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BEFORE THE BOARD OF COUNTY COMMISSIONERS

FOR COLUMBIA COUNTY, OREGON

In the Matter of Amending Ordinance No. 2001-06,)
 On Remand from the Oregon Land Use Board of) ORDINANCE No. 2001-13
 Appeals for an Interpretation of Policy 3F of the)
 Columbia County Comprehensive Plan,)
 Part XII, Resource Industrial Development)

The Board of County Commissioners for Columbia County, Oregon, ordains as follows:

Section 1. Title

This Ordinance shall be known as Ordinance No. 2001-13, interpreting Policy 3F of the Columbia County Comprehensive Plan, Part XII, Resource Industrial Development.

Section 2. Authority.

This Ordinance is adopted pursuant to ORS 203.045.

Section 3. Purpose

The purpose of this Ordinance is to amend Ordinance No. 2001-06 which adopted the Port Westward Urban Renewal Plan, for an interpretation of Policy 3F of the Columbia County Comprehensive Plan, Part XII, Resource Industrial Development, on remand from the Oregon Land Use Board of Appeals.

Section 4. History

The Columbia County Development Agency (hereinafter referred to as the "Agency"), an urban renewal agency, was created under ORS Ch. 457 in 1999 to address "blighted areas" in Columbia County. Chapter 457 permits the Agency to identify blighted areas in the County and to create one or more urban renewal areas that encompass such blighted areas. In order to create an urban renewal area, the Agency sought approval and adoption of an urban renewal plan by the County Board of Commissioners through the adoption of Ordinance No. 2001-06, conforming with ORS 457.095.

The Agency submitted an application for the County's consideration of the Port Westward Urban Renewal Plan (hereinafter referred to as the "Plan") and accompanying report (hereinafter referred to as the "Report"), on March 4, 2001. The Plan and Report were then forwarded to the Columbia County Planning Commission for its recommendation on April 27, 2001. The Planning Commission considered the Plan and Report on May 7, 2001. After receiving evidence and testimony and considering the Staff Report, the Planning Commission voted to recommend that the Board of County Commissioners approve the Plan. Final Order DR 01-21 was signed by Jeff

VanNatta, Chair of the Planning Commission on May 11, 2001, and was forwarded to the Board of County Commissioners.

The Plan and Report were forwarded to the City of Clatskanie pursuant to ORS 457.105 for approval by the City Council. On May 2, 2001, the City of Clatskanie signed Resolution No. 2001-12, adopting the Plan. The Plan and Report were also forwarded to the governing body of each taxing district affected by the Plan on May 4, 2001, pursuant to ORS 457.085. No recommendations or comments were received by the County from the governing bodies of such taxing districts.

On May 3rd, the County mailed notice of a public hearing before the Board of County Commissioners to consider the Plan for the Port Westward Urban Renewal Area, to each household of record owning real property within the Clatskanie School District, in accordance with ORS 457.120(4)(a). The County also faxed notice of public hearing to two papers of general circulation in Columbia County, the Chronicle and the Clatskanie Chief, for publication on May 9, 2001, and May 12, 2001 (the Chronicle), and May 10, 2001, and May 17, 2001 (the Clatskanie Chief), according to the specifications of ORS 457.095(4)(b).

The Board of County Commissioners held a public hearing to review and consider the Plan and accompanying Report, the recommendation of the Planning Commission, and public testimony and evidence on May 23, 2001. At said public hearing, Ordinance No. 2001-06 was read for the first time, evidence and testimony was received into the record, the public hearing was closed, and the matter was continued for deliberations to June 13, 2001, at or after 10:00 a.m. On June 13, 2001, Ordinance No. 2001-06 was read for the second time at a the regularly scheduled meeting of the Board of County Commissioners. Thereafter, the Board of County Commissioners deliberated on the adoption of the Ordinance, and voted to approve Ordinance No. 2001-06, adopting the Plan, thereby creating the Port Westward Urban Renewal Area, effective September 11, 2001.

On July 3, 2001, Pat Zimmerman and Michael Sheehan (Petitioners) filed a notice of intent to appeal the adoption of Ordinance No. 2001-06, with the Oregon Land Use Board of Appeals. On July 19, 2001, the Port of St. Helens filed a motion to intervene in the proceedings on the side of Respondent, Columbia County. Petitioners, in a jointly filed petition for review, made two assignments of error. The first assignment of error was that in adopting the Urban Renewal Ordinance, the County failed to make an interpretation of Policy 3F of the Columbia County Comprehensive Plan, Part XII, Resource Industrial Development, under ORS 457.095(3). Petitioners also argued Policy 3F prohibits the adoption the Port Westward Urban Renewal Plan because the Policy cannot be interpreted to allow tax increment to be used to pay debt incurred for the building of public infrastructure. Petitioners' second assignment of error was that the County's finding that the Plan is economically sound and feasible under ORS 457.085(3)(g) and 457.095(6) was not based on substantial evidence in the record.

