

COLUMBIA COUNTY BOARD OF COMMISSIONERS
BOARD MEETING

MINUTES

January 19, 2005

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

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

PRESENTATION TO FINANCE DIRECTOR & STAFF:

The Board presented Ruth Baker and her staff with a plaque recognizing their achievement for excellence in financial reporting from the Government Finance Officers Association. Commissioner Hyde noted that this is the second year the Finance department has received this award. The Board thanked Ruth and her staff for their hard work.

MINUTES:

Commissioner Bernhard moved and Commissioner Corsiglia seconded to approve the minutes of the January 11, 2005 Work Session and January 12, 2005 Board meeting. The motion carried unanimously.

VISITOR COMMENTS:

Brad Witt, Clatskanie, came before the Board seeking candidacy for the District 31 position in the case that Betsy Johnson is appointed to the State Senate seat. He presented a letter of introduction and went over his accomplishments and goals. If appointed, he will continue to work closely with Betsy Johnson and the districts constituents, as well as community, county, state and federal leadership to provide a powerful and effective voice in our state legislature. He has the knowledge and experience that is necessary to hit the ground running. His goal is to be this districts representative and looks forward to working with this commission.

HEARING: BATES & ROTH PAPA/ZONE CHANGE/VARIANCE TO SMO & CCZO:

As scheduled, the public hearing, "In the Matter of the Application of Bates & Roth for a Comprehensive Plan Amendment (PAPA) and Zone Change from Primary Agriculture (PA-38) to Surface Mining (SM) and for a Variance to the 200 Foot Operating Setbacks of the Surface Mining Ordinance and Zoning Ordinance", was held

Sarah Tyson reviewed the purpose of this hearing. The Board will be hearing testimony on three items, the PAPA application, a variance to the 200 foot setback requirement in the SMO and the 200 foot setback requirement in the CCZO for Bates & Roth. Under Section 1605 of the CCZO, proposed zone changes are heard on the record of the Planning Commission decision, unless the Board votes to allow the admission of new evidence. She would recommend that the Board

make a motion to hear the PAPA application de novo so that when testimony is taken on all three applications, there would be no concerns with new evidence being presented. With that, Commissioner Bernhard moved and Commissioner Corsiglia seconded to hold this hearing de novo and to hear all three requests, the PAPA and the two variance requests and take testimony on all three. The motion carried unanimously.

Sarah noted that the Board will need to make three separate motions. Regarding exparte contact, Commissioner Bernhard stated that she had a visit from the Roth's last summer to discuss various issues including the applicability of Goal 5 on this application. Commissioner Corsiglia stated that the Roth's have been at a number of meetings but did not talk about this application. Commissioner Hyde also spoke with the Roth's, but would not discuss anything to do with this application. Sarah then reviewed the applicable criteria for all three applications and read the pre-hearing statement into the record as required by ORS 197.763. Sarah entered County Counsel's hearing packet into the record, labeled *Exhibit "1"*, and noted all contents.

Staff Report:

Todd Dugdale, LDS Director and Glen Higgins, Chief Planner, came before the Board to give the staff report. Todd clarified a change in the map in the PAPA staff report, which had omitted a small triangle on the east side of Honeyman Road, which is included in this application. Todd turned it over to Glen to present the staff report on the PAPA.

Glen began with the staff report for the PAPA, dated January 12, 2005. Bates & Roth has applied for a Comprehensive Plan Amendment and Zone Change for an aggregate mining operation. The have also applied for variances from the Columbia County Zoning Ordinance and Surface Mining Ordinance setback provisions. Glen reviewed the applicable criteria for the PAPA. He noted that the 180 day rule has been extended to February 10, 2005 by the applicants attorney. Because the staff report is quite lengthy, Glen briefly highlighted the criteria and staff findings. The finding is that this is a significant aggregate site. Regarding the transportation impact, Dave Hill has reviewed the transportation plan and his response, which is included in the staff report, is that the developer should be required to mitigate the additional traffic impacts on Honeyman Road. Glen noted a couple of typographical errors in the staff report. The Planning Commission held a hearing on the PAPA application on November 1, 2004 and finds the PAPA application is complete and the Goal 5 process has been sufficiently satisfied and therefore recommends approval of the PAPA with the 35 conditions as listed in the staff report.

