



Abbreviated Minutes: Complete Set of Minutes Are on File in The Clerk's Office

**Madison County
Commissioner Meeting Minutes
November 28, 2022**

Attendees:

**Todd Smith, Commissioner Chairman
Brent Mendenhall, Commissioner
Douglas Smith, Commissioner
Troy Evans, Deputy Prosecuting Attorney was excused
Kim Muir, County Clerk
Commissioner Elect Dustin Parkinson**

ACTION ITEMS

This meeting was streamed electronically.

Pledge of Allegiance: By all

Invocation: Commissioner Mendenhall

Calendar Discussion:

Next Commission Meetings: December 12, and December 20, 2022

December 6-7, 2022 IAC Fall Conference – Residence Inn, Idaho Falls

December 7, 2022 Meeting with the City of Rexburg to approve fee changes to the Golf Courses and Airport

December 8, 2022, Eastern Idaho Water Rights Coalition Forum 10:00 a.m. Waterfront Event Center Snake River Landing

December 8, 2022 County Christmas party, 6:00 p.m.

December 12 meeting with CEI and ALTURA looking for support

Commissioner Mendenhall has the following meetings:

Public Defense Commission meeting in Boise - December 1, 2022

Mayor of Sugar City regarding the parcel in Sugar City 8:30 a.m. on November 29, 2022

Contracts/Documents: Action Items:

Contract for RFP proposals for the IDWR grants with Rumsey Engineering. Working on funding for a diversion structure. Commissioner Mendenhall will discuss this further with Mayor Adams and it will be discussed at the next meeting. Troy will review the documents.

Routine Matters: Action Items

Review and sign: Claims, as presented by the Clerk

After review and discussion, Commissioner Mendenhall made a motion to approve the claims presented by the Clerk. The grand total of claims was \$246,672.65. Commissioner Doug Smith seconded and voting was unanimous. The motion passed.

Certificates of Residency:

Review and sign: After review and discussion, Commissioner Doug Smith made a motion to approve the Certificates of Residencies for Britten Lervold and Lizbeth Rosas. Commissioner Mendenhall seconded and voting was unanimous. The motion passed.

Personnel Actions:

After review and discussion, Commissioner Doug Smith made a motion to approve the Personnel Actions. Commissioner Mendenhall seconded and voting was unanimous. The motion passed.

Public Comment:

Executive Session: Commissioner Mendenhall made a motion to go into Executive Session at 9:02 a.m. Idaho Code §74-206 (1)(b) employee matters, (c) negotiation to acquire an interest in real property and (d) exempt records - AnnMarie Sorensen, Indigent Clerk. A roll call vote was taken as follows: Commissioner Todd Smith – yes, Commissioner Mendenhall – yes, Commissioner Doug Smith – yes. The motion passed. Commissioner Mendenhall returned to open session at 9:37 a.m.

After review and discussion, a motion was made by Commissioner Mendenhall to sign a Lien Release for Case No. 2019010. Commissioner Doug Smith seconded and voting was unanimous. The motion passed.

Gary Armstrong, P & Z Matters

UDC Update for Madison County – Accessory Dwelling Units

After review and discussion, Commissioner Mendenhall made a motion to approve the UDC Update for Madison County – Accessory Dwelling Units. Commissioner Doug Smith seconded and voting was unanimous. The motion passed.

Ordinance No #466 UDC Update for Madison County – Accessory Dwelling Units

Madison County is proposing a change to the Uniform Development Code to allow accessory dwelling units through an administrative permitting process. This would be a change from the current process which requires a conditional use permit. The application considers a number of changes to the Code in order to provide definitions, inclusion in the land use table, changes to density language in appropriate zones, and criteria for approval in a new section of code devoted just to accessory dwelling units.

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The demand for accessory dwelling units in Madison County has surged in recent years. As families consider such things as providing housing for aging parents, adult children trying to get established, or utilizing an accessory dwelling for increased income through rental, the demand for accessory units is great. In 2022 alone, several dozen applications for accessory dwellings have been received. Under current code, each requires a conditional use permit application process, which can take 6-8 weeks to complete due to public hearings and notification requirements. Upon review of this, the Planning and Zoning

Commission recommends that the process be streamlined by establishing standardized criteria that can be reviewed administratively. Additionally, if criteria cannot be met and approved administratively, the Planning and Zoning Commission felt that allowing for an appeal to the Planning Commission for a waiver of certain criteria may be appropriate. This proposed code change is the result of multiple work sessions by the Planning and Zoning Commission, and extensive research and development by planning staff. Where this proposed change is the result of this collaborative effort, the Planning Administrator recommends approval of the proposed code change.

After review and discussion, Commissioner Mendenhall made a motion to approve the Findings of Fact for the modification of the Madison County Development Code. Commissioner Mendenhall seconded and voting was unanimous. The motion passed.

After review and discussion, Commissioner Mendenhall made a motion to approve Resolution #466 Zone changes to Madison County Code to allow accessory dwellings to be approved through an administrative permit as presented. Commissioner Doug Smith seconded and voting was unanimous.

Ordinance No. #465 Amended Zone Change – State Lands to Agriculture, legal description correction

This ordinance is proposed to amend and change the zoning map and provide the zoned designation change for property owned by Eastern Idaho Regional Solid Waste District, located at approximately Baseline Road and 11000. Zoning was not assigned previously as it was zoned State Land.

After review and discussion, Commissioner Mendenhall made a motion to approve Ordinance No. #465 Amended Zone Change for property owned by the Eastern Idaho Solid Waste District from State Lands to Agriculture and includes a legal description correction. Commissioner Doug Smith seconded and voting was unanimous. The motion passed.

CUP/Findings of Fact for Dave & Robin Wold – Accessory Dwelling w/Living Space

The Wold's live at 976 E Butte Road in Menan. The applicant is applying for a Conditional Use Permit to construct a primary residence on a 5.8-acre lot in the Menan Butte Subdivision. The parcel is Zoned Trans Ag. There is already a primary home on the lot. The building permit application is for a 1,500 s.f. manufactured home. It will be served by the existing well, and a new septic system. The proposed structure will be located in the northern corner of the lot, with its own driveway off East Butte Road.

Staff recommends a provisional approval of the CUP, pending the currently proposed amendment to Madison County Code relative to accessory dwelling units. While the proposed building will have its own septic system, the nature of the site especially the slope, as the new building is located downhill of the primary house, it would not make sense to require the new building to share a septic system with the main house, as effluent would need to be pumped uphill to the existing septic. Were this a smaller lot, say less than 2 acres, it may be an issue. But on a 5.8-acre lot, the lot size is conducive to the second septic. Additionally, in light of the code changes approved, this application would meet all of the proposed criteria of the proposed change, and would be approved administratively.

After review and discussion, Commissioner Mendenhall made a motion to approve the CUP/Findings of Fact for Dave & Robin Wold – Accessory Dwelling w/Living Space. Commissioner Doug Smith seconded and voting was unanimous. The motion passed.

Angie Moffat: HOE tax cancellations

Total Cancellations for those applying in the recent past total \$28,688.

After review and discussion, Commissioner Doug Smith made a motion to approve the Homeowner exemption tax cancellations. Commissioner Mendenhall seconded and voting was unanimous. The motion passed.

