

MALHEUR COUNTY COURT MINUTES
March 20, 2024

The regularly scheduled meeting of the County Court was called to order by Judge Dan Joyce at 9:00 a.m. in the County Court Office of the Malheur County Courthouse with Commissioner Ron Jacobs and Commissioner Jim Mendiola present. Members of the media, public and staff had the opportunity to join the meeting electronically or in-person. Present in the meeting room were Administrative Officer Lorinda DuBois and Economic and Community Development Director Taylor Rembowski. Notice of the meeting was posted on the County website, Courthouse bulletin board and emailed to the Argus Observer, Malheur Enterprise and those persons who have requested notice. The meeting was audio recorded. The agenda is recorded as instrument # 2024-0855

ROAD ACCEPTANCE - FULK

Surveyor Derrick McKrola presented a road dedication on a partition plat for the Court's consideration. Commissioner Mendiola moved to accept road dedication of a portion of S Road C on Tonya Fulk's Partition Plat #24-02. Commissioner Jacobs seconded and the motion passed unanimously. See instrument # 2024-781

CROSSING PERMITS

Commissioner Jacobs moved to approve the following Crossing Permits: Crossing Permit #34-24 to Idaho Power Company for work on Alameda Drive #863; Permit # 35-24 to Idaho Power Company for work on Locust Road #568; Permit # 36-24 to Idaho Power Company for work on Grand Avenue #562; Permit # 37-24 to Idaho Power Company for work on Owyhee Avenue #1036; Permit # 38-24 to Idaho Power Company for work on Twilight Drive #1042; Permit # 39-24 to Idaho Power Company for work on Klamath Avenue #774; and Permit # 40-24 to Idaho Power Company for work on Norwood Drive #775. Commissioner Mendiola seconded and the motion passed unanimously. Original permits will be kept on file at the Road Department.

COURT MINUTES

Commissioner Mendiola moved to approve Court Minutes of March 13, 2024 as written. Commissioner Jacobs seconded and the motion passed unanimously.

OWYHEE IRRIGATION DISTRICT

Commissioner Jacobs moved to approve signing of a letter of support for funding assistance for Owyhee Irrigation District (OID) to upgrade efficiencies at their two Snake River pumping facilities. Commissioner Mendiola seconded and the motion passed unanimously. See instrument # 2024-0856

IGA (INTERGOVERNMENTAL AGREEMENT) - MARINE BOARD

Commissioner Jacobs moved to approve Maintenance Assistance Grant Intergovernmental Agreement, Agreement No. 2325-049 with Oregon State Marine Board. Commissioner Mendiola seconded and the motion passed unanimously. Funding is in the amount of \$17,625 to assist with

operation and maintenance of three recreational boating access sites in the County for the 2023/2025 biennium. A copy will be returned for recording.

Ms. DuBois left the meeting.

PUBLIC HEARING – ORDINANCE NO. 235

Present for the first public hearing to consider proposed Ordinance No. 235: An Ordinance Adopting a Post Acknowledgement Plan Amendment (PAPA) to Include Approximately 80 acres of Tax Lot 3200, Assessor’s Map 16S47E on the Malheur County Comprehensive Plan Goal 5 Resource Inventory as a Significant Aggregate Site were Planner Tatiana Burgess, County Counsel Stephanie Williams, Applicant Darren Lee, Brian Sheets – Counsel for Applicant, Mike and Mandi Hastings, Mike and Dinah Lord, Tina Cassity, Don and Patty Dickinson, and Pat Caldwell of the Malheur Enterprise; present electronically were Bill and Riley Downing. Notice of the hearing was published in the Argus Observer. The Applicant is Darren Lee; Property Owner is Dallas Head. Planning Department File No. 2023-12-010.

Judge Joyce opened the hearing.

Judge Joyce: This is the first of two hearings for a Post Acknowledgement Plan Amendment to add a proposed site to the County’s Goal 5 Inventory. No decision will be made today. The second hearing will be April 3, 2024 at 10:00 a.m. Planning Department file is 2023-12-010. When you are called to speak please state your name, address and title, if any, for the record. There is a general time limit for testimony of three minutes. The applicant’s initial presentation will be 10 minutes; with a rebuttal of five minutes. All testimony and questions shall be directed to or through the Judge. Testimony and questions should not be directed to staff or directly to witnesses.

