

**Minutes - Woodbury County Zoning Commission Meeting
November 23, 2015**

The meeting convened on the 23rd of November, 2015 at 6:00 PM in the Board of Supervisor's meeting room on the first floor of the Court House, Downtown, Sioux City, Iowa. Present were the following Commission members – Tom Bride, Bruce Garbe, David McWilliams, Barbara Parker and Christine Zelmer Zant. Zoning Staff Present: John Pylelo and Peggy Napier. Present from the public were Patricia and Dale Kreisler, and Kelly and Janice Pry.

The first agenda item is any citizen not on the agenda wishing to be heard.

The Planning and Zoning Office is not aware of any person intending to be present to be heard on a non-agenda matter.

The next agenda item is the approval of minutes from the Commission's October 26, 2015 meeting. Mr. McWilliams made a motion to approve the October 26 minutes. Mr. Bride seconded the motion; motion carried 5-0.

The next agenda Item is a Zoning Ordinance Section 2.02:9.E Review and Recommendation to the Board of Adjustment; Re: Conditional Use Permit Re-Application; Applicant's Dale and Sheila Gernhart and Contractor Lessee K&L Construction, Inc.; For the Staging and Operation of Resourse Extraction - Borrow Pit.

The initial application related to this agenda item was reviewed by your Commission at your May 2015 meeting. On November 2, 2015 the Board of Adjustment reviewed this agenda item's re-application and found the re-application should be processed.

Woodbury County property owners Dale and Sheila Gernhart (Gernharts) have entered into a lease agreement with K&L Contracting, Inc. (K&L) for certain grading. The grading project includes the staging and operation of a borrow pit for the removal of earthen material. The Gernharts desire the removal of storm damaged timber, an alternative building site location and to decrease the rate of slope of a portion of the driveway to their residence on their adjacent parcel to the north. The Gernharts believe each of these goals will be accomplished at minimal or no cost other than providing the earthen material as stated under the lease 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 29 at or near the Salix Iowa 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 locations.

The application requests approval for the removal of up to 107,000 cubic yards (144,450 tons) of earthen material. The project has been described as a "removal of the top from the existing hill". Further project detail can be found within the CUP application provided.

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, unoccupied rental dwelling. The dozing and mulching of storm damaged timber has already occurred. A mulch pile currently exists on the parcel and will be removed by K&L.

The use as a borrow area is best described on page 37 of the zoning ordinance's *Land Use Summary Table (LUST)* 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. The LUST further prohibits the requested conditional use in all the county's other 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, Sergeant Bluff or State of Iowa roadway right of way:

- Glen Ellen Road
- Old Lakeport Road
- US Hwy 75 South
- Poplar Avenue
- 275th St.
- IDOT ROW

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

Section 2.02-9.F

(1) In order to grant a conditional use the Board of Adjustment must determine that:

- (a) *The conditional use requested is authorized as a conditional use in the zoning district within which the property is located and that any specific conditions or standards described as part of that authorization have been or will be satisfied.*
 - (b) *The proposed use and development will be in harmony with the general purpose and intent of this ordinance and the goals, objectives and standards of the general plan.*
 - (c) *The proposed use and development will not have a substantial or undue adverse effect upon adjacent property, the character of the neighborhood, traffic conditions, parking, utility facilities, and other factors affecting the public health, safety and general welfare.*
 - (d) *The proposed use and development will be located, designed, constructed and operated in such a manner that it will be compatible with the immediate neighborhood and will not interfere with the orderly use, development and improvement of surrounding property.*
 - (e) *Essential public facilities and services will adequately serve the proposed use or development.*
 - (f) *The proposed use or development will not result in unnecessary adverse effects upon any significant natural, scenic or historic features of the subject property or adjacent properties.*
- (2) *Other considerations. In its review of conditional use requests, the Board of Adjustment shall consider whether, and to what extent:*
- a) *The proposed use or development, at the particular location is necessary or desirable to provide a service or facility that is in the public interest or will contribute to the general welfare of the neighborhood or community.*
 - b) *All possible efforts, including building and site design, landscaping and screening have been undertaken to minimize any adverse effects of the proposed use or development.*

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

1. The Gernhart's Conditional Use Permit Application received 10/22/2015; approved for acceptance on 11/02/2015. Of not is the application includes:
 - October 13, 2015 email form Mark Nahra to Rhonda Roberts
 - Borrow pit project description\Schedule of Operations
 - Photo of highest elevation
 - IDNR Storm Water Discharge Permit – NPDES General Permit#2
2. Location within Woodbury Township TAM Mapping
3. Aerial Mapping
4. Area's Zoning District Mapping
5. The Areas Flood Plain 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. Onsite Photographs.

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

It should be noted the Gernharts/K&L's position is the project's categorization as *Resource Extraction – Borrow Pit* is in error. That the conditional use permit review process and CUP issuance should not be required by Woodbury County and the project can be allowed solely by issuance of a grading permit.

