

Commission upholds landfill findings on split vote

Appeal will not be remanded to RPC for hearing

By Heather Gula
The Humboldt Sun

WINNEMUCCA — The Humboldt County Commission voted 3-2 Monday to approve the proposed findings on the appeal of a vote, decision and findings by the Regional Planning Commission regarding revocation of the Conditional Use Permit issued to Jungo Land and Investment, Inc.

Commission Chairman Tom Fransway and Commissioner Chuck Giordano provided the two dissenting votes.

This vote essentially upholds the RPC findings and confirms their decision not to conduct a hearing on the revocation of JLI's permit.

The hearing opened with the appellants — attorneys Robert Dolan and Massey Mayo — arguing their appeal of the proposed findings made by the RPC.

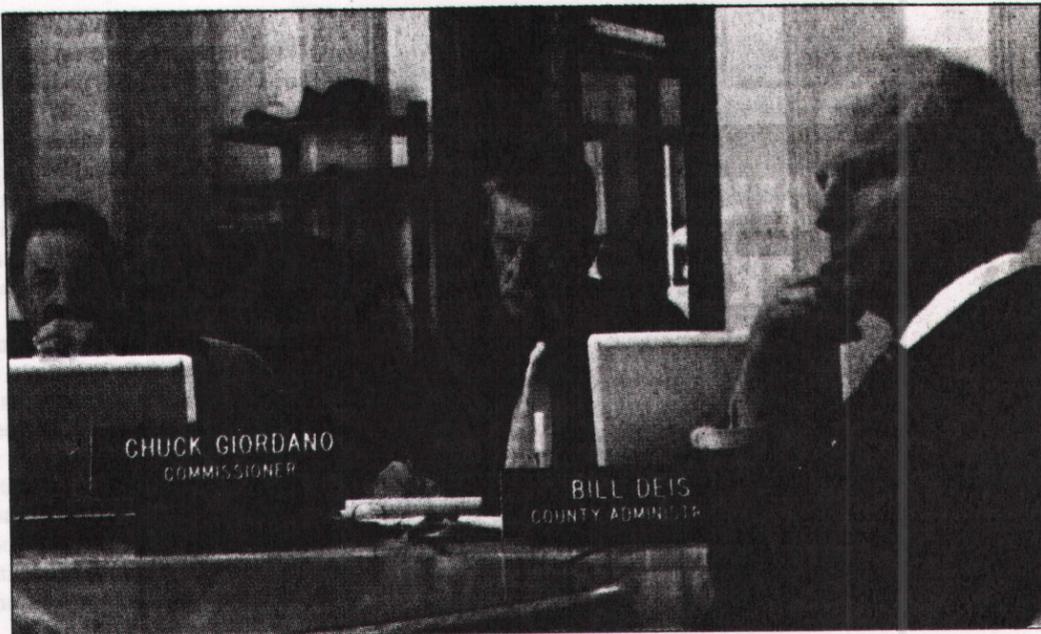
In his appeal, Dolan argued

that the RPC's conclusion that there was no misrepresentation of fact on the JLI application was erroneous; that their finding that Dolan himself is not an aggrieved party is an incorrect finding; and that the RPC has the right to review the CUP on an annual basis with no limitation to its investigation within that review process.

He asked that the commission find one of two things, either that the item be remanded back to the RPC to review and possibly revoke the CUP or that the commission consider remanding the item back to the RPC with instructions to hold an evidentiary hearing to support the validity of the CUP approval.

Attorney John Frankovich — representing the applicant — asserted that based on Humboldt County's own ordinance the matter before them was very limited.

He explained that they did not have legal standing to review the project, nor the appeal but only to address the question of whether they should hold a public hearing to review the planning commission's decision not to hold a public hearing on the appeal filed by Dolan.



Robert Dolan (right) argued an appeal of the proposed findings made by the Regional Planning Commission regarding the Jungo Landfill during Monday's Humboldt County Commission meeting. Also pictured are county Administrator Bill Deist (middle) and Commissioner Chuck Giordano (left).

HEATHER GULA • The Humboldt Sun

He went on to explain that as such, the proceedings were not only unusual but also unprecedented. He cited the reason for the lack of precedence being that the entire process, including the petition and the appeal, are not

authorized by any local or state law.

He claimed that the petitions were without merit based on the fact that the CUP is a finalized document.

"It does not matter if those claims are true, the decision made in 2007 pursuant to your own ordinance became final when it wasn't appealed then," he said. "You can not revisit those final decisions 2½ years later."

On the first item of appeal — the accusation of misrepresentation within the application — Dolan contended that the statement on the 2007 application that there would be no effect on abutting properties or the uses permitted thereon was "a fraudulent misrepresentation."

