

TOWN OF CLYMAN
APPEALS COMMITTEE MEETING
August 19, 2008 – 7:00 PM

Attendees: Marjorie Gahlman, Dave Manning, Margaret Johansson, Mary Kreuziger, Lynn Zimmerman, Marylee Peterman, Nancy Schlender, Chuck Burkholz, Jeff & Jean Kreuziger, Robert Tracy Jr., Brad & Caroline Bailey, Steve Hoffman, Dave Blank

Attorneys Griggs, McFarland, Tutwiler and Roder were also present along with appeal board members Chuck Joyce, Leroy Schultz, Jerome Haase, Jeff Mameyak, Charlie Zimmerman.

The meeting was called to order at 7:00 PM by Chairman Chuck Joyce.

Minutes – Bottom of Page 1 – Charlie Zimmerman stated that he did not say that his well was polluted as claimed by Caroline Bailey. Page 2 - Marylee Peterman, ex-plan commission member, stated that there is a lack of cooperation from ULWR and its attorneys. This statement was not listed in the minutes and it was felt it should be included. Motion by Jerry Haase, seconded by Leroy Schultz to accept the minutes as amended. Motion carried.

This meeting was a continuation of the July 15, 2008 meeting. Chuck had requested ULWR and Atty. McFarland to present a presentation of what they are contesting. The copy received from ULWR's attorney was not in the form that was asked for. Attorney Roder did put the CUP's in side-by-side comparison form for which Chuck thanked him. Attorney Roder advised that the meeting would not be open to public input at the present time. Attorney Roder requested to add Exhibit 6 to the list of exhibits which is the side-by-side comparison of the CUP's. Motion by Leroy/Chuck to add the exhibit. Roll call vote taken with unanimous approval.

Attorney McFarland pointed out that Tracy Bros. LLC is the correct owner. The applicant and permittee are ULWR. Attorney Roder stated that the town's understanding is that ULWR is the owner. Tracy Bros. owns the land, not ULWR. Attorney Roder suggested that ULWR be operator and an applicant. Tracy Bros. would be the owner and an applicant as well. Tracy Bros. LLC does not operate ULWR. The application itself listed ULWR Inc., as the applicant and Tracy Bros. LLC as the owner. Language holding both entities jointly and severally liable was taken out by ULWR attorneys. Question was raised as to who would be bound if there was a violation. Both would be bound. Attorney Roder pointed out that under the CZO the CUP has to be issued to the owner of the land. He felt that both entities should be listed as applicants and owners. Attorney McFarland objected to ULWR being listed as the owner of the property. The language should be reworded to

distinguish Tracy Bros as the owner of the land and the equipment. ULWR would be listed as the Permittee along with Tracy Bros. LLC.

Attorney McFarland felt that “property” was a broad term to use. He felt this is inconsistent with state regulations and is an attempt to micromanage ULWR. Attorney Roder pointed out that any application to land spread was not permitted from 2000-2004, thereafter, CUP’s should be obtained. Attorney Roder asked which property owned by ULWR and Tracy Bros. LLC would be grandfathered in. Attorney McFarland indicated that information was never asked for. Jeff Mameyak questioned if all spreading application requests are handled in this manner. Attorney Roder indicated that he had no information about other requests for spreading. Attorney McFarland objects that this CUP applies to all land that ULWR wants to spread on. He felt this CUP should apply only to the CUP for the lagoons. Leroy Schultz questioned if all waste went into the lagoon first before being spread on the land. Attorney McFarland said that there is direct application as allowed by the state permit. Chuck Joyce asked if the DNR identifies the land that is approved for spreading and McFarland stated that he felt they had this information and that the dates were included. McFarland stated that if the town feels that ULWR is spreading on land for which they don’t have a CUP, they should advise ULWR and request that ULWR present proof of the approval. They object to broadening the definition of land other than where the lagoons are. Chuck felt that McFarland was being unreasonable and if ULWR feels that they are grandfathered in, they should present proper proof. McFarland felt that broadening the definition of the property was an attempt to control the land application sites of ULWR. Attorney Tutwiler indicated that they removed terms of applying on any other land that doesn’t apply to the lagoons. Attorney Roder indicated that the burden of proof is on ULWR. He feels there is a dispute between what the ordinance says and what ULWR wants it to say. Roder felt there should be some “tentative agreement” reached so they can move on. Attorney McFarland stated that he did not understand what was the use of approving other lands other than the lagoons. He indicated that this was a CUP to build the lagoon and not doing land application. Attorney Roder explained how the CUP would work with spreading on additional properties. He felt this would bring ULWR in conformance with the law and was a flexible way to do it. ULWR indicated that they have no desire to do it in any other form. Attorney Tutwiler stated that there is nothing in the application that describes land application activities. They did not apply for an application to land apply. Attorney Roder explained that the Plan Commission exercised their logic in the matter and explained that non-ag waste cannot be spread on ag land. Attorney Roder pointed out there are no permits to dispose of non-ag waste by ULWR or anyone for that matter. If ULWR is disposing of non-ag waste in the town, they are not in compliance with the ZO. He mentioned the former Stanton, Doherty and Bremer farms. Attorney McFarland

stated that these issues will be resolved in the courts. He feels the activities on those farms were in compliance with the town ordinances. He indicated ULWR has been on the receiving end of a lot of accusations. Attorney Roder stated that ULWR's chemical process is very odorous. Jeff Mameyak stated that you can't put control on an agricultural community. Attorney Roder countered that you can put a nuisance control on the odors.

