

**BENTON COUNTY BOARD OF ADJUSTMENT
MAY 13, 2010 – 7 P.M. – REGULAR MEETING
PLANNING ANNEX – 1002 DUDLEY AVENUE
PROSSER, WA 99350**

The Chairman opened the public portion of the meeting at 7 p.m.

NOTE: The minutes is a summary of the testimony presented at the hearing, not a verbatim transcript.

NOTE: All persons present that wished to testify on any actions presented to the Board of Adjustment tonight had been sworn in.

ROLL CALL:

PRESENT: Brent Chigbrow
Dean Burows
Bob Page
Glenn Bestebreur
Herb Everett

STAFF: Clark A. Posey, Senior Planner
Carel Hiatt – Recorder

MOTION: Mr. Burows moved and Mr. Page seconded the motion that the minutes of April 1, 2010 be approved as written. Motion carried.

UNFINISHED BUSINESS: Variance Request – VAR 09-04 – David Scott

MOTION: It was moved and seconded that the Benton County Board of Adjustment accept the applicant's request to withdraw this variance request. Motion carried.

NEW BUSINESS:

SPECIAL USE PERMIT – SP 10-04 – operation of a manufactured home setup business to include the storage of supplies. The site is located at 19206 N Webber Canyon Road – on Lot 1 of Short Plat 1884 in Section 29 and 30, Township 9 North, Range 27 East, W.M. Applicant: Roy R. Conley, Jr. 19206 N Webber Canyon Road – Benton City, WA 99320.

The Chairman opened the public portion of the hearing. The Planner summarized said action for the Board, entered into the record Exhibit Nos. 1-13 and outlined the proposed action on Exhibit No. 13 – 2008 aerial of the site.

The Planner continued to state that the applicant's property is zoned both Unclassified and Agriculture. The area where the business will be proposed is located in the Unclassified Zone of his property, which would be allowed by special use permit.

The Chairman noted that the applicant did not request signage for this type of operation. No comments were submitted from surrounding property owners.

APPLICANT TESTIMONY: Roy R. Conley, Jr. – 19206 N Webber Canyon Road – Benton City, WA 99320, stated he had been operating his business from this site for about three and one-half years. Basically, his trucks utilize the site and had collected some personal material that was currently located on site; not related to the business. He would just like to keep doing that.

Mr. Burows: Let's address the collection of stuff there, so we don't have to talk about site obscure fencing. It is your intention to clean the area up a bit.

Mr. Conley: It is. I am trying to get some area leveled in back; but he wanted to obtain a permit to be able to do that. He wants to put a building back there.

Mr. Burows: Looks like a fair amount of good stuff, but also a fair amount of rubbish as well.

Mr. Conley: I do have a bit of rubbish out there. He has been cleaning up and sorting through stuff, but there is a lot stuff piling up.

Mr. Chigbrow: We don't want it to become a junkyard.

Mr. Conley: I understand. It is already becoming a bit more then what he would like it to be.

Mr. Chigbrow: That would certainly be one of the conditions of approval to make certain that this site does not become a junkyard.

Mr. Conley: He would gain a lot of flat area if approved. He would flatten out the top of it, so that he would have a bigger parking area up there. He would like to keep all of the business equipment there at the very back corner and the rest of it is gone. The piled stuff he had been taken loads out and getting rid of much of the rubbish as he could. The concrete he had kept for fill, because that is good fill.

Mr. Everett: Describe the kind of material or equipment that would be related to the business that you would be storing on site.

Mr. Conley: I would be applying for permits for a local office trailer, which I would place at the perimeter of the property up there. He had some containers that he found out were over the square footage, shipping containers and they need permits. He would be applying for permits for them as well. He had kind of fenced it off up there with containers right now.

Mr. Everett: It seems like you have a lot of concrete blocks that you use.

Mr. Conley: Those are stacked and palletized.

Mr. Everett: What else do you have, axels?

Mr. Conley: Axels – those are in a container.

Mr. Everett: Anything else that is typically part of your setup.

Mr. Conley: Just a truck, totters, pilot cars and his service trucks.

Mr. Burows: How many pilot cars, service trucks and tow trucks would be located on site.

Mr. Conley: Five to eight at the maximum counting the truck and trailer, two totters, a trailer, two service trucks and three pilot cars.

Mr. Chigbrow: One of the conditions of approval, Condition No. 3 was "A special use permit shall not be granted for the keeping of more than five vehicles advertising the business on site."

Mr. Conley: On my original.

Mr. Bestebreur: Correct.

Mr. Chigbrow: One of these conditions that the Planning Department put in your paperwork in the packet they sent you – would there be five or more vehicles advertising your business on site.

Mr. Conley: Not advertising my business on site – No.

Mr. Burows: Some of that could be because you said you had vehicles and trailers.

Mr. Conley: The sign is only on the door of three of his rigs.

Mr. Burows: Okay, that is fine. When we take a look at these storages and pieces of that for a business like that, we want to know how many pieces of equipment will actually be there. If it is five total – great, but if you are going to have five plus three trailers – the Board wants to know that as well.

Mr. Conley: Would the storage containers be counted or just equipment.

Mr. Burows: No, I think they would be – as long as they are not on wheels and over 120 square feet, they would be a building, right.

Mr. Burows: Are you going to get permits for these storage containers?

Mr. Conley: Correct.

Mr. Burows: Then they would be buildings.

Mr. Conley: Did not know I needed a permit for them? He thought you could just place them on your property.

Mr. Bestebreur: Is there an existing mobile trailer on site or an office trailer/mobile trailer. Is that currently being used?

Mr. Conley: No, I had one parked up there a small one. That is what he planned on – if he is granted the permit would like to install an office.

Mr. Bestebreur: So, you have no septic system up there, currently.

Mr. Conley: No, there is no toilet just four walls and a countertop.

Mr. Bestebreur: Do you have a well, currently on this site.

Mr. Conley: No, not on this site – the section for which I am applying. There is no water or sewer. I may apply for electrical.

Mr. Burows: If you are using the trailer for an office you will need to have some sort of sanitation for your employees. How are you going to cover that?

Mr. Conley: Put in a port-a-pottie or something like that. The house is just close by also.

Mr. Chigbrow: Will customers be coming onto the site?

Mr. Conley: Rarely, very rarely. They just usually meet me and get a key. They might come by and buy block. I usually send them to Central Premix. He just keeps enough for one house on hand only.

Mr. Bestebreur: On the eleven acres there is a house.

Mr. Conley: Yes sir.

Mr. Bestebreur: You live in that house.

Mr. Conley: That is correct.

Mr. Bestebreur: Does it have a septic system?

Mr. Conley: It does.

Mr. Page: Do you do any work on site, such as set-up.

Mr. Conley: No, don't do anything with manufactured homes on site.

Mr. Page: Any non-resident employees on site.

Mr. Conley: Not permanent. The employees park their cars and then go to work.

Mr. Burows: So, technically on occasion they come onto the premises.

Mr. Conley: Right, they come in the morning and then leave for work. They put their stuff in the service vehicle they need for the day and then leave for the day.

Mr. Burows: You have read this package.

Mr. Conley: I believe that I have.

Mr. Burows: Okay, there is a letter in here from the Benton Franklin Health District. The letter states that if the business were housed in a separate building, it would need to

contain water, a bathroom and must be serviced by its own system. I just wanted to make certain that you were aware of that. It would need a separate water and sewer system.

Mr. Conley: Understood, if he put in a separate building he would abide by the requirements of the Benton Franklin Health District.

Mr. Chigbrow: The most important item and condition of approval would be Condition No. 1. "That the applicant shall not conduct any of the activities within the scope of SP 10-04 until they are in compliance with all the conditions set forth herein. " What that means is that you have six conditions currently and if the Board adds another one as far as making certain that the place gets cleaned up that would be seven conditions. Until all of those things are met, anything that has to do with your business; you cannot do it on that site.

Mr. Conley: Right.

Mr. Chigbrow: Okay

Mr. Conley: No vehicles with my name on them.

Mr. Chigbrow: We just don't want you to conduct your business on that site, as you do not have a permit to do so. You will have one year to satisfy all the conditions of approval.

Mr. Conley: Okay.

Mr. Chigbrow: It would probably behoove you to do it as quickly as possible.

Mr. Conley: Yes sir.

Mr. Page: Do I understand you to state that you are in business, currently?

Mr. Conley: I am. I started the business there with one truck and it kind of grew a bit.

Mr. Bestebreur: Question for the planner. Was this action presented to the Board because of a complaint or from a resident or from a nearby resident?

Mr. Planner: Code Enforcement.

Mr. Chigbrow: Any more questions. Mr. Conley do you have any additional testimony to present or state.

Mr. Conley: No, not at this point in time.

Mr. Chigbrow: Okay.

PROPONENT TESTIMONY: None.

OPPONENT TESTIMONY:

REX WATKINS – 18506 WEBBER CANYON ROAD – BENTON CITY, WA 99320 lives just east of Roy. Mr. Watkins outlined his residence on **Exhibit No. 13** – large aerial of the site – by placing an “X” in red. Mr. Watkins read the following testimony into the record and then presented to the Board – **Exhibit No. 14**: “I Rex/Tammy Watkins neighbors to the east of Roy Conley Jr, object to the special use permit application, because he wants to use his property for a solid waste dump site! When Roy Conley moves a mobile home he carries this waste to his own property for disposal. This affects all property owners along Webber Canyon Road. Our property value drops considerably because of his blatant disrespect for all people around him. Note there are pictures to back this up. Rex/Tammy Watkins.” The pictures are **Exhibit Nos. 15-23 dated September 6, 2009** and **Exhibit Nos. 24 - 29 dated May 5, 2010**. I am not against anyone making a living or anything, but the garbage disposal is what hurts our property values. We all try to keep our places clean. I have lived there since 1994. I have worked very hard to keep a nice clean place. The neighbors all around him have nice clean places also, but this every time I look over there; I just get furious.

Mr. Chigbrow: Let me ask you a question then. The property value decrease is that something that is an actual fact or is that a thought that you have. Is it something that a real estate agent has said that you actually will have a decrease in property value because?

Mr. Watkins: If I was to sell my place and I brought someone up there to look at it. If they looked just to the west of me they would see a solid dumpsite. That would affect me by 50 grand or more.

Mr. Chigbrow: That was not my question. My question was do you have substantial evidence that from a land developer or appraiser that your property values have been decreased because of the applicant's site.

Mr. Watkins: No, not at this time. It would happen for sure.

Mr. Burows: Let me step back a bit farther about the waste on the site, visible piece. Would it be better to have him, if he was granted, to have a condition that the site is cleaned up or to have a six-foot site-obscuring fence around the area where he was going to secure the material?

Mr. Watkins: If he cleaned it up, I would have no objections to the solid waste. The big chunks of concrete that you can never hide. If he had cleaned all that stuff up, I would not care what he did. It is an eyesore it is terrible.

Mr. Chigbrow: That is something that will need to be remedied.

Mr. Bestebreuer: Has he buried any of the waste or is it just lying on top of the ground.

Mr. Watkins: It is just lying on top of the ground. Load after load he would bring in.

Mr. Chigbrow: Anything else.

Mr. Watkins: No.

TAMMY WATKINS – 18506 WEBBER CANYON ROAD – BENTON CITY, WA 99320 wife of Rex Watkins. As you would see in the new pictures submitted the site is not cleaned up May 5, 2010 Exhibit Nos. 24-29. No we do not have objections to it, but when you see someone bring in a pickup full of garbage, concrete and what not. The applicant would back-up pull forward slam on his brakes, so it would fly out the back. As noted this is what you see. There are containers all around. If you go up on the canal bank, you will see a lot of the waste and old junked cars. The site has not been cleaned up. Lots of it blows over onto their property. It is a mess. No, it is great if someone wants to make a living. We all have to, but we cannot continue to have something like this. As you folks have stated, you don't want it to become an official legal garbage dump and that is the problem.

Mr. Page: The pictures your husband presented were they taken from the ditch bank or were they taken from your parcel.

Mrs. Watkins: They were taken from my parcel and the ditch bank. I have more at different angles to. I know that you have a lot of them there. Some of those are from the prior year, last September when I took them. Some of those are from the 5th of this month when I took them. You will note the difference or no difference.

Mr. Chigbrow: You have been there since 1994.

Mrs. Watkins: Correct.

Mr. Chigbrow: How long has your neighbor been there?

Mrs. Watkins: She could not remember when he moved in.

Mr. Chigbrow: Was there any garbage on that site before.

Mrs. Watkins: No. In fact, if you don't mind me saying the folks who lived there prior, we have pictures at home and were friends of theirs. We went to their place. We helped them develop all the underground sprinklers. All the fencing on the property to the west of the current house was placed there to make the property look nice. We put our hard back into the property to make it look nice. It was a beautiful place.

Mr. Burows: Did you take these pictures?

Mrs. Watkins: Yes

Mr. Burows: There is a picture here dated 9/6/2009 and you have highlighted on two fifth wheel trailers that people are living in these trailers. Is that still going on?

Mrs. Watkins: I couldn't say if it is or not. I do have additional pictures I could look that I didn't put on there. There is a trailer there, but I couldn't tell you that or not at this time.

