

1997 SEP 15 AM 11: 59

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BEFORE THE HEARINGS OFFICER OF KLAMATH COUNTY, OREGON

In the Matter of the Violation by:)
FRED TOMKINS) ORDER HOPU # 4-98 and VIOLATIONS
Respondent)

1. NATURE OF THE ASSERTED VIOLATIONS

Respondent is alleged to have been maintaining an auto wrecking yard as defined by the LDC article 11 on property not zoned for such by maintaining more than one inoperable vehicle and to have been operating an auto repair business out of the property.

2. NAMES OF PARTICIPANTS

The hearings officer reviewing this violation is Joan-Marie Michelsen. The Respondent did appear and offer testimony at several hearings as did several other persons. The planning department was represented by Kim Lundahl. The recording secretary was Karen Burg.

3. LOCATION OF PROPERTY INVOLVED

4. EVIDENCE RECEIVED

All evidence consisted of the oral testimony given the staff report, provided at both hearings.

5. FINDINGS OF FACT

The Hearings officer FINDS AS FOLLOWS:

- a. The respondent appeared and gave testimony admitting that there were inoperable vehicles on the property, that there was scrap metal on the property and that he works on other peoples vehicles on the property.
- b. The vehicles constitute an "auto wrecking yard" as defined by the County LDC the behavior constitutes an illegal use of the property.
- c. The respondent/applicant has a long history of problems with land use and the county. However, he has made significant progress in cleaning up his property.

- d. The respondent/applicant has on several occasions stated that he feels he isn't hurting anyone by his violations. This is problematic and irrelevant. The question in this case is whether the behavior is legal or can be made so and if so what are the conditions.

6. ORDER

THEREFORE, IT IS HEREBY ORDERED THAT:

1. The hearings officer finds that as a matter of law the Respondent is in violation of the Klamath County Land Development Code.
2. The enforcement officer is directed to cite the Respondents to appear in the KLAMATH COUNTY CIRCUIT COURT with bail to be set by the court. Due to the ongoing nature of the problems with this location if this matter returns to court the enforcement officer is directed to request maximum bail and penalties if the problems is not remedied as per this order. If Mr. Tompkins violates the order of the Wood River Justice Court the enforcement officer is directed to request maximum sanctions for contempt.
3. If at any time the Code Enforcement Officer or his designees for Klamath County feels a need to inspect the property Respondent shall not impede this inspection and if the Officer reasonably believes it necessary to enter onto the property Respondent shall allow that entry.
4. If any of the conditions of this order are not followed then the HOPU will immediately become null and void.
5. If the permit is violated then the respondent/applicant must within 10 days of that event remove ALL scrap vehicle parts from the property which can not be stored inside and must remove all but one inoperable vehicle or store any remaining inoperable vehicles in a legally constructed building.
6. Mr. Tomkins is directed to remove the auto parts, tires, including the engines from the outside, if he wishes to keep them he may but they must be in a legally constructed building by November 15, 1999. If the items are removed then Mr. Tomkins shall send proof of proper disposal to the county by December 1, 1999.
7. Mr. Tomkins may operate a small auto repair business from the property subject to the conditions of this order.
8. There shall be NO tow trucks coming to the property at any time to either drop off or pick up any materials or vehicles. Any inoperable vehicles which are currently on the premises which need to be towed may be removed within 3 months. After that Mr. Tomkins will not allow any tow truck to enter onto his property with a load or to drop off a load or pick one up. Tow Truck includes flat bed or regular hook trucks or any other type of truck designed to or used for hauling inoperable vehicles.

9. There shall be no more than 2 vehicles worked on per month. While a vehicle is in for work it shall be kept out of sight from the road, such as behind the fence.
10. Mr. Tomkins shall not dispose of oil or other waste on the property but shall dispose of it legally either through recycling or other approved business practice. He shall provide proof of proper disposal at any hearing to renew this permit.
11. Any remaining inoperable vehicles or parts of vehicles shall be enclosed in legally constructed buildings or removed by Nov 15, 1999.
12. All work on vehicles shall be done inside.
13. Mr. Tomkins shall have no employees.
14. Mr. Tomkins shall provide photographs showing compliance with this order by 12-15 and 6-15 of each year that this permit remains in effect.
15. This permit is for one calendar year and shall expire on 9-10-2000 unless renewed.
16. Mr. Tomkins will comply with all orders of this tribunal and Justice Edgars or this permit will be void.
17. Mr. Tomkins will obtain an Oregon DMV license for his work if he is required.

Dated this September 10, 1999


 Joan-Marie Michelsen
 Hearings Officer

NOTICE OF APPEAL RIGHTS

You are hereby notified this application 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 Section 33.004 of the Klamath County Land Development Code together with the fee required within SEVEN DAYS (7) following the mailing date of this order.

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 Linda Smith,
 County Clerk Fee \$ NF