

SAUK COUNTY BOARD OF ADJUSTMENT
December 16, 2010 Session of the Board

PRESENT: Richard Vogt, Chair
David Allen
Henry Netzinger
Robert Roloff
Linda White
David Wernecke
Ron Lestikow

ABSENT: None

STAFF PRESENT: Gina Templin
Dave Lorenz
Mark Steward

OTHERS PRESENT: See individual appeal files for registration appearance slips.

Chair Vogt called the session of the Sauk County Board of Adjustment (BOA) to order at approximately 9:05 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. Certification accepted on a motion by White, seconded by Wernecke. **Motion carried 5-0.**

Motion by Roloff, seconded by White to adopt the agenda. **Motion carried 5-0.**

Motion by Netzinger, seconded by Vogt to adopt the minutes from the November meeting. **Motion carried 4-0 with White, Roloff, and Wernecke abstaining.**

COMMUNICATIONS:

Todd Liebman, Corporation Counsel stated he was involved in a meeting that was directed by the Board, so he arranged to have special counsel to the Board if there are any legal questions.

Linda White stated she received an email from Paul Freitag in reference to the quarry hearing. A copy of the email was giving to the record.

DISCUSSION AND POSSIBLE ACTION ON AN APPEAL POSTPONED AT A PREVIOUS HEARING.

- A. Bradley Palmer & James Nero (SP-29-10) granting of variances to authorize the creation of two nonconforming parcels as the result of a proposed land transfer.

Vogt discussed procedures for this case. Netzinger stated even though he recused himself at the previous hearing, he would like to be able to vote on this request.

The Board asked special counsel to advise on whether a recused person can reconsider the issue and take part in the vote. Counsel stated that he does not know of any case law that prevents it from happening, so he feels Netzinger can be allowed to come back and participate in the vote.

Vogt asked White and Roloff if they received the packet of information. Roloff stated that he did receive the materials, but because he knew he would be absent so he returned them without reviewing them. Vogt asked Roloff to recuse himself from the hearing.

White stated she did receive the information from the county as well as listening the audio tape, as well as the minutes and feels she can make a decision based on the understanding of what is going on.

Vogt stated due to 5 members, Wernecke is not needed.

Vogt provided some background on what took place at the previous meeting. Vogt advised the Board that he can reopen the hearing if there is new testimony.

White asked the Board to reopen the hearing as the applicants were advised to meet with Planning and Zoning and the applicants to see if an alternative could be met. She stated the discussion should be about that meeting and not revisit all the past information.

Motion by White, seconded by Netzinger to reopen the hearing to allow new testimony. **Motion carried 5-0.**

Mark Steward, Director, Sauk County Planning and Zoning, stated that the parties are working with Land Conservation and the DNR to provide a solution to the water/dam issue. He provided a proposal for a land split that the Department could support for a variance.

Todd Liebman, Sauk Corporation Counsel stated that there were a number of different scenarios that were provided at the meeting. He stated that LCD, P&Z and the applicants met and reviewed a wide variety of different topics and one thing that was done immediately was resolve the engineering issue and the solution for the dam/water. The other issues were then discussed and then at the end of the meeting, all the parties were in agreement, including Planning and Zoning that the applicants request would be granted. He stated he drew up a stipulation and provided to all parties and it was his impression that all agreed. Steward then did state that he has issues with how the stipulation was draw up. He stated that this map was provided and he communicated with the parties and inquired if they would be willing to agree to the acreage concept, but did to provide to them the map.

White stated with this map, is the intent to keep one parcel non conforming rather than two.

Vogt asked if the map should be allowed. Attorney Gault then appeared. He stated the record was closed, and the motion was to get information as to what occurred during a meeting that took place. He stated he believes MR. Sweeny has a problem with new evidence for other alternatives. He is aware of some of the email traffic, while all of the details have not been seen and feels they should not open the meeting for new evidence.

