

Canby Planning Commission
Special Meeting
September 1, 1988

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

MEMBER ABSENT: Chairman Kahut

OTHERS PRESENT: City Administrator Lashbrook, Public Works Director Klem,

Vice Chairman Schrader called the meeting to order and asked if there were any additions or corrections to the minutes of the second portion of the hearing August 22, 1988. Commissioner Nicholson stated that there had been more discussion than what was stated in the minutes causing the Commission to deny the appeal of the City Administrator's denial of a business license. Mr. Schrader stated that the tapes were the official minutes of the meeting and if this is appealed, the Council may listen to the tape. The minutes were approved as submitted. The next item on the agenda was the findings of fact for the denial of the appeal. Vice Chairman Schrader moved that the findings of fact be approved as submitted. The motion was seconded by Commissioner McKibbin and passed unanimously.

Vice Chairman Schrader stated that the next item on the agenda would be a decision on the Conditional Use Application by John and Sande Torgeson for a rock crusher. The Planning Commission discussed the best way to handle the new information that had been received after the close of the public hearing. The consensus of the Commission was to hear or consider nothing additional beyond the discussion of the document submitted by the Torgesons at the conclusion of the August 22, meeting. A letter from Mr. Pfieffer had been submitted after the last meeting and although the Commissioners had a copy Mr. Lashbrook was asked to read the letter aloud. (a copy is attached to these minutes.) Mr. Lashbrook went on to say that the Torgeson's submitted an answer to the Mr. Pfieffer's which was received on August 29. Mr. Lashbrook went on to say that the letter had been read by the City Attorney and himself and they felt that it was argument on the information the Commission had before them and not new information. Mr. Lashbrook informed the Commission they should ask if anybody in the audience had any information they would like to add.

Commissioner Seale suggested the Commission request any new information from the audience on the Torgeson's new information they submitted. Vice-Chairman Schrader informed the audience the Commission would allow ten minutes for new evidence regarding the rebuttal of the Torgesons and the Torgesons will have another ten minutes to rebut that information. Marv Dack stated that his attorney had spoken to Mr. Lashbrook and it was his impression that there was to be no rebuttal at this meeting. Bob Traverso stated that he had submitted a letter to Mr. Lashbrook on this date and would like to have it read into the record. Mr. Lashbrook stated that he had the letter and the purpose of the letter was to correct some of the inaccuracies that had been stated in prior hearings. There being no further comments from the public, Mr. Schrader requested

the Commissioners read the letter from the Torgesons (copy attached). Someone in the audience requested that the letter be read aloud and Mr. Lashbrook volunteered. After Mr. Lashbrook read the letter, Mr. Schrader asked the Torgesons if they had anything they wished to add tonight. Mr. Lashbrook stated that he had another letter from the Torgesons dated August 30, 1988 and received August 31, which both he and the City Attorney considered new evidence and therefor had not enclosed it within the packets and would not read it tonight unless otherwise instructed, as it would open it up for more public hearing from both sides. At this time, Mrs. Torgeson withdrew the letter of August 30, 1988, and all copies were returned to her. Mr. Lashbrook brought up the fact that a letter from John Haxton on July 20, 1988, which did not come before the Commission. Mr. Schrader said the Commission would rule it out of order and therefor not accept it into the record.

Mr. Lashbrook stated that the Commission still needed to make an official ruling on the term aggregate removal. Mr. Schrader stated that the whole basis for the application is the fact that the letter to the Torgesons from Mr. Atwood granted aggregate removal but excluded rock crushing without going into the reason why. The letter stated that if they wanted a rock crusher they would need to apply for a conditional use permit, which the Torgesons have done. Mr. Lashbrook pointed out that the City's laws governing nonconforming uses have changed since the Atwood letter was sent, and he had different considerations in that nonconforming uses could be expanded. Mr. Nicholson stated that he felt the Torgesons should apply for a conditional use permit for their mining operation to take it out of nonconforming use status. The application for the mining permit for 5,000 cubic yards per year came in June, the Atwood letter was in April, and the letter dealt with prior use of the property. Mr. Nicholson went on to say the amount of public testimony, and the public uproar is testimony to the fact there was a need for a conditional use permit. Mr. Schrader asked if staff could approve a conditional use. Mr. Lashbrook stated "no" this was not appropriate. Mr. Lashbrook gave the Commission a further explanation of how the system worked and the changes that have been made due to LUBA's decision. Commissioner Nicholson stated that his point ties in with the third paragraph of Mr. Atwood's letter which says ". . . I believe that it is well established that gravel has been removed from the ranch for many years utilizing the present handling system and thereby creating an existing use which may continue under present conditions, but with no expansion of use or the system used for removal." Mr. Nicholson said that other parts of the testimony indicate the level of use underway at the present time is much greater than at the time Bud Atwood wrote the letter. Mr. Lashbrook stated that if standards of operation had been set at the time the letter was written, then the City would know if there had been an expansion. Discussion continued on the subject of a nonconforming use versus a conditional use. Mr. Schrader asked if the application is denied is there no way that the City or the residents could set any limits as to hours of operation, or anything that would apply to the expanded use. Mr. Lashbrook stated that conditioned or limitations could be set on the nonconforming use operation if anyone of the numerous appeals that have been filed is successful at LUBA and LUBA remands the application back to the City with instructions to hold a

