

COLUMBIA COUNTY BOARD OF COMMISSIONERS
BOARD MEETING

MINUTES

April 11, 2007

The Columbia County Board of Commissioners met in scheduled session with Commissioner Rita Bernhard, Commissioner Anthony Hyde, and Commissioner Joe Corsiglia, together with Sarah Hanson, 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 Bernhard seconded to approve the minutes of the April 4, 2007 Board meeting and April 4, 2007 Staff meeting. The motion carried unanimously.

VISITOR COMMENTS:

Scott Groves, 57218 Old Mill Road, Scappoose: He attended the CPAC meeting last night and was surprised to see Robert Crain, Roger Kadell and John Knight there to discuss the dog ordinance. It was a very productive meeting, they gave a lot of good information and took questions. He just wanted to publicly thank them for that.

Also at the meeting last night, they talked about new ordinances. He sent an e-mail yesterday voicing his frustration with his neighbor. One of the options that was discussed regarding the new ordinances, was the county's authority to revoke kennel licenses if violations occur. He wanted to know from the Board if that is a viable option in his particular case. Commissioner Hyde explained that is an issue that can't be decided upon today due to the litigation in process.

Scott was informed that almost a year ago, upon the first citation being issued to his neighbor, one of her sponsors, PETCO, called Robert Crain to see if this person was properly licensed and legally able to operate in the county. Robert informed PETCO that she was not. At that point, PETCO asked for documentation to that effect. Robert was going to send that information off to PETCO, but was told not to by the county. Scott asked why that decision was made because of how long this issue has been going on. Commissioner Hyde stated that he would like to follow up on that comment and will meet with Scott at a later date to go over this matter.

DELIBERATIONS: MICHAEL CLARK CONDITIONAL USE PERMIT:

This is the time set for deliberations, "In the Matter of the Application of Michael Clark for a Conditional Use Permit for a Type II Home Occupation in a Single-Family Residential (R-10) Zone".

Sarah reviewed the status of this application to date. There was some exparte contact after the hearing was closed. That information was sent to Mr. Clark to respond to. No response has been received to date. Staff was directed to speak with Mr. Clark to see if the conditions of approval could be mitigated. They did and, based on that conversation, a revised staff report has

been prepared. Sarah then entered additional items not in the original record: Affidavit of Fax & Mailing to Michael Clark by Jan Greenhalgh, marked Exhibit "4"; revised Board Communication with revised conditions of approval, dated 4/11/07, marked Exhibit "5"; and a letter from Sharon Coates, marked Exhibit "6".

Todd Dugdale and Lonny Welter went over the revised staff report, detailing the changes to the conditions agreed upon.

After little discussion, Commissioner Corsiglia moved and Commissioner Hyde seconded to approve Order No. 78-2007, "In the Matter of the Application of Michael Clark for a Conditional Use Permit For a Type II Home Occupation in the Single Family Residential (R-10) Zone". The motion carried unanimously.

DELIBERATIONS: SCAPPOOSE SAND & GRAVEL LIMITED EXEMPT CERT:

This is the time set for deliberations, "In the Matter of the Application of Scappoose Sand and Gravel Co., for a Limited Exemption Mining Certificate to Mine 10 Acres".

Sarah gave a status update on this application and there is nothing new to add at this point. The Board is now ready for deliberations. Todd refreshed the Board on the primary criteria for the Limited Exempt Certificate for the 10 acre site at Scappoose Sand & Gravel mine that they will need to consider. The main criteria that apply are in Article 4, in particular, Section 4.1 and 4.3, which prescribe the minimum requirements of criteria for determination of Limited Exempt Status. As the Board will recall, those focused primarily on that a mine to be found Limited Exempt would have to be an area disturbed as of July 1, 1972 and/or vested under the vesting language in Article 4. Basically, what was disturbed and/or what was vested under the criteria.

