

MINUTES
UMATILLA COUNTY BOARD OF COMMISSIONERS
Meeting of June 11, 2014
9:00 a.m., Rm 130, Umatilla County Courthouse
Pendleton, Oregon

** ** ** **

Commissioners Present: Bill Elfering, Chair; George Murdock, Vice-Chair; and Larry Givens, Commissioner

County Counsel: Doug Olsen

Others / Guests Present: Wendie Kellington, Martha Pagel, Mike Stalder, Mike Raley, Chris Clemon, Pat P. Maiers, Terri Morris, Ben Mundie, Phil Wright, Casey Humbert, Elaine Eisenbraun, Brad Humbert, Gary Allgood, Larry Schwartz, J Frazier, Peter Mohr, Mark Morgan, Sheriff Terry Rowan

** ** **

CALL TO ORDER

The meeting was called to order at 9:02 a.m. Commissioner Bill Elfering reminded all present that the meeting was a public forum.

Pledge of Allegiance. Those in the room stood, saluted the flag and recited the Pledge of Allegiance.

Minutes – BCC staff meeting minutes of 6/4/14 had been presented. **Commissioner Givens moved to approve. Seconded by Commissioner Murdock. All voted aye. Carried 3-0.**

Additions to Agenda. No additions.

Recognition of Visitors – Commissioner Elfering stated it was good to see Sheriff Rowan here.

Agenda

1. **City of Hermiston Enterprise Zone Electronic Commerce Designation:** Mark Morgan with City of Hermiston requested support for the application of designation for the City of Hermiston as an E-Commerce zone. This is a state income tax abatement that provides additional tax incentives for businesses within the zone. The incentive works out to a 25% income tax credit. This does not impact local revenues. As a co-sponsor, the county also must request the designation.
Commissioner Murdock, in the matter of Order BCC2014-040. Commissioner Givens seconded. Commissioner Murdock thanked Mark for being a liaison. All voted aye. Carried 3-0.

Commissioner Murdock expressed appreciation to Mr. Morgan of the City of Hermiston for his positive efforts in partnership with the county.

2. **Elaine Eisenbraun, Executive Director of the N. Fork John Day Watershed Council and a facilitator for the Umatilla Forest Collaborative established in 2011.** The mission is to enhance and advance economic, social and ecological principles on federal lands in the Umatilla National Forest. The collaborative brings together people to meet on common grounds. Two primary projects: 1) Dry forest project in the Heppner area and 2) a cool moist project. How to deal with a cool moist forest. Scientists are coming early July for a tour and try to enhance the science. Great success in the region since 2011 with common ground. There has been some struggle in the cool moist area. Difference in opinion for new growth and for collaboration.

Today's visit is to notify Commissioners they are beginning a local campaign and invite Commissioners and people in the Pendleton area to the meetings the 4th Thursday every month from 10-3 at the Forest Service Building. Field visits on occasion – to be announced.

Commissioner Elfering encouraged Ms. Eisenbraun to send the minutes of the meeting to the BOC so they can be kept in communication. He asked if cool moist forest was a technical term – our area is usually considered dry. To which she stated not really a technical term. Just a description – it has to do with vegetation and types of trees in a particular forest.

Commissioner Givens asked if Ms. Eisenbraun has coordinated with the Blue Mountain Forest Plan advisory committee. She stated she has not, but the group is attentive to the plan and will comment on the plan as a group to maintain their standing. Blue strategy (accelerated restoration plan) region 6 (includes Wallowa-Whitman, Malheur, Umatilla and all the way to the West of the Cascades) of the forest service taking on projects fire breaks, one on Little Joe (Wallowa Forest) and the other is a broad dry forest project.

Commissioner Givens mentioned projects on the north Tollgate area (Ms. Eisenbraun said this is the cool moist project).

She also requested a letter from the County supporting the organization (Umatilla Forest Collaborative) getting ready to apply for funds to the Oregon Dept. of Forestry. She discussed meetings and those in attendance. There is a need to be in the loop.

(Commissioners' Reports moved from Agenda item I. to meet time requirement for the land use public hearing at 10:00 a.m.)

