

TOWN OF CLYMAN
BOARD OF ZONING APPEALS MEETING
October 28, 2008

Attendees: Marylee Peterman, Marjorie Gahlman, Kevin O'Meara, Lynn Zimmerman, Jean Kreuziger, Randy Wirtz, Bob Tracy, Jr., Nancy Schlender, Chuck Burkholz, Steve Hoffmann, Pat Morrison, Brad and Caroline Bailey, and Jeff Kreuziger

Attorneys: Ray Roder, Andrew Griggs, Amy Tutwiler

Board Members: Chuck Joyce, Charlie Zimmerman, and Jerome Haase. Leroy Schultz and Jeff Mameyak were absent.

The meeting was called to order at 7:18 PM by Chairman Chuck Joyce. The pledge of allegiance was said.

Motion by Chuck Joyce/Jerry Haase to approve the minutes as presented. Motion carried.

The purpose of this meeting was to go over the CUP. Chuck Joyce indicated that there have been several meetings between him and the attorneys for both sides. Unfortunately, due to Attorney Griggs' schedule, the proposed draft of the CUP was not available for the members to review prior to the meeting due to the lateness of its receipt.

Atty. Tutwiler indicated that there were differences of opinion including but not limited to:

Paragraph 5: The last sentence should indicate the month of May to give the parties flexibility.

Paragraph 10, 7, and 53(d): There is a difference as to the town's and state's ability to enforce the provisions should the state decide not to enforce.

Paragraph 51: They object to the payment of fees – ULWR agrees with the change in language but does not agree with the amount.

Paragraph 52: There is a need to discuss options.

Paragraph 16: The parties have agreed that Jerry Foellmi would discuss with Randy Wirtz the conception management plan however this has not yet been discussed between the two. No language had been developed to discuss this.

Paragraph 10: The sentence that refers to signatures by a certified Wastewater Treatment operator and a corporate officer should read Wastewater treatment operator “or” a corporate officer.

Both sides have gone over the draft and discussed it extensively.

Chuck Joyce indicated that since the last meeting, he felt certain conditions and language were close to being agreed upon by the parties. There have been a number of meetings between the parties to finalize some of the language in the CUP. The basis has been to maintain the integrity of the town and plan commission. Chuck is hopeful that this is the final draft of the CUP. He feels the few points brought by Amy are minor considering where this started from. He feels that the draft is protecting the interest of the town while allowing the business to operate within the confines of the town in their best interest.

Atty. Roder pointed out the major changes.

1. Individual Spreading Sites – The conception was that all of the sites used by ULWR as of the date the CUP becomes final would become part of the CUP as long as there was approval by the DNR and an owner acknowledgement. If ULWR wants to spread on land in the future, they would have to get the owner’s permission, get DNR approval and amend the CUP. This site would then be subject to all the terms of the CUP. The concession agreed to was that any site that was added from the date of application to the date of the CUP approval would all be approved once the CUP is accepted. Charlie Zimmerman questioned that ULWR did not wait to get approval for spreading on the former Quest farm. Ray felt that this was intended to force a legal issue being municipal waste being mixed with other waste. Ray indicated that this matter is before the court now. Charlie inquired of ULWR why they spread on the property and Atty. Tutwiler indicated that ULWR acted on her legal advice. She indicated that previous CUP’s for land spreading were denied by the board. Charlie pointed out that there have never been a CUP denied, two previous ones were withdrawn because of lack of owner approval.

Marylee Peterman questioned the legality of the meetings because there has not been any motion made to have the attorneys act on behalf of the town. Chuck Joyce indicated that at the previous meeting, the attorneys were directed to try to come up with a final draft. Marylee indicated that no motions were made to have the attorneys act on this matter. Attorney Griggs indicated that this matter can be discussed and brought back to the board which is what happened. Discussion held on this issue. Atty. Roder indicated that he will take the heat on this and that at the last meeting the attorneys were directed by the chairman to try to reach an agreement on the CUP. Atty. Griggs felt that it was much more efficient for the attorneys to meet and streamline the CUP but it is up to the board to decide

whether to grant the CUP. Question was raised as to the Zoning Chairman being at the meetings. It was felt that his input was good.

2. The Wastewater Treatment Plant proposal as it was presented to the Plan Commission and Town Board is that its capacity would be 75,000 gal. ULWR advised that they currently do 150,000 gallons per day so this was changed in the draft. Attorney Roder has asked Jerry Foellmi about this but has not gotten an answer as of yet.

3. Enforcement issue - This was compromised as it relates to odor. A complaint process has been developed that segregates several types of problems. The form will be put on the website and will be dictated by the WPDES permit. ULWR would then have five days to get the complaint to the clerk.

4. Emergency Action Plan – All of those provisions got condensed down into an operation and maintenance plan filed with the DNR and included in this will be a plan that states what will happen with a malfunction and what will happen on various sites.