Glen then went over the staff report on the request for a variance to the 200 setback in the Columbia County Zoning Ordinance. The applicant is requesting a variance from the 200 foot setback to a 50 foot setback. Because this is over 75%, this is a major variance request and must be reviewed at a public hearing. Glen reviewed the criteria for a major variance. He gave an example of a potential traffic hazard at the 90 degree turn on Honeyman Road with only a 50 foot setback. Glen explained the reason given by the applicant for the variance. The 200 foot requirement would effect the mining operation because it would greatly reduce the 600 foot width at the pinch point. He pointed out that there is only about 80 feet of the entire boundary

that requires the 200 foot setback. Glen stated that the Zoning Ordinance requires only a 50 foot setback for the majority of the subject property because it is not within 200 feet of a residence. However, based on the findings, the planning staff recommends denial of the request for a variance to allow 50 foot setbacks instead of the required 200 foot setbacks along the southwestern boundary of the subject property where it borders the RR-5 zoning district.

Todd Dugdale then gave the staff report on the request for a variance to the 200 foot setback requirement on the SMO. The criteria is different in the SMO than the variance requirement in the CCZO. Todd went over the criteria that must be met. Based on the findings, DOGAMI has recommended approval of the request for a variance to the 200 foot setback requirement, pending approval of the PAPA application with the following condition: *The variance shall become void if a surface mining permit is not applied for within one year of the approval of the PAPA application.* However, staff does not recommend the one year time frame because the one year condition is only in the CCZO, not the SMO. The Surface Mining Advisory Committee agrees.

Dave Hill, Public Works Director, addressed the road issue, specifically the 90 degree turn onto Honeyman Road. Even putting up barriers could create a hazard and he would therefore recommend the Board go with the 200 foot setback in that area. In response to the consultants report that there will not be any traffic impacts, Dave feels there will be significant traffic impacts to the road. Major improvements are already needed on West Lane Road. He would require the developer to make improvements to West Lane Road. He has estimated the costs for just West Lane Road, not including any improvements to Honeyman Road, a minimal overlay on that section of West Lane Road would be \$120,000. It would be his suggestion that we ask the developer to pay \$60,000 towards the \$120,000 cost of these road improvements. This should be in addition to any other improvements made by the developer. The developer should pay for the impacts to both West Lane and Honeyman Roads.

This concludes the staff report. At this time, the hearing was opened for public testimony.

PROPONENTS:

Vera Roth 35361 N. Honeyman Road, Scappoose: Four generations of her family has lived in the community for over 40 years. Since 1968, they have known that their property had a significant aggregate resource. For the past 30 years, first her parents, then herself, then her sons have pursued the development of that resource. She has resided next door to the existing aggregate processing plant since its inception. She brings to the Board a plan of operation that is compatible with the neighborhood. For the past 20 years, she has routinely attended many aggregate related hearings and meetings. Hopefully she has gained some insight into the process and it has given her some useful background to develop a workable plan. They have endeavored to assemble a group of advisors and consultants who could put together an application to address most, if not all, county concerns. There are consultants and her attorney present today to address the Board.

Gary Roth, 34162 Church Road, Warren: Gary first wanted to compliment the planning staff for all their hard work and assistance in processing this application. For the record, his family

did meet with the Board individually last summer and wanted to state that it was prior to the submission of any of these applications and they were not discussed. Bates & Roth are generally in agreement with the conditions set forth in the staff report with the exception of a few that will be discussed here today. For many years, people have known that aggregate exists at this site and now the time has come to develop the site in order to make other sites, closer to the airport and Scappoose, available for other employment uses. The community has clearly indicated its preference for alternatives to deal with the impacts of mining near the airport rather than mitigating them endlessly. Part of the solution is to identify locations like this one that are further away from sensitive uses. He feels this application is both appropriate and consistent with good public policy. What he is describing here is embraced in a Memorandum of Understanding between several other parties, including the Port of St. Helens and the City of Scappoose, identifying the Bates & Roth site as an alternative source of aggregate and is predicated on substantially all of the site being permitted. The conditions and limitations placed on this application deal with the usual impacts, such as noise, dust, traffic and hydrology and they are pleased that the staff report is favorable. There are a number of things that they and staff have done to make this application one of little to no impacts. This is very important to them because they have been members of this community for a long time. He grew up here, is raising his kids here and is sensitive to their neighbors uses and it has been important to them from the start of this project to ensure that, whatever they do, they do not adversely impact those uses. They had their economic consultant examine the economic aspects of this project. The property will generate revenue to the county, which far exceed the county's cost to provide services to the site. This project will generate around \$7.8 million in payments to local government service providers, while the cost of government to provide services is just over \$500,000. Therefore, the proposed zone change from farming to aggregate mining is expected to have significantly positive impacts on the community as well as positive fiscal impacts to the county. If the property was to remain as farm land, it would take approximately 733 years to generate the same tax revenues that will be generated in approximately 28 years through mining. Again, they have worked very hard to address all the impacts. They have met with the Scappoose-Spitzenberg CPAC twice and they provided a recommendation to the PAPA that is conditional. They had three issues: 1) the inclusion of up welling ground water, which they agree with and is addressed in condition #13; 2) the creation of noise outside of operating hours, which they agree with and is addressed in conditions #11 and #31; 3) the implementation of a surface mining impact overlay zone. At this time, they take no position on this matter and leave it up to the Board as the decision maker, however, it is a matter of state law. At this time, Gary submitted a letter from the Port of St. Helens in favor of this application - *Exhibit "2"*.

