

MALHEUR COUNTY COURT MINUTES
November 8, 2023

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. Staff present was Administrative Officer Lorinda DuBois and County Counsel Stephanie Williams. Members of the media, public and staff had the opportunity to join the meeting electronically or in-person. 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 # 2023-3182

FIRST PUBLIC HEARING- ORDINANCE NO. 234

Present for the first public hearing for consideration of Ordinance No. 234: An Ordinance for a Post Acknowledgement Plan Amendment (PAPA) to Include Tax Lots 200 and 700 Map 17S47E19 of the Malheur County Assessor's Office as a Significant Aggregate Site to Malheur County Assessor's Office as a Significant Aggregate Site to Malheur County's Comprehensive Plan, Goal 5, Mineral and Aggregate Inventory were: Planner/ Environmental Health Director Eric Evans, Nick Seubert - Applicant Seubert Excavators, Inc. representative, and Ron and Linda Hahn; Planning Department File No. 2023-08-002. Notice of the hearing was published in the Argus Observer.

Judge Joyce opened the hearing and asked for a staff report.

Planner Eric Evans: This was brought forth to our Planning Commission back in September, September 28th. Mr. Seubert and Seubert Excavators has proposed an expansion of their current mining operation; it's off of Stanton Boulevard. The parcel size for this particular piece of property is a little over 19 acres; it's all zoned CA-1 Exclusive Farm Use. The proposed access will be off of their current access off of Ontario Heights Road so they aren't proposing any new access to this. There's no restrooms proposed on the site. They met the criteria in statute and the County code for Planning Commission to be approved for a conditional use permit for aggregate mining and they met the mitigation standards for noise, dust abatement, sound and everything else. What we're here to discuss today is not necessarily the conditional use permit - not the mitigation or what's being done at the gravel pit to approve that - we're just here to discuss adding this to our Goal 5 Inventory; whether this property meets the quality, quantity, and location requirements to add this into our Goal 5 Inventory. In addition to that, part of this ordinance will be limiting other developments within a 1500-foot impact area. We sent a Measure 56 notice; we designated an impact area of 1500 feet around these two parcels. And within that impact area the County will require a statement to be recorded for any new developments that dust and noise could affect; that typically would include any new dwellings, any new churches and schools are really the only new developments that could occur there that this could affect, but they would have to record on their chain of title a waiver of remonstrance. So, it's basically sort of like the right to farm statement, that we won't sue

based on this. What we're in essence doing is protecting that Goal 5 Resource; we're protecting this to allow it to happen. Those are basically the two things that...

Commissioner Mendiola: So, anything new comes up they've got to make sure that they know that that's going to eventually be a gravel pit.

Mr. Evans: Correct. We addressed any of the impacts they would have towards the existing developments, to the existing homes around. For instance, there's going to be a berm that's going to be built around there - that's pretty common.

Commissioner Mendiola: For sound abatement.

Mr. Evans: Yes. And the equipment's going to be, I believe, 30 feet below the top of the berm. It was the Planning Commission's decision that they met that requirement to dampen that noise and to lessen, mitigate the impacts they would have in the existing stuff. Any new developments would have to basically just agree that they're going to have to deal with it. I think that's it - that was a long staff report, sorry.

Commissioner Jacobs: How do we get by the water right issue to start with because that ground has a water right. I thought when we divided this ground up

Mr. Evans: Water rights was an issue

Commissioner Jacobs: Yeah, water right was an issue, so why isn't this an issue with this property?

Mr. Evans: This isn't being taken out of farm use. This is a use that the state legislature has allowed in farmland and it stays farmland. When we build a house we're actually taking that out of farm use. The reality is when they finish their mining and they do the reclamation process it's going to be farmed again. They're mining and reclaiming as they go through this so it's never taken out of farm use. And when all the gravel's gone the expectation is that this will be farm use again.

Commissioner Mendiola: They've still got to keep the dues and assessments - they're going to pay that.

multiple talking

Mr. Evans: I don't believe that we're proposing to transfer any water rights off of this; I think they're keeping those rights as part of this and when Seubert Excavators is done with this it will be farmland again.

