

UMATILLA COUNTY PLANNING COMMISSION
Meeting of Thursday, October 24, 2013
6:30 p.m., Umatilla County Justice Center, Media Room
Pendleton, Oregon

** **

COMMISSIONERS: Randy Randall (Chair), John Standley, Tammie Williams,
David Lee, Don Marlatt, Suni Danforth.

ABSENT: Gary Rhinhart (Vice Chair), Don Wysocki.

STAFF: Richard Jennings, Carol Johnson, 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 meeting to order at 6:30 p.m.

Approval of Minutes: Commissioner Standley made a motion to approve the minutes of the September 26, 2013 hearing as presented. The motion was seconded by Commissioner Lee and passed unanimously.

New Hearing: Chairman Randall identified the hearing as Conditional Use Permit #C-1226-13 and read the opening statement. There was no bias, conflict of interest, declaration of ex parte contact or objection to jurisdiction from the Commissioners.

Staff Report: Senior Planner Richard Jennings said the Humbert's submitted a Conditional Use Permit application for an asphalt batch plant in July of this year. A public notice along with the findings were sent to the adjacent property owners. Comments were received from Mr. Robert Berry and Mr. John Bakkensen of the Helen Reser Bakkensen Trust. An administrative decision to permit the asphalt batch plant was made by the Planning Department staff and during the appeal period which ended on October 3rd, a request for an appeal of that decision was received from Mr. Berry and Mr. Bakkensen.

Mr. Jennings stated that although this is an appeal of a decision made administratively by the Planning Staff, it is a first evidentiary hearing so it is the responsibility of the Planning Commission to make a decision on whether or not to approve the Humbert's Conditional Use permit application.

Aerial maps of Humbert's existing aggregate pit were displayed on the overhead screen showing the proposed location of the batch plant within the site. Mr. Jennings referred to those maps as he explained that the pit was 6.5 miles east of Milton-Freewater on Birch Creek Road and was established in the early 1990's. At the time the aggregate site was

originally permitted Humbert Asphalt received authorization for a rock crusher and an asphalt batch plant but the asphalt plant was not established at that time, voiding that portion of the conditional use permit. This made it necessary for them to reapply at this time for a permit to operate an asphalt batch plant in this location.

Mr. Jennings referred to another map showing a closer view of the aggregate pit pointing out the entrances to the site and the area where the asphalt plant would be located. Mr. Jennings said he had visited the site and explained that the pit sloped to the east, away from the road. There is a 15 ft. earthen berm which would divert any runoff from going onto the road or into Birch Creek.

In addressing possible concerns regarding increased truck traffic in the area, Mr. Jennings said that Mr. Humbert currently extracts gravel from this aggregate pit for his existing asphalt plant located on Hwy 11. The amount of truck traffic would remain the same because trucks already visit this site to get the gravel for the asphalt.

Mr. Jennings described the area around the aggregate site as mostly dry land wheat fields and a small amount of cattle. To the northeast there is a ½ acre vineyard approximately 2.6 miles from the pit. Another vineyard located across the state line in Washington is 3 miles away. There are several vineyards towards Telephone Pole Road about 4 miles away. Thus, there are no “planted vineyards” within 2 miles of the aggregate pit where the asphalt plant is proposed to be located. The aggregate site is located on a parcel of land owned by Kenny Farms and leased to Humbert Asphalt.

The asphalt plant requires a conditional use permit in the EFU (Exclusive Farm Use) zone. The criteria for conditional uses in the EFU zone are found in the Umatilla County Development Code (UCDC) Section 152.060 which comes from ORS 215.283 (Sub 2). The state has determined that asphalt plants are allowed in this zone if the proposal meets the standards set forth in state statute and what has been adopted locally.

Mr. Jennings referred to Section 152.061 which is identical to ORS 215.296 and said that the criteria found in Section 152.615 which lists additional standards for conditional use permits and the criteria found in Section 152.617 (I) (Item A) which lists the standards for an asphalt plant were used when the Planning Department staff approved this permit.

