

WEEKLY BUSINESS SESSION – February 10, 2016

5:30 p.m. – Anne G. Basker Auditorium
600 N.W. Sixth Street, Grants Pass, OR 97526

Present: Cheryl Walker, Chair; Keith Heck, Vice-Chair; and Simon Hare, Commissioner; Wendy Watkins, Recorder

These are meeting minutes only. Only text enclosed in quotation marks reports a speaker's exact words.

Pursuant to notice through the media and in conformance with the Public Meeting Law, Cheryl Walker, Chair, called the meeting to order at 5:30 p.m.

Items discussed were as follows:

1. LEGISLATIVE ACTIONS:

- a. First Reading of Ordinance No. 2016-001; An Ordinance Amending the Comprehensive Plan of Josephine County (Ordinance 81-11 as Amended), from Forest to Residential and Amend the Zoning Map of Josephine County (Ordinance 85-1 as Amended), from Woodlot Resource (WR) to Rural Residential (RR5). The Subject Property is Identified in the Josephine County Assessor's Records as Map 35-06-11, Tax Lot (TL) 1600. The Property Owners are Donald and Danelle Marvin. (second reading scheduled for February 24, 2016)**

Commissioner Hare made a motion to read the Ordinance by Title only, seconded by Commissioner Heck. Upon roll call vote, motion passed 3-0; Commissioner Hare – yes, Commissioner Heck – yes and Commissioner Walker – yes.

Commissioner Walker read the Ordinance by Title only and introduced Dennis Lewis, Planning Director. Mr. Lewis explained this is the last step in the long process to make a land use change. He stated this is a 39 acre parcel and there was no opposition to completing the process.

Commissioner Walker opened Public Hearing for comment at 5:33 p.m.

No comments heard.

Commissioner Walker closed the Public Hearing at 5:34 p.m.

Commissioner Heck made a motion to approve the First Reading of Ordinance No. 2016-001 and set the Second Reading for February 24, 2016, seconded by Commissioner Hare. Upon roll call vote, motion passed 3-0; Commissioner Hare – yes, Commissioner Heck – yes and Commissioner Walker – yes.

2. ADMINISTRATIVE ACTIONS IN CONSIDERATION OF:

BOARD DECISIONS UNDER ADMINISTRATIVE ACTIONS WERE MADE AFTER PUBLIC COMMENT WAS RECEIVED

- a. Approval of Request for Position Change/Additions to Parks (Two original Position Requisition forms returned to Human Resources)**

Sarah Wright, Parks Director, explain she would like to retitle the Park Steward position and make it an Assistant Park Ranger and also add an additional Park Ranger position. JJ Scofield, Human Resources Director, provided this is a non-General Fund department and the positions will be funded by the fees and revenue generated by the Parks.

- b. Approval of Resolution No. 2016-017; In the Matter of O&C Litigation (One original Resolution filed with the County Clerk)**

Commissioner Hare stated the Josephine County Board of Commissioners is committed to supporting the Association of O&C Counties in their effort through litigation to achieve a balanced and workable resource management plan that conforms with all applicable federal and state laws.

3. REQUESTS/COMMENTS FROM CITIZENS: (Each person will be given three (3) minutes to speak)

Dale Matthews, Grants Pass, spoke about a piece of cardboard.

David Everist, asked the Board to send a coordination letter to the Inspector General's Office and submitted Notice to the Public (**Exhibit A**).

Clinton Chard, Josephine County, read and submitted the Bidding Process for Fielder Dam (**Exhibit B**).

Mark Seligman, Selma, spoke about being an advocate for cannabis.

Laurie Johannsen, Josephine County, spoke about her dissatisfaction with the water testing laboratory for Fielder Dam.

Viken Nokhoudian, Josephine County, read and submitted a threatening letter (**Exhibit C**).

Ray Smith, Cave Junction, spoke about House Bill 3453.

Barbara Matthews, Josephine County, read and submitted Public Business Meeting (**Exhibit D**).

Mark Collier, Josephine County, spoke about his dissatisfaction with the water testing laboratory for Fielder Dam and submitted email correspondences (**Exhibit E**).

Catherine Austin, Josephine County, spoke about House Bill 3453.

Larry Ford, Grants Pass, spoke in support of Resolution No. 2016-017.

Steve Rouse, Josephine County, read and submitted a Rogue Advocates letter regarding Land Use (**Exhibit F**).

Vivian Kirkpatrick-Pilger, Grants Pass, said she would like public comment to be extended beyond the three minutes.

Paul Diffendaffer, Grants Pass, spoke about his dissatisfaction with the \$77,000 invoice from the water testing laboratory for Fielder Dam.

Lisa Childs, Grants Pass, spoke about the Healthy Climate Bill she is lobbying for in Salem.

Peter Storm, Sunny Valley, said he was the one who filed the appeal on the Brimstone Natural Resource and urged the Board to send this to LUBA.

Board Discussion and Action – Agenda Item 2(a)

Commissioner Hare made a motion to approve Request for Position Change/Additions to Parks, seconded by Commissioner Heck. Upon roll call vote, motion passed 3-0; Commissioner Hare – yes, Commissioner Heck – yes, and Commissioner Walker – yes.

Board Discussion and Action – Agenda Item 2(b)

Commissioner Hare made a motion to approve Resolution No. 2016-017; In the Matter of O&C Litigation, seconded by Commissioner Heck. Upon roll call vote, motion passed 3-0; Commissioner Hare – yes, Commissioner Heck – yes, and Commissioner Walker – yes.

4. APPROVAL OF CONSENT CALENDAR:

- a. **Minutes** (*Draft minutes are available for viewing in the Board's Office*)
Executive Session (Open Session) – January 20, 2016
County Administration Workshop – January 21, 2016
Land Use Hearing – Andersen – January 25, 2016
AOC Legislative Update – January 25, 2016
General Discussion – January 26, 2016
Weekly Business Session – January 27, 2016
Executive Session (Open Session) – January 27, 2016
- b. **Coordination Letter to Federal Agencies regarding Participation in Federal Land Use Planning Efforts** (*One original letter mailed to Federal Agencies*)
- c. **Order 2016-004; In the Matter of the Re-Adoption of the Josephine County Investment Policy** (*One original Order filed with the County Clerk*)
- d. **Resolution No. 2016-011; In the Matter of Appointments to the Local Public Safety Coordinating Council (LPSCC)** (*One original Resolution filed with the County Clerk*)
- e. **Resolution No. 2016-013; In the Matter of an Appointment to the Josephine County Rural Planning Commission** (*One original Resolution filed with the County Clerk*)
- f. **Resolution No. 2016-014; In the Matter of an Appointment to the Josephine County Budget Committee** (*One original Resolution filed with the County Clerk*)

Board Discussion and Action:

Commissioner Hare made a motion to approve the Consent Calendar Agenda Items 4(a) through 4(f) as listed, seconded by Commissioner Heck. Upon roll call vote, motion passed 3-0; Commissioner Hare – yes, Commissioner Heck – yes, and Commissioner Walker – yes.

- 5. OTHER: (ORS 192.640(1))** “. . . notice shall include a list of the principal subjects anticipated to be considered at the meeting, but this requirement shall not limit the ability of a governing body to consider additional subjects.”)

None reported.

6. MATTERS FROM COMMISSIONERS:

None reported.

Weekly Business Session was adjourned at 6:50 p.m.