Commissioner Doug Smith made a motion to amend the agenda to consider a resolution regarding the Salem Road project. Commissioner Mendenhall seconded and voting was unanimous. The motion passed.

After review and discussion, Commissioner Mendenhall made a motion to approve Resolution #494 for the Salem Road Rural Project. Commissioner Doug Smith seconded and voting was unanimous. The motion passed.

Commissioner Doug Smith made a motion to recess the meeting at 11:20 a.m. Commissioner Mendenhall seconded and voting was unanimous. The motion passed.

Public Hearing for Edstrom Gravel pit Conditional Use Permit

Commissioner Smith welcomed those present and opened the meeting at 5:32 p.m. The meeting is being live-streamed.

The purpose of this hearing is to hear an appeal for a Conditional Use Permit hearing that was held before the Madison County Planning & Zoning Commission.

The meeting was properly noticed as reported by Clerk Kim Muir and Gary Armstrong.

Commissioner Smith called for any conflicts of interest: Commissioner Doug Smith – None, Commissioner Brent Mendenhall – None. Todd Smith declares a conflict of interest due to a perceived bias and will be recuse himself and he turned the meeting over to Commissioner Mendenhall.

As a matter of understanding Commissioner Mendenhall outlined the rules of the hearing and the time limits that will be placed upon public testimony. Staff presentation from The P & Z Administrator will be allowed. Applicant of the CUP will have up to 20 minutes. If there is a Spokesman for the opposition they will have up to 10 minutes. When we get to the verbal public testimony it will be limited to 5 minutes. There will be a 30 second notice given. Civility will rule at this hearing.

Gary Armstrong, Planning and Zoning Administrator presented the history of the application, legal frame work and where we are in this process.

Under Madison County Code commercial gravel pits are allowed in Ag Zones as well as light and heavy industrial zones with a CUP. CUP's are a negotiated process between the applicant and the county. Madison County Code 117-62 for gravel pits contains policy demands for construction of new gravel pits. The section of code was more than a year's worth of work sessions with concerned citizens, members of the P & Z Commission, industry experts, and gravel pit operators and provides a list of predetermined use of conditions that are applied to gravel pits which are a result of almost a year's work, to come up with

policy demands. This is commonly known as the Gravel Pit Overlay. It directs setback landscaping, how many gravel pits should be allowed in an area, equipment storage, hours of operation, berms, road capacity, water, lighting, fencing, buffering, utilities, equipment storage, reclamation and others.

On Feb 2 Edstrom's applied to build on the property. P & Z held a public hearing on April 13, 2022. In 2019, the property was re-zoned to Industrial. During that process, numerous public hearings were held over a series of several months. The primary issues raised at that time included dust control as it related to operation of gravel pit health and safety, air quality, water quality, impacts to roads, traffic and lifestyles in nearby rural neighborhoods and subdivisions. The Board of County Commissioners approved the Findings of Fact for the Zone Change on August 29, 2019.

In that approval the BOCC placed a condition of approval as follows: "After review and discussion, Commissioner Smith made a motion to approve the Findings of Fact for the Edstrom Construction Zone Change, with the condition that the property be used only for gravel mining. Further, if the Conditional Use Permit for the gravel mining is not obtained on or before January 1, 2023, it would revert back to Transitional Ag. Commissioner Mendenhall seconded and voting was unanimous. The motion passed.

This application is not to re-visit the zone change. That public process was completed in 2019. The application is to consider the application for a commercial gravel pit, within the property that is currently zoned as Industrial-Light. It should be evaluated according to the codified "Standards Applicable to Conditional Uses" The application should also be considered within the intent and purposes of and Industrial-Light Zone. Also evaluated according to the conditions and guidelines outlined for gravel pits, in the Gravel Pit Overlay section of Madison County.

Edstrom's applied to expand the current gravel pit. P & Z held a public hearing on April 13, 2022. The Commission determined the application was insufficient. On July 27, 2022, Edstrom's submitted a revised application. On August 24, 2022, the P & Z Commission reheard the application. A public hearing was held and Edstrom's was asked for additional supporting info. On September 24, 2022, P & Z voted 4 – 1 to recommend approval. On October 24, 2022, a group of concerned citizens submitted an application for appeal. The Board of County Commissioners determined to hold their own Public Hearing to consider the application for a Conditional Use Permit and tonight we are here to consider the application from Edstrom to consider the CUP. Step by step procedures were explained as followed in Code. The options for tonight's meeting are to deny, table, approve and/or modify or uphold the previous decision. It is important to understand that on an appeal, the BOCC will consider the previous recommendation from the P & Z Commission.

The applicant is applying for a Conditional Use Permit to operate a gravel pit on approximately 47 acres of land at approximately 4600 S 2860 W. The property is zoned Industrial – Light, with a strip of Trans Ag on the north and eastern portions of the parcel. The parcel is also considered part of the Gravel Pit Overlay and contains details of the operation once it is established.

Commissioner Mendenhall states statements given and public testimony should stay within the merits of this project and fit in with the comprehensive plan.

Applicant:

Bryan Edstrom, 5999 W 2000 S, Rexburg. He is part owner of Edstrom Construction. In 2019 they applied for a zone change for the property from Trans Ag to Light Industrial. Through all meetings it was made public that this would eventually be a gravel pit. They have never changed that. COVID came and they took a break, but are now back. The gravel pit borders these people's homes with a canal in between. There are setbacks on the west side it borders the existing gravel pit. This will be called the east pit. The purpose is that we live in a growing community and there are many additional subdivisions, and we need more gravel in our area. There are other pits in the area, but in this pit is there is an LA abrasion in the rock which is a dense rock and is tough to find in a gravel pit. He feels the gravel pit overlay has protections in place, and when executed, the property which they intend, can be that buffer. The overlay was put in for a reason. It is not excellent for anyone, but it was put in for a reason. Concerned citizens can expect the county to hold them accountable and they want to adhere to the requirements. They have plans to put in the berm and the trees.

Commissioner Doug Smith states there is a dismal lack of compliance with the gravel pit overlay and what they see. He has a problem with this. Will we see the overlay adhered to or will we see what has happened in other places?

Brian: Neighbors will keep them accountable. Their full intent is to adhere. They run their business in compliance with the law.

Commissioner Mendenhall asks: Do you feel you have everything in place to meet the Gravel Pit overlay and Reclamation Plan, water rights, landscaping plans and all other conditions in place for a CUP?

Brian: Yes. The reclamation plan has been restructured with Department of Lands for water rights and being able to replace the water due to evaporation. The overlay plan has conditions set and it offers protection. There have been back and forth conversations with them and they have everything covered and are in the works with their attorney and reclamation. Water shares and evaporation are the main issues.

Commissioner Doug Smith: What are the requirements of water rights?

Brian: They need to be able to replace the water from evaporation and it is in the works with their attorney and State Department of Water Resources hasn't cracked down on this because there are ponds all over the place in other gravel pits.

Commissioner Mendenhall: You would need water shares and is that being worked out.

