

IN THE BOARD OF COMMISSIONERS OF LANE COUNTY, OREGON

Order No. 94-3-30-1

-) In the Matter of Affirming a Hearings
-) Official Decision which Reversed the
-) Planning Director's Approval of a Site
-) Review Permit for Expansion of a
-) Quarrying Operation within the
-) QM/Quarry and Mining Operations
-) District (PA 1237-93) (Oregon Rock
-) Products, Inc., Applicant/Appellant;
-) and Donn & Doris Kirk, Appellants)

WHEREAS, the Lane County Hearings Official made and subsequently affirmed a decision on application PA 1237-93 to reverse the Planning Director's decision approving a Site Review Permit for expansion of an existing quarrying operation; and

WHEREAS, two appeals of the Hearings Official's Decision were placed before the Board of County Commissioners pursuant to Lane Code 14.600; and

WHEREAS, on January 26, 1994, the Board elected to hear both appeals on the record, and on February 16, 1994, conducted an on-the-record hearing pursuant to Lane Code 14.400; and

WHEREAS, at the conclusion of the hearing, the Board came to a tentative decision on the appeals and directed preparation of findings for a final decision; NOW

THEREFORE, BE IT ORDERED that the decision of the Hearings Official on application PA 1237-93 is affirmed, and both appeals of it are denied.

BE IT FURTHER ORDERED that Findings in support of the decision, attached hereto and incorporated herein as Exhibit "A", be adopted.

APPROVED this 30th day of March, 1994.

Jerry Rust

Chair, Lane County Board of Commissioners

FILED

APR 01 1994

COUNTY CLERK
BY *Laura Dubois*

APPROVED AS TO FORM

Date 3-18-94 Lane County
Stephen J. Weber
OFFICE OF LEGAL COUNSEL

Findings In Support of Adoption of the Order

1. The property involved in this action is identified as a 160-acre portion of tax lot 100, map 18-02-25, owned by Gordon Tripp. This property is presently used and occupied by Oregon Rock Products, Inc. ("ORP"), a rock quarry business which is the "applicant" in this matter. The property is designated Natural Resources: Mineral on Plot 494 of the Lane County Rural Comprehensive Plan, and is zoned QM/Quarry & Mining Operations on Zoning Plot 494. The QM zoning district is adopted as Lane Code section 16.216.
2. In July 1992, the applicant and property owner were notified by the Lane County Zoning Compliance Officer of a land use violation on the site in that the QM zoning district required Site Review approval for quarry or mining operations, which were occurring on the property.
3. The applicant, on September 11, 1992, applied for a Site Review (PA 3016-92) pursuant to Lane Code 16.257, to respond to the Compliance Officer's notice. However, the application did not describe the operation and contained insufficient information to address Site Review criteria. It was denied February 19, 1993.
4. In February 1993, the applicant met with Division staff and was advised to make a new application. Based on the applicant's arguments that the site was exempt from reclamation standards of the Oregon Department of Geology and Mineral Industries (DOGAMI), a circumstance verified through Land Management Division staff contacts with DOGAMI staff, Division staff concluded that the Site Review could be confined to the stockpiling/crushing area and office site (new expansions outside exempt area). A chronology of events concerning the operation, and the staff conclusion concerning operations within the exempted area, was provided to the applicant by letter April 5, 1993. The applicant applied April 8, 1993 for a Site Review (application PA 1237-93) covering the stockpiling site and office area.
5. Application PA 1237-93 was approved with conditions August 23, 1993 by the Planning Director.
6. On September 2, 1993, the Director's action was appealed. A de novo Hearings Official hearing on the appeal was held November 4, 1993, in Eugene, with the record held open until November 29. Considerable testimony was received in oral and written form.
7. On December 8, 1993, the Hearings Official issued a decision reversing the Planning Director's approval of the Oregon Rock Products Site Review permit by concluding that the applicant had not met the burden of proof necessary to show that quarrying activities within the exempted area of the site were indeed exempt from County regulation, and that the applicant did not adequately address Rural Comprehensive Plan policies and Site Review approval criteria concerning compatibility of the operation with neighboring residential uses.