Do any members of the County Court need to abstain, disclose conflicts, disclose biases, or disclose any ex parte communications or site visits? If so, state the reason now.

Judge Joyce: I have none.

Commissioner Jacobs: I have none.

Commissioner Mendiola: I have none.

Judge Joyce: Does anyone object to any of the members of the Malheur County Court hearing this application? Does anyone challenge the County Court’s jurisdiction to hear this matter?

Land use statements for the record: Oregon land use law requires several items to be read into the record at the beginning of this hearing. I will now read those items: These laws apply to and are found in Oregon State laws and rules as well as the local code provisions, which are specifically set out on the Staff Report and include OAR (Oregon Administrative Rules) 660, Division 23-0030.

Testimony, arguments, and evidence presented must be directed toward these approval criteria or other criteria in state law, the Malheur County Comprehensive Plan, or the Malheur County Code, that the speaker believes to apply to the decision.

The failure of anyone to raise an issue accompanied by statements or evidence sufficient to afford the County Court and the parties the opportunity to respond to the issue will preclude appeal to LUBA (Land Use Board of Appeals) on that issue.

An issue that may be the basis for an appeal must be raised no later than the close of the record. Such issues must be raised and accompanied by statements or evidence sufficient to afford the County Court and the parties an adequate opportunity to respond to each issue.

The failure of the applicant to raise constitutional or other issues relating to the proposed conditions of approval with sufficient specificity to allow the County Court to respond to these issues precludes an appeal or an action for damages to Circuit Court.

So, Order of Proceeding. The applicant will be allowed 10 minutes for initial applicant presentation. The applicant may also present up to five minutes for final rebuttal. All others wishing to testify will be given three minutes.

So, at this time we will have the Staff Report from the County – Tatiana Burgess, Planning Director.

Planner Tatiana Burgess: So, this is Planning Department File 2023-12-010. It was an application for a conditional use approval for aggregate mining and today we are discussing the determination for a post acknowledgement plan amendment. The property owner is Dallas Head at 5560 Highway 201 in Ontario; and the applicant is Darren Lee at 515 Noble Road in Ontario. The property is identified as Tax Lot 3200, Assessor's Map 16S47E, Malheur County Reference No. 6207 and the proposal is for a portion of Tax Lot 3200 which is 80 acres. The property is located west of the intersection of Highway 201 and Mesquite Road. It is a split zone; a significant portion of the property - 261.42 acres is Exclusive Range Use, which is the site of the proposed action, and a smaller portion is Exclusive Farm Use – 47 acres. The parcel is used for farming and residential activities. Surrounding use – there is an existing aggregate mining to the West; there is farm and rural residential use to the South, East and North. The proposed access to the site would be off of Mesquite Road, directly to the northeast portion of the parent parcel. It is important to mention that the private access includes crossing a buried pipeline that is owned by the LDS (Latter Day Saints) and there is an Owyhee Irrigation District canal. The property owner, Mr. Head, and Owyhee Irrigation District have a current crossing agreement. There will be no restrooms provided on site and up to three employees will be using porta potties. The parcel is within Payette, Idaho Fire Protection District and we do have a letter from them on file. The property is not within the 100-year floodplain. There are no water rights attached to this property. And a bit on the zoning history: this application was accepted by the Planning Department on December 20, 2023. A similar application was submitted by Mr. Lee in 2021, Department file 2021-03-010; that

application was denied by the planning commission and the decision was upheld on appeal by the County Court. In 2023, Mr. Lee was found to be in violation of Malheur County's Planning and Zoning ordinances by the Malheur County Justice of the Peace. There was a conversation with DOGAMI (Department of Geology and Mineral Industries) the Planning Department had regarding the current suspension order that is on file for the mining activity.

So today what you will be considering is the eligibility to determine if the identified aggregate resource meets quality, quantity and location standards that are identified in Oregon Administrative Rules 660-023-0180.

Regarding the quality analyses, I am going to break these down. In his application Mr. Lee submitted two reports that were included in your packets. One was done by Strata Inc. and one was done by Atlas Technical Consultants LLC (Limited Liability Corporation). I did list in your reports in there the specific testing that was done.

Regarding the Atlas analysis that was performed, at one of the previous planning commission hearings Mr. Lee stated that that analysis was performed on a separate site, outside of the 80 acres, so for that reason we are not considering that report for today's review.