Brian: Brian compared this to Rainbow Lake and Wake Side Lake, which are gravel pits. They are working out things with the water rights. They are working out a few things on the Reclamation Plan. Through a lot of back and forth, they have it covered. He fully expects the county to hold them liable for the reclamation.

Rules were discussed for Public Testimony and rebuttal for applicant and appellant.

Those speaking for the gravel pit:

Joe Stanislayo, 662 Tendoy Drive, Idaho Falls,

There is a great need in this county for gravel and he is in favor of the gravel pit. There is a need for the LA abrasion rock which is the greatest rock in the area. If a gravel pit is moved to a different location there are trucking issues and roadways will be hammered worse than they are now and the county would pay for this. The community will pay for this if a gravel pit does not go in here. Opposition has not brought anything valid to them. They have asked for mediation, but they do not state what they want in that mediation. They have met the guidelines and have met all regulations on overlay and have exceeded the expectations, but now they want more and more. All CUP overlay conditions have been met. The HOPE group is just a delay process. The gravel is needed for the growth in this community. They have not provided any proof of health detriments and have nothing from the state as far as having Edstrom shut down the gravel pit. It is cost prohibitive to not have a gravel pit in this area. The gravel pit is necessary for this community.

Brian Edstrom. Nothing further to state.

Rory Kunz, 4792 Honey Locust Lane, Rexburg,

Perhaps should have been on neutral. He has no ties to Edstrom or the gravel pit. Edstrom's have been in the area for a long time and have done good business. There is nothing on the overlay they have not met. They have met berm requirements; fencing, dust control, noise hours of operation and they have met the requirements. He has worked in this field for a long time and there is a need for gravel. There are no health concerns and he is for it.

John Edstrom. nothing further to add.

Raymond Milner 237 North z/ Worked for Edstrom's for over 20 years. There are conditions they have to meet in the CUP and they are totally different than what they have done in the past. They will enforce the conditions and make sure the trees stay good. The dust does not create a health issue. The county can send people out to inspect.

Commissioner Doug Smith asks if we have to monitor.

Raymond: No. They don't. Edstrom's will make sure the conditions are met. They have looked into health issues and there are none. Workers are under no health conditions. Regulations have not changed in 15 years. Let's try it out.

Jennifer Milner. Nothing further to add.

Christopher Edstrom. Nothing further to add.

Angela Morgan. Nothing further to add.

There was no one to speak in the neutral position

Those speaking in Opposition:

Brenda Blaylock, 4510 S Cameron Lane, Rexburg. She states that Edstrom's do not have a valid reclamation plan and it has been pointed out in hearing after hearing. Edstrom's reclamation is based on having ground water rights and the matter was passed on Brian Edstrom's word. She has talked with the Department of Water Resources and was told there is a 12-year moratorium and this will not be signed off on based on reclamation. Right on the application it states ground water rights that they don't have and will not likely get. An attorney was hired for the HOPE group and thought basically they need an update to the reclamation plan. HOPE has not been able to review this plan as Department of Lands has the review right now. The reclamation plan shows a performance bond of only \$88,000, but in the gravel pit overlay, it says bond or performance guarantee shall be received for CUP, but she does not feel it is sufficient. The bond has the county listed as joint owner the amount of the difference between the state bond and the reclamation cost. Edstrom's don't have a valid SWPP Plan, but they need an acceptable plan. Getting a different SWPP plan should not be allowed. This should not be a condition but the correct SWPP plan was required at the time of application. Edstrom's crusher was hard-wired as a permanent crusher, they only have a portable crusher permit. The crusher should be moved and they should have applied for a permit to construct. The expansion plan says it is a separate pit, but DOL considers it one pit. The Reclamation Plan is only for one pit and is not separated out. Legal in Madison County has gone with a 2-pit interpretation, but HOPE's legal counsel said if Edstrom's is considering this a separate pit and county legal agrees, then the reclamation plan presented to the county does not agree with the County GPO Plan which It currently does not. It just shows a giant lake covering both properties with no distinction between the pits and they go below the water table, it requires implementation of a professionally prepared plan, also reviewed by the Commission board, with technical assistance by DEQ. It requires the Reclamation Plan for the whole project with drawings to show what it will look like when it is finished It requires what each phase of reclamation should look like so it doesn't exceed 12.5 acres. Their plan doesn't show this. It just shows a giant lake. It should include drawings as well as water rights to maintain trees buffering of trees and a plan which shows each phase, as well as water rights to maintain the entire project. A long-term solution needs to be submitted.

Commissioner Doug Smith asks if she can provide proof of all statements made.

Brenda Blaylock states she can show proof of all statements made.

Brian Blaylock 4510 S Cameron Lane, Rexburg. He has been involved in the construction industry for 50 years, has owned and operated construction companies and has taught university students for the past 23 years. He has never run a gravel operation, but understands laws, regulations and requirements. He would like to expand on reclamation plan and the bond that is required. He states: DOL considers this a single mining operation and needs to be reclaimed at one point when complete. They currently have submitted an \$86,000 reclamation bond. He showed a picture of the existing gravel lake. The reclamation plan states the shore of the private lake will be a 4-12 slope 15 feet from the road and it looks about right in the picture taken July, 2022. He presented Cubic Yards required to fill in the pond and sloping the pit and the math used to come up with his estimates for a total. A conservative estimate to fill with pit run would be \$10 million. Costs not including grading or top soil would be 11 million. In this circumstance their bond includes nothing for filling in the pit, leaving the old and new pit as a pond. Circumstances will potentially cause Edstrom's to default. Brian has discussed this with Gary and he said it wasn't a concern to them as the county is the owner of the bond and would be able to collect their bond if defaulted. Brian states we are placing the county at risk. When you own the bond, you own the problem and are strapping the county to this. The new property is 47 acres, but only 25.5 acres will be mined. To summarize, Brian stated they are not going below the waterline the new pit is burned up in 3 years if they are only allowed to go down 15 feet.

Commissioner Mendenhall. Will Department of Lands not approve reclamation plan if water rights are not in place?

Their application for reclamation plan states if they do not have water rights from Department of Water Resources. They are required to submit a Reclamation plan that includes filling the pit to a level above the ground water table. They do not have water rights. They have a letter stating this. The Department of Lands has actually approved their Reclamation Plan without checking. DOL said it was an oversight on their part. HOPE attorney sent a demand letter stating they need to follow regulations. They are in the process of redoing it will be resolved.

Commissioner Doug Smith asks if the information was presented to the P & Z Commission and if they have proof from Department of Water Resources.

Brian states Yes, but this is in regards to the old pit and we are discussing the new pit. Department of Lands calls this a single mining operation and is a separate reclamation plan.

Kelly Roberts. 4436 S Cameron Lane, Rexburg

In Edstrom's application they stated that the best location of a gravel pit is next to a gravel pit. I speak to contradict this. Their old pit is not ideally located but in 2019 our neighbors had a reality check when this business began their mining operation in the new closer location without approval and permits. Their newer operation was very close to homes, creating noise, dust and all sorts of issues.

