

BEFORE THE HEARINGS OFFICER

KLAMATH COUNTY, OREGON

In the Matter of Violation 28-86)
 R.K. or ARLA R. NEWMAN) Klamath County Planning
) FINDINGS OF FACT AND ORDER

This matter was called to hearing on July 3, 1986, pursuant to notice given in conformity with Ordinance 45.2, Klamath County Land Development Code notably Sections 14.007 et. seq., Section 32.001 et. seq. Respondents R.K. and Arla R. Newman, appeared personally, while represented by counsel, Enver Bozgoz, 1135 Pine Street, Klamath Falls, Oregon. The Klamath County Hearings Officer was Bradford J. Aspell. Klamath County Planning Department was represented by J. Kim Lundahl. The hearing was reported by Janet Libercajt.

The hearing was called to order by the Hearings Officer, during the course of presentation of evidence, the following exhibits were offered, received, and made a part of this record:

Klamath County Exhibit A, Staff Report
 Klamath County Exhibit B, Assessor's Map
 Klamath County Exhibit C, Notice of Violation Warning #1
 Klamath County Exhibit D, Notice of Violation Warning #2
 Klamath County Exhibit E, Formal Uniform Citation
 Klamath County Exhibit F, Letter from adjacent property owner
 Klamath County Exhibit F(1), Pictures
 Klamath County Exhibit G, Letter from adjacent property owner
 Klamath County Exhibit H, Letter to adjacent property owner

1 Klamath County Exhibit I, Letter from City of Klamath Falls
2 Klamath County Exhibit J, Letter from Enver Bozgoz, Attorney
3 Klamath County Exhibit K, Letter of Objections
4 Klamath County Exhibit L, Pictures
5 Klamath County Exhibit M, Pictures
6 Klamath County Exhibit N, Pictures
7 Klamath County Exhibit O, Letter of complaint
8 Klamath County Exhibit P, Letter from Enver Bozgoz, Attorney

9 The following conclusion, the presentation of evidence by
10 Klamath County, by respondents, by interested persons and
11 attendants, and upon closing statements made by the respective
12 parties, the Hearings Officer closed the hearing and makes the
13 following Findings of Fact:

14 FINDINGS OF FACT

15 1. The respondents were duly served with Uniform Citation
16 (Ex. E) on the 19th day of May, 1986, alleging that respondents
17 violated Section 51.005, of the Klamath County Land Development
18 Code in the following p ticulars:

19 A. "Maintaining a yard for repair of commercial vehicles in
20 a zone which does not permit the use."

21 B. Maintaining a vehicle wrecking yard in a zone which does
22 not permit the use.

23 2. On request of Enver Bozgoz, attorney for respondents, the
24 above entitled hearing was continued from the 9th day of June,
25 1986, at 9:00 A.M., to the 3rd day of July, 1986, to provide
26

1 respondents an opportunity to show cause why the provisions of the
2 code and enforcement order should not be entered.

3 3. R.K. and ARLA R. NEWMAN, are owners of the subject
4 property and reside at 3730 Homedale Road and have a Post Office
5 Box address at 7464. The subject property is located at 801 Wiard
6 Street, legal description of which is a portion of the SW 1/4, NW
7 1/4 Section 35, Township 38 South, Range 9 E.W.M., carries tax
8 account number 3809-35-AC-000. The property in question is
9 rectangular in shape, consists of 7.72 acres and is located on the
10 north end of Wiard Street, as shown in the Assessor's Map, Klamath
11 County Ex. B. The real property is designated Residential (R) in
12 the Klamath County Comprehensive Land Use Plan and carries a zone
13 designation of Suburban Residential (RS). The property lies
14 immediately outside of the incorporated limits of the City of
15 Klamath Falls, and is located within the urban growth boundary.
16 The property in question generally appears to be in pasturage of
17 native grasses and brush, the property is fenced, access is gained
18 off Wiard Street, a gravelled road which terminates at the
19 property. The property is surrounded by generally large lot
20 residential suburban parcels and marginally developed land.

21 4. The Hearings Officer specifically finds that the real
22 property in question has three mobile homes located thereon.

23 5. The Hearings Officer specifically finds from the numerous
24 photos (Ex. F(1) and Ex. L, M, and N) that there are at least four
25 stored, wrecked or inoperable highway tractors, together with at
26 least three hood and fender assemblies, more than two truck frames

1 and chasses, one wrecked automobile, numerous water trucks, water
2 trailers, fuel tanks, oil cans, vehicle hoods and more than two
3 highway trailers. Respondents testified that they do not repair
4 vehicles there, however they do change tires there and store their
5 equipment, including their wrecked, damaged equipment and the
6 equipment from which they remove parts for repair of other
7 equipment. Respondent further testified that his business is
8 supplying water trucks and road graders to clear and maintain
9 mountain roads and that the property is used as a repair yard for
10 commercial vehicles.
11

12 6. The Hearings Officer finds from the substantial input and
13 testimony at hearing that the property has been used continuously
14 for either the repair of commercial vehicles or their storage, for
15 dismantling them, and for the storage of excess and inoperable
16 vehicles continuously since November 1985.

