

UMATILLA COUNTY PLANNING COMMISSION
Meeting of Thursday, March 27, 2014
6:30 p.m., Umatilla County Justice Center, Media Room
Pendleton, Oregon

COMMISSIONERS

PRESENT: Randy Randall (Chair), Gary Rhinhart (Vice Chair), John Standley, Tammie Williams, Don Wysocki, Suni Danforth, Don Marlatt, Cecil Thorne.

ABSENT: None.

STAFF: Tamra Mabbott, Shane Finck, Julie Alford, Connie Hendrickson.

NOTE: THE FOLLOWING IS A SUMMARY OF THE MEETING. A RECORDING OF THE MEETING IS AVAILABLE AT THE PLANNING DEPARTMENT OFFICE.

CALL TO ORDER:

Chairman Randall called the hearing to order at 6:30 p.m.

Approval of Minutes:

Commissioner Wysocki made a motion to approve the minutes from the January 23, 2014 hearing as presented. The motion was seconded by Commissioner Standley and passed unanimously.

Chairman Randall identified the hearing and read the opening statement. He announced that the hearing would most likely be continued to April 24th.

Staff Report: Planning Director, Tamra Mabbott began the presentation by referring to maps which identified the subject property owned by James Spence Properties and described as 5N 36 07, Tax Lot 200. Adjacent property owners within the 750 foot legal notice area were provided a notice of the request submitted by A & B Asphalt for a Goal 5 Significant Site with a Zone Map Amendment and Text Amendment. Mrs. Mabbott also pointed out the 1500 foot impact area on the map. Because this application is a Goal 5 request and the Oregon Administrative Rule requires an ESEE (Economic, Social Environmental and Energy) Analysis to be completed, property owners within that area were notified as well. Umatilla County requires an extra step for an AR (Aggregate Resource) Overlay zone so the map showed the 1000 impact area, as well.

Mrs. Mabbott described a map showing the 30 acre quarry area which had been approved by Umatilla County years ago and pointed out the area disrupted by mining activity. She said that to the best of knowledge of the county and that of DOGAMI (Department of Geology and Mineral Industries), A & B Asphalt was operating within the boundaries of their permit. The area had been surveyed and they had a bond required for the area they

are mining. Mrs. Mabbott noted that the maps being shown were included in the Planning Commission packets and had also been posted on the county's web site.

Mrs. Mabbott pointed out section 7 of the map 5N 36. The southwest quarter of the southwest quarter was listed in the Technical Report of the Umatilla County Comprehensive Plan as a significant site. The application submitted by A & B Asphalt did not include this area because it was already on the county's inventory of significant sites. By Administrative Rule no more than 35% of the overall quarry area can be high value farm ground. This quarry meets that standard.

Chairman Randall paused for a moment to ask the Planning Commission members if there was any bias, conflict of interest or declaration of ex parte contact. There was none.

Mrs. Mabbott told the Commissioners they would hear testimony tonight regarding the mining operation and whether or not A & B Asphalt was in compliance with their existing permit. She said there were three existing Conditional Use Permits on the property, one issued in 1977, one in 1984 and one in 1987. The site had been on the county's inventory for a long time and they requested permits each time they expanded.

Mrs. Mabbott said she had spoken with County Counsel, Doug Olsen and they had agreed that A & B Asphalt was currently in compliance with their permit. She stressed that A & B Asphalt's compliance with the permit was a separate matter and not relevant to this evening's discussion or the decision before the Planning Commission. The matter before the Commission is the Goal 5 application and whether or not this was a Significant Site and if so, the potential impacts to the area and whether to allow the Goal 5 protection.

Mrs. Mabbott referred to the draft findings in the Planning Commission packets and a flow chart which showed the steps to be followed to receive Goal 5 protection. The site has to meet a quality and quantity test and the information in the packets showed there was well over 500,000 tons of aggregate that could be mined in the proposed expansion area. The site also has to meet ODOT (Oregon Department of Transportation) specifications.

Mrs. Mabbott referred to a diagram in the draft findings which was the chart to be followed after determining that a site was significant. The land uses in the 1500 foot impact area are identified along with possible conflicts between existing or future development and the mining operation. If it was determined there were potential conflicts that could be mitigated, the Planning Commission could adopt standards which would protect the land owners' ability to mine the aggregate.