Wendy Watkins, Recorder

Entered into record:

- Exhibit A – Notice to the Public**
- Exhibit B – Bidding Process for Fielder Dam**
- Exhibit C – Threatening Letter**
- Exhibit D – Public Business Meeting February 10, 2016**
- Exhibit E – Email Correspondences**
- Exhibit F – Rogue Advocates' Letter**

WBS

2/10/16

David D Everist

PO BOX 1831 Jacksonville Oregon

17447 Thompson Cr Rd 97530

Applegate Oregon

Phone 541-531-7273

email address is ~~mineralaw@gmail.com~~
mineralaw@gmail.com

Notice to ~~all of courses~~ The Public

I been coordinating with
 Office Inspector General to BLM
 for investigation for appointing
 Trustee to valuable minerals
~~Deposit~~ Deposit Grant and
 Trustee for what reason
 Trustee was not appointed
 To the Trust of Grant of
 1872, 1876, 1866 minerals
 Trust when BLM formation ¹⁹⁴⁶
¹⁹⁴² To ~~manage~~ ~~manage~~ manage minerals
 Granted lands and grazing rights
 Granted lands by not having
 specific Name Trustee
 To Both These Trusts I ask
 county commission ~~to~~ to
 join me ^{and my} mining Districts
 To coordination and coordinate

as Local Governments

To appoint minerals Deposits
estate The Trustee to the
Grantee as 1872, 1870, 1866
acts by congress over the covenants
of The Granted Trust Estates

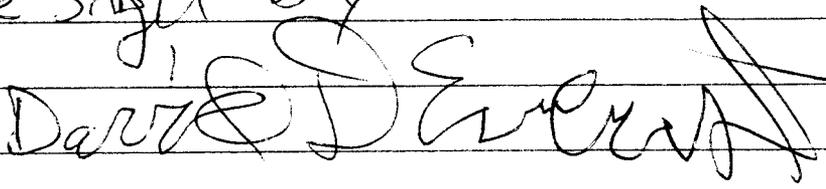
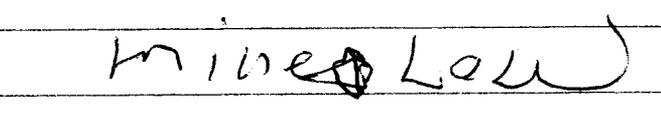
as I am Everist is to Everist
and Everist is as to Everist
is to Part of Rights as in
English The Bringer of
Rights as I was tried
a court of Equity when
my trial is to be in ~~the~~ court
of Rights Now I will
get the Trustee to defend
The Grantee and I will
be the bringer of Rights
forward when ~~the~~ ^{Trustee} ~~is~~ appointed
and comes forward to defend
The Grantee Sign by
and impose
The Trust 
and Audit of
accountable 
mine Law

Exhibit B

WBS

2/10/16

From: Kim Ramsay <kramsay@nrclabs.com>
Subject: **Bidding Process for Fielder Dam**
Date: February 10, 2016 3:15:09 PM PST
To: share@co.josephine.or.us, kheck@co.josephine.or.us,
cwalker@co.josephine.or.us
▶ 6 Attachments, 3.4 MB

Dear Commissioners,

I am writing to you to offer some clarification regarding the bidding process for the Fielder Dam project. On October 22nd at approximately 3:00 pm Neilson Research Corporation received a Request for Proposals from Josephine County Public Health Department. Please reference the PDF document named "RFP Sent to Neilson & Umpqua", this is the 1 and a half page document that we received. I also attached copies of actual bid documents that laboratories normally receive. As you can see this RFP was very vague and not a typical laboratory document.

The deadline for this proposal was Tuesday, October 27th 2015 at 5:00 pm. We were only given 3 business days to conduct an entire habitat survey and create a list of chemicals and materials to be sampled and analyzed. Eric Schaafsma was given 43 days and was allowed to create his own proposal based on his own study. Grants Pass Waterlab is not certified for sediment analysis, so the data that was initially gathered is not legally defensible.

Here are some of the items in the RFP that need your attention:

General Information and Scope of Work: Specifies certified water laboratories to monitor the effects of the removal of Fielder Dam at Evans Creek. To monitor the effects of the removal of a Dam, the county should have requested this from a certified hydrologist which is by definition: the science dealing with the occurrence, circulation, distribution, and properties of the waters of the earth and its atmosphere. Or a registered geologist, which is by definition: a person who specializes in geologic research and study.

A water laboratory by definition is: a building, part of a building, or other place equipped to conduct scientific tests on water. That being said, how would a certified water laboratory have the capabilities and certifications to conduct a habitat survey? This document also specified "certified", however the laboratory that was chosen to conduct such a survey does not have a certified hydrologist or geologist on staff, and was not certified for sediment or water under the Clean Water Act.

Submission of Proposals:

Item 3. List of chemicals and materials to be sampled and analyzed? Laboratories do not create this list, they are given this list by certified hydrologist or registered geologist.

Item 4. Whether the proposer has conducted any initial testing of the former Fielder Dam site or other dam removal sites. This appears to be written for Eric, however Neilson Research was the laboratory that has worked with most of the environmental firms on these types of projects because we are certified for sediment.

Thank you for your time. I hope this adds some clarification about the bidding processes for laboratories. If you have any further questions, please feel free to contact me. My cell number is 541-840-1850.

Kimberly Ramsay
Vice President



Environmental Testing Laboratory

245 South Grape Street
Medford, OR 97501
(541) 770-5678

400 SE G Street, Suite B
Grants Pass, OR 97526
(541) 479-4053

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G.P. Or.

MEDFORD OR 975
07 NOV 2015 PM 2 L



William N. Khouidian
912 SW River Oak Place
G. P. Or. 97526

9752632731 

Exhibit C
WBS
2/10/14

Così Vick,

*Sappiamo che avete parlato con molti, diffondendo
voci di questi uomini.*

custodi giuramento Bruce M. e Roy L.

Questo tipo di discorso deve fermarsi ora!

È necessario chiedere scusa a questi uomini.

*Diciamo che si sbaglia e questo non sarà mai
accadere di nuovo. Vogliamo sentire che tutto
questo parlare è chiarito.*

*Se si decide di continuare a parlare, Vi
dispiacerebbe vedere nulla sfortunato
accadere a voi o la vostra famiglia. Non si dovrebbe
parlare di questi uomini di nuovo.*

*Poi tutti noi possiamo dimenticare. Se lo dici a
qualcuno di questo, avremmo dovuto pagare
tu e tua madre una visita amichevole. Capisci?*

*Soggiorno sicuro, la famiglia della peace
Cosa Nostra*

Così Vick,

Sappiamo che avete parlato con molti, diffondendo voci di questi uomini custodi giuramento Bruce M. e Roy L. Questo tipo di discorso deve fermarsi ora. È necessario chiedere scusa a questi uomini.

Diciamo che si sbaglia e questo non sarà mai accadere di nuovo. Vogliamo sentire che tutto questo parlare è chiarito.

Se si decide di continuare a parlare, Vi dispiacerebbe vedere nulla sfortunato accadere a voi o la vostra famiglia. Non si dovrebbe parlare di questi uomini di nuovo.

Poi tutti noi possiamo dimenticare. Se lo dici a qualcuno di questo, avremmo dovuto pagare tu e tua madre una visita amichevole. Capisci?

Soggiorno sicuro, la famiglia della pace

Cosa Nostra

Google Translate (Italian):

So Vick,

We know that you have spoken to many, spreading rumors of these appoint guardians oath [Oath Keepers] M. Bruce and Roy L. This type of speech has to stop and I implored must apologize to appoint these.

Let's say that you are wrong and this will never happen again. We want to hear all this talk and clarified.

If you decide to keep talking, you would hate to see anything unfortunate happen to you or your family. We should not talk about these appoint again.

Then we can all forget. If you tell anyone about this, we would have to pay you and your mother a friendly visit. Do you understand?

