

**IN THE CIRCUIT COURT OF
WASHINGTON COUNTY, ARKANSAS**

**WASHINGTON COUNTY,
ARKANSAS**
..... **Plaintiff**

vs.

**WEDINGTON MINE, LLC;
SAILFISH, LLC; MONICA
TERMINELLA; and,
TOM TERMINELLA**
..... **Defendants**

COMPLAINT

COMES NOW, Washington County, Arkansas, by and through its County Judge, Patrick W. Deakins, and for its Complaint, states as follow:

1. Plaintiff Washington County, Arkansas (the “County”) is a county organized and operating pursuant to the Arkansas Constitution (1874), as amended, and the statutes enacted by the General Assembly of the State of Arkansas.

2. Defendant Wedington Mine, LLC is the owner of certain real property situated within Washington County, more particularly described as:

A part of the SE ¼ of the SE ¼ of Section 7, T16N, R31W in Washington County, Arkansas, and being described as follows: Beginning at the NE Corner of said SE ¼, SE ¼, said point of being the POINT OF BEGINNING, thence S02°30'10"W 1,288.75 feet, thence N87°45'09"W 257.24 feet, thence N02°30'15"E 842.06 feet, thence N78°22'27"W 616.02 feet, thence N08°09'08"E 294.06 feet, thence N87°08'46"E 192.89 feet, thence S87°19'43"E 903.90 feet to the POINT OF BEGINNING: Containing 13.44 acres more or less subject to easements and right of way record. (Washington County Parcel number 001-11510-000); and,

A part of the SE ¼ of the SE ¼ of Section 5, T16N, R31W in Washington County, Arkansas, and being described as follows: Commencing at the NE Corner of said SE ¼, SE ¼, thence N87°19'43"W 903.90 feet, thence S87°08'46"W 192.89 feet, thence S08°33'37"W 70.00 feet to the POINT OF BEGINNING, thence N80°53'23"E 79.06 feet, thence N87°08'46"E 125.27 feet, thence S87°19'43"E 64.68 feet, thence S08°09'08"W 294.06 feet, thence N78°22'27"W 73.13 feet, thence N80°55'39"W 191.53 feet, thence N08°33'37"E 233.00 feet to the POINT OF BEGINNING: Containing 1.62 acres more or less subject to easements and right of way record; (Washington County Parcel number 001-1151-001); and,

A tract of land being in part of the SE ¼ of the SE ¼ of Section 5, and the NW ¼ and SW ¼ of the SW ¼ of Section 4, all in T16N, R31W, in Washington County, Arkansas, and being more particularly described as follows: Beginning at a found ½" rebar, said point being the SW corner of Section 4 and the SE corner of Section 5; thence along the south line of section 5, N87°45'09"W a distance of 257.24 feet to a set 5/8" rebar; thence leaving said south line of section 5, N2°30'15"E a distance of 842.06 feet to a set 5/8" rebar; thence N78°22'27"W a distance of 689.15 feet to a set 5/8" rebar; thence N80°55'39"W a distance of 221.53 feet to a set mag nail; thence N8°33'37"E a distance of 296.68 feet to a set mag nail; thence N87°08'46"E a distance of 223.50 feet to a found ½" rebar; thence S87°19'43"E a distance of 903.90 feet to

a found 1" crimped pipe, said point being at the northeast corner of the southeast quarter of the southeast quarter of section 5; thence along the east line of section 5, N2°30'25"E a distance of 716.81 feet to a set 5/8" rebar; thence leaving said east line of section 5, S87°21'44"E a distance of 840.00 feet to a set 5/8" rebar; thence S2°31'24"W a distance of 644.41 feet to a set 5/8" rebar; thence S87°59'17"E a distance of 250.00 feet to a set 5/8" rebar; thence S2°25'06"W a distance of 592.21 feet to a set 5/8" rebar; thence N89°52'05"W a distance of 155.14 feet to a found 1/2" rebar; thence S0°07'55"W a distance of 292.47 feet to a found 1/2" rebar; thence S25°59'32"E a distance of 209.77 feet to a found 1/2" rebar; thence S41°48'03"E a distance of 386.27 feet to a found railroad spike, said point being at the southeast corner of the southwest quarter of the southwest quarter of section 4; thence along the south line of section 4, N87°55'05"W a distance of 1317.68 feet to the point of beginning. Said tract of land contains 60.83 acres more or less; (Washington County Parcel number 001-11493-001).

3. Defendant Sailfish, LLC is the owner of certain real property situated within Washington County, more particularly described as:

A part of the NW 1/4 of the SW 1/4 of Section 4 and a part of the SE 1/4 of the NE 1/4, a part of the NE 1/4 of the SE 1/4 and a part of the SE 1/4 of the SE 1/4 of Section 5, all in T16N, R31W in Washington County, Arkansas, and being described as follows: Beginning at the NE Corner of said NW 1/4, SW 1/4 of Section 4, said point being the POINT OF BEGINNING, thence S87°06'18"E 840.64 feet, thence S02°31'28"W 629.24 feet, thence N87°21'48"W 840.01 feet, thence S02°31'06"W 716.96 feet, thence N87°19'48"W 903.79 feet, thence S87°09'47"W 223.43 feet to the centerline of Harmon Road, thence along said centerline N09°06'23"E 279.01 feet, thence N07°17'37"E 226.40 feet, thence N05°55'06"E 242.21 feet, thence N05°24'57"E 672.35 feet, thence leaving said centerline of Harmon Road S87°39'17"E 1,026.35 feet, thence S02°20'43"W 50.00 feet to the POINT OF BEGINNING: Containing 46.47 acres more or less subject to easements and right of way record. The above

described property is also known as Tracts D, E, and F of Clear Creek Estates (Washington County parcel numbers 001-11494-000, 001-11507-000, and 001-11509-000).

