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BEFORE THE HEARINGS OFFICER
FOR KLAMATH COUNTY, OREGON

In the Matter of
KLAMATH COUNTY, by and through
KLAMATH COUNTY PLANNING DEPARTMENT,

NO. 1-82

Petitioner,

vs.

RONALD BEERMAN,

Respondent.

FINDINGS OF FACT,
CONCLUSIONS OF LAW AND
ORDER TO CEASE AND DESIST.

THIS MATTER came on for a hearing before the Klamath County Assistant Hearings Officer, JAMES R. UERLINGS, on September 16, 1982, at 1:30 p.m. in the Commissioners' Hearing Room of the Klamath County Courthouse Annex. Klamath County appeared through the Klamath County Planning Department Staff by Jonathan Chudnoff; Respondent did not appear. The following findings of fact, conclusions of law, decision and order to cease and desist are entered pursuant to said hearing.

FINDINGS OF FACT:

1) Respondent is the owner of subject property located at 2036 Autumn Avenue, Klamath Falls, Oregon, with Tax Code 3909-0524-04300-000-004. Subject property is zoned pursuant to Klamath County Development Code, Section 51.006, as low density residential. This zone does not permit the maintaining of a stockyard with the purchase and/or sale of livestock.

2) The applicant is maintaining a stockyard on

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1 the premises for the purchase and/or sale of livestock and
2 for the storing of said livestock in between transactions.
3 This livestock includes sheep, goats, cattle, and pigs. A corral
4 and two livestock trailers are part of this operation.

5 3) A dozen to over twenty animals have been observed
6 upon the property by visits made by the Klamath County Planning
7 Department's staff on June 16, 1982, August 9, 1982, and August 31,
8 1982.

9 4) The Respondent was first sent a warning letter on
10 June 2, 1982; a second warning letter was sent on June 29, 1982,
11 by certified mail. The Respondent did not answer the first letter.
12 In an telephone conversation on July 15, 1982, the Respondent
13 advised Jonathan Chudnoff that he was looking for another place
14 to house the animals. At this time, the Respondent was warned
15 by Jonathan Chudnoff of the time limits imposed by the warning
16 letters.

17 5) On August 9, 1982, Jonathan Chudnoff paid a second
18 visit to the property and found the same conditions to exist and
19 verbally warned the Respondent again. On August 23, 1982, when
20 Jonathan Chudnoff found that the conditions continued to exist,
21 a Uniform Notice of Violation was issued. The applicant was given
22 until August 30, 1982, to correct the situation of keeping large
23 animals, to-wit: a stockyard operation including sheep, goats,
24 cattle and swine as well as two livestock trailers parked on
25 his property. A citation was issued.

26 6) On September 1, 1982, a further inspection by

1 Klamath County Planning Department Staff indicated that the
2 violation continued and a citation #1-82 was issued to the
3 Respondent. The citation required the Respondent to appear
4 on September 16, 1982. The Respondent submitted a letter
5 numbered Respondent's Exhibit #1 wherein he advised that he
6 would not be able to attend the meeting and that he is in the
7 process of moving on or before October 10, 1982. The letter
8 acknowledged that he did have animals on the property.

9 7) Several persons appeared in support of the citation,
10 either by way of letter or by testifying at the hearing. The
11 general nature of this testimony included pictures of the property,
12 including pictures of the stockpens and the trailers in which
13 the animals were housed, and further showing how the applicant
14 washed out the animal waste contained in the trailers, allowing
15 it to drain down the neighborhood streets. The witnesses further
16 testified that the odor and noise from the property were substan-
17 tial and that the livestock in the area caused an extraordinary
18 number of flies to be present. Witnesses appearing in favor
19 of the citation further testified that the animals had not been
20 kept on the property in the past other than their two dogs.
21 Mr. John Brown testified that, due to the odor, noise and the
22 tremendous number of flies in the area, he was forced to move to
23 a different area within the County. Mr. Brown further testified
24 that on occasion dead animals were on the property and not disposed
25 of by the Respondent.

26 * * * * *

1 8) Klamath County Planning Department Staff testified
2 that no Conditional Use Permit was in effect for the subject
3 property.

4 KLAMATH COUNTY DEVELOPMENT CODE CRITERIA:

5 1) Klamath County Development Code Section 51.006 prov-
6 ides that, in a low density residential zone, the following uses
7 are permitted: single family residential, essential services,
8 accessory uses such as a garage or a storage shed for lawn equip-
9 ment, wood, etc. Conditional uses allowed would be community
10 education, community recreation, religious facilities, small
11 animals, and extensive impact services. Small animals is inter-
12 preted by the Planning Department to mean chickens, rabbits, etc.

