

**RECORD OF THE PROCEEDINGS
SKAGIT COUNTY BOARD OF COMMISSIONERS**

Wednesday, March 4, 1992

1:30 p.m. - 4:00 p.m. Public Hearing - CM Trucking and Construction Special Use Permit #SP-89-032, 2062
F & S Grade Road, Sedro Woolley.

The Skagit County Board of Commissioners met in regular session on Wednesday, March 4, 1992, with Commissioners Robby Robinson, W. W. Vaux, and Ruth Wylie present.

**PUBLIC HEARING - CM TRUCKING AND CONSTRUCTION SPECIAL USE PERMIT #SP-89-032, 2062
F & S GRADE ROAD, SEDRO WOOLLEY.**

Grace Roeder, Associate Planner, read for the record a memo which synopsized the current status of the CM Trucking special use permit matter. The options the Board now has are as follows:

- 1) To revoke the special use permit.
- 2) To suspend the special use permit pending correction of specific conditions.
- 3) To modify the conditions of the special use permit.
- 4) To allow the permit to remain as it now stands.

Chairman Robinson confirmed the presence of the parties involved and their legal representatives and invited testimony to begin.

- Mr. Bill Nielsen, attorney for CM Trucking addressed the Board.

Mr. Nielsen stated that he had concerns regarding modifying the original Special Use Permit due to the lack of evidence. The problem CM Trucking is having is based on one neighbor's complaint. He felt that the Hearing Examiner imposed more conditions on the permit after finding there were no significant violations to revoke the permit. Mr. Nielsen stated that he didn't feel the Hearing Examiner or the Board of Commissioners has a legal right to impose other conditions, especially the condition of maintenance work to be accomplished between the hours of 7:00 a.m. and 7:00 p.m. The size and extent of the operation is the same as it was in 1989. Ms. Martin employs 30 - 35 people and has a \$500,000 payroll. The Board has seen some of the equipment when they went on site. There are the same number of trucks and equipment, but they are newer, quieter models. The conditions of the 1989 permit dealt with continued growth and expansion.

The only violation, of sorts, was that there were no landscaping plans submitted. One neighbor, Mr. Hiebe, doesn't want landscaping. The landscaping is in place and approved by the Planning Department and is no longer an issue.

Mr. Nielsen continued, stating he thought there was an issue regarding waste oil disposal. CM Trucking is awaiting the Department of Ecology and the County Planning Department to give direction on what disposal methods to put in place. The Department of Ecology was not sure that a waste oil collection station was necessary but CM Trucking is willing to put one in place.

Mr. Nielsen stated that it is his belief that the Coultas' are mostly concerned with the noise generated by CM Trucking. He felt that there had been a failure to communicate the noise difference. The on site readings taken by Mr. Palmer from the County Health Department were within permissible levels by R. C. W. 14.04.180. The trucks are not at the site during the day. Mr. Nielsen presented a chart into evidence showing the locations of various businesses in relation to CM Trucking and the Coultas' properties, noting the proximity of Cascade Ready Mix and Butler Gravel Pit. He then presented into evidence three surveys taken over two days, February 27 and 28, 1992. The first survey taken between the hours of 6:30 a.m. and 10:17 a.m. on February 27, 1992 showed a count of 28 trucks that passed by CM Trucking, 5 of which originated from CM Trucking. The second and third surveys were conducted on February 28, 1992 between the hours of 6:30 a.m. and 6:00 p.m. The second survey showed a breakdown of trucks passing in one hour time segments. At 6:30 a.m. six trucks departed from CM Trucking, away from the direction of the Coultas'. Eleven trucks from other business departed in the same hour. From 7:30 a.m. - 8:30 a.m. one CM truck, 10 others. 8:30 a.m. - 9:30 a.m. no CM trucks, 13 others. 9:30

a.m. - 10:30 a.m. no CM trucks, 16 others. 2:00 p.m. - 3:00 p.m. 3 CM trucks, 17 others. 3:00 p.m. - 4:00 p.m. 2 CM trucks, 22 others. 4:00 p.m. - 5:00 p.m. 3 CM trucks, 13 others. 5:00 p.m. - 6:00 p.m. 5 CM trucks, 8 others. The third survey taken at the same time as the second, was a total vehicle count beginning at 7:30 a.m. The first hour 80 vehicles passed, the second hour 74 vehicles passed, and the third hour 66 vehicles passed. From 2:00 p.m. - 3:00 p.m. 106 vehicles passed and from 3:00 p.m. - 4:00 p.m. 136 vehicles passed. The traffic generated by CM trucking represented approximately 2 - 3 % of the total vehicle traffic, and no more than 20% of the truck traffic.