Dorian Kuper, Kuper Consulting, 22680 SW 76th Avenue, Tualatin, Oregon: She is an engineering geologist and is registered in Oregon, Washington and California. For the past 15 years she has been working with a lot of landowners and various mining operators to evaluate their properties to determine if they have an aggregate resource and, if they do, help design their mining and reclamation plans. This application has met the significance test of Goal 5 as mentioned by staff. Using the aerial map, Dorian went over the mining plan which will be done in 8 phases. She explained where the burms will be located. At the Honeyman Road intersection, there will be a 7 foot burm to address any traffic hazards. There are no plans for de-watering or blasting at this site. Eventually this site will be turned into a wildlife type feature.

Gary Roth clarified that there is no intersection at Honeyman Road, rather a gravel driveway that accesses 2 or 3 homes. They are the only ones that use that driveway. It is not an intersection, just a 90 degree turn in the road with a driveway. He continued on with his testimony. When he previously spoke about the economic aspects of this project he did not mention that of the \$7.8 million in payments to local governments service providers, \$6.5 million is generated from depletion fees. An issue that has garnered a lot of attention is the issue of hydrology. He knew this was going to be an issue of interest so it was important to secure the services of someone who is an expert in the field and independent of any of the voluminous work already done on this subject in the Scappoose area. They chose Gary Peterson of Squier & Kleinfelder. They asked this firm to evaluate all of the geological and hydro-geological information previously done on this subject in the Scappoose area going back to 1968. The firm was to inform them of any impacts of any kind. In summary, the mining of the Bates & Roth site will have no perceptible impact on groundwater conditions in the area.

Gary Peterson, Squier Kleinfelder, 4350 West Bay Road, Lake Oswego, Oregon: He is a engineering geologist in Oregon and has been registered since 1982. When he first began working with Bates & Roth, they expressed their desire to address any water related impacts on the neighboring property owner. Gary reviewed his findings. The ground water levels will be what they are and will be managed by the Scappoose Drainage District's pumping system in the same fashion that they are now, without withdrawing or injecting water. He does not see an adverse impact to the Scappoose Drainage District. The district is in a flood zone and the threat of a flood is significant, however, it has been mitigated through different agencies over the years and the threat is much less now than it has ever been. This mine will not alter the threat of flooding. In summary, he finds really no perceptible off site impacts with respect to hydro-geology. No one will see anything different about the ground water or surface water operations of the area. The surface streams are unaffected through the design of the mining plan. The Corp of Engineers did approve and recommend a monitoring program to go forward and that is included as an appendix in his hydrology report. The monitoring program seemed to address the concerns of the neighbors in the area.

Tim Ramis, 1727 NW Hoyt Street, Portland, Oregon: He is the attorney for the Roth family and has been working with them to develop this application over the past couple of years. He wanted to thank the staff for all the work they have done in assisting the Roth's in the application process. They received a unanimous approval from the Planning Commission, with only one person speaking in opposition. He believes this is a result of hard work and that Mrs. Roth has always stressed "look for solutions". Tim wanted to address the conditions of approval, go over how to measure the setback requirement next to the RR-5 zone and then address some of the issues brought up by Dave Hill. He presented the Board with a handout to follow during his testimony. This document was entered into the record and marked *Exhibit "3"*. In the handout, there are some revisions to some of the conditions that staff agrees with. Tim would ask that, if the application is approved, it is with these amended conditions. Regarding the letter from the Scappoose Drainage District that asked the Board to impose the same conditions on this as was imposed on Glacier NW. The specific conditions that address those concerns are #13, up-welling of ground water, #25 which imposes the monitoring program and #34, which addresses the 15 foot sea level requirement. The Roth's support these conditions. The issues have been narrowed