Mr. Burows: Okay.

BRAD ANDERSON – P O BOX 854 – BENTON CITY, WA 99320 outlined his site on Exhibit No. 13 by a red "O". He read into the record his testimony as noted in **Exhibit No. 30**. Mr. Anderson was against the approval of this business, due to the decrease in

property values, garbage, incompatibility with the surrounding area and not compatible with the existing zoning designation.

Mr. Bestebreur: Mr. Anderson is your property higher or lower than the applicant's site.

Mr. Anderson: Similar.

Mr. Bestebreur: Do you or the applicant look down on either property?

Mr. Anderson: No. The applicant's property is located to the west of his site. He does not see the upper region from his site. He sees the lower across the natural topography slice. He was back several hundred feet.

APPLICANT REBUTTAL:

Mr. Conley: Yes he would like to rebuttal.

Mr. Chigbrow: One question I have prior to you giving your rebuttal is that I want to know if there is anyone living in those trailers.

Mr. Conley: Nope, in fact that trailer is not there anymore. It is part of the rubble.

Mr. Chigbrow: There are no other people living on that site, except you and your family.

Mr. Conley: Correct.

Mr. Bestebreur: You stated that the trailer is now rubble.

Mr. Conley: Correct.

Mr. Bestebreur: Crushed.

Mr. Conley: Demolished and removed. That is the only way to get rid of it when Code Enforcement came; I got rid of 22 cars, two camper trailers and a motor home.

Mr. Bestebreur: When did that happen?

Mr. Conley: Over the past 60 to 90 days. Whenever Code Enforcement came and stated that I could not have these cars, couldn't have derelict vehicles. He got rid of all the vehicles. I have just the office trailer, two camper trailers that are just camper trailers that I never use, but they are there. Nobody is living in any of them.

Mr. Burows: How many of the containers are left?

Mr. Conley: The containers are still there. I have six on his property and four of them will be returned as the lease is up. He will just keep the ones he personally owns.

Mr. Burows: That would be only two.

Mr. Conley: Yes, sir, possibly three.

Mr. Burows: The two factors that concern me is that there is a fair amount of burnable debris as it appears from the picture. Also, getting service vehicles into the site due to the amount of debris might pose a bit of a challenge. It is further complicated when you surround the access, the outer access with those containers that you could not get through quickly for a fire truck or emergency vehicle even if you were hurt on the property. This is a huge concern when I see that on someone's property, that is a bad combination. Hopefully, you say they will be removed.

Mr. Conley: The front part is open, 90 feet wide is open. There is a camper that some of the pictures the neighbor said people lived in that camper trailer there by the telephone pole that is torn down and there is just a frame left, getting ready to move it up and pile it with his other frames. He had two and three of them to keep for trailers, personal use. This was a hobby of mine. He did collect cars, but hard to keep cars now.

Mr. Chigbrow: How long would it take you to clean up this site.

Mr. Conley: He could have the site cleaned up in 90 days easily. The concrete he did not realize created a problem with pushing concrete to use for burying to get some flat area. The property was very crowned and he flattened it off quite a bit. He did not realize that a block of concrete would be considered an eyesore. I thought that maybe they referred to only the garbage. Ninety percent of that is already cleaned up. We had a big pile of garbage and now there is just a little picking left to do and the rest is yard debris.

Mr. Burows: Part of what you have to do when you bring an application to us is prove that what you say is true and would be just as compatible as every place else. Be able to meet all the compliances inaudible and what is going to be done. What we are leading to on this is that over a two to three year period of time that you have been in business at this site, you collected that immense amount of garbage. What makes me reassured that in three years we don't have the same problem with Code Enforcement on this site when your business has a permit.

Mr. Conley: The Insurance says that if I have a permit to operate there then I can operate a business there. I wasn't operating a business there before; I just parked my cars there. He had a permit to do that and was informed that he could have four company vehicles only on my property when I first got my business license. Four years ago I think. They said no more then four-company vehicles on the property or then he would have to do all this.

Mr. Bestebreur: Whom did you get your business license from, as Benton County does not issue Business Licenses.

Mr. Conley: He had some kind of a license. He had several of them. He did not know what they were all for. Did you get a State license or Master Business License?

Mr. Burows: Master Business License.

Mr. Conley: Someone in the county said he could only have four vehicles.

Mr. Burows: One vehicle or four vehicles would be okay, but there are pictures presented to the Board where you have between, trailers and containers 25 to 30 vehicles on site. Under any code in the State that is a junkyard.

Mr. Conley: Yes, if a container was considered a vehicle yes he would say he had several. I have quite a few vehicles.

Mr. Burows: If they are not licensed or drivable then anything over four is considered a junkyard.

Mr. Conley: So, you are allowed to have four cars on your property.

Mr. Burows: Not running

Mr. Conley: Not running. That is pretty close to what I have only four vehicles that are not running.

Mr. Burows: Now, but in the pictures.

Mr. Conley: I got rid of 20 vehicles sir. They say that there is no cleaning been done, but I got rid of 20 vehicles. I have a done a lot for a man that works 18-hour days. I have done a lot to get the property straightened up, organized and parking things in a file, trying to have it neater.

Mr. Burows: I can appreciate that, we have many folks who come in front of us and thumb their nose at Code Enforcement then move forward and expect to have special conditions placed upon them. You are moving forward and that is fine, but you still have an issue out there. My question to you is in three years are you going to inform me tonight that you would still be in compliance.

Mr. Conley: I will be in compliance. In three years I will be in compliance whether it is in compliance to stop my business there or continue and clean it up some more. I want it clean it up. I don't want it to be a mess. I don't like stuff getting dumped out. Sometimes we just get in a hurry and we stage a load there long enough to grab another load. Then we pick it out so we don't just get rocks. I am not doing that any more. I have been hauling it and paying to get rid of the rocks and dirt also.

Mr. Bestebreur: How long have you been operating this business, not here, but is this the only place you have operated the business.

Mr. Conley: Yes, four years I believe.

Mr. Page: I am looking at this one picture that was in the packet. You have a Big B van there and a bunch of material is stacked along side of it. Looks like possible concrete forms or – he showed the picture to the applicant.

Mr. Conley: That is concrete blocks.

Mr. Page: Those are all blocks. Spool of cable

Mr. Conley: The cable is all gone, just remaining concrete blocks and some lumber.

Mr. Page: Have you removed any of the concrete blocks or rubble off that has been piled.

Mr. Conley: No, I have been collecting it for fill. Trying to fill that edge where I can have a big enough space to turn my trucks around on the property without having to back up.

Mr. Page: The concrete that you are dumping and the debris is it all going in the same area or not.

Mr. Conley: All concentrated in pretty much the same area, but tried to put it all into one. Hard to get up on top of the blocks and dump more. I was waiting for a decision on this permit to know which way I am going to flatten. If the area were for landscaping he would need to do something different and not push as much to that side.

Mr. Page: I am not overly impressed with the debris and rubble storage, especially seeing it can be seen from other parcels.

Mr. Chigbrow: If you lived next door to you would you like to look at what you have on your property currently.

Mr. Conley: No sir, I do not like looking at it myself on my property. I have been cleaning it up pretty rigidly over the past four to five months. He will continue to work on this site. No rubble or garbage. The fill I did not realize looked like garbage to any body, except my neighbor. I just now realized that.

Mr. Chigbrow: I think fill is in the eye of the beholder.

Mr. Conley: Yes sir.

Mr. Page: In this particular picture I am looking at of which you did not present, it looks like there are sticks of wood and a blue polycarb which is out of context with what I would like to see buried. The other thing is before you start burying this stuff is to find out if it is legal.

Mr. Conley: Okay.

Mr. Page: But in any case you need to dispose of it by just being a good neighbor.

Mr. Conley: I am continually working on it.

Chairman closed the public portion of the hearing.

Mr. Chigbrow allowed Mrs. Watkins to submit additional photos – Exhibit Nos. 24-29 dated May 5, 2010.

Mr. Page: Question for the Planner. There were some concerns expressed in testimony about where the line goes between the two zonings. You said this was a double zone. Can you outline on the aerial Exhibit No. 13 where the specific zones are located. Does it split the property from corner to corner?

Mr. Planner: Mr. Posey outlined the two zoning districts on Exhibit No. 13.

Mr. Bestebreur: It is like what the drawing shows on our black and white drawing.

Mr. Everett: Which zone is on which side of that line?

Mr. Burows: The area that the applicant is talking about is?

Mr. Posey: The property is all Rural Lands 5.

Mr. Burows: Asked the Planner to outline on Exhibit No. 13 exactly where the applicant would be operating this business. Is the applicant on the Unclassified side not the Ag side?

Mr. Posey: Correct.

Mr. Everett: Does the county have any program for adjusting zoning to meet parcel lines or anything. Have you run into that before?

Mr. Posey: We normally take whatever is the most prominent or dominate. This one is pretty much 50/50.

Mr. Everett: The section line was the split for zoning.

Mr. Posey: Correct in this case. If the property had all been zoned Agriculture then the applicant would not be permitted to run this type of operation from this site. Seeing as he does have the Unclassified Zone that is where he would be permitted to run this type of business by a special use permit. The planner stated that if the property were all zoned Agriculture then the applicant would have to do a Business Type Activity where everything would have to be conducted within an 1800 sq. foot building.

Mr. Bestebreur: Where everything is housed and stored currently is on the Ag side.

Mr. Posey: No, on the Unclassified side. He does have a truck up here.

Mr. Bestebreur: Based on the pictures most of the stuff is on your side of the line from what I see from that aerial photo.

Mr. Posey: Stated that everything the applicant has on the Agricultural side needs to be moved to the Unclassified side.

Mr. Chigbrow: If I were going to approve something like this the list would be another page longer of conditions of approval. The pictures received at tonight's hearing were taken 5/5/2010 – Exhibit Nos. 24-29 eight days ago. I see 16,17, 18 vehicles or trailers or whatever still located on site. I think with my thoughts right now are that until it gets somewhat cleaned up better, I would have a hard time approving this action.

Mr. Burows: Obviously, there is some progress being made, however, the property has slipped so far towards to what you could legally call, in my opinion, a junkyard. I think we have to address that with a condition. If a permit was granted for this it might

behoove the neighbors because we might have some control over cleaning up this situation. Private piece of property would be a different story.

Mr. Everett: He agreed with everything stated. Thought that was occurring to me was that the applicant had indicated that within 90 days would be about what it would take to get the site cleaned up and squared away. I am leaning toward continuance of the application for a minimum of 90 days to see what gets done.

Mr. Burows: Would that be within our timeframe of getting this action resolved.

Mr. Posey: Acceptable.

Mr. Bestebreur: In that same note could the aerial show where the two zones are located, so that the owner realizes where the two zones are located.

Mr. Everett: Are you pretty certain that it is the section line?

Mr. Posey: He would outline the two zones on the aerial for the Board and the applicant.

Mr. Chigbrow: Okay, with bringing this action before the Board in 90 days. There would have to be some substantial changes made in those 90 days. The Board would like to have some pictures and proof of those changes. I think, in my opinion, if we have to bring this to a vote tonight; I don't think it would get approved. That is my opinion only, but right now he said it would take 90 days to clean up this site. I agree with Mr. Everett that we will postpone it for 90 days, if that is what the Board wants to do and give him those 90 days. I would also suggest as long as I am talking and people in the audience can hear me is that the applicant during that time go and talk to his neighbors and let them know what he is doing and how he is doing it.

Mr. Burows: The burden of proof is on the applicant to show the Board that you can meet all of the conditions of the special permit. Currently, you have not. That proof to me is that you have cleaned up some of the junk, which is a good gesture to begin with. You stated in testimony that you would have this site cleaned up in 90 days. The proof is in the pudding. Bring it back cleaned up. Rearranged where it is all on the correct zoning, conversations with your neighbors; then I might be willing to consider it.

Mr. Everett: Mr. Planner following up on a question that was asked on the timeline from the beginning of complete application accepted what is the time period that the Board has to take action. I know that it can be extended with the applicant's concurrence, but is it 120 days.

Mr. Posey: 180 days.

Mr. Everett: When was this application presented – within the last month.

Mr. Posey: Correct.

Mr. Everett: So, we would not be running array with this extension.

Mr. Posey: No, the only problem would be a postponement after that.

Mr. Page: Condition No. 6 – disposal of any debris must be disposed of off site in a timely manner. I question whether or not he could take what he has on site currently and legally bury it.

Mr. Chigbrow: The applicant would need to contact the Benton Franklin Health District.

Mr. Page: But as far as a postponement, if he were to be able to get it done in an earlier manner; he could possibly notify the Board that it was done and move it up 30 days. The applicant cannot operate his business from this site until the permit has been approved then it may behoove him to jump on it. Since this was a Code Enforcement action, I would assume that he is not still operating the business from this site.

Mr. Burows: It would be a good thing if he wasn't, so that Code Enforcement would not have to go out and cite him again.

Mr. Page: I think that once he notifies the Board through the Planning Department that he is in fact ready to come before the board for approval or whatever other action to be taken by the Board, that at that time we have some good photos to prove in fact what we are looking for and at.

