

BEFORE THE HEARINGS OFFICER

53203

KLAMATH COUNTY, OREGON

Vol. 1185 Page 14745

1 In the Matter of Violation )  
2 No. 21-85/Robert D. Baker ) Klamath County Planning  
Findings of Fact and Order

3 A hearing was held on this matter on August 15, 1985, pur-  
4 suant to notice given in conformity with Ordinance No. 45.2,  
5 Klamath County, before the Klamath County Hearings Officer, Jim  
6 Spindor. The Klamath County Planning Department was represented  
7 by Claudia Stine. The Hearings Reporter was Karen Burg.

8 This order is based on the following conclusions of law:

9 CONCLUSIONS OF LAW:

10 1. Mr. Baker is in violation of the Klamath County Land  
11 Development Code, Section 51.005, concerning the Suburban-  
12 Residential zone, which does not allow a wrecking yard as a per-  
13 mitted use.

14 2. Mr. Baker's property is being used (and has been so used  
15 since at least 1980) as a wrecking yard as defined by the Klamath  
16 County Land Development Code, Section 93.005J. Such a use is in  
17 violation of Section 51.005 as it is allowed only in industrial  
18 areas.

19 3. Mr. Baker's property and his use thereof is not a "non-  
20 conforming use" as defined by Article 77 of the Klamath County  
21 Land Development Code, because the use in question was not law-  
22 fully established before the effective date of this Code as re-  
23 quired by Section 97.002 which defines "non-conforming use". The  
24 use in question was not legally established because even as far  
25 back as 1975 it violated the 1972 zoning ordinance in Klamath  
26 County, this being Ordinance 17.

27 4. Mr. Baker shall conform his use of the property in  
28 question to the Klamath County Land Development Code,

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1 Section 51.005 within 45 days from the date of this order; that  
2 is, he shall remove all except two of the vehicles on his property  
3 which are not in running condition, and/or parts of such vehicles  
4 within said 45 days.

5 FINDINGS OF FACT:

6 Mr. Baker has been found in violation of the Klamath County  
7 Land Development Code, based on the following findings of fact:

8 1. The property consist of a one-acre lot on Crest Street.  
9 The property is rectangular in shape and is located in the  
10 Suburban Residential zone. Approximately the front one-third of  
11 the property is occupied by a small house, shed, trees and lawn.  
12 The back two-thirds of the property has a large metal shop (about  
13 20 feet by 60 feet) and a large number of auto bodies and auto  
14 parts. See Exhibits B-1 and B-2. Also see Exhibit J submitted  
15 by Mr. Tobias, a neighboring landowner, which contains six  
16 photographs of Mr. Baker's property.

17 2. The situation on this property was first called to the  
18 attention of the Planning Department in 1980. Mr. Baker was  
19 first contacted regarding this matter by letter dated April 3,  
20 1980. There is a note on this letter that Mr. Baker called to  
21 the Planning Department and "said he had a hobby restoring antique  
22 cars and was not operating a business at this site". Mr. Baker  
23 further told the Planning Department that "he will clean up the  
24 place and put up a fence". The second contact with Mr. Baker  
25 regarding this property was by letter dated April 23, 1980.  
26 After violation proceedings, Mr. Baker agreed to clean up the  
27 property, signing a statement dated May 13, 1980 which read "I,  
28 Bob Baker, agree to have the property located at 2928½ Crest

1 Street, Klamath Falls, Oregon, cleaned and in an orderly manner  
2 with acceptance and approval of the Administrative Officer and  
3 meeting the conditions of Ordinance 36 by June 30, 1980." See  
4 Exhibit D herein which documents the information set forth in this  
5 Finding of Fact.

6 3. Next, Mr. Baker was given Warning No. 1 with regard to  
7 the use of his property dated May 3, 1985, which stated "main-  
8 taining an automobile wrecking yard in a residential zone".  
9 Warning No. 2 was given to Mr. Baker on May 23, 1985, and on June  
10 24, 1985, Citation No. 21-85 was issued to Mr. Baker stating that  
11 he had been "maintaining an automobile wrecking yard in a resi-  
12 dential zone" from March 31, 1980 through June 24, 1985. See  
13 Exhibit E which documents the information set forth in this  
14 Finding of Fact.