3. **Commissioners' Reports.**

- a. Commissioner Murdock. Pertaining to the DD Program, he reported the building now housing this program (located across the highway from EOCI on Westgate) will be transferred to another state department. The County is to take over the DD program 8/1/14 from the state, which will make it necessary to find a new facility/building to house the DD program. In addition, the County Human Services and Veteran's Services departments will be included so that all three departments can be housed together for better access by the public.
- b. Commissioner Givens. Recently attended the regional AOC Conferences where he attended meetings regarding water issues. One of the presentations was made by prior County Commissioner Dennis Doherty. He noted Phil Ward, Oregon Water Resources Dept. (ORWD) had recently left the position of director there to go to the USDA. Tom Paul is the interim ORWD director until the Governor appoints a new Director.

- c. Commissioner Elfering. Also attended the regional AOC Conference. He noted the set up was more together instead of some breakout sessions. They attended a Leadership session he found interesting regarding different approaches and styles. He attended a discussion on public safety. On July 22 a Public Safety Summit will be at the Justice Center and will draw law enforcement professionals from all over the state. Marijuana is sure to be a topic – both medical and perhaps recreational – discussions are ongoing about initiatives and how to handle them if they become a reality. In addition, he attended a presentation on regional solutions. This includes economic initiatives which the Governor reviews for action. Commissioner Elfering advised he will be gone next week but available by email and cell phone.
4. **Google License Payable:** Doug Olsen presented the request on behalf of Dan Lonai. This is for an additional 150 Google Apps users. The invoice is \$6,880.50. Since it is over \$5,000, it requires Commissioner approval. Google Apps is the new email and collaboration tools the county is now using.
Commissioner Murdock moved to approve and sign the payable for \$6,880.50. Commissioner Givens seconded. All voted aye. Carried 3-0.

Recess at 9:30 until the land use hearing portion of the meeting at 10:00 am.

Reconvened.

5. **Land Use Hearing – A&B Asphalt.** 10:00 AM: Commissioner Elfering called the hearing to order at 10:02 am. Commissioner Elfering summarized the order of business. Commissioner Elfering, stated the role today is to consider Zone Map Amendment #Z-300-14 / Text Amendment #T-14-052. This is a Goal 5 Aggregate application to add 33.26 acres of land as Large Significant Site to the Rock Material Resources Inventory of the Comprehensive Plan and to apply the Aggregate Resources Overlay Zone to said acres (which includes three areas to total the 33.26 acres). The subject property is located east of the Walla Walla River Rd tax lot 200 of map 5N3607, zoned EFU.

Chair Elfering asked for abstentions. Commissioner Givens requested to be recused from the hearing due to extensive ex parte contact and his involvement as chair of the DOGAMI Governing Board. Commissioner Givens left the hearing and did not participate in the hearing.

Chair Elfering asked for public input – advised anyone who wished to speak/make a presentation today to please complete a form provided, including the content/purpose of their discussion; when asked to come to the podium, each person shall provide their name, address, and what they are providing (document, photo, etc.) and on whose behalf made (if not for themselves) for the public record. Chair Elfering then requested the staff report in order to summarize the application and to ask for public testimony and to provide the criteria for discussion purposes.

Staff Report: Tamra Mabbott, Planning Director. She presented a new exhibit into the record -- a letter from Mike Robinson representing the opponent (Bradley Humbert) requesting the Board of Commissioners continue the hearing until the matter in Circuit Court can be resolved.

Doug Olsen stated the matter in Circuit Court was a request for a Writ of Mandamus; he noted the plaintiff cannot pursue both remedies at the same time. The procedure would be to continue with

the public hearing today and deny the request. The consensus of the Board was to continue with the hearing.

Ms. Mabbott reported the Commissioners packets include 52 exhibits including applicable criteria as established in OAR Chapter 660, Division 23 and County criteria in Section 152.487. Exhibit 54 is a letter of response from attorney Wendie Kellington to Mike Robinson's letter request for a continuance.

Ms. Mabbott referred to the map on the screen, noting the blue area is the impact area. The red hatch marked area is the proposed expansion area regarding aggregate resources (33.26 acres), the magenta area is the existing 30 acres quarry conditional use permit. Red is subject parcel. Pink is city limits, with a school house marked. Urban Growth Boundary is the line that runs along the river. The request is to add the 33.26 acres to recognize as a significant resource and to allow mining to continue. The Planning Commission recommends approval. The Planning Commission added some conditions in addition to findings (included in her memo in the packet, attached), which are: A&B Asphalt follow the blasting plan with notification area of 2,500 ft.; conduct one pre-blast analysis within the 1,500 ft. impact area; limit hours of operation from 6am to 7pm (the standard in the County is consistent within the industry); plant a buffer zone of trees to mitigate noise and dust; install a flow meter on the well; Insure all DEQ and DOGAMI permits are in place.