After reviewing the parties' briefs and hearing oral argument, LUBA issued its final opinion and order on October 16, 2001 (LUBA No. 2001-106, October 16, 2001). With respect to the first assignment of error, LUBA remanded the County's final decision for an interpretation of Policy 3F. LUBA further specifically disagreed with petitioners that Policy 3-F must be read to prohibit the County from planning and funding improvements to support future resource industrial development. LUBA said, "if the board of commissioners agrees with the interpretations of Policy 3-F that are

advanced in the response briefs it my adopt those interpretations in its findings. LUBA denied Petitioners' second assignment of error.

Thereafter, on October 29, 2001, the County faxed notice of a public hearing on remand to the Chronicle for publication in its November 3, 2001, and November 10, 2001, issues, and to the Clatskanie Chief for publication in its November 8, 2001, and November 15, 2001, issues. On October 30, 2001, the public notice of hearing on remand was mailed by first class mail, postage prepaid, to all persons and entities that participated in the original hearings on adoption.

On November 21, 2001, the Board of County Commissioners held a public hearing on remand for an interpretation of Policy 3F of the Columbia County Comprehensive Plan, Part XII, Resource Industrial Development. At the hearing, the Ordinance was read twice by title only. After hearing testimony and receiving evidence into the record, the Board closed the public record, deliberated on the matter, and voted to approve Ordinance No. 2001-13, amending Ordinance No. 2001-06, to adopt an interpretation of Policy 3F.

Section 5. Findings.

The Board of County Commissioners adopts the supplemental findings on remand which are attached hereto as Exhibit "A" and are incorporated herein by this reference.

Section 6. Adoption.

Ordinance No. 2001-13, amending Ordinance 2001-06, on remand from the Oregon Land Use Board of Appeals for an Interpretation of Policy 3F of the Columbia County Comprehensive Plan, Part XII, Resource Industrial Development, is hereby adopted.

Ordinance No. 2001-06 is amended to include the supplemental findings on remand, which are attached hereto as Exhibit A.

Section 7. Emergency.

This Ordinance being immediately necessary to maintain the public health, safety and welfare, an emergency is declared to exist and this ordinance shall take effect upon its adoption.

Section 8. Severability.

If for any reason any court of competent jurisdiction holds any portion of this Ordinance or any portion or portions of the attached Exhibit "A", to be invalid, such portion or portions shall be deemed a separate, distinct and independent portion, and any such holding shall not effect the validity of the remaining portions thereof.

Section 9.

Effective Date.

The effective date of this Ordinance shall be the date of adoption.

Dated this 21st day of November, 2001.

Approved as to form

By: Sarah Hood
Office of County Counsel

Attest:

By: Jan Suenkelgh
Recording Secretary

First Reading: 11/21/01
Second Reading: 11/21/01
Effective Date: 11/21/01

BOARD OF COUNTY COMMISSIONERS
FOR COLUMBIA COUNTY, OREGON

By: John M. Hubbard
Chair

By: _____
Commissioner

By: Joe Corsiglia
Commissioner

Exhibit A
Supplemental Findings on Remand

1) This matter came before the Board of County Commissioners on November 21, 2001, following a remand by the Land Use Board of Appeals in *Zimmerman v. Columbia County*, ___ Or LUBA ___ (LUBA No. 2001-106, October 16, 2001). In *Zimmerman*, the petitioners raised two assignments of error: (1) that the Board violated ORS 457.095(3) by failing to make findings addressing Columbia County Comprehensive Plan Resource Industrial Development Policy 3-F; and (2) that adoption and carrying out of the urban renewal plan is not "economically sound and feasible" as required by ORS 457.095(6). LUBA ruled in favor of the petitioners on the first assignment of error, and in favor of the County on the second assignment of error. Consequently, the only issue before the Board on remand is the interpretation of Policy 3-F, and whether that Policy conforms with the Plan under ORS 457.095(3).