Mr. Chigbrow: We would certainly, I think, if the 90 days is what the Board decides we are going to do that at the end of those 90 days the Board would need a burden of proof. We need some pictures. We need the Code Enforcement to go out to see if he is in compliance at that point.

Mr. Burows: I am going to step out of bounds here is this all right with the applicant? The alternative is that if we vote on this action tonight it would not be approved.

Mr. Conley: Yes that would be fine.

MOTION: Mr. Everett made a motion that we continue Special Use Permit – SP 10-04 to the August 5, 2010 meeting of the Board of Adjustment in order to allow the applicant 90 days to clean up the site. Seconded by Mr. Page. Motion died as discussion ensued.

The Chairman then reopened the public portion of the hearing for the taking of additional testimony, photos of the progress made within the 90 days as far as cleaning up the site, Code Enforcement to go out and check the site and for the applicant to bring pictures to substantiate his clean up.

Mr. Burows: In addition to reopening the hearing it gives the neighbors an opportunity to state whether or not it has been done.

Mr. Chigbrow: Absolutely, we are going to have to allow for additional testimony at the August 5, 2010 hearing.

Mr. Everett: Do we need to make a motion to reopen this hearing and then continue it?

Mr. Posey: Yes.

MOTION: Mr. Everett moved and Mr. Chigbrow seconded the motion that the Board of Adjustment reopens the hearing with regards to the taking of additional public testimony on SP 10-04. Motion carried.

MOTION: Mr. Burows made a motion to continue this action to the August 5, 2010 Board of Adjustment Hearing – 7 p.m. – Planning Annex – 1002 Dudley Avenue – Prosser, WA for the allowing of additional testimony to include the following: (1) photo presentation by the Planning Staff with regards to the applicant's progress made within the 90 days as far as cleaning up the site, (2) photos and/or other testimony presented by neighbors, (3) Code Enforcement to recheck the site along with presentation of photos and (4) the applicant to bring pictures to substantiate his clean up. Seconded by Mr. Bestebreur. Motion carried.

SPECIAL USE PERMIT – SP 10-05 – operation of a customization and restoration of old cars including the sale of aftermarket accessories. The site is located at 22206 E Kennedy Road on Lot 4 of Short Plat 2653 in Section 16, Township 9 North, Range 2 7 East, W.M. Applicant: Trish Tricket – 22206 E Kennedy Road – Benton City, WA 99320. The applicant submitted a new floor plan to the Board – Exhibit No. 15.

The Planner, Mr. Posey, summarized for the Board Special Use Permit – SP 10-05, entered into the record Exhibit Nos. 1-14 and outlined the site on Exhibit No. 14.

The Chairman opened the public portion of the hearing.

Mr. Burows: Was this a Code Enforcement Action?

Mr. Posey: Yes, due to the placement of an Opening Soon sign advertising a custom repair and restoration business. This was done prior to the applicant submitting an application to the Board and obtaining approval for the operation of a business at this site.

Mr. Burows: Big commercial building constructed without obtaining a permit.

APPLICANT TESTIMONY:

TRISH TRICKET – 22206 E KENNEDY ROAD – BENTON CITY, WA 99320 stated she would like to get a shop to sell mainly after market accessories for cars, trucks, some restoration for jobs coming in and your basic after market shop.

Mr. Chigbrow: What about vehicles parked outside?

Ms. Tricket: If they are not running I believe we have to put them in the bullpen. We have a few there right now that are being worked on. A couple of others that are not yet in running condition. The intention is to have them all in running order and licensed within a month or two.

Mr. Burows: I would take it from the pictures that your site-obscuring fence for your bullpen is not erected yet.

Ms. Tricket: Not yet, we have the spot leveled which is behind the mobile home down – small drop off – about five foot high. We are going to put them back there where they are out of the way and out of site, hopefully, from people and then add fencing around them.

Mr. Burows: Site obscuring fencing not a barbed wire.

Ms. Tricket: Right, we do not want people to know they are back there anyway.

Mr. Chigbrow: How many vehicles do you anticipate to be on site at one time that you might have back in the bull pen.

Ms. Tricket: Actually, the ones in the bullpen will be personal. We won't have customer's cars that we are storing for any amount of time. I have a few collector cars like the old black car seen in a picture, old 35 Ford Tow Truck, my Datsun runs, but not licensed because it got hit in the back; it does run but will be removed. I think I have one more, so I think there will be four personal cars in the bullpen; but no customer cars. We are not storing anything for anyone.

Mr. Burows: Back to the original question that if you have a customer who comes to work on his car and the shop is full, where will his car be placed until such time as it can be worked on.

Ms. Tricket: That is a good question, I never thought of. That could happen if we get a long-term job. The intention is to add on to the back of this shop. I would not anticipate getting any of those kinds of jobs immediately. I think it will be more the after market accessories until my fabricator/welder gets a little better known. I am thinking it will be two to three years before we get any frame restorations that take four to five months to complete.

Mr. Burows: May be you will get lucky.

Ms. Tricket: Good question, we will have to deal with that. I don't know if we can build a small bullpen behind the shop for something like that or not; but that is definitely something to consider.

Mr. Chigbrow: How much room on the inside of your building is going to space that you can bring a car inside and work on.

Ms. Tricket: On the floor plan the building is split 50 – 50. The front half is office, some personal space that I will have in my office and some retail. The back half is going to be open garage storage, extra inventory, a car if we get that lucky and some personal space in there as well.

Mr. Bestebreur: The personal space you are referring to is that living space.

Ms. Tricket: No, furniture storage, etc.

Mr. Posey: The building itself is 2300 square feet which exceeds the 1800 square foot allowed area for a business use activity in an agricultural zoning district. The applicant created an area that is separated off from the business.

Mr. Everett: The future shop addition would not be acceptable.

Mr. Posey: Correct.

Mr. Everett: The business activity area will remain at 1800 sq. feet maximum.

Mr. Posey: Discuss the new plot plan with the Board – Exhibit No. 15.

Mr. Burows: If the applicant is only allowed 1800 square feet then the applicant cannot expand the business in the future.

Mr. Bestebreuer: Could the applicant construct another 1800 sq. foot structure?

Mr. Posey: No. Just one 1800 sq. foot structure.

Mr. Chigbrow: Most importantly the Board does not want to have a bunch of vehicles stored outside that people could see as they drive by.

Ms. Tricket: Like her neighbor down the street.

Mr. Burows: Do you have anything to do with the neighbor down the way?

Ms. Tricket: She knows him, but not affiliated with him with regards to business.

Mr. Chigbrow: Did you use to have a business on Clearwater?

Ms. Tricket: Yes. Pretty much of the business will be the after market accessories.

Mr. Burows: Are you living in the trailer?

Ms. Tricket: She lives in the trailer on site.

Mr. Chigbrow: Conditions of approval. Did you read all of those?

Ms. Tricket: Yes

Mr. Chigbrow: Any problems with the conditions of approval.

Ms. Tricket: No

Mr. Chigbrow: Signage will you have.

Ms. Tricket: That she was a bit confused over. We talked about being able to put the sign out like she had it, but you are limited by space. If you can put it on the building then you are not necessarily limited the same way. She is not certain. She was going to ask the Board.

Mr. Chigbrow: The Board cannot answer that question. Deferred to Mr. Posey. The conditions of approval state that the signage installed could be four square feet.

Mr. Posey: He would provide her with more clarification with regards to signage on her building as there is more leeway there as opposed to a free standing sign.

Ms. Tricket: She would like to put it on the structure.

Mr. Chigbrow: If the applicant decided to place the signage on the building she will need to meet with the planning department.

Ms. Tricket: Stated that the current signage was just advertising "Coming Soon" business. She again stated that she would like to advertise the sign on her shop.

Mr. Posey: The signage was taken down after Code Enforcement.

Ms. Tricket: She did not know that a coming soon sign counted the same as stating we are already here.

Mr. Everett: The applicant has the necessary permits; building permits for the construction of this building.

Ms. Tricket: Yes, next stop would be the building department for a change of use if the Board approves this special use permit. It was built as storage, but now wants to do something different with it. The Building Department informed her to go to Planning Dept. first, then the Board of Adjustment and then the Building Dept.

PROPONENT/OPPONENT TESTIMONY: NONE.

The Chairman closed the public portion of the hearing.

Mr. Page: Item 11 on Conditions of approval – no overnight parking of customer vehicles allowed, outside storage of hulk or non-operational is prohibited including the discussion with regards to a bullpen for storage of vehicles.

Mr. Burows: The bullpen was for personal use not customer use was what the applicant stated.

Mr. Page: Does the county have a limit on the number of personal vehicles allowed in the county?

Mr. Burows: Four unlicensed, inoperable.

Mr. Chigbrow: That is the requirement and right now the applicant meets that criteria.

Mr. Page: I do think that if she has a recessed area in the ground area with a site obscure fence installed that would be better, as the whole area was visible from the freeway.

MOTION: Mr. Burows mad a motion that was seconded by Mr. Everett that the Board of Adjustment, pursuant to the aforementioned controlling factors, finds that the application of Trish Tricket for a Special Use Permit – SP 10-05 should be **approved with the conditions as outlined in the staff report dated, April 22, 2010** 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 decisions made by the Board of Adjustment tonight. Motion carried.

SPECIAL USE PERMIT – SP 09-03 – for the operation of a rock crushing and screening business and equipment storage to include the sale of rock products. This site is located on Lot 1 of Short Plat 2849 in the North Half of the Southeast Quarter of the Northeast Quarter of Section 12, Township 8 North, Range 28 East, W.M. lying West of Hildebrand Road and East of Wheat Road. Applicant: Mike Johnson –

The Chairman opened the public portion of the hearing. The Planner summarized said action to the Board, outlined the site on the aerial provided, entered into the record Exhibits BOA 1.1 to 1.50, BOAH1.1 and 1.2.

Mr. Burrows: Exhibit BOAH 1.2 Victor Johnson is a resident nearby or status of Mr. Johnson.

Mr. Posey: Mr. Johnson was a surrounding property owner within 300 feet of the applicant's proposal.

Mr. Chigbrow: Mr. Johnson lives across the street from the Mahaffey yard.

Mr. Bestebreur: Staff memo page 4 of 8 – Item # 14 Conversation between the Benton County Planning Staff and the Benton County Building Department determined that there is not a record of a final or certificate of occupancy regarding the placement permit for the office building. Is that still correct as of today?

Mr. Posey: Yes, the building is a temporary building and that was part of the discussion that will be addressed later is that if Mr. Johnson were to be granted his permit. He would like to establish a regular building at the site and not have the temporary building on site. He was deciding whether or not to get this building approved or to remove it.

Mr. Burows: Currently, there is no plan in front of the Board tonight with regards to the building.

Mr. Posey: Right.

Mr. Burows: Second question for me is that back in Item # 10 here with regards to the Amon Wasteway which listed the buffer zone of 100 feet on each side of the boundary of the creek. It also talks about buffer zone not being suitable for structures or any related activity related to this special use permit. That includes the storage of rock.

Mr. Posey: Yes

Mr. Burows: Also, there is a piece in there – go down to Item 11 – they are not going to allow for any traps. And by the way, the traps talk about the discharge that would be in the applicant's application talking about using straw bales in SEPA. Is that what they are referring to there?

Mr. Page: Think that was misread.

Mr. Burows: Maybe I did – set me straight if I did.

Mr. Page: It states discharge into the Amon Wasteway is not allowed and traps would need to be installed to collect debris.

Mr. Burows: Okay, let me change my question. The traps then put forth in SEPA are allowable. Talking strictly about hay bales. Straw bales. Would that be an acceptable trap or do we know that.

Mr. Posey: We do not know that.

Mr. Burows: There is no current Benton Clean Air Authority permit for this site as of today.

APPLICANT TESTIMONY:

MIKE JOHNSON – 313 CANYON LAKES DRIVE – KENNEWICK, WA 99337 – stated that he felt he could make this presentation brief and painless. I think everyone knows what the intent is here. I don't have any problems with the conditions of approval now with the exception of one, which I might need some clarification on and that is Condition No. 5. In order to be able to continue to conduct business on this site, the way I read this is that we apply for another permit for the placement of the temporary building and then comply with the Building Inspector's requirement for bringing it up to compliance for an occupancy permit. Is that correct?

Mr. Chigbrow: I think that is correct.

Mr. Johnson: Okay, now when we say issuance of SP 09-03 that doesn't mean your conditional approve today or whenever, if we approve it – that means the final approval. Is that correct?

Mr. Chigbrow: That is correct.

Mr. Johnson: In that case I do not think that I have a problem with any of the conditions of approval. In fact we are in compliance with practically all of these conditions, right now.

Mr. Page: Did you read Condition No. 1?

Mr. Johnson: Conducting business. I am paying for my transgressions there; I really have no choice from an economic standpoint.

Mr. Chigbrow: Mr. Johnson, are you in business at this time.

Mr. Johnson: Yes, I am.

Mr. Chigbrow: You are in business without a permit, is that correct.

Mr. Johnson: That is correct.

Mr. Chigbrow: Okay.

Mr. Burows: You are also in business without an Air Permit, current Air Permit.