Commissioner Rhinhart asked for clarification on what A & B Asphalt was applying for. Mrs. Mabbott said there was a total of 33.26 acres which had an existing Conditional Use Permit and pointed out a 9.83 acre area of that parcel which was currently on the Goal 5 inventory in the county's Comprehensive Plan. The 9.83 acres is already protected so was

not a part of what was being requested on this application. The area to the north is class 2 soil and is where the company would like to expand the mining operation.

Applicant testimony: Ms. Wendie Kellington, Attorney for A & B Asphalt began by outlining what was being proposed by the applicant. A & B Asphalt would like to add some land to the Significant Site inventory so the entire mining site would be included on the inventory. Ms. Kellington referred to the 9.83 acre area closest to the road which was currently on the county's inventory of Significant Sites and where the asphalt batch plant was located. That area has been exhausted and mining no longer takes place there.

Ms. Kellington pointed out a 14.15 acre area to the east which is currently being mined and still contains between 400,000 to 500,000 tons of basalt rock. To the north there is an 11.64 acre area with a 7.47 acre arc around it. The total acreage proposed to be added to the inventory is 33.26 acres. Discussion followed.

Ms. Kellington said the issues before the Planning Commission were whether or not the application met the relevant approval standards to add 33.26 acres to the Significant Sites inventory and if mining should be allowed because impacts from that expansion were not significant. She agreed with Mrs. Mabbott's staff report which said there was nothing which would prohibit the county from evaluating this application to add the land to the inventory. She also said the status of the Conditional Use Permits affecting the aggregate site were irrelevant and unnecessary for the Goal 5 approval.

Ms. Kellington said the comprehensive noise study that was done determined the current noise output from this site, as well as what is anticipated, and it will meet all DEQ (Department of Environmental Quality) noise standards. The 1500 foot impact area from the boundaries of the mining operation complies with the Oregon Administrative Rule (OAR). With regard to dust from the site, the prevailing winds come from the south and the west and blow away from the residences. There is also dust mitigation with the use of sprinklers and water trucks.

Ms. Kellington addressed the issue of a citation issued by Umatilla County to A & B Asphalt for operating outside of the hours of operation listed in their Conditional Use Permit. They disagree with the county and will be in court on April 8, 2014 to dispute the charges, but stated that matter had nothing to do with the issue before the Planning Commission at this hearing.

Ms. Kellington referred to a quality and quantity standard used to determine if a site is significant saying that A & B Asphalt met all standards and that there were geological and ODOT reports confirming that. She added that the soils of the 33.26 acres were not more than 35 percent Class 2 soils.

Ms. Kellington said a traffic impact analysis completed by MacKenzie Engineering concluded that there would be no new traffic impacts with the expansion of the site. The analysis also stated that all objective standards were met with respect to site distances, road capacity and cross sections. All of the intersections were anticipated to operate

within mobility standards and the proposed amendment would not significantly affect transportation facilities.

Applicant testimony: Mike Raley of Daly-Standlee & Associates, 4900 SW Griffith Drive, Suite 205, Beaverton, OR 97005. Mr. Raley said the engineering firm of Daly-Standlee & Associates was employed by A & B Asphalt to complete a noise study and to develop any necessary noise mitigation methods insuring that noise impacts would be minimized as specified by the Goal 5 standards. The Goal 5 standards state that noise impacts are minimized if the DEQ noise criteria of the site are met.

Mr. Raley referred to a slide presentation and said for the noise study he had divided the site, with the proposed expansion, into three sections. The first part of the mining operation would remove the ten foot layer of soil called the over burden; then the twenty to twenty-five foot layer of fractured and weathered rock beneath that would be removed and used to form a thirty foot high noise berm. The solid rock to be used for mining was located beneath the fractured rock layer. Holes would be drilled into the solid rock and small sections of the rock would be set with blasts causing the rock to fall into the pit. A front end loader would carry the rock to the crusher where it would be crushed into smaller pieces. Another front end loader would be used in the pit to move and process rock and load trucks. The number of trucks hauling aggregate would not be increased with the expansion of the pit.

