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**BEFORE THE BOARD OF COUNTY COMMISSIONERS**  
**FOR THE COUNTY OF KLAMATH**

**IN THE MATTER OF THE CITATION  
 AGAINST NED PUTNAM/STURDI-  
 CRAFT, INC.**

ORDER No. 90- 194

THIS MATTER came before the Board on an appeal by Ned Putnam/Sturdi-Craft, Inc. from a March 6, 1990 decision of the Klamath County Hearings Officer finding that Putnam was in violation of the Klamath County Land Development Code in that he had not obtained site review for structures added in 1981, 1983 and 1985 or 1986.

The Board properly advertised the hearing on this appeal for April 19, 1990 and on that date a hearing was held on the Appeal based upon the record from the Hearings Officer proceeding. The Appellant appeared through his attorney, Diane Spies, and three neighbors also appeared. Staff presented its report.

Following the hearing, the Board continued the matter until May 29, 1990.

**I. Scope of Review and Issues Before the Board.**

The Board conducts this review and makes this determination based upon all of the evidence in the record of the Hearings Officer proceeding and the arguments presented at the Board's hearing of April 19, 1990.

The issues raised are:

1. Did the Appellant obtain site review as required by the Land Development Code?
2. Is the County estopped from requiring the necessary site review?

The standards and criteria relevant to review of this matter are found in the Klamath County Comprehensive Plan and the Klamath County Land Development Code.

**PUTNAM/STURDI-CRAFT ORDER**

**Page 1**

**II. Factual Findings.**

The Board of County Commissioners, after careful consideration of the evidence and the arguments, issues the following findings of fact:

1. The Klamath County Land Development Code was adopted on November 25, 1981.
2. The northeast section of the factory (15' x 50' addition) was added sometime after November 1981. The Appellant has argued that the 1980 building permit (Exhibit "Q") establishes that the addition was made in September of 1980. That building permit shows a plan check fee and a building permit fee which are indicative of one structure, not two different structures on the same permit as alleged by the Appellant. Likewise, the plot plan attached to that permit indicates that it only covered the improvements to the southwest section. No site plan approval was given for the addition to the northeast section.
3. The factory office was constructed in 1983. There is no evidence in the record to substantiate the Appellant's testimony that he obtained a site plan approval. The records of the Planning Department show no such approval, including no receipt for payment of the required fees.
4. The baghouse/hopper building was added in 1985 or 1986 (Testimony of Tom Putnam before the Klamath County Planning Commission on July 28, 1987, Exhibit A14). It was enclosed in August of 1987. (Exhibit A12)
5. There is no evidence in the record to support a finding that a site plan

1 approval was done as to the construction in 1985 or 1986. There is  
2 substantial evidence in the record, in the form of testimony from staff, that  
3 the records of the Planning Department and Building Department fail to  
4 reveal any records of permits or approvals for either the structure or its  
5 enclosure, including any fees being paid.

### 6 **III. Conclusions of Law.**

7 Based upon the findings of fact made herein, and after careful consideration of the  
8 evidence, the arguments and the provisions of the Klamath County Land Development Code,  
9 the Board of County Commissioners conclude:

10 1. The Appellant failed to obtain the required site plan approvals for the structures  
11 indicated above, other than the enclosing of the baghouse/hopper building in 1987. KCLDC  
12 41.001 provides:

13 The purpose of Site Plan Approval is to ensure compliance with this Code  
14 and other applicable codes and ordinances by the establishment of any use  
15 or development which is permitted by the land use zone. Site Plan approval  
16 is required of the following: The construction, relocation, addition, extension  
17 and other site improvements.

18 a. As to the addition of the northeast section to the factory building, the Board is  
19 convinced that this occurred at a time other than September of 1980 and also after the  
20 adoption of the Land Development Code in November of 1981. The testimony of Sam  
21 Redkey was that the addition was done after the adoption of the Code. The testimony of  
22 Kim Lundahl of the Planning Department as to the failure of his efforts to locate any  
23 approval or record of fees paid for such an approval support this testimony. The testimony  
24 of the Appellant that the northeast section was added in 1980, based upon the September  
25 1980 building permit, is not credible in light of the building permit itself. The Appellant has

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26 **PUTNAM/STURDI-CRAFT ORDER**

Page 3

not offered any proof of payment for site plan approval.

b. As to the factory office constructed in 1983, there is no issue as to when this was constructed. As to whether it had site plan approval, again there is nothing in the record which might indicate that such an approval was obtained. The Appellant has argued that he could not have obtained a building permit without a site plan approval. However, as this Board has held in the past, site plan approval was not a legal prior requirement for the issuance of a building permit until August 9, 1989, when Ordinance 28.4 was adopted which required Planning Department approval prior to issuance of a building permit. Flowers v. Klamath County, \_\_\_ Or LUBA \_\_\_ (LUBA No. 88-113 1989); Sparacino v. Klamath County, et al, \_\_\_ Or LUBA \_\_\_ (LUBA Nos. 89-135 and 89-142 1990).

c. The baghouse/hopper building also is not an issue as to the fact that it was built after the adoption of the Land Development Code. The Appellant has taken the position that since a building permit was not necessary, a site plan approval was not necessary. First of all, there is no evidence which would support the position of the Appellant that a building permit was not necessary. That evidence related to the enclosure of the baghouse/hopper building in 1987 rather than to the construction of that building in 1985 or 1986. Second, site plan approval under Article 41 of the Code is distinctly different from the requirements of building permits under the Uniform Building Code. No exception exists in the Land Development Code when building permits are not required.