15 4. The Land Development Code, Section 93.005J, defines a  
16 wrecking yard as "any property where three or more vehicles not  
17 in running condition or parts thereof, are: wrecked, dismantled,  
18 disassembled or substantially altered for sale or not for sale,  
19 and not enclosed; or any land, building or structure used for the  
20 wrecking or storing of such motor vehicles or parts thereof for  
21 a period exceeding three months." Mr. Baker's property contains  
22 <sup>85</sup> ~~more than~~ three or more vehicles, not in running condition, or parts thereof  
23 which are wrecked, dismantled, disassembled or substantially  
24 altered. See Exhibits B-1, B-2 and J for proof of this fact.  
25 Some of the vehicles are for sale; see Exhibit G. The land is  
26 not enclosed. Further, Mr. Baker's land is used for the storing  
27 of such vehicles for a period exceeding three months, in fact  
28 since at least 1980.

1        5. Mr. Baker purchased the land in question on November 17,  
2 1976. The property at that time was subject to the County's 1972  
3 zoning ordinance which was Ordinance 17, and which zoned the  
4 property in question as RA (Residential-Agricultural). Pages 9,  
5 12, 48 and 49 of this ordinance are attached hereto and made a  
6 part hereof. It can be seen from these pages that any industrial  
7 use was prohibited on this property. It can further be seen that  
8 the use of the property as Mr. Baker uses it today, and has used  
9 it since 1980, was in violation of this 1972 ordinance, specific-  
10 ally Ordinance 17.

11        6. Objections of Mr. Baker's use of the property as a  
12 wrecking yard have existed since approximately 1975 (see  
13 Exhibit I). Numerous neighbors appeared at the hearing and com-  
14 plained about the use of the property in this manner. Other ob-  
15 jections were obtained in writing.

16        7. The Hearings Officer viewed the property in question and  
17 other properties along Crest Street in this area, and no other  
18 properties are used as Mr. Baker's. Although to Mr. Baker this  
19 is a hobby, to any objective observer this is a wrecking yard in  
20 the middle of a residential district. This use of Mr. Baker's  
21 property is a detriment to all surrounding neighbors and the  
22 neighborhood in general.

23        The Hearings Officer, based on the foregoing Findings of  
24 Fact, accordingly orders as follows: That real property de-  
25 scribed as

26        " being generally located at 2928 Crest Street, and  
27 more particularly described as being Lot 13, Block 4,  
28 Altamont Acres, Klamath County, Oregon,"

is to have removed all except two of the vehicles on his property

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1 which are not in running condition, and/or parts of such vehicles  
2 within 45 days from the date of this order.

3 Entered at Klamath Falls, Oregon, this 11<sup>th</sup> Day of September  
4 1985.

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7 KLAMATH COUNTY HEARINGS DIVISION

8 Jim Spindor  
9 Jim Spindor, Hearings Officer

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## ARTICLE 15 - DEFINITIONS

To carry out the purpose and intent of this Ordinance and alleviate any ambiguities, the words, phrases and terms included herein shall be deemed to have the meaning ascribed to them in this Article.

SECTION 15.001 - "A"

ABUT OR ABUTTING - The same as adjoining.

ACCESS or ACCESS WAY - The place, or way by which pedestrians and vehicles shall have safe, adequate and usable ingress and egress to or from property or use.

ACCESSORY USE - A use incidental to, related and clearly subordinate to a principal use established on the same lot or parcel of land which accessory use does not alter the principal use.

ADJACENT - Two (2) or more lots or parcels of land separated only by an alley, street, highway or recorded easement.

ADJOINING - Two (2) or more lots or parcels of land sharing a common boundary line, or two (2) or more objects in contact with each other.

ADVISORY AGENCY - The Planning Commission which shall serve in such capacity to the Board of County Commissioners on all matters designated by the Board of County Commissioners.

AGRICULTURAL PURPOSES - The predominate and gainful use of land for the following purposes: The growing of hay, grain, row crops, horticultural crops, livestock, poultry and produce.

AIRCRAFT - Any device used, or designed for flight in the air and capable of conveying persons or goods.

AIRPORT, COMMERCIAL - Any area of land or water which is used or intended to be used for the landing and taking off of aircraft and any appurtenant areas used or intended to be used for airport buildings or other airport facilities or right-of-way, together with all airport buildings and facilities located thereon. Airport includes heliport and helistop.

AISLE - An access way to required vehicular parking spaces within a private, public or semi-public parking lot.

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**BOARD** - The Board of County Commissioners of Klamath County.

**BOARD OF COUNTY COMMISSIONERS** - The Board of County Commissioners of Klamath County.

**BODY AND FENDER SHOP** - A building enclosed on all sides by walls and/or doors and used for the repair of motor vehicles including reforming of parts of the vehicle body, replacing fenders, doors, windows, upholstery, wheels, bumpers, radiators, headlights, etc., painting or repainting, aligning or realigning of component parts and such other work to cause such motor vehicles to be operable in accordance with the Vehicle Code of the State of Oregon.