public hearing. Also, if the City, acting on a complaint from a neighbor, determines that the level of the operation had expanded from the level of operation in 1986, there would be a burden on the City to prove there had been expansion. Commissioner Nicholson stated that the Commission had written testimony that the operation had expanded and the City has a problem. Mr. Nicholson went on to say that the City should take action without waiting for LUBA to make a determination. Mr. Nicholson went on to say that the problem as he sees it is that there has been expansion of a conditional use whether it be a valid conditional use in this zone, without going through a conditional use permit process where the public has some input and can express their concerns. Mr. Schrader stated that it was his understanding the Commission could not place conditions on the removal operation in any manner as it had been "grandfathered" in. Mr. Nicholson stated that he felt the Commission could because in his opinion the use has expanded. More discussion on this application versus other nonconforming use applications which have been before the Commission.

Commissioner Harmon asked if the Commission was in a position to allow a conditional use on this property for a rock crusher, when there is a question of expanding the nonconforming use. Mr. Lashbrook pointed out that the Torgesons could be applying for a processing plant without having expanded the level of operation that existed before. Mr. Schrader stated that he was unable to agree with Mr. Lashbrook's statement because the reason for the Torgeson application was to increase his level of operation and take more gravel out of the ground. Commissioner Nicholson stated that the gravel removal was a nonconforming use, and the application before the Commission was for a processing plant under a conditional use. He then asked if the nonconforming use can not be expanded, why does he need a conditional use to be competitive. Mr. Lashbrook stated that if the nonconforming use did expand, the Commission must explain how they know it has expanded and give a logical progression of events leading up to the Commission's decision. Mr. Nicholson stated that was aside from the rock crusher which was applied for as a conditional use. Mr. Nicholson stated that he would like to see the gravel extraction use come before the Commission as a conditional use permit. Mr. Schrader stated that Mr. Torgeson already legally had the use. Mr. Schrader further stated that he would like to see the application come before the Commission but that as long as Mr. Torgeson has the nonconforming use there is no reason why he should seek a use permit just to keep doing what he is already doing. Mr. Nicholson stated that it was his opinion that enough material had been submitted at this hearing to request the staff to make a determination if, in fact, Mr. Torgeson has expanded his nonconforming use and would need a conditional use for gravel extraction.

*Commissioner Nicholson moved to request the staff to investigate the original nonconforming use of the Torgeson property. The motion was seconded by Commissioner McKibbin. Mr. Lashbrook asked what the staff was to investigate and Commissioner Nicholson stated the Commission wanted to know the level of use at the time of Atwood's letter in 1986. Mr. Lashbrook asked the Commission if they would accept a legal opinion from the City Attorney as to whether April 4, 1986, was in fact the proper date. Mr. Lashbrook reminded the Commission that the uses became nonconforming at the time the original city zoning was applied and not

when Mr. Atwood wrote his letter. Commissioner Nicholson stated that he would be interested in a legal opinion but does not feel the Commission should be held to it. Commissioner Seale wanted to know how the motion would affect a conditional use permit for a rock crusher. Vice Chairman Schrader stated that it would put the present application on hold until a later date. Commissioner Nicholson stated that in his opinion the Commission still had to rule on whether the rock crusher was a permitted conditional use within the zone. Mr. Schrader stated the Commission should consider the application as presented by staff and determine whether aggregate removal includes rock crushing or treat the rock crusher as a conditional use by itself. Mr. Schrader stated that he would rather attach conditions, severe conditions if need be, to the current proposal in a way to get a handle on this operation. Mr. McKibbin stated that action should be taken on the application tonight. Mr. Harmon stated that he also felt the application should be handled at this meeting. He further stated that in his opinion staff's efforts would be wasted because they would be required to go back to when it was annexed and zoned, not to what was happening in 1986. The question was called for ayes 2 McKibbin and Nicholson, nays 4, motion failed.