down to two. One is the question of where to measure the setbacks, which the Planning Commission did not hear. The other is the \$60,000 condition, which the Planning Commission did review and rejected it. Tim began with the setback requirement in condition #12 which requires a 200 foot setback unless a variance is approved. In the application they took the position that they did not need a variance because it was not a requirement to be 200 feet from the property line. They applied for a variance because staff suggested it as a possible means of resolving the issue. Given that the staff is not supporting the variance it seems they need to re-examine the question of whether they really need a variance. In his view, the requirement is that the applicant be set back 200 feet from an existing residence, which they are. Staff stated that there is no existing residences within 200 feet of the property line in the RR-5 area. Commissioner Hyde clarified that the applicant is only considering the existing residence and not a zoning district that allows a residence. Tim agreed and stated that is the issue they are asking the Board to look at. If the Board is to accept the staff interpretation of 1044.4, then the amount of separation between the existing house and the edge of the mining operation would be about 400 feet. Commissioner Bernhard asked about the potential for another dwelling closer to the boundary line. Tim stated that the property is 7 acres and is zoned RR-5. It currently has two dwellings on it and already exceeds the allowable density. Commissioner Hyde stated that is under the current situation, however that may change. Tim stated that the law states that, when measuring setbacks, you are to consider existing or currently approved uses. The code says "within 200 feet of a residence, or a zoning district that allows a residence". Staff has said that is always interpreted to be 200 from the property line, not 200 feet from the residence. This basically does away with a whole clause in the ordinance. There needs to be some meaning given to this and his interpretation would be, the language between the two comas is essentially there to accommodate two different situations. One of the arguments offered is that the County doesn't need to consider the state rules regarding Goal 5 because the code is already acknowledged. One could accept that argument in the context of a conditional use where the criteria has been established. However, this is a plan amendment which is different. Under the state law it states "*prepare, adopt, amend and revise comprehensive plans in compliance with goals approved by the commission*", so it is not possible to avoid complying with Goal 5 directly. You must apply the rules. He has provided language from the county code which states when you do a major map amendment "*the proposed zone change is consistent with the Statewide Planning goals*" so the county has imposed on themselves, the requirement of addressing the statewide goals directly whenever there is an amendment. Finally, he referred to a letter from DLCD responding to a conversation with Glen Higgins on how the county's 200 foot setback ordinance would be looked at by the state. The letter says that you can have a 200 foot setback requirement on the books, but in order to apply it, you must demonstrate through the Goal 5 conflicts analysis process that there is a conflict that can only be mitigated through the use of the 200 foot setback. In this case, the county doesn't have the record of the facts to do that, because in Finding 25, it states that there are no conflicts that cannot be minimized by measures proposed by the applicant. Therefore, there is no basis to require a 200 foot setback and Tim asked the Board to consider this fact. Tim then addressed condition #35. He presented his legal argument on what he believes is a problem with this condition and a possible solution. The applicant is being asked that money be paid to the county to offset the cost of maintenance. The Planning Commission voted to eliminate this proposed condition. Afterwards, Gary Roth spoke with Dave Hill to try to resolve this issues. Now, instead of being faced with a \$60,000

condition, Dave Hill is proposing a \$120,000 condition. Tim is proposing a compromise. Based on an analysis that justifies a \$60,000 payment, they would accept it. The problems with this are multiple. This property is subject to a depletion fee. Over the life of the project, it will generate approximately \$6 million to the county. The argument is that there is a \$60,000 impact that needs to be covered. The argument made with the Planning Commission is that the depletion fee is not factored in because it is a tax. He pointed out that this property will be making a significant contribution to maintenance on the road and this should be taken into consideration. The Roth's are willing to agree with condition #35 so long as it is clear what they are purchasing and he asked that the intent be clarified in the condition. He would suggest language that, for those payments being made, the operation would be entitled to generate up to 62 average daily hauls round trip per day. That is essentially the impact that is being paid for. If the operation were to generate more than the 62 round trip hauls, then the county would reserve the right to impose additional road maintenance charges on a proportional basis. The idea is that the payment cover the impacts to the road. Tim thanked the Board for their time.

Scott Ellis, 36671 Ellis Farm Road, Scappoose: Scott is here representing the Ellis family. He is neighbors with the applicant and share a border line and he is in favor of the Roth's getting their permit approved. He is in favor of the 50 feet setback. When asked, Scott stated that his family may be seeking a mining application on their property.