Mr. Johnson: Air Pollution Control Authority rescinded my permit based on the County's disapproval of the application. I have had two permits with them. I have another one

ready to submit. Nothing has changed, but we are not doing any crushing on the site or screening. We really don't need it until we obtain the approval from the Board. We can then obtain the Air Pollution Control Authority Permit.

Mr. Burows: Do you have any property or storage within 100 feet of the Amon Wasteway, currently?

Mr. Johnson: Do I have property.

Mr. Burows: Rock/storage.

Mr. Johnson: Yes, I do. But I am in compliance with the conditions set forth by the Bureau of Reclamation that are outlined here.

Mr. Page: Do you have something that states that the Bureau of Reclamation is allowing you to store material, as it is stored now.

Mr. Johnson: They are not saying that they are not approving it; they are just not disapproving it. The conditions that they have made a requirement are the conditions that are outlined here under Condition Number 10 -1,2 and 3. Those conditions are not a problem.

Mr. Burows: But you have nothing from them or anybody else with pictures or photos that show that you are in compliance.

Mr. Johnson: I am in compliance with these requirements.

Mr. Burows: Okay.

Mr. Chigbrow: Are you going to wash any rock on site?

Mr. Johnson: No.

Mr. Burows: Are you going to crush any raw rock on site?

Mr. Johnson: We are going to crush and screen on a part-time intermittent basis.

Mr. Chigbrow: Are you going to mine on site?

Mr. Johnson: No.

Mr. Chigbrow: Are you going to haul the aggregate in and at that point stockpile it and run it through.

Mr. Johnson: Correct, small quantities at a time.

Mr. Bestebreur: What are you going to crush? What are you going to crush to 5/8s minus, decorative rock?

Mr. Johnson: Decorative rock. Set up right now, but this is subject to change. Set up right now is to crush 1/8s minus or 1 to 3 or 3 to 8 and that may not change.

Mr. Burows: How many gallons of water do you use when you are crushing to keep the dust control down.

Mr. Johnson: He has about a dozen or two dozen sprinklers down around the site and just use whatever is needed.

Mr. Burows: How many gallons per day do you estimate that to be.

Mr. Johnson: Pretty rough guess. For one thing, we never crush full time. We might turn on four sprinklers to use for dust control while we are crushing.

Mr. Chigbrow: Is that water out of a well.

Mr. Johnson: Yes it is.

Mr. Burows: In your SEPA application page 11 "Does the project require the withdrawal of Surface Water?" You checked "Yes". What surface water and source of the surface water are you referring to?

Mr. Johnson: The only water we would be withdrawing would be well water. Classified as surface water, I would not think so. Maybe that is a mistake. There is no surface water withdrawn.

Mr. Bestebreur: How many total acres do you have there? How many acres are you currently using? How many additional acres do you plan on using?

Mr. Johnson: Currently, using approximately 8.5 acres. I have some property that I am using that is within the City boundaries and probably amounts to a couple or more acres.

Mr. Bestebreur: Roughly ten acres.

Mr. Johnson: There is 10 acres available there and probably using 6 of the 10 right now or maybe seven.

Mr. Burows: Did you have a use permit from the City of Kennewick for the two acres you are using for the business.

Mr. Johnson: No.

Mr. Burows: Have you applied for one.

Mr. Johnson: No.

Mr. Chigbrow: Have they said anything about that.

Mr. Johnson: No.

Mr. Page: Are they aware that you are using it.

Mr. Johnson: I am certain that they are as that is a portion of the property that runs right down to the five corners intersection.

Mr. Burows: In your application the two acres that sits in the city is that part of the 8.8 acres that you have on your application.

Mr. Johnson: No.

Mr. Burows: So, you have ten acres.

Mr. Johnson: Roughly.

Mr. Everett: So, the two acres is Hansen Ownership.

Mr. Johnson: Well, there is actually about seven and one half acres that is owned by HFRP. I have a lease option agreement with them on that and they are joint applicants here.

Mr. Everett: Could you point that out on the aerial provided what you own and what they own.

Mr. Johnson: Pointed out the area with a red marker.

Mr. Burows: So the bulk of your operation is on Hansen Fruit property.

Mr. Johnson: The bulk of the property belongs to HFRP, yes. I have a lease purchase agreement with HFRP.

Mr. Page: Mr. Johnson could you point out on the aerial where the crusher would be located and your stockpile.

Mr. Johnson: He point out that the crusher would be located on the bottom portion of the site. Apparently, there are no stockpiles.

Mr. Chigbrow: Mike, you stated that you were in compliance with the Bureau of Reclamation for what they are requiring of you. Have we received anything from the Bureau of Reclamation and if so maybe I might have missed it in the packet of information.

Mr. Burows: The Board has a letter that states.

Mr. Posey: That is the only correspondence we have received back from the Bureau. It is BOA 1.23 dated April 16, 2010 which states the following: 1) The operation of the rock crusher is not within the 100 foot right of way of the west bank of the, Amon Wasteway, of the parcel for which the special permit is applied for. The applicant shall continue to meet all such requirements while Special Permit SP 09-03 is in effect. 2) The operation does not include the use of washing crushed rock with water that can drain into the Amon Wasteway. 3) The rock to be crushed or the subsequent crushed rock cannot be stored on the 100 foot right-of-way in the Amon Wasteway.

Mr. Burows: But it is.

Mr. Chigbrow: Are you within that 100-foot are. Do you have storage within that 100 foot?

Mr. Johnson: Not of the product or the crushed product. Not have the product prior to it being crushed or the crushed product.

Mr. Burows: Do you have any storage within 100 feet.

Mr. Johnson: Storage of

Mr. Burows: Anything

Mr. Johnson: Yes

Mr. Chigbrow: What would that be?

Mr. Johnson: Boulders, palletized rock, and basalt columns.

Mr. Burows: So, are they retail items that you have for sale.

Mr. Johnson: Yes.

Mr. Chigbrow: Are they going to stay in that location within the 100 foot.

Mr. Johnson: That is the intent.

Mr. Chigbrow: Tell me what the Bureau.

Mr. Posey: As this reads and I will read it again. Number Three: "The rock to be crushed or the subsequent crushed rock cannot be stored on the 100-foot right-of-way in the Amon Waste way." He does not have any of that in there. What he does have is boulders and columns stuff that would not wash into the creek. That is what they are worried about. Are debris and water runoff and that leeching into the creek?

Mr. Burows: That is good, but there is one condition in here that has me worried about whether this will have any danger to the public safety. If he has "picking" rock or has any motor vehicles down there where it can spill and run into that creek, I believe it does not meet that condition.

Mr. Chigbrow: That may be the intent of what the Bureau said. I think that I would like a bit more clarification from them just to make certain that we are okay and that your boulders and your columns and everything are okay in there. I don't think that is a whole lot to ask for.

Mr. Johnson: Let me just say this. When I first started on that site one of the first things I did was write a letter to the Bureau of Reclamation requesting that I be able to do some clean up on that site. Seven months later, I got a form letter from the Bureau of Reclamation saying that these are the requirements. Basically, what it states is don't interfere with the drainage. That is not an easy thing to do.

Mr. Burows: Mike, in all fairness it says on the deed to your property that you are not even supposed to harm or move the vegetation within 100 feet and you have done that.

Mr. Johnson: Well, we may have to get Terry Miller to talk to you about that, I guess if we are going to get into depth on this.

Mr. Burows: We are.

Mr. Johnson: Okay, I will let Terry Miller take a stand.

TERRY MILLER – ATTORNEY FOR THE APPLICANT – 2337 GREENBROOK, RICHLAND, WA 99352 states that included in the packet is an Affidavit that I put together explaining my quest to run the short plat notes to ground. If you look at the short plat – BOA 1.46. The vicinity of the wasteway is a notation, actually a notation on either side, which states 100 foot and then the word “buffer” was on each side of the waste way then “buffer” was lined out and handwritten is the note “USBR R/W Reference File # 803521” that is an Auditor File Number – BOA 1.30. Short Plat also has a note on the face that states “No construction, filling, grading or vegetation removal within the Amon Wasteway drainage easement will be permitted”. Auditor File Number 803521 is a Resolution by the Kennewick Irrigation District. I attached a copy and the Resolution provides that certain documents will be recorded. That is Exhibit “A” to the Affidavit, which is BOA 1.30. Again, if you look at the Resolution it is a Resolution by the KID Board back in 1979 and they recorded the maps. Each map is tied to a section. I reviewed the section map, which for the County is now on microfiche at the Courthouse in Prosser. A copy of that microfiche is Exhibit “B” to my Affidavit. The map shows a single line for the creek. There are no notations about the right of way, buffer or strip or width. None of that is here. So, the next step that I took was to contact the KID's Chief Engineer Richard Evans and asked him about any easement, buffer or right of way claimed by the KID or the Bureau. He had no specific knowledge, but referred me to Jonathon Brooks – a realty specialist for the Bureau of Reclamation located in Ephrata. I spoke with Mr. Brooks and was referred in turn to his Supervisor Cass Garza and all these names and dates are in my Affidavit. I spoke with her a couple of times and left other messages. I then was referred to Dan Strasser of Permit Surveying, the licensed surveyor who prepared the short plat. Mr. Strasser was helpful. He still had the file from the short plat from 2004. I received from him a copy of a letter from R.J. Lott in the Planning Commission. A copy of that letter is also attached as Exhibit “D”. I did note that I have reviewed this earlier and some of the Exhibits to my Affidavit have been filed behind other exhibits that appear to be extraneous, but in looking at Exhibit “D” of my Affidavit is a letter dated October 11, 2004 to Gordon Keyes from R.J. Lott – Associate Planner at the time. Mr. Lott asked Mr. Keyes and Permit Surveying to add the note. “All drainages, rivers, creeks, etc and that no construction filling, grading or vegetation removal within the Amon Wasteway Drainage Easement will be permitted.” So, these two notes were added at the request of the County's Associate Planner. The Bureau of Reclamation apparently did not participate. I continued. I spoke with Karen Helberg from the Bureau. But, again this all occurred in the October 2009 timeframe. I telephoned Ms. Helberg and left detailed messages when she was not available. When I was able to finally speak with her, she was unable to provide any information or documentation relative to the interest claimed by the Bureau on Short Plat 2849. In further discussions with the Bureau of personnel in Yakima, I was directed back to the KID. The Bureau's position was clearly, that if the KID was satisfied with the waste way and others use of the same then the Bureau was satisfied. I went back to the KID and

spoke with Scott Revell. Mr. Revell was either Property Manager or Interim Operation Manager for the KID at the time. I filed a Public Records Request with the KID on January 13. A copy of which is Exhibit "E. The KID's response after telephone calls, emails and a face-to-face meeting with Mr. Revell is summarized in his email response of March 13, 2009 – that is also attached. Mr. Revell said is my question to him was that any development here regarding the KID or the Bureau's claim and his response was yes and no. I can find no documents that establish the width of the Amon Wasteway Right of Way other than the USBR's land classification maps "irrigable/non-irrigable, etc" which show it being 200 feet wide in Section 12. I have been to the title company and there are deeds in that area that refers to at least one side of the Wasteway. There are also references to a prior contract with USBR and refer to the land classification maps. You are welcome to copies of those documents, of course. Finally, he said I met with the USBR staff this week and confirmed that the property is subject to the Canal Act of 1890. Gentlemen all that I can say is that I have talked to numerous representatives of the Bureau in Ephrata, at least two representatives in Yakima. I have been to the KID, whose is the Bureau's beneficiary in that area. I spoke with the Chief Engineer and the Property Manger who later became the Interim Operations Manager of which no one has been able to produce anything that would substantiate any more than a right to use the Wasteway; presumable within the natural banks of the Wasteway. There simply is no documentation to substantiate a claim for any width for a right of way, easement or anything else.

Mr. Burows: USBR's land classification maps show it as being 200 feet wide in Section12, of which his property is was irrelevant.

Mr. Miller: No, a classification map is just that. He gave the example "irrigable/non-irrigable". So, if it was non-irrigable and someone were using KID water to irrigate it, presumably KID could come out and say, "You cannot water that strip" because it is non-irrigable.

Mr. Chigbrow: That is what the 200-foot measurement is that it states in these documents. That is what it means that it shows it as being 200 feet wide.

Mr. Miller: I don't know where the 200 feet comes from. Someone wrote 100 foot buffer then lined out buffer and then changed the notation. The Bureau cannot explain it. The Referenced Auditor File Number, I went through that. The map that was recorded under that Auditor's File Number is attached. There is nothing more. It is a single line showing the centerline of the Wasteway. There is no documentation of record. We could have a title company search for it, but I have been to the Bureau and the KID. Mr. Johnson has corresponded with the Bureau himself. I do not know what more we can do.

Mr. Burows: The legal recorded document has that on it.

Mr. Miller: It does, but the notation came from the County. That is what Permit Surveying is saying that R.J. Lott's notation states.

Mr. Burows: Mr. Marden approved that letter.

Mr. Miller: Let me explain what we are left with is almost a Quiet Title Action going into Superior Court and suing the world to revise that. Again, there has to be a basis for it. Presumably, the party that would benefit from it would be able to produce the basis. The

KID and the Bureau. I do not know what more I can do. Other than to write letters and make phone calls and send them a copy of the proceedings here. But to date no one has been able to produce anything to support a buffer anything more than the creek itself.

