

**MINUTES
MARATHON COUNTY BOARD OF ADJUSTMENT**

Members present: Richard Lawson, Roger Zimmerman, Karen Piel, Jim Servi and Arnold Schlei

Members not present: Carolyn Opitz and Gerald Hoffman

Also present: Teal Fyksen, Rebecca Frisch, Diane Hanson, Toshia Ranallo, Cindy Kraeger, Paul Daigle, Scott Corbett, Art Derks, Kay Derks, Damon Stichert, Dan Deboer, James Griesbach, Kevin Vincent, Kevin Williams, Ken Seehafer, Jennifer Stroetz, Dane Stroetz, Kris Stroetz, Dennis Stroetz, Dorothy Olson, Gary Franz, Russ Weichelt, Carolyn Opitz, David Swenson, Sarah Ruffi, Ryan Niehaus, Kimberly Niehaus, Heidi Peskie, Karen Niehaus, Cherrie Laffin, Tom Niehaus and Robert Peskie.

Called to order at 9:00 a.m., Assembly Room, 500 Forest Street, Wausau by Chair Lawson, who explained the **rules of the hearing** and the reason for the establishment of the Board of Adjustment.

1. Approve February 28, 2019 minutes – Motion / second by Piel / Schlei to approve February 28, 2019 minutes as distributed. Motion **carried** by voice vote, no dissent.

2. The application of Arthur and Kathleen Derks for a conditional use permit per Section 17.301.07 of the General Code of Ordinances for Marathon County Chapter 17 Zoning Code for the purpose of a farm consolidation located in the F-P Farmland Preservation Zoning district on properties described as part of the FRL S ½, SW ¼ Lot 1 (PIN # 010.2702.193.0990) and part of the FRL S ½ SW ¼ (PIN # 010.2702.193.0991) Section 19, T27N, R2E, Town of Brighton, with a property address of B1240 153 Rd, Spencer WI 54479.

Teal Fyksen was sworn in for this case and all additional cases, asked the Board to use the distributed determination worksheets in their decisions and cited the provisions of law which apply. Exhibit 1 – Staff report: Town of Brighton has adopted county zoning. The property is located within shoreland zoning, is not located within mapped wetlands, or a floodplain. There is a current violation on this site as a result of an illegally recorded Certified Survey Map (CSM); the Conditional Use Permit (CUP) needs to be issued prior to the recording of the CSM. Exhibit 2 – Petition for CUP. Exhibit 3 – Location within Township. Exhibit 4 – Town of Brighton future land use. Exhibit 5 – Surrounding zoning. Exhibit 6 – Aerial photo (wide angle). Exhibit 7 – Aerial photo. Exhibit 8– CSM. Exhibit 9– Town of Brighton resolution.

The board questioned if the violation on the property was related to the Certified Survey Map prior to the CUP. The violation would be cleared if the CUP is recommended for approval. Fyksen explained the application was submitted prior to the new zoning code approved by the Marathon County Board of Supervisors on March 26, 2019; therefore a CUP is required.

Chair Lawson asked for any additional testimony.

Art and Kay Derks were sworn in. They are the owners of the parcel. They had no additional details regarding the CUP request.

There was no additional testimony in favor, opposed, or as interest may appear. Testimony portion of the hearing closed at 9:22 a.m.

Motion / second by Piel / Servi to **grant** the conditional use request as proposed.

The Board deliberated and completed the Conclusion of Law and Decision Sheet.

Motion **carried** 5 yes, 0 no, roll call vote.

3. The application of Earth Inc. for a conditional use permit per Section 17.204.54 of the General Code of Ordinances for Marathon County Chapter 17 Zoning Code for the purpose of continuing an existing nonmetallic mine site (the previous special exception permit will be expiring) currently owned by Dennis & Krisan Stroetz located in the F-P Farmland Preservation Zoning district on properties described as part of the S ½ of the NW ¼ (PIN # 056.2603.102.0993) and part of the NW ¼ of the SW ¼ (PIN # 056.2603.103.0996), Section 10, T26N, R3E, Town of McMillan with a property address of 207601 Galvin Ave, Marshfield, WI 54449.

