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PLAN COMMISSION MEETING MINUTES
TUESDAY, AUGUST 26, 2015
Sister Bay-Liberty Grove Fire Station – 2258 Mill Road

The August 26, 2015 meeting of the Plan Commission was called to order by Chairperson Dave Lienau at 5:36 P.M.

Present: Chairperson Lienau, and members Scott Baker, Don Howard, and Marge Grutzmacher. Eric Lundquist arrived at 6:07 P.M.

Excused: Nate Bell and Shane Solomon

Others: Brandon Small, Pat Duffy, Tom and Jeanette Sadler, Greg and Carol Kenneweg, Chuck Koehler, Jackson Parr, Kathleen Hudson, Connie Carlson, Denise Bhirdo, Janet Janisse, Greg Casperson, Mary Kay Shumway, Tim Fuerst, Gary Dooley, Mark and Kathy Kunstman, Steve and Mary Musinsky, and seven other individuals.

Staff Members: Village Administrator Zeke Jackson, Assistant Administrator Janal Suppanz, Consultant Robert Kufirin, and Village Attorney Randy Nesbitt.

Comments, correspondence and concerns from the public:

Lienau noted that letters which were received from Rich and Sandy Blum, Greg and Carol Kenneweg, MaryKay Shumway, Martha Coventry, and Paul Kelnhofer were included in the meeting packets. All those letters pertain to the quarry issue, and copies of them are attached and incorporated by reference.

A letter which had been received from Ron Kane was also included in the meeting packets. In that letter Kane voices opposition to Beacon Marine's request to be allowed to park boats on a vacant lot which is adjacent to their business.

Approval of the agenda:

A motion was made by Baker, seconded by Grutzmacher that the Agenda for the August 26, 2015 meeting of the Plan Commission be approved as presented. Motion carried – All ayes.

Approval of minutes as published:

As to the minutes for the July 28, 2015 meeting of the Plan Commission:

A motion was made by Grutzmacher seconded by Howard that the minutes for the July 28, 2015 meeting of the Plan Commission be approved as presented. Motion carried – All ayes.

Business Items:

Item No. 1. Public Hearing on a request to amend §66.0320(c) of the Zoning Code to allow quarries as a conditional use in the B-1 General Business District; Discussion on a request to amend §66.0320(c) of the Zoning Code to allow quarries as a conditional use in the B-1 General Business District; and consider a motion for action to recommend approval of Ordinance 235, which amends Chapter 66.0320(c) of the Village's Zoning Code:

At 5:44 P.M. Lienau called the public hearing on a request to amend §66.0320(c) of the Zoning Code in such fashion that quarries are allowed as a conditional use in the B-1 General Business District to order and asked if anyone wished to comment.

1 Randy Nesbitt, the Village Attorney, explained that the quarry has been operated in its current
2 location for a number of years. In 2010 blasting started to occur at the quarry, and at that time a
3 number of noise and dust complaints were received. The owners of the quarry were cited for
4 Zoning Code violations. The case was contested, and the Judge who was assigned to the case
5 made it very clear that he was not going to order the quarry to be shut down. Instead, he
6 ordered that the Village and the owner of the quarry must participate in mediation sessions. The
7 existing quarry is considered to be a pre-existing, non-conforming use, or in other words, was
8 "grandfathered", and there is no requirement that it ever be shut down. Brandon Small, the
9 owner of the quarry has requested that he be allowed to expand the quarry on the condition
10 that the quarry must be closed in ten years. There will be two steps to the process which must
11 be followed with respect to Small's request. First, a Zoning Code text amendment will be
12 required which would allow a quarry as a conditional use in the B-1 District, and, if that
13 amendment is approved, then another public hearing must be conducted with respect to an
14 application for a Conditional Use Permit to expand the quarry. Nesbitt stressed that Village
15 officials have informed him that they have no intention of allowing quarries to be operated
16 throughout the Village, but, since they have been ordered to try to resolve this matter, they are
17 conducting this public hearing. If a text amendment is approved it would be possible to include
18 limiting language.

