

Planning Commission
Regular Meeting
August 22, 1988

MEMBERS PRESENT: Chairman Kahut, Commissioners Nicholson, Seale, McKibbin, Harmon, Lindsay and Schrader (arrived at 7:45 p.m.)

OTHERS PRESENT: City Administrator Stephan Lashbrook, City Attorney John Kelley, Secretary Virginia Shirley, John and Sande Torgeson, Frank Schnitzer, David Nelson, Dr. Edmund Davies, Leonard Wilke, Steven Pfiffer, Marv Dack, John Beck, Bill Stevens, Earl Walker, Bob Traverso, Sandra Watham and others

The minutes of August 8, 1988, were approved as submitted.

CONTINUED public hearing on the request of John Torgeson to install a processing plant on his property which is described as Tax Lot 1790, Section 4C, T4S, R1E, and located east of Canby Community Park. Stephan Lashbrook paraphrased the first staff report and gave all additional information he had received in the interim. Mr. Lashbrook informed the Commission that he had sent letters to Mike Houck of the Audubon Society of Portland, Ms. Diana Wong of U.W. Fish and Wildlife, Richard Dopp of Clackamas County Department of Transportation and Development, Dick Wixom of Department of Environmental Quality, Ken Bierly of Environmental Permits Unit, John Haxton of State Fish and Wildlife and Joe Gonthier of USGS - Water Resources. Mr. Lashbrook stated that he had not received replies but that was possibly due to the fact that he had not requested a reply date needed. Mr. Lashbrook went on to say that Mr. Bierly was awaiting an Attorney General's determination before proceeding. Mr. Lashbrook read a letter (dated 8.22.88) from Police Chief Jerry Giger into the record and a letter from the editor of the Canby Herald.

Since the public hearing had been continued, Chairman Kahut opened by asking for proponents. Sande Torgeson stated they had two items 1) was a plot plan for the crusher site and that each Commissioner would receive a copy in their rebuttal exhibits. Mrs. Torgeson stated that the Division of State Lands had first told them they would be doing a wetlands study and using core samples to determine the wetlands boundary. Since that time the Division of State Lands has determined they will use an aerial photo and generally mark off the wetland via the photo. Mrs. Torgeson stated "If they do that, we are generally going to dig it up." 2) Mrs. Torgeson stated that they (Torgesons) had never applied for a mining permit in the County. Mrs. Torgeson said that Mr. Lashbrook had not sent a letter to Frank Schnitzer of DOGAMI who had processed the Torgeson's application and approved it. Also, Mr. Schnitzer monitors there application, Mr. Schnitzer is in the audience and he had information if the Commission were interested.

Chairman Kahut opened the public hearing and called for proponents. Frank Nelson, 25610 N.W. Mountain Road in West Linn, and stated that his mother has property adjoining the Torgeson property and that he was raised on that property. Mr. Torgeson's road goes through his mother's

property and at one time there had been a dairy located on the property. There were 40' semi-trucks coming and going daily - two to three times per day. There has been agricultural use of the land and the semi's came and went. The Corps of Engineers trucked in and out with rip rap trucks off and on. Mr. Nelson further stated that he felt that Mr. Lashbrook's ideas for what should happen to the road were all good ideas. Mr. Torgeson stated that they had paid Mr. Frank Schnitzer to come to tonight's meeting because there were so many unanswered questions. Mr. Schnitzer has the answers questions he should be allowed to speak and answer the questions. Chairman Kahut asked the Commissioner's wishes on when Mr. Schnitzer should speak. It was determined that he speak at the present at this point during the hearing. Mr. Schnitzer stated that Mr. Torgeson had requested his presence at this meeting and was paying him to be here. He further stated that he could give facts, but that he was neither a proponent nor an opponent. Mr. Schnitzer stated that he was not concerned about time. The Commissioners, fearing further questions that couldn't be answered, decided to postpone his testimony until last.

Dr. Davies informed that Commission that he had been to the planning commission meeting on another matter, and the Chairman stated that this hearing would be lengthy and postponed the public hearing on the matter which he came to hear. Dr. Davies then read into the record a letter from Dennis Everson.

Leonard Wilke, Vale Garden Road, The traffic speed and two crushers in the area that make plenty of noise. The neighborhood doesn't need any more.

