

MINUTES
JOINT BOARD OF COMMISSIONERS'/
CITY OF EUGENE HEARING

January 16, 2008

6:00 p.m.

Harris Hall Main Floor

Commissioner Faye Stewart presided over the meeting for the Board of Commissioners with Bill Dwyer, Bobby Green, Sr., and Peter Sorenson present. Bill Fleenor was excused. Recording Secretary Melissa Zimmer was also present.

Mayor Kitty Piercy presided over the meeting for the Eugene City Council with Bonny Bettman, Chris Pryor, Mike Clark, George Poling, Andrea Ortiz, Jennifer Solomon, and Betty Taylor. Alan Zelenka was excused.

Stewart opened the Board of County Commissioners meeting.

Mayor Piercy opened the meeting of the Eugene City Council.

19. **WORK SESSION**

a. **NINTH READING AND DELIBERATION Ordinance No. PA 1238**/In the Matter of Amending the Lane County Rural Comprehensive Plan to Revise the "Significant Mineral and Aggregate Resources Inventory"; Metro Plan Redesignation from "Agriculture" to "Sand and Gravel"; Rezoning from "E30/Exclusive Farm Use Zone" to "SG/Sand, Gravel & Rock Products Zone"; to Allow Mining on 72.31 Acres of Land Pursuant to Lane Code 12.225 and 16.252 and the Goal 5 Oregon Administrative Rules (OAR 660-023); and Adopting Savings and Severability Clauses (file no. PA 05-6151, Delta Property Co.) (NBA & PM 10/18/06, 11/1/06, 12/12/06, 2/14/07 & 3/14/07, 4/18/07, 5/1/07, 5/23/07).

Stewart stated that the intent for the meeting was to provide the Eugene City Council with the Board's actions and findings to date. He said the Board worked through the application and they wanted to share findings and the mitigating factors to deal with the potential problems that might occur.

Kent Howe, Land Management, explained that there was a legitimate concern by the city council and in order to know whether or not minimization of potential impacts was occurring, he didn't know if the city knew the conditions the County might set on the potential authorization and whether the impacts had been minimized to get to a conclusion.

Howe recalled in August 2005 the County received this application and in November 2005 the Joint Planning Commission meetings took place. He noted on November 1, 2006 there was a joint elected officials meeting. He added on April 11, 2007 the city council deliberated and on May 23, 2007 the Board of Commissioners deliberated, and both bodies came up with different conclusions. He noted on September 19, 2007 the Board of Commissioners sent a letter to the City to offer the possibility of a further dialogue.

Howe explained since this meeting doesn't constitute a hearing, the record is closed. He said there is no need for a request of disclosure of ex parte contacts. He said they shouldn't review any letters or e-mails

they receive since the record is closed and they should avoid any types of ex parte contacts. He indicated state and County staff received a letter concerning the process. He added because the record is closed, the letter is not being provided unless they vote to reopen the record for all participants to submit additional testimony on the issue.

Howe explained in regard to the Goal 5 process and general steps, Step 1 deals with the adequacy of the post acknowledgement plan amendment application and the information provided. He indicated that both the city council and the Board determined that sufficient information was submitted by the applicant for the application to be considered adequate, allowing the determination of site significance and the minimization of potential conflicts under the Goal 5 Rule process to proceed. He explained that after they conclude there is adequate information to proceed, Step 1 asks if it is a significant site. He added after Step 1 it moves into steps that are potential impacts, and if those impacts could be minimized. He said if they can be minimized, then the site should be protected, justifying the plan amendment to protect the significant Goal 5 resource.

Howe noted there are two characteristics considered when determining significance. He said one is quantity. He said an aggregate resource site shall be significant if there is 2 million tons of the resource at the site and if it is in an area where it is an expansion area and in agricultural soils Class 2 or better. He added if more than 35 percent of that mining proposed area is Class 2 soils, then it has to have an average thickness of aggregate layer within the mining area of 60 feet. He noted that both the council and the Board concluded from the record that over 8 million cubic tons of material is present at the site, an amount well in excess of the 2 million cubic tons requirement. He added that the findings support the conclusion that an adequate quantity of the gravel resource exists on the site to meet that step. He noted the average cumulative depth of the aggregate layer is 70.5 feet.

With regard to quality, Howe explained that the quality of the resource has to meet ODOT standards. He noted those are standards that are specific for highway construction and the record shows that the methodology used to acquire and analyze the resource sample followed the industry standard and was conducted in a manner that supports the conclusion that the quality of the gravel resource meets the threshold designation as a significant gravel resource site under the Goal 5 Rule. He added that the analysis of the gravel at the site was peer reviewed by both ODOT and DOGAMI and the representative samples used in the analysis of quality are in the record. Howe stated the Board found there was a significant site, meaning both in quality and quantity. He said the council found the site was significant from the standpoint of quantity but not quality and through a straw vote, the city is at that step.