It is the opinion of the County's Director of Planning and Zoning and the Woodbury County Engineer that the CUP application process applies. At the November 3, 2015 meeting of the Woodbury County Board of Adjustment the Asst. Woodbury County Attorney stated the CUP process was required for the set of facts presented within the Gernhart/K&L project.

Attachments

Attached find the following for your review:

- Location and Parcel Information
- Final Platting
- Topographical Contour Mapping
- Aerial Photography
- Onsite Photographs

Your Commission is tasked with reviewing the Conditional Use Permit application. You are then to provide your Commission's recommendation to the Woodbury County Board of Adjustment stating if each of the standards found within ordinance subsection 2.02-9.F will be met. You are further tasked with authorizing your Chairman to provide your recommendation in writing to the Chairperson of the Woodbury County Board of Adjustment.

Discussion:

John Pylelo emphasized to the commissioners they were not to take into consideration the fact that the previous CUP application was denied. This is a new CUP application review with a new set of facts. The engineering is better and the cubic yards have increased. The haul route has changed, South Ridge Rd. has been omitted and the majority of the haul route to the IDOT project is paved. Many of the issues for haul route have been considered. The county engineer makes the final decision. The haul route permit requires any damages must be repaired.

The heavy density of this area is appropriate for its AE zoning and six (6) residences in the quarter quarter. The roads are paved so there shouldn't be dust issues and the noise shouldn't be too intolerable.

Mr. Pylelo said Planning and Zoning had no obligation to notify nearby property owners except those within a 500' radius. He didn't know if the dirt removal would create nuisance violations.

Pylelo acknowledged this was a much better application than the previous one. To date we have had no responses from any of the agencies. There will be considerations based on standards.

Mr. Bride noted there is nothing that defines the amount of earth removed.

Pylelo said there is a stand-alone definition of a borrow pit in the ordinances. It will be used as it exists now. He explained he has asked for legal opinion on a number of the issues from the County Attorney's Office and the Board if Adjustment went through them in their meeting.

Ms. Zellmer Zant suggested they begin going through the standards;

F. Requirements for conditional uses.

- (1) Standards. In order to grant a conditional use, the Board of Adjustment must determine that:
 - (a) The conditional use requested is authorized as a conditional use in the zoning district within which the property is located and that any specific conditions or standards described as part of that authorization have been or will be satisfied. **ZONING COMMISSION'S FINDING: As the conditional use requested is not authorized as a conditional use in the zoning district within which the property is located; i.e. AE (Agricultural Estates) this standard is not met.**
 - (b) The proposed use and development will be in harmony with the general purpose and intent of this ordinance and the goals, objectives and standards of the general plan. **ZONING COMMISSION'S FINDING: The proposed conditional use for operations of a borrow pit for earthen materials can be in harmony with the general purpose and intent of this ordinance and the goals, objectives and standards of the general plan providing sufficient conditions and restrictions are placed by the Board of Adjustment within the permit per public testimony to mitigate adverse impact at the location of the borrow area and along any approved haul route.**
 - (c) The proposed use and development will not have a substantial or undue adverse effect upon adjacent property, the character of the neighborhood, traffic conditions, parking, utility facilities, and other factors affecting the public health, safety and general welfare. **ZONING COMMISSION'S FINDING: The proposed conditional use for operations of a borrow pit for earthen materials will not have a substantial or undue adverse effect upon adjacent property, the character of the neighborhood, traffic conditions, parking, utility facilities, and other factors affecting the public health, safety and general welfare providing sufficient conditions and restrictions are placed by the Board of Adjustment within the permit per public testimony to mitigate adverse impact at the location of the borrow area and along any approved haul route.**
 - (d) The proposed use and development will be located, designed, constructed and operated in such a manner that it will be compatible with the immediate neighborhood and will not interfere with the orderly use, development and improvement of surrounding property. **ZONING COMMISSION'S FINDING: The proposed conditional use for operations of a borrow pit for earthen materials can be located, designed, constructed and operated in such a manner that it will be compatible with the immediate neighborhood and will not interfere with the orderly use, development and improvement of surrounding property providing sufficient conditions and restrictions are placed by the Board of Adjustment within the permit per public testimony to mitigate adverse impact at the location of the borrow area and along any approved haul route.**
 - (e) Essential public facilities and services will adequately serve the proposed use or development. **ZONING COMMISSION'S FINDING: The proposed conditional use for operations of a borrow pit for earthen materials is supported by essential public facilities and services which will adequately serve the proposed use or**

development providing sufficient conditions and restrictions are placed by the Board of Adjustment within the permit per public testimony to mitigate adverse impact at the location of the borrow area and along any approved haul route; Including electrical infrastructure west of the driveway.

- (f) *The proposed use or development will not result in unnecessary adverse effects upon any significant natural, scenic or historic features of the subject property or adjacent properties. ZONING COMMISSION'S FINDING: The proposed use or development will not result in unnecessary adverse effects upon any significant natural, scenic or historic features of the subject property or adjacent properties providing conditions and restrictions are placed by the Board of Adjustment within the permit per public testimony to mitigate adverse impact at the location of the borrow area and along any approved haul route; including protection of Loess Hills soils and nearby water sources.*

Staff Recommendation:

At the Commission's request Planning and Zoning Office staff can present its evaluation if the standard are met within the application are or can be met.

