

Minutes - Woodbury County Board of Adjustment Meeting May 4, 2015

The meeting convened on the 4th of May, 2015 at 6:04 PM in the Board of Supervisors Meeting Room in the Court House, Sioux City, Iowa. Present were the following Board members: Robert Brouillette, Brian Crichton, Kenneth Gard, and Katie Colling. JoAnne Sadler was absent due to other commitments. Board Supervisor Jeremy Taylor was also present. Staff members John Pylelo and Peggy Napier were also in attendance. Present from the public were Thomas and Rachelle Bisek, Elaine Knudson, Christine Evans, Steve Smith, Brian Krogh, Gary Winters, Leary V Smith, Kenneth Stanly, Bruce and Anne Morrison, Jon Winkel, Dave Christensen, William and Amy Cadwallader, Kevin Alexander, Sheila Gernhart, Jenna Wilson, Dan Hunt, Carl Kneifl, Jeff Pedersen, Curt Faledrichsen, County Engineer Mark Nahra, Dean Herbst from DOT and Liz Cross.

The First agenda item was Any Citizen Wishing to be Heard on Non-Agenda Items.
There were no non-agenda items to be heard.

The next agenda item was approval of minutes of April 6, 2015 meeting.

Mrs. Colling made a motion to approve the minutes. Mr. Brouillette seconded the motion; motion carried 4-0.

The next agenda item was a Public Hearing and Permitting Approval Re: Conditional Use Permit for Applicants Dale and Sheila Gernhart and Lessee K&L Construction, Inc. for the Staging and Operation of an Earthen Borrow Area; GIS Parcel #884721351002 Addressed 2071 Glen Ellen Road.

Woodbury County property owners Dale and Sheila Gernhart (Gernharts) have entered into a lease agreement with K&L Contracting, Inc.(K&L) to stage and operate an earthen borrow area. The Gernharts desire the removal of storm damaged timber; the demolition of unwanted structures; finished elevations supporting potential a residential building site(s); and the reduction in elevation and slope of a portion of the a driveway servicing the Gernhart's residence which is located upon an adjacent parcel to the North. The Gernharts believe each of these goals will be accomplished at no cost other than providing the earthen material as stated under their borrow agreement with K&L.

K&L has entered into construction agreement with the Iowa Department of Transportation (IDOT) serving as a subcontractor to provide earthen borrow to right of way improvements along Interstate at or near the Sergeant Bluff I-29 exit. K&L attempts to find borrow at a location or locations meeting approved soil specifications; in required quantities and in proximity to the borrow delivery location. Haul road availability, road specifications and route distances between the borrow area(s) and delivery location(s) are also criteria for the contractor in selecting suitable borrow locations.

The Genrhart parcel's borrow area is represented to be approximately 330' by 375' in size; or a 2.84 acre rectangular portion of the 9.24 acre parcel. The application requests approval for the removal of up to 95,326 cubic yards of earthen material for this borrow area. The project has been described as a "removal of the top from an existing hill".

The drive servicing the borrow parcel is addressed 2071 Glen Ellen Rd., Sergeant Bluff. A temporary drive between addressed drives 2069 and 2071 Glen Ellen Rd. has been installed by K&L.

The general area around the borrow area's parcel is AP (Agricultural Preservation) and AE (Agricultural Estate) zoning. The parcel on which the borrow area will be located is zoned AE and has an existing rental dwelling. The dozing and mulching of storm damaged timber has already occurred. A mulch pile currently exists on the parcel which K&L states can be incorporated in part for use within the SWPPP. Unused mulch will be removed by K&L for their use.

The use as a borrow area is best described on page 37 of the zoning ordinance's *Land Use Summary Table* within the category and sub-categories of:

- *Resource Extraction:*
 - *Borrow Pits for earth materials*

This use is approved as a conditionally permitted use in selected zoning districts. The use as a borrow pit for earth materials is only allowed as a conditionally permitted use (CUP) within the AP and GI (General Industrial) zoning districts. Although the Gernhart parcel is congruent to AP parcels to the south the parcel is not within a conditionally approved zoning district classification for the requested use.

In 2008 at this location the area south of Sioux City and north of Glen Ellen Rd. was re-zoned from Agricultural to Agricultural Estates to support then perceived residential development density potential of the area.

