

BEFORE THE BOARD OF COUNTY COMMISSIONERS

Klickitat County, Washington

ORDINANCE NO. 0 051804

AN ORDINANCE of Klickitat County, Washington relating to land use and planning; amending the County Code to provide for the designation of a Hearing Examiner by the Board of County Commissioners; and, designating a hearing officer to hold a combined conditional use permit hearing and State Environmental Policy Act appeal and issue a decision on same for Conditional Use Permit Application No. CUP2003-15 and SEPA Threshold Determination No. SEP2003-25 regarding gravel mining on property located off Cold Hollow Road in the vicinity of Goldendale.

The Board of Commissioners, Klickitat County, Washington does hereby ordain as follows:

Section 1 RECITALS AND FINDINGS.

1.1 Conditional Use Permit Application No. CUP2003-15; SEPA Threshold Determination No. SEP2003-25

1.1.1 Mike Counts applied for a conditional use permit ("CUP") to engage in gravel mining on a 20-acre parcel off Cold Hollow Road in the vicinity of Goldendale (located within a portion of Section 22, T5N, R14E, W.M).

1.1.2 A mitigated determination of non-significance ("MDNS") was issued under the State Environmental Policy Act ("SEPA") by the Klickitat County Planning Department on December 11, 2003.

1.1.3 The MDNS was appealed by Citizens Opposed to Commercial Mining off Cold Hollow Road ("Citizens") on December 30, 2003.

1.1.4 The Board of Adjustment hears applications for conditional use permits under the Klickitat County Code ("KCC"). See Chapter 19.60 KCC. However, when a SEPA appeal hearing is associated with a conditional use application, the two hearings are combined and heard before the Board of County Commissioners or such hearing officer as may be designated by the Board. KCC 20.28.030(A)(1)(f).

1.1.5 Procedures are established in the KCC for the hearing of CUPs and SEPA appeals. These procedures provide that the decisions on the CUP and SEPA determination by the Board (or designated hearing officer) are final and appealable to superior court. KCC 20.28.030; KCC 19.60.090; KCC 19.60.100. Notice of the hearing is required. KCC 19.60.090.

1.1.6 Citizens raised appearance of fairness challenges to the Board of County Commissioners based on a contract entered into by the county providing for the purchase of gravel from the gravel mining operation. The appellants requested that an

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alternate hearing officer be designated to hold the combined CUP and SEPA appeal hearing in accordance with KCC 20.28.030.

1.2 The Board of County Commissioners has decided to grant this request and designate a hearing officer to hear the CUP and SEPA appeal as authorized by KCC 20.28.030.

1.3 Designation of Hearing Examiner for Quasi-Judicial Hearings by Board of County Commissioners

1.3.1 When a SEPA appeal hearing is associated with another required public hearing or hearings, such hearings are combined and heard by the Board of County Commissioners or such hearing officer as may be designated by the Board. KCC 20.28.030(A)(1)(f).

1.3.2 Procedures are established in the KCC for the hearing of SEPA appeals, and other permit decisions, including CUPs. KCC 20.28.030; Chapter 19.60 KCC.

1.3.3 Klickitat County may face future decisions on whether to designate a hearing officer to hear matters otherwise presented to the Board. The County wishes to amend its code to provide additional detail on the process to be followed in such an event.

Section 2 CONDITIONAL USE PERMIT APPLICATION NO. CUP2003-15; SEPA THRESHOLD DETERMINATION NO. SEP2003-25

2.1 Hearing Examiner Phil Lamb is hereby designated to hold the CUP and SEPA appeal hearings in accordance with the applicable procedures of the KCC, including KCC 20.28.030 and Chapter 19.60 KCC. If Examiner Lamb is not available, an alternate Examiner shall be selected by the Board of County Commissioners.

2.2 The Examiner's decision is final and appealable to superior court, as provided in KCC 20.28.030 and Chapter 19.60 KCC.

2.3 The record shall be transferred to the Hearing Examiner and a hearing date scheduled by the County Clerk. Notice of the hearing schedule shall be provided in accordance with the KCC and to all parties, who are: Mike Counts (represented by Ross Rakow), Citizens (represented by Travis W. Misfeldt), the Board of County Commissioners (represented by Special Deputy Prosecuting Attorney P. Stephen DiJulio), and the Planning Department (represented by Prosecuting Attorney Timothy S. O'Neill).

Section 3 AMENDMENTS TO COUNTY CODE

A new section is hereby added to the County Code as follows:

19.60.125 Designation of Hearing Examiner by Board of County Commissioners.

If a quasi-judicial hearing is to be heard by the Board of County Commissioners, the Board of County Commissioners

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may elect to designate a Hearing Examiner to hear the matter. The procedures of the County Code which are applicable to the specific permit decision and/or appeal shall apply to the decision of the Hearing Examiner. Except in the case of a rezone, the Examiner's decision shall be final, with a right of appeal to superior court within 21 days of decision issuance. For rezones, the Examiner's decision shall be given the effect of a recommendation to the Board of County Commissioners. The Hearing Examiner shall be responsible for addressing procedural questions, such as whether briefing is to be submitted before the hearing. The Hearing Examiner may establish other deadlines to expedite the proceedings and issue preliminary rulings as appropriate.


Section 4 EFFECTIVE DATE.


4.1 This Ordinance shall take effect and be in force five days after publication, as provided by law.

DATED this 18th day of May 2004.



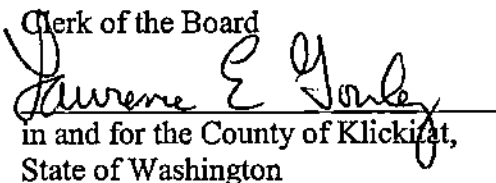
BOARD OF COUNTY COMMISSIONERS
Klickitat County, Washington


Joan Frey, Chairman


Ray Thayer, Commissioner


Don Struck, Commissioner

ATTEST:

Clerk of the Board

in and for the County of Klickitat,
State of Washington

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