Regarding Strata's report, that was submitted and is identified, they have excavated material from five test pit holes that are within the designated 80 acres that we're looking at today. In their report, they stated that the aggregate that was excavated was, they evaluated a mixed sample. We did receive a letter from DLCD (Department of Land Conservation and Development) regarding the fact that we would need to have verification that the hybrid sample is appropriate for testing only if the samples are similar. On February 22, 2024 a letter was submitted by Mr. Lee's legal counsel, Brian Sheets; it was introduced in the record as Exhibit 39 and that letter contained a statement from Strata regarding the similarity of those samples. Barry Miller, he was an engineer with Strata, stated that "when gravel encountered in explorations is of the same depositional environment and appears to be the same soil type, visual classification, there is no need to perform quality testing on each sample." There was no statement with regards to the similarity of the gravel deposit itself. He further details the sampling and testing process, and that a total of nine bags were collected and blended in the sampling in the AASHTO (American Association of Highway and Transportation Officials) T2 test. So due to the fact that Atlas testing did not take place on the subject parcel and the lack of the clarity with regards to the homogenous aspect of the hybrid sample tested by Strata, the planning commission recommends that the quality analysis conducted was inadequate.

Regarding quantity, neither Atlas or Strata tested for quantity of the aggregate resource, but another company performed the quantity testing, and that was Petra Drilling and Blasting of California. The testing report was signed by Nick Cunningham. It is identified specifically the location of the borrow pits that were evaluated. During the February 22, 2024 hearing, Mr. Lee stated that he drilled the test pits himself and that they had to be left open for a substantial amount of time due to the suspension order from DOGAMI that had been in place. There was also another statement that was submitted by Mr. Hastings, that was submitted in your packets, regarding the

research that he had conducted on Petra. So, based on those findings planning commission recommended that the testing, they found that the testing was insufficient and inadequate, because it was lacking the required certification, and the report was questioned due to it not being time-stamped.

The last aspect that we are evaluating today is the location. Atlas Consulting reports describe the quality of material excavated from three test pits; but the location of the test pits was not identified, and we further determined, like I said, that it happened on 40 acres that is outside of the subject parcel we're looking at today. Both Strata and Petra Drilling and Blasting testing was performed within the parameter of the 80 acres that we're looking at today. We do have geographical coordinates for those excavations. The 80-acre portion of Tax Lot 3200 is identified through a legal description that was made part of the record and the planning commission recommends that Strata and Petra Drilling and Blasting testing was adequate for location and it was conducted within the identified site, identified area #1.

At the last planning commission hearing on February 22nd, the planning commission voted to tentatively deny the Post Acknowledgment Plan Amendment application by a vote of 9 to 0 and, they made a recommendation to County Court to not add the site of area #1 to Malheur County Goal Inventory as a significant aggregate resource.

And I did pull up the map over there for you guys to look at, the map was also included in your packets and we are looking at 80 acres, which is this field right here, so the red outline that you're looking at right now, that's the entire property that belongs to Mr. Head, and we are discussing the aggregate that was identified within this 80 acres right here, south of Jasmine. So, this is the subject parcel that we are looking at today.

Judge Joyce: Okay, thank you. So, we do have a timer sitting behind us over here, he'll be in charge of the length of the talks, Taylor Rembowski. And so now we shall start with the applicant for 10 minutes.

Darren Lee: My name is Darren Lee, 515 Noble Road, and I'm the applicant for this. On that, can I get some clarification – you said denied for Area 1, this is I think what we did declare it as Area 3, correct?

Ms. Burgess: Area 3 was the private area that was for Mr. Head.

Mr. Lee: Private quarry, okay, fair enough.

Ms. Burgess: That's what you had in your application.

Mr. Lee: Okay. This is my second go around. After my first experience with the planning and zoning commission I thought I'd better get my ducks in a row and do my due diligence and make sure that this time I had followed the rules or what was requested of me the first time that I put the

application in. It was a single sample and that was not accepted by the planning and zoning commission, they said they wanted a broader sample so I did the combined sample this time. There's only two different types of samples that you can do, other than if you do five or ten different individual tests. I used Road District 3 and Seubert's application in the past as examples of what were successful applicants as far as Goal 5 inventory and then I tried to double that. That's why there's two testing there – the previous one that I did with Atlas and the second one that I did with Strata. So, either way is, that area there, meets the requirements of Goal 5 for quality testing. The State of Oregon has had a quarry up there they have mined gravel off; Road District 3 has; BLM (Bureau of Land Management) has, and I would assume that they would also want to put down aggregate that meets the criteria of Goal 5. There are also two established Goal 5 resource sites up there already, if you can see the map, there's a BLM portion that's off to the upper left corner – that's a BLM quarry, and they have been mining out of there since ever I can remember. I think that a reasonable person could assume that the gravel up in that area meets the criteria for Goal 5 for quality.

