

Canby Planning Commission  
Regular Meeting  
April 10, 1989

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

MEMBER ABSENT: Chairman Kahut

OTHERS PRESENT: City Attorney John Kelley, Public Works Director Wayne Klem, Secretary Virginia Shirley, Lee Shirley, Marv Dack, John Beck, Rod Beck, Bob Graham, John Shurts and Bob Traverso

The minutes of the April 6, 1989 meeting were corrected to read that Commissioner Meeuwsen expressed that the S. Ivy Street exit was not critical, not that it was a necessity. Commissioner Nicholson corrected paragraph 2 of page 2, line 7, to read: 2) The next phase . . . Delete Phase III. The minutes of March 27, 1989 and April 6, 1989 were approved as corrected.

Item #1: Appeal by Marv Dack of staff decision of April 4, 1986, recognizing nonconforming use status for an aggregate removal operation on property owned by John and Sandi Torgeson. The staff report was given by City Attorney John Kelley who presented into evidence: a letter from John Hammond dated April 1, 1986; Rock Excavation History presented with letter from John Hammond; letter from Bud Atwood dated April 4, 1986; Challenge from Pienovi; Challenge from Marv Dack; Request by Dack for appeal of administrative decision; letter from DeMar Batchelor, representing John Torgeson, dated April 4, 1989; letter in reply from City Attorney dated April 6, 1989; letter from John Shurts, representing M. Dack, dated April 10, 1989. After presentation of evidence and an explanation of each item, Mr. Kelley recommended that staff's decision be reversed and that Mr. Torgeson be advised that he cease operations until he had received a Conditional Use Permit to operate from this body.

The City Attorney was asked if he knew what property Claude Torgeson had owned. Mr. Kelley stated that his name had not shown up on any information the staff had been able to get. Commissioner Nicholson asked if Mr. Batchelor had received his letter as the turnaround time seemed pretty slim. Mr. Kelley stated there had been four days for the letter to go to Hillsboro.

Vice-Chairman Schrader opened the public hearing and called for proponents. Vice Chairman Schrader noted for the record that the applicant, John Torgeson, was not present for the public hearing. Vice-Chairman Schrader called for opponents. John Shurts, attorney representing Marv Dack, addressed the Commission stating he was going to go through some procedural positions. The letter from Mr. Torgeson's attorney which arrived this week. Attempting to withdraw his application is irrelevant as the application Mr. Dack is appealing is a final written order by the City. The decision of LUBA is that the decision is an appealable decision and that there should be a hearing on. The second item is the record. Mr. Shurts stated that he wanted to

add to what Mr. Kelley had said to the Commission. Mr. Shurts stated that everything that has come into the Planning Commission since the decision of LUBA in December 1988. He said there had been a wealth of information come before the Planning Commission in the last two years, and had become part of the record before the Planning Commission. Mr. Shurts stated that the appellant wished to appeal the decision but are in support of Mr. Kelley's report of this evening. Mr. Shurts expressed the opinion that the Pitts' letter was clear evidence and that he would expand on the property the Mr. Pitts owned in the area. Submitted a copy of the 1964 aerial photograph from the Clackamas County's Surveyor's office into the record. Submitted a copy of the Tax Assessor's map for the record. Submitted a 1965 photo into the record for comparison. Mr. Shurts also submitted into the record letters from Bill Stevens, John Gale, and Virgil Giger. Mr. Shurts stated that they had traced the deeds and Mr. Pitts bought the property early in the 1950's and sold it back to the Torgesons in 1964. Mr. Shurts then introduced Marv Dack.

Marv Dack, 175 S.W. 13th Avenue, stated that he bought his property in 1964 from Virgil Giger. Mr. Dack stated that while he lived there, beginning in 1964, he and his family walked all of the property. During the years he lived there, his children played on the bluff on his property and on the property now owned by the Torgesons. During the last two weeks, he and John Beck had been to Silverton and talked to Rodney Pitts. He reaffirmed that there wasn't any mining on the property during his ownership. Last week he contacted Mr. John Gale who submitted a letter for the record. Mr. Dack had also gone to see Virgil Giger he had also submitted a letter for the record. Mr. Dack stated that Bill Stevens had a conflict with the meeting date and so he also submitted a letter.

John Beck stated that he had moved to Canby in 1948 and built his home on S. Fir Street in 1959. Mr. Beck further stated that Mr. Pitts had given him permission to ride horseback, hunt deer, elk, birds and to fish from his property. Mr. Beck said that Mr. Atwood gave John Torgeson permission to remove 5,000 yards each year, but feels that Mr. Torgeson has far exceeded that figure.

Rod Beck, 1555 S. Fir Street, stated that this is the first time he has agreed to the City Attorney. Mr. Beck explained that he played cowboys and Indians on the property from 1959 to 1964, and there was no gravel removal during this time. As for the history submitted by Mr. Torgeson, Mr. Beck (attorney) stated that if one of the facts is flawed you are to consider everything suspect. Mr. Beck said in closing that he would ask that Mr. Torgeson be forced to do restoration of the property.

