

Minutes - Woodbury County Board of Adjustment Meeting March 7, 2016

The meeting convened on the 7th of March, 2016 at 6:00 PM in the Board of Supervisors Meeting Room in the Court House, Sioux City, Iowa. Present were the following Board members: Robert Brouillette, JoAnn Sadler, Katie Colling, Dwight Rorholm. Kenneth Gard was ill. Staff members John Pylelo and Peggy Napier were also in attendance. Present from the public were Bruce Garbe, Roy L. Semon, Diana L. Semon, Greg Jochum, Bill Jochum, Doug & Mary Beller, Kevin Alexander, Jenna Wilson, Rhonda Roberts, Dean Herbst, Attorney Stan Munger, and Pat Kreisler.

The first agenda item was Any Citizen Wishing to be Heard on Non-Agenda Items.

No citizen made comment pertaining to this agenda item.

The next agenda item was approval of minutes of January 4, 2016 meeting.

Mrs. Colling made a motion to approve the minutes. Mrs. Sadler seconded the motion. Dwight Rohrolm abstained from voting. Motion carried 4-0.

The next agenda item is a Public Hearing and Permitting Approval for a Conditional Use Permit for Applicant Alexson, LLC for the staging and operation of earthen resources extraction - borrow pit; GIS Parcel #8847 28 400 002.

On December 31, 2015 Alexson, LLC submitted a Conditional Use Permit (CUP) application with the Planning and Zoning Office. The applicant is a limited liability corporation under the control of the Kevin Alexander family. The family also controls K&L Contracting, Inc. (K&L).

K&L Contracting attempts to find borrow material at locations meeting approved soil specifications; in required quantities and in proximity to the borrow delivery locations. Haul road availability, road specifications and route distances between the borrow area(s) and delivery location(s) are also criteria for selecting any suitable borrow location.

The applicant wishes to stage and operate a borrow pit within portions of a rural Woodbury County parcel. The 57.74 acre parcel is zoned AP (Agricultural Preservation) which requires the applied for use be approved and permitted by the Woodbury County Board of Adjustment.

The location of the proposed borrow pit lies within the E ½, SE ¼, Section 28, Woodbury Township. The parcel is located on the north side of hard surfaced

210th St approximately 0.75 miles east of Sergeant Bluff and ½ mile west of the intersection of 210th St. graveled with Elk Creek Rd.

The application requests the removal from the parcel of up to 102,534 cubic yards (144,450 tons) of earthen material resulting in the construction of two (2) retention ponds. The application states the borrow removal is required to improve parcel drainage and to provide adequate drainage for potential residential development.

The decommissioning of borrow operations is unknown as borrow removal is based up unknown demand timeline. The applicant provided available hard surface haul route information along 210th St. to the west. Available north /south haul routes are then available at Old Lakeport Rd., Hwy 75, Port Neal Rd., and I29.

The two retention ponds have specifications as follows:

North Pond

Dimensions: 460' by 460'
Depth: 10'
Exported Volume: 72,712.1 cubic yards

South Pond:

Dimensions: 320' by 320'
Depth: 10'
Exported Volume: 29,822.3 cubic yards

The parcel is currently serviced by an unaddressed field entrance on the north side of 210th St.

The general area around the borrow area's parcel is zoned:

- AP (Agricultural Preservation) zoning to the west, north and east;
- AE (Agricultural Estate) zoning to the south

The Hinkel Addition, a subdivision consisting of 4 lots is adjacent to the south. Further south on the opposite side of 210th St. considerable residential development is located including the subdivisions known as Kucera Addn., NWNE Section 32 Woodbury Township Addn. and Bluff View 1st Addn.

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*

The applied for use is approved only as a conditionally permitted use in selected zoning districts. Further this 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 land use summary table prohibits the requested conditional use in all the county's other zoning districts. The 57 acre parcel proposed for the applied for use is zoned AP and thus qualifies for CUP consideration.