As far as quantity, again I looked at other successful applicants, and Road District 3 did a quarry about two years ago and it was 77 acres, and their quantity analysis came up to just about exactly what this quarry did for the 80 acres – it was between 2.5 and 2.7 million cubic yards. The criteria for the Goal 5 threshold is 500,000 tons. And mine, the test that I had, was 2.7 million tons. I don't think that any reasonable person could assume that we're going to guess exactly how much gravel is underneath the ground any more than you guess how much water is in an aquifer or how much oil is underneath the ground. The criteria is to meet a 500,000 ton threshold; that is the criteria. And within that criteria, it states that the inventory process for statewide planning goal 5 begins with a collection of available data from as many sources as possible, including experts in the field, local citizens and landowners. Now, engineers are engineers, they like to be precise; guessing how much gravel is underneath the ground is not necessarily within their purview. And because I knew that this was going to be scrutinized heavily by the commission, I have a good friend of mine who has a drilling and blasting company in California, I had him send up his blaster, who gets paid everyday by how much material that they produce volumetrically. So, the tests that I had done is not only superior to the testing that has been approved in the past, from say Road District 3, Seuberts, or other gravel companies, is in this case it shows the strata and the layers of the gravel, it shows the layers of the overburden and where the bottom of the quarry is; so, it's substantially superior to the prior testing that's been done. And it says right in here, that as many sources as possible, including experts in the field, local citizens and landowners. That includes myself who also runs a quarry right next door and I understand the strata that's underneath there. But I did not do that calculation; I just dug the test holes.

The other criteria is the level of detail that is provided will depend on how much information is available or obtainable. Okay, Road District 3 dug 12 test holes; I dug 12 test holes. At some point you're not digging test holes, you're just excavating the gravel out. I think, again, we need to look at the big picture here, does this meet Goal 5 and does it have a minimum of 500,000 ton of gravel? Based on prior experience in the community, what other applicants have put in, and the acreage, we're pretty similar in this community. We've got about 15-18 feet layer of gravel in this area and

that's kind of it; it doesn't get super deep. So, I followed that criteria. Now the commissioners had said that they wanted an Oregon engineer to do this quantity analysis; it doesn't state anywhere that that's the case. And I look over at the quarry in Ontario and they just had a guy go out and dig six test holes and say we guesstimate this is how much gravel is in there; that was like a 2019 application and that one was approved. I don't know whether it made a Goal 5, but they approved the quarry. And it says specifically, in the rule, a representative set of samples of aggregate material in the deposit on the site meets applicable ODOT (Oregon Department of transportation) specs for base rock for air degradation, abrasion and soundness. It said a representative set of samples; I've given a representative set of samples, and the engineering company that did the testing has stated that this is not only common practice but it is a fair assessment. And why that we're digging so deep in the weeds on this, as far as the process, versus the fact that the bottom line is, we know that this gravel meets those criteria. And also, that the estimated amount of material is more than 500,000 tons outside the Willamette Valley. That's the only two criteria that we need for Goal 5. So, I used those examples; I was chastised for using that – I was told that this was my application, not other quarry applications, but these are very complicated things to get through and I think that they do require a little bit of having some sort of a reference point because I can't get in a commissioner's head and find out exactly what they're looking for criteria. So, I use those examples, and I only expect to be treated with the same due course that these other folks were treated. And if Malheur County is going to require a higher threshold than DLCD (Department of Land Conservation and Development) then I think that really needs to be written down and explained so that we can follow that as a citizen, because these tests are not cheap and it's not cheap to fly people from out of town or conduct these tests. And again, I can't get in the heads of commissioners to decide what's going to be the flavor for the day, but I have fulfilled those requirements and like I've said, I've used prior applications to use those as an example of what to do to be successful, and again, I just expect to be treated with the same scrutinization as other applicants have. That's all I have.