As stated previously, the opponent has filed in Circuit Court to force the County to determine the A&B plant is unlawful alleging the conditional use permit for the plan has expired. Normally zoning permits are not issued if there is a violation, regardless of whether the applicant created the violation, unless the violation could be rectified as part of the development. Staff does not feel there is a violation.

Ms. Mabbott requested that Shane Finck show the map of a more focused view of the "red hatch marked" area discussed previously. The green hatch marked area is already on our Significant Goal 5 inventory. Most has been mined out; no need to protect it.

The third map shows the soil type. The application has been crafted to comply with the rules – this is not high quality soil. 61C is a high value soil and 50F is lick skillet, a non-farmable soil (classifications by ORS Chapter 215 rule).

Commissioner Elfering called for proponents.

Proponent Testimony:

Wendie Kellington, attorney representing A&B Asphalt. She introduced Adam Schatz, owner of A&B Asphalt. He is in the process of selling to Central Washington Paving. Mr. Pat Maiers with Central Washington Paving was there to speak as well.

Ms. Kellington advised the Planning Commission has approved and staff has done a good job with complex situation. DEQ has found no compliance problems. Neighbors most affected are OK with it. Previous county finding C 333 stated this request will not interfere with farming on adjacent land. Virtually all the run off originates from agricultural fields. DOGAMI found A&B left the land better than they found it.

All of the green hatch mark is under a conditional use permit for mining. Only the red hatch mark area is on the inventory. Once a site is on the inventory, there are protections. This proposal is to add the conditional use permit area to the inventory 33.26 acres.

The 9.83 acres are an existing site. It is an existing site because it is on the inventory. The site is listed in the comprehensive plan a 2A site. This means the County decided that there were no conflicting uses for it, preserving the minable character. The asphalt plant is on the 2A site and thus consistent with state and local policy, it is under protection of the existing 2A aggregate resource site. Not re-justifying that 2A site. The crusher is on the conditional use area, that is approved, but it is not on the 2A significant sites inventory. So we do have to rejustify the crusher to be part of the RMRI. On expansion, the crusher is approved by a county CUP, but still has to be justified under the Goal 5 Rule in this process.

[Showing a power point]Is 33.26 acres a significant site? You must show you have at least 500,000 tons of the right quality of rock. Should you allow mining? Do we have specific conflicts within the 1,500 foot area and, if so, can they be reduced to a level where they are no longer significant?

Noise and Dust, local road as they connect to the access, Goal 5 resources in the area (existing pit and 2 others) City restricts structure heights and the school is zoned public open space. These issues are not a problem.

The impact area does not go into the city limits or school. The site is significant; site access meets all objective standards,

Significant rules – quality and quantity standard and good quality agricultural land.

There is a comprehensive noise study. There is a blasting plan. They did have a bad blast once, no one made a claim about it. They have since hired a good contractor. Previous complaints to Gina Miller (County Code Enforcement) were unfounded. There is another crusher operating 500 yards from vineyards. The 1,500 feet impact area cannot be enlarged unless where factual information exists. Complaint school lacks crosswalks and bike lanes – response is that is not what the Traffic impact part of the Goal 5 rule evaluates; evidence in the record is that there are some citations and warnings around the school, but none to A&B drivers.

Traffic analysis highlights that as the rock resource is depleted A&B will proceed to new resources on the same parcel. No increased transportation impacts. No significant safety impacts in the area.

Potential conflict due to noise, dust or other discharges sensitive to those uses. Dust is controlled using water and sprinkling system. Wind carries away from residential areas with prevailing winds.

Martha Pagel, attorney with Schwabe Williamson & Wyatt, spoke as a consultant on water supply for the project. There are existing well and hydrant hook ups. The intention was to continue to use existing lawful sources. Questions came up about the appropriate use of hydrant water. For

Walla Walla it was not a source to continue in the future so that was cut out of the plan. For the City of Milton-Freewater there was concern about using the hydrant as a regular supply. Milton-Freewater water will be used in exigent situations, but normative use will be exempt well and water tanks. It has been confirmed with the Milton-Freewater City Manager and Public Works Superintendent the city's hydrant water can be used in an emergency. Ms. Pagel has a letter for the record confirming the water can and will lawfully be provided principally from the well on-site. There is one 10,000 tank on-site and will install 2 additional tanks. When operation is low the tanks will be filled from the well with the 5,000 gallon per day allowance by law.

