

MALHEUR COUNTY COURT MINUTES
April 3, 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 was Administrative Officer Lorinda DuBois. 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 # 2024-1005

PROCLAMATION

Judge Joyce read the following proclamation:

PUBLIC SAFETY TELECOMMUNICATIONS WEEK - APRIL 14-20, 2024

WHEREAS, since 1981 the Congress of the United States, and the President of the United States have established one week in April as National Telecommunicators Week; and

WHEREAS, recognizing that telecommunicators are critical to the interest and well-being of the community, the Malheur County Court, recognized our local Telecommunicators as “First Responders” in resolution number R20-28 on July 15, 2020; and

WHEREAS, emergencies can occur at any time of the day and night. They can range from a serious medical emergency, to an active fire or need for law enforcement assistance. Often when an individual encounters an emergency they reach for the phone and dial 911. The men and women who answer these calls for help are trained to gather essential information, dispatch the proper resources and provide vital information and instructions to a caller in distress; and

WHEREAS, public safety telecommunicators are more than a calm and reassuring voice at the end of the phone. They are knowledgeable and skilled professionals who work closely with law enforcement, fire and medical personnel; and

WHEREAS, our County enjoys a high standard of public health and safety and we owe a great deal of gratitude to them. During this special observance we extend a profound thank you to each operator who answers our request for help -- Tom, Kathy, Carisa, Stephanie, Ashley, Michele, Brooke, Jason, Genesis, Jessi, Elizabeth, Brittany, Charlotte, Melody and Ashley.

NOW THEREFORE, the Malheur County Court Proclaims the week of April 14th – 20th to be Malheur County Public Safety Telecommunicator’s Week. We invite all residents to observe this week in honor of our telecommunicators who help protect our health and safety.

Commissioner Jacobs moved to proclaim the week of April 14-20, 2024 to be Malheur County Public Safety Telecommunicator's Week. Commissioner Mendiola seconded and the motion passed unanimously.

Economic and Community Development Director Taylor Rembowski joined the meeting.

COURT MINUTES

Commissioner Mendiola moved to approve Court Minutes of March 27, 2024 as written. Commissioner Jacobs seconded and the motion passed unanimously.

AMENDMENT - IGA #26018

Commissioner Jacobs moved to approve First Amendment to Oregon Health Authority 2024-2025 Intergovernmental Agreement for the Financing of Community Mental Health, Addiction Treatment, Recovery, & Prevention, and Problem Gambling Services. Commissioner Mendiola seconded and the motion passed unanimously. Funding is reduced from service element 04 Aid and Assist Project. See instrument # 2024-1012

EMPLOYMENT AGREEMENT - WOOD

Commissioner Jacobs moved to approve Employment Agreement with Amy Wood for Malheur County Fair Manager. Commissioner Mendiola seconded and the motion passed unanimously. See instrument # 2024-1006

Ms. DuBois left the meeting.

Public member Arnold Tropf joined the meeting.

SECOND PUBLIC HEARING - ORDINANCE NO. 235

Present for the second public hearing to consider Ordinance No. 235: An Ordinance Adopting a Post Acknowledgment 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 Dinah Lord, Mike Hastings, Don Dickinson, and Tina Cassity; present electronically were Bill and Riley Downing, Brooke and Robert Cassity, and Mandi Hastings. Pat Caldwell of the Malheur Enterprise joined the hearing after it had started. 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 quasi-judicial land use hearing.

Judge Joyce: This is the second of two hearings of a Post Acknowledgment Plan Amendment to add a proposed site to the County's Goal 5 Inventory. The first hearing was on March 20, 2024 at 10:00 a.m. The Planning Department file is 2023-12-010. When called to speak please state your name, and 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 of the 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.

Commissioner Mendiola: No.

Judge Joyce: No.

Commissioner Jacobs: No, I don't have any.

Judge Joyce: None for me.

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 in 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 these items: The applicable substantive criteria upon which the application will be decided are found in Oregon State laws and rules as well as the local code provisions, which are specifically set forth and out in the Staff Report and include ORA 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 the 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 of 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 the issues precludes an appeal or action for damages to Circuit Court.

Order of Proceedings. The applicant will be allotted up to 10 minutes for initial presentation. The applicant may also present up to five minutes for final rebuttal. All others wishing to testify will be given three minutes each. There will be a staff report, applicant, testimony in favor, testimony in opposition, staff comments if any, applicant/proponent rebuttal five minutes, and then we'll close the public hearing and no public testimony can be heard after this point, then deliberations and a tentative decision at that time.