4. The properties described in paragraphs 2 and 3 above (Washington County parcel numbers 001-11510-000, 001-11510-001, 001-44493-001, 001-11494-000, 001-11507-000, and 001-11509-000) shall be referred to collectively herein as the “subject property.”

5. Defendant Monica Terminella is a resident of Washington County, Arkansas.

6. Defendant Monica Terminella is the manager of Wedington Mine, LLC and the registered agent of Sailfish, LLC.

7. Defendant Tom Terminella is a resident of Washington County, Arkansas.

8. Based on information and belief, Tom Terminella manages the day-to-day operations of Wedington Mine, LLC.

9. Pursuant to Ark. Code Ann § 14-17-201 et seq., Washington County has the authority to regulate development within the county that is outside of the corporate limits of any cities.

10. Ark. Code Ann. § 14-17-207(f) provides a remedy for the County to request injunctive relief against any property owner that violates the County development plan.

11. Jurisdiction and venue are proper in this Court.

12. In 2006 the Washington County Quorum Court passed Ordinance 2006-66 which created zoning in some unincorporated portions of the County. In doing so, the County created two zones: agricultural and single family residential. A copy of Ordinance 2006-66 is attached hereto as Exhibit "A."

13. Before the enactment of Ordinance 2006-66, Washington County did not have zoning.

14. In 2007, the Washington County Quorum Court passed Ordinance 2007-61, which expanded zoning to virtually every parcel of land except for certain corridors along Highway 71 South, 412 West, 412 East, 62 West, and 16 West in the unincorporated portions of the County. A copy of Ordinance 2007-61 is attached hereto as Exhibit "B."

15. In 2008, the Washington County Quorum Court once again modified the zoning map by including the previous un-zoned corridors along Highway 71 South, 412 West, 412 East, 62 West, and 16 West when it passed Ordinance 2008-70. A copy of Ordinance 2008-70 is attached hereto as Exhibit "C."

16. Washington County defines agricultural use and single-family residential use as:

Agricultural:

1. The care and production of livestock products, poultry and poultry products, apiary products, and plant and animal production for nonfood uses; by way of illustration, but without limitation, this includes horses, greenhouses, and kennels;
2. The planting, cultivating, harvesting, and processing of crops and timber;
3. The production of any plant or animal species in a controlled freshwater or saltwater environment; and
4. Includes silviculture and aquaculture.

Single-family Residential:

1. A detached dwelling for occupancy as the residence of one (1) family.

17. Since the enactment of the zoning regulations, all uses of property within the unincorporated areas of the County other than agricultural or residential, are non-conforming uses¹.

18. Pursuant to county zoning, any party proposing to make use of property other than agricultural or residential, is required to apply to the County planning board for a conditional use permit.

¹ Non-conforming uses in existence at the time of the enactment of county zoning are considered "grandfathered" and thus are not considered "non-conforming." This does not apply to the subject property, herein.

19. The subject property is currently being used for a purpose other than agricultural or residential without a proper permit. Specifically, the subject property is being used for a commercial purpose – a dirt mine – in violation of county ordinances.

20. A conditional use permit was sought by Tom Terminella to allow the non-conforming use, but was denied by the Quorum Court on November 21, 2019. Attached hereto as Exhibit “D” is Ordinance 2019-77 denying the conditional use permit request.

21. Defendants Tom and Monica Terminella continue operate a dirt mine operation on the property, despite the County’s requests that they cease their non-conforming use.

22. Due to Defendants’ continued violation of county ordinances, Plaintiff is left with no alternative but to request that this Court enjoin the Defendants from utilizing the subject property in an unlawful matter, and to issue a mandatory injunction directing the Defendants to cease its non-conforming use of the subject property.

WHEREFORE, Washington County, Arkansas prays that this Court will enter a permanent mandatory injunction directing the Defendants to immediately cease its non-conforming use of the subject property, and to enjoin the Defendants from using the subject property in a non-conforming

matter without a property permit; for its attorney fees and costs expended herein; and, for any and all other just and proper relief to which it may be entitled.

Respectfully submitted,

**WASHINGTON COUNTY,
ARKANSAS**

By: /s/ Brian R. Lester
Brian R. Lester
Washington County Attorney
Arkansas Bar No.: 2007036
280 N. College Ave., Suite 500
Fayetteville, AR 72701
(479) 444-1700

Attorney for Plaintiff

FILED

2006 NOV 14 AM 9:42

CLERK OF COURTS
WASHINGTON COUNTY
WASHINGTON COUNTY, ARK.