Teal Fyksen asked the Board to use the distributed determination worksheets in their decisions and cited the provisions of law which apply. Exhibit 1 – Petition for CUP application. Exhibit 2 – Location within township. Exhibit 3 – Location map – applicant submittal. Exhibit 4 – CUP cover letter. Exhibit 4a – CUP application narrative (continued). Exhibit 4b – CUP application narrative (continued). Exhibit 4c– CUP application narrative (continued). Exhibit 4d – CUP application narrative (continued). Exhibit 4e – CUP application narrative (continued). Exhibit 4f – CUP application narrative (continued). Exhibit 4g – CUP application narrative (continued). Exhibit 4h – CUP application narrative (continued). Exhibit 4i – CUP application narrative (continued). Exhibit 5 – Final pond per application. Exhibit 5a – Final pond cross

**MINUTES
MARATHON COUNTY BOARD OF ADJUSTMENT**

section per application. Exhibit 6 – Aerial photo – Staff rendition. Exhibit 7 – Staff Findings (inadvertently labeled as Exhibit 1) as distributed to board. Town of McMillan has adopted county zoning. The property is located in shoreland zoning, floodplain, and in a wetland. There are no current violations on the property. Exhibit 8 – Corporation Counsel written opinion. Exhibit 8a – Corporation Counsel written opinion (continued). Exhibit 8b – Corporation Counsel written opinion (continued). Exhibit 8c – Corporation Counsel written opinion (continued). Exhibit 9 – Town of McMillan future land use. Exhibit 10 – Planning Analyst Comprehensive Plan report. Exhibit 10a – Planning Analyst Comprehensive Plan report (continued). Exhibit 11 – Town of McMillan Resolution. Exhibit 12 – Letter in opposition.

Fyksen presented a power point and explained the Marathon County General Code of Ordinances Chapter 17 zoning authority and how it relates to the CUP, post/final land use, operational matters, setbacks and conditions. Fyksen explained the Marathon County General Code of Ordinances Chapter 21 Nonmetallic Mining Reclamation Code, Chapter 295 Wis. State Statutes and NR 135 related to the reclamation permit, authority for final land use and how reclamation standards are applied. This application is for a new CUP which is completely separate from any other prior special exception permit. Fyksen discussed the final land use would be a 21 acre aquaculture pond. Fyksen discussed Corporation Counsel’s opinion regarding the expiration date of the permit.

Frisch was sworn in and gave an overview of the Town of McMillan meeting on April 8, 2019. Frisch carried forth a list of concerns that were heard at the Town meeting consisting of: well tests, groundwater monitoring, blasting, assessments by 3rd party entities, depth, site screening/fencing; gates, haul routes, monitoring and enforcement.

Servi questioned the well and groundwater monitoring responsibility. Frisch explained that the County does not have the authority for the regulating wells. The Department of Natural Resources (DNR) has jurisdiction for wells and does not monitor individual private wells, just community wells. Currently the County does not provide groundwater monitoring.

Frisch discussed overall monitoring of a nonmetallic mining site. Chapter 17 and Chapter 21 of the Marathon County Code of Ordinances would be the limit of County jurisdiction for monitoring. Frisch then describe some examples of monitoring that occurs from other governmental entities such as towns monitoring road limits.

Chair Lawson called for a 10 minute recess.

Hearing resumed at 10:25 a.m.