2) ORS 457.095(3) requires in relevant part that the local government decision approving an urban renewal plan include findings that the plan "conforms to the comprehensive plan and economic development plan, if any, of the municipality as a whole". Before LUBA, the petitioners argued that the Board violated this statute because the adopted findings failed to address compliance with Comprehensive Plan, Part XII, Resource Industrial Development, Policy 3-F, which requires the County to restrict industrial development on RIPD-zoned lands to those uses that "will not require facility and/or service improvements at public expense", and Columbia County Zoning Ordinance Section 681, which contains very similar language. The petitioners further argued that Policy 3-F can only be interpreted to prohibit any publicly funded improvements to support resource industrial development, such that the urban renewal plan could not comply with the policy.

3) While LUBA agreed with the petitioners that ORS 457.095(3) requires findings addressing the interpretation of Comprehensive Plan, Part XII, Resource Industrial Development, Policy 3-F, it rejected their contention that the policy *must* be interpreted in a way that prohibits the county from planning and funding improvements to support future resource industrial development. Accordingly, rather than reverse the Board's decision, LUBA remanded this matter to the County so that the County can "express [its] judgment" regarding the relationship between the renewal plan and Policy 3-F.

4) Before LUBA, several interpretations of Policy 3-F were advocated. Petitioners claimed that Policy 3-F prohibits any significant expenditure of public funds for infrastructure to attract heavy industry to RIPD-zoned lands, arguing the central premise of the urban renewal plan "is that the only industries that will come are those that do require 'facility and/or service improvements at significant public expense.'" According to petitioners, that is precisely the type of development that RIPD Policy 3-F prohibits.

Columbia County Counsel and the Port of St. Helens, however, offered differing interpretations of Policy 3-F. County Counsel first argued that RIPD Policy 3 does not even apply to urban renewal plan adoption because it is focused on specific applications for industrial development rather than on broad legislative decisions regarding public infrastructure. However, if Policy 3 did apply, then it is met because its focus is aimed at protecting the County from proposals for rural industrial development that require facilities or service improvements at public expense, and development cannot "require" those improvements if they are already in place. In other words, Policy 3-F does not prohibit Columbia County from taking steps to put needed public facilities and infrastructure in place in anticipation of but prior to a proposal for a specific industrial development. County Counsel further argued that improvements funded by the urban renewal district would not be at public expense within the meaning of Policy 3-F because the burden of paying for the improvements rests on the tax increment of private developers rather than on Columbia County.

Similarly, the Port argued that Policy 3-F is directed at proposals for specific rural industrial development, as reflected by the repetition of Policy 3 in Section 681 of the zoning ordinance. The Port also asserted that other Comprehensive Plan goals and policies, including Economy Policy 10, Industrial Development Policy 7 and Public Facilities and Services Policies 1 and 2, direct the County to do what petitioners contended was prohibited by Policy 3-F: plan and fund public improvements for rural industrial development. Economy Policy 10 and Industrial Development Policy 7 each require the County to support improvements in local conditions in order to make areas more attractive to private capital investment. The Public Facilities and Services Policy 1 directs the County to provide adequate types and levels of public facilities and services in advance of or concurrent with development, and Policy 2 requires that the level of facilities be appropriate for the needs and requirements of the area to be served.

5) The Board does not agree with the interpretation of Policy 3-F that was advanced by the petitioners in the LUBA appeal. The Board concludes, instead, that Policy 3-F is intended to apply to specific industrial development proposals within the RIPD zone, such as a proposal to locate a plant or a factory in that zone. This interpretation finds support in Sections 681-685 of the Zoning Ordinance, which contain similar language to that found in Policy 3-F and require proposed industrial development to demonstrate consistency with the Resource Industrial Development plan policies and show the availability of adequate levels of sewer, water and other services. The Board further disagrees with the Petitioners arguments to the extent that Petitioners advanced an argument that Columbia County Zoning Ordinance section 681 applied to the adoption of the Urban Renewal Plan. The Board finds that the ORS Ch. 457 governs the adoption of such a plan. The statutes require that the County adopt an ordinance and in such ordinance, adopt a finding that the Plan conforms with the County's Comprehensive Plan. Nothing in the statutes require a finding of conformance with the Zoning Ordinance, and the zoning ordinance is not applicable to the adoption of the urban renewal plan.

The Board of County Commissioners agrees with its County Counsel and the Port of St. Helens that its Comprehensive Plan policies, including Economy Policy 10, Industrial Development Policy 7, the Public Facilities and Services Goals, and Public Facilities and Services Policies 1 and 2, impose on the County a responsibility to plan and fund capital improvements to support anticipated future development, including rural industrial development.

