

BEFORE THE HEARINGS OFFICER OF KLAMATH COUNTY, OREGON

In the Matter of the Request for)	VARIANCE NO. 9-88
a Variance and Conditional Use)	C.U.P. NO 18-88
Permit For The STATE OF OREGON)	FINDINGS OF FACT, CONCLUSIONS
For The SOUTHERN OREGON STATE)	OF LAW AND DECISION
COLLEGE.)	

This matter came before William M. Ganong, the Hearings Officer of Klamath County, Oregon, on July 7, 1988 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. The Applicant was represented by Ron Kramer, its Director of Broadcast Activities. 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. The Applicant purchased an existing radio transmitter site and tower located on Stuckel Mountain, approximately 15 miles southeast of Klamath Falls, Oregon. The Applicant requested a Conditional Use Permit to continue and expand the existing use of the site and a variance to increase the height of the tower located on the site from 120 feet to 160 feet. The Applicant intends to add antennas to the new tower to serve public television station KSYS (KFTS) and to expand the Applicant's FM radio transmission to the Klamath Basin. The Tower will continue to serve commercial radio station KLAD.
2. The subject property is 180' x 136' in size and is more particularly described as a portion of Section 10, Township 40 S., Range 10 E., W.M.
3. This transmitter site and existing tower are the subject of C.U.P. No. 36-84 granted to 960 Radio, Inc., the previous owner of the site. Said Permit

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expired January 22, 1988. Said previous permit generated substantial opposition. However, no one objected to the subject permit applications.

4. When completed the top of the new tower will be the same elevation as the neighboring KOTI television tower.

5. There was no testimony or evidence that either land use request will have any adverse effect on any other existing land uses on any adjoining land or the neighborhood.

6. The subject property is zoned Forestry Range although there was no evidence of any forestry or agricultural uses on the subject land or any nearby land. The top of Stukel Mountain has been developed for radio, television and telephone transmission. Considering the height of the mountain, its proximity to Klamath Falls, and its lack of other uses, it's best use is for transmission facilities.

7. Interference with other transmitting facilities is regulated by the United States Federal Communication Commission and is not subject to the jurisdiction of the County's Hearings Officer.

KLAMATH COUNTY LAND DEVELOPMENT CODE CRITERIA

Klamath County Land Development Code Section 51.021(c)(1) allows communication structures as a conditional use in the Forestry-Range Zone. Code Section 51.021D(1-7) set out the review criteria for a Condition Use in said zone. Code Section 63.003 limits the height of structures in Forestry zones to 35 feet. Code Section 43.003(c) provides the review criteria for a Variance Request.

KLAMATH COUNTY CODE FINDINGS OF FACT AND CONCLUSIONS

The following Findings of Facts and Conclusions are made concerning the review criteria set forth in Sections 51.021(D) and 43.003(c) of the Land Development Code:

1. The Conditional Use Permit criteria set out in Code Section 51.021(D) were adequately addressed in the Order entered in C.U.P. No. 36-84. The only substantial changes in circumstances that have occurred since said Order was entered are that the opposition to the proposed use has been withdrawn and the tower height will be increased by 33% to 160 feet. The increase in tower height is subject to the variance standards discussed below.

The lack of opposition to this request indicates that the existing tower has caused no substantial impact on any nearby land uses.

The findings and conclusions contained in C.U.P. Order No. 36-84 are hereby adopted and incorporated herein by this reference. Said Order limited the duration of the prior permit to two years. Based on the lack of land use conflict resulting from the granting of said permit there is no reason to limit the duration of this permit.

2. The following findings and conclusions are made concerning the Variance review criteria contained in Code Section 43.003:

a. The literal enforcement of the Code limiting the height of the tower to 35 feet would cause unnecessary hardship to the Applicant. There is a 120 foot high tower already existing on the property. There is a nearby tower used by KOTI TV which is 40 feet higher than the existing tower. The only adverse effects that could be caused by increasing the height of the tower by 40 feet would be to cause interference to other transmitters or by somehow interfering with the use of Kingsley Field. However, the proposed tower improvement is subject to the regulations of the FCC and FAA and any such adverse impact will be addressed by those agencies.

b. The general public will benefit from granting of this variance as the increased tower height will improve the quality of the reception of public radio and television transmissions in the Klamath Basin. The tower height

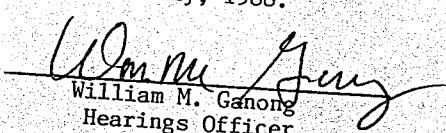
limitation has been varied for KOTT's and several other towers on Stuckel Mountain.

c. The granting of the variance will not be detrimental to the public health, safety, and welfare or to the use and enjoyment of adjacent land.

ORDER

The applications by the State of Oregon, State Board of Higher Education on behalf of Southern Oregon State College for a Conditional Use Permit and Variance to construct and operate transmission facilities, including a 160 foot high transmission tower, on the above described land is hereby granted.

DATED this 21 day of July, 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 the Code."

STATE OF OREGON: COUNTY OF KLAMATH: ss.

Filed for record at request of Klamath County the 22nd day
of July A.D., 19 88 at 9:49 o'clock A. M., and duly recorded in Vol. M88
of Deeds on Page 11644

FEE none

Evelyn Biehn County Clerk

By Adeline Mullins

Return: Commissioners Journal