

UMATILLA COUNTY BOARD OF COMMISSIONERS
Meeting of Tuesday, December 17, 2013
9:00 a.m., Room 114, County Courthouse, 216 SE 4th St
Pendleton, Oregon 97801

COMMISSIONERS PRESENT: Larry Givens (Chairman), Bill Elfering, George Murdock
ABSENT: None.
COUNTY COUNSEL: Doug Olsen
STAFF: Richard Jennings, Tamra Mabbott, Connie Hendrickson

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NOTE: THE FOLLOWING IS A SUMMARY OF THE MEETING. HOWEVER, A RECORDING OF THE MEETING IS AVAILABLE AT THE PLANNING DEPARTMENT OFFICE.

CALL TO ORDER:

Chairman Givens called the meeting to order at 9:00 a.m. and gave instruction to the members of the audience regarding the procedures for testifying during the hearing. He reminded those present that all comments should be relevant to the application and that comments should be kept short and be specific. Introductions of staff and audience members were made. Chairman Givens noted that Commissioner Murdock had an early meeting and would be arriving late to the hearing.

Chairman Givens identified the hearing as Conditional Use Permit #C-1226-13 and read the opening statement. He asked if there were any abstentions, conflicts of interest or declarations of exparte contact. Commissioner Elfering stated he had none and Commissioner Givens said that he had had contact with the Humbert's with regard to the process but there had been no discussion about the application.

Commissioner Murdock joined the meeting at 9:15 a.m.

Staff report: Senior Planner Richard Jennings gave a history of the Conditional Use Permit saying that it had been submitted in July of 2013. A preliminary administrative decision to approve the permit was made in the first part of August. During the 21-day comment period that followed Mr. Robert Berry sent a letter stating his concerns about the application. He said Mr. Berry's comment letter did not request a hearing nor did it object to the application but said that if were approved he would like conditions added to the decision. One request was to have a third party review of the air emissions from the asphalt plant. That review is a standard requirement by the Department of Environmental Quality (DEQ) and because that condition is well defined in their permitting process the Planning Department did not list that as a condition of approval.

During the appeal period of the Planning Departments' administrative decision to approve the permit, Mr. Berry and Mr. Bakkensen appealed that decision to the Planning

Commission. The Planning Commission hearing was held on October 24th. The Commissioners decided there was not enough evidence to substantiate a reversal of the approval of the permit and upheld the Planning Departments' decision. Mr. Berry and Mr. Bakkensen appealed the matter to the Board of Commissioners.

Mr. Jennings said the land use request before them today was for the approval of an asphalt batch plant to be placed in an aggregate site which has existed since 1992. When the original request for the site was granted, one feature of the permit was to, allow placement of an asphalt batch plant but since that was never acted upon the Humbert's are required to re-apply for permission to place the plant at the site.

The aggregate site is located along Birch Creek about 6¹/₂ miles east-southeast of Milton-Freewater. Mr. Jennings referred to maps of the area showing where the site was located in conjunction with the surrounding properties and businesses. An issue raised by the appellant was with regard to the proximity of the proposed asphalt plant to the water source of the Reser Ranch property.

Mr. Jennings stated that the Oregon Legislature created a standard which says that an asphalt batch plant cannot be placed within 2 miles of a planted vineyard. The ORS (Oregon Revised Statute) definition of a planted vineyard is one or more vineyards that equal 40 acres. He referred to a map which showed the vineyards located in the area of the aggregate site, none of which were within that 2 mile restricted area. The standard that comes from ORS 215.296 which is in the Umatilla County Development Code Chapter 152.061 deals with uses of the land that may impact or increase the cost of farming in the area. This aggregate site has been in place for more than 20 years and there is no indication that a change in current farming practices would occur.