Mr. Jennings noted that the description in Section 152.060 (B) (Item 3) specifically states that an asphalt batch plant may not be authorized if there is a planted vineyard within 2 miles of the proposed site. The definition of a planted vineyard is one or more vineyards that equal 40 acres. These vineyards must exist prior to the asphalt batch plant site being proposed. By this definition the only planted vineyard is 4 miles away to the northwest. The other closest vineyard, while smaller than 40 acres, is 2.6 miles from the pit and other vineyards are more than 3 miles away.

Section 152.061 of the Development Code deals with standards for the conditional uses in the EFU zone and their effect on the cost of farming and farming practices. Mr. Jennings said that the aggregate pit has been in that location for decades and the asphalt

batch plant would be placed within the boundary of the pit so farming practices would not be disrupted or disturbed. There may be some changes to tractor movement on the road due to truck traffic but it would not be significant and one would not take precedence over the other.

There is no scientific evidence to prove that emissions from an asphalt plant would have a detrimental effect on crops. Mr. Jennings said it was his understanding the reason a planted vineyard was to be 2 miles from an aggregate site was due to dust particulates in the air. After doing research for this application and visiting the aggregate site he did not believe that an asphalt plant would affect either the way the farming was taking place or the movement of farm equipment. Mr. Jennings added that Birch Creek Road where the aggregate site is located is a paved road so dust from truck traffic will not be an issue.

The language in Chapter 152.615 (Item A) of the UCDC deals with limiting development due to environmental factors such as noise and air pollutants. Emissions from asphalt batch plants are regulated by the Department of Environmental Quality (DEQ) through their air contaminant discharge permit. A third party is contracted to periodically monitor the asphalt plant according to DEQ standards. State statute puts the onus on DEQ to operate that program.

Mr. Jennings said one of the conditions of approval for the Humbert's permit is that they are in compliance with the State of Oregon by having all of their required permits. Additional subsequent conditions would require that the lighting be shielded and that this mobile batch plant remains on site or the conditional use permit becomes void. If they take it off site for a period of more than a year they would have to go through this permitting process again. This permit is subject to an annual review which includes an onsite visit conducted by the Code Enforcement division of the Land Use Planning Department. This ensures that the proper permits are in place and the operation is in compliance with the conditions of the permit.

Commissioner Danforth asked if the state had issued the permits for the batch plant yet and Mr. Jennings said it was in process. The Humbert's could get permits from the state conditionally upon approval of the plant by the county. This Conditional Use Permit is the first step in the process and all of the precedent conditions must be met before the final zoning permit will be issued by the county.

Applicant Testimony: Troy Humbert, 1364 Watson Loop, Touchet, WA stated that they have an asphalt plant on Hwy 11 in Milton-Freewater which neighbors orchards and other businesses. There is an existing asphalt plant at that site but they have purchased another newer asphalt plant and would like to place it at the Birch Creek site. As the economy grows they would like to be a supplier for the county and the state. The aggregate is already being extracted from this site so truck traffic will remain about the same.

Commissioner Standley asked Mr. Humbert to share a little bit about the process of mixing asphalt. Mr. Humbert said the first step is to crush the aggregate in the pit and

then it's loaded into bunkers where it is fed into the asphalt plant. The asphalt comes out at about 300 degrees. It goes through a large drum where it is mixed with oil and then dumped into trucks and hauled to where it is needed. Asphalt is very thick so if any of it spills it is easy to clean up. It solidifies when it is out of the hot temperature environment.

Commissioner Danforth commented that an asphalt plant produces far less dust than the extraction of aggregate and Mr. Humbert agreed. Commissioner Danforth asked how often, on average, the asphalt plant operated and Mr. Humbert said it varies depending on the jobs they have. Sometimes the plant will run for a week straight and sometimes it might be two or three days a week. They start operating anywhere from March to May, depending on the weather and continue through late November or early December.

Commissioner Danforth asked about the hours of operation and Mr. Humbert said they start about 6:00 a.m. at the earliest and stop anywhere from 5:00 to 6:00 p.m. Commissioner Danforth asked how often emissions from the plant are monitored and Mr. Humbert said if there is a complaint DEQ responds to it but other than that it depends on the asphalt plant. The last time their plant was tested the results were so good they were told they would not need to be tested for another 10 years; prior to that it was tested every 5 years.

