

BEFORE THE HEARINGS OFFICER

KLAMATH COUNTY, OREGON

In the Matter of Violation 30-84)

Donovan Kendall)

Klamath County Planning

Findings of Fact and Order

A hearing was held on this matter on November 25, 1986, pursuant to notice given in conformity with Ordinance No. 45.2, Klamath County, before the Klamath County Hearings Officer, Brad Aspell. The applicant was represented by C.W. "Win" Francis. The Klamath County Planning Department was represented by Kim Lundahl. The Hearings Reporter was Janet Libercajt.

Further exhibits presented at the hearing were:

Klamath County Exhibit CC, Letter to Mr. Francis regarding abatement requirements
Klamath County Exhibit DD, Invoice

Klamath County Exhibit EE (1-4), Letters submitted by Mr. Francis
The Hearings Officer, being fully advised in the facts and

issues of law, does hereby issue the following Findings of Fact:

FINDINGS OF FACT:

1. The respondent was found in violation of Land Development Code Section 51.021, operating a commercial borrow pit in a forestry zone without a conditional use permit at enforcement hearing on April 3, 1986.

2. The Klamath County Planning Department has remanded this case to the Klamath County District Attorney for prosecution.

3. The Klamath County Planning Director did seek abatement of the gravel pit by requirements set out in a letter dated October 2, 1986.

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1 CONCLUSIONS OF LAW:

2 The Hearings Officer hereby orders the respondent to:

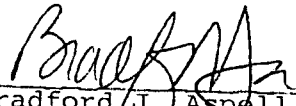
3 1. Slope all existing slopes into the pit at a ratio
4 of 2:1, or 30 degree angle, by June 15, 1987.

5 2. Not operate the borrow pit in any form or fashion
6 including use on the subject property as a forestry use except
7 upon prior application for approval or relief from this order.

8 3. To appear before the Hearings Officer after June 15,
9 1987, if the negotiated abatement requirements as agreed by
10 respondent's counsel and the Director of Planning as reflected by
11 the record of this hearing, have not been honored.

12 Entered at Klamath Falls, Oregon, this 16 day of
13 January, 1987..

14 KLAMATH COUNTY HEARINGS DIVISION

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17 Bradford J. Aspell
18 Hearings Officer
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Brad Aspell:

I reaffirm my order in Case 30-84 dated the 16th Day of May, 1986 finding Mr. Donovan Kendall in violation.

I order that in order to comply with order of this Hearings Officer that an abatement plan be followed.

I am going to order that all existing slopes into the rock quarry be sloped at an angle or ratio of 2:1, or 30 degree angle. That this be completed by June 15, 1987.

I am going to order that no further operation of the rock quarry occur in any form or fashion including use on the subject property as a forestry use except upon a prior application for approval or for relief from this order.

I will order that the staff bring this matter up for review on the first hearing date subsequent to June 15, 1987, and if based upon....lets put it this way, and if the terms that the staff and Mr. Kendall, through his attorney, have negotiated are met, that being the graveling of the road and payment to these gentlemen, has been met that I will seek no further abatement of the violation.

I don't think I can order... I can't order Mr. Kendall to do that. But if that's met I'll have no difficulty with enforcing the order, pursuant to that stipulation. Is that okay, Mr. Francis?

Win Francis: Yes, I'd like to add two other things.

1. My understanding of the process of sloping is that they are going to pull some of this out and what they pull out is what they are going to put on the neighbor's road. So I don't want to be violating the order in that respect.

Brad Aspell: Okay. I have no difficulty with that.

Win Francis:

2. The other thing is, that in talking with Mr. Kendall, if he gets it done in the next couple weeks, if we could get the inspection within ten days of him calling you and telling you its done, we could get the matter wrapped up immediately.

Kim Lundahl: Okay, just give me a call and I'll get my snow shoes on get right to it.

Brad Aspell: Okay, so that would mean that if its all been completed prior to that just submit a letter to the file, submit a letter to me and there will be no need for further review. But at this point in time, other than removing the material to gravel the road no further quarry activity of any sort....you may well be entitled as a forestry use, to use that pit further but it's going to be subject to the Bureau of Mineral Industries and the Planning Director...and rather than

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get into the debate as to whether it's a forestry use or not a forestry use at this point in time we'll just leave the enforcement order in place, and if you want to use it for a quarry you should seek relief from the order.

STATE OF OREGON: COUNTY OF KLAMATH: ss.

Filed for record at request of _____ the 3rd day
of February A.D., 19 87 at 12:45 o'clock PM., and duly recorded in Vol. M87,
of _____ Deeds on Page 1694.

Evelyn Biehn, _____ County Clerk
By Sam Smith

FEE NONE
Return: Commissioners' Journal