

61782

BEFORE THE HEARINGS OFFICER

KLAMATH COUNTY, OREGON

In the Matter of Request for )  
 Violation 9-86/Chestnut ) Klamath County Planning  
 Findings of Fact and Order

This matter, having regularly come on for hearing before the Klamath County Hearings Officer on April 3, 1986, at 1:30 p.m. pursuant to Citation 9-86, charging respondent THAD CHESTNUT with a violation of Klamath County Land Development Code Section 51.001 and Section 62.003(b) (2), based upon allegations that respondent was maintaining outside display and storage in a zone which does not permit the use, and the encroachment of outside storage into the required setback for parking/landscaping. The hearing was called to order with respondent appearing personally, with Klamath County represented by J.K. Lundahl, Planner, Klamath County Planning Department. The Hearings Reporter was Janet Libercajt. After preliminary opening statements, the Klamath County Planning Department presented:

- Exhibit A, Staff Report
- Exhibit B, Assessor's Map
- Exhibit C, Letter from County Fire Dist. No. 1
- Exhibit D, Letter from Surrounding Property Owner
- Exhibit E, Letter from Highway Division
- Exhibit F, Pictures

Thereafter the respondent was sworn and testified. There being no further testimony, the hearing was closed. The Hearings Officer having inquired of Klamath County and of respondent and being advised in the facts and issues of law, does hereby issue

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1 the following Findings of Fact:

2 FINDINGS OF FACT:

3 1. Respondent is the contract purchaser of certain land  
4 situate at 5548 South 6th Street, Klamath Falls, Oregon,  
5 particularly known as Lot 1, Block 1, Bailey Tracts No. 2, bearing  
6 Tax Account No. 3909-02DA-01200. The property lies to the south  
7 of South 6th Street, approximately 600 feet east of Homedale  
8 Road. The property is rectangular, having 70 feet of frontage on  
9 South 6th Street, and is 550 feet deep. The topography is  
10 generally level with surface drainage, although the property  
11 tends to get marshy to the south near the Enterprise Irrigation  
12 District canal which bisects the land. The property is designated  
13 as Commercial under the Klamath County Comprehensive Plan and  
14 is zoned CG (General Commercial). The respondent operates a  
15 retail business on the subject property known as Big "T" Tires  
16 and Wheels.

17 2. The Hearings Officer specifically finds that the Klamath  
18 County Planning Department has erred in alleging violation of  
19 51.001. However, no challenge having been made by respondent to  
20 this error; the Hearings Officer hereby orders that the citation  
21 be amended and corrected to read Section 51.011. Under Section  
22 51.011(b)(34) "Warehouse, storage, distribution-light" is  
23 permitted. Under Section 93.027(A) wholesaling, storage and  
24 distribution is defined to include storage and warehousing  
25 within enclosed structures. Therefore, the question becomes is  
26 the respondent storing wheels and tires outside of enclosed  
27 structures? The second thrust of the citation alleges an  
28 encroachment of outside storage into the required setback for

1 parking and landscaping of 25 feet.

2 3. Testimony from the respondent was that he had stored in  
3 the rear of the premises approximately 12,000 used tires and  
4 3,000 wheels, of which many of the tires are worthless. However  
5 when accumulated in sufficient volume these can be disposed of at  
6 no cost. In addition, respondent testified that he routinely  
7 gives the tires away to farmers and ranchers for erosion control  
8 and similar use. Finally, respondent testified that he purchased  
9 the property under the assumption that the storage of wheels and  
10 tires was a permitted use. He is a basin tax payer and business  
11 man and contributes to the economy. Respondent alleges the  
12 literal enforcement of an Order of Abatement will be financially  
13 damaging to him.

14 4. Photos of the subject property taken by the Klamath  
15 County Planning Department and identified by respondent confirm  
16 that in fact substantial numbers of tires and wheels are stored  
17 in back of the premises in other than covered structures.  
18 Additionally, the photographs of the front of the property show  
19 that a substantial number of tires and wheels are located on a  
20 fixed stand within the required 25 foot front setback.

21 Based upon the above Findings of Fact, the Hearings Officer  
22 hereby issues the following Conclusions of Law.

23 CONCLUSIONS OF LAW:

24 1. Respondent is in violation of Klamath County Land  
25 Development Code, Section 51.011(E) (34) and Land Development  
26 Code Section 93.027(A) in that respondent is storing substantial  
27 quantities of tires and wheels in the side and rear yard of the  
28 subject property.

1           2. That respondent, by maintaining fixed display in the  
2 required 25 foot front yard setback of the subject property is in  
3 violation of Land Development Code Section 62.003(b)(2).

4           3. Respondent is hereby ordered to properly remove and  
5 either dispose of, place in covered storage, or store in a lawful  
6 manner all wheels and tires in the rear and side yards of  
7 respondent's property not later than June 1, 1986, or to submit  
8 and have approved by the Klamath County Planning Director a  
9 substitute plan of abatement which shall result in removal of all  
10 the wheels and tires subject property within 180 days of the date  
11 of hearing to-wit: from April 3, 1986.

12           4. The Hearings Officer further orders that respondent shall  
13 not be in compliance with this order by the dumping or discharge  
14 of the used wheels and tires on agricultural lands or on other  
15 properties except as in compliance with the Klamath County Land  
16 Development Code.

17           5. In the event that either;

- 18           a) the removal of the wheels and tires is not complete  
19           by June 1, 1986, or  
20           b) That the respondent has not submitted and had  
21           approved by the Director of the Klamath County  
22           Planning Department a substitute plan of abatement  
23           and removal,

24           the Hearings Officer orders:

25           1. that the above-referenced Citation be referred to  
26           the Klamath County District Attorney's Office for prose-  
27           cution; and

28           2. That the Klamath County Planning Department should  
hereby remand this matter to Klamath County Legal Counsel  
for initiation of civil actions, mitigating a permanent

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injunction, abatement and for charging the costs therof to  
respondent.

Entered this 21st Day of May, 1986.

KLAMATH COUNTY HEARINGS DIVISION

Bradford J. Aspell  
Hearings Officer

STATE OF OREGON: COUNTY OF KLAMATH: ss.

Filed for record at request of May A.D., 19 86 at 3:31 o'clock P M., and duly recorded in Vol. M86  
of Deeds on Page 9031

FEE NONE

Return: Commissiones's Journal

Evelyn Biehn, County Clerk

By Pam Smith

Violation 9-86/Chestnut  
Page 5