Mr. Nielsen then submitted into evidence letters from neighbors who professed to have no problem with CM Trucking. He also submitted a questionnaire that had been given to other neighbors who also had no problem with CM Trucking.

Mr. Nielsen stated in closing, that the major problem is the condition to have the maintenance shop hours run from 7:00 a.m. to 7:00 p.m. The nature of the business calls for the trucks to be offsite during those hours. They do not return to the site until late. There is minimal maintenance done on-site. Mr. Nielsen felt that it would be an incredible burden and unrealistic to prohibit evening hours maintenance. In his opinion there is nothing that would support this business being shut down. This is an agricultural zoned area, not residential.

- Mr. Terrance Carroll, attorney for Harold, Charles, and Margaret Coultas addressed the Board.

Mr. Carroll stated that Harold Coultas owns property adjacent to CM trucking, and Charles and Margaret Coultas have lived in the area for many years. Mr. Carroll felt that CM trucking's complaint about improper notice of possible permit revocation was incorrect. Ms. Roeder has sent many notices and letters of request to comply. CM Trucking should have been well aware that their permit could be modified or revoked.

Mr. Carroll stated that there has been plenty of evidence of failure to comply with the conditions of the original permit, as the Hearing Examiner has found. Once CM trucking had been found in violation of the original conditions, the Hearing Examiner and the Board of Commissioners had free reign to apply additional conditions. Mr. Carroll said he does not object to Mr. Nielsen bringing in other noisy businesses in the area as evidence, but requested the Board to disregard the evidence as it is not the purpose of this hearing to check into other businesses, just CM Trucking and their permit and violation of the conditions of the permit.

Mr. Carroll requested that attention be focused on one factor in behalf of the neighbors: the need to have conditions limiting the hours of operation and enforcement of conditions. Mr. Nielsen's surveys submitted were done during the daylight hours. The hours of concern being dealt with are the long daylight hours when the trucks are not on site until dark and then maintenance is being done. The normal working hours are okay. The early and late hours are the problem. Mr. Nielsen feels that the Coultas' cannot compromise any more than they already are. If CM Trucking cannot or will not comply with the conditions of the permit, then the solution left is to revoke the permit. Mr. Carroll stated that this is not a request made lightly, but feels that it is the only way to approach the issue when a business will not comply. Mr. Carroll then submitted a letter on behalf of Margaret Coultas who was unable to attend the hearing.

- Carrie Martin, owner, CM Trucking addressed the Board.

Ms. Martin stated that the maintenance performed on-site during the day is as follows: electrical repair, under carriage work, no motor repairs, except an occasional starter replacement, and oil changes and lubrication. Brake work and safety checks are done after hours.

Ms. Martin told the Board that in agricultural areas there is always more impact during summer hours. The working hours are longer so the maintenance hours are later. Cleaning of the trucks has to be done during the daylight.

Ms. Martin stated in defense of the landscaping that she had spoken to Ms. Roeder on the phone several times about getting a plan approved but due to the flooding was postponed. The oil separator problem had been postponed due to the flood also. When there was finally a landscaping plan submitted that the Planning Department agreed on, another neighbor with adjacent farmland did not want it done. Ms. Martin stated that she had suggested to the Coultas' to plant trees in between their properties to suppress the sound, but the were not willing to do this.

Ms. Martin continued saying that the trucks have been moved to the back of the property for start-up and warm-up which reduces the noise. She is trying to satisfy the problem to have everyone happy with the situation. Ms. Martin stated that in order to run this business some of the work has to be done in the evening. Ms. Martin feels that it would be too expensive for her to move her business to another location.

- Mr. Jim Engler, President, Skagit Petroleum, addressed the Board.

Mr. Engler stated that CM Trucking is a good account of Skagit Petroleum and a major impact on their business. He stated that Ms. Martin always pays her bills, is a good distant neighbor, and a good community member. Mr. Engler does not want to lose her from the community.

