

The following are minutes of the Bettendorf Board of Adjustment and are a synopsis of the discussion that took place at this meeting and as such may not include the entirety of each statement made. The minutes of each meeting do not become official until approved at the next board meeting.

**MINUTES  
BETTENDORF BOARD OF ADJUSTMENT  
NOVEMBER 12, 2009  
5:00 P.M.**

Chairman Pro Tem McElhiney called the meeting to order at 5:00 p.m.

Item 1. Roll Call

PRESENT: Eikenberry, McElhiney, Voelliger  
ABSENT: Howe, Stelk  
STAFF: Beck, Connors, Fuhrman, Jager, Soenksen

Item 2. Review of Board Procedures.

Item 3. The Board to review and approve the minutes of the meeting of October 8, 2009.

On motion by Voelliger, seconded by Eikenberry, that the minutes of the meeting of October 8, 2009 be approved as submitted.

ALL AYES

Motion carried.

Item 4. The Board to hold a public hearing on the following items:

- a. Case 09-068; Lot 2, Shoppes at Duck Creek First Addition (C-2) – A request for approval of a special use permit for an additional drive-up window, submitted by McDonald Properties East, L.L.C. (Deferred to meeting of December 10, 2009)
- b. Case 09-074; 2820 Villa Court (C-5) - A request for a variance to reduce the required rear yard setback from 20 feet to 14 feet to allow for a 14-foot by 16-foot deck, submitted by Teresa Stori. (Deferred to meeting of December 10, 2009)
- c. Case 09-075; 2834 Villa Court (C-5) - A request for a variance to reduce the required rear yard setback from 20 feet to 12 feet to allow for a 16-foot by 16-foot deck, submitted by Tarikere Kumar. (Deferred to meeting of December 10, 2009)
- d. Case 09-082; 7186 State Street (I-2) - A request for a special use permit to allow a permanent concrete mixing facility, submitted by Pleasant Valley Redi-Mix.

McElhiney asked if there was an affidavit of publication. Soenksen stated that notice of public hearing had been received. Notice and affidavit of publication are Annex #2 to these minutes.

Soenksen reviewed the staff report. Staff report is Annex #3 to these minutes. Soenksen stated that he has received 5 letters in opposition and 12 letters in support of the request. He indicated that the letters had been distributed to the Board members and would be made a part of the permanent case file. Soenksen explained that the required affidavit of publication is available, adding that as a courtesy letters had been sent to nearby property owners in excess of the 200-foot radius that is typically used.

McElhiney asked if there was anyone present wishing to speak in favor of the request.

Todd Friemel, co-applicant, explained that he and Ethan Mahler own and operate Pleasant Valley Redi-Mix. He indicated that in February of 2009 the Board had voted unanimously to approve a temporary special use permit to operate a concrete mixing facility. He stated that since that time, 14 jobs have been created by the business, not including the owners. Friemel stated that the concrete mixing facility has supplied all of the concrete for the city's Hopewell Avenue and patching projects in addition to portions of the concrete used for sewer projects. He added that the plant has also provided concrete for projects in LeClaire, Davenport, Moline, Rock Island, and other surrounding communities. Friemel explained that site work including removal of organic black dirt has been accomplished in preparation for construction of a permanent facility. He indicated that this topsoil has been utilized by the city for several construction projects in addition to providing fill for his site in order that the proper elevation for the plant can be achieved.

Friemel stated that the property in question is zoned I-2, adding that he believes that the site is appropriate for construction of a permanent, enclosed concrete plant in addition to shop buildings for equipment, parking lots, and access roads. He explained that expansion of this high-volume business directly benefits the community through increased sales and property tax revenue.

Friemel explained that the request is for permission to enclose the entire concrete mixing facility which will reduce the amount of dust and debris that escapes the plant. He added that a state-of-the-art dust collection system will prevent any dust caused by the operations of the plant from escaping. Friemel indicated that approval of the request would also allow construction of concrete roads, parking lots, and other dust-controlling surfaces. He stated that if approved, buildings would be constructed to house all equipment and miscellaneous parts that are currently stored outside.

Friemel stated that site development and landscape plan approval by the Planning and Zoning Commission and City Council would also be required. He reiterated that approval of the special use permit would allow construction of an enclosed facility very different from the current operation. He added that once completed, the facility will fit in with neighboring businesses such as LeClaire Manufacturing, Americold, Olympic Steel, and Allied Waste.

Kelly Wainwright-O'Brien, 5621 Barcelona Street, expressed support for the request because of the enclosure that will control dust, the planned landscaping, and the number of employees people employed by the applicants. She indicated that the applicants are committed to the community on a long-term basis.

