

BEFORE THE HEARINGS OFFICER OF KLAMATH COUNTY, OREGON
 In the Matter of the Variance) VIOLATION NO. 37-88
 and Violation for ROBERT L. SMITH) FINDINGS OF FACT AND

ORDER

This Matter came before the 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 represented himself at the hearing and testified in his own behalf. Klamath County Planning Department was represented by Mr. J. Kim Lundahl and the Recording Secretary was Leanne Mitchel. The Klamath County Planning Department file and all contents thereof were incorporated in the record as evidence and specifically the orders of prior Hearings Officers dated August 4, 1988 and July 13, 1989. Also received into the record were several exhibits submitted by the Respondent including Exhibit A (a list of cars on the property), Exhibit B (a plan to bring the property into compliance), Exhibit C-1 (a tax record), Exhibit C-2 (a funeral billing) and Exhibit C-3 (Respondent's work schedule) and the testimony of the Respondent. 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 July 9, 1988 for operating an automobile wrecking yard in a zone, R-1 (Rural), as set forth

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in LDC Section 51.004, which does not permit such use. As a result of a hearing on July 21, 1988, Hearings Officer John Monfore found that Respondent was in violation of the Klamath County Land Development Code by using the property as an automobile wrecking yard, defined in LDC Section 93.005(J) as "Any property where there are three or more vehicles not in running condition or parts thereof *** and not enclosed ***." By Order dated August 4, 1988, Respondent was ordered to bring the property into compliance by April 1, 1989, with progress reviews on October 5, 1988 and January 4, 1989.

2. Respondent was again before the Hearings Officer Michael Miller on July 6, 1989, and, "Because of the substantial compliance that Mr. Smith is attempting ***" the matter was continued for further compliance review on September 21, 1989. Due to staff scheduling conflicts, this compliance review was postponed to October 6, 1989.

3. On October 6, 1989, this matter was called for hearing and Mr. Carl Shuck read a letter dated October 5, 1989, into the record which requested postponement of the compliance review hearing to October 20, 1989. In the letter, the Respondent agreed to appear at the Hearing on October 20, 1989, and to present the Hearings officer with a complete listing of all vehicles on the property, including a statement as to the mechanical status of each, and a written plan for bringing the property into compliance by February 2, 1990.

4. At the hearing on October 20, 1989, the staff reported that the Respondent has demonstrated significant progress in bringing his property into Code compliance since

proceedings were initiated in 1988.

5. Robert L. Smith, the Respondent, provided a list of operable and inoperable vehicles on the property as of October 19, 1989 (Exhibit A) and also provided a series of Exhibits (C-1, C-2, and C-3) which demonstrate the difficult financial situation faced by Respondent as well as showing his arduous work schedule which only allows Mr. Smith approximately seventy-two (72) hours during any fifteen (15) day period when he can be at home and able to work on bringing the property into compliance. Mr. Smith testified that it was very difficult for him to keep vehicles on his property in operable condition because of vandalism when he is working on the road as well as the inevitable deterioration of vehicles such as battery failures, flat tires and other mechanical failures. The Respondent did agree on the record to allow Planning Department Staff on his property to monitor progress and to verify compliance with the compliance plan agreed to by Mr. Smith which would bring the property into Code compliance by February 2, 1990.

ORDER:

Respondent, Robert L. Smith, is found to be in continuing violation of the Klamath County Land Development Code for maintaining an "automobile wrecking yard" in a Zone (R-1) which does not permit such use. Specifically, the Respondent is found by his own testimony and Exhibits to have at least eight (8) inoperable vehicles on his property, none of which are enclosed.

Respondent, Robert L. Smith, is hereby ordered to

bring the subject property into compliance with the Land Development Code on or before February 2, 1990, pursuant to the terms of the compliance plan agreed to on the record at the Hearing on October 20, 1989. Under the terms of the compliance plan, Respondent is ordered:

- a) To remove approximately one-half (approximately 100) of the used tires (not) used in Respondent's business) from the property by October 31, 1989.
- b) To remove or make operable all inoperable vehicles (vehicles A through H on Exhibit A) from the property by November 30, 1989. These vehicles are described by the Respondent as follows:
 - A. 1955 GMC
 - B. 1948 Dodge
 - C. 1951 Chevrolet
 - D. 1948 Kaizer
 - E. 1949 Ford (Belongs to Daughter)
 - F. 1949 Ford (Belongs to Daughter)
 - G. 1960 Chevrolet
 - H. 1960 Chevrolet
- c) To remove scrap iron and a red Chevrolet cab by December 31, 1989.
- d) To remove the remainder of the used tires (not) used in Respondent's business) by January 31, 1990.

The Klamath County Planning Department is hereby instructed to visit the subject property in December 1989 and

on or about January 31, 1990, to assess the Respondent's compliance with the Code and this Order.

The Respondent is further ordered to appear at Hearings scheduled February 2, 1990, at 9:00 a.m. to verify to the Hearings Officer his completion of the plan of compliance.

In the event the Respondent fails to comply with this order or in the event he violates the Code requirements regarding initiating and maintaining an automobile wrecking yard after February 2, 1990, 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 24th 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 26th day
of 26th A.D., 19 89 at 9:13 o'clock AM., and duly recorded in Vol. M89,
of Deeds on Page 20515.

FEE none

Evelyn Biehn - County Clerk

By Pauline Mullendore

Commissioners Journal