

**BENTON COUNTY BOARD OF ADJUSTMENT
REGULAR HEARING – MAY 9, 2013 - 7 P.M.
PLANNING ANNEX – 1002 DUDLEY AVENUE
PROSSER, WA 99350**

THESE MINUTES ARE A SUMMARY OF THE BOARD OF ADJUSTMENT HEARING AND NOT A VERBATIM TRANSCRIPT

CALL TO ORDER

PRESENT:

Dean Burows
Aimee Bergeson
Brent Chigbrow

ABSENT:

Bob Page

STAFF PRESENT:

Clark A. Posey, Senior Planner
Carel Hiatt, Recorder

APPROVAL OF MINUTES

MOTION

It was moved by Dean Burows and seconded by Aimee Bergeson to approve the minutes of April 4, 2013 as written. The motion passed with all members present voting in favor.

Clark Posey, Planning Staff, read to the Board ex parte issue questions for all actions and those wishing to testify during the hearing on actions presented to the Board of Adjustment tonight were sworn in.

The Chairman disclosed to the Board that had known one of the applicant's present tonight, Mr. Walt Meglasson, for many years as a customer. The Chairman stated that he had nothing to gain either way with regards to Mr. Meglasson's hearing item. The Chairman stated that if objections were raised he would step down on this action. The Vice-Chairman stated that according to the Board of Adjustment Rules of Procedure the Chairman would not be allowed to step down on this action as there would not be a quorum. The Chairman stated again that he would be fair and objective regarding this hearing item. Hearing no objections from the audience this action would proceed to be heard tonight by the Board of Adjustment.

CONSENT AGENDA

Extension Request – SP – 10-20 – Badger Mountain RV Park
Applicants: David/Charlotte Schlotfeldt

David Schlotfeldt – 520 Rome Court Street – Richland, WA 99352 informed the Board of the progress that had been made to date. The applicant was seeking approval from the Board to be able to open the RV Park by July 15 as all the conditions of approval should be satisfied by then, except for the pool. The applicant wanted to know if the Board would allow the RV Park to open if the applicant fenced off the pool, so that would not delay the opening of the RV Park by July 15.

MOTION: Dean Burows made a motion which was seconded by Aimee Bergeson, that the Board would allow the applicant to open the RV Park by July 15, 2013, if all conditions of approval were satisfied, excluding the pool. The applicant would be required to install construction fencing around the pool. The Board also approved a one year extension request. Motion carried – three in favor of approving the motion.

NEW BUSINESS:

VARIANCE REQUEST VAR 13-02 - The applicant is requesting a variance to BCC 11.16A.080 (4), which is a setback of twenty five (25) feet from existing easement for any building. The variance would allow the applicants/owners approval to construct a 30 foot by 60 foot shop only five (5) feet or twenty-five (25) feet from the property line bordering any public road right-of-way from the thirty three (33) foot right-of-way easement line, making this variance twenty (20) feet. The written date of completeness on this action is March 26, 2013. Location: 3260 Mt. Adams View Dr. West Richland, WA 99353 on Lot 101 of Willamette Heights in Section 8, Township 9 North, Range 28 East, W.M. Applicants: Jacob/Elizabeth Gear – 3260 Mt. Adams View Drive – West Richland, WA 99353.

Planning Staff – Clark Posey, Senior Planner – summarized for the Board the applicant's request for a variance and entered into the record Exhibit Nos. BOAM 1.1 to 1.10 and BOAR 1.1 and 1.2 and BOAH 1.1.

APPLICANT TESTIMONY:

JACOB GEAR – 3260 MT. ADAMS VIEW DRIVE – WEST RICHLAND, WA 99353, expressed to the Board his reasoning for seeking a variance to construct his shop as the site was very rocky, drain field/septic system location and easements on all four sides of his lot.

Mr. Burows stated that the applicant could locate the proposed shop elsewhere on his property thereby negating the need for a variance.

PROPONENT TESTIMONY/OPPONENT TESTIMONY/APPLICANT REBUTTAL: NONE.

The Chairman closed the public portion of the hearing, Board discussion and findings of fact completed.

Mr. Burows commented that he felt the applicant was requesting a variance for convenience of which the Board does not approve.

The Chairman stated that even though the property had easements on all four sides as testified by the applicant, the shop could still be placed on site without the necessity for a variance.

MOTION: The Board of Adjustment, pursuant to the aforementioned controlling factors, finds that the application for Jacob/Elizabeth Gear – VAR 13-02 should be **denied** based on the following: (1) The Board does not grant variances for convenience. (2) The applicant had ample area on his parcel to relocate the shop without the necessity of a variance. The Chairman, in conjunction with the Secretary of the Board of Adjustment, prepare and adopt written findings and/or conclusions that articulate and are consistent with the findings, conclusions and decisions made by the Board of Adjustment tonight. Motion made by Dean Burows and seconded by Aimee Bergeson. Motion carried. All members were in favor of denying the variance request.

APPEAL OF THE MITIGATED DETERMINATION OF NON SIGNIFICANCE (MDNS) - 12-22:

The Benton County Board of Adjustment will consider the conditional use permit application for a surface mining operation, rock quarry, rock to be sold off-site and the appeal of the Mitigated Determination of Non-Significance that was issued by the Benton County Responsible Official. Location: Southwest Quarter of the Northwest Quarter in Section 8, Township 9 North, Range 27, East, W.M. Applicant: Walt Meglasson – 54004 N Demoss Road – Benton City, WA 99320.

