

## BEFORE THE HEARINGS OFFICER OF KLAMATH COUNTY, OREGON

In the Matter of the Variance     ) VARIANCE NO. 16-86  
 and Violation for Mark L. Holst.) VIOLATION NO. 52-86  
                                           ) FINDINGS OF FACT  
                                           ) AND ORDER

This matter came before Hearings Officer Richard C. Whitlock on October 6, 1989 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 present and was represented by his attorney, Enver Bozgoz, at the hearing. Klamath County Planning Department was represented by Mr. Carl Schuck and the Recording Secretary was Karen Burg. The Klamath County Planning Department file and all contents thereof were incorporated in the record as evidence and specifically the testimony and exhibits received at the hearings on November 6, 1986, January 5, 1989 were received into the record as well as the orders of prior Hearings Officers dated February 3, 1989 and November 19, 1989. Also received into the record were several photographs, a letter from a prior property owner, a letter from former Hearings Officer Brad Aspell and the testimony of the Respondent and Robert and Laverna Hotchkiss. The County Hearings Officer, after reviewing the evidence presented, makes the following Findings of Fact, Conclusions of Law and Order:

FINDINGS OF FACT AND CONCLUSIONS OF LAW:

1. The Respondent was cited by the Klamath County Planning Department on August 15, 1989 for failure to comply with Hearings Officer Order dated February 3, 1987, (as

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clarified by Order) dated January 19, 1989, specifically by not installing appropriate gutters and downspouts on the carport situated at 2629 Kane Street, Klamath Falls, Oregon, bearing tax account number 3909-2DC-2500.

2. This matter had most recently come before Hearings Officer William M. Ganong for an interpretation and clarification of an Order issued by Hearings Officer Bradford Aspell dated February 3, 1987. The findings and conclusions of the initial Order and of the Order dated January 19, 1989 are incorporated herein by this reference. "The Order dated January 19, 1989 ordered the Respondent to install and maintain gutters and downspouts on all roof lines which are on the side of all buildings which face the Hotchkiss' property and the gutters and downspouts were to be designed and maintained "to carry the water off the roof(s) to deposit the water on other than the Hotchkiss' property."

3. Respondent, Mark L. Holst, testified that the carport was built by prior owners of the property in the Mid-60's and he points to a letter (in evidence) from a prior property owner so indicating. Holst also asserts that he complied with the gutter and downspout requirement on the shed within he built but he refuses to put gutters and/or a downspout on the carport. Mr. Holst and his attorney specifically challenge the authority of the Hearings Officer to impose conditions (i.e. gutter and downspout) on the carport (which is claimed to pre-exist the Klamath County Land Development Code) when the variance request related only to the woodshed added by Holst.

4. Robert Hotchkiss and his wife, Laverna Hotchkiss, testified that they moved to their present home next to Mark Holst in 1970 and that the Holst carport was not built until approximately 1976. Mr. Hotchkiss testified that the carport originally overhung the property line 3 to 4 inches but was cut back to approximately the property line in order to cut off the ragged edges of the roof rafters for a more uniform appearance.

5. The present apparatus on the top of the carport roof is insufficient to divert water or snow away from the Hotchkiss's property. It appears the addition of gutters to the edges of the carport rafters would encroach upon the Hotchkiss property boundary.

6. There is no apparent financial or physical impediment to the attachment of gutter and downspout or other effective water diversion to the Holst carport. Mr. Holst did not timely appeal either Hearings Officer Order and, pursuant to LDC 24.007, those prior orders are final and it is legally inappropriate to disturb those orders in any way.

7. Hearings Officer Aspell did intend to require the gutters and downspouts just as Hearings Officer Ganong determined or in his Order.

8. The law is clear that conditions may be imposed by a Hearings Officer on pre-existing structures and uses when granting a variance. Because of this legal ruling, it is not necessary to decide when the Holst carport was constructed, but I find that the carport was constructed in 1976, based primarily on my belief that Mr. and Mrs.

Hotchkiss are more likely to be able to fix the date of construction relative to their moving onto the property in 1970 than is the prior owner who Mrs. Hotchkiss testified was confused about the exact timing of the construction.

ORDER:

Mark L. Holst has failed to comply with the Hearings Officer Order dated February 3, 1987, as interpreted by Order dated January 19, 1989, by failing and refusing to install sufficient gutter and downspout on the carport situated on the Holst property.

The Respondent is hereby ordered to bring his carport into compliance with the requirements of the February 3, 1987 Order, as interpreted by the Order dated January 19, 1989, on or before January 15, 1990. PROVIDED, HOWEVER, that should Robert and Laverna Hotchkiss deny permission to allow the placement of gutter and downspout apparatus on the edge of the carport rafters (which would extend onto the Hotchkiss' property), then Respondent may provide the Hearings Officer, prior to January 15, 1990, cost estimates to comply with the Orders. Cost estimates shall include an estimate (separating labor and material costs) to replace a limited portion of the corrugated roof near the edge (possibly 6" to 12") with a flat roofing material to enable the use of the water diversion strip which is presently in place but ineffective to divert water from the corrugated roof surface.

In the event that Respondent fails to comply with this order by January 15, 1989, then the Klamath County Planning

Director is ordered to issue a citation or citations per Klamath County Ordinance 57 which may result in the imposition of fines of up to \$500.00 per day.

DATED this 16<sup>th</sup> day of October, 1989.

Richard C. Whitlock  
 RICHARD C. WHITLOCK  
 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 the 19th day of Oct. A.D., 19 89 at 9:40 o'clock AM., and duly recorded in Vol. M89, of Deeds on Page 19906.

FEE none

Evelyn Biehn . County Clerk

By Pauline Mullendore

Return: Commissioners Journal