

MINUTES
UMATILLA COUNTY PLANNING COMMISSION
Meeting of Thursday, January 26, 2023, 6:30pm

COMMISSIONERS

PRESENT: Suni Danforth, Chair, Don Wysocki, Vice Chair, Tami Green, Sam Tucker,
John Standley, Emery Gentry & Jodi Hinsley

COMMISSIONER

PRESENT VIA ZOOM: Tammie Williams

PLANNING STAFF: Bob Waldher, Planning Director; Megan Davchevski, Planner/ Transit
Coordinator & Tierney Cimmiyotti, Administrative Assistant

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

CALL TO ORDER

Chair Danforth called the meeting to order at 6:31 pm and read the Opening Statement.

CONTINUED HEARING

TEXT AMENDMENT #T-092-22, PLAN AMENDMENT #P-135-22 & ZONE MAP AMENDMENT #Z-322-22; CRAIG COLEMAN, APPLICANT/ GIRTH DOG LLC, OWNER. The applicant requests to establish a new aggregate site, add the site to the Umatilla County Comprehensive Plan list of Goal 5 protected Large Significant Sites, and apply the Aggregate Resource (AR) Overlay Zone to the entire quarry site. The proposed site is comprised of several tax lots located south of the Interstate 82/84 interchange. The site is identified on Assessor’s Map as Township 4 North, Range 27 East, Section 36, Tax Lots 900, 1100, 1200, 1300 & 1800. The site is approximately 225 acres and is zoned Exclusive Farm Use (EFU).

Chair Danforth called for any abstentions, bias, conflicts of interest, declarations of ex parte contact or objections to jurisdiction. Commissioner Tucker stated that he represented Carla McLane’s (applicant’s consultant) mother’s estate as an attorney. The Planning Commissioners determined there is no conflict of interest in this matter.

MINUTES

Chair Danforth called for any corrections or additions to the October 20, 2022 & December 16, 2022 meeting minutes. There were none. Commissioner Tucker moved to approve the minutes as presented. Commissioner Wysocki seconded the motion. Motion carried by consensus.

Chair Danforth called for the Staff Report.

STAFF REPORT

Mr. Waldher, Umatilla County Community Development Director, stated that the applicant requests to establish a new aggregate site, add the site to the Umatilla County Comprehensive Plan

list of Goal 5 protected Large Significant Sites and apply the AR Overlay Zone to the entire quarry site. He explained that the property is comprised of several tax lots totaling approximately 225 acres and is zoned EFU. The property is located south of the Interstate 82 and 84 Interchange, southwest of the Westland Road Interchange and south of Stafford Hansell Road. If the proposal is approved, the County will add this site as a Large Significant Site to Umatilla County's Goal 5 Aggregate Resource Inventory.

Mr. Waldher stated that the applicant requests to excavate aggregate, batch that aggregate for various commercial and industrial projects, stockpile unused aggregate material for current and future use and process the aggregate into both asphalt and concrete. Both sand and gravel materials are available on this site.

The criteria of approval are found in Oregon Administrative Rule (OAR) 660-023-0040 – 0050, 660-023-0180 (3), (5) and (7) and Umatilla County Development Code (UCDC) Section 152.487 – 488.

Mr. Waldher stated that the Umatilla County Planning Commission held a first evidentiary hearing on this matter Thursday, October 20, 2022. The hearing was subsequently continued to Thursday, December 15, 2022. During the continued hearing in December, testimony was provided by the applicant and their consultant, as well as project opponents (including neighboring and nearby aggregate operators). Several documents which were not included in the original October and December hearing packets were introduced into the record and are summarized as follows:

Exhibit I; December 12, 2022, Email communication between Bob Waldher (Planning Director) and Greg Silbernagel (Watermaster, OWRD).

Exhibit J; December 14, 2022, Email Response to Mr. Stamps 11/23/22 letter (Attorney Representing Opponents) from Carla McLane (Consultant for Applicant) to planning staff including; Coleman Response Letter, Hatley Application, Road Vacation Order & two pictures of the rock source locations.