Judge Joyce: Thank you.

Brian Sheets: Your honor, fellow commissioners, Brian Sheets, attorney for the applicant, 93 SW 4th Avenue, Ontario, Oregon. So, I think what Mr. Lee was talking about is an equal protection issue. When it comes to evaluating applications by the same standards, because I do believe that there was some heightened standards that were applied to Mr. Lee at the planning commission and that led to the recommendation of denial – specifically when we talk about the quality, or the quantity analysis, when they talk about required certifications and a timestamp. None of those are found in any code anywhere. So, to the effect that those are required, I believe that they made up those conditions on the fly and they didn't necessarily apply those same conditions to other applicants in the past. And so, to that extent, I do believe, at the same time I could be contaminating the findings for the planning commission as well, because those findings have not been drafted or presented to the planning commission for consideration. To that extent they'll be approving their denial of the conditional use application I believe next week. And to the extent that we discuss those kinds of things, I just want to be clear to the commission and your honor that those findings have not been drafted yet and that this hearing could actually affect those findings and how they're

drafted. So, I just wanted to make sure that that's on the record as well here because we are, there is an equal protection issue at play here, just because I believe that different applications have been treated differently. So, none the less, when it comes to the factual issues here, the technical data should rule the day. You've got the report from Strata, you've got the Petra analysis, and you've got the location, and based on those I do believe that this is worth including on Malheur County's Goal 5 Inventory for significant aggregate resource. If there's any questions I'd love to answer them.

Judge Joyce: We may do that afterwards.

Mr. Sheets: Alright. Thank you, your honor.

Judge Joyce: Okay, thank you. Now I'm assuming that finishes the applicant's testimony for right now and the rebuttal comes at the end.

Mr. Sheets: Your honor, I do believe that we will have one witness calling in.

Judge Joyce: Now?

It was explained that Nick Cunningham, who did the quantity analysis, was trying to call in and Judge Joyce agreed to let Mr. Cunningham speak when he called in.

Judge Joyce asked for opponent testimony.

Mike Hastings: My name is Mike Hastings, I live at 464 and 470 Jasmine. I really don't have a lot to say. This is now years in the making. And so really all I wanted to be very specific is I submitted, I did submit a lot of information and I'm kind of glad what they just said, because they actually were given in this round, so this happened first in 2021, but in this round they were given by the outgoing Planning Director an example of what a quantity takeoff analysis looks like, and this is for the Head property, I think they might have mentioned that. As you look through the Strata information, it's vastly different. And I don't have enough time to really who all the differences, but contained in this MTI (Materials Testing and Inspection Inc) report, they study underground water, they do core sampling, they study drainage, they do a lot of testing that is, you know, as part of the quantity takeoff, and it's also signed by, this report, by a registered geotechnical engineer, a licensed geological engineer, a staff geologist, and a geotechnical services manager. They advertise all over the world that they do these services for people. And so, this was the example that I submitted, and if you compare this simply to the Strata example, there are no dates, there's no signatures, and including in the Strata, or I'm sorry, in the Petra, I'm miss phrasing, I'm comparing this to Petra not Strata, I apologize. In the Petra documentation, there is nowhere within there that it says they've actually visited the site, and there are no signatures or dates, and they're just a single page analysis, basically a mathematical equation that I can see. So I'm just simply trying to say, for a project of this magnitude, this is literally a 180 acre industrial zone that he's proposing, the bar and the caliber of testing has to at least be to the standard that he was given, he

was given by Eric, that says when you're going to undertake something like this it needs to be by licensed professionals that do this day in day out, and not just your buddy that has a drilling company in California. And again, I'm talking about Petra, not Strata. The difference between the MTI test and the Petra test that was submitted in this project. That's really all I wanted to say since I know we are focusing on quantity, quality and location.

Judge Joyce: Thank you.

