

**SAUK COUNTY BOARD OF ADJUSTMENT**  
**June 24, 2010 Session of the Board**

**PRESENT:** Richard Vogt, Chair  
Linda White, Vice Chair  
David Allen  
Henry Netzinger  
David Wernecke, Alternate

**ABSENT:** Robert Roloff

**STAFF PRESENT:** Gina Templin  
Dave Lorenz

**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 Allen. **Motion carried 5-0.**

The Board discussed the agenda and moving item number 6 to be heard prior to item 5. Motion by Allen, seconded by White to adopt the amended agenda for the June 24, 2010 meeting. **Motion carried 5-0.**

Motion by Wernecke, seconded by Allen to adopt the minutes from the April meeting. **Motion carried 5-0.**

Motion by White, seconded by Wernecke to adopt the minutes from the May meeting. **Motion carried 5-0.**

**COMMUNICATIONS:**

None to report.

**OTHER BUSINESS:**

Clarification of the decision letter and conditions imposed for SP-43-09, LaRue Station Tavern.

Alene Kleczek, Assistant Corporation Counsel, appearing and provided a background of the decision letter and the part that is of concern is music not being allowed at any other time, which was part of the decision in relation to lighting, versus music. She discussed differentiating between the music and the lighting.

Vogt stated that his understanding is that on condition c, lighting and noise associated with outdoor entertainment, and asked what is the difference between noise and music. Kleczek stated that in item c, there will be no outdoor music during the week, but has nothing to do with the lighting and noise. But also, you can't just ignore what was in the decision letter, as that is what the Board provided.

Vogt clarified that music should be struck and replaced with lighting. He also asked about camping for a special event allowed on a Sunday night. When reviewing the camping part of the decision, the Board did not address when it can take place, other than how many units of camping they can have. He also stated that these were

conditions from the Freedom Town Board and Plan Commission. Kleczek stated the Board would need to ask Mr. Kessenich what his intent is there.

Mike Kessenich, appeared. Vogt clarified that he has spoken to Steve Sorenson. Kessenich stated he is opposed to the music item, as there is no noise ordinance and no way to enforce it and his main concern is being restricted to Friday night and Saturday and he would not be allowed to play music on holidays. He stated that Sorenson was under the impression that he could only camp on Friday and Saturday night.

Vogt asked if special events are on the Monday holiday weekends. Kessenich stated that he has events on Memorial Day, Labor Day, Fourth of July, etc.

Vogt asked about the Town conditions and that camping is allowed and with the special events with a Monday holiday. Kessenich stated he is looking to have the option to have music outside if there is a special event that may be during the week. He would like to have the freedom to have the option for the private parties and a place of entertainment to have music throughout the week.

Vogt asked about getting a permit for a special event. Kessenich stated that he needs a permit for all special events, which would be where there are more than 6 campers. He also stated that the Town did not put any conditions on his request.

White asked when you noticed this was an issue. Kessenich stated that he noticed it right away and Sorenson stated it was ok, because he would not enforce it. Then when he chose to have an event, Sorenson stated he couldn't do it, as he had to follow the Board requirements.

Wernecke stated he was not at the meeting, but the issue is that the Board tried to accommodate what you testified for, and in the minutes it shows that it was described during his testimony. He also stated it was a commercial operation and rezoned to that and how it affects the area around it is of interest to the county and just because something isn't stated in the ordinance doesn't mean it is permitted. Kessenich stated that Planning and Zoning tried to shut down a music festival he had last year and they couldn't because the county does not have a noise ordinance.

Wernecke stated there is a difference between an individual and a commercial business with noise.

Vogt clarified that what the applicant is asking for is to be able to have the music, shut down by midnight on Saturday or Sunday morning, or for special events, or for Monday holidays. Kessenich stated he is asking to have the music any day of the week and wants no restriction on the music at all.

White read from the minutes of the meeting and quoted his testimony. White stated it wasn't the Board making a mistake in what they were doing, but they went off of the testimony given by the applicant. Kessenich stated he misspoke during that meeting.

Kleczek reappearing. Vogt asked about the camping for special events and is that an issue they need to deal with. Kleczek stated she doesn't feel that has to be changed and has no opinion on that and if he wanted that changed, he should have appeal that to the Board when he had the chance.

Vogt clarified that it is a decision to be made by Planning and Zoning. Kleczek stated that is correct.

Wernecke asked how noise is not enforceable when this is a special exception permit and the Board can put conditions on a special exception permit to address concerns by neighbors and the community. Kleczek stated that the first thing is to look at what the permit was requested such as a sports field and the night lighting. She spoke of the rights to have the music prior to the special exception permit.

Wernecke stated this particular use requires a special exception permit to operate the establishment. Kleczek stated the night lighting requires the special exception permit. Wernecke stated it does require a special exception permit for a drinking establishment. He stated the entire operation is subject to review and is confused to the enforceability issue. Wernecke asked if the structure of the permit is what is troublesome. Kleczek stated that because it is incorporated with the lighting, that is what is troublesome.

