

1 **58601** BEFORE THE HEARINGS OFFICER

2 KLAMATH COUNTY, OREGON

3 In the Matter of Violation )  
 4 No. 40-85/Raymond Mattson ) Klamath County Planning  
 5 ) Findings of Fact and Order

6 A hearing was held on this matter on February 6, 1986, pur-  
 7 suant to notice given in conformity with Ordinance No. 45.2,  
 8 Klamath County, before the Klamath County Hearings Officer, Jim  
 9 Spindor. The applicant was represented by Mark Runnels. The  
 10 Klamath County Planning Department was represented by Kim Lundahl.  
 11 The Hearings Reporter was Janet Libercajt.

12 Evidence was presented on behalf of the Department and on  
 13 behalf of the applicant. There were adjacent property owners  
 14 present.

15 The following exhibits, "A" through "BB", were offered,  
 16 received, and made a part of the record. (see attached List  
 17 of Exhibits)

18 The Hearing was then closed, and based upon the evidence  
 19 submitted at the hearing, the Hearings Officer made the following  
 20 Conclusions of Law:

21 CONCLUSIONS OF LAW:

22 1. Raymond K. Mattson is not in violation of the Klamath  
 23 County Land Development Code, Section 51.014, for operating a  
 24 wrecking yard in the Highway Commercial (CH) zone, as set forth  
 25 hereinbelow.

26 2. Raymond K. Mattson's use of the property as a wrecking  
 27 yard is a "non-conforming use" under Section 97 of the Land  
 28 Development Code, in that it is a land use, or activity which was

EXHIBIT "A"

1 established and conducted in a manner which does not conform with  
2 one or more standards of the Klamath County Land Development  
3 Code and which was lawfully established before the effective date  
4 of said Code.

5 3. Raymond K. Mattson's use of the property as a wrecking  
6 yard does not violate Section 97.006A of the Klamath County Land  
7 Development Code which relates to expansion of a non-conforming  
8 use, in that it has not been "enlarged, increased, or extended  
9 to occupy a greater area of land then that occupied by such use on  
10 the effective date of this Code." (emphasis added)

11 4. Raymond K. Mattson's use of the property as a wrecking  
12 yard does not violate the law as set forth in ORS 215.130, nor in  
13 the case of Bither v. Baker Rock Crushing, 249 OR 640,  
14 438 P2d 998, 440 P2d 368 (1968), in that the use has not become  
15 offensive to the prevalent use in the neighborhood and surrounding  
16 area.

17 5. It should be noted that Section 97.006A has been read to  
18 mean any enlargement, increase or extension of the non-conforming  
19 use which results in the occupation of a greater area of land  
20 (see conclusion #3 hereinabove). To read this section otherwise  
21 is not consistent with the Bither case cited hereinabove, nor  
22 with ORS 215.130.

23 FINDINGS OF FACT:

24 Mr. Mattson has been found not in violation of the Klamath  
25 County Land Development Code, based on the following Findings of  
26 Fact:

27 1. The property in question is north of Falvey Road, 500  
28 feet west of State Highway 39. This property is in the Highway

1 Commercial zone and is 2.5 acres in size being irregular in shape.  
2 The adjacent and surrounding zoning is as follows: North - High-  
3 way Commercial, South - R-5, East - Highway Commercial, and  
4 West - R-5.

5 2. Mr. Mattson has been cited for an alledged violation of  
6 the County Land Development Code, Section 51.014. The violation  
7 concerns the operation of an automobile wrecking yard. As stated,  
8 the property in question is presently zoned Highway Commercial.  
9 Prior to this designation, the property was zoned for agricultural  
10 use. Neither of these zones permit, or conditionally permit,  
11 the operation of an automobile wrecking yard. Mr. Mattson  
12 contends that he was in business prior to December 7, 1972, and  
13 therefore he "grandfathers" any zoning designation.

14 3. The property in question is presently used as a "wrecking  
15 yard" as defined by Section 93.005J of the County Land Development  
16 Code. This section defines a wrecking yard as "any property  
17 where three or more vehicles not in running condition or parts  
18 thereof, are: wrecked, dismantled, disassembled or substantially  
19 altered for sale or not for sale, and not enclosed; or any land,  
20 building or structure used for the wrecking or storing of such  
21 motor vehicles or parts thereof for a period exceeding three  
22 months". The property in question has approximately 350 such  
23 vehicles located thereon at this time.