Dinah Lord: My name is Dinah Lord, I'm here representing myself and my husband Mike Lord, we live at 458 Jasmine Road, Ontario, Oregon 97914. Judge Joyce, Mr. Jacobs, Mr. Mendiola, thank you for allowing me this time. I would like to address irregularities submitted to the planning and zoning commission and now to you that pertain to location, quality and quantity. In a report Darren Lee submitted along with his application for a conditional use permit, Strata report dated July 14, 2023, Field Exploration - this report states on June 21, 2023 we visited the project and sampled from existing gravel stockpiles. In photographs also taken by Jasmine slope landowners and also submitted to DOGAMI as the samples were taken while a stop work order was in effect from DOGAMI, photographs do show these holes were indeed dug days before the agent from Strata came to the site. And as the samples were taken from existing stockpiles, there was no chain of custody. There was no way to verify that these stockpiles came from excavated test holes and as such there are no verified findings to quality, quantity and location. In the report submitted from Atlas Technical Consultants, dated February 16, 2023, states, this report does not include gravel quantity calculations. But, in a letter submitted from Petra Drilling and Blasting, which said company are a drilling and blasting firm from California, licensed by the Idaho Secretary of State, but with an address of 941 Eaton Road, which is Darren Lee's, Weiser home address as verified in tax filings. Nicholas Cunningham, who is not a certified professional engineer or a geologist, states, the net borrow equating to 2.75 million tons. How can an individual who is not a licensed engineer or a geologist, make a determination of quantity? The report from Strata, page 2, no page 1 submitted, no date, no signature on this report, states, the gravel failed to meet the gradation criteria for special filter material, base aggregate, shoulder aggregates, and PCC aggregates, and also failed to meet the equivalent specification for PCC aggregates. These samples would have to be have final testing in order to be used by ODOT. Also submitted from Strata, there is a reference to an Appendix D, not included in his submittal, as well as no signature from Strata. Darren Lee also stated to you that, BLM has had a gravel pit up there from as long as I can remember. My husband and I have lived at our address for over 14 years, many of the other landowners have lived here for 30, 40 years. (Time limit was reached for Ms. Lord's testimony.)

It was noted that Nick Cunningham was now on the phone and Judge Joyce agreed to allow for his testimony at this time. Nick Cunningham's address is: 23031 Tulip Ct, Tehachapi, CA 93561

Nick Cunningham asked if there were any specific questions for him. Mr. Lee requested Mr. Cunningham explain the testing process used.

Nick Cunningham: So, you guys have probably seen the documentation that I've sent over, but basically, we went up there and, you know, Darren dug those test pits and we got coordinates on the test pits and identified where the strata changes from one type of geology to another type of geology. And then we just plotted those points and did what's called a quantity takeoff, which I'm sure you're all very familiar with, to figure out how much overburden there was and how much material there was and then what the bottom looked like below the good material there.

Mr. Lee: Can you talk about your qualifications Nick?

Mr. Cunningham: I've been in the drilling/blasting 20 years. This is a type of activity that I do, I'll say, 15,20 times a month, which is probably more frequently than let's say an engineering firm that did something similar, because they would do dozens of different activities as well as doing this. Sometimes these quantity takeoffs will be just a quantified blast, sometimes it'll be a takeoff to identify amounts of material within a cut, sometimes it'll be to identify amounts of material in overburden, like we're doing there, and sometimes it'll be used to figure out mine life and various different things like that based on production levels and utilization and stuff like that. I've been doing that about 20 years. I think about, I'll say about 10 years, steady with the Topcon GPS system, which is what I used, and their software. Prior to that it was a lot more manual stuff, a lot of drawings and stuff like that for what we were doing.

Mr. Sheets: Hey Nick, this is Brian Sheets, attorney for Darren Lee, I just have a quick question for you. Would you certify that the results that you published are correct and accurate?

Mr. Cunningham: Yes.

Mr. Sheets: And is there any reason for anybody here to doubt what was submitted there?

Mr. Cunningham: No there's not.

Mr. Sheets: And would you submit that under penalty of perjury?

Mr. Cunningham: Yes, I would.

Mr. Sheets: Alright. Thank you very much.

(Time was called for Mr. Cunningham's testimony.)

