

MEETING MINUTES TOWN OF CLYMAN

July 15, 2008

BOARD OF ZONING APPEALS

Clyman Town Hall

The board meeting of the Town of Clyman Board of Zoning Appeals was called to order on July 15, 2008, at approximately 7 pm by Chairman Joyce. Board of Zoning Appeals members in attendance were Jerome Haase, Jeff Mamayek, Leroy Schultz, Charles Zimmerman, Chuck Joyce. Also in attendance were First Alternate Mary Kreuziger and Second Alternate Richard Green, Town Board Chairman Dave Blank, Town Zoning Administrator/Engineer Jerry Foellmi and Town Attorney Ray Roder. Attorney McFarland would be representing ULWR. There were about 20 additional people in the audience and an attendance sheet was passed around.

ULWR has arranged for a stenographer to be present to record the entire proceedings. In addition, the Town has arranged to have the meeting audio taped.

Motion to accept April minutes by Zimmerman, 2nd by Haase, motion passed 5/0.

Public Hearing regarding appeal by ULWR and Tracy Bros., Inc. concerning conditional use permit issued by Town Board for wastewater treatment at the N2797 STH 26 property and land spreading operations at the N2797 property and elsewhere in the Town of Clyman. A key issue in these proceedings is that the proposed ULWR processing and treatment system by all accounts is different from most other liquid waste land application formats. On that basis, this facility requires a high level of review and management.

Background structure for meeting was established by Town attorney Ray Roder. The following will testify:

- Robert Tracy, Jr., owner
- Randy Wirtz, Strand Associates – engineering consultant
- Steve Hoffman, ULWR Compliance Manager

The BZA will be assisted by Roder, Griggs, Foellmi to help the process move smoothly. Exhibits were provided to the BZA including the ULWR Appeal document, a reference document prepared by Roder (Black Notebook) and a request by ULWR for recusing certain board members, (a document submitted the previous Friday by ULWR Attorney).

Attorney Roder reviewed the structure for hearing.

ULWR submitted a request for Zimmerman to recuse himself. The Judicial Code of Ethics basis was reviewed and Zimmerman was asked three questions regarding his involvement with ULWR:

Statutory (746.12 & 13) - \$15,000/year involvement?	NO
Common Law (financial gain, family or individual)?	NO
Any bias to the case with ULWR?	NO

ULWR attorney McFarland stated that Charles Zimmerman had stated to Carol Bailey that he thinks ULWR polluted groundwater due to their operations. Zimmerman disagreed and was allowed to remain on the board for the proceedings.

The following is a synopsis of the hearing proceedings and will refer to ULWR's response to specific Town conditional use permit (CUP) items at times. This part of the meeting is documented in an outline format.

Witness #1 - Robert Tracy, Jr., Owner of ULWR:

- Exhibit 5 presented – 65 terms to CUP and his comments on them.
- Tracy stated that ULWR will comply with all conditions of WPDES permit.
- Upon request by the Township, ULWR will provide the requested information to the Township. He does not want to be required by the C.U.P. to provide information to the Town.
- CUP Item #63 – A Bond is not necessary; they can offer property as an exchange.
 - Chuck Joyce asked about insurance coverage for “pollution insurance”.
 - Jeff Mamayek asked about superfund type clean-up monies available if spill occurred.
 - There were comments about the beneficial impact of ULWR treated product because it has nutritional value.
- CUP Item #62 – ULWR is concerned that the Town will have an open check on reimbursement fees.
- CUP Item #61 – ULWR is concerned that the Town will have an open ended ability to charge ULWR for special services/equipment/materials.
- CUP Item #60 – ULWR doesn’t want to give the Town open access to inspect their facility. ULWR routinely samples ULWR and provides this information to the DNR.
 - Charles Zimmerman stated ULWR didn’t specifically raise issue when the Plan Commission was formulating the CUP. Tracy says yes he did.
 - Test America does the sample analysis for ULWR.
 - Robert Tracy is willing to work with Town to modify #60 to suit both parties.
- CUP Item #52/53 – ULWR took issue with these stipulations.
 - Foellmi noted that it is reasonable to videotape the impacted roads prior to and after major construction activities as noted by #52 and have the owner pay for damages as necessary. Operational Traffic can be documented in a similar way.
- CUP Item #57 – ULWR states there is no time to complete the lagoon construction project by January 2009. Roder stated that permit is not issued yet so the clock has not started yet.
- CUP Item #29 – ULWR wants the EAP included in with their overall facilities Management Plan
- CUP Item #20.4 – ULWR does not want the Town to impose volume limits on the treatment facilities, why is 75,000 gpd necessary. No other business has this limit. ULWR meters the amount of waste knifed into ground like all other similar businesses.
 - Audience comment: What about significant rain events connected with land spreading?
 - Joyce stated that ULWR needs to be proactive on spreading prior to anticipated rains.
 - Zimmerman noted that ULWR had stated that they would not exceed 75,000 gpd. What is the WWTP capacity?
- ULWR noted there were very few DNR verified complaints by land owners.
- Audience: ULWR applied on tiled fields which created concerns. ULWR noted that DNR walked the fields with ULWR prior to spreading.
- Joyce: Have there been any citations or allegations against ULWR? ULWR - NO.
- Audience: Does Mr. Tracy actually drive the field application trucks? ULWR – NO, five to six drivers do this work and get training on application techniques.
- Audience: Who owns “ULWR” acreage? ULWR: ULWR owns 14 acres; Tracy Brothers, Inc. has a large amount and so does his brother and father.
- Audience: How many trucks active? ULWR: They have 8 – 10 applicators/trucks. A concern was noted that there are only 5 -6 operators so who else might be driving. Not all trucks out at once.
- Schultz: Why don’t human consumption crops get to be placed on lands that they spread on? Tracy was not sure of the answer but this question would be answered by others testifying.
- ULWR noted that the Township’s land spreading requirements are far over and above the DNR’s WPDES permit requirements.

Witness #2 - Randy Wirtz – Strand Associates (engineering consultant)

- Wirtz is not an employee of ULWR.
- Wirtz has been with Strand from 1994 to present.
- Wirtz designed the ULWR Anaerobic Lagoon System.
- Wirtz noted that there are similar types of lagoon systems in state.

- Wirtz noted that many CUP items are inconsistent with the WPDES permit.
- Wirtz is not aware of other Townships imposing similar restrictions to business that Clyman is here.
- The WPDES permit doesn't cover the CUP's 300 mg/l requirement stated in item #5. Wirtz was reminded that he had stated the lagoon's ability to treat to that level in a previous meeting presentation. He didn't recall making that statement.
- The DNR satisfied with design according to Wirtz. After questioning by Foellmi he noted that there are no other lagoon systems in the US that treat this complex and variable type of waste. There is no operational data to compare with to anticipate how the anaerobic lagoon system will operate on a routine or emergency basis.
- CUP Item #8 – It is anticipated that Strand will do lagoon construction inspection with occasional review and inspection by the Town's engineer.
- Wirtz felt the leakage detection system was not necessary. Foellmi noted that the cost to add this groundwater detection and protection was very minor compared to the overall cost of the facilities.
- Wirtz noted the lagoons will operate in series which gives better results and protection against short-circuiting.
- Discussion on the water quality of the lagoon final effluent with comments that an effluent quality restriction could be 300 mg/l BOD₅. The anaerobic lagoon effluent could typically be 1,000 mg/l BOD₅.
- Roder noted that volatile fatty acids (VFA's) are often problems at the existing facility and in anaerobic systems in general and questioned Wirtz on how these would be dealt with in the new facilities. Wirtz noted the new facility will significantly reduce VFA's.

