

BEFORE THE HEARINGS OFFICER OF KLAMATH COUNTY, OREGON

In the Matter of the citation ) Violation Case No. 50-88  
 against BETTIE R. METCALF. ) FINDINGS OF FACT, CONCLUSIONS  
 ) OF LAW AND ORDER

THIS MATTER came before Deputy Hearings Officer Michael C. Miller on October 6, 1988 in the Klamath County Commissioners' 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 was present and represented herself and presented documentary and oral evidence in opposition to the citation. The Klamath County Planning Department was represented by Mr. J. Kim Lundahl and the Recording Secretary was Karen Burg. The Klamath County Planning Department file and all contents thereof were incorporated into the record as evidence. The Deputy County Hearings Officer, after reviewing the evidence presented, makes the following Findings of Fact, Conclusions of Law and Decision:

FINDINGS OF FACT:

1. Bettie R. Metcalf was cited for conducting retail sales in a medium density residential zone as that term is used in Land Development Code Section 51.007. Land Development Code Section 93.023 defines retail sales as "places of business primarily engaged in the sale of commonly used goods and merchandise." "Retail sales" are not enumerated as a permitted use in Section 51.007.

2. At the hearing, Bettie R. Metcalf testified that the property depicted in the photographs introduced by the Code Enforcement Officer was her property, and that the

FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER

98 OCT 21 AM 11 15

photographs accurately depicted the condition of her property. Additionally, she introduced Exhibits B-1 and B-2 which were photographs of her property while the sales in question were in progress. The photographs depicted articles of clothing and household items displayed neatly for sale.

3. Ms. Metcalf testified that in addition to the items originating from her own household, she had acquired articles from the households of various relatives for the sale. She testified that the sales of the merchandise depicted in the photographs commenced on the weekend of July 16, 1988 and that the final sale occurred on September 18, 1988. During the intervening weekends, she would open the sale when there were other garage sales on her street. During this period of nine weekends, the sale was open for four weekends. When the sale was not in progress, the merchandise was stored in her garage and on her yard under blue tarps purchased specifically for this purpose. Following the conclusion of the sales, the unsold merchandise was removed from the property.

4. The proponents of the violation attempted to introduce evidence of the respondent's habitual violation of the Nuisance Abatement Ordinance. In that the evidence was not relevant to the issue of the existence or nonexistence of "retail sales" it was not considered for that purpose. However, from the photographic and oral evidence, it was apparent that "retail sales" activity is not the only code violation that respondent participated in. That factor was considered in the order set out below.

CONCLUSION AND ORDER:

Between July 16, 1988 and September 18, 1988 Bettie R. Metcalf conducted "retail sales" on property whose zoning does not permit that use, in violation of Klamath County Land Development Code Section 51.007.

Bettie R. Metcalf is ordered to comply with the provisions of Klamath County Land Development Code Section 51.007 and to not permit her property located at 4241 Myrtlewood Drive to be used in violation of the said Land Development Code.

Given the history of code violations by the respondent, the Code Enforcement Officer is directed to refer future violations of the code or this order to County Counsel to institute: "injunction, mandamus, abatement, or other appropriate proceedings to prevent temporarily or permanently enjoin, abate, or remove the unlawful location, maintenance, repair, alteration, or use" of the subject property.

Additionally, if Ms. Metcalf shall fail to comply with this order and permit any future violations of said code section, the Code Enforcement Officer shall refer the matter to the Klamath County District Attorney for further action consistent with the law.

DATED THIS 20th day of October, 1988.

Michael C. Miller  
Michael C. Miller  
Deputy 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."

FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER -3-

STATE OF OREGON: COUNTY OF KLAMATH: ss.

Filed for record at request of Klamath County the 21st day  
of Oct. A.D., 19 88 at 11:16 o'clock A.M., and duly recorded in Vol. M88  
of Deeds on Page 17710

Evelyn Biehn, County Clerk

FEE none

By Michael C. Miller

Return: Commissioners Journal