Michael Shuttleworth – Planning Manager outlined the reasoning as to why the MDNS was before the Board of Adjustment tonight. The Manager informed the Board that this action was an unusual circumstance as normally a conditional use permit would be done. However, in this instance there is an appeal of the Planning Manager's determination on the environmental impact of the proposal. The Board has the determination and the letter requesting the appeal in the Board's application. Basically, looking at some of the issues raised by the appellants, the Planning Department did look at the issues, such as noise, dust and property values. As the Planning Manager stated in the Staff Memo the applicant will be applying for a Dust Control Plan from the Benton Clean Air Authority. Under SEPA it was determined that would satisfy the dust in this issue. Dust was a main concern that Clean Air Authority looked at on construction sites. The second item was noise. What was found with noise that normally once it leaves the property it drops below the state level that was given on noise; it would be hard to prove that there would be an impact due to the noise level and decibel level. However, it does not mean that noise would not be impacting the neighbors based on annoyance. If there would be continuing pounding it may not be a noise that disturbs your hearing, but it is a noise and a nuisance. The other item was on the property values. The Planning Manager discussed this with the Benton County Assessor's Office as there is a similar situation up off of Clodfelter. The Assessor's Office was not able to find any evidence where the values were reduced due to a rock crushing operation. In fact, there was a study that was reviewed pertaining to resale values of which none dropped due to the situation.

With that being said this is an issue and by State law the Board will need to consider both issues – the appeal and the conditional use permit at the same public hearing. However, with that being said the Board may want to take testimony related directly to the appeal, reach a decision then conduct a hearing on the conditional use permit. The Board could uphold the Planning Manager's decision, remand it back to the Planning Manager for further review or the Board may remand it back to the Planning Manager with a request to do X and Y or the Board may want a change, do a noise study, etc. If that would be the case then the hearing would need to be considered as that would be information to consider as part of the conditional use permit review. Exhibits entered into the record BOAM 1.1 to 1.4 and BOAR 1.1.

Dean Burows stated that property value would be difficult to determine, but noise levels are not. It is Mr. Burows understanding from the Board's packet there had been crushing and open mining going on at this location in the past. It would be up to the applicant to provide proof that he was within the allowable limits. Question, had the applicant supplied the Board in the application any noise studies.

Planning Manager: No.

APPLICANT TESTIMONY:

WALT MEGGLASSON – 54005 N DEMOSS ROAD – BENTON CITY, WA 99320, stated that he had purchased the land in 1993. The specific boundaries were indicated previously by the Planner via the legal description. He purchased the land from the Kennewick Irrigation

District. At the very top side of the property there are three home sites with enough surrounding acreage, however, it is currently landlocked with no way for vehicle access. The adjoining property owners who I refer to as Klipsun Vineyards own the property directly to the south and to the east. Klipsun Vineyards have a recorded deed from the Kennewick Irrigation District, which was surveyed and established for permanent ingress and egress to my property through their property. The easement was never signed and recorded by the owners of Klipsun Vineyards, so I found it necessary to find an alternate route. In 1994, the Union Pacific Railroad abandoned a spur line between Yakima and Kennewick – it crosses the Yakima River and the three span railroad bridge was still in existence. He purchased a strip of abandoned railroad grade ranging in width of 50 to 100 feet beginning at the original crossing of the Demoss Road and extending along the original grade with a 102 foot strip north of the original Kennewick Irrigation District property.

He realized by constructing a road along the railroad right of way and up the hill to the top of the property, he could bypass the Klipsun Vineyards property and the road easement; which was never agreed to.

Specifically, as time permitted he did some experimentation and some initial excavation to try and to figure out which was the best route up the hill, how he could construct the road and get some idea or feel for the material that was going to have to be removed. Due to the site geology, the slope and the nature of the property there was absolutely no room whatsoever to store any of the excavated material on site. It was determined that it would have to leave the property.

In the process of working to excavate back to widen the road itself, including the railroad grade, he discovered that the rock formations consisted of three primary stratifications. The top material was basically about 10 feet thick, which was material that was loose, disjointed, rather rotten as far as surface exposure. The middle portion which was anywhere from 10 to 20 to 25 feet thick was a solid base layer of consistent hard dense basalt rock with various joint conditions apparent.

Underneath this was a very distinct plain of separation which consists of a large amount of dense lava flow of material which is best described as a conglomerate and consists of broken basalt with a great a deal of smaller particles and dirt all compressed into a dense mess.

The steepness of the grade up the hill from elevation 490 from my survey map on the existing railroad right of way to the top of the basal outcrop at elevation 560, which is indicated on the map submitted from the surveyor. This was initially created by the rail road cut excavation when the railroad went through this area. However, in order to get the road up the hill, he discovered he would need to back up the actual road grade approximately 150 feet north of the KID property line in a southerly direction. By doing this it would allow him to construct the least steep grade for the road way to ascend the 70 foot vertical cut.

Without going into too much detail, he contacted the county at the outset to find out what the road requirements would be for a private road of that length and that particular characteristic to get up the hill. He was informed that at any point it would necessary to pass two emergency vehicles side by side and there would need to be turn outs. The grade was going to have to be constructed in such a manner to allow passage without the appropriate amount of wheel spinning consistent with steeper grades. In other words he needed to keep it between 3 and 4 percent. He would also have to maintain at least a 20 foot road running surface of crushed rock. Due to the nature of the steepness of the bank and the rock cut it was necessary to construct a

catch ditch on the uphill side in order to avoid anything rolling down onto the roadway itself. He would also have to have a significant amount of room to construct a slope of approximately two to one, which would allow the grade in that area to be consistent with most typical road cuts. In other words to be able to reclaim it by lite loose rip rap compacted on it to be able to allow a fire break in order to keep a large amount of tumbleweeds and other weeds from growing in that area. Also, to stabilize the material that it would not be dislodged by wind or rain or erosion. Basically, it is a light loose rip rap packing.

