

**GREEN LAKE COUNTY
LAND USE PLANNING AND ZONING COMMITTEE
Business Meeting – 4:30 p.m.
Public Hearing Minutes – 6:00 p.m.
June 2, 2010**

CALL TO ORDER

Committee Chair Sue McConnell called the meeting of the Land Use Planning and Zoning Committee to order at 4:32 p.m. in the Green Lake County Courthouse, County Board Room, Green Lake, Wis. The requirements of the open meeting law were certified as being met.

Present: Eugene Henke, Susan McConnell, Rick Perr, Donald Peters,

Absent: Thomas Traxler, Jr.

Also Present: Al Shute, County Surveyor/Land Development Director

Carole DeCramer, Committee Secretary

Jeff Haase, Assistant Corporation Counsel

APPROVAL OF AGENDA

Motion by Henke/Peters, unanimously carried, to approve the amended agenda.

APPROVAL OF MINUTES

Motion by Peters/Perr, unanimously carried, to approve the May 5, 2010, minutes.

PUBLIC APPEARANCES – None

PUBLIC COMMENT

Steve Anderson, resident of Green Lake County – Stated that he was shocked to learn of the amount of money it would cost him to convert some of his farmland from A-1 Exclusive Agriculture District.

Shute – Explained that the State of Wisconsin now mandates that the landowner pay this conversion fee. When the state notified the county that this would be going into affect, the county adopted an ordinance approving a similar fee.

CORRESPONDENCE

Shute – Gave each of the committee members a copy of a letter from an adjoining property owner of Board of Adjustment applicants Dr. Thomas and Linda Kloosterboer whose public hearing was held on May 21st. Asked that Assistant Corporation Counsel Haase apprise the committee of what transpired to warrant the neighbor's concern.

Haase – Explained that this is an issue that came up in 1991 when this property was granted a variance. The Board of Adjustment was of the concern that the variance runs with the land. There is a case on it, and that's true as long as they don't change what they've done on the property, is my opinion, and I tried to express that to them. They said, no, this is a continuance of the old variance and I think they made a mistake. My gut feeling is that this is one that should be challenged otherwise what we're going to have come up in this county is anytime anyone has been granted a variance, and now they want another variance, this will just be a continuation of the old variance.

McConnell – I thought we had language on the books that upholds that. A variance is a variance singly and that's it.

Shute – It's not that specific in our ordinance.

Peters – There's no sunset on a variance?

Shute – No, as long as the structure that they built with the variance doesn't change.

McConnell – By altering it or enlarging it, it changed.

Haase – That's our feeling. The case law on this one that went to the Court of Appeals, basically, was an individual who purchased a property and was like a four-family home and wanted to make it a six-family home and the variance was granted. A couple of weeks after the variance was granted, the Board on its own said that the variance only runs as long as these people own the property. A few years later, they wanted to sell the property so the new purchaser was told that you have to go and request a variance. He requested the same variance and the Board denied it and they appealed it. Basically the Court of Appeals said that the Board on its own, after granting the variance, can't go back and modify it without another hearing. They said that they were dealing with the old variance, the one that was already granted, so that just runs with the property because there were no changes. That's not the situation here. He's (Kloosterboer) tearing down the old house and building something completely new and what I tried to get across to the Board is that this is a new variance request and you can't consider the old one.

McConnell – Is this something that has already been started now, tearing down and rebuilding?

Shute – As far as we know, they haven't started yet. They were provided the information about the 30-day appeal window. The county, DNR, or any aggrieved party can bring an appeal of that decision.

McConnell – We can still appeal this at this point in time?

Perr – If they rip this down, if they use the same foundation or footprint, that would be acceptable?

Shute – We would probably be OK with that.

Haase – That is something we would probably consider.

Shute – That came up at the meeting.

Perr – They can keep building up as high as they can?

Shute – No, there is a height requirement. It did come up about them using the existing footprint, but they didn't want to do that because they have this plan.

Henke – Is the house that bad?

Shute – No, it's a nice house.

Peters – They just want it bigger.