Tina Cassity: Good morning, my name is Tina Cassity and I live at 478 Jasmin Road. In particular I'd like to speak on the location. And I'm not sure what was submitted, which I submitted to planning and zoning with my testimony. For DOGAMI's rule for complying with Goal 5, the impact area is a 1500-foot radius from the boundaries of the mining site. All of us that are up there, our homes are all affected by that, but our home in particular being the closest. Our home, which, I don't know if you all received these measurements, but our home is actually approximately 100

foot from his mining boundary. This is our front door. This is our well. And his mining boundary is 91 feet from our well. Also, from our property boundary, his mining area, which we know it's his mining area because he did it illegally last year, where berms were put up and that is 20 feet from our property boundary where that berm is. This here, is a picture from our dining room window. This is my daughter's car. Our property boundary is right here. And you can see the berms here, which he had done illegally per DOGAMI's suspension order. This here is another picture of how close it is in perspective to our home, this is our trashcan and this is the berms that he had. We are all well-dependent where we live. There's a natural wetland that's on that property, which has been documented by state and federal agencies. We do not know, there's no impact study on the effect that that's going to have on our wells, our drinking water, our health, it's a grave concern to us. Like I said, we've lived out there 30 years. Our home being so close, absolutely it's going to affect our property values, who wants to have a home 20 feet from a gravel pit. Noise impacts. It was affected greatly when he was illegally mining. We heard noise all day long, even in our basement we heard it. (Time was called for Ms. Cassity's testimony.)

Mike Lord: My name is Mike Lord, I live at 458 Jasmine Road, my wife is Dinah. In regards to Darren Lee's quality, quantity and assessment report here, we wanted to also add that, also submitted in Darren Lee's application is a typewritten quantity quality assessment that has no heading of a firm listed, no date, no signature. Who conducted this assessment? Additionally, all the test holes have the statement, poorly graded gravel, and test hole #6 water encountered at 22 feet. And finally, in the report submitted from Materials Testing and Inspection, testing from September 17, 2019, included in his application, limited borrow source investigative report, White property gravel quality assessment, 533 Ontario Heights Road, why was this investigation report included in his application? If it is a sample report, it should have read, the word sample written on every page. Due to the many irregularities highlighted the logical conclusion should be that Darren Lee's request for Goal 5 should be rejected due to the fact that he has failed to meet requirements of quality, quantity and location. Thank you.

Mandi Hastings: I'm Mandi Hastings, I live at 464 and 470 Jasmine. I just want to reiterate here that the reason why the level of testing is being required is because of the location that was chosen. And again, that Eric Evans that accepted this application in, gave an example to Mr. Lee of the level of testing that would be required to drop 180-acre gravel compound in the middle of nine different residences, right in the center, affecting wells and water and pollution and whatever else is going on. So, all of these other requirements in these areas, out in the desert, of course the levels don't need to be as high. And I just want to leave and submit this again, it is with his application, but if you look at the level of testing that is required, and that was given to him as an example, as the caliber that needed to be happening in this type of a situation, it's nowhere near it. Not only that, there's no chain of custody on any of the samples. And of course, we're watching everything; they like to paint us as these really nosy neighbors, we're watching everything because it's right in front of our faces in our front yards and in our backyards. We saw gravel brought in from outside, stacked next to test holes; yes, people came in and took bags of gravel that Mr. Lee had prepared for them, there is no chain of custody on that. So yeah, highest level of testing and caliber

and chain of custody and honesty needs to be determined here because of where he is choosing to do this. And that's all I have to say, thank you so much for listening to us today.

Judge Joyce asked for rebuttal from the applicant. Mr. Lee explained he had one more individual calling in to provide testimony; however, the individual never connected to the hearing before it was closed.

Mr. Lee: I'm getting pretty worn out of the libel and slander nonsense about me faking the funk on this stuff, illegal mining, and all that other kind of activity that has apparently gone on; I have not hauled one rock off of that quarry; that would constitute my digging a test hole that is required by the State and required by Goal 5. And that's exactly what I did. I got hemmed up by DOGAMI on that, it was made a big to-do about it and it's been pretty much rebutted and if it was an issue they would have made me get a permit. Let's get to the facts. This has been a quarry up there since 1930. So, everybody who has moved up there should have known full well that they were moving into a site that has been a quarry for a long time. As I said, there's been State activity up there, BLM, Road District 3, private activity, all the roads in that area have been pretty much built with that gravel that's up there. Unless next if we're going to start removing all the feedlots next door these people have to understand that they moved into a quarry, not the other way around.