The DEQ hourly noise criteria are measured at L 50, L 10 and L1 levels. Mr. Raley explained that the L50 criteria states a noise level cannot be exceeded for more than fifty percent of an hour or thirty minutes. An L10 level is ten percent of an hour or six minutes and an L1 level is one percent or thirty-six seconds. The L50 criterion is 55 dBA (A-weighted decibels), the L10 is 60 dBA and the L1 is 75 dBA. Mr. Raley said the focus of their study was based on the L50 criterion which is the most restrictive. If the L50 criterion is met, the criteria for the L10 and the L1 are met as well. The noise study they performed assumed the equipment would be running continuously, simultaneously and at the loudest position. It was based on industry standards for noise modeling and took into account the topography of the site and environmental conditions such as humidity, temperature and wind speed and direction.

DEQ noise criteria focus on specific noise sensitive receivers which in this case were predominantly residences but their study also predicted sound all around the site. The receivers chosen were the ones believed to most likely have noise impacts. The study showed that the noise levels at all of the receivers were well within the DEQ criteria; all sound was below 50 dBA. Mr. Raley referred to a graph which showed the sound levels during the tests performed and he identified the source of the sounds.

Mr. Raley stated that noise from blasting at the site has different DEQ criteria from the criteria applied to the regular daily site operation. The criterion for blasting is 98dBC (C-weighted decibels) slow response. In sound testing that has been done, blasts measured as close as 300 feet from a residence complied with the 98dBC DEQ criteria. The closest

residence to the blast area for this site is approximately 1100 feet. They feel that it is feasible and expected that blasting noise would meet the DEQ regulations.

Commissioner Rhinhart asked how they can be assured that A & B will meet the noise requirements with no enforcement from DEQ or the county and Mr. Raley answered that some counties have required noise monitoring if they felt it was necessary. Mr. Raley added that he had done noise testing for nearly six years and stands behind the information he provided in his report. He also said his supervisor who has been in this industry for over twenty years, managed this project and reviewed his report.

Ms. Kellington said that if the Commission wanted to have an extra measure of certainty with regard to the noise level, there could be specific conditions requiring that the mining occur using the processes that are outlined in the noise report. If that procedure were followed the noise would stay well within legal limits. Discussion followed.

Commissioner Wysocki asked what sort of noise would produce 55 dBA and Mr. Raley answered that it would be similar to the lower level of a car passing by on Walla Walla River Road. He gave another comparison saying 60 to 65 dBA is typical conversation level at approximately three feet away.

Mr. Raley said that although the asphalt plant is not a part of the Goal 5 application Ms. Kellington asked him to complete a noise test for that as well. The noise from the plant did not change the noise level above what had been predicted. Commissioner Lee asked what was being operated at the time of the testing. Mr. Raley referred to a graph being shown and said the excavation, crushing and screening operations were all running when the noise testing was done. Discussion followed.

Ms. Kellington said the dust from the site is mitigated through the use of an existing watering and sprinkling system. Water trucks fill up in the city of Walla Walla if the job is in that area and in Milton-Freewater when working in that area. There is also a 10,000 gallon holding tank where water is stored. Commissioner Marlatt asked if A & B had been purchasing water from the City of Milton-Freewater and Ms. Kellington said they had. Mike Stalder from A & B stated they also purchased water from the City of Walla Walla, renting meters from the city and paying usage fees. Mr. Stalder said the City of Walla Walla was their source for water last year and the City of Milton-Freewater the year before that. They also use the on-site well for dust control on the conveyor belts, the office and around the yard.

Ms. Kellington said the OAR has beneficial treatments that it provides to an existing aggregate site. The definition of an existing site is one that is either lawfully operating on September 1, 1996 and has been determined to be significant or it has been on an inventory since before 1996. The Humbert DOGAMI permit was revoked between July 1996 and November 1996. Because of that they were not in operation on the September 1st date but they are moving forward because a part of the site, the 9.83 acres, has been on the inventory since 1980. Ms. Kellington showed the July 1996 DOGAMI closure order and the letter from November 1996 rescinding the closure order.

Ms. Kellington concluded her testimony by stating that they had shown that A&B Asphalt met all the applicable standards and they respectfully requested that the application be approved.

