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BEFORE THE HEARINGS OFFICER
FOR KLAMATH COUNTY, OREGON

In the Matter of a

REQUEST FOR A CONDITIONAL
USE PERMIT

for

CHURCH OF JESUS CHRIST OF
LATTER-DAY SAINTS/DEE RAY JENSEN)

No. 29-83

FINDINGS OF FACT, DECISION
AND ORDER ON PETITION FOR
REVOCATION OF CONDITIONAL
USE PERMIT AND/OR
MODIFICATION

THIS MATTER came before the Assistant Hearings Officer, JAMES R. UERLINGS, on September 18, 1986, and on October 2, 1986, upon a petition (letter) filed by one of the original opponents to the Conditional Use Permit, Michael N. Clifford. In the interim between the September 18, 1986, hearing and the October 2, 1986, hearing, the Assistant Hearings Officer conducted a review of the site of the proposed church facility and an opportunity was granted to all parties to present additional evidence at the October 2, 1986, hearing.

The following exhibits were offered, marked and received into evidence and made a part of the record: Exhibits "A" through "Q".

The Planning Department was represented by Kim Lundahl.

After reviewing the evidence, the Assistant Hearings Officer makes the following findings of fact, conclusions of law and decision.

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1 FINDINGS OF FACT:

2 1. The original Order of the Assistant Hearings
3 Officer dated December 8, 1983, provided in Paragraph 12, page
4 4, as follows:

5 "The church's congregation in the Keno area uses
6 rented quarters and has purchased this site for a permanent
7 facility. Current membership in the Keno area consists of 30-40
8 families with an expected annual growth of three to four percent
9 (3-4%). The building is planned for an initial capacity of
10 130-140 persons but the applicant intends the building to be
11 capable of expansion. The building will have 2200 square feet
12 and will include a main chapel as well as classrooms and a
13 social hall."

14 2. The Order additionally contained, in pages 7, 8,
15 and 9, seven specific conditions which the applicant was
16 required to follow. One of those conditions, #2 on page 8,
17 required that the applicant follow his plot plan, designated as
18 Exhibit "M". Paragraph 3, page 8, required certain specific
19 modifications to Exhibit "M".

20 3. Those parties testifying in opposition to the
21 Conditional Use Permit indicated the following violations of the
22 Conditional Use Permit:

23 (a) Vegetation, including trees, had been
24 removed within the 25' buffer area in order to gain access to
25 the property over McLaughlin Lane and to install a water well.

26 (b) The applicant had used McLaughlin Lane to

1 gain access to the property during the digging of test holes for
2 D.E.Q. approval of the facility and in installing a water well
3 and generally clearing brush from the property.

4 (c) The applicant had submitted a plot plan to
5 the Building Department, different from the plan submitted to
6 the Planning Department, which showed a violation of the 25'
7 setback on the south boundary, east boundary and northern
8 boundary. On the northern boundary, the violation consisted of
9 the placement of a septic tank drain field within the 25'
10 boundary. On the east boundary, the violation consisted of
11 placing a sidewalk and possibly utility lines within the 25'
12 setback. On the southern line, the violation consisted of
13 placing a parking lot and the well within the 25' setback.

14 4. The applicant's response to these alleged vio-
15 lations generally consisted of testimony from their architect,
16 Bob Fisher, who indicated that he did not feel that these
17 modifications were of such a significant nature to cause a
18 violation of the Conditional Use Permit. He additionally
19 indicated that he had thought that the plot plan filed with the
20 Building Department was identical to that filed with the Plan-
21 ning Department, subsequent to the December 8, 1983, Order.
22 However, the testimony from the Planning Department and the
23 greater weight of evidence indicates that the plot plan filed
24 with the Building Department, Exhibit "K" was not, in fact,
25 filed with the Planning Department and does contain differences
26 than the plot plan approved by the Planning Department.

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2 5. The plot plan finally approved by the Planning
3 Department contains a notation on the Planning Department
4 Approval Certificate indicating that the applicant shall comply
5 with the terms of the December 8, 1983, Assistant Hearings
6 Officer Order. The plot plan, filed with the Planning Depart-
7 ment, did not contain dimensions for the building to be con-
8 structed.

9 6. The evidence presented indicates that the oppo-
10 nent's allegations as to the violations of the Conditional Use
11 Permit by the applicant are correct in a technical sense on each
12 allegation.

