

BEFORE THE HEARINGS OFFICER
FOR KLAMATH COUNTY, OREGON

In the Matter of a)	NO. 15-84
CONDITIONAL USE PERMIT)	
for)	FINDINGS OF FACT, CONCLUSIONS
)	OF LAW AND DECISION ON REMAND
DARRELL D. HANKINS)	FROM BOARD OF COMMISSIONERS
)	

THIS MATTER came on for a hearing before Klamath County Assistant Hearings' Officer, JAMES R. UERLINGS, on July 19, 1984, at 1:30 p.m. in the Klamath County Commissioners Hearing Room after being remanded for consideration of new evidence by the Klamath County Board of Commissioners by a decision dated June 11, 1984.

The applicant was present at the remanded hearing in person and the Planning Department was represented by Jonathan Chudnoff. Also present at the hearing was an opponent to the application.

The following additional exhibit was marked, entered into evidence and made a part of the record: Exhibit "F".

This decision specifically incorporates all exhibits, testimony and evidence heard at the prior hearing of April 19, 1984, and the additional Exhibit "F".

The Assistant Hearings Officer, after reviewing the prior evidence in record and the new evidence presented, makes the following findings of fact, conclusions of law and

FINDINGS OF FACT, CONCLUSIONS OF LAW AND DECISION ON
REMAND FROM BOARD OF COMMISSIONERS

84 JUL 31 PM 1 26

1 decision.

2 FINDINGS OF FACT:

3 1. All prior Findings of Fact as made under the prior
4 Order of April 30, 1984, are incorporated herein.

5 2. A scientific report performed by the Klamath
6 Speech and Hearing Center and one of their audiologists,
7 Jackie D. LeBrun, indicates that the noise level generated
8 by a lawn mower operated in the small engine repair shop,
9 65' behind the house with the lawn mower running at full
10 throttle with the shop door open is, in terms of the A-Weighting
11 level of the noise measured in decibels, in the range of
12 89 decibels 6' from the mower inside the shop to 28 decibels
13 at the northeast corner in the bedroom with the mower off.

14 The report indicates that response to noise
15 is a physiological event which varies from one individual
16 to another and therefore its effect on one individual cannot
17 be readily measured. The report, however, makes inferences,
18 using the noise measurements and comparable noise levels,
19 that, although the measurements could not be obtained at the
20 precise site where the neighbor experiences the noise inter-
21 ference, they were taken in surrounding locations and provided
22 a representative range of daily noise levels.

23 3. The applicant indicated that it would be possible
24 for him to attempt to operate the shop with the door closed
25 and the side door open to provide the necessary ventilation.

26 4. The neighbor, Mrs. Ross, indicated that
FINDINGS OF FACT, CONCLUSIONS OF LAW AND DECISION ON
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1 the greatest amount of noise interference is caused by lawn
2 mowers and chain saws of different types and different
3 conditions being operating outside the shop area.

4 KLAMATH COUNTY DEVELOPMENT CODE CRITERIA:

5 1. Klamath County Development Code Section 44.003
6 sets forth the criteria for consideration in the application
7 of a conditional use permit:

8 A. That the use is conditionally permitted in
9 the zone in which it is proposed.

10 B. That the location, size, design and operating
11 characteristics of the proposed uses is in conformance with
12 the Klamath County Comprehensive Plan.

13 C. That the location, size, design and operating
14 characteristics of the proposed development will be compatible
15 with, and will not adversely effect, the livability or appro-
16 priate development of abutting properties in the surrounding
17 neighborhood. Consideration shall be given to the harmony
18 in scale, bulk, and utilities; to harmful effects, if any,
19 upon desirable neighborhood character; to the generation
20 of traffic and the capacity of surrounding streets and to
21 other relevant impact of the development.

22 KLAMATH COUNTY DEVELOPMENT CODE FINDINGS AND CONCLUSIONS:

23 1. The proposed use is conditionally permitted
24 in the zone in which it is proposed.

25 2. The location, size, design and operating charact-
26 eristics of the proposed use is in conformance with the

FINDINGS OF FACT, CONCLUSIONS OF LAW AND DECISION ON
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1 Klamath County Comprehensive Plan.

