

BEFORE THE LAND USE BOARD OF APPEALS

JUN 30 3 10 PM '81

OF THE STATE OF OREGON

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NEIGHBORHOOD OPPOSING MORE )  
OPERATIONS FOR ROCK EXTRACTION, )  
an association consisting of )  
JOHN KACZA, KATHERINE KACZA, )  
RALPH DICK, DARLA DCK, JAMES )  
TUPPER, JR., ADELINE TUPPER, )  
STEVEN BENNETT, KATHY BENNETT, )  
ROBERT JOHNSON, LUCILLE )  
JOHNSON, ROBERT HAYES, FRANCES )  
HAYES, THOMAS PARSONS, TERESA )  
PARSONS, ROBERT HEINTZ, PERNA )  
HEINTZ, CARLA HEINTZ, AUGUST )  
SCHEMM, DOROTHY SCHEMM, JAMES )  
DUNKIN, DANA DUNKIN, MR. and )  
MRS. JIM HAYES, TOM WILSON, )  
HARRIET WILSON, CURTIS DAVIS, )  
MARIE DAVIS, BILL DALTON, )  
LOIS DALTON, JACK DALTON, )  
GERALD LAVY, LEANDER QUIRING )  
and MARIE QUIRING, )  
Petitioners, )  
v. )  
POLK COUNTY, OREGON, and )  
DAN VOIGT, )  
Respondent. )

LUBA NO. 80-165  
FINAL OPINION  
AND ORDER

Appeal from Polk County.

Chris L. Lillegard, Dallas, filed a petition for review and argued the cause for Petitioners. With him on the petition for review were Lillegard & Luukinen.

Paul J. DeMuniz, Salem, filed a brief and argued the cause for Respondent Dan Voigt.

No appearance for Respondent Polk County.

Bagg, Referee; Reynolds, Chief Referee; Cox, Referee; participated in the decision.

Remanded.

6/30/81

You are entitled to judicial review of this Order. Judicial review is governed by the provisions of Oregon Laws

1 BAGG, Referee.

2 NATURE OF THE DECISION

3 Petitioners appeal Polk County's grant of a conditional use  
4 permit to mine aggregate. The conditional use permit, No.  
5 80-27, was granted to Respondent Dan Voigt.

6 FACTS

7 Respondent Dan Voigt requested a conditional use permit to  
8 allow him to extract rock from a five-acre parcel within an  
9 agricultural-forestry (AF zone) in Polk County. Aggregate  
10 mining is a conditional use within the AF zone.

11 The quarry site is in a steep canyon. Apparently, blasting  
12 will be necessary to loosen the rock, and the proposed  
13 operation would include a rock crusher. There are two other  
14 active quarries within a mile and a half of this site.

15 Chapter 120 of the Polk County Zoning Ordinance controls  
16 the use of sand and gravel resource sites. Included within  
17 Chapter 120 is authority for the imposition of many conditions  
18 to minimize the impact of resource extraction and to insure  
19 rehabilitation of the site once mining activities have  
20 concluded.

21 At the request of the Board, the parties provided us with a  
22 copy of Chapter 119 of the county zoning ordinance. Chapter  
23 119 of the Ordinance controls conditional uses. This chapter  
24 is a general chapter providing for hearings, applications and  
25 similar matters for all conditional uses. Section 119.070 of  
26 Chapter 119 is as follows:

1 "119.070 FINDINGS OF THE PLANNING COMMISSION.  
2 Before granting a conditional use, the planning  
commission shall determine:

3 "(a) That it has the power to grant the  
4 conditional use;

5 "(b) That the conditional use, as described by  
6 the applicant, will be in harmony with the  
purpose and intent of the zone;

7 "(c) Any condition deemed necessary for the  
8 public health, safety or welfare, or to  
9 protect the health or safety of persons  
working or residing in the area, or for the  
protection of property or improvement in the  
area shall be imposed."

10 We are cited to no other provisions of the ordinance  
11 controlling the issuance of conditional uses.

12 The Board of Commissioners issued a letter on November 12,  
13 1980 granting the conditional use. The letter simply explained  
14 that the similar grant by the Polk County Planning Commission  
15 was being affirmed and the appeal of that grant denied. We are  
16 unable to find any "findings" addressing the county ordinance  
17 in the September 17, 1980 letter of the planning commission  
18 granting this conditional use or the November 12, 1980 letter  
19 of the Board of Commissioners.

20 ASSIGNMENT OF ERROR

21 Petitioners allege the county was in error in granting the  
22 conditional use permit. Although petitioners do not cite us to  
23 authority in the county ordinances to support their position,  
24 fairly read, petitioners' assignment of error alleges that the  
25 county failed to justify its decision. We agree with  
26

1 petitioners. The county's letter of November 12, 1980 granting  
2 the conditional use permit merely recites that it has  
3 "summarily" affirmed the grant of the same conditional use by  
4 the Polk County Planning Commission. The county's letter does  
5 not address the criteria outlined in Section 119.070 of the  
6 County Zoning Ordinance. The Planning Commission letter of  
7 September 17, 1980 granting the conditional use also fails to  
8 address the criteria in Section 119.070.

9 As the approval of the conditional use failed to set out  
10 the findings required by the Polk County Zoning Ordinance, we  
11 are required to return this decision for the adoption of  
12 findings. We cannot review the adequacy of the decision  
13 without the findings required by the county's own ordinance.

14 This matter is remanded to Polk County for proceedings  
15 consistent with this opinion.

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