

Cochrane-Fountain City School District

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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.

proposed private access roads and the depth of all existing and proposed excavations; and a restoration plan

Interested persons objected that all of this information was not included in the application with the applicant contending that it had "described the operation with sufficient particularity, but does not dispute that at the time of submission, the application omitted the quantity of water to be used, a topographic map with proposed depths and a restoration plan." The Court held this application to be deficient.

Buffalo County Zoning ordinance § 202 **requires** all of the following information to be included in an application for a CUP:

An accurate map of the property ... and properly dimensioned showing:

- a. The boundaries of the property involved.
- b. The location of the centerline of abutting streets or highways.
- c. The location on the lot of any existing structures, proposed additions or proposed new buildings, including the measured distances between such buildings and from lot lines and from the centerline of any abutting streets or highways to the nearest portion of such building.

Where the use involves human occupancy, a plan of the proposed water system and sewage which, if not connected to an approved municipal water system or municipal sewage system treatment shall conform to the requirements set forth in H62.20 of the Wisconsin Administrative Codes ... The plan shall also show the location and distances of the proposed water and sewage system to the water and sewage systems of adjoining lots.

This is the information required for an ordinary zoning permit. However, § 211 authorizes the BOA to require additional information in order to ascertain compliance of the proposed conditional use with the standards under § 212. Sec. 211 holds:

In order to secure evidence upon which to base its determination, the Board of Adjustment may require, in addition to the information required [] a zoning permit, the submission of plans of buildings, stockpiles, equipment storage, fences, or screens, specifications of operations, parking areas, traffic access, open spaces, landscaping and any other pertinent information that may be necessary to determine if the proposed use meets the requirement of the ordinance.

Taking the Starkey Dry Plant application into consideration, it fails to meet the criteria for even an ordinary zoning permit under § 202. But going beyond this, how can the BOA adequately examine the proposal on the basis of what has been submitted? It is quite apparent that the BOA needs to exercise its powers under § 212 to require of this (as well as the remaining applicants) additional information to delineate the true nature of the proposed land use so as not only to

allow it but interested persons, including the Cochrane Fountain City School Board to react and provide meaningful comments or evidence during the course of the public hearing-meeting #2. Sec. 212 states that the following are to be considered by the BOA in granting or denying a CUP:

1. The location, nature and size of the proposed use.
2. The size of the site in relation to it.
3. The location of the site with respect to existing or future roads giving access to it.
4. Its compatibility with existing uses on land adjacent thereto.
5. Its harmony with the future development of the district.
6. Existing topography, drainage, soil types and vegetable cover.
7. Its relationship to the public interest, the purpose and intent of this ordinance and substantial justice to all parties concerned.

As I have indicated above the School Board has not met to determine if it has a position—one way or the other—on one or more of these CUP applications. Board members will attend the informational meeting on May 9, 2012, and the Board will meet thereafter to decide what, if anything, to present with respect to the applications pending at the to be held public hearings.

I am asking you to do several things at this juncture. First, carefully review the contents of the application materials submitted by each applicant. If you agree that they do not meet the criteria of § 202, then they should be returned to each applicant with a request to follow the requirements of the Code. Secondly, whether you agree or not that the applications are sufficient under the standards of § 202, will you please place an item on the agenda for the BOA to consider if it needs additional information as it can require of each applicant under § 211 so as to properly consider the application under the standards set forth in § 212 of the Code? If the Board requires additional information, it should demand its production by the applicants before the publication date of the first notice of the public hearing to be held in the matter of each pending permit application. If you both agree that the applications are not sufficient under § 202 and the BOA demands additional information, then the second, or public hearing, “meeting” should be postponed long enough for the information to be generated and submitted on or before the first publication date for the public hearing.

In closing, I am asking you to reconsider the completeness of the applications in question. Nothing good is accomplished if someone after the fact challenges a deficiency that could have been corrected beforehand. Also, I believe that the BOA needs to sit down and decide—does it or does it not need additional information, beyond that required for a regular zoning permit under § 202 in order to process these requests in the public interest? The BOA needs to determine this “up front” and simply proceeding from the informational meeting on May 9, 2012, to the actual

public hearing without it raising this question of itself places the BOA in an awkward position if at a later date in time it decides that more information is required. The public should have the benefit of a complete application before this goes to the stage of a public hearing.

Sincerely,

Thomas D. Hiebert

Thomas D. Hiebert, Superintendent