2 3. The location, size and design and operating
3 characteristics of the proposed use will be compatible with,
4 and will not adversely effect, the livability and/or appropriate
5 development of the abutting properties in the surrounding
6 neighborhood if the specific conditions set forth herein
7 are strictly followed by the applicant. In considering the
8 location and operating characteristics of the proposed
9 development, it appears that they will be compatible with,
10 and will not have a significant adverse effect on, the
11 appropriate development and use of the abutting properties
12 in the surrounding neighborhood.

13 STATE-WIDE PLANNING GOALS AND REVIEW CRITERIA:

14 See Exhibit "AA" attached hereto and incorporated
15 by this reference.

16 CONCLUSIONS OF LAW AND DECISION:

17 1. This request for a conditional use permit
18 on the subject property does meet all the applicable
19 Klamath County Development Code criteria and policies gov-
20 erning such, with the inclusion of the conditions added
21 herein.

22 2. This request for a conditional use permit
23 is consistent with and complies with all applicable State-
24 wide Planning Goals and review criteria, subject to the
25 conditions imposed herein.

26 THEREFORE, it is hereby ordered that this request
FINDINGS OF FACT, CONCLUSIONS OF LAW AND DECISION
ON REMAND FROM BOARD OF COMMISSISIONERS

1 for a conditional use permit is granted on the property
2 in question, subject to the following conditions:

3 A. This conditional use permit will be reviewed
4 at the end of four (4) months at which time it will be deter-
5 mined whether the conditions are satisfactory to allow for
6 compliance with the applicable Klamath County Development
7 Code criteria.

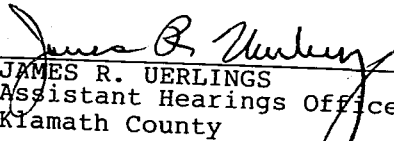
8 B. The applicant may operate his repair business
9 from 8:30 a.m. to 12 noon, Monday through Saturday. The
10 applicant may operate the business at other hours, so long
11 as no engines, motors or other equipment which emit noise
12 of the same type and character as a running engine are
13 operated during the additional business hours; i.e., the
14 applicant may perform certain other repairs to lawn mowers,
15 chain saws, etc. that do not require the running of the
16 lawn mower, chain saw, etc. during the time the particular
17 repair is being performed.

18 C. No piece of equipment, including those
19 pieces of equipment used for repairs and those pieces of
20 equipment being repaired, may be operated outside the
21 closed doors of the shop. Any time that the applicant
22 is running the motor of the lawn mower, chain saw, or other
23 piece of equipment which he is repairing, it shall be
24 done inside the shop with the doors closed, provided
25 at all times that the applicant shall have available adequate
26 ventilation to remove all dangerous, noxious fumes from

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1 the shop.

2 DATED this 27 day of July, 1984.

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6 JAMES R. UERLINGS
7 Assistant Hearings Officer,
8 Klamath County
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FINDINGS OF FACT, CONCLUSIONS OF LAW AND DECISION ON
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-6-

COMPREHENSIVE PLAN POLICIES AND STATE

LAND USE GOALS 1 - 14

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GOAL NO. 1 - Citizen Involvement

☒ Complies ☐ Does not Comply

☐ Complies with conditions

☐ Not applicable

Relevant Policies:

1. "The County shall provide for continued citizen involvement opportunities."

State Goal Issues:

A public hearing on this matter has been set for April 19, 1984. Notice has been sent to surrounding property owners, the South Suburban Area Committee and other concerned agencies and published in the Herald and News.

GOAL NO. 2 - Land Use Planning

☐ Complies ☐ Does not comply

☒ Complies with conditions

☐ Not applicable

Article 46
Major/Minor Partition
Section 46.003 Review Criteria

	Complies	Does not Comply	N.A.
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Relevant Policies:

A -	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
B -	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
C -	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
D -	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
E -	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
F -	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
G -	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
H -	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
I -	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
J -	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
K -	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
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State Goal Issues:

The area is zoned and developed for residential use. Home occupations are permitted subject to the limitations of Article 85 and to the general criteria for Conditional Use Permits (Section 44.003).

The home occupation must be found to be compatible with the surrounding neighborhood or be subject to conditions which would make it so.

GOAL NO. 3 - Agricultural Lands

- ☐ Complies ☐ Does not Comply
☐ Complies with conditions
☒ Not applicable

12944

Relevant Policies:

State Goal Issues:

The neighborhood is developed for residential use on lots of one acre and less. All urban utilities and services are in place.