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

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

It should be noted the Garnharts/K&L's position is the project's categorization as *Resource Extraction – Borrow Pit* is in error; that the conditional use permit review process and CUP issuance should not be required by Woodbury County and the project can be allowed solely by issuance of a grading permit.

It is the opinion of the County's Director of Planning and Zoning and the Woodbury County Engineer that the CUP application process applies. At the November 2, 2015 meeting of the Woodbury County Board of Adjustment the Asst. Woodbury County Attorney Joshua Widman, stated the CUP process was required for the set of facts presented within the Gernhart/K&L project.

The Zoning Commission gives the benefit of the doubt to the applicant and believes they will make the correct decisions in the Board of Adjustment meeting.

Motion to accept the application made by David McWilliams; motion seconded by Barb Parker. Motion carried 5-0.

Your next agenda item is a work session related to review of county zoning ordinances regulating the operation of “Truck Terminals” in rural Woodbury County under the ordinance’s home occupation use ordinance restrictions.

At multiple Board of Supervisor meetings several rural residents have expressed their point of view on the operation of over the road trucking operations within an existing rural Woodbury County subdivision. The Supervisors at their November 10, 2015 meeting tasked the county’s Zoning Director to initiate a method of review of zoning ordinances. The goal being a determination if small over the road trucking companies should be allowed to operate within the county outside the constraints of certain of the home occupation use limitations.

The goals of this agenda item are:

- A. To review the facts within the current rural example.
- B. To determine how Woodbury County might best address the facts in light of recent citizen input.
- C. If ordinance amendment is the selected route to follow to determine the mechanism which best balances the issue of property right protection vs. adverse neighborhood impact.
- D. To draft a recommendation to the Board of Supervisors. Should the method of choice be zoning ordinance change to provide proposed ordinance language for Supervisor consideration.

Hand out materials for this agenda item were made available at the meeting.

The situation initiating this work session was a failure to avoid vehicles and equipment being seen from the county right-of-way and/or other parcels.

Neighbors came to a Board of Supervisor’s meeting and one neighbor wrote the the Planning and Zoning office in support of the over-the-road trucking business as a Home Occupation Business.

Mr. Pylelo compared Woodbury County’s Home Occupation rules to other counties.’ He asked for other Zoning Commission members’ opinions.

The home occupation occurs on 210th St, a paved road with AE residential density.

The complainant can see the business. There are too many tractors, trailers, and employees’ cars visible.

The question appears to be should new language be designed for small trucking companies or should the ordinances simply be enforced as written?

Discussion:

Mr. Bride did not think it was necessary to write a new ordinance for truckers. He asked if the structure could be made larger to house all exposed vehicles.

Mr. Garbe asked if fencing could be an adequate solution. It was agreed the kind of fencing that would be required could be as bad as seeing the trucks/trailers.

Mr. Pylelo explained currently only one vehicle is allowed to go back and forth from work. That would allow one tractor could be observed but no trailers can be observed.

Mr. Bride commented if that is the case, there are a lot of people in violation. However, there are not enough people in the department to monitor this activity in the county.

Mr. Pylelo said the issues can vary from one person to the next and there are many difficult issues to consider. Each situation needs to be evaluated separately. The commission should possibly consider the use as a conditionally permitted use.

Mr. McWilliams asked if truckers could go through a CUP application. At least there would be input from neighbors for each situation and it would be possible to add conditions for each applicant. It would be presented to the Board of Adjustment for consideration. Each situation would be assessed individually.

Mr. Bride suggested the Planning and Zoning office draft language for the Board of Adjustment. Director Pylelo said he would draft language providing a couple of options.

Mr. Garbe made a motion to revisit the issue at the next Zoning Commission regular meeting as a work session agenda item. Mr. McWilliams seconded the motion; motion carried 5-0.

Patricia Kreisler stepped up to the commission to comment this situation should never have gone this far. The trucker in question admitted to Mr. Pylelo he was in violation of the tables in the ordinances. There may have been emotional presentations to the Board of Supervisors, but the tables showed he was in violation.

Mrs. Kreisler and her husband moved to the country for a rural and peaceful lifestyle. If a truck terminal is allowed, what will be allowed next? The Kreislers want to protect their property value.

Mr. Kelly Pry approached the commission to say he had a great neighbor. When he had an issue, he approached his neighbor personally and they worked it out. He agreed this trucking issue shouldn't have gone this far.

Clerk Peggy Napier commented working with the issue as a CUP application was no guarantee any applicant would be allowed a truck terminal in rural Woodbury County.

Your next agenda item is hearing any citizen wishing to be heard.

The Planning and Zoning Office is not aware of any person intending to be present to be heard on a non-agenda matter.

The meeting was adjourned at 8:00 PM by Mrs. Parker; seconded by Mr. McWilliams and carried 5-0.

Next meeting will be 6:00 PM Monday, December 28, 2015.