

PLANNING COMMISSION HEARING

May 8, 2019

Crook County Planning Commission Chairperson Michael Warren II called the hearing to order at 6:00 p.m. Commissioners present in addition to Warren were George Ponte, Bob Lundquist, and Commissioner Pro Tem Lawrence Weberg. Commissioners Gary Bedortha, Linda Manning, Susan Hermreck, and Laquita Stec were not present.

Crook County staff present were Planner Katie McDonald and Assistant County Counsel Eric Blaine.

Warren led all persons present in saying the Pledge of Allegiance.

OPENING STATEMENTS

Warren read the opening statements. He called upon the Planning Commissioners to state any conflicts of interest, or ex parte contacts. He asked if any member of the public wished to challenge any Commissioner on any item on the agenda.

Conflicts of Interest – None.

Ex Parte Contacts – None.

Challenges – None.

APPROVAL OF MINUTES

Minutes for the April 3, 2019 meeting.

Review of the April 3 minutes was continued, as a quorum of the Commissioners present at the April 3 meeting was not present. Weberg suggested that the Commissioners present at that meeting be asked to review the minutes.

Minutes for the April 24, 2019 meeting.

Weberg pointed out a correction which needed to be made.

Weberg moved for approval of the minutes as corrected, and Ponte seconded.

The Commissioners approved the motion by a vote of 6-0.

PUBLIC HEARING

Clint Woodward (owner/applicant) – Record Number 217-18-000341-PLNG is requesting modification of the conditional use approval authorizing mining and extraction of sand and gravel on the subject property (**C-CU-776-95**) approved by the Crook County Planning Commission on February 22, 1995. The specific request is to modify the existing conditional use permit to explicitly allow placement of a mobile asphalt plant on the site, and to allow processing of clean concrete, asphalt, and other rock material from off-site on the subject property. Aggregate sites are subject to the requirements of CCC 18.144. The property has been designated as a significant aggregate site in

the Crook County Comprehensive Plan (C-P (M-23-95) and is identified as T 15 S R 17 EWM TL 812, located on the north side of the Post-Paulina Highway.

The County Court remanded the matter to the Planning Commission for further proceedings to consider additional facts, issues, or criteria not previously addressed during the March 20, 2019 County Court review. The Court directed that a public hearing be held to reopen the record to new evidence and testimony to address issues raised in the appellants' notice of appeal.

Assistant County Counsel Eric Blaine stated that his role in the hearing would be limited to offering guidance on procedural issues. He recommended that the remand be treated like any hearing, and that time be apportioned among persons offering testimony.

Steven Hultberg, the applicant's attorney, testified on behalf of the applicant. He said that he intended to go through the procedural issues, as the appellants had raised procedural objections, and requested the remand. He said that he would address the substantive procedural issues:

- (1) The appellants' opportunity to present rebuttal testimony. He said that the present hearing would satisfy that requirement.
- (2) The appellants' opportunity to respond to the applicant's evidence.
- (3) The appellants' opportunity to submit new evidence.
- (4) The appellants' opportunity to challenge the staff report and agency comments.
- (5) The appellants' opportunity to review the staff report.
- (6) The Planning Commissioners' failure to disclose the nature of the site visit and ex parte contacts.

Hultberg suggested that the appellants state their continued procedural objections.

Blaine suggested that the Commission request testimony from the appellants. He said that the record must be held open for 21 days, with a further seven day rebuttal period. He recommended that the Commission address the procedure for site visits.

Warren said that Commissioners are not permitted to discuss the issues at the site visit, but that the applicant is asked to describe the proposal, and the Commissioners have an opportunity to familiarize themselves with the site.

Weberg commented that he had not attended the site visit for the present application, as he had extensive experience with aggregate pits.

Ponte said that the Commissioners had not discussed the specifics of the application at the site visit.

Lundquist said that he felt that the visit had been informative.

Warren said that Planning Commission meetings are recorded, and that a statement made that information on ex parte comments was not recorded was not true. He said that an appellant had been permitted to provide rebuttal testimony at the September 19 meeting.

Warren asked if any public agency representatives were present. There were none. He said that individual comments would be limited to five minutes.

Brett Morgan said that he would save his comment time for later.

Clint Woodward said that he would also withdraw his request to comment.

