

SAUK COUNTY BOARD OF ADJUSTMENT
February 27, 2020 Session of the Board

PRESENT: Dan Kettner, Acting Chair
David Allen, Secretary
Jim Mercier
Valerie McAuliffe (9:10 a.m.)
David Wernecke, Alternate

ABSENT: Linda White, Chair

STAFF PRESENT: Gina Templin
Lisa Wilson
Cassandra Fowler
Brian Simmert
Brian Cunningham

Vice Chair Kettner called the session of the Sauk County Board of Adjustment (BOA) to order at approximately 9:02 A.M. The Vice Chair introduced the members of the Board, explained the procedures and the order of business for the day. The staff certified that the legally required notices were posted for the scheduled public hearing. The certification of notice was accepted on a motion by Allen, seconded by Mercier. **Motion carried, 4-0.**

The Board adopted the agenda for the February 27, 2020 session of the Board on a motion by Mercier seconded by Allen. **Motion carried, 4-0.**

The Board adopted the minutes from the November 21, 2019 Board of Adjustment meeting on a motion by Mercier, seconded by Allen. **Motion carried 4-0.**

COMMUNICATIONS:
None.

APPEALS:

- A. SP-01-2020. Yahara Materials is requesting a Special Exception Permit pursuant to s. 7.038(1)(i) of the Sauk County Zoning Ordinance to authorize the continued operation of a non-metallic mining site, one acre or greater and a Non-Metallic Mining Reclamation Permit pursuant to s. 24.05 of the Sauk County Non-Metallic Mining Reclamation Ordinance. Located in Part of the W½ of the SE¼ and the E½ of the SW¼ of section 14, township 10 north, range 5 east and including parcels 020-0581-00000, 020-0586-00000, 020-0584-00000, and 020-0587-00000 Town of Honey Creek, Sauk County, WI.

Cassandra Fowler, Land Resources and Environment, appeared and provided a background and history of the request, the photos of the site and the approval from the Town of Honey Creek. She concluded with the recommended conditions should the special exception permit be approved by the Board.

Kettner asked about the inspections and any complaints on the site. Fowler verified that all inspection met standards and that she has not received any complaints on the site.

Wernecke asked about the findings of fact and if they are used as part of the basis of their decision. Fowler suggested that they should use them as part of their decision.

Wernecke asked if the provisions of the permit are enforceable without leases and asked if that was verified by counsel – referring to page 5, section 4b. Fowler stated that the landowners have granted permission and accepted the reclamation plan as is, and the operators are responsible for reclamation. Wernecke asked if that has any effect on the county's ability to enforce. Fowler stated it does not.

Wernecke asked about the night work statement. Fowler explained that if they did a DOT project they have the ability to work with that.

Kettner asked when the LRE staff make a recommendation, is the DOT night work automatically included. Fowler stated that it is not automatically included, as not everyone has the intention to bid for that type of work.

Robin Logen, Yahara Materials, appearing in favor of the request, stated as far as the DOT project, what they would do is contact the LRE office, give the DOT information on the project stating the duration of the project and hours, should they be successful on the bid.

Kettner asked if they have a hot mix operation at this location. Logen stated they do not, as they are only making aggregates for base.

Kettner asked when in full operation, how many trucks are leaving the site per day. Logen stated the busiest it has been has been 25-30 trucks per day, but that could increase depending on the job.

Kettner asked about the reclamation and if it has started. Logen stated they have started the stockpiling of material, but the reclamation has not begun.

Kettner asked about the berms. Logen stated the existing trees would stay and shield the site.

Wernecke asked about the expansion. Logen explained and spoke of the permission of the landowner within 500 feet.

Wernecke asked about the water runoff from the site being contained within the site. Logen verified it is and confirmed in the northeast corner the water dissipates into the site.

Kettner asked how much longer the mining activity will take place at this site. Logen stated it is market driven, but it will take place for at least 10 years.

Fowler reappearing.

Kettner asked if all the operations are meeting the needed bond for reclamation. Fowler explained that no site can be disturbed until financial assurance is provided that meets the reclamation plan that is submitted and the financial assurance is reviewed on a regular basis.

Wernecke asked about the procedure for the notification. Fowler explained the 1500 foot distance. Wernecke asked if they were notified of night hours. Fowler stated they were not, but would be notified if that work would be done at a later date.

Seeing as no one else wishes to speak, Vice Chair Kettner closed the public portion of this hearing at approximately 9:30 a.m.

Allen stated that operator seems to be following all the regulations and the Township is in favor of it.

Kettner stated the history of the operation is clean with no issues.

