

UMATILLA COUNTY BOARD OF COMMISSIONERS
Meeting of Thursday, April 19, 2012
1:30 p.m., Room 114, County Courthouse, 216 SE 4th St
Pendleton, Oregon

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COMMISSIONERS PRESENT: Larry Givens (Chairman), Dennis Doherty, Bill Hansell.
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 opened the hearing at 1:32 p.m. He read the opening statement and identified the hearing as a Text Amendment, #T-11-045 and a Zone Map Amendment, #Z-294-11 application submitted by Wade Aylett. The applicant has requested to establish a Goal 5 Large Significant Site (mining operation) and to apply the Aggregate Resource (AR) Overlay Zone to a parcel that is zoned EFU (Exclusive Farm Use), is 80 acres in size and located north of Interstate 84 and west of Ordnance Road. The criteria for approval of the application are found in Umatilla County Development Code (UCDC) 152.750-755 and OAR 660-023-0180. He called for abstentions, declaration of exparte contact or objections to jurisdiction. There were none. He called for the staff report.

Staff Report:

Senior Planner Richard Jennings began the staff report by describing the criteria and the process for establishing a Large Significant Aggregate Site. The Administrative Rule provides for Small and Large Significant Sites depending on the amount of rock to be mined. Because there would be more than 500,000 tons of rock extracted, this site is considered to be a large site which requires that it go through the Goal 5 process in order to protect the site.

He referred to an aerial photo that had been given to the Commissioners which showed the location of the property and the impact area located 1500 feet from the boundary of the site, which had been established during the process. The impact area includes other developments such as homes and schools, etc., roads, airports, other Goal 5 sites and agricultural practices that could be affected by noise and dust coming from the aggregate site. He noted that there was one home located in Morrow County on the southwest corner of the impact area.

Commissioner Hansell asked to pause the hearing for a moment in order to speak with County Counsel for some advice. He said he had not realized that some of the impact

area was owned by members of his family. County Counsel Doug Olsen suggested that the family had been notified. Commissioner Givens asked if the public notices that were sent included property owners in Morrow County. Mrs. Mabbott stated that if their property was in the impact area they did receive a notice. Mr. Olsen said since Commissioner Hansell had no financial interest in the property there was no direct conflict, there was potential conflict only. Because that was the case, the Commissioner could just disclose the information and if he felt that it created a problem he could recuse himself but if no problem existed then he was free to participate in the hearing. Commissioner Hansell asked if anyone from his family had contacted the Planning Department regarding this site. Mr. Jennings stated that there had been no correspondence from any private parties.

Commissioner Hansell asked that the record state that it had been discovered that the impact area did include property owned by some of his family but knowing that they had not raised any objection to this site he felt that he could rule fairly on this matter. Commissioner Givens said it should be so noted for the record.

Commissioner Doherty asked who was given notice on the depot side of the impact area questioning whether or not the Land Reuse Authority (LRA) had received notice. Mr. Jennings identified the property owners. Commissioner Hansell said that normally when a Commander or staff member at the Depot is notified, they would forward the notice to the LRA and no one had forwarded anything in objection to the project.

Commissioner Doherty referred to a map showing the aggregate site which is on land zoned EFU with the Aggregate Resource (A/R) over-lay zone. He questioned if the zoning for the land would change through this process. Mr. Jennings stated that the underlying zoning, which is EFU, would remain in effect and the A/R overlay would signify that the site went through the Goal 5 process. This would designate the land for aggregate so the applicant would not have to get a Conditional Use Permit in the future; they would need a Zoning Permit only.

Commissioner Doherty asked about the possibility of the land returning to an agricultural use and Mr. Jenkins said it would be highly unlikely because the top 50 feet of the soil would be removed. Aggregate is an allowed use in the EFU zone through a conditional use permit or the Goal 5 process so it meets the agriculture policies of ORS 215.

Commissioner Hansell asked if the applicant owned the surface and mineral rights to the property to which Mrs. Mabbott answered yes he did. Commissioner Givens asked if the applicant was getting a permit from DOGAMI (Department of Geology and Mineral Industries) and Mr. Jennings said that he was.

Mr. Jennings said the impacts noted such as noise and dust will be mitigated. There is a water right on the property which can be converted through Oregon Water Resources Department (OWRD) to an industrial use if they need it for extracting the gravel and water trucks can be used for sprinkling to keep down the dust. There will be earthen berms running along the south, east and north of the property to help mitigate the noise.

There are no impacts to local roads. There are no airports within three miles that would be impacted.

There is a recharge project in this area that is not at this time a Goal 5 resource but comment was provided regarding the project at the Planning Commission hearing, by J.R. Cook, Executive Director for the Umatilla Basin Water Commission. His concern was the possibility of water coming into the pit as the recharge project continues. Members of the Planning Commission suggested a covenant not to sue could be modified to cover the impact of the pit flooding.