Haase – That was one of their arguments. Their family is getting bigger and they need a bigger house, but that's not one of the criteria.

Peters – That’s why people buy bigger houses. They outgrow their houses. There are plenty of houses on Green Lake for sale that, I’m sure, would be adequate.

James Fox, Town of Green Lake Chairman – Doesn’t Land Conservation become involved with the land runoff?

Shute – In our condition of approval, we had for them to work with Land Conservation so that they’re not creating drainage problems. I’m not sure if they approached Jim Hebbe’s office yet.

McConnell – That’s hard to determine, too, because you can’t tell until it’s built to see if there’s a problem and then it’s too late. And yet, people sneak in after dark and do what they want and it’s hard to prove what has been done. We still have one that’s been going on for years.

Fox – There is a problem on this one with runoff.

Henke – How large a lot is this?

Shute – 60’ wide.

McConnell – He’s in the 75’ setback as well.

Shute – He’s four feet into the old variance. His old variance was for 69’, he’s at 65’, so he’s 10’ into the 75’ setback. I don’t know if Jeff (Haase) has a comfort level about an appeal and what action is needed from the committee, if any.

Haase – Does the committee want us to proceed with an appeal? My gut feeling is that, although we don’t know what the judge is going to do, it should be, at least, heard. I just have the feeling that others will hear about this and say, “I’ve got a variance and now we’ll just continue from that.” And the Board will just say, “Oh, OK.”

Peters – We had a similar situation last month, right? I think that at some point you can only go so far or we’ll all end up in the lake.

McConnell – Yes, the Crosby deal was from three years ago.

Haase – That’s why, if we’re going to do something, let’s jump on it right away and not hesitate.

Peters – Do you want that in the form of a motion?

Haase – No, just direct us. The other thing I’m thinking about is that I’m the attorney for the Board of Adjustment so that means I’ll just have John (Selsing) step in and do it.

McConnell – I would like to appeal it. Is the DNR weighing in?

Shute – They’re looking at it. They were at the meeting and we haven’t had them at the meetings in the past. They’re seriously looking at it, but I don’t think whatever they do should affect what we do. If they appeal, if we appeal, if a neighbor appeals, let all three appeals go to the court and the judge will sort it out.

Henke – I agree 100%. We have this on the same kind of land in the Town of Mackford and we can't put two houses on 21 acres.

Shute – I think it is an appropriate appeal given the findings.

Peters – If we don't do something, eventually we'll be able to open our windows and shake hands with your neighbor. All of these properties won't be downsizing as they remodel or rebuild.

Shute – We've seen the trend for a lot of years, at least to the extent that whatever somebody buys, they want to build setback to setback to setback to setback. Now, they're buying smaller lots and they want to go outside the setbacks so they're coming to the Board of Adjustment and getting variances a lot of times, in staffs' opinion, not meeting the criteria for granting variances. This one, you have the situation of the previous variance that they just said it applies and I think that's pretty problematic.

Peters – What's the downside, if the judge goes along with the property owner? Does it set a precedent that we've opened up a larger can of worms?

Haase – Not really. It can stop there or we can take it to the Court of Appeals and have them clarify.

Peters – It would still be done on a case-to-case basis.

Haase – Yes, they still have to meet the criteria. And I think in this one, the Board of Adjustment, as far as explaining the criteria, they were basically giving the variance for the garage portion, and did not explain how it met the criteria either.

Peters – I'm torn on this because it would increase the assessed value, but it infringes on the adjacent property owners and you have to look at that.

Henke – Has anyone sat down with the Board of Adjustment and explained?

Shute – They've had formal trainings.

McConnell – It just fries me that they make these decisions.

Shute – I think we need this one decision as a staff because they just keep pushing the limit.

The committee directed staff and counsel to proceed with an appeal of the Board of Adjustment May 21st decision.

PURCHASES – None

CLAIMS

Claims totaling \$966.31 were submitted.

Motion by Henke/Peters, unanimously carried, to approve the claims in the amount of \$966.31 for payment.