Commissioner Corsiglia - during the hearing he heard concerns about a precedence being set if this is approved. He is not sure how that would play out. Todd stated that was not a staff finding, but could have been a comment made. In the case of any criteria, the determination of finding that the criteria is satisfied or not, establishes a record as to how the county approaches what they find as sufficient evidence to support a positive finding. In the case of vesting, in this case and others, does build a body of record as what the Board accepts as evidence. There must be substantial evidence in the record to show that *"a landowner or operator has made such an investment of time, money and/or labor as to establish a vested right to surface mine the property"*. Simply an intent to mine is not sufficient. The Board needs to make the determination whether or not vesting has been shown.

Sarah added that the Board needs to make a decision about what they consider to be sufficient evidence of vesting and be prepared to apply that across the board to all miners, if and when they come in with an application such as this.

Todd noted that this is not a question of intent. The vesting criteria is not addressed by expression of intent. There has to be physical proof, not just the basic intent.

Commissioner Bernhard stated her concern with setting precedence. She feels it is tricky for someone to show that they have put in that much of an effort to meet the criteria. Commissioner Hyde has looked over the information in this file trying to find a way to approve it, but couldn't. What he wanted to see was control of the 10 acres beyond the easement that was there, such as moving the easement elsewhere, prior to the 1993 hearing, which didn't happen, or an appeal of the 1993 deliberations by the Board, which didn't happen. He was very troubled by the testimony of a former Commissioner that he made a decision based on political concerns rather than what was in front of him, however, Commissioner Hyde does not see where that gives this Board standing to reverse it. His biggest concern is the precedence the Board sets for all other miners. Unfortunately, he cannot see anything in the record that goes towards vesting. There is no doubt in his mind that Mr. Parker intended to mine this area, but whether or not he made the financial investment, he just doesn't see it.

Commissioner Bernhard had asked about investment during the hearing because of the testimony that equipment was purchased for mining. The same amount of equipment is needed no matter what the size the area is. She doesn't see where vesting has been demonstrated.

Commissioner Corsiglia feels this is difficult. However, in mulling it over, he feels when a business person invests in a piece of property that is obviously an investment of time and money. He can understand that a person would go about reaping an investment would be in a phased application and part of that process would be to clear hurdles that stand in the way, such as easements, wetlands, survey issues, etc. Those issues are not always dealt with immediately. He has always had a concern about the ability of this process to put conditions on. That troubles him. He has no question that there was vesting here.

After discussion, Commissioner Hyde moved and Commissioner Bernhard seconded to deny the request, "In the Matter of the Application of Scappoose Sand & Gravel Co., for a Limited Exemption Mining Certificate to Mine 10 Acres". Commissioner Corsiglia opposed. The motion carried.

CONSENT AGENDA:

Commissioner Hyde moved and Commissioner Corsiglia seconded to approve the consent agenda as follows:

- (A) Ratify the Select-to-Pay for 4/10/07.
- (B) Ratify Partition Plat for Holaday Orchard Tracts and Subdivision Plat for Austin Meadows.
- (C) Order No. 48-2007, "In the Matter of Claim Nos. CL 07-39 and CL 07-40 for Compensation Under Measure 37 Submitted by Robert Kessi".
- (D) Order No. 49-2007, "In the Matter of Claim Nos. CL 07-47 and CL 07-48 for Compensation Under Measure 37 Submitted by Fred Luttrell, Trustee of the Fred Luttrell Trust".

