

SAUK COUNTY BOARD OF ADJUSTMENT  
April 26, 2012 Session of the Board

PRESENT: Linda White, Chair  
Dan Kettner, Vice Chair  
David Allen  
Nicholas Ladas  
Henry Netzinger

ABSENT: None.

STAFF PRESENT: Dave Lorenz  
Gina Templin

OTHERS PRESENT: See Registration slips

Chair White called the session of the Sauk County Board of Adjustment (BOA) to order at approximately 9:00 A.M. The 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 had been provided for the scheduled public hearing. The certification of notice was accepted on a motion by Netzinger, seconded by Kettner. **Motion carried, 5-0.**

The Board adopted the agenda for the April 26, 2012 session of the Board on a motion by Netzinger, seconded by Kettner. **Motion carried, 5-0.**

Motion by White, seconded by Kettner to adopt the March 29, 2012 minutes. **Motion carried 5-0.**

COMMUNICATIONS: None.

APPEALS:

A. Kenneth and Sue Keegstra SP-08-12 requesting a special exception permit to authorize filling and grading on slopes of more than 20% during the construction of a residence.

Dave Lorenz, Environmental Zoning Technician, appeared and gave a brief history and background of the property, as well as reviewing photos and a video of the site. He then recommended conditions to be placed on the appeal if the request were approved.

White asked about the flags represented in the video and if they represented a corner of the new home. Lorenz stated he believes that is correct.

Kettner asked about the rope with the stakes and what they represent. Lorenz stated he is unsure but does not believe they were established by the surveyor.

Ladas spoke of the Town requesting that the County received details plans and borings and if we have received those. Lorenz explained that the County only has in place what was received and provided in the Board's packet.

White asked about the stone removed used for retaining walls and if that is soft stone or stone they will have to blast. Lorenz stated he was unsure.

Ladas asked if some of the area that has to be excavated will have a 40 degree slope to it. Lorenz stated some of the area is quite steep.

Gary Barbknect, Agent/Contractor, appearing on behalf of the Applicant, in favor, stated that the stone is in layers and is hard stone and to do a boring out there would not provide the information they are looking for. He stated they have completed two other projects on Lake Redstone that are similar to this project and is confident that this project will be as successful as the others.

Kettner asked how tall the retaining wall will be at the highest point. Barbknect stated about 6 feet tall.

Kettner also asked about the location of the wall and where the outcropping will straight down to the lake, referring to Exhibit II,3. Barbknect stated that where the retaining wall is located on that exhibit, there are lines showing the difference of elevation and that is what they are creating, not what is existing now.

White, referring to Exhibit II,7, the site plan shows the property as it is now. Barbknect stated that is correct.

Ladas, referring to Exhibit II,3, shows the septic tank located where the area is graded and how it will be serviced with the garage located as it is. Barbknect stated that is correct and it will be a true septic field with the field located above the house and garage to be removed. He also stated that he has spoken to the pumper and septic people and they agree that is a feasible location for the tank.

White stated she has a letter from Mark Malave in support of the request and read to the Board.

Seeing as no one else wished to appear, Chair White closed the public portion of the meeting at approximately 9:18 a.m.

Ladas said he has a problem with it and has gone to view the site and the grade is very steep and is concerned with how they will remove the trees without damage and erosion to the lake.

Kettner stated he is concerned as well due to the slopes there and the natural rock with a wall on top of it you could end up with something in excess of 12 feet tall and is concerned of the life expectancy of the wall and how it will hold up.

White asked if they would like more information from the applicant.

White reopened the public portion of the meeting to hear from the agent/contractor.

Gary Barbknect reappearing, stated that the stone that will be used is larger material that will be slid in place with a backhoe and built in as they go. He suggested viewing the other two projects and have the Board look at those so they can see what how that is done. He agreed that the slope is very steep and the trees will be removed with an excavator.

Ladas asked how the trees will be removed without materials falling to the lake. Barbknect stated his excavator is very good and they take the machines down, remove the first tree and then move on and confirmed that the trees are not deep rooted and then determine how they want them to fall with the backhoe.

White asked if they will be removing trees beyond the footprint of the building. Barbknect stated that no more than necessary.

Public portion of the meeting has been closed again at 9:24 a.m.

