

**MINUTES OF THE
LAND RECLAMATION COMMISSION MEETING
HOLIDAY INN EXPRESS CONFERENCE ROOM
1200 GANNON DRIVE
FESTUS, MISSOURI
JULY 23, 2008**

Chairman, Jim DiPardo called the meeting to order at 2:05 p.m., at the Holiday Inn Express, Washington Conference Room, located at 1200 Gannon Drive, Festus, Missouri.

Commissioners Present: Jim DiPardo; Dr. Gregory Haddock; Mimi Garstang; Ed Galbraith, Nick Matherly, Col. John Riffle and Bob Ziehmer.

Staff Present: Larry Coen, Staff Director; Bill Zeaman, Chris Thiltgen, Larry Slechta, Mitch Roberts, Mike Larsen, Mike Mueller, Joyce Luebbering, Dave Dowdy, Larry Hopkins, Guy Frazier, Teri Bibbs, Colleen Kenny, Larry Teson, Ron Dumey, Neil Elfrink and Tina Stockman.

Others Present: Harry Bozoian, Attorney General's Office; Steve Mauer, Bryan Cave LLP; Steve Rudloff, Missouri Limestone Producers Association; Faye Matherly, Jean Riffle, James Owen and Laura Hawk, McCarthy, Leonard et al Law Firm; John Olivaria, City of Osage Beach; Mark Magruder, Magruder Limestone Company Inc; Dean McDonald, Magruder Limestone Company, Inc.; Harold Bono, Magruder Limestone Company, Inc.; Matt Lindsay, Magruder Limestone Company Inc.; Adam Troutwine, Attorney, Hendren Andrae LLC, Ted and Melonie Windels, concerned citizens; Mike and Jacqueline Atkisson, concerned citizens, and John Polhemus, Bryan Cave, LLP; Richard Brownlee, Attorney for Magruder, Hendren Andrae LLC; and Penny Lyons, City of Osage Beach, Joint Sewer Plant.

Hearing Officer Status Report – Magruder Quarry, Miller County

Jim DiPardo instructed that each party will be given 15 minutes and may submit nothing new to try to supplement the record. Harry Bozoian announced that the Commission may go into Closed Session at anytime today. He reminded everyone that we do have an Open Meeting scheduled tomorrow (Thursday) on July 24, 2008, and this issue is on the agenda, and that meeting is preceded by a Closed Session at 8:30 a.m.

Hearing Officer's Introduction to the Magruder Issue:

W. B. Tichenor explained that he appreciates the Chairman's comment that the record is closed and although the record is extensive, there are a limited number of issues that must be decided in this case. He explained that while there is a lot of emotion tied to this issue, the law is clear: the petitioners must prove by scientific evidence that their health, safety or livelihood will be unduly impaired by the issuance of the permit. The scientific evidence is the standard that must be met. There are a number of collateral issues that were addressed in this order, but in particular this case boils down to the peak particle velocity created by blasting activities and what impact that might have on the City of Osage Beach sewer force mains and the Joint Sewer Board Treatment Facilities. The peak particle velocity is regulated now by the Missouri Blasting Safety Act, as outlined in paragraphs 101 and 102 in the

hearing officer's Recommended Order. The Recommended Order keeps all blasting 150 feet or more away from the sewer force main easement line. The Petitioners simply failed to show that blasting in this case will damage the sewer lines or the plant and based upon that there is no basis to deny the permit. The Recommendation Order does include conditions to provide additional safety.

Ed Galbraith asked Mr. Tichenor about the pre-split face concept recommended by the Sewer Board expert witness, which is not in the Recommended Order. Mr. Galbraith asked Mr. Tichenor if he could give his thoughts on this issue. Mr. Tichenor explained that after reviewing the expert testimony and the proposed mining blast plans there was not a persuasive argument given to require this condition.