Stay safe, the family of peace

Cosa Nostra

Barbara Le B. Matthews-Baskin
2525 Leland Road
P.O. Box 466
Sunny Valley, OR 97497

February 10, 2016

Commissioner Heck
Commissioner Walker
Commissioner Hare

Public Business Meeting February 10, 2016, Anne Basker Building 5:30pm

Dear Commissioners.

My name is Barbara Matthews and I live at 2525 Leland Road, Sunny Valley, Josephine County, Oregon.

I am attending and speaking at this public meeting to ask Mr. Hare and Mr. Heck a question:

Mr. Hare, how can you as a member of The Board of County Commissioners be qualified to vote on procedures addressing the same Brimstone application when YOU have already recused yourself on grounds of bias towards this land use issue?

Mr. Heck, How can you as member of The Board of County Commissioners be qualified to vote on procedures addressing the same Brimstone application when you were skillfully removed for bias by Mr. Hare from hearing this issue at the public meeting dated December 7, 2015?

In both cases this bias still remains an issue and is why YOU Mr. Hare suggested that LUBA should hear this case. Nothing has changed since December 7, 2015, you are both still considered bias, so end of discussion, let LUBA decide.

Respectfully Submitted By,



Barbara Le B. Matthews-Baskin
2/10/16

EXHIBIT D

WBS

2/10/16

From: mark c mcollier5895@gmail.com
Subject: Fwd: Simon....
Date: February 9, 2016 at 11:00 PM
To:

Exhibit E
2/10/16
WBS

Dear Simon,

We met with Diane Hoover and Brad Carlson this morning for 1.5 hours. They answered many questions and helped clarify the sequence of events. Diane and Brad were very forthcoming and supportive of our efforts.

Attached please find the Timeline of events.

One thing that jumps out is that Eric Schaafsma apparently waited a week before he gave notice to stop work to Shannon and Wilson. Thus Shannon & Wilson started their 30 day termination clock a week late, and the County should not be liable for any work done by them in that last week. I would think GP Water Lab is liable for that. Delay in notification is due to a lack of diligence by GP Water Lab, not the County. (I am presuming Eric Schaafsma was promptly notified by the County.)

Exactly what that amount overcharged that is unknown by us, because we did not get the invoices for that time period, and we were told by Diane that she did not have them either. They had been sent to "legal" as were other documents we wanted.

Things that we would likely request, and that County Health did not have are:

- 1) The proposal Schaafsma made to Diane Hoover at her request,
- 2) The invoice from GP Water Lab that includes the charges from Umpqua Research,
- 3) Any invoices from Shannon and Wilson or GP Water Lab after 12 December 2015,
- 4) Schaafsma's response to the RFQ.

I wonder if you could get them. I can put in an information request and pay for them, but it may be much quicker if you could request them. They may delay delivery to me.

The overall picture is that Joseph Rice and Allen Ehr et al managed to rile up the public enough that Diane was getting multiple calls and complaints. Schaafsma was involved early and had an unfair advantage in the bidding process. He had over 2 months to study it, while the other labs had only 3 business days, and no discussions as to what was needed or why. "Legal" was said to have written the RFQ, and that was not done correctly as the RFQ was vague and unworkable. This was not due to any ill intent on Diana or Brad's part - it was just how it was orchestrated around them. She relied on the scientific expertise and honesty of Eric Schaafsma, and was under pressure to act due to the orchestrated public demands.

If there had been more collaboration with other labs then this would have gone much differently. However, the other labs were not even aware of it until the last minute, and thus had no reasonable opportunity to collaborate as Schaafsma had done.

Furthermore, the representations made by Schaafsma about his samples in meetings to the Commissioners directly contradicts findings from the Oregon State Toxicologist. A written report from the toxicologist will be coming soon, but Diane and Brad told us what they had been told verbally.

Thus the problems are:

- 1) Improper bidding process managed/orchestrated primarily by entities external to the health dept. with a conflict of interest,
- 2) Billing past the termination date,
- 3) Failure to promptly notify Shannon & Wilson of termination,
- 4) Improper sampling and/or interpretation and thus false statements of fact early on by Schaafsma leading to a false conclusion by the Commissioners, and
- 5) Failure by Schaafsma to publicly dispel false rumors thus contributing by his inaction to a panic by the public.

This may form a basis for a renegotiation of the payments to GP Water Lab, and/or a basis of a complaint to the Oregon Attorney General.

If you could get those documents it would be very helpful. I am not sure how cooperative the legal office will be. If you cannot order them, then please let me know and I will quickly file the form to have them produced.

Best Wishes and Thanks for your Support, Laurie

From: Laurie Johansen <laurie@venture-technology.com>
Subject: **Outline of points**
Date: February 10, 2016 11:18:47 AM PST

Me

ACE Report 2014

OR Toxicologist says no threat. Not Al, not Fe, and not As. As is in the report that was published by Water Watch back in November 2014 and approved by the Army Corp long before the dam came down.

Quote Schaafsma.

Credit Dale we even have this. Been our eyes and ears with great determination.

Diane Hoover in Commissioners meeting 11/04/2015:

"Obviously Eric wrote this. He has a much higher level of education than I do. He uses big words." She is actually a PhD which is a much higher education level, but in administration, not science. She relied on his expertise.

Under pressure from public. Head of the JoCoOK still has alarming stuff at website. Quotes from Rice. damaging to mining. Head of OK making statements to incite panic.

Cite contract clause on reliance on expertise.

Contract not just terminated. Anulled based on (cite reliance part).

8. INDEMNIFICATION:

8.1 County has relied upon the professional ability, qualifications and training of Consultants as a material inducement to enter into this Contract.

5. PAYMENT:

5.1 On or before the 30th day following each quarterly test, Consultant shall submit to the Contract Administrator an invoice and request for payment including information on the work completed, dates that work was performed, and results obtained.

Legal says pay it? Says not to pay without report but says pay anyway? Says to pay it even though it was based on a false reliance?

Wally Hicks said he was a friend of Schaafsma, so he recused himself, but does that make any sense when it is passed to a subordinate who works with and for him?

Can't rely on the county legal so who is left to turn to? Atty general. State and federal. It's not my place to judge legally what is or is not a crime so the information is sent to them to decide. It is their job to look at this and act accordingly.

Word came from State Toxicologist all ok. What would a reasonable civic minded person do? Say Great News! Stop work and tell everyone else to stop work. That does not seem to be what he did based on the partial invoices we have.

Didn't turn off S&W for a week. Lack of concern for the public purse. S&W should have asked why this was being done in the first place instead of just taking the job and running up the bill. Early cheap results would have settled it. We did that.

9.3 Major Breach: Either party may declare a default immediately upon the occurrence of a material breach by the other party. A material breach is one that substantially impairs the contractual relationship of the parties to implement the Program or provide services in accordance with this Contract. Material breaches include, but are not limited to: A) Acts or omissions that jeopardize the health, safety or security of any person; B) Misuse of funds; C) Intentional falsification of records; D) Malfeasance by either party's officers, agents, or employees; E) Intentional refusal to comply with the provisions of this Contract; and F) A pattern of repeated non-material breaches.

→ Simon Hare has fought this with solid arguments and voted against it. In doing so he tried to protect the people of Josephine County and he defied the powerful Vice Chair of the Republican party which is Schaafsma. As far as I know he still has that position.

→ ~~I~~ get it. Schaafsma, the number 2 at the county Republican party wants to get paid, and Rice who spread the alarming claims of thousands over safety limits wants to be Commissioner.

Republican all my life. There are two pictures on the wall of the Josephine County Republican party. One is of Simon Hare and one is of Keith Heck. Keith Heck has backed this while Simon Hare has fought it. In a way this reflects the battle at the national level. We have some real Republicans fighting for the people's rights, and then we have some RINO's who are fast and loose with facts, fast and loose with the people's money.