Mr. Jennings said that emissions from developments, including asphalt batch plants, in the county are monitored by the Department of Environmental Quality Air Contaminant Discharge Program and there had been comments from the appellants criticizing the county for relying on that DEQ program. DEQ is a state-run program with the authority to monitor emissions and enforce the standards. Third party reviews are conducted to monitor asphalt plant sites on a regular basis. If the emissions are within the tolerances allowed by state standards the plant is in compliance with the permit requirement.

After visiting the aggregate site, DEQ determined that a storm water runoff permit was not necessary. There is a bean on the east side of Birch Creek that is at least 15 feet tall and the landscape slopes away from the road. Any water runoff from adjacent properties that might enter the pit would be retained on site.

The findings by the Planning Department state that the asphalt plant must meet the state permit requirements and must be on site at the aggregate pit at least one time during the year or the conditional use permit will become invalid.

Planning Director Tamra Mabbott identified and numbered exhibits that had been submitted after the packets were sent to the Board of Commissioners. Commissioner

Elfering moved to enter the exhibits into the record and it was seconded by Commissioner Murdock. The motion carried.

Commissioner Elfering asked when the original permit had been granted. Mr. Jennings said it was issued in 1992 but if a conditional use permit or a portion of it is not acted upon within the calendar year it will expire unless an extension is requested.

Commissioner Elfering asked if any leaching or contamination of the subsurface aquifer had occurred and Mrs. Mabbott said that they were not aware of that happening.

Chairman Givens asked Mr. Jennings what the distance was from the aggregate site to Birch Creek and he answered that it was about 100 to 125 feet from the road along the side of the pit to Birch Creek.

Chairman Givens asked if the Humbert's had an Air Contaminant Discharge Permit for this site and Mr. Jennings said they had applied for the permit but he was unsure of it's status. The permit is a requirement before they can operate the batch plant. Mrs. Mabbott said she had verified with the Department of Environmental Quality that the existing plant did have a current permit which had never been out of compliance.

Chairman Givens asked if there had been any soil classification testing done within a two mile radius of the existing plant. Mrs. Mabbott said the Planning Department did not have any background history of soil profiles only the SCS (Soil Conservation Service) soil survey which describes the type. and the classification of the soil.

Chairman Givens asked how many tons of asphalt would be produced from the proposed portable plant and Mr. Jennings answered that from testimony given by the Humberts at the Planning Commission hearing they will produce between 20 to 40 thousand tons annually.

Applicant and Proponent Testimony:

Applicant testimony: Dan Humbert, Humbert Asphalt, 84899 Hwy 11, Milton Freewater, Oregon and Troy Humbert, Humbert Asphalt, 1364 Watson Loop, Touchet, Washington.

Mr. Dan Humbert said that if the new plant is approved for the Birch Creek site the truck traffic would turn onto Powerline Road, decreasing the traffic to the existing plant on Hwy 11. From Hood road to beyond the aggregate pit, Humbert asphalt and Umatilla County went together to rebuild the road to help eliminate the dust and accommodate the truck traffic. Improving the road also has made it easier for farmers to move their equipment and their product.

Mr. Troy Humbert said they have been in operation for many years on Hwy 11. They have been governed by all of the state agencies and have always been in compliance with their permits. The plant they would like to place at the Birch Creek site is newer, has

fewer emissions and is more efficient. The old plant was built in 1950 and the new one was built in 1998 and had little use. The placement of the new plant will be a better situation for everyone because they will be able to provide the product to customers more efficiently and with better quality. They are planning to eventually retire the old plant.

Commissioner Elfering asked how many trucks per day were used to haul raw material from the Birch Creek site to the Hwy 11 site and Mr. Troy Humbert said there were 10 to 15 trucks hauling 6 to 12 loads each but they don't run every day. Commissioner Elfering asked how the truck traffic would change with the new plant in operation and Mr. Troy Humbert answered that the truck traffic would decrease.

Commissioner Elfering asked why the asphalt plant was not put into use when it was permitted in 1992 and Mr. Dan Humbert said they did not have room for the plant in the pit at that time. Over time the operation has moved further back into the pit and while they will be crowded, they've made enough room to operate the plant.