GOAL NO. 4 - Forest Lands

- ☐ Complies ☐ Does not Comply
☐ Complies with conditions
☒ Not applicable

Relevant Policies:

State Goal Issues:

The neighborhood is within the Klamath Falls urbanized area and is developed for residential use.

GOAL NO. 5 - Open Space, Scenic and Historic Resources, and Natural

12945

☐ Complies ☐ Does not Comply

☐ Complies with conditions

☒ Not applicable

Relevant Policies:

State Goal Issues:

There are no inventoried Goal 5 resources on or near the property affected by this home occupation.

GOAL NO. 6 - Air Water and Land Resource Quality

☐ Complies ☐ Does not Comply

☒ Complies with Conditions

☐ Not applicable

Relevant Policies:

1. "The County shall support efforts to maintain and improve the quality of air resources."

9. "Consideration shall be given to locating noise-sensitive activities away from noise generators."

State Goal Issues:

The home occupation would result in some smoke and fumes from the engines as well as fumes from fuels and solvents used in the business. With the low level of operation permitted for a home occupation, the level of air pollution would not be significantly higher than what is normally found in a residential area.

The home occupation would generate noise from running and testing the engines under repair. The noise could result in disturbance

GOAL NO. 6 - Air Water and Land Resource Quality (cont.)

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to the homes nearest to the Hankins shop, especially the Ross home, directly to the north, and the mobile home park to the east. The Rosses have already complained about this business. Noise problems can be reduced by limiting the hours and days of the operation and by restricting the running of engines to the interior of the shop.

GOAL NO. 7 - Natural Disaster and Hazards Are

12947

☐ Complies ☐ Does Not Comply

☐ Complies with conditions

☒ Not applicable

Relevant Policies:

State Goal Issues:

The area is not known to be subject to any natural hazards.

GOAL NO. 8 - Recreation Needs

☐ Complies ☐ Does Not Comply

☐ Complies with conditions

☒ Not applicable

Relevant Policies:

State Goal Issues:

The home occupation would not affect the need for or availability of recreational facilities in the area.

GOAL NO. 9 - County Economy

12948

- ☒ Complies ☐ Does not Comply
☐ Complies with conditions
☐ Not applicable

Relevant Policies:

State Goal Issues:

The home occupation would provide economic benefits by supplementing the Hankins family income. There would be no long-term change in the Klamath County economy or in employment.

GOAL NO. 10 - Housing

- ☐ Complies ☐ Does not Comply
☐ Complies with conditions
☒ Not applicable

Relevant Policies:

State Goal Issues:

The home occupation is accessory to an existing home and would not affect the need for or availability of housing in the area.

GOAL NO. 11 - Public Facilities and Services

☒ Complies ☐ Does not Comply

☐ Complies with conditions

☐ Not applicable

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Relevant Policies:

12. "Development proposals shall not be approved unless the types and levels of public facilities and services required are available..."

State Goal Issues:

Electrical, telephone, water, sewer and gas services are available to the property. The area is in Fire District No. 1.

The home occupation would not require additional public facilities and services.

GOAL NO. 12 - Transportation

☒ Complies ☐ Does not Comply

☐ Complies with conditions

☐ Not applicable

Relevant Policies:

State Goal Issues:

The property fronts on a paved public street. There is room on the property for at least four cars to park. It does not appear that more than one or two customers at a time would be present.

GOAL NO. 13 - Energy Conservation

12950

☒ Complies ☐ Does Not Comply☐ Complies with conditions☐ Not applicable

Relevant Policies:

State Goal Issues:

The home occupation would conserve energy by providing a service where customers are concentrated.

GOAL NO. 14 - Urbanization

☐ Complies ☐ Does not Comply☐ Complies with conditions☒ Not applicable

Relevant Policies:

State Goal Issues:

The surrounding area is urbanized. The home occupation would not affect additional urban development of the area.

EXHIBIT "AA", Page 8.

STATE OF OREGON: COUNTY OF KLAMATH:ss

I hereby certify that the within instrument was received and filed for record on the 31 day of July A.D., 1984 at 1:26 o'clock P M, and duly recorded in Vol M84, of Deeds on page 12937.

EVELYN BIEHN, COUNTY CLERK

by: Pam Smith, DeputyFee: \$ None