Applicant testimony: Planning Consultant, Leslie Hauer, 6100 Collins Road, West Richland, WA introduced herself and said the arc shown on the map around the site is there because the Umatilla County Code for applying the A/R (Aggregate Resource) overlay requires that it be 1000 feet from a residential zone. She said she was unable to find the hours of operation in the application that was submitted to the county, however, Mr. Stalder from A & B Asphalt said he is willing to commit to the operation of the rock crusher during the hours of 7:00 a.m. to 5:00 p.m., Monday through Friday.

Neutral testimony: Dr. Rob Clark, Superintendent of Schools for Milton-Freewater Unified School District read the letter that he submitted to the Planning Commission. His main concerns with regard to this application were for the safety of the children at Grove Elementary and ensuring the truck drivers followed the reduced speed limit of 20 mph on 15th Avenue during school hours.

Proponent testimony: John Spence, Walla Walla, WA, land owner of the aggregate site said he likes the way A & B is doing business and he does not believe there will be any negative impact on their existing farming operation.

Proponent testimony: Darren Bender, Benton City WA, gave a history of how A & B Asphalt became located on the property in Milton-Freewater. He said they provide a good service for the area and the expansion of the site will help the community. Mr. Bender introduced Adam Schotts, owner of A & B Asphalt who showed pictures of their Benton City operation as well as the one in Milton-Freewater. Mr. Bender said A & B Asphalt was established in April 1977. Mr. Schotts said he is proud of his operations and happy with his crew.

Proponent testimony: Mike Stalder, 3998 Mill Creek Road, Walla Walla, WA said he went to work for A & B Asphalt in 2009 and the Milton-Freewater site employs thirty-five people who live in Milton-Freewater, Walla Walla, Hermiston and Pendleton. He said they compete with businesses in Milton-Freewater, Pendleton, Hermiston and Boardman and competition is good for business and the consumer. He referred to letters of support from neighbors along with a petition signed by people around the area who are in favor of what A & B is trying to accomplish. He noted that their crushing operation had 14,000 man hours without an accident or injury. They had made mistakes with overloads, etc. and there is a learning curve but they wouldn't make the same mistakes twice.

Proponent testimony: John Morrison, 1020 Boyer, Walla Walla, WA introduced himself and said his father was one of the first to have an asphalt business in the area Walla Walla Valley area. His family still owns a 100 plus acre pit in Umatilla which produces round rock and is a non-blasting operation. He said the proposed expansion by

A&B Asphalt would be good for the economy of the area. Having more product to sell will help keep prices lower.

Proponent testimony: Eugene Luisi, 82360 Couse Creek, Milton-Freewater, OR said he was in favor of the expansion of the A & B Asphalt operation because it provided a good income for workers in the area which helped to support other businesses such as grocery stores and restaurants.

Neutral testimony: Mrs. Mabbott said that Scott Patterson who was responsible for the gas line that runs through the pit stated he was neutral about the expansion of the operation and would be submitting a letter stating the concerns he had with regard to the work in the aggregate pit and its proximity to the natural gas easement.

Opponent testimony: Mike Robinson, Attorney for Brad Humbert, 1120 NW Couch Street, 10th Floor, Portland, OR 97209-4128, handed out Goal 5 worksheets from the City of Milton-Freewater's acknowledged Goal 5 plan and a letter that addresses the Goal 5 criteria. Mr. Robinson said he would address the Goal 5 criteria beginning with the issue of water that was mentioned earlier by Commissioner Marlatt. Mike Stalder stated during testimony that A & B obtained water from both Milton-Freewater and Walla Walla. Mr. Robinson noted that their application cited Milton-Freewater in one place and Walla Walla in another but did not say how much water was obtained, how it was obtained or how often it was obtained. Mr. Stalder had also testified that A & B used water from the on-site well for control of dust from the conveyor. Page six of the application they submitted has questions with regard to water rights and wells but that information was not provided and the application states that they don't have any current water rights. Mr. Robinson said it was important before acting on this application, for the Planning Commission to gain a clear understanding of where A & B is getting the water they are using and what their rights are to the water. If they are using an on-site well, that introduces a topic which has not been discussed; the impact to water rights and ground water from their operation, both from using the well and the mining activities. These issues are relevant to the Goal 5 application process and more evidence is needed to determine what the right answer is.