"It was intentionally made, it was designed to mislead the Regional Planning Commission and it was successful in misleading," he said. "Had the response been genuine the response would have been 'yes there is an effect on abutting property, but in our opinion said effect is consistent with state, federal and local law.' It was an absolute expression of fact, it was not conditioned, therefore I am comfortable asserting that it was a intentional misrepresentation of fact."

Dolan's argument on the second appeal item — that he is an aggrieved party with the right to appeal the CUP — is based on the claim that he utilizes the abutting public lands.

Frankovich declined in depth discussion of the matter, however denied Dolan's ability to claim rights on property he does not own.

"I don't think Mr. Dolan can claim that there is an impact on property that he doesn't own," Frankovich said. "It's been established that this is surrounded by the (Bureau of Land Management). The BLM was noticed and is yet to complain, they didn't even have a representative at the planning commission hearing."

Gene Seidlitz, district manager of the BLM's Winnemucca District, released this statement on the matter Thursday morning: "Surprisingly, with BLM being a major administrator of public lands in Nevada and Humboldt County, the Jungo Land and Investments, Inc. proposed landfill is on private land in the checkerboard area. Since the proposed landfill is on private lands, there is no federal action and therefore the Winnemucca District BLM is not part of the per-

mitting/authorizing process for the proposed project."

In protest of the RPC findings that the only time a review of the CUP could be held was in the presence of a CUP violation, Dolan argued that they have the ability to perform an annual review wherein they can review the legality of the CUP issuance.

Frankovich believes that the only opportunity to revoke the CUP is if the conditions of the use are not being complied with and that that is what the annual review is intended to do — provide an opportunity to ensure those conditions are being complied with.

"Well, we are not at that point in this project because we haven't even built the project yet," he said. "You can't violate conditions before you even put the project in place."

Dolan then asserted that California's regulatory agency — the California Integrated Waste Management Board (CIWMB) — has been disbanded.

"That is a changed circumstance, a materially changed circumstance," Dolan said.

He stated that that fact alone offers the RPC grounds to modify or revoke the CUP.

While it is true that CIWMB will be disbanded, effective January 2010 the Department of Resources Recycling and Recovery will be created as a regulatory agency.

His final item of argument was that the CUP is signed by Don Gambelin, who claims to have a Doing Business As (DBA) certification for JLI.

Gambelin does not have a DBA on file in Humboldt County. As such, Dolan stated that the CUP is not valid because it has no valid signature.

"To this day Jungo Land has not properly signed the acceptance form and under the conditions of the Conditional Use Process itself, it is not effective until the applicant signs it," Dolan said.

Gambelin was the vice president of environmental and planning for Norcal Waste Systems — now Recology — at the time he signed. However, he is no longer with the company.

In an interview after the appeal, Recology CEO George McGrath disputed Dolan's claim that the signatory had no authority.

"Don (Gambelin) certainly had authority to sign on behalf of — See APPEAL, Page Two —

Safe trick or treating —



MICHAEL MICHAELSEN • Special to the Sun

Area youngsters were invited to drop by the ambulance barn located adjacent to Humboldt General Hospital on Oct. 31 to pick up a "Safe Halloween" bag filled with goodies, including lighted necklaces and glow sticks. Additionally, the HGH EMS Rescue Bike Patrol was out throughout the evening in high traffic trick or treating areas, along with area law enforcement, to make sure that children and parents stayed safe. Photo above, volunteer Mandy Stephen presents 9-year-old Mason Farnsworth with his goodie bag. For more Halloween photos, see Page 12.

Appealed case remanded to district court

Smartt trial slated to begin Nov. 17

By Jen Anderson
The Humboldt Sun

WINNEMUCCA — The trial for Justin Smartt is scheduled to begin Nov. 17 and will last for four days.

The decision came during the pre-trial conference last Monday, after attorneys on both sides told Sixth Judicial District Judge Richard A. Wagner that they were prepared to begin. Monday was the last day either could file motions that would delay the trial

and the last day the defense could enter a plea negotiation.

Smartt is represented by local attorney Kyle Swanson, while the state's case will be headed by Humboldt County Deputy District Attorney Brian Williams.

Smartt was convicted of sexual assault on a child under the age of 16 on Aug. 22, 2007, and sentenced to life in prison. Smartt successfully appealed the ruling almost two years later.

The Nevada Supreme Court order, dated Jan. 27, 2009, was signed by Justices Nancy Saitta and Michael Cherry in favor of the reversal and Justice Mark Gibbons as the lone dissenter.