19
20 *Denise Bhirdo indicated that she does not wish to speak for or against expansion of the quarry,*
21 *but as past President of the Plan Commission firmly believes that a "sunset clause" and limiting*
22 *language which states that the regulations only pertain to the property which is the subject of*
23 *this hearing must be included in the text amendment.*

24
25 *Pat Duffy indicated that he is a former Plan Commission member and is fully aware of the*
26 *history behind this issue. He purchased his property from the University of Oregon for \$1,100,*
27 *and basically was informed that his land was devalued to "nothing" because of its close*
28 *proximity to the existing quarry. Duffy indicated that he firmly believes quarrying should not be*
29 *allowed anywhere in the Village.*

30
31 *Tom Sadler read a prepared statement aloud. In that statement he pointed out that a number of*
32 *problems have been created as a result of the operation of the quarry, and, therefore, he does*
33 *not support the proposed Zoning Code text amendment. He also does not trust the Small family*
34 *at all, and does not believe it would be wise for Village officials to grant them a Conditional Use*
35 *Permit.*

36
37 *Steve Musinzky indicated that he also owns property which is adjacent to the quarry, and read*
38 *a prepared statement aloud. A copy of that statement is hereby attached and incorporated by*
39 *reference.*

40
41 *Kathleen Hudson asked if it would be possible for the Village to appeal the Trial Court's ruling,*
42 *and Nesbitt responded that the Judge has not issued a final ruling yet. She then read a prepared*
43 *statement aloud in which she indicates that she moved to the Village to get away from dust and*
44 *noise and is concerned that a number of ground water contamination and health issues will*
45 *arise if the quarry is expanded.*

46
47 *Mary Kay Shumway indicated that she is a realtor and is aware that there are seven streets in*
48 *the Village which would be considered to be in the "impact zone". At the present time a*
49 *revaluation is going on within the Village, and the quarry expansion could have negative*

1 *impacts on property values. If she was selling a home near the quarry she would be obligated to*
2 *point that fact out to the potential buyer(s).*

3
4 *Carol Kennewig asked what would happen if Village officials "vote this down". She also asked*
5 *what would prevent the Smalls from asking that the Conditional Use Permit be amended if it is*
6 *granted. Kufrin responded that if a Conditional Use Permit is issued and an amendment is*
7 *requested, another Public Hearing would be required.*

8
9 *Shannon Stragola indicated that her property abuts the quarry. She and her family moved up*
10 *here from Iowa two years ago and were never informed that the quarry would be in their back*
11 *yard. It really upsets her that the quarry is there, and, unfortunately, she and her family*
12 *members no longer wish to stay in their home because there are so many noise and dust issues.*
13 *If the quarry is expanded there will be negative impacts upon families who live and work here*
14 *no matter what time of the year it is.*

15
16 *Kathy Kunstman of Fieldcrest Road indicated that she believes Village officials made a major*
17 *mistake by allowing the quarry to continue to be operated after it was sold by the Krist family.*
18 *She is concerned that more mistakes will be made if the proposed text amendment is approved.*

19
20 *Kufrin indicated that he did a lot of research regarding this issue and determined that the quarry*
21 *was, in fact, a pre-existing non-conforming use. Therefore, there was no alternative but to allow*
22 *the operations to continue after the property was sold.*

23
24 *Janet Janisse of Fieldcrest Road indicated that when she first purchased her home she did not*
25 *even know there was a quarry in the neighborhood. Now that the quarry is getting a lot of use a*
26 *number of dust and noise issues have arisen. Janisse suggested that the Village "buy em out and*
27 *get rid of em".*

28
29 *Judy Wegehaupt of Fieldcrest Road read a petition which had been signed by a number of*
30 *individuals aloud, and pointed out that all the petitioners are opposed to expansion of the*
31 *quarry. Therefore, they are requesting that Village officials not grant Brandon Small's request to*
32 *amend §66.0320(c) of the Zoning Code.*

33
34 *Jim Olejniczak, who owns vacant property on Cherrywood Lane, indicated that he is having*
35 *second thoughts about constructing a home on his property because the quarry is in close*
36 *proximity to it. He is very concerned about all the noise and dust issues which have been*
37 *complained about this evening.*

38
39 *Greg Kennewig asked, "How much is enough if the violations keep piling up?".*

40
41 *Nesbitt responded that there is no clear answer to that question. He did state that more*
42 *citations could be issued to the owners of the quarry, but there is no guarantee that the Village*
43 *will prevail.*

44
45 *Kathy Kunstman asked for clarification of the proposed Zoning Code text amendment language*
46 *and Kufrin complied with her request.*

47
48 *Kufrin also reiterated that if the text amendment is approved and Small wishes to proceed*
49 *further he would have to submit a Conditional Use Permit Application. Another Public Hearing*
50 *would be required, and if a Conditional Use Permit is granted Brandon Small and Village*

1 officials would have to sign a Development Agreement. That agreement would include a
2 number of conditions.