Attorney McFarland stated that Wirtz stated that in his best engineering judgment this system will work and reduce odor. McFarland stated that no one has disputed this point. Attorney Roder pointed out that Sauer and Foellmi can dispute this. Attorney Roder indicated that no one wants this to fail because of the odor reduction. Leroy Schultz asked what happens if it fails. McFarland said that to a reasonable engineering certainty this is likely to work. Disposal of the waste would have to be done according to DNR regulations. Jerry was asked about a success/failure ratio of the lagoons. He stated that no one else in the United States takes this type of waste and he is concerned about the operation of it and the mixed bag of things that might possibly come in that will cause it to fail. That is why there has to be an emergency action plan.

Chuck Joyce asked at what point it becomes identifiable that a failure has occurred. Attorney McFarland stated that any waste that goes in could be directly applied. There could be a disposal problem. It is not land applied until it comes out of the second lagoon. Attorney Tutwiler stated that ULWR will have to prepare an operation and maintenance manual for the lagoons. Jerry Foellmi stated that this manual would have to be written around this particular facilities' requirements. Attorney Tutwiler indicated they would agree about requirements in a single document. Attorney Roder pointed out that the CUP contains the 5 points requested by the DNR and that these points should be added to the operations manual and the EAP. Attorney Tutwiler stated that the WPDES Permit contains the land application management plan. The operations and maintenance manual is designed to foresee and address the land application process. They will incorporate an EAP plan into the operations and maintenance manual. They have no problems with our engineer's concerns. Attorney Roder stated that the DNR, Plan Commission and Town Board want this to work but have concerns if it does fail. ULWR must meet DNR's approval before they can begin the project and they will provide this information to the town if requested. Attorney Griggs felt that the "property" definition should not be narrowed.

Jeff Mameyak asked who was going to be monitoring this. Attorney Roder stated that the Zoning Administrator would be handling this. Roder explained why he didn't feel DNR should handle this exclusively. Discussion held on this issue. Attorney McFarland stated that ULWR's record is pretty good. He felt that the

town was acting like a satellite DNR office. Attorney Roder stated that the temporary injunction was lifted because of an agreement to certain steps that ULWR has taken which have been effective.

Chuck Joyce indicated that the citizens are concerned about the smell and ground water contamination. He asked about the BOD being a critical level to control the smell. If the BOD level can be modified at disbursement and identified, can a level be established. Attorney McFarland stated that this is a problem because there is no liquid waste company under this limit. Discussion held on whether BOD has to do with odor. Attorney McFarland indicated that the State Statutes are enforced according to DNR. Meeting the BOD does not necessarily mean offensive odor. ULWR would be willing to identify a target BOD number to use to control the obnoxious odor. Jerry Foellmi finds it difficult to understand that they took all of that out of the CUP which would ensure a low odor level.

With regard to No. 17, it was requested that ULWR seek an opinion from their expert and see how they coincide with the DNR's opinion regarding odor level. McFarland feels that this is not a safe haven for the company. Mr. Wirtz will have to address these issues. They will try to come up with something. Charlie Zimmerman pointed out that all these items should be brought up to the Plan Commission. Attorney Tutwiler indicated that that process was dismissed by the Plan Commission and she takes offense to that statement. She felt that the proposals reached between a smaller group and brought to the Plan Commission were knocked down. Jeff Mameyak did not feel that a number should not be put on this for odor. Attorney Tutwiler indicated that there is a constant trying to restrict odors. ULWR will try to get Mr. Wirtz to come up with a number that would restrict odors. With regard to No. 17, it should state comply with the WPDES permit.

If all parts of the WPDES permit are enforceable by the town, the permit could be much shorter. Attorney McFarland said that ULWR has no problem complying with the WPDES permit and DNR regulations. Attorney Tutwiler indicated that the town should not enforce the State's requirements. The town should act to enforce the CUP and establish a format for submitting records.

Chuck Joyce indicated that the town would like assurance about their wells. Chuck suggested random sampling be done by Wirtz and Foellmi and sent in for testing for which ULWR would be responsible for payment. Attorney Tutwiler stated that there is a provision in the CUP under No. 60 for well testing but does not include coverage of the cost and inspecting. Attorney McFarland stated that that concept is fine. Bob Tracy Jr. indicated that the sampling cost of metals would be \$1,000. Chuck Joyce suggested possibly doing this only 3 times per year in light of the cost. Other samples would be \$300 to \$400 and done possibly 6 times per year. Jerry

Foellmi would provide input as to what the samples should be tested for. Attorney McFarland stated that there is a confidentiality order in place with the DNR. The town is not asking that the contract be breached.

Attorney Roder pointed out that the CUP would expire in one year but the appeals board can change this time line and asked what would be an appropriate time. ULWR should check with Mr. Wirtz and get back with this information.

Also the time frame for spreading municipal sludge should be taken out.

No. 63 – Bonding: Attorney McFarland said that this would be cost prohibitive to the company. He felt that this should not be required because ULWR does not handle hazardous waste. ULWR would be willing to give security in farm land in the town that has a value of close to \$500,000. ULWR would provide proof that the land would be free of liens. Chuck Joyce suggested going with that proposal.

Leroy Schultz would like to see identification of the property that is grandfathered in prior to the ordinances being put in place. Attorney McFarland will talk this over with his client and respond. Attorney Roder indicated that the grandfathering doesn't extend to a new company. Being with Tracy & Sons does not mean that the grandfathering would cover ULWR. ULWR should present their records as to what they feel has been grandfathered in and the Appeals Board can determine whether it should be grandfathered. Chuck indicated that the grandfathering date would be when the DNR established their database. Bob stated that the company change date may not be reflected.

Chuck Joyce asked if Attorney Griggs and Roder had enough information to come up with another proposal.

The next meeting is scheduled for September 23 at 7:00 P.M.

Motion by Leroy/Jerry to adjourn. Motion carried. Meeting adjourned at 9:40 PM.

Respectfully submitted:

Kris Kohlhoff
Clerk