

Cochrane-Fountain City School District

S2770 State Highway 35

Fountain City, Wisconsin 54629

Thomas Hiebert, District Superintendent
Steve Stoppelmoor, PreK-12 Principal

Phone: 608-687-7771
Phone: 608-687-4391 or
Phone: 608-687-4171

Fax: 608-687-3312
Fax: 608-687-6412

May 4, 2012

Mr. Del Twidt, Acting County Administrator
Buffalo County Courthouse
PO Box 494
Alma WI 54610-0494

Re: **Pending Conditional Use Permit Applications**

Dear Del:

This letter is being written to you in the spirit of cooperation regarding the forthcoming process of analyzing the four conditional use permit ("CUP") applications pending before the County Board of Adjustment ("BOA"). I have conferred with the attorney advising the School District on this matter, and he has supplied me with the basis upon which I am writing to you at this time regarding the completeness of the applications and the powers of the BOA.

First of all, our understanding is that the method of approach to be used by the BOA will be to hold a public informational meeting at which the applicants will present information to the BOA and public. No public comment will be allowed at this time. This meeting will be held on May 9, 2012. Thereafter, a second meeting in the form of a public hearing will be held. The attachment to your e-mail exchange with Gary LeMasters of April 24, 2012, regarding this process lists the following with respect to the second meeting/hearing:

Second meeting...

Exhibits or written testimony pertaining to the application must be submitted to the Buffalo County Department at least two (2) weeks before the scheduled meeting date.

Applicant may present any modifications to original application (final opportunity for changes by the applicant). This step was placed here to hopefully prevent an applicant from continually changing application specifics during the process.

...

For your information, the School Board has yet to decide on what position—if any—to take with respect to one or more of the pending CUP applications. In part, this must await the meeting of May 9, 2012, at which more information will presumably be shared with the BOA and public by the applicants regarding their plans.

Ed Callahan, Board President
Steve Scharlau, Board Vice President
Steve Willadsen, Board Director

Jo Frances Ressie, Board Clerk
Sue Pronschinske, Board Treasurer

Karen Knospe, Board Director
Charles Krueger, Board Director

Looking at the information shared with Mr. LeMasters, above, and considering this process from another vantage point, I would like to express several concerns. First of all, does the limitation on the introduction of exhibits or written testimony no later than two (2) weeks prior to the "second meeting" apply to interested persons, by which I mean anyone other than the applicants? If so, this has the potential in the case of not only the School Board but of other individuals, as well, of substantially limiting their participation in the process. As for the second point taken from your e-mail above, I will return to it below.

The requirements of the law are such that the application submitted by a person seeking a CUP must be complete no later than the date of the publication of the first of two notices of the hearing at which the public may offer its comments or testimony. This is firmly established in Weber v. Town of Saukville, 209 Wis.2d 214 (1996). In the words of the Court:

Such a rule ensures that interested individuals will have a meaningful opportunity to express informed opinions at the public hearings. Indeed, a contrary rule would create a damaging incentive for a conditional use permit seeker to withhold all controversial information from its application until during or after the public hearing. Such a perverse incentive would be diminished only slightly by requiring a complete application at the time of the public hearing, for even our ablest citizens would be hard pressed to digest and discuss in a single public hearing all of the debatable proposals in a given conditional use application.

So, to be consistent with Wisconsin law, the applicants for each CUP must have completed and filed their applications with the County no later than the date of publication of the date on which the "second" meeting under the Buffalo County rules will be held.

Unfortunately, your interpretation of the rules may allow the modification of applications to be made after the date of publication of the first, such notice. You may want to bring this to the attention of the applicants.¹

Next is the issue of the completeness of each of the applications received by the County to date. Returning to Weber, the Court held that the application was not complete and ordered that the decision of the BOA in that case was to be reversed and returned for a second hearing and decision. In so deciding, the Court relied on the Town ordinance which established what information had to be included in applications:

Application. Applications for a conditional use permit for mineral extraction operation...shall be accompanied by [...] a detailed description of all aspects of the proposed extraction operation; a list of equipment, machinery and structures which may be used; the source, quantity and disposition of water to be used, if any; a legal description of the proposed site; a topographic map of the site and the area abutting the site, to the nearest public road right of way or a minimum distance of 300 feet on all sides of the site drawn at a minimum vertical contour interval of five (5) feet and showing all existing and

¹In raising this point, I do not contend that the applicants cannot flesh out their proposals or offer testimony or commentary at the public hearing. It is simply that the application must be complete by no later than the date of publication of the first hearing notice that is at issue in this comment. I will deal with the merits of the applications in question, below.