Our group of homeowners is not anti-gravel pit. Of course, we need gravel pits for construction needs. This is just not the location for the gravel pit. There are plenty of places that it could go elsewhere not in

close proximity to homes. It may be convenient for the business, but it is not the right location. There are new light industrial businesses popping up around the Thornton exit, so on paper it seems like this is an appropriate location, however those businesses are contained in buildings or just equipment sitting quietly on site. A gravel pit, as we know is totally different. You can't contain it in a building, the noise of rumbling trucks and incessant beeping is heard in all directions, the crusher is constant and very loud, the dust blows mostly from the south to northeast and all of that cannot be contained on a single property. The size of this new operation is going to be huge. They can only mine 12.8 acres at a time, but my street is 12 acres and so I know the size of that and it is large. They have claimed that they will keep it watered down, but it is just isolated watering. Once all that ground is disturbed on a daily basis there is no containing that dust, but when they go home it will dry up and it will blow and blow and blow. We have watched this in 2019 when they started digging up that area and stock piling we saw mounds of dust blowing.

I would like to draw your attention to the screen. This picture shows the gravel pit surrounded by blue dots. Each blue dot represents a home. Since this picture was made, another new neighborhood has even been built in this area, increasing the number of homes. This is the most densely populated area of southern Madison County and this gravel is right in the middle of where the gravel pit is proposed.

Those of us here are representing hundreds of our neighbors and their families. They are not all here today because this process has been exhausting and many have expressed support that we continue for them. When this business started their expanded mining operation without approval and permits a few years ago, we easily received financial support from these neighbors and we represent all of them.

I just want to speak that what Brenda and Brian have been talking about. This is years of not following rules and laws. I have heard county officials and Planning and Zoning members actually praise this business in their efforts. The only efforts this business has made is to finally comply with existing rules and laws and ordinances. They were praised for obeying the laws. All we have ever asked is that they obey the rules and laws. But we have not seen that in practice. It cost our group over \$20,000 to get them to obey the laws.

The gravel pit overlay, in my opinion, and I have studied it over and over and it is not adequate for this close proximity to homes. I believe that their application does not fully address the issues. For one thing they say they are going to put in an 8-foot berm this would be inadequate to cover their operation. Trees will take 10 – 20 years before they are large enough or to control anything to help in any way. I just believe their application does not meet the clearly outlined for criteria for approval. I ask you to please deny this application. The application is too close to homes and I don't believe their years of not obeying all of the rules are not going to change this. The application is inadequate I ask you to deny this request because the location is just too close to homes.

Commissioner Smith: If this is not the right place where is the right place? We have to put have gravel pits. Where there is gravel.

Kelly Roberts: I am not an expert on this. But it is not the right place next to homes. If you put it right next to a school, you would not approve it. It's not the right place, it's the convenient place.

Kirsten Ruebush, 1893 W 5350 S, Rexburg

Mr. Smith. It is the duty of the Madison County Commissioners to identify gravel in the county and it is that it is the responsibility of the commissioners to find gravel in the area and that's from the comprehensive plan. I can look for it. It just came up. You ask the question. I would need time to find that. I don't know how you're supposed to do that but that's OK.

The second one is in the Idaho Land Use Handbook, it talks about requirements for legal standards of county decisions, quoting from page 259. The applicant for the permit carries the burden of showing that he or she is entitled to the permit, you continue to ask for us to provide proof, and nothing has been provided but you're not asking the applicant to provide proof for their statement. When they are supposed to provide the proof. For example, they've claimed that there was a settlement agreement they have provided no proof. There is no proof. We did not agree to that and our attorney signed it. They chose not to. He said there is minimal dust with their dust plan. They have no proof there's minimal dust. They said they have monitored. There's no proof of what they're monitoring or how they are controlling dust. Just a couple of points there. I will provide proof that plan that they put forward in the hearing that is being appealed tonight was based on the Reclamation Plan that they had with the Department of Lands. Here is the proof of the neighbors paying an attorney at least \$500 recently and called in question the Reclamation plan with the IDL. Here's the letter from the attorney and here is the Idaho Dept. of Land's response. It says Edstrom's Construction has submitted an amendment to their Reclamation Plan providing a backfilling plan complete with cost. This plan is currently under a completeness review, which by the way takes up to 30 days after the plan has been determined to be complete, IDL will process the amendment and that may take another 60 days so right now the decision that was made by Planning and Zoning that is being appealed was based on a Reclamation Plan that is no longer going to be approved. It is being amended.

I don't know what that means to you but to me that means their application is not complete. They are changing it voluntarily. Just in the application process of the GPO gravel pit overly, the contractor will show that the plan to meet the standards are set by the State Department of Lands. They are responsible to show that. I'm giving you proof they are changing the Reclamation Plan. They did not bring that forward. That is required in the State application sketch plan. They are supposed to have this well in advance of applying. Section 3 (b) 4-5. They shall submit, and this is part of the application, a Reclamation Plan for the whole project with drawings, that show what the area will look like when finished. The plan for each phase of reclamation with drawings, there is no the plan in there. They do not have a plan currently for the change they are making to fill in there. It continues the Reclamation Plan that is in the application right now continues to show a lake, so right now this change they're making is not a correct application. Like Brenda pointed out, if they have if they are changing it, the public has the right and that is under the Idaho Land Use Act requirements, we have the right to see that new Reclamation Plan and to comment on it, so you cannot approve this tonight based on the fact that there is a new Reclamation Plan coming. I would say it would not be appropriate to table at this point because it's going to take up to 90 days. I know that there is some

concern about them suing. I want to point out this from the Idaho Land Use Handbook and I want to point this out. Applicants to fail to submit the required information have no right to approval of a permit that does not meet the requirements of the governing ordinance, especially when the applicant retains the opportunity to submit the required information, in the course of a subsequent application. Denying this this point, so they can put in a new application with the new Reclamation Plan is the appropriate thing for you to do so the application can say what they're really going to do on that property and that is a County requirement backed up by the Idaho State Department of Lands and they have the right to reapply. You are not taking from them by denying them right to a permit they haven't shown proof that they should get it.

Commissioner Mendenhall asks to Mrs. Ruebush. What is that you're submitting? Items mentioned above.

Deanna Poulsen. 2280 S 4200 S

Hello my name is Diana Polson and I live at 2280 W. 4200 S. There are a lot of holes in this application that is being resubmitted. In section 7 (f) it says that the applicant needs to show proof of sufficient water right which has been mentioned. I want to continue an idea here. Edstrom's have submitted proof of a canal water right to water the trees but they haven't submitted proof of water rights to water the area, meaning the stockpiles, etc. Edstrom's has tried to circumvent this requirement by making a contract with the City to purchase water through the mayor. This seems like a very shortsighted solution that doesn't seem like sustainable and I have to question; does the mayor have the right to actually get permission for that. I'll get to my slide in just a moment. Edstrom's performance bond guarantee is based on having water rights that they do not have, Edstrom's are currently in the process of changing the performance bond to be an alliance with filling in their current pond, as they don't have ground water rights, they are currently updating their plan with the Department of Lands to fill in their pit. It is currently under review. The GPO section 21 says that the county reserves the right to have a party responsible for the Reclamation Plan upon or performance guarantee above the state requirements for reclamation and show proof of ability to complete. Their reclamation plan shows a 12-foot berm to the state but the plan and the county only shows an 8-foot berm. This doesn't coincide and is a discrepancy. We have to wonder what they are actually going to do. We can't tell they we've got two different stories from the same party. Edstrom's have asked for your extension on their January 1, 2023 deadline to work with state agencies to get things going because of Covid. Covid has been over for a while. This would be very unfair to HOPE because the things that need to be requirements since the 90's and are listed in on the Reclamation Plan and they also claimed to have them after July hearing in the form of the Commissioners. I feel like that's something worth noting. Should you choose to go forward with this, as someone who is directly affected by this. My house faces the gravel pit. I'm not opposed to gravel I could use them in driveway right now. I'm not going to lie, but like it was mentioned, I think the location is a poor location. You asked Commissioner Smith where is a good location. Well I mean I only have about half an inch of topsoil for my garden so there is a plenty of gravel in the area of Archer and Lyman and maybe not in the middle of homes is not the best location.

