

BEFORE THE HEARINGS OFFICER OF KLAMATH COUNTY, OREGON

In the Matter of the Citation
against R. K. NEWMAN and
ARLA NEWMAN

) VIOLATION NO. 27 -87
) FINDINGS OF FACT, CONCLUSIONS
) OF LAW AND DECISION

This matter came before William M. Ganong, the Hearings Officer of Klamath County, Oregon, on November 19, 1987 in the Klamath County Commissioner's Hearing Room. The Hearing was held pursuant to Notice given in conformity with the Klamath County Land Development Code and related ordinances. R. K. Newman was present and was represented by Attorney Enver Bozgoz at the hearing. The Klamath County Planning Department was represented by J. Kim Lundahl and 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. R. K. Newman and Arla Newman were served in the manner provided by the Klamath County Land Development Code with Citation No. 1. Said Citation alleges that the Respondents were maintaining a Fleet Storage facility, as defined in Code Section 93.005B, on land zoned RS, Suburban Residential. Said zone does not permit use of the land for fleet storage or other commercial uses.

2. The Respondents were cited in 1986 for other violations of the Land Use Code. (See Findings of Fact and Order, In the Matter of Violation 28-86, R. K. or Arla R. Newman) The

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Respondents subsequently cured the previous violations and the Citation was released.

3. The Respondents own approximately 7.73 acres of land located at the Northern terminus of Wiard Street. The subject property is more particularly described as Klamath County Assessor's tax lot No. 3809-35AC-300. The property is inside the Klamath Falls urban growth boundary and is zoned RS. The land uses allowed in the RS zone are set out in Code Section 51.005 B and C. The RS zoning was applied to the property when the Klamath County Land Development Code was adopted on November 25, 1981. Prior to said date the property was zoned RA, Residential/Agriculture. The uses allowed in said RA zone are set out in Article 41 of Klamath County Zoning Ordinance 17 which was adopted on August 29, 1972.

4. Respondents purchased the subject property in January, 1976. R. K. Newman testified that he purchased the property for the specific uses of building a shop to maintain his heavy equipment, to store his equipment on and as the base of operations for his business.

5. At the time Respondents' purchased the property they operated a construction business and primarily performed masonry work. At that time the equipment stored on the property included concrete mixers, fork lifts, scaffolding, forms and a truck and trailer.

6. In approximately 1979 the Respondents started a road maintenance business. This business maintains logging roads for private companies and the U.S. Forest Service. The Respondents

currently own two road graders, three water trucks, several wood hauling trucks, a blue storage van, a front end loader, a lowboy trailer and several forklifts. Mr. Newman testified that the equipment is not on the subject property during the work season but that generally 4 or 5 pieces of equipment are stored on the property during the winter. In addition, from time to time equipment owned by other people will be on the subject property.

6. Bryan E. Jones, a neighbor, testified concerning pictures he took of the property in July and August, 1987. Said pictures show a substantial amount of equipment on the property at one time or another. They also show Newman's fuel truck being filled on the property, the stocking of automotive supplies and other trucking firms coming on to the property to borrow equipment or return equipment. They also show equipment on the property which Mr. Newman testified he had borrowed from another contractor.

Mr. Jones testified that on the morning of November 19, 1987, there were three semi-trucks with water tanks, a road grader, a road sweeper, a lowboy trailer and other equipment on the property.

7. The adjacent property owners testified that they are bothered by noise, dust and diesel fumes emanating from the property and the truck traffic on Wiard Street.

8. The subject area is a residential area. There are no other commercial businesses in the general vicinity.

9. Article 97 of the Klamath County Land Development Code provides that nonconforming land uses which existed at the time the Code was adopted may continue. Said Article provides in part:

"Nonconforming use includes any of the following which were lawfully established before the effective date of this Code;

A. ...

B. A use of land established in a location where such use is not identified as allowable by this code."

(emphasis added)

10. Code Section 93.005B defines Fleet Storage as:

"... Fleet storage of vehicles used regularly in business operations and not available for sale or long-term storage."

11. The Respondents' own testimony and witnesses established that at all times since the Respondents purchased the subject property they have used it in conjunction with their business enterprises. At all times material hereto the Respondents' use of the property in conjunction with their businesses has been in violation of the Klamath County Zoning Ordinance and Land Use Code. The Respondents' said use of the land was not a "lawfully" established nonconforming use of the subject property.

ORDER

R. K. Newman and Arla Newman are hereby Ordered to cease and desist the use of the property described as Klamath County Assessor's tax lot No. 3909-35AC-300 for uses not allowed by Klamath County Land Development Code Section 51.005. Said persons shall discontinue storage of equipment, including, with out limitation, water trucks and semi-tractors, lowboy dump trailers and trucks, road graders, fork lifts, fuel trucks, road sweepers

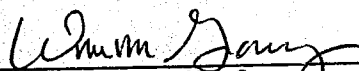
and other vehicles and equipment not used for residential purposes or other uses allowed by Code Section 51.005.

Respondents are further ordered to remove any and all said vehicles and equipment from the above described property on or before December 31, 1987. The failure to remove all said vehicles and equipment by that date and the use of the property for storage of said equipment or vehicles after said date shall constitute violations of this Order.

This Order shall not be interpreted so as to prevent Respondents from using said land for any use permitted by Code Section 51.005 nor as preventing Respondents from preparing said land for any permitted use.

In the event that the Respondents fail to comply with the provisions of this Order, the Planning Department Director or his designee are Ordered to initiate judicial enforcement of this Order, to seek penalties as provided by the Code and to abate the violation of the Order as provided in the Code.

DATED this 3rd day of December, 1987.



William M. Ganong
Hearings Officer


Klamath County Land Development Code Section 24.007 provides:

"An Order of the Hearings Officer shall be final unless appealed within ten (10) days of its mailing by a party having standing in accordance with the procedures set forth in Chapter 3, Article 33 of this Code."

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STATE OF OREGON: COUNTY OF KLAMATH: ss.

Filed for record at request of Klamath County Planning Department the 8th day of December A.D., 19 87 at 9:26 o'clock A M., and duly recorded in Vol. M87 of Deeds on Page 21976.

Evelyn Biehn, County Clerk
By 

FEE

NONE

Return: Commissioners' Journal