

COLUMBIA COUNTY BOARD OF COMMISSIONERS  
BOARD MEETING

MINUTES

August 20, 2003

The Columbia County Board of Commissioners met in scheduled session with Commissioner Joe Corsiglia, Commissioner Rita Bernhard and Commissioner Anthony Hyde, together with Sarah Tyson, Assistant County Counsel, and Jan Greenhalgh, Board Secretary.

Commissioner Corsiglia called the meeting to order and led the flag salute.

**MINUTES:**

Commissioner Bernhard moved and Commissioner Hyde seconded to approve the minutes of the August 12, 2003 Work Session; August 13, 2003 Staff meeting; and August 13, 2003 Board meeting. The motion carried unanimously.

**ORDINANCE #2003-5 - GOAL 5 SENSITIVE LANDS:**

Sarah Tyson stated that the Board held a hearing on this matter a few weeks ago. At the conclusion of that hearing, it was determined that there was some additional information that staff needed to research. It appears that staff still needs some additional time to complete that research and, because of that, this ordinance is not yet ready for any action. Todd asked that discussion on this matter be held over to the next work session, with the first reading carried over to 9/3/03. The Board agreed and, with that, Commissioner Hyde moved and Commissioner Bernhard seconded to continue the first reading of Ordinance No. 2003-5 to September 3, 2003, at or after 10:00 a.m. The motion carried unanimously.

**PUBLIC HEARING: GLACIER NW PAPA & ZONE CHANGE FROM PA-38 TO SM:**

As scheduled, the public hearing, "In the Matter of the Application of Northwest Aggregates Co. (aka Glacier NW) for a Post Acknowledgment Plan Amendment (PAPA) for a Comprehensive Plan Amendment from Agricultural Resource to Mineral and Aggregate Resource and Zone Change from Primary Agriculture (PA-38) to Surface Mining (SM)", was held.

Sarah Tyson reviewed Section 1605 of the CCZO which states that, unless the Board votes to hold a de novo hearing (to accept additional evidence), the decision would be on the record of the Planning Commission and testimony would be limited to evidence already in the record. Commissioner Hyde stated that the Board is up against a time limit on this application and that may be a problem if the record is opened again. If the information presented today is the same information already in the record, it may not be worth opening up the hearing because of the time frame. Commissioner Bernhard understands that, but if there is new evidence and information to

be submitted, the Board needs to look at it. Commissioner Hyde agrees and that is why he wants to know if it is new evidence or not. Sarah went over the time lines. If the Board opened the hearing today and took additional evidence, a final decision could still be made within the allowable time frame, however it would be tight. After discussion, Commissioner Bernhard moved and Commissioner Hyde seconded to hold this hearing de novo. The motion carried unanimously.

The Board declared their ex-parte contact. Commissioner Bernhard spoke with Lynn Waggoner on July 23, 2003. He came into the Board office on another issue but talked a little bit on this application. He asked about postponing the hearing. She advised Lynn to speak with the secretary when she returned. On August 6, 2003, Mr. Kessi submitted a large packet of information to the Board office. This was turned over to Sarah without the Board looking at it. On August 7, 2003, Fred Bernet called and asked if the Board would be accepting additional information at the hearing. She told him that decision would be made at the time of the hearing. Steve Abel, attorney for Glacier NW, had no questions about Commissioner Bernhard's ex-parte contact.

Commissioner Corsiglia was contacted by both Fred Bernet and Lynn Waggoner asking if the record would be opened for new testimony. He suggested that they submit any questions and/or comments to County Counsel's office. Steve Abel had no questions.

Commissioner Hyde was contacted in late July by Fred Bernet who wanted to know if the record would be opened. He informed Fred that he would need to come to the hearing to find out. Steve Abel had no questions.

The Board stated they have no conflicts of interest.