White stated from listening to the audio tapes, feels that any that happened past the last Board meeting should be allowed, as that is what was requested by the Board. She also stated that any solution that would have been worked out would be different than their original request. What is the Board allowed to rule on, what was in the application or what is now being proposed. What are they ruling on, the original request? Gault stated they have made a request for a variance for specific sized parcels, and this what is before the Board unless they want to amend their request. White asked if they need to postpone the meeting and asked for another request or can the applicant ask for an alternative. Gault stated they can make an oral request. White confirmed that the Board will vote on the request as originally submitted or the applicant can ask to have the request modified.

White also stated that at this point, Planning and Zoning would be allowed to review their proposal and the applicant can review what their proposal is and if they don't agree to this one, then maybe they have a different solution. Gault stated it depends on what the motion by the Board was and allow new evidence might be. Vogt stated though you allowed to let the applicant to make a change to their request.

White stated you are not going to allow Zoning to provide information or a new proposal, but you would allow the applicant to provide a new proposal. Gault stated that he feels it would be unfair to the applicant.

Lestikow stated that the reason they postponed it was so the two parties could meet to try to resolve. Counsel stated that party did take place, but there was some agreement, but no map, now there is a map to go along with the meeting. Gault stated that he understands the meeting took place and a stipulation was drawn up, but not agreed upon. He stated you go with the record that was given previously or you reopen the meeting to all new testimony.

Mark Steward, reappearing. Vogt asked about the map that was distributed to the Board and asked about the proposed solution to the issue is something that came out of the meeting. Steward stated that lot sizes were discussed in depth in the meeting, but there was no agreement to lot sizes, which is why the Department did not agree to the stipulation, but the engineering and the work with Land Conservation was agreed to.

Todd Liebman, Corporation Counsel, reappearing, stated that when the meeting was ended he feels there was a comprehensive agreement on all issues the applicant and believed that the Department would not oppose the variance request.

White asked if the agreement was to take the applicant as originally applied for. Liebman stated that is correct.

Mark Steward, reappearing. White asked if there was something in the stipulation that was not acceptable. Steward stated the stipulation had language in it that was not acceptable by the Department, in which comments were forwarded to Corporation Counsel and he felt that the agreement was not as definitive as he felt it should have been.

White asked about the map presented and is asking what the goal is on this split as opposed to what was originally presented. Steward stated that the original presentation was the decision of the Department. In light of trying to compromise, the Department reviewed and came up with this map which one variance would be required versus two and the Department could support.

Vogt spoke of the dam issue and it going away because of the decision by the DNR. He then spoke of the co-ownership issue of the culvert and the way the survey lines were and that was the main argument of the applicants why the variance was needed so that they could have one ownership of the culvert. White also spoke of the entire watershed.

David Gault, reappearing, stated that he recommends to the Board that they decide what the scope of the hearing is today – reopen the record for everything or is it for limited scope. If it is to take new evidence you need to allow the applicant.

White stated her motion was to include any information from the applicant and planning and zoning that took place since the last Board meeting between the parties. Gault stated that new information came out after that meeting that they may not be acceptable of. White stated that is up to the applicant if they want to allow the information.

Charles Sweeney, representing Nero's, stated that he was at the meeting and he believes that there was an agreement and feels they have a binding agreement and went back and forth for various options and had a heated discussion and feels there was an agreement. He stated the first part of the meeting was on engineering and a solution that everything felt would work. An issue that came out at the end was that they would explore other alternatives with Land Conservation and feel they can work with that and feels they may come up with a better solution.

Vogt asked to see the stipulation that was drawn up.

Dave Gault, reappearing, stated that whatever agreement there was or wasn't, is not binding on this board. The Board has to make the decision on the variance and has to meet the legal requirements of a variance, no matter what all parties agreed to do or not do. There is no legal binding agreement and nothing wrong with Planning and Zoning changing their mind. Compromises that came out of that agreement aren't binding on the Board's decision. The Board needs to decide if they want to grant or not grant the variance, not whether the parties agreed to oppose or not oppose something.