Mr. Burows: My concerns go even farther than the notes on the letter BOA 1.14 from the City of Kennewick which states "(2) Our maps show the Amon Wasteway in this area with a 100-foot setback requirements on each side of the Amon Wasteway. Also our Critical Area map shows a large portion of this area to be an "Erosion Hazard" area and a "Steep Slope" area. The Critical Area Map also shows "Riparian Habitat" within the site. The site plan enclosed with the special use permit is too small to identify any detail. The City of Kennewick requests a larger scale site plan showing the Amon Wasteway buffer, the Critical Areas and exact location of the proposed use in relation to the Amon Wasteway and Critical Area. If uses were located within the Critical area, the City would like to review the mitigation measures." Basically, what they are saying is move everything out of the 100-foot area. They are against it. They continue it in BOAH1.1 "The Bedrock business has pretty much destroyed whatever was left of the Amon Wasteway which needs to be restored and is designated as a Riparian Habitat on our Critical Area Map. Also, if the City were ever to annex that part of our UGA that business would be a non-conforming land use. And on top of that we have some addressing issues that need to be resolved for that site because of our emergency response addressing standards." They continue to come back to this 100-foot for the City of Kennewick as well recognizing the maps that are there. So, at some point there has to be some authority that makes that claim until it is challenged, correct. So, what I have to decide on here today is what is written in a recorded document, which states that there is a 100-foot buffer. Unless, you can show me otherwise.

Mr. Miller: What it says is a 100 foot the word "buffer" is lined out. Buffer doesn't show, it says 100 foot. In hand writing R/W presumably right of way and it refers to an Auditor's File No. which doesn't support.

Mr. Everett: Mr. Miller in your research relative to this would you say that the results continue on down the Amon Wasteway across the golf course at Meadow Springs on down to the Columbia Park Trail where it goes down into the canyon, terraced developed and is considerable wider and platted up to the line. It occurs to me, that what you saying are that other portions of the Amon Wasteway, maybe they have different documentation or recorded deeds that would shed some light on this situation. I was wondering if you had run across anything else on other portions of this same PR, right of way, waste way.

Mr. Miller: Let me see if I can find it. I believe that part of my request to the KID. Let me look at Exhibit E that is my public records request. It is again Exhibit E to my affidavit, which states the following: "Please accept this as a public record request: 1) Correspondence between KID and any other party related to the Meadow Springs County Club's current project in and around the East Amon Creek or East Amon Wasteway. (The "Project"). 2) Internal KID notes or emails related to the project, 3) permit applications and/or permits related to the project; 4) Records establishing or evidencing any interest of the KID in the East Amon Wasteway." They could not produce it. The East Amon Wasteway does run across 10th and wind kind of around and it goes under the tracts, under Clearwater and then it runs into the golf course. The golf course as some of you may know, has landscaped right up to the water's edge. A recent

project that was underway at this time was that the golf course had excavated back and was placing boulders right up to the edge of the water and then back filling and landscaping. There is grass right up to the boulders and then the boulders drop right into the water clear down to the golf course headed for Gage Blvd. and where it starts to drop towards the river. KID didn't produce anything to support permitting or over site of this project. They did not produce any records supporting their interest in the Amon Wasteway. They simply have not done so. I do not know what more we can do.

Mr. Everett: I appreciate your response, but the fact that you did not find any other documentation relative to deeds recorded, rights of way, USBR or something.

Mr. Miller: No, let me explain the Canal Act, which is referenced in Mr. Revell's email. This is pretty much the last document in the chain. The Canal Act is best described, as the Federal Government's Sovereign Authority to take any land it needs for an irrigation project, like the Yakima River Project. It is a blanket authority. When the Bureau came in 1905 and started the Yakima Project it had the right to place canals where it wanted to. It had to take some kind of step to be able to do that. It has claimed the right to the Amon Wasteway, but the only right it has described is that map which is recorded; which is the centerline of the waste way. Now, Washington Law Common Law and Statutory Law prohibit adjacent property owners from interfering with the flow of the waste way. Mr. Johnson couldn't go down and start building out into the creek, but as long as he doesn't interfere with the flow or doesn't interfere with the function of the waste way, there is simply nothing more in the record other than Mr. Lott's request to put those notes on the short plat.

Mr. Chigbrow: I have a brief question for the Planner. On the other side of the Amon Wasteway there is a company on that side and they are in the water, are they in the water.

Mr. Posey: I cannot say if they are in the water.

Mr. Chigbrow: Within 100 feet.

Mr. Burows: They were cited down there and had to clean it up because they were in that buffer.

Mr. Posey, Yes, they have been cited. I do not know the outcome of that yet. I cannot go on the property. The pictures taken were on the other side of the creek. I am the person who got Code Enforcement involved. It would be the same call that we got back from the Bureau. We will send the Bureau notice and they will be able to comment on that site. I assume that we will receive the same response.

Mr. Chigbrow: If in fact they were cited and the Bureau of Reclamation says they don't care as long as they don't obscure the flow of the stream. Does that mean that the citation goes away?

Mr. Posey: No, they were not cited because of that. They were cited because they had taken a site that was issued a special use permit for the construction of mini-storages and changed the business type.

Mr. Chigbrow: So, it didn't have anything to do with the Amon Wasteway.

Mr. Burows: When they moved that dirt they were cited because they went into the 100-foot buffer. I think if we check the records they were cited.

Mr. Posey: County.

Mr. Burows: No, not the county.

Mr. Posey: That is all that I can comment on. I don't know if they received a citation from anyone else or not. As far as we are concerned the citation was that they were operating there on a use that had not been permitted. They will have to go through the same hoops as Mr. Johnson is going through. We will have to send out for the same comments as we did Mr. Johnson. I don't know what we are going to get back from the Bureau of Reclamation. I would assume that we would get back the same type of comments, but I cannot say. It just happened we have not done anything with it.

Mr. Chigbrow: With a thorough research as Mr. Miller has done and to find the same information that the 100-foot on each side is non-existent. What happens then?

Mr. Posey: They have no problems or if they send back even if that buffer means nothing as far as it being on paper, drawing it on a map; this still wins here. This is the latest comment from the Bureau of Reclamation BOA 1.23. This is all that I have to go by.

Mr. Chigbrow: Understand. My other question is if they are the regulating agency for the Amon Wasteway. It seems to me that at this point in time they have passed the buck and said okay we are going to give it to KID.

Mr. Burows: KID came back and said it was a 200 foot classification and Mr. Miller gave his opinion on that as well. I have to go back even one more if you can't answer that one. This is designated, as a critical area for habitat and that does not have any buffer zone.

Mr. Posey: I do not know exactly where it was designated as a critical area. The City of Kennewick has their opinions and feelings on it. It was like trying to regulate the mini-storages that were heard last meeting where they said thanks for your comments and we will take that into consideration.

Mr. Chigbrow: I think that is the way we need to stay.

Mr. Burows: I understand that, but if that is part of the critical area map – if that is a critical habitat area – then there is a buffer there. Whether it is a 100-foot that is scaled on the map. Is that why the County had it ultimately put in there, if the County put it in there, who put it in there and nobody knows; but it is a recorded part on the deed today. Right or wrong it is there. So, we don't know anything here tonight about a critical area for habitat.

Mr. Posey: Correct, the maps that you have presented to you tonight are the City of Kennewick's map and they do not reflect the county's maps. If there is an infraction within that waste way, we are not the authority to issue a citation on it. So, if somebody else got a citation I wish that I would know, but it would not be any bearing on my job.

The county would be informed. If there were an infraction it is up to whomever is in charge of that buffer, here it would be the Bureau of Reclamation. They have the final say. They would be the ones to issue the fines accordingly.

Mr. Chigbrow: I guess I just don't understand. We ask them if there is a 100-foot on either side of it, is there or is there not and is it a legal 100-foot on either side. That is what I want to know. Mr. Miller states that there is not. It has been scratched out and it is very plainly scratched out. Now, the county has signed it off.

Mr. Posey: The county does not scratch anything off of the mylar maps. We don't have the authority to do that.

Mr. Chigbrow: That is the problem, we don't know who did it.

Mr. Posey: A licensed surveyor or an attorney has the right to do that. But if there is not a 100-foot buffer in there why did we get a comment letter back from the Bureau of Reclamation.

Mr. Chigbrow: I understand that and I agree with you 100 percent.

Mr. Everett: Mr. Johnson owns part of the property – title to it deed to it. What does that deed say as far as deed restrictions, easements and etc. relative to the Amon Wasteway. Does it say anything subject to that?

Mr. Miller: No.

Mr. Everett: Totally nothing about a Wasteway on that deed.

Mr. Miller: I don't know that I have seen the deed, but when a deed. Typically, a deed for short platted property would describe the property as short plat number 2864 Lot 1 or 2 and thereby incorporates whatever is on the face of the short plat.

Mr. Everett: Prior to that who had the title or deed to the property

Mr. Miller: It was Gordon Keyes in this instance.

Mr. Everett: I know that sometimes they specifically spell out easements and restrictions and rights of way and other limits. Sometimes they just reference to any specifics and then anything of record. Any other easements, reservations or restrictions of record or whatever on that. I think Title companies looking for it. I was curious about the actual deed document did it state anything about it. Does it even acknowledge that the Amon Wasteway or some USBR right of way exists?

Mr. Miller: Again, I do not know.

Mr. Posey: The title report may show something. I did not do a title search on it. Everything is listed and the title report cannot be over two months old at the time of recording to make certain that we have the latest information on that property. I don't know what it says.

Mr. Everett: It is another avenue of research that should be looked at. Perhaps, it has something specific, I doubt. You would think that it would surface during Mr. Miller's research. I am curious about some of it as I know that there is other pieces of that waste way in that general vicinity that are several hundred feet wide. It is like a big intestine as it winds down around there and shown on the topography and winds in and out. Somebody established that and I know at least some of the properties about they do not go out to the centerline or whatever.

Mr. Burows: I need to go back one more Mr. Miller. There is a June 2009 letter in our packet to Carel from KID BOA 1.18 that states, "The KID believes this customer to be encroaching into the USBR Right of Way located along the west property line. There is a 200' (100' both sides of canal centerline) present for the Amon Wasteway. This issue is currently unresolved." I don't know if they are saying that it is unresolved to them, but it appears to be that their individual – Chris Sittman – KID Associate Engineer – believes that there is. That buffer zone or right of way zone, whichever you want to call it.

Mr. Page: KID has their heading on the top right hand page.

Mr. Miller: Chris Sittman, KID Associate Engineer, I spoke with his boss and his boss didn't know of anything. His boss's boss Scott Revell could not produce anything.

Mr. Page: The information came from somewhere. Somebody is not going to arbitrarily pull it out unless they have located it someplace.

Mr. Miller: If you have any suggestions for someone else in the Bureau that I can. Short of filing a lawsuit against the Bureau, I don't know how we can get them to respond and produce what they think is out there. The note came from Mr. Lott of the County. Maybe Mr. Lott remembers. I don't know what more we can do. Again, short of a Quiet Title Action, we can do that. A deed to Mr. Johnson that is easily resolved. We could have that tomorrow morning and distribute copies. I am not optimistic that would answer any question, but we can certainly do that.

Mr. Chigbrow: I think it would be something good to produce, so that we could see it. It may not say anything. I am still having a problem with the Bureau of Reclamation as to why in the world we cannot get an answer.

Mr. Miller: Sure, well they are the Bureau.

Mr. Chigbrow: I understand.

Mr. Miller: That fits the full explanation.

Mr. Chigbrow: In a situation like this Mr. Miller we really need an answer. I am quite impressed by all of your research. You have dug deep and you still really don't have an answer, but you do not have the answers that we are looking for. Is there 100 feet on each side of that? One agency says that there is and one agency says there is not. I don't understand that if it is a recorded buffer zone or whatever it is – why won't somebody say so. Is that the answer, that it is the Bureau.

Mr. Miller: I am satisfied that it is not recorded. Because again the map that is recorded is in here and where it shows the canal it shows the width of the canal rightfully. So,

when the Bureau wanted to claim something with the width, it had no problem showing it and showing the width. However, for the waste way it shows a survey course of the creek no width.

Mr. Chigbrow: What else do you have to add Mr. Miller?

Mr. Miller: I did not plan to respond to questions or testify, but I followed Mr. Johnson through this journey. He has done an awful lot. He is feeding himself off of this. He has actually employed others. He wants to continue to do that. The surrounding area you can look at the aerial photos. You can look at the photos taken on the ground. This use of this property is compatible with the surrounding area. The City of Kennewick as you may know this is the far west end of the South Ridge Sub Area Plan and the city has just acknowledged in writing in recent council meeting minutes that they have serious problems with South Ridge as they never followed through on zoning or comprehensive planning. It is interesting to have the City object to this project when it is on the very fringe, very little development in South Ridge and nothing out on this end other than the city's water tank up on top of the hill.

Mr. Chigbrow: I am sure that you are aware that the Board of Adjustment, we put this in our packet as it part of the correspondence that we get. We won't make a decision on what they say. We will make a decision on what is presented to us. Will that way in, probably not a lot because it is county property not city. Although it is in the Urban Growth Area. We will make our decision by the evidence that we hear from you.

