

Jefferson County Department of Community Development

Notice of Appeal

1. Decision being appealed

Unified Development Code Interpretation dated January 5, 2008 MLA07-00638 (ZON07-00098) ¹

2. Name, address, and phone number of appellant and appellant's interest in the matter.

The appellant is Iron Mountain Quarry, LLC. Contact information is: Mr. James E. Burnett, Iron Mountain Quarry, LLC, 22121 17th Avenue SE, Suite 117, Bothell, WA 98021-7404; Tel: 425-481-0999; Fax: 425-486-3346.

Appellant, Iron Mountain Quarry, has acquired mineral lease interests with respect to approximately 140 acres of land in Jefferson County. The lease area includes an area that has been used for mineral extraction and processing since the 1970's.

In the course of preparing to submit a land use application to further develop and expand mineral extraction and processing at this location, Iron Mountain Quarry representatives met with Jefferson County Community Development representatives in May and August of 2007. Community Development staff informed Iron Mountain Quarry that permit approvals would not be granted for mineral extraction and processing uses at this site in excess of ten acres regardless of non-conforming mineral use rights unless Iron Mountain Quarry applied for and received approval of a comprehensive plan amendment to designate the proposed lease area as Mineral Resource Land. Iron Mountain Quarry explained that this 10-acre limit effectively precludes Iron Mountain Quarry from exercising its non-conforming mineral use rights at this location, because ten acres is too small for feasible mineral extraction and processing activities.

Iron Mountain Quarry exchanged a number of communications with Community Development Department staff and other Jefferson County staff explaining that the County's position is not consistent with non-conforming mineral use rights under the diminishing asset doctrine established in *McGuire v. City of University Place*, 144 Wn.2d 640, 30 P.3d 453 (2001). Community Development staff has taken the position that a comprehensive plan amendment and a Resource Mineral designation is required for Iron Mountain Quarry's proposed mineral resource uses at this location, regardless of whether the diminishing asset doctrine applies.

Iron Mountain Quarry filed a Code Interpretation request pursuant to Article VI, Chapter 18.40 JCC on December 3, 2007. Jefferson County failed to respond within the 28 days required by JCC 18.40.370(2). After the 28 day deadline passed, the Community Development Department issued a Code Interpretation that was dated January 5, 2008, but which was submitted to the appellant on January 4, 2008. Iron Mountain Quarry has a vital interest in obtaining a Code Interpretation decision that will recognize its non-conforming mineral use rights as established by the Washington Supreme Court and that will allow

¹ The Decision was dated January 5, 2008 but it was emailed to Iron Mountain Quarry 's attorney on January 4, 2008. A copy of the email transmittal and a copy of the code interpretation decision are attached hereto as Exhibit A.

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mineral use activities at this site in excess of ten acres without the delay and uncertainty of a comprehensive plan amendment.

It would be futile for Iron Mountain Quarry to proceed with any permit application for the proposed mineral resource uses at this site since the Community Development Department has informed Iron Mountain Quarry that an application for the proposed mineral resource uses at this site will be denied unless a comprehensive plan amendment for Mineral Resource Land designation is approved by the Board of County Commissioners.

3. Appellant's statement describing standing to appeal

a. Prejudice to appellant:

The Code Interpretation decision issued by Jefferson County's Department of Community Development fails to recognize appellant's non-conforming mineral use rights established under the diminishing asset doctrine as established by the Washington Supreme Court and would subject appellant to a comprehensive plan amendment process that would delay implementation of appellant's mineral use rights by over a year and without any reasonable assurance that the Mineral Resource Land designation for the subject property would be recommended by Community Development staff or would be approved by the Jefferson County Board of County Commissioners. The Code Interpretation issued by the Community Development Department directly conflicts with the non-conforming mineral use rights established by the Washington Supreme Court.

b. The interest of appellant is among those the local jurisdiction was required to consider:

Appellant's non-conforming mineral use rights and interests established by Washington courts are important rights and interests that Jefferson County is required to consider when interpreting and applying its land use regulations. In this case, Jefferson County Community Development Department failed to consider applicable land use law regarding non-conforming mineral use rights as established by the Washington Supreme Court.

c. A decision in favor of appellant would substantially eliminate or redress the prejudice caused by the decision:

A decision in favor of Iron Mountain Quarry reversing the Code Interpretation regarding the 10-acre restriction found in JCC 18.20.240(1)(a) would eliminate or redress all of the prejudice caused by the Code Interpretation decision. A favorable interpretation would allow Iron Mountain Quarry to apply for permit approvals to exercise its non-conforming mineral use rights on the subject property in compliance with applicable environmental requirements, without the delay and uncertainty of being subjected to a discretionary comprehensive plan amendment process to determine whether the Board of County Commissioners would grant Mineral Resource Land designation on the subject property.

d. Appellant has exhausted its administrative remedies:

There is no administrative remedy available prior to appeal of the administrator's Code Interpretation under Article VI of the Unified Development Code. JCC 18.40.390 provides that "[w]hen an interpretation is made in response to a written request pursuant to the provisions of this article, the person filing the written request may appeal the decision of

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the administrator to the hearing examiner within 14 calendar days of the decision using the process for appeals of Type II permit decisions as set forth in JCC 18.40.330." The appellant has followed these appeal procedures.

4. Specific reasons why the appellant believes the decision to be wrong.

As an initial matter, the administrator's Code Interpretation decision should be reversed because it was not issued within the time limits established by County Code.

If it is considered on its merits, the administrator's Code Interpretation decision is wrong because it fails to consider and apply the non-conforming mineral use rights for this location under the diminishing asset doctrine of *McGuire v. City of University Place*, 144 Wn.2d 640, 30 P.3d 453 (2001). The administrator's interpretation would require Iron Mountain Quarry to submit to a comprehensive plan amendment process that would not necessarily result in a Mineral Resource Land designation to allow the exercise of non-conforming mineral use rights protected under the diminishing asset doctrine for the mineral resource uses proposed at this location. The administrator's Code Interpretation directly conflicts with Jefferson County's comprehensive plan policy NRP 7.3, which provides that standards and guidelines for mining operations "should not have the intent of rendering mining operations economically unfeasible."

In addition, the administrator's conclusion that the proposed mineral uses at this location are simply subject to a "performance standard" for mining in segments not larger than ten acres completely fails to consider appellant's non-conforming mineral use rights with respect to the proposed mineral uses at this location.

The administrator's Code Interpretation decision is also wrong because it irrationally concludes that 72,000 acres of other property owned by Pope Resources would be subject to mining without Mineral Resource Land designation under the diminishing asset doctrine, a conclusion made without any evidence that other sites in Jefferson County would be protected as non-conforming mineral use sites to allow mineral extraction and processing in excess of ten acres.

The administrator's Code Interpretation decision erroneously concludes that allowing Iron Mountain Quarry to exercise its non-conforming mineral use rights for for the mineral uses proposed at this location under the diminishing asset doctrine would mean that "no MRL [Mineral Resource Land] overlay would ever be required in Jefferson County."

The administrator's Code Interpretation decision erroneously concludes that the 10-acre requirement in JCC 18.20.240(1)(a) does not preclude mining but merely adds a "performance standard" for how mining can occur. This contradicts evidence provided by Iron Mountain Quarry that the 10-acre restriction does in fact preclude mining at this location.

5. The desired outcome or changes to the decision

Appellant requests that the Hearing Examiner issue a decision reversing the administrator's Code Interpretation decision and holding that the 10-acre restriction found in JCC 18.20.240(1)(a) is not applicable to Iron Mountain Quarry's proposed mineral resource uses outside of designated mineral resource land where the property falls within the non-conforming mineral use rights established under the diminishing asset doctrine established in *McGuire v. City of University Place*, 144 Wn.2d 640, 30 P.3d 453 (2001).

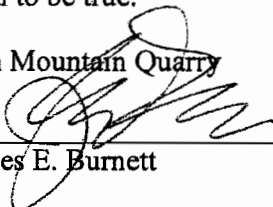
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6. Appellant's statement and signature.

On behalf of Iron Mountain Quarry, LLC, I have read the notice of appeal regarding the appeal of the Unified Development Code Interpretation issued by the Jefferson County Department of Community Development on January 4, 2008, and I believe the contents of the notice of appeal to be true.

Iron Mountain Quarry

By: 
James E. Burnett

Date: 1-10-08

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