ORDINANCE NO. 2006-66

**BE IT ORDAINED BY THE QUORUM COURT
OF THE COUNTY OF WASHINGTON,
STATE OF ARKANSAS, AN ORDINANCE
TO BE ENTITLED:**

**AN EMERGENCY ORDINANCE ESTABLISHING
ZONING AND THE ADMINISTRATION OF SUCH
IN PORTIONS OF WASHINGTON COUNTY.**

WHEREAS, rural Washington County is undergoing rapid growth; and,

WHEREAS, pursuant to A.C.A. 14-17-209 the Quorum Court may zone all or part of the County; and,

WHEREAS, the Quorum Court has determined that partial limited zoning in parts of the growth areas of the cities is needed and desired by the citizenry.

NOW, THEREFORE, BE IT ORDAINED BY THE QUORUM COURT OF WASHINGTON COUNTY, ARKANSAS:

ARTICLE 1. Zones Created: Portions of the County are hereby divided into zones as shown on the official zoning map which together with all explanatory materials thereon is hereby adopted by reference and declared to be a part of this ordinance.

ARTICLE 2. Map Location: Said map shall be located in the offices of the County Clerk and the Planning Director.

ARTICLE 3. Description of Zones: The zones depicted on said map, unless shown otherwise, are two (2) miles from the corporate boundaries of the cities of Fayetteville, Springdale, Farmington, Prairie Grove, West Fork, and Lincoln all being cities of the first class, and one mile from the corporate boundaries of the cities of Elkins, Elm Springs, Goshen, Greenland, Johnson and Tontitown, all being cities of the second class. Said zones shall automatically extend by two miles or one mile respectively anytime an annexation occurs. When and if the City of Winslow enacts zoning then this ordinance shall be applicable from its corporate limits for one mile and extend accordingly in the event of an annexation.

ARTICLE 4. Uses Permitted: These areas so zoned are designated as agricultural and single family residential, the latter to have a lot, tract or parcel size of no less than one acre; however, if any city requires a larger size in its subdivision regulations, then the larger size will be controlling.



ARTICLE 5. Definitions:

- a. **Agricultural** means uses of land or property for the purpose of cultivating the soil, producing crops and/or raising of livestock, poultry and other animals for human consumption.
- b. **Single Family Residential** means a detached dwelling for occupancy as the residence of one family.
- c. **Surrounding Area** means other property in the zone whenever there is a reasonable likelihood that a proposed use will impact such significantly.
- d. **Non-conforming Uses** means a use that is not agricultural or single family residential, the latter to have a lot, tract, or parcel size of no less than one acre.

ARTICLE 6. Conditional Uses: All other proposed uses in said zones, other than those specifically permitted therein, are hereby declared to be conditional uses and may be permitted based upon the factors set forth below.

ARTICLE 7. Administrator; Rules and Regulations: The Planning Administrator is authorized to promulgate additional rules and regulations to further effectuate this ordinance subject to approval by the Quorum Court.

ARTICLE 8. Non-conforming Uses: All non-conforming uses shall be considered as conditional uses for expansion purposes or re-establishment or re-building purposes and must obtain a building permit or plat approval.

ARTICLE 9. Zoning Board of Adjustment: There is hereby established a Zoning Board of Adjustment which shall consist of the Washington County Planning Board.

ARTICLE 10. Criteria for Allowance of Conditional Uses:

(1) The Zoning Board of Adjustment shall hear and decide requests for a conditional use and may authorize such if it finds:

- a. That a written application has been filed with the Planning Office and the appropriate fee has been paid.
- b. That the applicant has provided proof that each property owner as set out in Article 14 has been notified by return receipt mail.

ORDINANCE NO. 2006-66
PAGE 3

- c. That adequate utilities, roads, drainage and other public services are available and adequate or will be made available and adequate if the use is granted.
- d. That the proposed use is compatible with the surrounding area.
- e. That the establishment, maintenance, or operation of the conditional use will not be detrimental to or endanger the public health, safety, morals, comfort, or general welfare.
- f. That the Conditional Use will not be injurious to the use and enjoyment of other property in the surrounding area for the purposes already permitted, nor substantially diminish and impair property values within the surrounding area.
- g. That the establishment of the conditional use will not impede the normal and orderly development and improvement of the surrounding area for uses permitted in the zone.

(2) If it is determined that there exist conditions that could be imposed by the Board that would significantly lessen the impact of the aforesaid, then the Board has the power to impose said conditions which shall be specifically set forth.

ARTICLE 11. Conditional Use-Majority Vote: A Conditional Use may only be allowed upon a majority vote of the entire Board membership.

ARTICLE 12. Appeals to Board: The Board may hear appeals from any decision of the Planning Administrator in respect to the enforcement and application of this ordinance and may affirm or reverse, in whole or part, such decisions.

ARTICLE 13. Variances: The Board may hear requests for variances from the literal provisions of this ordinance in instances where strict enforcement would cause undue hardship due to circumstances unique to the individual property under consideration, and grant such variances only when it is demonstrated that such action will be in keeping with the spirit and intent of the provisions of this ordinance. The Board may impose conditions in the granting of a variance to insure compliance and to protect adjacent property; a variance may only be allowed upon a 3/4 majority of the entire Board membership.

