

**MINUTES OF THE
SPECIAL MEETING OF THE
WASHINGTON COUNTY QUORUM COURT**

Thursday, February 12, 2015
6:00 p.m.
Washington County Quorum Court Room

FILED
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CLERK OF COURTS
WASHINGTON COUNTY
MARIANNE W. HARRIS

- 27.1 The Washington County Quorum Court met for a special meeting on Thursday, February 12, 2015. The meeting was called to order by County Judge Marilyn Edwards.
- 27.2 Judge Edwards stated that this was a Conditional Use Permit Appeal Hearing on the Rich Red Dirt CUP denied by the Washington County Planning and Zoning Board.
- 27.3 H. Bowman led the Quorum Court in a prayer and in the Pledge of Allegiance.
- 27.4 MEMBERS PRESENT: Daniel Balls, Harvey Bowman, Rick Cochran, Robert Dennis, Lisa Ecke, John Firmin, Ann Harbison, Eva Madison, Sue Madison, Joel Maxwell, Joe Patterson, Butch Pond, and Bill Ussery.
- 27.5 MEMBERS ABSENT: Tom Lundstrum.
- 27.6 E. Madison and J. Patterson reported that T. Lundstrum was in the hospital and a moment of silent prayer was taken.
- 27.7 OTHERS PRESENT: County Judge Marilyn Edwards, County Chief of Staff Dan Short, County Comptroller Cheryl Bolinger; Interested Citizens; and Members of the Press.
- 27.8 ADOPTION OF THE AGENDA: Judge Edwards asked if there were any additions or deletions to the agenda.
- 27.9 County Attorney Steve Zega noted that Ordinance #6.1 included in the packets is confirming the decision of the Planning and Zoning Board and denying the CUP. He stated that he drafted an Ordinance #6.2 that approves the CUP for consideration if the Quorum Court decides not to ratify the Planning and Zoning Board's decision.
- 27.10 **A motion was made and seconded to adopt the agenda as presented. The motion passed unanimously by voice vote by those present. The agenda was adopted as presented.**
- 27.11 CONDITIONAL USE PERMIT APPEAL HEARING: Rich Red Dirt CUP Conditional Use Permit Request; Location: Section 05, Township 16 North, Range 31 West; Applicant: Benny Holtzclaw; Location Address: 15792

Harmon Road; Proposed Land Use: 122.00 acres – Open Pit Red Dirt/Clay/Gravel Extraction; Coordinates: Longitude: -94.28545281” W Latitude: 36.08850625” N; Project #: 2014-124; Planner: Juliet Richey, jrichey@co.washington.ar.us

- 28.1 Introductory Remarks and Presentation by County Staff Summarizing the Project and Staff Recommendations: County Attorney Steve Zega explained that County Planning Director Juliet Richey, would be giving remarks on behalf of Planning Staff and explain their actions, as well as giving a brief orientation to the Court, especially to the new members, on how to handle zoning appeals and a brief history of what is and isn't zoned in Washington County. He stated thereafter the Road Department and Contracted County Engineer will present make some remarks; followed by remarks by the Applicant/Appellant in support of the Project; followed by remarks by Opponents of the Project as well as remarks by Supporters of the Project. He noted that the public comments need to be held to three minutes each and if they have a group representative to hold that presentation to ten minutes. Further, the group representative should not comment individually. Mr. Zega stated that after all members of the public have spoken, public comment will be closed.
- 28.2 Mr. Zega explained that the Ordinance is on first reading tonight; however, the Court can move to suspend the rules and place the Ordinance on second and third reading by title only if they so choose which means that they may consider final resolution of this appeal at this meeting. If they do this, the Public Comment will be reopened ten minutes for and ten minutes against the granting of the permit and each will have three minutes to present their individual comments. He noted that Judge Edwards was the Chair for this meeting and all comments should be directed to her unless individual JPs ask questions and then they should engage that JP in dialogue. He noted that the most important rule is to be polite and civil to one another and to this proceeding not to disrupt the decorum of the proceeding. He stated if someone has already made the point that they want to make, yield the microphone to someone else so as not to be repetitious. He noted that the members of the Quorum Court take all comments very seriously and consider each and every comment with all due attention.
- 28.3 County Planning Director Juliet Richey addressed the Quorum Court stating that she would first give some general information on zoning since this is the first CUP hearing for some JPs. She stated that zoning in Washington County was originally passed in 2006 in limited portions of the County and extended to the full County in 2007. She explained when passed some of the primary concerns of residents and reasons for passage revolved around

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compatibility of uses with existing rural and agricultural uses and the primary compatibility concerns at that time were with high density residential developments and high impact industrial uses. She stated that they passed an ordinance allowing for lower density single-family residential, one unit per acre and agricultural uses by right; and all other uses such as commercial, multi-family, high density residential, and industrial, etc. are by Conditional Use Permit only.

- 29.1 Ms. Richey explained that allowance of Conditional Use Permits is based on a set criteria and the Planning and Zoning Board shall hear and decide requests for conditional use and may authorize such if it finds as follows: (1) That a written application has been filed with the Planning Office and the appropriate fee has been 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; (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; (4) That the proposed use is compatible with the surrounding area; (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; (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; and (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. She stated that 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 improve said conditions which shall be specifically set forth.
- 29.2 Ms. Richey explained that the Planning and Zoning Board will hear the conditional use permit first, rule on it, and have the same three choices that the Quorum Court has as follows: (1) They can approve as submitted by the applicant with no conditions; (2) They can deny it; or (3) They can improve it with conditions that the proposed use to meet the required criteria. She stated when allowing or considering a use via the CUP process, other than what is allowed by right, is not a variance to their zoning code but a common misconception that if they are even considering something that is not agricultural or single-family, then is disregarding their code. She stated that this is not the case because a variance would be a strict variation on the letter of law and their zoning ordinance is set up to consider these different types of uses through this process and evaluate them by that criteria list. She stated that whenever they hear these requests, staff will give a detailed report

addressing each criteria point directly and some points tend to be cut and dry such as notifying neighbors; safety and infrastructure are usually easier to evaluate; and some can be less so like compatibility. Staff will give their professional analysis of the project and the proposed conditions that they feel may apply in order to meet criteria, but there may be some things that are seen differently as far as aesthetics and compatibility. She stated that compatibility does not mean the same, but are able to co-exist in harmony with one another and different people may have different ideas regarding what is compatible.

- 30.1 Ms. Richey stated that for the most part zoning has been very successful in Washington County and staff tries their hardest to find conditions that make things work for everybody concerned. She stated that they want to grow business and development in Washington County and also respect the people that live there and their right to enjoy their property for residential and agricultural uses. She stated that many times they are able to find conditions that will work for both parties; and sometimes they can not and that is the position that they are in tonight.
- 30.2 Ms. Richey explained that Rich Red Dirt CUP was denied by the Planning and Zoning Board and staff recommended denial to the Board and will recommend the same to the Quorum Court for several reasons to include safety. She stated that herself, County Fire Marshall, Road Department, and County Environmental Affairs Department all take safety very seriously and consider it one of the primary functions of their jobs and while they try to be flexible in a lot of areas, safety is not an area that they have a lot of flexibility. She stated that they feel that they owe it to the people of Washington County to make sure that they have safe developments and their job is also to help protect the general taxpayer's dollar so that they are not picking up the tab for certain types of developments and issues that they may cause down the road.
- 30.3 County Attorney Steve Zega asked that cell phones be silenced during the hearing. He stated before they begin the detailed staff presentation, he wanted to give some legal advice that is especially fresh in his mind given the fact that he presented oral arguments yesterday in Kansas City on a zoning issue with a cell tower case that several members of this court had an opportunity to hear in the Summer of 2013. He stated that cell towers get special consideration, which they won't address tonight, but some of the issues that apply to a cell tower also apply in this case. He stated if the Quorum Court decides tonight as a body to move the ordinance up to its final decision, whatever their decision either for or against the CUP that they go down the list of criteria that Ms. Richey provided and state which criteria they are basing their vote on. He explained the reason for this is that many of

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these issues tend to wind up as litigation and the viewing court reviews their decision and wants to know whether they followed their own zoning ordinance to base their decision.

- 31.1 Mr. Zega stated that the three issues on the criteria that they might consider tonight under Sec. 11-200 are compatibility; safety; and injury to the surrounding land use and enjoyment of that land by other property owners and the diminution in property values.
- 31.2 Mr. Zega noted that he was asked the other day by a JP whether they should be getting personal liability insurance for their time on the Quorum Court and he answered if it helped them sleep better at night that was fine; however, they generally enjoy broad immunities for their legislative actions on this court, such as with the votes they cast, the policies they make, and what they do for this county.
- 31.3 E. Madison noted that this issue was discussed in a court this week and the Dean of the UA Law School stated that the General Counsel of the University advised that if they had personal liability insurance, then their liability insurance would be on the hook and immunity didn't apply, which made her concerned about having personal liability insurance. She stated that the whole presentation that night was on immunity because apparently if they have any type of personal liability insurance, it would apply and qualified immunity only applies after that.
- 31.4 Mr. Zega responded to E. Madison stating that the immunity which he is talking about is not immunity from suit; it is whether a suit would be successful. He stated that they should generally feel pretty good about their personal issues for what they do on the court.
- 31.5 Mr. Zega noted if there is commentary from landowners about the value of their property, they need to know in Arkansas, generally speaking, a landowner or property owner is competent or is legally allowed to speak to the value of his or her property. He noted that this does not necessarily carry the same weight as an expert appraiser's opinion, but they are allowed to consider what folks say is the value of their property if they are the owners.
- 31.6 Planning Director Juliet Richey addressed the Quorum Court stating that this is a Conditional Use Permit Request for the Rich Red Dirt Pit CUP that was denied by the Planning and Zoning Board on November 6, 2014. She noted that this project site is located West of Fayetteville with an entrance proposed onto Harmon Road located North of Wedington or Hwy. 16 West. She noted that this CUP approval request is for Rich Red Dirt CUP to transition existing

agricultural and residential property into an open pit red dirt/clay/gravel and extraction operation. She noted that the property does lie within the County Zoned area Agriculture/Single-Family Residential 1 unit per acre and the project is not located within the City's Planning Area. She noted that the project is in District 7, JP Rick Cochran's District. She stated that the property is owned by Mark Rich and the operation proposes the construction of a haul road and red dirt pit operations for extraction of clay and gravel, but does not include rock quarrying. She stated that the proposed haul road from Harmon Road would connect to a proposed open cut mining area of approximately 9.3 acres in size.

32.1 Ms. Richey stated that it should be noted that this is a large piece of property with 123 acres, which has legal access from both Harmon Road and Riches Road, both being County roads. She noted that Mr. Rich in his application has elected to propose taking access from Harmon Road. She stated that there are other mining operations in the area; however, they are geographically separated from this mining site both by distance and terrain, and these mining operations take access off of Hamestring Road which then connects to Hwy. 16 West. She stated that the entrance to the site is proposed to be located near the existing home owned by Mark Rich at 15792 Harmon Road.