So, I will ask for the Staff Report now.

Tatiana Burgess: I don't have anything additional to add Judge. I just wanted to make a note that we did receive some documentation from Mr. Hastings that I shared with you all and I also shared that with the applicant (inaudible)

Judge Joyce: Okay

Ms. Burgess: New information we have.

Judge Joyce: So, if that's your report then we'll start with the applicant.

Darren Lee: Thank you your honor. Darren Lee, 515 Noble Road, Ontario, Oregon. So, my understanding is here we're just to discuss Goal 5 issues today, if I'm not mistaken. Okay. So, again, I did two quality analysis by two different engineering firms. The first one was done by Atlas, I think they changed their name, anyways, one of the engineers who did the testing for me on that was the same engineer that did the testing for three prior quarries that were approved by the planning and zoning commission. That first application, the commissioners deemed that not sufficient so I did a second test through Strata and apparently that one does not appear to be sufficient to the commissioners, yet I asked, when the engineers asked what they can do to clarify that, the commissioners only response is that the information is vague. Now, the engineers assured me that they followed Oregon guidelines for the testing and if there's any clarification that needs to be given to them, or that they can give, to please be a little bit more clear than vague because engineers don't work very well off of vague. As far as the quantity analysis, I've given examples of other quarries that had similar estimations on the quantity of gravel available, it's pretty common, our geography's pretty similar around here for gravel deposits. And again, the criteria by DLCD (Department of Land Conservation and Development) is an estimation. And the estimation has a 500,000-ton threshold. And I understand the reason for that is because we don't want quarries that are maybe less than that and so if that's their requirement then so be it. But it says that the criteria for the person making that estimation can be an expert in the field, which I presented, it can be people who are operating in the industry in the field, such as myself, and even landowners are allowed to make that estimation. So, I think that I've presented those clearly, the testing, especially the quality analysis, the very expensive test up to \$10,000 apiece. And I would imagine that the engineering firms would not want to be held liable for not making the bar on that. So, if those are the criteria I believe that I've met those. I've met with much opposition. I think that the commissioners' ears have been bent by a very small group of activists who have come up

with a multitude of impediments to continue the use of this quarry which has been in existence and as well as government quarry operations up there since 1930. So that's all I have. Thank you.

Judge Joyce: Next.

Brian Sheets: Good morning your honor. Brian Sheets, 93 SW 4th Avenue, Ontario, Oregon, attorney for the applicant. So, just want to thank you again for hearing this, appreciate it. So this is a continuation from the planning commission's conditional use hearing and just wanted to remind that the County here that this is really to Goal 5 and within Goal 5 the County has recognized the necessity to protect aggregate resources. So, this is a continuation from what was jointly heard for this post acknowledgment plan amendment along with the conditional use. And I think what you're going to probably hear today is a bunch of testimony related to a conditional use and not necessarily to this Goal 5 quantity and quality analysis. So, just to recap what happened at the planning commission was I believe was an openly hostile planning commission to my applicant that basically made a de facto moratorium for any sort of aggregate extraction on this premises for no conditions, the staff report wasn't updated following our submission of several dozen pages of additional information and was openly hostile to Idaho residents as well as myself, I mean, I've never been at a hearing where a commissioner stopped his deliberation explanation after I had a quizzical look on my face and said, Hey what is that look on your face? He stopped and asked me that and I thought I was going to have to defend myself out in the parking lot afterwards. I mean, granted after that at the hearing, I did go and explain myself afterwards and didn't fortunately have to come to that, but it was a display of the open hostility that the planning commission had to my client and myself. So I would hope that this commission, the county commissioners and your honor, take it to heart that this is about quantity and quality. Not to be distracted through the spaghetti against the wall treatment of throwing everything and seeing what sticks. So, just hope that you keep this focused on exactly what we're talking about today, so I appreciate your time and if you have any questions I would be happy to answer them.

Judge Joyce: I don't have any at this time.

Commissioner Jacobs: I guess I, one question I have, you have the quantity of being potentially 2.7 million tons - is that going to be over the entire 80 acres?

Mr. Lee: Which is similar to Road District 3's, they have about a 77-acre parcel and I think they were at 2.4.

Commissioner Jacobs: And you have 18 foot of overburden?

Mr. Lee: Some places have zero. It's up to 18. There's that map that shows the strata as it climbs because it's up a hill so the overburden is a little higher at some of the, at the top of the elevation versus where it's been washed away below.

Commissioner Jacobs: Oh, interesting. And all the testing that you did, you did nine, how many tests did you submit?