David Treimer, 6887 Colonial Avenue, stated that he parks his vehicle outside and has not had any additional dust on his car since the plant began operating. He indicated that the industrial corridor is where this type of business is intended to be located. He stated that the business itself is located as far as possible away from the residences in the area. Treimer stated that while he has heard backup beepers from the applicant's vehicles, the concrete mixing facility is not the only business using that type of vehicle. He added that loud noises are generated by trains, sirens from the Police and Fire departments, and other businesses in the area. He expressed support for the request as he does not believe that the enclosed plant will allow any dust to escape.

Nick Kuhnert, employee of the applicants, expressed appreciation for the employment opportunity he has been provided.

Ryan Dolan, 6800 Crow Creek Road, stated that he can see the plant from his home and drives by it daily, adding that he has no objection to the request.

McElhiney asked if there was anyone wishing to speak in opposition to the request.

Steve Berger, 6751 Ridges Court, stated that he does not believe that the staff report addresses compliance with the performance standards required by the zoning ordinance. He questioned if the release of particulate matter and the amount of noise generated by the plant was adequately measured or studied by staff. Berger expressed concern that topsoil has been removed from the property when only a temporary permit to operate a concrete mixing facility was granted by the Board. He indicated that this is a completely different use of the property that was not granted by the temporary special use permit. He explained that the ordinance lists additional requirements for the extraction of materials such as topsoil including a reclamation plan for the land, adding that he does not believe that such a plan has been presented. Connors stated that a flood plain development was obtained by the applicant which allows the removal and replacement of soil in a flood plain. Berger asked for clarification of the applicant's compliance with the requirements of Section 16.23.9. Connors explained that the section to which Berger refers has to do with mining facilities, adding that the interpretation of the ordinance is under the purview of the zoning administrator. Berger stated that Section 16.23.9 refers to mining or extraction of materials. Connors reiterated that that his interpretation is that the Section 16.23 does not apply to someone who is removing and replacing topsoil on his property. Berger stated that he believes that the zoning administrator's interpretation is too narrow as the applicant is removing and replacing the topsoil as part of a commercial enterprise.

Berger stated that while he believes the use would be appropriate in an I-3 District, it is not appropriate for an I-2 District. He indicated that a permanent facility should be located in an I-3 district.

Dave Gelao, 6789 Ridges Court, stated that his property overlooks the concrete plant. He indicated that he is not opposed to progress, but objects to the fact that he was not notified that the concrete plant was to become a permanent facility. Soenksen reiterated that the legal notice is the publication of the request in the newspaper, adding that as a courtesy letters are generally sent to residents who live within 200 feet of the property in question. He indicated that for this case, that 200-foot radius was extended. He explained that the closest residential property on Valley Drive to the proposed concrete facility is over 900 feet, adding that he would estimate that Ridges Court is nearly 1500 feet removed.

McElhiney stated that one of the conditions that the Board placed on the original temporary special use permit was that the use be reviewed by staff and that the applicant be required to return after the construction season to determine whether or not a permanent special use permit would be granted. Soenksen commented that both of those requests were published as required. McElhiney asked if there have been any complaints about the use. Connors stated that he had not received even one complaint about the facility.

Gelao stated that the reason no complaints had been received is that the nearby residents believed the facility to be a temporary one. He explained that during the past year he has noticed that there has been significantly more dust in the air that comes into his home. He stated that he does not believe that enclosing the plant will eliminate the particulate matter from the air. Gelao requested that the owners meet with the homeowner's association to explain what the air quality will be. He expressed concern about the health of the elementary school students in the area. He stated that he believes that the property value of the homes in the area will be reduced.

Dave Streets, 6940 Valley Drive, stated that he had received no notification of the project. He expressed concern about a possible reduction in property value caused by the proposed operation. Streets stated that it appears as though the letters in support of the request were received from people who have either made money from the plant or plan to in the future.

Bob Carel, 6799 Ridges Court, reiterated that the neighbors had been under the impression that the concrete facility was to be temporary. He indicated that it had been his understanding that the plant was in operation for use only during the Valley Drive repaving project, reiterating that this is the reason that no complaints had been received. He stated that it is likely that because of the rainy summer, not as much dust has been generated as would have occurred normally. He indicated that he has noticed a substantial amount of dust has been present during the past few days while it has been dry. Carel commented that whether or not the plant is enclosed, dust will still escape. He asked why it would not be appropriate to locate the concrete plant closer to the downtown area if it is a desirable use. Soenksen explained that the downtown area

is part of an overlay district with design standards with regard to types of required building materials that are not applicable to the proposed location of the plant.

Eikenberry asked if Carel was aware of the zoning designations of the adjacent properties when he built his home. Carel questioned whether or not the Board is familiar with the Comprehensive Plan. He indicated that the area was supposed to have been zoned Ultra-light Industrial, adding that the city has not followed its own Comprehensive Plan. Connors explained that the city does not have the right to rezone properties that are not owned by the city.