At this time Sarah read the pre-hearing statement into the record as required by ORS 197.763. Sarah entered County Counsel's hearing file into the record (*Exhibit 1*), which includes everything that was entered into the record prior to the Planning Commission decision. She then went over all items that have been submitted after that time; letter and attachment from William Buckley received 8/18/03 (*Exhibit 2*); packet of information received from the Scappoose Drainage District on 8/5/03 (*Exhibit 3*); letter with attachments from the Scappoose Drainage District received 8/12/03 (*Exhibit 4*); letter from the Port of St. Helens dated 8/18/03 (*Exhibit 5*); and letter with attachments from Jackstadt Farms received 8/19/03 (*Exhibit 6*). Those items need to be formally entered into the record. With that, Commissioner Hyde moved and Commissioner Bernhard seconded to enter Exhibits 2 through 6 into the record. The motion carried unanimously. Sarah passed the record copies to the Board.

**Glen Higgins, Chief Planner**, came before the Board to give the staff report. To summarize, Glacier NW has applied to expand their mining operations on the Scappoose Gravel bar to include a 52 acre site directly east and across Honeyman Road from their existing Santosh aggregate processing facility. Staff understands this "Fort James Site" is being proposed in lieu of expanding their operations into the long controversial "Meier Site". There are less conflicting

uses associated with this proposed site, in comparison with sites closer to housing developments and the Scappoose Industrial Airpark.

The Planning Commission recommends approval with 26 conditions which appear to mitigate any adverse impacts mining would have on surrounding properties, passers by and the Santosh Slough Goal 5 protected area. Mining has been accepted as a viable and important industry within this "Scappoose Bottoms" lands given the abundance of river rock in the fluvial deposits along the Columbia County river.

The conceptual "post mining use" would be a lake, or "fish and wildlife habitat". As such a water impoundment could be viewed as directly in opposition to the purposes of a Diking District, whose purpose is to de-water an area. Increased potential of flooding during high Columbia River levels was a reason for two hearing continuations. The Planning Commission heard testimony about this problem from residents of the diking area and surmised that an adequate monitoring program is necessary and is outlined in Condition #26.

The hearing was then opened for public testimony.

#### **PROPONENTS:**

***Steve Abel, Attorney for Glacier NW, 900 SW 5<sup>th</sup>, Suite 2600, Portland, Oregon, 97204.***

As stated by Glen Higgins, this is an application for 52 acres of the Fort James site. The original application was for the entire Fort James site. Glacier NW had asked the County to give them significance determination for all of the Fort James site, but only mining permission for the 52 acre site. When DLCD saw the application, they said it couldn't be done that way, so Glacier backed out the "significance" determination part of the request. Now, the only relevant portion of the site is the 52 acres which is immediately adjacent to the existing Glacier mining operation. Steve reminded the Board why this application is before the Board. Last year, Glacier applied for a mining permit for a 17 acre site. That was approved and it was an important step to resolution of the global issues involving mining there. One of the other steps to resolve those more global issues, is this application. This is one of the applications necessary in order for Glacier to yield its rights on the 52 acres Meier site and do no aggregate mining. Therefore, this is a very important application for the County, Glacier NW, Port of St. Helens and the City of Scappoose. Steve wanted to address a couple of questions that were asked. With respect to the impacts, Glen explained that the existing facilities are under permit and has been for quite some time, they have a variety of either grandfathered rights or actual surface mining permit rights. Under Goal 5, it states that if you are going to expand a site, the relevant analysis is the expansion territory and its impact areas, not existing facilities. Steve stated that there are two volumes of materials that have been submitted in this application. Glacier believes that the materials submitted by all the consultants demonstrate that the criteria has been satisfied and County staff and the Planning Commission has agreed with that.

Steve wanted to comment on the Planning Commission hearing. There were two continuances granted to the Scappoose Drainage District in an effort to provide additional information with respect to hydrogeologic issues. The SDC submitted materials and Glacier submitted materials in

response. Glacier thought that was the end of it, but when they got to the hearing on June 2<sup>nd</sup>, a month and one-half later, a second continuance was granted to the SDC. More information was submitted by the SDIC and Glacier responded to that. On July 7<sup>th</sup>, the Planning Commission approved the application. That process took about 3 ½ months, which put the application up against the 180 day time frame. Frankly, Steve thought the Planning Commission had resolved the issues on hydrogeology. No representative from the SDIC even appeared at the second hearing when the application was approved. Now, more information is being submitted. Glacier is just looking for some fairness here.