The permit application shows a haul route using the following described rural Woodbury County, City of Sioux City or Sergeant Bluff roadway right of way:

From 2071 Glen Ellen Rd. westerly to Old Lakeport Rd.;

Then northwesterly on Old Lakeport Rd. to S. Ridge Rd.;

Then westerly on S. Ridge Rd. to S. Lewis Blvd.;

Then south on S. Lewis Blvd. to 8th St.;

Then west on 8th St. to Harbor Dr.;

Then south on Harbor Dr. to Iowa Department of Transportation I-29 right-of-way lying east of the 6100 block of Harbor Dr.

Sgt. Bluff wasn't going to allow use of road within the city limits for a haul road.

The conditional use permitting process includes a public hearing held by the Woodbury County Board of Adjustment. The ordinances further require a Zoning Commission review the Conditional Use Permit application and report its findings with recommendation to the Board of Adjustment. By ordinance the Zoning Commission review is limited to a determination if each of the below standards found within ordinance subsection 2.02-9.F will be met.

On April 27, 2015 the Zoning Commission met. Attending were the applicants including property owner Dale Gernhart. K&L Construction Inc. was represented by Jenna Wilson.

A letter from the Chair of the Zoning Commission outlining the Commission's findings and recommendation under ordinance subsection 2.02-9.F will be provided to your Board either by attachment or at your meeting.

See the attached documentation which provides additional information on the conditional use application:

1. The Conditional Use Permit Application Submitted by the Applicants
2. Location within Woodbury Township TAM Mapping
3. Aerial Mapping
4. Borrow Location with Nearby Parcel Ownership Mapping
5. Area's Zoning District Mapping
6. Areas Soil Mapping
7. Borrow Location Soil Mapping
8. Land Use release Form Dated Dec 22, 2014
9. Borrow Agreement Dated March 5, 2015
10. Parcel Information GIS #8847 21 351 002
11. Application Proposed Haul Route
12. The Areas Flood Plain Mapping
13. Onsite Photographs.
14. Agency/Department Letter Requesting Comment
15. Storm Water Discharge Permit Notice From IDNR Dated March 18, 2015 with discharge authorization date of April 1, 2015. This is in the name of property owner Dale Gernhart.
16. Storm Water Discharge NPDES Permit #2
17. Storm Water Pollution Prevention Plan
18. Silt Fence/Wattle Addendum Aerial

Please note that within attachment item #1 that the applicant has responded to each of the standards listed within ordinance subsection 2.02-9.F

Written comments have been requested from each of the state and local Agencies or Departments listed within attachment #14. The Zoning Office has received the follow written comments:

1. An e-mail dated April 2, 2015 from the City of Sergeant Bluff to the IDOT expressing concerns of the proposed borrow's haul route within Sergeant Bluff. A copy is provided.
2. An e-mail from Jennifer Davis dated April 29, 2015 transmitting a letter dated April 28, 2015 signed by Kelly Ingenthron, Vice-Chairman of the Woodbury County Soil and Water Conservation District. The letter expresses SWCD's concern of potential adverse impact upon Glen Ellen Watershed detention structure site 3-2. A copy is provided. We have also provided by attachment the city of Sioux City's municipal code language referred to By Mr. Ingenthron.
3. An e-mail dated April 23, 2015 from Woodbury County Engineer, Mark Nahra. Mr. Nahra commented on borrow contours, silt fence, site monitoring and traffic.

(From: Mark Nahra [mnahra@sioux-city.org]

Sent: Thursday, April 30, 2015 5:08 PM

To: Carl Kneifl; John Pylelo

Cc: Brian Crichton; JoAnn Sadler; Peggy Napier; Katie Colling; Robert Brouillette; Ken Gard

Subject: Re: Conditional Use Permit Application by Dale and Sheila Gernhart and K&L Construction

John:

I have reviewed the requests of Mr. and Mrs. Kneif. At least three of the comments are under the responsibility of the secondary road department, not the Board of Adjustment. I will answer those now:

1. With all the truck traffic can the road be oiled each time it is graded to keep dust down? *Oil is no longer a permitted product for dust mitigation. The county uses Calcium or Magnesium Chloride. Prior to the beginning of the haul use on the road, the road will be shaped and treated with dust palliative. The need for subsequent applications of dust palliative to the roadways will be determined by the secondary road department. Chlorides, when bladed under wet conditions, such as after a rain, do not always require reapplication of the material. Once dust reaches levels that result in obscuring of vehicles traveling on the road, reapplication of dust palliatives will be required. The cost of dust palliatives should be paid for by the party placing the extra traffic on the roadway, in this case the Gernharts or their contractor. I believe the Board of Adjustment is within its authority to require that the party requesting the use permit pay for the application of dust control on an "as needed" basis and my department would appreciate this condition being placed upon the permittee.*