Steven Pfiffer stated that extraction activities are a term within themselves. DOGAMI does not control O.R.S. 215.183. Mr. Pfiffer further stated that the Commission lacked information to make a decision. Mr. Pfiffer also spoke of the access to the property and asked if Mr. Torgeson had irrevocable license to use the roadway through other peoples property. Lastly, Mr. Pfiffer stated that he still was not sure of the nonconforming use status. Commissioner Schrader asked why the Pienovi family had moved. Mr. Pfiffer stated that he was becoming surrounded by rock crushers.

Sandra Watham, Vale Garden Road, has lived on Vale Garden Road for 16 years. Ms. Watham stated that she had raised her family in a quiet, agricultural area with wildlife and Heron as visitors. Ms. Watham stated she had the idea that the state protected agricultural lands.

John Beck, S. Fir Street, told the Commission that the Police Chief has a different story. In 1953, the property in question was purchased by John Gale. In 1964, Dietz and Torgeson purchased the property jointly. In 1987, John Torgeson became the sole owner. Mr. Beck went on to say that J. R. Richardson had sent a letter to the applicant for a rock crusher in March, 1963, stating that Canby City Council did not want a rock crusher in the area.

Bill Stevens informed the Commission that while he was a City Councilman, a rock crusher for this property was denied. He was not sure of date.

Marv Dack - Stated that he really didn't care if he got the crusher nor not because he just about had his land sold. However, the property was flooded in the flood of 1964, and ninety percent flooded in the flood of 1970.

Bill Stevens - Asked why their questions of the previous meeting had not been answered.

Bob Traverso, Parker Northwest, stated their company does not do crushing in the evening. There is no crushing after 6:00 p.m. and they have been in this location for 16 years. Also, there is no Saturday crushing.

Earl Walker asked how the City would have enforcement with penalties. There has to be an inspection agency and an enforcement agency in order to have this type of operation.

Mr. Schnitzer stated that DOGAMI is the lead agency for enforcement. The Torgeson operation is presently bonded for two acres at \$1,250 per acre.

Commissioner Seale asked how often the site was visited. Mr. Schnitzer said they visited the site twice this past year. He went on to say that Mr. Torgeson had received his permit on August 6, 1986, (No permit was needed unless he removed more than 5,000 cubic yards per year.) and has been in good standing ever since.

Commissioner Schrader asked what this would do to the Molalla River. Mr. Schnitzer stated that Mr. Torgeson had kept the operation back from the river. Commissioner Harmon asked if Mr. Torgeson were to excavate close to the wetlands if it would have any effect on are pond. Mr. Schnitzer stated that he didn't believe it would because of the texture of the material. Dr. Davies asked if he was speaking as an employee of DOGAMI or of John Torgeson. If John Torgeson is paying all of his expenses, is it normal for somebody from the state to be paid by a private individual to give expert testimony? I question his status at this meeting. Mr. Schnitzer stated that his employer (State) requires that he charge for his time and expenses as a witness. Commissioner Harmon asked if the Commission should wait for answers to make a determination on this application.

Commissioner Seale asked how many sites Mr. Schnitzer was familiar with in Oregon. Mr. Schnitzer stated that would be about 900.

City Attorney Kelley asked Mr. Schnitzer for his definition of mineral extraction and if mineral extraction included processing. Mr. Schnitzer stated that DOGAMI does not require a separate permit approval for processing. Mr. Kelley stated that the City's ordinance says "Aggregate removal operations," and Mr. Pfiffer has cited a case where LUBA has held that similar extraction in a county allowed extraction and not

processing. He went on to say that the difference is that the term aggregate is different from mineral; and, by using your definition includes processed or crushed rock. Mr. Schnitzer answered in the affirmative.

Commissioner McKibbin asked a hypothetical question of Mr. Schnitzer regarding turbidity and existing wells in the area. Mr. Schnitzer informed the Commission of DOGAMI's procedure for handling such complaints. Chairman Kahut asked if there were many cases of noncompliance. Mr. Schnitzer answered that only 5 to 10 percent are ever out of compliance and must have enforcement action.

Marv Dack asked if the spring water coming from the hillside would dry-up if Mr. Torgeson dug a hole 100 foot deep. Mr. Schnitzer stated that he didn't know how that would be possible.