ARTICLE 14. Notification: An applicant for a Conditional Use or a Variance shall show proof he has sent a certified letter to all adjoining property owners within three hundred (300) feet of the exterior boundary of the proposed use at least fourteen (14) days prior to the scheduled meeting of the Board, at which the application is to be reviewed, in which he shall state the date, time, place of the review of the proposed application and the location of the proposed use.

ORDINANCE NO. 2006-66
PAGE 4

ARTICLE 15. Fees: An applicant for Conditional Use or Variance shall remit a fee in the amount of \$100 to the Planning Office upon submittal of any application.

ARTICLE 16. Appeals from Board: Decisions of the Board shall be subject to appeal only to a Court of Record having jurisdiction; unless the State Legislature authorizes appeals first to the Quorum Court.

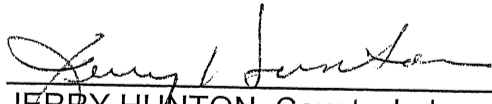
ARTICLE 17. Building Permits: The provisions of this ordinance shall be administered by the Planning Administrator; building permits are hereby deemed to be issued for agricultural and single family residential uses. All conditional uses and uses requiring a variance are required to have a building permit or plat approval.

ARTICLE 18. Violations: A violation of this ordinance shall be punishable and enforceable as set out in Washington County Code 11-14.

ARTICLE 19. Applicability: This ordinance shall apply to all uses that have not received preliminary approval by both the city and county before the effective date of this ordinance. This ordinance shall not apply to any business or industry currently negotiating with any city to locate adjacent to the city limits.

ARTICLE 20. Severability: The provisions of this ordinance are hereby declared to be severable. If any section, paragraph, sentence or clause of this ordinance shall be held invalid, the invalidity of such section, paragraph, sentence or clause shall not affect the validity of the remaining portion of the said ordinance.

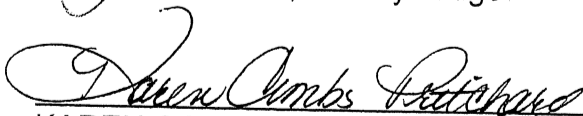
ARTICLE 21. Emergency Clause: It is hereby determined that it is in Washington County's best interest for this ordinance to be effective immediately; and the general health, safety and welfare of the citizens are affected by such for the reasons as set out above; therefore, an emergency is declared to exist and this ordinance shall be and is effective from the date of its passage.



JERRY HUNTON, County Judge

11-13-06

DATE



KAREN COMBS PRITCHARD, County Clerk

Sponsor: Micah Neal
Date of Passage: November 9, 2006
Votes For: 9 Votes Against: 4
Abstention: 0 Absent: 0

ORDINANCE NO. 2007-61

RECORDED
CO. & FORMAL CLERK
WASHINGTON CO. ARK

2007 NOV 13 PM 2:58

FILED

BE IT ORDAINED BY THE QUORUM COURT
OF THE COUNTY OF WASHINGTON,
STATE OF ARKANSAS, AN ORDINANCE
TO BE ENTITLED:

AN ORDINANCE AMENDING THE WASHINGTON
COUNTY CODE ESTABLISHING ZONING IN THE
REMAINDER OF THE UNINCORPORATED
PORTIONS OF THE COUNTY.

WHEREAS, pursuant to Ordinance No. 2006-66, an
Ordinance was passed that zoned a portion of the County; and,

WHEREAS, said Ordinance was amended by Ordinance No.
2007-06 to change the definition of "agricultural"; and,

WHEREAS, it has become clear that there is a need to zone
the rest of the County to ensure protection for all the citizens of the unincorporated
portions of the County.

NOW, THEREFORE, BE IT ORDAINED BY THE QUORUM
COURT OF WASHINGTON COUNTY ARKANSAS:

ARTICLE 1. County Code Sec. 11-191 is hereby amended as
follows:

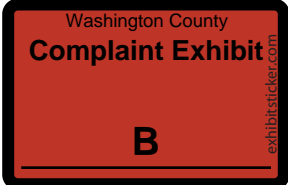
Sec. 11-191. Zones Created.

Portions All of the unincorporated portions of the County is are hereby
divided into zones zoned, unless depicted otherwise, as shown on the
official zoning map which together with all explanatory materials thereon is
hereby adopted by reference and declared to be a part of this ordinance.

ARTICLE 2. County Code Sec. 11-193 is hereby deleted in its
entirety.

Sec. 11-193. Description of Zones.


~~The zones depicted on said map, unless shown otherwise, are two (2)
miles from the corporate boundaries of the cities of Fayetteville,
Springdale, Farmington, Prairie Grove, West Fork, and Lincoln all being
cities of the first class, and one mile from the corporate boundaries of the
cities of Elkins, Elm Springs, Goshen, Greenland, Johnson and Tentitown,
all being cities of the second class. Said zones shall automatically extend~~



ORDINANCE NO. 2007-61
PAGE 2

~~by two miles or one mile respectively anytime an annexation occurs. When and if the City of Winslow enacts zoning then this ordinance shall be applicable from its corporate limits for one mile and extend accordingly in the event of an annexation.~~

ARTICLE 3. Severability: The provisions of this ordinance are hereby declared to be severable. If any section, paragraph, sentence or clause of this ordinance shall be held invalid, the invalidity of such section, paragraph, sentence or clause shall not affect the validity of the remaining portion of the said ordinance.