2. Is it possible to have the county run their road grader all the way from Old Lakeport to S. Lewis Blvd, instead of stopping on the curve? And can it be graded once a week? *County blading will be determined by road conditions. Once per week blading will not be guaranteed unless road conditions determine that it is needed. This decision is at county road department discretion. Weekly blading will require almost weekly treatment with chlorides to maintain dust control. It should be noted that even on the gravel roads serving CF Industries do not receive weekly grading. It has not been necessary once the road is properly shaped and*

treated. The CF roads see a much higher level of traffic than Glen Ellen Road will see during the proposed conditional use of the Gernhart property. The dust treatment performance degrades with each blade pass. The frequency of blading will be determined by Secondary Road Department staff in consultation with the county engineer.

3. Can we get a posted speed limit of 35 MPH on the road during this process? *No. At this time, the speed limit reduction is not justified. Once construction starts, the secondary road department will monitor traffic and make speed limit adjustments if needed. If the traffic conditions are similar to those experienced last year with the borrow on 210th Street, a speed limit reduction is not warranted.*

In regard to question 6, *there is no absolute guarantee of safety now for school buses on any roadway. The use of the road from the conditional use permit will not change the state law provisions in regard to school buses nor the laws requiring traffic to yield to stopped buses with the stop arms extended. Normally I would place more reliance on professional, licensed commercial drivers operating the semi trucks than the average motorist when it comes to safety around school buses on the rural roads. Buses have not had problems on the CF haul roads, again at much higher traffic levels than Glen Ellen Road will see during the conditional use.*

If there are other questions I can answer, please feel free to forward them.

*Mark J. Nahra, P.E.
Woodbury County Engineer)*

On April 21, 2015 the Planning and Zoning Office received a telephone call from Rachelle Bisek. Mrs. Bisek is an adjacent property owner to the west of the borrow project. Mrs. Bisek stated her intent to be present for the public hearing. Mrs. Bisek also stated she rents the adjacent ground to Brian Krogh of Sergeant Bluff for agricultural use.

(Several comments were also received after the packets were mailed.

- May 1st Sara Wicki called wanting clarification of the issues.*
- April 30th Tim Christenson had questions about the haul road.*
- April 30th Mark Kneifl asked about right-of-way issues. These questions were correctly directed to Mark Nahra, County Engineer and his emailed answers are above.)*

The Zoning Office has also communicated with various agencies, departments and the public who had received request for comment letters or a notification of the proposed project in their neighborhood. We have answered inquiries based upon the application and subsequent information from the applicants which was available at that time the inquiry was made.

On the morning of April 29, 2015 an onsite meeting was held to view the site; discuss the project; and review the issue raised in comments received to date. The following individuals were in attendance at the onsite meeting:

Dale Gernhart – Property Owner

Sheila Gernhart – Property Owner
Kevin Alexander – K&L Construction Inc.
Jenna Wilson – K&L Construction Inc.
Mark Nahra - Woodbury County Engineer
Rick Schneider - Woodbury County Conservation Service
John Pylelo – Woodbury County Planning and Zoning
Lewis Byers – Woodbury County Soil and Water Conservation District
Tom Roos – Iowa Department of Natural Resources
Bryan Whiting - Iowa Department of Natural Resources
Christine Evans – Woodbury County District Conservationist

The onsite meeting was scheduled for April 29th as the borrow area had been recently corner staked. Upon borrow perimeter staking it became apparent certain aspects of the application were inaccurate. It was confirmed the borrow area’s actual footprint was larger than the borrow area footprint represented in the application’s mapping. Further that the 95,325 cubic yards of earthen material stated for removal would now be significantly more than the actual cubic yards required under K & L contract with the IDOT. Further that the 95,325 cubic yards of earthen material may be more than can be removed to meet the terms of the borrow agreement with the property owners.

At the time of the release of your meeting packets K & L Construction staff continues its’ work to update borrow mapping and computation of cubic yards of borrow. The information will be provided when it becomes available. It is anticipated the yards of borrow will change. Any reduction in material leaving the project could reduce the level of adverse impact related to the project.

The Zoning Office is releasing your meeting information at this time to allow for your pre-meeting review and onsite visit. We will update you with additional information as it becomes available. Should any member of your Board wish to be accompanied during your onsite visit by Zoning Office staff please contact John Pylelo at 712/279-6557.

After the close of the public hearing and prior to any vote staff will be prepared to offer any recommendation requested on this application.

Your Board is tasked with holding the required public hearing on the application; then deliberating and voting upon issuance of the Conditional Use Permit.

