

TOWN OF CLYMAN
BOARD OF ZONING APPEALS MEETING
December 3, 2008

Attendees: Dave Blank, Jeff Kreuziger, Chuck Burkholz, Jean Kreuziger, Chris Spilker, Nancy Schlender, Marylee Peterman, Mary Kreuziger, Donald Schuetz, Bob Tracy, Jr., and Brad and Caroline Bailey

Attorneys: Raymond Roder, Andrew Griggs, and Amy Tutwiler

Board Members: Chuck Joyce, Charlie Zimmerman, Jerome Haase, Leroy Schultz and Jeff Mameyak. Minutes were taken by Jerry Foellmi.

The meeting was called to order at 7:05 pm by Chuck Joyce. The Pledge of Allegiance was said.

Motion by Jerry Haase, second by Leroy Schultz to approve the minutes as presented. Motion carried.

The purpose of this meeting was to continue with the review of the ULWR Conditional Use Permit based on the previous meeting's comments and meetings, phone conversations and other contacts between the BZA, its representatives and ULWR and its representatives. BZA members were given the latest vintage of the CUP that was boiled down to 45 items.

Open Forum Comments:

Charlie Zimmerman asked who authorized Chuck Joyce and Ray Roder to make the latest round of changes to the C.U.P. Chuck Joyce noted that the board has had full involvement from the beginning in the CUP review. Discussion followed.

Marylee Peterman felt attorneys Griggs and Roder were not representing the township. There should be a line by line review of CUP at this point. She was dissatisfied with the compromise with UWLR. Ray Roder noted there was no BZA request for line by line review. In his judgment \$62,000 paid over 24 months was a good compromise. Peterman stated the attorneys must get payments over 24 months also. Ray Roder agreed to get payments for his firm's work on the CUP over two (2) years without interest. Andrew Griggs agreed with Ray Roder that this is a good negotiated C.U.P. and he would take his pay on the same basis.

Peterman noted ULWR didn't show up initially for meetings and were not cooperative and therefore should pay additional costs. Chuck Joyce understands her position but stated that this came to a stalemate situation with no resolution

of the issues. Roder stated that ULWR must pay their attorneys plus the compromise figure of \$50,000+/- plus C.U.P./BZA processing fees portion.

Roder started working for the Town on this issue in April of 2007. Ray Roder also stated that hopefully this will be one of the last BZA meetings. Finalization is planned within one more meeting. The CUP presented tonight contains a paring down of the language of the CUP that is also included in ULWR's WPDES permit. The proposed final CUP overall serves the Town well.

Andrew Griggs said that the proposed final CUP contains the most important points of the original CUP. If agreement is not reached, the only other option is litigation, which may get the Town less than what the CUP has in it now.

A request was made to go through the CUP item by item. Nancy Schlender requested a full review. Dave Blank also requested a full review as did Charlie Zimmerman. Charlie Zimmerman also questioned whether the BZA's proposed modifications were allowable. Ray Roder stated the ordinance allows the BZA to change "wholly or partly" and could act in an error correcting way. Charlie Zimmerman felt that a 4/1 super-majority vote was the ordinance approval format. Ray Roder felt a simple majority was statutorily correct (Retzlaff and Griggs agreed). Statute 68.11 requires only a majority. Mary Kreuziger questioned the super majority issue. Andrew Griggs stated that both the statutes and the courts would support a simple majority.

Charlie Zimmerman questioned why the Town should give ULWR a CUP if their DNR permit has not been renewed. Ray Roder responded that if the DNR doesn't reissue approval then ULWR/Tracy Brothers have no CUP. There was an appeal filed in February of 2008. The DNR's wastewater treatment lagoon approval lapsed in September of 2008. Roder noted that both sides accused him of being biased towards the other side so he must be doing his job. Jeff Kreuziger asked who drafted the initial CUP. Roder, Griggs, the Plan Commission and the Township helped create the 65 item CUP. Jeff Kreuziger then asked why this got watered down. Ray Roder said the reason for the CUP was to allow ULWR to build a wastewater treatment plant and reduce odors. They needed to make adjustments in order to finally resolve the issues and prevent going into a lawsuit.

Roder recommended the CUP review be by asking if there are questions on each paragraph rather than reading each item.

Paragraphs 1 & 2 – No comments.

Paragraph 3, 4th line – Plumbing connections are “connections” within the wastewater treatment plant. A pipe through a culvert under Hwy 26 is not a plumbing connection under this CUP. Amy Tutwiler stated that the CUP covers both the wastewater treatment plant and land applications. Exhibit A contains grandfathered sites. Exhibit B contains March 2000-present approved sites covered by this CUP. New sites will be allowed to be added to Exhibit B through a public process. A question was raised on the Thomas Witte site that does not have landowner approval. Tutwiler stated that ULWR will remove from Exhibit A or B any owners that do not want to be included. Nancy Schlender questioned why the lapse of Exhibit A or B status was set at 24 months. Ray Roder noted application rates and cropping formats create timelines that are greater than 12 months so 24 months was reasonable. BZA will give a written decision noting that this is a special condition.