Motion by McAuliffe, seconded by Mercier, to approve the application for a special exception permit to continue non-metallic mining operations 1-acre or greater, based upon findings of fact, conclusion of law and subject to staff analysis with recommended conditions by the Land Resources and Environment Department. **Motion carried 5-0.**

- B. SP-02-2020. David and Delores Leatherberry Living Trust is requesting a Special Exception Permit pursuant to s. 7.038(1)(i) of the Sauk County Zoning Ordinance to authorize the operation of a non-metallic mining site, one acre or greater and a Non-Metallic Mining Reclamation Permit pursuant to s. 24.05 of the Sauk County Non-Metallic Mining Reclamation Ordinance. Located in part of the NE ¼ of the NW ¼ and SE ¼ of the SW ¼ of Section 26, T12N, R6E and including parcel 002-0779-00000 and 002-0784-00000, Town of Baraboo, Sauk County, WI.

Brian Simmert, Land Resources and Environment, appeared and provided a background and history of the request, the photos of the site and the approval from the Town of Baraboo. He concluded with the recommended conditions should the special exception permit be approved by the Board.

Kettner asked if there are still items that are not in compliance from the last permit. Simmert stated that was correct.

Kettner asked if the applicant should be in operation while these items are being corrected. Simmert stated no, that a land use permit allowing the operation would not be issued until all items are corrected. Kettner verified the applicant would not be allowed to operate until all items were corrected and found to be in compliance, but the special exception permit could be approved. Simmert stated that was correct and explained.

Simmert also provided a comment from a neighbor in opposition to the proposed use, which he provided and labeled Exhibit I.

Kettner asked about the noticing distance. Simmert explained.

Mercier asked about the previous meeting and a time limit for another extension. Simmert stated there is not.

Wernecke asked if all the previous citations and fines have been settled and paid for. Simmert stated that is a separate issue. Wernecke feels it is not separate. Simmert stated that what is before them today is a new mining operation and would have to consult with counsel, but feels that what is in the past is separate and the court would need to decide the outcome of the citations.

Mercier asked if this quarry was in operation prior to the house of the individual filing the complaint being built. Simmert stated he doesn't know.

Wernecke asked about the draft financial assurance and if corporation counsel has reviewed, but feels there are outs for the bank that would expose the county and those need to be addressed. Simmert stated that staff has reviewed it, but before any final document is acted on, it will be reviewed by counsel.

Wernecke asked if the new road agreement with the town has been signed. Simmert stated he is not aware.

Wernecke asked if Mr. Leatherberry has attended town meetings. Simmert is not sure and hasn't received communication from the Town if they approved the special exception permit.

Kettner is not sure why the meeting is being held now and not waiting until everything has been approved first, and feels this is out of order. Simmert stated the parties have been working diligently to get the documents together and from a staff perspective feels comfortable and feels there is protection where staff won't proceed with the land use permit until those items are completed.

Mark Steichen, Attorney for Leatherberry, appearing in favor of the request, stated that they need a decision from the board with conditions so they know what to fulfill. He spoke of the letter of credit and needs to pay for it, a negotiated road agreement and what is left to do. He wanted the financial assurance form to be attached to the staff report as an exhibit, but understands the corporation counsel needs to still approve. He also wanted the final town road agreement attached to the staff report as an exhibit.

Wernecke stated that things still needed to be negotiated the board doesn't need to stipulate anything because things could be changed and renegotiated after the hearing. Steichen disagreed.

Kettner asked if there is any recommendations by staff that they have any issues with. Steichen stated they have no issues. He also stated that they have an understanding with the staff that once the new financial assurance is provided the county will release the two mortgages.

Wernecke asked why the other citations have not been paid. Steichen stated they have an agreement with the corporation counsel to put a hold on those citations, as Mr. Leatherberry has pled not guilty to the citations and believe there is an issue with the citations and feel they will be able to come to an agreement with staff on the citations.

Kettner stated he feels certain things need to be taken care of and feels the cart is before the horse. Steichen explained that they want to know what conditions may be placed on them by the board before paying for a bond. He also stated the citations are on a previously issued special exception permit.

Randy Puttkamer, Town of Baraboo, appearing as interest may appear, stated that the road maintenance agreement with the town has been agreed upon, but is contingent on getting a bond and a special exception permit, as well as payment of legal fees.

Steichen, reappearing, stated that any payment of legal fees for negotiating the road agreement to the town of Baraboo, were never agreed upon. The only legal fees to be paid would be if there were a disagreement on road maintenance after the agreement was signed.

Kettner stated that is between Leatherberrys and Town. He verified if the SEP was granted they would move ahead and have the road agreement, the financial assurance and then the issues in court taken care of, and how long will the process take. Steichen stated there are only 3 things that need to be completed per the staff, which are the letter of credit after approval by counsel, the road agreement which he feels has already been negotiated of this contract, and the signage. He feels the court issues are a totally separate issues, but feels he can negotiate with the county to deal with the citations.