Mr. Lee: Twelve.

Commissioner Jacobs: Twelve?

Mr. Lee: Same as Road District 3.

Commissioner Jacobs: Okay. And all of that came back to meet standards (inaudible)

Mr. Lee: Out of the 12 there was a combined sample taken of five of the test pits because the original application they didn't like the individual, the commissioners didn't like the individual test I did. There's either an individual or combined, there's kind of not much else you can do. And I think that they testified that that is very typical and the gravel was pretty much symmetrical as far as its quality quantity, or quality.

Commissioner Jacobs: And all of those came from those sites that you've identified?

Mr. Lee: Correct. Well they took them from their sites, they used their GPS (Global Positioning System), they came out and did the analysis, not me. They came onsite and did their own independent deal, I wasn't a part of that other than showing them where the places were.

Commissioner Mendiola: And what company was that?

Mr. Lee: That was Strata out of Boise. And again, they're not cheap tests, we're talking upwards of 10 grand for these tests.

Commissioner Mendiola: I take it you got this information we got the other day?

Mr. Lee: I just received it right now, I hadn't seen it.

Commissioner Mendiola: Because on page 1 it says that, off of this Petra, that, Step 1 plot the points on google earth, so they didn't come out at all, Petra didn't.

Mr. Lee: Yes, they did. They were onsite. He testified to that, Nick Cunningham, when he called, he was onsite. He came out to do some drilling and blasting for me and did that analysis at the same time.

Commissioner Mendiola: Well it says here, it says, attaching addendum to bring attention to the fact that nowhere in the Petra documents do they claim or show a date when the site was visited by Petra.

Mr. Lee: Again, what are we looking at here? Because I

Commissioner Mendiola: Right here.

Mr. Lee: I understand, I'm just seeing that, I'm sorry.

Commissioner Mendiola: Front page.

Mr. Lee: The gentleman testified on the last hearing that he did come out, he did stay with me, and he did go out and physically test those sites during that time period. We were doing also drilling and blasting and I was learning how to run the drill so there was, we don't probably have an exact day, I'm not sure what the relevance in that, within a week period, that that would make a difference.

Commissioner Mendiola: Well this says that Petra didn't even show up to the piece of the property.

Mr. Lee: Well again, that's someone else's rumor and conjecture who's been trying to stop me from doing the right thing from the get go.

Commissioner Mendiola: This come from Mr. Hastings this morning.

Mr. Lee: And Mr. Hastings is also a hostile neighbor who tends to make up a substantial amount of information that's not correct. I mean Mr. Cunningham testified to you via phone this last time that he did come out. If I need to provide a plane ticket I could probably provide a plane ticket. But that was

Commissioner Mendiola: I must not understand because this has got Petra Drilling and Blasting on the top of the page, it didn't come from him?

Mr. Lee: That document? Yes, it did come from him. And again, Mr. Cunningham, he was in Mexico when, he wasn't a part of this whole conversation on this last phone interview because you were having difficulty with the phone and he testified to all of that. That he came out, inspected the holes, and did his quantity analysis. Because that wasn't the only purpose I had to fly him up, it's not cheap, and I had purchased a drill from their company and they were showing me how to run it and getting my first (inaudible) in a different quarry. And that's what he does every day. So, I'm sorry if Mr. Hastings is misinformed, but he is incorrect.

Mr. Sheets: Your honor, commissioners, Mr. Cunningham did testify to that effect and to the extent that there weren't certifications or signatures or anything, he did state that subject to penalties of perjury that all these representations that he did make were in fact correct. So he did testify to that effect and he did orally certify those findings that he did make.

Judge Joyce: Any other comments?

Commissioner Jacobs: I don't have anything else.

Judge Joyce: No more proponents?

Mr. Sheets: I believe that's all we've got.

Judge Joyce: For now, okay.

Mr. Sheets: Thank you.

Judge Joyce: Okay, now three minutes for the opposition, each. Who's going first?

Mike Lord: I'd like to talk about location. Can I display this somewhere where the Court can see it? My name's Mike Lord, I live at 458 Jasmine, one of the homeowners in this area. This board, it shows the location of the proposed gravel pit. The photos on the top row are after, or excuse me, before, and you can see how natural the habitat is on these top photos. And then the bottom photos are after. And you can see all the, you can see all the digging that was done in each location. The top, this is before, the top row; this is after. So, when you look at how much digging that was done, illegally, without a permit, believe it or not, all of this was done without one permit, and it was done within 1500 feet of at least one house if not multiple houses. It's quite a location to try to shove right on top of multiple homesites. It's almost unbelievable to be honest with you, everybody we've ever talked to is shocked, and they don't believe what we say; no one would act in this manner is what we've heard multiple times. So, would you like me to continue holding this? Or we can set it down if you'd like.