The following people were sworn in and gave testimony in favor of the Earth Inc. Conditional Use Permit request:

Damon Stichert – Representing Dennis & Kris Stroetz: Stichert explained the family history of the farm and the goal of the aquaculture pond for trout depth which would be 21 acres in size. Stichert presented the following exhibits for the record in favor:

Exhibit 13 – Letter from Dennis and Krisann Stroetz

Exhibit 14 – Letter from Dane and Jennifer Stroetz

Exhibit 15 – Letter from Leroy Kroening

Exhibit 16 – Letter from Dr. Robert Kay

Exhibit 17 –Letter from Charlie Wegner

Exhibit 18 –Letter from Janalee Papini

Exhibit 19 –Letter from Larry Scheuer

Exhibit 20 – Letter from Larry Scheuer

Stichert shared photos noting the berms around the Niehaus property and stated the following information: tax records show the land values on properties near the site are increasing, and that the site has not had a negative impact on the tax base; the site is located close to a major highway which is beneficial for transporting the mineral resources; what specific steps have been taken to minimize traffic including that all loaded trucks go north on Galvin Avenue and unloaded trucks can travel to/from the south as long as weight limits are met; a quote for a fence to be placed on the Niehaus property has been received; gates have been placed at entrances into the pit and no trespassing signs have been posted to ensure public safety; silencers may be installed on the pumps to help with reduction of noise if necessary; no wetlands are being impacted; the site is in compliance with DNR best management practices and stormwater quality is monitored annually. Stichert stated that Earth Inc. has an emissions specialist on staff to ensure there are no negative emissions or impact to air quality near the pit. In addition, a well test on Stroetz’s well was conducted and all levels are within the safe zone. Stichert stated that Stroetz’s have vested interest in ensuring safe groundwater since the family is located on site.

**MINUTES
MARATHON COUNTY BOARD OF ADJUSTMENT**

Exhibit 21 – Several photos of berms and ponds

Exhibit 22 – Tax record Ryan Niehaus

Exhibit 23 –Tax record Tommie Schultz

Exhibit 24 – Tax record Jeremy Barth

Exhibit 25 – Several tax records

Exhibit 26 – Several photos of roads

Exhibit 27 – Sunnybrook Fence & Deck Quote for safety fence

Exhibit 28 – Photo of agriculture field

Exhibit 29 –Certifications of Kevin Williams – Earth Inc.

Exhibit 30 – Photos of Signs around mine site

Exhibit 31– Ag Source Laboratories water analysis

Exhibit 32 –Arcadia Lab water test report- Dennis Stroetz 5/18/2017

Stichert discussed water tests concerns of the Niehaus'. Earth Inc. tested the Niehaus well in May, 2017. The test showed that nitrate levels went down and there have been no test results from Niehaus showing nitrate levels of concern. Earth Inc. did drill a new well for the Niehaus' and the well was tested; nitrates were at 2.0 ppm and coliform bacteria came back safe. Earth Inc. has a certified blaster on site with liability insurance. The equipment is regulated through Mine Safety and Health Administration (MSHA); all equipment meets these requirements. Statutes require advance notice as to blasting occurring, prohibits fly rock, and safe level of ground vibrations. Damage to drywall and foundation occurred in 2016. Vibra-Tech Inc. received blasting reports from Applies Energies stating that the blasting did not have any impact on the damage at the Niehaus property but Earth, Inc. did repair the paint and drywall damage. Stichert explained that numerous individuals and entities use the Stroetz quarry which is consistent with the Comprehensive Plan of the Town and County. Stroetz wants to keep it safe, provides him with making a living, and raising fish in the future.

Exhibit 33 – Heeg Well Drilling & Pump Company well inspection report – Lueth home

Exhibit 34 – Ag Source laboratories water analysis Ryan Niehaus 5/30/17

Exhibit 35 – Heeg Well and Pump Invoice # 4254 new well and pump installation

Exhibit 36 – Ag Source Laboratories water analysis for Ryan Niehaus 10/2/17

Exhibit 37 –Certificate of Liability Insurance and Calibration certificates

Exhibit 38 – Chapter SPS 307 Explosives & Fireworks WI Statutes

Exhibit 39 – Applied Energies Blast reports

Exhibit 40 – Vibra-Tech report – blast damage

Exhibit 41 – Kountry Home Builders quote

Exhibit 42 – Denny Dillenburg letter

Exhibit 43 – Stroetz Quarry customer list

Exhibit 44 – Witness statements (several) in favor of Stroetz Quarry

Exhibit 45 – Town of McMillan Parks element – Support McMillan Community Park

Exhibit 46 – Letter from Mullins Cheese

Exhibit 47 – Letter from City of Marshfield

Exhibit 48 – Letter from Village of Stratford

Fyksen corrected his power point and stated that the hours of operation on the application were 6:30 a.m. to 6:30 p.m. Monday – Friday and 6:30 to noon on Saturdays. Servi questioned the depth and size of the applicant's request. Fyksen stated the mine would be 60 feet in depth and 21 acres in size. Stichert stated that the granite quality is high and dense;