Liam Sherlock, the appellants' attorney, provided testimony on behalf of the appellants. He was surprised that the applicant had not brought the missing materials forward. He said there was evidence of greater problems. He said the Commission had erred by not requiring the information required by the County Code. He said that a new ESSEE analysis is needed, since the proposed batch plant raises new issues that were not addressed by the original ESSEE analysis. He said that batch plants catch fire, and may start wildfires. He said that the application submitted by the applicant is not adequate, and the appellants don't know what to address. He said that he was asking for a continuation of the hearing until the required material is submitted and reviewed by the appellants. He said that hemp is processed in the same way as mint, and is vulnerable to contaminants in the same way. He said that an application for an asphalt batch plant had been withdrawn because of a conflict with a mint growing operation. He said that one of the applicants has a nearby hemp growing operation, and is at risk of having his product rejected due to contamination.

Sherlock said that asphalt is not a natural material. He said that land used for an aggregate pit must be restored for agricultural use. He said that asphalt processing turns land into industrial land, and the effects could last forever. He said that DOGAMI states that asphalt processing is not part of surface mining. He said they have not seen the materials the applicant is required to submit, including information on stormwater and groundwater contamination. He said that the County is wrong about new evidence, and he believes that the appellants can raise new issues. He said that evidence submitted by the Planning staff should be rebuttable, and the appellants should have seven days to respond. He asked how long the site visit was, what issues were discussed, and what information was provided.

Lundquist said that the Commissioners had looked at piles of reclaimed asphalt. He said that the crusher had a water tank for dust abatement, and a water truck was onsite. He said that the Commissioners had seen the pad for the batch plant, and had seen how the pit had been expanded.

Warren said that few specific questions had been asked.

Lundquist said they had been given a tour of the site.

Blaine asked for a list of the appellants, and it was provided by Sherlock.

Warren asked for an explanation of the exhibits submitted by Sherlock.

Sherlock reviewed the exhibits. He said that batch plants should be prohibited within two miles of vulnerable agricultural uses. He said that the applicant's proposal does not meet the standard of no significant impact on area agricultural uses.

Lundquist asked for an explanation of Exhibit C. He said that it refers to California compliance, which is not applicable.

Sherlock said that the laboratory which conducted the analysis is located in California, and simply referred to California standards.

Weberg asked Sherlock what Oregon Revised Statutes (ORS) he was quoting concerning conditional uses. He said that a new ESSEE is not required.

Sherlock said that if a new ESSEE is not provided, the applicant must prove that the proposal is consistent with the initial ESSEE.

Hultberg asked where in the County Code batch plants are listed as an industrial use.

Sherlock said that the Comprehensive Plan lists asphalt processing as a heavy industrial use.

Weberg asked if consequences from particulates have occurred in Oregon. He asked if there has been damage from batch plants to sensitive crops and essential oil production. He said that state agencies have stated that there has been no such damage.

Sherlock said that the appellants are trying to prevent damage. He said that the state legislature has prohibited batch plants within two miles of a vineyard, and the same logic applies to crops such as hemp. He said the Commission must consider whether the proposed batch plant could have an impact. He said they must look at individual farms, and not consider profitability. He said that the application must be denied if the applicant cannot prove that there will be no impact. He said that the burden of proof is on the applicant.

Weberg commented that, during the 1970's, the EFU designation was applied to lands which were not agricultural.

Lundquist said that a hazard review which had been submitted had been dated December, 2000, and updated impact information is needed. He said that a major asphalt production plant in Redmond is located within one mile of a hospital and a grade school, as well as senior living and daycare facilities.

Sherlock said that impacts on people are not being considered, but rather impacts on crops, and bees. He said that the applicant must meet strict criteria concerning impacts on crops. He said that essential oils produced in Oregon are sought after in the European Union, because there is no contamination. He said that the Western European nations have rejected materials produced in Eastern Europe because of industrial contamination.

Ponte asked if there are no industrial uses near any mint farm in Oregon.

Sherlock said that industrial uses may have been preexisting.

Weberg commented that no mint is being produced in Crook County at present.

Lundquist said that mint is not the same as hemp.

Sherlock said that they are both distilled to produce oil, which must be one hundred percent pure.

Warren asked about the Cooper property.

Sherlock said that the Coopers are licensed to grow hemp.

Kristy Cooper said that they have no irrigation water yet.

Ponte said that he had questions for the Coopers.