- Ms. Judith Meadows, neighbor of CM Trucking, three tenths of a mile north, addressed the Board.

Ms. Meadows stated that it was her understanding that the main problem was whether the noise levels were in compliance with the Department of Ecology's noise regulations. She felt that if the noise levels are exceeding regulations, then they should be made to be in compliance day and night. Ms. Meadows stated that the decision shouldn't be an arbitrary one. If CM Trucking can run within the DOE regulations then let them. If not, then don't let them.

Ms. Meadows stated that she has seen changes over the last year. A year ago at 11:00 p.m. or 12:00 a.m. noise from the truck shop could be heard. Over the last four or five months she hasn't heard the noise. Ms. Meadows feels that the landscaping seems to help reduce the noise levels and that landscaping in the front of the business could help also. Ms. Meadows would like to see CM Trucking stay but only if they can operate within the allowed noise levels.

- Mr. Bill Christofferson addressed the Board.

Mr. Christofferson stated that the hours when work can be done on trucks has to be in the evening after business hours. Having the shop doors closed would help the noise level. Mr. Christofferson added that Ms. Martin is a good person, CM Trucking is a good account and would not like them to leave the area.

- Ms. Kathy Hocking, CM Trucking employee, addressed the Board.

Ms. Hocking stated that she was the person responsible for taking the questionnaire around to the immediate neighbors to complete. Every one of the four households stated that they had no problem with CM Trucking. None of them had a problem with noise in the evening. One gentleman next door thought that maybe the trucks were too fast, but no faster than the speed limit. Ms. Hocking stated that the people in the house facing the new truck starting area are not bothered by the noise. All the neighbors she spoke to would like the business to stay.

- Mr. Harold Coultas, of Westerman Road, addressed the Board.

Mr. Coultas stated that he did not understand where the questionnaire regarding the truck traffic fit in at this hearing. It was his understanding that the noise levels reported by neighbors within 300 feet were the only ones who's complaints or comments counted. He and his parents are the only ones who live within 300 feet. Mr. Coultas feels that the whole problem began when the properties were changed from rural residential zoning to agricultural.

Mr. Coultas remarked that he questions the site visitation made by the Board. Any time you tell someone when you are going to come inspect their property, they will fix it so that what is seen is what they want seen.

Mr. Coultas continued stating that the real issue is the permit. He feels that this is a rural residential area. His family has lived on their land for over 100 years, and he was planning to also. The zoning classification was a Class C, industrial property for storage warehouse use. Mr. Coultas doesn't feel that the Special Use Permit takes into consideration the impact of the hours of the operation. The noise levels are not as bad, but they have been keeping winter hours and are not as busy. Mr. Coultas stated that he heard the Hearing Examiner tell Ms. Martin that he couldn't make her move but would recommend her to start looking, that she's had it too good too long.

- Mr. Bill Stiles III, Sedro Woolley Planning Commission, addressed the Board.

Mr. Stiles stated that the Sedro Woolley Planning Commission has reviewed a short plat east of the CM Trucking property that is within the Sedro Woolley Growth Management area. He questions whether the future use of the CM Trucking property is going to be appropriate. The noise is disturbing the Coultas' who live in a non working area. Mr. Stiles remarked that there had been a diary kept of the noise disturbance suffered by the Coultas' at times from midnight to 3:00 a.m. He continued stating that this business started without a permit and has grown. It is good to have the business in the area but maybe this is not the right location for it.

Mr. Stiles stated that the County Health Department's noise study that was done showed non-compliance and now the Health Department has changed their findings. It was discovered that the zoning is Agricultural and not rural so higher noise levels are allowed. Mr. Stiles feels that this is not an agricultural use, but an industrial use, and the acceptable noise level needs to be determined on industrial use standards.

Mr. Stiles stated that the Coultas' should not have had to be in this situation if enforcement had been taken care when the original special use permit conditions had not been complied with.

- Keith Fredrickson, Skagit County Health Department, addressed the Board.