Paragraph 4, last sentence – the issue is regarding the municipal sewage sludge. There has been an issue of CWD waste spreading in Clyman in the past. Significant discussion followed. Leroy Schultz motioned, second by Charlie Zimmerman to add statement in CUP that CWD waste shall not be allowed to be disposed of in the Township. Motion passed 3/2.

Paragraph 5, Why was 75,000 gpd maximum flow changed to 97,000 gpd daily maximum with 120,000 gpd weekly maximum? Foellmi noted that the DNR approved these values in its review of the WW treatment lagoon submittal. It is reasonable to follow the same values in the CUP. Early discussions with Randy Wirtz involved the concept of 60 day detention and the lagoon volumes show this concept remains valid.

Paragraph 6, The wastewater treatment plant is not built yet so this item cannot be satisfied until then.

Paragraphs 7 through 12 – No comments.

Paragraph 13, Discussion covered the reasons for the testing requirements.

Paragraphs 14 through 18 – No comments.

Paragraph 19, What happened to the emergency action plan (EAP)? Roder noted that the O & M Manual with the land application management plan is equivalent to the EAP with CUP provisions on requirements for when the wastewater treatment system does not function as designed.

Paragraphs 20-23 – No comments.

Paragraph 24, Ray Roder read this. The Town does not have authority over DNR to approve or disapprove of wastewater treatment plant changes.

Paragraph 25, There were questions on runoff from land spreading on tiled fields. DNR must get involved if the tiled field drainage shows short-circuiting. There was concern for greater restrictions in setbacks over and above DNR requirements. Roder and Foellmi noted there must be logic to change from DNR's requirements. No reasons were given to make a more restrictive change.

Paragraph 26 – No comments.

Paragraph 27, Questions were raised on why this paragraph exists. Roder explained the DNR can better respond during more typical hours. Mameyak stated that operating farm equipment during "off hours" sometimes creates noise issues and could this paragraph's restriction transpose to other farming operations? Ray Roder said it would not because the ordinance that is the basis for the CUP applies only to non-agricultural activities.

Paragraph 28 – No comments.

Paragraph 29, The citizen complaint form is not yet developed, but it will be soon.

Paragraphs 30 through 33 – No comments.

Paragraph 34, There was concern noted that ULWR gets to choose the defense counsel for the Town due to claims against ULWR. ULWR pays costs so they pick the attorney.

Paragraph 35, Concern was noted that ULWR could change the DNR approved wastewater treatment plans when they re-submit for approval. Roder/Foellmi noted it would be a costly process to make changes at this point. Bob Tracy Jr. stated he has no intention of changing the approved plans when he seeks re-approval.

Paragraphs 36 & 37 – No comments.

Paragraph 38, The confidentiality requirements for a Town representative entering the ULWR site was deemed necessary by the administrative law judge reviewing a related case.

Paragraph 39, It was clarified that this paragraph covers sampling of waste being discharged at a farm field.

Paragraphs 40 & 41 – No comments.

Paragraph 42, The recommended changes to this paragraph were challenged. One concern was that the value of \$1,500,000 was reduced down to \$720,000. The justification was reviewed. Significant discussion followed about land value, and free and clear land versus a second mortgage position. Why couldn't ULWR provide a bond? The response was that there was no time frame for the bond; therefore no bond company would deal with it. ULWR needs much of the property mortgaged to finance the project. Foellmi/Roder discussed the likelihood of the failure scenario occurring and noted that there are many scenarios that can be considered but only those involving odorous wastes that were not hazardous substances would involve a Town as opposed to a DNR/EPA cleanup. A scenario was discussed where ULWR had contaminated as opposed to partially treated wastewater throughout the plant and a much greater level of effort/cost would be required to mediate the site. It was pointed out that this was not a Town cleanup scenario. It was suggested that ULWR wouldn't logically contaminate their own wastewater treatment plant. There remained concerns that the second mortgage wasn't a proper pledge. Tracy noted that his business loans are up in 3-5 years, and then the Town becomes the first mortgager. Questions remained on why reduce the values. Foellmi/Roder noted refined discharge locations (closer) and lower per gallon costs as verified by independent haulers.

Paragraph 43, Concerns were noted over the significant structure to dealing with complaints of non-compliance and their resolution. Roder noted this structure gives the Town a process to follow. There were concerns that the detailed nature of this paragraph was taking away the Town's ability to set terms to deal with non-compliance. Discussion followed on the basis that bias was perceived by both sides and the possible overlap of DNR and Township authority, the detailed procedure being a way to balance these factors.

Paragraph 44, The unique nature of ULWR's business is the reason for this paragraph. Charlie Zimmerman said the ordinance already has this information in it, so it is unnecessary. Paragraph 44 should be taken out.

Paragraph 45 – No comments.

Motion by Leroy Schultz, second by Charlie Zimmerman for a secret ballot to vote on accepting the revised CUP with changes noted at the meeting. Foellmi counted the votes. The secret ballot vote was 3 yes and 2 no, motion passed. Attorney Roder was directed to prepare the written final decision.

Motion by Leroy Schultz, second by Jerry Haase to adjourn the meeting. Motion passed.

Meeting adjourned at 11:01 pm.

Respectfully submitted;
/s/ Jerry A. Foellmi
Jerry A. Foellmi
Clyman Zoning Administrator