Vogt stated they have to rule on the variance that is before them, but the need to acknowledge that there was some agreement by the parties, but it is not the county's place to grant or deny the variance, that is up to the Board. If the agreement that was worked out, and if the applicant finds that yes, they will revised their original request, the map and the agreement then is new for them to try to make a decision on whether they are asking for two variances or one.

Gault stated that whether there is an agreement by Planning and Zoning to oppose or not oppose the variance request has no bearing on whether the Board grants or does not grant the variance. He recommended stick the evidence that was applied for to address the variance.

Sweeney stated that it changes the request for the variance in that they insist as part of this that they sit down with Land Conservation and Zoning to work out a solution besides the pipe and make a larger spillway and want to have Land Conservation, the applicants and have everyone sit down to look at those options. He stated that the stipulation has part of working that out. He stated that Liebman met as a mediator between parties, rather than representing the County.

Vogt stated they have not seen the agreement and did that agreement go along the lines of changing the boundary of the parcels in that you did away with the issue of joint ownership of the drainage and the dam and did it address that issue at all. Sweeney stated they did discuss it, but the ownership and parcels lines have not changed from their original request. Vogt confirmed that the boundaries have not changed and the only thing addressed in this agreement is that they would work with land conservation and work out a more satisfactory and better solution to the drainage if possible and address the dam and it would not become an issue anymore. Sweeney stated that was correct, but Land Conservation provided a bunch of various options and that was part of the stipulation that was put together.

White asked that his intent for having the agreement put into the record is so that it can become part of the record if the variance is granted. Sweeney stated that was correct.

Vogt stated it still doesn't address the issue of the main request which is the variance and the lot sizes. There would still be joint ownership of the pipe or drainage issues. Sweeney stated it would be under one ownership if they went with the original request.

Dave Gault, reappearing. White asked if this is a yes or no answer on a variance or can they approve with conditions. Gault stated they have some discession there.

Linda Borleske, Town of Reedsburg Plan Commission and Town Board, stated that they are upset and frustrated on the process and attended the meeting with all parties and felt that they reached an agreement that Planning and Zoning would be in support of a variance as brought, and the applicant would work with Land Conservation on fixing the dam and the water run-off. She read from the stipulation that was drawn up and confirmed that the applicant did not change any of their original request. She felt everyone was in agreement and feel that they put a lot of time and effort into coming up with an agreement and is requesting that they approve the variance.

Marty Krueger, County Board Chair, stated that he did not attend the November 18th meeting, but heard about it, and then met with Todd Liebman and is in full agreement that he needed to act as a facilitator between all parties to do what was requested by the Board. He stated that he is extremely disappointed in the Planning and Zoning Director not following through and was disgusted that he was not attending the Town of Reedsburg meeting because of not signing the stipulation, instead that Mr. Liebman attend the Reedsburg meeting to discuss that there was not an agreement made. He advise counsel not to go to the meeting and personally called the Town of Reedsburg Chair to pull the item from the agenda for that meeting. He stated that he feels whether they can or can not accept what happened in that meeting, that was what they were directed to do. The results of the meeting should be considered because that is what the Board voted 3-0 to do.

Vogt stated the issue before them is that there is a variance before them and there is no change in the variance in regards to dimension size and the only change is that they can put a condition on the variance.

Lestikow stated they the conditions would be in the stipulation.

Guaust stated you asked for the results of the meeting, which was a document that was never signed by both sides. If you take the document into evidence you could make issues for all parties down the road. If you want it for the purposes of conditions, that can be read into the record, but if you take that document into the record you could cause legal issues.

White stated the document had 7 or 8 things on it, so how do we know which conditions they take into consideration. Guaust stated the document was never agreed to. If the applicant wants certain items into the record for their conditions, that is fine, but the rest of the record is irrelevant. He recommended only getting the conditions that the applicant agrees to.

Vogt stated there was some issue with Planning and Zoning that a document came out that was proposed that everyone had worked on, but it was rejected by one party. He confirmed that document is not relevant because it is not signed by all parties.