32.2 Ms. Richey reported that this project was initially heard and tabled at a Planning and Zoning Board of Adjustments meeting on August 7, 2014, followed by an informational Planning and Zoning Board meeting held onsite at the Rich property on August 26, 2014. She noted that the project was then tabled at the request of the applicant at the September and October 2014 Planning and Zoning Board Meetings. She stated that the project was heard and denied by the Planning and Zoning Board at their November 6, 2014 meeting; and an appeal for this project was filed on December 5, 2014. Ms. Richey reported that the primary reasons for denial include: (1) Safety concerns in regard to the proposed location of the haul road intersection with Harmon Road; (2) Issues of compatibility; and (3) The high 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. She noted that the Planning Staff recommended denial of this CUP at their November 6, 2014 meeting and at this time is making the same recommendation to the Quorum Court that they uphold the denial of this proposed CUP. Ms. Richey reported that there has been a large neighborhood response to this CUP of nearly 90 pages submitted in writing in opposition to the project as well as one neutral comment and one in-favor comment received.

- 33.1 Ms. Richey stated if a CUP for this project is approved, the project would be subject to any conditions set as well as all applicable Washington County Large Scale Development Regulations which is the next step in development if the project moves forward. She noted that during the CUP step, they are evaluating whether or not this proposed use is appropriate for this site in the manner it is proposed or if it could be made appropriate/compatible with the addition of any conditions; and as per their Zoning Ordinance, they must evaluate the proposed use using the seven criteria mentioned earlier. She noted that the criteria (1) and (2) were met by the applicant as the written application and fees paid, as well as the notification of neighboring property owners within one-half mile initially by certified mail and any subsequent notifications by regular mail. She stated with regard to criteria (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, that the location of the proposed haul road's intersection with Harmon Road appears to be inadequate in regard to safety. She further stated with regard to criteria (4) that the proposed use is compatible with the surrounding area, which staff had concerns in regard to compatibility due to portions of the proposed site being close to neighboring property lines and only relatively small buffer areas were being proposed at that time. Additionally, there will be an industrial use added to an area that does not currently have industrial type noise and traffic within this close of a proximity to it. Although there is mining nearby, even until a few years ago on Mark Rich's land, the areas that have been mined in the past and are currently being mined are geographically removed by distance and/or elevation and terrain changes from the currently proposed location. Additionally, the other existing mining sites route traffic via Hamestring Road to Hwy. 16, not onto Harmon Road. This CUP proposes to add an industrial/mining type use in an area that has not experienced such a use in such a close proximity. With regard to criteria (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, she stated the sight distance visibility in regard to left hand turns onto Harmon Road from the site appears to be a health/safety issue. A significant amount of information has been submitted and staff has spent a significant amount of time analyzing the issue; and it appears that the currently proposed haul road configuration will not accommodate safe left turning movements onto Harmon Road. She stated with regard to criteria (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 or impair property values within the surrounding area, that there is much concern from neighboring property owners in regard to property values, quality of life, and other similar issues. Additionally, staff has concerns about the affect of this use on neighboring properties due to the

limited buffering of haul roads and the mining area from surrounding residences. With regard to criteria (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; staff feels that due to a lack of buffering from surrounding properties, the development and improvement of surrounding areas, especially neighboring properties, could be impeded in regard to agricultural and residential growth and development.

- 34.1 Ms. Richey stated that she would address the primary concerns and issues in greater depth. Ms. Richey noted that sight visibility and safety in regard to truck traffic and Harmon Road has been an issue of high concern since the project was initially submitted. She noted that this portion of Harmon Road is posted at a 45 mph speed limit and there is a curve advisory sign posted at 25 mph preceding the curves south of the proposed entrance; however, staff uses the posted speed limit of 45 mph to determine the intersection sight distance needed unless actual design speeds are available. She noted that the County generally uses a table from the AASHTO Green Book Standards to determine the minimum sight distance visibility needed for an intersection at certain speeds. She stated therefore, as per their code, minimum sight distance required for this speed is 500' for left turning movements and 430' for right turning or straight movements; and it became evident early in the process that the applicant did not have 500' of sight visibility to the South in order to be able to safely make left turning movements onto Harmon Road.
- 34.2 Ms. Richey stated that the applicant was given three options to address the sight visibility issue in regard to their proposed access point onto Harmon Road: (A) Pursue an alternate drive location that meets required sight distance for the posted speed limit; (B) Determination of design speed for this stretch of Harmon Road; or (C) Clearing/Offsite Easement option. She reported that the applicant chose to pursue Option B and their Engineer, Mike Kelly, submitted documentation via a plan and profile sheet showing a series of "design speeds" for 1800' of Harmon Road. Mr. Kelly further submitted intersection sight distances as follows: Sight distance to the south to accommodate left turning movements – 446.36'; and sight distance to the north to accommodate right turning movements – 500'. Using the time gap value appropriate for the proposed type of truck traffic at this site, Staff calculated that the sight distance needed for left hand turning movements from the proposed haul road onto Harmon Road should be 628.4' for a 45 mph speed limit. After the November 6, 2014 Planning Board Meeting, Staff decided it would be best to perform their own survey of the site to check their data against that submitted by the applicant. The Road Department performed a survey of the area and the County Contract Engineer used this

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new data to formulate their own plan/profile sheet of the subject section of Harmon Road, and his findings dated January 29, 2015 were that 45 mph is the posted speed for this section of Harmon Road and the findings did not warrant a change in the posted speed of 45 mph for this section of Harmon Road. Further, the proposed haul road does not have enough sight distance to safely make left turns onto Harmon Road. The sight distance needed to make a left turn from the haul road onto a 45 mph roadway is 628 feet. According to the information submitted by the developer, the proposed site has a current intersection sight distance from the location of the haul road looking south of 446 feet. Due to all of the reasons listed, Planning Staff still feels that there is a true safety concern regarding the location of the proposed drive/haul road.

- 35.1 Ms. Richey stated the second area of concern was with buffering from surrounding properties in regard to noise, quality of life, property values, and incompatibility of uses. Planning Staff still has some concerns regarding the lack or minimal width of proposed buffers onsite, especially in the area of the proposed haul road. The applicant has attempted to move the haul road from the neighboring property line as much as they can, but the haul road is still within 35' or less from the neighboring property line for approximately 400'. While 28' to 35' may seem like a substantial width of land, staff feels that with the impact of 100 dump truck trips per day, further buffer may be needed for surrounding properties. The applicant has also offered to place a 3' berm with cedar trees on top of it for the first 230' along the haul road and while staff feels that a berm could be effective, they feel that it should be taller than 3' in height and extend to at least 400' in length. Additionally, the location of the berm should be considered carefully as none of the existing fence line vegetation should be disturbed so that the existing vegetative screen remains in place.
- 35.2 Ms. Richey continued stating that while the mining site itself appears to primarily be tucked away from the sight of the general public, there are two adjacent property lines to the south and west that are owned by other parties. Staff did note that both of these areas contain a high amount of existing vegetation, so the planning of additional vegetation is likely not needed if existing vegetation is left undisturbed; however, Staff recommends that a 150' buffer be proposed between these properties and all parts of the operation and the addition of berms could also be beneficial. At present the applicant is proposing only a 50' buffer from the southern property line while borders the Casey and University of Arkansas properties. Additionally, more buffering or berming along the western property line bordering the Elkins property should also be explored. Due to the intensity of the traffic and operations of a dirt pit,

Staff is hesitant to recommend less than 100' to 150' wide buffers along all adjoining property lines as this is a line with what has been recommended in the past for other industrial/mining CUPs like the Northwest Arkansas Quarry and Big Red.

- 36.1 Ms. Richey addressed Staff's concern regarding impact to Harmon Road and the possible need for road improvements to accommodate the proposed use. If a CUP is approved, Staff recommends that a formal Traffic Study be required at the Large Scale Development Stage. The applicant was given the following information at the County's technical review: A formal traffic study will be required at Preliminary LSD if a CUP is approved. The applicant would be required to pay for any needed improvements specified in the study as well as acquire any needed right-of-way. The traffic study should include but not be limited to: (a) Directional division of proposed truck traffic (north and south); (b) Level of service; (c) Impact to the intersection of Hwy. 16; (d) Impact on intersections with the existing Wedington Woods intersection (WC2161, Dogwood) to the North; and (e) Change in percentage of trucks vs. car traffic on Harmon Road. A pavement analysis for Harmon Road will be required once formal traffic loading has been determined. She noted that Harmon Road belongs to the City of Fayetteville for the first ¼ mile from the intersection of Hwy. 16 and discussion of any improvements needed must be coordinated with the City for their portion at Preliminary LSD.
- 36.2 Ms. Richey noted Staff's concern regarding debris and tracking on Harmon Road, especially during inclement weather situations, due to the amount of traffic that currently travels Harmon Road. The applicant has specified that they will build a tire wash onsite to help mitigate this issue, but this is not shown on the current plans that Staff can see. The applicant has made several statements in their plan that they will not track and will shut down on inclement weather; however the Staff needs more details and a fully defined policy/plan from the applicant to review in regard to safeguards against trucks' tracking on Harmon.
- 36.3 Ms. Richey noted that there are environmental concerns, including concern regarding proximity to the U of A site on Harmon. The Planning Staff contacted the U of A regarding any possible environmental issues that could arise in regard to this dirt mining proposal's proximity to the U of A's land on Harmon Road adjacent to the south of this site. As per Staff's conversations with the U of A, the Staff understands that all radioactive materials that were on this site in the past have now been removed and the site has been cleaned up; and the only restriction remaining on the site is a Deed Restriction stating that a water well cannot be drilled on the University's property due to the small amount of chemical contamination in the perched

ground water on a location on this specific site. The University does not want someone drilling through the perched water and into the aquifer. The deed's restrictions and concerns to the perched water are specific only to the U of A's parcel of land; not to any surrounding properties. She reported that the University's official response was that they are happy to make documentation regarding the Harmon Road property available for the inspection and review of county officials, including any deed restrictions. The University, however, does not believe that it should make any type of blanket warranties or representations regarding any of its property or any adjacent properties. The ADEQ worked with the University as officials of the institution to oversee the clean-up of the Harmon Road site and that process was completed some time ago. Further, the University has taken a neutral position on the permit issue currently pending with Washington County. Ms. Richey noted that Planning Staff also spoke with the ADEQ Hazardous Waste Division and they did not feel that there was a high chance of there being any contamination issues on surrounding properties.

- 37.1 Ms. Richey stated that other environmental concerns brought up by property owners in the area related to drainage, wildlife, and storm water, but staff did not have any specific concerns in regard to those.
- 37.2 Ms. Richey addressed the actual appeal document and the various issues addressed therein are as follows: With regard to safety, they stated that all designs are set for 45 mph per zoning staff unless applicant could prove Harmon Road does not meet 45 mph design. They stated that our engineer surveyed the site and stamped drawing stating that existing and vertical alignments for Harmon Road only meets 20 mph design. Immediately preceding the hearing, staff changed sight distance requirement from 500 feet as in the current ordinance to 628 feet not a current ordinance without properly notifying the applicant prior to the hearing. Ms. Richey stated that they talked several times about what our Engineer found in regard to the design speeds and after looking at the design speeds for that stretch of road that 45 mph is the correct posted speed for that road. She noted that the information that they found in the ASSHTO manual with regard to specifics in areas like this where there is primarily truck traffic utilizing that road, that they should be using a different time gap coefficient to figure what the sight distance is needed for that situation was something that they found the day before the Planning Board meeting. She noted that they went over this, checked their numbers, and sent it that evening to their County Engineer to review to make sure that they were reading it correctly. The County Engineer reviewed it and got back to them the actual day of the Planning Board meeting and finally solidified that information just a few hours before the meeting and emailed the information to the Planning Board at that time. Ms.

Richey stated that the Planning Staff does try to keep a clear line of communication with the applicant and while it is Staff's job to notify the Planning Board of findings of this nature, they are not under any obligation to share recent findings with the applicant prior to the meeting.

