**MINUTES**

**UMATILLA COUNTY PLANNING COMMISSION**

**Meeting of Thursday, May 24, 2018, 6:30 p.m.**

**Umatilla County Justice Center, Media Room**

**4700 NW Pioneer Place, Pendleton, Oregon**

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**COMMISSIONERS**

**PRESENT:** Suni Danforth, Chair, Tammie Williams, Tami Green, Cecil Thorne, Hoot Royer

**ABSENT:** Gary Rhinhart, Vice Chair, Don Wysocki, Molly Tucker Hasenbank

**STAFF:** Bob Waldher, Planning Director, Carol Johnson, Senior Planner, Jacob Potterf, Planner/GIS, Tierney Dutcher, Administrative Assistant, Gina Miller, Code Enforcement Coordinator

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*NOTE: THE FOLLOWING IS A SUMMARY OF THE MEETING. RECORDING IS AVAILABLE AT THE PLANNING OFFICE*

**CALL TO ORDER**

Chair Danforth called the meeting to order at 6:30 p.m. and read the Opening Statement.

**MINUTES**

Chair Danforth asked the Planning Commission to review the meeting minutes from March 22, 2018. Commissioner Green stated that she did not make the comment during deliberation noted on page 12, “Commissioner Green stated that she wishes she could add a condition for the road, but that is ODOT’s jurisdiction and the Planning Commission has no power over the road”. Commissioner Williams acknowledged that she made the statement. That change will be made in the final draft of the minutes. Commissioner Green moved to adopt the minutes with the noted change. The motion was seconded by Commissioner Thorne. Motion carried by consensus.

**NEW HEARING**

**CONDITIONAL USE PERMIT #C-1301-18, CENTRAL WASHINGTON ASPHALT, INC., APPLICANT, JAMES SPENCE PROPERTIES, INC., OWNERS.**

The applicant requests an amendment of one of the conditions of approval in Conditional Use Permit #C-333 (1984) and implied limitation in Conditional Use Permit #C-479 (1987) to change the hours of operation. Current hours of operation are limited to daylight hours. The modification would change the condition to the following:

*“[H]ours of operation will be day-light hours only, except for those projects for which road work is required by contracting governmental entities to occur during dark periods between sunset (nautical dusk) to dawn. Those governmental projects may occur during night-time (nautical dusk to dawn) hours. In no case shall blasting or crushing occur except during day-light hours.”*

The asphalt batch plant related to this request is located on a portion of property described as Township 5N, Range 36E, Section 07; Tax Lot #200. The subject property is zoned Exclusive Farm Use (EFU) with Aggregate Resource (AR) overlay, and is located off Walla Walla River Road, east of City of Milton-Freewater. The uses on the subject property, including the asphalt plant, are existing and not new uses. The applicable criteria of approval for modifying Conditional Uses and Land Use Decisions are found in Umatilla County Development Code (UCDC) Sections 152.611. Criteria of approval for asphalt plants are found in UCDC Section 152.617(I)(A).

Chair Danforth called for any abstentions, bias, conflict of interest, declaration of ex-parte contact or objections to jurisdiction. There were none.

**STAFF REPORT**

Mr. Waldher stated that the purpose of Central Washington Asphalt’s request to amend Conditional Use Permits (CUP) #C-333 approved in 1984, and the implied limitation in Conditional Use Permit #C-479 approved in 1987, is to change the hours of operation required by the Conditions of Approval. The aggregate site where the operation currently occurs is known as the Spence Pit, and is located in Township 5N, Range 36E, Section 07; Tax Lot #200. The subject property is zoned Exclusive Farm Use (EFU) with an Aggregate Resource (AR) overlay, and is located off Walla Walla River Road, east of the City of Milton-Freewater. The uses on the subject property, including the asphalt plant, are existing and not new uses. Mr. Waldher presented a map on the overhead screen to demonstrate the layout of the parcel. He stated that the area where mining first occurred on the property was permitted in 1984 through #C-333. The existing batch plant was permitted in 1987 through #C-479 and the remainder of the site falls within the Goal 5 Expansion Area approved in 2014.