Steve concluded with some comments on a couple of conditions the Planning Commission added in their approval. Condition #23, which requires some road improvements to West Lane Road, was modified at the request of staff and Glacier has no problem with that. Condition #24 was simply clarified. Conditions 25 & 26 were adopted by the Planning Commission to respond to the Scappoose Drainage Districts concerns. Steve went over both conditions and noted that Glacier has no problems with either condition.

***Glen Dorscheler, Mayor for the City of Scappoose:*** He read a prepared letter from the City of Scappoose and entered it into the record (*Exhibit 7*). In summary, the City of Scappoose supports this application, with the understanding that mining operations will be conducted in a manner that is consistent with all applicable state and local laws.

***Craig Ellis, 52619 NW Lisa Drive:*** His family has two pieces of property adjacent to the Glacier mining site. They support this proposal, but have some concerns with potential flooding. They have a lot of equipment, inventory and homes on these properties and they just want to be protected.

***Dave Williamson, representing the Ellis Partnership:*** He submitted a prepared letter into the record without reading it (*Exhibit 8*). He did comment that he reviewed the hydrological report and believes that condition #26 addresses some concerns, however, it doesn't address water "quality". Dave would ask that condition #26 be modified to include that, in addition to water levels, turbidity and water quality in surrounding wells also be monitored. Other than that, the Ellis family supports this application.

#### **OPPONENTS:**

***Robert Kessi, 34172 Elm Street, Scappoose:*** He is a resident of the drainage district, land owner and on the Board of Supervisors for the Scappoose Drainage District. He is here today representing the Scappoose Drainage Improvement Company (SDIC). The SDIC is requesting that the County Commissioners understand very clearly the magnitude of the potential impact caused by mining in the flood plain. Understanding that, they should require all surface mining applications in the district to prove that no community flooding will result due to excavation. It is not the position of the district to prohibit mining in the flood plain, however, if the balance of the district including its 2000 plus residents cannot be guaranteed the level of safety acceptable to the FEMA standards, then no mining should occur in the district. There is a history of rejections of surface mining applications made by Lone Star pertaining to the Meier site. The SDIC has a letter

from Lone Star, dated 4/15/94, that speaks about contributions to the Drainage District as part of the Meier site applications. Sixty to seventy percent of the Meier site is inside the district and Lone Star was willing to acknowledge that there would be additional surface water problems for the districts pumping process. They were willing to pay three times the additional pumping costs over the normal usage to the district. The same standard should apply here. Mr. Kessi submitted this letter into the record (*Exhibit 9*). Mr. Kessi then presented a slide show to show the lands within the SDIC and potential effects of flooding. In closing, the SDIC is not necessarily against mining, as long as the SDIC and the property owners can have some safety assurances against flooding and additional pumping costs.

***Netti Loos, 35800 Riverside Lane, Scappoose:*** Ms. Loos is on the Board of the SDIC but is here today speaking as a resident. She read and submitted a prepared letter into the record (*Exhibit 10*). She is very concerned with the potential of flooding as she has lived through such a devastating disaster before.

***Peter Patterson, 1934 SW Terrace Drive, Portland:*** He is a registered geologist and certified engineering geologist for the State of Oregon. His resume is already in the record. In late July, 2003, the SDIC asked him to provide them with some technical assistance and review of the Fort James proposal. Mr. Patterson submitted his written testimony and (8) 35mm slides into the record (*Exhibit 11*). He went over his report, detailing the design of the dike and described the soils in the area to try to determine what the permeabilities in the area might be. From that, you can then generate what the potential inflow from the outside water sources into the pit might be. He also explained Because of the wide range of data and potential effects, the SDIC has requested an independent engineering review of the foundation conditions by the Portland District Army Corps of Engineers. He thanked the Board for their time.