- (E) Order No. 51-2007, "In the Matter of Claim No. CL 07-71 for Compensation Under Measure 37 Submitted by Reed Bruegman".
- (F) Order No. 53-2007, "In the Matter of Claim No. CL 07-38 Submitted by Robert Kessi for Compensation Under Measure 37".
- (G) Order No. 54-2007, "In the Matter of Claim No. CL 07-73 for Compensation Under Measure 37 Submitted by Dean and Patricia Werth".
- (H) Order No. 55-2007, "In the Matter of Claim No. 07-72 for Compensation Under Measure 37 Submitted by Lorette Wagner".
- (I) Order No. 56-2007, "In the Matter of Claim No. 07-70 for Compensation Under Measure 37 Submitted by Mark and Marlene Gift".
- (J) Order No. 57-2007, "In the Matter of Claim No. CL 07-93 for Compensation Under Measure 37 Submitted by McClellan K. Stewart".
- (K) Order No. 58-2007, "In the Matter of Claim No. CL 07-79 for Compensation Under Measure 37 Submitted by Norman and Mary Jenkerson".
- (L) Order No. 59-2007, "In the Matter of Claim No. CL 07-80 Submitted by Bendy Ho and Karen Gordon for Compensation Under Measure 37".
- (M) Order No. 60-2007, "In the Matter of Claim No. CL 07-118 for Compensation Under Measure 37 Submitted by Ronald W. Bone, Trustee of the Bone Living Trust".
- (N) Order No. 61-2007, "In the Matter of Claim No. CL 07-69 for Compensation Under Measure 37 Submitted by Craig and Rhonda Melton".
- (O) Order No. 62-2007, "In the Matter of Claim No. CL 07-82 for Compensation Under Measure 37 Submitted by Mary Sykes".
- (P) Order No. 63-2007, "In the Matter of Claim Nos. CL 07-34, CL 07-35 and CL 07-36 for Compensation Under Measure 37 Submitted by Alayne Bryan, Anita Scheckla and Analene Waterman".
- (Q) Authorize Todd Dugdale, LDS Director to make 2 Planner II promotional appointments, effective March 26, 2007.

AGREEMENTS/CONTRACTS/AMENDMENTS:

- (R) Intergovernmental Agreement with the Oregon Department of Transportation for supervised Community Corrections work crews.

- (S) Intergovernmental Agreement with Clatskanie RFPD for Emergency Management Services and authorize the Chair to sign.
- (T) Elderly and Disabled and Public Transportation Contract with Metro West Ambulance Services.

The motion carried unanimously.

COMMISSIONER BERNHARD COMMENTS:

Commissioner Bernhard was in Salem on Monday for an AOC legislative meeting and reception. It was a good time to get an update on the different pieces of legislative.

On Saturday, she went to the Mega Easter Egg Hunt at the Fairgrounds. There were around 2,300 people that attended. She and Brad Witt got to judge a coloring contest.

She attended a gathering at the Scappoose Library last weekend for the Heerwagens, long time owners of the Spotlight, who are retiring.

She also attended the Santosh Landfill meeting that was held the other night at the Scappoose High School. DEQ is still monitoring wells and have done a good job trying to address the issues out there.

COMMISSIONER HYDE COMMENTS:

Commissioner Hyde also attended the Santosh Landfill meeting last Wednesday. It's good that there is no immediate danger to the public. He learned a lot out there about mitigating a landfill.

On Thursday, traveled around the county to finalize the Emergency Management agreements.

On Friday, he attended a Council of Forest Trust Lands Committee meeting

On Saturday, he attended an egg hunt in Vernonia.

Monday, he was in Salem at an AOC Legislative Committee meeting - discussed PL 106-393 long term issues.

COMMISSIONER CORSIGLIA COMMENTS:

Commissioner Corsiglia was in New Mexico and Colorado last week.

He wasn't here last week, but wanted to comment on the meeting the Board held with the loggers. He felt it was an excellent tool to communicate with that group and would suggest doing that with other groups to help mitigate issues.

On Tuesday, he was elected President of Kiwanis Day Breakers, which he has been a member of for over 20 years.

No Executive Session was held.

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

Dated at St. Helens, Oregon this 11th day of April, 2007.

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 A. Bernhard*

Rita Bernhard, Chair

By: *Anthony Hyde*

Anthony Hyde, Commissioner

By: *Joe Corsiglia*

Joe Corsiglia, Commissioner

Recording Secretary:

By: *Jan Greenhalgh*

Jan Greenhalgh