

YAMHILL COUNTY PLANNING COMMISSION MINUTES

Thursday, November 6, 2003 @7:00 p.m.

Yamhill County Courthouse, Room 32

535 E 5th St.

McMinnville, Oregon 97128

Roll Call: Gary Johnson, Alan Halstead, Brad Myers, Robert Smiley, Dean Brown, Sid Friedman, Marjorie Ehry, Bernie Diefenderfer, Absent: Daryl Garrettson. Staff: Michael Brandt, Ken Friday, Rick Sanai, County Counsel.

Review of the minutes from the July 17, 2003 Planning Commission Hearing. Alan Halstead moved to approve the minutes as submitted. Robert Smiley seconded the motion. Approved unanimously.

Chair Dean Brown reviewed the procedure for the evening's hearings.

QUASI-JUDICIAL PUBLIC HEARING:

DOCKET NO.: PAZ-05-03

REQUEST: Approval of a Comprehensive Plan amendment from Agriculture Forestry Large Holding to Quarry; a zone change from EF-80 Exclusive Farm Use to MR-2 Mineral Resource for approximately 169 acres of land.

APPLICANT: C.C. Meisel

OWNER: C.C. Meisel

TAX LOT: 4335-201 and 301 (Also known as the Hester Property)

LOCATION: Approximately 1/4 mile north of the east end of Nichols Road, Dayton Oregon

CRITERIA: Sections 402 and 404 of the Yamhill County Zoning Ordinance. Statewide Planning Goal 5. Oregon Administrative Rule (OAR) 660-023, in particular the section dealing with Mineral and Aggregate Resources of OAR 660-023-0180. Transportation Planning Rule of OAR 660-12-0060.

Chair Dean Brown opened the public hearing.

Abstentions, Objections to Jurisdiction, Ex Parte Contact: Robert Smiley noted that his employer does business with C.C. Meisel, the applicant, and has worked with them primarily through telecommunications. This should not effect his decision-making ability.

Rick Sanai read the **"raise it or waive it"** statement into the record.

Staff Report: Ken Friday gave a brief review of the staff report. Ken stated that notice was sent to 1500 feet beyond the property as this was the identified impact zone. Ken advised the commissioners that County Goals and Policies and Zoning requirements do not apply. Administrative Rules directly apply since this is a Goal 5 resource. Questions: Sid Friedman: When was the local criteria governing significant mineral resources adopted? Mike Brandt: 1982. Sid: ODFW letter references a map. I did not receive it. Ken said that he did not remember receiving a map.

Proponents case:

Paul Hriberneck, 805 SW Broadway #1900, Portland, OR 97205: Paul reviewed the rules of a PAPA application.

Dorian Kuper, Kuper Consulting, 22680 SW 76th Ave, Tualatin, OR: She is a certified engineer geologist. She explained the significance of the site and the meeting of the significance requirement. Mining will stay out of the Willamette River Greenway. There will only be excavation from this property, no blasting or processing. There are wetlands on the property and we are working with different agencies on the wetlands. The intent is to ultimately enlarge the wetlands after mining. There is a listed wetlands that will not be mined. She reviewed the reclamation plan.

Paul Hriberneck: The impact area was determined to be approximately 1500 feet. Noise is a major determination on the impact area. There are no residences in the impact area. He reviewed the conflicts of noise, dust, tremidity, traffic and local roads. Dorian explained the dewatering process and the creation of small cells. Paul explained that a question arose regarding access. There is a roadway easement without restrictions. The applicant respects the farm traffic and understands their concerns.

There are no other Goal 5 inventory resources. We did choose to review the following items. Wetlands were reviewed in a report included in the application. It is primarily a “mosaic” effect. There is one primary area that the applicant does not plan to touch but would like permission to mine through the “mosaic” areas. There is a log of water in the main swell and have seen no evidence of fish trapped and this would be monitored especially during the flood periods.

Cynthia Lowe, 400 SW 6th Ave., Suite 802, Portland, OR: Registered Civil engineer. She reviewed how the site was effected by floods and how a flood could effect the site and transport materials. Using aerials, she indicated the meandering of the river over the years.

Farming conflicts. Farming interests and traffic will be stressed by CC Meisel. A possible equipment share is possible and the applicant can work with the farmers to minimize the conflicts. We looked at possible future uses of the property.