***Clifton Deal, 5735 SE Hale Place, Gresham:*** Mr. Deal submitted his written testimony into the record (*Exhibit 12*). He is a registered professional civil engineer in the State of Oregon and gave a brief summary of his work history. On August 8, 2003, he was contacted by the SDIC to review information concerning the development of a new gravel pit referred to as the Fort James site. This review was to look at any potential engineering concerns that may impact the SDIC project, specifically seepage, internal stability and other items that may be considered as potential engineering safety hazards. Mr. Deal went over his written report. His conclusion and recommendation is as follows: 1) Considering the internal instability of the soils and the potential seepage condition significant boiling and piping of the fine fraction of the soils is certainly a possibility. This is an area that should be investigated to determine the internal stability of the soils on the Fort James site and obtain sufficient soil information to adequately determine the seepage conditions at the proposed site. The development of soil movement under any dike system can lead to major maintenance problems for the dike and poses a public safety issue; 2) When the total potential for additional areas to be mined in the SDIC project area are considered the total impact on their pumping and maintenance cost could be significant. This is because a significant amount of the mined land will be closer to the Multnomah Channel and dike. This area will now have a slight potential for additional seepage, excessive uplift pressures and the potential for soil movement.

**Len Waggoner, 33951 SE Oak, Scappoose:** His issue of concern is a little different than what's been discussed here today. In the fall of last year, a number of entities joined together to discuss the resolution of the development of the Meier site. What resulted was a Memorandum of Understanding. Among other things, it stated Glacier's dedication not to mine the Meier property. What Lynn finds frustrating about this MOU is that, in trying to politically absolve a problem, the MOU now has the tendency to look like a "green light" document. Two weeks ago he met with Glen Dorschler and Jerry Gilliam from the City of Scappoose. He told them that there is a significant question regarding the possibility of flooding and that it needs to be discussed. They refused to do anything because they were "signatories to the MOU". That appears to mean that even if there is an issue, it isn't important enough to go past this document. The MOU scares him. He understands why the Board could not and did not sign this MOU, however it still appears to be a "green light". Lynn submitted the MOU into the record (*Exhibit 13*).

**Fred Bernet, 51364 Dike Road, Scappoose:** We have 381 acres in the SDIC and he wants protection. Protection from flooding and protection from the increased cost of extra pumping. He may not be a computer expert, but he is a flood expert. He has gone through over 5 100 year floods, in 1927, 1933, 1948, 1964 and 1996. He doesn't want to find out that the experts made a mistake. All he is looking for is protection.

**Albert Havlik, 52406 Mountain View Road, Scappoose:** He is the Vice Chair of the Scappoose Drainage Improvement Company but he speaking today on his own behalf. He owns 120 acres on the dike. He wants to be record that he does not share all the concerns about flooding because of the mining.

**Gary Roth, Roth/Bates, Inc., 34162 Church Road, Warren:** He is here representing the Bates & Roth family property in Scappoose, not all of which is located in the Scappoose drainage district. He serves on the SDIC Board and is currently the chair, however he is not making his comments as a representative of the SDIC. The Board has heard from Mr. Kessi who stated that he was representing the Scappoose Drainage District. Gary has attended every SDIC meeting since the first of the year where any issues relating to the Fort James application were been discussed. To his knowledge, the decision to appoint Mr. Kessi to represent the district was never done. However, this doesn't confirm or deny any of the content of his material.

Due to time constraints, the hearing was continued to Thursday, September 21, 2003, at or after 1:00 p.m. for rebuttal. Steve Abel, attorney for Glacier NW, agreed to this.

**EXECUTIVE SESSION UNDER ORS 192.660(1)(h):**

The Board recessed the regular session to go into Executive Session as allowed under ORS 192.660(1)(h) - Litigation. Upon coming out of Executive Session, no action was taken by the Board.

***The Board recessed the meeting at 3:05 p.m. and reconvened on Thursday, August 21, 2003 at 1:00 p.m. with all present.***

Commissioner Corsiglia called the meeting back to order and led the flag salute.

**CONTINUE: GLACIER NW PAPA & ZONE CHANGE FROM PA-38 TO SM:**

This hearing was continued from 8/20/03 for rebuttal.