Again in construction of this road as described a significant amount of rock excavation is necessary with no way around it. In conjunction with this which revealed the middle rock strata, he found that the rock itself was of such significant high quality as to be very much in demand for various landscaping purposes, rockery construction and even for decorative monument stones which sometimes people will engrave house numbers, names and logos on it. Due to the amount of material that he would have to excavate it was determined that approximately 75% of the material excavated would have to be shipped off site. The cost of doing this is prohibitive if the material to be shipped out were not processed into some type of beneficial product and eventually sold. There is a significant demand for these products on an as needed basis.

He understood in contemplating a project like this and actually starting it that there would be some impacts due to the actual construction and the nature of the construction on the surrounding area. We do not blast anything, but use a hydraulic hammer to bring the rock out. The reason for this is the fact that he could get the larger pieces of rock out which are more saleable then the smaller pieces. The basalt formation which the good rock comes from is very brittle and blasting would fracture too much of this out into less than desirable rock pieces. Drilling and blasting is not only costly at current rates, but produces just as much noise and dust as does the hammer extraction.

Now, being a contractor in the excavating and demolition business he was also a qualified explosive specialist. He knew that undertaking a project like this is of a long duration. Sixty percent of the applicant's time, he was not on site as he was doing other contract projects. He had mentioned several things in regards to some of the noise and dust mitigation, which he had typed out and given to the Board.

He addressed the Board's question pertaining to noise mitigation in that maintaining two excavators in place during the actual rock extracting at the fact itself – that would be the cliff that comes down – would require a hammer and an excavator with a bucket and a thumb. The reason for this equipment was that using only the hammer to extract material eventually builds up a pile in front of it. Pretty soon you start hammering and poking and cannot see what you are doing. Using the bucket excavator to move the material out of the way in a consistent manner exposes the next piece of rock to be hammered out which greatly reduces the amount of noise and time to be able to do this.

He had also found that due to the fact that the face is higher up then the surrounding property in the lower valley it could have the possibility and does have a possibility that when the hammer is actually running to bounce that noise off of the cliff and carry it back in the opposite direction down over the lower valley. He stated that there was not a lot he could do in regards to being able to mitigate that noise, except to make it as intermittent as possible.

The other thing the applicant had found is that due to the fact that he was producing a great deal of rubble, constructing a rubble berm between face, the lower road and the lower valley

which would have a dampening effect on the hammering, which is most of the time down below at the base of the face. Any noise which reflects off of the actual rock face has to get through that berm and over it before it would proceed on down, which does have a dampening effect.

Dean Burows: The basis of the question was that you as the applicant had not undertaken any noise readings or contacted any engineering people qualified to make a determination as to what the noise level would be of any kind.

Mr. Meglasson: Correct.

Dean Burows: How long have you been digging out there?

Mr. Meglasson: Off and on for about 12 years.

Brent Chigbrow: Did you state that you did not do any blasting out there?

Mr. Meglasson: No, it is all hammer. He did do a bit of blasting on an experimental basis a long time ago to see what the results would be, but the cost, cracking and splitting of the rock he was trying to save was too expensive and not practical.

Dean Burows: If I understand this correctly, you are trying to build a road and not a crushing company.

Mr. Meglasson: He was coming to that. The material that is being extracted is basically consisting of a "size gradation". Start with a big rock up to number 5 which could be five to six feet across and some could be monument stone. It grades down until you get down to about 12 inches, most of that material goes for rockery, landscape purposes and it is in very high demand for people who have houses built on hillsides as they have to somehow stabilize that bank slope against erosion and so forth. The material that remains from that extraction was basically crusher feed or light loose rip rap. It consists of anything 12 inches on down to actually dirt consistency.

Four years ago, he bought a jaw crushing unit and so far no rock has been crushed on site yet. It has been all done off site, except for one occasion when concrete was crushed. However, the material that is stock piled out of the way, consisting of crusher feed, has got to go somewhere. No more room on site. He was almost at a dead stop because he has no more room to function. Some of the material could be utilized at the far end of the high end to be able to build the road bed base. He has almost part of that in place currently.

Dean Burows: How many thousands of yards have you determined went out into a commercial application for sale?

Mr. Meglasson: From start to finish approximately 150,000 yards. Going into dust mitigation he had purchased a 2,000 gallon water tank specifically for the purpose of mitigating this dust. He does not like the dust any more than the next person. He was going to have to institute a program of dust control which includes several things, such as (1) as far as extracting the rock and crushing it, the material needs to be thoroughly saturated with water, prior to going to the crusher. In the experimentation done with a mixture of rock and concrete on site, he found that by saturating the material with water from the water truck it would go through the crusher with 99 percent dust control due to the wetness.

Dean Burows: So there is no runoff that comes off of your soaking process.

Mr. Meglasson: None.

Dean Burows: It all evaporates in the crushing system and nothing hits the ground.

Mr. Meglasson: If he unloads a full water truck load on a hot summer day the ground would be dry within an hour and half.

Dean Burows: 10,000 gallon truck load

Mr. Meglasson: No, 2,000 gallon truck load in a specific spot. Talked about a road dust fixative which he heard was very effective once it is applied and controls dust.

Brent Chigbrow: It is called mag chloride and it is effective with regards to dust control.