The CUP process includes a review by the Woodbury County Zoning Commission with written recommendation to the Board of Adjustment. The recommendation is limited to a determination if each of the standards found within ordinance subsection 2.02-9.F will be met. Please note that within item A below the applicant has responded to each of these Section 2.02-9.F standards. Those standards and the Zoning Commission's recommendation are provided within attached correspondence dated February 23, 2016 from Commission Chairman, Dave McWilliams.

At the Commission's February 22 meeting Chairman Williams allowed oral comment from a number of Woodbury County citizens. May of those citizen's expressed concerns should the application be approved. We anticipate some, if not all, of those citizens will offer official public comment before the close of the public hearing.

The below list of attached documentation provides further information related to the Alexson, LLC conditional use permit application:

- A. Alexson, LLC Conditional Use Permit Application
- B. Site Plan with Retention Pond and Parcel Elevations
- C. Location within Woodbury Township TAM Mapping
- D. Aerial Mapping
- E. Parcel Information GIS #8847 28 400 002
- F. Area's Zoning District Mapping
- G. The Areas Flood Plain Mapping. Note: the location is impacted by the 100 year flood plain.
- H. Soil Survey Summary Mapping and Corn Suitability Rating Verification
- I. On site photos of the location
- J. An e-mail dated January 13, 2016 from Rhonda Roberts who represents the applicant providing additional information on: elevation change, driveway placement, status of DNR permitting, status of the abstractor's affidavit, neighborhood communications, potential haul routes and earthen material placement location(s).
- K. Mapping for potential proposed haul routes provided by the applicant 1.) to the west then north and 2.) to the west then south.
- L. An e-mail dated January 20, 2016 from county engineer Mark Nahra.
- M. Correspondence from Woodbury County citizen(s) related to the application.

The application does not provide an ending date for applied for use. As such the application will be processed as a permanent permit application request.

Your Board is tasked with holding the required public hearing; then to deliberate upon the Alexson, LLC Conditional Use Permit application. You are then to vote either upon permit approval or denial. For any approved permit the ordinances allow placement of those conditions which your Board feels:

- **Furthers the goals of Woodbury County's General Development Plan;**
- **Provides that the standards within Ordinance section 2.02-9.F are met; or**
- **Protects the health, safety and welfare of Woodbury County citizens.**

Citizen Public Hearing Comments:

Attorney Stan Munger asked if they will need to pump water into the Farmer's Drainage Ditch.

Kevin Alexander replied they may have to pump some water. They will pump into the settling basin pond on the north end. It will go to their overflow with checks to filter through and catch some in the ditch.

Mr. Munger asked how long this pumping will last; a year, more, less.

Alexander said they will pump 3 weeks at a time and then shut down while they evaluate the water table. This will determine when or if they will continue to pump. In 3 weeks they can pump approximately a million gallons all to go to the same place previously stated. He noted they needed avoid the gas line.

Commissioner Rorholm asked if this was all the applicant's property. Alexander informed him it was.

Greg Jochum stated the ditch to the north is owned by his uncle. The ditch extends a mile from the west $\frac{3}{4}$ miles down is owned by 3 private farmers. This section is not part of the Farmers Drainage Ditch. Part of it is now on Mr. Alexander's property. He is stating the water that goes into this ditch cannot block farmers upstream. Alexander has a responsibility to the ditch and all of the affected farmers.

Q. Jochum also asked if Alexander has a plan to check the Farmer's Drainage Ditch in case of a rain event. Can the water be blocked from going onto Jochum's fields until the water has settled.

Q. Mr. Pylelo asked if there was any permitting for pipe easements.

Q. Mr. Munger asked someone keeps monitoring this and advise accordingly about the distances so no farmers are inconvenienced. Call if any do have issues.

A. Mr. Alexander said he has the required NPDES permit.

Q. Roy Semon stated the north ditch is already full most of the time. In a rain event what will Alexander do to prevent water from running west.

A. Alexander replied the natural tendency is for water to run west. The drainage district won't allow him to do anything that will intentionally cause the water to run west. At the same time there is nothing he really can do about the water's natural tendency to run west.

