

In the matter of the request
of LEE ROY TOTTEN

CONDITIONAL USE PERMIT
CUP NO. 38-92

This matter came before Neil D. Smith, Hearings Officer for Klamath County, Oregon on 28 June 1991 in the County Commissioners' Meeting Room in Klamath Falls Oregon. The Klamath County Planning Department was represented by Mr. Kim Lundahl Senior Planner, the recording secretary was Ms. Karen Burg. The Klamath County Planning Department file and all the exhibits and other contents therein is incorporated by this reference into this matter.

The Hearing was held pursuant to notice given in conformity with the Klamath County Land Development Code and related Statutes and Ordinances. The applicant for the above referenced Conditional Use Permit, was present and testified. Applicant's information was received and found to be in favor of the permit.

There were witnesses in opposition whose testimony was taken and considered in this matter.

FINDINGS OF FACT

1. Those property descriptions and application information contained in exhibit A are hereby made a part of the record and by this reference incorporated herein as findings of fact.

2. The Applicant's requested Conditional Use Permit is permitted in this zone. There is presently in operation the same operation on the adjacent property which has been in operation for some two years.

3. The expansion of this enterprise will conform to all requirements consistent with Section 81.010 et seq of the LAND DEVELOPMENT CODE.

4. There was opposition to this application in the hearing.

5. There was a letter and oral testimony presented by Judy Urback (The letter is exhibit E) and set forth the position of Trendwest inc. in opposition. Regarding those objections, the following is found to be fact:

A. (1.a) There is undisputed testimony that the operation, insofar as equipment usage except for an asphalt plant will be identical to that used on the present site, the asphalt plant will be located at the present mining site NOT as applied for on this site.

B. (1.b) The applicant has testified that he is planning to drill a well for the purpose of supplying water for dust abatement and will coat the roadways which require it with special antidust compounds which meet environmental parameters.

C. (1.c) Exhibit D illustrates that the 50 foot strip has been in place in the same abutting operation and is below the below the ridge between the Trendwest properties and the operation. That exhibit also shows that Tax Lot 20000 "is not to be disturbed" where it tops the ridge.

D-1. (81.040[4]) The testimony clearly shows that there will be NO increase in traffic since this will merely be a continuation of the present operation which was permitted under CUP 89-64.

D-1. (81.040[5]) This question was addressed in B above.

D-1. (81.040[4]) There was testimony that two windows were broken possibly by blasting in the past, that testimony was given by Mrs. Fisher. The applicant unequivocally testified that any damage connected to the operation here paid to the person so damaged.

E. (81.050[G]) There will be NO MODIFICATION of hours of work in this operation from those set forth in the code.

F. (A.) There were no complaints regarding noise EXCEPT those regarding blasting. The applicant addressed that concern by stating that smaller and more frequent blasting could and would solve that problem.

G. (B.) The hours of operation are clearly set forth in the code as referred to above the mere showing of lights over a ridge is not a severe problem and would be for a limited time during permitted working hours.

G. (C.) The testimony of Mr. Totten is that there will be NO additional traffic from that presently using the roads, as noted above.

G. (D.) There is presently in place a well monitoring system as set up and chosen by a State agency.

G. (E.) There is a need for rock crushing facilities, according to the Applicant. He has assured the Hearings Officer in exhibit C page 2, items 12 & 13, that the entire operation will meet EPA noise limits.

G. (F.) The "concern" expressed here in legitimate but, in the present economic condition of the area what effect on land values due to the general economic conditions and this two year operation cannot be determined. That concern is addressed in exhibit C page 2 items 12 & 13.

6. Mr. Thompson's concerns seem to be that he doesn't wish to live near this quarry operation. He testified that he did not know of its existence until after he purchased his home. It appears that his main worry is that the operation will continue to grow until it becomes a nuisance.

7. There was testimony by Mr. Keith Rice regarding stream pollution from rock dust in this operation. Mr. Totten clearly stated that he had built sediment ponds to protect the stream and that he would add such devices as necessary to prevent damage to the waterway.

8. Ms. Karen DeVore expressed concern that there would be visual pollution if the operation were within sight of the "Greenacres" subdivision.

9. Ms. Sandra Fisher is concerned mainly about the noise pollution and well damage caused from this operation. Those concerns are addressed above and in the Order below.

10. There appears to have been some minor property damage in the past possibly connected to this site when it was operated by another person who is no longer connected to this quarry.

CONCLUSIONS

1. This application is NOT the commencement of a new enterprise in this location but rather, an extension of a presently working mining site.

2. The operation of this facility, if properly

conducted will not result in significant harm to adjacent property owners.

3. The extension of this operation from the original will have no different effect than the original.

4. The use conforms to LDC Section 56.030 (D).

ORDER

Based upon the findings herein the Conditional Use Permit number NO. 38-92 is granted under the following conditions.

1. The operation will strictly comply with ALL the conditions governing this facility in LDC Section 81.010 et seq

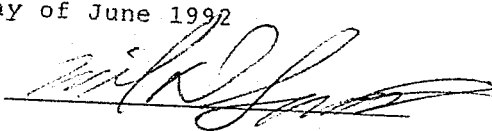
2. Any perceived violation of those conditions by those having "standing" as defined in the code will be immediately be investigated and if found to be a violation of this order will be remedied immediately by the operator of the facility.

3. The operator of the mine will indemnify any person who suffers property damage due to the operation herein permitted.

4. Any rock crusher operations will be restricted to the hours of 8 AM to 5 PM unless such operation does not interfere with the peaceful enjoyment of adjacent property owners. Rock crusher operation will be limited to Monday through Friday.

5. All other conditions set out in CUP 89-64 which do not conflict with this order will apply to this order.

DATED this 1st day of June 1992


Neil D. Smith, Hearings Officer

KLAMATH COUNTY LAND DEVELOPMENT CODE SECTION 24.007 PROVIDES:

" An Order of the Hearings Officer shall be final unless appealed within seven (7) days of its mailing by a party having standing in accordance with the procedures set forth in Chapter 3, Article 33 of this Code"

STATE OF OREGON: COUNTY OF KLAMATH: ss.

Filed for record at request of Klamath County the 2nd day
of June A.D., 19 92 at 2:44 o'clock P.M., and duly recorded in Vol. M92
of Deeds on Page 11901.

FEE none

Evelyn Biehn County Clerk

By Pauline Mueller

Return: Commissioners Journal