Guaust stated that in the public interest, if that was not the best thing to do, it still is not binding. That document is not binding whether it is signed or not and is not relevant to what the Board has to decide.

White asked if they can accept the document as a summary to the meeting. Guaust stated the document, no matter what is not relevant to what the Board has to decide. This agreement can not bind the Board and if you take it in, it causes more problems for the Board down the road. The agreement is not binding. There is nothing in the document that is relevant to the decision the Board needs to make. The document is not relevant to the decision. The only thing the Board should address is if the applicant wants conditions put on the variance.

White stated for the Boards purpose, it does not matter what was agreed to or not agreed to and whether the zoning office agrees with or not, doesn't matter. Vogt stated that the water issue is still going to exist whether or not they grant the variance.

Joe Hasler, representing Brad Palmer, stated that the Board has a request for a variance and the Board asked them to sit down and work out something and that was the document that was circulated and that said, Planning and Zoning will agree not to oppose this variance if certain conditions are met. The issue right now, is that the applicants are prepared to amend the request that the variance be granted subject to the discussions and agreements between the parties. He feels that he sees what the parties agreed to, as that is the amended request at this time. They are asking for the original variance with the land division that was originally proposed and the agreement between all parties as amended. Now the Board needs to review the 3 criteria for a variance. He stated that the unnecessary hardship exists because conforming with the rule is that is unnecessary burdensome. There is already a division and compliance with this is burdensome because it interferes with the most reasonable

solution on the ground that exists. He stated that for unique property limitations are present because the current land division does not reflect the actual problems on the ground out there. He then addressed harm to public interest and stated that the public interest is enhanced because the dam and all its features will be under 1 ownership.

Vogt stated that Counsel has advised them that the agreement is irrelevant in respect that something will be done there and whether it is done by more engineering work or if it is done by land conservation department, that is not germane to whether the variance should be granted to split the parcel as it is. Hasler stated that he agrees that the issue is the land division, but the staff also had questions on what the water issues. He agreed that the agreement is not binding on the Board, but asking that the Board approve the variance.

White stated if they grant the variance, is the testimony given enough to say that they will follow the agreement, whether they see it or not. Hasler stated that if they get the variance, they agree to follow the conditions that are imposed.

White stated, even if they don't impose them, as part of the testimony, he agrees to do them. She stated that even if they don't impose them, they still agree to do them. Hasler stated that is not what he intended.

Vogt stated they shouldn't attach a condition and just straight up and down vote on the variance. He confirmed that the agreement is not germane to the variance that is before them.

David Gault, reappearing, stated that the ultimate vote is yes or no, but the variable is whether you put conditions on or not. He then spoke of the ability of the Board to put conditions on a request. He stated if they do the conditions route, lift paragraphs 1-3 out of the documents, apply to the request and then vote.

Brent Bergstrom, Sauk County Land Conservation, stated that he was present at the meeting that took place and looked at the engineering that was proposed, there are issues with wetland and he looked at other options as well and there are other possibilities, but the issue and whether you add the extra items, it is not necessary. What they are proposing to repair the dam will eliminate that. The engineering behind the project is ok.

Lestikow asked if the variance is granted will they comply with what they lay out. Bergstrom stated that he felt the applicants are willing to look at other options for the water issue.

Seeing as no one else wished to appear, the public hearing portion of this request was closed at 10:50 a.m.

White stated she feels that this meets the unnecessarily burdensome issue, as the owners will not be able to sell their property as it sits today. She also feels taking down the barn is an unnecessary hardship. She doesn't feel the applicants created this problem or increased the problem. She also feels that testimony from the Township and Land Conservation Department state that fixing this problem will help the public interest.

