

BEFORE THE HEARINGS OFFICER OF KLAMATH COUNTY, OREGON

In the Matter of the Request)	C.U.P. 19-87
for a Conditional Use Permit)	FINDINGS OF FACT, CONCLUSIONS
for TEEN CHALLENGE OF OREGON,)	OF LAW AND ORDER
INC.)	

This matter came before Hearings Officer William M. Ganong on June 18, 1987 in the Klamath County Commissioner's Hearing Room. The applicant was represented by Michael Hodges and Linda Thorp. The Klamath County Planning Department was represented by Mr. Kim Lundahl and the Recording Secretary was Donna Verling. After approximately one hour of testimony, the hearing was continued to July 16, 1987. At the July 16, 1987 hearing, the Recording Secretary was Karen Burg. The Klamath County Planning Department file and all contents thereof were incorporated in the record as evidence. The County Hearings Officer, after reviewing the evidence presented, makes the following Findings of Fact, Conclusions of Law and Decision:

FINDINGS OF FACT:

1. The Applicant has requested a Conditional Use Permit to establish a group care residential facility for women over the age of 18 years of age in an existing single family residence located in the R-5 Zone. The subject property is 10 acres in size and is identified as Klamath County Tax Assessor Lot No. 3808-12-1200.

2. After the applicant presented its testimony at the hearing on June 18, 1987 and several people had testified in opposition to the application, two procedural concerns were raised by the people in opposition to the application.

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The first question that was raised was whether or not all of the people entitled to receive notice by mail pursuant to the provisions of the Klamath Land Development Code indeed received notice. After some discussion, the hearings officer granted a continuance to address that concern and a second concern discussed hereinafter. During the interim period between the hearing on June 18, 1987 and the hearing on July 16, 1987, Planning Staff member Kim Lundahl determined that notice was not mailed to some landowners who were entitled to notice. That error was corrected by Planning Department Staff member Janet Libertajt who then mailed notice of the application and the hearing date of July 16, 1987 to said people.

The second concern raised by the opponents was the potential bias or conflict of interest of the Hearings Officer. Some people in opposition testified that the subject property was listed for sale by Frank F. Ganong, a broker with Ganong / Barnhisel Realtors of Klamath Falls, Oregon. Frank F. Ganong is the uncle of Hearings Officer William M. Ganong. At the time the concern was raised the Hearings Officer was unaware that Frank F. Ganong held the listing for the subject property. During the interim period between the two hearing dates, the Hearings Officer contacted Frank F. Ganong and determined that, in fact, Frank F. Ganong did hold the listing. The merits of the request were not discussed by Frank F. Ganong and William M. Ganong. Klamath County Land Development Code Section 31.002 sets forth the procedure for filing challenges to the impartiality of the Hearings Officer.

Section 31.003 provides that if certain conditions exist, the Hearings Officer must withdraw from hearing the application. In this case, no challenge was filed and none of the conditions set forth in Section 31.003 exist. The Hearings Officer determined that he was not required to withdraw and determined that he could decide this matter without bias and in an impartial manner.

3. The Findings set forth on pages 1, 2, 3 and 4 of the Klamath County Planning Department Staff Report dated June 11, 1987 for CUP 19-87 and are found to be true and correct and are incorporated herein by this reference.

4. The Hearings Officer viewed the property and the access road to the property during the period between the two above said hearing dates.

5. The applicants intend to use an existing single family residence as a center for a residential program to counsel drug or alcohol dependent women in a peaceful, secure and homelike setting. The program used by Teen Challenge, Inc. is highly structured and the activities of the students involved in the program are strictly controlled. Linda Thorp testified that the program is not a detox center; that physical exams are required of each student; that visitations are allowed by appointment only and are restricted for an initial period of time; and, that visitors are carefully screened. The program applies biblical principles to make a positive change in the lives of the students involved.

6. The subject program is a four month residential program. The applicant expects that there will not be more than 15 students

in the program at any one time; that the students will reside on the subject property and that there will be at least two staff members residing on the subject property at all times. The program is modeled after other existing Teen Challenge programs including one at Lebanon, Oregon and one at Sacramento, California. The Crossroads Women Center will be the first program for women in the State of Oregon.

7. The applicant submitted a large number of letters in support of the subject program. Letters were received from the Oregon Department of Human Resources, Adult and Family Services Division; the Klamath County Sheriff and the Klamath County District Attorney. Most of the letters submitted by the applicant verified the need for the program but did not specifically speak to the criteria for reviewing a Conditional Use Permit.