Chairman Givens asked if DOGAMI had inspected the pit and Mr. Dan Humbert answered that the inspections were done every year and there had never been a problem. DOGAMI also tracks the storm water runoff. Humbert Asphalt got a permit from the county to install some culverts. There is a catch basin at the bottom that diverts the water that comes from farmers' fields and all the water that comes off the pit area is directed back into the pit.

Commissioner Murdock asked how far it was from the current plant to the site for the proposed new plant and Mr. Dan Humbert answered the distance was approximately 6 miles. Commissioner Murdock asked about the vineyards and orchards around the current plant. Mr. Dan Humbert said there was one existing vineyard and two that have been planted since the asphalt plant has been in operation. The closest vineyard is around 500 feet from the pit and the closest orchard is around 250 feet from the pit.

There was discussion about the total tonnage that will be produced by the new plant. Humbert Asphalt's largest production year was 40,000 tons. Daily production is an average of about 400 tons. The plant normally runs about three days per week and is capable of producing 800 tons daily but in most cases 400 tons is a high figure.

Proponent testimony: David Shannon, Attorney at Law, 1500 Katherine, Walla Walla, WA. Mr. Shannon referred to a 40 page DEQ permit which is required for the operation of asphalt plants and said that asphalt plants operate cleanly and have been built next to waterways. Asphalt is also used to patch reservoirs. The exhaust from a diesel-operated piece of farm equipment has more emissions than an asphalt plant.

Proponent testimony: Dave Dunkelburg, 57445 Birch Creek Road, Milton Freewater, OR. Mr. Dunkelburg is the property owner of the land where the aggregate site is located. The Humbert's have been good tenants for the last twenty years. The truck drivers for Humbert Asphalt are cautious and have never created a traffic problem on the road. The water right for his property has been in place since 1912 and the water supplies

are well upstream of the pit at a higher elevation. He has 565 acres on both side of the road which he pointed out on a map in the room. Discussion followed.

Proponent testimony: Mike Stalder of A & B Asphalt, 3998 Mill Creek, Walla Walla, WA. Mr. Stalder said he was in favor of Humbert Asphalt's proposed new plant. A & B Asphalt produces about 60,000 tons annually and having the new plant will help the Humbert's compete which is good for consumers.

Appellant and opponent testimony:

Appellant testimony: John Reser Bakkensen, 1141 SW Mitchell Lane, Portland, OR submitted an exhibit which was numbered as Exhibit 21. Commissioner Elfering moved to enter Exhibit 21 into the record. The motion was seconded by Commissioner Murdock. The motion carried.

Mr. Bakkensen said he was born in Pendleton and spent a lot of time in eastern Oregon. When his mother passed in 2000 he became the trustee of her interest in the Ralph Reser Ranch. He was there on behalf of that trust and his cousin, Robert Berry.

Mr. Bakkensen showed maps and photographs of the Reser Ranch property and surrounding area and said that his grandfather acquired the land in' 1912 raising wheat on the land until his death in 1976. Joyce Reser Bishop, Mr. Bakkensen's aunt owns a half interest in this property. She is elderly and it was decided not to involve her in this appeal process but her son and daughter-in-law, Larry and Chris Bishop who live in the house on Reser Ranch were present at the hearing.

Mr. Bakkensen referred to a map and pointed out that this part of the Birch Creek area was a natural canyon and the east side of the canyon was relatively steep. He identified the home site and the water source on the map stating that the water supply which comes from Birch Creek was a gravity-fed system. Birch creek was a tributary of the Walla Walla River which is a tributary of the Columbia River making it protected by the Federal Clean Water Act. The Supreme Court ruled that any waterway in the United States that is connected to a navigable waterway is within the jurisdiction of the Federal Clean Water Act. The concern of the Ralph Reser Ranch trust is that discharges from the quarry will contaminate Birch Creek.