24 4. Testimony was uncontradicted that this property has  
25 continuously had at least three motor vehicles, not in running  
26 condition, thereon since 1955. There is testimony from Bob Baker  
27 that he has dealt with Mr. Mattson since 1961 and there have  
28 always been at least three such vehicles on this property since

1 that time, and that he has purchased car parts from Mr. Mattson  
2 during this period. Further, see Exhibits K, Q, R, Y, Z, AA, and  
3 BB which support this finding. Therefore, a wrecking yard as  
4 defined by the County Land Development Code has lawfully existed  
5 prior to Klamath County's first zoning in December of 1972.

6 5. Testimony was uncontradicted that although there has  
7 been an increase in vehicles on Mr. Mattson's property over the  
8 years, that the wrecking yard has not been enlarged, increased  
9 or extended to occupy a greater area of land since its beginning  
10 in the 1950's. (emphasis added)

11 6. The testimony shows that the number of vehicles has  
12 vastly increased since the passage of the first zoning code in  
13 Klamath County in December of 1972. Exhibit "F" submitted by  
14 the Planning Department indicates that in July of 1976 there were  
15 ±10 vehicles on the property. Although the testimony varied as  
16 to how many vehicles were on the property at various times, Mr.  
17 Mattson admitted that there were not large numbers of vehicles  
18 on the property (meaning 100 or more) until 1976 - 1977 when he  
19 acquired a wrecker.

20 7. Exhibit "W" indicates that the Planning Department had  
21 no concern with Mr. Mattson's use of the property as a wrecking  
22 yard in 1980.

23 8. Testimony from the Planning Department was that their  
24 first complaint with regard to Mr. Mattson's use of the property  
25 was in October in 1985 from an anonymous source. Several persons,  
26 including immediate neighbors, testified as to objections they  
27 had with regard to Mr. Mattson's use of the property; however,  
28 none had objection to the existence of a wrecking yard

1 on Mr. Mattson's property, and none stated that having a wrecking  
2 yard on this property was offensive to the prevalent use in the  
3 neighborhood and surrounding area. The Hearings Officer viewed  
4 the property in question and there are several houses near to  
5 Mr. Mattson's property. Not one neighbor who testified objected  
6 to the existence of a wrecking yard; however, most all stated  
7 that they had the following objections:

- 8 1) Lack of inadequate fence;
- 9 2) Use of their driveways for parking or turnaround by  
10 Mr. Mattson and/or his customers;
- 11 3) Parking of vehicles on Falvey Road; and
- 12 4) Lack of state license by Mr. Mattson.

13 It should be noted that Don Gourley of the Klamath County  
14 Building Department testified he had complaints as far back as  
15 1978 with regard to lack of inadequate fence and cars being  
16 parked on the street. However, Mr. Gourley testified that he  
17 heard no complaints about the fact that a wrecking yard existed  
18 on the property, just these two specific complaints.

19 9. Any changes in or enlargement of the use since De-  
20 cember 7, 1972 have not been offensive to the prevalent use in  
21 the neighborhood and surrounding area. Any such changes have  
22 been of no greater adverse impact to the neighborhood than before  
23 they occurred. This is confirmed by the evidence set forth  
24 hereinabove in Finding of Fact #8.

25 10. Notice of this hearing was sent to surrounding property  
26 owners, to concerned public agencies and published in the  
27 Herald & News, a Klamath Falls newspaper.

28 The Hearings Officer, based on the foregoing Findings of

1 Fact, accordingly orders as follows:

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2 That real property described as

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

7 is found not to be in violation of the Klamath County Land  
8 Development Code.

9 Entered at Klamath Falls, Oregon, this 26<sup>th</sup> Day of  
10 February, 1986.

11 KLAMATH COUNTY HEARINGS DIVISION

12 *[Signature]*

13 Jim Spindor, Hearings Officer

14 STATE OF OREGON: COUNTY OF KLAMATH: ss.

15 Filed for record at request of \_\_\_\_\_ the 26th day  
16 of February A.D., 19 86 at 11:15 o'clock A M., and duly recorded in Vol. M86  
17 of \_\_\_\_\_ Deeds on Page 3262

18 Evelyn Biehn,  
19 By \_\_\_\_\_

FEE

NONE

Return: Commissioners' Journal

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EXHIBIT "A"

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D. *[Signature]*

STATE OF OREGON: COUNTY OF KLAMATH: ss.

Filed for record at request of \_\_\_\_\_ the 20th day  
of May A.D., 19 86 at 9:16 o'clock P A.M., and duly recorded in Vol. M86  
of \_\_\_\_\_ Deeds on Page 8601

Evelyn Biehn,

County Clerk

By \_\_\_\_\_

FEE

NONE

Return: Commissioners journal