

COLUMBIA COUNTY BOARD OF COMMISSIONERS  
BOARD MEETING

MINUTES

August 19, 2009

The Columbia County Board of Commissioners met in scheduled session with Commissioner Rita Bernhard and Commissioner Earl Fisher, together with Spencer Parsons, Assistant County Counsel and Cynthia Zemaitis, acting Board Secretary. Commissioner Hyde was not present.

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

MINUTES:

Commissioner Fisher moved and Commissioner Bernhard seconded to approve the August 12, 2009 Board meeting minutes. The motion carried unanimously.

VISITOR COMMENTS:

None.

DELIBERATIONS: TIDE CREEK ROCK SDR & SM OPERATING PERMIT:

This is the time set for deliberations, "In the Matter of an Application by John A. Petersen for a Site Design Review and Operating Permit of Tide Creek Rock Products to Mine Aggregate on a Site Zoned PF-76, FA-19 and PA-38".

Spencer reviewed the prior hearing and noted that once a decision is made, the Board will need to make two separate motions, one for the Site Design Review and one for the Surface Mining Operating Permit. Prior to deliberations, Spencer recommended that the Board re-open the hearing to address a couple of administrative issues. If re-opened, the applicant will have a chance to speak. Spencer understands there has been some ex parte contact that needs to be declared, the nature and extent of that contact. Commissioner Fisher indicated the he had contact with Mrs. Peterson the week of August 7 - 13 by telephone. She asked him to look at the condition recommended in the staff report pertaining to bonding, and thought the ordinance would allow some leeway in reducing the bond amount. Commissioner Fisher responded that he would look at all options. He does not believe this conversation had any impact on his ability to judge fairly.

Spencer then entered the Board Communication from LDS into the record, marked Exhibit 2.

Todd Dugdale, LDS Director, summarized the Board communication. The applicant addressed 3 conditions in particular. Condition 10 under the site design review recommended the requirement to obtain a revised deed of access from ODOT. The concern raised by the applicant was the amount of time it might take to accomplish this. Therefore, staff has now recommended a revised condition that the applicant should apply to ODOT within 30 days of approval of site design review and obtain the needed access from ODOT within 6 months of approval.

The other 2 conditions the applicant is concerned about concern the operating permit. Condition No. 1, the reclamation bonding condition, and the finding by the Surface Mining Administrator that DOGAMI's calculations required a bond of \$50,500. The applicant expressed concerns about the amount of the bond, indicating that he felt there was no need for a performance guarantee as they would be responsible in completing the reclamation. The Surface Mining Administrator was contacted and stated that this is a standard amount and is necessary should there be a default and reclamation not be performed. He explained that this was the amount necessary for DOGAMI to take on this obligation and perform the required reclamation. The ordinance requires a bond, cashier's check, or certified check. Bob Brinkman pointed out that under DOGAMI they would, and have, accepted irrevocable letters of credit. The revised condition now elaborates on the form of the performance guarantee.

Condition 5 required that the applicant place a 3' layer of soil on the land before revegetating on reclamation. The applicant felt that 3' of soil across the site seemed excessive. In response, the Surface Mining Administrator suggested a revised condition calling for 1' of soil in the areas to be revegetated with native grasses, and up to 3' in areas where revegetation was to be native timber.

***Agnes Peterson, 33625 Tide Creek Road, Deer Island:*** Mrs. Peterson stated that they had made a mistake in the acreage that surrounded the pit. For clarification, it should be 300 acres, 120 acres around the house, and 80 acres around the pit, for a total of 500 acres. She indicated that the bond was for economic impact and DOGAMI wouldn't get any money from it. This bonding requirement will have a great impact on them, and asks that the Board consider a property bond that she and John can sign. On the subject of the 6 months to obtain a access deed from ODOT, the staff recommended that there be a mandatory requirement that the State act within a certain time frame. She believed this to be unreasonable,

since it often takes longer to get a response from the State.

David Williamson, representing the applicant, echoes what Mrs. Petersen has to say about the ODOT permit. He has already contacted ODOT and 2 weeks later he hasn't heard back from them. He asks that there not be a time frame put on this requirement. Regarding the amount of the bond, he has looked at the ordinance and state statute, and there appears to be some flexibility. He is not sure a property bond is within the confines of the ordinance or statutes but, if it is, he would appreciate the consideration. With regard to the soil, Mr. Williamson stated that, just north of Tide Creek Rock, there is a rock face with a fir tree growing right on it, so it isn't necessary to have 3' of soil for trees to grow.

He would propose a condition that there be sufficient soil there to grow native grasses and seeds.

John Petersen, applicant, stated that he and his wife own 500 acres. The road under the highway has been there since before the new highway. They're not coming out under the highway, but directly on to the highway after crossing the old highway 30. Miners before him have long used that access. Regarding condition 5, he feels that the requirement for 3' of dirt onto the pit was asinine. Trees have been growing in solid rock since 1952. There are pits that have never been reclaimed, but you would not know it was a pit because it has all grown up with brush and trees.

They have done everything the State and everybody else wanted down there, including building a shop.

With no further comments, the hearing was closed for deliberations.

Commissioner Bernhard had a couple questions for Spencer. She agrees it will be difficult to force the applicant to do something within 6 months with ODOT and suggested adding an extension. Spencer recommended language such as "within 6 months with another extension granted by Todd for 6 months". Todd agreed with this recommendation.