Applicant Testimony: Dan Humbert, 84899 Hwy 11, Milton-Freewater, OR said they have never had any problems and according to DEQ representatives their plant is one of the cleanest in the area. He referenced a letter of support for Humbert Asphalt written by a business which is 200 feet from their asphalt plant on Hwy 11. An orchardist who also has property close to theirs has never had problems with their fruit due to the asphalt plant. There are vineyards within 500 feet of the plant and they have not had any problems with their grapes. There is a home 250 feet to the east of the plant and the people living there wrote a letter of support for the plant, as well.

Commissioner Williams asked if the new plant would meet the quality and the criteria of the old plant and Mr. Dan Humbert said it would be even better. Mr. Troy Humbert stated that the new plant was purchased from a company in northern California where regulations are far more restrictive than they are here so the new plant would exceed the regulations required in Oregon. Discussion followed.

Mr. Dan Humbert said the new plant has an enclosed bag house which filters all of the dust through the bags and the air pressure blows the dirt off the bags making the dirt fall where it is augured back into the mix. Commissioner Danforth asked Mr. Humbert if he had been cited at any time by the DEQ and Mr. Humbert said he had not. He said in the 18 years since their plant had been in operation he had one complaint from a neighbor who at the time lived across Hwy 11 from the plant. The neighbor called DEQ but Mr. Humbert had already discovered that there was a problem because of the noise and vibration from the machine. They shut the machine down and found the problem and repaired it.

Mr. John Bakkensen, one of the appellants said he read the DEQ permit application that Humbert Asphalt submitted and it said the asphalt batch plant they had purchased was manufactured in 1998 making it 15 years old. He asked Mr. Humbert if the machine was used for the entire 15 years and Mr. Humbert said that it had only been used for 8 years.

Proponent Testimony: Dave Dunkelburg, 57445 Birch Creek Road, Milton-Freewater, OR said he was the President of Kenney Farms, Inc. and he pointed out the house he lived in on one of the maps showing the aggregate site. Kenney Farms has much of the land around the site and he has been involved with the Humberts for 18 years since the aggregate pit was established and they have never had a complaint against the Humbert's site. There have not been any conflicts with the farm equipment and the trucks traveling the same road. There are some blind spots and hills on that road but all of the farmers and truck drivers are aware and move slowly and cautiously. The foliage is kept cleared from the road improving visibility.

Commissioner Lee asked Mr. Dunkelburg to comment on the noise level from the quarry. Mr. Dunkelburg said the majority of the time the wind blows from the south so they don't hear the noise from the pit. When the wind comes from the north they hear the noise which he compared to the sounds from a metropolitan area and said it becomes white noise so it isn't a problem.

Commissioner Lee asked Mr. Dunkelburg when the last time it flooded in that area and if he had any problems due to the aggregate site. Mr. Dunkelburg said the last flood there was less than ten years ago. The land above their house is in CRP (Conservation Reserve Program) but prior to that there was storm that dropped six inches of rain in one day. Twelve inches of water was running through his front and back yard. Runoff from the rain storm was going into the pit and staying confined there. There was no runoff from the pit. Discussion followed.

Proponent Testimony: Mary Dunkelburg, 57445 Birch Creek Road, Milton-Freewater, OR said she and her husband had lived in their home for 22 years. She stated that she is retired and is home all day but rarely hears the rock crusher or the truck traffic. The pit doesn't operate at night and they always inform them in advance when they are going to be blasting in the pit.

Appellant Testimony: John Reser Bakkensen, 1141 SW Mitchell Lane, Portland, OR gave a copy of some exhibits to the Commissioners and said he was appearing on behalf of his cousin, Robert Berry and the trust of Helen Reser Bakkensen for which he is the trustee. He said he and his cousin together own an undivided one half interest in the Reser Ranch and the other half is owned by his aunt, Joyce Reser Bishop who is 88 years old and not in good health.

Mr. Bakkensen asked the Commissioners to look at Exhibit 7 in the notebook he had given them and explained the markings that he had made on that map pointing out Birch Creek Road, the Reser Ranch location and the Reser Spring.