13 7. The applicant had proposed a fence on the plot
14 plan filed with the Building Department but, during the course
15 of the hearing, it was determined by the applicant and the
16 opponents that no fence was required by either party; therefore,
17 that fence was to be deleted from the final Building Department
18 plot plan upon agreement of the parties.

19 KLAMATH COUNTY DEVELOPMENT CODE CRITERIA:

20 1. Klamath County Development Section 44.003 sets
21 forth the criteria for the consideration in the application for
22 a conditional use permit:

23 A. That the use is conditionally permitted in the
24 zone in which it is proposed.

25 B. That the location, size, design and operating
26 characteristics of the proposed uses is in conformance with the
Klamath County Comprehensive Plan.

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2 C. That the location, size, design and operating
3 characteristics of the proposed development will be compatible
4 with, and will not adversely effect, the livability or appropri-
5 ate development of abutting properties in the surrounding
6 neighborhood. Consideration shall be given to the harmony in
7 scale, bulk, coverage and density; to the availability of civic
8 facilities and utilities; to harmful effects, if any, upon
9 desirable neighborhood character; to the generation of traffic
10 and the capacity of surrounding streets and to other relevant
11 impact of the development.

12 D. That the location, design and site planning of
13 the proposed development will provide a convenient and function-
14 al living, working, shopping or civic environment and will be as
15 attractive as the nature of the use and its location in this
16 setting warrant.

17 2. Klamath County Section 44.001 sets forth the
18 general purpose of Article 44, Conditional Use Permit, as
19 follows: The purpose of the Conditional Use Permit is to
20 provide a mechanism whereby uses which may be suitable only in
21 certain locations or only if designed or operated in a particu-
22 lar manner may be allowed within the basic zone designation.
23 KLAMATH COUNTY DEVELOPMENT CODE FINDINGS AND CONCLUSIONS:

24 1. It was originally found, in the December 8, 1983,
25 Order, that a facility 2200 square feet in size with 34 parking
26 spaces would cause the proposed facility to be in conformance
with the Klamath County Comprehensive Plan.

1 2. The location, size, design and operating charac-
2 teristics of the proposed development were found in the original
3 Order to be compatible with, and would not adversely effect, the
4 livability and/or appropriate development of abutting properties
5 in the surrounding neighborhood. This decision was reached
6 based upon the factual finding that the facility would consist
7 of 2200 square feet, would contain 34 parking spaces and would
8 be designed for an initial capacity of 130-140 persons. At that
9 time, it was estimated that the church membership consisted of
10 30-40 families with a 3% to 4% increase per year. Testimony at
11 the present hearing indicated that the growth had been approxi-
12 mately 15% per year, approximately 3 times the estimate present-
13 ed in the original hearing.

14 3. The applicant, at the current hearing, indicated a
15 desire that the facility be 3200 square feet immediately and
16 that they determined that the 3200 square foot facility could be
17 built for the same price as the 2200 square foot facility. The
18 applicant's witnesses also indicated that the primary use of the
19 1,000 square foot increase would be for social meeting rooms.
20 The applicant indicated its intention to continue to expand the
21 facility with the size of its church membership in the Keno
22 area.

23 4. The nature of this neighborhood is a rural one,
24 with houses located on approximately one-acre lots upon a
25 wooded, hilly area. The residential character of this neighbor-
26 hood would be substantially changed with the construction of a

1 large meeting facility, whether it be a church facility or
2 otherwise. The increase in the size of this facility, beyond
3 the 2200 square foot plan in the original Order, would not be
4 consistent with a finding that the proposed development would be
5 compatible with, and will not adversely effect, the livability
6 or appropriate development of the abutting properties in the
7 surrounding neighborhood.

8 5. For the same reasons, a facility constructed
9 larger than 2200 square feet and one in which substantial
10 improvements infringed upon the 25' proposed buffer area would
11 have harmful effects upon the desirable neighborhood character
12 of the area.

13 6. The location, design and site planning of the
14 proposed development will provide for a convenient and function-
15 al living environment and will be as attractive as the nature of
16 its use and its location to this setting warrant, subject to the
17 conditions imposed further herein.

18 7. The Assistant Hearings Officer finds that the
19 applicant's technical violations of the Conditional Use Permit
20 were not of an intentional nature.

21 KLAMATH COUNTY DEVELOPMENT CODE FINDINGS AND CONCLUSIONS:

22 1. The applicant's Conditional Use Permit at this
23 time is not revoked.

