

BEFORE THE HEARINGS OFFICER OF KLAMATH COUNTY, OREGON

In the Matter of the Violation by)	
)	VIOLATION 20-97
)	
FRED KEPNER,)	ORDER
)	
Respondent.)	
_____)	

1. NATURE OF THE ASSERTED VIOLATION:

FRED KEPNER had previously been cited for engaging in warehousing - heavy on property not zoned for the use without Planning Department approval. The property under consideration is civilly described as 3038 Cannon Street, Klamath Falls, Klamath County, Oregon. Hearings Officer Michael Brant initially heard the matter on May 16, 1997 and found a violation to exist. The Hearings Officer decision was appealed to the Board Of County Commissioners, and upheld after hearing held July 16, 1997. The language of the Board Of County Commissioner's Order reads in relevant part that the Board, "upholds the Hearings Officer Order finding a violation exists. Further, the appellant is allowed until 60 days from the date of the hearing (September 15, 1997) to bring the property into compliance with the Hearings Office Order and the Land Development Code."

2. NAMES OF THOSE WHO PARTICIPATED:

The Hearings Officer in review of this violation was Neal G. Buchanan. The Respondent appeared in person and through his attorney Bradford J. Aspell, and offered testimony. Additional persons who offered testimony included Lorna McCaslin, Lucille Mead and Roy McCaslin. The Planning Department was represented by Kim Lundahl, and the recording secretary was Karen Burg.

3. LOCATION:

The real property under consideration is civilly described as 3038 Cannon Street, Klamath Falls, Oregon

4. EVIDENCE RECEIVED:

Received were pictures marked as Exhibits 1 through 7, together with subsequently received (pursuant to Hearings Officer request) exhibits which, for convenience, will be marked as exhibit A through C.

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5. FINDINGS OF FACT:

A. The Hearings Officer finds as credible Respondent's testimony in essence that much of the "equipment" on the property had been removed, but that there is some question as to the identification of the items remaining on the property which result in a finding that there is a violation. The Order of Hearings Officer Brant refers only to "the equipment."

B. The Hearings Officer finds as credible Respondent's testimony that he had encountered difficulties in obtaining an alternate storage or display facility.

C. The Hearings Officer received and finds credible a Memorandum from Carl Shuck, Planning Director, which indicates in relevant part that "the Kepners certainly have made progress in cleaning up their property and the site appears to be 80% better than what it was in November 1997."

C. The Hearings Officer finds credible the Respondents testimony that plans are pending to located railroad items on property owned by a Kenneth Denser near Merrill, but that no application is pending for such use (See Exhibit C).

D. The Hearings Officer finds that the reference to "the equipment" in Hearings Officer Brant's Order, even when taken together with the record, does not appear to encompass all of the material which neighbors would like to see removed from the Kepner property such as pallets.

6: CONCLUSIONS OF LAW:

A. The Hearings Officer is mindful of and to some degree sympathetic to the difficulties encountered by the Respondent, whose intentions appear to be positive. However, the Hearings Officer is also bound by what is perhaps best referred to as the "law of the case." In this instance, the Board Of County Commissioners has upheld a finding that a violation exists, and given the Respondent a fixed time for removal of "the equipment." The Hearings Officer finds no alternative but to uphold that Board Of County Commissioners Order, which has not been complied with.


B. The Respondent is in violation of the Klamath County Land Development Code, and citation should issue unless this Order is appealed

7. ORDER:

A. The Respondent is in violation of the Klamath County Land Development Code.

E. The enforcement officer is directed to cite the Respondent to Wood River Justice Court with bail set at \$1,500.00.

Dated this 30th day of January, 1998.


NEAL G. BUCHANAN
Hearings Officer

NOTICE OF APPEAL RIGHTS

You are hereby notified that this Order may be appealed to the Klamath County Board of Commissioners by filing with the Klamath County Planning Department a notice of appeal as set out in Sections 33.030 and 33.040 of the Klamath County Land Development Code, together with the fee required within seven (7) days of the mailing date of this Order. Failure to file a notice of appeal within the time provided will result in the loss of your right to appeal this decision.

STATE OF OREGON: COUNTY OF KLAMATH: ss.

Filed for record at request of Klamath County the 30th day
of January A.D., 19 98 at 11:35 o'clock A.M., and duly recorded in Vol. M98
of Deeds on Page 2963
Return: Commissioners Journal By Bernetha G. Letsch, County Clerk
FEE No Fee Kathleen Russell