Vik

Since we started this water investigation I have been harassed. □

Diane Hoover confirmation of SWATting attempt by Joseph Rice was confirmed Monday. Essentially an attempt on my life. Right after UCC. Details. Fortunately it didn't work.

Then there was an OK mafia style letter mentioning Roy L and Bruce M and referring to Oath Keepers, and threatening me and my mother unless I shut up. That was just too much so I turned that over to FBI.

In this very chamber one week ago the head of the Oath Keepers, Joseph Rice threatened to

From: Laurie Johansen <vti@4securemail.com>
Date: October 6, 2015 9:40:03 PM PDT
To: Viken Nokhoudian <vikman@silcom.com>
Subject: **Fwd: [Josephine County Politics] The shooting at UCC was tragic, no question. As...**

I was wondering why this was listed as posted by not just Rice, but Willie and Dale.
Am I understanding this right?

Begin forwarded message:

From: "Joseph Rice" <notification+kjdp1wp1d_5d@facebookmail.com>
Date: October 4, 2015 10:34:03 AM PDT
To: Josephine County Politics <662323590560650@groups.facebook.com>
Subject: **[Josephine County Politics] The shooting at UCC was tragic, no question. As...**
Reply-To: Reply to Comment <g+40po88lh000zg6pwado7007i4eh9jtkv000000qvf2uz30q46@groups.facebook.com>

Facebook

Joseph Rice, Willie Niall and Dale Matthews posted in Josephine County Politics.

Joseph Rice

October 4 at 10:33am

The shooting at UCC was tragic, no question. As expected, this has turned into a debate about guns. This is not a gun issue, it is a mental health issue. All the school shootings we have suffered as a nation were executed by individuals with mental health issues. No law abiding, sane individual would perform such a heinous act on innocent, unarmed people. What are we doing about individuals we know are dealing with mental health issues and could be a danger to themselves? In

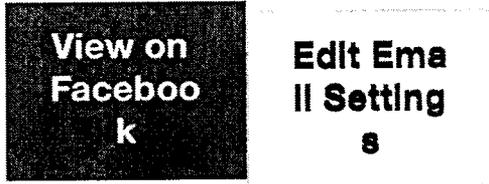
health issues and could be a danger to themselves? In the case of UCC, the shooter made his intentions well known prior to his cowardly act on a blog and was encouraged to do it by individuals with no regard for human life. No one on the blog came forward giving a warning or sounding an alarm, making them complicit in my opinion. As a society, we stumble around with political correctness, not wanting to offend or hurt someone's feelings or risk litigation at the expense of this type of event occurring. I have to ask myself, what if someone spoke out, what if he was not bullied, what if the family had been more involved in his life, what if.....would there be 9 dead, 7 wounded. I ask myself could this happen in Grants Pass? Of course it can, we are not immune.

Does an individual like the UCC shooter walk among us now, attending Rogue Community College? Yes he does.

Last November he attempted suicide and did not succeed because 11 community members intervened and stopped him. He has not sought out or received mental health treatment after being encouraged to do so. His behavior has continued to degrade, blaming others for his problems, transference of accountability, ill-rational actions and seeking attention. The authorities have been alerted, Josephine County Public Health and the Sheriff's Office. No action has been taken because "he has not done anything to harm others", yet they discount his attempt to harm himself. He is clearly a danger to himself and others, yet the system continues to fail, as it has in all the school shootings. Can I see into the future with the possible actions of this individual, no, but;

Yesterday he attended the gun show at the Josephine County Fair Grounds, handling and looking at guns, less that a year after his suicide attempt with no mental health treatment.....you connect the dots.

**L
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Reply to this email to comment on this post.

This message was sent to laurie@venture-technology.com. If you don't want to receive these emails from Facebook in the future, please [unsubscribe](#).
Facebook, Inc., Attention: Department 415, PO Box 10005, Palo Alto, CA 94303

From: "Coordinator" <coordinator@oathkeepersjoco.com>
To: "Viken Nokhoudian" <vikman@silcom.com>, "Viken Nokhoudian" <vikman@divisionsix.com>
Cc: member@oathkeepersjoco.com, "Dave Daniel" <DDaniel@co.josephine.or.us>, "Bill Landis" <blandis@grantspassoregon.gov>, "Diane Hoover" <dhoover@co.josephine.or.us>
Sent: Friday, October 9, 2015 2:26:08 PM
Subject: Interstate Battery Located

Viken,

At last night's monthly Oath Keeper general meeting your battery was located in the custody of George Backes, one of the Sugar Pine mine owners. George stated he called you directly, told you he had your battery and to come pick it up. You have known the location of the battery, acknowledge its location, yet have harassed our chapter leadership for its return. Logistics is in the process of obtaining your battery from George and will contact you to coordinate its return to you.

I sent an open invitation to you to attend the monthly meeting last night and present your alleged grievances, in the interest of transparency, to the general membership. You did not show and have chosen not to present them, therefore invalidating any further discussion on them. Stewart Rhodes is currently in Roseburg. In briefly speaking with him yesterday, he stated he has received your multiple emails and will be responding.

Last November you attempted to commit suicide. 11 members of the Josephine County Oath Keeper chapter responded to your cry for help and assisted you through that dark time. You

have not obtained any mental health care for that attempt, despite being encouraged to do so. You have recently been witnessed attending a local gun show, taking advanced weapons classes and hand to hand combat classes. We are less than a year from your attempt to end your life and you still have not received and refuse any type of clinical help. In your current mental state, as demonstrated by irrational, manic behavior which has continued to spiral downward, I believe you pose a danger to yourself and others in the community.

Again, please seek professional treatment for your suicide attempt last November so you may travel the path to back to sound mental health.

In liberty,

Joseph Rice
Coordinator - Oath Keepers of Josephine County
(541) 326-1911

www.oathkeepersjoco.com

This e-mail is for the sole use of the intended recipient(s) and contains information belonging to Oath Keepers of Josephine County, which is confidential and/or legally privileged. If you are not the intended recipient, you are hereby notified that any disclosure, copying, distribution or taking of any action in reliance on the contents of this e-mail information is strictly prohibited. If you have received this e-mail in error, please

From: vikman@silcom.com
To: "Dave Daniel" <ddaniel@co.josephine.or.us>
Cc: "Bill Landis" <blandis@grantspassoregon.gov>
Sent: Friday, October 9, 2015 4:20:58 PM
Subject: Joseph Rice's Email

To Sheriff Dave Daniel and Chief Landis

I was rather amazed to see the email from Joseph Rice this afternoon. He has been working on this particular false narrative for some time but I did not expect him to try to take it so far.

Rice has also been harassing other people who, like myself, left his Oath Keepers chapter in disgust and were critical of his actions.

I am available if you wish to have a sit-down chat to discuss this. If you wish, I can bring along some of the other people who have been subjected to similar harassment by Rice.

All documented evidence I have is available to you. Let's get this resolved.

Sincerely,
Viken Nokhoudian
541-295-7118

Exhibit F
WBS 2/10/16
February 10, 2016

Dear Josephine County Board of Commissioners,

On this February 10, 2016 I am appearing on behalf of Rogue Advocates before the Board at their weekly business meeting to address several points regarding the Brimstone Natural Resources application, the Writ of Mandamus filed by the applicant, and the LUBA appeal of the Brimstone Planning Director decision filed by Rogue Advocates (Petitioner/Intervenor). I am submitting Intervenor's Response *and Motion to Dismiss the Writ submitted to the circuit court February 4, 2016*, as well as a LUBA Notice, to ensure the Board has reviewed Intervenor's response.

