

Canby Planning Commission  
Regular Meeting  
June 22, 1987

MEMBERS PRESENT: Chairman Kahut, Commissioners Seale, McKibbin, Lindsay, Schrader, Harmon and Nicholson.

OTHERS PRESENT: City Administrator Stephan Lashbrook, City Attorney John Kelley, Secretary Virginia Shirley, Randy Pienovi, Mike Hodges, Wendy Pienovi, Evelyn Vearrier, Charles Stirling, Margaret Stirling, Carol A. Pienovi, Leonard Wilke, Jim Pienovi, Marjorie Wolf, Don Ohmant, Jim Kriegshausen, Bob Kacalek, Shaun and Martha Means, Cynthia Riggs, Basil W. Belew, Rufus Kraxberger, Charles Driggers, Alice Merrill, Jeff Kennedy, Helen Kennedy, E. E. Davies, Sean McVicker, Marv Dack, Bob Graham, Mary Addison, Mick Dack, Barb Coyle, Ed Coyle, Judille C. Rothi, Nola Lingel, Herman A. Bergman, Gary A. Wilmes, and others.

Item #1: Request for determination that storage lockers are an allowable permitted use in the C-1, Downtown Commercial, zone. Applicant is Wallace Graham. After a short discussion regarding the size and uses of the proposed lockers \*Commissioner Seale moved that storage lockers located inside a building where access to the lockers is from within the building be found to be similar to other commercial uses allowed in the C-1 zone. The motion was seconded by Commissioner Schrader and passed unanimously with the Chairman voting.

Item #2: Request for Expansion of a Nonconforming Use to allow rock crushing operation in conjunction with pre-existing gravel mining operation. This is a public hearing. Applicant is John Torgeson. City Administrator Lashbrook read the staff report and three letters opposed to the rock crusher. Mr. Lashbrook then answered questions the Commissioners had regarding the staff report and letters.

Jack Hammond, representing the applicant, gave a history of the gravel removal from this site, the size of the rock crusher, questioned condition #10 of the staff report which calls for fencing and a berm, and, stated that the applicant had never made formal application for a permit from Clackamas County. Chairman Kahut asked if there was a reclamation plan on file. Mr. Hammond stated that they had submitted a reclamation plan to the state department of geology which called for a large lake 50 to 100 feet deep, a 150 foot separation from the stream channel, and a 50 to 200 foot buffer from other property lines. Commissioner Schrader asked if the reclamation plan was binding. Mr. Hammond informed the Commission that any changes in the original plan would have to be approved by all agencies. Commissioner Nicholson stated that it looked like the riparian land was lost already and asked how much wet area was to be left undisturbed. Mr. Hammond stated that 100 feet would be disturbed and 400 feet left undisturbed. Commissioner Nicholson asked if this would be dedicated to the City. Mr. Hammond stated no, the land was too expensive for giving to the City. Commissioner Harmon stated that the applicant did not seem to be sensitive to wildlife in the area, and asked if he would be in the future. Mr. Hammond stated that Mr. Torgeson was not going to disturb the remainder of the area that was not to be mined. Commissioner

Schrader asked if a new permit would be needed if he were to change the mining operation. Mr. Lashbrook stated that this was a possibility, that he would need to consult experts to be sure. Commissioner Harmon asked the duration of the project. Mr. Hammond stated that with the crusher the project would continue for possibly five years, without the crusher it would be years and years. Commissioner Schrader asked about the truck traffic. Mr. Hammond stated that with the crusher there would be additional truck traffic, however at this time that is all in the County.

Chairman Kahut asked John Torgeson how water was removed from the hole they were working. Mr. Torgeson replied this could be done by pumping the water into another hole which had been dug prior to the one they were working. Chairman Kahut asked the size of the crusher. Mr. Torgeson replied that it was about one-tenth the size of the one used by Canby Sand and Gravel. Commissioner Lindsay again asked Mr. Torgeson the size of the crusher. Mr. Torgeson stated that it was 25 feet long, 8 foot wide and there were two conveyors which were each about 20 feet long. The crusher stands 12 feet in height. Commissioner Lindsay asked how much gravel could be crushed in an hour and if there would be retail sales. Mr. Torgeson stated that he didn't intend on having any retail sales. As for the crusher, it has the potential to produce from 75 yards per hour up to 125 yards per hour. Commissioner Schrader asked how much noise was produced with this operation. Mr. Torgeson stated that it would produce 65 decibels at 100 feet. On Marvin Dack's front porch it would be like two people whispering. They will have dirt berms and stockpiles to help cut down on the noise. Commissioner Schrader asked what type of trucks would be used for hauling the crushed rock. Mr. Torgeson stated that he had a truck with "jake brakes" but they are not necessary. Commissioner Nicholson asked how the rocks would be moved to the crusher. Mr. Torgeson stated that he didn't know for sure, but a small 10-yard dump truck would do as it is only a short distance.

