

Minutes - Woodbury County Board of Adjustment Meeting December 7, 2015

The meeting convened on the 2nd of November, 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, JoAnne Sadler, Katie Colling, Brian Crichton and Kenneth Gard. Board Supervisor Jeremy Taylor monitored the meeting. Staff members John Pylelo and Peggy Napier were also in attendance. Present from the public were Sheila and Dale Gernhart, Jenna Wilson, Rhonda Roberts, Mark Huntley, Dwight Suing, Rollie and Anne Cook, Zak Cook, Lewis Byers, Randy Samson, Dean Herbst, Rachelle and Thomas Besik, Elaine Knutson, Steve Hass, Aaron Lincoln, Zebadia Cook, and Linda M. Cox.

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 November 2nd, 2015 meeting.
Mrs. Colling made a motion to approve the minutes. Mrs. Sadler seconded the motion; motion carried 5-0.

The next agenda item was a Public Hearing and Permitting Approval Re: Conditional Use Permit for applicants Dale and Sheila Gernhart for the Staging and Operation of Resource Extraction – Earthen Borrow Area; GIS Parcel #884721351002 Addressed 2071 Glen Ellen Road.

Your Board previously deliberated on this agenda item at your meeting of May 4th 2015. On October 22, 2015 a re-filed conditional use permit application was received by the Office of Planning and Zoning. At your November 2, 2015 meeting your Board determined the re-filed application was not barred under the ordinances for reconsideration. The re-filed application was officially accepted the same date.

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 pit. The Gernharts desire finished parcel elevations supporting the potential for additional residential building site(s). Further the applicants desire a reduction in elevation and slope of a portion of the 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 Salix, Iowa I-29 exit (Exit #134).

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 Gernhart parcel's borrow area is represented on the attached grading plan within a rectangular portion of the 9.24 acre parcel. The application requests approval for the removal of up to 107,000 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. In addition structure(s) have been demolished. 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 within the AP and GI (General Industrial) zoning districts.

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, Salix or State of Iowa roadway right of way:

- Glen Ellen Rd.
- Old Lakeport Rd.;
- US Hwy 75 South
- Poplar Avenue
- 275TH St.
- IDOT ROW at Exit 134 (Salix)

The conditional use permitting process includes a public hearing held by the Woodbury County Board of Adjustment. The ordinances further require the 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 standards found within ordinance subsection 2.02-9.F will be met.

On November 23, 2015 the Zoning Commission met, considered the facts; and then deliberated. A letter from the Chair of the Zoning Commission outlining the Commission's findings under ordinance subsection 2.02-9.F has been drafted stating the outcome of the Commission's findings.

Below is a list of the documentation we have attached which provides additional information on the conditional use application. Included are Zoning Commission findings:

1. The Conditional Use Permit Application Submitted on October 22, 2015; approved for acceptance on November 2, 2015.
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.
12. Agency/Department Letter Requesting Comment dated November 19, 2015.
13. Storm Water Discharge Permit Notice From IDNR Dated March 18, 2015 with discharge authorization date of April 1, 2015.
14. Storm Water Discharge NPDES Permit #2.
15. Storm Water Pollution Prevention Plan.
16. A Section 2.02-9.F letter from the Chairperson of the Woodbury County Zoning Commission. Note: Letter is unsigned. A signed copy will be entered into the record at the public hearing.
17. E-mails dated November 20, 2015 between Joshua Widman of Woodbury County Attorney's Office and the Woodbury County Zoning Director.

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 #12. As of December 1, 2015 the Planning and Zoning Office have received the following written comments:

(see attached)

Also attached is comment from County Engineer Mark Nahra. (...basically saying...)

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 deliberate and vote upon issuance of the requested 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:

Dale Gernart addressed the Board to say taking the hill down would be an improvement for them. Having the road brought down helps considerably, and with these improvements they will be able to increase the number of houses on their land.

Jenna Wilson commented she did not think taking the hill down should be considered a grading permit rather than a borrow pit. The main purpose of the grading is to remove dirt.

The Gernharts and K&L Construction asked for a grading permit. Subsequently, Mr. Pylelo said they had to apply for a CUP (Conditional Use Permit). No pit was created, not hole was created (which, according to Ms. Wilson is the meaning of "*Borrow Pit*"). Their intentions are bringing the hill down. Mr. Pylelo referred to a "*Borrow Permit Agreement*." That is not part of this application.

Rachelle Besik has the property adjacent to the Gerhart's. She iterated the same issues as her last comments:

- Damage to the road
- Who will pay for damage to roads
- Who will inspect and repair roads
- Damage to neighbors' structures and yards from hauling vibrations
- Who will pay for this
- How many trucks will carry 107,000 cubic yards of dirt

- Public health issues with dust
- Erosion
- No finish date

Rollie Cook said he came to some of the same conclusions that (Rachelle) came to regarding the finish date and who would repair the roads after they have been damaged.

Steve Hass also wanted clarification on deadlines and where the dirt was going.

Aaron Lincoln, city administrator for Sgt. Bluff, commented on the objections they had at the May, 2015 CUP meeting. At that time their objections were because the haul route would be going through Sgt. Bluff, there was the issue of dust control, and the time limit was unclear. He wanted to know if it would be as long as a year.