Mr. Bakkensen said his grandfather, Ralph Reser, acquired the ranch in 1912 and farmed it with his brother, Ray Reser, until his grandfather's death in 1976. It is now operated by his cousin, Larry Bishop, Joyce Bishop's son, along with other cousins through an entity called the Bar-Ten Partnership. It has primarily been a wheat ranch but they also have grown peas as the rotational crop until about three years ago. Commissioner Standley asked about the domestic water source serving the residence on the site. Mr. Bakkensen referred to the map and pointed out the Reser Ranch spring and the ranch house that it serves. He said the spring is about 4000 feet from the quarry. Discussion followed.

Mr. Bakkensen noted that the findings written by the Planning Department state that Birch Creek Road is about thirty to fifty feet from Birch Creek. He also said that Birch Creek is protected by the Federal Clean Water Act which states that any body of surface water that is connected to a navigable body of water, such as the Columbia River, is within the scope of the Federal Clean Water Act. Mr. Bakkensen said that DEQ had not dealt with the clean water issue because when Humbert's applied in early August for a portable asphalt batch plant permit they were not dealing with any particular site.

Mr. Bakkensen said the water right for Reser Ranch dates back to 1894. When his grandfather bought the property he was deeded rights to draw water from that spring. He said this is the sole water source for the Reser Ranch and their concern is for the possible contamination of that water. The water is a natural spring coming from the ground and they have a pipe connected at the spring point. Commissioner Williams asked if they had that water tested annually and if there had been any contamination? He said he has not had the water tested and as far as he knows there has not been any contamination but there had never been an asphalt plant at that location before. Commissioner Danforth noted that according to the topographical map he had given them the water from the spring had to run uphill. Mr. Bakkensen said that was correct. The grading does go up but the water is forced by gravity and its ultimate destination is lower so the water is still forced downhill.

Mr. Bakkensen referred to the criteria of the UCDC in section 152.055 which requires the county to maintain and improve the quality of air, water and land resources stating that the requirement comes from the State of Oregon's Goal 6. He said another policy mandated by the Federal Clean Water Act is an anti-degradation policy which is intended to guide decisions that affect water quality and prevent the waterways from pollutants.

Mr. Bakkensen said there is a National Pollutant Discharge Elimination System permit (NPDES). Permit number 1200A issued by DEQ states that mobile asphalt batch plants are required to obtain coverage under the national permit. He also said that DEQ is required to coordinate with local land use regulations in obtaining a Land Use Compatibility Statement from the applicant which has not yet been provided.

Mr. Bakkensen said that because the required permits have not been submitted they filed a petition on October 14, 2013 with DEQ to have them reconsider the issuance of their permit to Humbert. DEQ has 60 days from that date to act on the petition. He said he had received an email from DEQ stating that they were reviewing the matter.

Mr. Bakkensen asked the Commissioners to refer to a table in the Exhibit notebook he had given them which showed a compilation of an EPA study released in 2000 on a typical drum mix plant. The study shows what is released from the plant after it has gone through the filtering system and he named some possible carcinogens that could be emitted from the exhaust stack. His concern was that those emissions would contaminate Birch Creek and potentially the spring where they draw their water.

Mr. Bakkensen said studies of wheat fields were done at the University of California in Davis showing that wheat is susceptible to PAH's (Polycyclic Aromatic Hydrocarbons) which are emitted primarily from combustion sources. He said that their wheat field is above the canyon wall of the quarry. Commissioner Danforth pointed out that the source of the PAH's were not known in the study done in California. She also asked Mr. Bakkensen if he had tested their water and he said he had not and to his knowledge his cousin Larry Bishop had not either. When asked if there was an operable well on the property he said there was a well at one time but it had not operated for decades.

Commissioner Danforth asked if farming practices such as spraying of fertilizers and applications of pesticides could affect their spring and Mr. Bakkensen said that they do not apply anything near the spring. Chairman Randall pointed out that their water source is on someone else's land and they have no control over any spraying the neighbors may be doing and Mr. Bakkensen agreed.

Commissioner Williams asked Mr. Bakkensen how large the Reser Ranch was and he answered that it was about 640 acres.

Mr. Jennings clarified that the Land Use Compatibility Statement is a form which will be signed by the Planning Department stating that the land use being requested is compatible with land use law. Land Use Compatibility Statements are signed by the planning department for a list of permits issued by DEQ. When a conditional use permit is issued a planner will then sign the Land Use Compatibility Statement and attach findings or explain to DEQ the conditions placed on the permit.

