

BEFORE THE HEARINGS OFFICER OF KLAMATH COUNTY, OREGON

In the Matter of the Request for)
 a Conditional Use Permit for the)
 JEHOVAH WITNESSES) C.U.P. No. 57-84
) FINDINGS OF FACT, CONCLUSIONS
) OF LAW AND DECISION

This matter came before William M. Ganong, the Hearings Officer of Klamath County, Oregon, on October 4, 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 its member, Keith Clinton. 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. By Order dated January 31, 1986, Klamath County Hearings Officer, Jim Spindor, granted a Conditional Use Permit to the Applicant to construct and operate a building for use in religious assembly. The Findings of Fact, Conclusions of Law and Order contained in said Order dated January 31, 1986 are incorporated herein by this reference.

2. Said Order required in part:

"The applicant shall follow the plot plan set forth in Exhibit 'M' herein."

3. During the time between January 31, 1986 and September 13, 1988, the Applicant has worked toward the construction of said building in each of the following particulars:

a. By accumulating funds and arranging the donation of services to construct the building;

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b. By conducting building committee meetings to determine the needs of the congregation, design the building and prepare the final construction plans and line up workers to construct the building;

c. By purchasing the seats from the Esquire Theater to use in the new building;

d. By drilling a domestic water well on the subject property in June, 1988; and

e. By obtaining a permit from the DEQ for the construction of an onsite sewage disposal system.

4. Klamath County Land Development Code Section 44.006 provides in part:

"A Conditional Use Permit shall be void after two (2) years if no substantial development has taken place."

If no substantial development has taken place, the subject permit would be void as of January 31, 1988.

The drilling of the subject well occurred after said two year period and cannot be considered in determining whether or not substantial development has taken place.

The LDC provides as follows:

"A. Substantial progress shall require consideration by the reviewing authority of the following factors:

1. The ratio of expenditures incurred to the total cost of the project.
2. The good faith of the landowner.
3. Whether the expenditures have any relationship to the completed project or could apply the various other uses of the land.
4. The kind of project, location and ultimate cost.
5. Whether the acts of the landowner arise beyond mere contemplated use or preparation, such as, leveling of land, boring test holes for preliminary negotiations with contractors or architects."

In this case the first criteria is of little significance because much of the design and construction work has been and will be donated, thus making it difficult, if not impossible, to compare the expenditures that have occurred to the total cost of the project.

The land owner has proceeded in good faith. The landowner has obtained the necessary DEQ permit, has completed its design and construction plans and has purchased the seats which will be placed in the subject building.

All of the work of the Applicant, except the drilling of the well, are related to the contemplated project and have little value or relationship to other possible uses of the subject land.

The acts of the landowner have gone beyond the mere contemplation of the project to the point that the Applicant is now ready to proceed with the actual construction of the project.

Substantial development has taken place and the subject Conditional Use Permit is not void.

5. The Applicant desires to deviate from the condition of the original Permit that it follow the plot plan set forth as Exhibit M. The new plot plan submitted by the Applicant makes three material changes:

a. It locates the proposed building near the westerly boundary of the property so that the parking will be on the east side of the building rather than the west side as initially proposed. Said change has two positive benefits:

1. It will reduce the noise in the building which is caused by the traffic on Highway 39; and
2. It substantially increases the distance between the planned building and the residence of the adjoining property owner to the north, thus providing an increased buffer between

said competing land uses;

b. The new plan increases the size of the planned building from approximately 3,945 sq. ft. to 4,416 sq. ft.

c. It increases the number of off street parking places from 70 to 78.

The adjoining landowners support the relocation of the proposed building. However, they object to increasing the size of the proposed building out of fear that more people will use it and there will be corresponding increases in traffic, noise, etc.

The Applicant testified that the size of the proposed building has been increased primarily because the seats purchased from the Equire Theater for placement in the new Hall are larger than standard seats. The proposed building will have seating for 180 people.

The record from the Hearings held concerning this matter in 1985 show that the seating capacity of the building shown on Exhibit "M" was 190. Therefore, the seating capacity now proposed is actually smaller than initially granted.

The neighbors also testified that they are concerned about the fire hazard posed by the weeds now growing on the subject property. The construction of the proposed Hall will eliminate that danger.

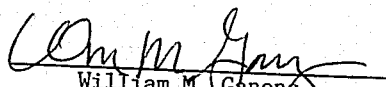
Finally, the neighbors are concerned that the construction of the driveway to the subject property from Henley Road crosses the buried water line from their well to their house and the water line may be damaged.

The Applicant testified that it would be careful in constructing the access road so as to not interfere with said water line. Said concern is not properly before the Hearings Officer at this time because it does not represent a change from the original conditional use permit and it involves private contract concerns which arise from the terms of the easement granted by the prior owner of the subject property.

ORDER

The request of the Applicant to amend the Conditional Use Permit dated January 31, 1986 to allow it to revise its plot plan in the particulars described above is granted. The Applicant shall substantially conform its construction and development of the subject property to design set out on the site plan filed on September 13, 1988.

DATED this 27th day of October, 1988.


William M. Canong
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 26th day
of Oct. A.D., 19 88 at 9:52 o'clock A.M., and duly recorded in Vol. M88
of Deeds on Page 18051

FEE \$none

Evelyn Biehn, County Clerk

By Audene Muelenslore

Return: Commissioners Journal