Mr. Bakkensen stated that hot mix asphalt plants have been studied by the Environmental Protection Agency (EPA). One of the documents contained in the exhibit he submitted was issued in the year 2000 and lists some types of molecules such as Volatile Organic Compounds, PAH's (Polycyclic Aromatic Hydrocarbons) and HAP's (Hazardous Air Pollutants). The Humbert's proposed plant has a bag house but some of the emissions are in a gaseous form and are small enough to pass through the filter. The asphalt plant will be powered by two large generators operated by diesel fuel which will also generate emissions. There are other emissions referred to as Fugitive Emissions which occur during the load out of the hot mix asphalt into a truck. The study includes data from the modeling of the dispersion of the asphalt plants which predicts the laydown of the

particulates and the distance during which that laydown becomes a problem. Mr. Bakkensen named several of the possible PAH's and some possible side effects.

Mr. Bakkensen referred to the Kobioshi Report done in the San Joaquin and Sacramento Valleys in California. They studied wheat grown in the area for the presence of PAH's. This study was not concerning the origin of the PAH's but rather their effect on the food we eat. The study showed elevated levels of several PAH's and his concern is that the wheat grown in our area will absorb the PAH's emitted from the asphalt plant.

Mr. Bakkensen read excerpts from some letters written by opponents of the asphalt plant who grow crops in the area. These letters had been submitted previously as a part of appellant Exhibit 21. He and the people he was representing shared the concerns stated in the letters.

Opponent testimony: Jim Omundson, Pinnell Bush, 6420 SW Macadam Avenue, Suite 330, Portland, Oregon 97239 said his background is in construction and he studied civil engineering at Oregon State University and is a registered Civil Engineer. He has consulted in construction and design and was asked to take a look at the Humbert's application and he has developed some concerns.

The land surrounding the Humbert's Birch Creek quarry is EFU and is involved in farm use. The farmers in the area are not hobby farmers. One goal of the farm use policy is to maintain and improve the quality of air, water and land. He referred to a Google Earth photo of the aggregate site and said the edge of the road is about 25 feet from the creek. He then referred to a perspective elevation photo of the area taken from Google Earth and pointed out an area where the fugitive gasses emitted from the plant will hang at a lower level and not be dispersed. The gasses vaporize and as they begin to cool they will condense, becoming liquid. The liquid will be trapped due to the topography of the area and be deposited into the creek.

Mr. Omundson referred to a report by Louis Zeller, an environmental consultant based in North Carolina. Mr. Zeller's report describes ducted emissions, fugitive emissions and dust. Mr. Omundson said the proposed asphalt plant design capacity is 150 tons per hour and is capable of producing 160 tons per year of vapor fugitive emissions. Most of the fugitive emissions are condensed particulates with volatile organic compounds comprising 29% of the total. He said it was his opinion that DEQ was behind when monitoring fugitive emissions.

Mr. Omundson referred to maps created by Mr. Zeller for the site of the proposed asphalt plant and surrounding area. He said the maps were based on the EPA (Environmental Protection Agency) Screen3 air dispersion model. This model establishes the minimum risk levels set by the Agency for Toxic Substances and Disease Registry which studies chemicals and determines at what level those chemicals are potentially harmful. He focused on mercury, cadmium and benzene and showed maps which depicted the radius around the proposed asphalt plant site which would be affected by the emissions of those chemicals.

Commissioner Givens asked if it were a proven fact that the area depicted on the maps would be affected. Mr. Omundson said that any time the plant is operated at 150 tons per hour those emissions will occur. Commissioner Givens asked him to clarify if the emissions may occur or will occur. Mr. Omundson said that Lou Zeller believes this is what does occur based on the EPA Screen3 modeling that was conducted.

Mrs. Mabbott asked if the minimum risk levels Mr. Omundson spoke of were to human health or environmental health exposure and Mr. Omundson answered that it was to human health exposure. Mrs. Mabbott said it seemed as though Mr. Omundson was using the human health exposure to argue that the asphalt plant will have a negative impact on the surrounding farmland.