Howe reported Step 3 is minimizing conflicts. He said there were seven potential conflicts that had been identified in the record. He reported that under the Goal 5 Rule, conflicts are considered to be minimized if they meet the local, state or federal standard. He added that most of the conflicts have a state standard. He indicated the conflicts were traffic, groundwater, wetlands, flooding, agricultural practices, dust and noise. He noted the next question in the process is whether any of the conflicts extend beyond the 1500 foot impact area that is required by the rule. He indicated the answer by the County was no, the 1500 foot impact area was measured from the boundary of the proposed mining expansion area and none of the potential conflicts were determined to extend beyond the 1500 foot impact area. He recalled that the Board determined that all of the conflicts could be minimized to acceptable levels and or minimum thresholds through the proposed conditions attached to the County ordinance.

With regard to traffic, Howe indicated the County engineer waived the requirement for a traffic impact analysis. He noted it is an existing site and the existing processing operation is not going to change. He said all that is happening is that it is expanding the area from which they are taking the gravel. He explained because of the scale and size of the proposed extraction rate in the expansion area, it didn't warrant a detailed traffic analysis for road performance. He indicated that the County found that they did not require further analysis and traffic impacts had been minimized.

With regard to groundwater, Howe reported that the construction of the aquaclude is proposed to minimize any loss of groundwater and any impact to neighboring wells. He said it is a low grade barrier that would eliminate flow on the groundwater into the pit. He said groundwater by the Board of Commissioners has been determined to be minimized with the aquaclude.

Under wetlands, Howe noted the Division of State Lands is the regulatory body. He indicated there are two identified wetlands on the property and the completion of the aquaclude would function to retain groundwater that could also retain water in the lower reaches of the wetlands and it wouldn't impact the wetlands. He indicated the Board of Commissioners has concluded that the impacts to wetlands have been minimized.

With regard to flooding, Howe stated that FEMA is the agency standard. He added that gravel extraction doesn't impede the water flow. He said the extraction of the aggregate proceeds in a downward manner and doesn't create any barriers that impede flood flows. He indicated under this analysis, the Board concluded that the potential impact of flooding has been minimized by meeting the FEMA regulations.

Under agricultural conflicts, Howe reported that there are two standards under the state rule, Agricultural Land Goal 3. He said the proposal won't force a significant change in accepted farm or forest practices and won't significantly increase the cost of accepted farm or forest practices on surrounding lands. He said the property is currently being farmed and the land being farmed is an appropriate interim use for future gravel resource. He said the agricultural uses that have been identified in the record are beyond the 1500 foot impact area. He stated no minimization conditions are proposed and the agricultural conflicts have been met.

With regard to noise, Howe noted the category is addressed by the regulations of the DEQ. He said under Goal 5, only the expansion area is subject to the noise threshold requirement. He indicated that there is an existing operation. He added that the plant and processing facilities are currently operating under a permit. He added that the focus on noise conflicts with the final analysis, the minimization procedures and the conditions and findings provided were sufficient evidence for the Board to conclude that potential noise conflicts of mining the expansion area are minimized to the level required under the Goal 5 Rule by meeting the noise standards.

Under dust, Howe stated the DEQ regulates the dust emission standards through LRAPA through an air contaminate discharge permit. He indicated that Delta's processing operation directly east of the expansion site operates under the current LRAPA permit and if approved the future mining expansion area would be added to the existing permit that would be updated to include the expansion area and conduct operations in a manner with the applicable standards under the existing authorized permit. He indicated that the sources of dust include activities from overburden removal, aggregate extraction and truck traffic on the haul roads from the expansion area to the processing plant on the existing approved operation. He said the Board found that the potential dust conflicts would be minimized to the

operation's limits that are in the conditions that include the watering of surfaces during dry periods. He said LRAPA monitors air quality in the metro area to meet DEQ emission standards applied to the air contaminate discharge permit. He said therefore, this criterion has been met and the potential impact minimized through that condition. He stated the Board concluded through their straw vote that the proposed conditions do adequately minimize all potential conflicts to a level that meets the required thresholds.

Howe explained the next step is laying the ESEE analysis. He said that analysis is only triggered if one of the potential conflicts wasn't minimized. He added since they were all minimized, they didn't need to move into Step 4 for an ESEE analysis.

Howe noted Step 5 was the determination of whether new uses surrounding the Goal 5 resource could impact it and would they need to be limited. He added that is done through an ESEE analysis. He indicated that the record showed there weren't any potential new uses identified in the impact area, therefore the ESEE analysis of potential new uses was not required.