Commissioner Jacobs: You can set it down.

Mike Lord: So, with that being said, talking about location, it's a terrible location, absolutely worse location you could pick in the whole county. Because it's in the middle of multiple homes. Right in the middle of us. Not up in the back. Never came and talked to us about how he could put it in the back. Right on top of us. It's too close within the 1500 subsidence boundary. There's not compatible roads for heavy construction traffic and it's going to create a safety hazard. The proposals within a fragile ecosystem that consists of mule deer, pheasant, fox, heron, a proven and established riparian corridor, right where he has already dug, illegally. It'll create noise and air pollution to current homeowners. Most successful gravel operations are located away from homes, schools, and natural wildlife corridors. Darren Lee's persistence in his statement to the Malheur Enterprise, I will not be stopped, is an indication of putting the gravel pit in a poor location is purely driven by profit at the expense and the quality of life of these homeowners. Darren Lee does not own this land that he already dug up. So, he has everything to gain and a very minimal investment to lose, in our opinion. Darren Lee's ultimately made the decision to evacuate large amounts of soil on someone else's land without going through a legal permitting process, see the photo board as our example. To date, Darren Lee and Dallas Head have pled guilty (the time limit was called for Mr. Lord's testimony)

Dinah Lord: Judge Joyce, Commissioner Jacobs, Commissioner Mendiola, thank you for your time. The Goal 5 resource proposal is within an Oregon

Judge Joyce: State your name.

Dinah Lord: Dinah Lord, 458 Jasmine Road. I apologize. The Goal 5 resource proposal is within an Oregon Department of Fish and Wildlife mapped biological winter range for mule deer and is deemed essential. Mining activity would result in the direct loss of suitable wildlife habitat to include noise disturbances and displacement of wildlife during mining operations. All opponent landowners have seen a total loss of mule deer in the impact area. At the County hearing held on March 20th, Darren Lee stated that opponents think that they are subject matter experts. Subject matter experts is a term widely used by the military, of which three of the landowner opponents are former military, to describe individuals who have become knowledgeable in a field of study. Opponents have had to become knowledgeable regarding mining practices as well as permitting as the information and statements Darren Lee has made do not support verifiable information on quality, quantity and location. Darren Lee also referenced planning and zoning approval of a conditional use permit for Seubert and that there were houses around it; there's actually only one house at this location and Seubert bought the home to minimize conflict. Darren Lee's counsel also stated under oath that Darren has had to make a really good guess, make assumptions to make it worthwhile, and nobody is looking for an exact measurement, and we are going to keep coming back. The burden of proof is for Darren Lee to hire firms with an expertise in this field; not a firm that is a drilling and blasting company that has not provided certifications this is their area of expertise regarding quality and quantity. The Strata report that has been referenced by Mr. Lee states at the bottom of the report, our scope of services is limited to sampling of stockpiles and did not include subsurface exploration or aggregate volume calculations, as such conditions can change between exploration locations which may impact the viability of this site as a potential borrow source. Again, did not include volume calculations. Mr. Lee also stated at the last hearing before this court that there were only four landowners in opposition to this Goal 5; there are actually eight landowners, and for your information, there are statements from all eight landowners that are in opposition. Would you like me to give this to Tatiana? I will. The BLM (Bureau of Land Management) pit that was located to the west of Power Road was deactivated in the 1950's. The BLM quarry was never used for retail purposes but rather for construction of the water pipeline (the time limit was called for Ms. Lord's testimony) Thank you.

Judge Joyce: Next.

Tina Cassity: Good morning, my name is Tina Cassity and I live at 478 Jasmine Road. In the last hearing and in the planning and zoning hearings, Mr. Lee, who lives in Weiser, Idaho, continually has made misleading statements that our homes are surrounded by gravel pits and that we shouldn't have a problem with it and that these people need to learn that they moved into a quarry and not the other way around. He also was quoted in the March 15, 2023 edition of the Malheur Enterprise newspaper that Head's property historically has been used as a quarry privately and by the government for the past 50 years, leading you to believe that there are currently active quarry