17 7. The Hearings Officer specifically finds that LDC Section
18 61.005 does not permit either as a permitted use, or a use subject
19 to a conditional use permit the repair of commercial heavy
20 equipment. The Hearings Officer further finds that the least
21 intensive zone for which heavy equipment could be maintained and
22 repaired would be in the highway commercial zone (CH) under land
23 development code Section 51.014.

24 8. The Hearings Officer further finds that the uses put to
25 the property by respondents are the uses defined by LDC Section
26 93.005(B) (Automotive and Equipment: Fleet Storage); LDC Section
93.005(C) (Automotive and Equipment: Parking); LDC Section

1 93.005(D) (Automotive and Equipment: Repairs, Heavy Equipment);
2 LDC Section 93.005(I) (Automotive and Equipment: Storage,
3 Nonoperating Vehicles). Pursuant to the above enumerated
4 sections, such uses must be conducted upon properly zoned
5 commercial properties. Hence the Officer specifically finds
6 respondents to be in violation of Count 1 of the citation:
7 "Maintaining a yard for repair of commercial vehicles in a zone
8 which do not permit the use."
9

10 9. The Hearings Officer specifically finds however, as to
11 Count 2: "Maintaining an auto wrecking yard", respondent is not in
12 violation of this provision pursuant to the definitions of
13 automobile wrecking yard as provided in Section 93.005(J), most
14 notably that "automobile wrecking yard shall not be construed to
15 mean scrapyard, junk or salvage and not include the incidental
16 storage of inoperative or dismantled vehicles in connection with
17 the operation of an automobile repair garage, automobile body and
18 fender shop, automobile impound yard."
19

20 10. The Hearings Officer specifically makes no finding as to
21 whether the respondent is in violation of other code sections
22 dealing with the number of single family dwellings located on the
23 subject property.

24 11. The Hearings Officer further finds that while the
25 applicant purchased the property some time ago, prior to November
26 21, 1981, the date of which this code came into force and effect,
that under the prior Klamath County Land Development Code, the
land was previously zoned RA and its said use likewise did not

1 include uses currently being made on the property. By virtue of
2 the fact that the respondents testified that they did not commence
3 use the property in question for the storage and repair of
4 commercial highway vehicles until after they began their business
5 in 1979, the hearings officer finds that respondents are not
6 entitled to claim a preexisting permitted use on the subject
7 property.

8 12. The Hearings Officer further finds that it would be just
9 and equitable for respondents to be given to and including
10 November 30, 1986, to clear the subject property of all highway
11 tractors and parts thereof, highway trailers and parts thereof,
12 engines chassis, hood assemblies, front end clips, water tanks,
13 towers, road graders and other heavy equipment and return the
14 property to a condition free of trash, junk or refuse within the
15 time prescribed herein.

16 Based upon the foregoing findings of fact the hearings
17 officer issues the following Conclusions of Law

18 CONCLUSIONS OF LAW

19 1. That the respondents be and hereby are found to be in
20 violation of provisions of the Land Development Code, to-wit:
21 violation of 51.005 by maintaining a yard for repair of commercial
22 vehicles in a zone which does not permit the use.

23 2. Respondents are further ordered to discontinue such use,
24 including repair of commercial vehicles or their storage, for
25 dismantling them, and for the storage of excess and inoperable
26 vehicles on or before November 30, 1986.

3. That in failure thereof, the Klamath County Planning Director is hereby directed on or after the 1st day of December 1986, to seek judicial enforcement of this, to seek penalties and fines, together with civil enforcement including the abatement thereof, the charging of the costs to the respondents herein.

4. To such other injunctive relief and damages as are appropriate.

5. Such further relief as may be available by law pursuant to LDC Section 14.013 et. seq.

The Hearings Officer based on the foregoing Findings of Fact, accordingly orders as follows:

That the real property described as:

"being a portion of the SW 1/4, NW 1/4 Section 35, Township 38 South, Range 9 E.W.M., Klamath County, Oregon."

to be cleared of all offending equipment as set forth above.

Entered at Klamath Falls, Oregon, this 15th day of August, 1986.

KLAMATH COUNTY HEARINGS DIVISION

Bradford J. Aspell
BRADFORD J. ASPELL

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STATE OF OREGON: COUNTY OF KLAMATH: ss.

Filed for record at request of _____ the _____ day
of August A.D., 19 86 at 2:35 o'clock P M., and duly recorded in Vol. M86
of _____ Deeds on Page 14720.

FEE NONE

Return: Commissioners' Journal

Evelyn Biehn, County Clerk
By Sam Smith