



Land Use

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April 11, 2018

Mark Mathews
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Dear Mr. Mathews

This letter is in response to your July 12, 2017 letter regarding the status of Resolution 98-32. Resolution 98-32 approved Docket SU-96-18. The approval consolidated some of the existing mining permits in the area and approved a 30-year plan for gravel mining in new areas. The total area of the use approved is approximately 881 acres.

In response to your request, I have determined that the Special Use approved in Docket SU-96-18 has not lapsed. The determination is based on the language contained in Article 4-604.C of the Land Use Code (the "Code"). In making this determination staff reviewed the information contained in files in the Land Use Department, permit documents from the Colorado Mined Land Reclamation Board, information submitted by the public and a review of the permit's status provided by outside consultant hired by the County. The consultant's report gives the opinion the permit has not lapsed. The analysis is attached to this letter. I concur with his opinion.

Article 4-604.C. states:

Any approved use by Special Review which commences operation or construction as required under Subsection (B), immediately above, shall lapse, and shall be of no further force and effect, if the use is inactive for any continuous five-year period or such shorter time as may be prescribed elsewhere in this code or in a condition of a specific docket's approval. If this period of inactivity occurs, the use may not be recommenced without a new discretionary approval granted under this Code. An approved special use shall be deemed inactive under this Subsection (C) if there has been no activity under any portion of the special use permit for a continuous period of five years or more as a result of causes within the control of the special use permittee or agent.

My determination is limited to the question of whether no activity under the permit occurred for a continuous period of five years or more. My review does not consider whether the project meets or does not meet current Code criteria such as environmental impacts, transportation, or other issues that fall under the purview of the Board of County Commissioners. The questions regarding traffic, environmental impacts, water, etc., were reviewed during the initial Special Review and found, with the conditions imposed as part of the approval, to meet the Land Use Code criteria.

In my review, I analyzed whether the mining use under this permit should be determined to have lapsed on the basis that the specific use approved was gravel mining and that Martin Marietta has not provided adequate information to show gravel mining has been continuous. However, the approval governs not only the mining operations, but also the activities to plan and prepare for mining as well as all necessary post-mining reclamation activities. A Special Use approval must remain open and considered active through all phases of activity contemplated. If the approval was not active throughout all phases of activity, then, for example, the County would not have the ability to enforce post-mining conditions such as landscaping or reclamation. In fact, the first condition in Resolution 98-32 addresses not only the mining activity, but also the post-mining reclamation phase. It specifically references and establishes the time period for “all mining-related activity.” Specifically, reclamation work, a type of mining-related activity contemplated by the approval has continued without a consecutive 5-year lapse. Such reclamation work is referenced in your July 12, 2017 letter and was confirmed through review of the Colorado Division of Reclamation, Mining and Safety documents database.

While my determination is that the Special Use permit has not lapsed, there are still a number of actions necessary before mining can commence. Some of those requirements are listed below. It is also important to note that any proposed modifications to the approval (including, by way of example, any modifications related areas to be mined, reclamation, or timing of interim reviews) will need to be assessed to determine if they constitute substantial modifications to the approval under Article 4-603 of the Code. A modification that is determined to be substantial would require additional approval through the County’s Special Review process. Specific Floodplain Development permits, building permits, and all other relevant permits will be necessary prior to any activity commencing.

Please also note that Condition 7(B) in Resolution 98-32 requires an interim review five years prior to commencement of mining on phases two and three as follows:

7b. ...Special interim reviews will be conducted five years prior to the commencement of mining of Phase II and Phase III to determine whether the terms and conditions of approval are sufficient or require amendments. In the course of these reviews, which shall be conducted as duly-noticed public hearings before the Planning Commission and the Board, new conditions of approval may be imposed and original conditions may be modified, reduced or waived to accommodate changing technology, knowledge of new health concerns, or other new information not available at the time of this approval.

As stated in the above condition, the County will review the next phases of mining activity “and new conditions of approval may be imposed and original conditions may be modified, reduced or waived to accommodate changing technology, knowledge of new health concerns, or other new information not available at the time of this approval.” At this time the County has not received an application or request to commence this interim review.

Also, please note Condition 35 of Resolution 98-32 requires a community advisory committee be established. Based on the changes to the mining plan and removal of Phase I, the condition was clarified in David Callahan’s October 16, 2006 memo so that the establishment of the community advisory committee is required at least one month prior to commencement of mining. Staff suggests Martin Marietta establish this committee as soon as

is practical. The level of interest and potential impacts to neighbors in the area makes it important to establish an open and clear line of communication between Martin Marietta and the neighbors.

My determination that the approval of Docket SU-96-18 has not lapsed is appealable to the Boulder County Board of Adjustment under Article 4-1200 of the Code. An appeal must be in writing, accompanied by a statement of the basis for the appeal and the required appeal fee. In addition, you must file the appeal with the Director no later than 30 days after the date of this determination. The County will consider this determination final if it is not timely appealed.

For additional information or questions, you may contact me directly at 720-564-2604 or via email at dcase@bouldercounty.org.

Regards,



Dale Case, AICP

Attachments: Resolution 98-32, Heil evaluation 1/31/18, Callahan Letter

Cc: Julie Mikulas