



## Board of Adjustment Meeting Minutes

A regular meeting of the Okanogan County Board of Adjustment was held on April 19, 2011 at 7:30 p.m. in the Commissioners' Hearing Room, 123 5th Avenue North, Okanogan, Washington.

**BOARD OF ADJUSTMENT MEMBERS** present included: Chair Steve Kunkel, Vice Chair Harlan Warner, Board Member Loren Holthaus, Board Member Dan DeWeert, and Board Member Dave Hanna.

**OKANOGAN COUNTY STAFF** in attendance included: Director of Planning Perry Huston, Senior Planner Ben Rough, Planner II Randy Johnson, and Administrative Secretary Sharon McKenzie.

**APPELLANT/APPLICANTS OR THEIR REPRESENTATIVES** in attendance: Don Coleman, Raye Evans, and Tyson Morris.

**OTHERS** in attendance: Thomas Willi, Sheila Horner, and Gordon Horner,

The meeting was called to order by Chair Steve Kunkel at 7:30 p.m.

### Approval of the Agenda

Board Member DeWeert moved to approve the April 19, 2011 agenda. Board Member Harlan Warner seconded the motion. Motion passed.

### Approval of January 18, 2011 Meeting Minutes

Board Member Warner moved to approve the January 18, 2011 meeting minutes as presented. Board Member DeWeert seconded the motion. Motion was passed.

### Public Hearing: Item #1

#### ❖ Omak Aggregate, Inc. CUP 2011-1

Chair Kunkel asked Planner II Randy Johnson to present the project summary of the **Omak Aggregate, Inc. CUP 2011-1**. Planner Johnson presented the Affidavit of Public Notice which was recently given to the Planning Department. Planner Johnson explained the application is to amend CUP 2003-8 in order to expand operations from 3 acres to 27 acres for the purpose of expanding long term extraction of materials for rock crushing and asphalt batching. He presented the history of the original permit which

allowed rock crushing and asphalt batching. He said the site is located on Sand Dust Lane in Omak, WA.

Chair Kunkel requested the Staff Report and Affidavit of Public Notice be entered into the record.

Chair Kunkel asked the Proponent to come forward to speak to the issue.

Don Coleman of Omak Aggregate, Inc. and residing in Chelan stated he purchased the gravel pit in 2009 and began operations in 2010. He said he sold the business to his daughters. He said the primary business is rock crushing. He noted purchasing the property was a way to keep rock crushing available to the area since other pits were either depleting or closing.

Chair Kunkel asked if there were any questions for the Proponent from the Members of the Board. There being no questions, Chair Kunkel opened the hearing to public testimony.

Bonnie Marchand stated her parents, Tom and Kay Willi, live next to the project. She said there is lots of dust and fumes. Ms. Marchand showed the Board Members where her parents reside on the map provided in the Staff Report.

Sheila Horner residing at 37 Omak Airport Rd. in Omak said her property is directly south of the airport. She said they bought the property for their retirement and the views. She said a Temporary Use Permit was issued for three acres a few years ago. She said:

- her parents now have no north view except for piles of dirt and gravel.
- expanding the project to 27 acres would surround them by dirt.
- when the wind comes from the north, they are covered in dirt and the asphalt fumes blow in their direction
- it is a health issue.
- She wants to know what is going to be done about the blowing dust.

Thomas Willi said he lives to the north of the gravel pit. He said:

- he is 600 ft. from the pit and his grandmother's home is 300 ft. from the pit.
- he figures the Board has already made up its mind.
- there is lots of banging, the crushing is noisy, and pictures are knocked off the wall.
- the dust is so bad, he cannot see his truck from the house.
- the rock crushers come on to his property and steal stuff.
- the rock crushers shoot guns.
- when the asphalt plant is operating, there is a layer of oil on all his equipment.
- when he goes outside when the asphalt plant is running, he is good to stay outside for 30 minutes and then he gets nauseous and sick.
- in the summer, he cannot use air conditioners because it brings the fumes inside his house.
- the bad air has destroyed two air conditioners.

- according to inspectors from the other side, the batch plant is running incorrectly and should not be allowed.
- the rock crushing has destroyed his first well, and he is getting sand and grit out of the new well.
- the Environmental Protection Agency has pictures of what is going on showing brown air where the sunshine does not come through.
- he cannot get the value out of the house. He said a realtor said he could get \$30,000. He said he has put \$300,000 into it.
- you can drive Airport Road and cannot see because of the dust.
- there is no way of sealing the house to stop the dust.

Director Huston said due to the earlier comment made by Mr. Willi regarding the Board already having made up its mind, there is an appearance of fairness issue. He suggested the Chair of the Board of Adjustment put Mr. Will under oath and ask if Mr. Willi has any evidence to support his comment.

Mr. Willi said he had no evidence.

Director Huston suggested the Chair go Member by Member and ask if any Member had outside communications.