Motion by White, seconded by Netzing, to approve the special exception permit to authorize filling and grading on slopes of more than 20% to construct a residence, with the conditions recommended by Conservation, Planning & Zoning. **Motion carried 4-1 with Ladas in opposition.**

B. James R Conlin SP-09-12 requesting a special exception permits to authorize filling and grading on slopes of more than 20% during the construction of a new residence.

Dave Lorenz, Environmental Zoning Technician, appeared and gave a brief history and background of the property, as well as reviewing photos and a video of the site. He then recommended conditions to be placed on the appeal if the request were approved.

White asked about the Town's request for a setback for a variance and it states that the deck is 65 feet. Lorenz stated in this case they can utilize averaging because both properties on either side of the residence are legal non-conforming and allow the reduced setback.

White asked if they are at 65 or is it 63 or some other number. Lorenz explained 65 feet makes it legal when using averaging, but is unsure about the deck and would have to look closer.

Kettner asked if it is standard practice to default from the 75 foot setback from the water and to do averaging. Lorenz explained that the ordinance allows averaging to deviate from the setback distance, but you are not allowed to go any closer than 50 feet.

White asked how close the structures have to be within to use the averaging. Lorenz confirmed it is 250 feet.

Mike Jones, Agent/Contractor, appearing for the Applicant, in favor, stated that this request is similar to the afore mentioned appeal and the main difference is their property levels off in front of the structure and stones will be used for the retaining wall as well. He also spoke of a

driveway access that they can use to get into the lower level part of the property and trees will be removed in the same manner, as they are using the same excavator.

White asked how they plan to deal with the change of the runoff from the house. Jones stated they will use erosion control during construction and will not be changing the runoff pattern that is existing.

White asked about the garage. Jones stated that the garage has been removed and there is a plan to put it where the parking pad is located.

White stated that could require another permit. Jones understood that.

Ladas asked about the property owner. Jones explained.

White asked about removing trees and vegetation and cautioned him that if he infringes on the setback that they have now there is no mercy from the Board on mistakes and requested that he make sure they are at that distance or further back from the lake.

Seeing as no one else wished to appear, Chair White closed the public portion of the meeting at approximately 9:35 a.m.

Allen stated he feels it is a straight forward request.

Ladas stated he feels it is a straight forward request as well.

Netzinger stated the setback they are looking at is to the deck and not the house and spoke of the 11 foot setback from the property line.

Motion by Netzinger, seconded by Ladas, to approve the special exception permit to authorize the filling and grading on slopes of more than 20% during the construction of a new residence, with the conditions recommended by Conservation, Planning & Zoning. **Motion carried 5-0.**

C. Joseph Seep SP-10-12 requesting a variance to authorize the replacement of a warehouse, workshop destroyed by fire within the minimum road setback.

Dave Lorenz, Environmental Zoning Technician, appeared and gave a brief history and background of the property, as well as reviewing photos and a video of the site. He then recommended conditions to be placed on the appeal if the request were approved.

Kettner asked about the structure shown in photo 4. Lorenz explained that was a construction trailer on wheels and movable.

Ladas asked that the building can be rebuilt if they leave it in the same footprint as the one that was damaged by fire and asked where the expansion comes in. Lorenz explained that the existing pole shed damaged by fire will be replaced with the larger pole shed.

Tom Guyse, Agent for the Applicant, appearing in favor, he spoke of the building in question is shown as proposed warehouse and office space on the plot plan and the request is to use the same footprint, however they would be coming out 10 further to the South to accommodate 2 bay doors to be allowed to park the larger trucks into the new shed.

Kettner confirmed that the new building is replacing the burned building and is planned to expand it 10 feet larger to the south. Guyse confirmed that is correct. He also spoke of the topography of the landscape and there is a significant slope off the driveway and there is a large area that acts as a buffer with a drainage ditch with grass. He spoke of shifting the building and needing to get commercial vehicles around there for deliveries and the attempt to minimize the impact with the building of the new shed.

White spoke of the requirement to address the 3 issues of a variance. She also asked if they are using the existing concrete from the building or will this start from the dirt up. Guyse stated he believes they are starting from the dirt up.

White asked for confirmation this will be a commercial building. Guyse confirmed.

Kettner asked about the other existing pole shed and gravel drive and if that is used for a driveway to get around the building or if it is used as a parking lot. Guyse stated that on the north side of the pole shed there are vehicles parked there and on the south, the driveway does wrap around but not used for parking and stated during the course of the day there will be equipment parked on the gravel drive.