Chairman Kahut opened the public hearing portion of the hearing and called for proponents. When none came forth, the Chairman called for opponents.

Craig Shimm, 402 S. Locust, stated that Clackamas County did not recognize the use, while Canby did. This was evidenced by letter from Bud Atwood. Mr. Atwood's letter said there would be no increase in use. There is a conflict of use. Mr. Atwood granted a nonconforming use while it is the goal of the Planning Commission to minimize conflicting uses. Goal #5 (Natural Areas) was not dealt with adequately. The Planning Commission does not have inventories and maps showing the natural areas. What happens to the wildlife in the area? The State requires at least minimum protection and the Planning Commission should get the information needed. Much of the riparian zone is protected by other departments - we should also protect it. Suggested denial of the application.

Neal Thompson, Soil Conservation Service, stated that his main responsibility was to the "Wetland." The wetland needs protection. Stated that he knew the applicant and no further work should be done until the wetland is protected. Mr. Thompson suggested that the State

agencies, the City, Mr. Torgeson should all get involved and get the permit reviewed prior to anything being done.

James Pienovi, S. W. 20th Avenue, stated his concerns for traffic safety and truck traffic entering Highway #170. Mr. Pienovi stated the private road being used does not have an easement for trucks to use it. He explained further the road is not rocked, does not have gravel, and vision impairing trees at the intersection with Highway #170. Mr. Pienovi also spoke of the negative effects of the dust on vegetable gardens, not only small personal ones but crops that are to be harvested for sale by truck gardeners. Mr. Pienovi presented the Commission with a petition signed by 270 people in opposition to the rock crusher. Mr. Pienovi also read a letter to the Commission from Virginia Terrill stating her living conditions with a rock crusher close to her home.

Bob Kacalek, 489 S. W. First Avenue, spoke of the damage this would do to property values in the area from noise, dust, truck traffic and other related negative aspects of the crusher operation.

Robert Graham, biology teacher at Canby Union High School, stated that his students had inventoried the unique wildlife habitat that exists at the Canby Community Park which is adjacent to the gravel operation. The inlet to the City pond is through the Torgeson property. Mr. Graham stated that there are Bass five to six years old in the pond. Mr. Graham further stated that this is a complete eco-system and asked that the Commission consider this before fencing or berming is considered. Mr. Graham read from some of his students' reports on the eco-system that exists within the park/pond at this location.

Bill Stevens stated that his property abutts Mr. Torgeson. He purchased his property in 1962, realizing that someday it would be developed. This rock crusher will lower the land value that he has considered his savings account. So far, no one knows how much noise or dust the crusher would make. Mr. Stevens further stated that he is afraid of depreciating land values, has concerns for the water in the Molalla and the fact that the City of Canby gets its water downstream from this operation, and knows it is not compatible with R-1 zoning. Commissioner Lindsay asked Mr. Stevens how high the bluff was where he was located. Mr. Stevens stated approximately 65 - 70 feet high and that bluffs carry sound.

Marjorie Wolf, 25261 S. Highway 170, was concerned because of the dangerous intersection, and the effects of a berm on the river flow. Mrs. Wolf further stated that in 1984 Mr. Torgeson asked to remove a gravel bar from their property. Mr. and Mrs. Wolf signed a contract with Mr. Torgeson but they had to stop Mr. Torgeson because of his failure to live up to the contract.

Herman Bergman, 661 N. W. 4th Avenue, stated his concerns for the Boy Scout building in close proximity to the rock crusher.

