

DICKINSON COUNTY BOARD OF ADJUSTMENT
Monday, March 23, 2009
7:00 P.M.

The Dickinson County Board of Adjustment met Monday, March 23, 2009 at 7:00 p.m. in the Community Room, Dickinson County Courthouse.

Members present were Dennis Jackson, Don Oleson, Bob Duncan, Jeff Ashland and Wendell Williams.

Don Oleson, Chairman, called the meeting to order at 7:00 p.m.

First on the agenda was roll call.

Second on the agenda was new business.

- 1st item of new business was Duinick Bros. Inc. and Jason Howe, a conditional use for the East ½ of the NE ¼, Section 34, Okoboji Township. Oleson read the description of the conditional use for a resource extraction operation.

All members had viewed the property.

Kim Garletz with Duinick Bros. said the company was looking at a project in the area, and needed to find a property for gravel. They found Jason Howe who was willing to lease property to them. They tested and found it okay for aggregate. There are several projects coming in the area, among them wind farms. As long as they were planning, in other counties along with the gravel processing, they have an asphalt plant to use the gravel. Their intent is only to use temporary equipment. They would make the tonnage they need, leave and come back and finish out the agreement. This would make them more competitive. All plants are portable. Emissions must pass EPA guidelines. Gravel crushing must meet Mine Safety and Health Administration (MSHA) standards. The plants are powered by portable generators. They must meet regulations for dust, noise, safety, etc.

Oleson asked about the DNR requirement for an NPDES storm water discharge permit. His concern is for a retention pond as there is a creek tributary near there.

Garletz said it depends on how close they are. They are thinking of taking the material from the higher point and piling it below. They must remove the topsoil and keep it to put back on when they are finished. There is an area of natural grass that constitutes an area that will hold runoff.

Oleson asked if there is permitting and site review from the DNR.

Garletz said he is not aware of a site review. They do have to obtain a DNR permit and add to their present mining license.

Oleson asked if they have to put up a bond to cover reclamation of the site.

Garletz said they have a bond with their mining license. After the reclamation, the land will be farmable.

Duncan asked Garletz to show on a map drawn on a white board where the proposed pit would be and the asphalt plant placement.

Garletz drew the proposed plan.

The board members asked questions of the applicant as follows:

How big an area will they be using for the operation? Answer – approx. 10 acres.

Where they would have ingress and egress to the property? Answer – existing entrance off A43.

How long has Duinick Bros. had the pits in other counties? Answer – from one to four years in various locations in Iowa and Minnesota.

If they still wanted the pit after four years would they come before the board to ask for an extension? Answer – yes.

How far south they would be digging? Answer – 21 acres on top, must stay away from gas line and 50 feet from all lot lines.

Are they going to run a wash plant? Answer – not their intention.

How will oil and asphalt spills be contained? Answer – asphalt stored in a tank with a berm around it. All spills reported to the EPA.

Ashland asked what would be their hours of operation, the decibel level during operation, and how they remedy dust issues.

Garletz said the asphalt plant is run in the daylight hours. The crusher is never run at night for safety reasons. Decibel levels he doesn't know. The MSHA sets the level. Workers have to work close to the crusher. Dust issues – the material in the ground always comes out moist. It is screened to size. Water is sprayed around if dust is a problem. Dust from trucks is sprayed down with water trucks.

Questions opened to the public in attendance.

Jack and Jan Dittman have an acreage 1/10 mile from the proposed gravel pit. Their concern is that it will devalue their property, the noise, and the dust. The most noise concern would be from trucks coming in and out and up and down the hill all day.

Deb Powers owns land ½ mile west of the property. Her ground is lower and she pointed out where the water table is. Her concern is noise and the smell of an asphalt plant.

Gary Kane owns land to the south. His concern is they may hit the water table and affect the water aquifer which is his water source.

Powers said she also uses the water for her horses.

Oleson asked Howe who has a sewage pumping business, if he is dumping sewage on this ground at present.

Howe hasn't dumped any sewage on the property for 6 months. If the gravel pit doesn't work, they will put a treatment plant there. They have DNR rules they must abide by.

Kohlhaase explained the percolation process of soils and that gravel doesn't stop anything.

The board members discussed options to address the neighbor's concerns. Oleson suggested a buffer zone of non-activity to the northwest.

Cindy Martens has a house just to the west. She is concerned with safety on the road. There are no weight limits. There are already grooves worn in the blacktop from the Rohlin trucks and semi traffic. She also objects to the smell of an asphalt plant. Her quality of life would be affected by the noise, the dust, and concern for the groundwater.

Ashland asked if Duininck had looked at other sites for gravel.

Garletz said they did look and none are available.

Pat Derner has a farm office on the farm property that adjoins on the southeast corner. His concern was who would be responsible to maintain the dirt road to the east. If they later find heavy metals in their groundwater, who is responsible?

Harris Duininck said if they use the road, they would maintain and repair it.

Lonnie Saunders said the landowner has liability for groundwater. If the land ownership changes, then it becomes a legal issue.

Question on whether any product would be brought in from other sources.

Garletz said some aggregate may need to be brought in to add to the recipe. Some asphalt projects require milling of the old road and millings to be blended in.

The board members discussed requiring trees as a buffer and where they should be placed; if they would grow and how to water; pulling back from the perimeter; dropping the speed limit on A43; changing the entrance to a safer location; maybe install flashing lights to warn traffic.

Duininck suggested they could put up a berm of topsoil instead of the tree buffer.

Duncan asked if the gravel operation was active 12 months a year.

Duininck said no. An asphalt project is done within about 20 days. Gravel operation is intermittent over 5 to 6 months.

The hearing was closed to further questions.

Oleson read correspondence from Jack and Jan Dittman in objection to the proposed project.

The board members continued to discuss berms versus tree buffers and where they should be located; concern with traffic safety and driveway entrance; and stipulations that gravel extraction not go below the water table.

Jackson moved to vote on the conditional use application with the following stipulations:

- 1) The conditional use would be in effect for three years.
- 2) Jason Howe will spread no sludge on the property for three years.
- 3) Move the driveway entrance to the west with the County Engineer's recommendation for placement.

Williams seconded the motion. All were in favor to vote.

The vote was recorded as: Duncan – approve, Oleson, Ashland, Jackson, and Williams – deny.

Oleson read from the vote result form.

Third on the agenda was approval of the minutes of January 26, 2009. Ashland moved to approve the minutes as written. Duncan seconded. All were in favor.

Fourth on the agenda was communications. There were none.

Fifth on the agenda was report of officers and committees. Oleson asked if there were any wind energy applications. Kohlhaase said none have been received. April 1st is the deadline for the April meeting.

Sixth on the agenda was old or unknown business. There was none.

Seventh on the agenda was other. None.

Eighth on the agenda was adjournment. Jackson moved to adjourn. Duncan seconded. All were in favor. The meeting adjourned at 9:37 p.m.