**BORROW PIT** - The same as quarry.

**BUILDING** - Any structure having a roof supported by columns or by walls and intended for the shelter, housing or enclosure of persons, animals, chattel or property of any kind.

**BUILDING, ACCESSORY** - A detached subordinate building, the use of which is incidental to that of the main building or to the principal use of the land and which is located on the same lot or parcel of land with the main building or principal use of the land.

**BUILDING HEIGHT** - The vertical distance from the grade to the highest point of the coping of a flat roof, or to the deck line of a mansard roof, or to the average height of the highest gable of a pitch or hip roof.

**BUILDING, MAIN** - A building in which is conducted a principal use of the lot or parcel of land upon which it is situated. In a residential or agricultural zone any dwelling shall be deemed to be a main building upon the lot or parcel of land on which it is situated.

**BUILDING SETBACK LINE** - The minimum distance required between the property line of a lot or parcel of land and any point of a building or structure related thereto, exclusive of those architectural features permitted to extend into yards or open spaces.

#### SECTION 15.003 - "C"

**CABANA** - A stationary, lightweight structure which may be prefabricated or demountable with two (2) or more walls used adjacent to and in conjunction with a trailer to provide additional living space meant to be moved with the trailer.

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ARTICLE 41 - RA ZONE 9 (RESIDENTIAL-AGRICULTURAL)

SECTION 41.001 - INTENT

This zone is intended to provide for single family residential living, the maintenance of domesticated animals on the same premises and limited agricultural pursuits on the same premises.

SECTION 41.002 - PRINCIPAL USES

Buildings, structures and lands shall be used and structures shall hereafter be erected, altered or enlarged only for the following uses, plus such other uses as the Board of County Commissioners, by resolution, may deem to be similar to those uses listed and not obnoxious or detrimental to the public health, safety and welfare:

Accessory buildings including a single accessory living quarter, private stables, greenhouse and lath house  
Dwellings, one family Home Occupation  
Keeping of horses, bovine, goats and sheep within a pen or corral subject to the following conditions: (1) the lot area is not less than 20,000 square feet; (2) there shall be not more than two animals on any one (1) lot except where such lot area contains in excess of 20,000 square feet, two (2) additional animals may be maintained per acre.

Kennel, non-commercial  
Keeping of poultry, rabbits and the like shall be permitted; however, not more than 25 shall be kept per acre.

Mobile Home, subject to the following conditions:  
(1) there shall not be more than two (2) mobile homes on any one (1) lot; (2) that sanitation facilities shall be provided in accordance with applicable regulations; and  
(3) that the location and use shall be in accordance with applicable provisions of this zone.

Raising crops, including field, tree, bush, nursery stock and the like.

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SECTION 41.003 - USES PERMITTED SUBJECT TO CONDITIONAL USE PERMIT

The following uses may be permitted subject to a conditional use permit as provided for in Section 41.001:

- Churches
- Educational institutions
- Golf courses
- Parks, playgrounds or community centers owned and operated by a governmental agency or as created pursuant to a special district
- Nursing homes
- Public utility facilities
- Keeping of animals other than listed in Section 41.002
- Temporary carnivals and bazaars in conjunction with churches, educational institutions or service clubs

SECTION 41.004 - USES EXPRESSLY PROHIBITED

The following uses shall be expressly prohibited:

- Agricultural, residential, commercial and industrial, unless otherwise provided for herein.

SECTION 41.005 - PROPERTY DEVELOPMENT STANDARDS

The following property development standards shall apply to all land and buildings except that any lot held under separate ownership or of record on the effective date of this Ordinance which is substandard in area or dimensions, may be used subject to all other standards:

- A. Lot area - Minimum lot area shall be not less than 20,000 square feet.
- B. Lot dimensions
  - 1. Width - Minimum lot width shall be not less than one hundred (100) feet except in the case of a corner lot which shall be not less than one hundred ten (110) feet.
  - 2. Depth - Minimum lot depth shall be not less than one hundred fifty (150) feet.

August 29, 1972

STATE OF OREGON: COUNTY OF KLAMATH: ss.

Filed for record at request of \_\_\_\_\_ the 12th day of September A.D., 19 85 at 12:39 o'clock P.M., and duly recorded in Vol. M85 of Deeds on Page 14745.

FEE

NONE

By Evelyn Biehn, County Clerk

Ret: Commissioner's Journal