Mr. Meglasson: He does have the intent on minimizing the adverse effects of anything he was doing on site. He had worked on site from time to time on a part-time basis. Many of the people who wrote letters objecting to his operation have received significant benefits from what he had done on site, such as equipment services, rock and materials from him. He finds it somewhat disheartening to find that the people have expressed their objections as in the 12 years on site the people could have come to his site and discussed his operation, particularly dust, noise issues. During the 12 years nobody had come to his site to address disturbing issues. He stated he did try to keep the dust, noise, etc. down. He would have taken more significant steps if he had known that his business was creating issues with the surrounding property owners.

He addressed the pile of concrete currently located on site. He stated the concrete came off of one of his demolition jobs. He intended to crush the concrete and use it on the steeper portion of the road.

Dean Burows: The application states it would be for the construction of a road. Now, you are talking about a quarry and operating a commercial business of selling material out of the quarry. Mr. Burows was confused about how all these issues discussed are tied together with the construction of the road.

Mr. Meglasson replied that to avoid combining numerous plans into this request would be to focus on using the site as a quarry due to the fact that he would need to take a significant amount of rock out of this site, process it, ship it offsite. In the legal definition that becomes a quarry.

Dean Burows: Yes, an open mine.

Mr. Meglasson: An open pit mine, quarry, so for that reason the development of the natural resources located on site becomes in effect a quarry operation with the end result of having the road constructed out of that operation.

Dean Burows: There are two different operations being conducted at this site. The conditional use permit was for a quarry or a road construction or whichever one you want, but to throw them all into one mass, he had some concerns.

Mr. Meglasson stated that for clarification he would be extracting rock. The end result or the

reclamation of the site when done mining the rock would be a road constructed up the hill; but that would be the end result – not what is being done specifically and pointedly and sole purposely currently.

Dean Burows: That was where he had some issues as to what was transpiring, separation issues. If the applicant wanted to open a mine then the permit should have been for a mine or quarry and put that in your remediation plan with the State with the end result being a road.

Mr. Meglasson replied that he had done that.

Dean Burows: Except for here in this permit before the Board the applicant was requesting approval for the construction of a road, not a quarry or commercial operation.

Mr. Meglasson stated the application had been amended by leaving the road out of the operation at the present time even though that would be the end result. The road construction phase up the hill would be the final reclaimed use of the property. In other words that would be in the future. In order to get the road up the hill it would be necessary to remove the rock and sculpt it into a pattern such that a road could be constructed. In order to achieve that there is a huge amount of material to be removed and that was the reasoning for applying for the mining permit. In effect what the applicant stated he was doing was quarrying.

Brent Chigbrow: Mr. Shuttleworth, Planning Manager – the Mitigated Determination of Non-Significance was it for the road or the quarry.

Planning Manager: The MDNS was issued for the entire project, which was a quarry for the removing of rock. The action was not necessarily for what the exact permit was for.

Dean Burows commented that he had issues with that as two separate operations were being combined. If this was for an access road as the property was landlocked. However an open mine that has been in operation for 12 years illegally is not that simple to address. Open mine and open pit for him the appeal of the mitigation the applicant would have done a study.

Planning Manager responded that this action was appealed to the Board, which was within their prevue to state that the applicant would need to provide a noise study.

Brent Chigbrow asked if the appeal was for the road or the quarry.

Planning Manager clarified that the appeal was on his determination of MDNS that Mitigated Environmental Impact Statement would not be needed, which relates to the whole project including the conditional use permit as there were some questions as to whether the application was for a business use activity, crusher or road.

Dean Burows: Construction equipment yard, material storage business in conjunction with crushing and gravel on site – that does not address the mining and that is what is noted on the application. Testimony given so far was that a road was being built only. Two letters from the applicant in the Board's packet address the conducting of a rock quarry and then two more letters where the applicant states he would be conducting a road, so which is it.

The Planning Manager gave a brief history of the process. The application was a Code Enforcement action. Originally, the applicant discussed the building of a road, but with further discussion the applicant addressed the removal of rock on site. The Planning Department

conducted a site visit and noted concrete (unable to understand) on site, which altered the proposal by making it larger. The road was not just being constructed, but doing other activities. If the applicant was just building a road on site then this action would not be before the Board of Adjustment. The applicant's property was located within a Rural Lands 5 Zoning District in which a quarry or business activity required a conditional use permit to be considered by the Board of Adjustment. The road is not the real issue, but the mining operation and the impact to the surrounding area was an issue.

Mr. Meglasson stated that the problem lies strictly in the fact that in order to build the road a considerable amount of rock needs to be removed.

Brent Chigbrow advised the applicant to stay away from the road and focus on the quarry.

Planning Manager advised the Board to make a determination on the MDNS appeal and then proceed with the conditional use permit action.

PROPONENT TESTIMONY:

TERRY MILLER – ATTORNEY REPRESENTING THE APPLICANT – WALT MEGGLASSON – 7409 WEST GRANDRIDGE – KENNEWICK WA 99336. The application could be interpreted three ways (1) road construction permit, (2) quarry under which would be an allowed use with the a conditional use permit or (3) business activity if the applicant were to crush material that had come from offsite and not extracted – that would require a business activity permit. Mr. Miller turned the Board's attention to the application – conditional use application No. 5 states "hammer out, excavate back into existing portion of basalt outcrop as necessary to construct a county designated road width, shoulders and slopes across basal outcrop, as detailed on topographic map, to crush and utilize rock ballast onsite for road construction and sell and ship the remainder offsite." He felt that the applicant had covered all the basis and described if you will all three activities. Quarry activity – the applicant would be taking, extracting material from the site, processing some, taking that off site and the applicant had included processing material brought on site. Continuation of No. 5 "The larger basalt rock produced in this process will be sold off site as rock and water feature rock." In the Environmental Checklist the applicant addressed all the various activities, Paragraph 11, page 2 " General Scope: Widen road (old Union Pacific Railway right-of-way) Excavate and remove rock face to construct roadway up hill, crush onsite, rock excavation for placement on roadway, sell and ship balance of excess off site. Excavate site for future shop construction, and a home sites on top of the hill." Purpose of the appeal was the scope in the application and the checklist consistent with what the applicant's objective would be and feels that it is. He believed the application is for a quarry. The applicant sent a letter to the Planning Department for the Board where the applicant tried to limit his application to a quarry as that would allow him to proceed doing what he hopes to accomplish and if later on he wants a road he would fill out a separate application.

