

## **Minutes - Woodbury County Board of Adjustment Meeting November 2, 2015**

The meeting convened on the 2<sup>nd</sup> 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, and Katie Colling. Brian Crichton and Kenneth Gard were absent due to other commitments. 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, and Rhonda Roberts.

**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 May 4<sup>th</sup>, 2015 meeting.**  
Mrs. Colling made a motion to approve the minutes. Mrs. Sadler seconded the motion; motion carried 3-0.

**The next agenda item was a Successive Conditional Use Permit Application submission determination Pursuant to Zoning Ordinance Section 2.02:1.(5) for Gernhart and K&L Construction. Re: Conditional Use Permitting for the Staging and Operation of an Earthen Borrow Pit on GIS Parcel #884721351002 Addressed 2071 Glen Ellen Rd.**

On October 9, 2015 a Grading Permit Application was received from property owners Dale and Sheila Gernhart and contractor K&L Construction, Inc. It was determined the application included onsite grading and the staging and operation of a borrow pit removing a significant number of cubic yards of earthen material from the site. It should be noted the applicants disagree with the Director of Planning and Zoning and the County Engineer's assessment that a borrow pit operation will in fact exist.

Under the county's ordinances any borrow pit use requires the issuance of conditional use permit. The applicants were subsequently advised that the grading permit application could only be considered in conjunction with a conditional use permit (CUP) application for the borrow pit use. On October 22, 2015 the applicants submitted the required CUP application. Further that the grading permit could only be considered independently if it was limited to on site grading only.

Under zoning ordinance Section 2.02:1.(5) CUP applications are barred if they are for a previous CUP application which was initiated within one year and the previous application was denied. However, the ordinances allow certain exceptions as follows (*the original application date was used to control the second application*):

*Exception. If the administrative official or body which originally decided the issue determines that conditions have changed; new or additional information is available; or a mistake of law or fact was made, a new application may be considered.”*

At your meeting of May 4, 2015 your Board denied a Conditional Use Permit (CUP) application for the referenced applicants (Board of Adjustment Resolution No. BA 337 dated May 12, 2015). The previous CUP application and the CUP application currently under consideration are located upon the same parcel.

By ordinance your board is required to determine the impact of zoning ordinance subsection 2.02:1.(5). Specifically to determine if the October 22, 2015 CUP application filing can be considered under one or more of the exceptions for barring the current application.

Your Board is asked to determine if the facts within the applicant’s October 22, 2015 Conditional Use Permit Application, and any meeting testimony provided, supports one or more of the exceptions within section 2.02:1.(5)(b).

Should one or more of the exceptions be found to apply the applicant’s October 22, 2015 CUP application filing may be initiated and can be heard at a subsequent Board of Adjustment meeting; likely on December 7, 2015.

Should your Board find that no exception is met the October 22, 2015 CUP application filing cannot be initiated. The Board’s previous May 4, 2015 CUP denial determination will remain in effect.

Provided for your review you will find included in your meeting packets:

- 1.) The initial CUP application filed March 27, 2015.
- 2.) Board of Adjustment Resolution No. BA 337 dated May 12, 2015 related to the initial CUP application determination of denial.
- 3.) May 12, 2015 transmittal letter of Board of Adjustment Resolution BA 337 to applicants.
- 4.) The grading permit application filed October 9, 2015
- 5.) The successive CUP application filed on October 22, 2015; approximately seven (7) months after the initial CUP application.
- 6.) A copy of pages 8 through 10 of Woodbury County zoning ordinances which includes Section 2.02: Administrative Procedures 1. General Requirements.

Reference is made to the previously provided proposed minutes of the May 4, 2015 Board of Adjustment meeting. It is anticipated the proposed minutes will be approved; action on this agenda item.

**It was not necessary to close a public hearing since this agenda item is a review, not a public hearing process. The two (2) applications need to be compared and Mr. Pylelo is here to make a staff recommendation.**

Jenna Wilson from K&L Constuction does not see this application as a duplicate application. The Gerharts, not K&L, are making the application.

Issues to be addressed;

- Protective measures needed to be improved
- K&L does not believe it is a borrow pit
- The driveway needs to be lowered
- Dirt needs to be removed

Sheila Gernhart had several comments;

- The hill behind their house is severe and they want it taken down.
- K&L needed the dirt and Gernharts wanted the dirt taken away
- There is a place where the dirt can be taken
- No dirt can go in the frontage across or over the pond at the base of their parcel

Joshua Widman, assistant county attorney, brought everyone's attention to the definition of *Borrow Pit* on page 83 of the County Ordinances. In the definition there is no threshold as to how much dirt or why it is being removed to qualify as a borrow pit. He added it was imperative the Board of Adjustment follow the ordinances.

Ms. Wilson repeated they do not intend to create a borrow pit. K&L is simply removing dirt from a parcel which is done all the time. They wanted a grading permit; not to create conditions where people are coming to get dirt. Removal of dirt is the responsibility of the IDOT. The only purpose for K&L's relationship with the Gernharts is to create a better driveway.

Mr. Pylelo had Ms. Napier distribute and analysis of the changed conditions in the new application, pros and cons (*attached*).

The change in the haul route is significant.

Pylelo wanted to know if this application was denied did they intend to apply again.

Rhonda Roberts, project manager with K&L Construction, said in the previous application the removed dirt appeared as a borrow pit. That is not the case this time. This is a specialized IDOT job.

Class 10 weight dirt has to be removed from the site to completion of the project. While County Engineer Mark Nahra says this is a larger project than he has seen, Ms. Roberts refutes his comment because of information on the IDOT website that happened in Woodbury County. In the end of this project trees will have been removed, area smoothed out, erosion controlled, the driveway lowered, etc.

Mr. Pylelo said this may not be the place to argue if this is a borrow pit or not. The advice from the County Engineer and the legal opinion from the attorney need to be considered. Pylelo understands the hardships this creates.

**Mr. Brouillette, tonight's vice-chairman, pointed out this is a five (5) member board and two (2) are missing tonight. Depending on which way the present members were leaning, they could decide not to vote tonight.**

**Mrs. Colling said between determining whether this application has new information, has changed information or if it is a matter of law, it appears to her this information is new.**

**Mr. Brouillette agreed.**

**Mrs. Sadler sees the items Mr. Pylelo presented as being significant.**

**Staff Recommendation:**

Mr. Pylelo said with the ordinance as it is written Planning and Zoning could accept the application and vote on it.

**Mrs. Colling made a motion to accept the application and take it to a hearing on December 7<sup>th</sup>. Mrs. Sadler seconded the motion; motion carried 3-0.**

**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.**

Board Supervisor Jeremy Taylor was present and commented his presence was as an observer.

**Mrs. Sadler made a motion to adjourn the meeting. Mrs. Colling seconded the motion; motion carried 3-0.**

Meeting was adjourned at 6:40 PM. Next meeting will be 6 PM, December 7, 2015.