5. Setbacks – In order to avoid a legal issue, a setback provision of 300 feet to a navigational stream was stated but instead referred to the DNR code.

6. Financial surety – The \$720,000 figure came from Jerry Foellmi after he talked with comparable companies. The town would accept the \$720,000 as either a first mortgage on real estate or a combination of real estate and personal property. The personal property could only be equipment that could be used for land spreading.

7. Town Ordinance – Currently, if a CUP isn't used for 12 months, it would expire. This would be unique use because sometimes ULWR may not use a field for 12 months, so this CUP says 24 months instead of 12 months.

8. Payment of fees – The Town's Zoning Administrator has the option to designate a consultant to do the work regarding checking the liners for ULWR. If a consultant does the work then all the fees are paid to the consultant. Should a consultant do the work, that amount is payable by ULWR but is capped at \$5,000.

Items to be completed: Exhibit A is a list of the sites that are grandfathered before the ordinance was in effect. Exhibit B is a list of the sites used since the ordinance went into effect. Other attachments have to be completed also.

Pat Morrison asked where the \$75,000 fee contribution come from. Attorney Griggs indicated that it came from a significant part of the work that has been done. The original number was \$50,000 which included attorney fees, engineering fees, etc. This is an add on to that number which is negotiable.

The terms of the WPDES permit are incorporated into the CUP which compressed the size of the CUP. Atty. Tutwiler indicated that ULWR has made significant concessions in this CUP in order that this CUP will get approved. ULWR is not required by law to restrict the volume that they take in but in the interest of compromise ULWR has agreed to restrict volume. She listed several other areas where ULWR has conceded in an effort to get this approved. ULWR has agreed to make sure that the odors are under control.

Pat Morrison questioned what would classify as a modification of the limits. Attorney Tutwiler indicated that there is some discretion from the start up to a 12 month period. Charlie Zimmerman questioned about this being an expansion project because of the initial request of 75,000 gallons and now 150,000 gallons is being proposed. He indicated that he did not feel the system was not big enough to handle 150,000 gallons per day. Pat Morrison indicated that this is a volume that ULWR and the town may consider, not that it shall really happen. The idea is that ULWR would get the plant operating and then have a grace period to get it on track.

Randy Wirtz stated that he would be willing to discuss the lagoon volume with Charlie Zimmerman if he so wished. The system will not allow them to bring in more waste than the 150,000 gallons per day. The original design was for 125,000 gallons a day. Mr. Wirtz is not sure what the maximum is. It is a very conservative design.

Attorney Roder suggested the board members take the CUP home to go through it and then come back for a meeting to discuss it further. Charlie Zimmerman would also suggest that if any public individual would like a copy of it, they be allowed to take it and that they be allowed to bring up questions they have. The proposed CUP will be posted to the website. This is not a final draft. Cleanup work needs to be done. Nancy Schlender asked about the negotiations. Attorney Roder indicated that these will continue. Pat Morrison asked how the comments will be handled. Chuck Joyce indicated that these will be handled as come up while they continue working on the final draft. Lynn Zimmerman asked what was going to be in Exhibit C. This will contain the forms that need to be submitted to the town.

Chuck Burkholz asked about the details of the town's enforcement of these provisions. Atty. Roder indicated that the procedure is outlined in Paragraph 53. ULWR is concerned that the town will come up with frivolous things and unfounded complaints. Discussion held on this issue. There is also an exhibit D, which is the owner verification form as it pertains to Paragraph 34 (of the marked up CUP draft). The last step is the drafting of Findings of Fact and Conclusions of Law.

Question was raised if Attys. Griggs and Roder felt they were maintaining the right direction of the Plan Commission and Town Board for the CUP. They indicated that they felt this was being done.

Atty. Roder also indicated that the hours of operation have been changed so that they are in agreement with all parties. Atty. Griggs felt that this represents a very reasonable compromise and still maintains the enforcement concept and will improve the odor problems.

Lynn Zimmerman questioned where it was stated that the Zoning Administrator could hire a consultant or designate someone to do this work and was advised that it was in Paragraph 8.

Chuck Burkholz asked about having a comment form along with the CUP posted on the website. It was felt this was a good idea but the comments will not be answered until the next Appeals meeting.

Chuck Joyce commended the Plan Commission and the Town Board for their efforts in the initial draft of the CUP. It gave the Board of Zoning Appeals a good foundation to work with.

Atty. Tutwiler felt that the final points are within a workable solution. The bond surety issue is unclear. The payment issue is questionable and these two issues need to be intertwined. She feels that a compromise can be reached on the enforcement issue.

They will try to get the final details settled before the next meeting and will be conducting conference calls to do this.

The next Board of Zoning Appeals meeting will be Wednesday, December 3 at 7:00.

Motion by Charlie Zimmerman/Jerry Haase to adjourn. Motion carried. Meeting adjourned at 9:06.

Respectfully submitted:

Kris Kohlhoff
Clerk