Commissioner Elfering asked a clarifying question about the 30,000 storage of water. Ms. Pagel stated 5,000 gallons per day can be refilled from the well and by alternating 2 tanks you can replenish within 7 days.

Ms. Kellington introduced Mike Stalder, Vice-President of A&B Asphalt, Inc. since July 2010.

Mike Raley is an engineer with DSA, an acoustical engineering firm in Beaverton, OR. Using a power point, he talked about DEQ noise criteria for noise minimization and how noise associated with the site meets all applicable standards. For the expansion you apply the noise criteria for the existing site. You can exceed a certain noise level for a percentage of the hour. L 50 is the typical focus because it is the worst. Area C is existing area. The area is to the north and C is to the southeast. Starting in area A, they will strip the over burden and use that material to create a berm. Take that to the lowest elevation then move to area B and eventually area C.

Haul truck noise is exempt from noise criteria. He discussed his firm's process of evaluating noise. They use 3D noise modeling software, wind speed and direction topography; if not available, they use from another model. Look as far as needed to be sure noise levels are acceptable.

Without any additional mitigation measures, they are in compliance.

All residences and the school are outside the compliance boundary.

Blasting noise will be talked about by the expert, but is predicted to comply with applicable noise standards so long as the blast plan is followed.

Mr. Raley presented a graph of the existing noise levels at the residence. They are very conservative in their noise analysis. A graph of noise level at Grove Elementary shows compliance with vehicle noise levels. The loudest noise was a Dodge truck. Back-up beepers can be a nuisance but they are for safety and are common in the community, and importantly they are required and exempt from the noise regulation. They are in compliance with DEQ noise regulations.

Commissioner Elfering asked about consideration for earth movement. Mr. Raley stated the blast expert would be more qualified to answer.

Commissioner Murdock asked how often blasting occurs. Answer: once a year, possibly twice. Commissioner Murdock asked how long the blasting lasts. Answer: one blast.

Ms. Mabbott entered into the record an April 11, 2014 memo from Mike Raley to Mike Stalder, which had mistakenly been omitted from the BCC packets but was being submitted today.

Larry Swartz, Blasting Contractor with Barnes Incorporated (Lewiston, Idaho) reported they do a lot of blast work in rural and urban areas. They have federal guidelines put out by MSHA that they follow. They analyze each quarry to build a plan to be sure they stay in compliance. It is very feasible to blast effectively in this area without doing harm to those around. He explained when blasting is done per the plan in the record, it will meet all applicable standards and not cause significant adverse effects on neighbors.

Pre-blast survey is done with in the area to identify homes that may be harmed. In a pre-blast survey, they take pictures of concrete, plaster or drywall. If there is a complaint they can see if the crack grew during the blasting.

Commissioner Elfering asked if the blasting mistake made previously resulted in damage. Mr. Swartz did not have the answer and did not want to speculate. He has shot this quarry when Humbert owned it and is confident it can be done safely.

Commissioner Murdock asked what a bad blast was -- is there a measure? Mr. Swartz uses the term "bad blast" is when they hit something and the rocks come out "big as trucks". Commissioner Murdock asked if it was more or less intrusive than fireworks at the 4th of July. Mr. Swartz stated it is much less intrusive than the fireworks at 4th of July celebrations. The drilling is more intrusive and louder than the blast. People state they can feel it. It is reported to MSHA when they go over certain decibels.

Ms. Kellington came back and reiterated the bad blast just shook more than they wanted it to. No claims have been made. The County already decided that mining does not pose any conflicts with agriculture. The existing mine does not pose any conflicts; zoning is not an issue.

Storm water is not an issue; DOGAMI nominated the site for a storm water management award – good job done by A&B. Not at issue: Claims about the old conditional use permit.

The Petition for Writ of Mandamus alleges the previous operator did a bunch of things wrong. That may or may not be true but that does not apply to current owner or applicant. The complaint is about the asphalt plant. But the asphalt plant is approved under both C-333 and C-479 the opponents attack. Also specific County determinations of C-479 land use conditions being satisfied and that the asphalt plant and other C-479 operations are lawful were made in both 2006 and 2010. Those are final County decisions. If someone did not agree, then those should have been but were not appealed. They are now long past their appeal date and are final and binding County decisions.