**MINUTES
MARATHON COUNTY BOARD OF ADJUSTMENT**

therefore the mining is taking longer than initially proposed and mine operations are subject to the economy. Lawson questioned the proposed length of the project from the initial proposal in 2000, the 2009 application and the current application. Lawson questioned if room was available to stock pile all material to get to the 21 acre pond. Dan Deboer, owner of Earth Inc., stated that was not feasible; as it is impossible to blast and pile it that quantity of material. Earth Inc. accommodates the neighborhood with aggregate and remains compliant with all regulations.

Griesbach, Marathon County Highway Commissioner stated that the Highway Department relies on local sources of aggregate for road projects and this mine location is fundamental for residents of southwestern Marathon County.

Kevin Vincent, Blaster, has been blasting at Stroetz Quarry for many years and never had a complaint prior to the 2016 incident. Blasting adjustments were made to ensure safety and no damage.

The following people were sworn in and gave testimony in opposition to the Earth Inc. Conditional Use Permit request:

Kimberly Niehaus runs a daycare and stated concerns regarding the June, 2016 blasting impact to their house including no running water for 3 days and rock in their yard. She is concerned about the safety of children, and potential for future damage to the drywall and foundation of her home.

Exhibit – 49 Letter from Kimberly Niehaus with photos

Heidi Peskie owns property near the mine. Her concerns include: initially proposed as a temporary mine – now going on almost 20 years; there are other aggregate sources in the area; safety issues such as no fencing and gates; traffic on Galvin Avenue from trucks; overweight and oversize vehicles; noise from crushing gravel; and property values decreasing.

Exhibit – 50 Letter from Heidi and Bob Peskie

Karen Niehaus is concerned with the open pit mine; quality of life, safety of grandchildren with the location of the steep slopes and 60 foot drop; and the need to protect the environment.

Exhibit – 51 Letter from Thomas & Karen Niehaus

Cherie Laffin, Scott Williams Appraisal Inc. completed a value impact study on the Niehaus property. Impact of property value by pit can be anywhere from 0 to 11% value reduction.

Exhibit 52- Summary of finds on general value impacts on surrounding properties – Stroetz Quarry Scott Williams Appraisal Inc.

Exhibit 53 – Letter from Marathon County Office of the Highway Commissioner

Chair Lawson called for a 10 minute recess.

Hearing resumed at 12:25 p.m.

Sarah Ruffi, Ruffi Law offices, discussed numerous changes from the original proposal to the current proposal including: post land use; length of time of the operation; and the proposed depth. Ruffi expressed concerns impacting the neighbors including: well water safety and quality, traffic concerns, depth of mine, impact to public health and safety (no fencing), dust and noise and operation, damage to aesthetic value of property, property decline, damage to property; Compatibility of existing adjacent land uses and impact to neighborhoods; Ruffi suggested operating times for mining be 7:00 a.m. to 5:30 p.m. Monday – Friday and that the proposed after mining land use be an aquaculture pond. Ruffi presented 83 signatures of citizens opposing the renewal of the Stroetz Quarry /Earth Inc. Conditional Use Permit.

Exhibit 54 – Documents opposing Stroetz Quarry Project on behalf of Ryan & Kim Niehaus & Robert & Heidi Peskie

Exhibit 55 – Town of McMillan residents petitioning against the 10 year renewal of the granite pit.