W. B. Tichenor explained that according to the blast plan, blasting will not occur below the elevation of the sewer lines, the blasts are not designed to fracture the floor of the quarry which will minimize shock waves below that level.

Mimi Garstang referred to the Recommended Order on pages 44 and 45 and asked for a discussion of the issue of standing as it relates to the City of Osage Beach. W. B. Tichenor explained that the City of Osage Beach never intervened as a party to the Hearing when the opportunity was open to do so. However, every issue that was a concern to the City of Osage Beach was covered entirely in the Hearing process. There was never a plea brought forward to express that the City's concerns were not being considered, so he never saw a reason to add the City as a party to this hearing. The Commission simply needs to focus on the fact that every issue that needed to be addressed was addressed in the record.

Steve Mauer for the Sewer Board:

Mr. Mauer introduced himself and reminded the Commission that he had appeared before them in September to request this Hearing. Mr. Mauer provided a handout to accompany a PowerPoint of his presentation. He referred everyone's attention to a map of the City's Sewer System, exhibit number 52. This system is not a typical gravity feed system. Because of the topography of the area, this system is under pressure. Mr. Mauer explained that the proposed Magruder location is the worst place to put a rock quarry. Furthermore, this sewage system is under pressure; moving about 1.3 to 1.8 million gallons of sewage per day through the pipes. He explained that there are about 800 rock quarries in Missouri and not one has sewage lines running through it. If one of the force mains are ruptured by the activities of this Quarry there is nothing to prevent raw sewage from entering the Osage River. If the City must shut down the force mains then the lift stations throughout the system will begin to overflow and that overflow will run into the Lake of the Ozarks. Petitioners had to prove the fact that a break would be undue impairment to their health, safety or livelihood. Once that fact is established then the burden shifts to the applicant to provide that a break would not unduly impair the public's health, safety or livelihood. Magruder came no where close to proving that their plan is adequate to protect those lines. The Magruder blast plan only covers 25 acres of a 205 acre mine plan and does not include all of the area that they bonded and the area that they proposed to mine first. A lot of unknowns regarding the sewer lines remain that Magruder never discovered such as condition, construction and depth of the pipes. Magruder did not propose how they were going to mine the rest of the property, how they would protect the sewer board structures or how they were going to safely cross the sewer lines. Magruder should have had a burden to prove that they can blast safely next to the sewer lines. They couldn't do that because they did not know anything about those lines. Even their blasting expert said that a pipe expert would be needed to answer those questions. Magruder produced

blasting experts, but they did not produce a pipe expert. The hearing officer knew information about the force mains was missing so he used Wikipedia to supplement the record. This is not scientific evidence, because anyone can edit the contents of Wikipedia, whether they know what they are saying or not. Mr. Mauer stated that he knew that anyone can change Wikipedia because he changed it himself. All of the pipe information presented by Magruder's expert were different types of pipes in different settings. The testing results from these studies included controlled information and the condition of the pipes were known. All of that information is missing in this case. In addition, construction blasting like that proposed for the highway 54 bypass is different than quarry blasting, because construction blasting is controlled at lower levels while quarry blasting is designed to break up as much rock as possible. Finally, Mr. Mauer explained that the sewer board was not given an opportunity to suggest special conditions. Mr. Mauer questions whether the proposed conditions are really conditions that can be monitored and enforced. In addition Mr. Dressler, the Sewer Board's expert witness, provided proof that a loaded quarry truck that crosses the force mains would likely crushed them. Magruder did nothing to prove how they will protect those lines.