Kristy Cooper said that when she had issued her rebuttal on December 19, she had not seen the document discussed. She said that she had not been allowed to rebut the staff document. She said that information on the Supreme Court language is on page 3 for March 2018. She said that a vineyard owner had sued a batch plant operator due to a loss in Oregon. She said that information had been received from the EPA and the National Park Service. She said that asphalt plants are not allowed within 6.2 miles of a National Park. She said that the Knife Ridge asphalt plant in Redmond is not relevant, because it is located on flat ground where there is no runoff. She said that her property is located within one mile of the rimrocks bordering the Ochoco Reservoir. She said that there are no cattle or horses near the Redmond plant. She said the proposed asphalt plant will generate traffic of more than 30 trucks per day. She said that asphalt plants are listed as an industrial use. She said that there is only one water truck on the site, and it will run up and down the road. She said that an asphalt plant will be a wildfire hazard, since the area is a “juniper jungle”. She said the Planning Director had said the proposal must be consistent with DOGAMI regulations, which say that an asphalt plant is not an allowed use.

Ponte asked Cooper what she presently grows.

Cooper said that she grows oregano and organic vegetables, and has thirty hemp plants. She said that she plans to grow hemp for commercial production of hemp seed.

Lundquist asked Cooper how much acreage she has.

Cooper said that she presently has no irrigation water, because she is afraid to buy it until the issue is settled. She said that she intends to purchase water rights for her existing well.

Lundquist asked if she is concerned about cross-pollination with her neighbor who also grows hemp.

Cooper said she is prepared to address that issue later.

Warren said that DOGAMI states that they have no authority over asphalt plants, and do not say that there will be adverse impacts.

Cooper said that the County has the responsibility of regulating asphalt plants. She said that they are not a permissible use.

Lundquist said that he had thought that asphalt is a suitable fill for reclamation.

Cooper said that DOGAMI is the authority on that. She said that the applicant has no reclamation plan.

Steve Harlan offered testimony. He said that he grows hemp. He said that a hemp operation cannot be within two miles of marijuana. He said he is worried about fumes from the asphalt plant. He said that he has \$100,000 in his hemp crop. He said that male plants must be removed

by hand, and there is a lot of maintenance. He said that he has two employees. He said that all-female plant seed is expensive. He said that he has good soil. He said that hemp plants are sticky, which makes them vulnerable to particulates. He said that his property adjoins a golf course.

Harlan said that his livelihood is at stake. He said that he has put \$200,000 into his ranch. He said that the price of hemp has dropped, and he has had to double his crop. He said that he could lose his ranch.

Ponte asked Harlan if he grows anything else.

Harlan said that he keeps horses, but has no other crops.

Ponte asked if he uses any chemicals.

Harlan said that he does not. He said that he uses only organic fertilizer, which has all-natural ingredients.

Warren asked how many acres he has.

Harlan said that he has six acres of hemp.

Weberg asked if there is spraying on the golf course adjoining his property.

Harlan said it is on the other side of his property from the hemp, and is downwind.

Lundquist asked how far the hemp is from the golf course.

Harlan said it is about 3000 feet away.

Warren asked for other testimony. There was none.

Hultberg presented rebuttal testimony. He said that the applicant is not submitting a new or amended application. He said there is no basis for a continuance. He said that much of the information the appellants have asked for is not part of the approval criteria, and must be submitted later.

Hultberg said that the impact area for farm operations is 1600 feet, except in exceptional circumstances. He said that Harlan's ranch is 1.6 miles from the site, and is upwind. He said that Harlan's property is close to a highway, with impact from diesel fumes. He said that he does not see any reference to chemicals produced by an asphalt plant in the requirements for approval. He said that tests are not done for all chemicals. He said that the argument that an asphalt plant is a heavy industrial use is illogical. He said that there are asphalt plants next to schools and hospitals. He said that there is no prohibition on locating an asphalt plant within two miles of a vineyard if the plant is not on agricultural land.

Hultberg said that the Comprehensive Plan says that an asphalt plant is allowed on EFU land. He said that mining and processing is permitted on EFU land. He said that the standard addresses "significant" impact on agriculture, not just any impact on farming. He said that Cooper just obtained her hemp license, and her growing area measures three-quarters of an acre.

Sherlock presented the appellant rebuttal. He said that there is a lack of findings of fact, and the conditional use criteria have been ignored. He said there is an order of magnitude difference, and a serious deficiency. He said that reports must be provided. He said that an industrial use is not allowed in an EFU zone, just extraction and processing of natural materials found onsite. He said that batch plants produce benzene, which is tested for in analysis of hemp oil. He said that urban uses located near asphalt plants are not relevant. He said that the proposed batch plant is to be on EFU land. He said that the Comprehensive Plan is clear on the issue. The application is not complete, and a continuance is needed.