Commissioner Lindsay wanted to know more about the Reclamation Plan. This should be registered with the City. Mr. Schnitzer stated that DOGAMI had sent a copy to the City and asked for their response. According to DOGAMI's file, Bud Atwood responded to their request. Commissioner Lindsay asked if DOGAMI had placed any conditions on Mr. Torgeson's permit. Mr. Schnitzer said they had placed conditions on the permit, Mr. Lindsay asked if the City had any input into those conditions. Mr. Schnitzer stated they could have but did not. Mr. Schnitzer went on to read the three conditions which had been placed on the permit. Commissioner Lindsay asked how much gravel Mr. Torgeson could remove annually. Mr. Schnitzer stated that he could take an unlimited amount with his present permit.

Mr. Lashbrook asked Mr. Schnitzer if he was talking about an application DOGAMI received July 8, 1986, is that correct. Mr. Schnitzer stated "Yes." Mr. Lashbrook informed the Commission that they had a copy of the same application.

Steven Pfiffer, (attorney for Beck, Stevens, and Dack) asked Mr. Schnitzer if it was possible to have a gravel removal operation without a processing plant. Mr. Pfiffer then asked Mr. Schnitzer if removal suggested to him removal. John Kelley asked Mr. Schnitzer if aggregate suggested crushed rock to him. Mr. Schnitzer answered in the affirmative. Mr. Pfiffer asked how you could extract crushed rock from the ground. Mr. Schnitzer stated that none of this had bearing on the City's ordinance. A discussion of LUBA between Mr. Schnitzer and Mr. Pfiffer followed.

Dr. Davies addressed the chair and stated that he had taken the time to look aggregate in Webster's Dictionary and aggregate is rock, not crushed rock, just rock.

Chairman Kahut asked Mr. Schnitzer if these wetlands were on the national registry as had been indicated at the last hearing on the rock processing plant. Too many people speaking at once to understand the tape.

Mr. Lashbrook read a letter into the record from Bill petrick. John Torgeson stated that the Corps of Engineers and State Lands were looking at his property about three weeks prior to the hearing.

Chairman Kahut asked if Mr. Torgeson had any rebuttal. Mr. Torgeson replied in the affirmative. Chairman Kahut stated they would hear rebuttal after a five-minute break.

Mrs. Torgeson apologized to the Commission for loosing her temper. Mrs. Torgeson then gave each of the Commissioners what she called a "Rebuttal Exhibit." Mrs. Torgeson then proceeded to speak of past associations and land sales. Mr. Torgeson starting by reading passages from the City's Comprehensive Plan and O.R.S. Mr. Torgeson continued going through the exhibit item by item (one of these rebuttal exhibits has been made a part of the file). Mr. Torgeson read an article on silicosis. Mr. Torgeson continued until he had explained all of the information in the "Rebuttal Exhibit."

Mr. Pfiffer asked for a point of order. The exhibit by the Torgesons during rebuttal, is new evidence. As Mr. Kelley will point out both parties to a proceeding are allowed rebuttal and rebuttal is argument only. Mr. Pfiffer considered the new evidence as privileged argument, since they had not seen the material prior to the presentation. Commissioner Schrader stated that all of the information had been before the Commission before. Mr. Pfiffer stated that not all of the information had been before the Commission prior to tonight, such as silicosis, and other minor points. John Kelley stated that there were pictures of the rock crushing plant, which they had not seen before. Rusty Klem's support letter was new evidence. The City Attorney said the Commission should ask Mr. Pfiffer which of the exhibits were new and he wished to rebut. Commissioner Schrader stated that the only things that Mr. Pfiffer should be concerned with, are those things which are new tonight. I suggest that Chairman declare the point of order, out of order. Mr. Kelley stated that perhaps the attorneys need to go through the file with Mr. Torgeson to find out what is new. Mr. Pfiffer stated that he could not rebut something unless he had read it first. Commissioner Schrader moved that the point of order be ruled out of order unless it follows the guidelines suggested by the City Attorney. The motion was seconded by Commissioner McKibbin. Mr. Pfiffer suggested that he take one of the "Rebuttal Exhibits" and make his comments in writing to Mr. Lashbrook. Mr. Kelley stated the Commission did not want further new evidence from the audience, but argument on the testimony either from this hearing or the first hearing on the processing plant. The question was called for and Chairman Kahut called for those in favor of the motion 6 - opposed to the motion 1 (Nicholson). A decision will be reached on the conditional use permit for a rock processing plant on September 1, 1988, after 7:30 p.m. Commissioner Schrader asked that it become part of the record that the Commission will not hold meetings on any night other than Monday in the future.

The remainder of this meeting has been pre-recorded earlier to enable an appeal to the City Council to be heard.