Ruffi read letters from the following neighbors opposed:

Kevin and Heidi Fischer stated that this project should be terminated since the project is not compatible with the Town of McMillan's comprehensive plan

Exhibit 56 – Letter, photos, documentation from Kevin & Heidi Fischer

Vincent Weber – Concerns about home value, well condition; and his ability to sell his property.

Exhibit 57 – Letter and photo from Vincent Weber

**MINUTES
MARATHON COUNTY BOARD OF ADJUSTMENT**

Faith Ver Kilen – Concerns include: safety of family, bridge on Galvin, excessive dust, house shaking, and broken heirlooms from the blasting impact.

Exhibit 58 – Letter from Faith Ver Kilen

Joseph Wagner and family – Concerns include: shaking of house, traffic pattern, dust, well damage, noise from equipment, riding bikes on Galvin Avenue, water supply, and beauty of community.

Exhibit 59 – Letter from Joseph Wagner and family

Roger and Abbi Roehrborn – Concerns with truck traffic, deteriorating roads, riding bikes on Galvin Avenue, decreased home value, blasting, quality of well water, and land around mine.

Exhibit 60 – Letter from Roger and Abbi Roehrborn

Kathy Richardson – Concerns with blasting, value of home, low pressure of well, hauling of materials on Galvin Avenue, Galvin Avenue bridge; short term project.

Exhibit 61- Letter from Kathy Richardson

Gary & Valerie Niziolek – Concerns with length of mining, blasting, wells, Galvin Avenue, and impact to value of homes.

Exhibit 62- Letter from Gary & Valerie Niziolek

Kathleen Oelrich – Concerns about noise, dust, blasting, and hauling of materials on Galvin Avenue.

Exhibit 63- Letter from Kathleen Oelrich

James & Kristine Schwalbach – Concerns with road damage, noise, equipment noise, and traffic on Galvin Avenue.

Exhibit 64 – Letter from James & Kristine Schwalbach

Tommie Schultz – Concerns with road repair costs, safety of children, noise, dust, water quality and quantity, damage from blasting, decreased property value, long term effects of open pit mine, and possible future health issues.

Exhibit 65 – Letter from Tommie Schultz

Michaela Wilsman – Concerns with well safety, health and safety concerns, dust and noise, noise from blasting and operation, damage to the aesthetic value of properties, property value decline, and potential damage to wells.

Exhibit 66 – Letter from Michaela Wilsman

Ellen & Roger Roehrborn – Concerns with well contamination, property value decline, safety of children, damage to roads, blasting damage, and manmade lake.

Exhibit 67 – Letter from Ellen & Roger Roehrborn

Hannah & Jeremy Barth – Concerns with blasting causing artwork to fall from walls.

Exhibit 68 – Letter from Hannah & Jeremy Barth

Ryan Niehaus explained the blasting and fly rock that have affected their home and the concerns of daycare parents while mining operations are ongoing. Concerned about the health and safety of his family and how it has progressed longer than 7-10 years; the quarry does not meet the Town of McMillan's comprehensive plan; the minimum distance of 500 feet separation from a well to a quarry edge; the quarry interferes with the enjoyment and use of adjacent property; the impact of the traffic and safety on the roads, impact of public health, safety and welfare.

Exhibit 69 – Letter with photos from Ryan Niehaus

Servi questioned about the severity of the blasting since June 2016. Niehaus responded that since then the blasts have not been as severe.

Frisch provided clarifications on a few statements during the public hearing including; the reclamation plan, nuisances, fencing – clarified information in the 2000 application, expiration of permit – once permit expires a property owner has the right to apply for another permit; 500 foot setback for well came into effect in 2014, prior to that there was no setback; parcel numbers changing – numbers can change as property is sold or split.

MINUTES MARATHON COUNTY BOARD OF ADJUSTMENT

Frisch discussed an email that was received on Tuesday, April 23 from the Town of McMillan Town Clerk with a 150 page attachment of documents received at the April 8th town meetings. The Town Clerk provided no direction of what to do with the information. Frisch emailed the Town Chair inquiring what to do with the information and the Town Chair responded the Board should consider the recommendation as indicated on the Town Board resolution (submitted previously). The Town of McMillan is recommending a 5 year Conditional Use Permit. Frisch reminded them the application is to be treated as a new application; not as a renewal.