Ed Galbraith asked about the pre-split face issue that the Sewer Board expert witness, Mr. Dressler had proposed. He had stated that this would prevent vibrations from reaching the sewer lines. Would the Sewer Board feel better about this permit if a pre-split face would be required? Mr. Mauer stated that this would be a good idea, but it needs to be designed, not just required. The Sewer Board would like the opportunity to explore this; however this does not resolve how the company is going to cross the sewer lines or how they are going to mine all the land on the other side of those lines. Mimi Garstang asked if the Sewer Board could describe the age of the sewer lines. Mr. Mauer referred to a map and explained that the lines are eight (8) to twenty-four (24) years old and in some cases up to fifty (50) years old. Mimi Garstang asked if there have been problems in the lines in certain areas? Mr. Mauer stated that there have been two (2) breaks in recent years caused by construction activities, but not by blasting. In one of these cases it took four (4) days to clean up and repair the break. Mr. Galbraith asked when these breaks occurred? Mr. Mauer stated that the latest break was in 2005. Mrs. Garstang asked in these cases were the conditions of the pipes known or unknown like on the Magruder property? Mr. Mauer said they were unknown and the only way to find out is to dig them up. Mimi Garstang asked aren't there maintenance programs to cover issues of pipe degradation? Steve Mauer stated no, that a maintenance plan is not needed. The pipes just lay there, there is no excavation planned near them unless they need to be repaired. Mimi Garstang asked what about a contingency plan for the main lines? Steve Mauer stated that there is no contingency plan, but there is an emergency plan. Dr. Haddock asked what is the pressure in these lines? No one had the answer.

Col. Riffle asked if there have been leaks in these lines? Steve Mauer stated not in these lines across the Magruder property. There have been leaks in the system but not in these lines. Mr. Galbraith asked can the lines be switched out at times? Mr. Mauer stated that the lines are always full, so they cannot be switched and emptied, etc. The lines are designed to deliver as much as 3.6 million gallons to the treatment plant per day. The lines are always full and under pressure, but the volume is controlled by pressure and how fast the contents move through the lines. Col. Riffle asked how close can they blast to these lines? Mr. Mauer explained that the mine plan shows that quarrying can occur as close as 50 feet from the treatment plant facilities and the Quarry could cross over or mine beneath the force mains.

Jim Owen for the Individual Petitioners:

Mr. Owen explained that in his opinion the application was not complete until February 2008 and therefore the application should be denied. Mr. Owen explained his 27 years experience and provided a handout to the Commission outlining his concerns. He stated that the Commission is given its power in order to be a watch dog for the public. Basically, in this case the application was not complete because it did not show utilities and did not show the names of those with an interest in the land to be mined. If the application is incomplete, then the permit must be denied. Magruder messed up and didn't follow the law. The application did not include the name of the easement holders of the sewer lines and the utility lines. If the Commission grants Magruder this permit as requested then the Commission is sending a message that you don't always have to follow the law.

Mr. Owen also expressed that the application included false information. The application indicates that there was a lease but testimony in the hearing indicated that there was no lease at the time the application was submitted. Magruder should redo their public notice now that all these application errors have been cleared up. Mr. Galbraith asked about the timing of the application and when it was considered complete. Mr. Tichenor explained that not with standing the corrected map everything that was required for Public Notice was complete when the Public Notice began. If the Public Notice was republished after February, 2008, the Public Notice would have read exactly the same way. In addition no one came forward to say that they would have requested a hearing had they known about the easements on the map. Mr. Galbraith asked Mr. Tichenor about the easements? Neither easement granted the utilities an interest in the land to be mined and Magruder cannot mine within the easements, so there is just no basis to require the Company to redo their Public Notice. W. B. Tichenor stated that since no mining can take place within the easement, according to 444.772.10 there is no interest in that land to be mined. Mimi Garstang asked what about the burden of proof for the applicant? W. B. Tichenor explained that he's read the Statute and regulations regarding this issue and he reads that the burden of proof is upon the persons bringing the action. He stated the applicant does not have to prove the negative, this is in case law.