Bob Traverso, Parker Northwest Sand and Gravel, said that right after Bud Atwood wrote his staff decision he had spoken with Bud and questioned the legality of the decision. Mr. Traverso said that he thought Mr. Atwood was confused with regards to "grandfathering." Mr. Atwood told this would be alright because he was going to hold Mr. Torgeson to 5,000 yards per year anyway. Mr. Torgeson went to DOGAMI and got a permit and don't know how much he is removing now.

Vice Chairman Schrader closed the public hearing portion of the meeting as there were no further opponents.

After a short discussion, \*Commissioner Harmon moved to overrule the decision in 1986 that Mr. Torgeson has been running a nonconforming operation and that he should cease and desist due to all the information presented tonight. The motion was seconded by Commissioner McKibbin. City Attorney Kelley said the motion needed findings of fact and conclusion of law in order that it be a proper motion. Mr. Kelley said the Commission should probably take a short recess in order to list their findings of fact. The maker of the motion both withdrew the motion and Vice Chairman Schrader called for a 10-minute recess.

The meeting recess at 9:10 p.m. and reconvened at 9:22 p.m.

Commissioner Nicholson stated that the letter from John Torgeson's attorney stating they wished to withdraw the application did not seem to apply as John Torgeson has acted as though it was final and letter from John Hammond of April 1, 1986, to the City supports the belief that Mr. Torgeson considered it a final decision made at that time. We have had material that Mr. Torgeson has presented during the last two years in which he said that he had a right to be mining based on Bud Atwood's letter. Vice Chairman Schrader and Commissioner McKibbin both expressed agreement with the points Commissioner Nicholson had made.

Vice Chairman Schrader read the list of findings prepared by City Attorney John Kelley and the Conclusion of Law. Vice Chairman Schrader stated that the last thing the Commission had to concern themselves with was the condition of the land. City Attorney Kelley stated that the Commission first needed a motion to adopt the findings and conclusions.

Commissioner Harmon moved to overrule the staff decision made April 1, 1986, regarding recognizing the nonconforming use status for an aggregate removal operation on the property owned by Torgesons. This motion is based on documentation provided by City staff and read by Kurt Schrader Chairperson on April 10, 1989, which offers substantial proof that no aggregate removal operation was in place July 15, 1963, or at any time near this time period. He further moved to adopt the findings of fact as read by Vice Chairman Schrader which follows:

1. That the effective date of Zoning Ordinance No. 452 establishing an R-1 Zone for the subject property is July 15, 1963.
2. That on July 15, 1963, the subject property was owned by one Rodney Pitts.
3. That the property was sold to Dietz-Torgeson by contract dated July 1, 1964.
4. That while the property was owned by Rodney Pitts from 1953 to July 1, 1964, no gravel was extracted from the subject property.

5. That statements and testimony from several neighbors of the subject property indicates that no gravel was being extracted from the property during the 1950's and 1960's.

6. That the applicant has presented no evidence except for a written rock excavation history to support his position. The Planning Commission finds that evidence not credible at least in part.

7. Aerial photographs taken 9.23.64 and 2.20.65 show no discernible evidence of gravel extraction on the subject property.

#### CONCLUSION OF LAW

That the applicant did not have a lawful nonconforming use or vested right to operate a gravel extraction business as of July 15, 1963, and that the City Administrator's decision of April 4, 1986, is reversed.

The motion was seconded by Commissioner McKibbin and passed unanimously with Vice Chairman Schrader voting. City Attorney Kelley stated that written notice of the decision would be sent to the applicant and based upon the ordinance he will have fifteen (15) days to appeal the decision to the City Council. If he chooses not to appeal to the City Council, I would suggest that make that recommendation or if you want to wait until after the fifteen day appeal period is up, and make a recommendation City Council at your next meeting as to what you feel is the appropriate enforcement action should be in this situation.

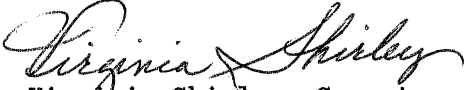
After a lengthy discussion, Commissioner Harmon stated that he felt the Commission should let the appeal period pass before making any statement regarding restoration. Commission Lindsay also felt the appeal period should go by before any further action is taken. There was much discussion regarding the appeal process which Mr. Torgeson could use and the recourse the City had in case of no appeal. City Attorney Kelley reminded the Commission that Mr. Torgeson could apply for a conditional use permit to remove gravel and that the Comprehensive Plan supports aggregate removal.

Vice Chairman Schrader asked the Commission if they wanted to wait until a later date regarding the restoration or if they wished to make some recommendation to the City Council at this time. Commissioner McKibbin stated that he would like to work on a reclamation plan which will take some time to figure out. Bob Graham stated that there were a number of options to come up with a reclamation plan and he has a good number of students and nursery people who would be willing to help. \*Commissioner Harmon moved to recommend to the City Council that restoration of the subject property (Torgeson property) be strongly considered and if, in fact, it is determined restoration needs to take place the City of Canby Planning Commission will be able to take an active position in terms of the actual plans that are used for full restoration of the damaged area on this property. The motion was seconded by Commissioner McKibbin and passed unanimously with Vice Chairman Schrader voting.

There being no further business to come before the Commission, the meeting was adjourned at 10:55 p.m.

This meeting has been recorded on tape.

Respectfully submitted,

  
Virginia Shirley, Secretary  
Canby Planning Commission