

9.26.18

Gilliam County Court
Special Session and Public Hearing
Sept. 26, 2018

IN THE MATTER OF PUBLIC HEARING: ORDINANCE No. 2018-03

This being the time and place duly set and advertised, Judge Shaffer opened a public hearing at 10:00 a.m. to receive public comments and respond to questions on Ordinance No. 2018-03, in the matter of an Ordinance providing for amendments to the Gilliam County Comprehensive Plan to add an aggregate resource site, County ID #654 -- Philippi Canyon, as a Goal 5 Protected Site to the County Goal 5 Inventory List of Aggregate Resource Sites in compliance with State of Oregon Planning Goal 5 Requirements, and rezoning the subject site to Significant Resource Combining Zone (SR) and approving Site Development Plan for upcoming 2018/19 I-84 Maintenance Project. Judge Shaffer noted this is a legislative hearing.

Those present were:

Steve Shaffer, Gilliam County Judge

Mike Weimar, Gilliam County Commissioner

Leslie Wetherell, Gilliam County Commissioner

Dan Meader, Contract Planner, Tenneson Engineering

Ruben Cleaveland, County Legal Counsel (via phone)

Sandy McKay, Court Administrator

Mary Dyer, County Recorder

Mac Stinchfield, Times-Journal

Stacy Posegate, Oregon Department of Justice (via phone)

Sherrie Wilkins, sewilkins1973@gmail.com,

Laurie Bartlemay, winelady1@gmail.com

Michelle Colby, Gilliam County Planner

Connie Anderson, 14906 Heritage Lane, Arlington, ce_bar@hotmail.com

Brian Meese, Meese Family Trust, Bend, Oregon, brian@realoregon.com

Jonna Rattray, Condon

Judge Shaffer read the rules for the public hearing. There were no questions. He then presented the Order of Testimony, as follows:

1. Staff report
2. Public comment
3. Close hearing
4. Deliberations

5. County Court action

There were no questions regarding the order of testimony.

STAFF REPORT

Dan Meader advised the Court that the first step involves the review and adoption of the Findings document, an administrative action that requires no public input and must occur before the Court considers the Ordinance, which is subject to the public hearing process. He explained that the Ordinance simply follows state statute for Goal 5 and changes the Comprehensive Plan and Zoning Ordinance to accept the site as an aggregate resource site.

Meader said he has read through the Findings, which seemed straightforward although the process was contentious.

At this point, County Legal Counsel Ruben Cleaveland and Stacey Postgate of DOJ indicated they were present via phone. Cleveland said he concurs with Meader's comments. He wants to ensure that actions in the hearing follow the First Reading procedure for the Ordinance so the second reading can be completed at a meeting at least 13 days following this one, as required by state statute.

Judge Shaffer confirmed that the first step is to approve the Findings before moving into the Ordinance portion. Dan Meader confirmed that was correct. Commissioner Weimar said the Court's decision at the last hearing was tentative, and the meeting today involves approval of the final document.

Commissioner Weimar noted an error on page 27 of the Findings of Fact document. The Court agreed that the error, "Heritage Lane," should be corrected to "Quinton Canyon Road." Sandy McKay corrected the change accordingly.

Commissioner Wetherell asked if the Court needs to approve the Findings by consensus, or by motion. Dan Meader said a motion is required. Ruben Cleaveland said it isn't necessary to go through every Finding, but any questions or concerns should be addressed at this time. He explained that the Findings can then be approved, along with any corrections or changes. There were no questions or concerns with the Findings.

MOTION by Commissioner Weimar, second by Commissioner Wetherell, to approve the Findings of Fact of Law for Philippi Canyon Quarry Significant Resource Application and

Site-Development Approval. Shaffer – Yes; Weimar – Yes; Wetherell – Yes; **Motion Carried.**

Judge Shaffer opened the Hearing to public comments.

Brian Meece, Meece Family Trust

Brian Meece said he is reiterating testimony already on file and requesting one more time that the sole objective is to take a bigger look at the natural resources issue and make a decision regarding basalt outcroppings in a larger context that includes all other implications -- economic, cultural, historical, wildlife, etc. He commented that a bigger discussion should have taken place from the beginning, revolving around Goal 5 resources and not only ODOT's request.

Laurie Bartlemay

Laurie Bartlemay concurred with Brian Meece that there should have been more time to discuss the destruction of the outcroppings. She said there aren't justifiable circumstances to destroy them, and that the issue was brought to the Court on Jan. 24 and "they" didn't meet to discuss the matter until May 22. She said that's an awfully large gap and she didn't feel the adjacent landowners or other people affected were given proper time to prepare. She would like to see nothing happen today, and would like to see the Gilliam County Court protect Gilliam County residents instead of ODOT.

Judge Shaffer clarified that the matter was brought not to the Court but the Planning Department in January, and to the Planning Commission in May.

Connie Anderson

Connie Anderson indicated she felt unprepared because she was under the impression that today's meeting was administrative and that there would be no public testimony. Although she had no formal response, she referred to her previous statements of opposition and to what Laurie Bartlemay and Brian Meece stated about the time gap and seemingly planned exclusion of the landowners involved, as several of them were not notified. Anderson indicated she was notified, but landowners closer by weren't notified until she brought it to their attention. She said the time gap "stinks" and the lack of consideration for the landowners "reeks." She said they have valid concerns and the historical value identified in the Comprehensive Plan as being protected is being completely disregarded. She said she's very disappointed in the Court.

Judge Shaffer asked when landowners were notified. Planning Director Michelle Colby said she would have to check the file, but she believes Jan. 24 is the date the application was deemed complete.