Howe said the procedures for Step 6 where they develop the program to allow the mining is the final step of the process. He said because the expansion site is outside the urban growth boundary, Lane Code Chapter 16 applies and the Board of Commissioners is the one that makes the decision on the operation plan and the rezoning of the property. He said the Board found the record showed ample evidence that the site meets all of the above criteria for the rezoning requirements and would approve the rezoning of the property to sand and gravel and rock products. He said a variance was requested. He added that it would only be processed by the Board. He said the requirements were addressing setbacks and no flood hazards as a result of a variance. He said the request was for the aquaclude requiring the variance. He added the request for placement within the setback area is to ensure its separation from the excavated aggregate pit and to place the barrier's outer edge as close as possible to the surrounding outside shallow aquifer. He said the applicant proposed to construct that aquaclude within the setback, proceeding ahead of the mining extraction to the west at a distance of 400 feet from any excavation activity. He said under the rule to allow mining, it takes any required measures to minimize conflicts including special conditions and procedures regulating mining need to be clear and objective. He said that Lane County will be coordinating with DOGAMI and the water resources regarding the existing operation and reclamation plan for the expansion into the area. He said the mining plan requires DOGAMI approval.

Howe said if the City of Eugene should revisit this and get beyond Step 2, those would be the conditions and the reasoning behind the Board concluding that the potential impacts would be minimized with the conditions and how the Board concluded that this is a significant Goal 5 resource that needs protection and they would be developing the plan to allow the mining.

Clark declared that he received an e-mail from a neighbor and gave it to staff.

Solomon thought the County came up with a reasonable plan that addressed all the issues that Delta Sand and Gravel and the neighbors had. She commented that it is a heavily regulated industry and she was confident that the program the County has come up with is reasonable. She thought they were contributing to the economy and community. She believed that at a minimum the city council owes them a vote.

Ortiz believed this was an important decision but she still had a lot of concerns.

Clark asked how the Board reached their vote.

Dwyer stated his decision was based on the record. He said the record indicates that these things have worked in the past. He added that they will put in the specifications for the aquaculture and if anything happens, the application said they would mitigate the program caused by a problem.

Bettman asked what the purpose of this meeting was.

Dwyer said they have a process and people are entitled to a conclusion to a process. He said if they don't like the conclusion, they have to be able to access the procedural rights that allow this to move forward. He added by the council not taking a position, they are denying the procedural rights of an applicant that deserves some finality or a way to move forward to get to a conclusion. He said it is not fair to allow a process to be thwarted. Dwyer thought the city council only took a straw vote.

Bettman recalled that they were under the impression from their staff that they could spend time deliberating the other issues but since their definitive piece disagreed with the County's finding, the only process is to take it to MPC. She said there is a process. She stated that the council did not thwart anyone's rights. She said the council did what they needed to do in order to expedite the process. She commented that if there is no agreement on whether the resource is adequate. The rest is moot.

Stewart stated they were told by staff that a straw poll was made and it wasn't a final decision and a final decision hadn't been made yet. He said they were also told by staff that some of the deliberations the County had might help move the city council to a final decision. He said the County hasn't made its final decision but they are prepared to adopt the findings. He stated the county and city are at differences. He asked if they go to the MPC process if they could work out the differences. He added up to this point they were not lead to believe that the straw poll was a final decision.

Emily Jerome, City of Eugene, responded that what the County has done has placed the County and city in the same position. She said both bodies have taken votes (straw polls) on particular criteria and the MPC does not begin until both jurisdictions have adopted ordinances with findings and conclusions. She said the city council at any time could make that decision. She said if the ordinances differ, that is when it would be referred to MPC.

Kurt Yeiter, City of Eugene, explained that they are not asking for council deliberation on the findings tonight. He said their recommendation is to bring back several options at a subsequent meeting with findings for all of the criteria for denying on the overarching issue of resource.

Bettman said they took a formal motion to ask staff to prepare a resolution that finds that there was not sufficient evidence that a significant resource exists on the subject site consistent with the attached draft findings. She said someone asked if this superseded a straw poll and staff said it does. She stated that they revised it and talked about using an ordinance instead of a resolution. She said they look at internal factors whether there are issues of production changes or the product changing. She asked if they had looked at external factors such as initial operations and transportation issues. She said the Eugene Code requires a transportation impact analysis which has to cover 20 years. She added there is a state transportation planning rule that says if they change the use, it becomes a sub-study of the metro plan. She said it was designated as part of the inventory for residential property. She asked if the change of use triggers the state transportation rule. She asked if the County's waiver supersedes the state

