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BEFORE THE HEARINGS OFFICER OF KLAMATH COUNTY, OREGON

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In the Matter of the citation)
against RON WICKLINE)

Violation Case No. 39-87
FINDINGS OF FACT, CONCLUSIONS
OF LAW AND ORDER

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This matter came before Hearings Officer William M. Ganong on February 4, 1988 in the Klamath County Commissioner's Hearing Room. The Hearing was held pursuant to the Notice given in conformity with the Klamath County Land Development Code and related ordinances. The Respondent represented himself at the Hearing. The Klamath County Planning Department was represented by Mr. 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. Ron Wickline was cited by the Klamath County Planning Department for maintaining a solid waste dump, maintaining outside storage and establishing an auto wrecking yard on land zoned CG, a zone which does not allow said uses.
2. The subject property is located at 6850 South Sixth Street, Klamath Falls, Oregon and is more particularly described as Klamath County, Tax lot 3909-1DC-1700. The subject property is zoned CG, General Commercial. Mr. Wickline operates a automobile repair shop and retail tire sales business at said location.

3. The Klamath County Land Development Code contains the following definitions:

a. § 11.002(D) - "Dump - A place used for the disposal, abandonment, discarding, dumping, reduction, burial, incineration or other means of solid waste, garbage, trash, refuse or waste materials or sustances (sic)."

b. § 11.002 (S) - "SOLID WASTE - All putrescible and nonputrescible wastes, including ... abandoned vehicles or parts thereof; ...

c. § 93.005 (J) - "Automobile Wrecking Yard - Any property where three or more vehicles not in running condition or parts thereof, are: wrecked, dismantled, disassembled, or substantially altered for sale or not for sale and not enclosed; or any land, building or structure used for wrecking or storing of such motor vehicles or parts thereof for a period exceeding three (3) months. ... Automobile wrecking yards must be licensed by both the State Motor Vehicle Department and the County Uniform Fire Code."

d. § 93.005 (D) "Automotive and Equipment : Repairs, light equipment - Repair of automobiles and the sale, installation and servicing of automobile equipment and parts ..."

4. The uses permitted in the General Commercial zone are set out in Code § 51.011(B). Said uses include "Automobile and Equipment - Light repairs." All uses allowed in the CG zone are subject to compliance with the property development standards set out in Code Chapter 6.

5. Code § 64.002(D) provides that when a non-residential use abuts a residential uses a solid wall or fencing is required to be located on the side and rear property lines of the non-residential use.

6. Code § 64.002(G) requires that outside storage areas in commercial or industrial zones shall be screened on all sides by a wall or fencing.

7. The following facts are supported by substantial testimony in the record:

a. Ron Wickline is operating an automobile repair shop and tire shop on the subject property. Said use is permitted in the CG zone.

b. Mr. Wickline has accumulated and stored on the subject property in excess of 1,000 used tires and casings. Mr. Wickline sells said used tires and casings to retreaders. Said tires are not abandoned or discarded and the subject property is not solid waste dump. Said tires are being stored until they can be shipped to a retreader.

c. The said tires have not been stored on the property for a period exceeding three months.

d. There are more than three automobiles on the subject property which are not in running condition. However, three of the said automobiles are not owned by Mr. Wickline and are not being stored by Mr. Wickline. There is insufficient evidence that Mr. Wickline is storing more than three inoperable vehicles or parts thereof and the owner of the subject property was not cited.

e. The adjoining property to the south is used as a single family residence.

f. The subject property is not fenced or screened as required by the Land Use Code.

g. The said storage of tires by Mr. Wickline is in violation to the uniform Fire Code. Mr. Wickline knows that he is not in compliance with the Fire Code, however, Mr. Wickline has not been cited for violating said Ordinance.

h. The said storage of tires by Mr. Wickline is in violation of the Klamath County Nuisance Control Ordinance.

CONCLUSIONS AND ORDER

Land Development Code § 14.005 requires the Code Enforcement Officer notify an alleged Code violator by written citation of the County's intention to enforce the Code. Said citation must contain a list of the specific code sections which are allegedly being violated.

The Storage of used tires and tire casing are a real problem in Klamath County. The County Planning Department, Nuisance Control Officer and the Fire Marshalls have spent many (often frustrating) hours trying to eliminate the wrongful storage of tires in this County.

There is overwhelming evidence that the storage of tires, in the manner that Mr. Wickline is employing on the subject property and at his prior business location, creates an extreme fire hazard and a public nuisance. The current storage of tires by Mr.

Wickline also violates the fencing and screening requirements of the Land Development Code.

However, basic constitutional "due process" and the specific provisions of the Code require that a person receive adequate prior Notice of the alleged violations and the action to be taken.

The specific alleged violations set forth on Uniform Citation 39-87 (1) and the Conclusions of Law based on the record before the Hearings Officer are:

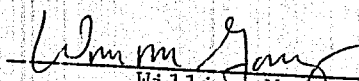
1. Mr. Wickline is not operating a solid waste dump site (used tires) - the only evidence in the records on this point is that the used tires and casings have value, will be sold and are not abandoned, discarded or dumped. Mr. Wickline is not operating a solid waste dump site.
2. There is no provision in the Klamath County Land Development Code which prohibits outside storage in the CG zone. Code § 64.002(G) specifically provides for outside storage in commercial or industrial zones, and requires fencing or screening of said storage area. However, Mr. Wickline has not been specifically cited for violating the fencing or screening provisions of the Code and the allegation that he is in violation of the Code for "establishing outside storage" does not provide adequate notice of violation of the screening and fencing requirements in the Code.
3. The County failed to prove that Mr. Wickline has established an auto wrecking yard. There is no evidence that the tires have been stored on the property for more than three months.

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There is no proof that there are three inoperable vehicles in nonoperating condition under Mr. Wicklines control on the subject property.

Ron Wickline is not in violation of Klamath County Land Development Code Section 51.011 in the manner alleged in Citation 39-87-1.

Dated this 18th day of February, 1988.


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."

STATE OF OREGON: COUNTY OF KLAMATH: ss.

Filed for record at request of Klamath County Planning Dept. the 23rd day
of February A.D., 19 88 at 4:26 o'clock P M., and duly recorded in Vol. N88
of Deeds on Page 2646

FEE NONE

Ret: Commissioners' Journal

Evelyn Biehn,

By

County Clerk