- 38.1 Ms. Richey stated while reviewing a CUP, one of the criteria to be met is that the establishment, maintenance, or operation of the conditional use will not be detrimental to or endanger the public health and safety. She noted that CUP review does not hold staff to road development standards only found in our current ordinance, and in this case they used the AASHTO Green Book as it was the best tool available to evaluate safety for this particular combination of use and intersection situation. For staff to ignore the use of the larger time gap coefficient for single unit trucks in the sight distance equation, which is what equated the larger distance of sight distance needed than originally calculated, would be negligent on their part.
- 38.2 Ms. Richey stated with regard to compatibility, the appellant stated the site is situated between the U of A Hazardous Waste Site adjacent to Harmon Road to the west and existing rock quarry and dirt mining pits to the east as well as having previous pits under reclamation on the applicant's owner's 123 acre farm. Staff determination of non-compatibility issue is being challenged and they requested the zoning staff basis for their determination of incompatibility. Appellant further stated that injurious to surrounding property already permitted as Applicant has a current open mining permit in effect on his land for reclamation purposes. They requested the Zoning Staff basis for their determination of significantly affecting surrounding property values as it is their contention that some will actually increase in value.
- 38.3 Ms. Richey reported that both of the above issues were covered in the November Staff report for this project and iterated by Staff at the November 6, 2014 Planning and Zoning Board Meeting. Their findings on these topics included the issue of compatibility in regard to the relatively small buffer area, which, for the record, Staff encouraged the applicant to increase this buffer area, but they were not interested in doing that. With regard to the other existing mining sites in the area, these are separated and route their traffic via Hamestring Road.
- 38.4 Ms. Richey stated that she feels Planning Staff has adequately addressed every issue that the Applicant/Appellant brought up and they are making recommendation for denial of this CUP. She noted that Shawn Shrum from the Road Department and Clay Crote, the County's Staff Engineer are available to address any other technical questions that anyone may have.

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- 39.1 E. Madison asked if the speed limit on the curve is posted 25 mph, then why was it decided that it wouldn't be possible to lower the speed to 25 mph which seems to address the sight concerns.
- 39.2 Assistant County Road Superintendent Shawn Shrum addressed E. Madison and the speed limit issue stating that whenever driving on a State Hwy. or County Road, when you come to a curve, there is not a speed limit sign change, but rather an advisory sign which is the yellow and black sign. In this particular stretch, they do have it advised at 25 mph where the speed limit is 45 mph. He stated a UPS truck would not be able to drive that curve at as high a rate of speed as a car and on major collector roads; they do not want to change the speed limit up and down.
- 39.3 E. Madison stated that she understood from the Staff report that someone made the decision that posted speed limit should not be changed from 45 mph to 25 mph, which she believes would address the sight visibility and is asking for the rationale behind not solving this problem by reducing the speed limit. She noted that it may be that Staff believes that the appropriate speed for this road is 45 mph and shouldn't be 25 mph.
- 39.4 Mr. Shrum responded to E. Madison stating that this is where it is not good practice on a major collector to lower the speed limit because it is unlikely that the traffic coming through there would lower their speed to 25 mph creating an unsafe situation.
- 39.5 E. Madison asked with regard to visibility whether they believe that lowering the speed limit would not solve this problem; to which Ms. Richey responded that they are looking at how the road is actually laid out, the vertical and horizontal curves, and how the road is sloped to figure out what the actual design speeds are. They are all higher than 25 mph, varying from 35 mph going into the curve and 30 mph when in the curve. By the time they are at the haul road intersection location, it is up to 58 mph. She noted that they spent a lot of time evaluating this and driving that curve over and over noting that it is very steep at a 17% slope. The natural instinct is to brake and because of the slope, the minute you take your foot off of the brake, your speed shoots up and you are going much faster coming out of the curve. By the time you reach that intersection, you are going quite fast. She noted that it doesn't make sense to sign a road for a tiny stretch and then increase the speed right after the curve. Ms. Richey further stated that the ASSHTO manual takes into consideration many factors and advises in this particular type of curve on a major road preceding an intersection, they should look at using more caution and greater sight distance.

- 40.1 E. Madison asked with the first ¼ mile of this road being part of Fayetteville, how this would impact in terms of improvements because it suggests to her that this area could become a part of the city; to which Ms. Richey responded that one of the things that they look at in a traffic study is the direction of the traffic and if the majority is going toward Hwy. 16 and whether it necessitates intersection improvements such as a turning lane where Harmon Road meets Hwy. 16. In this case, the applicant would have to work with the City at Large Scale because technically at this point, the City is not part of the process since the project is in the County and not in the growth area.
- 40.2 In response to questions from E. Madison referencing the maps, Ms. Richey explained where the existing Rich Red Dirt property is located in reference to existing mining sites. E. Madison stated that it appears that some of the folks objecting are also doing mining work to which Ms. Richey responded that 40 parcels should be fully under reclamation and the area all around the Rogers Group was part of John David Lindsey's mining operation before he went through bankruptcy and he actually owned the property that Rogers Group was on and they leased the quarry area from them. From what she understands, when they went through bankruptcy, all of their dirt mining areas, some being Lindsey's land and some land of other people that he had leases with, including Mr. Rich and Ms. Cromley, were all under reclamation with bond money and it has gone very slowly. She noted that the only portion that is being actively mined of Lindsey's property is the actual rock quarry and none of that accesses Harmon Road, but instead all went to Hamestring. She stated that the Rogers Group owns all of that property now and there is no longer a path for Mr. Rich to get to Hamestring Road. She further verified that for the Main and Cromley Properties to resume any type of mining work would require going through the Planning Board. E. Madison pointed out that the Casey Property is the only one in favor of the CUP and the bulk of the objections are the residential people on Harmon Road and Ms. Richey pointed out those property owners that would be impacted by the location of the haul road.
- 40.3 E. Madison asked if they looked at any alternate access roads; to which Ms. Richey responded that they have legal access to Rich's Road but chose not to pursue that option, noting that is not to say that Rich's Road would not have its own issues.
- 40.4 J. Maxwell stated that since the impromptu use of the heavy traffic/heavy truck coefficients were just discovered prior to the Planning Board meeting, that those have not been used in any other calculations for any type of use permits; to which Ms. Richey responded that they have not used them in the

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past, but they have not had the same sight visibility issues. He further asked about the actual posted speed limits in the 33 mph. and 35 mph; to which Ms. Richey responded that the posted speed limit is 45 mph. with a 25 mph. advisory sign before entering the curve.

- 41.1 R. Cochran addressed the existing permit of Mr. Rich for reclamation purposes and asked how much truck traffic it generates onto Harmon Road; to which Ms. Richey responded that it does not generate any on Harmon Road, but accesses Hamestring Road. He further asked whether they have as much activity as is expected with Rich Red Dirt; to which Ms. Richey responded that she could not answer that question.
- 41.2 Remarks from Applicable Public Agencies – Road Department & Contracted County Engineer: Clay Grote, Contracted County Engineer, addressed the Quorum Court stating that he is in his 10th year at this job, noting they have come a long way. He explained following the meeting for the CUP with the Planning Commission, they decided it would be best to go out and survey this site themselves. He noted that Mr. Kelly, Engineer for Rich Red Dirt Project had done his own survey and took over 200 shots to get their profile of the road; and the County took over 533 shots, or elevation spots, to model the road, noting that the more shots they make, the more accurate they can evaluate a road for its vertical and horizontal alignment.
- 41.3 Mr. Grote reported that he then took that data with “The Green Book” (6th Edition), and modeled a vertical and horizontal alignment of Harmon Road based on its curves. He stated that he feels that the posted speed of 45 mph. is the correct design speed for the main reason that the location of the proposed drive is in the area that has a designed speed of greater than 45 mph; it is actually at 58 mph. He noted that there is a curve to the north that is evaluated at 33 mph to 35 mph. the advisory posted speed there is 25 mph. and once you leave that curve, the straight stretch of road has a design speed greater than 45 mph.
- 41.4 Remarks by the Applicant/Appellant in Support of the Project: Todd Lewis, Attorney at Law in Fayetteville, addressed the Quorum Court stating that he has lived in Washington County for 23 years and represents Benny Holtzclaw, owner of the subject property, and has known Mr. Holtzclaw for over 30 years. He announced that Mr. Holtzclaw would address the court and Mike Kelly, Engineer, would give details about the design speeds that have been presented tonight varying from 25 mph. to 33 mph. for the curve on Harmon Road. He noted that Mr. Holtzclaw was born and raised in Washington County and has been a member of this community for a long time.

- 42.1 Mr. Lewis explained that Mr. Holtzclaw has operated several red dirt pits for many years and as a member of the community, is not here to run this into the ground or file bankruptcy. He explained that there is a rock quarry adjacent to this property owned by the Rogers Group and the same property has been used as a red dirt pit in the past. He stated that Mr. Holtzclaw tried to contact the Senior Vice President of the Rogers Group on three separate occasions trying to work out a deal with them where he could use Hamestrung Road for access and was told no twice and has had no choice but to respect that decision. Mr. Holtzclaw next looked into Richards Road that has houses right on it and would not work as a haul away road, so Harmon Road fit for him. He noted that the red dirt pits in this part of the County are going fast with only one left with any red dirt activity as this is what they use to build roads and without it, they don't build in this area. Without it, they will need to go into Benton County or north Washington County to get red dirt.
- 42.2 Mr. Lewis stated with regard to compatibility that while he can appreciate the neighbors' protests; however, this land has always had red dirt and lime and if there is going to be a mining operation, Mr. Holtzclaw is the best person to run the operation; there are people in this community who have been doing business with him for 30 years who will speak tonight that he is a man of his word and will do what he says he is going to do. He stated that Mr. Holtzclaw is willing to work with everyone on this and willing to work with what the county believes is the best interest of not only this property, but those living in this area.
- 42.3 Mr. Lewis briefly addressed the issue of buffers, noting that the ADEQ requires a 50' buffer or even less in certain situations and Mr. Holtzclaw doesn't want to go any closer than what the State prescribes on this and that buffer would be next to the neighbor who is in favor of this project. Mr. Lewis stated another upside to this is that those who have visited this site can testify to the fact that the spot where the pit would be is far into the property and it wouldn't be possible to see anything other than trees. He stated that this court has a tough decision to make and he believes that they will treat everyone fairly.
- 42.4 Benny Holtzclaw, owner of Holtzclaw Excavating and the subject property, addressed the Quorum Court stating that he has lived in Washington County his entire life and has 35 years experience in the excavating business. He noted that he has been affiliated with seven dirt pits which is a part of his business and there is a great need for this as there is currently only one red dirt pit in operation. He stated that he has hauled dirt from all of these pits, but has only owned one other pit in the past.