Mr. Omundson said he visited the aggregate site and disagreed with the statement that there would not be any runoff from the site going onto the road or into Birch Creek. He introduced photos which he said disputed everything that was said about the slope of the plant. One photograph showed a 36 inch culvert which dispensed 18 feet from Birch Creek through a pipe running under the road. He pointed out a catch basin that was 5 feet in diameter and described how he thought that basin caught the water from the aggregate site and it flowed into the pipe which emptied 18 feet from the creek. The culvert will handle 21,000 gallons of water per minute. In the event of a large rain storm the equivalent of 500 42 gallon drums per minute can go through that pipe. He referred to photographs he had taken of the site with the grades and the erosion around the pipe and noted that the grade on the back side of the berm around the quarry directed the water to the catch basin.

Mr. Omundson said that although the Humbert's had said the existing asphalt plant would be shut down, since their permit is good until 2017 . a n d could also be renewed, that may not happen right away. He noted that if Humbert Asphalt got a big job they may want to have both plants in operation. If that were to occur, truck traffic would be increased and if the plant operated at capacity during a ten hour work day there would be 111 ten-yard dump trucks on the road with a longer haul to market.

Mr. Omundson said contaminated water should be hauled off site and as a civil engineer it was his opinion that if the permit for the proposed asphalt plant is approved, the water on site needs to be contained. The drainage needs to be re-graded with a trench drain which would go to ponds or tanks to be tested in order to confirm that the runoff was not harmful. The important thing is to keep the water from entering the creek. The appellants are concerned about the airborne pollution and condensation into the creek from the gases. They are also concerned about the farmers' ability to plant peas, grapes and wheat without being adversely effected by the emissions from the asphalt plant.

Mr. Bakkensen said the criteria found in 152.061 sub section (A) states that if there will be a significant adverse effect on farming practices or that it will increase the cost of farming practices, the Conditional Use Permit cannot be granted. He referred to a 2006 case in Polk County where the farmers grew mint crops. The farmers offered evidence

that volatile organic compounds were being absorbed by their crops from the emissions from a hot mix asphalt plant. Polk county contended that it had addressed that issue in its' findings stating that the hot mix asphalt plant would comply with all DEQ standards. The case went to LUBA and was remanded back to Polk County. The asphalt plant operator dropped the request to site the plant in the area of the mint farms.

Mr. Bakkensen said their first point was that they had made a showing that there will be an adverse effect on the wheat grown in the area and that it was not enough to say DEQ would take care of it. Their second point was that they had heard very persuasive evidence from several opponents that there will be an adverse effect on trucking.

Mr. Bakkensen said that 152.061 sub section (B) states that the permit cannot be issued if there will be significant increase in the cost of farming. The appellants believe there will be an increase due to the testing that will have to be done to the crops. He said it was his opinion that if the Commissioners allowed the permit to be issued, the cost of the testing should be borne by the Humbert's since their operation would create the potential hazard for the farmers.

Mr. Bakkensen said another focus should be on the access roads and whether or not they will be arranged in such a manner as to minimize nuisance to surrounding properties. There needs to be an engineered solution to the site if the permit is granted and the site needs to be redesigned so that all water will be contained in the pit.

Mr. Bakkensen gave examples of farmers filing suit against companies they believe to have caused damage to their crops due to emissions. He added that vineyards also have the right to bring a claim based on common law nuisance which is a theory-defined as an unreasonable interference with ones' use and enjoyment of their property.

Mr. Bakkensen said that the Commissioners have the ability to require the applicant to comply with other conditions deemed necessary. While he and the other appellants don't think they should allow the asphalt plant, if they should decide to go forward with the permit they should impose conditions upon the operation. They would like for limits on production which would decrease the amount of pollution.

Commissioner Givens asked if there were any public agencies present; there were none.