John Beck, 1547 S. Fir Street, stated that he was a past Planning Commissioner and that he owns 18 acres on the bluff east of the site. Mr. Beck questioned the length of time the Torgeson family had owned

property. Mr. Beck further stated that Rodney Pitts had approached him (Mr. Beck) and asked him to buy the property but he had been unable to get a loan from the bank. Mr. Beck further stated that they could hear the other rock crushers at times when the wind was from the west.

Earl Walker, Carriage Court, stated that he uses the park and the park brings in money for Canby. Mr. Walker also stated that Canby has a valuable resource in the park.

Joe Redman expressed concern for school busses at the intersection of S.W. 20th and S. Highway 170.

Todd Gary, 1348 S. W. Berg Parkway, stated that he was in favor of the rock crusher and didn't feel the noise or dust would disturb him and he lives in the mobile home located in the park.

Rod Beck, 1515 S. Fir Street, told the Commission how he had hunted and fished the Molalla River area from 1958 through 1967 and that there was very little, if any, gravel removal. The timber on the property however was clear-cut. Mr. Beck further stated that in last several months there has been accelerated gravel removal beyond belief. He was not informed of the basis for removal. Mr. Beck went on to say that he would like to see a definite plan for the gravel removal and what effect it would have on the natural resources of the area. Mr. Beck stated that a rock quarry/gravel pit was very different from a rock crusher. Mr. Beck stated that in his opinion state and federal agencies did not have time to maintain control.

Marv Dack, 175 S. W. 13th Avenue, expressed concern over noise and dust. Mr. Dack asked if the applicant digs a hole 100 feet deep, how it will effect the City's water supply. Mr. Dack stated that there had been no mining since 1964 as he had inspected the property weekly. Mr. Dack was most concerned about property values in the area. He stated that an appraiser had told him that his property would be worth very little if the rock crusher was put on the Torgeson property. Mr. Dack asked what would prevent Mr. Torgeson from acquiring and using a larger crusher. Mr. Dack reminded the Commission that the main channel of the creek splits and speculated that his operation would cover wetlands.

Commissioner Nicholson asked Mr. Dack when the mining operation started. Mr. Dack stated that Mr. Atwood told him that Mr. Torgeson was digging on land outside of the City.

Gary Wilmes, 11858 Jones Road, informed that Commission that his rock crusher can crush between 30 and 40 yards per hour and he employees five people. The proposed crusher must be much larger.

Steven Pfeiffer, attorney representing Mr. Pienovi, spoke to the Commission of the applicant proving a nonconforming use existed before he tried to expand the use. Cited court case of Polk County verses Martin. Mr. Pfeiffer expressed the opinion that Mr. Atwood's letter was flawed. Spoke of the existence of the wetland area. Mr. Pfeiffer further stated that there had been no due process and that Mr. Atwood had no authority to write the letter. The "burden of proof" is on the

applicant. Mr. Pfeiffer stated that he had been unable to find any easement across the Pienovi property. As for the Planning Commission of the City of Canby, they can depend on other agencies to police the operation only after the feasibility to meet the standards has been met.

Mr. Jack Hammond, representing John Torgeson, stated that they had accepted the Atwood decision in good faith. Mr. Hammond stated that the Supreme Court had upheld Polk County in the court case Mr. Pfeiffer had spoke of. He informed the Commissioners and audience that the proposed rules were more stringent than those of other jurisdictions. Mr. Hammond stated that the concerns of Bob Graham made the Community Park and its small pond sound like a National park. Mr. Hammond stated that easement had been used for over 20 years as access for fisherman and anybody using the river. Stated further that Mr. Pienovi had mined gravel from his place.

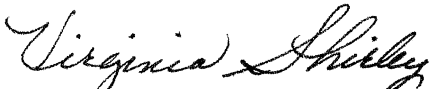
Chairman Kahut stated that the public hearing would be continued until July 27, 1987, after 7:30 p.m. Chairman Kahut asked the staff for additional information from the County regarding the use of rock crusher. The Commissioners asked to have experts available to testify from Oregon Department of Geology, possibly from the Corps of Engineers, the Fish and Game Commission and any other that would be informative.

The public hearing on the proposed amendments to Ordinance #740 was postponed until the meeting of July 13, 1987.

This meeting has been recorded on tape, and is the public record of this hearing.

The meeting adjourned at 12:45 p.m.

Respectfully submitted,

  
Virginia Shirley, Secretary  
Canby Planning Commission