

COLUMBIA COUNTY BOARD OF COMMISSIONERS
BOARD MEETING

MINUTES

June 9, 2004

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

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

MINUTES:

Commissioner Hyde moved and Commissioner Corsiglia seconded to approve the minutes of the June 2, 2004 Board meeting and June 2, 2004 Staff meeting. The motion carried unanimously.

CERTIFICATES OF APPRECIATION TO HEALTH CARE BENEFITS COMMITTEE:

The Board presented certificates of appreciation to all members of the Health Care Benefits Committee for the extensive time and pro-active efforts they put forth on this committee.

VISITOR COMMENTS:

None.

HEARING: GLACIER NW FOR SITE DESIGN REVIEW & OPERATING PERMIT:

As scheduled, the public hearing, "In the Matter of the Application of Northwest Aggregates Co. (aka Glacier NW) for a Site Design Review and for an Operating Permit to Mine the Fort James Site", was held.

Sarah Tyson explained that this is the time set to hear the applications by Glacier NW for a Site Design Review and Surface Mining Operating Permit to mine the Fort James site. This site is adjacent to mining sites A and B. The Board approved the Comprehensive Plan Amendment and Zone Change on September 25, 2003 and became effective on December 24, 2004. Lynn Wagner appealed that decision and the applicant intervened. The LUBA appeal was stayed pending the conclusion of this design review and operating permit application. The applicant and the appellant agreed to resolve the LUBA issue by agreeing that storm water includes upwelling ground water in condition #13. Site Design Review applications are normally held by the Planning Commission, however, because the Board is the decision maker on the operating permit, staff recommended that the Board take jurisdiction over the design review application and have one hearing on both applications and the Board agreed. Both decisions are quasi-judicial land use decisions and this is the initial hearing on both applications. The Board will need to make separate motions at the conclusion of the hearing.

The Board stated they had no ex parte contacts or conflicts of interest. Sarah then read the pre-hearing statement as required under ORS 197.763 and then reviewed the hearing procedure. She entered County Counsel's hearing file into the record (Exhibit "1") and noted all contents.

Glen Higgins, Chief Planner, came before the Board to give the staff report on the Site Design Review. Staff recommends approval with 27 conditions as listed in the staff report. The conditions are substantially the same as what was recommended in the PAPA, except the additions to condition #3 and #13, and adding conditions #26 and #27.

Todd Dugdale, LDS Director, came before the Board to give the staff report on the Operating Permit for mining the Fort James site. He noted that comments provided by the Surface Mining Administrator have been adequately addressed by the 5/5/04 supplemental submittal by the applicant. Todd summarized the mining plan for this site and reviewed the reclamation plan. Based on the finding in the Surface Mining Administrator's report, staff is recommending approval of the Operating Permit with the 6 conditions noted in the staff report.

PROPONENTS:

Bob Short, Glacier NW, first commented on mining and gravel in general. He referred to an oversized map to show the mining that has taken place on their property. There was a considerable amount of opposition by those who see this area as having vast potential for development, a higher and better use than for aggregate mining. As a result of that, through negotiations Glacier agreed not to mine the Meier site and would put it up for sale. In return, Glacier had to look for other sites. One thing about the Fort James site is that it is a viable aggregate site because of the barge canal which allows them to move their product on the river. One barge load is 100 truck and trailers. That's 100 truck and trailers that aren't going through Scappoose and down the highway. That is good for the community and for Glacier. Therefore, it is important to keep their facility where it is. To do this, they need to have a resource. The Fort James site has already received land use approval to mine and they are here today to obtain the site design review and operating permit. He noted that the only opposition to this has come from the Scappoose Drainage District. Bob feels that their concerns were addressed during the PAPA process. A monitoring plan was developed to determine how much, if any, additional seepage would be created by mining. That plan has been submitted to the Scappoose Drainage District and they have accepted it.