Applicant rebuttal: Troy Humbert disagreed with the testimony given by the appellant regarding the culvert and the issue of the water runoff He referred to one of the maps being shown and pointed out and described how any water that was in the pit flowed directly to the back wall of the pit. He also described where the water that flowed through the culvert originated.

Proponent rebuttal: Attorney David Shannon said the EPA Screen3 report given by the appellants was based on modeling not on actual emissions testing. Chemicals can be damaging in the right quantity but in the EPA information submitted by the applicant it states that the chemicals referred to by the appellant are only present in very minute

quantities. The DEQ has very strict testing standards and they had issued a permit to the Humbert's so that they can proceed. The only thing they are lacking at this time is approval from the county.

Mr. Shannon said the primary substances emitted by an asphalt plant are nitrogen, water, oxygen, carbon dioxide, carbon monoxide and sulfur dioxide. The report from Dr. Green in the Commissioners packets has the numbers regarding emission of these substances. Asphalt plants have been sited next to reservoirs without problems or complaints. The appellant gave testimony which included scientific speculation but the Commissioners did not have the benefit of listening to an expert speak about the facts regarding asphalt plant emissions and how the data would show compliance with DEQ requirements.

Commissioner Murdock asked what type of permit was required in order for Spofford Elevator to expand their truck traffic and Mr. Jennings answered that he didn't know they expanded their operation and no permits had been issued for the expansion. He stated that there is a grain pile next to the elevator but he does not know when that was started. Gary Nibler, 57766 Lone Fir Road, Milton-Freewater, OR 97862 said the permanent grain pile started about 4 or 5 years ago and holds one million bushels under cover. The elevator holds at least another half a million bushels. The grain comes from farms in Oregon and Washington. Mrs. Mabbott said the Planning Department was unaware of the expansion which may need to be permitted. Commissioner Murdock said what was fair in regard to truck traffic for one operation was fair for all. Mrs. Mabbott agreed and said the Planning Department would follow up on that.

Commissioner Givens called a recess until 12:05 p.m. Commissioner Givens restarted the meeting at 1:05 p.m.

Commissioner Murdock said they had discussed the dust, the environment, the chemicals and the concern for the vineyards. He asked if there were regulations in place regarding potential danger to vineyards from farming operations. Mrs. Mabbott said there is a definition of farm use defined in state statute and in the Umatilla County Development Code. Planners hope that if there ever is a regulation to arbitrate between competing farm uses, that it stay with the Oregon Department of Agriculture and not as a land use regulatory matter.

Commissioner Elfering asked at what level the benzene emissions become a problem with regard to causing cancer and Mr. Bakkensen said he did not have those numbers readily available but that there is a minimal risk level for exposure to benzene which primarily deals with human health. Someone living close to an asphalt plant is at a greater risk of benzene exposure. Commissioner Elfering asked the Humbert's how long they had been in business and Mr. Dan Humbert answered that they had been in business since 1974. Commissioner Elfering asked if he had any health problems and he answered that he did not. Troy Humbert said that he was 45 years old and was raised around the aggregate operation and was very healthy. Discussion followed.

There was discussion regarding the hourly fuel consumption of the generators used for the operation of an asphalt plant and the amount of annual emissions when the plant was running at maximum capacity. Mr. Bakkensen said that the new plant is capable of producing 150 tons of asphalt per hour. Mr. Humbert said the most they have produced in the past is 40 thousand tons per year from a plant that is capable of 80 tons per hour. The plant does not run continually or at full capacity. Discussion followed.

Commissioner Elfering asked Mr. Bakkensen if he had spoken with any of the Humbert's neighbors on Hwy 11 with regard to crop damage and he said he had not spoken with them but had read the letters they wrote.