8. A large number of landowners and residents in the general area in which the Women's Center is proposed to be located appeared either in person, by letter or through attorney Jerry Molatore to raise several concerns. The concerns raised by the nearby landowners are summarized as follows:

A. The access to the property is over a Class E County Road. Said road is not maintained by the County and has not been improved to County standards. The road generally has a gravel surface, its condition varies throughout the year but can be characterized as very uneven and bumpy. To the extent that the road is maintained, it is maintained by people residing along the road. The neighbors contribute to the maintenance of the road as

needed. Because the said road is not paved and is not well maintained, a substantial amount of dust is created by the traffic over the road. The area residents are concerned that if the subject application is granted, the traffic to and from the subject property will increase and thereby increase the dust and noise created by traffic over the subject road.

B. The subject area is an exclusive residential area comprised of large lots with homes that generally range in value from \$75,000 to \$250,000. The landowners are concerned that if the Center is located on the subject property, it will draw to this area people with drug and alcohol problems who have a propensity to commit crimes such as burglary and theft. The residents question the character of the students that will be involved in the proposed program and they also question the character of people who may be visiting students at the subject program. They are also concerned that the location of the subject program on the said property will make known to said group of people with a higher propensity for committing crime an area that is an exclusive residential area.

C. The residents are concerned that there is a lack of police protection in this area. The residents' concern is supported to some extent by a letter from Klamath County Sheriff, Tom Duryee, dated July 14, 1987 and which is marked as Exhibit Y. However, it is interesting to note that Sheriff Duryee's said letter seems to directly contradict a letter signed by Sheriff Duryee dated June 17, 1987, marked Exhibit K-1, and which states:

"I have reviewed the site of its proposed operation and I have no law enforcement concerns regarding its location."

D. The landowners are concerned that the siting of a residential treatment center such as proposed by the applicant in this area will devalue their property by making their property less attractive to potential buyers. The opponents presented a letter, Exhibit Z dated July 15, 1987 and signed by Gary W. Hargraves, Real Estate Appraiser. Said letter states, in summary, that nonconforming uses can have an adverse affect on neighboring land uses and that the affect of such nonconforming uses must be investigated on a case by case basis. Mr. Hargraves' letter does not contain a conclusion which specifically addresses the subject Land Use Application.

E. The neighbors are concerned that the road, in addition to being dusty, may be narrow and dangerous and that an increase in traffic over that road will make it more dangerous.

F. The neighbors are concerned that the size of the facility may increase in future years thereby further reducing the privacy and solitude that they enjoy in this area.

G. Attorney Jerry Molatore summarized the opponents' testimony as being that the location of the group treatment center proposed by the applicant would adversely impact the livability of this area and the desirable neighborhood characteristics for which the residents in the area purchased their property and which they currently enjoy.

9. Ms. Thorp submitted an outline of the concerns raised by the neighboring property owners and the applicants' response to those concerns. Said outline is marked as Exhibits GG 4 and 5. Applicant representative Linda Thorp presented the following testimony in rebuttal to the concerns of the neighbors:

A. The Teen Challenge Program has a substantial written manual containing specific guidelines for the program. Those guidelines include restrictive rights and structured activities for the students enrolled in the program. They strictly limit the visitors which the students are allowed to have and require that the students not leave the center except in the accompaniment of a staff member and generally as a group. Ms. Thorp presented letters from residents of the area in which a similar treatment center is located in Sacramento, California, which letters state that those residents have incurred no adverse impacts from the location of the group home near them.

B. Ms. Thorp presented a letter written by landowner, Dr. Dewey Mathews, outlining the historic use of the access road and the number of trips that his family made across that road. They averaged 11 trips a day. Ms. Thorp submitted an estimate of the traffic which the proposed Women's Center would generate. Said estimate, Exhibit DD, totals approximately 45 trips a week, thereby indicating that the traffic will actually decrease from the level of traffic generated by the Mathews and their guests. Dr. Mathews' letter also points out that the maintenance that has been done to the road has been done by him, neighbor Steve

Southwell and neighbor James Kerns. Mr. Southwell vigorously opposes the subject application. James Kerns submitted a letter in support of the subject application.