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- 43.1 Judge Edwards asked how long this red dirt pit is expected to last; to which Mr. Holtzclaw responded 4-6 years. With regard to the other red dirt pits that he has operated, she asked whether he had restored the earth back to use; to which Mr. Holtzclaw responded that they are currently in the process of doing this with the Luttrell's Pit on Hwy. 16, noting that they have hauled dirt out of this pit for over 30 years along with others and is now helping them to reclaim it. He explained that they have a contract with the City of Fayetteville who is bringing all of their waste dirt to this pit but with over 2 million yards of dirt removed from this pit, it will take a long time to reclaim. Judge Edwards questioned whether the owners of these other pits have restored them back to use; to which Mr. Holtzclaw responded that one is the White Pit that Johnny Tyson bought that hasn't been restored and he is unaware of plans for these other pits.
- 43.2 E. Madison asked why Riches Road wasn't considered as a haul road; to which Mr. Holtzclaw responded that there are so many houses on that road while the proposed location is back on top of the hill away from everyone.
- 43.3 E. Madison asked what the speed limit was on Riches Road; to which Assistant Road Superintendent Shawn Shrum responded that it would be 30 mph.
- 43.4 E. Madison stated that it looks like the property encompasses a part of Riches Road already and then the next closest property owner on Riches Road didn't even give an opinion on this red dirt pit, so it just looks like a path of less resistance.
- 43.5 J. Firmin asked who was responsible for reclamation to which Mr. Holtzclaw responded that the landowner was responsible and in this case, it will be him. He stated that he would plan to strip the topsoil off of it and store it in the back and this pit will be a 15 to 20' cut with a 3-1 slope and where the knoll is, it will be flattened and they will put the topsoil back.
- 43.6 J. Firmin addressed #7 on the criteria list that they have been asked by County Attorney Steve Zega and Planning Director Juliet Richey to follow in trying to determine whether this conditional use should be allowed, "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 this zone." He stated that one of his concerns for the surrounding property owners is the fact that the land that has been used and is being reclaimed right now, is not being reclaimed by the sitting property owner who wants to start another pit. J. Firmin stated that he believes it is germane to the conditional uses that they have to follow and consider what sort of assurance

the surrounding property owners have that he will in fact reclaim the property; to which Mr. Holtzclaw responded that there will be a bond and whoever has the permit is responsible and if they don't reclaim it, this is done with the bond money. In his case, this property will actually be a better piece of property because he currently has no use for it other than cattle.

- 44.1 J. Firmin asked who determines how much bond is required to which Mr. Holtzclaw responded that the ADEQ determines the bond by the acreage.
- 44.2 County Attorney Steve Zega addressed J. Firmin's question, stating that Mr. Holtzclaw is correct that whoever gets the permit from the ADEQ is ultimately responsible for reclamation and ADEQ has a formula that they use per acre to determine the amount of bond required. He stated that at one time it was \$50,000 per acre, but he is not sure of the current formula. He further explained if the property holder goes bankrupt, the bond is static because if they buy a bond once, it is there forever and if the price of reclamation goes up and the bond remains the same, you can have a gap that is essentially not filled and ADEQ is responsible to reclaim the rest.
- 44.3 A. Harbison stated that there were a lot of pits that were mined before the law was passed that they had to be reclaimed, but all new pits have to be reclaimed. She doesn't believe that people are aware that a lot of those pits were grandfathered in.
- 44.4 E. Madison asked whether they were saying that the bonds were not sufficient; to which Ms. Richey responded that she has been told by ADEQ that there were gaps in the bonds for the Lindsey property, but she does not know the full story or if it was because of the bankruptcy or if ADEQ did not do a good job in following up to make sure that his bonds were not expired. She stated that she has heard several different things and does not know whether Mr. Lindsey held the permit for Mr. Rich's property as well and if so, she does not know why it is not being reclaimed.
- 44.5 H. Bowman stated that in looking at the map, and the small county road, Riches Road, that dead ends into this property, it looks like there would be far fewer people impacted (possibly six) than it would on the collector road with all of these neighborhoods. He stated that he has driven Harmon Road all the way from Tontitown all the way down to that way, and there are many really nice homes and a lot of traffic flow both North and South in this area.
- 44.6 H. Bowman stated that it appears to him that coming out onto Harmon Road is probably the worst of three options; and he inquired whether the Rogers

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Group had simply denied this possibility or whether it was a conditional deal based on the price for traveling through there; to which Mr. Holtzclaw reiterated that he has spoken to the Vice President twice and he just said that they were not interested at this time and there was no discussion about price.

- 45.1 H. Bowman stated that he sees Riches Road as the ideal access that would effect far fewer people and reduce the number of possible accidents impacting the neighbors.
- 45.2 B. Ussery stated that his concern is with Harmon Road as it just looks like an accident waiting to happen with as much traffic travelling through and with the number of trucks they are talking about. Further, he questioned why there couldn't be a little larger buffer area looking at it from the perspective that this is all it would take to make that issue go away. Mr. Holtzclaw stated that it is just the amount of dirt that would be taken away and on the south side it won't matter if it is 40' or 50' because it will be flat on top because when you cut a slope 15' into the ground, that 50' will be 15' to 20' in the air and you will be down on the level.
- 45.3 Mike Kelly, registered professional Engineer, addressed the Quorum Court stating that he has over 30 years of experience in this industry and served as a county engineer for over 20 years noting that he would be going through his PowerPoint outline and presenting exhibits related to the red dirt project.
- 45.4 Mr. Kelly stated that there had been discussion about using Hamestring, Riches and Harmon Roads and they elected to use Harmon Road as they did not have legal access to Hamestring Road. He explained that Riches Road is a gravel road that does not have sufficient right-of-way for a public road in Washington County and would require acquisition and construction in order to bring that road up to current County standards and the right-of-way acquisition would most likely be tenacious as well. He stated that they do not have the right of eminent domain as counties, states and utility companies do; therefore, if they ran into one opposition, they could not further the project.
- 45.5 Mr. Kelly addressed the history of our county roads and in particular Harmon Road, stating that Harmon Road like most county roads in this area were built using horse teams and plows back in the 1800's, long before the automobile revolution. These roads have transformed over the years in alignment and surfacing to what they are today. He refers to these roads as "farm to market" roads as they allowed our farmers and ranchers to get their commerce, meat and produce to the town market. He stated according to staff, this is also a major collector road which has federal highway designation and means that it is a major road that is one of the main routes to achieve moving public and

commerce to a particular area. These roads are usually subject to federal funding for improvements when available.

- 46.1 Mr. Kelly addressed their site plan for the Rich Red Dirt and explained that they are not creating a new drive, but modifying an existing driveway that leads to a rent house that they were going to use as their main entrance. Mr. Riches' renters use those roads, one a disabled Veteran. He noted the location of the gate as well as the 2 security lights, sediment basins, hatched area and a 9.3 acre mining site. He explained that the driveway will be a paved surface made with 250' x 40' x 28' asphalt and 8' shoulders. He also explained that the typical sections they plan to build with the road; 40' wide surfacing, 8' shoulder, 12' lane with 10" of pc concrete and another 12' lane with 10" of pc concrete, 8' shoulder, all on a 6" aggregate base. From the end of that road, they plan to create the haul road which would just be a gravel road that would be 20' wide. He stated that these are not public roads and would not have public designation or would they be opening them up to the right-of-way to the public as they are private roads.
- 46.2 Mr. Kelly noted the various areas that would be addressed with this project: Drainage intensity will not be increased, but actually reduced. He stated since they are going to cut the tops of the hills off to make them flatter, an increased time of concentration will be created for the storm water runoff to reach the streams down below it. Erosion control measures will be established, set-up, designed, monitored and kept at all times.
- 46.3 Entrance to the property will be protected by fencing and gates with proper signage and lighting with truck entrance signs placed along Harmon Road for entrance safety with LED flashers used if needed to warn the public of trucks entering. Operation of the facility would be from 7:30 to 5:30 during the summer months and 8:30 to 4:30 during the winter months and will be closed during inclement weather. Adequate sight visibility will be obtained and a detailed traffic study will be submitted for preliminary LSD. A geotechnical investigation will be conducted and recommendations followed for pavement preservation. Regarding traffic, it is estimated an average of 50 trucks per day will be using this facility and it will take approximately one year to generate traffic volume. He noted the 100 trucks that he has heard people speak of most likely come from 50 trucks coming in and 50 trucks going out. Egress to Harmon Road will be monitored and kept clean at all times.
- 46.4 Equipment necessary for this operation will be trucks, track hoe, track loader bulldozer and water sprinkling equipment for dust control. No fuel, chemicals, or hazardous materials will be stored on the site. Topsoil will be salvaged as a berm around the perimeter of the knoll removal project for reclamation

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purposes. Reclamation (applying topsoil and vegetation) will be continuous as removal of the knoll progresses. Absolutely no blasting will be performed under any circumstance. A 50' buffer will be obtained between the knoll removal site and the property lines to the south and west of the knoll removal site. The entrance road buffer varies from 28' to 35' to the north edge of the proposed entrance to the property line. Moving the drive to the south to create more of a buffer would decrease safety sight distance and this is why they do not want to adhere to a 100' buffer on the road. He noted that ADEQ has a requirement for a 50' buffer on the site itself and they are more than happy to adhere to the 50' buffer. He noted that the property owner to the south is for it; the property owner to the east made no statements, so all properties around their actual removal site are either for it or null. A permit will be required and obtained by ADEQ.

- 47.1 Mr. Kelly addressed a Google Earth map showing the site for which Benny Holtzclaw has a permit to mine dirt at that location that expired June 30, 2014, and is now to go under reclamation; however they didn't take anything out, so there is nothing to reclaim at that location. He noted the project and boundaries of their proposed mining development, as well as the U of A hazardous waste site to the west; other dirt pits located in the area; a rock quarry located in the area.
- 47.2 Mr. Kelly reported at the Planning and Zoning meeting on November 6, 2014, he came up with a circle of compatibility by picking a point in their project closest to the densest population and objections they are having from neighbors and figured a distance of roughly 1300 feet and drew a circle to see who all they would affect with their circle of compatibility. He noted within that circle there is the Holtzclaw Excavating site, U of A Hazardous waste site, and the Rich Red Dirt site. He explained in drawing this he crossed five properties encompassed in the circle, two being rent houses owned by Mr. Rich, one the neighbor next to Mr. Rich who is indecisive whether the project goes through or not, and two are landowners who are opposed to the project. He noted as well the toxic waste site and all of the dirt and rock pits in this area.
- 47.3 Mr. Kelly stated there were three reasons given by the Planning and Zoning Board for denying their CUP, one being compatibility and he wanted to show that they really are compatible with this area. He noted another reason given for denying their CUP was that there is a high likelihood that this project will be injurious (causing harm, hurt, damage, or distress) 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 in the surrounding area. He reiterated the fact that there is a

hazardous waste site on Harmon Road and on that site he had an associate of his, who has a PhD with the University of Oklahoma, who performs his environmental assessments look into this site and presented a 77 pg. report for the environmental concerns, not only for this project, but for all the projects in this area. He reported that the site is a closed, mixed waste, low-level, radioactive and hazardous waste disposal site that was closed in 1999. The report continued that there is contamination in the ground water solvent and post closure monitoring appears to be ongoing with some inspections as late as 2008. Mr. Kelly noted that they would not be disturbing the ground water or disturbing that hazardous waste site; however, it is a negative impact in this community, in this area that would be disclosed for real estate transactions. Therefore, it is his opinion that the toxic waste site served as a major detriment to the property values in this area, including Mr. Riches. If the project is approved, the scenario is that this would have an insignificant, short term impact of increased truck traffic; however, a greater long term positive impact because at the end of the mining of the knoll, it will be a flat, grassy plain conducive to residential building and/or agriculture.

