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BEFORE THE HEARINGS OFFICER OF CLATSOP COUNTY ORDINANCE

In the Matter of Formal Uniform
Citation No. 1 (40-46) citing
WILLIAM W. ANDERSON,

Findings of Fact
Conclusions of Law and
Order

This matter came before the Hearings Officer of Clatsop County, Oregon upon Clatsop County, Oregon Formal Uniform Citation Number of Enforcement Hearing No. 1 (40-46). Said citation required William W. Anderson to appear before the Clatsop County Hearings Officer on January 29, 1967, at 10:00 a.m. to show cause why the provisions of the Clatsop County Land Development Code should not be enforced. Said citation charged Mr. Anderson with violation of Clatsop County Land Development Ordinance Section 51.011 by conducting or permitting the violation of the provisions of the CC Zone in the following particulars:

1. Maintaining a scrap operation in a zone which does not permit the use;
2. Maintaining an automobile wrecking yard in a zone which does not permit the use; and
3. Maintaining an auto and truck sales lot without city plan approval.

A hearing was conducted by Clatsop County Hearings Officer James Spindler on January 29, 1967. At said hearing, Mr. Spindler received testimony and exhibits under oath from William W. Anderson, (the Landlord), Ray Hubert and Edward Matine.

PROCEEDING BACKGROUND

On December 12, 1966, Clatsop County Planning Department ordered Hearing No. 1 (40-46) on William Anderson and a copy of said hearing to Don Stoen. Said hearing advised the parties that the Planning Department had received complaints from neighbors and businesses along South 6th Street concerning the operation which Mr. Anderson was conducting at 2920 South 6th Street, Clatsop

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Falls, Oregon. Said warning specified alleged violations of Elsworth County Land Development Code. Said violations being those outlined above. On December 19, 1966, Elsworth County Planning Department mailed Warning No. 2 (40-96) which restated the alleged violations described above.

On January 6, 1967, Elsworth County Planning Department mailed Citation No. 1 (40-96) to William E. Anderson, son of Mrs. E. F. Smith, Attorney at Law, and Ray Lefterich. Said citation charged Mr. Anderson with unlawful land use and violation of the Elsworth County Land Development Ordinance as stated above. Said citation required Mr. Anderson to appear on January 19, 1967 to show cause why the provisions in the Elsworth County Land Use Code should not be enforced. On January 19, 1967, Hearings Officer James Spindler conducted a hearing. Thereafter, Hearings Officer Spindler issued Conclusions of Law which included the following:

1. Mr. Anderson is not maintaining a scrap operation as defined by Section 21.021 of the Elsworth County Land Development Code.
2. Mr. Anderson is in violation of the Elsworth County Land Development Code, Section 21.021, concerning the General Commercial Zone, which does not allow a wrecking yard as a permitted use.
 - (a) Mr. Anderson's property is being used as a wrecking yard as defined by the Elsworth County Land Development Code, Section 21.021 (5). Said use is in violation of Section 21.021.
 - (b) Mr. Anderson shall confine the use of his property to the Elsworth County Land Development Code, Section 21.021, shall remove all except two of the vehicles on his property which are not in running condition and/or parts of said vehicles within such time period.

1. Mr. Anderson is maintaining an auto and truck sales lot without Site Plan Approval. (Site Plan Approval is required by Section 41.001 of the Elmore County Land Development Code).

(a) Mr. Anderson shall file a for Site Plan Approval for the auto and truck sales lot within 45 days from the date of this Order.

Mr. Spindler indicated that he would file Findings of Fact but as of the date of this Order he has not done so. Subsequent to the issue of the Conclusions of Law by Mr. Spindler, the Elmore County Board of Commissioners appointed William W. Ganong as the Elmore County Hearings Officer replacing Hearings Officer Spindler. Hearings Officer Ganong has listened diligently to the tape recording of the hearing conducted by Hearings Officer Spindler on January 29, 1967 and has reviewed the Elmore County Planning Department file for Citation No. 1 (40-46). After reviewing the record, Hearings Officer Ganong issued Proposed Findings of Fact, Conclusions of Law, and Order.

Those people who testified at the hearing conducted by Hearings Officer Spindler on January 29, 1967 were mailed copies of said Proposed Order on May 1, 1967. Said Proposed Order provided that any interested party could request a further hearing within 15 days of the date of mailing of the Proposed Order. No one requested a further hearing.

Therefore, Hearings Officer Ganong does hereby make the following Findings of Fact, Conclusions of Law and Order:

FINDINGS OF FACT

1. The subject land is owned by Don Slone and Janet Slone. The Slones acquired the subject property on August 7, 1952 and conducted a mobile home sales yard on the property for a period of approximately 5 years. In 1957, the Slones sold their mobile home business to Barry Parnell but kept title to the

real property and leased the real property to Mr. Farnell. Thereafter, Mr. Farnell went out of business and in 1962 the Slomms leased the subject real property to William Anderson. During the time that the Slomms operated their mobile home sales yard, they received equipment, trucks and autos in trade for mobile homes and sold or resold said equipment, trucks and autos from the subject property.

2. Prior to the Slomms' acquisition of the subject property, Bud Sump, an excavation contractor, owned a portion of the subject property for a period of approximately five years during the mid 1960s. Mr. Sump used the portion which he owned for the storage of heavy equipment during his off season and as a repair area for said equipment. Mr. Sump did not conduct an equipment sales business on the subject property.

3. Mr. Anderson's primary use of the property has been as a sales yard for various kinds of surplus-used equipment and parts. Said equipment includes small and logging machinery, diesel engines, automobiles and trucks, tractors, mobile homes, and trailers.