**REBUTTAL:**

***Steve Abel, 900 SW 5<sup>th</sup> Avenue, Suite 2600, Portland, Oregon:*** Steve is here representing Glacier NW. With him was Tom Michelek, geologist with LDC Design Group, Inc.

Steve responded to the comment made yesterday about the Memorandum of Understanding. Glacier has always felt that the MOU was resolution for the Meier site. This application and the 17 acre application are different sites and independent of the MOU. He mentioned that it took close to two years to conclude that MOU in a public process and the SDIC did not participate in that process, even though they had the option to do so. The decision before the Board today is a land use decision on the 52 acres site, based on the evidence and testimony received. It has nothing to do with the MOU.

Another concern brought up yesterday was the impact on wells. This has come up a number of times with applications made by Glacier NW and they have found that there has never been a well problem. They have always said and will continue to say that they will work with people on this issue.

***Tom Michelek, LDC Design Group, Inc., 3300 NW 211<sup>th</sup> Terrace, Hillsboro, Oregon:*** He is a registered geologist and licensed hydrologist in both the State of Oregon and the State of Washington. He gave some background on his qualifications and the work he has done on the Pit E, Pit F, and the Fort James site. He is the author of the hydrologic report produced in support of the 52 acre site. The results of all this work can be summed up in a few sentences. The main question we're trying to answer is what will the effects of mining pits be. His conclusion is that because the levels within these mining pits will be a reflection of the water levels in the ground water system outside the mining pits, there will be very little difference in water level elevation inside the pit and outside the pit. He believes that situation holds true for almost anywhere in the drainage district area, as long as mining does nothing to jeopardize the Corps of Engineers structures that have been built around the drainage district to provide flood control. This will not happen due to mining the 52 acre mining site. There will not be any excavation immediately adjacent to the Corps of Engineer levy structures. Tom went through his report and discussion was held on a number of issues. Tom went over the monitoring plan which is to install a number of monitoring wells to watch the water table. Glacier has been collecting data in this area for over 10 years and has a pretty good idea of a normal year. This data can also be used to determine if the SDIC will have to pump more because of the mining.

Commissioner Bernhard feels that wells owned by individual property owners need to be considered and protected as well.

Commissioner Hyde asked if Glacier would be willing to monitor all pre-existing wells within the 1,500 feet, which can't be too many. Bob is not able to commit to that at this time, however that should not be an issue.

Commissioner Corsiglia asked about the letter from Lone Star from back in 1994 where they recognized that there may be a change. Steve was around when that letter was prepared and it referred to the Meier site, a much larger site with its own hydrogeologic conditions. In the first paragraph of that letter it states that "if" radiances are increased towards the district. So there is some question as to whether it is or is not. The 1994 offer was rejected by the SDIC and they also rejected the hydrology report. Since 1994, there have been a number of other reports that have occurred. In 1997, on behalf of the drainage district, Lone Star hired the Slicker firm. That report was also rejected by the SDIC. Now 6 years later we have another report that the SDIC is rejecting. Glacier has continued to try to resolve these problems with the drainage district. To get through this, Steve would recommend that a condition of approval be that ***"Glacier would pursue discussions with the SDIC about developing a program for compensation which would have clear and objective standards"***. Frankly, the discussion yesterday about the compensation for the increased pumping costs is the first we've heard about that as a potential solution for the SDIC in 1994. Discussion held on a possible solution. Steve suggested that perhaps the condition of approval could be that Glacier provides a proposal to county staff about what the compensation package would look like and, if staff agrees with that proposal, that would satisfy the condition.

Bob Short agrees that if mining creates increased costs to the drainage district, then mining should pay for it. However, it is hard to determine if mining has caused the increased costs. For example, the amount of growth in residential housing in the district has increased by 50% since 1996 and that creates increased costs to the district.

Steve stated that it will be a couple of years out before mining occurs on this site. Perhaps Glacier could agree to have discussions with the SDIC prior to mining and submit a proposal to the County that may or may not be agreeable to the SDIC. But the County would have a proposal to review and determine if reasonable. Commissioner Hyde clarified with staff that these types of issues should be dealt with through the site design review and operating permit application. Steve agreed and thanked the Board for their time.