During the December hearing, upon request from Mr. Stamp, the Planning Commission agreed to leave the record open for a period of 21 days, outlined as follows; 7 days to allow for all parties to submit new evidence (deadline 12/22/22); then, 7 additional days for rebuttal (deadline 12/29/22); and finally, 7 days for the applicant to submit final legal arguments only – no new evidence (deadline 01/05/23). Deliberation and a decision (recommendation to the Board of County Commissioners) was announced for the hearing scheduled on January 26, 2023 at 6:30 pm at the Justice Center Media Room, 4700 NW Pioneer Place, Pendleton, Oregon.

Subsequent to the continued December 2022 hearing, additional information was submitted and received by the County Planning Department during the 21-day open record period, summarized as follows:

Exhibit K; December 22, 2022, Additional Evidence submitted by Craig Coleman & Representatives (Applicant)

Exhibit L; December 22, 2022, Additional Evidence submitted by Wade Aylett Sr. (Opponent)

Exhibit M; December 22, 2022, Additional Evidence submitted by Wade Aylett Jr. (Opponent)

Exhibit N; December 22, 2022, Additional Evidence submitted by Andrew Stamp (Attorney Representing Opponents)

Exhibit O; December 29, 2022, Rebuttal submitted by Craig Coleman & Representatives (Applicant)

Exhibit P; January 5, 2023, Final Legal Arguments submitted by Sarah Stauffer Curtiss (Attorney Representing Applicant)

Mr. Waldher added that, in addition to the information included in the Staff Report, relevant information pertaining to this agenda item can be found in the previous October and December 2022 hearing packets. Previous hearing packets can be found on the County's website at: <https://www.co.umatilla.or.us/departments/planning/plan-packets>.

Mr. Waldher noted that, during the final 7-day period in which only the applicant was to submit final legal arguments, additional emails and comments were received from Terry Clarke representing JTJ Enterprises, LLC which operates a mining site to the east of the subject property, and Andrew Stamp, Attorney representing the Aylett's and Rock It, LLC. After discussion with legal counsel, these documents were not included in the January 26, 2023 hearing packets because they were received outside the deadline set by the Planning Commission at the December 15, 2022 hearing. However, staff noted that this information can be presented in arguments before the Board of County Commissioners (BCC) as part of the de novo hearing review and decision process.

Mr. Waldher stated that the process of approval by the County involves review by the County Planning Commission with a recommendation to the BCC. The decision includes a set of Precedent and Subsequent Conditions of Approval. He explained that the Planning Commission is tasked with determining if the application satisfies the criteria of approval. First, they must decide whether the site can be established as a Goal 5 site added to the County's Aggregate Resource Inventory and second, whether or not to allow mining. He added that this decision must be based on evidence and facts in the record. Subsequently, the BCC must hold a public hearing and decide whether or not to adopt the proposed amendments. A public hearing before the BCC will be scheduled upon a recommendation from the Planning Commission.

Chair Danforth closed the hearing for deliberation and adopted Exhibits K - P into the record.

Mr. Stamp Andrew Stamp (Representative for Opponent, Wade Aylett, Rock It, LLC) stated that he objects to the proceeding. Chair Danforth noted Mr. Stamps objection and moved forward with deliberation.

DELIBERATION & DECISION

Commissioner Tucker stated that believes that at a higher level, this request could be decided differently than what the Planning Commission decides. There could be appeals to the Oregon Land Use Board of Appeals (LUBA) and they could find problems with their recommendation. However, he feels that possibility should not be considered when deciding this matter. He explained that after the first hearing he was left with the impression that the applicant did not have everything they needed. However, as the opponent presented complaints about the application they essentially made a road map of what was incomplete. As a result, the applicants came back to the second hearing and addressed each concern presented by the opponents at the first hearing. Ultimately, they proceeded to check all the necessary boxes.