operations happening in our neighborhood, which he has repeated over and over in these hearings, as he did earlier this morning, but that simply is not true. Even Mr. Head, the landowner, said in the same article, that there have been no gravel operations on the property for 40 years. This is all documented here in the paper. And as you can see from this topographical map taken from google earth which highlights the location in question, there are indeed two small pits on Power Road, one being BLM's closed inactive pit, and the other one Mr. Head's private pit. These are well over a mile away and up and over and down in a canyon; they can't even be seen from the road. And as you can see also the location of Mr. Lee's proposed operation, Area 1 and 2, which have by the way, never been gravel pits, but zoned rangeland and farmland. I would also add, our homes in this rural neighborhood were given permits from the County to be built here surrounding other homes, rangeland, and farmland; not gravel pits. And this map clearly shows that. Our homes are not surrounded by gravel pits and it would not be business as usual as Mr. Lee likes to indicate. You can also clearly see that this would be a horrible location for a Goal 5 resource with a 20-plus year plan of a 200-acre industrial complex, including an 80-acre gravel pit surrounding our homes in this rural neighborhood. And as you can imagine, if you lived in our neighborhood, this would be absolutely devastating. Thank you, sirs.

Judge Joyce. Thank you.

Mike Hastings: Mike Hastings, 464 Jasmine. Real quickly, in 2021 Darren testified that Petra was the premier people, quantity takeoff people in the west, and he was very fortunate to get them. He testified that they do everything in California up the coast for big concrete plants and stuff and they have sharp pencils. This is what was submitted by that company. And there is an error actually in the second paragraph, it's not 1200 East - West, he's got the East - West and the North - South flipfopped. And I was simply giving you that information to show, I don't make anything up, there is nowhere in any of this documentation that ever shows a date or describes a time in which they visited the property, and that's all I was trying to bring attention to on that Petra stuff. Otherwise I'm here to set the record straight on a few things. I love gravel. I use gravel. I buy gravel. I support those that legally and ethically produce and sell gravel. I'm also an entrepreneur and I grew up in eastern Idaho where I started working on farms at age 13 moving pipe, worked potato harvest, drove truck, ran pilers, drove crossovers, disc scrapers, worked my dad's potato processing plant, and after that I went to college and earned an accounting degree at Boise State, started a business for 20 years, sold that business without one legal challenge or complaint. And the reason I say these things is that for four years now I've had to sit silent while Mr. Lee gets up over and over and over again and mischaracterizes me and my wife and my family, continually attempts to label us as outsiders that don't understand the way of things in these parts; he's tried to paint the narrative that it is us trying to change things and not him; and that's not true. My neighbors have also had to sit while Mr. Lee continually talks down to us, treating us like worthless objects that need to be quiet and get out of the way or leave so he can make some money on Dallas Head's land. And just like he said in the last meeting, These people need to learn. Well I don't need to learn anything from Darren Lee. And my wife's family has a long history of farming and ranching in Malheur county. I lived in Hermiston as a young man and my father spent his entire career in agricultural processing in eastern Oregon and Idaho. If our farm on Jasmine doesn't look

the same as every other farm you see then that's great with us. Because that's not what we're trying to do there. We are experimenting and working to find better ways to produce farm goods, live a balanced life with nature and protect our health. Literally we're only trying to live on our own land, take care of ourselves, without help or interference from others. And as a business man I know exactly how it feels when you think you have a perfect plan to make a lot of money and that plan never is realized. And it's not because of lack of effort, or knowledge or desire, but simply because sometimes the plan doesn't work and the answer is no. Whether the plan fails legally, ethically, politically or just plain and simple because it's a bad idea sometimes the answer is no and, hopefully that's what the answer will be here today. What I know for sure is that if a business plan involves the destruction of other people's hopes, dreams and livelihoods then that is a plan that is sure to fail. (the time limit was called for Mr. Hastings testimony)

Judge Joyce: Next. Any other opposition? Okay, here we go we've got someone online.