Mr. Bakkensen read from the Umatilla County Development Code Section.152.055, which refers to Exclusive Farm Use zones. He said it was the duty of the Commissioners to help to preserve and maintain the land for farm use. He said that it was his belief that the Reser farm lands will not be preserved if contaminants are allowed to accumulate in the wheat and the soil due to the proximity of the asphalt plant.

Mr. Bakkensen went on to say the county is required to consider the current and future needs for agricultural products. If the plant is allowed to operate in perpetuity their ranch would never be able to consider grapes as a viable alternative crop because they are sensitive to the emissions from an asphalt plant.

Mr. Jennings said Section 152.055 is not a standard of approval, rather it is the purpose for the EFU zone. A person would not be precluded from growing grapes as a crop

within two miles of a batch plant. The standard is if you have an existing planted vineyard the asphalt plant is not to be placed within two miles of it. It does not mean that you could not grow grapes at a later time. If this was a Goal 5 site where the site or adjacent uses would need protection that might be a consideration but this is not a Goal 5 significant site.

Mr. Bakkensen referred to chapter 152.061 which deals with forcing a significant change in accepted farming practices in surrounding lands. He said it was his opinion that siting the asphalt plant in that location would prevent the ability of the Reser Ranch to grow grapes in the future. He added that in 1989 farmers with grape vineyards went before the legislature and requested a two mile exception which was granted so the law was changed allowing counties to consider the siting of asphalt plants in Exclusive Farm Use zones. He said there must have been some scientific basis for making that change.

Mr. Bakkensen referred to chapter 152.615 dealing with additional use permit restrictions which he believes applies to the Humbert request. The county is required to consider limiting the manner in which the use is conducted including restrictions and restraints that minimize environmental effects such as air and water pollution. Another section of that code requires the county to protect and preserve water and air resources among other natural resources. He said he believed the county has an obligation to maintain air and water quality and that the same criteria which applies to protecting open reservoirs should apply to domestic water sources such as the Reser water source.

Commissioner Standley asked Mr. Bakkensen if his water source was an open reservoir or a spring block with artesian driven water. Mr. Bakkensen said they had a very old stone spring box with an artesian spring. Commissioner Standley said if the water source was an open reservoir it might be cause for concern but being a closed system it was a different matter. Mr. Bakkensen said that the box is not sealed and is exposed to the air that is in the canyon.

Commissioner Danforth asked if Mr. Bakkensen would have the right to drill a well on his property if something happened to contaminate the spring and he said he did not know if that was included in their water rights. The wording of the deed describes it as having the right to draw water from the head of Birch Creek. Commissioner Standley inquired as to the type of pipe that is being used for the spring and Mr. Bakkensen said the pipe was PVC.

Mr. Bakkensen stated that siting an asphalt batch plant next to Birch Creek, which is federally protected, and next to historic wheat fields should not be justified under the land development ordinance mentioned earlier and without a Land Use Compatibility Statement. He requested that the Planning Commission deny the Conditional Use Permit. As an alternative to a denial, he suggested that this be continued until DEQ had responded to their petition for reconsideration which would determine if any further permitting would be needed to meet their requirements.

Chairman Randall asked if there was a possible scenario in which the asphalt plant would be acceptable. Mr. Bakkensen said that at this point he opposes the plant but if it is allowed to go forward he believes that it should be restricted and the NPDES (National Pollutant Discharge Elimination System) permit should be obtained.

Commissioner Lee asked if the pollution chart they had been shown was for our area and Mr. Bakkensen said it was a chart that was created after the EPA (Environmental Protection Agency) surveyed over 200 plants and the chart is a summary of that survey.

Chairman Randall said he and sees a lot of numbers and information on the chart and based on that information we should not have asphalt plants but we do have them and it is the job of land use planners to determine where they will be placed.