- 48.1 Mr. Kelly stated that the third reason given for denial of their CUP was safety. and Ms. Richey advised him by email that that Harmon Road is posted at a speed of 45 mph. and this speed limit would stand unless they could prove this is too high of a speed for this section of County road per ASSHTO's "A Policy on Geometric Design of Highways and Streets", 6th Edition, also known as the Green Book; and that they must consider horizontal and vertical curve alignment and super elevation, and only after submitting all information, findings, etc. as per these standards, would the County consider any differing statement of designation. Mr. Kelly stated being a county engineer for 20 years; it is easy for him to determine that Harmon Road, from the top of the hill where Mr. Elkins drive and the toxic waste site is located all the way down to Wedington Woods Drive, would not qualify for 45 mph. design because the hill is too steep and the curves are too sharp. He stated that he assisted in a survey with a robotic data collector approximately 1800' of Harmon Road and those results were submitted to Planning personnel.
- 48.2 Mr. Kelly reported at the November 6, 2014 meeting the Planning and Zoning Board questioned his findings as he had used an outdated version of the Green Book. Mr. Kelly stated that he was told to use the 6th Edition, but they used the 4th and 5th Editions to check his work, noting that there is different information in the new editions and when one is outdated, it should be discarded and the latest edition should be used to verify engineering concepts. He received a letter from Mr. Grote stating different findings, but he even stated that the velocities interpreted were less than 45 mph. He believes that Mr. Grote did not properly interpret the information then and with

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his current findings because he stated that the curve that they surveyed had 8% super elevation, but it can be seen on the cross sections that it doesn't; and it doesn't even address the fact that outdated data was used to compare his findings. As a professional Engineer, he took an oath to protect the health and safety of the public and when he discovered the discrepancy; on January 20, 2015 he mailed a set of stamped as built plans for this section of road to Judge Edwards and the County Superintendent with his velocity findings for consideration and immediate and future safety improvements. He stated that the horizontal curve only meets 15 mph. and one of the vertical curves near their entrance only meets 20 mph.

- 49.1 Mr. Kelly addressed a 200' section of Harmon Road where he took cross-sections every 25' to create a profile of Harmon Road which shows how much super elevation each lane of that curve holds. He noted that the Planning Staff claims that this curve has 8% super elevation throughout the whole curve; however his cross-section indicates on the curve that the northbound lane has 8% super elevation and the southbound lane does not.
- 49.2 Mr. Kelly next addressed the intersection sight distance stating at this point the information provided is little since this section of road does not meet 45 mph; however, he wanted to point out deficiencies in the information the County is providing stemming from their research of Chapter 9 of the 6th Edition Green Book. He read from the book that, "An intersection is defined as the general area where two or more highways join or cross, including the road way and roadside facilities for traffic movements within the area. Each highway radiating from an intersection and forming part of it is an intersection leg." He pointed out that they are not building a state or county highway or county road, but they are modifying an existing driveway. He stated he was unaware of what the sight distance is on an existing driveway and whether they have to adhere to the same standards or not which is something he will look into if this project goes forth. Mr. Kelly wanted to also point out on the time gap on truck instances is the intersection control. He stated that the recommended dimensions on sight triangles vary from type of traffic control used at an intersection because different types of controls impose different legal constraints on drivers and therefore result in different driver behavior. He noted that they will not have control of this intersection; it will not be mandated to have stop signs, yield signs, or traffic signals as it is an existing private drive wanting to be modified into a commercial drive for their use. He stated that Planning Staff held us to intersections with stop control on a minor road; and they will not have stop control on this road which is not a minor road, but rather a driveway. Mr. Kelly stated therefore he believes that Planning Staff has misinterpreted the Green Book in both of these instances with their increased sight design from 500' to 628' that they changed at the last meeting.

- 50.1 Mr. Kelly addressed neighbors' comments stating that the majority (30 out of 54) of the comments address safety along Harmon Road, which tells him that they have a current safety problem on Harmon Road. He stated at the last meeting he made suggestions to staff to correct this by erecting a stop sign at Wedington Woods Drive which does not have current sight distance as it is as short on sight distance as they are short on their sight distance to the south.
- 50.2 County Attorney Steve Zega stated that they are not talking about a stop sign on Wedington Woods, and asked him to keep his comments relating to the proposed drive.
- 50.3 Mr. Kelly stated that there are currently safety problems in that area and he has made suggestions to remedy some of the safety hazards and the addition of their drive may add to that; however, he maintains that they can remedy their situation the same way that the county remedies theirs. He recapped the points he had made regarding the county's denial of this CUP, stating that they have overcome all criteria found in the ordinance and have provided both reasoning and documentation for an approved CUP recommendation..
- 50.4 R. Dennis asked where Mr. Kelly was employed as a County Engineer to which he responded Cherokee, Adair, Sequoyah, Okmulgee, and Wagner Counties in Eastern Oklahoma.
- 50.5 R. Dennis stated that he is a believer in a person's property rights. He asked how long it takes with a stopped dump truck loaded with red dirt to go 30' which is how long it would be to go across the highway and turn; to which Mr. Kelly responded that he would have to defer that question to Mr. Holtzclaw.
- 50.6 Mr. Holtzclaw asked a truck driver in the audience to respond to R. Dennis' question and he stated he could go 30' in 5-10 seconds.
- 50.7 R. Dennis made the point that many teenagers cannot read speed limit signs. He reported that he visited this site and counted how long it took to see a car coming from the north and decided that he had stayed long enough and started to walk across and had to jump back as it took him 4 seconds. He noted if there was a dump truck pulling out, taking 5-10 seconds to get out of the way, he can see this resulting in disaster.
- 50.8 A. Harbison addressed the old red dirt pit located on this property and asked if it exited onto Hamestring Road; to which Mr. Kelly responded that it had to cross over another mining property and did exit onto Hamestring Road. He further explained that the owner of that old red dirt pit went bankrupt and so they lost their easement. She noted that they are looking at the easiest, most

inexpensive way to get their dirt out of there and she believes that it is too dangerous to come out on Harmon Road. She stated that she is also for property rights, but they have to put the safety of the general public first and she is hopeful that they can find another way out.

- 51.1 R. Cochran stated that he used to drive Harmon Road north all the way to Hwy. 412 going to work in Tontitown and it didn't take him long to determine that this was not a safe way to go. He noted that the speed limits are not necessary followed by most driving that road and he also saw instances of people passing on double yellow lines. He stated that reducing the speed limit to what they are recommending would technically make it possible to do what they want to do as an entrance and exit onto Harmon Road, but what people driving this road will do is a whole different thing. He agrees that people should be able to use their property the way they want to, but when it gets in the way of personal safety, he has to draw the line. Regarding concern over traffic coming from the north, he stated the folks coming down that hill are not slowing down and are going 50-55 mph. after they come out of the curve at the bottom, and he really would hate to see someone lose their life if they put the entrance at that location.
- 51.2 B. Pond stated that he also has concerns with the sight distances and it probably wouldn't make a difference with either of the engineering books used. He stated that he would like to see Mr. Holtzclaw give his permit to mine his red dirt and he appreciates their concern for the people on Riches Road. He believes that Mr. Holtzclaw is doing everything he can to get along with all the people around him. He noted that pointing out other safety issues on that road that don't pertain to his development makes it worse. B. Pond stated that this is a ribbon of country road that is paved and runs all the way from Tontitown to Farmington and he does not have a safety issue with the truck drivers, but those trucks coming out of there and doing what they are supposed to do, when a kid comes up behind them that is late for work or school and passes on a double yellow line. He stated that he would approve this if they could use Riches Road, though maybe not quite wide enough would be a safer alternative.
- 51.3 County Attorney Steve Zega pointed out that this time was to be spent asking questions of Mr. Kelly and the Quorum Court can deliberate later in the agenda.
- 51.4 Remarks by Opponents of the Project: County Attorney Steve Zega requested that any spokesperson for the opponents of the project to speak first.

- 52.1 B. Pond asked that once the public speaker has finished, that they ask for shows of hands that are in agreement with the comments made.
- 52.2 Dick Johnson, resident of Pin Oak Road, addressed the Quorum Court stating that he lives within ½ mile of this property. He stated his appreciation for the diligence put into the presentation to this point, along with the questions and statements which have robbed almost everyone of anything that they have to say. He stated that he is not an engineer, but has lived at this address for 40 years and driven that road every day and seen all sorts of things. He stated that signage will not do anything because just like it is against the law to litter, as soon as people leave Hwy. 16, whatever litter they have in their car goes out the window. He stated that he felt like Mr. Smith was referring to those opponents of this project present tonight as "not in my backyard" types to which he responded that 90% of the people present have no objection to the mining of this land, but their concern is for the safety of their family and children. Mr. Johnson pointed out that Hwy. 16 bounds this industrial area on one side and Harmon Road bounds it on another side. He noted that they have done their part quietly to be good neighbors to Washington County and don't complain because they do have a quarry, multiple dirt pits, a hazardous waste dump, and also received 55% of the affluent flow of Fayetteville sewage when the new plant was built.
- 52.3 County Attorney Steve Zega asked for a show of hands of those in agreement with Mr. Johnson's statements and a large majority of the audience held up their hands.
- 52.4 Walter Ward, resident at 16365 Hamestring Road which is just north of this site, addressed the Quorum Court stating that he has a little bit different experience. He stated as a business owner he doesn't want to stop Mr. Holtzclaw from digging his dirt; however, he has had a lot of experience over the years with the red dirt farms. He noted that they talked about installing a spray pit to wash down the trucks before they start out on the road, but he has driven up and down Hamestring Road for years and they have been very good about bringing in a brush to clean off the red dirt and rocks. He stated however, that road has a very minor incline and it doesn't take much for the trucks to get out, but they still lose a lot of dirt and rocks, and even though they are supposed to have tarps covering their loads, only about half of them do it. Mr. Ward reported that he has been following a truck on Hamestring Road when a rock fell off in front of him that he ran over and blew a tire. Further, he noted that they track red dirt out onto the road more so in the past than currently and no matter how good they are about keeping the road clean, the road will still have red mud clay on it and if it rains, will become exceedingly slick and if this were to happen on the curve of Harmon Road,

cars will end up in the ditch. Mr. Ward stated that the size of the properties around the quarry portion of the property is larger at 10 acres or so, they are talking about a quarry that will be very near a major housing development just across the road and there will be a lot more people affected than from the quarry on the other side. He further noted that the red dirt farms that are now being closed right up the hill produce sounds like they are having a tank battle going on.

- 53.1 County Attorney Steve Zega asked for a show of hands of those in agreement with Mr. Ward's statements and a majority of the audience held up their hands.
- 53.2 Sherry Main, resident at the end of Riches Road and property owner of two other parcels on Riches Road where her family resides, addressed the Quorum Court stating that she was not opposing the red dirt pit that is adjacent to her property, Mark Rich is her neighbor and Mark and Betty Rich have assured her that the land will be reclaimed; the operation will not be long term over six years; and there will not be any additional land added to the original ten acres to be mined. She noted that there are 21 families who live on Riches Road, most with houses sitting very close to the road and have children who play along the road. She stated that they had this very same issue in 2002 with Gary Combs before John David Lindsey bought the Steven's Red Dirt Pit. Ms. Main noted that Riches Road is narrow and the houses along the road are very close to the road itself and the road is not wide enough for two trucks to pass and the county only has a 30' right-of-way easement for Riches Road which is not adequate for vehicles to pass with dump trucks. She stated that using Riches Road for this red dirt pit would affect houses sitting very close to the road and safety of children playing; however, using Harmon Road would only affect maybe three homes if turning left from the pit site onto Harmon Road. She further noted that these homes do not sit close to Harmon Road and the main issue she is hearing from folks in Wedington Woods and along Harmon Road is the safety concerns with the road and the inconvenience of following dump trucks and dump trucks entering and exiting the pit onto Harmon Road. Harmon Road is a main artery road for Hwy. 16 and Hwy. 412 and the hill on Harmon Road south of the pit entry and exit area has always been a problem with cars travelling too fast and if a slower speed limit is posted with flashing signs indicating trucks turning, this would handle the safety issue. Regarding safety of driving on Harmon Road, she believes that people should be held accountable for themselves and obey the law as speed limits are posted for a reason. Driving on Hwy. 16 West of Wedington is dangerous and dump trucks travel that road daily. The curve on Wedington and Hamestring is very dangerous, but they are aware that there are trucks entering and exiting so they slow down. Ms.

