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BEFORE THE BOARD OF COMMISSIONERS
KLAMATH COUNTY, OREGON

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1 In the Matter of Violation)
2 No. 40-85/Raymond Mattson)

ORDER #217

3 A hearing was held on this matter on February 6, 1986, pursu-
4 ant to notice given in conformity with Ordinance No. 45.2, Klamath
5 County, before the Klamath County Hearings Officer, Jim Spindor.
6 A copy of the Order of the Hearings Officer is attached hereto and
7 marked Exhibit "A".

8 On March 3, 1986, Klamath County filed its Notice of Appeal
9 to the Board of County Commissioners. A hearing before the Board
10 was held on April 9, 1986. The hearing was then closed and con-
11 tinued to April 17, 1986, for decision only, and based upon a
12 review of the record of the hearing before the Hearings Officer,
13 the Board makes the following conclusions of law:

CONCLUSIONS OF LAW:

14
15 1. Raymond K. Mattson is in violation of the Klamath County
16 Land Development Code, Section 51.014, for operating a wrecking
17 yard in the Highway Commercial (CH) zone, as set forth herein.

18 2. Mr. Mattson's property is presently being used (and has
19 been so used since at least 1955) as a wrecking yard defined by
20 Section 93.005J.

21 3. Raymond K. Mattson's use of the property as a wrecking
22 yard is not a "non-conforming use" under Section 97 of the Land
23 Development Code, which provides:

24 "The lawful use of any building, structure, or land
25 at the time of the enactment or amendment of any
zoning ordinance or regulation may be continued."

26 because in December 1972 when the first Zoning Code was enacted
27 in Klamath County and continuously since then to the date of the
28 hearing, there was no evidence that Raymond K. Mattson had com-

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1 plied with ORS 481.345 which requires that no person shall con-
2 duct the business of wrecking, dismantling or disassembling motor
3 vehicles unless he has applied for and received a license from the
4 Division of Motor Vehicles.

5 4. Mr. Mattson shall conform his use of the property in
6 question to the Klamath County Land Development Code, specifically
7 the Highway Commercial (CH) zone, as follows:

8 FINDINGS OF FACT:

9 Mr. Mattson has been found in violation of the Klamath County
10 Land Development Code, based on the following Findings of Fact:

11 1. The property in question is north of Falvey Road, 500
12 feet west of State Highway 39. This property is in the Highway
13 Commercial zone and is 2.5 acres in size being irregular in shape.
14 The adjacent and surrounding zoning is as follows: North - High-
15 way Commercial; South - R-5; East - Highway Commercial; and West -
16 R-5.

17 2. Mr. Mattson has been cited for an alleged violation of
18 the County Land Development Code, Section 51.014. The violation
19 concerns the operation of an automobile wrecking yard. As stated,
20 the property in question is presently zoned Highway Commercial.
21 Prior to this designation, the property was zoned for agricultural
22 use. Neither of these zones permit, or conditionally permit the
23 operation of an automobile wrecking yard. Mr. Mattson contends
24 that he was in business prior to December 7, 1972, and therefore
25 he is "grandfathered" into an appropriate zoning designation.

26 3. The property in question is presently used as a "wrecking
27 yard" as defined by Section 93.005J of the County Land Development
28 Code. This section defines a wrecking yard as "any property where

1 three or more vehicles not in running condition or parts thereof,
2 are: wrecked, dismantled, disassembled or substantially altered
3 for sale or not for sale, and not enclosed; or any land, building
4 or structure used for the wrecking or storing of such motor vehi-
5 cles or parts thereof for a period exceeding three months." The
6 property in question has approximately 350 such vehicles located
7 thereon at this time.

8 4. Testimony was uncontradicted that this property has con-
9 tinuously had at least three motor vehicles, not in running condi-
10 tion, thereon since 1955. There is testimony from Bob Baker that
11 he has dealt with Mr. Mattson since 1961 and there have always
12 been at least three such vehicles on this property since that time,
13 and that he has purchased car parts from Mr. Mattson during this
14 period. Further, Exhibits K, Q, R, Y, Z, AA, and BB before the
15 Hearings Officer support this finding. Therefore, a wrecking yard
16 as defined by the County Land Development Code has existed
17 prior to Klamath County's first zoning in December of 1972.

18 5. The testimony shows that the number of vehicles has vastly
19 increased since the passage of the first zoning code in Klamath
20 County in December of 1972. Exhibit "F" submitted by the Planning
21 Department indicates that in July of 1976, there were +/- 10
22 vehicles on the property. Although the testimony varied as to how
23 many vehicles were on the property at various times, Mr. Mattson
24 admitted that there were not large numbers of vehicles on the
25 property (meaning 100 or more) until 1976-1977 when he acquired
26 a wrecker.

27 6. Testimony from the Planning Department was that their
28 first complaint with regard to Mr. Mattson's use of the property
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1 was as far back as 1982 from an anonymous source. Several persons,
2 including immediate neighbors, testified as to objections they had
3 with regard to Mr. Mattson's use of the property. They had the
4 following objections:

- 5 a) Lack of an adequate fence;
- 6 b) Use of their driveways for parking or turnaround by
7 Mr. Mattson and/or his customers;
- 8 c) Parking of vehicles on Falvey Road; and
- 9 d) Lack of State license by Mr. Mattson.

10 It should be noted that Don Gourley of the Klamath County
11 Building Department testified he had complaints as far back as
12 1978 with regard to lack of an adequate fence and cars being
13 parked on the street.

14 7. Changes in or enlargement of the use since December 7,
15 1972, have been offensive to the prevalent use in the neighborhood
16 and surrounding area. Such changes have been of greater adverse
17 impact to the neighborhood than before they occurred.

18 8. Notice of this hearing was sent to surrounding property
19 owners, to concerned public agencies and published in the Herald
20 and News, a Klamath Falls newspaper.

21 9. Raymond K. Mattson's use of the property as a wrecking
22 yard cannot be a "non-conforming use" as there was no evidence in
23 the record that Raymond K. Mattson ever applied for and received
24 a wrecker's license pursuant to ORS 481.345, which therefore makes
25 the use of the property as a wrecking yard not lawful.

26 The Board of County Commissioners, based on the foregoing
27 Findings of Fact, accordingly orders as follows:

28 That real property described as:

"being generally located north of Falvey Road, 500 feet west of State Highway 39, and more particularly described as Section 2, Township 41 South, Range 10 East, Tax Lots 4400 and 4500, Klamath County, Oregon,"

and upon finding the use of Mr. Mattson's property did not comply with either local Ordinance or State Statutes, or has never been in compliance with same laws, the Board of County Commissioners cannot find the use of the property as an automobile wrecking yard was in conformance with the law. The Board of Commissioners orders Mr. Mattson to immediately cease and desist from all use of the property not permitted by existing zoning. The Board further orders that all wrecked/inoperable vehicles and parts thereof, be removed from the site within a 12-month period. The Planning Director will view the property on the first of August and the first of November, 1986, and the first of February, 1987, with final review on May 1, 1987, at which time the automobile wrecking yard shall be empty of all wrecked/inoperable vehicles and parts. A minimum of 90 vehicles must be removed per quarter or 29 per month.

Entered at Klamath Falls, Oregon, this 15th Day of

May, 1986.

BOARD OF COUNTY COMMISSIONERS

Jim Rogers
Jim Rogers, Chairman of the Board

Roger Hamilton
Roger Hamilton, Commissioner

Carroll Zon Gerbert
Carroll Zon Gerbert, Commissioner

Approved as to Form:

Robert D. Bolvin
Robert D. Bolvin
County Legal Counsel