We understand these issues are or will be addressed in executive session and perhaps a public meeting. We understand the writ has been submitted to the County to show cause why the writ is invalid per state laws, or in the alternative the Board may support a resolution in support of the writ to satisfy the court. We request your consideration of the following points:

- 1) At the December 7, 2015 appeal hearing of the Planning Director's Decision the hearing was unable to be held due to the recusal of Commissioner Hare for bias, and the exclusion of Commissioner Heck for ex parte contact that resulted in bias as voted by Commissioner Hare and Walker.
We question how a Board that lacked a quorum to hold a hearing on the application due to bias can then turn around and vote on a resolution to consider the writ for the same application without bias.
- 2) Commissioner Hare's recusal due to bias is not curable. Commissioner Heck's ex parte issue is curable as stated by Mr. Dole in his accusation.
- 3) The writ can not be supported by law if the applicant waived or extended the time required for the County to make it's final land use decision. Per Section 5.2 of the Planning Director's Decision the applicant did extend the timeline. Mr. Dole failed to identify this flaw in the writ submitted to the court. Therefore, pursuant to ORS 215.429(1), the applicant is barred from seeking a writ under ORS 34.130 to compel the County to issue approval of the application. (See Motion #7)
- 4) The County approval of the writ would violate substantive provisions of the Josephine County comprehensive plan or land use regulations. (See Motion #9) For these reasons the writ cannot lawfully be supported by the Board.
- 5) Commissioner Hare stated at the December 7, 2015 hearing that the next step would be review by LUBA. The County took no further action on the appeal, therefore the Planning Director's Decision became the final land use decision. Rogue Advocates appropriately filed a LUBA appeal #2015-101 on December 16, 2015, while the applicant subsequently filed the Writ on December 23, 2015. Review of the Brimstone application is within the

exclusive jurisdiction of LUBA pursuant to ORS 197.825(1). (See Motion #5, #11)

- 6) We understand Mr. Hicks has refused to produce the Brimstone record to LUBA in a timely manner. Mr. Hicks filed a Motion with LUBA on January 6, 2016 requesting a three month extension of time to file the record. LUBA denied Mr. Hicks request on January 15, 2016 and ordered the record to be submitted no later than January 29, 2016. No record has been filed, resulting *in the ongoing substantial prejudice of Petitioners rights. We request the Board to order Mr. Hicks to submit the record. (See LUBA Record Notice)*

We request the Board promptly review these documents in order to expedite the appropriate response to LUBA and the circuit court.

Sincerely,

Steve Rouse
President
Rogue Advocates
P.O.Box 433
Williams, Oregon 97544

Submitted by Rogue Advocates

1
2
3 **IN THE CIRCUIT COURT OF THE STATE OF OREGON**
4 **FOR THE COUNTY OF JOSEPHINE**

5
6 **STATE EX REL BRIMSTONE NATURAL**
7 **RESOURCE CO., an Oregon corporation,**

Case No. 15CV35359

8 Relator,

9 v.

10 **BOARD OF COUNTY COMMISSIONERS**
11 **OF JOSEPHINE COUNTY, OREGON, a**
12 **public body,**

INTERVENORS' RESPONSE TO
PETITION AND MOTION TO
DISMISS THE PETITION, OR IN
THE ALTERNATIVE, STAY THE
PROCEEDING AND
MEMORANDUM IN SUPPORT

13 Defendant,

14 **ROGUE ADVOCATES, an Oregon non-**
15 **profit membership corporation; and PETER**
16 **M. STORM, an individual.**

Intervenor-Defendants.

17 **MOTION TO DISMISS OR, IN THE ALTERNATIVE, STAY PROCEEDING**

18 In this land use matter, Intervenor-Defendants Rogue Advocates and Peter M. Storm
19 (collectively "Rogue Advocates") move the court for an order dismissing Relator Brimstone
20 Natural Resource Co.'s ("Relator") Petition for Alternative Writ of Mandamus because the court
21 lacks subject matter jurisdiction over Relator's petition (ORCP 21 A(1)) and because there is
22 another action pending between the same parties for the same cause (ORCP 21 A(3)). In the
23 event that the court determines that this matter is appropriately before the Court, Rogue
24 Advocates requests, in the alternative, that the court exercise its inherent authority to stay this

25 **MOTION TO DISMISS - 1**

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1 proceeding until the resolution of a related pending land use proceeding before the Land Use
2 Board of Appeals, the disposition of which may render this action moot.

3 **MEMORADUM IN SUPPORT OF MOTION**

4 Rogue Advocates respectfully requests that the court dismiss Relator's Petition for
5 Alternative Writ of Mandamus because this court lacks subject matter jurisdiction over this
6 mandamus proceeding. Jurisdiction over Relator's application is within the exclusive
7 jurisdiction of the Land Use Board of Appeals ("LUBA") because Rogue Advocates properly
8 filed a Notice of Intent to Appeal Defendant Josephine County Planning Director's decision on
9 the Permit on December 16, 2015, prior to Relator's initiation of this mandamus proceeding.
10 Additionally, Relator has not met the jurisdictional prerequisite of ORS 215.429(1) because
11 Relator granted Defendant an indefinite extension of the 150-day statutory deadline. These
12 arguments are discussed in detail below

13
14 Moreover, the court should dismiss the petition because "there is another action pending
15 between the same parties for the same cause." ORCP 21 A(3). "ORCP 21 A(3) applies '[i]f
16 entry of a judgment in...other pending actions would preclude [the] plaintiffs from asserting any
17 claims in the case at issue.'" *Eli v. Lampert*, 194 Or App 280, 285, 94 P3d 170 (2004), *rev den*,
18 338 Or 57 (2005) (quoting *Lee v. Mitchell*, 152 Or App 159, 166, 953 P2d 414 (1998)). In *Eli*,
19 the Court of Appeals explained that a case is properly dismissed under ORCP 21 A(3) when the
20 events involved in the other pending action constitute "the transaction at issue in the plaintiff's
21 claim." *Id.* Here, Relator seeks to compel Defendant Josephine County to approve the
22 application for the Permit that is currently on review before LUBA. The two actions involve the
23 same transaction and the same parties. An entry of judgment by LUBA in Rogue Advocates'
24 pending land use appeal would preclude Relator from asserting its claims in this mandamus
25 MOTION TO DISMISS - 2

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1 proceeding. *See Id.* Because the pending appeal before LUBA was filed earlier than this
2 proceeding, the court should dismiss Relator's later-filed petition for alternative writ of
3 mandamus.

4 In the alternative, Rogue Advocates requests that the court stay the proceedings in this
5 mandamus action in order to preserve judicial and party resources. On January 13, 2016, Relator
6 in this action filed a motion to dismiss the pending appeal before LUBA for lack of subject
7 matter jurisdiction. Resolution of that motion will determine whether Relator's petition for writ
8 of mandamus is properly before this court, or, if as Rogue Advocates argues, whether LUBA has
9 exclusive jurisdiction over Relator's application for the Permit. Thus, Rogue Advocates requests
10 that this proceeding be stayed until LUBA resolves the pending motion to dismiss and the parties
11 provide the court with a status update regarding that motion.

12 For the ease of the court's reading, Rogue Advocates provides additional support for its
13 motion as responses to the allegations in the petition for alternative writ of mandamus and the
14 facts set out in the alternative writ of mandamus:

15
16 1.

17 In response to Paragraph 1, Rogue Advocates admits that this is an action pursuant to
18 ORS 215.429 to compel approval of Relator's application for a conditional use permit for siting
19 of a rock crusher on lands in Josephine County (the Permit). The application also seeks approval
20 for aggregate mining and removal operations and associated uses such as haul roads, sound
21 barriers, and visual screening.

22 2.

23 In response to Paragraph 2, Rogue Advocates is without knowledge or information
24 sufficient to form a belief as to the truth of the allegations, and therefore denies them.

25 MOTION TO DISMISS - 3

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3.