APPELLANTS TESTIMONY:

DAVID GELLES – 4636 WEST CANAL DRIVE – WEST RICHLAND, WA 99353 feels that the Board had been given information out of context. Mr. Gelles stated he would try and give the Board information to put it in context. He pointed out on the aerial provided the applicant's site. Red Mountain area was a unique area to grow wine grapes. The applicant's quarry was located directly under Red Mountain. He noted his property on the aerial. The applicant's road may abut his vineyard. Two points that are legally important: (1) if the hillside falls the applicant would be liable for any damage and by informing the Board of this situation the County may also be liable and (2) dust limits – concern over dust and his vineyard –

especially dust mites that could damage his vineyards. He had submitted documentation to the Board of which was in their packet. The property owners were aware of the quarry, but thought that the County would step in and regulate. He was not concerned over the noise so much, but more so over the mite issue.

Brent Chigbrow asked how long Mr. Gelles had resided and grown grapes at his current location.

Mr. Gelles replied about 1984 and another site in 1989 both close to the applicant's property.

PHIL MEES – 46915 NORTH RIVER ROAD – BENTON CITY, WA 99320 residence was directly across the river from the applicant's site. He has 12 acres of cherries and a residence on site about 1100 feet from the applicant's operation. He had been listening to the noise from the applicant's property for about 12 years. Mr. Mees responded to comments expressed by the applicant such as, if the applicant knew he could do something to mitigate the impacts he would. During the summer the applicant hammers rock until dark. If the applicant wants a road then utilize the explosives to get the rock out of the way and build the road. He said that the applicant had used explosives three to four years ago. Mr. Mees heard the noise, but no drilling; just explosive noise. Explosives are much better than the consistent hammering. However, the explosives only lasted a couple of days then the applicant returned to hammering.

Now the appeal, Mr. Mees wrote the appeal and said it was inadequate in addressing noise and the impact on property values. The Staff Report stated that when the noise leaves the property it is already down to 52 dbl. Well, how big is the property they are talking about, such as a 50 acre site. Mr. Shippy lives 250 feet away from the applicant's site. Mr. Mees' deck was 1100 feet away from the rock face that the applicant was hammering upon. Fifty two dbl as noted in the Staff Report would be incorrect. A noise study needs to be completed. Impact on property values, the Planning Manager contacted the Assessor's Office and they stated that there was no documented evidence of lower property values on a subdivision by a gravel pit. This is a not a gravel pit, but a rock mine. The applicant hammers and loads trucks that come and go all day long. The site was not a gravel pit. He continued to state that if you were looking to purchase property in this area and the applicant was hammering, dumping and moving trucks the probability of purchasing in the area would be very slim to none.

Brent Chigbrow asked if Mr. Mees ever heard A/B Asphalt.

Mr. Mees: A/B was located quite a distance from this site. Also, nothing was located around A/B and other rock quarries, but that was not the case here as the area was residential in nature. He felt that the Board needed to look at the noise issues, especially for those properties located on the east side of the river who reside directly under the applicant's property and investigate property values.

RON SHIPPY – 46902 N DEMOSS ROAD – BENTON CITY, WA 99320 residence was directly across from the applicant's property. The applicant had been working at this site for 17 years. He read his testimony into the record and touched on the following areas: hammering done seven days a week dawn to dusk, subcontractors also on site, working holidays, noise, dust, safety issues and applicant trespassing on his property due to noise, dust issues, or sound barrier, crushing concrete, timeline for completing the road or turn it over to another contractor at the applicant's expense to complete, mining of rock not for the road, but for resale purposes, property value decrease, etc.

SHARON SHIPPY – 46902 N DEMOSS ROAD – BENTON CITY, WA 99320 read her testimony into the record. Expressed concern over the following: verbal noise, constant noise, loading of rocks into trucks, rocks falling from the site onto the roadway below, quality of life being impacted, dust issues.

TERRI HANSEN – 45204 DEMOSS ROAD – BENTON CITY, WA 99320 – submitted a booklet of pictures of the site BOAH 1.1 (15 pages – 30 pictures). She has lived at her residence for 17 years. Her concerns were the following: jack hammering on rock and inability to sit outside or have window open due to the noise, noise is a huge issue, some current and future property owners do not like living in this area due to the operational noise from the applicant, noise study needs to be done, concern over rock falling onto the road and 12 years of road building was a bit extreme. Residents in favor of this action do not live in the immediate vicinity of the applicant's rock quarry.

APPLICANT REBUTTAL:

WALT MEGGLASSON – 54005 N DEMOSS ROAD – BENTON CITY, WA 99320 – felt that the people testifying were not being honest.

TERRY MILLER – 7409 W GRANDRIDGE – KENNEWICK, WA 99336 stated that the issue on the appeal was whether there was evidence that there will be a significant environmental impact. However, all testimony given addresses dust and noise of which both were subjects of the mitigation and the DNS. He did not feel that anything had been presented either in writing or verbally at the hearing tonight that would raise an issue of significant environmental impacts. Mr. Meglasson would ask the Board hearing the appeal to deny the appeal and affirm the MDNS finding by the Planning Department.