Section 2.01:9 Subsection E of the zoning ordinances allows your Board to approve, approve with conditions and limitations, or to deny the requested conditional use.

Comments

Kevin Alexander explained he was contacted by the Gernharts who wanted to have the hill on their property taken down to a more desirable level. Alexander intended to take the soil to the Interstate 29 Sgt. Bluff exit project. He had been getting dirt from the Hwy 20 borrow area, but it would be much more convenient to transport dirt from the Gernhart borrow pit.

He further explained the increased development in Woodbury County recently proves the need for borrow pits. He agreed they need to be controlled but they are still a good idea economically for everyone.

Sheila Gernhart said a recent storm made a massive mess out of their large grove of trees. Once all the damaged trees were removed the dirt hill was a mess. She and her husband decided to level the hill with intentions of possibly building there some time.

After the borrow pit was depleted the hill would be re-seeded. The current tenants will be moving out and the area will be vacated making the entire area more attractive. They saw it as a win-win situation for Mr. Alexander and the Gernharts.

Rachelle Bisek from North Dakota owns 80 acres of land West and North of Gernharts parcel. Mrs. Bisek said the land is highly sensitive Loess soil that, by its' nature, could create a huge erosion issue from the top of the hill. Her land would be approximately three feet (3') from the borrow pit and could be part of a potentially large problem. Seed does not grow readily in this type of soil. There is a real fear of flash flood migrating problems through the hills. Bisek is concerned with who will pay in the future if this is allowed now.

Mrs. Bisek is also concerned with many issues from the vibrations of an estimated 5,000 trucks coming and going. There could be potential septic and well issues. She asked who would pay for what level of repair on the haul route? There would be problems with the regular traffic and the truck traffic coming from this borrow. Bisek noted the road to the borrow pit is not wide enough for trucks and regular traffic to pass each other and the shoulders aren't substantial enough to take the loads.

Mrs. Bisek said the process started in November and she asked for the timeline.

Curt Fredrickson stated Old Lakeport Rd was no longer safe between Glen Ellen and Shields. The postman will no longer deliver to their home. They have to collect their mail in town. He and his daughter have been hit from behind on this road.

Carl Kneifl is concerned about 200 vehicles a day beating up South Ridge Rd. He has trouble getting out of his driveway now. Trucks will slow things down even more. He is concerned about busses and kids when people pass trucks and aren't concerned about safety or collisions. Trains cause great delays for cars and trucks.

Steve Smith asked who will dust control and maintain the haul route. How long will the pit be operating...30 days...more?

Jon Winkel, Mayor of Sgt. Bluff, never intended for truckers to use 8th St. as a haul street. He has coordinated with the DOT to leave the road unpaved for the next couple of years while bridges are being worked on. He thought he had already discussed the issue with Kevin Alexander when they talked in Winkel's office.

Mr. Winkel said community members are to use compost roads which will eventually be blacktopped. This kind of road is not capable of supporting trucks.

Sgt. Bluff owns the west half of Lakeport Rd. It is involved in annexation plans. Sgt. Bluff could own the road from 210th St. to half of South Ridge. Sgt. Bluff has cooperated with various agencies. Eventually Sgt. Bluff will have control of all of these roads.

Trucks should go on Dog Wood Trail Rd. when it is finished. Winkel says there will be no haul route through the community. Sgt. Bluff cannot afford any more maintenance costs.

Dean Herbst from the DOT in Sioux City wanted it clear that references made to November were done when estimates were made originally in the plan when contractors put the bid in. It was originally planned for a borrow pit. K&L had done tests and found the material was suitable for a borrow pit. The DOT has been involved with all these different organizations in their plans. K&L's plans for the haul roads are their responsibility, not the DOT's. 5,000 loads require haul roads designated. It won't be approved if it is unsuitable. Local entity roads are not DOT roads.

Herbst concluded there must not have been adequate communication between the city and contractor's regarding 8th St.

When one factors in maintenance and repair of haul roads: all clearances are still not all worked through.

Mr. Herbst said 30,000 cubic yards of dirt have been delivered. 55,000 yards are needed. It is not just about the DOT; 70,000 yards still need to be transferred.

Mr. Alexander explained they have safety and erosion control plans which they will follow. K&L will maintain the road and control the dust themselves. Alexander saw no problem with vehicles passing and said it was an issue for everyone.

Jenna Wilson said she submitted a haul route to the DOT; DOT submitted it to the city. This was submitted understanding they would be using the commercial part of road. Mr. Alexander communicated with the city. He didn't know about problems.