The proposed change to the hours of operation would not add employees or change operations other than allowing Central Washington Asphalt to respond to certain governmental contracts. Work hours at the subject property would be shifted to accommodate requirements of these specific types of contracts. The reminder of the site is subject to a Goal 5 decision that limits the hours of operation to 6am through 7pm. Truck traffic and aggregate operations not associated with the asphalt plant, but included on the County’s Goal 5 inventory, would not operate outside the hours of operation required by the County’s 2014 decision. Mr. Waldher stated that the Planning Commission should keep in mind that this request is only to modify the condition of hours of operation for #C-333 and #C-479. No other elements of the existing CUP’s or the Goal 5 Expansion are relevant or subject to change as part of this amendment process.

The applicable criteria of approval for modifying Conditional Uses and Land Use Decisions are found in Umatilla County Development Code (UCDC) Sections 152.611. Criteria of approval for Asphalt plant s are found in UCDC Section 152.617(I)(A).

Mr. Waldher stated that the Planning Commissioners Packets contain letters of support that were received after the public notice was sent, in addition to one comment in opposition to the amendment. The applicant provided a letter from Mr. Troy Humbert, Vice President, Humbert Asphalt. Mr. Humbert does not oppose the request to amend the CUP and stated that they understand that sometimes overnight paving is required to do government work. Mr. Waldher stated that these documents will become part of the hearing record.

Chair Danforth asked if the operation will be 24 hours a day, 7 days a week. Mr. Waldher stated that he understands it will be limited to state and federal contracts that would require nighttime operations in order to be awarded the contract.

**TESTIMONY**

**Applicant Testimony:** Ron Jones, Manager, Central Washington Asphalt, 53358 Bade Lane, Milton Freewater, Oregon, Kerrie Standlee, Noise Mitigation Expert, 15399 SW Burgandy Street, Tigard, Oregon and Wendie Kellington, Attorney, Kellington Law Group, PO Box 159, Lake Oswego, Oregon.

Mr. Jones stated that Tyson Morris, Regional Manager, Central Washington Asphalt is in attendance and available to answer questions as well.

Mr. Jones stated that the Milton Freewater plant has 28 employees and 20 of them live in Milton Freewater. Central Washington Asphalt is requesting an amendment to the condition of approval limiting hours of operation to daylight hours because they would like to do the work paving Highway 11 and it is scheduled to be an overnight job. He stated that they are only asking for an exception to be made for projects by government entities which require road work be done during dark periods and they would never blast or crush at night.

Mr. Jones distributed a packet of paperwork including Google Earth images of homes near the Spence Pit and letters of support from surrounding neighbors. He also included photos of noise mitigation measures they have taken on site.

Mr. Jones stated that his process is pretty simple. They produce the asphalt at the asphalt plant, load it into dump trucks, and send to the job site. The trucks then return to the plant to get reloaded and the cycle continues all night. He stated that they do not do many overnight jobs and in his 35 years of experience he has only worked on 3.

Mr. Standlee stated that this project is separate from the mining and crushing operation. The amendment would be specific to the asphalt plant. He explained that he focused on the residence at 53836 Walla Walla River Road for his study because it is least protected from noise. Therefore, if they meet the requirements at this location the more protected residences would also meet the noise standard. When the asphalt plant was running Mr. Standlee measured levels that met the daytime standards but were approximately 5 decibels (dB) above the nighttime noise limit. The DEQ limit is a statistical limit which states that the noise caused by the industrial operation cannot exceed 50 dB for more than 30 minutes per hour. He was able to determine the main components contributing to the noise were the bag-house exhaust stack and the burner, which blows hot gas through a rotating drum to dry the gravel. Mr. Standlee made suggestions to Central Washington Asphalt to mitigate the noise issues. He stated that they made the changes within days resulting in a reduction of noise levels right away. Subsequent testing indicated that they will be in compliance with the 50 dB limit.