Commissioner Givens suggested that the pit could become another recharge area if it did flood and Mr. Jennings said that could be one of the post-mining uses for the land. Discussion followed.

Commissioner Doherty read from the draft minutes of the discussion at the Planning Commission hearing which referred to the water level rising and flooding the aggregate site and the recharge project taking precedence over the aggregate site. Mr. Olsen and Mrs. Mabbott explained that the water recharge project was a pre-existing farm use and there would be a covenant not to sue in place. Commissioner Doherty confirmed that the covenant not to sue would not be superfluous but would be added assurance that there would not be a dispute over that issue.

There was discussion about the critical ground water areas and the fact that Umatilla County had not gone through the process that would make the recharge projects significant Goal 5 resources. While by Administrative Rule the areas that are designated as critical ground water are significant Goal 5 Resources, those resources have not been added to the Umatilla County's Comprehensive Plan. Discussion followed.

Commissioner Givens said the aggregate mining process is permitted through DOGAMI and if contamination occurred in the ground water because of the mining it would be addressed by DOGAMI.

Mrs. Mabbott said that added assurance had been given to mitigate potential problems by language that had been drafted by Mr. Jennings and Mr. Olsen to the standard covenant not to sue for normal farming practices which specifically names water recharge as one of the types of farm use.

There was discussion regarding the fact that Commissioner Givens is Chairman of the Board of DOGAMI and Commissioner Doherty is on the Umatilla Basin Water Commission but that it would in no way affect the decisions that they were being asked to make at today's hearing.

Mr. Jennings continued his report by addressing the agricultural uses in the area. A statement by a wheat and alfalfa farmer in the area said that there would not be any impact to his crops from the mining site. There would be no processing of the aggregate at the site. It would be extracted then taken by conveyor to Morrow County where it would be processed. Because the aggregate will be mined from one county and processed

in another the applicant would need two DOGAMI permits and a representative from DOGAMI, Ben Mundie, said there would be no problem with that. There will be a weigh station and shop building on the northeast corner of the property but it will not create more truck traffic than already exists.

Mr. Jennings said the Goal 5 inventory shows 1000 acres that are deemed significant and that the 80 acre site on the inventory would need to be amended to show the aggregate overlay applies to the 80 acre site.

The ESEE (Economic, Social, Environmental, and Energy) analysis looks at uses that could be placed in the area which might potentially affect the pit. After a review of all the possible different types of permitted or conditional uses for the area such as dwellings and parks, it was determined there would be no need to prohibit those uses or limit permissible development.

The post mining uses for the site could include warehousing, potato sheds or some other agriculturally related storage facility. Another use could be a future recharge project. DOGAMI would be in charge of the reclamation plan but the permitting for the post-mining uses would be completed through the Planning Department.

Mr. Jennings stated that the next step for the aggregate site would be to apply for a zoning permit from the county. If they did not mine for over a year and let the zoning permit lapse, they would have to apply for another one. Commissioner Givens asked how long the operations would have to be ceased before they would have to go through the permitting process again. Mr. Jennings said the AR (Aggregate Resource) Overlay is a permanent decision and once it is in place they would not have to come before a governing body with regard to it again. If, however, they stopped mining for an extended period of time they would need to apply for another zoning permit from the Planning Department. Discussion followed.

Applicant Testimony:

Rebecca Kelley 77258 County Line Road, Hermiston, OR 97838. Ms. Kelley said they were trying to get this site permitted, enabling them to move away from another site they are mining but do not own.

Other Testimony:

There were no other comments from proponents or agencies.

Close of Hearing:

Commissioner Givens closed the hearing at 2:19 p.m.

Deliberation:

Commissioner Doherty stated that he is okay with this application but there may be potential questions that could arise in the future with regard to the proximity to the Depot.

Commissioner Hansell mentioned the buffer area between the aggregate site and the railroad lines. Mr. Jennings stated the railroad right of way was 200 feet wide. Commissioner Hansell said that he agreed the application had met the necessary qualifications.

Commissioner Givens called for a motion. Commissioner Doherty moved in the matter of applying an aggregate resource overlay zone to the significant aggregate site owned by Rock-It, LLC, approval of Ordinance No. 2012-08. Commissioner Hansell seconded the motion. It passed unanimously.

Commissioner Doherty moved that the Board adopt the findings and conclusions of #Z-294-11 and #T-11-045 located at 4N 27 27 Tax Lot 300. Commissioner Hansell seconded the motion. It passed unanimously.

Approval of Minutes:

Commissioner Hansell moved approval of minutes of the March 13, 2012 Board of Commissioners hearing with minor changes. Commissioner Doherty seconded the motion. It passed unanimously.

Adjournment:

Commissioner Givens adjourned the hearing at 2:25 p.m.

Respectfully submitted,

Connie Hendrickson
Administrative Assistant

(adopted by the Board Of Commissioners May 24, 2012)