70,000 extra yards of soil will be dealt with somewhere. This discussion was before moving on project.

The SWPPP keeps dirt from leaving site. The top soil will be stripped, but it will be reseeded when done. This will help water stay on and not run off. Water will always run south. Nothing would be below where terrace ends because it is already prepared for water runoff.

Sheila Gernhart said the hill will be mowable.

Mrs. Bisek's perception is that the runoff situation will run over her and her mother's property lines.

Mr. Alexander said the Morrison property line will never be disturbed. The terraces are designed so the water will run around it. It won't touch her or her mother's land.

Leary Smith does not think South Ridge Road seems adequate for truck traffic. Traffic is usually 45 mph which he thinks is too fast.

Ken Gard made a motion to close the public hearing. Katie Colling seconded the motion; motion carried 4-0.

Discussion:

Brian Crichton addressed Kevin Alexander to say his erosion control plan is unclear.

Mr. Crichton asked if there will be a buffer area.

Mr. Alexander said originally the plan with the Gernharts was not about getting a certain amount of dirt out; they wanted to make the hill a certain approximate height that would be most advantageous to them. The plans for the DOT and other projects were secondary.

Mr. Crichton asked about the timeframe. He asked if it was possible they could work the project for a couple of weeks for the DOT and work the rest of it in phases. Maybe it won't be a 50,000 cubic yards project right away; maybe it will be five (5) or ten (10) thousand. And then use the rest as needed.

Ken Gard felt there was information missing from Mr. Alexander.

Bob Brouillette said conditions may not ever be able to be met and need to be mitigated. Each and every adverse impact needs to be looked at.

Mr. Gard asked if any heavy equipment was being used on the Gernhart's road and if there would be any changes made in the road.

Mr. Alexander said the road would be lowered 10' to 12'.

Mr. Crichton asked what the timeframe would be for work on the driveway.

Alexander said the hill needed to be lowered before the road.

Katie Colling asked if it was necessary to level the hill in order to lower the road.

Mr. Alexander explained there were utility pole issues. He added if they took soil from the west side of the road the driveway would be lowered.

Christine Evan from Woodbury County District Conservation commented if the borrow pit was larger or broader the southwest water would run north instead of south.

Mr. Brouillette said how it is graded from the northern-most line would make a difference.

Mr. Alexander said the top soil and a silt fence would define the maximum borrow line.

Ms. Evans noted she did not see the flags Mr. Alexander said he placed at the top of the terrace.

Mr. Gard said the application was in no way accurate. He was not specific.

John Pylelo said things that were reported in the application are no longer accurate. Adverse impacts were not known and haul routes were not accurate. Loess Hills group was notified but they did not respond. Borrow pits are necessary and needed.

Mr. Brouillette noted driveway improvements appear necessary. There are four (4) stakes outlining the area.

Mr. Crichton suggested the biggest challenge is the haul roads. Currently there are too many issues and it is needs to be clarified.

Staff Recommendation

Mr. Pylelo said it is almost impossible to address all the issues in one night. The issues are significant and cause undue hardship to the neighborhood at this point. We need to look at the primary purpose of this project, which is a DOT project. The secondary purpose is the landowner.

Mr. Gard said the actuality of reseeding and maintaining the borrow pit is not realistic considering DNR requirements.

Mark Nahra noted there is more concern after the DOT purposes are satisfied. Then it becomes Secondary Road's problem to deal with the roads. Glen Ellen is part of the dust control problem. County policy is sometimes inadequate depending on conditions. It is an entirely different process than the roads south of the airport. Gravel roads can bear the brunt. This is very different.

If the borrow pit is used intermittently, how much responsibility does K&L have between active uses?

Mrs. Gernhart said the above was not the original intent for leveling the hill.

Mr. Alexander said if his trucks aren't moving it is costing his company more money.

Mr. Brouillette said the Board of Adjustment would like to see the borrow pit happen, but not the way it is currently happening.

Mr. Gard said Mr. Alexander needed to work out some alternatives.

Mrs. Colling made a motion to deny a Conditional Use Permit as it currently stands.

Mr. Brouillette seconded the motion; motion carried 4-0.

K&L Construction and Mr. and Mrs. Gernhart have the right to appeal the decision within thirty (30) days.

The next agenda item shall be any Citizen wishing to be heard before the Board.
There was no one present.

The next agenda item shall be any other Board business.
There was no other business.

Mr. Gard made a motion to adjourn the meeting. Mrs. Colling seconded the motion; motion carried 4-0.

Meeting was adjourned at 7:45 PM. Next meeting will be 6 PM, June 3, 2015.