Notice from Umatilla County to verify annual review was completed.

There is a zoning permit from 2009. There were no problems with it. Ms. Kellington also talked about the county code. She is impressed with County staff and the Planning Commission. She characterized this is quasi-judicial in nature as opposed to legislative. She went on to talk about standards and how they apply in this case.

Ms. Kellington feels A& B meets all applicable standards. Time to appeal is passed (from 2006 and 2010) and so the asphalt plant and C-479 should be a non-issue. They would respectfully request the Board of Commissioners uphold the recommendation of the Planning Commission.

Ms. Mabbott asked Ms. Kellington's thoughts about the additional conditions the Planning Commission recommended. She indicated that the applicant felt they were burdensome and unnecessary but that the applicant was not contesting the Planning Commission's recommendation to impact those. The application will live with those.

Mike Stalder, project manager for A&B stated those items noted as additional conditions are in process and are continuing.

Pat Maiers, Owner of Central Washington Paving who will soon to acquire A&B Asphalt assets. Family owned business - 9 locations throughout Washington and Idaho; 400 to 500 employees. They have a great reputation. Mission is: "Giving a high quality product for a low quality price". Has a relationship with Barns, Inc. who has done the drilling for 30 years. Looks forward to coming to the community and working with the local people.

Commissioner Elfering asked if there are any other proponents. There being none, **Commissioner Murdock moved to approve the Exhibits 1-52, 53, 54, 55, 56, 57, and 58. Commissioner Elfering seconded. All voted aye. Carried 2-0.**

Recess at 11:30 am for 10 minutes.

Commissioner Elfering reconvened the hearing at 11:41 calling for opposition.

Opponent Testimony:

Peter Mohr with Jordon Ramus PC on behalf of Konen Rock Products, Humbert Asphalt, Inc. and Pioneer Asphalt, Inc. The only issue they are concerned with is the validity of the CUP permit as modified in 1992. Their position is that the CUP is not valid today. Not contesting the issuance of the CUP as issued in 1987 or 1992 as modified. Their contention is it is no longer valid as a matter of law for the applicant or its predecessor. Exhibit 41 is a letter from him and Exhibit 31 is a letter dated 04/21/14 from Daniel Humbert, President of Humbert Asphalt, with documentation on the historic land use for the Kenney Pit. These discuss conditions on CUP's. Provided the prior entity moved the plant off the site in 1990. In 1992 Humbert sought to assume the 1987 CUP to place a new plant on the site. Why does this matter? His client's objection is they have had to satisfy a variety of conditions anytime they went to locate a pit, when the County determined the permit was no longer valid, so the applicant should have to go through the same process. He summarized Exhibit 41.

C479 is an issue because if the County alleged that even if it was deemed invalid they could correct as a violation under 152.025. If this was determined a valid permit there would not be a hearing or opportunity for public comment. None was had. If deemed valid the minerals could be processed by the asphalt plant.

History was given on the 1977 CUP issued for Humbert Asphalt. They did not meet the specific terms and conditions within in the required timeframe. They never obtained a zoning permit for an asphalt plant. In 1987 they decided to locate an asphalt plant on the site and claimed the '77 CUP was still valid. County said no the prior one was not valid. Humbert Asphalt filed an application for a new CUP on Spence Pit. The applicant satisfied the conditions and requirements and operated for 2 years. In 1989 they moved operations off the site (Spence Pit). 1992 Humbert went to the County to operate the pit -- and the County put them through the process. CUP C479 was amended. That approval required submittal of a site plan, obtain a zoning permit prior to location and operation of an asphalt plant on the Spence Pit. At no time between 1992 and 2010 did Humbert Excavating or its successor in interest, Birch Creek Construction, did they satisfy the terms and conditions to locate a new asphalt plant on the Spence Pit. Renewal fees were not consistently paid. A&B has not satisfied the conditions either.

1994 the rock crusher was removed as well from the Spence Pit so there was no processing capability until A&B moved there in 2010.

Exhibit 31 is a timeline for the Kenney Pit operated by Humbert Asphalt, Inc. They received approval in 1992, satisfied conditions, filed a plot plan, obtained a zoning permit and paid renewal fees. Never located an asphalt plant on the Kenney Pit. In 2013, the County required them to file for a new CUP. The concern is the rules being applied equally in the required timeframes.

