



To: The Crook County Court
Judge Seth Crawford
Commissioner Brian Barney
Commissioner Jerry Brummer

Tuesday, June 7th, 2022

From: Matt Ropp, Knife River NW Region Technical Services Manager

Re: Applicant's Argument on Case No. 217-21-000573-PLNG (CUP)

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Crook County
Community Development

Dear Members of the Court:

Applicant has appealed the Planning Commission's March 31st, 2022 decision on conditional use permit application No. 217-21-000573-PLNG (the "Application") because the Planning Commission (PC) failed to properly administer the Crook County Code and Comprehensive Plan, particularly Ordinance No. 328.

As evidenced by transcripts of the March 16th, 2022 hearing, the PC spent two hours discussing this case, working through each condition of the County Court's Program to Achieve Compliance with Goal 5; a program developed by the County Court and codified in Ordinance 328. In a three to two vote, the PC denied the Application. The reason stated by Commissioner Hermreck – who made the motion to deny- was that "even with all these [conditions] it is going to cause a tremendous impact to the area." It is understandable that some Planning Commissioners may feel that their friends and neighbors will be impacted by the mining of the subject property. However, this feeling should not outweigh substantial evidence which clearly demonstrates consistency with applicable approval criteria. It has been stated numerous times that Applicant is a "publicly traded corporation," a "big guy," whereas opponents in this case are friends and neighbors. This characterization – and the villainization of Applicant- illustrates a clear bias that is not fair to the Applicant.

The record in this case includes hundreds of pages of technical evidence, test data, expert testimony, maps, and other documents. There have been more than fourteen hours of public hearings dedicated to this project, much of which was allocated to provide opportunities for interested parties to participate, and to object to Applicant's proposal. Without question, the evidence in the record supports the County Court's decision to add the subject property to its inventory of significant aggregate sites. The evidence supports the County Court's findings that impacts associated with mining of the subject property can be minimized or mitigated to an acceptable level by conditions in the Program to Achieve the Goal, codified in Ordinance 328. The evidence clearly supports approval of the Application. Stated differently, despite the numerous claims made and concerns expressed by

opponents, there is not sufficient evidence in the record for the county to find that the applicable approval criteria cannot be met. Ordinance 328 makes this clear.

As stated by Applicant at the June 1st, 2022 hearing, the County Court's review of the PC's March 31st decision should be an "on the record review." The June 15th hearing should not be a new hearing wherein opponents are provided yet another opportunity to argue their case. Rather, the June 15th hearing should be an opportunity for Applicant/Appellant to demonstrate to the Court that the Planning Commission's decision is in error. Crook County Code (CCC) Section 18.172.110(12) Scope and Standards of Review of Appeal:

*(a) On the Record Review. The **appeal is not a new hearing**; it is a **review of the decision below**. Subject to the exception in subsection (12)(a)(vi) of this section, the review of the final decision shall be confined to the record of the proceedings below, which shall include, if applicable:*

Subsections (v) and (vi)

*(v) Argument (without introduction of new or additional evidence) by the **applicant, appellants or their agents**.*

*(vi) The appellate body may, at its option, admit additional testimony and other evidence from an interested party or party of record to supplement the record of prior proceedings. The record may be supplemented by order of the appellate body or upon written motion by a party. **The written motion shall set forth with particularity the basis for such request and the nature of the evidence sought to be introduced**. Prior to supplementing the record, the appellate body shall provide an opportunity for all parties to be heard on the matter. The appellate body may grant the motion upon a finding that the **supplement is necessary to take into consideration the inconvenience of locating the evidence at the time of initial hearing, with such inconvenience not being the result of negligence or dilatory act by the moving party**.*

*(b) Standard of Review on Appeal. The burden of proof in a hearing shall be as allocated by applicable law. The burden shall remain with the applicant to show that relevant criteria were met for an application throughout the local appeal process. For an appeal on the record, **an appellant shall have the burden to articulate reasons why the initial decision is in error**.*

Once again, thank you for your time and thoughtful consideration.

Prepared and Submitted by Knife River
Corporation – Northwest
By: Matt Ropp,
Technical Services Manager

A handwritten signature in blue ink that reads "Matt Ropp". The signature is written in a cursive style and is positioned above a horizontal line.

Date: June 7, 2022