

BEFORE THE HEARINGS OFFICER OF KLAMATH COUNTY, OREGON

In the matter of the request )

of JOHN BROOKS )

) **CONDITIONAL USE PERMIT**) **NO. CUP 23-91**

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This matter came before Neil D. Smith, Hearings officer for Klamath County, Oregon on 17 May 1991 in the County Commissioners' Meeting Room in Klamath Falls Oregon. The Klamath County Planning Department was represented by Mr. Carl Shuck the recording secretary was Ms. Karen Burg. The Klamath County Planning Department file and all the exhibits and other contents therein is incorporated by this reference into this matter.

The report prepared by staff was read and the contents thereof were received in evidence; Exhibit "A" (staff report); Exhibit "B" (location map); Exhibit "C" (letter from City of Klamath Falls planning Director); Exhibit "D" (site plan); Exhibit "E" (Memo to file from Mark Richards); Exhibit "F" (Letters in opposition to application [57]); "G" (Letters in favor of application [14]); Exhibit "H" (photographs [21]); Exhibit "I" (Letter from Klamath County Fire District No. 1); Exhibit "J" (Letter from Oregon Liquor Control Commission; Exhibit "K" (Children Count from site); Exhibit "L" (City Map showing location from which letters in opposition and in favor originated) Exhibit "M" (Revised site plan); Exhibit "N" (Letter from Lord Maitreya); Exhibit "O" (Newspaper clipping).

The Hearing was held pursuant to notice given in conformity with the Klamath County Land Development Code and related Statutes and Ordinances. MR. Brad Aspell, esq. Made opening remarks and presented evidence in favor of the application. Mr. John Brooks, Mr. Beeler, Mrs. Lori Brooks, and Mr. Reynolds. Mr. Aspell made further remarks in rebuttal after those in opposition were heard as did Mr. Brooks and Reynolds. The following persons appeared and gave testimony in opposition to the application: Mr. Andy Salani, Lord Maitreya, Nancy Roeder, Mr. Ron Arnold, Mr. Nillipowitz, Mr. Dennis Long, Ms. Christy Redd, Sgt. James Pratt, Mr. Robert Woldt, Ms. Diane Pinoli, Ms. Sandy Couch, Ms. Dorothy Martin, and Ms. Connie Pratt all testified in opposition to the application, that testimony as well as the 57 Letters in opposition to the application were considered in this decision.

Based upon the evaluation of the testimony and consideration of the evidence received, the Hearings Officer makes the following FINDINGS OF FACT AND CONCLUSIONS.

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FINDINGS OF FACT :

1. The Applicant is requesting a Conditional Use Permit for the purpose of establishing a tavern with food, serving chicken and beer and wine.

2. The property, is located on Madison Street in the City of Klamath Falls, in Klamath County, Oregon; legally described as "Tax lot 5800 section 11AA tsp 39 range 09; street address 3310 Madison St.

3. Authority for the proposed Conditional Use Permit is found in section 52.230 F., subject to review under 44.030 A through D.

4. The Applicant's requested Conditional Use Permit is conditionally permitted in this "Neighborhood Commercial (CN)" zone under section 52.230 F.

5. Section 52.210 sets forth the Purpose of this specific zoning classification. It states as follows:

"The purpose of this zone is to establish and maintain places for the limited retail sales and services that are accessible and convenient to nearby residents. The Neighborhood Commercial zone is applied to areas serving only a limited, local market, and is intended to permit only those uses which do not create adverse impacts that are incompatible with nearby residences."

6. Section 44.030 must be considered in the evaluation of this application.

A. The use complies with the policies of the Comprehensive plan;

B. The use is in conformance with all other required standards and criteria of this code; and

C. The location, size, design, and operating characteristics of the proposed use will not have a significant adverse impact on the livability, value of appropriate development of abutting properties and the surrounding area.

D. Conditions - The review body may grant a Conditional Use Permit subject to such reasonable conditions based on findings of fact that it deems necessary to ensure compliance with the Klamath County Comprehensive Plan, Land Development code, and sound land use Planning principles.

CONCLUSIONS

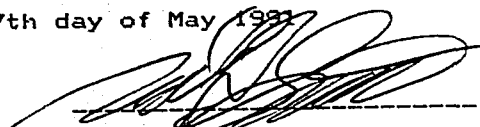
The placement of this Restaurant/tavern in this particular neighborhood and on this specific street would not be in the best interests of the neighborhood for the following reasons.

1. Madison Street is an unlighted through street which in itself is a hazardous area for pedestrians and especially for children who traverse the street in winter darkness.
2. Madison street has no sidewalks or curbing to give safety areas for pedestrians.
3. Madison Street is an arterial street for children enroute to Ferguson School.
4. The greater weight of the evidence shows that the property values in the area would decrease if a tavern were to be in operation at this location.
5. The operation of a tavern will have a significant adverse impact on the livability of the surrounding area.
6. It appears to the hearings officer that an operation such as this proposal will, of necessity, require that the patrons of the establishment will be drawn from a much larger area than the immediate area of this established neighborhood which is contrary to the purpose set forth above of Article 52.2.
7. Although the code permits a conditional use such as a tavern in this area the ratio of sales of food to alcoholic beverages of 50% in the environment where this is to be located is incompatible with this neighborhood in that it would attract a high percentage of its patronf from outside the neighborhood.
8. The lack of police protection in this area is another consideration, once again because of the poor lighting conditions and road condition accidents are inevitable even though they may not involve children or other pedestrians nor would the response time be fast enough in an emergency situation.
9. The hearings officer also notes that Ferguson School is most extensively discussed there are two additional schools in the vicinity (within less than one mile according to Mr. Dennis Long.

ORDER

Based upon the findings and conclusion herein the Conditional Use Permit is denied.

DATED this 17th day of May 1991



Neil D. Smith, Hearings Officer

KLAMATH COUNTY LAND DEVELOPMENT CODE SECTION 24.007 PROVIDES:

" An Order of the Hearings Officer shall be final unless appealed within seven (7) 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 20th day  
of May A.D., 19 91 at 2:34 o'clock P. M., and duly recorded in Vol. M91,  
of Deeds on Page 9508.

Evelyn Biehn - County Clerk

By Pauline Muelandore

FEE none

REturn: Commissioners Journal