Mr. Standlee addressed the letter of concern regarding truck noise. He distributed paperwork containing Google Earth images to the Planning Commissioners. He stated that the trucks go up Walla Walla River Road to the asphalt plant to be loaded, then return down Walla Walla River Road to exit the area. The residence that submitted the letter of concern is located at 53862 Walla Walla River Road. While observing the trucks entering and exiting the site, Mr. Standlee stated that he could not hear them coming until they reached the entrance of the site. The level of noise produced by the trucks was just above the ambient level, around 55-59 dB. Truck noise is not regulated by the Department of Environmental Quality (DEQ) because this is a previously used site. They currently meet the required truck pass-by noise level standards set by DEQ. The plan is for approximately 85 loads of asphalt to be transported nightly over a 10 hour period, leaving and returning to the site in a staggered pattern.

Commissioner Green asked if it is true that sound travels further distances at night. Mr. Standlee confirmed that sound does travel further at night because of favorable atmospheric conditions. Sound does not travel well in high temperatures or dry air. He pointed out that the lowest temperatures and highest humidity take place in the morning hours between 2am and 5am. He added that, once the temperatures reach freezing the distance traveled decreases. The best conditions for sound travel lie between 45-70 degrees Fahrenheit with 70% or higher humidity. Mr. Standlee stated that he used the numbers for prime conditions in the study for his modeling.

Commissioner Royer asked why they plan to cut the stack down from its original height. Mr. Standlee stated that they have built a noise barrier onsite and after the exhaust stack height is reduced the barrier will become effective in reducing the noise level for surrounding residences.

Ms. Kellington stated that the condition of approval is specific to the small percentage of governmental contracts that require overnight operations. It is also specific to the asphalt plant portion of the property and will not change hours of operations for the mining or crushing areas.

Ms. Kellington asked more about the complaints that have been made on the property. She stated that she is not sure what the issue is because each time there has been a complaint the Code Enforcement Officer has made a site visit. Central Washington Asphalt has never been found to be operating out of compliance with the terms of the permit. Furthermore, she pointed out that they have received several letters from residents in support of the amendment.

**Agency Testimony:** Gina Miller, Code Enforcement Officer & Program Coordinator, Umatilla County, 216 SE 4th Street, Pendleton, Oregon. Officer Miller stated that she has been working with the Spence Pit since it became active again in 2009. She stated that prior management caused more concerns among neighbors. However, since the new company has taken over the level of enforcement has significantly decreased as they have taken great steps to comply with all required conditions and rules. Officer Miller stated that Mr. Jones calls frequently to check in and notifies the office prior to blasting. Code Enforcement has received approximately 6 calls over the last 2 years. After early morning observation and investigation it was determined that the claims could not be confirmed. She confirmed that the Spence Pit is in compliance with the conditions of their permit at this time.

Commissioner Green asked if the complaint calls were because of noise. Officer Miller stated that the caller reported that they were operating before daylight hours. During her investigation she observed workers arriving and trucks being started onsite before daylight hours, but no activity taking place inside the asphalt plant.

Chair Danforth closed the hearing for deliberation.

**DELIBERATION**

Chair Danforth stated that she was present at the original hearing in 2014 and remembers many neighbors complaining about the operation. The fact that there were no objections at this hearing speaks volumes to the changes that have been made. She added that she has heard good things about Central Washington Asphalt and their operations.

Commissioner Williams stated that she likes that out of the 28 employees, 20 live in Milton Freewater. They will be using the road and it will help provide work to Milton Freewater residents.

Commissioner Williams made a motion to approve the Conditional Use Permit #C-1301-18 amending the condition of approval in Conditional Use Permit #C-333 (1984) and implied limitation in Conditional Use Permit #C-479 (1987) to change the hours of operation. The motion was seconded by Commissioner Green. Motion passed with a vote of 5:0.

Chair Danforth added 4 additional documents to the record including; May 24, 2018 support letter from Troy Humbert, packet of exhibits presented by Ron Jones, May 23, 2018 support letter from Nita Stokes and packet of exhibits presented by Kerrie Standlee.

**ADJOURNMENT**

Chair Danforth adjourned the meeting at 7:37 P.M.

Respectfully submitted,

Tierney Dutcher

Administrative Assistant

Minutes Adopted by the Planning Commission on July 26, 2018.