Dr. Haddock asked a question regarding application completeness, have there been other occasions where we have received important information after the close of the Public Comment period? Was it true that the staff did not have information about the easements during the application review? Mr. Coen explained that once the staff advised him that the application was complete the company was asked to begin the public notice process. The concerns expressed by the public about the easement information on the map began during the Public Notice process and were not resolved until February, 2008. Mr. Galbraith asked if it is common that additional information is made known through the Public Notice process. Larry Coen stated that there have been cases where we have required operators to start their Public Notice period over again. Sometimes the new information is not significant enough to require a new public notice. It just depends on the nature of the information. By that time in February of 2008, this hearing process was well underway and there was no opportunity for the staff to take the application back from the Hearing Officer in order to consider whether or not a public notice process should be restarted. Dr. Haddock explained that he recalled in the past on a different application that someone questioned if an application was complete when the Public Notice listed the wrong county but otherwise had the correct Section, Township and Range. He recalled that the Commission determined that the Public Notice was sufficient because the Petitioner requested the hearing and attended the meeting.

Richard Brownlee for Magruder:

Mr. Brownlee has 36 years of practice and a lot of experience and he believes the record of this hearing is a thorough investigation. He knows and understands the emotion on this issue, but the decision cannot be based on emotion. The scientific evidence is one way to reach a standard that is based on facts and not emotions. The land in the easements is not going to be mined. Additionally, nothing in the record of the hearing proves that a pipeline has ever been damaged by vibration due to blasting. The vibrations that will be caused by blasting are limited by the Missouri Blasting Safety Act to no more than the thickness of two or three sheets of paper. He questioned the validity of the Sewer Board's expert witness, Mr. Dressler, who claims that blasting cannot be safely conducted by Magruder at a distance greater than 150 feet, yet he has been hired to design the blasting that will occur for about five miles along the Highway 54 bypass. Some of that blasting will occur as close as forty-five (45) to eighty (80) feet from the same pipe that crosses the Magruder property, and they plan to move over two (2) million tons of rock as part of that project. Yet, Mr. Dressler indicates in his testimony that Magruder cannot safely blast 150 feet from these same pipelines probably four (4) times a month.

THE LAND RECLAMATION COMMISSION WAS ON BREAK FROM 3:50- 4:05 p.m.

Mr. Brownlee commented on the conditions to say that the Company suggested and is fine with the conditions and believes that the Commission has full authority to impose these conditions. He also pointed out that each of the conditions can be based on testimony provided in the hearing record. Mimi Garstang asked what about driving over the easement? Does the Quarry operator have a plan for driving over the easement? Richard Brownlee stated that pipelines are crossed all the time. Magruder has no desire to cause damage to those pipelines and will have to plan for an engineered structure to allow for crossing the lines. Ed Galbraith stated that the Recommended Order does not address the issue of crossing the easement and does not include any blasting plans for the eastern part of the mine. Would Magruder be willing to limit their mine plan to areas A, B and C today? Richard Brownlee stated that could be done, or the Commission could condition that those areas would not be accessed until a blast plan is provided. Ed Galbraith commented that the Recommended Order covers the area West of the sewer easement with a referenced blast plan but does not really address the East side of the application. The Commission is charged with making a decision that will protect the Public. Ed Galbraith asked what about the pre-split face? Does the Company have any thoughts on the feasibility of doing this? Richard Brownlee asked where would you put it? Drilling along the easement could be more dangerous than the planned quarry activities. His opinion was that it was probably not a viable option.

W. B. Tichenor, Hearing Officer:

Harry Bozoian stated that it would be beneficial to hear more about the special conditions and the allegation that there is no evidence in the record to support special conditions. Mr. Bozoian asked if the Hearing Officer could address that. W.B. Tichenor first responded to Mr. Mauer's allegation that there is no evidence in the Hearing Record to support special conditions. On the last day of the hearing, June 6th, the respondents counsel wanted to offer Mr. Coen's review of the decision to issue the permit and the suggestion of the special conditions as rebuttal testimony. Since this was not proper rebuttal of any previous testimony, he would not allow it. Never the less, this did not prevent anyone from offering special conditions in their Post Trial Brief or Findings of Facts and Conclusions of Law. W. B. Tichenor explained that each condition is based on the evidence of the record, except that the

condition to restrict blasting from 8:00 a.m. to 5:00 p.m. on week days is not in the record but was offered by the Applicant's suggested conditions. Harry Bozoian asked questions to clarify the conditions for the Commission and he also asked if the Hearing Officer had ordered the parties not to submit the conditions. Mr. Tichenor replied that he had not.