Commissioner Elfering asked Mr. Bakkensen what his concern was regarding the runoff issue and he answered that the fugitive emissions that go to the ground and others that come from the stack will land on the vegetation in the immediate vicinity surrounding the quarry and will be washed down during rain events, going into the catch basin and being deposited into Birch Creek. Mr. Bakkensen said they had submitted a petition of reconsideration to DEQ which was denied.

Mr. Jennings said if all of the water coming from the aggregate site was going into the catch basin then the water should be analyzed but we cannot assume that the water is going to be contaminated or that all of it goes into the catch basin. If the water is coming off the hill as Mr. Humbert stated, it flows in different directions and it would need to be determined how much goes into the catch basin and where it is coming from. Mrs. Mabbott said that it looks like some of that water comes from the adjoining farm fields and the Department of Agriculture works with farmers with regard to farm runoff which is regulated differently from other types of industrial use.

Commissioner Givens said that previous testimony had been that the culvert was installed by the county to address runoff from the field so that it did not run into the quarry. Mr. Dan Humbert said that was correct and that they got a permit to extend the culvert to go around the rock crusher which was in the middle of the road when they first began their aggregate operation. Mr. Humbert identified the path that runoff water takes on the maps in the room. Commissioner Murdock asked if the culvert predated the quarry and Mr. Humbert answered that it did. Discussion followed.

Mrs. Mabbott asked the Humberts if any water was used in the operation of the asphalt plant and Mr. Humbert answered there was not. He said that water was used in the operation of the crusher. It was sprayed from a truck with a water tank for dust control.

Commissioner Givens asked Mr. Nibler about the acreage that he farmed in the area of the aggregate site. He said he rented and owned farmland. About 50% of the acreage produced wheat but his main concern was the fresh green peas they grow for processing. The green pea acreage in that area has dropped from 50, 000 to 5,000-7,000 total acreage per year; they farm about 4,000 acres. His operation is food alliance certified and their only customer is a Japanese firm whose food standards are higher than even DEQ's. Peas are very receptive to the absorption of chemicals. He described the type of testing

performed and said that they are testing for off label chemicals and they have gone beyond parts per million to parts per billion.

Commissioner Givens asked Larry Bishop, 89205 Hood Road, Milton Freewater, OR 97862 how many acres he farmed in that area and he answered that he farms about 640 acres. Mr. Bishop also said he was concerned about possible contamination of the spring. He said his spring was boxed but had a metal lid which could develop leaks when exposed to chemicals.

Mr. Dunkelburg said his spring box is 3 feet from the county road. They have their water tested every year and there have never been contaminates above acceptable levels.

Commissioner Givens asked if staff was familiar with the Polk County court case mentioned in appellant testimony. Mrs. Mabbott was generally familiar with the case but the facts from the Polk County case were a bit different from the issues of this hearing. The Planning Commission had a copy of an approved permit and denied Mr. Bakkensen's petition to appeal the air quality permit. She added that there are five asphalt plants permitted by DEQ in this county with Humbert's existing plant being one of them.

Mrs. Mabbott said that it was not the job of the planners to influence the decision of the Board of Commissioners but to remind them that the parameters are limited to the land use standards. She added that the appellants had done a good job of providing some science. The Kobioshi report which had also been submitted to the Planning Commission refers to impacts to crops and concludes that further study about the effect of eating grain that has been exposed to PAH's is necessary. The study does not establish a direct nexus between that chemical and the impact to farming and the cost of farming; it is more of a toxicology report.

Mrs. Mabbott inquired about the credentials of Louis Zellar and Mr. Bakkensen said he had been involved with the Blue Ridge Environmental Defense Fund since the 1980's. The EPA invited Zellar to express concerns about asphalt plants. His background is as a Physician's Assistant. He is not a toxicologist nor does he have a PhD.

Mrs. Mabbott said the standard by which the Board is evaluating this application is a land use standard. According to Tom Hack, Air Quality Program Manager in the Pendleton office of the DEQ, the Oregon Revised Statute 468.035 defines the functions of DEQ. Although the functions of DEQ are numerous, the statute defines DEQ and the primary regulatory authority for air and water quality issues that could transpire from the operation of an asphalt plant. It is not the function of DEQ to make land use compatibility determinations. Discussion followed.