Commissioner Jacobs: Because these are Owyhee Irrigation District rights. And then the other thing was - it's Class 1 or Class 2 ground, is that going to stay Class 1 or Class 2?

Mr. Evans: I don't know exactly what their process is, but I presume they take some of that overburden off, they create these berms, and then you just use these berms to go and put it back over the top. So, you essentially are saving that top soil, because that's being used as that overburden to create those berms.

Commissioner Mendiola: There's probably two different piles. Take the top soil off and pile it for future use and they'll take the overburden and use that for the berms and then they'll put the berms back in and put the dirt back on top of it. So, it's going to be torn up but it's probably going to be as good or maybe even better than it was before.

Mr. Evans: Our expectation is that this is going to be put right back into farm use.

Commissioner Mendiola: And it's going to be farmed until they need it, correct?

Mr. Evans: Did we discuss like 20 acres at a time, basically, disturbed?

Mr. Seubert: It's going to be more like 5 acres.

Commissioner Jacobs: Because there's only 19 in the two parcels

Mr. Evans: Sorry, I was thinking of a different application. So yes, 5 acres disturbed at a time and they're basically reclaiming it as they go to the extent that they can.

Judge Joyce: So, is there a timeline from start to finish?

Mr. Evans: How long did you think that it was going...

Mr. Seubert: We estimate basically 10 years or so.

Mr. Evans: Then once that's done then that impact area goes away. We no longer are worried about any new developments. But as we all know, developing on EFU (Exclusive Farm Use) is difficult as it is, but there are certain things that are allowed on farm use that would be subject to this - schools and churches are one of them that somebody could potentially propose out there.

Judge Joyce asked for proponent testimony.

Ron Hahn: I have a question. I live right next door. Is the dust and noise going to impact me that much? I live within...

Linda Hahn: You're very noisy.

Mr. Hahn: We can hear the big pit all the time.

Mr. Evans: During our public hearing and the testimony that was provided, I don't know what is different than what they have now, we evaluated more of this proposal. They're going to be about 30 feet below the top of that berm, so that berm was

Mr. Hahn: There's still going to be a lot of noise.

Mr. Evans: They'll be, my presumption is there will be some noise.

Mr. Hahn: Is there going to be any lights?

Ms. Hahn: Oh, that's bad, yeah.

Mr. Hahn: Because on the big pile that's south of us, or north, whatever it is, there's lights out there all of the time.

Mr. Seubert: We have security lights.

Commissioner Jacobs: Do you live just off of Stanton - or where do you live?

Mr. Hahn: 559 Stanton and that's next door.

Ms. Hahn: Right next to them, and they're noisy and they're dirty and now we're going to have more of it and we have nothing to say about it.

Commissioner Jacobs: But there's no houses within 600 feet - isn't that correct, didn't I read that?

Mr. Evans: I think it was their house is probably one of the ones I measured to be about 600 feet. Let me see if I can find the map and I can show you.

Commissioner Mendiola: And your house is which direction from this proposed site?

Mr. Evans: To the west.

Mr. Hahn: Yeah.

Commissioner Mendiola: Up Stanton then from these guys. So, you're pretty much right across from Fry Foods?

Ms. Hahn: It's just down the road a little bit.

Judge Joyce: Are you closer to the freeway than Fry Foods?

Ms. Hahn and Mr. Hahn: Yeah.

Commissioner Jacobs: I looked at the aerial photo

Mr. Evans: Their house that they are talking about is this tax lot 600. This is the map of the impact area.

Commissioner Jacobs: See this is existing - all of this is all existing.

Mr. Evans: Right. Nick Seubert is here with Seubert Excavators and he can probably talk a little bit more about the operation and I don't know, these existing permits that they had down here isn't anything that we evaluated, so I'm not sure, are there berms surrounding what, between his house?