Q. A question was asked about the truck traffic. How much dirt will be carried out and how deep will the hole be.

A. He was told there would be approximately 10,000 loads.

A. Alexander said the projects are earmarked to be approved through the county and the DOT.

Q. It was asked what the hours of operation would be; from sundown to sunset? Will the application be open-ended? Will the noisy pumps be running all of the time and will there be debris on the road?

Q. Mr. Rorholm asked if the borrow could be accessed again in the future if they had another project. Is that what is meant by open-ended?

A. Mr. Pylelo said if more is needed and this met the specs they could go through this same process to open the pit again.

Q. Jerry Walters was concerned about how much silt was in this mile of water.

A. Mr. Pylelo replied there were a number of conditions required; a grading permit, County Engineer assessment on certain things. We would discuss situations with different departments, make rules, and monitor various things. Planning and Zoning will defer to these other department's findings and regulations.

Mr. Alexander agreed he would not be able to move forward with any future projects without all of the proper permitting for the amount of discharge.

Mr. Pylelo commented Planning and Zoning has a responsibility to protect the Farmers' Drainage Ditch and to the farmland within the drainage district.

Mr. Semon pointed out the Farmers' Drainage Ditch is the only drainage ditch and they don't want it damaged. If anything happened to it what else would they use.

Pylelo said the impacts would actually be further downstream.

Mr. Alexander assured them his crew would assume responsibility for cleanup of excess silt. They have gone above and beyond before and will again if needed.

Q. Pat Kreisler addressed the board with her observations from a K&L operated borrow pit a quarter mile from her house. The traffic was fast and loud 7 days a week. It was very disturbing. 95% of the parcel is in the floodplain. In her opinion K&L does not care about the residents.

Further, Mrs. Kreisler said the condition on page 4 in the CUP application form was not answered by Mr. Alexander. Kreisler is totally against granting a permit for a CUP to K&L.

Alexander commented this project will be less than the 2014 project she was referring to.

Jason Waugh said neighbors don't understand the needs of projects that ask for borrow from projects such as this. The projects (such as road projects) need to find the borrow they need borrow from somewhere.

A.Mr. Alexander assured Mrs. Kreisler his truckers are warned not to use their jake brakes. If they are heard, please call the number on the side of each truck and report them to the company. The company tries to monitor the trucks.

Mary Beller said she lived through the 2014 borrow project knowing it would eventually be over. It might help other concerned neighbors if they knew approximately how long this project will take. She urges Planning and Zoning to use caution.

Jenna Wilson's house was built next to the 2014 project as it was happening. They will still be there during K&L's new project. She asked concerned citizens call her personally anytime. Ms.Wilson assured everyone things will not go overboard. There is no homeowners association but they have a facebook page and she will be in the house 24/7.

Q. Diane Semon asked if there will be any control over the conditions.

A. Pylelo said it depends on who will do the monitoring.

Greg Jochum felt he needed more information and asked the permit be denied. He would prefer a condition that required the project to have a review at the end of a year followed by potential revisiting of the permit.

Roy Semon asked who would monitor the project.

Mr. Pylelo said the Engineer's department would have that duty.

Semon responded saying he and his wife were against the CUP permit.

Dean Herbst said with a projected 70,000 cy of dirt there is a good chance they can't go deeper with DOT conditions.

Pylelo suggested they would be finished at the end of the construction season.

At this point, Mr. Rorholm made a motion to close the public hearing, Joann Sadler seconded the motion; motion carried 4-0.

Discussion:

Commissioner Dwight Rorholm felt the effects on local farmers could be problematic. Working the project sunrise to sunset didn't agree with him and he was concerned about it bothering the neighbors. If he had to vote now it would be a no.

Joann Sadler asked if the proposed housing development would be building in a floodplain.

Pylelo said the amount of fill to get it out of the floodplain was a matter of inches. Much of it could be removed by a successful LOMAR application.