APPROVAL OF DEPARTMENT ACTIVITY REPORTS

Permits/Violations/Budget

Shute – Discussed the various aspects of the report. Overall, the department is doing well as far as year-to-date and budgeted amounts.

Motion by Henke/McConnell, unanimously carried, to approve the April, 2010, monthly report.

DEPARTMENT/COMMITTEE ACTIVITY

- a. Agricultural Zoning Districts**
- b. Rural Residential Zoning Districts**
- c. R-3 and R-4 Districts**

Shute – Contacted several consulting firms regarding comprehensive revision of ordinances. Mid States Associates (MSA) is currently working with the Town of Manchester on comprehensive plan revisions. I will meet with an MSA representative on June 9th to see if they could take advantage of the efforts we are doing and even possibly doing draft work for them. Perhaps we could do more steering on the front end to get the dollar amount down.

Peters – Asked how much money is set aside for this.

Shute – Approximately \$20,000. Will have more to report on MSA at the July 7th meeting.

GENERAL COMMITTEE DISCUSSION

- a. Such other matters as authorized by law**
- b. Future activities**
- c. Interest in Training**

5:54 p.m. The committee took a brief recess.

PUBLIC HEARING MATTERS

Audio of committee discussion is available upon request from the Green Lake County Land Use Planning and Zoning Department.

Committee Chair McConnell reconvened the meeting of the Land Use Planning and Zoning Committee at 6:01 p.m. for the public hearing item and read the rules of public hearing.

Item I: Owner/Applicant: Badger Mining Corporation **Site Address:** Utley Quarry Rd & CTH JJ, Parcel #010-00008-0000, Lot 1 Certified Survey Map 2858, Section 1, T15N R13E, Town of Mackford, (±266.101 Acres) **Explanation:** The applicant is requesting a conditional use permit for mineral extraction.

- a) Public Hearing

Don Seaman, Jr, 488 Maple Ridge Road, Berlin – Spoke in favor of the request.

Gary Laybourn, N2477 CTH Q – Explained that, in 2003, when a previous conditional use permit was granted, we wanted a site berm. We do not want a berm placed there now. We would recommend that it comes off of the map. Also concerned about the well and suggested that, during the reclamation process, the 60-acre lake that will be created have a public access.

Mike Ceman, N2607 CTH Q – Wanted the committee to know that Badger Mining is a good neighbor, but there are a few concerns. We have concerns about the well, the flow of the river, and noise.

Jim Fox, Town of Green Lake Chairman – Expressed concerns about not having a berm. Other pits have to have berms around them.

Public hearing closed.

b) Committee Discussion and Deliberation

The committee discussed concerns that were voiced: public access to the lake, the height of the berm(s), and where the berm(s) would be placed.

c) Committee Decision

Motion by Henke/Peters, unanimously carried on roll call (5-eyes, 0-nays), to recommend approval of the conditional use request as presented with the following conditions:

- 1) All activity will follow Chapter NR 135, Wisconsin Administrative Code and the Green Lake County Non-Metallic Mining ordinance.
- 2) That the applicant meets all State and/or County storm water and erosion control standards.
- 3) That all other applicable laws, ordinances and regulations be satisfied.
- 4) No additional expansion of the operation shall occur without review and approval through future Conditional Use permit(s).
- 5) The proposed mining area to maintain a setback of 100 feet to neighboring lot lines and road right-of-ways. A berm eight feet high, minimum, shall be created along those lot lines outside the required yard setback areas.
- 6) The Financial Assurance on file in the Land Use Planning and Zoning Department will need to be amended to cover the new mining acreage.
- 7) Warning signs advertising “active quarry” should be placed on berms and/or along property line.
- 8) Specify dust control measures that will be implemented to keep dust and debris from becoming a nuisance.

d) Execute Determination Form/Ordinance

NEXT MEETING DATE

July 7, 2010

– Business Meeting 4:30 p.m.

– Public Hearing 6:00 p.m.

ADJOURN

Motion by Peters/Perr, unanimously carried, to adjourn.

Time: 6:55 p.m.

Recorded by Carole DeCramer
Committee Secretary

APPROVED ON:

July 7, 2010