1
2 In response to Paragraph 3, Rogue Advocates is without knowledge or information
3 sufficient to form a belief as to the truth of the allegation in the first sentence of Paragraph 3, and
4 therefore denies it. Rogue Advocates admits that Josephine County deemed the application for
5 the Permit complete on April 17, 2015.

6
7 4.

8 In response to Paragraph 4, Rogue Advocates disputes the allegation. On July 29, 2015,
9 the Josephine County Planning Director approved the application with certain approval
10 conditions.

11
12 5.

13 In response to Paragraph 5, Rogue Advocates admits that on August 11, 2015, Intervenor
14 Peter M. Storm filed an appeal of the planning director's approval. Rogue Advocates disputes
15 the allegation that no final land use decision has been made by Defendant on the application.
16 Defendant, Josephine County set a hearing for Intervenor Storm's appeal for December 7, 2015
17 before the Josephine County Board of Commissioners. Intervenor Storm and Intervenor Rogue
18 Advocates attended the December 7, 2015 hearing prepared to present oral and written testimony
19 to the Board of Commissioners explaining why the application for the Permit does not comply
20 with the substantive provisions of Defendant's comprehensive plan or land use regulations.
21 However, on the date of the hearing, the Board of Commissioners did not hear the appeal
22 because Commissioner Heck was voted out for bias and Commissioner Hare, after voting in
23 favor of the bias charge against Heck, recused himself resulting in a lack of quorum to decide the
24 appeal. Commissioner Hare stated that the appropriate next step for the application was review
25 by the Land Use Board of Appeals. Exhibit A. Defendant took no further action on the appeal
MOTION TO DISMISS - 4

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1 or application. Therefore, the July 29, 2015 Planning Director decision became Defendant's
2 final land use decision on the application on December 7, 2015. On December 16, 2015, Rogue
3 Advocates filed a Notice of Intent to Appeal the Planning Director's decision to the Land Use
4 Board of Appeals. Exhibit B.¹ Relator subsequently filed the petition for alternative writ of
5 mandamus before this Court on December 23, 2015. On December 28, 2015, Relator filed a
6 motion to intervene in the LUBA appeal. Review of Relator's application is within the exclusive
7 jurisdiction of LUBA pursuant to ORS 197.825(1); therefore, this Court lacks subject matter
8 jurisdiction over Relator's petition for alternative writ of mandamus. ORCP 21 A(1).
9 Additionally, the pending LUBA appeal constitutes a pending action between the same parties
10 for the same cause as the two actions arise out of the same transaction; thus, this action should be
11 dismissed on that basis. ORCP 21 A(3); *Eli v. Lampert*, 194 Or App 280, 285, 94 P3d 170
12 (2004), *rev den*, 338 Or 57 (2005).

14 6.

15 In response to Paragraph 6, the statute speaks for itself and no further response is
16 required.

17 7.

18 In response to Paragraph 7, Rogue Advocates admits that more than 150 days have
19 elapsed since Relator's application was deemed complete by Josephine County. Rogue
20 Advocates disputes that Relator has not waived or otherwise extended the time required for
21 Defendant to make its final land use decision on the Permit. As stated in Section 5.2 of
22 Defendant's Planning Director's decision, Relator and Relator's counsel "verbally assured the
23

24 ¹ Rogue Advocates' LUBA appeal was assigned LUBA Case No. 2015-101 and can be referred
25 to as *Rogue Advocates, et al. v. Josephine County, et al.*, LUBA No. 2015-101.

1 Planning Director that they would allow an extension for as long as the process would take.”

2 Exhibit C at 11. Therefore, pursuant to ORS 215.429(1), Relator is barred from seeking a writ of
3 mandamus under ORS 34.130 to compel Defendant to issue approval of Relator’s application for
4 the Permit.

5 8.

6 In response to Paragraph 8, Rogue Advocates admits that Relator’s application for the
7 Permit seeks a “land use decision” as that term is defined by ORS 197.015(10) and as used in
8 ORS 215.427 and 215.429.

9 9.

10 In response to Paragraph 9, Rogue Advocates disputes that approval of the Permit would
11 not violate any substantive provision of Defendant’s comprehensive plan or land use regulations
12 for the following reasons:

13 Relator’s application for the Permit seeks to conduct aggregate removal of historic mine
14 tailings as well as crushing and processing operations and accessory uses, including a haul road
15 and sound barrier construction, on Tax Lot 1600. Tax Lot 1600 is zoned for Exclusive Farm
16 (EF) use. Pursuant to ORS 215.283(2)(b), ORS 215.298, and Josephine County Rural Land
17 Development Code (RLDC) § 64.040.R, mining and aggregate uses may only be allowed on
18 Exclusive Farm use zones through a conditional use application review, RLDC Article 45.
19 However, the application for the Permit does not seek conditional use approval for aggregate
20 crushing operations on the Exclusive Farm parcel, TL 1600. Both the Oregon Department of
21 Geology and Mineral Industries (DOGAMI) and the Department of Land Conservation and
22 Development (DLCD) – the state agencies responsible for mining and land use regulation –
23
24

1 agree that the removal of historic mine tailings fits within the statutory definition of “mining” in
2 ORS 215.298 and ORS 517.750. Exhibit D.

3 Pursuant to RLDC § 64.040.R and Josephine County Ordinance 2006-002, an application
4 to mine aggregate sites zoned for Exclusive Farm use may only be approved if the site is listed
5 on the Josephine County Inventory of Significant Aggregate Sites. See Ordinance 2006-
6 002(1)(E)(6)(a). Tax Lot 1600 is not listed on Defendant’s Inventory of Significant Aggregate
7 Sites. Additionally, a conditional use permit for aggregate mining in EF zones shall not allow
8 mining of more that 500,000 tons (~ 345,000 cubic yards) of aggregate material. Ordinance
9 2006-002(1)(E)(6)(b). Tax Lot 1600 contains approximately 2 million cubic yards of aggregate
10 over five acres. Relator has already disturbed approximately 3.25 acres of ground on Tax Lot
11 1600 per DOGAMI and has verbally indicated to Defendant that it intends to remove mine
12 tailings from Tax Lot 1600. See Ex. C at 10. Both DOGAMI and DLCD have taken the position
13 that Tax Lot 1600 must be included in Relator’s application for aggregate removal and crushing.

14 *Id.*

15
16 Moreover, whether or not Relator removes and processes aggregate from the mine
17 tailings on Tax Lot 1600, the accessory uses for the aggregate mining operations on Tax Lot 101
18 that will take place on Tax Lot 1600 for transport of aggregate on a haul road, construction of the
19 haul road and construction of sound barriers also require approval as mining uses on an
20 Exclusive Farm use parcel under Defendant’s conditional use review criteria. See *Bowman Park*
21 *v. City of Albany*, 11 Or LUBA 197 (1984); *Roth v. Jackson County*, 38 Or LUBA 894 (2000);
22 *Wilson v. Washington County*, LUBA No. 2011-007 (May 17, 2011). The application for the
23 Permit does not comply with the requirements for conditional use approval of aggregate crushing
24

25 MOTION TO DISMISS - 7

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1 or mining in an Exclusive Farm use zone. Approval of the Permit would violate ORS 215.298,
2 RLDC § 64.040.R., and Ordinance 2006-002. ORS 215.429(5).

3 10.

