

76129

BEFORE THE HEARINGS OFFICER

Vol. 1487 Page 11048

KLAMATH COUNTY, OREGON

In the Matter of a Request for

CONDITIONAL USE PERMIT

for

WILLIAM L. ZAWILA

) C.U.P. 13-87  
)  
)  
) FINDINGS OF FACT,  
) CONCLUSIONS OF LAW  
) AND DECISION  
)  
)

THIS MATTER came on for hearing before Klamath County

Hearings Officer, JAMES R. UERLINGS, on May 7, 1987, at 11 A.M.

in the Klamath County Commissioners' Hearing Room. The hearing

was held pursuant to notice given in conformity with the Klamath

County Development Code and related ordinances. The applicant

was represented by Michael McKenna and Frank Ganong. The Klamath

County Planning Department was represented by Kim Lundahl.

In the course of the hearing, the Hearings Officer

requested that the applicant's representatives present the

applicant's position as to whether or not Klamath County had

complete jurisdiction under its variance ordinance and

conditional use permit ordinance to regulate the siting of this

radio station tower.

The applicant's representative, Mr. McKenna, requested

a continuance in order that he might consult with Mr. Zawila on

the issue.

The hearing was then continued to June 4, 1987, at 9:30

A.M.

The testimony and exhibits introduced in both hearings

were considered by the Hearings Officer prior to reaching a

decision.

The following exhibits were marked, entered and

FINDINGS OF FACT, CONCLUSIONS OF LAW  
AND DECISION, Page 1.

BOIVIN & UERLINGS, P.C.  
ATTORNEYS AT LAW  
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1 received into evidence and made a part of the record:  
2 "A" through "DD".

3 The Hearings Officer, after reviewing the evidence  
4 presented, makes the following findings of fact, conclusions of  
5 law and decision.

6 FINDINGS OF FACT:

7  
8 1. The applicant's representatives at the hearing of  
9 June 4, 1987, indicated that they were agreeing to the  
10 jurisdiction of Klamath County and requested that the hearing  
11 proceed forward. Based upon that representation, the Hearings  
12 Officer conducted the hearing.

13 2. This request for a conditional use permit is for  
14 the placement of an AM radio broadcast tower (a Non-Forest use)  
15 in a Forest/Range zone under Section 51.021 of the Land  
16 Development Code.

17 3. The subject property is located North of  
18 Breitenstein Lane, 1/4 mile West of Drindale Road, Klamath  
19 County, Oregon. The legal description of the property is as  
20 follows: "Portion of the NE 1/4 SW 1/4, Section 1, Township 39,  
21 Range 8, Klamath County, Oregon" bearing Tax Account No. 3908-1C-  
22 200.

23 4. The physical characteristics of the property are  
24 as follows: Plan Designation is Forestry Range, the Zone  
25 Designation is F/R (Forest/Range).

26 5. The property consists of 15 acres. The shape of  
27 the property is rectangular and the topography is a rolling  
28 plain. General drainage on the property consists of surface  
runoff.

FINDINGS OF FACT, CONCLUSIONS OF LAW  
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1 6. Vegetation on the property consists of a grain  
2 crop.

3 7. Access to the property is off Breitenstein Lane,  
4 an unimproved County road.

5 8. The Soil Classification is SCS Class III and the  
6 Timber Productivity Rating for this site has not been determined  
7 by the Klamath County Planning Department.

8 9. Unique physical characteristics of the surrounding  
9 lands consist of agricultural production to the North, East and  
10 West, and a rural residential subdivision to the South.

11 10. Adjacent and surrounding zoning consists of  
12 Forest/Range to the North, East and West and Suburban Residential  
13 to the South.

14 11. Public facilities and services to the property are  
15 as follows: Water, none; Sewer, none; fire district, Klamath  
16 County Fire District No. 4; electricity, Pacific Power and Light  
17 and County schools serve the property.

18 12. The applicant has proposed the construction of a  
19 metal A.M. radio broadcast tower, the description of which is  
20 contained within the exhibits filed at the time of the hearing.  
21 The tower will be 198' in height and it will be secured by guy  
22 wires in the upright position. Part of the system also consists  
23 of other wires, described as radials, which are laid in the  
24 ground in a circular pattern around the base of the antenna.  
25 Additionally, the site will contain a concrete building, which  
26 will supply power to the antenna, as well as a chainlink fence.  
27 The applicant has proposed building a chainlink fence 4' long on  
28 all four sides with a height of approximately 8'. The applicant

FINDINGS OF FACT, CONCLUSIONS OF LAW  
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1 currently does not have plans to put any type of security devices  
2 at the top of the fence, such as barbed wire, etc. The applicant  
3 has indicated that he may put an silent alarm system on the fence  
4 which would alert the station owners to an entry within the  
5 perimeters of the antenna.