Netzinger stated that he feels there is a problem with the water and complying with the ordinance will create the hardship and feels the flooding of property and land and running across the barnyard and going to the stream needs to be corrected and following the ordinance will not allow them to correct the water problem. The property is unique in that being in the valley there is a lot of water to control and the owning the back side of the pond is important to controlling the run off. He also stated the hardship was not created by the owners and even if you take the dam out you still have a water problem and feels they should look into a retention pond to let the water out slower would be a help to the Township to get rid of the water going across the road, which would mean it is in the best public interest.

Allen stated that he is in favor of granting the variance and feels it meets the three criteria and agrees with the statements that Linda and Henry made.

Lestikow stated they asked the parties to meet and reach an agreement and stated that Sauk County Board Chair, Town of Reedsburg is for this and feels it does meet the three criteria required to approve the variance. He stated the hardship is unique to the physical limitations to the property. The important thing is development in the country and when you split parcels and these two splits will not cause any more development than is already there. The hardship is not self created, they purchased the property that way and existed before they purchased the property. He stated that no one has spoke against this other than Planning and Zoning and this will help the drainage and flooding the roads and it will stop that drainage and feels this is in the best interest of the public.

Vogt stated that he doesn't believe it is a self imposed hardship, and there is a need to do some drainage work and is not sure that the variance resolves that other than the parcel now becoming under one ownership and whether it was part ownership or two parties dealing with the drainage or the drainage problems is insurmountable, however it can get difficult and messy. He feels that the possible hardship is to try to resolve this issue as two parties owning the water issue. He feels the unique situation, although there is dual ownership of watersheds, and feels that dealing with one party to resolve the issue is better. He state that he feels public interest is a positive from the standpoint that the township is involved and the parties are committed to resolving the flooding issues and the issues with the roadway and the flood conditions that have occurred. He stated the argument that you won't see any more development, the purpose of the ordinance is to restrict the development. The preliminary maps that we reviewed will split the acreages and could have adverse affects agriculturally.

Motion by Allen, seconded by White, to grant the variance for the creation of two nonconforming parcels as the result of a proposed land transfer, as requested. **Motion carried 4-1, with Vogt with opposition.**

APPEALS:

Roloff is back with the Board.

- A. David Leatherberry, (SP-30-10) requesting an appeal of the decision of the Zoning Administrator to suspend the special exception permit to operate a quarry.

Dave Lorenz, Environmental and Zoning Specialist, appeared and provided the history and background of the request and reviewed the staff report provided to the Board and Applicant, as well as photos and a video of site. He then concluded with the recommendation that the Board uphold the Zoning Administrators decision and require a new hearing and application to the Board for the mining site.

Vogt confirmed that the operations taking place in the quarry at certain times are what the issue is. Lorenz stated that is correct.

White asked what this meeting is for. Lorenz stated the permit is suspended and this hearing is that the applicant is appealing the zoning administrator's decision to suspend. If the board felt that was done in error, he would be able to continue operating. If they uphold the zoning administrator's decision, he would have to come back to the board to reapply if he chooses to continue operation of a mineral extraction site.

Roloff asked about the complaints received by the office. Lorenz explained the complaints that were made.

White asked about the evidence that was received from the person who complained. Lorenz stated that they are not in the packet, but the department does have them. White asked if the photographs provided showed evidence of a violation. Lorenz explained.

White asked if the revocation is based on the complaints received or if they were on site. Lorenz stated the complaints were received and staff was not onsite.

Ben Letendre, appearing in favor, representing Mr. Leatherberry, stated that the question to the board is did the applicant operate outside of permitted hours. He referred to letters to the applicant from Planning and Zoning. He then discussed the hours of operation and the individual operations related to their stated hours. He then addressed the complaints and allegations from a neighboring property owner. They took the complaint, did not investigate, but took the credibility of the complaint and then called the applicant to discuss. He also discussed the dust complaint which was dismissed. He then presented Exhibit IX, which is a redacted version of the 2009 Schedule E, which deals with specific information with the quarry operations and points out the incentive that the applicant has to comply with the rules of the zoning department, which is the income from the operation.