Main reported that her property was reclaimed by ADEQ and she now has a smooth sloped, nice area that is fenced, seeded and returned to agriculture and she now has cattle on the property.

- 54.1 In response to a question from Judge Edwards, Ms. Main stated that she is not opposed to the red dirt pit, but she is opposed to using Riches Road for access.
- 54.2 County Attorney Steve Zega reminded the audience that this time is reserved for folks to speak who are opposed to the CUP as applied for with the collector road going onto Harmon Road.
- 54.3 Jim Boyd, resident of Washington County for 40 years, addressed the Quorum Court stating that he has raised his family on the fourth property to the north of this proposed red dirt pit site. He stated that there is a creek running through there and this is a concern as well as the safety issue on Harmon Road. He has many drivers in his family and the thought of one of them colliding with a dump truck is a bad thought. He stated he is hopeful that the Quorum Court will be able to reach a conclusion tonight because there are many people who have taken the time to be here. He believes that they reached the right decision the first time and he hopes that they stick with that.
- 54.4 County Attorney Steve Zega asked for a show of hands of those in agreement with Mr. Boyd's comments and the majority of the room raised their hands.
- 54.5 Bill Robertson is a resident of Wedington Woods and has the closest house to the entrance of Harmon Road. His elevation is higher and he can look down on the pit, so he has an objection to the pit itself. Regarding the safety issue, he has a view of the hill and can testify that people fly down that hill and he is the one who calls 9-1-1 when people go off of it. He stated that 50 trucks don't run just one load a day and they would be talking about hundreds of trucks coming in and out of there. He noted that they do have a stop sign at the entrance of Wedington Woods onto Harmon Road, but this issue of sight distance, there is no way that drivers will be able to slow down in time. Mr. Robertson stated that he has been a certified appraiser for 35 years for one of the local lending institutions and the devaluation from the radioactive dump site occurred years ago. He noted he has purchased several lots and properties in Wedington Woods and was never disclosed about that pit. He stated that people will know that they have a safety issue at the bottom of that hill. He also stated that they have a red dirt pit across the hill and it will devalue their property.

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- 55.1 County Attorney Steve Zega asked for a show of hands of those in agreement with Mr. Robertson's comments and the majority of the room raised their hands.
- 55.2 Sherry Williams, resident on Dogwood Drive, addressed the Quorum Court stating that she bought her house in 2004 and was not disclosed of the problems at the top of the hill. Her husband actually worked that excavation and her house sold for \$244,500 to her and there was no devaluation because of it. She stated that her main concerns at this time are with safety and devaluation of her home.
- 55.3 County Attorney Steve Zega asked for a show of hands of those in agreement with Ms. Williams' comments and the majority of the room raised their hands.
- 55.4 Janice Ward, resident ½ mile north of the quarry site, addressed the Quorum Court stating that there is so much talk about people driving too fast on Harmon Road and how that creates a safety issue and that people need to be held accountable for how they are driving. She stated her concern even more than teenagers who drive irresponsibly are the school buses from two school districts that go up and down Harmon Road, pointing out that school buses are a lot like trucks, they don't stop as fast, but they are in a hurry to get kids to school on time so they make up time where they can. She believes if a bus was driving the speed limit and a dump truck was pulling out in front of them, she doubts that they could stop in time and that is her major concern.
- 55.5 County Attorney Steve Zega asked for a show of hands of those in agreement with Ms. Ward's comments and the majority of the room raised their hands.
- 55.6 Remarks by Supporters of the Project: Sherry Main, resident on Riches Road, addressed the Quorum Court again to do some rebuttal on comments made regarding noise, property devaluation, stating that Rogers Quarry is right behind her house and she does hear the blasting when she is sitting on her deck, but does not hear dump trucks. Regarding safety and property devaluation, she does not see any devaluation of homes and if there was, she would have a great devaluation. Regarding the school buses stopping on Harmon Road, she stated that there may be 1-2 stops by school buses on this leg of Harmon Road because there are only 3 homes along this stretch and buses don't stop from where the entry exit is to the pit to Hwy. 16 that the trucks would be encountering. She stated on Riches Road they have two school buses that pick up small children and it would be very much more dangerous for a dump truck to be passing a school bus with children loading and unloading from the buses.

- 56.1 Terry Davis, resident on Beechnut Lane, addressed the Quorum Court in response to the comments made earlier about clay being slick when wet and about tire washing. She stated when looking at the profile going up the hill with a 17 degree grade and a 35-45 degree angle, she was following a dump truck into town today on Hwy. 16 that was hauling red dirt piled up high and almost to the end of the tail gate. She believes that Arkansas law requires tarping of trucks hauling rock, sand and gravel, but not dirt and so the red dirt farms are not required to do so. She questioned whether dump trucks going up this 35-45 degree incline and have to catch a lower gear, the dirt will shift and there will be dirt/clay falling off the trucks and while it may only be a small amount, by the time 50 trucks a day do this day after day, it builds up on the highway. She further noted that the red dirt pit would have no liability as it would be considered a road hazard by insurance companies. She stated if the owners of this property would sign some type of affidavit stating that they would be responsible for any accident on that hill as a result of the build up of the red clay, then she would support them, but she doesn't believe their attorney would advise them to do so.
- 56.2 Mark Rich, resident of Washington County for 52 years, addressed the Quorum Court stating that when he first bought his family farm there were fewer houses and a 20' driveway easement that wasn't wide enough, so when he bought his home on Harmon Road, the couple who owned it sold him land so that he would have another way out of his property. He noted he has had realtors try to get him to list it and when they viewed his rent house and asked him about the chain link fence on the hill, he advised them of the situation, showed them the documentation, and was told that he would have to make complete disclosure on any home that they sold within ½ to 1 mile of that site. When asked about the worth of his home or rent house, he was told that they couldn't estimate what it would be worth to somebody.
- 56.3 Mr. Rich stated that he does not want to hurt these landowners property values or damage their lifestyle in anyway; however, due to another's bankruptcy filing, he has no other way available to access and exit this property than Harmon Road. He stated that Mr. Holtzclaw has been in this business for 30 years and the money that would be made from this red dirt pit would be Washington County tax money. He stated that the realtors who looked at his property advised him that the only people who would be interested in his farm would be mining companies and they would be more interested in the state-grade limestone that was under the red dirt
- 56.4 County Attorney Steve Zega advised that Mr. Rich's time was up; however, as the owner of his property the court can continue his time; and it was voiced by some JPs that Mr. Rich should be allowed to continue.

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- 57.1 Mr. Rich continued stating that over the years he has lived here and his parents lived on the farm for years and they had a radioactive dump site and quarry across from them and this land has always been considered commercial by the bank, the taxes are commercial. As far as going to the south of the hill, everybody including himself, is worried about the safety of the people in the neighborhood; however, he feels that if there was a safety issue, then all of the neighbors would have already wanted to clean it up so there wouldn't be any site problems. He drives a Toyota Forerunner and he has tried to go around that curve with cruise control set at 45 mph. and ran off the side of the road. He noted in one of the first pictures shown of vegetation, one of those trees is on his side of the property, but he was told not to cut anything and wanted to do what he was told. As stated by Mr. Shrum, the county doesn't have very much right-of-way, but from there over to the electric line is Ozarks Electric, who does have a right-of-way, with a gate on his property and are supposed to clean it. He contacted Ozarks Electric and they stated that they wouldn't do it and Planning Director Juliet Richey advised him that he couldn't do it until this is over with, so they actually have the right to clean that area for the site distance.
- 57.2 Mr. Rich reported speaking to Mr. Elkins three weeks ago and being put in the center of this has really been hard and he understands the pressure that has been put on them. He reported that someone made the statement that he had threatened him for the last 2-3 years, which is not the case in any way. He noted when he purchased the land adjoining them, he asked about it and was told that he would be cleaning the knoll off one of these days, so feels that he has been only honest and upfront with them.
- 57.3 Mr. Rich stated that he has driven a dump truck himself and there is a right way and a wrong way. He stated that it is against the law for trucks not to be tapered; they have to be loaded 6" below the boards including the tailgate. In his research on speed limits he contacted the State Police and was told that it is at 45 mph. that any car involved in an accident in that area would be given a ticket for driving too fast for conditions so any vehicle driving over the 25 mph. involved in an accident would be written a ticket. He believes one thing they could do for safety is clean that hill off and lower the speed limit at least down the hill and through the curve.
- 57.4 Matt Holtzclaw, son of Benny Holtzclaw, addressed the Quorum Court stating that he has been doing this for about 15 years and this is their livelihood. He stated that while he understands the concerns about safety, he thinks that some of it is a little over-exaggerated. He stated that they are not trying to upset or aggravate people, but are just trying to make an honest living. He believes that there is a way to resolve every problem or circumstance where people can meet in the middle.

- 58.1 County Attorney Steve Zega asked for a show of hands of those in agreement with comments made by the supporters of the project and about 7 people raised their hands.
- 58.2 E. Madison explained that she is the sponsor of this Ordinance as the new Chair of the County Services Committee and planning matters originate from there.
- 58.3 AN ORDINANCE RATIFYING A CONDITIONAL USE PERMIT DENIED BY THE PLANNING AND ZONING BOARD: E. Madison introduced **An Ordinance Ratifying a Conditional Use Permit Denied By The Planning And Zoning Board**, and County Attorney Steve Zega read the ordinance which is on first reading.
- 58.4 County Attorney Steve Zega explained that depending on what happens tonight, he will probably go ahead and read Ordinance #6.2 unless there is a motion to advance #6.1 now and decide on it. However, if they do that, he cautioned them that public comment will need to be opened back up prior to voting.
- 58.5 E. Madison stated if they were to leave it on first reading and advance it to second reading next week, that would not require additional comments; to which County Attorney Steve Zega concurred.
- 58.6 E. Madison noted that many of the supporters of the project may have left and didn't get a chance to speak; to which Mr. Holtzclaw responded that he thought they were done with comments in support and since some of them had been there for 2 ½ hours, he told a couple of them to go ahead and leave.
- 58.7 E. Madison stated that she personally feels like she has heard enough to be ready to vote tonight, but doesn't want to make a motion without some sentiment from the court.
- 58.8 S. Madison asked if there was an extraordinary vote required to support the decision of the Planning and Zoning Board; and County Attorney Steve Zega responded if they move it up, it would require a 2/3rds on the two subsequent motions to do so. She verified therefore that only expediting the matter requires a 2/3rds vote or 10; otherwise, it takes a majority.
- 58.9 J. Maxwell stated that they have been given some different insights and perspectives and he has read through all neighbors' comments and

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information from the website; went out to the property and did a sight survey himself. He stated that this has certainly has raised some new things that he would like to research so he would like to have the additional readings allowing them time to follow up.