One area that would be worth looking at is adequate fencing. It would be a great idea to install fencing instead of the low shrubs that are submitted in the landscaping plan. Shrubs, provide a hiding place for

children should they choose to wander. A secure fence that would deter that could be very beneficial, not only to the neighbors that live on the bordering property line, but also to Edstrom's themselves. If I were to have a pool or a trampoline or anything dangerous in my yard I would be responsible and liable for that, unless it was enclosed completely. In reality we are trying to keep the best interest of them and our children at the forefront here. Having a fence that spans the entire first and second parcel at that northern property line, we feel would be a reasonable condition to request. Something else to consider is the slope of the existing pit and the new pit, having that slope be amended to be four to one in existing pit and with the new pit having it graded at a four to one slope would ensure a short safety precaution and indeed say OK we are good neighbors we are going to the best we can to make this a good thing for everybody. Let's see the last thing I'd like (don't go the last thing yet). I would like to submit a document to the administrator here and this document adds a little bit of clarification and conditions that we would want to request should you make this go forward. We have tried to discuss this with Edstrom's. Our request for mediation was in short denied. The county determined that it was not important, but we believe that this will help everyone in the future to know the process and responsibilities of this Conditional Use permit. It isn't finished. You will notice some blank spots on it and it cannot be finished. It can't even be discussed in this public hearing but if there is no way for us to have respectful conversations with Edstrom's and the county, we ask that you review that document and those conditions. I just want to wrap it up with the next slide saying this incomplete application in hindsight should not have been permitted in the first place and you know good neighbors, work good together. It's been said that good fences make good neighbors and I want to extend that thought too. I don't want to twist each other's words and the requirements to fit any kind of narrative. We want the truth. There're is always two sides to the story and then the third side is the truth. That's all I have thank you.

Commissioner Mendenhall asks if anybody in the group opposing this has looked into the liability components for its or any gravel pit owners, Walters. It wouldn't matter who it was. You know what kind of a liability responsibilities they have with that. Has anyone in your group looked into that?

Mrs. Poulsen: Mrs. Ruebush has. The pit itself and the berm would be an attractive nuisance.

Commissioner Mendenhall: Yeah. I'm not asking about that. I'm asking about any liability? If a child wandered in and rolled down in and was drowned or any injuries or anything like that

Mrs. Ruebush As far as I can see on a search of everything, liability is, if you don't take precautions, if you have an attractive nuisance on your property and you do not take the reasonable steps to secure safety of those around you, you can be liable, not for a natural body of water like the sloughs and stuff like that, but if it's a man-made pond or something you can be held liable for that. One more thing I wanted to say about that, and it is especially so when it applies to children who cannot read. When there are children in the neighborhood that it is more likely that you are liable for not taking care to secure your own property. Does it mean it will always happen? No, but there they couldn't read "No Trespassing" or "Danger".

Lori Christiansen, residing at 2208 W. 4200 S., Rexburg. My home is directly downwind or north of the gravel pit. We purchased a home in 92 and have lived in this location for 30 years. As both environmental in medical research suggest, air pollution caused by stone crushing industrial sites results in high levels of

airborne particulate matter such as dust, silicon chemicals, etc. present serious, chronic inflammation responses is which eventually result in disease and death. I know a dust issue and particulate matter seems to be a nuisance and are a really insignificant problem to many, however, as an asthmatic with lots of airborne allergies, breathing air quality is vital to pulmonary and cardio health. The more I have researched and read about the side effects of fugitive dust and the diseases it can cause are exacerbated, the more I wonder about the health issue issues of my neighbors and my family. I've had numerous doctor visits addressing lung issues. My pulmonologist in Salt Lake City said, once he found out I lived in a rock crushing plant, responded without hesitation you need to move. My neighbor, who was a 35 plus year resident of our neighborhood, a non-smoker, living downwind of the rock plant passed away last July from lung cancer. I've also recently read in medical journals that fugitive dust and silicon can cause inflammatory responses to one's body. This information once again, directs me to question my son's health. His body had an extreme inflammatory response 13 years ago idiopathically, which left him with lifelong problems. I'm also asking that health issues need to be considered when exposure to prominent dust particles as a daily occurrence and some of the neighborhood health issues reflect the hazard of living near a rock crushing plant. Dust is a constant problem everywhere in my home. The rain gutters collect leaves, but moreover they accumulate dust, which eventually turns to mud. There is always a layer on our vehicles, the windows are a constant battle to keep clean, the dust on the ? is horrendous. You need to wash the house once a year to remove the dust residue.

This past summer I grew dill in my garden and dried it in the garage. When it was done drying, I put it in ? and noticed all the fine white dust coming off the stalks. It hung in my garage for approximately one month. It us unusual and odd for dried dill to be dusty. I have contacted ? laboratories, a comprehensive analytical food testing service to have the dill tested for particulates and dust. I have not yet received a response from them. My concern is that is Edstrom's dust control plan appears to be lacking long-term specific measurement procedures, established by state and federal rules and regulations for particulate matters. This statement from the rules for control of air pollution in Idaho states particulate matters emission from portable rock crushers shall not exhibit more than 15% opacity. Opacity shall by using the procedures specified in IDAPA code where it is stated in their plan that there is a procedure introduced to measure the opacity and it does not exceed 15% for the non-portable crusher opacity limits are even are even stricter. This is their Dust Control Plan that they submitted. One page. Edstrom's declared they will not mover their crusher which it makes it non-portable, however, to my knowledge they never applied for a permanent permit, known as a Permit to Construct, since they have declared they will not move the crusher. I request the county require Edstrom's to obtain a Permit to Construct and not be allowed to continue operating using a portable crusher. A portable crushing permit allows Edstrom's the ability to not be monitored regarding health issues. This is a copy of a Permit to Construct much different and in it, I pulled it off the internet, the 22-year-old application from another rock crushing company. These applications have explicit Statewide requirements regarding but not limited to emissions limits, operating requirements, monitoring, record-keeping, and the companies must state their Mitigation Plans and demonstrate how they would implement them before mining begins. 22 years later those requirements are the same. Bottom line is I am a downwind resident of what can become an even more hazardous situation for all citizens in the neighborhood. It is not unreasonable to ask the county to follow government guidelines and protect your citizens. Those guidelines are there for protection. The state and federal guidelines need to be an intricate part of Edstrom's business plan and procedures. In addition, the county needs to implement tough love standards to those businesses in our area that overlook, turn a blind eye, claim ignorance or choose not comply. Please deny their request until they are willing to do their due diligence by searching and providing documentation stating that they will uphold the laws and ordinances of the requirements. I request respectfully that you deny the application.