Mr. Robinson summarized the letter he had given the Commissioners by saying the three soil samples, two of which are on the edge of the 33 acre site, are not a representative set of samples and not samples with which it can determine whether or not the soil is a significant resource. He said Ms. Kellington was correct in saying that the usual Goal 5 conflict area is 1500 feet out but the rule provides that if there is factual information which justifies a larger conflict area, that information must be considered. There are impacts to Goal 5 resources both inside and outside the 1500 foot area which the application neither considers nor acknowledges. Before the Commission makes a recommendation to the Board of County Commissioners they need to understand what all the Goal 5 resources are, how they are impacted and how the impacts can be mitigated.

Mr. Robinson said wind does blow in a prevailing direction but it blows in other directions, as well. A & B said they use best dust management practices but their

application does not explain what those practices are. He said their application failed to address noise sensitive uses outside of the 1500 foot impact area; these include residences and the Grove Elementary School which is within ¼ to ½ mile from the mine. Because there are significant conflicts with those uses they are required by the Goal 5 Administrative Rule to address them.

One of the Goal 5 resources acknowledged by the City of Milton-Freewater is the views of the Blue Mountains to the east which is within the 1500 foot impact area. The City of Milton-Freewater feels strongly about those views because they put them in their plan.

Umatilla County has designated the Walla Walla River as a resource that is sensitive for fish production and said the handout he gave the Commissioners included the county's Comprehensive Plan pages 8-19 and the Technical Report which describes it. The application submitted by A & B makes no mention of that resource and consequently there is no discussion of how storm water runoff or impact to ground water or dust may impact that Goal 5 resource.

Mr. Robinson said the A & B application failed to analyze agricultural operations other than dry land farming. There are two vineyards within a couple of miles of the site and there had been no analysis of those vineyards. Dust on grape leaves creates mites which damage the vines and the fruit production.

Mr. Robinson said Goal 5 applicants are required, like other applicants who seek to amend acknowledged comprehensive plans, to address relevant statewide planning goals. The A & B application does not address Goal 6 which is federal and state air and water quality nor do they address Goal 12 which is transportation. The transportation study by MacKenzie does address the transportation planning rule but the statewide planning Goal 12 is different from that, requiring a safe transportation facility. There has been no analysis of how expanding the mining operation and multiple trucks running throughout the day on 15th Avenue past Grove Elementary School will impact the safety of pedestrians and other motorists on that street.

Mr. Robinson said there were other issues raised in the letter he submitted. He said he appreciated the testimony given by the applicant and would respond to that at the continued hearing in April.

Opponent testimony: Nita Stoke, 53881 Walla Walla River Road, Milton-Freewater, OR pointed out the location of her home on the map and handed out letters from some of her neighbors who were unable to attend the hearing.

Mrs. Stoke said she disagreed with the findings of the noise study report presented by Mr. Raley. The noise levels at her home are very different from the report given. She talked about the structural damage that had been done to the floors, walls and window frames of her home due to the blasting from the mining operation but said she had not had a home inspection done.

Mrs. Stoke said she had a new well drilled to irrigate her property. Chairman Randall asked if Mrs. Stoke had state water rights from the well for the 35 acres she owned and she answered that she did. She said she is concerned about the well cracking from the blasts and surface water draining down and contaminating her well. Mrs. Stoke said trees on her property have died because of the blasting. She added that there used to be a spring from the hill which came down to her property but it is gone and she knows that the value of her property has decreased.

Opponent testimony: Gary Goodwin, 311 SE 15th Avenue, Milton-Freewater, OR described the way the blasting from A & B Asphalt's aggregate pit felt and said the second time they blasted it created a crack in some of the molding in his home. After the third blast, the crack in the molding measured 3/8" and there were cracks in three rooms of his home that were not there before. He has requested that an engineer look at the damage to his home after which he will be in touch with A & B. Commissioner Danforth asked Mr. Goodwin when the third blast took place and he answered that he had the date written down but did not have that information with him; he guessed that it was sometime July or August of 2013.