Questions: Sid: What is a ton of aggregate. Lloyd Towne: About 1.9 tons processed. Sid: ODFW’s conditions are different than staff, do you have a problem with accepting these conditions. Paul: The only condition the applicant has a problem with would be the slope requirement for wetlands. They are a bid extreme. We would be happy to work with a wetlands plan. Sid would like to add ODFW’s conditions to staff’s recommendation. Paul: The cottonwood issue is not resolved. These are in the “mosaic” area. The fish entrapment issue is something that we can work out. We have proposed a condition with Staff. There are other ways to address their issues than to accept their conditions. Sid: Regarding Condition 7, NOAA sign-off needs to occur, not “may” occur. DOGAMI should be final sign-off as they take into consideration the other agencies. Reclamation in the southern portion would occur first and this would be an effective use of the top soil. Sid: What is the lifespan of this operation? Lloyd Towne: This depends greatly on the economy. The life span could be 25-40 year at full capacity. Sid: What is wet mining and is this wet mining? Paul: This would be wet mining because we are working in the aquifer. Dry mining would be blasting. Gary Johnson: How many wells are in the 1500 foot impact area? The applicant could locate 6 wells. None of these are for residential use. Brad: As flood water recede, what are the expected

effects of the entailings. Paul: There will be no berms or piles to create swirls or eddings. Our job is to construct the area to minimize effects of flood. There will be no stock pile on site. Marjorie Ehry: There are 159 acres currently in farm land. Will this continue? Paul: Over time, the farm land will shrink? The first working site would be in the south east area moving slowly over the property. Marjorie: She is concerned with road impact and wells for agriculture uses. Paul: Per Bill Gille, CC Meisel works with the county on Road Improvement. Lloyd Towne said that Timmons Quarry road was over worked and the road was not constructed for the heavy use. We don't want the damage to our vehicles that would occur on a bad road. The closest wells to the site are not on the property and well away from the mining area that will start the process. We will be monitoring these two wells regularly. Sid: Will there be stockpiling or berms? Lloyd: There may be "berms" to separate the cells. Marjorie: What will the reclamation be. Paul: There will be a large lake with a Wetland enhanced in the southern area. Dean: Is the entire site in the flood way? Paul: Yes. Dean: What is the annual rate of extraction? Paul: A starting time has not been set, maybe 100 thousand yards. This is strictly a guess. Dean: Are these company trucks or independents? Lloyd: Probably a mix. Dean: Is the easement adequate for the traffic. Paul: The easement has no restrictions. Dean: Is there a direction of flow for the ground water? Paul: Towards the northeast paralleling the river. Gary: Percentage of use in County, about 93 %.

Questions of Proponents;

Marilyn Reeves: Is it possible to have a 10-year flood three times in a year? Cynthia Lowe: Yes. Marilyn: Are you saying that there will be no significant draw down at 700 feet. How do you measure a cone of depression and where does the 700 feet begin? Paul: It begins at the edge of the extraction area. We estimated using extraction on an adjoining property. At 600 feet there was about a 6 foot draw down. Adjoining Property owner: Robert May. How often is monitoring done on wells. And how much notice of draw down will I have to avert a potential problem of loss of crop. (His well is not included in the well locations.) Paul: We can do mitigation and give sufficient notice. It all depends on how fast they are pumping.

Dogami: Bob Brinkman, DOGAMI, 229 Broadalbin St. SW, Albany, OR. He is available for questions. Dean asked for further response on ground water monitoring to protect the well. Bob: There is no deficit in the water balance in this area. Water is being recharged back into the water table. We have seen no evidence of an adjacent well being adversely effected. DOGAMI's Review process has not started yet. We are currently reviewing for completeness. Then our review will begin. We will be protecting off-site water sources. Marjorie: How fast is water recovery on a well? Bob: If a well is effected, his water will be monitored and protected. If water levels are being impacted we can make that determination ahead of time. He has water rights for specific uses. Sid: Do you agree with the County condition regarding monitoring? Bob: Our monitoring requirements will carry on throughout the mining process. Question from audience: Why use 10 year floods. Bob: The most destructive part of a flood is when the property enters or leaves the site. Marilyn Reeves: Is it common for land use bodies to review before DOGAMI's review. Bob: Land use approval and a permit from DOGAMI must be received for mining.

We have received an official request for **continuation**. New evidence may be submitted by all parties until 5:00 pm on November 17, 2003. The applicant may rebut testimony until 5:00 p.m. November 25, 2003. All submittals are to be made to the Yamhill County Planning Office at 401 NE Evans St., McMinnville. The hearing will re-open at staff recommendation on December 4, 2003.