JERRY HUNTON, County Judge

11-9-07

DATE



KAREN COMBS PRITCHARD, County Clerk

Sponsor: David Daniel
Date of Passage: November 8, 2007
Votes For: 7 Votes Against: 6
Abstention: 0 Absent: 0

ORDINANCE NO. 2008-70

BE IT ORDAINED BY THE QUORUM COURT OF THE COUNTY OF WASHINGTON, STATE OF ARKANSAS, AN ORDINANCE TO BE ENTITLED:

FILED
2008 NOV 14 PM 3:09
KAREN COMBS PRITCHARD
CO. & PROBATE CLERK
WASHINGTON CO. ARK.

AN ORDINANCE AMENDING WASHINGTON COUNTY CODE 11-191 ET. SEQ. TO ZONE CERTAIN REMAINING UNZONED CORRIDORS IN WASHINGTON COUNTY.

WHEREAS, pursuant to Ordinance No. 2006-66, 2007-06 and 2007-61, which are, or will be, codified in Washington County Code 11-191 et.seq., all of the unincorporated portions of the County are now zoned, except for certain unzoned corridors along Highways 71 South; 412 West; 412 East; 62 West; and 16 West; and,

WHEREAS, the Quorum Court desires to zone a portion of said remaining unzoned corridors.

NOW, THEREFORE, BE IT ORDAINED BY THE QUORUM COURT OF WASHINGTON COUNTY, ARKANSAS:

ARTICLE 1. A portion of the above stated corridors along the highways as set forth below, as depicted on the official zoning map, which is readopted by reference and declared to be a part of this ordinance, are hereby zoned as Agricultural-Single Family Residential, the latter to have a lot, tract, or parcel size of no less than one acre:

- a. Highway 412 East and West;
- b. Highway 71 South;
- c. Highway 62;
- d. Highway 16 West

ARTICLE 2. All other proposed uses in said corridors are hereby declared to be Conditional Uses and may be permitted based upon the factors set out in Washington County Code 11-200.

ARTICLE 3. Other portions of the above stated corridors, as reflected on the official zoning map, remain unzoned at this time.

Jerry L. Hunton
JERRY HUNTON, County Judge

11-14-08
DATE

Karen Combs Pritchard
KAREN COMBS PRITCHARD, County Clerk

Sponsor: David Daniel
Date of Passage: November 13, 2008
Votes For: 8 Votes Against: 4
Abstention: 0 Absent: 1



2019 NOV 25 PM 3:57
BECKY LEWALLEN
CO. & PROBATE CLERK
WASHINGTON CO. AR

FILED

ORDINANCE NO. 2019-77

BE IT ENACTED BY THE QUORUM COURT OF THE COUNTY OF WASHINGTON, STATE OF ARKANSAS, AN ORDINANCE TO BE ENTITLED:

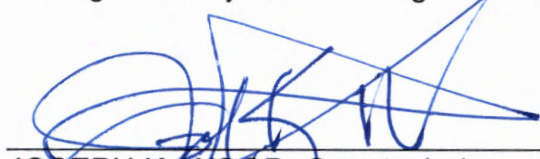
AN ORDINANCE DENYING A CONDITIONAL USE PERMIT GRANTED BY THE PLANNING AND ZONING BOARD OF ADJUSTMENTS.

WHEREAS, the Planning and Zoning Board of Adjustments granted a Conditional Use Permit for **Wedington Mine** on **August 22, 2019**.

WHEREAS, after reviewing the information provided by the Planning Department, the applicant, and members of the community, the Quorum Court desires to deny the Conditional Use Permit, as allowed by Washington County Code and the laws of the State of Arkansas.

NOW, THEREFORE, BE IT ORDAINED BY THE QUORUM COURT OF WASHINGTON COUNTY, ARKANSAS:

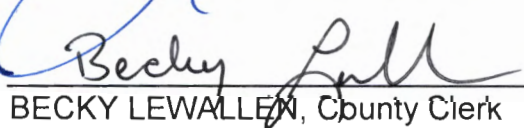
ARTICLE 1. That the Conditional Use Permit for **Wedington Mine** granted by the Planning and Zoning Board of Adjustments is hereby denied.



JOSEPH K. WOOD, County Judge

11. 25. 2019

DATE



BECKY LEWALLEN, County Clerk

Introduced by: **JP Sue Madison**
Date of Passage: **November 21, 2019**
Members Voting For: **Cunningham, Yanez, Washington, E. Madison, Jenkins, Highers, S. Madison, Leming, Harbison**
Members Voting Against: **Johnson, Bowman, Deakins, Duncan, Pond**
Members Abstaining:
Members Absent: **Ecke**





WASHINGTON COUNTY PLANNING OFFICE

2615 Brink Dr.
Fayetteville, AR 72701
(479) 444-1724

Agenda Item

E

Meeting- August 22, 2019
Project Name: **Wedington Mine CUP**
Project Number- **2019-123**
Planner- Nathan Crouch
ncrouch@co.washington.ar.us

ZONING- CONDITIONAL USE PERMIT REQUEST

The determination as to whether a conditional use permit will be granted is subjective to a degree. The Zoning Board of Adjustments may act on issues discussed in the zoning ordinance and criteria checklist when making decisions in these matters.