Opponent testimony: Roger Cosner, 910 NE 1st Street, Milton-Freewater, OR, said he was a self-employed contractor and had obtained a document from ODOT stating that A & B Asphalt had nine state and federal driving violations. He said they also had thirty violations of trucks running over weight at the scales. He said he was opposed to the expansion of the A & B Asphalt pit.

Opponent testimony: Carol Free, 53840 Walla Walla River Road, Milton-Freewater, OR said the blasting had caused her porch and chimney to start pulling away from her home and she showed the Planning Commission pictures she had taken.

Opponent testimony: Mindy Birdwell, 54068 Walla Walla River Road, Milton-Freewater, OR said her concern is the blasting. Her home is located 0.8 miles from the pit and has been damaged by the blasts. There are cracks in her home now that were not there before the blasts.

Opponent testimony: Gina Green, 53906 Walla Walla River Road, Milton-Freewater, OR said she purchased her home five years ago and the concrete she put around it has large cracks through it now due to blasting in the pit. She was not notified that blasting would occur so she and her family were frightened when the blast happened. She is concerned about the safety of the gas pipeline located near the pit when the blasting occurs.

Opponent testimony: Peter Mohr from Jordan Ramis, PC, 2 Centerpointe Drive, 6th Floor, Lake Oswego, OR 97035 introduced himself and said he agreed with the comments made by Mr. Robinson. He said he was recently engaged by Konen Rock Products, Humbert Asphalt and Pioneer Asphalt with regard to this application. He stated that he had only been involved in this process for approximately two days so would not

be submitting written comment at this hearing but would at the continued hearing in April.

Mr. Mohr said the draft findings and conclusions state that the permits held by A & B Asphalt are valid. Based on the Umatilla County Development Code (UCDC) and prior LUBA (Land Use Board of Appeals) decisions there is reason to believe that those permits are not valid. A conditional use permit according to the UCDC provides that the permit is valid for one year and without requesting an extension within that year that permit is no longer valid. There are a variety of findings in the staffs' findings and conclusions which rely on the permits being valid for purposes of this application to increase the area for the aggregate pit. He referred to permit #C-479 which authorized the crusher and the asphalt plant on the property and was amended in 1992. The findings state that the permit is valid so it is released from consideration for purposes of going through the Goal 5 approval process.

Mr. Mohr said he disagreed that the permit is valid and that it is an issue. He will submit documentation at the continued hearing showing that the permit, as amended in 1992, provided for the placement of an asphalt plant by Humbert Excavating and that Humbert's never did place the asphalt plant on the property. They also did not satisfy the conditions of the conditional use permit for purposes of keeping it active. There are a number of conditions identified in the permit; one of which said the new asphalt plant must be located 500 feet from the nearest residence and that a revised plot plan showing the exact location of the plant in relation to those residences must be submitted. Those and other conditions were to be completed prior to the issuance of a Zoning Permit for the operation of the asphalt batch plant. A & B Asphalt is operating that asphalt plant under #C-479 and the express terms and conditions for the operation and siting of that plant have never been satisfied.

Mr. Mohr said no revised plot plan for the location of the asphalt plant had been submitted to the county so no zoning permit had been required for operation of the asphalt plant. Mr. Mohr said he realized that the application submitted was for a Goal 5 proceeding but we can't have a Goal 5 proceeding relying on the validation of a permit which does not exist as a matter of law.

Mr. Mohr said this was not about a fight between competing enterprises; the companies he is representing have no problem with competition in the valley. The basis of their concerns is that all aggregate mining and asphalt producing businesses should play by the same rules.

Opponent testimony: Jayne Clark, 1325 NW Horn, Pendleton, OR said her concern was process. Mrs. Clark said she was an operator in the aggregate business and there should be a fair and equitable process by our county government which applied to everyone. A&B Asphalt had not been required to meet the same 2005 standards that other companies had to meet. Mrs. Clark said she was outraged at how the process had not been followed correctly and it had affected homeowners, the community and other business owners.

