

MINUTES & NOTICE OF BOARD ACTION

BOOK 153 PAGE 1818

APPROVED *October 27, 1993*



LANE COUNTY BOARD OF COMMISSIONERS

This document, upon approval in a public meeting by the Board of County Commissioners, serves as official minutes of such meetings as required under the Open Meetings Law, ORS 192.650.

Pursuant to notice made by mailing agendas to news media, a selected list of jurisdictions and individuals in Lane County, a meeting of the Board of County Commissioners was held.

Questions should be directed to The Board Office Specialist 3, ext. 4203.

September 15, 1993
1:30 p.m.

REGULAR MEETING
BOARD OF COUNTY COMMISSIONERS

Harris Hall
Main Floor

10. COMMISSIONERS' ANNOUNCEMENTS

Frazier commented that she and Dumdi would be attending a potluck at the Lorane Grange on Monday at 6:30 p.m.

Cornacchia stated that he had received a request from the Latino community for information regarding Lane County's service delivery system and whether the possible cessation of services was putting the services/grants at risk. Bill Van Vactor, Acting County Administrator, noted that he had spoken with Steve Manela and Manela has been working with Health and Human Services regarding procuring a mediator to help in the dispute. With regard to the contract obligations, Van Vactor indicated that he would be sending a memo to each department with contracts (HACSA, Youth Services and Health & Human Services) and ask them to meet to coordinate a review of the service delivery in this situation. He indicated that a report to the Board on this issue was anticipated by the end of the week. Roberts cautioned to be careful not to be drawn into the dispute. Cornacchia agreed, noting that participation should be limited to the service delivery system and the grants involved.

11. PUBLIC HEARINGS

- a. FOURTH READING AND PUBLIC HEARING/Ordinance No. PA 1039/ In the Matter of Amending the Rural Comprehensive Plan Diagram from "Agricultural Lands" to "Natural Resources" and Amending the Zoning Map from "Exclusive Farm Use" (EFU) to "Quarry Mining" (QM) for Map No. 17-01-20, Tax Lot 201 (Applicant: Henton).

Cornacchia read this Ordinance into the record. Al Couper, Associate Planner, noted that events had transpired in the last few hours and that he understood there was substantial convergence among the

parties, so he did not expect lengthy testimony. Cornacchia indicated that speakers would be limited to 3 to 5 minutes per person. Couper stated that this was a reconvened hearing and presented some history on the item, explaining that a site review had taken place in the interim. Couper remarked that, at this time, Commissioners would be asked to declare ex parte contacts and describe what they observed on the site visit related to noise levels, etc.

Frazier entered into the record correspondence from Alvin and Carol Berry. She indicated that she had a brief, not substantive, phone conversation with Inez Hagen. Frazier remarked that she had met three people at the site that she did not know before: Wayne Endicott and Jim McClory and his wife, but that there was no substantive conversation. Frazier stated that she had taken notes on the site visit and that it was her observation that on the southwest corner at the top of the bluff road traffic noise was louder than the rock crusher right behind her. She noted that there was very little noise at Kickbusch and no discernable noise off of Flowerdale Road. She indicated that the highway traffic noise from McKenzie Highway was very noticeable, but that she didn't hear anything from the crusher or the truck that came down the hill at intervals. She stated that at Kickbusch there was a little bit of noise from the jake brake, but not out of the ordinary. She commented that people were heard to comment that the actual impacts were not what they had anticipated or what they had experienced before.

Rust stated that he had received a call from Mrs. Berry who told him there had been some blasting that had caused some damage. He indicated that his observations were similar to Frazier's. He stated that the truck, excavation and grinding noises were faint. He commented that he had heard some jake brake. He noted that he had asked one party that if the conditions got no worse than they were that day, could they live with that and the answer was "yes".

Dumdi indicated that she had had non-substantive contacts with Larry Gildea, Doug Putschler, Allen Peterson, Lee Downing and Otis Holland. She stated that her observations were similar to Frazier and Rust; that at the top of the hill, she could not hear anything from the quarry until coming within 100 yards or so. She stated that on the lower elevations, she could not hear anything from the quarry, but could hear some jake brake and traffic from Highway 126 and Camp Creek Road.