Opponents case:

Sam Sweeney, 1070 Ferry St., Dayton, OR 97114: He has a farm adjacent to the Hester site. He presented a slide presentation into evidence. Slides include the access to the Hester property, views of an existing working wet-mine, dangerous road conditions, existing wells that have gone dry, and after-effects of the 1996 flood. He is concerned with the well monitoring, noise and access road. Questions: Dean: Where is the site of the pit in the slides? Sam: This is a pit about 600 yards away, operated by Burch. Sid: What can be done on the road? Sam: It is narrow, curvy and swampy. It would take a lot of money to improve. It shouldn't be improved with County resources.

Pieper Sweeney, 860 Ferry St., Dayton, OR : She is an adjacent property owner. Burden of proof is on CC Meisel to prove that there will not be adverse effects. We have two wells, one for residential use. The experts say there will be no effect. The Sleger and the Dorsey properties both have wells that have been affected by area mining. There is good faith effort, but they can be wrong. Crops can't wait. All surrounding property is farm use. The burden of proof that the wells will not be effected has not been met. Dust can ruin a crop of broccoli and marion berries. Paul H.: Where are your wells located? Sam Sweeney indicated three wells on the map. Pieper: If water is pumped to site because of loss of water, can a farmer lose his water rights?

Arie Slegers, 18345 SE Nichols Rd., Dayton, OR: Mr. Slegers owns land due west of Hester site. He appreciates more time to have the easement researched. He lost two wells, 2500 and 3500 feet from pit. CC Meisel has been cooperative but what happens in the future? The road is very bad as indicated in the slides. He is concerned with erosion issues. Questions: None.

Robert Dorsey, 12915 SE Kimsey Rd., Dayton, OR: He has been on the property for 80 years. There has been major erosion over the years. He also has water pumped by CC Meisel. Could he lose water rights? Questions: Paul H. Did DOGAMI look at the well when the problems started? Robert: No.

John M. Rehm, Jr., 5088 Summerfield Drive SE., Salem, OR 97306: He has researched the irrigation wells located around the Hester Site. There is a fairway that connects the Sweeney property with the Hester Property. If the mining operation moves south, will what happened to the Dorsey and Sleger wells happen to the Sweeney wells. Questions: Paul H.: You were once with Water Resources, could they lose their water rights? Mr. Rehm: He was unsure. Paul H. Do wells age? Can they go dry from poor construction? Mr. Rehm: Yes.

Geoffrey Dorsey 19075 SW Mallard Ln., Dayton, OR: He is concerned with back water flooding. It does occur from downstream. There has been significant head cutting on these operations. With past filling in of the sloughs and the culvert installations by public works there will be significant back water across the Hester property. In flood waters, salmon will look for the back water infusion and get trapped in the pit. Questions: Paul H. You mentioned that in one of the pits they had put in large rocks. Did it help? Geoffrey: Yes, but in another they were installed, they washed away and had to be reinstalled..

Robert May, 9215 SE Webfoot Road, Dayton: He had the chance to comment regarding his well earlier in the hearing.

Merilyn Reeves, Friends of Yamhill County, PO Box 1083, McMinnville, OR 97128: Friends of Yamhill County at this point do not have a position in this matter. We are requesting a continuance until we have a chance to review the technical reports.

Rick Sanai asked the commissioner how they wish to proceed. Ken Friday said that he believed that it was requested to have a continuance until DOGAMI makes their report. Ken stated that they are required to make a final decision by March 7, 2004 per Administrative Rule. Rick stated that the Board of Commissioners will hear this denovo.

Public Agency Report: None other than those in the packet.

Rebuttal: The applicant opts to make written rebuttal.

MOTION: Alan Halstead moved to close the public hearing at Staff Recommendation and leave the record open for new evidence to be submitted by all parties until 5:00 pm on November 17, 2003 and for applicant rebuttal until 5:00 p.m. November 25, 2003. The hearing will reopen at Staff Recommendation on December 4, 2003. All submittals are to be made to the Yamhill County Planning Office at 401 NE Evans St., McMinnville.

DOCKET NO.: PAZ-04-03
REQUEST: Approval of a Comprehensive Plan amendment from Very Low Density Residential to Industrial; a zone change from VLDR 2.5 to LI Light Industrial in order to allow expansion of a mini-storage business.
APPLICANT: Duane and Diane Sharer
TAX LOT: 4411-905
LOCATION: 3200 NE Lone Oak Road
CRITERIA: Sections 702, and 1208.02 of the Yamhill County Zoning Ordinance.

Abstentions, Objections to Jurisdiction, Ex Parte Contract: Gary Johnson abstained from the hearing. Duane Sharer and Gary are old friends. Bernie Diefenderfer said he would abstain also, as a previous owner of a mini-storage, he did not feel he could be fair to both sides.

