

Ludlow concerns rise with quarry

4/23/08
Newspaper
Article from
PT-JC Leader

By Allison Arthur
Leader Staff Writer

Iron Mountain Quarry's plan to mine 142 acres next to the Port Ludlow Golf Course is advancing. Opposition to it also is surfacing.

After hearing from several opponents Monday morning during a public comment period, Jefferson County commissioners met with county attorneys and planners in the afternoon in public, and then in a closed executive session, to discuss options to a hearing examiner decision that favored Iron Mountain.

Commissioners did not take action to appeal the hearing examiner decision as opponents had asked. The deadline for challenging the decision is May 1.

Hearing examiner Stephen K. Causseaux ruled April 9 that based on the diminishing asset doctrine set forth in a state Supreme Court ruling, Iron Mountain has a right to mine 142 acres leased last year from Pope Resources that abuts the Shine Quarry, a separate company which also leases 40 acres from Pope Resources.

Causseaux disagreed with the county Department of Community Development (DCD) and said that contrary to DCD's interpretation of its land-use codes, Iron Mountain doesn't need to do a mineral resource land (MRL) overlay in order to mine.

Ludlow concerns

Unlike gravel mining, hard-rock mining requires blasting.

And that has some Port Ludlow residents concerned about noise, property values, the aquifer and whether their lifestyle — and the buffer between them and the Shine Quarry — will be harmed.

Iron Mountain appears to want to blast for rock within 1,700 to 1,800 feet of the edge of the Port Ludlow Golf Course, which opponents say is one of the few amenities supporting the Port Ludlow Master Planned Resort.

"You're going to have an erosion of the tax base. We won't be able to sell homes," David Armitage told county commissioners during the Monday morning session.

John Fabian of Shine, who has led a fight against Fred Hill Materials Inc. and its Shine Pit expansion plans farther south and across State Route 104, said what bothered him is that Causseaux's decision bypassed elected county officials. He feared a combination of gravel and hard-rock mines will dominate the south end of the county.

Port Ludlow resident Larry Nobles also encouraged commissioners to appeal Causseaux's ruling.

Nobles said yesterday he doesn't think people in Ludlow have the financial backing to appeal the decision. "I think it's very unfortunate if no one appeals," he said.

Fred Hill Materials' attorney Jim Tracy, who routinely attends commission meetings, chastised commissioners for not explaining land-use laws to those who had spoken. Tracy said commissioners ought to explain to people that commissioners can't interfere in such land-use decisions.

Tracy also told commissioners that no county would appeal the doctrine Causseaux used because it's a state Supreme Court ruling.

"You don't have a dog in this particular fight," Tracy said.

'Uphill battle' to appeal

Appealing Causseaux's decision poses a dilemma for the county, Chief Civil Deputy Prosecuting Attorney David Alvarez told commissioners later that afternoon.

Alvarez said the hearing examiner was acting as a judge in the case and that appealing the decision would be a problem.

"It might just mean the end of the hearing examiner system, in a way," Alvarez said, quickly adding that a challenge would undermine the hearing examiner and that it could be difficult to hire a hearing examiner in the future if the county commissioners appealed what is, in essence, a county decision.

Alvarez also called an appeal "an uphill battle."

Department of Community Development Director Al Scalf said Ludlow residents were talking about challenging Causseaux's decision and that anyone who had spoken at a March hearing before Causseaux could appeal.

Commissioner David Sullivan asked what the county should do, hypothetically, if it didn't like a decision by the hearing examiner.

Alvarez said the county would have to narrow the issues, focus on land ownership, abandonment of rights issues and other issues. But Alvarez repeatedly said he thought Iron Mountain had presented strong evidence that Pope had intended to mine the property all along.

And Scalf noted that Causseaux's decision did not give the company permits it needs to mine immediately. Iron Mountain still needs stormwater permits and a SEPA (State Environmental Policy Act) review as well as permits from the state Department of Ecology and state Department of Natural Resources.

A SEPA review would determine whether Iron Mountain needs to do an environmental impact statement to mitigate noise and other concerns.

Scalf also noted that he was concerned that the ruling could impact 1,200 acres, not just the 142 acres specified in the decision.

Set a precedent

Unknown is whether Causseaux's decision could set a precedent for future mining projects in Jefferson County.

Planners thought so when Iron Mountain first asked the county to apply the doctrine of diminishing asset to the property and not require an MRL as other companies have been required to do.

"If the diminishing asset doctrine is applied in this case, then you could presume that the entire 72,000 acres owned by Pope Resources would also be subject to the diminishing asset doctrine," planners said.

Causseaux disagreed, saying Pope officials have "made it clear in their declarations that the company has always intended to mine the 182 acres only. Therefore, this application does not apply to the balance of the 72,000 acres, Hood Canal Tree Farm."

Keith Moxom, a Seattle attorney representing Iron Mountain, said he didn't think the decision set a precedent for any case other "than this case."

"So 72,000 acres of land is safe and not about to be plundered. Nothing was imperiled," Moxom said.

Moxom also said it was unlikely that Iron Mountain would continue to pursue an MRL proposal it filed for the property. It did that before the hearing examiner decision came out, in part because the deadline for making changes to the county's comprehensive land-use plan was in March.

"I'm sure we won't go down both roads," Moxom said of not needing the MRL now that Causseaux has said the company can mine using the doctrine of diminishing asset.

The company has not withdrawn its MRL request yet, as it waits for the appeal period on the Causseaux decision to expire.

Although they discussed the issue in an open meeting for almost one-half hour, county commissioners opted to spend another half hour Monday with Alvarez and Prosecuting Attorney Juelie Dalzell in a closed executive session to discuss the issue as a "pending legal" matter.

They came out of that meeting and did not take action.

Alvarez said Tuesday that the option of challenging Causseaux's decision remains open until May 1.

Where's the market?

In the meantime, neighboring Shine Quarry Manager Jim Mort said last week his company still has 10 years left to mine the area it has leased from Pope Resources.

Mort said he didn't know where the market is for the hard rock that Iron Mountain would extract. (Shine Pit, for example, does sand and gravel, while Shine Quarry and Iron Mountain are after hard rock.)

"The economy is not doing that great. Fuel prices are terrible," Mort said.

Mort questioned the need for another hard-rock operation in the neighborhood. But he said he didn't think his company would appeal Causseaux's decision.

(Contact Allison Arthur at aarthur@ptleader.com.)