Servi questioned if the blasting size can be addressed through the County. Frisch informed Servi that blasting is handled by State statutes. Frisch stated the final land use does not happen until the mining operations are completed and the reclamation will be a 21acre size fish pond.

Chair Lawson asked for any additional testimony.

Ken Seehafer, as interest may appear, concerned with the dust, traffic and farming has changed; look for the good so we can get through this.

There was no additional testimony in favor, opposed or as interest may appear. Testimony portion of the hearing closed at 1:55 p.m.

Steichert wanted to clarify the water test results were not provided at the Town of McMillan town board meeting. Chair Lawson re-declared the hearing closed at 1:56 p.m.

Chair Lawson called for a 10 minute recess.

Hearing resumed at 2:05 p.m.

Motion / second by Schlei / Servi to **grant** the conditional use request for Earth, Inc. with conditions to be developed as the Board reviews the decision sheet.

Motion / second by Schlei / Servi to **amend** the original motion to grant the conditional use request for Earth Inc. and it shall be in effect for 5 years beginning June 20, 2019.

Motion / second by Schlei / Servi to **amend** the original motion to grant the conditional use request with the following conditions:

1. Operation hours of the quarry shall be from 7:00 AM to 5:30 PM, Monday thru Friday with no weekend operation which shall include pre-warming of the machines.
2. All gravel haul trucks, full or empty, exiting or entering the Stroetz Quarry will use the north driveway onto Galvin Road to/from the north connecting to County Road C.
3. All wells located within 300 feet of the quarry property boundary will have well water samples tested by a third party water testing vendor every two years at the quarry owner / operator expense
4. A minimum five foot high chain link safety fence, as proposed in Exhibit 27, shall be installed between the current Niehaus property and the mine.
5. Gates shall be installed on all entrance points of the quarry.
6. All blasting will be in done in accordance with all practices implemented after June 2016.
7. All berms surrounding the current Niehaus property shall be vegetated.
8. All pumps shall have silencers installed to be used after hours.

Lawson called for a roll call vote to the motion to amend the original motion with the conditions. Motion **carried** 5 yes, 0 no, roll call vote.

Lawson then called for a roll call vote to the motion to amend the original motion with the effective date and length of approval. Motion **carried** 5 yes, 0 no, roll call vote.

Lawson then called for a roll call vote to the original motion to grant the conditional use request of Earth, Inc.

Motion carried 4 yes, 1 no. Lawson, Zimmerman, Servi, Schlei, yes. Piel, no.

4. The application of Matthiae Properties LLC for a conditional use permit per Sections 17.204.43 and 17.204.44 of the General Code of Ordinances for Marathon County Chapter 17 Zoning Code, for the purpose of private indoor and private outdoor recreational facilities, located in the G-A General Agriculture district, on property described as Lot 1 in the NW

April 25, 2019
9:00 a.m.

210 River Drive, Wausau WI

**MINUTES
MARATHON COUNTY BOARD OF ADJUSTMENT**

¼, NE ¼, Section 31, T26N, R7E Town of Knowlton (PIN # 048.2607.311.0997) with no current property address.

This application was withdrawn.

5. Board education and trainings as needed – None.

6. Announcements and Requests – None.

Next meeting date – May 23, 2019 at 9:00 a.m., 210 River Drive, Wausau.

7. Meeting adjourned – **Motion** / second by Piel/ Zimmerman to adjourn at 3:27 p.m. Motion **carried** by voice vote, no dissent.

Respectfully submitted,
Arnold Schlei, Secretary
Marathon County Board of Adjustment

AS/ck

cc: Board of Adjustment (7), County Clerk, Town Clerk

O:\ZONING\BOARD_OF_ADJUSTMENT\Meetings\2019\04_25\Minutes\BOAD_20190425_Minutes.doc