Opponent testimony: Terry Clark, 1325 NW Horn, Pendleton, OR. He agreed with Mrs. Clark's sentiments saying that the process had been flawed and this was an opportunity to correct it. He said he knows employees of A & B Asphalt and they do good work and agreed that this was not about competition. He said that as an operator they needed to be able to rely on the county ordinance to be applied to all businesses the same. Mr. Clark stated that he did not think it had been intentional but since it had been done incorrectly now was a good opportunity to get it right.

Opponent testimony: Charles Konen, 81890 Couse Creek Road, Milton-Freewater, OR said his business had gone through the Goal 5 process in 2004 and had a list of conditions that he was required to follow. He referred to an area on the map of the A & B Asphalt pit saying it was out of compliance with county standards. He said they should be required to move the asphalt plant so that it is 500 feet from the residences and comply with the same rules as other operators. Mr. Konen asked the Planning Commission to look at A & B's operation to see if they were within the county's standards for a conditional use permit.

Chairman Randall told Mrs. Mabbott that there were some issues brought up in testimony that the Commission would like for staff and county counsel to research. He said they would keep the hearing open and take additional testimony not previously heard.

Rebuttal:

Ms. Kellington made a request to have a few minutes to rebut opponent testimony. Commissioner Williams said she would like to hear what Ms. Kellington had to say. Mr. Robinson said he had no objection to Ms. Kellington offering rebuttal now but asked for clarification on how the continued hearing would proceed. Chairman Randall said new testimony would be accepted at the continued hearing and there would be an opportunity for further rebuttal.

Ms. Kellington said this hearing is not about the asphalt plant, it is a Goal 5 application for the 33.26 acres. The asphalt plant is 575 feet from the road so they are abiding by the same rules as other operators. A & B knows they had a bad blast and if someone has a problem, they would like to know about it. The blasting was done by a contractor who has insurance. This pit has been operation since the 1940's and blasting has occurred at the site since then.

Ms. Kellington said the matter of the conditional use permit is irrelevant because whether Humbert operated lawfully when he had the pit or got the right permits does not matter. With regard to A & B not meeting their reporting obligations nine times and the ODOT violations, they are not the only ones on the list; Pioneer Asphalt is listed there as well. She said this application has been developed over a period of a 1 ½ years with geological and transportation studies and it was determined that there would be no significant impacts.

Ms. Kellington said that Mrs. Stoke complained when Humbert operated the pit that they were setting up an asphalt plant in the pit and she did not want the smell coming into her

home. An officer talked to Brad Humbert who said that the plant was new and there would be minimal odor and the wind blew away from the residences. The county wrote a letter to Mrs. Stoke in 2010 saying the batch plant was lawfully permitted.

After some discussion it was decided that the continued hearing would be held at the Justice Center on April 24, 2014 and begin at 5:00 p.m.

Commissioner Standley said there was some confusion about dates with regard to the conditional use permits in the draft findings and he would appreciate some clarification. Mrs. Mabbott said she will get some background information for the Commissioners concerning those permits. Commissioner Williams asked for clarification on the Goal 5 and the aggregate site being on the county's inventory.

Commissioner Marlatt said a chronological list of the ownership of the pit would be helpful and Commissioner Standley added that would help clarify some of the issues people had with regard to the permitting process and what was required of each business. Mrs. Mabbott said she would consult with County Counsel, Doug Olsen about it.

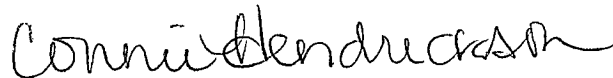
Commissioner Williams asked if the owners of the natural gas pipeline had provided comment and Mrs. Mabbott said they had come to the hearing and were going to speak as neutral but needed to leave early. They were supportive of A & B Asphalt and would be submitting a letter making sure that everyone was aware of the pipeline easement.

Election of Officers:

Commissioner Rhinhart made a motion for Chairman Randall to remain the chairman of the Planning Commission for another year. Commissioner Danforth seconded the motion and it passed unanimously. Commissioner Standley made a motion for Commissioner Rhinhart to continue as Vice-Chairman for another year. Commissioner Williams seconded the motion and it passed unanimously.

Chairman Randall closed the hearing at 9:50 p.m.

Respectfully submitted,



Connie Hendrickson
Administrative Assistant

Adopted by the Planning Commission 04/24/14