Steve Abel, Attorney for Glacier NW, will be brief. He recalled the hydro geologic issues discussed at the PAPA hearings last year. At that time, expert witnesses testified for both the Scappoose Drainage District and Glacier NW and talked extensively and in detail about the hydrogeology on this particular area. After which the Board made a finding that said there is minimal or no risk of catastrophic problems and would not deny mining on this site. The finding also states that they need to make sure there is no seepage. Glacier's expert witness does not believe there will be any seepage. Those findings were not appealed and they are part of this particular case. Arising from those findings, two conditions were required, condition #13, not allowing ground water to move off site and condition #25 relates to the monitoring plan and a

program of compensation to the Drainage District if there is seepage. Glacier has agreed to implement a monitoring plan and compensate for any excess energy costs of pumping any water out of there. To a great degree, what the Board did in the PAPA application in conditions 13 and 25, is dipped a little bit into the site design review process. The Board agreed there is a right to mine, but felt that these are parts of the obligations of design of the site and the operation of the site that are going to minimize the amount of impact at the site if mining takes place. That is in accordance with the Goal 5 rule on aggregate which essentially says that these additional site design review processes are minimum processes. Steve read a portion of the rule for site design review after there has been an approval of a PAPA plan, "*Additional land use review, for example: site design review, if required by the local government, shall not exceed the minimum review necessary to ensure compliance with the PAPA approval*". Therefore, there is a limited amount of review that occurs after there has been a PAPA review and approval. Conditions 13 and 25 carry forward and are adequate conditions in the Site Design Review. Steve commented that condition #13 was amended to clarify the discharge of storm water off site includes up welling ground water. Glacier agrees with the 27 conditions of approval, 25 of which were carried forward from the PAPA approval.

Steve responded to the letter from the Scappoose Drainage District dated 5/28/04 of which there are four points. The first point is that the SDIC accepts the monitoring plan. The second speaks to condition #13, the amended condition on the retention of storm water discharge on site. Pages 12-14 of Glacier's application explains how that water stays on site. As for the enforcement powers, the County has enforcement powers in the land use code relating to the 27 conditions of approval and also the Surface Mining Ordinance. The third point that the SDIC makes relates to compensation for the potential seepage. Condition #25 addresses that and Glacier intends to honor that. The last point has to do with speculation. If Glacier were to sell, the operating permit program would require new permits for a new operator.

Again, Glacier agrees with all conditions and appreciates the Board's consideration.

OPPONENTS:

Robert Kessi, Scappoose. Although he is a member of the SDIC, he is here testifying on his own behalf as a land owner. He submitted a copy of his written testimony to the Board and read it into the record.

Fred Bernet, Scappoose. He has lived in the Scappoose Drainage District since 1946. With all the changes in these conditions, how come they haven't gone before the Planning Commission. Sarah suggested that if he has questions about the process, she would be happy to discuss those outside of the hearing. Fred stated that he is interested in protection, not just for his property but for all of the drainage district. He explained about the fractured SDIC Board. One member has an agreement with Glacier to mine their property, one member is pro-mining and another member of on the fence, so there are only two out of the five that are against mining in the district. He has lived through four 100 year floods since 1933. There is over 5,000 acres in the district and needs to be protected. If Glacier wants to mine this property, he feels there should be

a 32 foot dike, which is the same elevation as the rest of the dike. If this permit is approved, he would like to see a condition added that, once this property is mined, that the pit be filled back in.