6  
7 13. The applicant has not determined what color the  
8 tower would be painted, but the applicant's representatives  
9 indicated that the applicant felt that he had the right to paint  
10 the tower any color he wished to and to either light or not light  
11 the tower as he so desired. The applicant's representatives  
12 proposed that the applicant may determine to secure the facility  
13 in a manner other than the use of the chainlink fence but had not  
14 determined what type of system would provide the most security.

15 14. Eight letters and four petitions were introduced  
16 as exhibits, expressing opposition by neighboring property owners  
17 to the construction of this facility. Additionally, seven (7)  
18 persons, all residents of the subdivision "Green Acres" which  
19 immediately adjoins the proposed facility site, testified in  
20 opposition to the construction of the facility.

21 15. No persons testified in favor of the facility,  
22 other than the applicant and the applicant's representatives.

23 16. Those testifying in opposition expressed primarily  
24 the following concerns:

25 A. The safety problems that the facility would  
26 cause, primarily in relation to the fact that over 200 children  
27 between toddler stage and eleventh grade reside within 1/2 mile  
28 of the proposed site. Residents testified that they were not  
aware of any type of security devices which could keep out a

FINDINGS OF FACT, CONCLUSIONS OF LAW  
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1 determined child from entering the facility. The testimony  
2 indicated that the facility would radiate with a maximum power of  
3 10,000 watts, generating a considerable electrical potential.

4 B. The opponents expressed concern that the  
5 facility would cause a visual eyesore and reduce the aesthetic  
6 serenity of the area. Many of the opponents testified that they  
7 had moved to, and purchased homes in, the Green Acres area  
8 specifically for the purpose of residing in an area which was a  
9 considerable distance from any commercial development. There is  
10 no commercial development near the subdivision.

11 The opponents testified that the residents  
12 within the Green Acres subdivision area are subject to  
13 restrictive covenants which have been imposed upon their land.  
14 Those restrictive covenants are represented by Exhibit "CC"  
15 attached to the Conditional Use Permit. Opponents testified that  
16 the restrictive covenants and the general manner of construction  
17 in the area has eliminated all above ground utility facilities;  
18 there are, in fact, no power lines, power poles, telephone lines,  
19 telephone poles, cable lines, cable poles or lights above the  
20 ground within the subdivision. Restrictive covenants also  
21 prohibit manufacturing, general workshops or uses, or any other  
22 use that will create excessive noise, vibration, smoke or odor.  
23 Restrictions also limit the number of farm animals which may be  
24 kept on the facility and the nature of related structures that  
25 can be built for farm animals.

26 C. The opponents testified that they saw no  
27 manner in which the applicant could camouflage the radio tower  
28 such that it would not be visible to the residents of the area.

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AND DECISION, Page 5.

1 The overwhelming weight of testimony indicated that the closest  
2 residence was less than 900' from the proposed radio tower.  
3 Testimony indicated that the tower would be located approximately  
4 within the center of a triangular shaped area, upon which three  
5 homes immediately bordered. All of these homes have views which  
6 look out in the area where the radio tower would be constructed.  
7 The construction of the radio tower in that area would  
8 significantly detract from, and alter, the rural countryside view  
9 that those homeowners have previously enjoyed. Testimony also  
10 indicated that the house which is closest to the proposed site is  
11 situated on ground higher than the radio tower itself.

12 In summary, the standards significantly  
13 restrict the development of the residential area to strictly  
14 residential uses; even as to residential uses, other standards  
15 are imposed to reduce unpleasant odors and noises and visual  
16 obstructions within the area. Currently, there is no commercial  
17 development within near proximity of the residential area.