Witness #2 - Steve Hoffman – ULWR Compliance Manager

- Hoffman has been the ULWR Compliance Manager since September 2007.
- Hoffman has reviewed the 65 item CUP.
- CUP Item #9 – Hoffman noted that spray irrigation is allowed by DNR for land application of waste.
- CUP Item #24 – Regarding the records retention issue, Hoffman feels the Town may be contrary to statewide Code.
- Hoffman noted that DNR will require written notice of most all wastes accepted by ULWR for treatment or land application. A discussion followed regarding the allowance of certain food wastes to be directly applied without written notice.
- Hoffman noted that some CUP provisions are "old" compared with the possible final WPDES permit language.
- Hoffman noted that some CUP provisions are opinion based and not qualitative and could be inconsistent.
- Hoffman noted that the DNR gets specialized training for WPDES permit enforcement. He works or is in contact with DNR on weekly basis.
- CUP Item #40 – There seems to be some separation issues of what the DNR requires versus what the CUP requires (300' vs. 200' horizontal separation from streams and 5' vs. 3' vertical separation from groundwater). Hoffman feels the CUP is inconsistent with DNR regulations.
- CUP Item #42 – ULWR typically gets a sign off from property owner but there is no requirement by DNR to provide that information to them.
- The question of food crop restrictions regarding ULWR applications came back up. There are time restrictions relating to when human consumption crops can be grown after certain types of wastes are land applied, such as human waste.
- CUP Item #44 – ULWR has an issue with the time restrictions imposed by the CUP. No other townships or DNR have time restrictions on field application. ULWR is concerned with the financial impacts due to the restrictions.
- CUP Item #45 – This restriction contradicts WPDES permit.
- Discussion followed on the operation and maintenance manual requirements per the DNR. This treatment facility will be required to have an O&M Manual prepared as part of project.
- The emergency action plan (EAP) as covered in the CUP will be part of O&M manual.
- Hoffman discussed the bypass conditions issue. He noted that wastes that they land apply don't specifically require treatment so bypass conditions don't require CUP coverage. Much of ULWR's

accepted industrial waste is food process waste. They also accept shampoo manufacturing product waste.

- Discussion regarding the application operations followed. According to Hoffman, the DNR doesn't require owner sign-off information at specific land application sites. ULWR submits a site application request to DNR then the DNR reviews and approves or approves with conditions ULWR's request.
- Discussion followed regarding the application of wastes just prior to major rain events. People voiced concerns that application times did not account for eminent rain events. Hoffman noted he has not received complaints about land applying onto soggy soils.

Attorney. McFarland's closing arguments

- ULWR is trying to do the right thing by constructing a wastewater treatment facility.
- The Township is standing in way of ULWR by placing undue CUP stipulations on them.
- ULWR feels the Township Board members are against this company.
- ULWR will state they are going to follow WPDES permit which they feel is sufficient and no need for the CUP stipulations. They are concerned that the CUP will allow the Township, for some miscellaneous reason, to close down the ULWR facility.
- ULWR feels the DNR staffing that is in place is sufficient to handle any of the issues with ULWR.
- Chuck Burkholz commented that there is a lack of trust of ULWR and this needs to be re-attained.
- Audience comment was that this process is several years old and should not be delayed any further.

Motion by Schultz, 2nd by Haase to close hearing at 10:40 p.m.

The Board took a short recess and reconvened at 10:55 p.m.

Leroy Schultz is now absent from the Board.

It was noted that the ULWR property is in the Ag District which allows for the wastewater treatment facilities and Non-Agricultural waste land spreading but by Conditional Use only.

Chuck Joyce noted that the Hearing was shotgun review of CUP. ULWR needs to prepare line by line comparison of what they are willing to do vs. what CUP stipulates.

McFarland wants until August 1 to prepare the comparison Joyce referred to and allow BZA to make decision within 30 days of that receipt date.

The Board decided to reconvene Tuesday, August 19, 2008 at 7⁰⁰ p.m.

The Appellant (ULWR) has waived 30 day rule regarding the BZA's decision on this matter.

Motion to Adjourn by Jeff Mamayek, 2nd by Jerome Haase at 11:06 p.m.

Respectfully submitted:

Jerry A. Foellmi

Jerry A. Foellmi P.E.
Town of Clyman Zoning Administrator