Don Johnson, 6914 Valley Drive, stated that he had not been notified of the public hearing. He indicated that he does not believe that the proposed use suits the area, adding that at this time he is neither in support of nor in opposition to the request. He asked if there would be new access roads from Criswell Street, Crow Creek Road, and/or Valley Drive. Johnson explained that the applicant is currently using Mickey's Café as an access point. He asked if these types of issues are to be addressed at the Board of Adjustment or Planning and Zoning Commission level. McElhiney explained that there are several levels of approval, beginning with the Board of Adjustment which has a very limited purview. She added that subsequent approval of the site development plan would be requested from the Planning and Zoning Commission and the City Council. Connors explained that a platting of the property would be required prior to site development plan approval. Johnson requested that the notification area to include properties on the other side of Valley Drive and on Ridges Court. Connors stated if the interested residents would leave their names and addresses he would ensure that personal notification is sent. Soenksen stated that access issues would be a part of the site development approval process. He indicated that there is no frontage on Valley Drive, therefore there could be no access. Johnson reiterated that the concrete plant had initially been presented as a temporary use. McElhiney stated that her recollection is that the applicant had initially requested permission for a permanent facility but that the Board has chosen to grant a temporary special use permit for one year at which time the effects on the neighborhood would be evaluated.

Laurie Beck, 6888 Valley Drive, commented that the concrete plant is dusty, ugly, and noisy. She requested that those three issues be addressed before any final approval is given. Beck stated that Valley Drive is being used as a highway for cement trucks and fill trucks and expressed concern that the new roadway will be damaged by them.

Mark Brockway, 1424 Berryfield Court, stated that the property his family owns to the south and west of the proposed use is used to grow organic produce and native plant materials. He submitted a letter expressing opposition to the request because of the negative impact the grading and excavation of the property has had and will have on Pigeon Creek, the particulate matter that is produced and deposited on the plants in his garden, that the plant does not operate in a clean, quiet manner as indicated in the section of the ordinance related to the I-2 district, and the traffic hazards caused by trucks entering onto Highway 67. Brockway stated that there is a reason why a concrete mixing facility is not a permitted use in the I-2 district, adding that Section 21.10 of the zoning ordinance refers to special uses that are of such an unusual nature

that their operation may cause unique problems with regard to their impact upon neighboring property. He commented that no special use permit can be granted unless it meets nine specific standards listed in the zoning ordinance, adding that he believes that five of them have not been met. Brockway explained that the nature and intensity of the use will not be in harmony with the neighborhood, that the use will hinder and discourage development of adjacent land and buildings, that the concrete plant operation will cause traffic hazards, that the value of neighboring properties will be negatively affected, and that the proposed use is not consistent with the Comprehensive Plan nor does it serve to further its goals. Brockway stated that while he understands that the property is zoned I-2, the land use plan indicates that heavy industrial uses should be placed south and east of State Street, light industrial uses should be placed north of State Street, and office/transitional uses along Valley Drive. He added that the proposed location for the permanent concrete plant is actually indicated on the land use plan as ultra-light industrial. Brockway stated that ultra-light industrial is meant to serve as a transitional buffer for the homes. He indicated that he believes that the people who built or purchased homes in the area did so with a relative level of confidence that the plan would be followed and their interests would be protected. He requested that the Board carefully consider the specific guidelines outlined in the ordinance with regard to approval of special use permits.

Eikenberry commented that trucks enter and exit Highway 67 from various businesses at all times of the day and night. Brockway stated that a controlled intersection is necessary.

David Wallace, 6890 Crow Creek Road, stated that he was aware when he moved to the neighborhood that the property in question has an industrial land use designation. He reiterated that none of the neighbors had had any idea that a heavy industrial use would be approved for the site. He indicated that in his opinion as a certified real property appraiser, the proposed use will most definitely negatively affect property values in the area. Wallace stated that if the use is approved on a permanent basis, any buffer between residential and industrial uses will effectively be removed.

Tom Bengel, 6974 Valley Drive, stated that the plant generated a significant amount of dust during the summer although there has not been as much of late. He indicated that if the silos and equipment are not properly maintained, the cement and fly ash will escape. He added that enclosing the plant will not necessarily solve the dust problem. He expressed the opinion that the release of dust into the air is likely a violation of DNR standards.

Joel Funk, 6761 Ridges Court, reiterated that the neighbors had been under the impression that the plant was to be located in their neighborhood temporarily, adding that this is the reason why staff did not receive any complaints. He asked why no environmental impact study was required of the applicant. He questioned whether any data with regard to particulate matter has been gathered over the past year and asked for clarification of the reason for removing the building at the concrete plant near Casey's.