8. The Hearings Official decision carried an appeal deadline of December 20, 1993. On that date, appeals of the Hearings Official decision were filed by the applicant (Lee Kersten, agent) and by neighboring property owners who had appealed the matter to the Hearings Official (Anne Davies, agent). On December 22, 1993, the Hearings Official affirmed his decision.
9. On January 26, 1994, The Board found that both appeals satisfied the requirements of Lane Code 14.600(3)(b), and elected to hear both appeals. An on-the-record hearing date of February 16, 1994, was set and notice was sent to parties of record. Order 94-2-2-2 was adopted by the Board to establish the date and name those qualified to participate in the hearing.
10. On February 16, 1994, the on-the-record hearing was held pursuant to Lane Code 14.400. Parties appearing included the applicant/appellant's representative, the second appellant and that appellant's representative, and other persons qualified as participants in Order 94-2-2-2.
11. The record is found to be those items #1 - #42 listed on the attached "OFFICIAL RECORD": PA 1237-93. Items #1 - 33 and #42 listed constitute the record of the proceeding before the Hearings Official. The remaining items, #34 - 55, are matters placed in the record subsequent to the Hearings Official decision, including appeal items and procedural items.
12. Upon reviewing the record and hearing arguments made by those persons appearing before the Board in the on-the-record hearing, the Board has determined the following:
 - a. The Oregon Rock Products quarry site has been acknowledged by DOGAMI to be an exempt area by virtue of its existence since 1972, and has been active pursuant to a DOGAMI Grant of Limited Exemption since 1978. This exemption still exists in the form of DOGAMI operating permits for the quarry site, the most recent of which was issued April 1993 and is valid through March 1994. Prior to 1984, the property was zoned FF-20/Farm-Forest-20 (Lane Code section 10.105).
 - b. In 1984, with the adoption of Lane County Ordinance PA 891, the 160-acre tract which includes the site was identified in the Lane County Rural Comprehensive Plan as a Goal 5 resource, designated as Natural Resources: Mineral and Aggregate and zoned QM/Quarry and Mining Operations.
 - c. While the quarry site was considered exempt from DOGAMI reclamation standards, the record does not contain evidence of the level of quarrying activity since before 1984 or the type of quarrying methods employed (e.g., quantity of blasting, drilling, rock removal) on the quarry site during the intervening years. The record does contain information on the size and characteristics of the stockpiling/crushing site and the office site.
 - d. The Board concludes that exemption of the quarry site from DOGAMI reclamation requirements does not necessarily exempt the quarry site from, or otherwise pre-empt, Lane County land use regulations or RCP policy mandates. The scope of DOGAMI review and regulation is limited to reclamation concerns and impacts of a quarry on natural resources (e.g., groundwater) and does not extend to regulation of impacts on neighboring residents, scenic values, or areawide natural resources.

- e. The Board finds that concerns such as impacts on neighboring residents, scenic values, or areawide natural resources are appropriately addressed through the County's land use regulations including Site Review and the rural Comprehensive Plan policies which address offsite impacts of quarry and mining activities subject to those regulations.
 - f. It is not the Board's intention to retroactively apply restrictions and regulations to activities which clearly existed prior to the adoption of the RCP and Lane Code Chapter 16 zoning regulations. Such activities may be "grandfathered" or legally nonconforming. It is also not the intention of the Board to shut down all ORP activities in the existing quarry site, but rather to ensure that components of the ORP quarrying and crushing operation which are subject to County regulations comply with those regulations.
 - g. The Board finds that the level and type of quarrying activities within the quarry site which have occurred since QM zoning was applied in 1984 may be exempted from County regulation, but that these activities must be documented in the form of evidence from the applicant.
 - h. The Board finds that the Hearings Official's decision was appropriate in establishing a mandate for the applicant to provide information on activities in the ORP quarry site, in order that those activities which are regulated by the County may be identified and those which are exempt from County regulation may also be identified. The Board concludes that this information is best dealt with in the form of a third Site Review application from the applicant or property owner which also addresses applicable policies of the Rural Comprehensive Plan.
13. The Board concludes that the decision of the Hearings Official should be affirmed, and therefore both appeals should be denied.

Attachment: Index of Record, PA 1237-93.