REQUEST: Conditional Use Permit approval for Wedington Mine to transition existing agricultural/residential property to open pit red dirt/clay/gravel extraction operations on a parcel of land that is 60.83 acres in size.

CURRENT ZONING: Project lies within the County's Zoned area. Agricultural and Single-Family Residential uses at a density of 1 unit per acre are allowed by right. Any other uses may be approved through the Conditional Use Permitting process.

PLANNING AREA: This project is not located in a city planning area. It is solely within Washington County's jurisdiction.

FUTURE LAND USE: Residential (Compatible to Surrounding Densities)

QUORUM COURT DISTRICT: District 7, Sam Duncan

FIRE SERVICE AREA: Wedington Rural FD

SCHOOL DISTRICT: Farmington

INFRASTRUCTURE: Water- Washington Water Authority

Electric-Ozarks Electric

Natural Gas- N/A

Telephone- AT&T

Cable- N/A

BACKGROUND/ PROJECT SYNOPSIS:

History of the proposed Rich Red Dirt mine and the issues it had that lead to its denial

In July, 2014, Conditional Use Permit approval was requested by Mark Rick to allow a commercial open-cut red dirt mine at this location. After being tabled multiple times the CUP request was denied at the November, 2014 meeting due to the following factors:

- Safety concerns regarding the proposed location of the haul road intersection with Harmon Road.
- Issues of compatibility
- The likelihood that this project will be injurious to the use and enjoyment of some of the other property in the surrounding area for the purposes already permitted, and substantially diminish and impair some property values within the surrounding area.

The current proposal

Now, Wedington Mine has purchased a portion of the property and is requesting Conditional Use Permit approval to allow a commercial open-cut red dirt mine on approximately 60.83 acres. This CUP request is not proposing any permanent structures or utility service at this time.

Access will be to the west from Harmon Road, near the Wedington Woods Subdivision entrance, with a proposed dump truck volume of 30-50 round trips daily (See applicant's Traffic Statement). Portions of the interior roads have been constructed and the connection to Harmon Road in Washington County's right-of-way is permitted and complete.

The applicant has received General Permit approval from the Arkansas Department of Environmental Quality to mine up to 20 acres. The applicant has provided a letter of credit for the required bonding to actively mine up to 4 acres at a time. It is the applicant's intent to mine only up to 4 acres at a time, with reclamation of the mined area at a rate such that no more than 4 acres will be actively active at once.

TECHNICAL CONCERNS:

Utilities

No structures or utilities are proposed for this development at this time.

Water/Plumbing:

Washington Water Authority has an 18-inch water main running along the east side of Harmon Road, beneath (perpendicular to) the applicant's access drive. WWA has stated that "due to the crucial function of this water main supplying the Washington Water North zone and the heavy equipment traffic generated by this CUP, the existing water main running under the proposed access drive will need a designed steel encasement."

However, WWA has stated they are willing to consider other options for protecting the water main. They will need the applicant to submit the preferred option to them to review.

Electric:

Ozarks Electric provided general technical comments:

1. Any damage or relocation of existing facilities will be at the owner's expense.
2. Any power line extension that has to be built to this property will be at the owner's expense.
3. All off site easements that are needed for Ozarks to extend electrical service to the property must be obtained by developer and easement documentation provided to Ozarks before work begins. On site easements must be shown on plat and recorded with the county.

Additional comments:

4. Ozark Electric has existing lines in the area. There is a 30ft. utility easement along all overhead lines.

Gas/Cable/Phone:

No comments/concerns at this time.

Fire Code

The Washington County Fire Marshal had no comment/concerns at this time as there are no structures proposed.

Septic:

No new septic systems are proposed.

Roads/Sight Visibility/Ingress-Egress/Parking:

Some interior roads have been constructed, and the paved access road entrance connection to Harmon Road, on Washington County right-of-way, is permitted and complete. The remainder of the haul road and interior roads remain private at this time.

Harmon Road (WC-31) is a thoroughfare that conveys north-south traffic west of, and parallel to, I-49. This county road carries traffic of all types and sizes, including school busses, freight trucks, dump trucks and trash trucks of varying sizes and capacities, passenger vehicles and motorcycles, etc.

Traffic Study

The Road Department is conducting an ongoing traffic study along the length of Harmon Road as part of Washington County's Comprehensive 5-year Road Plan. The first section of the study was conducted to determine the daily traffic volume along the section of Harmon Road between the entrance to Wedington Woods Subdivision (Dogwood Rd.) and the bottom of the hill to the south. The 7-day traffic study yielded traffic count data for each hour of the day, average daily traffic volume, vehicle type, and vehicle speed. (See attached Traffic Study report)

Some interesting data from the Traffic Study are as follows:

- Average Daily Traffic- 1487 vehicles
- 75% of vehicles travelling south (approaching the bottom of the hill) are at 30-40 MPH
- 62% of vehicles travelling north (down the hill) are at 40-50 MPH
- Traffic volume spikes from 3 – 7 PM
- Average of 62 vehicles per hour
- 70% of traffic is on weekdays, 30% on weekends

Next the Road Department will begin conducting similar traffic studies on all of the county roads that connect to Harmon Road in order to get those traffic volumes and make informed decisions regarding upgrades to the roadway.

