

**MINUTES
PUBLIC HEARING BEFORE THE
SAWYER COUNTY BOARD OF APPEALS
April 18, 2017**

Board of Appeals

Alan Gerber, Chairman
Laura Rusk
Mark Olson
Waldo Asp
Dee Dobilas
Gordon Christians
Jim Tiffany

Zoning Administration

Dale Olson, Zoning & Conservation Administrator
Kathy Marks, Deputy Zoning & Conservation Administrator
Ward Winton, Attorney

PRELIMINARY MATTERS

- 1) Call to Order and Roll Call.
Al Gerber calls the Public Hearing before the Sawyer County Zoning Board of Appeals to order at 6:00 P.M. in the Sawyer County Courthouse, 10610 Main St., Hayward, Wisconsin. Roll is called and finding present: Al Gerber, Laura Rusk, Mark Olson, Waldo Asp and Jim Tiffany. Dee Dobilas, Gordon Christians are absent. Dale Olson and Kathy Marks present from the Zoning & Conservation office and Ward Winton attorney.
- 2) Statement of Board and Hearing Procedures.
Those wishing to speak will be afforded the opportunity provided they identify themselves. Al Gerber gives order of submitting files to BOA, taking testimony, and making a decision. Requests orderly procedure. Gives appeal deadline.
- 3) Statement of Hearing Notice.
The Public Hearing Notice was published as a Class 2 Notice in accordance with Chapter 985 of the Wisconsin Statutes in the Sawyer County Record and Sawyer County Gazette.

APPEAL

- 1) Town of Round Lake – Appeal Case #16-001 against CUP #16-012 (Brueggeman). Part of the SE1/4 SW1/4 and Part SE1/4 SW1/4, Lot 3 CSM 6/21 #1229; S14, T37N, R3W; Parcel #024-841-12-3408 and -3403; Document #222614 & 318225; Acreage: 2.75 & 1.76 for a total of 4.52 acres; Properties are zoned: Residential/Recreational One (RR-1). Permit was desired for: Operation of Tree Service. Request was approved at the Town Board level on September 8, 2016 with two conditions. 1) Property can be used for business purposes only (Operation of Tree Service) Monday – Saturday 7:30 am – 6:00 PM. No business activity is to take place outside of these hours). 2) No commercial burning is allowed on the property at any time. Zoning Committee approved application on September 16, 2016 with same conditions as town placed on case. Findings of Fact: It would not create traffic or highway access problems. It would not destroy prime agricultural lands. Appeal is for Residential/Recreational (RR-1) property that was used as residence for decades and then for residence and unpermitted tree service for unknown length of time.

Mark Olson asked if new testimony will be taken. Ward Winton attorney replies that no new testimony or evidence will be presented, the decision will be based on the Zoning Committee meeting record from September 16, 2016. Mark Olson asked we are allowing opening statements and we can questions people if we have questions. Ward Winton attorney replies that is what the Chairman has said.

Linda Coleman attorney for Robotka (appellant) spoke in objection of the Zoning Committee's decision on September 16, 2016 approving the Conditional Use Application #16-012 for Brueggeman. Concerns brought to the Board included grandfathering, lawful use, can property be used as conditional use, noise, smoke, appearance, odor, hours of operation, multiple employees, large equipment, concerns that the committee based decisions on traffic & agricultural activity. The Zoning Committee did not consider the objection letters or uses in RR-1 District and urged the Board of Appeals to deny the Conditional Use Permit.

Board discussion held with Attorney Ward Winton explaining that this is an Administration review. That to review the Zoning Committee's decision, can take into consideration the Town Boards decision. Listening to the audio from the Zoning Committee meeting September 16, 2016 case #16-012 was suggested. Discussion held.