C. In response to the neighbors' concerns that the location of a treatment program on this property will potentially subject the neighborhood to visitations by a class of people with a propensity for drug abuse, alcoholism, theft, burglary and other undesirable characteristics, Ms. Thorp references the policies and procedures manual that Teen Challenge requires its centers to follow and specific portions which restrict the visitation privileges of the students involved in the program. Those policies which strictly control and manage the students funds, personal property, entrance into the program, visitations and activities while in the program. Ms. Thorp states that Friends of the students will not be allowed to visit the program; that while the students are in the program, their activities will be strictly controlled; that they do not have access to automobiles and will not be allowed to have an automobile at the site of the program; that all trips into and out of the area by students will be in the accompaniment of a staff member and that, in her judgment, the concerns of the neighbors are unfounded. Ms. Thorp's position is supported by letters from people who reside near a similar program in Sacramento, California. The opponents presented no specific testimony or evidence of a similar type program causing an adverse impact on a neighborhood where it is located.

D. Ms. Thorp presented a letter from Klamath County Tax Appraiser, Bill Heath, stating that he has reviewed the subject neighborhood and program and believes that it will have no adverse affect on the property values of the residents in this area.

E. Ms. Thorp pointed out that the property where the group home is proposed to be located is 10 acres in size and is surrounded by an additional 330 acres also owned by the Mathews. Dr. Mathews' letter states that the nearest home is approximately 1.2 miles away from the site of the proposed group home and that it is out of sight and hearing of the subject property. The location of the proposed group home is isolated from Cove Point area and the Sunset Ridge area by a high steep hill. Dr. Mathews' opinion is that the location of the Teen Challenge Program at the site proposed will have no adverse economic affect on the property which he retains.

F. Ms. Thorp testified that the applicant does not intend to make any major structural changes to the existing residence and does not intend to enlarge the subject program.

KLAMATH COUNTY LAND DEVELOPMENT CODE CRITERIA

Klamath County Land Development Code Section 44.003 sets forth the criteria which must be addressed in reviewing an application for a Conditional Use Permit. Land Development Code Section 51.003 (C) (2) allows group care residential in the R-5 Zone.

KLAMATH COUNTY CODE FINDINGS OF FACT AND CONCLUSIONS

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The following Findings of Fact and Conclusions are made concerning the review criteria set forth in Klamath County Land Development Code Section 44.003:

A. The proposed use of the subject property as a group care residential facility for women over the age of 18 years is conditionally permitted in the R-5, Rural Residential Zone, pursuant to Klamath County Land Development Code Section 57.003 (C) (2).

The applicant intends to use the subject property for an intensive treatment and educational program for women over the age of 18 years who have experienced drug or alcohol related problems. The average stay by the women enrolled in the program will be four months, although the length of stay is dependent somewhat on the progress the student makes in the program.

B. The location, size and operating characteristics of the proposed use are in conformance with the Klamath County Comprehensive Plan. The lot upon which the proposed use will occur is 10 acres in size and complies with the minimum lot size requirement for the R-5 Zone. The existing structure on the lot is 4,500 square feet in size. It contains five bedrooms and three and a half baths. The applicant testified that the subject property is approximately the same size as other similar Teen Challenge group residential programs. This property is served by electricity and telephone and is in the County Fire District. If this application is granted, the applicant will be required to

comply with the requirements of the Klamath County Department of Health Services with respect to the septic system and water system on the property. The operation of the proposed residential facility is strictly governed by the Policies and Procedure Manual and the Student Policies and Guidelines Manual of Teen Challenge of Oregon, Inc. If, in fact, the center is operated in the manner contemplated by said policies and guidelines, the use of the property for a Women's Group Residential Center will be in conformance with the Klamath County Comprehensive Plan.

C. The third criteria for reviewing a Conditional Use Permit under the Klamath County Land Development Code is the most comprehensive criteria. It requires findings that the location, size, design and operating characteristics of the proposed development will be compatible with and will not have a significant adverse affect on appropriate development and use of abutting properties in the surrounding neighborhood. Consideration must be given to the harmony in scale, bulk, coverage and density; to the availability of civic facilities and utilities; to the harmful affects upon the desirable neighborhood characteristics and livability; to the generation of traffic and the capacity of surrounding streets; and to any other relevant impacts of the development. It is this third criteria which the bulk of the testimony presented by the opponents to the application was directed.

A substantial amount of the testimony given by the opponents dealt with potential adverse affects that the use of the subject

property as a group residential facility may have on the surrounding neighborhood. Other testimony presented by the opponents dealt with existing problems in this neighborhood, specifically the county road which serves the neighborhood.