With no further testimony coming before the Board, the hearing was closed. Commissioner Hyde moved and Commissioner Bernhard seconded to carry over deliberations on this matter to Wednesday, August 27, 2003, at or after 10:00 a.m. The motion carried unanimously.

Further, Commissioner Hyde moved and Commissioner Bernhard seconded to hold the first reading of Ordinance No. 2003-7 on August 27, 2003. The motion carried unanimously.

**CONSENT AGENDA:**

Commissioner Corsiglia read the consent agenda in full. With that, Commissioner Hyde moved and Commissioner Bernhard seconded to approve the consent agenda as follows:



- (A) Ratify the Select to Pay for 8/19/03.
- (B) Change time of Board Staff meetings to every Wednesday at 2:00 p.m.
- (C) Resolution No. 59-2003, (Initiating Vacation Proceedings), "In the Matter of Vacating a Portion of Fourth & "D" Streets and a Portion of an Alleyway in the Neer City, Oregon, Subdivision [Robert C. Smith Petition] ". ***[REMOVED FROM AGENDA AND HELD OVER].***

**AGREEMENTS/CONTRACTS/AMENDMENTS:**

- (D) Memorandum of Understanding with Columbia County Juvenile Department re Juvenile Crime Prevention Plan.

The motion carried unanimously.

**SERVICE AGREEMENT WITH McNULTY WATER PUD:**

John reviewed the agreement. The County does not intend to install a service line and conveyed that to McNulty Water. They agreed to let John make some changes in the language. However, John would still like more time to look at this agreement before making a recommendation to the Board. The Board agreed and this matter was held over one week.

**COMMISSIONER CORSIGLIA COMMENTS:**

None.

**COMMISSIONER BERNHARD COMMENTS:**

Commissioner Bernhard attended the Vintage car display at Heritage Park. It was a very successful event.

She also attended Senator Wyden's town hall meeting on Sunday. He answered a lot of tough questions.

**COMMISSIONER HYDE COMMENTS:**

Commissioner Hyde also attended Wyden town hall.

Again, he spent time in Salem testifying on some bills that greatly effect Columbia County.

He wanted to mention that the County received additional funding for the Scappoose-Vernonia Linear Trail project.

**COUNTY COUNSEL COMMENTS:**

There will be a meeting tonight with parents and day care providers about getting kids to school and day care - using public transit. Hopefully, this meeting will help come up with some solutions and/or options.

It's been a busy week dealing with gas issues. The consultant the county hired for this project is doing a great job.

**FEMA SUPPLEMENTAL GRANT:**

Commissioner Hyde moved and Commissioner Bernhard seconded to ratify the approval of the FEMA Supplemental Grant Program FY02 Planning and authorize the Chair to sign. The motion carried unanimously.

**EXECUTIVE SESSION UNDER ORS 192.660(1)(e) - PROPERTY NEGOTIATIONS:**


The Board recessed the regular session to go into Executive Session as allowed under ORS 192.660(1)(e). Upon coming out of Executive Session, no action was taken by the Board.

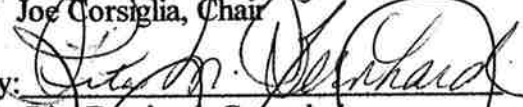
With nothing further coming before the Board, the meeting was adjourned.


Dated at St. Helens, Oregon this 20<sup>th</sup> day of August, 2003.

NOTE: A tape of this meeting is available for purchase by the public or interested parties.

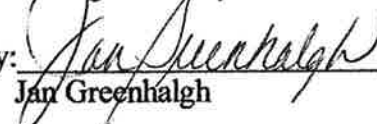
BOARD OF COUNTY COMMISSIONERS  
FOR COLUMBIA COUNTY, OREGON

By:   
Joe Corsiglia, Chair

By:   
Rita Bernhard, Commissioner

By:   
Anthony Hyde, Commissioner

Recording Secretary:

By:   
Jan Greenhalgh