4 In response to Paragraph 10, Rogue Advocates disputes that Relator has complied with
5 all legal requirements precedent to the relief requested in the petition and that no facts exist to
6 excuse Defendant's approval of the permit. As stated above in Paragraph 7, Relator granted
7 Defendant an extension of the 150-day deadline and thus fails the jurisdictional criteria of ORS
8 215.429(1). Additionally, as discussed in Paragraph 9 above, Defendant is excused from
9 approval of the permit because such action would violate substantive provisions of Defendant's
10 comprehensive plan or land use regulations. Rogue Advocates disputes that Relator is without a
11 plain, speed or adequate remedy in the ordinary course of law. Relator's application for the
12 Permit is pending review before LUBA; LUBA's review will provide Relator with a plain,
13 speedy and adequate remedy in the ordinary course of law. See ORS 197.830 (setting strict
14 deadlines for LUBA review of land use decisions to ensure speedy resolution of development
15 applications).

17 11.

18 In response to Paragraph 11, Rogue Advocates disputes that this court has exclusive
19 jurisdiction over Relator's application pursuant to ORS 215.429(2). Rogue Advocates filed a
20 Notice of Intent to Appeal Defendant's Planning Director's decision to LUBA on December 16,
21 2015, prior to the date Relator filed its petition for alternative writ of mandamus before this
22 court. Ex. B. ORS 197.825(1) provides LUBA with exclusive jurisdiction "to review any land
23 use decision or limited land use decision of a local government." Additionally, ORS 215.429(1)
24 permits an applicant to file a petition for writ of mandamus in the circuit court, "except where an
25 MOTION TO DISMISS - 8

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1 applicant requests an extension under ORS 215.427....” Relator granted Defendant an extension
2 pursuant ORS 215.427(1) “for as long as the process would take.” Ex. C. at 11. Therefore, this
3 court lacks jurisdiction over Relator’s petition for alternative writ of mandamus.

4 12.

5 In response to Paragraph 12, Rogue Advocates disputes that Relator is entitled to seek
6 recovery of its reasonable attorney fees, costs and disbursements pursuant to ORS 34.210.

7 13.

8 In response to Paragraph 13, Rogue Advocates disputes that Relator is entitled to apply
9 for a writ of mandamus with the court to compel Defendant to issue approval of the Permit.
10 Rogue Advocates has demonstrated that the approval would violate substantive provisions of
11 Defendant’s comprehensive plan or land use regulation as defined in ORS 197.015, that
12 Relator’s petition for alternative writ of mandamus to this court is barred for lack of subject
13 matter jurisdiction and that there is another action pending for the same cause between the same
14 parties. ORS 215.429(5); ORCP 21 A(1); ORCP 21 A(3). Therefore, Relator is not entitled to
15 the writ of mandamus.
16

17
18 WHEREFORE, Rogue Advocates respectfully requests the court dismiss Relator’s
19 Petition for Alternative Writ of Mandamus or, in the alternative, stay the proceedings in this
20 action pending resolution of the motion to dismiss on review before the Land Use Board of
21 Appeals in *Rogue Advocates, et al. v. Josephine County, et al.*, LUBA No. 2015-101, the
22 pending related action between the same parties.

23 //

24 //

25 MOTION TO DISMISS - 9

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1 Respectfully submitted, this February 4, 2016.

2
3 /s/ Maura C. Fahey

4 Maura C. Fahey, OSB # 133549
5 Ralph O. Bloemers, OSB # 984172
6 Crag Law Center
7 917 SW Oak St., Suite 417
8 Portland, OR 97205
9 maura@crag.org
10 Tel: (503) 52-2722

11 Of Attorneys for Intervenor-Defendants

12 **CERTIFICATE OF COMPLIANCE WITH UTCR 5.010**

13 Before filing this motion, counsel to Rogue Advocates conferred with counsel for
14 Defendant Josephine County on February 1, 2016 concerning the issues in dispute. Counsel for
15 Rogue Advocates attempted to confer with counsel for Relator by telephone on February 2, 2016
16 and again by follow-up e-mail on February 3, 2016; counsel for Relator did not respond to the
17 requests to confer.
18
19
20
21
22
23
24

25 MOTION TO DISMISS - 10

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BEFORE THE LAND USE BOARD OF APPEALS
OF THE STATE OF OREGON

1
2
3
4
5 ROGUE ADVOCATES, and)
6 PETER STORM,)
7)
8 Petitioners,)
9)
10 vs.)
11)
12 JOSEPHINE COUNTY,)
13)
14 Respondent,)
15)
16 and)
17)
18 BRIMSTONE NATURAL)
19 RESOURCE, CO.,)
20)
21 Intervenor-Respondent.)
22 _____)

LUBA No. 2015-101

NOTICE REGARDING
TRANSMISSION OF RECORD
AND REQUEST TO RESOLVE
MOTION TO DISMISS

NOTICE

25 Petitioners hereby provide notice to LUBA that on February 4, 2016,
26 counsel for Respondent Josephine County notified counsel for Petitioners that the
27 county does not intend to transmit the record in this proceeding. See Declaration
28 of Maura C. Fahey.

29 On January 6, 2016, Respondent Josephine County filed a motion for
30 extension of time to file the record for this appeal requesting a three-month
31 extension of time. The reason Respondent gave for the requested extension was

1 because a mandamus proceeding had subsequently been filed, pursuant to ORS
2 34.210 and ORS 215.429, in the Josephine County circuit court, *State Ex Rel*
3 *Brimstone Natural Resource Co. v. Board of County Commissioners of Josephine*
4 *County, Oregon*, Case No. 15CV34359, to compel approval of the application for a
5 conditional use permit that is at issue in this appeal. *See* Respondent's Mot. for
6 Extension of Time at 1. Petitioners opposed Respondent's motion on the basis that
7 such a delay would substantially prejudice Petitioners' rights and that the
8 subsequently filed mandamus proceeding did not justify a delay of this appeal.

9 On January 15, 2016, LUBA denied Respondent's motion for extension of
10 time, essentially rejecting Respondent's justification for needing additional time to
11 file the record. *See* LUBA No. 2015-101, Jan. 15, 2016 Order at 2. LUBA
12 ordered Respondent to compile and transmit the record within 14 days of its order
13 – no later than January 29, 2016. *Id.*

14 After verifying with LUBA on February 3, 2016 that the record for this
15 appeal had not been received, on February 4, 2016, counsel for Petitioners
16 contacted counsel for Respondent to inquire on the status of the record. *See* Fahey
17 Dec. At that time, Respondent notified Petitioners that it does not intend to
18 transmit the record in this case because it wants to wait and see how the pending
19 mandamus proceeding plays out. *Id.* This is the precise reasoning that LUBA has
20 already rejected in denying Respondent's motion for an extension of time to file

1 the record. Respondent indicated to Petitioners that it would only produce the
2 record if and when the Josephine County Circuit Court determined that it does not
3 have jurisdiction over the mandamus proceeding.¹ *Id.* Respondent's recalcitrance
4 is substantially prejudicial to Petitioners' rights; Respondent is essentially taking
5 this matter into its own hands to impose a stay of these proceedings on its own
6 accord in direct defiance of LUBA's order.

7 **REQUEST TO RESOLVE MOTION TO DISMISS**

8 In the January 15, 2016 Order, LUBA stated that it could not resolve
9 Intervenor's pending motion to dismiss this appeal without the record because

10 "at present we have only the parties' descriptions of what occurred at
11 the December 7, 2015 board of county commissioners' hearing and
12 we cannot be sure that the county may not have taken additional
13 actions following the December 7, 2015 hearing which may have
14 some bearing on the jurisdictional question."