The borrow areas have some potential for nuisance issues. Problems with the other borrow areas were;

- Dust control (fugitive dust)
- Haul routes (the trucks will be covered)
- Water truck to mitigate dust problem
- Re-vegetation
- Additional permitting
 - LOMAR
 - Addressing
 - Driveway permitting
 - DNR permitting

Katie Colling said K&L's track record bothered her. They have not had good comments regarding past projects. She also does not like an open-ended timeline. Colling did approve of the conditions but for a permit only for one year.

Mr. Pylelo said regarding monitoring, if things don't go well at some point the County Attorney takes over. Possibly the Engineer's department is involved as well.

Sgt. Bluff is concerned when haul roads happen. However, this property is properly zoned for this activity and 210th St. is already a farm to market haul road and is in close proximity to growth areas.

Bob Brouillette said most objections can be addressed.

- There are ways to mitigate noise from the pumps that could possibly run all night at times.
- With the truck noise, the company number is on the side of each truck.
- Nuisances can only last as long as the housing development is worked on and the development can only get so big.
- Jenna Wilson has already offered to deal with nuisances and has given out her personal telephone number.

Mr. Pylelo said the Board could start with an already prepared list. More could be added to the list.

Recap of Negative Comments Received Prior to the Public Hearing of March 7, 2016:

1. Property owner will obtain all local, state and federal permits.
2. Applicant will respond to all fugitive dust complains. Mr. Lieber provided the phone number (605) 422-0543 for complaint reports.
3. Applicant agrees to re-vegetate disturbed soil within 30-60 days with appropriate seasonal material, such as mulch, grass, trees, oats, wheat.
4. Hours of operation shall be 7:00am – 7:00pm Monday through Friday, 7:00am – noon Saturday.
5. Owner will provide necessary site security as appropriate including signage and gate access restriction.

Katie Colling made a motion to approve the Conditional Use Permit with the below conditions.

- 1. Applicant vehicles and equipment shall maintain right of way safety by obeying traffic control devices.**

2. Applicant vehicles and equipment shall maintain right of way safety by obeying speed limits along any haul route.
3. Applicant shall maintain right of way safety by the applicant's timely removal of any materials tracked or spilled on to roadways by applicant's vehicles and equipment. Major incidents shall be reported to the County's Secondary Road Department.
4. Applicant shall not allow a public nuisance resulting from jake braking of applicant's vehicles.
5. Applicant shall limit borrow operations to between 7:00 AM to 7:00 PM. Borrow pit pumping operations, as needed, may occur at any time day or night providing the appropriate steps are taken so sound levels emitted by pumping equipment do not disturb the neighborhood.
6. Fugitive dust shall be controlled onsite by timely application and re-application of water or other approved fugitive dust control agent.
7. Fugitive dust from any applicant vehicle, trailer or equipment traversing public right-of-way shall be controlled by the covering of all loads.
8. Applicant shall take all steps necessary to protect sediment from the project and its parcel from entering the Farmer's Drainage Ditch system including its laterals. Applicant is financially responsible for the cost of any sediment reclamation as may be determined by officials of the Farm's Drainage District.
9. The conditional use permit approved by this resolution shall expire on March 31, 2017.
10. Upon Woodbury County's request the applicant will provide at applicant's expense an independent written assessment that excavation has not exceeded the permitted relocation of earthen borrow material.
11. The applicant shall obtain all other federal, state or local permitting required for all uses and activities on the parcel; and
12. The applicant shall provide the applicant's contact information including a phone number to those property owners within a minimum of 500' of any point on the parcel for their use in reporting incidents or make comment.
13. The applicant shall contact the County's Secondary Roads Department and request warning sign be placed informing the public

that trucks are entering the roadway right of way. The sign's posting shall be at the discretion of Secondary Roads Department.

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

The next agenda item is any citizen wishing to be heard.

No citizen made comment pertaining to this agenda item.

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

Meeting was adjourned at 8:45 PM. Next meeting will be 6 PM, May 2, 2016.