Mr. Seubert: On the, something we actually bought before does not have berms on it. The piece that was to the south we did put berms up on - that's to the south of them, quite a bit to the south of our property. This will be, basically, we propose putting berms (inaudible) subsurface by about 30 feet. Basically, the crusher, it's a portable crusher, it's not a permanent operation. Generally, we come in there once a year, sometimes twice a year, with the crushing operation. But we're not proposing to put an asphalt plant on this property or a concrete plant. It's mainly just to mine aggregates and to crush them.

Mr. Hahn: It's going to be just like down the road that you guys got?

Mr. Seubert: I'm not sure what you're asking about down the road.

Mr. Hahn: From the freeway towards Ontario, you've got one on the right-hand side.

Mr. Seubert: That's not us.

(Others in the room thought Mr. Hahn might be referring to Gerulf's gravel site.)

Commissioner Mendiola: That's the one that's east of the state highway shop on Stanton, as you're going back towards 201 it'd be on the left-hand side?

Mr. Hahn: No. I can only tell you from the freeway, from the overpass there, going towards Ontario, right before you start going down the hill, it's on the right-hand side.

Ms. Hahn: It's 45 minutes from our house.

Mr. Hahn: Then there's one on the left-hand side that's got piles of gravel and stuff.

(This site may be the road district's site.)

Mr. Evans: I guess I'll reiterate, because I'll always listen, but it's really about location, quality, and quantity today and ultimately next, on the 29th I believe is the second hearing. Mr. Seubert

did have the gravel evaluated, it did meet ODOT's (Oregon Department of Transportation) requirements for soundness, abrasion and all the requirements. It did meet the quantity requirements to put it on our significant inventory and obviously the location is there's a property description that'll be attached to the ordinance as well.

Judge Joyce asked for additional testimony - proponent, opponent, and public agency. There was none.

There was no further discussion or questions. Judge Joyce closed the hearing. The next hearing is November 29, 2023 at 9:00 a.m.

VETERANS TRANSPORTATION GRANT; STIF (STATEWIDE TRANSPORTATION IMPROVEMENT FUND) COMMITTEE

MCOA&CS (Malheur Council on Aging and Community Services) Transportation Manager Brittany White presented the veterans transportation grant. Also present was Veterans' Services Officer Connie Tanaka. Commissioner Jacobs moved to approve State of Oregon, Oregon Department of Veterans' Affairs 2023-2024 Transportation of Veterans in Highly Rural Areas Grant Agreement - Malheur County. Commissioner Mendiola seconded and the motion passed unanimously. Grant funding is not to exceed \$45,000 for the period of September 15, 2023 through September 14, 2024. Malheur Council on Aging and Community Services (MCOA&CS) will provide the transportation services. Mr. Tanaka expressed support for the grant and the partnership with MCOA&CS. See instrument # 2023-3209

Commissioner Jacobs moved to appoint Rachel Hernandez to the Malheur County STIF Advisory Committee. Commissioner Mendiola seconded and the motion passed unanimously.

Ms. White noted that ODOT recently announced that additional funding is available and MCOA&CS will apply for it.

CROSSING PERMITS

Commissioner Mendiola moved to approve Crossing Permit #33-23 to Jim and Kaye Foss for piping work across Big Bend Road #1104; and Crossing Permit #34-23 to Probst Electric/Niko Allen for work on Lincoln Road #903. Commissioner Jacobs seconded and the motion passed unanimously. The original permits will be kept on file at the Road Department.

COURT MINUTES

Commissioner Mendiola moved to approve Court Minutes of November 1, 2023 as written. Commissioner Jacobs seconded and the motion passed unanimously.

CHECK REGISTER

Commissioner Jacobs moved to approve Accounts Payable Register for October 2023. Commissioner Mendiola seconded and the motion passed unanimously.

JUVENILE CRIME PREVENTION AGREEMENT

Commissioner Jacobs moved to approve Reinstatement and Amendment No. 1 to Grant No. 15682 with Department of Education - Juvenile Crime Prevention Fund. Commissioner Mendiola seconded and the motion passed unanimously. The agreement expires June 30, 2025.

COURT ADJOURNMENT

Judge Joyce adjourned the meeting.