Commissioner Tucker explained that he believes the job of the Planning Commission is to read the rules and apply them to the facts presented in the applicant's request. Therefore, the argument that there are already too many aggregate pits in the area does not play a role in making the final decision. He expressed that he would not want to stop development and explained that his general philosophy is that the government should stay out of the way unless there is a reason to get involved. He feels that, if the applicant meets criteria, they meet it. If the concern is competition, he believes that is what our economic theory is based upon and competition controls price.

Commissioner Tucker acknowledged that there is a water issue at the site and the applicant is unsure how they will get water. He stated that, although this is a concern, it is not the Planning Commission's problem. He does not think the Planning Commission should deny the request because they think another agency may not approve something down the line. He believes approval is appropriate because the applicant has checked all the boxes necessary to meet the Planning Commissions requirements. He trusts that the applicant has drilled and tested an adequate amount of test holes and demonstrated with overwhelming evidence that they meet the quality and quantity standards for material at the site. He stated that he supports approval of the application.

Commissioner Hinsley stated that her biggest struggle with this application was that the applicant does not have water rights to support operations at the facility. Additionally, she was concerned about adding another aggregate operation to the area when there are already a number of existing sites close by.

Commissioner Standley agreed with Commissioner Tucker. He stated that he was originally concerned about the lack of water at the site, but believes the applicant has presented several ways to mitigate that issue. He added that it's the applicant's role to provide more details about their intended water source as they advance in the application process with other agencies. The

Department of Environmental Quality (DEQ) and Department of Geology and Mineral Industries (DOGAMI) will have standards the applicant has to meet that don't involve County Planning.

Commissioner Williams stated that she agrees with the other Commissioners. She thinks the applicant meets the requirements and water at the site is not the Planning Commission's issue. She added that it can take 2-3 years to establish a water right and it's not something the Planning Commission looks at when making their decision.

Commissioner Gentry stated that he also agrees with the others. He added that the Planning Commission has met several times on this issue and the request has been thoroughly examined. It is important to consider what is within the purview of the County and the role of the Planning Commission. He believes the applicant has met the criteria for approval in this application and restated that they will have additional standards to meet when they move forward with other agencies.

Commissioner Wysocki stated that he feels this is a difficult decision and he has empathy for both the applicant and opponents. He reiterated that the Planning Commission is required to make decisions based on the rules and regulations required by the County.

Chair Danforth stated that this is the first time in her tenure with the Planning Commission that an issue has been continued to a third hearing. She has empathy for both sides and stated that she has learned a lot during this process. She agrees with Commissioner Tucker that the opponent was able to outline a path forward for the applicant. She was not able to review the application submitted by Mr. Coleman and wondered why the application was not in the packets. She stated that the applicant used previous applications to complete their own application and contended that this request is just like the others that the Planning Commission has approved in the past. However, she does not believe this request is like the others. She explained that this is a new request for Goal 5 protections, not adding additional acreage to an existing site. She feels it is important to look at this request as its own unique application and not compare it to past aggregate requests.

Chair Danforth stated that she is concerned that the applicant does not have a definitive plan for onsite operations. She was frustrated that, when asked for specific details, the applicant and proponents used phrases like, 'we will see what we're working with'. She reiterated that there is no actual plan in place and asked, "How do you approve something without a plan?"

Chair Danforth stated that she believes this operation will affect residential sites in the area and she would like a standard in place to protect those residents, not just the applicant's word at the hearing. She views this issue as particularly problematic because enforcement of environmental impact standards is complaint driven, so the resident will carry the burden. She pointed out that, with no water at the site they cannot properly manage dust and she believes they do not have all the necessary parts in place to operate at this time. She explained that the applicant expressed that they plan to produce asphalt and concrete but they do not have water, which is required to clean

the rock. Additionally, she does not believe the applicant showed proof of a certified geological study completed at the site.

