

**WINNEBAGO COUNTY  
BOARD OF ADJUSTMENT**

Thursday, March 3, 2011 - 4:30 p.m.

Planning & Zoning Conference Room, Orrin King Administration Building,  
Oshkosh, Wisconsin

**DELIBERATIVE SESSION**

**Members Present:** Arden Schroeder, Dan Mingus, Tom Verstegen, Mary Mathwig, and Greg Kargus.

**Also Present:** Cary Rowe and Eric Rasmussen, zoning department; Karen Fredrick, court reporter, and guests.

Meeting was called to order at 4:30 p.m. G. Kargus made a motion to approve the minutes of January 6, 2011, January 21, 2011, January 25, 2011 and February 18, 2011. Motion seconded by M. Mathwig and carried by unanimous voice vote.

The following items were acted on:

**I. John Blossom – Town of Vinland**

The variance requested was for placement of a new single family dwelling with an attached garage 20' from the road right-of-way.

The committee discussed that they felt the owner could have reasonable use of the property without a variance, setback averaging did not apply for an attached garage, and all other setback requirements would be met.

A motion was made by D. Mingus to deny the variance. Seconded by G. Kargus.

**Findings:**

1. **Exceptional Circumstances:** None. The property owner would be allowed to construct a reasonably sized home on the property without the variance. The construction could include a front load garage that meets the required street yard setback or a detached garage with a decreased street yard setback through setback averaging.
2. **Preservation of Property Rights:** Both of the immediately adjacent properties have detached garages closer than the required setback to the road right-of-way. Setback averaging is only allowed with like structures. Therefore, the detached garages can not be used to allow a reduced street yard setback for the proposed attached garage.
3. **Absence of Detriment:** The proposed construction would increase the street yard setback that currently exists for the existing detached garage and that would be allowed for a new detached garage.

**Based upon the above findings,** it is the opinion of the Board that all criteria of Section 17.32(7)(a), (b), and (c) have not been met.

**Vote on the Motion:** T. Verstegen, aye; M. Mathwig, aye; G. Kargus, aye; A. Schroeder, aye; D. Mingus, aye.

Motion carried by a 5-0 vote. **Variance denied.**

## **II. Zillges Materials – Town of Winchester**

The applicant is appealing a decision of the Winnebago County Planning & Zoning Committee to deny an application for a Conditional Use to operate an extraction site in the Town of Winchester.

The Board of Adjustments asked the Zoning Administrator to write the main issues of the application on the white board as they discussed them.

### **Issue #1 – Town Comprehensive Plan**

The Board discussed if the Town could deny the Conditional Use based on their Comprehensive Plan? No, when the law changed last summer the ability to deny land use permits based on the Comprehensive Plan became invalid.

### **Issue #2 – Property Values**

The Board felt that how a quarry will affect property values is an opinion. Members of the Board felt that living next to an active quarry can be a nuisance and that homes sales may be affected while the quarry is active but that land adjacent to reclaimed sites can be very desirable.

### **Issue #3 – Traffic / Road Conditions**

The Board discussed that with the 10 year limit the applicant had agreed to there would an average of 7-8 loads of sand removed per day.

### **Issue #4 – Loss of Ag Land**

An identical pond could be constructed on the property without a Conditional Use if the material were not being sold. Approximately 10 acres will be disturbed and the actual pond will be 5.66 acres when completed.

### **Issue #5 – Wells**

The Board discussed the possible affects on neighboring wells. The neighboring wells are older and probably do not meet today's regulations. The AECOM Operation Plan addresses petroleum spills but does not address any other contaminants such as heavy metals. The Board discussed how to determine how much the applicant could be responsible for, the DNR's regulation on wells, and who would be responsible for monitoring the wells after the site was reclaimed.

### **Issue #6 - Roads**

Typically the shoulder of the road and the entrance/exit to the site are the most damaged by the heavy truck traffic. Depending on the construction of the road, the road bed may be damaged as well. The board discussed how to determine a bond amount since it was missing from the agreement to the Town. Typically bond is 150% of the estimated cost of the repair, the cost of repair can be determined by an outside source such as the County Highway Commissioner. If the applicant goes out of business or decides to fight the costs, they can be costly for the Town and difficult to prove in court.

### **Issue #7 – Environmental Issues / Wetlands**

The sentinel wells will show signs of the contaminants before they reach the wetlands or a neighboring well. The site is not located in a wetland. The board discussed a 1,200 foot setback from an extraction site to a private well. This setback was brought up in testimony but the Board was unsure if it was valid, this is the same setback required from a landfill to a private well.

### **Issue #8 – Safety of Children**

The Board stated that the pond being an attractant for kids was a non-issue, there are many other ponds in the area. The Board felt like children waiting for the bus could be an issue with the truck traffic but the concern could be addressed by conditions of approval.