Rich Engstrom, President of the Oregon Concrete Producers Association, 737 13th Street, Salem, Oregon: He represents a number of members in the area. He is in favor of this application. The association has only one issue and that is with the 200 foot setback variance to the CCZO. There has been a lot of discussion on this and he was glad to see the response from DLCDC. The state statutes says that conflicts have to be existing or already approved. The questions of "what if" is not fair to the applicants when trying to prepare an application. The policy reasons for setbacks are all good reasons but the county needs to look at the full utilization of resources. The 200 foot setback can take out a substantial amount of aggregate resource and would have an economic impact on the county and the applicant. The Planning Commission gave the Board an example, when talking about this area, of why specific setbacks don't work and DLCDC agreed. Therefore, the industry supports this application.

Albert Havlik, 52406 Mountainview Road, Scappoose: He is a land owner in the Scappoose Drainage District and is the Chair of that Board. Speaking for himself, he is in favor of this project. He has followed in the engineering process and feels it is the best.

OPPONENTS:

None.

The Board recessed the meeting at 1:15 p.m. and reconvened at 1:40 p.m. to continue the public hearing.

Commissioner Corsiglia asked about the residence on the Ellis property. Glen stated that the Ellis residence is more than 200 feet back and therefore not an issue. Also, Mr. Ellis is in favor of this application.

Gary Roth also responded. The Roth's have always intended to stay 200 feet away from any residence and the mining area is easily over 200 feet away. They also intend to stay at least 200 feet away from the existing residences in the RR-5 zone. They have tried to take into account every possible impact.

Commissioner Bernhard complimented the Roth's on this application and how well it was done. Commissioner Hyde stated that, with the amount of opposition received, it speaks volumes about how well this application was prepared.

With no further testimony coming before the Board, the hearing was closed for deliberation. The Board set deliberations for Wednesday, January 25, 2005 at or after 10:00 a.m.

CONSENT AGENDA:

Commissioner Hyde read the consent agenda in full. Sarah briefly reviewed the agreement with PGE. With that, Commissioner Bernhard moved and Commissioner Corsiglia seconded to approve the consent agenda as follows:

- (A) Ratify Select-to-Pay for 1/18/05.
- (B) Order No. 2-2005, "In the Matter of Adopting a Public Records Policy and Exempting Specific Public Records From the Provisions of the Policy".

AGREEMENTS/CONTRACTS/AMENDMENTS:

- (C) Personal Services Contract with Sea Reach, Ltd. for Interpretive Services.
- (D) Agreement Regarding Forest Practices with Portland General Electric Company.

The motion carried unanimously.

COMMISSIONER HYDE COMMENTS:

None.

COMMISSIONER CORSIGLIA COMMENTS:

Commissioner Corsiglia suggested this meeting be recessed until Friday so more than one Commissioner can attend the Port meeting, should they reconvene their meeting. The Board agreed.

COMMISSIONER BERNHARD COMMENTS:

None.

APPOINTMENT OF STATE SENATOR:

The Board met, by conference call, with the following Commissioners: Helen Westbrook, Lylla Gaebel, Richard Lee, Patricia Roberts, and Samuel Patrick of Clatsop County; Diane Linn, Serena Cruz, Maria Rojo de Steffey, and Lisa Naito of Multnomah County; Chuck Hurliman, Tim Josi and Mark Labhart of Tillamook County and Tom Brian, Dick Schouten, John Leeper and Andy Duyck of Washington County. The counties met to vote on the position of State Senate, District 16, vacated by Joan Dukes. When the vote was taken, Betsy Johnson was voted in unanimously.

Commissioner Hyde stated that this decision now goes back to the Secretary of State. If Betsy accepts this appointment, she will need to resign as Representative and that position will then need to be filled. Therefore, Wednesday, January 26, 2005 at 2:00 a.m. was set to make that appointment.

The Board recessed the meeting until Friday, January 21, 2005 at or after 10:00 a.m. The Board did not reconvene the meeting.

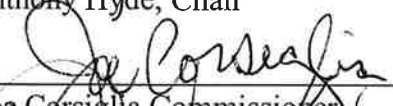
With nothing further coming before the Board, the meeting was adjourned.

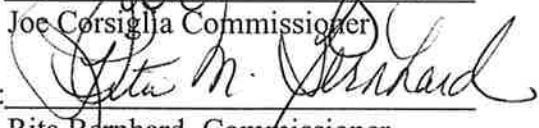
Dated at St. Helens, Oregon this 19th day of January, 2005.

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: 
Anthony Hyde, Chair

By: 
Joe Corsiglia Commissioner

By: 
Rita Bernhard, Commissioner

Recording Secretary:

By: 
Jan Greenhalgh