With respect to testimony concerning potential adverse impacts, such as the security of the existing residences and the affect on property values, the neighboring landowners expressed very real concerns. However, their concerns are speculative in nature and are directly rebutted by testimony and Exhibits presented by the applicant concerning the lack of adverse affects that other similar treatment centers have had in the neighborhoods which they are located. Specific reference is made to Exhibit BB which is a letter signed by Ralph A. Campbell and Sally J. Campbell. Said letter states that a Teen Challenge Women's Center moved into their neighborhood approximately one year ago and during the ensuing year they have experienced no adverse impacts as a result of the center. In fact, they have found the center to be a positive influence on their use and enjoyment of their property. As there are many Teen Challenge programs in existence, if the fears expressed by the neighboring landowners in this case had some basis, it would seem that the opponents could have produced testimony supporting their concerns. The Hearings Officer believes that if the center is operated in strict compliance with the policies and procedures of the Teen Challenge Program, the anticipated concerns of the adjoining landowners will never become reality.

With respect to the problems concerning the county road which serves the property, this criteria requires that the Hearings Officer consider the generation of traffic and the capacity of surrounding streets to carry that traffic. There is substantial testimony in the record from the Mathews and the applicant concerning the level of traffic previously generated by the Mathews and the level of traffic anticipated by the applicant. In summary, that testimony is that there will actually be less traffic into and out of the subject property if this application is approved than was generated by the Mathews' family and their boarders during the time they resided on the property. In addition, Dr. Mathews' letter states that the use of the subject road by the other landowners' in the area has decreased as their children have graduated from school and left home. Therefore, the Hearings Officer finds that the level of traffic generated by the proposed use will decrease and that the existing road is capable of carrying the level of traffic that will be generated. The condition of the road and the maintenance of the road could be improved and provided for through a road maintenance district if the landowners believe that the problems that they have described concerning the road are substantial enough to warrant the formation of a district which could then levy assessments against all property owners for the maintenance of the road. A potential tradeoff for repairing the road is that it will encourage more unrelated traffic to come into this area out of curiosity.

The opposing landowners express concern about the affect that the requested use of the subject property will have on their property values and resale values. The people in opposition introduced into the record a letter signed by appraiser Gary Hargraves. The Hearings Officer has carefully read that letter and finds that it discusses in the abstract the affect of influences not located on property being appraised on the value of that property. Mr. Hargraves states that the affects of outside influences must be determined on a case by case basis and that the environmental considerations are influenced by the density of the area, the type of buildings, the topographical features, open spaces, general maintenance and attractiveness, and the safety of routes that enter and exit the neighborhood. Mr. Hargraves' letter speaks in terms of nonconforming uses and variances from existing land use standards. This case involves neither a nonconforming use nor any variance. Rather, the proposed use is allowed subject to control through the Conditional Use Permit process. There is substantial evidence in the record that the subject property is relatively isolated from adjoining residences and that it is not even visible from any of the nearby residences. The Hearings Officer believes that if the proposed group residential facility is operated in the manner provided by the Teen Challenge Policies, that the public in general and the adjoining landowners specifically will not even be aware that the center is there. As stated above in the Findings of Fact, the opinion of Klamath County Appraisal Officer Bill Heath is that the

location of this center under the strict guidelines set forth by Teen Challenge program will have no detrimental affect on the value of nearby property.

The subject lot, ten acres, is of more than adequate in size to provide for the needs and uses contemplated by the applicant. The applicant's representatives testified repeatedly that they will make no structural changes to the house and existing buildings, and that they will not increase the size of the existing building. Physically, the existing property is in harmony in scale, bulk, coverage and density to the neighborhood in which it is located. If, in fact, it does not physically change, as the applicant has repeatedly stated, harmony should not change.

The greatest change that is going to occur with respect to this property, is that there will be a larger number of people residing on the property. The Mathews' letter states that at times there were five OIT students sharing one building on their property, and that they and their son and, at times during vacation periods, additional students resided in their house. Dr. Mathews' letter does not state an average number of people who resided on the property while they were there, but it appears that it was probably less than ten. One major difference, however, is that while the Mathews were occupying the subject property, all of the residents on the property were coming and going on a daily basis. Under the program proposed by the applicant there will be more people, however, those people will be more or less confined

to the subject property and will only come or go as a group and with staff members. The program provides for occasional visits by relatives of the students, however, those visits are strictly controlled under the Teen Challenge Program. Therefore, the Hearings Officer finds that the establishment of the subject program as requested by the applicant will result in the use of the subject property becoming more subdued than it has been in the past.

There are a number of letters in the record which speak to the availability of civic facilities for the use and enjoyment of the students involved in this program. The subject property is served by adequate utilities, either public utilities in the form of power and telephone or private utilities in the form of water and septic systems. The applicant's use of the property must be in compliance with Klamath County Health Department Requirements and Klamath County Land Use and Building Ordinances.