Allen stated there is an agreement on the road, but the Town states something different. Steichen states there is a final agreement without the payment of legal fees, and feels the negotiation is done and they

never asked for that and the agreement states this is the final agreement and now that they have an agreement, it is not appropriate for the town to come back and say they want different terms.

Puttkamer, reappearing, stated that they only met with their attorney, and in previous road agreements Mr. Leatherberry had to pay for legal fees, and in their ordinances they can be reimbursed for legal fees. It is not right for tax payers to pay for legal fees for this. It was also addressed at the last meeting in talking about the agreement that an invoice would be generated.

Kettner asked about the road maintenance agreement. Puttkamer stated the town will address it and it should not have bearing on their decision. The town noted that if Leatherberry does not agree to their terms the town won't sign it. There is no signed contract to date, and the town will be contacting the attorney and reviewing their ordinances.

Simmert reappearing.

Mercier asked if this is a general practice of waiting on certain things before they get a special exception permit. Simmert stated it is not out of the ordinary.

Kettner asked if he would be satisfied with an approval with the conditions. Simmert stated he feels the applicant meets the conditions of approval and feels staff will make sure the applicant meets the conditions before operation can take place.

Wernecke spoke of the unsettlement in the corporation counsel office and would feel more comfortable having this reviewed prior to the approval. Simmert stated that the document and staff report is very standard and he is comfortable that the county is protected.

Wernecke asked what the shortest term limit for mineral extraction allowed. Simmert stated that is in the prevue of the Board of Adjustment, but the standard per the ordinance is 5 years.

Seeing as no one else wishes to speak, Vice Chair Kettner closed the public portion of this hearing at approximately 10:28 a.m.

Kettner stated he is troubled with the "cart-before-the-horse", but understands that there are issues to take care and conditions placed to ensure follow-through.

Mercier stated he doesn't like the idea of things left undone, but feels they could approve to allow the applicant to fulfill the conditions.

Wernecke expressed his concern with the applicants history of operating without permits and not complying with requirements and is very uncomfortable with doing a 5 year permit. The permit should be for less to encourage compliance, get things in order, settle issues that need to be settled and verify that he can do so without operating in violation of the ordinance.

Allen stated that he isn't sure they have the authority to shorten the length of the permit. Simmert verified you can.

Mercier asked when the special exception permit takes effect. Simmert stated the special exception permit takes effect today, but after 365 days, the special exception permit will void. He has 365 days to come into compliance and complete all the requirements to have a land use permit issued and cannot operate until that land use permit has been issued.

Motion by Allen, seconded by McAuliffe, to approve the application for a special exception permit for non-metallic mining operations 1-acre or greater, based upon findings of fact, conclusion of law and subject to staff analysis with recommended conditions by the Land Resources and Environment Department. **Motion carried 4-1 with Wernecke in opposition.**

6. Discussion and possible action on Yahara Materials (SP-12-17), requesting a temporary amendment to a Special Exception Permit pursuant to s. 7.060 of the Sauk County Zoning Ordinance, to authorize temporary use for a Department of Transportation project of a non-metallic mining site, one acre or greater. The non-metallic mining operation is located in an Agricultural Zoning district, described as: part of the E½ of the SE¼ of Section 8, T9N, R6E, and part of the NW¼ of the NW¼ of Section 9, T9N, R6E and including tax parcels 028-0217-00000, 028-0194-00000, and 028-0197-00000, in the Town of Prairie du Sac, Sauk County, WI.

Fowler appeared and explained the request by the operator to amend their original special exception permit to authorize the temporary use for a DOT project site. Fowler explained this specific pit was allowed for only ag use, and this is being requested to lift that restriction for the DOT project.

Kettner asked if the Town is good with this request. Fowler stated they are, but request only using Highway 60 and 12 and the restriction of only using for agricultural sand once the project is completed.

Wernecke asked if the ground flow of water will increase. Fowler stated the DNR has approved the stormwater permit and will have to be maintained.

Kettner asked about internal drainage and does the accumulated runoff ever become too much and it need to be removed. Fowler stated with the permit through DNR, the internal drainage will divert water outside of the pit and identify a sump area.

Motion by Mericer, seconded by McAuliff to approve the temporary amendment to the special exception permit SP-12-2017 based upon findings of fact, conclusion of law and subject to staff analysis. **Motion carried, 5-0.**

Motion by Allen, seconded by Mercier, to adjourn at 10:50 a.m. **Motion carried, 5-0.**

Respectfully submitted,

David Allen, Secretary