Roberts stated that he had received one, non-substantive, phone call from Jerry Brown, who opposed the quarry. He indicated that his observations at the site visit were similar. He noted that standing right by the quarry, it was "loud as hell". He remarked that it was easy to see that when the hole/pit was being dug from up on top, the noise would have been extremely loud and that explains many past

complaints. He indicated that if speed limits were maintained, the road watered down, etc., that impacts could be minimized.

Cornacchia commented that he had had non-substantive contact with Doug Putschler and with a woman who owned a nursery he had gone to last weekend. He also remarked that he has had some procedural contacts with counsel. Cornacchia stated that he was surprised that he had not heard what had been described previously. He indicated that at listening stops, it was necessary to wait until all traffic on the roads had stopped before being able to listen to the quarry.

Couper reviewed a brief staff report (see material on file.) He noted that the entire record was present in the room. He noted again that he had had contacts with the applicant's agent and the attorney for some of the opponents, and he had heard convergence on four key points: 1) that the resource is significant and should be included on Lane County's inventory; 2) that if the quarry could operate as it did during the site visit, that, in terms of impacts, that would be acceptable; 3) that a test period was advisable, with a mandatory review at the end; and 4) throughout the test period, and the life of the quarry after that, that there be strict and prompt enforcement of any conditions the County applies to the application. He noted that specific mechanisms discussed include 1) the application put forward by the applicant which is a plan change, zone map change and site review; 2) the plan change and a zone change with conditions attached as part of the zone change; and 3) adding the site to the inventory and then use the existing EFU zoning, with a special use provision for subsurface mineral extraction which would allow conditions to be attached. He indicated they would all arrive at the same point which is to try to ensure that the quarry operates at no greater impact than observed on the site visit. Cornacchia asked if, in the event that the Board chose to not grant the rezoning, but suggested the special use permit process, there is a way that process can be integrated into this particular process so it doesn't need to be started all over again? Couper responded that the part that adds the quarry to the inventory is what is being done with the plan change. He noted that if the zone change was left as it is, then the special use permit would be available. He stated that bringing the record from this proceeding into that would take some discussion with legal counsel. He indicated that Mr. Kloos' letter indicates that his side would be willing to work with the applicant and staff to suggest the precise mechanisms. He suggested that the hearing be held today and then a short continuance may be helpful to work out all the details. Cornacchia expressed concern that all parties would be represented and that the decision might be taken out of the public domain. Couper indicated the hearing could be continued and then the parties could come back and stipulate to an agreed mechanism, put it on the record and then the Board could consider the matter. Rust suggested that the attorneys speak first to address these issues and then see if people's expectations have been met during public testimony. Roberts agreed, stating that it would be especially helpful to hear

during the public hearing from those not represented by Johnson and Kloos, regarding whether the terms that were being presented were acceptable. Responding to Frazier, Couper stated he could not predict the additional time and cost involved in the special use permit process. He noted that the Board does have authority under the Code to attach a "site review suffix" as part of a plan and zone change application - another hybrid mechanism to make the plan diagram change and leave the existing zoning, but have site review available.

Cornacchia opened the Public Hearing.

Mike Evans, 1071 Harlow Road, Springfield, attorney for the applicant, stated that Mr. Kloos may be the logical person to begin the process to outline the suggestions that he has and then he (Evans) would respond.

Bill Kloos, 767 Willamette, #3, stated that he represents opponents James McClory, Michael McClory, Wayne Endicott and Doug Putschler. He indicated that, with assurances that the quarry operates in the future the way it operated during the site visit, the quarry is acceptable. He reviewed the contents of his letter, dated September 15, addressed to the Board (see material on file.) In the letter are described observations during the site visit and an outline, with a detailed description following, of two options the Board may proceed with: 1) a plan/zone change option and 2) a special use permit trial period. He highlighted (on page 2 of his letter under "Discussion of the Plan/Zone Change Option) the conditions absolutely necessary to assure that this use is the use that is continued, stating that (f) is the most important as it has to do with enforcement. He summarized that his clients are in agreement as long as the same conditions are in effect as were at the site review and that there are conditions to clearly enforce compliance. Cornacchia asked Kloos if in (f), it was intentional that no notice or opportunity to cure a violation precedes the elimination of the zone upon determination of a violation. Kloos replied that the language in that paragraph does not include an opportunity to cure, indicating that it is something that could be discussed. He stated that the fear was a continuous loop where the violation goes on ad infinitum.