- 59.1 H. Bowman agrees with J Maxwell.
- 59.2 Judge Edwards asked if they wanted to suspend the rules and place the ordinance on the second reading and then do a third reading next week; to which County Attorney Steve Zega responded that they could do that or do the next two readings at regular Quorum Court meetings. She stated if that is what they wanted to do, the way they stand just moves it forward.
- 59.3 E. Madison responded to Judge Edwards statements, stating she is not sure that is what everyone wants to do, but pointed out if they advance it to the second reading and then have the third and final reading at a regular Quorum Court meeting, it means that all of these people will have to come back and sit through their Quorum Court meeting and not a Special meeting. Therefore, she stated if they want to hear more, they need to leave it on first reading, have the second reading next week, and the third reading at their next Quorum Court meeting so that parties involved and the public do not have to sit through their regular Quorum Court meeting because she believes that they will have a healthy agenda. She further stated that she could also move to advance it to second and third readings tonight to see if it fails or passes tonight which she believes may be the consensus.
- 59.4 S. Madison asked when the Quorum Court will actually be discussing this ordinance to state their positions because they have heard a lot of discussion tonight and the public probably would like to know their sentiments tonight which she is prepared to give, as well as to vote on the issue tonight.
- 59.5 County Attorney Steve Zega responded to S. Madison stating that there is nothing that says the Quorum Court can't talk about the ordinance tonight, but if they don't advance it, they can't vote on it because advancing it would be the actual deliberation part of these proceedings.
- 59.6 E. Madison stated if she were to make a motion to suspend the rules and advance Ordinance #6.1 to the second, if that passed it would move to second reading and if it failed, then it would stay on first reading.
- 59.7 **E. Madison made a motion to suspend the rules and place the ordinance on second reading by title only. R. Cochran seconded.**
- 59.8 Judge Edwards asked for a roll call vote on E. Madison's motion.

- 60.1 **VOTING FOR:** R. Cochran, R. Dennis, L. Ecke, A. Harbison, E. Madison, S. Madison, J. Patterson, B. Pond, B. Ussery, and D. Balls. **VOTING AGAINST:** H. Bowman, J. Firmin, and J. Maxwell. **The motion passed with 10 members voting in favor and 3 members voting against the motion.**
- 60.2 County Attorney Steve Zega read **An Ordinance Ratifying a Conditional Use Permit Denied By The Planning And Zoning Board** by title only.
- 60.3 **E. Madison made a motion to suspend the rules and place the ordinance on third and final reading by title only. R. Cochran seconded.**
- 60.4 In response to a question from R. Dennis as to what they were voting on; County Attorney Steve Zega explained that they are voting to suspend the rules and advance the ordinance to third and final reading by title only and they are about to vote on the merits of the ordinance.
- 60.5 R. Dennis stated his concern that they have listened to a lot of information tonight and believes in order to be fair that they need some time to have further discussion within this quorum to reflect on the information they have received before making a decision. He stated he would not be in favor of advancing the ordinance to third and final reading tonight, preferring to having their discussion and voting on the ordinance at their next meeting.
- 60.6 J. Patterson suggested that they have the final reading two weeks from tonight instead of having it at their regular Quorum Court meeting next week.
- 60.7 County Attorney Steve Zega stated that they have a motion on the floor with a second to place it on third reading, so they would have to vote on the merits tonight. In order to accomplish what J. Patterson is suggesting, he would have to vote against E. Madison's motion. He further explained that if this ordinance is on the agenda on second reading for a regular Quorum Court meeting a week from tonight, it would have to be taken off the agenda and leave the special meeting scheduled on the 24th and use that for the third reading and vote.
- 60.8 E. Madison stated that it has been her experience that when an ordinance advances to a second meeting, they may learn some additional information on their own, but they don't hear anything different. She encouraged anyone with questions to take advantage of this opportunity to get them answered. She noted that they have had a lot of people here since before 6:00 and if they do it next week or the week after, they will have to come back and the court will probably hear the same comments over again, so she is trying to be considerate of those in attendance. She reiterated if the ordinance does stay

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on second reading tonight, she will move it to a special meeting and not a regular Quorum Court meeting which means a shorter agenda.

- 61.1 R. Cochran stated as long as they are honest with their constituents and pull it from next Thursday's meeting, that is fair to them. His concern is if they don't have it on the agenda and it is brought back for a special meeting, they won't know to attend.
- 61.2 In response to a question from E. Madison, Quorum Court Coordinator Carly Sandidge stated that the special meeting for third reading is currently set for February 24, 2015.
- 61.3 R. Dennis stated that he thinks he knows how he wants to vote and they have heard extensively from those opposed to the project; however, he wants to be fair to those in favor of the project who may have left the meeting without speaking and asked whether there was anything else that they may have wanted to add or were they ready for the court to vote.
- 61.4 Mr. Kelly, Engineer for the project, addressed the Quorum Court stating that he would like to speak again on behalf of those in favor of the project.
- 61.5 R. Dennis stated that he would entertain that they allow Mr. Kelly to speak because he does not want anyone to feel like they got shorted and were unable to speak; otherwise, he would be ready to vote.
- 61.6 **E. Madison made a motion to withdraw her motion to suspend the rules and place the ordinance on third and final reading by title only. R. Cochran seconded. The motion was withdrawn.**
- 61.7 **E. Madison made a motion to suspend the rules and allow Mr. Kelly to speak. R. Dennis seconded. The motion passed unanimously by those present by voice vote.**
- 61.8 Mike Kelly, Engineer for the project, addressed the Quorum Court stating that their original sight distance that they were shooting for when they started this project was 500 feet; they were 426 feet without doing any clearing and if the county was to declare their right-of-way, they probably could have obtained the 500 feet.
- 61.9 Juliet Richey, County Planning Director, stated that Planning Staff has some things that they would like to clarify based on statements made by Mr. Kelly if the Quorum Court was interested.

- 62.1 Ms. Richey addressed the Quorum Court stating that there are several things that Mr. Kelly said that are engineering issues and Mr. Clay should probably address; however, staff has discussed all of the issues that Mr. Kelly brought up tonight and she didn't go into the minutia of all the engineering ins and outs, super elevations and how things are determined. She stated while he was taking into consideration both lanes and calculating the velocities on that road, they were taking into consideration the northbound lane which did have the higher percentages because that was the traffic in question that was heading north. She stated there were decisions made by the County's Engineer and team that they feel they can completely back and she does not know what the specific questions are, but everything that Mr. Kelly brought up the Planning Staff and County Engineer addressed. She stated that they need to understand that this is not a highway and they are looking at the best tool that they have to evaluate the safety. She noted that they spent hours visiting the site, discussing and debating it between one another and she believes that they have good, solid reasons for everything they did. She addressed the statement that he is modifying a driveway, stating that this is a residential driveway for one house and they are turning it into a commercial drive, much larger than it was and it would have 100 trips a day on it that basically functions as a minor road. Ms. Richey stated that she feels confident that they considered everything and looked into things that had the safest outcome in mind and that were appropriate for the situation at hand. She urged anyone who had questions about the appropriateness to please ask and Mr. Grote will provide the information in whatever detail they want in regard to detailed engineering.
- 62.2 H. Bowman asked about the questions raised over the different editions of the Green Book used by the parties; to which Ms. Richey responded that they did use some older editions at the meeting in November; however, how the sight distance is calculated, which is the critical part, did not change from edition to edition. She noted to eliminate confusion, all calculations that they got on the plan profile sheet from the County's Engineer in the letter were all done with the 6th edition. She stated that this can be argued, but is a mute point now.
- 62.3 H. Bowman stated if they are talking about 100 trucks a day during an 8 hour period or 12 trucks per hour or one truck pulling out onto that highway every five minutes, his concern is that they will be heading south up that hill with a loaded truck of clay and he is interested in what their speed would be by the time they get to the top of that hill. He believes that they will basically stop traffic every time a truck pulls out onto that road and he doesn't believe that is a very good proposition to have to deal with.
- 62.4 The audience responded to Mr. Bowman by clapping.

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- 63.1 H. Bowman continued stating that the issue about clay on the road is almost unavoidable and when it is wet, will be slick and will increase the potential problems on that road. He believes that the secondary road, even though it might not be a great place to move the trucks, there would be far fewer people at risk there and would dramatically improve the safety situation coming out of the site. He stated that these are the issues that he believes they need to talk about as a court before moving the ordinance onto a vote.
- 63.2 R. Cochran stated when they look at the seven criteria that they are tasked to make a decision on; the applicant has fulfilled items #1 and #2. He has a little question about #3 because he is concerned that this access road will get backed up early in the morning and the trucks may be cued out onto Harmon Road. He further has concerns about the red dirt debris that will be on Harmon Road and the very busy activity at this site. He noted that he travels Hwy. 16 coming in and there was a time when the other quarries actively mining red dirt were tracking it onto the highway which was a flat stretch of road; it was slick as ice when it got wet prompting Fayetteville to clean up their act and reduce the traffic, which helped the situation. With respect to item #4 whether the proposed use is compatible with the surrounding area, he feels they fail this criteria as well. He stated although the applicant feels that it is compatible activity in the area, he does not agree because there is a significant difference in the traffic pattern with trucks from this project as compared with the other site. Further, he stated that the access road is too close to the neighbors and loaded trucks traveling up that hill will be heard well into the Wedington subdivision.
- 63.3 R. Cochran continued stating with regard to item #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, this left hand turn visibility is a problem and trucks heading up the hill will back up traffic and create a hazardous situation for other traffic. He doesn't believe that reducing the speed limit will help this because people will go faster than the posted speed limit anyway. He has concerns about activity near the U of A waste site and although they declare that it has been cleaned up, they are still prevented from drilling there and the U of A did not explicitly give a green light on this. He addressed item #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, stating that there were only two exits from Wedington Woods and they either will reroute and go the other way and come out onto Hwy. 16 or they will come out on Harmon Road and face that truck traffic every day. He stated the noise reduces enjoyment and those trucks traveling up the hill will be loaded, grinding, and loud. He stated that

there is no question that property values will be reduced and he cannot understand the comment made that the property values will increase. Finally, he stated he is undecided on item #7. R. Cochran stated that this fails on several of the items that they are to consider and at this time, he cannot approve the Rich Red Dirt CUP.

64.1 **E. Madison made a motion to suspend the rules and place the ordinance on third and final reading by title only. R. Cochran seconded.**

64.2 Judge Edwards requested a roll call vote on this motion.

64.3 VOTING FOR: H. Bowman, R. Cochran, R. Dennis, L. Ecke, A. Harbison, E. Madison, S. Madison, J. Patterson, B. Pond, B. Ussery, and D. Balls. VOTING AGAINST: J. Firmin and J. Maxwell. **The motion passed with 11 members voting in favor and 2 members voting against the motion.**

64.4 County Attorney Steve Zega read **An Ordinance Ratifying a Conditional Use Permit Denied By The Planning And Zoning Board** by title only.

64.5 County Attorney Steve Zega explained that the next item of business on the agenda is for the Quorum Court to deliberate and then open up for public comment.

64.6 E. Madison reported that she did a lot of studying on this issue and received some telephone calls and letters in opposition to Rich Red Dirt. She stated she has been in situations like this and from her experience, when a property owner wants to do something with their property and run into opposition from neighbors, it never works well if they get approval against a ton of opposition. She also believes where there is a will, there is a way and she has seen it work but the better way is to do it in some type of compromised fashion. She noted that the Rogers Group has not been cooperative with them and that is disappointing, but her hope would be that there will be some further opportunities and she does not believe that by shutting off the Harmon Road access, it means that they cannot find a way.