In the document, Smartt contended that the State failed to provide the defense with adequate notice that it intended to call Denise Engel as an expert and failed to provide her curriculum vitae (akin to a professional resume) prior to the trial. Instead, he said, the curriculum vitae was provided to the defendant on the day Engel was scheduled to testify, leaving Smartt inadequate time to prepare an effective cross-examination.

In addition, Smartt also argued that the district court acted in bad faith when it failed to follow Nevada Revised Statute

— See TRIAL, Page Two —

Page 8



EWS
owry
Chapter
winners
2009
red
reer
t, held
napolis.
ages 9-11

hool
country
orthern
pionships
29, at
Park in
ages 13-17

Page 3
Page 4
Page 5
Page 6
Page 7
Page 12
Pages 18-19

ather



igh around
to 20 mph.



the mid 50s



ow 50s and

town Content



VT
Company
prices

closing metals prices

SILVER

50 \$16.45
30 \$17.21
90 \$17.44

**BUY IT,
SELL IT,
RENT IT**
with the
classifieds!

DRINKING BEFORE DRINKING

15 are 5 times more
drinks when they're adults.

www.stopalcoholabuse.gov
729.6686

Ad
Council

Dr. D. Draper

Podiatrist

Podiatric Physician

Surgery Available

Paradise Building

Street

1044

CA EVERY WEDNESDAY

Paradise Valley

at Fair
Saturday

November 7, 2009

10 am until 3 pm

Paradise Valley Community Hall

Yes, you saw that right!!

For the first time ever we are having

our craft fair on a

Saturday...

And, all your favorite crafters

and artisans will be returning

after many years!

more crafters across the street!!

Shopping Fair...

make Christmas!

Fransway refuses to recuse himself from appeal

Recology official said chairman's public comments would prevent a fair hearing

By Heather Gula
The Humboldt Sun

WINNEMUCCA — The Humboldt County Commission heard the appeal of a vote, decision and findings by the Regional Planning Commission regarding revocation of the Conditional Use Permit issued to Jungo Land and Investment, Inc. last Monday, ultimately deciding to uphold the RPC decision.

Prior to the hearing John Frankovich, the attorney repre-

sented Recology and their subsidiary JLII, requested that commission Chairman Tom Fransway recuse himself from the proceedings due to his public partiality on the proposed project.

"With all due respect Chairman Fransway we believe your actions and statements have clearly indicated that you are not able to fairly and impartially consider this appeal," Frankovich said. "You have made numerous statements on the record relating to this project, all of which indicate you oppose the project."

He went on to list specific incidents, including Fransway's on-the-record statement that he would do what he could to stop the project and his attempt to solicit other members of the com-

mission to state their position on the record. Fransway's appearance and testimony at the air quality hearing conducted by the Nevada Department of Environmental Protection was brought into question due to his statements urging NDEP not to issue the air quality permit. Further, Frankovich made accusations that Fransway had solicited friends and other residents in Winnemucca to appear in opposition of the project and contacted Sen. Harry Reid, D-Nev., to initiate a federal process to oppose the project.

"All of which we believe would suggest it would be very difficult for us to get a fair and impartial hearing with you participating," Frankovich said.

Fransway responded and denied accusations that he had

contacted any individual asking them to come before the board in opposition of any project and stated that he did not contact Reid's office. Further, he stated that he had publicly announced that he would do anything he could legally to stop the project.

"You say I am biased and prejudiced, I say I have an opinion," Fransway said. "And my opinion is based on fact and my constituents have the right to know what my opinion is. I am a duly elected member of this board and I will not voluntarily step aside so that Recology can stack the deck."

District Attorney Russell Smith confirmed that there was nothing in his legal opinion requiring Fransway to recuse himself from the appeal hearing.

APPEAL

(Cont. from Page One)

Jungo Land and there is no question that Jungo Land was the applicant and Don was representing the applicant," he said.

Commission Chairman Fransway introduced a new point that was not raised during the appeals, a point that District Attorney Russell Smith later said was outside of the scope of the appeal they were there to hear.

"The most egregious misrepresentation — and I will fall short of saying it was meant to mislead but I will state that it was a definite misrepresentation — was the fact that the Regional Planning Commission in the Conditional Use Permit before me was led to believe that the facility would be on one section of land," Fransway said.

"After the conditional use permit was granted, Jungo Land came before this commission and the landfill committee and said that they have three other sections of land that they either own or were working on acquiring. To me that is a misrepresentation that warrants further review."

Commissioner Dan Cassinelli pointed out that that issue was outside of the scope of the argument being heard by the commission. "My understanding is they were only permitted on one section of land. They may have three other sections of land, but that's not our business," he said.

Commissioner Garley Amos agreed stating, "I think you are out of line Mr. Chairman, I think we should continue with the advice of our attorney."