Regarding the bonding issue, there has been some discussion with DOGAMI. From past experience, they have been asking for this from all the mines in the County and urging these mines to reclaim the property for other uses. She believes the bonding is necessary. As far as the way its structured, she seeks guidance. Spencer stated that the Surface Mining ordinance says they need a reclamation

bond, cashier's check or cash. The County should not go outside the bounds of the ordinance. But, at the end of the month the program goes to DOGAMI, so Todd has re-phrased that condition to be more broad. Spencer recommends keeping the revised condition as Todd wrote in his report. Todd stated that DOGAMI will be sending notice out to all the at the end of the month, and that the bonds would have to be acceptable to DOGAMI.

Commissioner Bernhard stated that she is not an expert in vegetation, so will depend on those who are regarding the soil requirements. Todd said flexibility was provided in the revised condition based on the recommendation of the Surface Mining Committee, who noted that the litmus test is the survival rate, so if vegetation is not surviving they will not sign off on the Bond.

Commissioner Fisher believes issues have been addressed and that the applicant now has some flexibility. He agrees that 3' of dirt to grow something is not needed. As far as the road issue, if the State doesn't respond quick enough, an extension should be granted. In terms of the bond, he tried to get a definition property bond and was unsuccessful, so this would be up to DOGAMI. There is a only a very small likelihood that the bond would ever be needed, but he believes they need to treat all miners consistently.

Commissioner Bernhard is comfortable with going forward with the changes as stated, with the addition of the extension on the road permit.

After deliberations, Commissioner Bernhard moved and Commissioner Fisher seconded to tentatively approve the Site Design Review application DR 02-01 with conditions of approval contained in the August 17, 2009 staff report including a six month extension on the road permit from ODOT and directed staff to prepare the final order. The motion carried unanimously.

Further, Commissioner Bernhard moved and Commissioner Fisher seconded to tentatively approve the Surface Mining Operating Permit #05-0070, with conditions listed in the staff report along with modified conditions in the August 17, 2009 staff report and direct staff to prepare the final order. The motion carried unanimously.

**CONSENT AGENDA:**

Commissioner Fisher moved and Commissioner Bernhard seconded to approve the consent agenda without reading as follows:

- (A) Ratify the Select-to-Pay for 8/18/09.
- (B) Order No. 52-2009, "In the Matter of Designating a Newspaper of General Circulation for the Publication of the Columbia County 2009 Foreclosure List".
- (C) Resolution No. 53-2009, "In the Matter of Declaring a Fiscal Emergency and Modifying Recording Dates under ORS 205.242 for the Columbia County Clerk".
- (D) Order No. 54-2009 (Authorizing Resolution), "In the Matter of Appointing a Financial Assistance Administrator for the 2009-2011 Intergovernmental Agreement with DHS".
- (E) Order No. 55-2009, "In the Matter of Exempting a Personal Services Contract for the Provision of Grant Management Services for CDBG Grant #D08029 from the Screening and Selection Procedures of the Personal Services Contracting Rule".

**AGREEMENTS/CONTRACTS/AMENDMENTS:**

- (F) Personal Services Contract with Anderson Geological for Phase Two Environmental Site Assessment services.
- (G) Hold Harmless Agreement with Marlo Morley-Coffman for a wedding to be held at Camp Wilkerson, September 13, 2009.
- (H) Hold Harmless Agreement with Jennifer, Teresa and Dan Bernardi for a wedding at Camp Wilkerson on September 6, 2009.
- (I) Approve Memorandum of Agreement with Columbia County Deputy Sheriffs' Association to postpone COLA.
- (J) Ratify the Hold Harmless Agreement with St. Wenceslaus Catholic Church for use of Big Eddy Park August 14-16, 2009.

The motion carried unanimously.

**COMMISSIONER BERNHARD COMMENTS:**

*BOC Minutes*

*8/19/09*

*Page 6*

Commissioner Bernhard was very happy to report that NOHA has received funding to help those who have been taken off the housing program. This should take care of the rent for the remainder of the year, with the hope that these people will be put back on the program. This funding was realized through the help of HUD, The Housing Authority of Portland, our State legislators and many individuals in the community.

She attended the Parks meeting yesterday. The parks are very busy this summer with the warm weather we've experienced and because a lot of people are staying close to home due to economic reasons.

On Friday, she attended Congressman Wu's town hall meeting at the Tech Center. It was a full house, far more than most town halls attract, with perhaps a couple hundred more people outside. Everyone conducted themselves in a positive manner.

**COMMISSIONER HYDE COMMENTS:**

Not present.

**COMMISSIONER FISHER COMMENTS:**

Commissioner Fisher meet with the IT Committee who is working on the re-design of the County's website.

He commented on how many community gardens he is seeing around the different communities. These will be a big benefit to the Food Bank. He wanted to thank Commissioner Bernhard for all she did to get this under way.

He attended a conference last week and learned various rules, regulations and complexity on water which is becoming a big issue and more rules and regulations are forthcoming.

He was unable to make it back in time for Congressman Wu's meeting, but finds it very interesting with what is going on in health care. He finds it surprising how unfounded rumors grow and spread. He would urge everyone to check the validity and accuracy of any information before passing it on.

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

Dated at St. Helens, Oregon this 19<sup>th</sup> day of August, 2009.

BOC Minutes

8/19/09

Page 7

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: \_\_\_\_\_ Not Present

Anthony Hyde, Commissioner

\_\_\_\_\_

Recording Secretary:

By: \_\_\_\_\_

By: \_\_\_\_\_  
Cynthia Zemaitis, acting Board Secretary

Earl Fisher, Commissioner