White asked for a definition of maintenance. Letendre stated he will address that shortly. He then stated that the maintenance on Saturday is for scheduling maintenance during a time that doesn't affect business. He then referred to September 18th date, and the letter states that they met with Mr. Leatherberry on the 25th and then issues suspension because of the 18th. He reviews the complaint made by Mr. Freitag. He also stated that the equipment needs to bear the weight and doing a track and balance on the conveyor belts. He then provided Exhibit IX, 2, an affidavit from Gary Nechvatal stating what is required to do maintenance on the conveyor belts, as well as Exhibit IX, 3 a manual for the conveyor belts stating how to maintain the machine. He stated to the average person, what was happening would look like crushing and processing and it is critical to do maintenance and that is what was taking place on the dates that were reported.

Billy Scully, appearing in favor of the request, stated he has 35 years of experience in the aggregate industry, but in listening to the maintenance that was being done as the operator stated, he stated that how you maintain that piece of equipment was done properly, and is exact to how was testified.

Vogt stated that it is his opinion that this would fall under the prevue of maintenance and not processing. Scully stated that is correct. Vogt is what type of material you use, if it was already processed or start from the beginning. Scully stated you could get material on it and run the total unit, not just one portion of it.

Vogt asked how long the process takes. Scully stated it depends on how long its tracked or how accurate the machine is, it could take 10-15 minutes, you may have to run it through several times to get the belt accurate. Vogt asked if that could take a couple hours. Scully said usually not, but it's possible.

White asked how often you have to track a belt. Scully stated if it's a new belt, then you have a different situation, but it could change and very.

White asked how often you have to check and maintain, if its weekly or every two weeks. Scully stated you have to keep an eye on it and change it in small increments so you don't over adjust.

White asked if it is possible he could check on a Saturday or if there is a problem, you would have to stop in the middle of the week to fix it. Scully stated you would have to stop and fix it immediately, but if you are tracking it, you would want to do it on a Saturday.

Ben Letendre, reappearing, stated that a new belt was purchased. They replaced the belt on the 18th and then had to fine tune the adjustment to the belt on the 25th. He stated that the neighbor is not familiar with operations of the equipment. He then provided Exhibit IX, 5, a letter from the MSHA was on the site, did an investigation and found no violation of excessive dust. He states the Board needs to view in the entire context.

Vogt asked if any of the information or explanation that was provided to the Board given to the Planning and Zoning Department. Letendre stated it was not and that the Department told Mr. Leatherberry that he needed to appeal the decision.

Roloff asked if Mr. Freitag ever personally contacted Mr. Leatherberry. Letendre stated he is unaware.

David Leatherberry, applicant, appearing in favor. Roloff asked if Mr. Freitag personally addressed him about the complaints he had on the site. Leatherberry stated that Mr. Freitag has never spoken to him personally, although he did complain to his wife on one occasion.

Vogt asked where Mr. Freitag lives. Leatherberry stated he is a neighbor and lives about 700 feet or so.

White asked if lived in the area prior to the quarry being started. Leatherberry stated that the quarry was there prior to him living in the area.

Vogt confirmed where the Mr. Freitag lives in relation to the quarry site. He also asked if he had any complaints from other neighbors. Leatherberry stated he does not, that he has a lot of good neighbors.

White asked how often you replace and maintain the belt. Leatherberry stated they maintain the belt constantly and when they replaced the belt this fall, the drive unit was offset slightly and that corrected the problem.

White asked how many belts are on the machine. Leatherberry stated there are about 5 belts and have to be maintained the same way.

Angela Fuller, appearing in favor, stated that she is the applicants daughter and that he rarely works past noon on a Saturday and does not know of any time recently that he has run past noon on Saturday for any reason what-so-ever, although she doesn't pay attention to what goes on in the quarry, but he is always home afternoon on Saturdays.