Evans stated that the objectives described by Kloos are understood and can be dealt with. He noted that there are some minor differences in the conditions of approval that might be imposed because they tend to be ambiguous and there are some differences in the appropriate procedure that might be used to approve the quarry and establish the process. Evans indicated that the applicant does not agree with the two suggested procedures because they (the applicant) have the position that they know the quarry can be operated with conditions so as to minimize the impacts with the neighbors. He acknowledged the need to balance the Goal 5 rule requirements, ORS 215.213 requirements, Lane Code procedures and Lane

Code zoning (site review) requirements. Evans stated that he is quite confident that you cannot designate/rezone the property through the Goal 5 process and then, at some point in the future, come back and take that away. With regard to the Special Use Permit Trial Period, he stated it is a viable process, coming closer to meeting Goal 5 requirements. He indicated that in order for rock to be extracted on the property, it has to be designated through the Goal 5 process and that conditions have to be applied through the Goal 5 scenario. He remarked that the applicant is concerned that this option, which may be a viable option although it may cause them to have to start over again, is a process that would technically appear to achieve the goals. He stressed that the site review process is a better process, including being better for the long term protection of the neighborhood. He commented that a special use permit in the EFU zone does not deal with compatibility, while a site review process has requirements that the activity be compatible with the neighborhood. He stated that the site review process would have better enforcement through the hearings official, as anytime within the next two years that there are questions about the conditions, there would be a hearing before the hearings official. He indicated the need for clear and objective standards regarding dust, noise, etc. and that if they are violated, the hearings officer can implement remedies.

Van Vactor suggested hearing from the public and then, if the Board agrees with the general outline, the groups could meet with their representatives, planning staff and legal counsel to work out a lot of the questions.

Cornacchia asked for clarification regarding whether, under the Goal 5 process, once it is determined that the quarry is a significant resource, the Board cannot stop extraction; thus requiring that, under site review, it may go back to the hearings official to modify time and time again. He stated that if that is the case, then there is no assurance that there is an opportunity to end the use at the end of the limited enforcement period.

Roberts indicated that, at this time, he was less interested in specific conditions, but would like to hear from the public and see if the focus has been narrowed to the point that the parties should have a chance to try to negotiate through some of those issues. Then the Board can decide how far it needs to go to be reassured about enforcement in order to approve the permit.

Couper stated that he believed Evans unintentionally created the impression that you could never turn back. He remarked that the Goal 5 process was three step: 1) the determination of the significance of the resource; 2) identification of any conflicting uses; and 3) then development of a program for balancing the conflicting uses. He explained that it is not correct that once you have taken an action you cannot go back and modify it. Cornacchia noted that the

opponents appear to want to go beyond unlimited modifications and be able to end the use at some point if necessary. Rust observed that the two parties may be able to reach agreements during possible future negotiations. He stated that those who were present without legal counsel need to be heard.

Frazier inquired from legal counsel regarding the difference between how the enforcement issue on site review is different for this application than any others approved for mining and quarrying operation that have had some of the same kinds of concerns expressed and addressed in the site review process. Stephen Vorhes, Assistant County Counsel, indicated that the only difference might be the conditions that are attached as part of the site review process in this application and those attached on any other application that has been approved. Cornacchia emphasized that he wants to know whether the opportunity to cease the operation is available. Van Vactor remarked that if that is the route the Board would want to take, then it is the job of staff to try to work that out and come up with an answer to that question. Evans stated that it was not his intent to say that if it is designated, it is a "done deal" no matter what. He commented that the point is that if it is found that the site is appropriate to designate as a resource, it remains a resource that could be utilized under conditions which may be applied, even though the hearings officer has the ability to curtail all activities.