Mandi Hastings: Hi, this is Mandi Hastings, 464 and 470 Jasmine, and I just wanted to just speak to the fact that, you know, Mr. Lee has willingly chosen to file an application for Goal 5 in a highly sensitive area. And therefore, it's his responsibility to fulfill the burden of proof and provide unquestionable testing and not only that, information about the other natural resources that are resident in the area. We live in Malheur county, there's a lot of gravel in this county. There isn't a ton of water and there isn't a lot of clean water. (The electronic connection temporarily failed during Ms. Hastings testimony.) (Ms. Hastings was asked to repeat/resume her testimony.) So, I just feel that it's his responsibility to provide the highest caliber of testing, unquestionable testing, as to what lies underneath that ground, you know, before we move into this. Second of all, I'm very concerned about the blatant disregard of authority that's been shown to both the county commission, to this court, and now to the state. It's concerning to have the idea of someone moving around in, again, such a sensitive situation. He was told last time that he could not dig up there by both the commission and the court; he moved forward and did it anyway. Hence the fully active suspension order from DOGAMI (Department of Geology and Mineral Industries). This is not in question, it is there, and the reclamation has not been started that was ordered by the state quite a while ago. My other question is, is as far as Goal 5 sites go, there are two Goal 5 sites that exist within two to five miles from this Goal 5, proposed Goal 5 site. The one site has 45 acres available, 13 of which have been mined over the last 14 years. Darren Lee also has his own Goal 5 site that is completely untouched. I do not think that there is a lack of Goal 5 sites available to the county. Collectively that provides 60 years' worth of mining if we go off of the DeHaven site he is already currently mining. So, I don't feel that there is a lack of gravel and is there really a need to drop 180-acre industrial mining park in the middle of nine homes? In the middle of wildlife refuge? This does not sound like a county problem. Malheur county has a lot of gravel. So, these are my main concerns that I would bring up. I really appreciate you guys listening today and thank you so much.

Judge Joyce and Commissioner Jacobs: Thank you.

Judge Joyce: Next online.

Riley Downing: This is Riley Downing, 5151 Power Road. Sorry I'm at work and I had to step away for a second. I think something that I have taken away from this morning's meeting is that when we first started this whole process, three things for the Goal 5 that were required were the quality, quantity and location. And it seems like the last three or four meetings Mr. Lee has got up and spoke extensively, him and his attorney both, on quality and the quantity. The third piece of that has been location, and I don't know if you've noticed that has been a subject that he has either chosen to ignore, or knows, that he cannot mitigate all of the issues that there are at this location. If a person was to go back to the very first hearing that we had, those were all covered pretty extensively, and there were many. These were all before we found out from Fish and Wildlife that it's in a rangeland corridor. We heard from, whoever it was – sorry just lost this, I'm working, so I apologize, there's also a riverine that runs through there. There is a organic farm. There's just a lot of reasons that the location does not work and he was not able to mitigate those the first time. He was not able to mitigate those a second, third, fourth, or fifth time. And I honestly think that if we're looking at all three of those requirements that have to be met in order to place this into a Goal 5, he's missing a huge piece of it. That's all I just wanted to bring up this morning. Thank you so much for your time.

Judge Joyce: Thank you.

Tina Cassisty requested to read her husband's statement as he was ill and unable to attend the hearing; Judge Joyce allowed this request.

Tina Cassity: I am speaking for my husband Robert Cassity of 478 Jasmine Road, Ontario, Oregon. When Mr. Lee first applied for his permit in 2021 he came to our home and explained his plan, which was he was a small veteran owned business, would be way back down the road, a couple dump trucks a day, business as usual. Well we own a small business for over 27 years, come from a long line of veterans in our family, including my husband, so we had compassion on his endeavors and trusted what he said was true. So, as you can imagine we were beyond shocked and incredibly disappointed when we saw his application and realized that he had lied to us and that wasn't his plan at all. And then we found out he had done the same with all of the neighbors. Clearly, he knew he would have opposition if we knew his real plan. I mean, nobody would be too keen on a gravel pit 100 foot from their front door. So, this is how it began. He then was denied by the court his permit in 2021 but to fight that and in the Spring of 2022 began hauling heavy equipment up and down Jasmine Road. He tore into Mr. Head's private pit and built a new haul road for his mining. This was part of his mining plan because Jasmine Road was deemed to dangerous by P&Z based on its tight hairpin curves and steep grades. Again, shocked and knowing he didn't have a permit us neighbors contacted the County. They requested us to document his activity, which we did with videos and photos. Consequently, Mr. Head was found guilty and issued a citation. But despite that, Mr. Lee in December 2023 continued his illegal mining activity without a permit in which he tore into 10 acres of Area 1, built berms, dug test holes, and a 40-foot impoundment. We saw dump truck loads of gravel brought in and dumped in Area 1 which

we thought strange since Mr. Head's private pit is just down the road. We contacted DOGAMI in which they asked us to document his activity with videos and photos. Again, using Jasmine Road to haul all his heavy equipment and work trucks up and down, most of the time not abiding the 15 mile per hour speed limits and dangerously flying past our house and down the road, where at times yelling at them to slow down. Subsequently Mr. Lee chose to have a state geologist come out, was found guilty, a suspension order was issued March 8, 2023 in which he said he would comply with. However, even with that order in place he had Strata come out to Area 1 on June 21, 2023 and take samples off the property. And most recently on March 22, 2024 a frontend loader was brought in, dirt was moved, and what seems to be berms were built in Area 1, suspiciously the biggest berm closest to our home and in view from our dining room window. Mr. Lee is quoted in the Malheur Enterprise in stating he would continue defying the neighbors, and I'm not going to be stopped. So, this appears to be personal and a game to Mr. Lee, but this is no game for us. It is our lives and it has been incredibly difficult on all of us neighbors. (The time limit was called for the testimony.)