Brian Meece said his point is that there were conversations going on between ODOT and the County long before it came to the Planning Commission. He said conversations go back to a discussion leading to that final document, and that there were documents from Tenneson in the application. He said there were conversations long before the matter came before the Planning Commission.

Laurie Bartlemay said they never received any documentation from anyone about anything. She stated that the road closure is going to affect them a great deal.

Connie Anderson said their letter was received in late April, but she knows there were conversations prior to January, as of last Fall, and they were watching and waiting and asking to see if this in the works and it was denied that anything was coming down the pike until they received the letter in late April. Brian Meece said that was when she shared the letter with him.

Judge Shaffer asked Commissioners if they had further questions. No questions were presented. There was no further public comment.

Judge Shaffer closed the hearing to public testimony at 10:30 and opened it to deliberation by the Court.

MOTION by Commissioner Wetherell, second by Commissioner Weimar, to have the first reading of Ordinance 2018-03 by title only. Shaffer – Yes; Weimar – Yes; Wetherell – Yes; **Motion Carried.**

First reading by title only by Sandy McKay.

MOTION by Commissioner Wetherell, second by Commissioner Weimar, to accept the first reading of Ordinance 2018-03 by title only. Shaffer – Yes; Weimar – Yes; Wetherell – Yes; **Motion Carried.**

Dan Meader asked Ruben Cleaveland to explain the appeal process for the Ordinance and the Findings. Cleaveland said Findings could be appealed to the LUBA (Land Use Board of Appeals.)

Meador explained that once the Ordinance is formally adopted at the second reading, that is the final decision by the County Court and the matter can be appealed to LUBA. There is a 21-day filing deadline from the date the Ordinance is formally signed.

Commissioner Weimar requested an explanation of an Order and an Ordinance. Dan Meador said the Ordinance amends the Comprehensive Plan, the Zoning Map and the Site Plan. The Order approves the findings. Ruben Cleaveland said the order is the vehicle by which the governing body imposes conditions onto ODOT for the closure -- it is how the Court says ODOT has to abide by the conditions.

Judge Shaffer noted that the second reading of the Ordinance by the Gilliam County Court will take place at the Court meeting, Oct. 17.

Judge Shaffer then asked if the matter could be appealed prior to the second reading at the Oct. 17 meeting. Dan Meador said that until the decision isn't final until it is executed by the Court. Sandy McKay said the Ordinance doesn't go into effect until 90 days after signing, although that doesn't preclude filing.

Judge Shaffer asked Stacey Postgate and Ruben Cleaveland if they had further comments. Both indicated they did not.

Laurie Bartlemay stated she would like to ask the Court a question. When given approval, she asked the Court about their reasoning and why they didn't listen and had complete disregard for adjacent landowners and how they would be affected, and about historic outcroppings.

Ruben Cleaveland noted that the job of the Planning Commission and County Court is somewhat limited and if ODOT, the proponent, establishes that they have the rights to use the property in the manner allowed under Goal 5, the Court and Planning Commission don't have the option of just saying no and that the matter isn't strictly up to the discretion of the Court.

Laurie Bartlemay asked at what point Gilliam County residents are protected by the Court. She asked, "Isn't that their job?" She also said the Comprehensive Plan fully states the outcroppings wouldn't be touched. Ruben Cleaveland responded that the outcroppings were addressed in the Findings of Fact and Bartlemay responded that they weren't completely addressed. She said the gap between the receiving of the proposal and the first meeting wasn't addressed, and not everybody was notified. She asked, "How can we move forward with those discrepancies?"

Ruben Cleaveland said he believes there was notification, and Laurie Bartlemay said she did not receive any notification.

Judge Shaffer said he is concerned about a possible problem with notification getting to landowners. Connie Anderson said notification came to her from landowners who are closer to the site, and not from the Planning Commission or County Court. Judge Shaffer said he knows said that by the time the matter came before the County Court's attention, landowners had been notified and possessed information because they had been at a couple of the Planning Commission meetings.

Anderson asked if the Planning Commission is under the Court's rule as far as notification and due process. She said one of the bones of contention is that the process was lacking and has been ignored. Judge Shaffer explained that the Court doesn't oversee the Planning Commission. The Court appoints members, but the Commission has its own process. If a matter is appealed at the Planning Commission level, it moves to the Court. The Court has no information prior to that time.

Judge Shaffer said there was so much information that came to the Planning Commission at the latter part of the 180-day window, the Commission didn't feel able to make a decision. Connie Anderson asked, "Whose fault is that -- it's theirs for not letting us have enough time, so Gilliam County residents again get screwed." Judge Shaffer said the matter moved to the County Court in July, and he isn't sure how much more time could have been needed. Bartlemay again noted the gap between Jan. 24 and May 22.

Commissioner Weimar said Judge Shaffer has explained the Court's position well. Judge Shaffer said he understands the matter is controversial, noting he was on the Planning Commission when the matter came before the Commission in the mid-90s. He said nobody was more disappointed that the matter couldn't be mitigated to the point everybody felt comfortable.

Judge Shaffer announced that the Ordinance will be addressed in a Public Hearing at the Court's regular meeting on Oct. 17. Time of the Hearing will be announced.

Judge Shaffer closed the meeting at 10:45 a.m.

GILLIAM COUNTY COURT

By _____
Steve Shaffer, Judge

By _____

Michael Weimar, Commissioner

By _____

Leslie Wetherell, Commissioner

Mary H. Dyer/Recorder _____