Mark Steward, Director Sauk County Planning and Zoning, appearing as interest may appear, reviewed the letter speaking of the meeting on September 25th, that is a Saturday and unless we met with him on site, that date is incorrect. He then spoke of a photo and a timestamp of 6:04 a.m. Exhibit IX 6, and the loading of trucks, which was the violation on the 17th. He then addressed the processing on the 18th, but you see that they are screening material on this date, not running the belt, but the second photo does show the activity of the belt running at this time. On September 25th there is an additional complaint and photos provided where the applicant is running materials through the screener, which is shown in IX, 7.

Vogt asked about the running the machinery as a whole to do the adjustments and maintenance and could the photos show the maintenance process going on. Steward stated that per the maintenance activity if that is the manufacturer's specification they should follow that, however the applicant was aware there were several complaints on hand and should inform the Department that is what he is doing or alter the timing of the maintenance so it is not construed as a processing activity.

Vogt asked if Mr. Leatherberry advised this is what was going on. Steward stated in late September he did state they were maintaining the belt and not processing materials. But there is also photographic evidence of processing/screening on those days, as well as loading the truck.

White asked if screening is part of the maintenance to verify that the belt is working. Steward stated that it is possible, but it has not been explained if that is what the screening was done for.

White asked about the noise and dust complaints. Steward stated the Department did not follow up on them as they had MSHA there and due to their findings the Department did not feel they were valid complaints to follow up on.

Bill Scully, reappearing. Roloff asked about the photos provided by Steward and asked if he can tell by looking at those photos what is going on. Scully stated that in the operation on the piece of equipment, you can't only start the belt, you have to start the entire unit and everything would have to run for him to put material on the belt.

Vogt asked about the loader dumping material into the screener. Scully stated this could be part of the maintenance process.

White asked if he is aware of which belt is being replaced. Scully stated he is just here to give testimony to the full process.

White asked if the machine were being tested or maintained, wouldn't there be people near the machine. Scully stated that depending on which belt was being replaced, you may not be able to see in these photos.

Ben Letendre, reappearing, stated that he hasn't seen the photographs and they were taken from one person, who is not here and he is the individual who is the source of every complaint. The evidence is that this is a maintenance operation.

Vogt stated he has 4 registration slips of persons in opposition.

Seeing as no one else wished to speak, Chair Vogt closed the meeting at 9:35 a.m.

The Board reviewed the ordinance.

Roloff addressed the chronology of the complaints that were heard and because of the problems in defining maintenance versus crushing and processing and what constitutes crushing and processing and due to he says/he says nature of these complaints .

White states there is a difference between conclusive evidence and viable explanation, but she can't say one way or another whether he did something to violate his permit. She brought up the renewal and cautions the owner of notifying zoning.

Netzinger stated that he agrees with what White said and feels that seeing as it has gone as far as it has, the applicant needs to be very careful on the hours he works and what he does. The fact that it is one neighbor, that bothers him.

Allen stated that he agrees with what Henry said and feels there is a lack of evidence. It is possible they were operating outside of hours and advised the applicant to be careful and abide by the special exception permit.

Vogt stated that there are photos, but testimony saying it is necessary to run the equipment to do the maintenance work that is required. He cautioned the applicant to be careful and it would be important for him to let Planning and Zoning know what work is being done at what time so that they are aware. Communication with Planning and Zoning is lacking and needs to be improved.

Motion by Roloff, seconded Vogt by to grant the appeal to reverse the decision of Planning and Zoning to suspend sp-02-08. **Motion carried 5-0**

- B. Brad and Donna Luce (SP-31-10) requesting a special exception permits to authorize the serving of liquor and malt beverages at an existing tavern and sports fields with night lighting.

Dave Lorenz, Environmental and Zoning Specialist, appeared and provided the history and background of the request as well as photos and a video of site.

Vogt confirmed that there was a complaint on a non-conforming use and the applicant went ahead rezoned, and now here to bring the property into compliance.

Brad Luce, applicant, appearing in favor of the request, stated that they just want to keep operating the business as they have in the past. When they purchased in 2001 they had the lighting and, horseshoe pits and then added the volleyball.

