

Minutes - Woodbury County Zoning Commission Meeting May 21, 2007

The meeting convened on Monday, the 21st of May, 2007 at 6:00 PM in the Board of Supervisor meeting room in the lobby of the Woodbury County Court House in downtown Sioux City, Iowa. Present were the following Commission members – Chairman Grady Marx, David McWilliams, Dwight Rorholm, and Arvin Nelson. Unexcused absence; Christine Zellmer Zant. Zoning staff: John Pylelo, Zoning Administrator, and Peggy Napier. Present from the public was Riley Simpson, the County’s consultant with Flat Earth Planning, John Sanborn, Rhonda Buss, Mardell Buss, Larry Lewis, Sheryl Lewis, Bill Bride, Tom Bride, and Alicia Ebergh.

The first agenda was approval of May 8th, 2007 Commission Minutes.

Mr. McWilliams made a motion to approve the May 8th, 2007 minutes; Mr. Nelson seconded; Mr. Rorholm was not at the May 8th meeting and chose to abstain; motion approved by a vote of 3-0.

The next agenda item was any citizen wishing to be heard before the Commission.

The citizens present were prepared for the next agenda item.

The next agenda item was discussion with a representative of Enterprise Products Operating, LP – Re: Mid American Energy Pipeline easement vegetation clearing process.

Chairman Marx introduced Mr. John R. Sanborn from Kearney, Missouri, the Senior Land Representative for Enterprise Products Operating, LP. He was here to discuss their policies on tree clearing, easements, and pipeline repair in Woodbury County.

Mr. Sanborn was asked to be present to address those multiple citizens concerned with removal of vegetation along the Mid-American Pipeline Easement near Buchanan Ave. North of US Hwy 20.

Mr. Sanborn explained although Mid-American Pipeline Company, LLC is the owner of the pipeline running through easements in Concord Township, Enterprise Products Operating, LP is responsible for the day-to-day operation, care and inspections of said pipeline. The letter sent to property owners who have pipeline easements stated the Department of Transportation (DOT) “...mandate it is the responsibility of the Operator (EPOLP) to develop a means of (Right of Way) inspection. Considering overall

effectiveness of operations, and emergency inspection for possible leaks, EPOLP has chosen the industry standard, which is inspection by aircraft.” Citations from the DOT to pipeline operators note “...uncleared right of way makes it impossible to adequately inspect the surface conditions on or adjacent to the right of way.”

Mr. Sanborn gave a partial list of reasons pipeline operators check the right-of-way:

- Checking for corrosion. Tree roots can damage protective coating on pipes
- Evidence of leaks; i.e. Stained or dead grass and other vegetation, standing liquids
- Danger of encroachments or excavation by other parties

Other reasons for clearing the right of way are listed in the letter sent to property owners informing that EPOLP was “...continuing with its pipeline right of way clearing program.” (see letter attached) Sanborn’s main concern is to ensure the accessibility of the pipeline should there be an immediate need for an emergency response, for testing, and repairs.

Mr. Sanborn brought pictures of what the pilot sees during his inspections to emphasize the need for clearing of vegetation and tree removal.

Mr. Rorholm asked about the conditions of the original easement.

Mr. Sanborn admitted the original easement was created in 1941 and was not specific or clear regarding the current issues.

Chairman Marx made reference to a section of the easement that said;

“...do hereby grant (previous operators) and his successors or assigns, the right of way to lay, maintain, alter, repair, inspect, operate and remove pipe lines for the transportation of oil and/or gas, and products or by-products thereof, ...and similar appurtenances as may be necessary or convenient to the operation of the said lines...”

Mr. Marx pointed out there was nothing in the easement about trees or maintenance.

Mr. Sanborn explained they needed to maintain the line and in order to do that they needed to be able to see the line from the air. If foliage or trees block the view, they need to be removed.

Chairman Marx quoted further from the original easement;

“...all pipeline laid under this grant shall be laid on a route selected by the Grantee, its successors or assigns, and shall be buried to such a depth as not to interfere with the ordinary cultivation of land.”

