

Meeting Minutes
Special Town Board Meeting
October 21, 2009

Present: Kendall Schneider, George Franklin, Don Krajeck, Elisabeth Howard, Matt Dregne

1. Mr. Schneider called the meeting to order at 6:34 p.m.
2. Ms. Howard reported to the Board regarding the alleged violations of the conditional use permit issued for the mining operation at the Phelps property. An outline of Ms. Howard's report and preliminary recommendations is attached to these minutes. Among other things, Ms. Howard reported on a meeting that was held on October 20, 2009, among Ms. Howard, Mr. Dregne, Mr. Krajeck, Brett and Tammy Frank and the Franks' attorney.
3. The Board discussed each of the alleged violations and the preliminary report. At the conclusion of the report, each board member summarized his comments on the report, as follows:
 - A. Mr. Krajeck was impressed with the Franks' cooperative and candid approach in the October 20 meeting. Mr. Krajeck said that it will be necessary to better define what activities are allowed and not allowed outside the hours of operation specified in the CUP, and to better define other things that are ambiguous in the CUP. Clarifying the language in the permit and perhaps amending the permit may be helpful, and will reduce the number of issues where there may be arguments and disagreements about whether the operation is in compliance with the CUP. Mr. Krajeck is concerned that if the Town and the permit holder do not address the issues now, all concerned will have to continue dealing with these issues.
 - B. Mr. Franklin said that it will not be possible to satisfy everyone's complaints and concerns. He noted that in the country, there will always be noise, dust and other conditions that people have to live with. Mr. Franklin does not see that there are any big problems with the APPI operation, and doesn't want people to make it a problem. Mr. Franklin said that the process the Town is now following to respond to the alleged violations of the CUP is the right process.
 - C. Mr. Schneider said that living in the country means living with noise and dust. He said he visited the pit recently and it was quiet. Mr. Schneider said the process the Town is now following to respond to the alleged violations of the CUP is the right process.

4. The Board directed the town's attorneys to proceed with the recommendations in its preliminary report, including gathering additional information from the Franks, and to prepare a final report and recommendations as soon as that can be done. It is anticipated that the town attorney will return with a final report in approximately two months.
5. Mr. Krajeck moved to adjourn, seconded by Mr. Schneider. Motion adopted.

Outline of Phelps CUP Issues and Next Steps

October 20, 2009

1. Hours of Operation.

- A. Permit says: "Hours of operation: APPI will run from 6:00 a.m. to 6:00 p.m. Monday through Friday. Saturday hours will run from 7:00 a.m. to 2:00 p.m." Also "[n]o operation on Sunday."
- B. Issues:
 - (1) Whether trucks driving in after hours fit definition of "operation."
 - a. Any activity involved in operation of mine or mine-related equipment (?)
 - b. Vehicles hired out when APPI has no material to deliver must return after hours.
 - (2) Trucks-for-hire business.
 - a. This is unrelated to mining operation, falls outside of CUP activities.
- C. Conclusions and Next steps:
 - (1) "Operation" under current permit likely includes any activity on the property.
 - (2) Trucks for hire business likely not allowed under the current permit.
 - (3) Franks are considering whether to request amendment to CUP to allow the trucks for hire business. May also request authority to do miscellaneous minor activities (such as electrical repairs, clerical work) during different times.

2. Berm.

- A. Permit says: "Berms: 10' to 12' high berm will be constructed on the east and south side of the property along the road."
- B. Issue:
 - (1) Bob Fahey identified part of berm near the scale house that needs to be raised.
- C. Next Steps:
 - (1) Bob Fahey will meet with the Franks to show them the area he has identified.
 - (2) Reclamation may require use of berm materials. May need to amend CUP to allow for removal of berms at appropriate time during reclamation process.

3. Storage of dump trucks and installation of fuel tank.

- A. Issues:
 - (1) Dump trucks are stored and a fuel tank has been installed on the property.
 - (2) To the extent trucks used in mining operation, CUP allows storage.

(3) To the extent trucks are used in trucks-for-hire business, may not be covered by CUP.

B. Next Steps:

(1) Franks are considering whether to request amendment to CUP to allow storage of trucks and use of fuel tank for non-mining business.

4. Noise.

A. Permit says: APPI "shall comply with all applicable Town and State of Wisconsin noise rules, regulations and ordinances."

B. Issues:

(1) Engine brakes, back-up beeping noise, general machine noise.

(2) Performance standards under Ordinance s. 17.25.

a. Decibel level at property line.

b. "All noise shall be so muffled or otherwise controlled as not to become objectionable due to intermittence, duration, beat frequency, impulse character, periodic character or shrillness."

C. Next steps:

(1) Franks will meet with Bob to do decibel reading at property line during time (or times) when typical noise levels are reached. We should develop an appropriate testing plan with Bob.

(2) Franks will provide us with the following:

a. Mine Safety Health Administration (MSHA) standards and testing records at the mine.

b. Report of the steps they have taken to reduce noise, including signs prohibiting engine braking, noise reducing equipment, and reduction of backing-up.

5. Number of truck loads per day.

A. CUP does not limit the number of loads that may be hauled per day.

6. Sweeping sand off driveway and road.

A. Permit says: "Driveway: The driveway entrance will be paved to prevent erosion and spreading of material out onto the road. A broom tractor...or a hand broom may be needed to remove material from the road when necessary."

B. Issue:

(1) Complaint of sand and gravel being left in the road entrance.

C. Next steps:

(1) Franks will provide us with a report on their standard practice of keeping the road and driveway clear of sand and gravel. They have begun to keep a log.

(2) Bob's prior inspections have not found violations. Continuing enforcement will require timely investigation of complaints.

7. Exposed acreage.

- A. Permit says: "Exposed acreage: APPI will limit the amount of acreage for a mine to 20 acres. When more acreage is needed, reclamation will be more prevalent in order to keep the exposure level to a minimum."
- B. Issue:
 - (1) What is definition of "exposed acreage"?
 - a. Area that is subject to reclamation requirement.
 - (1) County's aerial photo shows estimate of 30.3 acres.
 - b. Area where APPI currently has an open hole in the ground; does not include stockpile or settlement pond or inactive areas.
 - (1) Franks estimate between 15 and 18 acres.
- C. Next steps:
 - (1) Franks will provide us with a 2006 aerial map indicating only 14.3 active acres, and only including open holes.
 - (2) Review 2006 minutes – any indication of definition?
 - (3) Franks are considering whether to request an amendment to the CUP to replace the current exposed acreage requirement with simple compliance with County reclamation plan.
 - (4) The Town Board will need to decide what the current CUP requires.

8. Blowing sand, dirt and dust.

- A. Permit says: "Best management practices will be used to control dust and wind erosion."
- B. Issues:
 - (1) Davis complaint of sand, dirt and dust blowing from APPI property onto their property.
 - (2) Performance standards (Ordinance s. 17.25) prohibit emission of particles in concentrations exceeding 0.3 grains per cubic foot, or in such quantities as to cause soiling or danger to health.
 - (3) Physical structures on Davis property may contribute to sand and dust build-up.
- C. Next steps:
 - (1) Franks will provide us with
 - a. MSHA standards and testing records.
 - b. A description of their dust-management practices, including putting tarps on trucks, black top on driveway, and watering ground when necessary.

Summary:

- Gather more information.
- Final report and recommendations in November or December.