Mr. Miller: Let me get back to the Bureau issue. If this Board has any suggestions or ideas, I am open to them. I would like to know the answer. Dealing with the Bureau is like other federal agencies. It can be tough to do.

Mr. Chigbrow: We understand that and there isn't anybody that would like to put this issue to bed more then we would.

Mr. Miller: Thank you.

Mr. Everett: Mr. Planner can you show us on BOA 1.51 – larger version of the aerial – where the UGA lies.

Mr. Posey: I would have to look at it. To me it would not make any difference.

Mr. Chigbrow: That is the way that I feel, it doesn't make any difference.

Mr. Posey: I don't mean any disrespect to Kennewick, but in this particular case where this is not going to be a housing development. It would be more so what your UGA would take in.

Mr. Everett: I was just curious how far west does it extend from this site. Hildbrand Road.

Mr. Burows: If you look at the map on BOA 1.50 you can pretty much see where Hanson Park the last phase of Hanson Park is before it comes across the road up the left hand corner. This is also the end of Steptoe Extension, I believe.

Mr. Bestebreur: Yes. What is the difference between a "buffer" and an "easement"?

Mr. Posey: Easements are generally used for ingress and egress for properties. A buffer zone is generally something that stands in a setback zone or setback area.

Mr. Bestebreur: It clearly states on this drawing BOA 1.46 that there is a drainage easement. Appears that there is no testimony that there is not a drainage I mean against the drainage easement, is that correct. There is a drainage easement that is not in doubt, correct.

Mr. Posey: As far as we are concerned yes. Mr. Miller might disagree with that.

Mr. Bestebreur: But it has not been crossed out and hasn't been added. My point is independent of what is crossed out and re-written on there, there is still a drainage easement that has not been addressed, changed or anything to that affect. If you go to note 10, that has not been changed or modified.

Mr. Burows: Correct, no construction, filing, grading or vegetation removal within the waste way drainage easement will be permitted.

Mr. Bestebreur: So, I am not sure really what the buffer or USBR right of way Auditor's File has to do with this because there is a drainage easement and 100 foot on each side.

Mr. Burows: Where did it say that?

Mr. Bestebreur: BOA 1.46 right in the middle of the – it says drainage easement right along the line.

Mr. Everett: It doesn't say 200 feet.

Mr. Bestebreur: Buffer or an easement now. Question, I guess you could say okay are they referring to the buffer as a form of an easement that would be the 100 foot buffer on each side. Or did they cross out the word buffer as maybe that was the type of terminology back when this was filed originally and when it was updated they got rid of the word buffer as that terminology was no longer used as we use the word easements now.

Mr. Everett: I would suspect that it is a misnomer to put it on that way and that was what they were trying to do to get it corrected with the handwritten thing, but then they reference a file that apparently does not substantiate the Auditor's File Number.

Mr. Bestebreur: We do not have a copy of that file now, do we.

Mr. Miller: Yes, you do. The Auditor's File Number is Exhibit E. My Affidavit, which is BOA 1.30.

Mr. Page: Note Number 10 "No construction, filling, grading or vegetation removal within the Amon Wasteway Drainage Easement is permitted."

Mr. Miller: Exhibit A to my Affidavit just a couple of pages back is the KID Resolution from 1979. Page two of that resolution is this long list of drawing titles. The next page

Exhibit B is that drawing number. It is for Section 12, Exhibit A, and Page Number 36. So, Exhibit B the north arrow is there in the upper right and the waste way is that surveyed single line through the upper right hand portion of that section.

Mr. Burows: This isn't a County recording. This is a recording with the Bureau of Reclamation.

Mr. Miller: No, it is both in effect. If you look at Exhibit A, the KID Resolution that has the recording number that is on the face of the short plat, which is BOA 1.46. BOA 1.46 is the face of the short plat.

Mr. Bestebreur: But, you stated in your Affidavit that reference maps were not available.

Mr. Miller: They were not available at the Title Company. They were available on microfiche in the Benton County Auditor's Office in Prosser.

Mr. Bestebreur: That is page 36 of 106 pages.

Mr. Miller: Correct.

Mr. Bestebreur: Do have any clue what these two handwritten notes state as noted on Exhibit B.

Mr. Miller: No.

Mr. Bestebreur: I would assume that if they are going to put a reference file, that there would also be some additional writing, but I do not know if that writing clarifies anything or no buffers are used anymore. I am asking if a buffer is not a terminology that they use any more as it could mean a lot of things. May be that is why they went with the terminology of an easement, but they did not cross out the 100-foot. They kept the word easement and drainage easement along with the word of 100 feet. If you do follow that logic then you go to number 10 under notes of BOA 1.46 "No construction, filling, grading or vegetation removal within the Amon Wasteway drainage easement will be permitted. "

Mr. Miller: Which is Mr. Lott's note. That is what the County wanted on the face of the short plat.

Mr. Bestebreur: If you go to a previous one and this one here then number 10 is not there.

Mr. Miller: Mr. Lott's letter.

Mr. Bestebreur: The only drawing between this 36 of 106 which is your Exhibit B and the only dated 12/9/04 are these the only two drawings.

Mr. Miller: The previous plot.

Mr. Bestebreur: The previous plot. Are there any other drawings between these two, prior to the short plat other than these two drawings?

Mr. Miller: Not that I know of.

Mr. Bestebreur: Okay, so where did – who put 1-11 in there.

Mr. Miller: Notes 1-11, presumably Permit Surveying.

Mr. Bestebreur: Okay, then note number 10 came from

Mr. Miller: Note Number 10 came from Mr. Lott.

Mr. Bestebreur: Okay, but the other notes 1-9 and 11 came from permit surveying.

Mr. Miller: Permit Surveying prepared the short plat.

Mr. Bestebreur: Correct. It is just like prior to permitting the grading or FAS.

Mr. Miller: According to Mr. Lott's letter, which is Exhibit D to my Affidavit dated October 11, 2004 states: "Please note: Those requirements listed below that require changes to the Mylar (the final drawing of the short plat) are to be completed by your surveyor." So the surveyor but them on the face of the short plat, but you can see a lot of these came from county requirements/short platting requirements.

Mr. Bestebreur: But is no construction, filling, grading, or vegetation removal within an Amon Wasteway drainage easement is that a county requirement.

Mr. Miller: Mr. Lott required it for this short plat. That is all that I can say without further investigation.

Mr. Bestebreur: I guess this kind of goes with what Mr. Everett stated has there been other short plats, but they would all be within the city then if you are going more towards the Amon Wasteway towards the river.

Mr. Miller: I don't know of any short plats between Mr. Johnson's property and where the KID dumps into the waste way. I don't believe that there are as it is all undeveloped.

Mr. Bestebreur: There is really none going back the other way.

Mr. Miller: None that I am aware of, but it has happened just north of 10th in that they have channelized the waste way. They have put dikes on both sides. It is just a narrow channel down there and they have paved right up to the edge of the dike.

Mr. Bestebreur: My next question is with this short plat here at this time based on this owner's certificate, Gordon Keyes owned the property when this was signed.

Mr. Miller: Correct.

Mr. Bestebreur: Subsequent since then Mr. Johnson has bought that property or obtained that property. He bought this property with this short plat knowing that requirement number 10 was on the short plat. However, it was put on there or whatever.

Mr. Miller: Recording gives constructive notice. Again, we will take a look at the deed itself.

Mr. Bestebreur: He bought this property with Number 10 on this drawing saying no construction, filling, grading, or vegetation removal within an Amon Wasteway drainage easement will be permitted.

Mr. Miller: Correct.

Mr. Bestebreur: Based on what I see here is that there is a drainage easement and that there is a 100 foot on each side USBR on this here. I don't know who wrote it or put it on there, but they crossed out buffer, may be for a terminology reason or whatever, but 100 foot is still on each side. That is the way I am looking at it. That is why I was asking was buffer an outdated term because of confusion, but drainage easement has not been crossed out and 100 foot has not been crossed out. So, it would lead me to believe based on this here and what I have right now is that right now you don't do anything on that 100 foot on either side. Not on Mr. Johnson's side or the other side Kimo's side. The way that I read this here if I was to buy this piece of property.

Mr. Miller: Note 10 say "no construction, filling, grading, or vegetation removal."

Mr. Bestebreur: Correct.

Mr. Miller: Mr. Johnson explained his correspondence with the Bureau leading up to his removal of dead trees.

Mr. Johnson: Gordon Keyes made application for this plat and got it approved and personally told me there were no restrictions. He certainly did not abide by any terms of his tenure on that property on both sides of the waste way. Then as you go north from there, like Terry Miller said, every business in line along the waste way is infringing on the buffer if there is a buffer. Another thing Hansen Fruit typically stockpiles all those fruit boxes on that same so called buffer and have been doing it for how many years. They are still doing it.

Mr. Bestebreur: If you go to note Number 10 Mr. Johnson it doesn't say anything about not storing material or "inaudible"; but as long as there is not vegetation removal, construction, filling, grading.

Mr. Johnson: Like I said Gordon Keyes did not comply with it.

Mr. Bestebreur: They're a lot of people with tenure who don't comply.

Mr. Chigbrow: What would it do to your business the boulders, columns, and stuff you have in that – let us just say that the material is there in the 100 foot - what if you moved it somewhere else.

Mr. Johnson: Short of a lawsuit with the Bureau of Reclamation, so that we could resolve this issue and keep myself in business there at this site that might be the simple solution.

Mr. Chigbrow: I am just trying to. Short of filing a lawsuit if you can be in compliance with every thing else, but the 100 foot then move the boulders to the other side of the property.

Mr. Johnson: Here I think Mr. Posey said it right that if the Bureau of Reclamation has a problem with something I have done or the KID does aren't they the policemen, aren't they the people who need to enforce any requirements that they might have on that. It doesn't have to be resolved here tonight, does it?

Mr. Burows: Yes, it does to make a variance in the code to grant you the opportunity to move forward.

Mr. Johnson: I have agreed to comply with the Bureau of Reclamations conditions that is not a problem that are part of the conditions of approval here. That is not a problem.

Mr. Chigbrow: So, moving the boulders would not be a problem.

Mr. Johnson: No, but that is not one of their conditions.

Mr. Chigbrow: No, but one of their conditions is that they are concerned about being within 100 feet of the Amon Wasteway.

Mr. Johnson: Well, I guess they are not very concerned because they haven't done anything about it for the many years that I know.

Mr. Chigbrow: Understand. Mike, we are trying to come to a conclusion here. We certainly do not want to put a business away. We need all the businesses we can get in this area, but when the Bureau of Reclamation. The easy solution to the whole deal is to move the boulders to the other side and let us get on with it. Get in compliance and then go on with it. That saves you a lawsuit. It puts you in compliance with everything that we are requesting. Then if you want to go back and get the Bureau of Reclamation go do it. I do not care, but it just seems to me that is the easiest solution to move ahead. Because we have the Board we are unclear, we admire Mr. Miller's research. The work that has been done on this, but we still have these pieces of paper that are in our packet to say we have a 100 foot – whatever it is – a buffer zone or a easement or whatever it is. I do not know.

Mr. Johnson: What you want to do is change the proposed conditions here.

Mr. Burows: That is our ability to do so.

Mr. Johnson: What would that condition be?

Mr. Chigbrow: I think if a condition were added, but the Board would have to agree. If there was a condition in here that said that you would be required to move your boulders and columns box out of the 100 foot easement and you meet all the rest of the conditions that are set forth in the packet. My opinion only.

Mr. Burows: Mike, I will be honest with you. I am not convinced you have supplied me with enough information here to approve your permit and that you have proved without a reasonable doubt that you meet all the conditions for approval. That being said this

continual piece here where you want to challenge the law that is written and the coding that is written on the document pertaining to the piece of property you purchased. I don't think that it is making you a huge amount of headway. The business herein is landscaping rock for if I were a customer I would want to go someplace that looks like they actually care about the environment that they are trying to sell. The place of business and take a look at the creek, which is supposed to be a protected buffer zone and you disregarded the requirements.

Mr. Johnson: Well, just for your information I have received numerous positive comments from people with regards to the changes made to the property and about the way it looks as it is today.

Mr. Page: What do you have within a 100 feet from the centerline of the waste way besides the line of boulders.

Mr. Johnson: Asphalt columns, boulders, palletized rock and probably an ecology block bin.

Mr. Page: If you decided to move that how much time would you have involved.

Mr. Johnson: Couple of days. Where would you put it is still the question.

Mr. Page: There are about 10 acres and there are about 8.2 on this application. Would it be that hard to find a place to put it?

Mr. Johnson: Well, it would be it would take some work to prepare another area. It is not something that could not be done.

Mr. Posey: Are you stating indefinitely or until a final decision from the Bureau of Reclamation can come back and specify exactly the limitations.

Mr. Burows: Speaking solely for himself, I am going to take what is noted on the short plat and that is a recorded document. I will base my decision on. If that is what the Bureau wants to meet, then fantastic. I think we have a commitment to a legal recorded document whether it is right or wrong. We did not do that. The document is there and is recorded by the County. That is what is stated has to be there, no building and no vegetation. That is what I am concerned about.