Mr. Sanborn said depth changes occur with normal erosion of land. Enterprise has done several depth surveys and where the line was shallow they paid farmers more than what their normal profit would be not to farm over shallow pipelines. Enterprise is willing to work with landowners at times by hauling dirt and terracing to prevent soil erosion over the pipeline. (Sanborn stated later it was much less expensive [and much safer] for them to pay the farmer to not cultivate over the pipeline than it was to unearth and lower the pipeline.)

Chairman Marx introduced Mr. Tom Bride from the public to Mr. Sanborn. Mr. Bride asked if pipelines are excavated for inspection.

Mr. Sanborn says that probably wouldn't happen. A detection device they use won't tell them where the pipeline is uncovered, but it will tell them if it is corroded. Excavating the pipelines is not cost effective and creates more problems than it resolves. Their intent with bimonthly aerial inspections is partially to prevent future problems and safety risks by clearing.

Mr. Sanborn commented to Mr. Nelson if a reference was being made about a Mid America pipeline easement written in the 1960s, Enterprise had recently reached as far as those pipelines and the easement specifically says “no trees.” Enterprise has a right to clear any trees in this right of way.

Mr. Sanborn said Enterprise has been in charge of operations for Mid American since 2002. Operation companies before them had obviously not been as aggressive regarding their clearing directives as Enterprise.

Chairman Marx made it clear to Mr. Sanborn the reason the public was present and why Mr. Sanborn was asked to appear was to resolve the issue of how the landowners had been treated when presented with knowledge their landscape was going to be altered.

Mr. Sanborn said he was aware there was a conflict, but his objective was to remove the trees. Enterprise's intentions were to clear 50' of land on either side of the pipeline unless it was otherwise specified. Many landowners they've approached have not taken issue with clearing. He stated they wanted to be “good neighbors.” When asked what the average pipeline depth was, Sanborn thought it averaged approximately 2'. When the pipeline was being installed the minimum was approximately 3'. At the present time it is 4'.

Mrs. Rhonda Buss from the public approached the Commission to describe her experience with the tree removal service Enterprise hired to clear the pipeline right of way. Mrs. Buss related how a man from the service told her what she should expect to happen, but the next day, without relaying any additional information or announcing his presence, she discovered him on her property marking trees not discussed for removal. She was told the trees would be cut into large sections and left there with the stump. When she said she wanted the service to delay their activity while she researched her rights, she was warned their lawyers would be contacted.

Chairman Marx presented photographs of the aftermath of a tree removal in the ditch across from Buss' property. Mr. Sanborn agreed it should not have been left as it was, but did not agree it was a large enough area to affect water runoff.

Mr. Larry Lewis from the public approached the Commission to describe his experience with the tree removal contractor. He said a man came to his door with a notification regarding work they would be doing on Lewis' property. Lewis described the man as "rude." He did not notify Lewis he would be there and he lied about calling and/or leaving messages. Lewis also claimed the contractor threatened him with court action.

Mr. Lewis explained part of the reason they bought the property was for the privacy the row of trees gives them. He said the trees were also a wind break. They had been fine where they were for the past 40 years and he did not understand why now they needed to be removed. One of his concerns was removal of the trees would devalue his property.

Mr. Lewis said he had been called prior to men coming out to walk the line previously in small sections. Why couldn't this practice be continued?

Mr. Sanborn asked if they did this every two weeks. He said the flyovers occurred every two weeks. He repeated his company had been working on 35,000 miles of pipeline since 2002, they were now in this part of the country, and they were more aggressive in their clearing policies than other operators might be. It was not cost effective to have men walking the lines.

Mr. Rorholm suggested Enterprise must have a right of way department that could do a feasibility study on updating the easements. Specific items that had turned into issues needed to be spelled out.

Mr. Rorholm stated if the contractor Enterprise hired to do the clearing was rude, they would need to address that problem.

Chairman Marx, who is also an impacted property owner, quoted a section of the easement he was presented and asked to sign saying Enterprise would be "held harmless" from issues involving "shallow pipelines."

Mr. Sanborn was not aware of Chairman Marx's comments that farmers were aerating pasture land around 6" shallow pipeline.

Mr. Bill Bride approached Mr. Sanborn to say their contractors wanted to remove 9 rows of his grove of trees. Bride said he would not allow that.

Mr. Sanborn replied they would have a problem with that.