13 2) Klamath County Development Code Section 14.001
14 provides that this article establishes procedures for the enforce-
15 ment of the provisions of this Code and other fully adopted ordin-
16 ances under the jurisdiction of the Building Department. Enforce-
17 ment procedures set forth are intended to insure due process of
18 law for violations of those Codes.

19 3) Section 14.003 provides that the Code Enforcement
20 Officer may issue a citation to any person who violates any of the
21 provisions of their applicable ordinance. Penalties for viola-
22 tions shall be in accordance with Section 14.012 of this Code.

23 4) Section 14.005 provides that alleged violators
24 shall be notified in writing at least two (2) times within forty
25 five (45) days prior to a citation for an Enforcement Hearing
26 by certified mail, postage prepaid, return receipt requested, to

1 the owner of the effected property. It further provides that the
2 Code Enforcement Officer is to notify the violator by a citation
3 of intention to enforce or revoke at least ten (10) days prior to
4 the Enforcement Hearing.

5 5) The citation is to contain a list of provisions of
6 this Code or the conditions which were violated and the means to
7 correct such violations, if any. The citation is further to
8 include the requirement that the individual appear and show cause
9 why the provisions of the ordinance should not be enforced.

10 6) Section 14.006 provides that Hearings conducted
11 for the purpose of Code enforcement, revocation of approval or
12 forfeiture of bonds are to be conducted before the Klamath County
13 Hearings Officer.

14 7) The Hearings Officer is to hear sworn testimony,
15 consider other evidence concerning the conditions constituting
16 cause to enforce this Code, or Building Department ordinances,
17 revoke approval or forfeit bonds. The Hearings Officer shall
18 deliberate upon the evidence and make findings to support any
19 action which the Hearings Officer is empowered to take by this
20 ordinance, including but not limited to, enforcement of this
21 Code and other applicable ordinances, revocation of approvals,
22 or granting bond forfeitures. Thereafter, the Hearings Officer
23 shall issue his Order to the Respondents.

24 KLAMATH COUNTY DEVELOPMENT CODE FINDINGS:

- 25 1) See Findings 1-8 under Findings of Fact.
- 26 2) Subject property is located within a low density

1 residential zone. The applicant does not have a Conditional
 2 Use Permit for the keeping of any animals upon the property.
 3 Even with a Conditional Use Permit, the applicant would only be
 4 allowed to keep chickens and rabbits and other small animals on
 5 the property. The applicant is not allowed by the Development Code
 6 to keep, for any purpose, goats, pigs, cattle or sheep. The
 7 evidence indicates that the applicant has kept those animals and
 8 has continued to do so after repeated warnings from the Planning
 9 Department.

10 3) The applicant's conduct requires this Hearings
 11 Officer to take action to enforce the revisions of this Code
 12 pertaining to the permitted uses within the low density residen-
 13 tial zone.

14 CONCLUSIONS OF LAW, DECISION AND ORDER TO CEASE AND DESIST:

15 A. This citation complies with all applicable Klamath
 16 County Development Code requirements and policies governing such.

17 B. This citation is in conformity with the Klamath
 18 County Comprehensive Land Use Plan.

19 C. The applicant has violated Section 51.006 pertaining
 20 to the uses permitted within a low density residential zone.

21 D. There is substantial evidence in the record to
 22 support the finding that the applicant is in violation of this
 23 Code and

24 * * * * *

25 * * * * *

26 * * * * *

Therefore, it is hereby ordered that the applicant shall cease and desist to do any of the following acts on or before October 1, 1982, at twelve noon:

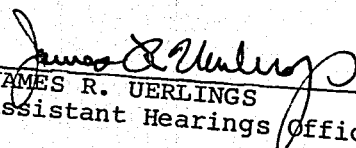
1) To keep, hold, possess, or exercise any other control over any large animals upon the subject property including but not limited to, sheep, swine, goats and cattle.

2) The applicant shall remove from the property all corrals, or pens, or other structures used to house said animals.

3) The applicant shall clean up the property to remove all animals, waste products, pens or other items associated with a stock yard operation which continues to produce odors and flies in this vicinity.

4) If the applicant fails to honor this order to cease and desist, the Klamath County Planning Department is directed to refer this matter to the Klamath County District Attorney for appropriate action.

DATED this 22 day of September, 1982.


JAMES R. UERLINGS
Assistant Hearings Officer

STATE OF OREGON; COUNTY OF KLAMATH; ss.

Filed for record

this 22 day of Sept A. D. 1982 at 12:50 o'clock P. M., and
duly recorded in Vol. M82 of Deeds on Page 12571

No Fee

EV. LYN BIEHN, County

By 

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