requirement that there be a transportation study. She added that the Eugene Code says the transportation impact analysis has to cover 20 years. She said she reviewed the notes she took of the testimony and had a note that stated Mike Alltucker in his comments said that currently they are producing 4 million tons per year to be mined. She added that will increase to 8.5 million per year. She said that in their testimony DS&G made the point that they were going to increase production and that is inconsistent with the assertion in the application that production will not increase. She asked about the inconsistency. She commented that over 20 years, if production varies and they excuse the TIA based on the claim on the record, there will be a stable production over 20 years. She saw an inconsistency with the Eugene Code requirements and with the State Transportation Planning rule and concerned about the conflicts that are occurring and the interchanges are in a failure mode. She said with all of the specific criteria they look at, that unless they do an ESEE analysis, there is no opportunity to look at the impact on the people who have built houses and moved into their neighborhood. She noted that with every hearing, there was never a representative of the company that showed up to say a housing development shouldn't have been built because they had the land and they planned to expand the gravel pit. She stated families are now living there. She added that they are going to be impacting those families and their property values.

Pryor recalled that after they had their joint meeting, the city just had one meeting to discuss this. He recalled they voted to have a resolution prepared but didn't remember voting on the resolution. They told staff to prepare a resolution, but he didn't think they had an official action. He recalled saying if they can't get past Step 2, they shouldn't spend any more time on the rest of the steps. He commented that if they focus at Step 2, it is a dead action. He didn't think it was a productive use of time to process all of the other decisions knowing they are going to reject them..

Green read the council action after Step 2 as being done. He said under the Metro Plan Agreement, there is a provision to go to MPC. He didn't advocate that process as it doesn't lend itself to a resolution. He said they would spend too much time to go no where. He said the applicant deserves to know this so they could go onto the next level.

Poling didn't think they came to a conclusion on Step 2. He recalled the motion they passed was to direct staff to prepare an ordinance. He said they never voted on the ordinance. He didn't think Step 2 was completed.

Piercy asked what the next step would be.

Howe said final action would be directed to the planning directors to draft the findings because there wasn't agreement. He thought the County wanted it with the perspective that the County was able to get to yes, but the Eugene City Council couldn't get past significance of a resource and the application denied.

Dwyer commented that this process was not conducive to good government. He thought the quicker they could come to a conclusion, the better off it would be for everyone.

Clark asked if this process is appealed to LUBA, if the City of Eugene would bear the sole costs for its defense.

Jerome said that was a policy question for staff.

Clark asked if the County and city disagreed what the resolution would be.

Dwyer said they would support their position at the Court of Appeals.

Clark commented that the County could wind up on the side of the applicant and the city could end up as the defendant at LUBA.

Bettman heard that there was enough gravel to last 10 or 15 years and it is not someone running out of gravel and going out of business. She didn't recommend sending this to MPC. She said as a council they have to do the same due diligence as MPC because they have to give definitive direction to represent the Council's policy direction. She added it would be the same steps they would need to go through to address an entire application. She thought it made sense to go through the entire application in case they have to end up defending it.

Pryor said they know where the Board is: ready to approve the ordinance. He said because the record is closed, he didn't anticipate any change in vote. He said they know if they bring an ordinance, it is going to be to deny. He said the city council needs to do the ordinance. He said a question is if it is going to court, do they need to go through the rest of the steps to have a position in a court case. He said if it were up to him, he would approve it, but it wasn't up to him it is where the council is on the issue. He recommended getting the ordinance on their agenda signed so people have certainty what they need to do next. He said they need to go to a forum where they can get a legitimate legal and binding solution.

Stewart indicated that each body will go back and take their action. He said the legal counsels can give direction as to the next step of the MPC process or a final determination by the planning director that gives the application the ability to move on.

Piercy thought it was legitimate for both bodies to believe they have done a due process and acted on behalf of the public in a responsible way and come to different conclusions.

Poling asked if they need to have a public hearing with the ordinance.

Jerome responded that they had already had the public hearing and neither body needs to open the record or have another public hearing. She said the city council may choose to deliberate further. She said with the County's complete findings, they are ready to adopt an ordinance but they need to take the final step and no hearing.

MOTION: to approve a Ninth Reading and Deliberation and Setting a Tenth Reading and Deliberation on Ordinance No. PA 1238 on February 5, 2008.

Green MOVED, Sorenson SECONDED

VOTE: 4-0.

There being no further business, Commissioner Stewart adjourned the meeting of the Board of Commission at 7:05 p.m.

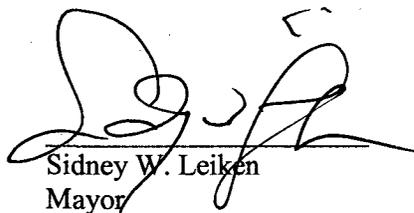
Mayor Piercy closed the meeting of the Eugene City Council at 7:05 p.m.

Respectfully submitted,

Angel Jones
City Manager *pro tem*

Melissa Zimmer
Recording Secretary

Approved by the Springfield City Council



Sidney W. Leiken
Mayor

Attest:


City Recorder