Commissioner Doug Smith asks if she has considered moving.

Lori states: She cannot buy back what she has. The rest of this was inaudible.

Shauna Johnston 2233 W 4200 S

I represent those of us who have been deeply impacted by this gravel pit. When they expanded it behind our homes and even continuously as they go before. I'm going to try to skip some things so that I can get through this. I believe it is a reasonable expectation to expect a company to know and understand the laws, ordinances and requirements that govern them. I believe it is their responsibility and following that it is government, federal, state and local to make sure that they are following those laws, but the responsibility falls mainly in their lap and that has not happened in this instance. Showed pictures. This picture was taken by Lou Cameron showing the dust and you can see the crusher in the back. This is what happens when they don't monitor themselves. This didn't change until a mutual acquaintance was working in Lou's yard and told them that we were being buried by the dust from their crusher. Showed picture from a distance from 4700 S and shows that the dust is lifting and that it is going forward. Another picture showing what the snow looked like when they are crushing and it is constant. The snow in our yards are covered with black dust and another from the Archer Lyman Highway. Showing the dust that is being created and being lifted and that stock pile in the north. They have since moved that, but the crushing creates dust that lifts above 25-foot stock pile. Shauna presented a video where could be heard the sound of the crusher and trucks running. They hear this almost on a daily basis, so that you know how we are affected not only by the dust, but the incessant noise. You will hear the moving of trucks, the crusher in the background and the dumping of gravel onto that and you will see dust coming up afterwards.

This was taken when they were behind and the reason why I use this is because we still hear this every day. Just listen to the crash of dumping gravel. The audible sound from the beeping of dump trucks and this is what they hear every day. It is a real nuisance and it's a real irritation. Another video of the dust coming off their stock pile as it was right behind us. They still have stockpiles, it's moved a little further away, but we are still getting the dust off of this into our homes. Most winds come in from the southwest and they go straight across our yards. Next picture is an example of what we were told to go look at by the county. This is the county's example of the burn that surrounds the County gravel pit and I went out to drive and see it and took this picture. Is that what we're supposed to be protected by with the Gravel Pit Overlay? That's the protection from the dust were supposed to get? I sat in my car and cried, because maybe in 25 years. Maybe. Even if all protective measures are enforced we will never be completely protected. This is not the place to expand a gravel pit. It brings it affects dangerously close to our homes. We've also been affected by the process we are involved in this evening. The number of times we have had to attend hearings is daunting. We have spent years now educating ourselves, researching, and sharing what we have learned only to be repeatedly shut down. We have tried mediation we have shown why their current application should be denied because over and over they are neither complete nor correct, only to have them passed anyway. Repeatedly decisions have been delayed so that Edstrom's can get their documents, water right, SWPP Plans, reclamation, air quality plans in order and again their current application devotes 36 pages to irrigation and weed control of the berm and less than three pages to dust control. One page being a picture. Not mentioning anywhere, a plan to control dust coming off the crusher, one of the major offenders. To water the stockpiles, it only uses the words "as needed", not any plan whatsoever to care of those. Nothing. That is frightening for those of us who are deeply affected

by this 24 hour a day. When their workers go home, we have to stay and deal with the dust that comes. Their Water Plan is not transparent and so ambiguous as to lead us only to guess at its effectiveness and protecting us. Is that deliberate? If it is not detailed in a CUP application and if that is ? then it is not enforceable. I do not understand why we, the public and the affected families must work so hard to get our decision-makers to require this company to do it right. They have shown that they will not do it on their own. I understand the need for gravel in our growing community and Edstrom's has been tutored, coached and supported by those in our county government. They have been informed and advised by us and yet we are still looking at an incomplete, and incorrect application. I do not understand the obvious push by county committees and officials to make sure this project gets approved even if we must throw Edstrom's over the ?. That protects us. It has been at least 25 years since they have known they needed a water right and if they were unaware, it is their fault and yet they now need more time to get the necessary rights and permits. When do we say it's enough? When does someone have the courage to say that this is not the right company to move forward with this project? They have been given years to pull this together and in the 11th hour it remains incomplete and incorrect. I don't know how much we have to ignore what our group has researched and planned and put forward and can prove. How much more do we have to do to hand back the application and say its incomplete, it's denied? I just don't know why it keeps going. Thank you.

Shane Ruebush

Brief comment. Simply put this is just about a procedural point as why I'm in oppositions. Inasmuch if you do not know not know that everything is in place and according to what it needs to be, that definitely requires that you take some time to consider it. Knowing full well that the Reclamation Plan is under reconsideration, that means that you cannot make a decision at this time. Therefore, you could just deny it and the reason why it's not such big deal. Let's just put it in real perspective. They just reapply when everything is in order and it goes through, as long as everything is in order. There is no real pressure to make an approval or deny or whatever at this point, in the sense of there is plenty of time. Thanks for listening. That is my recommendation at this point, for any other purpose than its just a fact of the way the process of the application is; what is currently stands and a denial does not mean the end of the world, it only means when everything is in order they come back and apply again. Thank you.

Commissioner Mendenhall. We have down here three others and they are not speaking Cyndy Hansen, Lori Hansen and Bryce Johnson. So that comes to the end of our list of those who signed up to speak for, neutral or against. With that, the person representing the appellant, would you like to speak in rebuttal? This is not new or additional or new information.

Shauna Johnston: There is one thing that was stated that was not true. It was with the first speaker and I'm not sure of his name, so I'm sorry. He said that we made a plan, and we made an agreement that we would not oppose them at this meeting and that was put forward by them and we did not sign it. We refuse to give up our right to stand up here before that. He stated that we were agreed to do that and we did not. We would like to see that agreement, but he states that we agreed to. Because we know for a fact that we did not. We also know our lawyer sent them some stipulations and things that we would like and their lawyer looked at it and said I don't see how this benefits my clients and sent it unsigned. So we did not move forward with any of the litigation that we tried. There was no agreement and as he was talking, I was surprised at his take on that because it was not true. Raymond Milner also stated that there were no health issues and I have read MSHAWS requirement for dust for gravel mining operations and I have gone over it and they're extensive and I hope they are doing that for their workers, but I guarantee you that MSHAWS requirements do not cover the homeowners that are directly north and around those people that are getting the dust and getting that dust from their operations. It does not cover us because

as I said, before in previous hearings there were times when it was so bad that I can walk through my house and see my footprints on the ground. We leave our windows open at night during the spring, summer and fall because we don't have an air conditioning unit, so that's how we cool our home and there is dust and footprints. The dusting is white and its thick and it is constant, even since they have moved to the other side. So, they talk about there not being any health issues and there is a true concern from all of us that there are health issues, as stated by MSHAW if they don't take the precautions to protect their employees, but it doesn't help us. That was just something, we just want to restate. This should be denied, based on the incomplete application. It is incomplete and it is not correct. There is an incomplete dust control plan. We need the correct crusher control. We need monitoring and everybody says we should be doing the monitoring and I don't think that's our responsibility. I believe it is the company who is supposed to prove that they are monitoring these things with the Department of Environmental Quality and it is their responsibility to set up monitors and check what their opacity level which are stated for them as guidelines. The current bond is not sufficient they need to provide proof of water right. We have been asking for proof forever. I finally went in the Department of Water Resources last March and found out they do not have water right nor did they have a record of them ever applying for a water right. I was in there a couple of weeks ago there is still no application and that's when we learned that there's a 12-year moratorium on groundwater rights and they most likely won't get them which makes their Reclamation Plan insufficient or wrong and the Department of Lands, I think, approved their plan based on what their assumption was, that they have a water right.