Kettner stated part of keeping a building back from a roadway is safety and parking vehicles between the road and the shed defeats the purpose of safety and keeping things away from the roadway. Guyse stated that where the proposed warehouse will be there won't be a lot of parking.

White asked if the extra 13 feet to meet the 63' is significant. Guyse stated that you would have to bring in a large amount of fill to extend the parking lot to get the commercial vehicles between the proposed shed and the drop-off. He also stated that limiting the fill and giving you more green space for storm water runoff is better and to keep the improvements out of the prime ag land as well.

White asked if you didn't make the building 10 feet wider, you would be 10 feet further away from the road setback and you would only be 3 feet into the setback. Guyse stated he is trying to accommodate the size of the business as it is right now as well as future expansion and the need for the two service bay doors.

Netzinger stated they can't build the shed as is and you need to build it bigger to retain the bays. Guyse stated that the expansion is for the bays.

White asked if that is on the part of the building on photo 3. Guyse confirmed.

White asked why the doors have to be built that way. Guyse stated he thinks it has to do with the Uniform Dwelling code, the doors wouldn't be any wider, but the footprint will be bumped 10 feet wider.

Kettner asked about photo number and requesting to extend the building 10 feet in that direction towards the portable building and the paved drive that exists currently is how far from the road. Guyse stated the existing pavement is 27 feet.

White stated they steep slopes wouldn't come into affect if you moved it back the 10 feet. Guyse stated if you didn't extend the parking lot you would eliminate the south side as far any commercial vehicles.

White asked if the access could not be on the north side. Guyse stated you will face the same issues and you would have to pull the shed almost to the drop-off. He referred to photo 1. He stated they would do more regarding on the north end of they did that.

White asked for a summary of the 3 questions.

Guyse stated the hardship would be the uniqueness of the site and trying to accommodate and work with the slopes they have now and trying to eliminate the impact on the resources and try to provide a viable access for his current business.

Guyse stated the unique property limitations are the slopes and the public interest is trying to work with the resources that are there and the buffer between the commercial business and the waterway.

White asked if the building will be longer than the existing one. Guyse stated it will only be wider, due to the 10 foot expansion for the bay doors.

Kettner asked in photo 2, clearly shows a large dump truck parked parallel to the road and is only a few feet from the roadway and if they are concerned about public interest is the safety from the road and to have vehicles parked so close to the roadway, it is not in the best interest of public safety. Guyse stated he is concerned about the parking for the building that did not burn.

Netzinger spoke of moving the driveway to the north of the new building, if you move it you are going to be parking vehicles up by the road.

John Pearson, appearing in favor the request, stated he is a member of the Town Board and Plan Commission, and stated he is a client of the applicant and stated that the Town is in favor of keeping the applicant in the community and service the Township of Ironton, as well as stating it is handy to have someone that does this kind of work in the community.

Allen asked as a Town Board member if he feels the vehicles parked too close to the road would be a safety hazard. Pearson stated he has driven by and never really considered the vehicle parking to be too close to the road.

White asked how much traffic is on the road or if car counts are done for the Town. Pearson stated they did a car count several years ago and it's not a major artery and feels the only traffic on the road is residence or people coming to or from the other residences.

White asked how long the building has been there. Pearson stated he can't state for sure, but

Seeing as no one else wished to appear, Chair White closed the public portion of the meeting at approximately 10:10 a.m.

White stated she is torn as it is for new construction and they have given permits for rebuilding after a fire when replacing on the exact footprint. She also read from the ordinance section that pertains to the request and advised the Board on the requirements for granting a variance.

Allen asked White if she feels it meets the hardship criteria. He stated there are other cases where they tried to help people and due to state rules, they were wrong in their decisions to grant variances based on not meeting the criteria necessary. He spoke of this case being a convenience simply due to only hauling in extra fill. White also stated finances are not a consideration on whether it is a hardship or not and if it costs more to bring in fill, it is not a consideration they should be using to determine hardship.

Kettner asked if they were to rebuild the building in same footprint that would be acceptable.

White stated they have allowed that in the past. She stated she feels it may be a hardship with them having to meet new state codes and the parameters have changed since the building was built. She also stated she drives by the property often and there is not a lot of traffic on the road, and also feels there are some uniqueness to the property.