The Chairman closed the public portion of the hearing for any additional testimony.

BOARD OF ADJUSTMENT DISCUSSION:

Brent Chigbrow felt that the Board did not have enough information to do anything. The Board has no noise, dust or anything to make any decisions to move forward.

Dean Burows stated that the point of the appeal would be for the appellant to show proof that the Planning Department failed in the process of the MDNS. Going from that standpoint the Board appreciates and recognizes the concern of the noise and dust. The pictures are very helpful about safety aspects of the quarry operation being conducted, but it doesn't mitigate the fact that there was no proof other than hearsay that the Planning Manager did not do the job efficiently. He continued to state that he did not believe that the applicant had provided enough information for him to make a decision one way or another on the hearing process pertaining to this application. The applicant did not provide any safety plans or a professional noise study. The Board heard a substantial amount of testimony presented with regards to noise issues, but on the appeal personally no one had presented him with any documental proof that the Planning Staff did not do their job properly.

The Planning Staff highlighted only what had not been presented by the applicant.

Planning Manager commented that it would be within the Board's prevue to request more information pertaining to noise issues and dust. The Planning Department did not address dust mites.

Dean Burows felt that it would not be up to Benton County to submit additional information, but the applicant.

MOTION: Dean Burows made a motion which was seconded by Aimee Bergeson to deny the appeal of the Mitigated Determination of Non Significance (MDNS) EA 12-22 – Walt Meglasson as no testimony was provided to the Board of Adjustment that the Planning Department Staff did not meet the requirements of the code and that the Board of Adjustment upholds the Planning Manager's decision with regards to the issuance of a Mitigated Determination of Non Significance – MDNS 12-22 – Walt Meglasson. Motion carried with all three members present voting in favor.

CONDITIONAL USE PERMIT CUP 12-10:

The Benton County Board of Adjustment will consider the conditional use permit application for a surface mining operation, rock quarry and for rock to be sold off site. Location: Southwest Quarter of the Northwest Quarter in Section 8, Township 9 North, Range 27, East, W.M. Applicant: Walt Meglasson – 54004 N Demoss Road – Benton City, WA 99320.

The Planning Staff summarized said action for the Board of Adjustment with ex-parte communication completed at the beginning of the hearing. The following exhibits were entered into the record: BOAR 1.1 to 1.4, BOAM 1.1 to 1.46, BOAH 1.1 to 1.3.

Dean Burows asked the Planner to also allow for the submittal of Exhibit BOAR 1.4 – 15 pages 30 pictures, presented by Teri Hanson during the appeal of the MDNS 12-22 to this action CUP 12-10.

The Planner entered into the record Exhibit 1.4 – 30 pictures – 15 pages presented by Teri Hanson during the MDNS 12-22 Hearing.

The Planner informed the Board that if they look at Exhibit No. BOAR 1.1 #5 which states: The Conditional Use/special Permit is request to conduct the following use of which the applicant responded: "Hammer out, excavate back into existing portion of basalt outcrop as necessary to construct county designated road width, shoulders and slopes across basalt outcrop, as detailed on topographic map, to crush and utilize rock ballast onsite for road construction and sell and ship the remainder off site." The application was for a road and presented to the Board as such.

Dean Burows agreed that the application was to hammer out, excavate basalt outcrop to construct the road. Material sold or shipped off site had nothing to do with the road.

The Planner continued "that the selling and shipping offsite the larger basalt rock produced in this process will be sold off site as rockery rock and water feature rock. Once the road construction is complete in accord with proper engineering standards no further rock will be excavated." Then additional information that was received by the applicant stated that the last item would be to construct the road. The Planning Department stated that originally the applicant submitted an application for the construction of the road and to sell the excess materials, but additional information submitted by the applicant did not state such.

Dean Burows commented that it was stated in testimony presented during the appeal that the application had been amended to be just a quarry.

The Planner answered that the road and the quarry were lumped together.

Dean Burows responded that he had heard that there was an amendment to the application for just a quarry.

The Planner replied that there was no amendment to the original application for the conducting of a rock quarry.

Brent Chigbrow read Exhibit BOAH 1.3 in which the applicant stated " I will focus on using my property for a "quarry and similar use for the development of natural resources extracted on site."

Dean Burows stated that statement alters the original application to this, so which one does the Board recognize.

The Planner responded that the Board needs to focus on the original application BOAM 1.2 of which Mr. Miller quoted during the appeal of the MDNS 12.22. The construction of the road was the main priority of the project and the selling of the extra material was secondary.

Brent Chigbrow asked the Planner if the Board was to reach a decision on whether or not to (1) permit a rock quarry or (2) allow for the construction of a road or (3) allow for the operation of a commercial business. Question being are all the three issues lumped into one permit.

Dean Burows stated that the main issue would be for the construction of the road as that was noted on the original application.

APPLICANT TESTIMONY:

WALT MEGLASSON – 54005 N DEMOSS ROAD – BENTON CITY, WA 99320 – stated that rock would be excavated on site as there was no room for storage of this amount of rock on site, so it must be shipped off site. The legal definition of that operation would be a rock quarry. Later on as the parameters and dimensions of the road that would be constructed up hill, the base of the road will be hammered out of solid rock; which would also be removed from the site and the basis of that road will remain as it is described in the topographic map of which was submitted. Then at that point there will be further rock extraction once the road was outlined and constructed in place.

Brent Chigbrow asked about the timeframe for the construction of the road.

Mr. Meglasson responded that depending on his contracting projects off site it could be four to five years at least. Sixty percent of the time there would be no activity at this site. Work at the quarry would be on a time permitted operation due to other work activities.