Chair Danforth expressed that she has confidence that the Planning Commission has been able to come to a clear understanding of what this request entails over last few months and feels that the concerns expressed by her and others should be voiced to the BCC. She wants to be sure the Planning Commission continues to approve only applications which meet the required standards when reviewing aggregate requests and not lower the bar moving forward.

Commissioner Standley stated that he has apprehensions about potentially conflicting issues not being in writing. For example, the applicant does not intend to use a berm as part of the operation because they contend the nearest neighbor prefers that they not impede his view. Commissioner Standley explained that it makes him uneasy that this agreement has not been solidified as part of the operation plan. He would like more documentation in the record to show exactly what is being approved and what was not, to ensure things do not change over time.

Commissioner Gentry reiterated that the Planning Commission has specific criteria to consider when approving or denying these requests. He explained that the applicant will be required to provide many more specific details and meet strict requirements when they apply for permits related to mining operations because there will be a number of permits required by a variety of agencies at that time. Additionally, other agencies will enforce regulatory standards for environmental concerns like dust and noise so it's not the Planning Commissions role to make those determinations.

Commissioner Gentry asked if it is appropriate for the Planning Commission to tell an applicant that they need to spend the money to conduct a full geological survey. He stated that he has the impression that some of the Commissioners feel the applicants testing of rock samples may have been inadequate. However, he believes the only way to do more is to conduct a full geological survey of the site, and that seems like a big ask.

Commissioner Standley stated that he is unsure what other regulatory agencies are responsible for when it comes to permitting operations like this. He pointed out that, as part of his testimony at previous hearings, Mr. Clark asked for additional information about the site plan, among other things. Commissioner Standley stated that he is unsure if a site plan is required for our process or if another agency oversees that piece. He stated that he would feel better about not fully addressing every aspect of the operation if he knew they were being taken care of by another agency.

Commissioner Hinsley stated that she originally had concerns about impacts to the neighbor living near the operation. However, she pointed out that the neighbor received notification about the public hearing and did not object to anything.

Mr. Waldher reminded the Planning Commissioners that they have the opportunity to add conditions. For instance, a site plan is required when obtaining the Zoning Permit to complete the

process. He stated that they could impose conditions like spelling out that the processing equipment will be setback at least 500 feet from existing dwellings and require the applicant to show the berm on the site plan. In terms of water, a condition could be added to ensure they obtain all required permits from Oregon Water Resources Department (OWRD) or otherwise demonstrate whatever method they plan to use to obtain water at the site.

Commissioner Tucker asked whether additional conditions like that are necessary or if they are redundant, because those requirements will be mandatory either way. Chair Danforth stated that they could add conditions of approval, but the matter will ultimately be decided by the BCC. They could add more conditions or remove all the conditions recommended by the Planning Commission, it's their decision. Commissioner Wysocki stated that, although he knows the additional conditions are already required steps, he thinks it's important to send a message to the BCC that they have considered all the elements by adding them as conditions of approval. Commissioner Hinsley agreed. She added that it makes a statement to the BCC that these pieces of the plan are not yet in place, and she would like it to be noted. Chair Danforth was in agreement.

Chair Danforth stated that she would like to see a berm around the pit. Commissioner Tucker argued that a requirement like that would be counterproductive because the pit will eventually be near the residence, placing the berm near the residence. This is something the neighbors clearly asked not to be done. Discussion continued among the Planning Commissioners about potential conditions of approval. It was decided not to require the applicant to include the berm as part of the site plan because the neighbor stated that they do not want a berm blocking their view.

Commissioner Standley pointed out that, in the January hearing packets, under Exhibit P (January 5, 2023, Final Legal Arguments submitted by Sarah Stauffer Curtiss, Attorney Representing Applicant), Ms. Stauffer Curtiss wrote:

“Location of Crushing: As discussed during the December 15 public hearing, the Applicant proposes to locate its crushing equipment in tax lot 1800. The applicant will start the crushing equipment at the surface. Once the pit is opened up to the finish depth and there is enough room, the crushing equipment will be relocated down in the pit. This location will keep all impacts away from the residences in the area. The County can place a condition on approval that will require the Applicant to keep the location of the crushing there throughout the entire operation.”