Kettner stated that possibly the hardship is tied with the unique characteristic of the property and if the building was moved further to the south it takes away some farmland and is concerned about public interest and public safety and having the building built in that location is not as much an issue as the location of where vehicles are being parked next to the road.

Allen stated he is concerned with the hardship and understands this is not a highly trafficked road and puts a lot of emphasis on what the township recommends. He stated he feels the property is unique, but doesn't feel it would be impossible to move the building and they cannot take financial into account.

Netzinger stated he believes the building could be moved to the south, but questions if the hardship is the fire and the new regulations. He feels the uniqueness of the property does not allow more ability for him to move the building somewhere else on property he owns and feels he shouldn't force someone out of business, but is having a problem with a complete hardship.

Ladas stated he feels it is difficult to force a person out of business because of a fire and does not see how they cannot move the building a little bit to accommodate the applicant. He also feels that even though this isn't a very traveled road, the parking of the vehicles eliminate the view on a traveler that could be driving past and that is an issue with public interest.

White stated it would not put them out of business, but it would cost them more to back up the building.

The Board asked to speak with legal council on the parameters of a hardship.

Alene Bolin, Sauk County Assistant Corp Council appeared. White asked about the requirements of proof for unnecessary hardship and briefly reviewed the case in front of them.

Bolin suggested the Board consider if they received evidence that if they built on the same footprint they would not meet building codes. White stated that testimony did state that and explained that if they moved the proposed shed off of the footprint they would be required to put in more fill and asked about hardship requirements.

Bolin stated that due to not being a part of the testimony or knowing in detail about the case at hand that she could only speak to the law requiring variances and hardship and cannot provide council on this particular case. She stated to determine hardship it would be whether the ordinance prevents the owner of a property from using their property for a permitted purpose or if they were to conform to the ordinance the restrictions placed on them are unnecessary burdensome. She spoke of law pertaining to uniqueness to the property and it cannot be self created and as well of an owner not having the option to rebuild on property they own at all because of building codes.

White confirmed if they had to put more fill on outside is or is not a hardship. Bolin again stated she could not comment on this particular case nor could she direct them as to whether or not it is a hardship, but when you look to grant a variance, you should look if there are other options available to the property owner.

Allen asked for a definition of “reasonable”. Bolin stated you look at it as, an option that can be done, and other things to determine whether something is reasonable, such as the cost outweighing the benefit.

White asked you can use costs in determining hardship. Bolin stated case law does not allow financial issues in determining a hardship, but you could consider it with determining reasonableness.

Netzinger asked about putting fill in and having a lot that has runoff or water issues and feels filling the land and creating steeper slope is not reasonable and asked if that is the correct way to look at it. Bolin stated it is something they can consider and suggested to consider if that can be mitigated or is there nothing that can be done to prevent runoff if they have to use fill.

White asked if slope issues can be dealt with through a retaining wall, and if that could negate the discussion on runoff problems. Bolin stated in general, the Board should consider if there is a solution to an issue that is something that would normally be done in a construction project, then wouldn't be a hardship, as it is not radical.



White mentioned the previous cases regarding filling and grading where they approved fill and retaining wall use to address slope and runoff problems.

The Board reopened the public portion of the hearing and asked to hear from the applicant.

Tom Guyse reappearing.

Netzinger asked who owns the properties adjacent to the proposed building. Guyse stated Celia Spike. Netzinger asked for confirmation that the applicant does not own property adjacent to the proposed site. Guyse stated that is correct.

Netzinger asked how steep the slope is. Guyse stated he is not an excavator so he can't say what it would take to build that up and feel that it is around 20%.

Allen asked if the drop off was manmade or natural. Guyse stated that it was manmade due to the building of the other sheds, but there is some natural slope to it as well.

Kettner stated that paved drive area to the south of the burned building is as much parking lot as it is driving from one end to the other. Guyse stated that it is left open and most of the parking is done to the south between the two sheds and the blacktop.

Kettner inquired the new proposed building was moved to the south about 25 feet and you take off 10 feet for the additional size and then put a drive between what is now the green space and the building, you would have a 15 foot drive going past that building making no need for a variance, and asked if that would that be feasible solution. Guyse stated he wasn't sure.