Chairman Marx stated Mr. Sanborn could not bully the people present and the rural people who were too intimidated to appear at the meeting on their land. He said he intended to ask the zoning department if there was some kind of a permit companies would have to get before they were allowed to clear pipeline right of way.

Mr. Pylelo asked Mr. Sanborn if he "...was aware of any governmental body that in any way places any restrictions or ordinances on your company regarding vegetation removal." Pylelo said Chairman Marx "could propose a recommendation on any type of ordinances (he) liked, but (Pylelo) couldn't tell him without seeking the County Attorney's legal advice whether or not they would be binding in a scenario like this."

Mr. Sanborn stated he wasn't aware of anything like that.

Mr. Rorholm said if there is a lot of grading the DNR (Department of Natural Resources) in Iowa would have control of any runoff or pollution standards. The little site in the ditch where the tree was removed would be included.

Mr. McWilliams discussed areas that needed to be updated in the easement. Both sides had valid arguments, but the only thing that was going to settle it for both sides was more clarity in the easements. Mr. Rorholm agreed with McWilliams and stated he was reasonably sure one could make an addendum to an existing easement. Mr. Sanborn didn't think landowners with pipeline easements would be interested in negotiations to have their trees removed.

Mr. Rorholm said he was sure the pipeline and what that would entail was disclosed to the landowners when they bought the property.

Mr. Sanborn anticipated there would be problems with these tree removals and had told Enterprise as much. He explained Enterprise could get a fine from IDOT for pipeline safety if they did not remove the trees and Enterprise would take it to court to support tree removal. Mr. Sanborn said "*Whatever we mean to do, we mean to cut those trees.*" They don't want to have to deal with clearing a path and removing trees to gain access to a pipeline in an emergency.

A question arose concerning asbestos. Mr. Sanborn said if those concerned really wanted to know he would be able to get information about exactly what areas of pipeline asbestos was used on. This would be a hazard only if an asbestos wrapped pipeline was exposed. Pipeline in any ordinary circumstances should never be exposed.

Chairman Marx related the tree removal contractor's approach to the landowners as one of intimidation. He had calls from people who were upset but were intimidated at the threat of a lawsuit and decided not to pursue it because they were afraid. Marx said this was unacceptable.

Mr. Sanborn said he has used "Troy" before and has gotten compliments on his demeanor. He was surprised to hear Troy referred to as "Intimidating." He said when Troy was asked to leave, he left the property. Sanborn said he would speak to Troy; however, there were unpleasant things their job required them to do that would unavoidably upset some people. The only issue Enterprise is concerned with is the public's safety. Sanborn brought pictures of damage done to pipelines by tree roots and what a cleared right of way should look like.

Mr. Sanborn asked Chairman Marx what had occurred on his property.

Chairman Marx said Enterprise had tried to make him sign a lease saying he (Marx) was responsible for everything.

Mr. Sanborn asked if anyone had gotten back to him and said they would move dirt over the top of the pipeline.

Chairman Marx said there had been a mention of some dirt but he wondered where that dirt was going to come from.

Mr. Sanborn replied he guessed they would have to haul the dirt in.

A discussion ensued with Mr. Sanborn and Mr. Tom Bride regarding which farm activities required "One Call" monitoring.

Chairman Marx asked Mr. Sanborn to continue discussing the issues with the public outside of this meeting and to find a satisfactory resolution.

Mr. Sanborn said he had driven by the complainants' properties and was agreeable to driving out with them to personally view each of their properties. The visitors from the public and Mr. Sanborn exited the meeting to discuss arrangements and issues further in the lobby of the courthouse.

***Chairman Marx asked for a break at 7:04 PM at the conclusion of above item.
Chairman Marx asked the Commission to reconvene at 7:15 PM.***

The next agenda item was the Work Session Re: Woodbury County Zoning/Subdivision Ordinances and Zoning District Mapping.

Mr. Simpson facilitated a proofing of maps for each township. The Commission alphabetically reviewed Grange Township through Lakeport Township.

Mr. McWilliams made a motion to adjourn; seconded by Mr. Nelson; approved.

Meeting adjourned at 9:00 PM

Next meeting – Tuesday, June 12, 2007 – 6:00 PM