Judge Joyce: Anybody else? Okay, rebuttal.

Mr. Lee: Again, we are here to discuss Goal 5. After my first application I knew that I'd better have my ducks in a row to resubmit another application and I did that. I did use examples from other successful quarry applications that were submitted and I used those as my template because there really is nothing else out there to use as a guide, so I figured that would be the prudent and smart thing to do, so I did that. Again, I hired a separate engineering firm, at much expense, to do a different quantity analysis; both of those quantity analyses came back as exceeding state specifications for what's required for Goal 5. And again, the quantity analysis, as we all know, is an estimation, we don't really know what Mother Nature has going on down there. I think we've done a good job of providing a good spectrum of that 80-acre parcel with the test pits. And the goal again is to establish that there is an estimated 500,000 tons, and I think that we've successfully done that. Thank you for your time.

Mr. Sheets: Your honor, commissioners, Brian Sheets, 93 SW 4th Avenue, Ontario, Oregon. So, as I stated in my opening remarks that we would be hearing quite a bit of irrelevant information, we did hear some of that today unfortunately. So, when it comes down to the location - we're talking the physical location of the aggregate resources, not necessarily the appropriateness of it, what the plans are to extract those. Those are subjective conditional use permit. So, when it comes down to quantity, quality, location, the location is the GPS coordinates, it's not necessarily what's going to happen there. And when we talk about things like sensitive areas, there is a process for having those put on the County's inventory. Things like deer, winter deer habitat, as well as riparian corridors. There are process for including those as significant natural resources. Those are not included in the County's inventory right now, especially when it comes to that riparian corridor. There's an entire process that can be gone through to put those in there. But in this case, it's just not there. And then when it comes to the winter mule deer habitat, there is an exception in the state's methodology for including those kinds of places. These materials were submitted to the planning and zoning commission when it talks about agricultural areas. This is exclusive range use

and exclusive farm use area. The area that's proposed to be used for aggregate extraction is dry land farmed. It's been used in agricultural. It's been pasture land. So, to the extent that there's claims that this is good mule deer habitat its unfortunately not quite the case. And so, I really want to thank you for narrowing your deliberation to what Goal 5 actually talks about, quantity, and quality and the physical location of this aggregate resource. Thank you very much.

Commissioner Jacobs: Thank you.

Judge Joyce: Any more rebuttal from the applicants? None. Okay proponents, I mean opponents, you've got 5 minutes. Rebuttal.

County Counsel Williams: We usually don't do surrebuttal Judge.

Judge Joyce: We don't? It just says that on my paper so I'm just following the rules.

County Counsel Williams: We usually don't. I mean, it is discretionary, but it would only be to rebut his rebuttal.

Judge Joyce: Okay, so I take your advice then. There will be no rebuttal.

County Counsel Williams: It's your discretion, but we typically don't do surrebuttal.

Judge Joyce: Alright. Hearing no other explanations, we will take no further hearing testimony, I imagine that's probably enough anyway so, and then we will close the public hearing without objection.

Commissioner Mendiola: None here.

County Counsel Williams: Do you have any questions that you want to ask before you close the hearing?

Judge Joyce: Before we close, so yeah, if you've got questions.

Commissioner Jacobs: I do have one question. You indicated that there was some truckloads of stuff hauled in, can you explain what those were.

Mr. Lee: That's completely false.

Ms. Cassity: I have photos and I have videos.

multiple talking

Mr. Lee: They may but they're very well doctored videos. Why would I haul gravel up there? There's been state pits, there's been BLM (Bureau of Land Management) pits, they've all been Goal 5 certified, which means they've done the quality quantity testing. Why would mine be any different? That's the latest nonsense that has been presented is that somehow, I brought gravel up and magically pointed the engineers in the right direction to take these samples.

Unknown: No, it was dumped from one of your

Unknown: It come out of the trucks

Multiple talking

Mr. Lee: How much gravel have I hauled off of that property?