Kettner stated this way you do not have to go into the slope for the building or for the drive and you simply put the drive on the other side. Guyse stated for ease of operation it's nice to have more room to maneuver for the larger trucks the way they have it laid out.

White closed the public hearing portion again at 10:42 a.m.

White stated she doesn't feel it meets the hardship portion of the business. Personally she would like to grant this, but legally, she doesn't feel the Board can grant it due to other options being available that would not require the variance.

Kettner stated he feels the Board all wants to help, but also understands to abide by the legal requirements of granting a variance and felt there could be options sought for the building.

Allen and Netzinger stated they addressed their opinions on the variance in previous discussion.

White also spoke of the public safety.

Motion by White, seconded by Netzinger, to deny the variance request due to the Applicant not meeting the 3 criteria for the Board to grant a variance in accordance with State law. **Motion carried 5-0.**

D. DL Gasser Construction SP-11-12 requesting to modify the conditions of a special exception permit to operate a quarry on Fox Hill Rd, specific to hours of operation, allowing an earlier start time and the option for 24 hour operation.

Dave Lorenz, Environmental Zoning Technician, appeared and gave a brief history and background of the property, as well as reviewing photos and a video of the site. He then recommended conditions to be placed on the appeal if the request were approved.

White asked if any quarry has 24 hour permission. Lorenz stated they do not.

Ladas asked about the hours of operation and the Town board approval letter. Lorenz stated he was not at that hearing so he deferred to the Town representatives.

John Traxler, DL Gasser, Division of Mathy, appearing in favor stated that the Town was opposed to crushing at night and stated that was not a problem. He also stated that the request is with the intent to start the asphalt plant 1 hour earlier in the morning, helps them when the haul further distances. As they looked further into projects and their hours of operations, there are projects that include night work and they used their Dells site where there are no restrictions on the hours of operation. He spoke of other projects and the opportunity to run at night when they have a project that requires work at night.

White asked about the crushing part to start at 5 a.m. instead of 6 a.m. Traxler stated it is for consistency if all the hours are the same. He stated that they would be ok with the asphalt plant only starting at 5 a.m. versus all the others starting earlier.

White stated she is reluctant to do a 24 hour operation permit 365 days of the year, but would consider so many days of the year being allowed to do 24 hours and if they would be acceptable to that. Traxler stated a job they did last year, they felt 60 days could be worked with.

White asked if this would be about May to October. Traxler stated that would be normal, but there are years that they ran from April to deer hunting.

White asked if the request is only if the contract states they must work at night or only a convenience. Traxler stated the project specifications that are put together by a consultant or the customer.

Kettner asked about the backup warning beeper versus strobe light. Traxler stated the trucks are not set up for strobe lights. Kettner asked if the beepers can go off all night long. Traxler stated they could.

Bill Kazmerek, appearing in opposition, stated that he built his home in 1994 and knew the plant was there and had no problem with that and they can hear the plant early in the morning, but they accept that and to go 24 hour operation they are opposed to. He spoke of the backup alarms on their loaders, the trucks and the engine brakes on the trucks are a public nuisance.

White asked how far his house is from the operation. Kazmerek stated 1 mile.

Kettner asked about the engine braking and if it can be avoided. Kazmerek stated it can be avoided and the trucks currently abuse it the Jake brakes options and many of the trucks coming to and from the quarry don't have mufflers on.

Randy Thomas, appearing in opposition to the request, stated he is ½ mile from the quarry and stated he couldn't find any place onsite where the current hours are posted. White provided the hours.

Thomas stated he is in favor of the quarry business and appreciates them growing, however the initial special exception is for excavation and if there is still excavation being done at the plant. He also stated that part of the responsibility of an ongoing business is to be a good neighbor and protect the quality of life. He was aware of the quarry when he moved to the area but currently there are about 100 families within ½ mile radius as it relates to the amount of residents around the quarry. He spoke of the operation, truck traffic and other issues such as back up noise, conveyor running and crushing operation and the pit actually acts as an amplifier and the proposed hours expansion covers what would be their entire summer and puts undue hardship on the people that live within the area and feels it is not reasonable to ask 100 families to live in a construction zone. He spoke of alternatives to running 24 hour operations and appears that there is a conflict in this location.

White asked if he feels they have stayed within the hours they have been given with the original permit. Thomas asked a question on the hours and whether 6 a.m. means unlocking the gate or machines on and ready to go. He did state that the machines are up and running prior to 6 a.m.