4. Mr. Anderson testified that there are three or more vehicles that are out in operating condition; that there are trucks on the property that have been torn apart for sometime; that there is a wrecked pickup on the property; that there are approximately 50 units (motor vehicles or tractors) on the property for sale; that Mr. Anderson purchases generally older equipment which comes to his yard in its "as is" condition and in some cases not running; that there are located on the property approximately 10 to 15 diesel engines or parts of diesel engines, some of which are stored inside a storage building located on the property and some outside; that located on the property is a shop which Mr. Anderson uses to maintain his construction equipment and to work

on some of the machinery and equipment that he acquires for resale, but that said shop is not opened to the public.

5. Mr. Anderson, as of the date of the hearing, had not filed a site plan for his sales yard.

6. The subject property is unightly and does contain what some people could refer to as "junk", or more particularly pieces of equipment and automobiles in a non-operating condition, parts, engines and outside storage of miscellaneous goods.

7. The subject property is zoned General Commercial.

CLATSOP COUNTY LAND DEVELOPMENT CODE OUTLINE:

Clatsop County Land Development Code Section 91.001 sets forth the uses which are permitted outright or conditionally in the General Commercial Zone. Said uses include automotive and equipment repairs and sales, farm equipment and light equipment repair and sales. Code Section 91.001 requires that a site plan for any land development change or use be submitted for review and approval of the Planning Department and Building Department. Code Section 91.001 does not allow the maintenance of an automobile wrecking yard in the General Commercial Zone and it does not allow the maintenance of the scrap operation in the General Commercial Zone. Land Development Code Section 91.004 defines a scrap operation as a place of business primarily engaged in the storage, dismantling or other processing of used or waste materials which are intended for reuse in their original form. Code Section 91.005, paragraph J, defines an automobile wrecking yard as being any property where three or more vehicles not in a running condition, or parts thereof, are located.

CLATSOP COUNTY LAND USE GOALS AND POLICY COMPLIANCE

The relevant policy is Goal 2 Policy No. 3 which provides:

"All legally existing land uses shall be allowed to continue as either conforming or nonconforming land uses." (Emphasis added)

CONCLUSIONS OF LAW

1. The use of the subject property prior to the adoption of Elsworth County Zoning Ordinance No. 17 on November 7, 1957, and the adoption of the Elsworth County Land Development Code on November 25, 1958 was as a mobile home sales yard. In connection with said primary use of the property, Mr. Sloan and his successors in interest took in trade various automobiles, trucks and other equipment which were repaired and resold on the subject property. Prior to Mr. Sloan's occupation of the property, the property was used for a period of time as a heavy equipment storage and repair area. However, that use of the property was abandoned at the time Mr. Sloan sold his interest in the property.
2. This case does not involve "grandfathering" because the use of the property as a mobile home sales yard was permitted outright in the commercial zone that existed in 1972 through 1981 and it is permitted outright under the current zoning ordinance.
3. Mr. Anderson has changed the use of the property by primarily using the property for the resale of surplus equipment where the sales of mobile homes is a secondary use of the property. In addition, Mr. Anderson is maintaining an auto wrecking yard as defined in the code and is maintaining an auto and truck sales lot without site plan approval.
4. Subsequent to the hearing held by Hearings Officer Spindler on January 25, 1987, Mr. Anderson did submit a site plan for vehicle sales and equipment sales lot. That site plan has been conditionally approved by the Planning Department as set forth in the letters to Mr. Anderson dated March 10, 1987 and April 17, 1987. Said letters contained site improvement requirements with

which Mr. Anderson must comply within the time limits set forth in said letters and the Land Development Code.

5. William M. Anderson, Don Sloan and Hazel Sloan received the warning notices and Uniform Citation Notice of Enforcement and Contemplated Action as required by Land Development Code Section 14.005.

ORDER

William M. Anderson, Don Sloan and Hazel Sloan and any other persons having an interest in the real property located at 5820 South 4th Street, Elmore Falls, Oregon and more particularly described as Elmore County Assessor Tax Lots 2500 and 2600, Township 29, Range 9, Section 1 (E), are hereby ordered to cease and desist from conducting or permitting an automobile wrecking yard on the subject property in violation of Elmore County Land Development Code and maintaining an auto and truck sales lot without site plan approval. Said parties shall, if they wish to continue the operation of the auto and equipment sales lot on the subject property, comply with the requirements set forth in the Planning Department letters dated March 23, 1997 and April 27, 1997 within the time periods set forth in said letters. Respondents are further Ordered to immediately remove all except two of the vehicles or pieces of equipment located on the subject property which are not in a running condition, and they shall immediately remove or store in closed storage all of the parts and engines located on the property.

This Order shall be effective upon service of the Order on the above named parties in the manner provided for service of notice by the Elmore County Land Development Code.

Elmore County Land Development Code Section 14.002 provides that any person, firm, corporation or other entity who has been found by a hearing

Officer to have violated any of the provisions of the Code and who does not comply with the Order of the Hearings Officer shall be punished by a fine not exceeding one hundred dollars (\$100) for each day of violation where the violation is a continuing one, but such fine may not exceed one thousand dollars (\$1,000) or a fine of five hundred dollars (\$500) where the violation is not a continuing one. District Court and Circuit Court have concurrent jurisdiction over the prosecution of violations of the Code.

DATED May 21, 1967.

William H. Gentry
 WILLIAM H. GENTRY
 Klamath County Hearings Officer

STATE OF OREGON, COUNTY OF KLAMATH

That the undersigned is a member of Klamath County Planning Department as Chairman of May A.D. 19 57 in 1967 at 2 P.M. and duly recorded in Vol. 117 of Books in Page 2157

FILE NO. 112
 Recorder Commissioned Journal

By William H. Gentry
 William H. Gentry, County Clerk