Chairman Randall asked Mr. Bakkensen if he thought the plant would be better suited at the site on Hwy 11 and he replied that since they have been hauling rock from that pit for years it could be hauled to another site for batching so it would not need to be on Hwy 11. Chairman Randall asked Mr. Bakkensen if he had any trouble with the rock crushing at the Birch Creek site and he answered that he had not. He added that he and his family just didn't want the asphalt plant sited next to Reser Ranch. He said hopefully there will be another site near Milton-Freewater that would be compatible with their operation.

There were no other opponents nor were there government agencies to give testimony. Mr. Jennings stated that the only agency comment was the letter from DEQ which had been included in the Commissioners' packets.

Applicant rebuttal testimony: Troy Humbert asked how far the point of diversion for the Reser Ranch spring was from the Humbert Aggregate site. Mr. Bakkensen said it was around 4000 feet up stream from the pit. Mr. Humbert said the prevailing winds are predominantly from the south. Mr. Bakkensen added that the canyon runs in a northwesterly direction and air becomes trapped there.

Mr. Humbert said there is a vineyard located in the Couse Creek area that was planted in the 1950's. It is 700 feet from Konen Rock products which operates an asphalt plant and there has never been a problem with the grapes grown there. He said there is another asphalt plant, one of the largest in the area, about 2,900-3,000 feet from that same vineyard and there has never been an issue because of their operation.

Commissioner Lee verified that Humbert's were currently producing about 20,000-30,000 tons of asphalt per year and Mr. Humbert said they were but were hoping to increase production with the larger plant. Mr. Humbert added that the asphalt plant they have in use now is on Hwy 11 and the Walla Walla River is approximately a ½ mile away and they have never had a problem.

Proponent rebuttal testimony: Dave Dunkelburg said his water comes from Birch Creek out of the spring box ¾ mile above his house. His water was tested within the last 5 years and is good water. His spring box is ¾ mile below where the Reser Ranch spring

box is located and his water right is dated 1912 the same as Reser Ranch. Commissioner Standley asked if Mr. Dunkelburg he thought that airborne pollutants would affect his water supply and he said no. He added that when the wind does come from the north during the winter time the plant is not in operation.

Proponent rebuttal testimony: Mary Dunkelburg said their water supply comes out of the ground into a spring box which has a full cover that they built to protect it from rocks and the whole thing is located underground so the batch plant would have no effect on their water.

Commissioner Danforth asked Mr. Bakkensen if it was his intent to have a vineyard. Mr. Bakkensen answered that he had discussed that possibility with his children. He said they had expressed an interest in looking into that possibility. Chairman Randall asked if there was an adequate water supply to support a vineyard and he answered that the water supply might be an issue.

Commissioner Danforth asked Mr. Bakkensen if he or his family had any opposition when the Humbert's applied initially in 1992 for the quarry and the asphalt plant and he answered that he did not become involved with this until the year 2000 when his mother passed away and she had not discussed any notices she may have received regarding the aggregate pit with him.

Commissioner Marlatt said the environmental concerns are a matter of EPA governance and not something that the Planning Commission needs to consider. He added that if the batch plant does produce the chemicals and carcinogens named by Mr. Bakkensen then the EPA would need to contact the operator of the plant. Commissioner Standley said he concurred with Commissioner Marlatt. Commissioner Williams said she appreciates the information presented by Mr. Bakkensen but she cannot see a reason to disapprove the Conditional Use Permit based on that information. Commissioner Lee said there was nothing he heard that should prevent them from approving the permit.

Chairman Randall said with regard to Chapter 152.055, preserving and improving the air quality for the county, for the Humbert's to continue to operate the old diesel-run asphalt plant for a long period of time would not be preserving the county's air quality. A new plant in a new location away from orchards, vineyards and businesses is an improvement.

Commissioner Standley made a motion to accept the decision made by the Umatilla County Planning staff for approval of Conditional Use Permit #C-1226-13 along with all the precedent and subsequent conditions, the exhibits submitted and the findings by staff.

The motion was seconded by Commissioner Marlatt and passed unanimously.

Senior planner Carol Johnson informed the Commissioners that the rezone application submitted earlier in the year by Sam Humbert had been withdrawn.

Chairman Randall adjourned the hearing at 8:48 p.m.

Respectfully Submitted,

Connie Hendrickson
Administrative Assistant

Adopted by the Planning Commission on December 19, 2013