Kettner asked for one thing that is the most detracting from the quality of life. Thomas stated that the biggest issue is the noise. He cautioned the board to consider with this being the only 24 hour operating plant, it could lead to future issues where more things are being done at this plant.

Steven Hess, appearing in opposition, stated that he is a Town Board member, president of the Wynsong 4<sup>th</sup> addition subdivision and is a home owner that lives close to the quarry. He stated from the Town perspective, stated he has received complaints of noise from the pit which were maintenance being done at night. He also stated that they maintain the pit very well and appreciates that and the Township does get supplies from the applicant. He feels the potential for issues could arise if this is allowed for 24 hour operation 365 days a year. As a property owner, they can hear it from the subdivisions and the area is some of the higher valued homes in the area and the Town collects a large amount of property taxes from this area and also addressed the ability to sell a house and detract from the value of homes in the area.

White stated that this permit would renew in 2016 and would get reviewed at that point. She also stated prior to about 5 years ago, they were 5 year renewals, but have allowed 10 years renewals and suggested that the permit renewal time can be modified.

Kettner verified the largest problem is the noise issues and asked what is the source of the noise that is of greatest consideration. Hess stated back up alarms, Jake braking and is not familiar

enough with the plant to determine what process is making the noise, but thinks it is probably the crushing, but could be some combination.

Ladas asked as a Town board member, the Town approved it with the change in crushing. Hess stated he would have voted the other way, but due to him not having preparation time himself. He also stated what they get from the County is a letter of acknowledgement that they applied.

Ladas stated that they are stating to the Board that they are suggesting to the Board that they approve it. Hess stated if he could go back and change his vote at the Town level, he would. He is not saying they don't want the quarry to operate, he simply feels the homeowners could be even more inconvenienced with the changes.

White asked if he is also opposed to the 5 a.m. time. Hess stated he is also opposed to 5 a.m. due to the noise starting at 5 so they can officially begin at 6 a.m. and if you move the time back to 5 a.m., you have things starting up at 4.

Kathleen Goerks, appearing in opposition to the request, stated she is the property owner adjacent to the pit and the applicants also used their property in the past for mining and stated they do still have a contract with them. She also stated they have concerns with traffic due to the residential increases, the casino and other traffic and they are also used as a short cut to get into Baraboo from Highway 12. She stated they understand its part of it during the week, but during the weekends its very congested at the Pit Rd intersection. She also asked if this request includes hauling materials to the site and they are constantly going back and forth from the Leatherberry site to this site.

White stated this is only for this site and it does not give Leatherberry the ability to haul or truck or use the same hours.

Warren Traeger, appearing in opposition, stated he is very close to the existing operation and asked how many people want to wake up at 4:30 a.m. except for Sunday due to the trucks and engine brakes going to and from the pit and he stated the wash plant works 24 hours a day even though they don't have permission for it and stated he has talked to the Town Board however it has not done any good. He stated practically everything is hauled in and hauled out except for sand and they are not doing any quarrying and there is no need for the long hours. He stated that they were originally told that when the pit was empty they would be gone and out of there and he has a reclamation plan that shows it will all be planted into crops and that was in 1996.

White asked how long he has lived next to the quarry. Traeger stated about 60 plus years and he was there prior to the construction of the pit.

White asked if the other pits in the area make as much noise. Traeger stated the Leatherberry pit is on the other side of the hill, so he is further away from him.

Robert Moy, appearing in opposition, stated that he lives about 2/3 mile south of the plant and he developed the Wynsong subdivision and feels that everyone has always been good neighbors and have always had a good relationship with the quarry and there are some nice homes and he still

have lots available for sale in that subdivision and is concerned with the ability to sell the lots and other people's ability to sell their homes if the operation ran 24 hours and feels there is some time you have to be allowed to have some peace in their home. He stated they hear it early in the morning and they have gotten used to it but to have it go on all night long would be an issue.

White asked if he has heard issues at night now. Moy stated he really hasn't.

Sharon Terry, appearing as interest may appear, stated she is a resident of the Town of Baraboo and stated she is concerned with past discussion with the applicant due to the start up time at 6 a.m., they can start their equipment at 5:30 a.m. and then start work at 6 a.m. She stated the nature of road construction is in the summer which is when it would affect the neighbors and their quality of life and addressed restrictions when people can mow lawns and operate chainsaws and noisy equipment and doesn't feel it is unreasonable to expect the same in a high volume subdivision. She is opposed to the 24 hours day and would that be setting a precedent for having 24 hour operation for all other quarry operators.