Mr. Fredrickson stated he works with Ron Palmer in the Noise Program, and would like to clarify the way they operate enforcement. They enforce WAC 173-60 noise regulation that outlines different classes for uses of land. He feel that there may be discrepancies on how the land is being used and how it is zoned. He stated that they have to enforce the law on how land is zoned. If the noise creating property is zoned agricultural or industrial there is a 70 decibel limit. If the noise receiving property is also zoned agricultural or industrial, the noise level is not required to be reduced at night. However, if the noise receiving property is zoned residential, the levels are required to be lowered by 10 decibels at night. Mr. Fredrickson feels the noise levels should be enforced based on the real use of the land. Mr. Fredrickson feels that there may be some discrepancies to look at closely, and invited the Board to call on either he or Mr. Palmer if they had questions.

- Mr. Charles Coultas addressed the Board.

Mr. Coultas stated that Ms. Martin never created any problems for him until she got the special use permit and moved her residence out of the area. The first summer she moved, they worked until two or three a.m. The next summer until four a.m. Mr. Coultas restated that when she lived there she didn't do that.

- Mr. Don Collin addressed the Board.

Mr. Collin stated that he was not speaking neither pro nor con on this situation. He remarked that there are very few good, solid, sound, small businesses in the County and we need those businesses. CM Trucking has done a lot of favors for the Wildcat Steelhead Club. He heavily suggests that before any decision is made to close CM Trucking down that the two neighbors talk and work it out. He had a similar problem and was able to work it out in that way.

- Ms. Carrie Martin again addressed the Board.

Ms. Martin confirmed that she did live at the business site. She now resides on Benson Road and is completely surrounded by farmland. In the summer every three seconds there are gunshots fired 7:00 a.m. until dark to chase birds out of the fields. When the corn is harvested, it goes on all night long. This makes it even noisier than where Mr. Charles Coultas lives.

- Mr. Bill Nielsen readdressed the Board.

Mr. Nielsen stated that the real nuts and bolts were indicated by Mr. Coultas and Mr. Stiles. Mr. Nielsen feels that much of what the Coultas' brought up deals with things they wished were brought up in 1989, but most were presumably decided against them and in favor of the permit for CM Trucking. The only real evidence is the on-site noise problem. Mr. Nielsen was glad that Mr. Fredrickson came in as he set forth what the law is. The Hearing Examiner hearings found that the decibel readings were around 60 and exceeded residential standards. Mr. Nielsen feels that there is no more problem and that all conditions are met and are being met. There was no reason to impose further conditions. There are no violations of noise standards to warrant the closing of CM Trucking.

- Mr. Terrance Carrol readdressed the Board.

Mr. Carroll stated that not only was there evidence of violations presented, but plenty in the written record. The Hearing Examiner indicated plenty of evidence submitted: violating the noise standard, lights shining in bedrooms, privacy invaded. The initially granted special use permit had conditions imposed. It is a "special use" permit in order to have to comply. Revoking the permit sounds drastic, but it is the last resort the Coultas' have come to, and the only one when conditions can't be complied with. Mr. Carroll stated that the Coultas' are not against Ms. Martin personally nor are they against having small business in Skagit County. They just think another location would be better and would like to see CM Trucking locate in a more appropriate area.

Commissioner Vaux motioned to closed the public hearing. Commissioner Wylie seconded the motion, which carried unanimously.

Commissioner Wylie stated that she had a question on whether the conditions have been met or not and requested that Ms. Roeder submit a report clarifying this. She also confirmed that the conditions on the original special use permit are what are being considered. Ms. Roeder confirmed.

Commissioner Vaux stated that he would like to reconvene in two weeks to decide this issue. The two parties involved should be present when the board deliberates, in two weeks, as well as their legal representatives.

Commissioner Vaux motioned to reconvene on March 24, 1992, 2:00 p.m. to announce the final decision. Commissioner Wylie seconded the motion, which carried unanimously.

ADJOURNMENT

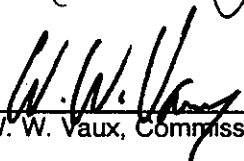
Commissioner Wylie motioned to adjourn the proceedings. Commissioner Vaux seconded the motion, which carried unanimously.

BOARD OF COMMISSIONERS
SKAGIT COUNTY, WASHINGTON

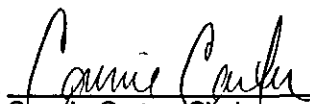



Robby Robinson, Chairman


Ruth Wylie, Commissioner


W. W. Vaux, Commissioner

ATTEST:


Connie Carter, Clerk
Skagit County Board of Commissioners