The County discussed earlier that assuming the Board was willing to consider the applicant has never satisfied the terms and conditions of CUP, County relies on interpretation that they can rectify any violation of the County code. If that was how the provision was to be construed, it would obviate the need for any approval process, including public hearing and public comment. Parties who live within the subject area would not be allowed to comment, generally.

Mr. Mohr went on to elaborate about county codes in question and their descriptions as they relate to the matter today, including 152.025 B – 060 regarding consideration for location of an asphalt plant; 152.612 D requires that a zoning permit must be approved prior to construction of an asphalt plant; 152.613A CUP shall expire if conditions are not met; 152.613D a conditional use can be granted, but can be reconsidered if no longer can it be satisfied. ORS 215.190 no person shall operate in violation of an ordinance.

They do not contest the proper issuance of the 1992 permit modification. He is simply saying it is no longer valid.

The 2009 Zoning permit or plot plan is for replacing a manufactured trailer office, not for the location and operation of an asphalt plant. It is not related to the location and operation of an asphalt plan – irrelevant for their purposes.

The sale of the assets is a concern as to how this hearing is characterized. Assuming the company or just buying the assets. The land use approval process may or may not be tied to that. Cannot comment on the nature of that transaction as it relates to the hearing today regarding approval (or not).

Mention was made regarding the Mandamus proceeding. He is representing parties in that proceeding. He's not sure it is appropriate to talk about it here. The Circuit Court is dealing with it.

Mention was made of Nina Stokes' letter submitted in 2010 raising concern about the location and operation of the asphalt pit (Spence Pit). It is not appropriate for him to comment on that either. County record shows she lost her opportunity to contest the 1992 CUP. However, it is not the same as what this hearing is about.

He would like the opportunity and wants to reserve the right to evaluate the statutes mentioned today as their being on today's proceedings. Any questions for him? None were made.

Commissioner Elfering called Brad Humbert to the podium.

Brad Humbert wanted to respond to his letter requesting this be postponed. He would have preferred his attorney be here to present but that was not the situation so he is here to proceed. He has not sued anyone. Under County Code, he feels the Commissioners do not have a completed application.

He requested the record be kept open so his attorney can respond to any new information presented today for their legal opinion.

No affiliation with Humbert Asphalt. They are his relatives only. His uncle got a permit for the Spence quarry. Uncle and Father had a falling out and father forced uncle to crush his own asphalt. They never hit high quality rock for asphalt. (He referred to the map and showed locations of operations.)

September 1, 1996, in his opinion, the rock quarry was being operated legally. It did have a closure notice in July 1996 they did what they needed to do and on November 5, 1996 DOGAMI rescinded the closure order. It was not reinstated, the order was rescinded. It is his opinion that the only thing that should be considered is the acreage that is being brought in-- not the existing acreage rock quarry. Always had the (30 acre) boundary and been held to the boundary. Records from 1977 but believes it is as far back as the 1940's. The letter from OCAPA April 23, 2014 Richard Engstrom explains the rule from 1996 (re boundaries of rock quarries). Quarries plan 20 years in advance; it affords protection of the 35% rule as a significant site. Also, information in the DLCDC letter of March 27, 2014 confirms his opinion as stated today.

Mr. Humbert presented a rock test (performed by the WA State Dept. of Transportation, Materials Lab Test) stating the sample submitted failed the degradation test. He requested it be submitted into the record. He believes samples were taken from all over the pit and mixed together. He doesn't believe there is enough quality rock in the existing quarry to justify it as being part of the expansion.

He does not believe the quarry dust can be controlled with 6,000 gallons of water per day. A typical household uses 3,800 gallons/ month. He submitted videos that show how much dust is created. He believes it is more like 25-30,000 gallons. The City of Milton-Freewater cannot guarantee water so it should not be considered; it would be for emergency only.

He previously submitted a Public Records request from ODOT to the Planning Commission. In 3 years, A&B Asphalt has 502 overload violations across a County bridge, through City streets and state highway, also numerous safety violations. Those were not considered in the study. He requested to submit this into the record.

Public Records request out of Walla Walla County. 95% were overloads out of the rock pit, and not just a little but over weight (1,000 to 1,500 lbs.). The weight tears up the road that is the purpose of the restriction. He doesn't believe there was a traffic study. He feels taken advantage of as a taxpayer.

This report is already in the record on a flash drive.