Bill Scully, Area Manager for the crushing division, appearing as interest may appear, stated that the wash plant area is grandfathered in and they are allowed to operate 24 hours a day and stated they wash there about 4-8 weeks out of the year at night. He addressed the reclamation on the west side of the road and the far north property, they have 76 acres have been reclaimed and 54 have been planted to corn and hay for the last 5-6 years. Heimlich property has been reclaimed and they have only crushed out new areas and Goerks property has been completely reclaimed last year and the seed is planted and it has to grow more before the county will accept the reclamation on that site.

Allen asked if the testimony that the pit has been used up for material other than sand is more of a distribution. Scully stated that is correct and that they still quarry sand.

Warren Traeger, reappearing in opposition, asked what "grandfathered in" means. He stated when the wash plant was moved in there was no permits.

White asked when the quarrying started. Traeger stated he doesn't know the exact years, but does have letters from Planning and Zoning in 1992 that they were going to reclaim, but doesn't feel that has been done to his knowledge.

White addressed what grandfathering means. Traeger gave history of ownership.

Steve Hess, reappearing in opposition, stated they are not talking about a quarrying operation, but a manufacturing operation taking place 24 hours.

Dave Lorenz, reappearing.

White asked if asphalt plants are separately permitted. Lorenz stated they are considered a mineral extraction activity but in an existing pit it is considered an expansion of the use.

White asked about with this pit they were included in the 2006 and prior request so it is allowed in the ordinance and with a special exception permit.

Seeing as no one else wished to appear, Chair White closed the public portion of the meeting at approximately 11:55 a.m.

White stated she would not allow 24 hour operation, 365 days a year and is reluctant to even allow during the summer months due to the options that could take place.

Kettner stated as it is the plant is open 15 hours a day and there are several concerns now and issues with the noise from several sources associated with the quarry and to open that up even further compounds the issues.

Allen stated he feels they have been a good neighbor and asked where all the complaints are and hasn't seen any. He wished it wouldn't take so long to get a permit and allow for them to get a permit easier.

Netzinger spoke of night work in Illinois and doesn't see it as an issue in Wisconsin and doesn't feel that the 24 hour permit would be used that often and the permit can come up for renewal. He also spoke of jake-braking and there is no law in Wisconsin concerning jake-braking or muffling and the Board can't do anything about it. He stated he would be in favor of allowing 24 hour operation of May 1<sup>st</sup> through October 30<sup>th</sup> and suggested back up strobes on trucks should be investigated. He stated if you don't like the night work, take it up with the State.

Ladas stated he has the same concerns that everyone is voicing here and is not in favor of the 24 hour a day, 365 days a year is not acceptable and feels they could have 30 days however, and is in favor of rapid approval of a permit to be able to get a permit easier. He stated engine-braking is a problem and there are ways to handle that, but it is not their issues. He is concerned why all these concerns didn't come up 5 years ago when they applied for the permit.

White stated people come in the first time something is approved and they express their opinions then and explained the public hearing process. She also spoke of follow up and the County only working certain hours and can't address an issue at night. She also addressed a major contract and having time to address a permit and the balance between the quarry's rights and the resident's rights. Due to the noise already starting prior to 6 a.m. she is not in favor of any every day thing, but allow 30 days out of the summer with dates on when the summer begins and ends.

Netzinger suggested trying it for a year.

Kettner asked for the applicant to come back and address some of the issues he has heard.

The Board reopened the public portion of the appeal.

Traxler reappearing.

Kettner asked him to address statement that have been made by those in opposition.

Traxler stated he does not know of any contracts up for bid this year, so he doesn't feel allowing this for one year will do them any good. He did say he usually has a 3 year window from the DOT on the project, but things come up. He stated 30% of everything the mix is sand that comes from this site.

Ladas asked if they told the truckers that contract with them that no more engine braking is allowed. Traxler stated that they can do it for those under contract but that only addresses ½ of the trucks coming in and out of the pits, but he is willing to do that.

Ladas asked how they feel the restriction of 1 year probationary period for the 24 hour operation within 30 days of the season. Traxler stated he doesn't believe there are no contracts coming up for bid this year.