Commissioner Elfering asked how DEQ established what was and was not acceptable and Mrs. Mabbott responded that they have to go through a rigorous process with a team of scientists. In order to issue a permit they have standards and establish thresholds based on human health and to a much lesser extent, environmental health.

Mr. Bakkensen said it was his understanding that DEQ did not do any independent analysis of asphalt plants due to lack of funds. They defer to emission factors which come from EPA standards.

David Shannon said they will, at their cost, have third party testing of the wheat now and after the plant has been in operation for a year. This could be made a part of the review process.

Commissioner Murdock asked if anything had occurred between the time of the Planning Commission hearing and this hearing that would cause questions to be raised about the decision made by the, Planning Commission. Mr. Jennings said the arguments and concerns stated at today's hearing are the same as were argued at the Planning Commission hearing.

Commissioner Givens said he would like to make sure they determine where the water going into the culvert originates. He would like to be sure that the Humbert's are working with DOGAMI (Department of Geology and Mineral Industries) on that water issue and following their recommendations. Mr. Jennings said there was a precedent condition with regard to meeting the DOGAMI requirements and having their permits in place.

Commissioner Givens closed the hearing at 1:57.

Commissioner Elfering said he understands the concerns about the existing farming interests in the Birch Creek area but there were too many hypotheticals raised. The findings by the Planning Commission were reasonable in placing an annual review on the operation, if the permit is granted. The conditions that the Planning Commission placed on the project are adequate to protect the residents and the farmers while providing everyone the freedom to do with their property what is permitted by statute.

Commissioner Murdock said he appreciates that there will be testing done. He said he spent 20 years living in a huge wheat producing area and issues such as dust, water run off, chemicals, fuel emissions and so forth were ever present in those areas. We need to know what the farming practices contribute to the equation as well as the asphalt plant contribution. He had not heard anything that would change the decision made by the Planning Commission.

Commissioner Givens thanked those on both sides of the issue for all the work put into present this data. Some of the data was very relevant but he was not convinced that there was a direct connection between the emissions and the chemical components that are affecting crops in this area and those that may affect crops or vegetation in the California area; there were too many variables. The studies presented were great and presented a lot of good information but they had not made a convincing case that all of the chemicals were that severe or that they all came from an asphalt plant.

Commissioner Givens said the Board of Commissioners' is concerned about the health and safety of the citizens. The Humbert's have had a DOGAMI review every year and

DOGAMI will continue to review their operation. DEQ will continue to monitor the site, as well. The Humbert's have volunteered to test the wheat at their cost. He said he has faith that the Planning Commission made an informed decision, adding that some members of the commission have doctorates in chemistry. He also said the Board of Commissioners has individuals who are involved with DOGAMI.

Commissioner Givens asked if planning staff would like to add anything and Mrs. Mabbott said that if a motion was made they should include as a precedent condition doing two or three samples of the wheat within a 1000 or 1500 foot radius of the plant site before the plant is in operation and to do post sampling one year after the plant has been operating. Also, they should clarify that the existing condition of the DOGAMI review includes compliance as to runoff and water distribution. Humbert Asphalt must have their DOGAMI permit, DEQ permit and must have submitted the pre asphalt plant operation testing data before the Zoning Permit would be issued.

Commissioner Elfering made a motion to uphold the decision of the Planning Commission and to issue a land use permit with the conditions stated in and to include the precedent and subsequent-conditions just discussed by the Board of Commissioners and staff and issue that permit to Humbert Asphalt.

Commissioner Murdock seconded the motion; it passed unanimously.

Commissioner Givens adjourned the hearing at 2:13 p.m.

Respectfully submitted,



Connie Hendrickson
Administrative Assistant

(Adopted by the Board of Commissioners on 02/19/14)