As far as the quantity and quality analysis. You can see there's been a lot of subject matter, amateur engineer experts on this. I have followed the rules. I have hired expensive firms to fulfill the requirements of Goal 5 and I expected it to be not nicked and dimed because the bottom line is there are two things that we have to have, one is 500,000 tons, which any reasonable person looking at any prior application or with common sense can realize there's at least 500,000 tons of rock under there. And again, we are all speculating on this 500,000 tons. So, whether you have an engineering degree or whether you are a subject matter expert or a local yokel that's what the requirement is, that you use the best information that you have available to make that determination. If there is criteria that is at a higher level than that then it was never presented to me and it never has been presented to me by Malheur County Planning and Zoning. So, if that is going to be the standard in the future then I would recommend that that be listed as such.

Talks about poor degraded gravel; that's a term that means that all the gravel is not the same consistency. You have big rocks, little rocks. It doesn't have anything to do with the quality of the gravel. No gravel sample will ever meet all the requirements for the state. That's why you process gravel. So, it says it doesn't meet for certain stuff. These are specialty things that everybody is required to process gravel to make it meet spec. It meets the requirements for Goal 5 100 percent times two different tests in that area. The State as well as the Road District are using the same gravel right literally adjoining that property or on that property and how are they going to get away with not having Goal 5 gravel is this doesn't meet those requirements? So, I think that's kind of a dead horse.

It talks about the White property – that's Road District 3. And this fellow talks about water in hole #6 – that gravel slopes, that 80-acre parcel slopes to the center, there's a ditch on the top, it's dry

as a bone up there, like every other irrigation ditch, it leaks, so there was water in that pit. If you look at the White property, Road District 3, they encountered groundwater in almost every one of those pits. If you look at the pit in Ontario – they're digging literally out of the riverbank and leaving a pond. So, I encounter a little bit of water, which is subbing from the canal and there's an issue with that.

They talk about the houses that are up there. There's 15 houses within a circular mile of the center of that quarry. There is over 50 around Seubert's pit. There is over 50 around Road District 3's pit. There is over 200 around the pit in Ontario. I think that 15 is a lot better number than 50 or 200. And with that, only four or five people have a real issue with that quarry. Which in my opinion is an extension of gravel activity. This isn't a new quarry. This has been here a long time. This has been a resource for this community for a long time. And if you look, there's a list of people in the community who support this. You have four or five people that have an issue with it and the rest of the community you're going to take away their resource that they've had for 90-plus years, and I don't think that's fair to the community or the landowner, Mr. Head, who knows that this land has no other purpose other than what it's been used for traditionally for the past 90 years. And the way this testing and stuff was done, it's done by engineers, it's not a crime scene, they're just taking a test. (Time was called for Mr. Lee's rebuttal.)

Judge Joyce asked if there were any persons online that wanted to testify.

Riley Downing: Bill and Riley Downing, 5151 Power Road. Sorry I didn't speak up sooner, I wasn't sure if you knew that I was online, I apologize for that. I'm kind of glad that I got to be last just because I just keep hearing some things that are just absolutely not true. We've had two houses up on Power Road now for 18 years, for one of them, 15 for the other, and I can tell you, there has been no gravel taken off of those properties up there since we've been up there, and the property that did have some gravel taken off of it was one of Mr. Head's, it's one that we can look into, we see the activity going on all the time. We've actually tracked Darren Lee's trucks driving off the hill with loads of gravel to a farm – they were building a new shop. So, I guess, we just want to ask that you look at all of the information that's been presented, not just of the pictures that have been painted. We have put a lot of time and effort into research. We are maybe only 15 places that are being affected but we are being affected in our yards, our water is being affected, our livability is being affected, and we need to know who's going to be responsible when wells run dry, when the riparian corridor is gone. It's just stuff that we would like to ask you to please take a second look at. I won't waste any more time going through the list because it is quite long. But, thank you for your time and consideration.

Judge Joyce: Okay, Staff Report.

Ms. Burgess: I don't have anything to add. I do want to mention that Mr. Lee had somebody else that he wanted to speak on his behalf, an engineer I believe, and we're not able to connect with him for some reason.

Judge Joyce: Was he going to submit something in writing?

Mr. Lee: No. He had reviewed the testing that Nick Cunningham had done and looked at all of his procedures and he's a neighbor out there and he thought it was a fantastic report.

Judge Joyce closed the hearing and announced that the next hearing would be April 3rd at 10:00 a.m.

COURT ADJOURNMENT

Judge Joyce adjourned the meeting.

**The Malheur County Compensation Board met on March 18, 2024; see instrument # 2024-0888 for the minutes.