In short, the Board believes and finds that the Columbia County Comprehensive Plan includes "planning" policies directed at the County and "implementation" policies directed at and applicable to specific development proposals. Economic Policy 10, Industrial Development Policy 7, and the Public Facilities policies directing Columbia County to provide adequate types and levels of public facilities and services to attract private investment are planning policies, and the Board's action adopting the urban renewal plan is consistent with those policies. It is an action taken preliminary to proposed development to provide conditions that will attract new development. In contrast, the policies in Resource Industrial Development Policy 3, including Policy 3-F, are policies applied to project development proposals, as demonstrated by the provisions in Section 681 of the Zoning Ordinance. Proposed industrial uses are evaluated under these standards to determine whether they may be permitted in the zone.

Based on these findings and interpretations, the Board concludes that the prior listing of Comprehensive Plan, Part XII, Policy 3 as an applicable policy to this urban renewal action was in error. Because the adoption of the urban renewal plan involves planning action, rather than consideration of a specific industrial development proposal, Resource Industrial Development Policy 3 does not apply to this decision. The urban renewal action will attract industry to RIPD-zoned areas, which is consistent with the Resource Industrial Development goal to use RIPD lands for industry that is resource based. However, Resource Industrial Development Policy 3 is not applicable to the decision to adopt an urban renewal plan.

6) The Board further disagrees with Petitioners' argument that Policy 3-F must be inconsistent with the adoption of the Port Westward Urban Renewal Plan. The Board finds that even if such policy were applicable to the adoption of the Urban Renewal Plan, which we have concluded it is not, the Plan conforms to the Policy, as it is properly interpreted. The Board finds that the industrial development anticipated to occur under the Urban Renewal Plan will not require public facilities or services at public expense because the planned infrastructure is to be built in order to attract future industrial development at Port Westward such that the eventual industrial development will not "require" those infrastructure improvements to be built at the time of development. The Board finds that the purpose of Policy 3-F is to prevent an industrial developer from forcing the County to make infrastructure improvements that would be at County wide expense in the context of an application for development. The Policy is not prohibitive when there is a method of paying for infrastructure improvements which is not at "public expense," and where the required infrastructure improvement falls within the scope, and timing of Urban Renewal Plan, and are fiscally possible.

The Board finds that methods proposed to be used to pay for infrastructure improvements under the Urban Renewal Plan are not at "public expense." The Board finds that all methods of servicing debt to pay for such improvements, including tax increment financing, are paid for by the industrial developers, and not out of the public coffers. As is typical with urban renewal projects, tax increment is used as a way to allow industrial developers to pay for infrastructure improvements over a period of time, out of their increased property taxes, rather than up front. While it is true that increased property taxes, outside of an urban renewal arena, would be distributed to the various taxing districts, the Board finds that due to the blighted conditions of the infrastructure at and leading to Port Westward, there would be very limited industrial development at Port Westward without the enactment of the Plan.

The Board finds that "public expense" under Policy 3-F reflects some hardship or loss on the part of the public at large. Because the Board finds that without the Plan, there would not be increased property taxes at Port Westward for distribution to the taxing districts, the Board finds that there is no hardship or loss to the public by the use of tax increment financing. In addition, the Board finds that, given the incentive for new industry to develop at Port Westward, and the potential for large property tax assessment increases at Port Westward, the public at large will benefit from the use of tax increment after indebtedness is retired and the additional property tax is distributed to all taxing districts. While it is difficult from some people in the county to conceptualize a benefit from urban renewal, the Board believes that long term planning with the use of urban renewal in the North County is necessary and will lead to a more diverse and economically stable environment throughout the County. For the foregoing reasons, the Board finds that even if Policy 3-F were applicable to the adoption of the Port Westward Urban Renewal Plan, the Plan conforms to the Policy.

7) Section 457.095(3) ultimately requires a finding that the urban renewal plan conforms to the comprehensive plan and economic development plan, if any, of the municipality as a whole. For the reasons stated herein and in its original decision and findings, the Board finds and concludes that the Port Westward Urban Renewal Plan complies with the Columbia County Comprehensive Plan as a whole. Policies like Economy Policy 10, Industrial Development Policy 7, and the Public Facilities and Services Policies provide clear direction to the County to take actions in the form of infrastructure investments to attract private capital investment. Such actions are needed in advance of development to provide a framework for development. The Board acknowledges that the language in Resource Industrial Development Policy 3-F is ambiguous. However, that policy was not intended to preclude County investment in infrastructure in the first instance in order to entice industry to locate on RIPD-zoned lands.