Inez Hagen, 38529 Kickbusch Lane, stated that she lives right at the bottom of the hill and indicated that she can hear jake brakes, cats, churning rocks from the crusher, etc., with the door closed. Responding to Dumdi, Mrs. Hagen remarked that she was not at home during the site review.

Arthur Hagen, 38529 Kickbusch Lane, commented that having to listen to the noise for eight solid hours makes a lot of difference. He noted that there is already a quarry two miles away.

Dean Hogrefe, 38144 Camp Creek Road, noted that he is not related to Henton nor does he work for him, but is one of the closest neighbors and supports the application. He stated that the free enterprise system built American and that it is an intricate part of the American dream. He observed that Henton has gone out of his way to address concerns and lessen impacts.

Don Morehouse, Section 19, Township 17, Range 1 West, Lot 301, stated that his property abuts the Henton property. He noted that the only real complaint regarding noise is the jake brakes coming down the hill. He remarked that if the trucks came through his property and exited that way, they would not have to use the jake brakes. He stated that he has a 40 foot by 1,085 foot road easement across the Berry property.

Glen Ross, 38401 Kickbusch Lane, stated that he lives close to the operation and it has never bothered him. He commented that the quarry is an asset to the community.

Eileen Stahl deferred comment.

Grover Hubbard left the meeting prior to the comment period.

Doug Putschler, 88090 Millican Drive, commented that he lives 6,600 feet from the quarry site and opposes the quarry operation. He indicated that he is concerned about compatibility with the community and has 300 signatures of community members who agree with him. He agreed that noise levels have improved since the summer of 1992. He offered support for Kloos' letter. He also spoke regarding assurance, stating that he is ready to accept the trial period and asked the Board to consider the best options to assure that the noise levels remain as they were at the site visit.

Terry Tanton, 38814 Camp Creek Road, stated that what she saw and heard during the site visit was not what has been regularly observed. She indicated that the trucks have to go fast going east to get up the hill and that their speeds are normally 40-50 miles per hour. She commented that she could live with the proposed two-year plan. She expressed concern regarding blasting, noting that their community is within a one-mile radius. She noted that everyone needs to be a good neighbor.

Linda Shambarger, 88741 Ermi Bee, noted that Worth Road and Camp Creek Roads are close to schools and the shoulders are not wide enough for children walking or waiting for the bus. She stated that she has no opposition to a quarry, but the gravel trucks are the problem. She also commented that Camp Creek Road is on the National Bike Path.

Wayne Endicott, 38739 Flowerdale, stated that the quarry site is on a prominent ridge at about 400 feet elevation and the drawback is the road access. He noted that the road has an average 11 percent grade and is steep and dangerous. He asked the Board to consider the people's needs and former environment, and come up with the mechanics to keep the sound level down to those of the site visit.

Doug Dennett, 38876 Camp Creek Road, stated that he is not associated with any particular group. He indicated that he was skeptical and has concerns. He remarked that the neighborhood needs more than a hearings officer - they need to be able to stop the operation if it goes back to the way it was a year ago and not to have it be an expensive compliance process. He stated that he is concerned about the enforcement process, noting that before Evans became involved, the operation was not acceptable. He stressed that he does not think the operation is compatible with the community and that it is noisy, dirty and affects daily life.

Victor Witcher, 88600 East of Eden Road, expressed concern related to his well on the hillside, noting that additional rock movement, blasting and earth fracturing may affect the volume of water and may contaminate it. He asked for a condition requiring Henton to post a bond of \$150,000 to protect and insure that people who have been drawing water for livestock and agricultural needs have a resource. He noted that his concerns were in writing and asked them to be entered into the record.

Dewayne Tiller, 4869 G Street, Springfield, stated that he owns property and works at 38931 Upper Camp Creek Road. He noted that he is in favor of the quarry, is opposed to any postponement and would like to be able to buy gravel locally.

Harold Chase, 37840 Camp Creek Road, stated that he lives 1/4 mile from Green's Gravel Company and has always worked out his problems with that quarry directly with the Greens.