18 D. The opponents also indicated that the  
19 construction of this facility in proximity to their residences  
20 would substantially reduce the value of their residences. In  
21 particular, they cited a specific example wherein a current  
22 property owner had received an offer of purchase on their  
23 premises prior to the first hearing on this matter. The  
24 testimony indicated that when the proposal for the construction  
25 of this radio tower became public, the proposed buyer withdrew  
26 his initial offer and tendered an offer 10% lower. The opponents  
27 indicated that they expected that the property values would be  
28 reduced even more than the 10% figure. The reason for the

FINDINGS OF FACT, CONCLUSIONS OF LAW  
AND DECISION, Page 6.



1 reduction value, as indicated by the testimony, was that persons  
2 who purchased homes in that area did so in reliance upon the  
3 restrictive covenants and the general residential and rural  
4 agricultural nature of the area and that the establishment of any  
5 commercial facility in proximity to the residential areas would  
6 reduce the resale value of their property.

7 KLAMATH COUNTY DEVELOPMENT CODE CRITERIA:

8 See Exhibit "A" attached hereto and incorporated by  
9 this reference.

10 KLAMATH COUNTY GOALS AND POLICIES COMPLIANCE:

11 See Exhibit "B" attached hereto and incorporated by  
12 this reference.

13 KLAMATH COUNTY DEVELOPMENT CODE FINDINGS AND CONCLUSIONS:

14 1. No evidence was presented as to the compatibility  
15 of this use with forest uses, other than the statement by the  
16 applicant that the facility would be compatible. Therefore, it  
17 is found that it is not compatible.

18 2. There was no evidence presented as to the exact  
19 nature of any forest practices that were ongoing on adjacent  
20 lands which were devoted to forest use. It is therefore not  
21 possible to determine whether this facility would at all  
22 seriously interfere with those accepted forestry practices.  
23 Therefore, this criteria is found not to be met.

24 3. The land use pattern of the area is agricultural  
25 and residential. The overwhelming weight of testimony presented  
26 indicated that, within approximately 900' of the proposed  
27 facility, there is substantial residential development. The  
28 reason why residential development occurred in the area is that

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AND DECISION, Page 7.

1 the residents wished to remove themselves from close proximity to  
2 commercial development. Therefore, I conclude that the  
3 construction of this facility at this particular site would alter  
4 the stability of the overall land use pattern, entering into the  
5 area the first commercial use.

6 4. There was no testimony presented as to the  
7 suitability of the area for the production of forest crops. No  
8 evidence was presented upon adverse soil or land conditions,  
9 drainage and flooding, vegetation, etc. other than testimony by  
10 the applicant's representatives that they intended livestock  
11 grazing to continue, and possibly changing the use to alfalfa  
12 production. The testimony indicated that approximately 1/2 acre  
13 of land would be taken out of productive use. There was no  
14 testimony presented as to whether or not that particular land was  
15 unsuitable for the production of forest crops or the grazing of  
16 livestock. Therefore, this criteria has not been met.

17 5. No evidence whatsoever was presented as to the  
18 forest site productivity rating. Therefore, this criteria has  
19 not been met.

20 6. The staff report is the only evidence presented on  
21 fire protection to the area. Based upon the staff report, I find  
22 that adequate fire protection is available to the site.

23 7. Since the majority of the above criteria have not  
24 been met, there are no conditions to impose upon the granting of  
25 the application.

26 8. Although this use is conditionally permitted  
27 within the zone, since the applicant does not address the criteria  
28 as set forth in Section 51.021(D), I cannot find that the

FINDINGS OF FACT, CONCLUSIONS OF LAW  
AND DECISION, Page 8.



1 location, size, design and operating characteristics of the  
2 proposed use are in conformance with the Klamath County  
3 Comprehensive Plan. Additionally, based upon the overwhelming  
4 weight of the testimony, the indication is that the area has a  
5 strong residential character. The development of this site would  
6 have significant adverse effects upon the appropriate residential  
7 development and residential use of the abutting properties. I  
8 find that this significant adverse effect to be caused by the  
9 following:

10  
11 A. There are safety problems caused by the  
12 construction of the facility near a residential area where over  
13 200 children live within less than 1/2 mile from the facility.  
14 The evidence indicated that children who live in proximity to a  
15 radio tower could have a propensity to investigate the facility  
16 and, on occasion, attempt to enter it without permission.  
17 Although several proposals were made by the applicant to reduce  
18 this risk, there were no proposals which would insure the safety  
19 of the area's children.

