

48439

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

**IN THE MATTER OF THE APPEAL OF HEARINGS OFFICER DECISION
CONCERNING CUP 75-97 FOR PERRY WELKER, APPEALED BY THE OREGON
DEPARTMENT OF TRANSPORTATION (ODOT)**

1. NATURE OF THE CASE:

The referenced case, a CUP for the development of a regulation golf course on 400 acres, was heard by the Hearings Officer AUGUST 15, 1997. An ORDER of APPROVAL was entered SEPTEMBER 10, 1997. ODOT filed an appeal of this ORDER SEPTEMBER 17, 1997. A hearing on this appeal was conducted by the Board of County Commissioners (BOCC) OCTOBER 14, 1997.

The appeal was heard pursuant to the procedure set out in Article 33 of the Klamath County Land Development Code.

2. THOSE WHO PARTICIPATED:

A listing of those who participated at this Hearing is on file with the Planning Department. The Planning Department was represented by Kim Lundahl, Senior Planner. Karen Burg, Planning Assistant, was the recording secretary. Members of the Board who heard the appeal were: Al Switzer, William R. Garrard, and M. Steven West.

3. CASE DESCRIPTION:

The Hearings Officer entered an Order September 10, 1997 approving the golf course application. The property is generally north and west of the intersection of the Greensprings Hwy. and HWY 140 W, at the west edge of the Klamath Falls UGB.

The appellant ODOT, in their letter of appeal, argued, in part, the Findings of Fact within the Order were not substantiated by the hearing record. An area of concern to ODOT was the Hearings Officer finding declining to impose "any specific condition with reference to access".

4. MOTION TO DISMISS

Mr. Welker's Attorney Michael L. Spencer entered a Motion requesting that the Board of County Commissioners dismiss the appeal as it was alleged the appeal was neither timely filed nor accompanied by the fee, as required by Section 33.030.

The BOCC finds the testimony of the ODOT representatives in regard to the delivery in person of the appeal to be persuasive and thus, the appeal was filed within the required time frame.

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In regards to the filing fee, there was testimony that in the past, Klamath County had accepted State of Oregon purchase orders from State agencies on appeal, but other entities have never presented purchase orders but have paid with check or cash. Also, ODOT testified that they relied on Klamath County's past practice. Although LUBA rules for appeals are not directive on Klamath County, it is worthy of note that LUBA does accept State of Oregon purchase orders for filing fees for appeals to LUBA as specifically authorized by OAR 661-10-015.

In view of Klamath County's past precedent of acceptance of State of Oregon purchase orders for fees and ODOT's reliance on this precedent, the Board of Commissioners rules that the State of Oregon purchase order satisfies the fee requirement of the Klamath County Land Development Code.

Accordingly, on motion by Commissioner Garrard, seconded by Commissioner West, it was unanimously moved the Motion to Dismiss be denied.

5. APPEAL FINDINGS:

The Board finds after consideration of the record and argument entered that:

The Hearings Officer made findings insufficient to support the action taken, approval of a golf course. The Hearings Officer Order is not validated by the record as it pertains to the support of the review criteria required by Section 44.030.

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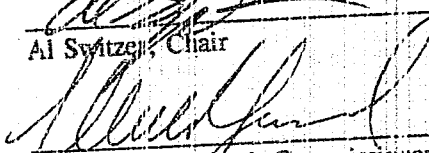
6. ORDER:

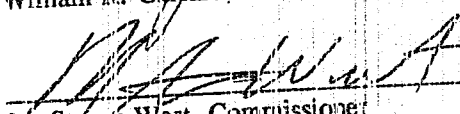
The Board of Commissioners, upon review of the record and argument presented, on motion of Commissioner Garrard and seconded by Commissioner West, hereby unanimously **OVERTURNS** the Hearings Officer **ORDER** allowing the golf course and **REMANDS** the application to the Hearings Officer for review.

Attorney Spencer, at this hearing, waived the right to file a 150 day Writ of Mandamus.

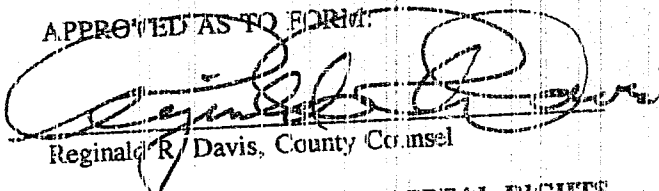
DATED this 6 day of November, 1997


Al Switzer, Chair


William E. Garrard, Commissioner


M. Steven West, Commissioner

APPROVED AS TO FORM:


Reginald R. Davis, County Counsel

APPEAL RIGHTS

This decision may be appealed to the Land Use Board of Appeals within 21 days of the date of execution by the BOCC. Please contact the Planning Department for information as to this procedure. Failure to file an appeal within the allowed time frame may affect your right to appeal this decision.

STATE OF OREGON: COUNTY OF KLAMATH: ss.

Filed for record at request of Klamath County B O C the 12th day
of November A.D., 19 97 at 10:43 o'clock A. M., and duly recorded in Vol. M97
of Deeds on Page 37219
Return: Commissioners Journal By Bernetha G. Letsch, County Clerk
Attorney Spencer

FEE

No Fee