Mr. Humbert read from a letter already in the record, from Samuel Estronik dated April 24, 2014. For 20 years he has lived just outside 1,500 ft. area. He did not receive a notice. Previously lease-holders were respectful of noise and dust. A&B seems to operate with complete disregard for neighborhood. Back up alarms awaken him. He monitors decibel readings -- never was the reading below 50 decibels. He was employed as a construction worker for 25 years (including 10 as an asphalt plant worker) and understands the work needs to be done -- but not at the expense of a person's right to peace in his own sanctuary.

He requested to show a video that is already in the Planning Commission record. It is video of the "bad blast". He could not get it to play but requested the Commissioners watch it later.

He stated he tried to expand the pit but Mr. Spence would not allow them into the wheat field. In April and May 2009, Mr. Spence agreed to let A&B into the field.

It was not operational from 1992 on -- it sat dormant. There is a long history of the rock pit. The crusher was sold in '94 -- an asphalt plant was not put in. The only way to get a big enough operator was to have Mr. Spence agree to expand it. Spence agreed April 24, 2009.

Commissioner Elfering called Joe Frasier.

Mr. Frasier is from Walla Walla; he said he is leery they can keep the dust down. He is a bordering neighbor to the west; which is farm ground and also all is in the UGB for the City of Milton-Freewater.

He has yet to hear there is an economic need for this expansion. He is a farmer. This is a farm use zone. Requests commissioners look at farm use zones. He sees this as an open pit mine in what is becoming known as a destination and tourism area in the Walla Walla Valley. He talked to dust and water issues. He submitted a letter into the record at the recent Planning Commission meeting.

Commissioner Murdock asked Mr. Frasier to clarify his comments, regarding future development and impact of the property. Mr. Frasier said the impact to him was negative as to future development (in his mind).

Shane Finck was able to get the video to play from another computer without volume and played the video.

There was discussion on whether to leave the record open. The Board will allow applicant rebuttal. Commissioner Murdock noted he only wishes to hear new testimony, not go over the same things again and again – they have heard the same testimony and many things are already part of the record.

Commissioner Elfering called for rebuttal.

Rebuttal Testimony:

Martha Pagel came forward again to explain the water. The 6,000 gallons was based on the history of water use on the site. The expansion does not increase the amount of water needed. The expansion is to allow future mining. The water usage is for the crush site not road dust. They have a signed rental agreement with the City of Milton-Freewater for back up supply.

Wendie Kellington came forward again to reiterate the record shows County Staff, Counsel and Planning Commission have gone through the process to determine the CUP 479 is valid. A&B need not show whether Humbert was operating lawfully, at all times material, the land on which the asphalt plant is located was on the significant sites inventory, adding no more than 32% of class soils, following all rules.

Ms. Kellington noted she feels opposition is really about avoiding competition in the asphalt and rock marketplace. She believes there are “unclean hands”. Previous owners accepted the benefits of the determinations when they were making money and now trying to claim they were operating unlawfully when they were making money.

Mr. Brad Humbert claims there is no relation to Humbert Asphalt but there is plenty of evidence in the record to show a business relationship.

Third party objective testers were used for the soil tests. The testimony about videos showing dust, that was mostly steam. The applicant has followed the administrative rule. This application deserves to be approved.

Mike Stalder, acknowledged there were some overloads going out (of A&B). In order to turn around safely they had to drive on county roads and cross a bridge. They did have a driver test; they have learned from mistakes. They have since and do now follow the rules.

Commissioner Elfering closed the testimony portion of the hearing.

Discussion was had about keeping the record open. **Commissioner Murdock moved to close the record. Commissioner Elfering seconded. All voted aye. Carried 2-0.**

Commissioner Elfering closed the hearing at 1:20 pm.

Commissioner Murdock asked Ms. Mabbott a clarifying question on the sale of the pit. Ms. Mabbott brought to their attention the application is in fact signed by all necessary parties.

Commissioner Murdock asked Ms. Mabbott a clarifying question on the overload. Ms. Mabbott stated she did have discussion with Tom Fellows, Public Works Director about the matter and there was no particular concern. Commissioner Murdock asked about hours of operation.

Commissioner Elfering asked if the Planning Commission found the operation valid and operable. Ms. Mabbott affirmed. Commissioner Elfering stated he believes all of the questions and concerns have been addressed.

Commissioner Elfering moved to uphold the Planning Commission's approval. Commissioner Murdock seconded. All voted aye. Carried 2-0.

No further business.

The meeting was adjourned at 1:26 p.m.