20 B. Secondly, and most significantly, the area  
21 has developed a strong residential character. There are no  
22 commercial facilities in close proximity to this area. The  
23 residents of the area are living there because it is a  
24 considerable distance from commercial-type facilities. They  
25 enjoy the country and rural atmosphere and the agricultural uses  
26 that go on in the area. Many applicants testified that they  
27 would not be living in the area if the radio facility were built  
28 and would not have purchased property there if the facility had  
existed prior to the purchase of their residence. Additionally,  
FINDINGS OF FACT, CONCLUSIONS OF LAW  
AND DECISION, Page 9.


1 the evidence indicated that property values in the area would  
2 decline and, in fact, may already have declined, just by the mere  
3 proposal of the construction of the facility.

4 Therefore, I find that the facility does have a  
5 significant adverse impact upon the appropriate development and  
6 use of abutting property.

7 CONCLUSIONS OF LAW AND DECISION:

8 1. This request for a conditional use permit on the  
9 subject property is denied as it does not meet the applicable  
10 Klamath County Development Code criteria and policies governing  
11 such.

12 DATED this 10 day of June, 1987.

13   
14 JAMES R. UERLINGS

# Planning Department Conclusions and Recommendations:

Conditional Use Permit 13-87 is a request for authorization to locate a 198 foot high radio transmission tower on a 15 acre site south of State Highway 140, west of Orindale Road.

The 15 acre site is planted to grain and is adjacent to properties devoted to the same use.

A rural residential subdivision, Green Acres, has been developed to the south. Notification has been made to owners within 250 feet.

Access to the tower site is by Breitenstein Lane, an unimproved country lane. This level of access is adequate for the proposed use.

The zoning and comprehensive plan designation of the property is Forestry/Range. The use of this and adjacent properties is not consistent with this designation.

The tower will be a receiving/transmitting facility for a new A.M. radio station. The operation of the station will be from a remote location. The tower site will not have human occupancy.

The site was selected for its location by longitude and latitude as A.M. broadcasting is not dependent on line-of-sight. Federal Aviation Agency approval has been obtained.

Should the Hearings Officer approve this permit, conformance with Section 51.021(D) must be met:

D. NON-FOREST USES: The non-forest uses conditionally permitted shall be subject to review in accordance with the following criteria. The review authority must find that each such use:

1. Is compatible with forest uses;
2. Does not interfere seriously with accepted forestry practices on adjacent lands devoted to forest use;
3. Does not materially alter the stability of the overall land use pattern of the area;
4. Is situated on generally unsuitable land for the production of forest crops and livestock, considering the terrain, adverse soil or land conditions, drainage and flooding, vegetation, location and size of tract;

Planning Department Conclusions and Recommendations Continued:

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5. Considers forest site productivity and minimizes the loss of productive forest lands;
6. Meets the standards relating to the availability of fire protection as set forth in Article 69 of this Code and other rural services, and will not overtax those services; and
7. Complies with such other conditions as the governing body of the County considers necessary.

Conformance with Relevant Klamath County Policies:

Goal 1 - Citizen Involvement:

A public hearing on this matter has been set for May 7, 1987. Notice has been sent to surrounding property owners and affected public agencies. Notice has been published in the Herald and News and posted in public places.

Goal 2 - Land Use Planning:

Conditional Use Permit 13-87 is a request for permission to locate a transmission tower on property zoned F/R (Forest/Range). This request is to be conditionally considered per Land Development Code Section 51.021(C) (1) per criteria set out in Land Development Code Section 51.021(D).

Goal 3 - Agricultural Lands:

The existing use of the property is grain production. The proposed tower would remove 4+ acres from agricultural production. The existence of a 200 foot tower may impact adjacent agricultural production.

Goal 4 - Forest Lands:

The property is zoned F/R (Forest/Range); however, forestry uses are not present and will not be impacted.

Goal 5 - Open Spaces, Scenic and Historic Areas, and Natural Resources:

The location of the tower is visible from State Highway 140 to the north and does impact scenic qualities from the highway and residences along Mason Lane to the south.

Goals 6 - 14 do not apply or are not affected by this application.

STATE OF OREGON: COUNTY OF KLAMATH: ss.

Filed for record at request of Klamath County Planning Dept. the 25th day of June A.D. 19 87 at 9:03 o'clock A.M. and duly recorded in Vol. M87 of Deeds on Page 11048.

FEE NO FEE

Return: Commissioners' Journal

By Evelyn Biehn, County Clerk  
[Signature]