John Hibbard attorney for Brueggemen spoke in favor of the Zoning Committee's decision on September 16, 2016 approving the Conditional Use Application #16-012 for Brueggemen. He discussed that the Committee did right advertising, invited the public, appellant sent letters but did not attend for the Zoning Committee meeting, opinion were letters sent out. They heard testimony from Brueggeman, there was no other testimony, they held the hearing, took into consideration the Town Board's approval on this case with the two conditions they advised, filed the correct procedure. The Committee followed the correct procedure of the law, the theory of law. The Committee did take into consideration the noise and smoke and the biggest objections. They also put restrictions on the Conditional Use. The committee deserves respect and did its job and the decision should be upheld. Grandfathering has nothing to do with the case.

Discussion by the Board held with Ward Winton, attorney stating that this is not a new trial. The decision for the Board is not about the case but did the Zoning Committee do their job.

Al Gerber suggested listening to the audio at this time. Dale Olson plays audio from the September 16, 2016 Zoning Committee meeting regarding the Brueggeman case CUP #16-012.

No discussion by Board.

Linda Coleman, attorney for Robotka spoke on the findings of fact, side issue of grandfathering. Points of interest. Not a de novo hearing, property owner has the burden to prove the use for a conditional use permit. How many employees, what kind of equipment, letters of opposition, committee did not do a thorough review, how close to neighbors and what were the reasons did the committee approve the conditional use permit. Coleman "I ask that you overturn the decision of the committee because I don't believe that the finding of facts before them on which they can properly base this decision and I believe they based this decision on their will to avoid a sticky question about grandfathering and not based upon the on considerations in the zoning code."

Mark Olson spoke on de novo. "Our 8.1 scope of the hearing for an appeal of a decision by Sawyer County Zoning decision shall not conduct a de novo hearing. So we are required not to under our bylaws."

John Hibbard, attorney for Brueggemen spoke of the zoning committee meeting. They did not violate the law. They met the requirements by law. Did they ask questions? Did they not ask questions? Did

they do their job? Answer is yes. They wasted time on the grandfathering issue. They discussed the neighbors, they discussed how long he has been in business? The effects of the business.

Discussion held between Board members.

Mark Olson spoke "I can start out with a few things. Was the committee within their jurisdiction? Yes, Wisconsin statute section 59 .694. Don't quote me on that. And Sawyer County Zoning Ordinance section 8.1, it falls within their jurisdiction." "Whether the committee proceeded on the correct theory of law." "In section 8.12 the County Zoning Committee shall consider the effect of such grant on health, general welfare, safety and economic prosperity of the county and of the immediate area in which such use would be located: including such considerations as the effect on established character and quality of the area, its physical attractiveness, existing topography, drainage features, erosion potential, vegetative cover, the prevention and control of water pollution, the location with respect to floodplains and floodways, the movement of traffic, and the relationship to existing or proposed roads, the demand for related services, the possible hazardous, harmful, noxious, offensive, or nuisance effect resulting from noise, dust, smoke, odor, and other factors." "Whether the evidence was such that the committee might reasonably make the decision in question." Mark Olson "Based on the general criteria and the looking at the specific criteria that are under our plan." "They did go through, and a reasonable person can see where their discussions would lead to their decision."

Discussion held between Board members continues with Ward Winton input on process of decision and Dale Olson conditional use process.

Motion by Mark Olson to uphold the Zoning Committee's decision with findings of fact he stated in his previous comment. Laura Rusk seconds motion to uphold the decision of the Zoning Committee. Laura Rusk amended Mark Olson's motion to uphold the Zoning Committee decision of the approval of the Conditional Use permit is only applicable with the owner, Terry Brueggeman. Second by Waldo Asp. Discussion held.

Al Gerber called for vote of the amendment: 5 to 0 motion passes.

Discussion held by Board.

Al Gerber called for vote of the motion with the amendment: Motion with amendment to uphold the decision of the Zoning Committee. 4 to 1 motion passes.

VARIANCE APPLICATION

None

NEW BUSINESS

None

ADJOURNMENT

Motion to adjourn by Mark Olson, second by Waldo Asp.

Minutes prepared by Kathy Marks, Deputy Zoning & Conservation Administrator