Dean Burows noted in BOAH 1.4 the massive amount of concrete on site. Seeing that the road was being constructed, why the need for all the concrete material.

Mr. Meglasson replied that the concrete was to be crushed and placed on the road surface going up the hill. He continued to state that he preferred that type of material to loose basalt rock.

Dean Burows asked if the purchasing of the crusher was mainly to crush the concrete.

Mr. Meglasson: No. The purchasing of the crusher was for (1) with the equipment currently owned it would be a compliment to be able to conduct various off site contracting projects. He

refuted prior testimony stating that he had crushed concrete, rock or anything at that site on holidays, weekends or after hours. Original concept in doing this was to construct the road as the property was land locked. He would like to discuss his operation with the neighbors. He showed the Board on the aerial the proposed location of the road.

Dean Burows asked the applicant how many more tons of rock would need to be removed from this site to construct the road and when did he contact Benton County with regards to road standards.

Mr. Meglasson replied about 1995 and he started selling rock in 1996 from this site.

Dean Burows noted BOAM 1.35 addressing road width.

Mr. Meglasson stated the pictures show the front entry off of Demoss Road and the size was legal for front access. If the applicant cannot sell the rock then the project becomes impossible due to insufficient storage.

Dean Burows asked about rock falling on the roadway.

Mr. Meglasson: No, rock had ever fallen on the roadway from his site. The rock would be used for bank stabilization material.

PROPONENT TESTIMONY:

ONETTA GIBSON – 8703 W CANYON AVENUE – KENNEWICK, WA 99336 stated that the applicant was her father-in-law. She and her husband own a landscaping construction business in which they purchase rock material from this site. No other rock quarries located within the immediate vicinity of the Tri-City area, so this operation was one of economics to local businesses. The applicant does not work on holidays, weekends or evening hours.

RAY MCELROY - 44810 N DEMOSS ROAD – BENTON CITY, WA 99320 residence was by the rock crusher. Build the road, no problem. He can hear the hammering, no dust, no dust mites have harmed his blueberry plants. He supports the applicant's endeavor. He notes that the orchard windmills are louder than the applicant's crushing operation. The applicant does not work on holidays.

KYLE GIBSON – 8703 W CANYON AVENUE – KENNEWICK, WA 99336 – touched on noise, dust, orchards windmills that make more noise than the applicant's business, orchard chemical sprays, and orchard cherry cannons going off all day long. Neighbor's residence and the applicant's rock quarry are a considerable distance apart.

MORGAN TABER – 51621 DEMOSS ROAD – BENTON CITY, WA 99320 – residence was directly north of the applicant's rock quarry. He used the old railroad bed as his driveway. Addressed rocks rolling into and onto the road, but they are not necessarily from the applicant's site. He doesn't hear much noise and supports the applicant.

LOU GANNON – 600 MERLOT DRIVE – PROSSER, WA 99350 – owner of Yellow Rose Nursery. He supports the applicant. The applicant's business was of economic benefit to the community. He submitted in six pictures showing the types of rock that the applicant produces from his quarry – BOAH 1.5.

SANDRA MEGLASSON – 54005 N DEMOSS ROAD – BENTON CITY, WA 99320, wife of the applicant. The applicant does not work on holidays, weekends and the hours of operation were 8 a.m. to 5 p.m. The applicant does not hammer every day – only three days a week when on site. He works a considerable amount of time off site. She stated that they didn't and do not complain over orchard sprays, cherry cannons or windmills that run all night. If the Board does not approve this application it will be economically devastating to them and others that utilize their services. Questioned why the neighbors did not complain to them about the noise, dust, etc.

PHIL CARPENTER – 2800 GLENN ROAD – RICHLAND, WA 99354 – worked with the applicant and no dust problems. Hours of operation 8 a.m. to 5 p.m. and was considerate of his neighbors. Not one of the neighbors complained to the applicant about his quarry operation.

OPPONENT TESTIMONY:

DAVID GELLES – 4636 W CANAL DRIVE – WEST RICHLAND, WA 99352 – property borders the applicant's site. He commented that the Board could not approve this application with little detail on such complicated terrain. He addressed windmills that are run just during the period of frost protection. The real problem pertaining to this application was that the road parallels the property boundary – limitations pertaining to constructing roads along property boundaries, especially on steep cliffs with a drop from 650 to 550 feet. Boulders are sticking out of the hill and falling onto the roadway. Board needs more detail pertaining to the road.

Brent Chigbrow asked the distance between Mr. Gelles' property lines to where the applicant was currently excavating.

Mr. Gelles felt that it was right on the property line.

ALEXANDER GELLES – 11190 E PR 388 NE – BENTON CITY, WA 99320 expressed concern over road width.

PHIL MEES – 46915 NORTH RIVER ROAD – BENTON CITY, WA 99320 – addressed Page one of the Staff Memo BOAM 1.1 – Zoning – Comprehensive Planning – the property and surrounding properties are rural and urban environment. He addressed noise pollution, zoning needs to be re-examined, Mineral Resource Protection Plan – this project does not fit those standards. The rock quarry would not be compatible with the Rural Lands (RL) 5 Zoning designation. Red Mountain Viticulture would bring in economic development, but would not be feasible with a rock quarry operation. The proposal would narrow the land use options in the immediate vicinity.

Brent Chigbrow asked Mr. Mees about the amount of hammering.

Mr. Mees responded that the applicant was factual in his testimony that rarely did he begin his operation prior to 8 a.m. Sometimes the hammering would be a steady two weeks and then nothing for a month, but never gone for six months. The hammering was a regular occurrence not occasional. Testimony presented that high value rock was obtained from the applicant's site for landscaping purposes. He requested that the Board deny this proposal. The proposed operation was not consistent with the RL 5 Zoning District or the policies of the Land Use Plan.