The results were as follows:

- Board Member Hanna – none
- Board Member Holthaus – none
- Board Member DeWeert - none
- Board Member Warner - none
- Chair Kunkel said he drove by the site because of the concerns regarding the view but had no discussion with anyone regarding the project.

Director Huston requested Chair Kunkel ask the person testifying to lodge a specific complaint against any Member of this panel that he believes ought to recuse himself from this process.

Chair Kunkel asked, “Mr. Willi do you have a specific complaint against any Member on this Board that you should feel should recuse himself.”

Mr. Willi said “I don’t.”

Chair Kunkel clarified that Mr. Willi said he didn’t have any objections to any Member staying on the Board to hear this project.

Director Huston stated he wanted the record to clearly reflect that the person speaking has indicated he has no objections to any member of this Board sitting on this particular application. He said if it was unclear, he would ask that Mr. Willi repeat himself.

Mr. Willi stated “I don’t know any of you. I haven’t dealt with you or anything else so how would I have anything against any of you.”

Chair Kunkel asked Mr. Willi if he had any additional information to offer.

Mr. Willi said “no”.

Chair Kunkel asked if there was anyone else that wished to give testimony. There being none, he closed the public hearing to public testimony.

Director Huston emphasized any discussion after the close of public testimony at the hearing should remain between the Proponent and Board Members. There should be no discussion with the members of the audience.

Don Coleman, representing the Proponent, came forward to address the comments made during public testimony. He explained he knows who worked the pit before he took over. He explained how the pit is currently operated.

He said

- the rock crusher is now out of site as it has been placed in the bottom of the pit and dust is contained in the pit.
- the neighbors should have seen a difference in the rock crushing operation since he took over.
- the company has managed to sell the rock and is reorienting the piles so the dust is better contained.
- he does not want to be credited for something done before he took over ownership.
- the asphalt company has moved the asphalt plant into the pit. This move took the emissions 300 feet internally into the pit with the idea to keep the fumes in the pit.
- the company has purchased a newer plant which operates better.
- the haul road has had recycled asphalt put down to keep the dust down.
- he sympathizes with what the neighbors are concerned with, but their concerns appear to have happened prior to his company taking ownership.

Addressing the question as to what more can be done to mitigate the neighbors' concerns, Mr. Coleman said:

- they are watering the site,
- working out of the pit,
- have lowered one pile 15' and will be lowering more.
- now that the plant is in the pit and with the sand going back into the hole, there should be no reason to make the piles as they have been done in the past.

Addressing the question regarding fumes and smell, he said he has a person from the asphalt plant present to explain the process. He said now that the plant is in the pit, the sound should be minimal and there should be no dust this summer. He said the operation is 90% better than when he took over.

Raye Evans, secretary of Omak Aggregate, Inc. and administrator of the requirements set forth by the Washington State Department of Ecology (DOE) and the Washington

State Department of Natural Resources (DNR) answered questions regarding the control of dust. She said:

- dust control is mandated by the DOE.
- the company is regulated for emissions, watering, stock piles, and crusher activity.
- water is put down to put a crust over the piles, speed limits are set in the pits, and surface gravel has been placed over the top of areas.
- they have asphalted over areas.
- they must be in compliance with DNR for reclamation to maintain site and maintain air quality.

Chair Kunkel read the DOE comment letter regarding air quality. He noted the documented complaints in the letter but noted the complaints may have been before the Omak Aggregate ownership. After detailing the complaints, Chair Kunkel noted the rock crushing issues have been mitigated according to Ms. Evans.

Addressing the question of how much dust would be leaving the proposed 27 acre site, Ms. Evans said hopefully there would not be any due to the watering and relocation of equipment.

For clarification, Director Huston said the conditions of the permit are the responsibility of the Proponent to see that they are complied with and not the responsibility of the sub-contractor. He said the Proponent is also responsible for compliance with any agency requirements such as those coming from the DOE and DNR.

Responding to Chair Kunkel's question regarding how Omak Aggregate intends to mitigate the fumes from the plant, Mr. Coleman deferred the question to the asphalt plant operator.

Tyson Morris of East Wenatchee explained the operation of the asphalt plant must comply with the DOE requirements. He noted Washington State has very tight rules regarding asphalt plants. He said:

- a source test must be passed or they cannot operate.
- the bag house takes out the particulates, recycles the particulates until emissions come out clean.
- they operate the permit with the source test.

Addressing the question of how long they operate the plant, he said the last time they worked at the location was last year off and on for a month total. Mr. Morris said they purchased a hot plant which is 20 years newer. He said regardless of the age of any plant, all plants in operation must pass the source test. He noted the newer plant is quieter and operates smoother.

Responding to the question regarding a layer of film on the neighbors' vehicles, he said it is not possible if the plant works properly. Mr. Morris said if the plant is not working properly, DOE would retest the plant, and if the plant is required to be shut down, the plant operator would pay gigantic fines.