The Board does conclude that site plan approval is not required for the enclosure of the baghouse/hopper in 1987. That activity would not involve activity that required application of any of the site improvement standards of the code, such as Article 61, BUILDING SETBACKS AND YARDS, Article 64, FENCES, HEDGES AND WALLS,

Article 71, VEHICULAR ACCESSES AND CIRCULATION, or Article 72, SITE DRAINAGE AND GRADING.

However, the Board does conclude that site plan approval was required for the construction of the baghouse/hopper building in 1985 or 1986. This addition would fall within the requirements of KCLDC 41.001. The Hearings Officer also found only that the baghouse/hopper building, and not the enclosure of that, was subject to the site plan approval provisions.

2. The Appellant has also raised the issue that, if site plan approvals were not obtained, then the County should be estopped from now requiring such approvals. The Appellant argues that the use is a vested right, having been in existence for about 40 years and that the Building Official's statements that a building permit would not be required would give rise to estoppel. In addition, he alleges that the complainants failure to raise the issue of lack of site plan approvals in prior quasi-judicial hearings involving the Appellant should now estop the County from requiring them. The Board notes that the prior quasi-judicial matters dealt with a request for a variance.

The following are the requirements of estoppel:

To constitute equitable estoppel, or estoppel by conduct, (1) there must be a false representation; (2) it must be made with knowledge of the facts; (3) the other party must have been ignorant of the truth; (4) it must have been made with the intention that it should be acted upon by the other parties; (5) the other party must have been induced to act upon it.

Earles v. Clark, 223 Or 257, 355 P2d 213 (1960). The Appellant has the burden of proof as to the defense of estoppel. KCLDC 31.008.

The contention that the Appellant has a properly zoned heavy industrial site in a residential neighborhood and has maintained that use for over 40 years does nothing in

1 regards to an estoppel argument. Such a use is still required to comply with the zoning  
2 requirements for heavy industrial zones and do not become exempt from the zoning  
3 requirements merely because they are long standing.

4 Since there was no basis for raising the lack of site plan approvals in the prior  
5 variance hearings, there can be no estoppel created. Any attempt to raise such issues would  
6 be improper as being beyond the scope of the matter being considered.

7 The Board can find no evidence in the record to support any of the elements of  
8 estoppel and therefore concludes that the County is not estopped from requiring compliance  
9 with the Code.

10 Additionally, estoppel has been held not to apply to zoning ordinances:

11 "We conclude that even if the estoppel were plead and  
12 proven in all the necessary elements, or if all elements were  
13 unnecessary of proof under exceptions to general rules, it  
14 nevertheless would not lie against the county's enforcement of  
15 the zoning ordinance in this case."

16 Clackamas County v. Emmert, 14 Or App 493 (1973); Sellwood Harbor Condominium Assn.

17 v. City of Portland, 16 Or LUBA 505 (1988).

18 **IV. Decision and Order.**

19 Based upon the findings of fact and conclusions of law contained herein, the Board  
20 of County Commissioners affirms the decision of the Hearings Officer in its entirety.  
21 However, with the filing of this appeal, the requirements of dates of compliance were stayed  
22 and therefore the Appellant is hereby ordered to submit an accurate site plan, reflecting all  
23 Code requirements for the three additions discussed, to the Planning Director by June 15,  
24 1990, and pay all appropriate fees.

25 DATED this 30 day of May, 1990.

26 **PUTNAM/STURDI-CRAFT ORDER**

**Page 6**



10339

BOARD OF COUNTY COMMISSIONERS

1 Harry Fredricks  
Harry Fredricks, Chairman

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3 Roger Hamilton  
Roger Hamilton, Commissioner

4  
5 Ted Lindow  
Ted Lindow, Commissioner

APPROVED AS TO FORM:

Michael A. Sney  
County Counsel

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7  
8 STATE OF OREGON, ss.  
County of Klamath

9 Filed for record at request of:

10 Klamath County  
on this 30th day of May A.D., 19 90  
11 at 4:25 o'clock P.M. and duly recorded  
12 in Vol. M90 of Deeds Page 10333  
Evelyn Biehn County Clerk  
13 By Pauline Mullendore Deputy.

14 Fee, none

15 Return: Commissioners Journal

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25 PUTNAM/STURDI-CRAFT ORDER  
26 Page 7

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