“Raise it or Waive it” Statement: Dean asked if there was anyone present for this hearing who was not present at the beginning of the meeting and who did not hear the reading of the “raise it or waive it” statement or would like it to be read again. There was no response.

Staff Report: Ken Friday gave a brief review of the staff report. The purpose is to allow a planned expansion of the mini-storage in the future. This planned property was part of code area 4.5, which was adopted in exception statement 2 in April of 1980.

Proponents case:

Mark Fancy, PO Box 235, Willamina, OR: Representing Duane Sharer. Mr. Fancy and Mr. Sharer are both aware that the proposed buildings on the property would not exceed the 40,000 square foot building standard for rural industrial uses. The applicant’s use was originally approved as a home occupation. Mr. Sharer would like to expand, but cannot under the current home occupation, since they would exceed

requirements in a low-density residential zone. Duane showed the layout of the property on a plot plan. Mr. Fancy said the coverage requirement of 30% in the current standing could have approximately 50,000 square feet of buildings. Based on the proposed expansion, the existing home and other out buildings the applicant has about 41,000 square feet. Mr. Fancy then handed out photos of the existing property and showed what it looks like at present, putting it in context with the surrounding area. The buildings on this property are similar to buildings on the surrounding properties. Mr. Sharer currently has 85 units and if approved, would have 36 additional units totaling 114 units. He is not against the overlay on the property limiting the use to storage units. Mr. Fancy did a review of the existing operations of storage businesses in the area of Newberg to Willamina. All sites indicated that they are nearly full and the use is needed. Many businesses expressed expansion in the future. Sid asked Mr. Sharer how many customers do you currently have? Mr. Sharer told him there is basically 1 client per unit.

Opponents case:

Merilyn Reeves, representing Friends of Yamhill County, submitted written testimony. There is a surplus of industrial land in McMinnville for urban use and there are 326 gross buildable acres available right now. She supports the staff report and said that the home occupation has changed since the applicant was able to have the current storage facility. Now the rule says the occupation has to be in your home or in those buildings that are within the zone. A home occupation shall not be used as justification for a zone change. Questions: None.

Dean Claus, 450 W. 7th Street, McMinnville, Oregon. Mr. Claus indicated on a map of buildable land in the City of McMinnville, that there is land available for mini-storage. These properties are suitable and do carry the requirements of the City for paved parking and sewer systems. This is a healthy market. Questions: None.

Public Agency Report: Ken Friday reported that the County Sanitarian reviewed the file and found no conflicts. There was a letter received from DLCD expressing concern about the need for taking an exception on Goal 14.

Rebuttal: Mr. Fancy said if all industrial growth is to occur in the City, why would the County have an industrial zone. This is a permitted use in the industrial zone, regardless of where people think it should be best located.

Staff Recommendation: Traditionally, the County has been very supportive of the expansion of existing businesses. In the past some of those approvals were without limitations. In other words, if someone asked for and justified a light industrial use, they got a light Industrial zone that allowed every LI use. This is no longer true with the application of the limited use overlay zone. What you would be allowing is a LI zone, but only one that allows a storage business. In looking at DLCD's letter, we are concerned about violating Goal 14, but don't feel he does, because he has not asked for the expansion. However, to protect against a violation to Goal 14, we have placed a limited use overlay requiring any expansion to comply with Goal 14.

Deliberation:

Alan Halstead: This is an urban use in the City. There are mitigating factors across the road with Bunn Village and the Honda Dealership.

Brad Myers: I am a proponent in property owners rights, but am concerned with what Ms. Reeves brought up with the expansion of a business or a zone change based on home occupation.

Robert Smiley: Feels that the section of home occupation is being stretched and is not comfortable with it.

Sid Friedman: This is clearly an urban use. Urban uses belong within Urban Growth Boundaries. Business in rural lands should be based on rural users. There is already property in the county designated for this usage.

Marjorie Ehry: This should be grand-fathered in. The property is being used for mini-storage and there is a growing need.

MOTION: Sid Friedman moved to recommend denial of the application on conclusions for denial contained in the staff report and section 1004.1 of the Zoning Ordinance. Seconded by Alan Halstead. Vote 4-2. (Marjorie Ehry and Dean Brown opposed) Must have 5 approving votes for recommendation.

MOTION: Robert Smiley moved to forward Docket PAZ 04-03 to the Board of Commissioners with no recommendation. Seconded by Marjorie Ehry. Approved unanimously.

MOTION: Alan Halstead moved to move docket G-01-03 to the January meeting. Approved unanimously.

Public Comment: Marilyn

The meeting was adjourned at