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"OFFICIAL RECORD" - PA 1237-93
(All items 1 page unless noted)

| <u>ITEM</u> | <u>DESCRIPTION/CONTENTS</u> |
|-------------|---|
| 1. | 8 April 93: Site Review application consisting of: A. Cover sheet; B. Supporting information (2 pp). |
| 2. | 17 April 93: acceptance, staff note & property list (6 pp). |
| 3. | April-June 1993: agency referrals and responses (15 pp). |
| 4. | 14 August 92: staff memo to file (2 pp). |
| 5. | 17 September 92: letter in support of application. |
| 6. | 5 April 93: staff letter to applicant about application (3 pp). |
| 7. | 19 February 93 and 13 August 93 applicant's supporting statements, with exhibits (5 pp). |
| 8. | Air photo of site (n.d.) |
| 9. | 15 September 92 & 7 September 93: DOGAMI reports & photos (5 pp). |
| 10. | 30 June 93, 7 July 93 and 5 & 13 August 93: staff communications to applicant (4 pp). |
| 11. | 23 August 93: notice of Director's decision of conditional approval (including staff report with mapped exhibit) (14 pp). |
| 12. | 2 September 93: appeal w/ postponement request (6 pp). |
| 13. | 7 September and 15 October 93: Notice of appeal hearing (11 pp). |
| 14 a & b. | 1 October 93: Kersten letter with exhibits (19 pp) & video tape. |
| 15. | 15 October 93: Davies letter with exhibit (3 pp). |
| 16. | File PA 3016-92 (see file index for contents). |
| 17. | 25 October 93: Director's response to appeal, in form of staff report (6 pp) w/ attachments (items 12, 14 & 15 above). |
| 18. | Petitions (2) from area residents, dated 11 October 93 (5 pp). |
| 19. | 18 Oct 93 Loveless letter (2 pp). |
| 20. | 31 Oct 93 petition (2 pp). |
| 21. | 2 Nov 93 McClellan letter. |
| 22. | 3 Nov 93 Suttmier letter (3 pp). |
| 23. | 1988 laser photo of site. |
| 24. | 1992 laser photo of site (3 photos). |
| 25. | 1989 LUBA decision 89-069 (17 pp). |
| 26. | (n/d) historic photo of ridge. |
| 27. | 31 Oct 93 petitions (2). |
| 28. | 1986 air photo. |
| 29. | 31 Octo 93 petition (2 pp). |
| 30. | 9 Nov 93 Gierlish letter. |
| 31. | 12 Nov 93 Davies letter(3 pp). |
| 32. | 24 Nov 93 Kersten letter (5 pp). |
| 33. | 8 Dec 93 HO decision (18 pp) w/ Notice of mailing (3 pp). |
| 34. | 20 Dec 93 applicant appeal & exhibits (12 pp) w/ item #33 above. |
| 35. | 20 Dec 93 opponents appeal (6 pp) w/ item #33 above. |
| 36. | 22 Dec 93 HO affirmation (2 pp). |
| 37. | 23 Dec 93 Notice of HO affirmation (3 pp). |
| 38. | 16 Dec 93 Davies letter. |
| 39. | 23 Dec 93 Kersten letter (2 pp) |
| 40. | 4 Jan 94 reply to Davies (2 pp). |
| 41. | 4 Jan 94 reply to Kersten (2 pp): |
| 42. | Tapes of Hearings Official hearing 3 November 93 (2 tapes) |
| 43. | 26 Jan 94 Notice of on the record hearing to participants (5 pp). |
| 44. | 1 Feb 94 Notice of on the record hearing to participants (6 pp). |

- 45. 1 Feb 94 Livengood request for party status.
- 46. 3 Feb 94 Sandland request for party status.
- 47. 7 Feb 94 Loveless request for party status, with testimony (5 pp).
- 48. 2 Feb 94 McClellan & Terwillegar request for party status.
- 49. 7 Feb 94 Tanton request for party status.
- 50. 7 Feb 94 Copy of Order 94-2-2-2 with exhibits A and B (3 pp).
- 51. n.d. Davies statement (3 pp).
- 52. 15 Feb 94 Testimony to B/CC (9 pp.)
- 53. 10 Feb 94 Notice of hearing
- 54. 2 Feb 94 Copy of staff report to B/CC for 16 Feb hearing (6 pp)
plus exhibits of previous record items.
- 55. 15 Feb 94 Copy of ORP 93-94 DOGAMI permit.