Vogt suggested that the Board discuss under sports field with night lighting, condition C of the decision letter, the last sentence, consistent with the applicants testimony....and no outdoor lighting at any time during Monday through Thursday or Sunday. He would also like to change that for a special event or a Monday holiday that he would be able to have the lighting.

White suggested the word music be taken out of the condition completely.

Netzinger suggested Planning and Zoning get a nuisance ordinance to address things like this, but at this time, they can't enforce on it.

Wernecke stated it is enforceable if they put a condition on it, but it should be separated from the lighting. Netzinger agreed.

Wernecke referred to the decision letter and approving the request for a drinking establishment and under that section, it would be appropriate to a condition on music held outdoors, since it was the original request. But the Board has the ability to place that condition.

Vogt asked about the holiday or special events. Wernecke stated you could use the same language, but put in the exception of special event and for 3 day holiday weekend.

White stated she has a concern in condition C where it states lighting shall be shut down by midnight on Saturday and Sunday, and suggests rewording because it doesn't discuss the other days of the week.

Vogt asked for a change. White stated that as a condition of the permit they can say all music and lighting shut down by 12 a.m. and feels that is reasonable as far as the neighbors are concerned.

Kleczek stated the only suggestion she has is to change the wording in condition c.

White clarified just to add 3 day holiday weekend. Kleczek stated that is correct.

Kessenich reappeared and suggested that all lighting and music be shut down by 12 a.m.. White stated that the Town was concerned that would leave an open door to have anything Monday through Friday. Kessenich disagreed with her and stated that they had no concern prior to 12 a.m.

Vogt stated no outdoor music to outdoor lighting, not allowed Monday – Thursday, except for Holidays.

Wernecke asked if it is the understanding that this restricts the outdoor music to only once a month.

White stated that in the testimony outdoor bands could be restricted to 1 a.m., so if he wanted to put a couple speakers out there it is different.

Allen stated it says lighting and noise associated with outdoor events. Isn't the music issue covered there.

Wernecke asked if the language permits outdoor music, any weekend, and it doesn't have to be the one per month event.

Vogt stated he does agree to that. Wernecke stated that is not what the Town requested. Wernecke is concerned with the Town's preference and their understanding of outdoor bands are only once a month, and if you don't specify that.

Vogt asked about private parties. Wernecke stated that may be only once a month, however that was never talked about.

Vogt spoke of addressing the lighting and a special event or 3 day holidays and those are the two items that need to be addressed.

Wernecke spoke of the limitations the Board can set and that it seems as if the Town had certain restrictions they wanted placed.

White stated the permits are written with a time period.

Wernecke asked if the Town of Freedom was notified of this requested change of conditions.

Vogt suggested the statement read "Consistent with applicant testimony all lighting and music be shut down by 12 a.m. Saturday and Sunday morning except for special event weekends or holidays and there will be no outdoor lighting during anytime Sunday through Thursday except with a special events or Holiday weekend."

Kleczek stated that the only problem she has with the first exception is that you are now allowing music after midnight. She suggested leaving the first part of the sentence alone, but add the holiday weekend exception at the end of the sentence.

Motion by Vogt, seconded by White to change Condition C on the decision letter to stated "Consistent with applicant testimony all lighting and music shall be shut down by 12 a.m. and no outdoor lighting at any time during Monday – Thursday or Sunday except for a special event or holiday." **Motion carried 4-0 with Wernecke abstaining.**

## **APPEALS:**

- A. DL Gasser Construction, (SP-13-10) a special exception permit to authorize the operation of a hot mix asphalt plant in an existing quarry.

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. He then provided recommendations by staff if the request is approved. He also stated that the Town Acknowledgement form has been presented to the Board.

Wernecke verified that this permit is for the hot mix plant on site, not an expansion of the previously approve quarry. Lorenz stated that is correct.

White asked about specific dates for an end time. Lorenz stated that the October cutoff date was developed by staff to give the applicant a window incase for some reason they didn't get it finished by September, they would be able to complete the project and not have to come back to the Board.

Vogt stated there is a timeline for asphalt due to weather.

Allen asked about the hours of operation. Lorenz stated that the Board follow the same hours of operation that are currently imposed on the quarry.

John Traxler, applicant, representing Gasser Construction, stated that at the time they filled out the applicant, they didn't have a confirmed scheduled, but the plan is to move the plant in July 15<sup>th</sup> and get contract done by end of August and is a DOT contract with stimulus funding and this was the best alternative for trucking costs and the amount of trucking at a minimum. He stated they wanted a site that was close to the work and it needs to keep hot, using good quality aggregate.

White asked where this material will be going. Traxler stated it is Richland County C from Rock Bridge to Yuba and Richland County D from Westbridge to Yuma.