Commissioner Mendenhall: Are there items that Edstrom's have made that you would like to rebut? This is information that was presented already. We want to make sure we are on the right track so we don't get called out. You can rebut or clarify. If you are doing that please continue.

Shauna Johnston: Let me clarify with asking that they will be required is to reapply. They may have to start over again because they have been given a generous amount to get this done and despite Covid shut downs, all of this information was available online without that and it should've been started before Covid hit, but it wasn't and it was required back when they broke into the water table back in the 90's. A lot of this was required and it was not done then. inaudible.

Commissioner Mendenhall: Any questions Mr. Smith? We have an opportunity following this rebuttal for clarification.

Commissioner Smith: No.

Commissioner Mendenhall: Okay then we will close this public hearing and consider it closed.

The public testimony was closed at 7:07 p.m.

Questions asked by Commissioner Smith inaudible.

Commissioner Mendenhall. Discussion by you and I and the action that we have. Opportunities we have to act on this. The written statements, the plan, the drawings other materials. They are part of the hearings record and I believe there were two things submitted that I recall. I do not know if you would like to submit those Power Points. That would be fine too. We would put those in the records if you would like to do that or they were utilized.

Gary Armstrong: Verifies that the material presented will be submitted.

Commissioner Mendenhall: Materials shall be left with the Administrator. Inaudible remarks by Gary Armstrong. OK all right our hearing is close and it's time for us to discuss we do. We can make a decision within a reasonable time. We can either make it now at the time of this hearing or it can be tabled for a future meeting.

Commissioner Smith: There are a myriad of things that have been asked and that we could look at. I don't know whether to or not. I don't know whether this is a single mining operation or a dual mining operation. I don't know whether the landscaping plan is under scrutiny or not. They say it is, but do they have water rights?

Commissioner Mendenhall: The document that Mrs. Ruebush submitted was a letter from the Department of Lands. Was that an amendment submitted by the Edstrom's that was under review?

Commissioner Smith: Do you know what that means?

Commissioner Mendenhall: The thought came into my mind. Mr. Smith is the Reclamation Plan has been disapproved and it has not, but the amendment that Edstrom's submitted, it's under review to see whether it would be an acceptable plan. That is the interpretation that I have in mind and part of that reasoning is because of the insufficient water rights and that they have all but admitted they made an error and didn't look deep enough.

Commissioner Smith: My question about water rights? inaudible. Why is that not adequate in all of water? Ground water rights were mentioned and a storage tank for water and if there is year-round water for dust control. Part of the application was contracting water for dust suppression from the City of Rexburg or they will need water trucks to haul for dust suppression? Evaporation idea from the Department of Water Resources. The pond regardless of how you fill it, you have to have some kind of water rights, so that the water that is lost it doesn't go to irrigation or domestic or whatever use.

Commissioner Mendenhall: The short answer is, it is insufficient water. They will need additional water. One thing I understand is the sensitivity of water in this new mining pit and that the Department of Lands considers it one pit but, Madison County does not. I want that clear for us. Kim please make a note of that. Department of Lands considers this one unit, one pit. Madison County does not. And if that's an issue then the Attorney General can come to Madison County and correct us. When I saw all of the pictures of the dust, I wasn't sure if that was solely from Edstrom's and their old pit. I'm still disturbed. Back at the original hearing, that there may have been some mining or some earth removal in the new location and I don't know if that was ever established, but this current one all the pictures, yes, it looked like the pictures were taken but there's a bark plant, there is Walters gravel pit, the Edstrom's gravel pit, and they are all in the prevailing winds and jet stream that comes through there. Then I think okay what do we do with noise. We have American Potato, we have again the bark plant that crushes and does everything at all times of the night. And there are homes and the freeway. I don't know how to address that one.

Commissioner Smith: Is not too concerned with the noise.

Commissioner Mendenhall: Yes. I don't know how to address that. The dust I was concerned about. I am concerned about the health

Commissioner Smith: Well I am too, but I have lived in Idaho a long time and they were showing a windy day and I've been up on the bench when I couldn't see this far in front of my face on a windy day.

Commissioner Mendenhall: Just making sure of my notes. There was one statement that was made and I don't know who made it. I didn't write it down. I made a note of the presenters, but this one was making an example. All of the other gravel pits, and I'm not even sure when the last gravel pit was approved, but since that time, that was back when we just threw gravel pits up and moved on our way. There wasn't the sensitivities and the growth, as we've been discovered in the homes being built. Someone made the statement that a new subdivision came in. Right then in my head I didn't say it, but I'm thinking, why would you build a subdivision when there's a controversy of a gravel pit? How many homes have been built since this gravel pit concept from the Edstrom's was introduced? How many homes have been built knowing there that dust was going to come there?

Commissioner Smith: Well that bark plant has been there forever and that is a dusty beast.

Commissioner Mendenhall. I'm putting this all this in my head and I'm just going to make it an example that one of the presenters opposing is that they said we have been told we meaning they have been told that they should be monitoring and I disagree. I believe that whoever is telling them that I believe is dead wrong. Edstrom's have a responsibility, Walters, whoever is doing it has a responsibility to monitor and the county has a responsibility to monitor. Commissioner Todd Smith, today, we were talking about another issue. He said we currently do not have an enforcement officer, and we would get beat up the side of the head if we said we're announcing the opening of a position at X number of dollars a year for an enforcement officer in Madison County. They would be lined up more than they are here telling us well we don't need one. but we have a responsibility, more so than we did 10 years ago to enforce. That has to do with one of the pictures that was being shown, all the old cars stacked up by the haystack. I don't know where it begins. I'm not rambling. I'm just saying these are all issues that are in my head. I don't know. What about you?

Commissioner Smith: Well, I think the answer to this is an approval and assuring that those berms are put in place, those trees are planted and I don't mean seedlings, but I mean some trees and they need to be put close enough so that they actually act as a buffer.

Commissioner Mendenhall: I believe the size of the trees are actually spelled out in the gravel pit overlay and the distance between them.

Commissioner Smith: The picture that she showed in Madison County inaudible being a barrier

Commissioner Mendenhall: The word outside of Rexburg appears to be very damning. I will tell you I'm concerned about the water rights. They are not in place.

Commissioner Smith: If they are not in place, this Conditional Use permit will never go into fruition. It shouldn't even if we approve it. They don't have the water to mitigate the reclaiming of the whole thing, they are going to have to back off and we are going to have to start again.

Unknown: We have for the last 20 years and we have remained operating.