REBUTTAL:

Steve Abel responded to the comments made in opposition. Most of the testimony given today is about the same testimony that occurred during the PAPA process debating the hydrogeology characteristics of this site. In that process, this Board made findings on that the evidence. All of this evidence came before the Board last year and the Board made decisions based on that evidence and made findings and related conditions of approval. Those findings made the determination that the hydrogeology proposed by Glacier's consultant was the best evidence. That Scappoose Drainage District wanted a monitoring plan and they got it and now they are saying that isn't enough. They want to go back to the underlying decision the Board made, that they did not appeal, and second guess the Board's conclusion from a year ago. That is not what Site Design Review is for. As for Mr. Kessi's letter, he speculates that the Port of Portland would object to this. Steve doesn't feel that is relevant, the fact is that the Port of St. Helens, who has jurisdiction over this area and the Meier site, does not object. He also heard that a minority of the SDIC appears to oppose mining on the Fort James site, which would mean to him that the majority doesn't oppose this. The SDIC was characterized as a "fractured" Board. It is not a fractured Board when they take a vote and the majority wins. That's how the system works. Glacier has responded to the SDIC's concerns. The Board has also responded, not only in the PAPA process but in this process with the 27 conditions of approval. The last thing Steve wanted to comment on is the reclamation of the site. Glacier has honored and will continue to honor reclamation requirements in the Surface Mining ordinance. The proposal on this particular site is to retain the site as a water body for wildlife. That is the same reclamation plan that exists for other portions of the Glacier site. As to re-filling these aggregate mining sites, it is simply not possible. There isn't the land available to do those kinds of reclamation. The decision to fill, which is not required by the SMO, would be one that would shut the mining industry down. With that, Steve believes that this is the best application that Glacier has submitted and he feels very comfortable with it.

The Board reopened the record for additional opposition testimony and rebuttal.

OPPOSITION:

Netty Loos, 75800 Riverside Lane, Scappoose. She is a Board member of the Scappoose Drainage District and just wanted to clarify a comment made by Mr. Abel. There are 5 members on the SDIC Board. One member recused himself because he is going into mining. That left 4 members to vote, two opposed and two not opposed. Therefore it was not a majority or minority vote.

No rebuttal.

Todd Dugdale commented on condition #2 of the Operating Permit and suggested the following change: ***“Implementation of the groundwater monitoring plan for the mine site consistent with conditions of approval of Ordinance No. 2003-7 approving the PAPA”*** to clarify the intent on this condition. Steve Abel agreed with the change.

With no further testimony coming before the Board, the hearing was closed for deliberations.

The Board recessed the meeting at 11:50 a.m. and reconvened at 1:30 p.m. with all present.

Commissioner Bernhard called the meeting back to order.

The Board began deliberations on the applications by Glacier NW for a Site Design Review and Operating Permit for the Fort James site. Sarah explained why the Board is hearing both issues. Site Design Review applications are normally held by the Planning Commission, however, the Board is the decision maker on the operating permit. There is a provision in the Planning Commission Ordinance (Section 11) that allows the Board to take jurisdiction over a matter in lieu of it going before the Planning Commission. For the record, Sarah would recommend that the Board formalize this in a motion. With that, Commissioner Hyde moved and Commissioner Corsiglia seconded to assert original jurisdiction over the site design review application. The motion carried unanimously.

Commissioner Corsiglia asked staff, regarding the concerns addressed in the SDIC letter, how much leverage the Board has in modifying the conditions. Sarah explained that the conditions approved in the PAPA process were carried through as conditions on the site design review and operating permit. Objections need to be related to either the design review or the operating permit. Sarah feels that the objections raised today are related to criteria that applied in the Post Acknowledge Plan Amendment and not the Site Design Review or Operating Permit. Without that connection, she doesn't feel that any of those conditions can be changed. The concerns of the SDIC were addressed during the PAPA process.

After discussion, Commissioner Hyde moved and Commissioner Corsiglia seconded to tentatively approve DR 04-08 subject to the 27 conditions of approval as set out in the conditions handed out. The motion carried unanimously.

Regarding the Operating Permit, Commissioner Hyde read revisions to condition #2 into the record as follows: ***Implementation of the groundwater monitoring plans for the mine site consistent with conditions of approval of Ordinance 2003-7 approving the PAPA.*** With that, Commissioner Hyde moved and Commissioner Corsiglia seconded to tentatively approve Operating Permit #05-0079, subject to conditions of approval as set forth in the staff report dated May 27, 2004, with amendments to condition #2 as read. The motion carried unanimously.