Multiple talking

Commissioner Mendiola: Whoa, whoa, whoa.

Commissioner Jacobs: You don't need to address each other here

Commissioner Mendiola: That was plenty

Commissioner Jacobs: The other question I have is about the winter habitat for mule deer, did you check with ODF&W (Oregon Department of Fish and Wildlife) to determine whether or not that was?

Mr. Sheets: Commissioner Jacobs, I did contact ODFW about that and I submitted our plan. To the extent that they submitted a letter, they did submit a letter detailing that, I did correspond back with them and submitted a proposed plan for reducing winter hours, reducing the footprint, and making a bunch of proposed mitigation measures. The planning commission didn't entertain those. To the extent that I present, the only thing, I did not get a written response from them but I did talk to them on the phone and if you're willing to accept my hearsay testimony to the extent of the communication I had with them I'd be willing to present that.

Commissioner Jacobs: Well I guess I just would like to make sure so

Mr. Sheets: Okay, well I'll offer it in and you can evaluate it to your extent.

County Counsel Williams: If it goes to quality, quantity and location, if you think that does.

Commissioner Jacobs: I think that does to location.

County Counsel Williams: Okay.

Mr. Sheets: Okay. So I did contact the biologist that had submitted that letter and the phone conversation that we had, after I had submitted to it, he said that he would need to have additional people look at it and that to the extent that their recommending any measures they would be deferring to the County on that because ultimately they don't have the regulatory authority to impose those kinds of conditions, it would be the County imposing those conditions.

Commissioner Jacobs: Interesting, because usually the State doesn't always let the County determine what's going to happen (inaudible)

Mr. Sheets: If I can speculate, I think that they might have jumped the gun on issuing that letter given that I pointed out that this had been used in dry land farming before, I mean it's been disked over several times, it's not like its sagebrush out there. This is, its dry land farm, it's been part of agriculture, it's been used for pasture and agriculture in the past.

Commissioner Jacobs: So, is it seeded for grass?

Mr. Sheets: I'm not sure exactly what's been

Mr. Lee: I don't know (inaudible) two years ago for fire mitigation, that's all I

Mr. Sheets: To the extent that it's like sagebrush, it's not, it's level but it's disked, its pasture.

Commissioner Jacobs: And there's also a pipeline that goes through this property for irrigation for the LDS (Latter Day Saints) farm, have you had conversation with them to determine what they're going to require as far as keeping your distance from that pipeline, recognizing that it could be crushed or

Mr. Sheets: Commissioner Jacobs, I did submit additional plans for mitigation on that pipeline to the planning commission prior to the second hearing. That included having the pipeline staked out with buffers as well as reinforcing of any crossing, prohibition of any sort of vehicle parking on it, daily monitoring of any sort of activity related to it and that, not only including the pipeline itself but also for any adjacent irrigation canals, and so I did put together a plan for identifying and mitigating any sort of concerns that were related to that pipeline. To the extent that the Planning Commission considered it or not, I have no clue. I think the exchange that I was having with the planning commissioner who got a little upset with me was directly related to that where he was, I don't think he went through the materials that I had presented to him with that detailed mitigation plan. And so, it did include requesting a condition of approval that any sort of crossings have engineered reinforcements over the top of that along with those marking, monitoring and buffer zones for that.

Judge Joyce: Questions?

Commissioner Jacobs: Thank you.

Mr. Sheets: Thank you.

Judge Joyce: Thank you.

Mr. Lee: Commissioner Jacobs, if I may elaborate a little bit on the, there's a course now of trying to put some, whatever about the quality analysis, is that if that quarry did not meet those specifications, quite frankly that's not a very good quarry for me, if that was the case, so for financially for me, if I can't make ODOT (Oregon Department of Transportation) or IDOT (Idaho Department of Transportation) spec materials well that eliminates a big customer base for me, so it would be silly for me to do something like that. And again, I have two different engineering firms that, unless they're in cahoots somehow, that's not going to happen.

Commissioner Jacobs: Okay, thank you.

Judge Joyce: Other questions?

Commissioner Mendiola: I've got nothing more.

Judge Joyce: Nothing more?

Commissioner Mendiola: No.

Judge Joyce: Well, nothing more, then we'll close the hearing.

Commissioner Jacobs explained he would like more time to review the documents. Consensus was to continue the Court's deliberation to the April 10, 2024 County Court meeting. The matter must be finalized within 180 days from the date the Planning Department accepted the application.

COURT ADJOURNMENT

The meeting was adjourned.