

COLUMBIA COUNTY BOARD OF COMMISSIONERS  
BOARD MEETING

MINUTES

May 30, 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 Corsiglia seconded to approve the minutes of the May 22, 2007 Work Session and May 23, 2007 Board meeting. The motion carried unanimously.

**HEARING: SCAPPOOSE SAND & GRAVEL LIMITED EXEMPTION CERTIFICATE:**

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

Sarah - The Board heard this matter in January 2007, and based on their final decision in April 2007, an appeal was filed by Scappoose Sand & Gravel. Sarah noted that all contents of the prior hearing file has been included in this record. The Board declared no exparte contact or conflicts of interest. Sarah then read the pre-hearing statement into the record as required by ORS 197.763. She entered County Counsel's hearing file into the record, marked **Exhibit "1"** and provided a list of all contents in the record.

**Todd Dugdale, LDS Director** - Because the appeal does not contain any additional facts, evidence or arguments addressing the relevant criteria for the decision, staff has not prepared a new staff report. Todd stated that the decision by the Board to deny this application was principally based on a finding in the Surface Mining Ordinance, specifically Section 4.1 which refers to exempt lands, and requires that we find that the subject property has to have been mined as of July 1972, or have a vested right to mine that area. That is defined as "substantial evidence in the record that there was sufficient investment of time, money and/or labor in that portion of the property. Based on the record, there was not substantial evidence presented to support a vested right to mine the remaining 10 acres. Therefore, staff continues to find no basis upon which to approve the request.

The hearing was opened for public testimony.

**Larry Derr, 425 NW 10<sup>th</sup> Avenue, Suite 306, Portland, OR 97209:** He is the attorney for the appellant. Larry presented a written statement from Dale Heimuller into the record, marked **Exhibit "2"**. Larry briefly recapped the purpose of this hearing. Back in 1972, the county granted Scappoose Sand & Gravel (SS&G) an operating permit for the entire 113 acres. In 1972, there was an existing pit and all of the 113 acres had been mined with the exception of the 10

acres, however, the overburden had been stripped and sold, which constitutes mining. Between 1972 and 1993, most of the 10 acres was mined, which SS&G was allowed to do under their operating permit. All that is left is about a 60 foot strip at the north end of the site, which is subject to an access easement to one house and a narrow strip along Westlane Road. Although this is being referred to as 10 acres, it is actually no more than about 2-3 acres. Scott simply wants to complete the mining of the site, so that reclamation can be completed. Larry went through the findings in the March 7, 2007 staff report.

Finding #2 relates to the criteria for establishing an exemption certificate. That finding leaves the impression that intent of the operator is not relevant. Intent is clearly an important part of the equation. With regards to the language "sufficient investment of time, money and/or labor" - purchasing equipment and removing overburden and selling is all part of surface mining. The purchase of the house was not for farmland, it was for the purpose of mining the rock underneath. There were no improvements made to the farmhouse because the property was purchased to mine.

Finding #3 states in part that *"there is no indication that the equipment expenditure isn't equally consistent with the mining uses of the adjacent mine"*. Larry has already covered that, stating that the equipment is designed for and purchased for purpose of mining the entire site. There is never going to be any equipment that is specific to a certain area of a mine. So that finding is really irrelevant.

Finding #4 referred to Dale Heimuller's statement that was introduced into the record prior to the last hearing stating "he did not indicate the nature and amount of investment in the equipment". After this statement was written, Larry submitted a statement from Dale Heimuller where he specifically said \$200,000 worth of equipment was purchased and adequate to mine the entire property. In reference to the ratio, it wasn't 15 or 20 percent, it was 100%. Also, within a couple of years after 1972, the farmhouse was demolished for mining purposes.

Finding #6 - *"With the easement on the property, the area under the easement could not have been mined. The 1970 lease reserves all easements, including the Masogs easement and the two utility easements on this portion of the proposed mine property."* Staff therefore finds that the lease demonstrates the intent to use this property for non-mining purposes. Larry finds it interesting that staff finds that intent is not an issue, but here and a couple other places in the findings, they clearly acknowledge that intent is an issue. Further, the 2 utility easements described here were not even utility easements, they were short term leases to Crown Zellerbach and the BPA. Also, those leases covered areas outside of the 10 acres in question and when those leases terminated, that area was mined.

Finding #7 states that because the farmhouse was there, it established an intent to use the property for an unknown period for residential purposes. The best evidence of intent is the direct testimony from the people that were there in 1972, which is Dale Heimuller who stated that the farmhouse was removed for mining purposes.