24 2. The following conditions are imposed and/or
25 reaffirmed as conditions. If the applicant violates these
26 conditions, any party with standing may file a request and/or

1 petition to the Klamath County Planning Department seeking
2 review of the Conditional Use Permit. Should the applicant, at
3 a future date, request modification of any of these conditions,
4 the applicant must file an application for modification of the
5 Conditional Use Permit with the Klamath County Planning Depart-
6 ment.

7 A. Access to the property should be limited to
8 one (1) driveway located at the southerly proposed access point
9 on Clover Creek Road. This access shall be established immedi-
10 ately and the applicant shall stop immediately using access
11 along McLaughlin Lane and shall re-plant that area of its
12 property abutting McLaughlin Lane with vegetation which will
13 eventually cover over this access point.

14 B. The applicant shall immediately file a plot
15 plan for approval by the Assistant Hearings Officer with consul-
16 tation of the Klamath County Planning Department. The modified
17 plot plan shall be constructed in such a manner to alleviate the
18 following problems:

19 (1) The applicant shall maintain a 25'
20 setback from the northern property line with the exception that
21 the applicant may install a drain field within 10' of the
22 property and of the size as indicated in the evidence presented
23 at the hearing on October 2, 1986.

24 (2) On the eastern property line, the appli-
25 cant shall maintain a 25' setback from access easement which
26 lies along the property line, with the exception that the

1 applicant may install underground utilities for telephone within
2 that 25' setback and may place power line poles within that
3 setback, so long as those poles do not violate the terms of the
4 access easement.

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6 (3) On the southern boundary, the applicant
7 shall maintain a 25' setback from the property, with the excep-
8 tion that the currently constructed well facility may remain
9 within that 25' setback. However, the applicant shall modify
10 the plot plan so that the parking lot facility is re-located in
11 a westerly direction so that it is not within the 25' setback.

12 (4) No other above ground construction shall
13 be located within the 25' setback on any boundary of the proper-
14 ty.

15 C. Should the applicant intend to install any under-
16 ground construction upon the property, any vegetation removed by
17 the underground construction must be immediately replaced with
18 the same or similar vegetation.

19 D. The size of the facility which the applicant can
20 currently construct on the property is limited to 2200 square
21 feet; any increase in the size must be done in modification to
22 this Conditional Use Permit upon notice and hearing.

23 E. The applicant shall not construct a fence around
24 the facility.

25 F. The total height of the structure shall remain
26 within the current height of the trees immediately surrounding
the proposed facility.

1 G. The applicant shall not cut down any more trees
2 nor remove any more shrubbery or vegetation than is absolutely
3 necessary for the construction and/or for fire safety of the
4 proposed facility, associated driveway, parking lot and
5 water/sewage systems. In particular, the applicant shall
6 endeavor to leave all trees, vegetation and shrubbery along the
7 boundary lines of the applicant's property and adjoining proper-
8 ty. These trees and associated undergrowth will serve as a
9 barrier between the proposed facility and surrounding prop-
10 erties.

11 H. The applicant shall limit the number of parking
12 spaces contained on the modified plot plan to 34 parking spaces.

13 I. Parking spaces shall be confined to areas adjacent
14 to the proposed building. Should future parking places be
15 necessary, a request to amend this Conditional Use Permit must
16 be filed. Based on the evidence presented in the original
17 Hearing, 34 parking spaces would be double what the current plan
18 usage for a facility is.

19 J. All parking for the proposed development shall be
20 limited to on property parking spaces.

21 K. No outdoor recreational activities shall be
22 conducted on the property. Additionally, the applicant shall
23 endeavor to keep noise levels from activities inside and outside
24 the facility at a minimum so as to not disturb the surrounding
25 property owners.

26 * * *

1 CONCLUSIONS OF LAW AND DECISION:

2 Subject to the conditions as set forth above, this
3 Conditional Use Permit shall remain in effect.

4 DATED this 17 day of October, 1986.

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7 JAMES R. UERLINGS
8 Assistant Hearings Officer
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FINDINGS OF FACT, DECISION AND ORDER
Page 11.

STATE OF OREGON: COUNTY OF KLAMATH: ss.

Filed for record at request of _____ the _____ 20th day
of _____ October A.D., 19 86 at 8:39 o'clock A M., and duly recorded in Vol. 186
of _____ Dads _____ on Page 19000

FEE NONE

Return: Commissioners' Journal

Evelyn Biehn, County Clerk
By 