Vogt asked about hours of operation. Traxler stated that they will be able to follow the hours and does not visualize any Saturday work and total paving time is about 3 weeks for this job.

Wernecke asked how many trucks. Traxler stated on a good day it would be about 100 loads.

Wernecke asked about the reclamation and Kramer's responsibility. Traxler stated that is correct, it is a portable site and on wheels, you move in, use it, move it and clean t place up and leave it the way you found it.

Wernecke asked about the State permit and emissions to the air and noise. Traxler stated that is correct.

White asked about what kind of clean up. Traxler stated they will build ramps and clean up the site and leave no messes behind.

White asked if you are taking about 100 loads of material out, how much will you bring in. Traxler stated they will be brining in some recycled material and sand, about 40%. White clarified about 100 loads a day but the sand and recycled mix brought in a head of time.

Wernecke asked about the Town's concern of speed limit and engine brakes. Traxler stated there were concerns from citizens about intersections of county Q and Y and using caution and safety and the engine brakes will not be used and will contact all trucks that through that area they will not be used.

Richard Marino, The Kramer Co, appearing in favor, stated that they are the owner of the property and are in support of the application and they run a good operation and there will be some redundancy on the clean up and will maintain the property and try to be a good neighbor and they have talked to the people from Gasser/Mathy about the neighbors' concerns and will oversee any operation in the quarry themselves. He did address the NR135 that is in effect and has no concern about any waste or clean up.

Vogt asked about any damage to the highways or roads. Marino stated it is done through the State and they typically require road maintenance.

White asked if there will be Kramer operations going on at the same time. Marino assured the Board that there will be staff onsite at all times.

Wernecke asked how many trucks throughout the day. Marino stated he was not sure but possibly 20 trucks.

Paul Neiderberger, appearing in opposition, stated that Kramer is a major business in Sauk County and they supply gravel to the Town of Woodland and feels because of the business relationship, the Town has given undue consideration in favor of Kramer. He also stated he spoke to Mr. Traxler at the Town meeting. And feels the

Town of Woodland and Sauk County will not benefit economically from this project and feels the County will be responsible for fixing the roads.

Vogt asked where he is located, referring to the topographic map. Neiderberger stated he is north of the quarry, at the intersection of County Y and the town road

White asked if he has had problems with the quarry operations. Neiderberger stated they have with a couple boulders when they backfill, but the operators have been very good. He said the Kramer Company has been very good neighbors and they do notify them and have no problem with the Kramer Company and the existing quarry.

Karla Neiderberger, appearing in opposition, stated that she is complaining about the Town Boards and usual politics, but is worried about the economics as well and wonders why the price of farmland goes up and feels the comprehensive plan protects the value of the area and preserve the rural area and only wants farm and farm related activities.

Vogt asked if she has an issue with the quarry. Neiderberger stated she has not problem with the quarry, just the mix plant.

Wernecke spoke of the other requests and in the district that the Town currently uses to implement the comprehensive plan, this is permitted within that zoning district by the County and the zoning district that the Town has requested. He then asked you passed the Town Comprehensive plan have the residents looked at the county ordinances to adopt one that more fits what they want.

Vogt stated they are zoned agricultural and is the most permissive zoning in the County and if the Comprehensive Plan calls for activities like this then they need to change the zoning for the Township.

Don Gross, appearing in opposition, stated that he was on the comprehensive plan committee and the thing that most residents of the Township want is to keep the township clean and green and don't feel this asphalt plant will do anyone any good and is concerned with the road system and Sauk County will not realize one bit of a benefit.

Vogt asked about a closer pit and if it is active. Gross stated it is in a different county and believes it is a closed pit and all the travel could be on State Highway 80.

John Montgomery, Gasser/Mathy, appearing in favor of the request, stated that Sauk County will receive revenue from this project on the half percent sales tax and the county roads are designed to handle the truck traffic and try to stay off of town roads as much as possible. He also stated that this quarry was selected due to the quality of the product and the location.

White asked about the roads to be traveled. Montgomery stated that County Road Q and County Road EE will be used to get to the traffic and will be on State Highways to the County Roads.

Seeing as no one else wished to speak, Chair Vogt closed the meeting at 10:50.

Vogt stated towns love to have quarries in the township because of the ability to get supplies and the costs.

White stated she likes this is fixed term and is a public service project and there are some strict standards when aggregate goes into state standards and have always been impressed with the good neighbor stand that Kramer has and puts a lot of stock in that.

Netzinger stated it is an economic development issue and a lot of people that work for these two companies live in Sauk County.

Motion by Wernecke, seconded by Vogt, to approve the special exception permit for a hot mix plant in an existing quarry. **Motion carried 5-0**

Motion by Wernecke, seconded by White to adjourn.

Respectfully submitted,

Linda White, Acting Chair