15 LUBA No. 2015-101, Jan. 15, 2016 Order. However, on January 29, 2016, all
16 parties in this proceeding provided the Board with a joint notice, which stipulated
17 that Respondent has taken no further action on the application since the failed
18 December 7, 2015 hearing. *See Joint Notice Regarding Status of Mandamus*
19 *Proceeding*, Jan. 29, 2016. Additionally, to clarify for the Board the procedural

19

¹ Respondent later provided additional reasoning for its failure to produce the record due to limited staff availability and budgeting for overtime costs. Respondent stated that it would produce the record once it was finalized but could not provide any estimate of when that might be. *See Attachment to Declaration of Maura C. Fahey.*

1 question of what occurred at the December 7, 2015 hearing, Petitioners attach to
2 this Notice the minutes of that hearing as approved and published by the Josephine
3 County Board of Commissioners on January 6, 2016. Attachment. In the minutes
4 it is clear that the Board of Commissioners intended the failed hearing to be their
5 *final action on the application and that the appropriate next step was review before*
6 *LUBA. See Attachment at 2 (“[Commissioner Hare] felt the parties would be best*
7 *served by referring the matter to Land Use Board of Appeals.”)*. Based on the
8 parties’ January 29, 2016 Joint Notice and the minutes of the December 7, 2015
9 hearing, there is no question that Respondent has taken no further action on the
10 application.

11 Respondent’s failure to produce the record in compliance with LUBA’s
12 order and its refusal to transmit the record until the pending mandamus proceeding
13 is resolved is substantially prejudicing Petitioners’ rights in this prior filed appeal.
14 Respondent is seeking to impose a de facto stay of this appeal to allow the
15 subsequently filed mandamus proceeding to move forward, forcing Petitioners in
16 this appeal to bear the burden of proof before the circuit court and to litigate on the
17 Applicant’s terms. Respondent is improperly attempting to circumvent the
18 statutory land use process and LUBA’s exclusive jurisdiction over land use
19 decisions under ORS 197.825. Accordingly, Petitioners respectfully request that
20 the Board resolve the pending motion to dismiss without the complete record,

1 based on the information provided herein and in the parties' Joint Notice.
2 *Resolution of the motion to dismiss in this appeal could render the pending*
3 *mandamus proceeding moot and would, hopefully, resolve Respondent's refusal to*
4 *compile and transmit the record.*

5 *Dated this 5th day of February 2016.*

6 Respectfully Submitted,

7 

8 _____
9 Maura Fahey, OSB No. 133549

10 Crag Law Center

11 *Of Attorneys for Petitioners*

12
13

**APPROVED ON JANUARY 6, 2016
BY THE BOARD OF COUNTY COMMISSIONERS
AT THE WEEKLY BUSINESS SESSION**

LAND USE HEARING – Brimstone – Monday, December 7, 2015 9:00 a.m.
Anne Basker Building
600 NW 6th Street, Grants Pass

Present: Commissioners Keith Heck, (Cherryl Walker arrived at 9:02 a.m.) and Simon Hare
Attending: Grace Zilverberg and Dennis Lewis, Planning Department; Linda McElmurry,
Recorder

These are meeting minutes only. Only text enclosed in quotation marks reports a speaker's exact words.

Prior to this meeting **Exhibits 1 – 8** were accepted into the record. Pursuant to notice through the media and in conformance with the Public Meeting Law, Keith Heck, Chair called the meeting to order at **9:00 a.m.** Items discussed were as follows:

1. LAND USE HEARINGS: (Hearings are conducted in accordance with Josephine County Land Use Hearing Rules, a copy of which is available from the Recorder.)

An Appeal of the Planning Director's decision to approve an aggregate mine operation to crush mine tailings left in the old Grave Creek channel in the 1930's. Appellant: Peter Storm; Applicant/Property Owner: John West; Property Location: 291 Dog Creek Road; Legal Description: 34-06-08 Tax Lot 101

Commissioner Heck read the De Novo Hearing Rules and then asked if there were any objections to the Board of Commissioners hearing the case. There were two.

Wally Hicks, Legal Counsel, explained there were two challenges and it was up to the Board on how they were addressed. He submitted **Exhibit 9 – Excerpts from Rural Land Development Code Sections 080 and 090** of the RLDC. One objection was that Commissioner Heck had Ex Parte contact and was biased and the other objection was that Commissioner Hare was biased. Wally advised that the Commissioner that was challenged on bias may submit an oral or written statement which would then be voted on by unchallenged members. Wally advised that *regarding the Ex Parte contact, Commissioner Heck needs to make a statement after the challenge has been articulated.* Commissioner Heck read **Exhibit 4 – Heck Challenge** aloud to the Board. Commissioner Heck advised the Board that he did receive phone calls and did drive up to Dog Creek Road but he did not talk to anyone there. Wally advised the Board that a site visit is Ex Parte contact and Commissioner Heck needed to submit his statement for the record which he did as **Exhibit 10**. Wally explained to the Board the possible scenarios and asked them to decide whether Commissioner Heck could participate, and noted there was an argument that Commissioner Hare could vote as he also was being challenged. Commissioners Walker and Hare said they also received emails from residents but they were not responded to. Commissioner Heck said he read them but that did not necessarily mean he was prejudiced. Wally requested the Board make sure all communications come into the record the Planning Department.

LAND USE HEARING – Brimstone – Monday, December 7, 2015 9:00 a.m.

Page 2

Jim Dole, 1246 NE 7th Street said the Ex Parte communications were curable as long as there was disclosure to the applicant. Their concern was specifically the emails listed as Exhibits 1 G67 and 68 and that Commissioner Heck did not disclose the nature and intent of his site visits.

Point of Order - Steve Rouse, Rogue Advocates, said Commissioner Heck's visit was due to code violations and were not relative to this application.

Commissioner Hare said the goal was to achieve the best possible outcome and he felt there *was hesitation on both sides now since both have issued a challenge. He stated after the last application was denied he met with the applicants and had communication with Planning. He felt the parties would be best served by referring the matter to Land Use Board of Appeals. He stated he was going to vote to remove Commissioner Heck and then recuse himself.*

Commissioner Walker agreed even if there were no Ex Parte contact the challenges open the matter to an appeal regardless of the decision.

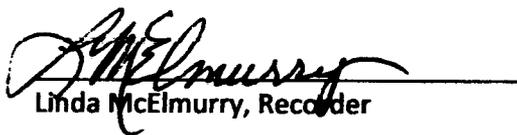
Board Discussion & Action:

Motion was made by Commissioner Hare to disqualify Commissioner Heck, seconded by Commissioner Walker. Upon roll call vote, motion carried 2 – 0; Commissioner Hare – yes and Commissioner Walker – yes.

Commissioner Hare read **Exhibit 11** and then recused himself saying he was a proponent of using tailings for aggregate as he felt it led to restoration of historic mining sites.

Wally notified the Board that with no quorum this was a failed proceeding.

Having no quorum the hearing was adjourned at 9:44 a.m.


Linda McElmurry, Recorder

Exhibits submitted:

Exhibit 9 – Hicks

Exhibit 10 – Heck

Exhibit 11 – Hare

Exhibit 12 – Speakers List in Favor

Exhibit 13 – Speakers List in Opposition

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CERTIFICATE OF FILING

I hereby certify that, on February 5, 2016, I filed the original and one copy of this **Notice Regarding Transmission of the Record and Request to Resolve Motion to Dismiss** with the Land Use Board of Appeals, at DSL Building, 775 Summer Street NE, Suite 330, Salem, Oregon 97301, by first class mail.

DATED: This 5th day of February 2016

By: 
Maura C. Fahey
Crag Law Center

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CERTIFICATE OF SERVICE

I further certify that, on February 5, 2016, I served a true and correct copy of this **Notice Regarding Transmission of the Record and Request to Resolve Motion to Dismiss** on the other parties to this appeal, by first class mail as follows:

Wally Hicks
Josephine County Legal Counsel
500 N.W. Sixth Street, Department 13
Grants Pass, OR 97526

James Dole
Watkinson Laird Rubenstein, P.C.
1246 N.E. Seventh Street, Suite B
Grants Pass, OR 97526

DATED: This 5th day of February 2016

By: 
Maura C. Fahey
Crag Law Center