Lewis Byers of Woodbury County Soil and Water Conservation said he was at the meeting to protect soil and water against erosion issues.

Elaine Knutson said the conditions on Glen Ellen were currently miserable.

Linda Cox, Mayor of Salix, was concerned with railroad traffic and trucks getting backed up at train crossings. It was disruptive to the citizens in Salix to have additional trucks going back and forth along with the CF traffic. She asked if K&L's traffic would be all day, how early would it begin and how late would they work in the evening.

Rhonda Roberts from K&L reported;

- They will be insured for the project
- All soil (which has been approved by IDOT) will go to the IDOT project
- The Salix projects need their soil
- K&L will maintain the haul roads
- There will be a total of 4,815 truck loads
- A "*borrow pit*" is a misconception. They are not doing that this time.
- It will take approximately 71 days to complete this project
- K&L will not be using Jake brakes and they will follow the speed limit
- K&L is experienced with traffic control and they have it set up for this project
- They are familiar with the haul route. Dirt is going through Salix whether from them, CF, or other current projects
- There will be no dust control issue in the winter
- Vibrations come with living in the country
- The loads will be covered

- Drivers do not drive before sunup or after sundown but they may work weekends

Ms. Roberts compared the May application with the new application and then gave a copy of her report to Chairman Crichton.

(Documentation attached)

Mr. Pylelo read County Engineer Mark Nahra's report in minutes (below):

John:

I have reviewed the proposal for the conditional use of the Gernhart property as a borrow area for the I-29 interchange project at Salix. The part of the project, upon which the Secondary Road Department has jurisdiction, is the request for a haul road route to allow delivery of the material to the interchange. I will be recommending approval of the haul route application to the Board of Supervisors, if the property receives a conditional use permit for use as a borrow. The use of the requested roads as haul roads is an appropriate use within their functional classification within the Woodbury County road system.

The use of gravel roads as borrow sites is quite common for DOT and county road projects. As the CF Industries project has demonstrated, gravel roads can serve under heavy traffic with intensive maintenance. Such maintenance would be part of the haul road agreement with the Iowa DOT and should not be a concern of the Board of Adjustment in making their decision.

From my point of view in regard to haul road use, this project request is of less concern than the Gernhart's earlier May 2015 CU permit request. The project is for a fixed window of time, not for a period of one to two years, or until the property has enough dirt removed to meet the Gernhart's site development plan. The higher maintenance effort on the road will be needed only during the 4-5 month project period, after which, the road will be released to normal maintenance.

The real question at hand in the hearing is whether a conditional use permit should be issued for this purpose. According to the county zoning ordinance, borrow pits are a prohibited use of land classified as AE, Ag Estate. It is my opinion that the project is indeed a borrow site. I would define site grading as moving earth on site to shape it to allow construction of a house or other structure. I believe Ms. Roberts asked me about earth removed from a lot due to basement excavation would be considered "borrow" or site grading. Looking at one of the larger homes in the county that I am aware of, Mr. Alexander's own home, a 12 foot deep basement under the footprint of his home would generate less than 2000 cy of material. If we use that as a guide for site grading vs. borrow pit, the material to be removed from the Gernhart property is more than 50 times this quantity. I think the quantity and proposed use for the material derived from the property fits the definition of "borrow pit for earth materials" as shown the county zoning ordinance. This amount greatly exceeds any amount necessary simply for the construction of a house, but amount and use of the material clearly is within definition 19 for borrow pit in section 6.02 of the county zoning ordinance.

I will not be available to attend the hearing tonight. You can call if you need any additional information or if you have questions.

Mark J. Nahra, P.E.
Woodbury County Engineer
759 E. Frontage Road
Menville, Iowa 51039

Mr. Brouillette made a motion to close the public hearing. Mr. Gard seconded the motion; motion carried 5-0.

Discussion:

An email to John Pylelo on November 20, 2015, from Assistant County Attorney Josh Widman was quoted by Mr. Pylelo. In essence it stated a CUP could not be granted when the parcel is zoned where CUPs are not allowed; and the Gernhart's situation appeared to be more of a variance issue rather than a CUP issue.

Mr. Pylelo stated the quandary is the board does not want the area torn up. At the same time the area is zoned to allow increased housing. The zoning is not right.

Discussion among the board ensued. Most would like to see the Gernhart's accomplish their goals, but that cannot happen if it breaks zoning ordinances and it clearly does.

Mrs. Sadler made a motion to deny the CUP application. Mr. Brouillette seconded the motion; motion carried 5-0.

The board continued to discuss what might be possible for the Gernharts. Pylelo suggested possibly making a recommendation to the Zoning Commission.

Mr. Pylelo also suggested the Land Use map is so definitive it zones you out of its use.

The next agenda item shall be any Citizen wishing to be heard before the Board.

There was no one present.

Mr. Gard made a motion to adjourn the meeting. Mr. Brouillette seconded the motion; motion carried 5-0.

Meeting was adjourned at 7:45 PM. Next meeting will be 6 PM, January 4, 2016.