Mr. Page: In either case I feel we need to get a yes, no, right, wrong or indifferent or I don't care from the Bureau of Reclamation. That is only part of it. We have several conditions of approval to be satisfied. We have a building up there that does not have an Occupancy Permit on it. Currently, the building is not entitled to be utilized. That needs to be handled. These things have been there for several years, I would imagine. It is a lot easier to do a few things that you don't really want to do than it is to stand here and bang your head against a wall, thinking that it will change a person's idea or opinion or attitude. To me if it means the difference of getting a permit or having to fight this or get cited due to being in violation again, I would probably would change the direction I was going.

Mr. Johnson: I don't know if it changes the direction I am going as I guess that is the direction I have been going all along. If that is going to be added as a condition and then

we are all in agreement. If I go down the road and have no other option other than the lawsuit with the Bureau of Reclamation, then I would have to agree to that. I am not happy about it.

Mr. Page: So, you are saying that moving those rocks is a big issue with you. I have heard in the past that I don't think it is right, so I am not going to do it. I don't really think that is the way to approach this matter. I think that there has been enough input presented here tonight that we do need confirmation from the Bureau of Reclamation. Mr. Burows has also stated that the short plat is filed and is a legal document, right, wrong or indifferent whoever put the information on the plat. It is a legal document that was in effect when you bought the parcel.

Mr. Johnson: Well, just give me the benefit of the doubt here for just a minute, here. I have explained this previously. I cleaned up a garbage dump and an old contractor's scrap yard when I bought that property. It belonged to the man who got that plat approved. It is in a lot better shape now than it was then, so he obviously was not in compliance with those conditions either. Neither has anyone else in that vicinity along the Amon Wasteway.

Mr. Page: At this particular point in time, I don't know what he did prior to this application. It is really irrelevant. What we are working on right now is Mike Johnson and Bedrock.

Mr. Chigbrow: Let us not forget that the decision we make tonight or we don't make tonight cannot be based on anything else that has happened a year ago. We will base our decision on what we have before us tonight. We do not want to go back only forward. The comment that previously Mr. Johnson did not abide by the requirements imposed by the Board not that I don't agree, but we need not to make a decision on past practices, but only what is before us tonight or we won't make a decision on what we have tonight.

Mr. Burows: That being said I would have to agree with you 100 percent. We are dealing with what is in front of us tonight and that makes matters even more difficult because of the factual documents. We stated that the legal bound documents are to be upheld as noted on the short plat that is listed with the County. We are to base our definition and so put it off to wait for the Bureau of Reclamation that may or may not do it in a timely manner that would assist or harm the applicant. I would like to have an answer as there is more property down the creek way and up. We have East Amon Wasteway and West Amon. West Amon has similar issues over there. I have property over there and I am very aware of some of that. Dealing with that I think that we have beat the horse about as far as we can on the 100-foot on either side. It is there and it is a recorded document. Mr. Johnson stated that he may be able to amend the way he does his business and pull that material out of there if the permit was so conditioned. I appreciate him saying that. I would like to look at the other issues that are along with this; such as it appears that you have your crusher down below for a good reason. You are hiding a lot "inaudible" and buffering the noise if it were to operate in there. Do you intend on keeping that crusher down low?

Mr. Johnson: Yes, that is where it was located when we did the noise and vibration study that you requested. That is the location that Mr. Reep recommended that it just be left right where it is; so that is the intention.

Mr. Burows: Is that a permanent or portable crusher.

Mr. Johnson: It is a portable crusher.

Mr. Burows: It is your intent under testimony that you will be leaving it at that location.

Mr. Johnson: Correct.

Mr. Burows: You have an additional "inaudible" going across your property. You have a ten foot utility easement and a five foot irrigation easement that runs just on the other side of Hildebrand that I am sure you are aware of. No equipment, crusher or any of the storage bins are encroaching on those easements. The easement will be okay.

Mr. Johnson: They are encroaching on the easements. But the easements are a non-existence KID line and an overhead power line. PUD does not have a problem with what I am doing.

Mr. Burows: Do you have any documentation to that affect stating that you could ignore their easements.

Mr. Johnson: I don't think it is any different then a lot other situations where you use the property that is within a PUD easement.

Mr. Burows: My question was are you encroaching on it and you stated yes. My question was do you have a variance from them or permission to do that.

Mr. Johnson: I am encroaching on the property that would be the easement. I am not interfering with anything. They do not have a problem with any thing that I am doing there.

Mr. Chigbrow: Ingress/Egress is not restricted.

Mr. Johnson: No.

Mr. Everett: If they decided to run a line would they be able to accomplish that task. If the obstacle was structural then you would need to get an encroachment permit to do something like that, such as a fence, building.

Mr. Johnson: Nothing permanent there at all.

Mr. Chigbrow: What type of lighting are you going to have on the property?

Mr. Johnson: It is already there. Installed by the PUD. Directional lighting downward on the pole.

Mr. Burows: Is your septic tank now in place and permitted.

Mr. Johnson: Yes.

Mr. Burows: One of the issues that the city had was in the steep slope for the additional erosion areas. There is a picture must be on your high bank it is wherever you – now I see where the division is and I am not even certain it is on your property; it may be on the other property. It appears that someone did a bunch of filling that bumps right into the creek and presents a pretty steep slope. Does that add to the erosion problems that you could have out there? Is this on your property or is this on “inaudible”.

Mr. Johnson: That is actually believed on HRFP Property. It is part of the property that I have an agreement with.

Mr. Burows: Did they do that fill or did you?

Mr. Johnson: It was there; I don't know where it came from.

Mr. Burows: I can see why the City of Kennewick would have an issue with additional erosion from slope like that with no vegetation just rock.

Mr. Johnson: It is hard to make sense of the City's Critical Area Map as it really does not match anything that is there.

Mr. Burows: I won't disagree with you. However, they do have their points that they make.

Mr. Page: On that, I guess it is your office that you have there. What do you have to do to come into compliance with the permit.

Mr. Johnson: Well, in order to get an occupancy permit for that temporary modular office the following would need to be done: Tie downs, skirting and handicap rails. That would cost anywhere between four and eight thousand dollars. It is a temporary thing and at best I never planned on it being there for four years, but it is still there. When I know that I have some longevity there then I will make some changes.

Mr. Burows: Refresh my dates here, but was that back in 07 when you fell out of compliance with a correction notice from the Building Department.

Mr. Johnson: Yes, they did an inspection and gave me two years at that time to come into compliance.

Mr. Page: You have customers come in.

Mr. Johnson: Yes. One of the recent customers was the Air Pollution Control Authority.

Mr. Page: Bringing you a permit.

Mr. Chigbrow: If we were to okay a permit for you tonight, Mike, how long would it be before you could do what the conditions are requesting that you do and have an Air Pollution Control Permit and an occupancy permit for your mobile office.

Mr. Johnson: Occupancy permit would take some time and that is why I questioned you a bit about Condition No. 5. The way it is written I will make the application for the placement permit again, renew that application and then comply with what the Building

Inspector requires, assuming he gives me a reasonable period of time, to get it up to speed for Certificate of Occupancy or I will get it out of there and make an application for something different, more permanent.

Mr. Chigbrow: Would you remove it and construct a building?

Mr. Johnson: That is what I would like to do.

Mr. Burows: Condition No. 1 states that you will not operate the business while you are trying to satisfy the conditions of approval. Are you going to hold off that long as it sounds like it is a six to eight month process.

Mr. Johnson: Well, I have been it has all been kind of hinging on knowing whether or not I was going to be there and be in business.

Mr. Burows: I don't know if you addressed my question.

Mr. Johnson: Well, I thought that I did. I have one question for you. Assuming we spend the time and effort it takes some definitive answer on this so-called buffer. Assuming that we find out that the Bureau of Reclamation has some claim to that or some right to impose conditions. Right here we have what they currently want me to do to comply, so how would it change what they are asking me to do.

Mr. Burows: How it changes is that the current legal document the exact piece for us as a Board to recognize is that the short plat and the notes that are on the short plat. I don't know how they got there. I don't know what it is, but I do know that it is the legal deed. It is the legal controlling factor today on that, on the short plat, and that is the controlling factor. If you are able to change that and you come back and have it changed I am sure. However, right now today that is the legal recorded document.

Mr. Johnson: That is why I was asking you a hypothetical question. If the Bureau has jurisdiction they have already informed me what they want me to do. I have agreed to comply with it.

Mr. Burows: I have to go back. All that I can do is what the legal recorded document states to do. I am not willing to change that. I do not think that we have the authority to change that to tell you the truth.

Mr. Johnson: Well, if we can get this all behind us by moving the boulders and the columns themselves, palletized rock then I would be in favor of doing that.

Mr. Burows: Okay.

Mr. Bestebreur: Mr. Posey what was sent to the Bureau was this portion here as far as the rock crushing, nothing else and that is what they responded to in their email; is that correct.

Mr. Posey: For the whole property.

Mr. Bestebreur: Right, but it was for this portion here not for any previous stuff it was only for this application, correct.

Mr. Posey: Correct.

Mr. Everett: Question about Hildebrand Road. On the short plat it shows a dashed line "inaudible". It shows another note, which states "outside edge of maintained road and then some location number", then another note, states "road maintained by county". It kind of goes up and quits part way before it gets to the boundary of the short plat and on the other side it has an existing 10' utility easement Auditor's File No. 85-5127. Looking at Wheat Road it has a 60' easement – Benton County. What is the deal with Hildbrand Road.

Mr. Johnson: I don't know anybody who has an answer to that question.

Mr. Everett: It is like the waste way there.

Mr. Johnson: Sort of.

Mr. Everett: They are showing the edge of it instead of the center of it.

Mr. Johnson: According to Ryan Pratt who is the Director with HFRP, no one really knows who owns that property.

Mr. Chigbrow: Wheat Road sits on.

Mr. Johnson: The County, City or HFRP.

Mr. Everett: There is a part of it that is on your property, right.

Mr. Johnson: That is the border on the East side.

Mr. Burows: So, originally it was a private road that was shared by people.

Mr. Johnson: I don't know how it originates.

Mr. Posey: I would think so, therefore the reason that Wheat Road is 60 feet as that is a dedicated County road.

Mr. Burows: Right, Hildebrand is not.

Mr. Posey: Correct.

Mr. Burows: It is still a private road, but shared by the owners, but up keep by the County; if they are lucky. That is good for you as there should be easements that go along with that if it is a county road, as it would make that lot even smaller.

Mr. Johnson: It is good and bad. There are an awful lot of County and KID vehicles that go up and down that road and nobody ever waters it. They blade it maybe once or twice a year.

Mr. Chigbrow: Does the Board have more questions for Mr. Johnson. Condition No. 2 states that "If the conditions of approval have not been met and the Planning

Department does not issue the special permit within six (6) months from the time the Board of Adjustment conditionally approved the special permit, the Board of Adjustment may declare it's approval null and void at a regular Board of Adjustment meeting. Prior to doing so, the applicant shall be notified in writing at the applicants last known address at least twelve (12) days in advance of the upcoming Board of Adjustment meeting." Six months.

Mr. Johnson: One year would be better, but I will take six months.

Mr. Chigbrow: You will be busy in six months.

Mr. Burows: I am not certain how you will be able to accomplish all of this within six months time. Until all the conditions of approval have not been met, you will not be able to operate your business.

Mr. Johnson: We are in compliance with most of these conditions and have been since right after the initial application.

Mr. Chigbrow: Move the ecology blocks out of the 100-foot whatever it is, column rocks and palletized rocks.

Mr. Johnson: Move them out of the 100-foot whatever it is. Okay.

Mr. Page: Do you have a dust control plan in writing.

Mr. Johnson: Yes, it was submitted along with the application to the Air Pollution Control Authority. I have had it twice and I will submit another one as soon as we have an approval from you guys.

Mr. Posey: Informed the Board that they would receive a copy of this approval.

Mr. Page: What is the cost for this permit.

Mr. Johnson: \$750.00

Mr. Page: Suggestion that you go ahead and submit it.

Mr. Chigbrow: Any more questions for Mr. Johnson or Mr. Miller, prior to going to the Findings of Fact.

Mr. Bestebreur: Timeline for completion of these conditions.

Mr. Chigbrow: Six months.

Mr. Bestebreur: No longevity of this business.

Mr. Chigbrow: At one time there was a time line when this matter was first discussed that is entirely up to the Board as it is not one of the conditions currently.

Mr. Burows: It can be recommended on this action tonight.

Mr. Page: On your building would you contract the Building Department and find out the minimum standards you have to install your ramp and skirting.

Mr. Johnson: I know what they are. In order to comply I would need to make an application to the Benton County Building Department.

Mr. Burows: Let us go back to that building for a bit. You're saying what your long-term plan is that you would not have the temporary office located here. You are going to construct a building. What were you surmising that your building would be and where would it be located.

Mr. Johnson: It would be located in the same place, roughly. As far as what it is going to be, it certainly isn't going to be any thing big or elaborate beyond that I could not really tell you now.

Mr. Page: The other option to not getting an occupancy permit on that structure and handicap ramp would be to remove it.

Mr. Burows: To remove it would be fine, but he still needs to have an office on site. Typically, you would.