Sarah will prepare orders for both and bring them back before the Board for approval.

CONSENT AGENDA:

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

- (A) Ratify the Select-to-Pay for 6/8/04.
- (B) Order No. 36-2004, "In the Matter of Approving the Formation of the new Columbia Health District".
- (C) Authorize Sue Poling to fill the vacant Chief Appraiser position.
- (D) Authorize small claims actions by the County Clerk against Melissa Yeager, Roseanne Rosecrans, Susan Jean McKean, Richard Lantzsch, Dolanda Hurlburt, Jennifer Hill, William E. Page and Christopher Cave for outstanding fees owed to Animal Control.
- (E) Approve the request by the City of St. Helens to use 7 parking spaces in the southwest corner of the east parking lot of the Courthouse for 3 weeks, June 14, 2004 through July 4, 2004, while constructing an amphitheater in Columbia View Park, subject to coordination with Bill Potter.

AGREEMENTS/CONTRACTS/AMENDMENTS:

- (F) EDA Financial Assistance Award #07-01-05490 for road improvements to Port Westward.
- (G) Amendment to CDBG Grant Application for the Columbia County Family Resource Center and authorize Commissioner Bernhard to sign.

The motion carried unanimously.

COMMISSIONER BERNHARD COMMENTS:

Commissioner Bernhard attended the Lewis & Clark meeting last night. There is a lot of work being done on this project.

She attended the Scappoose High School graduation. The gym was completed packed and there were over \$1 million in scholarships awarded.

She went to Gary Hudson's memorial service over the weekend. Gary was very well respected man and the service was well attended.

She also attended the Sacagawea fund raiser, that went very well.

She went to the Wauna Mill worker training program. There were a lot of people there from MTC and representatives from other businesses in the areas.

COMMISSIONER HYDE COMMENTS:

Last Friday, Commissioner Hyde met with the Governor's Natural Resource Advisory meeting regarding reauthorization of the federal forest money (O&C) PL 106-393.

He attended his daughters graduation and she received scholarships.

On Monday, he attended his first Oregon Economic Development Commission meeting in Bend. The commission authorized about \$1 million in expenditures by the department.

COMMISSIONER CORSIGLIA COMMENTS:

Commissioner Corsiglia enjoyed his vacation last week, fishing and etc.

On Sunday, he judged a car show in Rainier, which was a lot of fun.

On Monday, he attended the Scappoose City Council meeting to update them on the NASCAR project.

LIST OF RAC PROJECTS:

Commissioner Hyde has reviewed the recommendations from the Resource Advisory Committee and has no problems with the current list. With that, Commissioner Hyde moved and Commissioner Corsiglia seconded to approve RAC's recommendation list of projects for the year 2004-2005. The motion carried unanimously.

There was no Executive Session held.


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

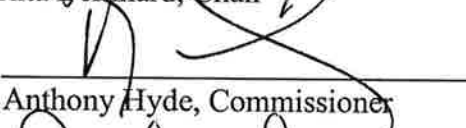
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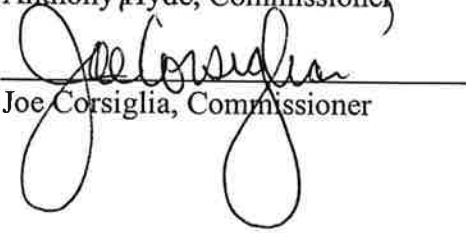
Dated at St. Helens, Oregon this 9th day of June, 2004.

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: 
Rita Bernhard, Chair

By: 
Anthony Hyde, Commissioner

By: 
Joe Corsiglia, Commissioner

Recording Secretary:

By: 
Jan Greenhalgh