Commissioner McKibbin moved to deny the request as a rock processing equipment and a rock crusher are not incidental and accessory to gravel removal operations. Commissioner Nicholson seconded the motion. A lengthy discussion followed regarding terminology. Motion failed 3 to 3 (With Commissioners Seale, Harmon and Schrader voting no).

It was the consensus of the Commission to go through the standards and criteria for issuing a conditional use. Mr. Seale stated the Comprehensive Plan supports aggregate removal. Mr. McKibbin stated his fears the features of the land would be changed. Mr. Seale stated the property was not useful as agricultural, cannot be developed residentially, the gravel was considered an important resource for the community and most of the testimony regarding environmental concerns was disputed by Mr. Schnitzer of DOGAMI. Mr. Harmon gravel is there. Mr. Lindsay stated that he felt the proposal meets all of (B) under the standards and criteria. Mr. Schrader stated that he was concerned and felt the Commission would have to be tougher, and felt DEQ would probably be tougher. Mr. Schrader went on to say the public park should be protected any way possible. Mr. Nicholson stated that he too was concerned about environmental issues, open spaces, steps in the conditions concerning vegetation. Commissioner Lindsay stated that it would not be possible for the applicant to meet No. 6 of the concerns raised in the staff report as he does not have any way of disposing of sanitary and solid waste. Mr. Lindsay went on to say that he was having problems finding solutions to the access to this property for heavy trucks, and drinking water. Commissioner Nicholson stated the public facilities needed for the operation were available and other public facilities were not a concern. Mr. Schrader stated that the solid waste from the crusher was supposed to be used to reclaim the area bordering the wetlands. Commissioner Seale stated the Commission should consider the level of public services and facilities needed to support the rock crusher and the existing facilities. Mr. Schrader stated that the access issue was large stumbling block. Commissioner Nicholson was concerned that the Commission would grant a permit when the applicant

does not have access and would have to go through the City park. Commissioner Harmon stated the parcel can not be landlocked and must have access from some direction. Mr. Harmon went on to say the access should be established and recorded at the County Courthouse prior to a permit being issued.

At the conclusion of the hearing, and after reviewing all of the information in the record before them, the Planning Commission voted 4 - 2 (Commissioners Seale, Harmon, Schrader and Nicholson voting in favor, with McKibbin and Lindsay opposed) to approve the application subject to the following conditions:

1. The applicants are to acquire and comply with all permits that may be required by the State Department of Environmental Quality (DEQ), State Department of Geology and Mineral Industries (DOGAMI), the Army Corps of Engineers and any other state or federal agencies which may regulate gravel extraction, rock crushing or related operations. Any additional recommendations of the State Department of Fish and Wildlife as may be made at the time of issuance of State or Federal permits shall be regarded as conditions of approval for this application.
2. The applicant is to design and conduct the rock crushing and other operations in a manner that complies with all DEQ requirements for noise and dust control. The motor is to be enclosed and the rock crushing surfaces to be sound treated. An acoustical study is to be conducted by DEQ at the start-up of the project to verify that noise levels do not exceed 55 dBA at the property lines.
3. Rock crushing operations are to be limited to 7:00 a.m. to 5:00 p.m., Monday through Fridays, excluding Federal holidays.
4. This use permit will not be issued until the applicant's legal right to use the access road for this purpose has been proven to the satisfaction of the City Attorney. This is to be provided in the form of a written document that is recorded with Clackamas County. Under no circumstances is access to be taken through the City park. It should also be noted that DEQ will require dust suppression measures and private deed restrictions may limit the use of the access road.
5. Any structures proposes to be located on the subject property must meet the requirements of the Federal Flood Insurance Program and City construction standards. The applicant should note that planned mining operations will result in changes to the flood boundaries such that areas which were previously above the "100 year flood" elevation will be below that level and subject to different standards and requirements. Action by the Planning Commission approving this application also constitutes the approval of a Flood Plain Development Permit for mining. Ongoing compliance with the requirements of the Federal Flood Insurance Program shall be a continuing requirements of this permit.

6. Rock crushing operation is to be used only for material mined at the site. No material is to be brought in from other locations for crushing.

7. The road on the Torgeson property along the eastern boundary of the City park is to be used for limited purposes. Trucks coming to or from the rock crusher will not use this road.

8. Rocks stockpiled for crushing shall be piled to the north or east of the crusher to help buffer the crusher's operations from the nearby neighbors. These stockpiles to be at least 250 feet from the wetland area.

9. Rock washing and dust suppression equipment is to be designed and located in a manner that will prevent the entry of waste water into the Unnamed Creek or Molalla River.

10. Before moving the rock crushing equipment onto the site the applicants are to have the boundaries of the wetland on the property determined by the Division of State Lands. No gravel extraction or processing is to take place within 35 feet of the established wetland nor within 50 feet of the Molalla River.