In approximately 1 year the Road Department will conduct the traffic study again to determine the change in traffic volume and characteristics. At that time, the Road Department will have the data needed to determine if upgrades are necessary along Harmon Road.

Sight Distance/Speed Limit

5 years ago when Rich Red Dirt was proposed, the sight distance was measured from a proposed (approximate) location, and evaluated based on a 45 MPH speed limit which has a sight distance requirement of 500 ft for left hand turns and 430 ft for right hand turns. However, the County Road Department evaluated the characteristics of Harmon Road with respect to speed, curves, and slopes in the curves, and determined the speed limit should be posted at 35 MPH along the section between Hwy 16 and Gun Club Road. The sight distance requirement for 35 MPH speed zone is 390 ft for left hand turns and 335 ft for right hand turns. Now that construction of the haul road is complete, the County Road Department calculated the sight distance in accordance with the requirements of AASHTO's "A Policy on Geometric Design of Highways and Streets", also known as "The Green Book". They determined the sight distance to be 440 ft to the left (south) and 836 ft to the right (north).

This sight distance meets the requirement. The measurement was taken prior to mowing/clearing the right-of-way. Once the Road Department clears the right-of-way the sight distance is expected to increase.

Drainage:

The Washington County Contracted Engineer made the following comments:

1. At the CUP stage, I do not have any comments on drainage. However, at the LSD stage, a drainage report will need to be provided analyzing pre-versus post flows discharging from the site.
2. Regarding traffic, 30 to 50 trucks daily is not going to be enough to warrant any signals. However, it should be taken into account the damage to Harmon Road over time that the trucks will cause. I will let the Road Dept. address that though.

Additional comments concerning the site plan and drainage report will be requested at the Preliminary High-Impact Large Scale Development stage.

Environmental Affairs Concerns:

At this time, no stormwater permit is required by Washington County; however, the applicant must comply with all rules and regulations of the Arkansas Department of Environmental Quality (ADEQ).

Stormwater runoff and erosion will be evaluated at the next stage of permitting, Preliminary High-Impact Large Scale Development.

Signage/Lighting/Screening Concerns:

If the applicant desires a business sign, it must be placed outside the county road right-of-way, no larger than 24 square feet, and must not be lit from within. Any proposed signage must be submitted to the Planning office for review and approval prior to installation.

All outdoor lighting must be shielded from neighboring properties. Any lighting must be indirect and not cause disturbance to drivers or neighbors. All security lighting must be shielded appropriately (see attached diagram for examples).

COMPATIBILITY CONCERNS:

Surrounding Uses:

The surrounding land uses are predominantly single family residential and agricultural. However, there are a number of other dirt pits and a large quarry in the vicinity.

Staff feels that the applicant's request can be made compatible with the surrounding uses and residential densities with the conditions of approval listed below. (See attached Surrounding Uses map)

County's Land Use Plan (written document):

According to the County's Land Use Plan,

SECTION III. PHYSICAL DEVELOPMENT

A. LAND USE CONSIDERATIONS

4. INDUSTRIAL

The chief goals for industrial development are:

Planning Staff's response to each item is shown in bold text.

- a. Provision of sites which are located adjacent to major thoroughfares or other adequate transportation facilities;
The subject property is adjacent to and takes access from Harmon Road (WC-31).
- b. Allocate land in sufficient quantity, where infrastructure exists, or will exist, so that industrial growth can be accommodated to benefit both industry, and the county. This will ensure that industrial land is protected from encroachment by non-industrial uses; and,
Within the vicinity there exist one active limestone quarry, three active red dirt mines, and two inactive red dirt mines. The infrastructure is available, or will be made available if this proposed red dirt mine is approved.
The Washington County zoning map doesn't designate areas in the county as suitable or unsuitable for industrial uses. However, as there are several mineral extraction operations in the vicinity Planning Staff feels the location for this proposal is suitable.
- c. Provide for ample utilities and services to support industrial development.
This proposal is not requesting any utilities, but there are overhead powerlines and an 18-inch water main adjacent to the subject property. If utility service is requested in the future there should be no problem providing it.

These goals can be achieved through the following operations:

- a. Adopt development regulations and standards to provide for quality development;

At this (CUP) stage land-use compatibility is being evaluated. If approved, the applicant must also receive High-Impact Large Scale Development approval, which is where the site design, stormwater, and technical specifics will be evaluated.

- b. Identify suitable land for reservation of future industrial growth;
As there are several mining/quarrying operations in the vicinity Planning Staff feels this location is suitable.
- c. Provide adequate services, utilities and accessibility;
Provided.
- d. Insulate industrial sites from other activities by location or buffers; and,
Buffering will be evaluated at the next stage off permitting.
- e. Require provision of ample off-street parking and loading space.
Not required for this proposal as parking and loading will be conducted on-site.

Future Land Use Plan

The County's Future Land Use Plan identifies the subject property as "Residential (Compatible to Surrounding Densities)".

When the Future Land Use Plan was developed there were already multiple dirt mines and a large quarry in the vicinity of the proposed mine. They were grandfathered into compliance.

It is Planning Staff's opinion that locating new dirt mines near other existing dirt mines makes the most sense with respect to compatibility.

