

In the Matter of the Request for) C.U.P. NO. 39-87
 a Conditional Use Permit for) FINDINGS OF FACT, CONCLUSIONS
 CHRIS ELVERFELD, dba PITCO) OF LAW AND DECISION

This matter came before William M. Ganong, the Hearings Officer of Klamath County, Oregon, on December 3, 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. Chris Elverfeld was present and was represented himself. 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 Order:

FINDINGS OF FACT:

1. Chris Elverfeld, doing business as Pitco, applied for a Conditional Use Permit to construct a residential septic effluent dump site on approximately 6.52 acres south of the South Poe Valley Road, 2 miles east of the Olene Store in Klamath County, Oregon. The proposed site is located on the NE $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 24, Township 39S., Range 10E., W.M.

2. The dump site would include two pits 70' x 145' x 8 $\frac{1}{2}$ ' deep. The Pits would be surrounded by a berm approximately five feet high. The Pits would be lined with clay or some other material designed to prevent seepage. The site would be secured by a fence and locked gate and a separate locked barrier across

87 DEC 24 AM 10 40

the access road. The site would be developed to Oregon Department of Environmental Quality Standards and would be operated pursuant to D.E.Q. regulations.

3. The Applicant stated that the pits would be located on the "flat area" portion of the subject property. Adjoining land owners testified that there is no flat area on the subject property. The Hearings Officer visited the site and adjoining property and finds that there is no flat area on the subject property. The topography of the subject property varies, however, there is a significant slope on all of the property. Construction of the pits would entail substantial excavation and fill. Exhibit D, a topographical map, shows an elevation change in excess of 200 feet in the NW $\frac{1}{4}$ of Section 24.

4. The drainage from the proposed site is to the east and to a gully which has an intermittent flow from a spring and general surface drainage. The Water in the gully flows north to the South Poe Valley irrigation canal.

5. The Applicant submitted well logs for several nearby water wells. The well logs for State Well No. 39/11 $\frac{1}{2}$ -19 show a ground water level of 2 feet below the surface in 1954 and 45 feet below the surface in July, 1974. The well logs for well 39/11 $\frac{1}{2}$ -30C1 show a water level of 15.06 feet below the surface and that the geologic stata is "fault-jumbled or disturbed material." The well log for the final well shows the water level as 17 feet below the surface. The well logs show a relatively high ground water level and that the area is (or was) effected by fault activity.

6. The only other operating septic dump facility is the site in the Klamath Hills operated by JNS. The Applicant testified that JNS operates its own septic pumping service and has set the dumping rates at its dump site at a level which gives it a substantial competitive advantage. The lack of an alternative competitive dump site substantially increases the cost to the consumers of this service.

7. Approval of the subject application would result in an increase of approximately 1.7 round trips per day on South Poe Valley Road. The road is well below its design capacity and can handle the anticipated increase in traffic.

8. The surrounding property owners unanimously oppose the subject application. The neighbors' concerns that a leak or spill at the dump site could pollute their wells, the irrigation canal and Lost River, and that the dump site would adversely impact their property values are credible. The findings of paragraphs 3, 4 and 5 above support the concerns about surface and ground water contamination. The applicant testified repeatedly that he is not able to address the concerns about property values.

9. The subject property and surrounding properties are zoned Non-Resource. Klamath County's Comprehensive Plan recognizes that large lot residential development of Non-Resource land is an appropriate use of such land. Bruce Jensen testified that he and his wife intend to develop their adjoining land for residential use. The plot plan submitted by the Applicant shows the two dump pits within 20 feet of the Jensen's property line. Even if the pits are operated in the odor free manner described by the

Applicant, the pits will substantially impact the esthetic and financial value of the Jensen property.

KLAMATH COUNTY LAND DEVELOPMENT CODE CRITERIA

Code Section 51.022 sets forth the permitted and conditional uses allowed in the Non-Resource Zone. Paragraph C, line 4 allows "Extensive Impact Services" as a conditional use in the Non-Resource zone. Code Section 92.009 defines Extensive Impact Services and Utilities to mean "public services and utilities which have a substantial impact on surrounding land uses." Code Section 11.002 defines "Public Utility" in relevant part as any individual or company that owns or operates any plant or equipment "for the treatment and disposal of sewage."

Code Section 92.009 states in part:

"Such uses may be conditionally permitted in any zone when the public interest supersedes the usual limitations placed on land use and transcends the usual restraints of Zoning for reasons of necessary location and community wide interest." (emphasis added)

KLAMATH COUNTY LAND USE GOALS AND POLICIES COMPLIANCE

The Goals and Policy Findings set forth in the Klamath County Planning Department Staff Report are hereby adopted and incorporated herein by this reference.

KLAMATH COUNTY CODE FINDINGS OF FACT AND CONCLUSIONS

Klamath County Land Development Code Section 44.003 requires the following Findings and Conclusions.

1. The proposed use is conditionally permitted in the zone in which it is proposed to be located. This finding and

conclusion is supported by the findings set forth above in the Section entitled "Klamath County Land Development Code Criteria."

2. The location of the proposed use is not in conformance with the Klamath County Comprehensive Plan. Code Section 92.009 provides that an Extensive Impact Service may be permitted in any zone when the public interest supersedes the usual limitations placed on land use ... "for reasons of necessary location and community wide interest."

There is a community wide interest in providing competition in the septic tank pumping and dumping service industry. The existing unregulated monopoly is contrary to the best interests of the community. However, there is no evidence in the record to support a finding that the proposed site is a "necessary location" for the proposed septic dumping pits.

3. The location and design of the proposed development are not compatible with and will have a significant adverse effect on the appropriate use of abutting properties and surrounding neighborhood.

The Applicant's testimony was well organized and delivered. The Applicant's testimony that the site will be nearly odorless, that the pits will be lined to prevent seepage and that the site will be used and managed in strict conformance with D.E.Q. standards is credible. However, the close proximity of the dump site to the Jensen property would have a significant adverse effect on the use and value of that property. In addition, the development of the pits on a hillside in close proximity to an intermittent stream and in a fault area with a high ground water

22886

table presents a substantial danger of contamination of the water in the event of accidental spill or an act of God.

The proposed development is not in harmony with the rural residential and agricultural character of the South Poe Valley area.

ORDER

The Application of Chris Elverfeld, dba Pitco to construct a residential septic effluent dump site on the above described property is denied.

DATED this 17th day of December, 1987.


William M. Ganong
Hearings Officer

Klamath County Land Development Code Section 24.007 provides:

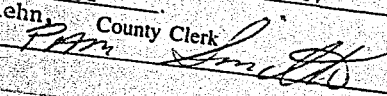
"An Order of the Hearings Officer shall be final unless appealed within ten (10) days of its mailing by a party having standing in accordance with the procedures set forth in Chapter 3, Article 33 of the Code."

STATE OF OREGON: COUNTY OF KLAMATH: ss.

Filed for record at request of Klamath County Planning Dept. the 24th day
of December A.D., 19 87 at 10:40 o'clock A M., and duly recorded in Vol. M87
of Deeds on Page 22881

FEE NONE

Ret: Commissioners' Journal

Evelyn Biehn,
By  County Clerk