Allen asked about controlling the customers that use the pit and supplies that they limit the jake braking would be appreciated.

White stated 24 hour operation, 7 days of the week is not reasonable, but only 24 hour operation on Monday through Friday.

White stated 30 days is 6 weeks and how many jobs run more than 6 weeks. Traxler stated none for this year but state jobs could go long than that. White asked about using other asphalt plants. Traxler stated they could always just move it to the other side of the road where they are grandfathered.

Netzinger spoke of postponing the vote due to no contracts coming up to allow for time to address some of the issues. He suggested Planning and Zoning addressing it.

Traxler stated they would be willing to strike the night work and come back when they have a contract, but allow the start time earlier.

White asked what the start time is. Traxler stated they open the gate at 6 a.m. and they are not starting any machinery before that time.

Lorenz reappearing.

White asked if this is something that Planning and Zoning could research with other ideas. Lorenz stated the Department could take a look at that, but also suggested if you postpone a decision you need to set a time limit as to when it comes back, if you don't set a time limit that is considered a denial.

White asked about enforcement and if the Department received calls. Lorenz stated there were complaints about operating beyond and earlier than the hours permitted and they came back before the Board of Adjustment, the Board did not uphold the Departments decision. He also stated it is difficult for the Department to monitor anything prior to department hours or after hours.

White asked if police wrote a report that would be considered evidence. Lorenz stated it could be.

Kettner asked if they make an observation, can they write a report. Lorenz stated he is unsure.

White asked if 6 a.m. is unlock the gate time, not machines are running by 6 a.m. Lorenz stated he is unsure.

Netzinger stated he will investigate with Planning and Zoning.

Randy Thomas, reappearing, stated that it would be total misappropriate of the sheriff's department and then who would enforce it. White spoke of specifications that if you violate more than 1 or 2 times, you can get it revoked and spoke of evidence showing that it took place for use when they come up for renewal.

Steve Cahoon, Town Board of Baraboo, appearing as interest may appear, stated that the situation they have at the site has been ongoing for many years and there are people who can enforce this and they have had calls at midnight and there is no reason that these people cannot get a hold of the Town and they can make a report. He spoke of law enforcement not having noise abatement equipment. He address jake braking and that you can hear them from many miles away and the Town can post going into there but they cannot post going out due to it being another township and they do not have law enforcement to go after the truck and you need a specific date and time and information off of the truck.

White asked about the changing of the hours. Cahoon spoke of the state letting these contracts and if the contract is in their hands would the board allow the operating of 24 hours.

White asked about the general opening at 5 a.m. Cahoon says he sees it as it stands and spoke of trucking going and coming from the plant and believes 6 a.m. is fit for what they are doing.

Ladas asked if he believes that deny the request at this time and then make an opportunity to get a permit when they have a contract in hand. Cahoon confirmed.

Kettner suggested that things left as they are and if they have a contract in hand that requires 24 hour operation, they would grant at that time the ability to run 24 hours on a trial basis.

White stated she is concerned on the length of time knowing when the contracts come. She suggested normal hours stay where they are, but for trial permit give them 20-30 days to run 24 hours during the summer until the existing permit expires. Kettner suggested two years trial.

White asked about parameters. Kettner suggested 60 days out of the year.

Ladas suggested 30 days between May 1 and November 1<sup>st</sup> each year and then it expires in 2016 and if there is one violation of the special exception that voids the 30 day 24 hour operation, if they receive a contract for a 24 hour job, which needs to be sent to the County to verify prior to running the 24 hour operation. He suggested a 2 year trial versus 2016.



Allen feels they should have a probationary period, but doesn't care if it is 2 or 4 years, but would lean more to the 4 years.

Public portion is closed at 1:40 p.m.

Motion by White, seconded by Allen, to retain the original hours of operation from the 2006 Board decision, also to have the option to modify the hours of operation for 30 continuous days each year, that allows any alteration to the hours of operation, with the exception of Saturday and Sunday hours, when the applicant has a signed contract for work that requires night operation, with notification to Planning and Zoning 24 hour prior to operating at extended hours. This permit is valid for two years with the option to renew on or before April of 2014. **Motion carried 5-0.**

Meeting adjourned at 12:43 p.m.

Respectfully submitted,

Henry Netzinger, Secretary