Mr. Everett: How big is the existing building.

Mr. Johnson: 12x56 Pacific Mobile temporary office, like a construction office.

Mr. Page: My thought would be to go ahead and get it approved, signed off, legal as soon as possible. I know that there is time and money involved.

Mr. Johnson: They are pretty difficult people to deal with when they have four years of your rent money already.

Mr. Everett: I would hearken back to the duration of the activity. Obviously, we need to put a limit on it or grant him perpetuity for the long term if that is the case then whatever other realities are when it happens that the plans are still for residential development to grow up and adjoining this area. The rational that we previously looked at was to recognize that with a time limit. I just bring it up as may be we should keep a handle on it as to where it could be looked at in five or ten year increments.

Mr. Page: Originally it was five-year increments.

Mr. Everett: I am just saying that maybe it should be reviewed or re-reviewed at some point.

Mr. Chigbrow: I certainly would not be opposed to a five-year increment in looking at it. I certainly would not be opposed to it. I think that may be it needs to be controlled.

Mr. Burows: Well, the fact of the matter is that today maybe the rock crushing does not disturb the neighbors, but if that neighborhood comes on the other side of the street it does provide a huge hindrance to growth of that area. Kennewick has a right.

Mr. Johnson: For what it is worth just let me say this. If and when that area develops and if it develops residential rather than industrial or something where crushing and screening of rock is not a fit, I do not want to be a bad neighbor. I will make changes, but right now it certainly isn't bothering anybody there.

Mr. Burows: Well, there are two or three in there that it is bothering.

Mr. Johnson: A point of interest one of those people complaining is one of the people that contacted the news company that you call when one of the fans in the orchard ran all night one night. The person complaining thought that we were running our crusher, so they came out to investigate. That is the person who is doing some of the complaining.

Mr. Burows: Neighbor.

Mr. Johnson: That fan has been in the orchard for twenty years.

Mr. Burows: I think discussing that with the Board is a worthwhile venture to talk about. We are setting precedence for a long-term piece. I don't typically agree that the business is exactly the same as other businesses in the area. If it was a retailing business only and not a rock crushing business then I would say that it was no different than Apollo or the other folks that are there. I have had an office in that area in the past, so I am pretty much aware of what goes on at the junction and the people that are there. Rock crushing is not something that has already been there, so that is an issue as to whether it is compatible or not to me.

Mr. Johnson: Keep in mind that this is never intended to be a high production rock crushing facility at all. We are making decorative rock. We operate a crusher maybe on an average of no more than two days per week. That is probably all it will ever be.

Mr. Bestebreur: So, if that is the case would you be willing to limit the condition to crushing two days per week.

Mr. Johnson: Yes, if it means something to you.

The Chairman closed the public portion of the hearing.

Mr. Burows: I am not convinced that this operation is compatible with the surrounding properties. If the rock crusher was not there I would fall back onto what I have stated previously that it is not much different than the other construction businesses, trucks coming and going. I do feel that we need to stand by what is noted on the short plat and the 100-foot drainage easement, buffer or whatever you want to call it. Not only do I want to see the retail rock moved off of the 100-feet, but also I want to see the area returned to its natural state or kept in some type of habitat that would be beneficial to that waterway. I agree with Glenn that if the rock crushing only operates and needs to operate 16 hours in a seven-day period then it should be limited to 16 hours of operation during the daylight hours of operation.

Mr. Chigbrow: I certainly would not have a problem with that.

Mr. Burows: I am still not convinced that it is compatible.

Mr. Chigbrow: I think to help possibly make it a bit more compatible, however, long ago that Mr. Mahaffey died two or three years ago, a couple of years prior to that they did have a portable crusher sitting in their yard.

Mr. Bestebreur: Didn't they crush right up the road.

Mr. Chigbrow: They have a pit clear up on the top. They had a crawler crusher in their yard, crushing rock because there were some purchases made out of that site. Not that it was a permanent deal, but it was there. So, there has been a rock crusher in that area. You are absolutely correct. To me it makes it a bit more compatible it is sitting in a hole and you do have Apollo's equipment on the other side buffering the noise. How many people travel up and down Hildebrand and if he is only going to crush a limited amount of time that is probably not a great deal, but it is better than it was. If we limit the hours of operation, I mean the crushing operation. We have a legal document tonight. I agree with you on that which states that there is a 100-foot whatever it might be. Whether it is a buffer or an easement or right of way or whatever, he has agreed to move everything off of there and let it go back to natural. That is certainly a step in the right direction.

Mr. Burows: It doesn't take a whole heck of a lot to be a "green" business especially if you are selling one. That can be made and we can do something with the waterway that is there to continue it no matter if it is a waste ditch or not in an urban or industrial setting it is good for society and good for the area. That is something that needs to be looked at.

Mr. Chigbrow: If we got a letter back from the Bureau that stated that they do not care if he builds out in the Amon Wasteway then we will go along with what the Bureau states. We may not like it, but then we would have something, which we do not have tonight.

Mr. Burows: Someway or some point he needs to get that short plat changed as it is still a recorded document.

Mr. Everett: Well, I am still a little fuzzy on the legal access to the property. I am assuming that it is a descriptive right and would almost be a county road by default even if there were no easement shown or anything. I look at the maps and I see lines on Hildebrand Road and lines on the waste way on one of the Exhibits by USBR. It is so old and so small you can hardly read it. I would still like to get a handle on that on what that is because if it is established by that referenced Auditor's File # document of which we saw a part of here. If it does something more than showing a centerline then that is meaningful. If we just got a line running across there then the short plat or whatever. We need to rely on that, but if it is not valid then it will go away. I am not comfortable with that. I would again reiterate that I commend Mr. Miller on his research. I would like to encourage him to keep doing that by supplying all the reports. I would also state that the willingness of Mr. Johnson to do some things limiting the crushing operation to two days a week – 16 hours whatever the Board decides. I think the movement of the material away is a good thing for him to do to demonstrate compliance with the Board. The duration of activity is basically the crushing part of the operation that I think causes the most concern for the Board. To that extent I think it might be something to look at as Mike stated that if he becomes a poor neighbor, some review of that part of the special use permit ten years down the road perhaps the Board should review the situation to see

if it will need to be taken out of the operation assuming he could still do the retail business.

Mr. Bestebreur: Question on the findings if we were to go five years can you do it for a five year and then have another extension or is it a five year only and then have to come back and apply for another five or how does that work.

Mr. Posey: You can extend it.

Mr. Burows: Five-year increments.

Mr. Chigbrow: I think that it would make sense to review it again in five years. If the city has not made any movement to their UGA and no development or any expansion in that area and nothing has changed. If they want another five year extension at that point in time unless there has been some enforcement issues or something then there would not be any reason to make any changes, if everything was going along as it should be.

Mr. Burows: We would not have any reason to think that someone would disregard the requirements and get cited again, would we.

Mr. Chigbrow: No.

Mr. Bestebreur: Then on the crushing that instead of an hour thing I would say two days per week. Eight hours a day just 16 hours, so it could be two days only.

Mr. Burows: Two operating days.

Mr. Bestebreur: Two operating days.

Mr. Chigbrow: The quantities that I am anticipating on the site and making the products, I would think that if the crusher ran more than a couple of hours a day, that would be a lot.

Mr. Bestebreur: Correct.

Mr. Chigbrow: That would be a lot to make the material that he is going to make. If it was 16 hours in a week there could be a huge amount of material made.

Mr. Bestebreur: I was just referring to the two hours every day like from 10 to noon. He could keep running five days a week, which could potentially be an issue with the noise. Limiting the crushing to two days a week, instead of potentially five days two hours every day might be more accommodating to the surrounding residents.

Mr. Posey: I don't believe that you want to take away his capability of being able to do a big job either. Limiting him to two days or two hours.

Mr. Chigbrow: I am not trying to limit that, what I am saying is for the materials that he is going to make and the stock pile room that is on the site there is not enough room to stock pile enough material on that site if he is making three inch minus to run more then a couple of hours anyway. That is all I am saying. I am not trying to limit that, I am

trying to tell you that with the crusher he has in two hours, he could crush it all and still have time left over.

Mr. Page: Here is a hypothetical question. Let just say that he were in fact crushing rock, how much rock would he crushed in a week, two hours, four hours, five hours.

Mr. Bestebreur: He could haul in and haul out.

Mr. Johnson: Could I comment. What Mr. Chigbrow is saying is absolutely true. I could cover the place up and in a week of steady crushing, assuming no breakdowns and no problems. I would like to have some flexibility on when I would be allowed to crush. I would like to be able to pick the days to crush. I can pick the weather. Pick the time when I don't have other issues or times that are more important than my living. Limiting the time does not bother me at all.

Mr. Chigbrow: In anybody's business it all depends on sales. He may not run for months or he may run two to four hours per day for a couple of days and then shut down. It depends on sales.

Mr. Burows: One point to consider here is that if we have people that are on the other side of 10th and complain about the noise then according to the information provided here by the engineer when the noise level from the road comes, you almost cannot hear the rock crusher. It is logical to crush a few hours a day or 16 hours during the day – the daylight hours, so the neighbors really don't have a reason to complain. We are looking at their best interest with regards to background noises. Background noises in the evening go way down, less train noises, so the crusher could be heard quite a distance.

Mr. Page: What I would like to see, assuming this action is approved, is that crushing be allowed during the daylight hours only with no crushing on the weekends. I would like to see him obtain a permit within a week's time to get the trailer legal. His dust control paperwork submitted immediately, if he already has a copy then it shouldn't be a problem.

Mr. Burows: I think the whole situation with regards to that is what Mike feels he could afford. If he is going to do what he testified to comply with all the conditions, comply with Condition No. 1 then he will need to move forward as quickly as he can; so that he can be back in business.

Mr. Page: I agree with you. Move the material from the 100-foot are. Look at the crushing activities within a five-year time frame. If the city does annex out there and they decide that is not compatible once they annex, I suspect that the city will shut it down or make an attempt to do it. I would also like to see the dust control to the Clean Air Authority as soon as possible. The building completed and would like to see this all done in 90 days. Condition No. 2 states that if the applicant is not in compliance within 6 months then this application will be declared null and void. I would like to see that he is good neighborly and get it up and running real quick. The big problem that I have and I think everybody is going to agree is he has been there for a number of years. I suspect that he will continue to operate. I would definitely not want to see that crusher operate until such time as the permit is issued.

Mr. Chigbrow: Is that a condition that you want to add.

Mr. Page: Correct. The permit is basically for a retail business, custom landscape rock in junction with rock crushing. The rock crushing at this point is very important as a permit to Clean Air and he needs the building for his legal office.

Mr. Bestebreur: If you can read the additional things that the Board requested.

Mr. Chigbrow: What I have is the following: (1) Additional to Condition No. 16 – move ecology blocks out of the 100-foot Amon Wasteway, palletized rocks, column rocks and anything that is in that easement needs to be moved, (2) Review in five years for compliance, (3) Two hours a day – 16 hours a week for crushing, (4) Crusher does not operate until he has the permit in hand – anything else.

Mr. Burows: Yes, I do on that on Number 16 I would like to have you add the note that he needs to stay in compliance with Note 10 that is noted on the short plat. I think that pretty much covers it.

Mr. Chigbrow: Until we have something that states it is changed.

Mr. Burows: Correct. That is an object of contention. I won't make any condition or won't ask for it to be conditioned, but I really believe that the vegetation along that creek needs to be investigated. I think that is the right thing to do.

MOTION: Mr. Bestebreur made the motion and Mr. Page seconded the motion that the Board of Adjustment pursuant to the aforementioned controlling factors finds that the application of Mike Johnson for a Special Use Permit – SP 09-03 should be approved with the conditions as outlined in the Staff Report dated April 23, 2010 with the following added conditions of approval. (1) Condition No. 16 - The applicant will be required to move his palletized rock, columns, ecology blocks etc away from the 100 foot easement or buffer of the Amon Wasteway. The applicant will need to abide by this requirement until such time as the Bureau of Reclamation informs the applicant and the Benton County Planning Department differently. (2) Condition No. 17 - The special use permit will be reviewed five years from the date of issuance of the special use permit to determine whether the applicant remains in compliance, if the business is still compatible with the surrounding area or if the property has been annexed into the City of Kennewick. (3) Condition No. 18 - The applicant will be limited to a total of 16 hours per week for crushing and that crushing only be allowed during daylight hours and not on Saturday, Sunday or Holidays. (4) Condition No. 19 - The applicant will not be allowed to operate the crusher until such time as the special use permit has been granted. (5) Condition No. 20 - The applicant will remain in compliance with Condition No. 10 as noted on Short Plat 2849 which states "No construction, filing, grading or vegetation removal within the Amon Wasteway drainage easement will be permitted" or until that condition has been removed or changed with a copy of said change being given to the Benton County Planning Department. 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 decisions made by the Board of Adjustment tonight. Motion carried.

PLANNING DEPARTMENT REPORTS AND DISCUSSION: None.

BENTON COUNTY BOARD OF ADJUSTMENT

A handwritten signature in black ink, appearing to read "Brent Chigbrow", written over a horizontal line.

BRENT CHIGBROW, CHAIRMAN

RECORDER: CAREL HIATT