The desirable neighborhood characteristics which the opponents want to keep are the peacefulness and seclusion of this exclusive residential area. If, in fact, the Teen Challenge Center is operated in the matter proposed by the applicant, those desirable neighborhood characteristics will probably be enhanced rather than adversely affected. As found above, based on the testimony of the applicant and the landowner, the traffic generated by this project will be less than that generated by the prior use of the property. In addition, the activities of the

residents of the property will be much more strictly controlled than those of the prior residents of the property.

Finally, this parcel is separated by topographical features and distance from the other residential uses in the Sunset Beach - Cove Point area. Based on the review of all of the evidence in the record, the Hearings Officer finds that there is substantial evidence that the proposed use of the property will not be harmful to the desirable neighborhood characteristics and livability of this area.

ORDER

The subject application for a Conditional Use Permit for Teen Challenge of Oregon, Inc. to operate a group care residential facility for women over the age of 18 years is granted subject to the following conditions:

1. The Planning Director of Klamath County, Oregon or his designee, shall review thoroughly the operation of the center during the month of December, 1987 and make a determination of whether or not, in the opinion of the Planning Director, the center is being operated in the manner provided for in the policies and procedure manuals of the Teen Challenge Program and in the manner testified to by the representatives of the applicants. If based on his review of the operation of the center and the investigation of any complaints made by the landowners in the surrounding neighborhood, the Planning Director finds that the operation of the center is significantly adversely affecting the use and enjoyment of other property in the neighborhood, then the

Planning Director shall schedule a public hearing before the Hearings Officer whereat the Hearings Officer shall reconsider this application and may revoke this permit, amend this permit or continue the permit.

2. If during the review in December, 1987, the Planning Director finds no substantial adverse affects being caused to the adjoining neighborhood by the subject applicant, then in July, 1988, the Planning Directors shall conduct a similar review of the program and if the Planning Director finds, in his opinion, that the use of the property by the applicant is significantly adversely affecting the use and enjoyment of the surrounding neighborhood, the Planning Director shall schedule a hearing before the Hearings Officer as provided above.

3. If the applicant decides to exercise its option to purchase the subject property, then not less than 60 days prior to the date of the closing of the sale of the property, the applicant shall notify the Klamath County Planning Director in writing of its intent to exercise said option, and the Planning Director shall as soon as reasonably possible thereafter, review the subject program and investigate any adverse affects on the surrounding neighborhood. If, in the opinion of the Planning Director, the use of the subject property is significantly adversely affecting the use and enjoyment of other property in the neighborhood, then the Planning Director shall refer this permit to the Hearings Officer for a public hearing as provided above. It is the intent of this Order that said hearing occur prior to

the transfer of the title of the subject property to the applicant.

4. This permit is granted to Teen Challenge of Oregon, Inc., a nonprofit corporation. It may not be assigned or in any manner used by any other organization. Teen Challenge of Oregon, Inc. may, however, operate the center under such assumed business names as it deems appropriate, including the name Crossroads Women's Center.

5. The applicant shall operate the proposed Center in strict compliance with the policies and procedures of the Teen Challenge Program. There shall not be more than 15 women, who must be 18 years or older, enrolled in this program and living on the property. In addition to said students, Teen Challenge shall provide not less than two live-in staff members at all times when students are residing on the property.

6. Teen Challenge of Oregon, Inc. shall maintain at all times a record of the date, time and purpose of all automobile trips to and from the subject property. Said log shall be available for review by the Planning Director or his designee upon 24 hours notice. If at any time during the course of the one calendar month the average number of round trips to the property exceeds 11 trips per day, then the Planning Director shall review the affect of traffic on the existing road and if, in the opinion of the Planning Director, the traffic generated by the applicant's use of the property is significantly adversely impacting the

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neighborhood, then the Planning Director shall schedule a public hearing before the Hearings Officer as provided above.

7. The applicant shall comply at all times with the requirements of Klamath County Department of Health Services, Klamath County Land Development Code and Klamath County Building Ordinances.

DATED this 31st day of July, 1987.

William M. Ganong
William M. Ganong
Hearings Officer

STATE OF OREGON: COUNTY OF KLAMATH: ss.

Filed for record at request of Klamath County Planning Dept. the 4th day
of August A.D. 19 87 at 8:38 o'clock A M., and duly recorded in Vol. M87
of Deeds on Page 13858

FEE NONE

Return: Commissioners' Journal

Evelyn Biehn,
By Sam Smith County Clerk