Commissioner Mendenhall: Do we have the authority to place a sunset on a CUP or does the application need to be complete before we approve it?

Gary? It needs to be complete. That is the point.

Commissioner Mendenhall: I am ready for a motion if you have one in your head, or I can make it and you can either second or it dies from lack of second.

Commissioner Smith: Not sure what to say, but I do have a feeling about this. I'd like to make a motion that we approve a Conditional Use Permit, and that all of the points of the gravel overlay need to be in place and show that they are operating before this Conditional Use Permit can be put into actual operation. Now that means there has to be proof that there has to be water rights, has to be proof that there is a bond, that will take care of reclaiming that gravel pit through its life span, I don't know what the life span of a gravel pit is. I know Walter's have been here a long time with this one over here.

Commissioner Mendenhall: In a normal circumstance, if I seconded that, it would be approved. In normal circumstances, we would have discussion, before a vote is taken, so I would need to have a bit of discussion right now. Here is my hesitation to second that and it is by Mr. Ruebush, I'm pretty sure.

Commissioner Smith: We are not in a hurry, is that what you are saying?

Commissioner Mendenhall: No. He wrote down here. Not a complete application. The only reason I'm hesitant about this, I voted no once before on this and that was for a different reason than right now. The reason right now is that we don't have a complete application and that is something that I was as unaware of. Right now, I don't feel that we have a Reclamation Plan, we have an amended plan that has been submitted and not approved by the State Department of Lands and submitted by the applicant. So, we don't have an approved plan back in place that would mean sufficient water rights. What I'm worried about is that I'm starring in the face of saying, Ah let's approve this Conditional Use Permit and when they get everything together then they can go ahead and proceed, which I'm not comfortable that we can go ahead and let them do that.

Commissioner Smith: I wish we had someone here to talk to us about this. Maybe the better thing would be to table it for the night and get some legal advice. I'm not sure I feel as comfortable with the application not being complete. Was the application complete when it was approved it with P & Z?

Gary: It was provisional approval. There were a list of things that needed to be completed. They needed a SWFF plan, approved reclamation plan and provide documented water right were the three things needed specifically. There were still things that needed to be provided in a recommendation from P & Z

Commissioner Smith: Have they received these things?

Gary: We have not received proof of those things to date. There is still a lot of work to be done before operation can commence. That is where P & Z left it. They have to get this checklist completed in order for approval to commence.

Commissioner Mendenhall: I was not aware that we are able to do that. I wasn't comfortable taking an application that had hanging fruit out there, waiting to be done.

Gary: Just a reminder that procedurally Constructive Land Use Law and Conditional Use Permits the terms state specifically and it is a discretionary action. It is different than our subdivision law that if you meet all of the requirements of a subdivision, then we are required to approve it. Conditional Use permits are negotiated. It is different than other land use actions. You're not compelled to approve or deny. Discretionary action from the board.

Commissioner Smith: How do we monitor the checklist?

Gary: It's like any other Conditional Use Permit. The applicant would say, we have our berm and I go out to meet them and look at their berm. The same applies with the trees. Gary looks and the number of trees and the spacing to make sure it is correct.

Commissioner Mendenhall: Do you get the documents of awarded water rights? You have a confirmed plan from the Department of Lands for a Reclamation Plan.

Gary: It's like any other permits the county processes. There is an onsite inspection with each of those items. Just like on a building permit. We do frame inspections. We would inspect each of those requirements or take certification from the applicable state agency that governs that particular issue.

Commissioner Smith: On the water issue, they go right to the State Department of Water Resources?

Gary: And that would suffice for the inspection. We would have certification for Water Resources.

Commissioner Smith: Before they can take any gravel?

Gary: Correct.

Commissioner Smith: I'm okay with that.

Commissioner Mendenhall: All right, restate that motion. We do need the 6 conditions? The 6 conditions were read. I would say that the gravel pit overlay being complied with in its entirety would be the revamp of the SWPP, the Reclamation Plan and the water rights are being addressed in Number 2. Actually, the water rights would also be in the gravel pit overlay for dust control.

Discussion regarding the gravel pit overlay and the SWPP Plan

Commissioner Smith: Does the crusher move ever?

Commissioner Mendenhall: It just says the crusher is to remain in the NW 4 acres of the west pit, where it is presently located on the date of the permit issuance. It is not moving.

Commissioner Smith: I don't see anything about the berms.

Commissioner Mendenhall: That would come in the Gravel Pit Overlay. That is where the specs for the Gravel Pit Overlay would be identified.

Commissioner Smith: I don't have anything else.

Commissioner Mendenhall: I am sending Kim an email to identify the conditions to be in the record.

There are 6 requirements for CUP These are conditions put on the CUP by the P & Z commission

1. Gravel pit overlay be complied with in its entirety.
2. No excavating below the seasonal high groundwater level until formal written correspondence is issued by the Idaho Department of Water Resources and has been provided to the county.
3. If a regulatory agency finds the operation out of compliance, operator will have 72 hours after official notification from regulatory agency to notify the county of such violation and shall resolve the violation or violations within a reasonable timeframe.
Unresolved violations will result in the conditional use permit being revoked.
4. The crusher is to remain in the northwest four acres of the West Pit where it is presently located on the date of the permit issuance.
5. Weeds shall be controlled per reasonable industry standards.
6. County requires validation from DEQ that the construction general permit is the appropriate permit to govern operations of this gravel pit. If this permit is unacceptable, a multi-sector general permit will be required.

Commissioner Mendenhall: So you are okay with that motion?

Commissioner Smith: Yes.

Motion restated:

I'd like to make a motion that we approve a Conditional Use Permit, and that all of the points of the gravel overlay need to be in place and show that they are operating before this Conditional Use Permit can be put into actual operation. Now that means there has to be proof that there has to be water rights, has to be proof that there is a bond, that will take care of reclaiming that gravel pit through its life span, I don't know what the life span of a gravel pit is. I know Walter's have been here a long time with this one over here. There are 6 requirements for CUP These are conditions put on the CUP by the P & Z Commission

1. Gravel pit overlay be complied with in its entirety.
2. No excavating below the seasonal high groundwater level until formal written correspondence is issued by the Idaho Department of Water Resources and has been provided to the county.
3. If a regulatory agency finds the operation out of compliance, operator will have 72 hours after official notification from regulatory agency to notify the county of such violation and shall resolve the violation or violations within a reasonable timeframe.
Unresolved violations will result in the conditional use permit being revoked.
4. The crusher is to remain in the northwest four acres of the West Pit where it is presently located on the date of the permit issuance.
5. Weeds shall be controlled per reasonable industry standards.

6. County requires validation from DEQ that the construction general permit is the appropriate permit to govern operations of this gravel pit. If this permit is unacceptable, a multi-sector general permit will be required.

Commissioner Mendenhall: I will second that motion and we will approve the Conditional use Permit based on the completion of those 6 items and nothing is to be turned until all 6 are satisfied.

Copies of the pictures and recordings will be delivered to Gary tomorrow.

The Public Hearing was closed at 7:32 p.m.

Approved:

Todd Smith, Commissioner
Brent Mendenhall, Commissioner
Doug Smith, Commissioner

Attest:

Kim Muir, County Clerk