Mr. Mauer rebutted that the special conditions that Mr. Coen wanted to offer at the hearing were provided in the Respondent's Post Trial Brief which the Commissioners should have. Mr. Coen's special conditions that he offered are far stricter than the special conditions offered by the Applicant and by the Special conditions provided in the Hearing Officers recommended Order. Those are the conditions that the Sewer Board wanted to respond to and Mr. Tichenor would not allow it. W. B. Tichenor explained that he did not allow the Respondent to enter conditions in the record of the hearing because it was not proper rebuttal of any previous testimony. However, all parties were free to suggest conditions in their Post Hearing Briefs. He apologized if Mr. Mauer did not understand this. Regarding Wikipedia, he was trying to provide some information for the Commissioners, since the experts provided little in this area. If the Commission prefers it not in the order, then the Commission can remove it. The important issue in the record is that the peak particle velocity is low enough that the blast plan will not damage the pipelines unless those lines are as fragile as drywall. In summary there is just no evidence that vibrations from blasting have ever caused breakage of any pipelines and therefore the final recommendation must be to issue the permit.

Mr. Galbraith asked since the sewer board does not feel they were given the opportunity to offer special conditions, do they have any to suggest today? Mr. Mauer stated that the pre-split face is a good idea, but they would like Mr. Dressler to develop it. If conditions are placed on the permit, they should be conditions that were proposed by the Staff Director, and there should also be a plan for crossing the easement.

Harry Bozoian advised that there are some legal issues that he needs to discuss with the Commission and it would be appropriate to go into Closed Session to do so. Col. Riffle made a motion that the Commission go into Closed Session pursuant to Section 610.021 RSMo to discuss legal actions, causes of actions or litigation involving a public governmental body and any confidential or privileged communication between a public government body, its representative and its Attorney to discuss the Magruder Recommended Order. Mimi seconded the motion, which carried unanimously by roll call vote.

VOTE TO GO INTO CLOSED SESSION –By roll call:

Jim DiPardo-yes
Dr. Haddock- yes
Col. Riffle – yes
Nick Matherly- yes
Mimi Garstang – yes
Ed Galbraith – yes
Bob Ziehmer - yes

Chairman DiPardo instructed the audience to clear the room for the Closed Session. He reminded the audience to be sure and sign the Sign In sheet that was located in the back of the room.

THE LAND RECLAMATION COMMISSION WAS IN CLOSED SESSION FROM 4:45- 5:45 p.m.

The Commission Meeting was called back to order at 5:45 p.m. Chairman DiPardo explained that Commissioners still have questions that need answers. He acknowledged that the hour was late and this matter could not be resolved today. Ed Galbraith explained that the Commission wants to take the time to properly discuss the matter because the decision on this issue will last a lifetime.

Col. Riffle made a motion that the Land Reclamation Commission continue this discussion in Closed & Open session the next day on Thursday, July 24, 2008. Mr. Galbraith seconded the motion. The motion carried 5 to 2 with the following roll call:

VOTE TO CONTINUE THE MAGRUDER DISCUSSION UNTIL THURSDAY, JULY 24, 2008 –

By roll call:

Jim DiPardo-yes

Dr. Haddock- no

Col. Riffle – yes

Nick Matherly- yes

Mimi Garstang – no

Ed Galbraith – yes

Bob Ziehmer - yes

ADJOURN

Dr. Haddock made a motion to adjourn and Col. Riffle seconded the motion. The motion carried unanimously. The meeting adjourned at approximately 6:10 p.m.

Respectfully submitted,

Chairman