Commissioner Standley stated that he would like to find a way to ensure that the processing equipment will stay inside the pit on Tax Lot 1800 as the permanent site for operations, not to be relocated. He would like this detail documented as part of the conditions of approval.

Commissioner Tucker made a motion to recommend approval of Text Amendment #T-092-22, Plan Amendment #P-135-22 & Zone Map Amendment #Z-322-22, Craig Coleman, Applicant, Girth Dog LLC, Owner to the Board of County Commissioners with the following addition to

Subsequent Condition #2 (changes bolded & underlined below), Obtain a Zoning Permit from the Umatilla County Planning Department to finalize the approval of the aggregate site. The site plan shall demonstrate that the extraction and sedimentation ponds are not located within 25 feet of a public road or within 100 feet from a dwelling. Access to the mining operation shall be restricted from Stafford Hansell Road. **Processing equipment shall be located at least 500 feet from existing dwellings, shall be located on tax lot 1800 and placed in the pit once opened to the finish depth. Processing equipment shall remain in this location for the duration of the aggregate operations.**

With the addition of the following Subsequent Conditions:

8. Mining is only allowed as proposed in the application, and as otherwise limited in these conditions.

9. All processing of mineral and aggregate materials shall occur on the northwest corner of Tax Lot 1800 as shown in Exhibit C, (October 18, 2022, Letter to Planning Commission submitted by Carla McLane) on page 16 of the December 15, 2022 hearing packets.

10. Applicant shall minimize fugitive dust emissions from the property by application of dust abatement chemicals, water, or similar best management practices recommended by DOGAMI and DEQ for control of dust at aggregate mining sites.

11. Applicant shall ensure equipment operating on internal haul roads does not exceed 20 mph to reduce potential dust impacts.

12. If water is used for dust abatement, water must be secured from a permitted source.

Commissioner Gentry seconded the motion. Motion carried with a vote of 7:1.

OTHER BUSINESS

Mr. Waldher stated that because this is the first meeting of 2023, Planning Commission Chair and Vice-Chair positions are due for reelection. Commissioner Standley nominated Chair Suni Danforth to continue as Chair and Commissioner Don Wysocki to continue as Vice-Chair. Commissioner Green seconded the motion. Motion carried by consensus.

Mr. Waldher explained that the Planning Department is going through a reorganization. We will now be operating as the Planning Division of the Umatilla County Community Development Department. Additionally, there have been some recent role changes. Mr. Waldher is now the Umatilla County Community Development Director and will focus more on economic & community development projects and issues. He explained that the County created a new position, Planning Manager, to oversee day-to-day operations in the Planning office. The Planning Manager position is open for recruitment and they hope to make a decision as soon as possible.

Mr. Waldher announced that Tierney Cimmiyotti has been promoted from Administrative Assistant to Planner II/ GIS. As a result, the Planning Administrative Assistant role is open for recruitment and Mr. Waldher asked for anyone who knows of a good candidate to encourage them to apply.

Mr. Waldher stated that staff is also seeking two Planning Commissioners to fill vacancies. He explained that Cindy Timmons resigned when she became Umatilla County Commissioner. Also, Tammie Williams' term is ending soon. Again, he asked for anyone who knows of a good candidate to encourage them to apply.

Mr. Waldher stated that we will likely not have a Planning Commission hearing in February. Staff will follow up with an email announcement when we know for sure.

ADJOURNMENT

Chair Danforth adjourned the meeting at 7:42pm.

Respectfully submitted,

Tierney Cimmiyotti,

Administrative Assistant

Minutes adopted by the Planning Commission on April 27, 2023.