Finding #8 has a very troubling statement - *"Staff finds that the fact that the applicant mined most of the (10 acres) without a permit by 1990 is not evidence that he invested sufficient time,*

*money and/or labor in 1972 to establish a vested right to mine the property at this point".* The implication that this property was mined without a permit is simply not true. The 1972 permit was an operating permit for the entire 113 acres. It was only in 1993 that the 10 acres was carved out by the Board of Commissioners for unrelated reasons.

Larry introduced a photo marked Exhibit "3" into the record and indicated where the Masogs house is, the 10 acres, etc.

Finding #12 references what the Board did in 1993 and it states that "*Staff finds that there is no evidence that the Board concurred that the 10 acres was vested in 1993.*" Larry understands that it does not tie the hands of this Board, but it certainly is relevant as to what is the history of this site. After the staff report was written, testimony was given by two of the three Commissioners from 1993 stated that they felt this property was vested.

Larry then moved to the supplemental findings. His concern is with #2 where it states that "*The Board finds that the applicant failed to appeal that 1993 decision. If the applicant felt that the Board, in 1993, failed to apply the criteria, the applicant should have appealed the decision*". The point here is the suggestion that the applicant can't be here today to ask approval for a Limited Exempt Certificate status for the 10 acres because he didn't appeal the 1993 decision. That is key and also not the case. First, when the Board (in 1993) denied the permit, it stated that SS&G could reapply again for the same area. At that point, Scott could either appeal that decision or come back and reapply when he was ready to mine that area. He chose to wait and that is why he is here. Secondly, there is nothing in the 1990 ordinance that says when or how often you can apply for a Limited Exempt Certificate.

After responding to the findings, Larry turned it over to Scott Parker for additional comments.

**Scott Parker, SS&G, 33485 E. Crown Zellerbach Road, Scappoose:** He believes he has had the right to surface mine the entire 113 acres. His grandfather started this pit in 1942 and Scott would like to allow his grandchildren to finish it for him. He doesn't feel that the 2-3 acres will not make or break the situation, but it would allow him to finish the northeast corner of the property in a proper way. Surface mines are not pretty sites, but he is trying to improve the look of his. One thing that hasn't come up is that he recently partitioned two parcels out of this piece of property. During that time, there were conversations with county staff and concerns were mentioned about the high wall on West Lane Road. Scott is taking steps to put in concrete blocks, construction fencing and guardrails on West Lane Road along the pit. If this permit is granted, then the guardrail will be extended to the northeast corner of his property line. So the safety concerns along West Lane Road are going to be addressed.

Commissioner Corsiglia asked Mr. Derr about his comment that this permit needed to be approved so the reclamation can be completed. Scott explained that the northeast corner of the property has a lot of blackberries, brush and a burm area. If he is allowed to mine that area, it will eventually be fenced and landscaped.

**Dale Heimuller, 335 South 2<sup>nd</sup> St., St. Helens:** Dale wanted to speak in favor of this application. He knows that in 1972 Scappoose Sand & Gravel was issued a permit to mine the entire 113 acres and they were grandfathered for it. However, evidence of that was lost by the county. Not much more needs to be said. He would recommend that the Board strongly consider in favor of this application.

**Agnes Peterson, Tide Creek Road, Deer Island:** She has been practicing law for 48 years in Columbia County. Although her husband is a logger and mine owner, she has no financial benefit with this application and in fact, her husband is in competition with the same product. She finds it funny that this Board has already heard the testimony in the first hearing and is now hearing it again under appeal. It is just the way the law is written and, although somewhat funny, it allows the Board to rethink their prior decision. As her father once said to her "*a wise man changes his mind and a fool never does*". She commends some in this room as following that and being wise. She stated that she has been involved with surface mining since before 1972 because of her husband and has sat as a member on the Surface Mining Advisory Committee (SMAC) and was a member when this application was heard. After the hearing, a judicial decision was made by SMAC to recommend approval of this application. She noted that the DOGAMI Surface Mining Administrator also recommended approval. The Board is in the perfect position to rethink their prior decision and grant this application.

With no further testimony, the hearing was closed for deliberation. Commissioner Bernhard understands that the Board needs to make a decision based on what was happening back in 1972 and that is what she looked at to base her decision last time. From testimony, she can see that there were problems with mining that area in 1972 because of the house and the easement. That is the only issue that she is struggling with. It looks to her that the intent was there, but still struggling with the investment part of it. Commissioner Hyde made a comparison in his mind to determine intent, with logging. If he had 113 acres, what would he do to log the entire site. He would hire a crew, purchase equipment, etc. He doesn't see any difference in that and what happened here. The State can use ratios, but Commissioner Hyde has never been pleased with that idea because people approach jobs differently. He believes that the fact that Scott purchased 113 acres, he intended to mine 113 acres and that establishes intent. The difference from this hearing and the last hearing, is that the focus was not on 1972 but later on. After reviewing everything and hearing the testimony today, he feels differently today than he did at the last hearing. Regarding the 60' right-of-way, he doesn't see that issue strong enough to prevent him from changing his decision. He is prepared to grant the permit.