Vogt asked if they are looking for any further expansion. Luce stated they intend to continue to operate as they have been.

Vogt asked about any complaints. Luce stated he has received no complaints and the County made them aware of the one complaint and then to bring into compliance.

Vera Scoles, appearing in opposition, stated she is the closest neighbor and has been there 52 years and through a lot of the owners of the bar. She stated that she is worried about the expansion and having the lights on until 11 p.m. 7 nights a week and concerned with the noise and serving liquor outside will increase the garbage that is already put in her lawn. She is also concerned about traffic and the need to be an alert driver when coming out of the driveway. She stated she also owns the property on 3 sides of them.

White asked if this is being operated every night of the week now. Scoles stated that it is not being done until 11 p.m. every night.

White asked if they are leaving the lights on until 11 or only when people are there. Scoles stated that only when people are there.

White asked what kind of conditions would she like to see. Scoles stated after 9 p.m. during the week or if they have league play one night a week, you have to put up with that, but every night of the week is excessive.

Vogt asked if she has seen the activities there over the last 5 years. Scoles stated its been building up, the horseshoe pits are behind the building, but the volleyball court is directly across from her.

Jerome Theisen, appearing in opposition, stated he is about ½ mile southwest of the tavern and the problem of outside activities 7 nights a week is excessive. He stated they have had loud music on some occasions and he can hear it. He feels the traffic, the driveway and the parking lot is a safety hazard. He said he could understand or 2 nights a week, but 7 days a week is too much.

White asked how long they've had their lights there. Theisen stated that he takes Luce for his word, but the lightening is not high enough so it illuminates the road and the neighboring homes.

White asked up until this point, how many nights a week the activities have been disruptive. Theisen stated during the summer 4-5 times the music was an issue. He stated the volleyball courts aren't that disruptive, but there is a traffic problem there.

Vogt asked about going to the Town for their meetings. Theissen stated that the Town just had an issue with the non-conforming issue and they decided not to fight it there, but come here. He feels that 10 p.m. is late enough. Vogt confirmed he did not attend the meeting at the Town level. Theissen stated they did not attend, they knew about the meeting, and they talked to the Town official and were told its merely to conform to state standards.

Steve Cohoon, appearing as interest may appear, stated he is a Town Supervisor with the Town of Baraboo, stated that the situation was brought to the Town and they put limitations similar to what the city has. He stated that the applicants have been easy to work with.

Vogt asked about the traffic concerns. Cohoon stated there is not any more traffic then what has been there. He also spoke of the US Highway 12 Bypass. He feels that since the business has been there for that long, its fair to look at it.

Vogt asked if the Town provided conditions that they want to see on this property. Cohoon stated that they worked on the conditions with the applicants.

Vogt confirmed that the Town feels that there has been plenty of public noticing due to all the meetings that took place on this issue.

White asked about a time period on a special exception permit and it was not requested by the Town. Cohoon stated they left it open for the Board to deal with.

Brad Luce, reappearing in favor. White asked how far away the Baker's home is from the bar. Luce said about ¼ mile. White asked about fencing. Luce said there was fencing around the volleyball courts. White asked if a 5 permit would be ok. Luce stated he would be ok with it.

Vogt asked if they go out and police the area for trash. Luce stated they only take care of trash issue on his side of the road. He stated he didn't know it was a problem, but if the neighbors had contact him, they would police it.

Motion by White, seconded by Allen, to approve the special exception permits as requested, with the conditions by Planning and Zoning, the addition of the permit not being transferable and the permit being granted for 5 years, with the option to renew at that time. **Motion failed 2-3 with Vogt, Roloff, and Netzinger in opposition.**

Motion by Roloff, seconded by Vogt, to approve the special exception permits as requested, with the conditions by Planning and Zoning, the addition of the permit not being transferable. **Motion carried 4-1 with White in opposition.**

Motion by Netzinger, seconded by Allen to adjourn.

Respectfully submitted,

Robert Roloff