Joe Celsi, 24 Oakbrook Drive, stated that the plant has generated enough dust to cause a buildup of debris on the fascia of the storage units that he owns south of the proposed location. He indicated that he had planned to construct more storage units and have more outside storage, but does not feel that he can compete with other facilities further down the street which do not have to contend with the dust problem. Celsi questioned whether it was appropriate to allow all the site work that has already been completed to be accomplished when the original approval was temporary.

Jeff Bloom, 6754 Ridges Court, stated that when he purchased his home he was fully cognizant of the fact that the area between Valley Drive and State Street would be the site of light industrial, transitional uses. He indicated that he believes the city should respect the parameters of the Comprehensive Plan.

Ethan Mahler, co-applicant, explained that much of the dust that has been generated is actually caused by the trucks bringing fill dirt, not by the plant. He indicated that state-of-the-art dust control measures will be installed in the plant, adding that the required DNR and EPA permits have been received. He assured the residents that once the trucks are no longer bringing fill, much of the dust will be eliminated. Mahler stated that they wish to be good neighbors, indicating that the noise generated by the plant from a 200-foot distance is approximately 60-70 decibels. He explained that a train horn generates 88 decibels at the same distance. Mahler stated that no accidents have occurred on Highway 67.

Several unidentified residents questioned the proposed hours of operation and whether the presence of diesel fuel tanks on the property pose an environmental hazard for the wells in the area. Mahler explained that the hours of operation are not set in stone, as the operation is weather-dependent. He indicated that the Bettendorf Fire Department monitors the site with regard to the diesel fuel used for the trucks, adding that the tanks are double-walled for safety.

McElhiney asked for staff's position on the issues that have been raised. Soenksen stated that city staff prides itself on its transparency with regard to potential developments. He explained that this is the reason that courtesy letters are mailed to residents in addition to publishing the required notice of public hearing in the newspaper. Soenksen stated that the standard policy with regard to courtesy letters is that property owners within a 200-foot radius of the property receive letters. He indicated that for this case, the radius was expanded regardless of the perception of the residents that staff attempted to conceal this information.

Soenksen explained that the applicants had originally asked for permission to construct a permanent concrete mixing plant, adding that the Board had determined at the February meeting to grant only a temporary permit in order that the effects on the neighborhood could be evaluated. He indicated that in the past the Board has granted only a temporary special use permit for certain uses. Soenksen stated that according to the zoning map, the property in question has a general industrial zoning classification. He added that a cement mixing plant is a listed special use in the I-2

district. Soenksen explained that there are properties surrounding Harbor Drive which have a limited industrial zoning classification.

Soenksen stated that an auto salvage yard, an industrial firm involved in the fabrication, processing, production, compounding, and manufacturing of materials, goods, and products, a planing or saw mill, a railroad freight station, storage and sales of farm implements, a contractor's yard, a fuel oil dealer are uses that could be located on the property with no special approval required by the Board of Adjustment. He indicated that staff considers these uses to be similar and compatible to the proposed use.

Voelliger commented that any business needs to move earth in order to develop an unused site. Soenksen concurred, adding that excavation does not constitute a mining operation as was alluded to earlier.

Voelliger stated that he feels that there should be some type of buffer between the residences and the proposed use because the entire property has an industrial zoning classification. Soenksen explained that to that end, the applicants have sited the proposed plant as close to State Street as possible. He added that the proposed building is approximately 950 feet from Valley Drive.

Voelliger asked how large the proposed site is and asked if the entire area would be developed as a concrete mixing facility. Mahler explained that the property is approximately 9 ½ acres in size. Soenksen added that the plant would occupy the entire area. Connors stated that originally the applicants had planned to subdivide the property into several lots, but that the concept has since changed to include one lot and one outlot.

Voelliger asked if there are any state requirements with regard to air quality. Connors stated that the applicant has received appropriate permits from the DNR and the EPA, adding that those entities would monitor air quality.

Voelliger stated that he does not feel comfortable making such an important decision when all of the Board members are not in attendance.

On motion by Voelliger, seconded by Eikenberry, that the request for a special use permit to allow a permanent concrete mixing facility be deferred until such time as all Board members are in attendance.

Eikenberry commented that were the vote to be held at this meeting, he would be in support of the request as he believes the proposed use meets the intent of the zoning ordinance.

ROLL CALL ON MOTION

ALL AYES

Motion carried.

Eikenberry suggested that interested parties indicate their name and address to staff so that notification letters can be mailed for subsequent meetings.

There being no further business, it was unanimously approved to adjourn the meeting at approximately 6:40 p.m.

These minutes and annexes approved

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John Soenksen  
City Planner