

BEFORE THE HEARINGS OFFICER

KLAMATH COUNTY, OREGON

In the Matter of a Request for) VARIANCE 6-87
 VARIANCE)
 for) FINDINGS OF FACT,
) CONCLUSIONS OF LAW
) AND DECISION
 WILLIAM L. ZAWILA)

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.

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1 received into evidence and made a part of the record: Exhibits
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 1. The applicant's representatives at the hearing of
8 June 4, 1987, indicated that they were agreeing to the
9 jurisdiction of Klamath County and requested that the hearing
10 proceed forward. Based upon that representation, the Hearings
11 Officer conducted the hearing.

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

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

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

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

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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, and a chainlink fence. The
27 applicant has proposed building a chainlink fence 4' long on all
28 four sides with a height of approximately 8'. The applicant

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 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 age and eleventh grade reside within 1/2 mile of
28 the proposed site. Residents testified that they were not aware
of any type of security devices which could keep out a determined

1 child from entering the facility. The testimony indicated that
2 the facility would radiate with a maximum power of 10,000 watts,
3 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 this Variance. Opponents testified that the
16 restrictive covenants and the general manner of construction in
17 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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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

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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
8 16. All testimony and exhibits offered at the
9 Conditional Use Permit Order were received and made a part of the
10 record in the variance application.

11 17. The applicant's representatives' testimony
12 indicated that the height of the radio tower could not be less
13 than 198' in order to accomplish the applicant's intended purpose
14 for its construction.

15 18. The evidence indicated that much of the land
16 surrounding the proposed tower was currently in use as
17 agricultural land. This land is regularly sprayed by
18 agricultural spray planes. The evidence indicated that the tower
19 would be an obstruction to the agricultural activity in the area
20 as it would hamper the efforts of the spray plane.

21 19. The highlighting of the tower by the applicant by
22 painting it red and white and/or by lighting the tower would
23 reduce to a minor degree the agricultural spray plane problems
24 but it would exacerbate the aesthetic problems that the tower
25 would cause being placed in proximity to the residential homes.

26 KLAMATH COUNTY DEVELOPMENT CODE CRITERIA:

27 See Exhibit "A" attached hereto and incorporated by
28 this reference.

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1 KLAMATH COUNTY GOALS AND POLICIES COMPLIANCE:

2 See Exhibit "B" attached hereto and incorporated by
3 this reference.

4 KLAMATH COUNTY DEVELOPMENT CODE FINDINGS AND CONCLUSIONS:

5 1. A literal enforcement of this Code would prevent
6 the applicant from constructing a tower to the height of 198'
7 within this zone. Currently, the maximum height allowed is 35'
8 in the Forest/Range zone. The difficulty or hardship, however,
9 does not arise from the property's size, shape or topography or
10 location of lawfully existing buildings and improvements or from
11 personal circumstances which would result in greater private
12 expense than public benefit of strict enforcement.

13 The difficulty or hardship arises from the fact
14 that the applicant has selected this site for the radio station
15 and the radio station requires a tower of this particular height.
16 It is probable that the applicant could not, or would not,
17 construct the radio tower on this site if the height of the tower
18 was confined to 35'. However, that is not the basis upon which a
19 granting of the variance can be given.

20 2. The condition causing the difficulty is created by
21 the applicant in the sense that the applicant could choose
22 another site for the construction of the radio tower wherein the
23 height restriction is not limited to 35'.

24 3. The granting of this variance will be detrimental
25 to the public safety and welfare in that the testimony indicated
26 that over 200 children live within 1/2 mile of the radio tower.
27 The residents of the area expressed sincere concerns that the
28 tower would create an "attractive" nuisance for the children and

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1 they did not feel that any of the security measures proposed by
2 the applicant would prevent curious children from attempting to
3 enter the facility and injuring themselves.

4 4. Additionally, the use and enjoyment of adjacent
5 properties will be adversely effected by the construction of the
6 tower in that the evidence indicated that the property values
7 would decline and that the construction of the tower would create
8 an eyesore, detrimental to the aesthetic values of the adjoining
9 property owners. The evidence indicated that the residents of
10 this area primarily moved to that area in order to put
11 considerable distance between themselves and commercial
12 developments. This is the only commercial development in near
13 proximity to their residences and they would not have purchased
14 their homes and would, in fact, consider moving from the area if
15 this radio tower was constructed within the near proximity of
16 their residences. Several of the homes would be presented with a
17 radio tower within a few hundred feet of their living room
18 window, obstructing the view they previously had of the rolling
19 hills and timbered hillside.

20 CONCLUSIONS OF LAW AND DECISION:

21 1. This request for a variance on the subject
22 property is denied based on the fact that it does not meet the
23 applicable criteria.

24 DATED this 10 day of June, 1987.

25 
26 JAMES R. UERLINGS

27
28 FINDINGS OF FACT, CONCLUSIONS OF LAW
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KLAMATH COUNTY DEVELOPMENT CODE CRITERIA

The variance review criteria set out in Section 43.004 of the Land Development Code requires the following findings for approval:

A. A literal enforcement of this Code would result in a practical difficulty or unnecessary hardship. The difficulty or hardship may arise from the property's size, shape or topography, from the location of lawfully existing buildings and improvements, or from personal circumstances which would result in greater private expense than public benefit of strict enforcement.

B. That the condition causing the difficulty was not created by the applicant.

C. That the granting of the variance will not be detrimental to the public health, safety and welfare or to the use and enjoyment of adjacent properties and will not be contrary to the intent of this Code.

11071

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 11061.

Evelyn Biehn, County Clerk
By Ann Smith

FEE NO FEE

Return: Commissioners' Journal

EXHIBIT "B"