Commissioner Corsiglia questioned staff this morning on the reason for a denovo hearing on this and that it is an odd situation. Agnes talked about it being a great opportunity to reconsider and he agrees with that. He felt at the last hearing that the intent to mine the entire 113 acres was there. He asked the question last time about the discussion on precedence because of what the Board heard from two prior Commissioners on how they based their decision years ago. He felt that the last hearing was more focused on setting a precedence more than looking at the evidence. What's interesting about findings is that, had the decision been 2-1 the other way, the findings would have been written very differently. When a decision is made, it the unenviable task of staff to create supportive findings.

Commissioner Bernhard feels this has been a difficult situation. The fact that a previous Board of Commissioner even stated that he made a decision for political reasons makes it hard, are we making another political decision?. The Board has heard from staff that the Board needs to base their decision on what was happening in 1972. It made it difficult because of documentation that was lost by the county. We are only talking about 2-3 acres here. Her concern is the look of things. She drove down there the other day and it is really unsightly. She is hoping that whatever the Board decides today, will help Scott make the area more presentable. That and the safety issues need to be addressed. Even though she has had some concerns, she feels there is enough gray area to make her question her prior decision. Based on what she has heard here today, she is willing to change her mind.

With that, Commissioner Hyde moved and Commissioner Corsiglia seconded to approve the application of Scappoose Sand & Gravel Company for a Limited Exemption Mining Certificate to Mine 10 Acres. The motion carried unanimously.

**VISITOR COMMENTS:**

None.

**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 5/29/07.
- (B) Authorize the County Surveyor to hire a temporary Survey Technician.
- (C) Authorize the Juvenile Director to fill one vacant PO position in the Juvenile Department.

**AGREEMENTS/CONTRACTS/AMENDMENTS:**

- (D) Intergovernmental Agreement with the Scappoose Rural Fire Protection District for Emergency Management Services and authorize the Chair to sign.
- (E) Intergovernmental Agreement with the Columbia 911 Communication District for Emergency Management Services and authorize the Chair to sign.
- (F) Oregon Community Development Block Grant HC#503 Project Completion Report and Certification - NW Oregon Regional Housing Center and authorize the Chair to sign.
- (G) Approve Personal Services Contract with CCMH for in-patient drug treatment at Pathways subject to County Counsel approval.

The motion carried unanimously.

**COMMISSIONER BERNHARD COMMENTS:**

Commissioner Bernhard had a fairly quiet week because of a leg surgery, however, on Monday she was able to attend the Scappoose Veterans' VFW memorial service to honor the vets and those currently serving in the armed forces. It was one of the best turnouts she has seen.

On Friday she was in Clatskanie for the Raymond Carver day celebration and they had a kickoff at Humps Restaurant. He was a local literary person and they read some of his works.

Last night she attended the Democratic Central Committee meeting. There was a lot of discussion on LNG projects and many were present that have been opposed to an LNG plant from day one.

**COMMISSIONER HYDE COMMENTS:**

Commissioner Hyde stated that his focus has been on the emergency supplemental bill which was sent to the President on Thursday night and he signed it on Friday. Work is already starting on a bipartisan bill for the additional 4 year funding.

**COMMISSIONER CORSIGLIA COMMENTS:**

Commissioner Corsiglia enjoyed the Democratic Central Committee meeting last night.

Over the weekend, he and Debi spent time in Florence to enjoy their Memorial Day celebrations.

Regarding the timber bill - it's nice to see it funded for a year, however he is very troubled with what the State has made the local governments go through for this and the cost to deal with it in time and money.

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 30<sup>th</sup> day of May, 2007.

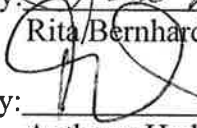
NOTE: A tape of this meeting is available for purchase by the public or interested parties.

BOARD OF COUNTY COMMISSIONERS  
FOR COLUMBIA COUNTY, OREGON

By:

  
Rita Bernhard, Chair

By:

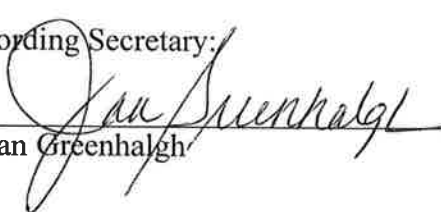
  
Anthony Hyde, Commissioner

By:

  
Joe Corsiglia, Commissioner

Recording Secretary:

By:

  
Jan Greenhalgh