

BEFORE THE HEARINGS OFFICER

KLAMATH COUNTY, OREGON

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2
3 In the Matter of Violation 53-86)
4 Paul B. McConnell, Jr.) Klamath County Planning
Findings of Fact and Order

5 A hearing was held on this matter on January 8, 1987, pur-
6 suant to notice given in conformity with Ordinance No. 45.2,
7 Klamath County, before the Klamath County Hearings Officer,
8 Bradford J. Aspell. The respondent present. The Klamath County
9 Planning Department was represented by Kim Lundahl. The Hearings
10 Reporter was Janet Libercajt.

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

14 The following exhibits were offered, received, and made a
15 part of the record:

- 16 Klamath County Exhibit A, Staff Report
- 17 Klamath County Exhibit B, Assessor's Map
- 18 Klamath County Exhibit C, Initial Contact Letter (8-19-86)
- 19 Klamath County Exhibit D, Initial Contact Letter (11-12-86)
- 20 Klamath County Exhibit E, Letter to McConnell (11-13-86)
- 21 Klamath County Exhibit F, Warning No. 1
- 22 Klamath County Exhibit G, Warning No. 2
- 23 Klamath County Exhibit H, Citation
- 24 Klamath County Exhibit I, Pictures
- 25 Klamath County Exhibit J, Comments from Environmental Health
- 26 Klamath County Exhibit K, Planning Department Copy, Goldenrod
- 27 Klamath County Exhibit L, Building Department Copy, Pink
(11-13-86)
- 28

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Klamath County Exhibit M, Application Package

Klamath County Exhibit N, Notification from Commissioners

The hearing was then closed, and based upon the evidence submitted at the hearing, the hearings officer made the following findings of fact.

FINDINGS OF FACT

1. Respondent was duly served with a Uniform Citation of Violation (Exhibit H) on or about the 12th day of December, 1986, alleging that respondent was "maintaining residence in a mobile home without a placement permit" in violation of Klamath County Land Development Code Section 51.003(B)(2).

2. The hearings officer finds that under Land Development Section 84.005(A), that a mobile home shall be subject to a site plan, specifically those conditions set forth as the 15 specified requirements under LDC Section 41.005. Under a mobile storage permit, a mobile home shall not be inhabited or connected to any utility service. The hearings officer further finds the term "inhabited" is not defined in the Code. The question thus becomes has the mobile home or its accessory structures been "inhabited" contrary to terms of this Code.

3. Respondent is the owner of real property known as Lot 8 Lawanda Hills Subdivision, Klamath County, Oregon, bearing tax account number 3908-23B-1600, which property is located at the southerly end of Grace Drive and is shown on Klamath County Exhibit C. The property is irregular in shape, designated rural under the Klamath County Comprehensive Plan, under a zone

1 designation of R-5 (Rural-5 acre minimum) comprises approximately
2 25.68 acres. The property abuts a number of lots to the south
3 (more than 13), which front on Greensprings Highway. Topography
4 is moderately sloped from the south to the north, with general
5 drainage being surface drainage in the well defined natural
6 swells. Vegetation consists of grass, brush and scattered pines.
7 The soil is classified SCS VI with timbersite productivity rating
8 of Class VII. Unique physical characteristics
9 of surrounding land, include large lot rural residential homesite
10 to the north, east and west with small lot to the south. The
11 property abuts against R-1 zoning immediately to the south.

12 4. In its present condition, the property is generally
13 undeveloped. Water would be available from wells (there are none
14 on the property), sewer from subsurface sewage disposal pursuant
15 to DEQ permit (one has not been obtained), electricity would be
16 available from Pacific Power & Light Company (however no
17 electrical service has been applied for or approved on the subject
18 site). The property lies within the attendance area of the
19 Klamath County School District and is served by Keno Rural Fire
20 Protection District.

21 5. Uncontroverted testimony of the applicant indicates that
22 the applicant purchased a mobile home with expando unit and moved
23 it on to the property in August of 1986, pursuant to a mobile home
24 storage permit. This permit expired on November 11, 1986, at
25 which time a second permit was applied for, (see Klamath County
26 Exhibits K, L and M). Applicant testified that he has not lived

1 in the mobile home but that he has kept his animals in the home,
2 kept it heated by a woodstove and taken water to them. Applicant
3 further testified that he has "camped" in the accessory building
4 which attaches to the mobile home during periods when he was
5 burning brush on the subject site. Adjoining neighbors who
6 appeared at the hearing testified to seeing smoke from the mobile
7 home, respondent moving water to the mobile home, and motor
8 vehicles parked there all night. Applicant testified that he does
9 not drive a car, and the motor vehicle belonged to another. Based
10 upon the testimony, a determination hinges on a definition of the
11 term "inhabited". "Inhabit" is "[s]ynonymous with dwell, live,
12 sojourn, stay, rest. Black's Law Dictionary 3rd Ed.. I therefore
13 conclude that the dwelling has been inhabited on one or more
14 occasions. The hearings officer specifically finds respondent to
15 have violated Section 84.005(D) and specifically makes the
16 following Order:

17 1. Respondent shall not live in, sleep overnight in, or
18 otherwise use the mobile home and appurtenant structures thereon
19 in any manner consistent with residential use or occupancy
20 including camping therein under the terms of any storage permit in
21 effect.

22 2. That applicant may apply for, but no further storage
23 permit shall be issued beyond April 15, 1987, unless a mobile home
24 placement permit has been applied for on or before that date, or
25 good cause shown to the hearings officer why additional time is
26 needed.

3. That the mobile home shall not be permitted to remain on the subject property except under the terms of the storage permit above described or during the term that a placement permit has been applied for.

4. That applicant shall be required to have final sign off of the placement permit not later than September 15, 1987, and on failure thereof shall be required to seek relief from the hearings officer or move the mobile home from the subject real property.

5. That during the period the mobile home is under storage permit, or placement permit (which is yet to be approved and final sign off issued), applicant shall not reside, live in, inhabit or otherwise use the mobile home as a dwelling and shall not sleep in camp in or otherwise inhabit the same.

6. That in violation thereof, the Planning Director is directed and empowered to seek enforcement orders, civil relief and penalties, pursuant to Section 14.012 and Section 14.013 of this Land Development Code.

Based upon the foregoing Findings of Fact the hearings officer issues the following Conclusions of Law.

CONCLUSIONS OF LAW

1. That respondent be and are hereby found to be in violation of the provision of the Land Development Code, Section 84.005.

2. The respondent is ordered to discontinue the use of the subject real property as above described.

3. That in failure thereof, the Klamath County Planning Director is directed on or after the date of this order to seek such penalties and civil relief as embodied by the terms of the Findings of Fact herein.

4. The hearings officer orders that respondent Paul B. McConnell Jr. be and is hereby found in violation of Klamath County Land Development Code on property described as Lot 8 Lawanda Hills Subdivision, in and to Klamath County, Oregon, respondent therein be ordered to comply with the terms contained within this finding of violation.

Entered Klamath Falls, Oregon this 6th day of February, 1987.

KLAMATH COUNTY HEARINGS OFFICER
BY: Bradford J. Aspell
BRADFORD J. ASPELL

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STATE OF OREGON: COUNTY OF KLAMATH: ss.

Filed for record at request of February A.D., 19 87 at 12:47 o'clock P M., and duly recorded in Vol. M87 the 9th day of February on Page 2040
of Deeds

Evelyn Biehn, County Clerk
By [Signature]