Ponte said that, if a continuance is not granted, the applicant will have 21 days to submit additional material, and the appellants will have 7 days to review it.

Sherlock said that there are many aspects to address. He said that recycled asphalt is contaminated by road waste, which is not present in new asphalt.

Weberg pointed out that there are seven soil classifications, and aggregate pits are permitted only on Class 6 and 7 soils, which are not good farm ground. He said that the applicant is not ruining good farm ground, and the operation is not close to good mint, alfalfa, or grain ground. He said that the state made the County zone the area EFU.

Sherlock said that Harlan's and Cooper's property is in farm use.

Weberg said that Harlan's property is on the valley floor. He said that groundwater contamination from the applicant's operation is a supposition.

Sherlock said that the applicant has the burden of proof.

Lundquist asked if appellants have the burden of proof of contaminants.

Sherlock said that the courts have said that the applicant has the burden. He said that the local body must find that the test has been met. He said this is the reason for the two-mile restriction adjacent to vineyards.

Weberg said that the prevailing wind does not go toward the valley floor.

Kristy Cooper said that she lives in the area, and the wind goes everywhere.

Weberg said that the Commission has until June 24 to make the decision.

Blaine said that the Commission should invite other testimony.

Russ Cooper offered opposition testimony. He said that one family has lived and ranched on the subject property since the 1880's. He said there is clay-sand soil on the property which could be farmed, if the juniper and sagebrush is cleared. He said there is a lot of soil.

Weberg said that the pit is on Class 6 or 7 soil.

Russ Cooper said that the pit is on a rock knoll. He said there are usable soils below.

John Morgan said that he wished to testify.

Sherlock said that he had no objection.

Morgan said that the appellants have all been in the area for a short time, and have small acreages. He said that he has no problem with the applicant's proposal.

Sherlock said that profit is not a factor, and there is no size threshold. He said that Harlan should have a chance for additional testimony.

Harlan said that his hemp crop is worth \$500,000 to \$600,000.

Blaine said that the Commission should invite written arguments.

Warren asked if there were any written arguments. There were none.

Blaine recommended a continuance. He said that the County Court decision had not been appealed. He said that the Commissioners should deliberate.

Weberg said that the Commission does not always opt for 21 days plus 7.

Lundquist said that the Commission should follow the Court's guidance.

Warren asked if the comment period could be longer.

Blaine said that they could run into the statutory time limit.

Hultberg said that if too much testimony is submitted, the hearing could be reopened. He said that the applicant would waive the statutory time limit.

Sherlock said that he had the ORS chapter which explains continuance versus open record. He said that a continuance was needed. He said that he wanted to bring in another expert.

Blaine said that the hearing could be continued to permit reviewing the material.

Weberg asked if the review could be completed before May 26.

The Commission discussed the matter.

Weberg recommended that they stay with the time frame that the Court had laid out.

Ponte moved that the hearing be continued.

Weberg seconded.

The Commissioners present approved the motion by a vote of 4-0.

Warren closed the hearing at 9:20 p.m.

OPENING STATEMENTS

Warren read the opening statements. He called upon the Planning Commissioners to state any conflicts of interest, or ex parte contacts. He asked if any member of the public wished to challenge any Commissioner on any item on the agenda.

Conflicts of Interest – None.

Ex Parte Contacts – None.

Challenges – None.

PUBLIC HEARING

Crook County (applicant) – Record Number 217-19-000062-PLNG continuation of hearing on a Text Amendment to amend Crook County Code Title 18 Zoning Chapter 18.08 Definitions, Chapter 18.16 Exclusive Farm Use Zone EFU-1 (Post-Paulina Area), Chapter 18.20 Exclusive Farm Use Zone EFU-2 (Prineville Valley-Lone Pine Areas), Chapter 18.24 Exclusive Farm Use Zone EFU-3 (Powell Butte Area), and Chapter 18.28 Forest Zone F-1.

McDonald said that no additional written testimony had been received by the deadline. She said that the hearing could be continued.

The Commissioners discussed the matter.

McDonald said that the changes decided on had been made. She said that the recommendation could be forwarded to the County Court.

Ponte moved that the recommendation be submitted to the County Court.

Lundquist seconded.

The Commissioners present approved the motion by a vote of 4-0.

OTHER BUSINESS

McDonald informed the Commissioners that the Hegele RV park modification was scheduled to be heard on May 22, 2019.

Weberg moved to adjourn the meeting.

Ponte seconded.

Warren adjourned the meeting at 9:48 p.m.