11. A durable chain-link fence matching the one on the park's southern boundary shall be constructed by the applicant to separate the applicant's property from the City park.

12. The use of any different access road, which would direct traffic through any part of the City, is to require the prior approval of the Planning Commission acting on a modification of a Conditional Use Permit.

13. City staff will conduct periodic reviews of the operations at this site to determine whether the applicant is complying with conditions set by the City and other agencies. Findings of noncompliance or violation of the conditions of approval will be grounds for immediate revocation of City permits and approval for this project. Continued operation after the revocation of permit shall warrant the maximum punishment allowed by City ordinance. On-site inspections by the staff are to be conducted at least quarterly during the first year and every six months thereafter. The staff is to report its findings to the Commission in writing.

14. The applicant shall be required to file a written affidavit agreeing to comply with all conditions of approval established by the City of Canby and agreeing to immediately comply with any lawful order or direction of City staff in the administration or enforcement of these conditions.

15. This permit is to be valid for a period of one year. It shall be renewed by the Commission at the conclusion of that year, without fee and without conducting an additional public hearing, if it is found that all required conditions of approval have been

met. The public will be notified of the time and place when the Planning Commission conducts its review at the end of one year.

16. This approval is limited to rock crushing, screening, bleaching and related processing in conjunction with materials mined at the site and does not include the batching or blending of aggregate into asphaltic or portland cement concrete products.

17. Trucks leaving the site shall not be allowed to tow loaded trailers.

18. The applicants are to prepare and submit a detailed reclamation plan in conjunction with the wetland boundary determination to be completed by the Division of State Lands. This plan is to include information about the planting of native tree species along the perimeter of the wetland for wildlife enhancement. The Planning Commission shall retain the authority to approve, deny, or modify this plan. The rock crushing process is not to begin until the reclamation plan has been approved by the Planning Commission. Additional to the performance bond posted with DOGAMI, the applicants are to provide the City with a bond or other surety, to the satisfaction of the City Attorney, for the reclamation of the site. This bond or surety to add \$1,000 per acre being mined at one time. The reclamation is to be completed for each given area within one year of the completion of mining in that area. All disturbed acres are to be replanted. Slopes within the pond or ponds are not to exceed 2:1.

19. An operational water tanker truck is required to remain on the site at all times when the gravel extraction or crushing machines are in operation.

20. No water is to be pumped into the Unnamed Creek, the wetland area, and the Molalla River.

21. No mining shall be by the use of draglines.

22. No mining is to be conducted within 50 feet of the City park boundary.

23. The rock processing equipment is to be essentially the same as that shown in Rebuttal Exhibit I-A.

The Commission determined that the required standards and criteria had been met in the following ways:

A. Consistency with the Comprehensive Plan, the Land Development and Planning Ordinance, and other applicable policies.

1. The Environmental Concerns Element of the Plan contains language supporting aggregate removal operations.

2. The conditions of approval are intended to assure that environmental problems such as noise, air and water pollution have been mitigated.
3. The site is not suited to agricultural or residential use because of rocky conditions and potential flood hazards.
4. Rick crushing operations were found to be a conditional use as part of "aggregate removal operations" listed in the "H" overlay zone.

B. Suitability of site characteristics.

1. The conditions imposed should provide adequate protection of the wetland and creek on the property and the adjoining City park.
2. The natural features of the site (i.e., location in a flood plain and the existence of gravel deposits) lend themselves to an operation of the sort proposed.

C. Adequacy of Public Facilities and Services:

1. The only public facilities which are expected to be needed are adequate access and electrical service. It has been determined that electrical service is available to the site through an agreement with the Canby Utility Board.
2. Access issues have been adequately addressed by the conditions that:
 - a. The applicants must prove that they have the legal right to use the access road; and
 - b. The applicants are precluded from hauling materials from the site by trailer, thereby reducing the risk of an accident at the intersection of the private access road and the County road.
3. What waste products are produced as a result of the operation are expected to be sold and transported off the site or used in the reclamation process.

D. Impacts on surrounding properties.

1. It was well established through the hearing process that gravel extraction and processing operations are among the primary activities in this area. The Commission concluded that this operation will fit within that pattern of land use.
2. Conditions limiting noise levels, requiring compliance with State agency regulations and limiting the days and hours of operation.

3. No evidence was received that supported a finding that the approval of this application would substantially limit or preclude the use of surrounding properties in the manner allowed by current zoning.

These minutes have been recorded on tape.

Respectfully submitted,


Virginia Shirley, Secretary
Canby Planning Commission