The board asked if the Town could deny the applicant just because they didn't want the use or if they need factual findings for denial. The Town or a neighbor saying they didn't want the extraction site is an opinion legally and is not sufficient for denial.

So far there have been no complaints to the Zoning Office about Zillges' other operations.

The Board discussed possible conditions that could be placed on the operation to address the valid concerns of the Town and neighbors.

The Board discussed who the reviewing body was for the Conditional Use if granted. Complaints would come to the Zoning Office, who would investigate and report back to the Board of Adjustments if the complaint was substantiated. The permit can be revoked if the conditions of approval are not met.

A motion was made by T. Versteegen to deny the appeal and uphold the decision of the Planning and Zoning Committee. Seconded by D. Mingus.

**Findings:**

1. Chapter 17.25(2)(c)(1) of the Winnebago County Zoning Ordinance states that Conditional Uses shall not be offensive. This use could be offensive because of the dust on the road, the mess from watering for dust control, and the mess on the roads.
2. The operation will be detrimental to Town roads.
3. There is a potential for decreased property values.
4. The applicant has not addressed the safety concerns to the children due of the increased truck traffic.

**Vote on the Motion:** M. Mathwig, aye; T. Versteegen, nay; A. Schroeder, nay; D. Mingus, aye; G. Kargus, nay. Motion failed by a 2-3 vote.

A motion was made by G. Kargus to approve the Conditional Use permit and overturn the decision of the Planning and Zoning Committee. Seconded by A. Schroeder.

G. Kargus made a motion to amend his motion to allow conditions to be added as the Board input them, instead of stating them all at once. Seconded by A. Schroeder. Motion carried 5-0 and the original motion was amended.

**Conditions:**

1. All setback requirements of Section 17.19 (3) (b) of the Winnebago County Town/County Zoning Ordinance shall be met.
2. Annual inspections of the extraction site shall be conducted by the Winnebago County Zoning Office to ensure compliance with Section 17.19 of the Winnebago County Town/County Zoning Ordinance. Said inspections shall be coordinated with the operator during reasonable hours. Inspection reports shall be made available to the Town of Winchester.
3. Hours of operation are limited to 7:00 a.m. to 5:00 p.m. Monday through Friday. Hours of operation are limited to 8:00 a.m. to 2:00 p.m. on Saturday. Operation shall not begin before 8:00 a.m. during the school year.

4. Hours of operation may be modified by the governing body and must be approved by the Town. There is no public hearing required for modification of hours but requests must be scheduled for review at the governing body's regularly scheduled deliberative meeting.
5. Slopes shall be maintained at 3:1 or flatter.
6. An approved reclamation plan shall be provided to the zoning office pursuant to Chapter 20, County Code, prior to this permit becoming effective.
7. Applicant shall obtain a bond 1.5 times the amount established by the Winnebago County Highway Commission to repair or reconstruct the road.
8. No lighting shall be used after 5:00 p.m.
9. No blasting, cutting, or grinding of rock shall occur onsite.
10. A baseline measurement of PVOCs and any other chemical that may be used onsite for the mining operation will be taken of all wells within 1,200 feet of the proposed extraction site along with depth measurements of the water in the wells. Sentinel wells shall be monitored for PVOCs on an annual basis. Any subsequent testing of private wells is the responsibility of the home owner. If contamination above enforcement standards is found in the sentinel wells operation shall cease until a contamination source is found and remedied. Applicant will then be responsible for testing all private wells within 1,200 feet to determine if they have been impacted. If any of the private wells are determined to have contamination levels greater than the baseline the applicant will be responsible for the remedy or replacement of the private well.
11. Conditional Use shall be valid for 6 years with an option of one 4 year renewal.
12. No retail sales shall be allowed out of the extraction site.
13. AECOM Non-Metallic Mining Operation Plan and document dated March 15, 2010 including Road Pavement Reconstruction Plan, Issues with operator, Transfer of Permit, and Dust and Noise Control shall be followed.

**Findings:**

1. Proposed use is in compliance with the Winnebago County Zoning Ordinance.
2. Conditional Use permit will not have an effect on surrounding properties.
3. Proposed conditions will adequately address concerns of the residents and the Town.

**Vote on the Motion:** T. Verstegen, aye; A. Schroeder, aye; D. Mingus, nay; G. Kargus, aye; M. Mathwig, nay. Motion carried by a 3-2 vote. **Conditional Use granted with conditions.**

There being no other business, the meeting was adjourned at 6:52 p.m.

Respectfully submitted,

***Eric Rasmussen***

Eric Rasmussen, Recording Secretary