SHERI MEES – 46915 NORTH RIVER ROAD – BENTON CITY, WA 99320 – did address the applicant in person as to what he was doing on site due to the continuation of noise. She asked the applicant if he had a permit for his operation. The applicant did work

weekends and holidays. Get the road finished.

Brent Chigbrow asked how many days per week does the hammering exist.

Sheri Mees stated 4 to 5 days a week.

LISA FULLER – 5908 EAST 468 PR RIVER ROAD – BENTON CITY, WA 99320 – P O BOX 87 – BENTON CITY – moved to the site in 2007 and bought a residence across the river from the applicant's site. The actual rock quarry could be seen from her front porch. She was not against the applicant constructing his road. The reasoning why she likes the area was due to the quietness – 2007 – then in 2009 the pecking noises began weekdays and weekends until 9 p.m. Why was the applicant taking so long in constructing the road. She would like to have her peace and quiet returned.

TERRI HANSEN – 45204 DEMOSS ROAD – BENTON CITY, WA 99320 – had resided in the area for over 17 years. She understands the orchard requirements – cherry cannons, windmills, sprays, etc. She did not purchase her site with a rock quarry next door. The Board needs to require a noise study.

APPLICANT REBUTTAL:

WALT MEGLASSON – 54005 N DEMOSS ROAD – BENTON CITY, WA 99320 stated he did have a job to do and he should have a right to develop his property and his road. If the property owners do not like the hammering of which there would be no alternative, but he would control when the hammering would be done. No hammering done on weekends or evenings. The road being on the property line was similar to existing surrounding property owner's roads. No sand or gravel on site. He also wants to have the road completed.

Brent Chigbrow addressed a letter from the Washington State Department of Natural Resources discussing a Surface Mine Reclamation Permit, did the applicant respond to the Dept. of Natural Resources.

Mr. Meglasson explained the process for obtaining a reclamation permit. He also applied for a Benton Clean Air Permit.

Dean Burows: By applying for a reclamation permit do you admit that surface mining was being conducted on site.

Mr. Meglasson replied that there has been no contest to that all along.

Dean Burows replied that he just wanted to hear the applicant's testimony.

Mr. Meglasson stated that a surface mining operation did require that a reclamation permit be obtained.

Dean Burows informed the applicant that it was his responsibility to prove to the Board that this operation was not any less compatible than anything being conducted in the surrounding area. Building a road in an agricultural area would be no more or no less compatible than anything else in operation. However, in the applicant's surrounding area on that road, the surface mining was the question.

Mr. Meglasson stated that the question was in order to construct the road he had to haul away a volume of material.

Dean Burows responded that by creating a commercial entity from the operation that falls back into a surface mining operation more than just the ultimate outcome of the road.

The Chairman closed the public portion of the hearing for further testimony.

Board of Adjustment Discussion:

Dean Burows needed more information from the applicant that this type of operation would be compatible with the surrounding area. The basis of the information presented to the Board on this application was not complete enough for him. The application probably started out as a road project and then generated the quarry and surface mining operation which was probably a very lucrative business. However, the operation was not compatible with the surrounding area.

Brent Chigbrow stated that he had a hard time discerning exactly what the business entailed, such as a road, quarry or both. The application was contrary and the Board did have a letter in the packet stating to avoid combining numerous plans that the applicant should focus on utilizing the site for a quarry with similar resources stacked on site. Talking about a quarry, but constructing a road, but making the quarry operable.

Dean Burows continued that if the road were to be constructed then a plan would have to be devised, develop the angle and grade of the road. Roads are usually built on private accesses 25 to 30 feet according to County Standards of which Mr. Burows did not have an issue. The exemption here comes from when we go from the 20 to 30 feet into the base of best rock on the property and then cut 150 to 200 feet and that was where we are being exploited.

Brent Chigbrow felt that there was more motive here than just building a road.

Dean Burows noted that there were three viable home sites above the road area.

Brent Chigbrow needs more information in order to make a decision in favor of this application.

Dean Burows needed to know more about noise exposure from this type of business, dust could be mitigated. The Board heard testimony that noise was a big issue. The applicant did not present any information to the Board that the noise issue does not have an adverse effect on the surrounding area.

Brent Chigbrow commented that the noise produced by the rock quarry would not be compatible with the surrounding area. The applicant needed to have presented to the Board a noise and dust study. He would not be ready to turn down the application, but more information would be needed prior to the Board reaching a decision on this application. Based on the information presented to the Board, he would not be able to approve this application.

Dean Burows did not feel that enough information had been presented to the Board on this action. Also, this operation would have a negative impact on the surrounding properties.

MOTION: Dean Burows moved and Aimee Bergeson seconded the motion that the Board of Adjustment pursuant to the aforementioned controlling factors finds that the application of Walt Meglasson – CUP 12-10 be denied based on the following: (1) noise, (2) dust and the

affects it would have on the surrounding agricultural area, (3) conditional use permit submitted for road construction – not mining operation as currently being conducted on site, (4) selling of rock off site – commercially being the main focus of the project instead of the construction of access road, (5) incompatibility of Rural Lands 5 Zoning District, and that the Chairman in conjunction with the Secretary of the Board of Adjustment, prepare and adopt written findings and conclusions that articulate and are consistent with the findings, conclusions and/or decision made by the Board of Adjustment tonight. Motion carried with all three members voting in favor to deny this CUP 12-10.

There being no further business before the Board of Adjustment the meeting was adjourned at 10:45 p.m.



BRENT CHIGBROW, CHAIRPERSON



DATE