64.7 E. Madison addressed the criteria that they must use in considering this, she does feel that Planning Staff has spent tremendous time and effort studying and restudying this and it is one of those instances where the court is not the experts, but has enough faith in their staff that they have done the right thing. She stated that they come into this with Ms. Richey's recommendation that the court follow their lead and deny this CUP. She stated in looking at the elements, she has focused on #4, #5, and #6 which is the ones where their determination usually comes in. She stated that Mr. Kelly was somewhat

convincing to her on the compatibility issue because the circle was meaningful. As mentioned by Mr. Johnson, they have all had their share of burdens out there including Wedington Woods that is definitely a residential community, but by virtue of being in the County, they are very close to widely varying things from their homes because they have rock quarries and red dirt pits, so to some extent she is wavering on the compatibility issue.

- 65.1 E. Madison stated that the biggest challenge for her is criteria #5 with safety. She reported living on a residential street near a school where the speed limit is 25 mph. and it is not the teenagers that are speeding, but moms on their cell phones picking up kids after school and cutting through the neighborhood. She stated you can do everything in your power including posting speed limit, having Sheriff's patrols check periodically and it remains the same. She further stated that they need to listen to their Road Department who says 45 mph. is the appropriate speed for this type of collector road; unfortunately they can't assume that everybody will obey the speed limit. She stated that this is one of the things that engineers and experts take into consideration when evaluating safety and to her the sight distance concerns, having dump trucks moving slowly carrying heavy loads that can't move or stop quickly; school buses are a concern of hers. E. Madison stated that she will have to follow County Planning's lead on this because of her concern about the safety on Harmon Road.
- 65.2 B. Pond stated that criteria #5 which is the safety issue due to the sight distance for turning, is his reason for denying this CUP request. He added that it is not just because of what the Planning Board tells him; he has driven out there many times and you can just see the potential problems. He stated that this does not mean that he doesn't want these folks to have their red dirt for the need of this material in the county and he believes that they are bending over backwards to be as considerate as they can.
- 65.3 B. Ussery asked whether procedurally each one of them need to say what criteria they base their decision on; to which County Attorney Steve Zega responded if they intend to vote to deny the CUP, they need to vote in favor of ordinance #6.1 which is saying criteria #4, #5, and #6. He asked if there was such thing as a right of domain against the Rogers Group to provide them with a road. that they are ratifying the decision of the Planning Board and denying the CUP; and yes, he would appreciate them saying under what criteria they are casting their vote as E. Madison and B. Pond did because if it winds up in court, it allows the court to look at the ordinance and their reasons.
- 65.4 B. Ussery stated that the reason that he will vote to ratify the decision of the Planning Board is due to what Planning Staff has said, he feels that there is a

big safety issue. But having said that, he is certainly hopeful along with E. Madison that they do find a way to make this happen and that there are compromises out there some where.

- 66.1 S. Madison stated that she is in support of the Planning Board and therefore, support this ordinance and part of her reasoning is that the Applicant has not really shown a spirit of cooperation or compliance or alternative options and instead have just argued with them tonight on the safety issues. She feels like their County Staff very thoroughly went through their concerns about sight distances, speed limits, curves and hills and very carefully documented the issues with safety on that road and represented with engineering details, though she does not feel that this is the place to hash out engineering details. She believes that the compatibility issue is once again something that is being argued with in the Applicant's response. She noted there is nothing any of them can do about the University's hazardous waste site that has been remediated because it is State property. She stated that the Applicant has pointed to the existing mining pits in the area, but almost none of them are active and none of the reclamation is complete. Therefore, adding 50 trucks a day to this would be highly incompatible with what is currently going on in the neighborhood. She addressed the Applicant's language of rebuttal to the injury of the surrounding neighborhood by stating that she was a bit curious about it and had trouble understanding what they were meaning. She believes that they are ignoring the fact that the property is not being used for mining or hazardous waste in a sense and the reclamation is not happening. She believes that this use would be a new injury to this neighborhood and the fact that there is a very close neighbor who is not objecting does not imply any position or consent in her book. S. Madison stated that she is a sole believer in property rights, noting that what money her family had from her grandfather on down was only in real estate primarily undeveloped, but some developed. She noted that their Arkansas Constitution speaks very strongly of the right of property and she believes in strong property rights, but she is also a very strong believer in neighborhoods, safety and compatibility issues. She stated for those reasons, she has to agree with our Planning and Zoning Board.
- 66.2 J. Firmin stated that he will be supporting the Planning and Zoning Board decision to deny this CUP, though there are still some questions he has and will be disappointed if this applicant is not able to use his property. However, he believes that criteria #5 regarding safety and opening up this road for 100 trips a day or about one every five minutes will change the nature of that side of the neighborhood.
- 66.3 L. Ecke acknowledged Ms. Richey and the Osmonds whose letters and calls she has received, stating that she heard their voice and read their letters.

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She stated that she agrees with them and supports them as property owners. She noted that they are in business and one day they or their grandchildren will be selling property and they want to maintain that value just as much as the applicant wants to do business here. She stated that she is always pro business and is the first one to tell the government to stay out of her business; and let her govern herself rightly and she believes that is what they want to do. She stated if they could come up with an alternative access other than Harmon Road because it is the safety issue that their neighbors are verbalizing loudly. L. Ecke stated that she is citing criteria #5 and #6 in support of property rights.

- 67.1 County Attorney Steve Zega stated that the JPs don't necessarily have to articulate every reason that they are citing criteria and can simply state the criteria number if they so choose.
- 67.2 R. Dennis stated that he will be supporting the Planning and Zoning Board's denial of this CUP and cited criteria #4, #5, and #6. He also asked if there was such a thing as the right of domain against the Rogers Group to provide the appellant a road.
- 67.3 County Attorney Steve Zega responded to R. Dennis that there are statutes for that and ways in which they can try to get a prescriptive easement or a private road, but it is not always that easy.
- 67.4 R. Cochran stated that he has already voiced criteria #4, #5, and #6 very strongly as his reasons for supporting the Planning and Zoning Board.
- 67.5 H. Bowman stated that he will be supporting the Planning and Zoning Board's denial of this CUP for reasons set out in criteria #4, #5, and #6.
- 67.6 D. Balls also stated that criteria #4, #5, and #6 were his reasons for supporting the decision of the Planning and Zoning Board.
- 67.7 A. Harbison stated that she would be supporting the Planning and Zoning Board's denial of this CUP for criteria #4, #5, and #6.
- 67.8 J. Patterson stated that he will be voting against the ordinance.
- 67.9 J. Maxwell stated that this is an older issue to some of the members who have been on this Quorum Court longer and they have probably had to attend many of these types of meetings in the past. For the other members who are newer at this he has done as much due diligence that he knew to do prior to coming in for the meeting tonight and have tried to listen with a very open

mind as this is a very difficult decision for property rights of someone who wants to operate a mining business vs. property rights of neighbors who will both be affected by whatever decision is made tonight. He stated his personal preference would be to have a little more time, not necessarily to garner more information from the parties who have spoken on both sides of the issue because they have heard both sides very thoroughly and he does understand that both sides have spent lots of hours researching, but to take more time to think about it. He understands that they will be moving the ordinance forward to vote tonight, so therefore he may choose to vote "present" just for a lack of the ability to make a good determination.

- 68.1 Judge Edwards thanked both groups who have come tonight to support their side of this issue, noting that they have been very courteous to one another and stated her appreciation for this and their patience.
- 68.2 County Attorney Steve Zega stated that there is 20 minutes allotted for citizen's comments if they so choose.
- 68.3 Citizen Comments: Bonnie Osmond, resident at the top of the hill very close to where the access road would be going in, addressed the Quorum Court stating that she knows of two school buses that come by her house every day, one big school bus with a lot of children riding that goes by in the morning and at exactly 3:26 p.m. every day. She further stated that there is a smaller bus that comes by 3-4 minutes before the first school bus, also full of children. She stated that she has been told there is a third bus, but these are the only two she is aware of. She wanted the court to be aware that these buses do not make school bus stops directly in this area, but come down that hill heading north and turn to the left just almost right across from the road where the CUP would be coming in.
- 68.4 Janice Ward addressed the Quorum Court stating that there was a comment made by S. Madison that she takes offense to when she said Ms. Ward was for this because she didn't want to upset her neighbor who she lives in close proximity to. She stated that she has not spoken to Mark Rich for probably 12 years ever since the initial Gary Combs issue when he wanted to bring his dirt down Riches Road. She reported that she and Mark Rich grew up and went to school together and this caused a huge conflict between them to the point that 21 families on Riches Road were going to file a lawsuit against Gary Combs and Mark Rich for the same reasons of opposition in this case, that of safety, the enjoyment of their property, etc. She stated if they proceed and go to Riches Road as everyone wants a different avenue but not in their back yard, but that alternative measure will affect 21 families and other people and they will be right back here again. She stated that they aren't getting

anywhere or resolving this issue, but just pushing it to someone else's backyard. Ms. Ward stated that she knows this is a new Quorum Court; however, she is really disappointed in the way the Quorum Court is working tonight with a lot of confusion, a lot of misunderstanding about motions, second and third readings, when to vote, when to speak. She stated that R. Cochran represents her district and he will be hearing from her tomorrow because she doesn't believe she is being represented very well.

- 69.1 Martha Richie, resident on Harmon Road, addressed the Quorum Court stating that her property starts at the top of the hill and ends at the bottom of the hill. She stated that they have lived on this property for 40 years, she likes it there and they have a nice quality of life. She reported lately she has taken up the pastime of counting cars and is very familiar with what goes on out there and is familiar with the compatibility and safety and property value issues. Ms. Richie urged the Quorum Court to vote against this CUP and hopes that it does not pass because who says they have to have a red dirt pit. In closing, she stated her appreciation for the Planning Commission and Quorum Court.
- 69.2 **B. Pond made a motion to adopt the ordinance. S. Madison seconded.**
- 69.3 County Attorney Steve Zega reiterated that a "yes" vote denies the CUP and ratifies the decision of the Planning and Zoning Board.
- 69.4 **With no further discussion, Judge Edwards called for a vote on the motion to adopt the ordinance.**
- 69.5 VOTING FOR: H. Bowman, R. Cochran, R. Dennis, L. Ecke, J. Firmin, A. Harbison, E. Madison, S. Madison, B. Pond, B. Ussery, and D. Balls. VOTING AGAINST: J. Patterson. ABSTENTION: J. Maxwell. **The motion passed with 11 members voting in favor, 1 member voting against, and 1 member abstaining from the motion. The ordinance was adopted.**

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- 69.6 J. Patterson stated that he thought long and hard about this, stating that they adopted zoning several years ago that has caused a lot of problems for both he and B. Pond who were rural JPs and voted against zoning. He reported that he has been condemned twice; first time the Game and Fish Commission from the State of Kansas took 160 acres of his rural bottom farm and about 15 years later, federal guys took his property to put in a power dam. However, he survived both of those incidents, but he doesn't like to go against property rights and doesn't take this lightly, voting against this

ordinance. He stated that he lives out by the JB Hunt Quarry and they are running 100 trucks a day now and when they first opened were running 300 trucks a day. With regard to the 250' that was mandated from the road, if they put in a water pit where they drive through when leaving the pit and the mud, etc. on their tires falls off in the last 250' before they get to the road. He thanked those who took the time to attend the meeting and speak on this issue.

70.1 ADJOURNMENT: The meeting adjourned at 9:55 p.m.

Respectfully submitted,



Carly Sandidge
Quorum Court Coordinator/Reporter