Frankovich did choose to respond to Fransway's comments, and said that the fact is that JLII has an option on four sections of land; they have not bought any of them. They were looking at which one was most suited to get a CUP on one of them, "and one only," he said.

"They can build the facility on

At a glance —

The Humboldt County Commission findings based on appeal of the vote, decision and findings by the Humboldt County Regional Planning Commission regarding revocation of a Conditional Use Permit for Jungo Land and Investment, Inc.

The motion to accept the proposal passed 3-2, with Commissioners Garley Amos, Mike Bell and Dan Cassinelli in favor and Chairman Tom Fransway and Commissioner Chuck Giordano voting no.

- The Appellants argue that the RPC abused its discretion with regard to the issues of asbestos; however, this is not the case. As was pointed out in the RPC findings, the CUP application stated solid waste will be received at the landfill, consistent with applicable State and Federal laws. The Nevada State Environmental Commission is responsible for adopting regulations regarding the "disposal of asbestos and material containing asbestos" (NRS 618.755).

one of them, they can't build two of them, they can't build one next door, they can't do anything other than the one that they got approval on and that is if they get through the NDEP and they exercise the option," Frankovich continued.

A discussion was then led by Fransway speculating reasons that JLII may have for interest in the additional sections.

Smith interjected, advising the chairman that the discussion was outside of the scope of the appeal they were there to hear.

"I don't believe that we have the authority to ask someone what they have intentions for on property they have options for,"

The Nevada State Environmental Commission's regulations allow a Class I disposal site, similar to what Jungo is proposing, to dispose of asbestos, as long as it complies with Nevada regulations (Nevada Administrative Code 444.965-444.976).

Asbestos is not regulated under the hazardous waste regulations per both NRS and NAC. No evidence has been presented that Jungo made any misrepresentations to the RPC relating to asbestos, and the issue is premature as to whether Jungo has complied with applicable laws regarding acceptance of asbestos at its landfill.

- The RPC did not abuse its discretion when it found there were no misrepresentations made by Jungo regarding its CUP.

- The RPC did not abuse its discretion when it found that the allegations regarding noncompliance with the conditions of the CUP were premature. Jungo has only

begun the early permitting process for its proposed landfill. No evidence has been provided to show that Jungo is in any way out of compliance with the conditions of its CUP, in fact, Jungo is complying with the conditions of its CUP by seeking out the required permits from the State of Nevada.

- To date, Jungo has complied with the conditions of the CUP, and all County, state and Federal laws. Therefore, the Commissioners will not reverse the RPC's findings. The Commissioners agree that there has been no evidence presented to even consider revoking Jungo's CUP, and therefore RPC's findings are upheld.

To read the entire findings, visit
http://www.hcnv.us:1403/ca/docs/11_02_09/DOLAN/Proposed%20Findings%20on%20Appeal.pdf.

Smith advised the chairman.

A discussion of the additional plots continued for some time prior to public comment being heard on subjects ranging from technical assertions on the environmental soundness of the proposal to the status of the host agreement.

Following final comments by both attorneys, the chairman provided a conclusion to the proceeding. "I think the commission from the testimony taken here today finds just cause to remand this back to RPC for review and/or possible revocation, but I stress review, and my main reason for that is the fact of the three extra sections of land that were not on the original permit," Fransway said. "I believe that we are obligated to go back and do things right the next time and when we do that I suggest wholeheartedly that we seek out the experts on both sides, on the side of Recology and on the side of scientific knowledge."

He then turned his comments into a motion to remand the issue of the CUP back to the RPC for review and further asked that all

experts be invited to the table and offered funding to ensure that the experts be present.

Commissioner Giordano stated that he felt a meeting with the experts to review the CUP could be very productive if held in a similar manner to the meeting they had that day.

It was put to vote and the motion failed 3-2, with Giordano and Fransway in support, while Amos, Cassinelli and Mike Bell voted to deny the motion to remand. Amos made a counter motion that JLII had complied with the conditions of the CUP as well as county, state and federal laws and motioned to uphold the RPC's decision in accordance with the Humboldt County Commission's proposed findings.

The motion passed 3-2, with Amos, Cassinelli and Bell voting in favor and Giordano and Fransway voting in opposition.

With that motion both parties have an option to appeal the issue to the Sixth Judicial District Court for judicial review within 25 days of notice of findings.

TRIAL

(Cont. from Page One)

174.234(2), which asserts that the State has the responsibility to provide specific information regarding expert witnesses to the defense at least 21 days before the witness is scheduled to testify.

During last Monday's conference, Wagner said attorneys will be able to choose the jury from an 80-person pool. Selection will take place in the morning of Nov. 17, with opening statements and first witnesses slated for that afternoon.