In response to the question of compliance with the current permit, Mr. Coleman indicated they are not. He noted 10 acres has been disturbed for many years. He explained 3 acres does not mean just the dig area. He explained it takes four acres to operate a medium size rock crusher. He said the operation will be better now and stock piles will diminish as they go down into the pit.

Addressing the question of obstructing the views, Mr. Coleman said:

- he would do what he could to restore the view.
- one stock pile which obstructed the view was to go to Omak Airport but the bid was cancelled and hopefully the pile will be gone with the new bid.
- the piles must have some place to go and in the future, stock piles can be placed in better locations.

Director Huston reviewed the hearing procedure whereby the public has offered information. Once the public offers the information, the Board and the Proponent may discuss this information. However, the public is not to be involved in a cross examination of that information. He said it is the Board of Adjustment's responsible to condition the proposal accordingly, if they choose, to deal with the issues based on the record.

Chair Kunkel described the issues at hand were fumes, dust, and view obstruction.

Director Huston commented if the Board needed additional information to mitigate the concerns, they can continue the hearing so Mr. Coleman can come back with proposals to mitigate those issues so that what happened in the past does not happen again.

Chair Kunkel stated the DOE has specific requirements. He said those requirements are in the Conditions of Approval. He said based on the testimony by the Proponent's representative, those requirements are being adhered to.

In addressing the question regarding the comment from the irrigation district about the payment of the well license, Mr. Coleman stated the well license is paid.

Chair Kunkel asked if the Proponent was familiar with the Conditions of Approval. Mr. Coleman stated he was familiar with the Conditions of Approval. Chair Kunkel asked if the Proponent found the Conditions onerous. Mr. Coleman said no.

Chair Kunkel noted there was nothing in the Conditions of Approval which addressed the concern regarding the obstruction of views. He said he felt the view obstructions need to be addressed.

Mr. Coleman said he will work with Mr. Horner but expressed concern that setbacks may not be that effective.

Chair Kunkel said the stock piles should be set back so as not to obliterate the Horner's view. He suggested a Condition H for a setback would be in order.

After significant discussion amongst the Board Members regarding setback alternatives, Director Huston suggested the Board may want to opt for a continuance and ask the Proponent to come back with information regarding setbacks, reduction in height of the stockpiles, etc. He said it is very important to make it clear what will be done to satisfy the neighbors. He said if the resolution is too general, it will not achieve a solution to the issue.

Addressing the question if a two to one ratio for the stockpile from the property line would work, Mr. Coleman said the two to one ratio would work.

Chair Kunkel queried the Board regarding the addition of a Condition to deal with the view obstruction. It was agreed by the Members that a Condition should be added, but the Condition must be specific.

After addressing questions and concerns regarding the SEPA designation and commercial structure setbacks, Director Huston suggested the Board ask the Proponent to come back with additional specific information regarding what they would recommend as setbacks, where those setbacks would be apply, how those concerns are addressed by the agency requirements, and what the requirements are.

After discussion by the Board Member, it was determined the agency requirements had been addressed, and it was clarified by the Board that the Proponent would only have to address the current view issues and that any setback considerations would be site specific.

Board Member Hanna moved to continue the public hearing of the **Omak Aggregate, Inc. CUP 2011-1** to the next regularly scheduled meeting on May 17, 2011. Board Member DeWeert seconded the motion. Motion passed.

Director Huston clarified with the Board that Staff will council the Proponent as to what needs to be done prior to the next meeting.

### **Old Business:**

Chair Kunkel asked if there was any old business. There was none.

### **New business:**

Director Huston explained the overturning of the Board of Adjustment's decision on the McHugh Motocross Track. He explained the Judge determined that the way the Code was constructed, the decision made by the Board of Adjustment was problematic. The Judge ruled the commercial nexus was not the intent of the Code. The Judge stated Mr. McHugh can apply for a Conditional Use Permit. Director Huston said the ruling is if you have a track in the Methow Valley, you have to apply for a Conditional Use Permit.

Chair Kunkel asked if there was any other new business. There was none.

Chair Kunkel adjourned the meeting at 9:30 PM.

## Summary of Motions

*Board Member DeWeert moved to approve the April 19, 2011 agenda. Board Member Harlan Warner seconded the motion. Motion passed.*

*Board Member Warner moved to approve the January 18, 2011 meeting minutes as presented. Board Member DeWeert seconded the motion. Motion was passed.*

*Board Member Hanna moved to continue the public hearing of the Omak Aggregate, Inc. CUP 2011-1 to the next regularly scheduled meeting on May 17, 2011. Board Member DeWeert seconded the motion. Motion passed.*

Respectfully submitted,  
Sharon S. McKenzie  
Administrative Assistant  
Okanogan County  
Office of Planning & Development