Frankie Hogrefe, 8525 McKenzie Highway, stated that she has listened to gravel trucks, jake brakes, car accidents, etc., and it is no bother. She commented that people need to get along. She noted that no one complains about the EWEB gravel trucks.

Philip Mulholland, 38422 Kickbusch Lane, commented that he had reviewed the case file on this matter and found that over 290 citizens had signed a petition in opposition to the change in land use, over 80 letters in opposition had been submitted by residents, 40 people in interviews cited the noise of the quarry as a nuisance and two dozen people had provided testimony at public hearings.

Bob Bodine, 04554 Blanco Street, Florence, stated that gravel pits are necessary, but expressed concern about compatibility. He noted that he would not vote for this gravel pit.

Doug Henton, noted that he owns the subject property. He stated that when the quarry was first operating, he had no knowledge that the noise was creating a disturbance. He indicated that once he was informed, he stopped operating and has been working to resolve the complaints. He emphasized that he believes the quarry can be operated as it was during the site visit. He said he sincerely wants to be a good neighbor.

There being no one else present who wished to testify, Cornacchia closed the Public Hearing.

Frazier went through the list of Proposed Operating Conditions as stated on Page 2 of the Agenda Memo and stated her comments on each. She indicated that the proposed access onto Camp Creek Road is the best access and that the Worth Road alternative is not acceptable. She stated that she would like to see hours of 7 a.m. to 6 p.m. Monday through Friday, with no holiday operation. She commented that

straight stack exhaust pipes were acceptable. She stated that she did not think tree planting was necessary. She agreed regarding a minimum vertical distance of 10 feet between the top of the pit and the crusher/loader operating inside the pit. With regard to speed limits, she remarked that a 20 mile per hour posted speed limit and a stop sign would help with the Jake brake issue. She indicated that she saw no need for speed bumps. She observed that the conditions should be part of the site review process and that the current compliance process in place for site review compliance should be used for enforcement.

Rust commented that the majority of concerns on both sides can be met by the parties negotiating in good faith. He noted that a new question in his mind was the possibility of a bond. He expressed the hope that the parties work together, that a limited hearing be held on the negotiated conditions and then any loose ends can be handled by the Board.

Roberts agreed that progress had been made toward a resolution and that time spent allowing the parties to attempt to work through differences would be helpful. He indicated that negotiated settlements give people direct input. He noted that most opponents had reflected concerns consistent with those of Kloos. He stated he was not sure another public hearing was necessary. He remarked that the main concerns seem to be compatibility and assurances. With regard to Kloos' letter, he stated that "no noise" was too strict a standard and that "no dust" was also too stringent. He agreed with Frazier regarding speed bumps. He suggested that the remedy (f) needs to be refined as it is too rigid. He commented that he is comfortable with hours of operation from 8:00 a.m. to 7:00 p.m. at some times. He expressed the hope that the parties could come back with recommendations based on what they have agreed upon and/or set forth their differences at which time the Board would take action.

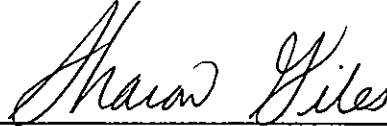
Dumdi concurred with both Rust and Roberts, noting that she had faith in the people involved on both sides to work together towards resolution. She remarked that she did not feel another public hearing was necessary.

Cornacchia noted that the majority of the Board desired an extended process. He stated that the parties had already stated the terms on which they were still in disagreement and he was not sure further discussions would change that. He asked staff for recommendations on how to accomplish the next process. Couper indicated that deliberations could be continued, a time frame for mediation could be set, a document would come back to the Board stipulating the areas of agreement/disagreement and then the Board could act upon that. He noted that Findings of Fact and Conclusions of Law would need to be adopted whether or not the approval was given and that the applicant would need to provide them if the decision was to be "yes".

Larry Gildea spoke representing the applicants and stated that two weeks would be enough to reach agreement and that both sides were agreeable to meeting next Monday if staff were available. There was concurrence that this item be set next for October 13.

12. OTHER BUSINESS

There being no further business, this meeting adjourned at 4:02 p.m.



Sharon Giles
Recording Secretary