SITE VISIT:

A site visit was conducted by planning staff on August 13, 2019. No issues were noted at that time

NEIGHBOR COMMENTS/CONCERNS:

All neighbors within one-half mile of the boundary of this property were notified by certified mail of this proposed project.

As of 8-16-19, 30 comments have been received by Planning Staff all opposed to the proposal. Additionally, on 8-16-19 a petition with 34 signatures was received, all opposed to the proposal. (See attached neighbor petition map)

Staff will update the Planning Board at the meeting if any additional comments are received.

Sec. 11-200 – Criteria for Allowance of Conditional Uses

Planning Staff's response to each item is shown in bold text.

- a) The Board shall hear and decide requests for a conditional use and may authorize such if it finds:

- (1) That a written application has been filed with the Planning Office and the appropriate fee has been paid.

Filed & Paid.

- (2) That the applicant has provided proof that each property owner as set out in section 11-204 has been notified by return receipt mail.

Notifications were mailed on 7-23-19, 30 days prior to the Planning Board meeting.

- (3) That adequate utilities, roads, drainage and other public services are available and adequate or will be made available and adequate if the use is granted.

If this CUP request is approved and ratified, the applicant will submit documentation for High-Impact Large Scale Development review. At that time the technical aspect of the proposal will be evaluated.

- (4) That the proposed use is compatible with the surrounding area.

This requested land use can be made compatible with the surrounding area with the proposed conditions of approval, and through the High-Impact Large Scale Development review process.

- (5) That the establishment, maintenance, or operation of the conditional use will not be detrimental to or endanger the public health, safety, morals, comfort or general welfare.

A number of neighbors argue this proposed use will be detrimental to and endanger their public health, safety, comfort and general welfare. However, no objective data has been submitted for review.

- (6) That the conditional use will not be injurious to the use and enjoyment of other property in the surrounding area for the purposes already permitted, nor substantially diminish and impair property values within the surrounding area.

Similar to #5 above, no objective data has been submitted for review. There are multiple mines and a large quarry in the vicinity, and Staff is unaware of any litigation that has arisen due to compatibility issues with those operations.

- (7) That the establishment of the conditional use will not impede the normal and orderly development and improvement of the surrounding area for uses permitted in the zone.

If this Conditional Use is granted, future development along Harmon Road may actually source building materials from this development.

- b) If it is determined that there exist conditions that could be imposed by the Board that would significantly lessen the impact of the aforesaid, then the Board has the power to impose said conditions which shall be specifically set forth.

STAFF RECOMMENDATION: Staff recommends *approval* of the proposed Wedington Mine Conditional Use Permit with the following conditions:

Planning Conditions:

1. Applicant must satisfy the issue as to which acreage will be mined, within the overall 60.83 acre property.
2. Applicant must comply with all rules and regulations of the Arkansas Department of Environmental Quality (ADEQ).

Washington Water Authority Conditions:

1. The 18-inch water main beneath the access road must be protected.
2. At Large Scale Development stage, the applicant must provide engineered plans showing how the water main will be protected.

Fire Conditions:

1. No structures are proposed, so the County Fire Marshal has no comments or concerns at this time.

Sewer/Septic/Decentralized Sewer Conditions:

1. No new septic systems are proposed, so the Health Department has no comments or concerns at this time.

Roads/Sight Visibility/Ingress-Egress/Parking Conditions:

1. Any work to be completed in the County Road Right-of-Way requires a permit from the Road Department prior to beginning work. Any tile that may be needed must be sized by the Road Department. The Road Department may be reached at (479) 444-1610.

Drainage Conditions:

1. At the LSD stage, a drainage report will need to be provided analyzing pre- versus post flows discharging from the site.
2. Additional comments concerning the site plan and drainage report will be requested at the Preliminary Large Scale Development stage.

Environmental Conditions:

1. At this time, no stormwater permit is required by Washington County; however, the applicant must comply with all rules and regulations of the Arkansas Department of Environmental Quality (ADEQ).

Utility Conditions:

1. Any damage or relocation of utilities will be at the expense of the owner/applicant.

Signage/Lighting/Screening Conditions:

1. Signage cannot be placed in the County Right-of-Way.
2. If a sign is desired, a sketch must be submitted to Planning Staff for review and approval. Any signage must be no larger than 24 sq ft, and must not be lit from within.
3. Any outdoor lighting must be shielded from neighboring properties. Any lighting must be indirect and not cause disturbance to drivers or neighbors. All security lighting must be shielded appropriately.

Standard Conditions:

1. Pay engineering fees within 30 days of project approval. Applicant will be billed once invoices are received. Any extension must be approved by the Planning Office.
2. Any further splitting or land development not considered with this approval must be reviewed by the Washington County Planning Board/Zoning Board of Adjustments.
3. This CUP must be ratified by the Quorum Court.
4. It is the applicant's responsibility to contact the Planning Office when inspections are needed.
5. All conditions shall be adhered to and completed in the appropriate time period set out by ordinance.
 - o This project requires additional review (High-Impact Large Scale Development), and therefore, the applicant must submit for Preliminary project review within 12 months of this CUP project's ratification.

PRIOR PLANNING BOARD/ZONING BOARD OF ADJUSTMENTS ACTION:

_____ CUP Approved
_____ CUP Ratified
_____ Denied
_____ Tabled