3
4 Mark Kunstman asked who decides what penalties are imposed for violations of the Zoning
5 Code.

6
7 Nesbitt responded that the Village Board is ultimately responsible for adopting regulations and
8 the penalties for violation of them.

9
10 Attorney Chuck Koehler indicated that when this whole process started the goal was to shut the
11 quarry down. A Judge with twenty-five years experience ordered that the parties must enter into
12 mediation, and in the spirit of compromise Small is proposing that a Conditional Use Permit
13 which states that the quarry will shut down in ten years be granted.

14
15 Greg Kennewig asked where the ten year time frame Attorney Koehler referred to came from,
16 and Kufirin responded that that was the time period which had been proposed by Small. It
17 would be possible for the Plan Commission to recommend a different time limit.

18
19 Steve Musinsky stated that he believes the main problem is that there is a lack of trust in the
20 Smalls. It really concerns him that none of them have even said that they "are sorry" about the
21 problems which have arisen to date.

22
23 At 7:19 P.M. Lienau asked if anyone else wished to comment, and when no one responded he
24 declared that the hearing was officially closed. A brief recess was then taken, and the
25 Commission members reconvened at 7:31 P.M.

26
27 Lundquist indicated that it is his understanding that all the neighbors agree that the quarry is "a
28 problem", and since they will be directly impacted by the proposed regulation amendments he
29 believes their wishes must be taken into consideration.

30
31 Baker noted that because there is a possibility that a specific deadline for operation of the
32 quarry could be established if a Conditional Use Permit is granted, he would be in favor of
33 recommending that the proposed text amendment be approved.

34
35 Grutzmacher stated that she is concerned that the audience members appeared to be very
36 confused about the procedures which would be followed with respect to Small's request. She
37 also indicated that that she believes having more control will benefit everyone.

38
39 Howard indicated that he is concerned that the proposed regulation amendments will affect
40 everyone in the B-1 District. He also can't visualize any conditions which would convince him
41 that it would be a good idea to open a new quarry in Sister Bay.

42
43 Lienau noted that he is directly negatively impacted by the quarry operations at his business
44 and his home, and definitely struggles with this issue. While he heard a number of his
45 neighbors voice their concerns loudly and clearly he does not believe Brandon Small has been
46 given an opportunity to describe what he actually wants to do, which is a due process issue.
47 With that said, he is in favor of recommending that the text amendment be approved and
48 proceeding to public hearing on an Application for a Conditional Use Permit.

49

1 Nesbitt noted that if Small's request gets "shot down" at this stage and Small alleges that he was
2 not granted "due process" the Trial Court will not be happy, as he ordered that the parties
3 attempt to resolve the issue through mediation.
4

5 *A motion was made by Howard that the recommendation is made to the Village Board that*
6 *Brandon Small's request to amend §66.0320(c) of the Zoning Code in such fashion that*
7 *quarries are allowed as a conditional use in the B-1 General Business District be denied. That*
8 *motion failed due to lack of a second.*
9

10 *A motion was made by Grutzmacher, seconded by Baker that the recommendation is made to*
11 *the Village Board that Brandon Small's request to amend §66.0320(c) of the Zoning Code in*
12 *such fashion that quarries are allowed as a conditional use in the B-1 General Business District*
13 *be approved on the condition that the Board establish a constraining condition(s). Motion*
14 *carried with Lundquist and Howard opposed.*
15

16 *At 8:32 P.M. another brief recess was taken, and the Commission members reconvened at 8:42*
17 *P.M.*
18

19 Kufirin noted that he will not be available for the September Village Board Meeting, and,
20 therefore, it was the consensus that this issue shall be addressed on October 20, 2015.
21

22 **Item No. 2. Discussion on Chapter 66.0404 – Boat and Trailer Parking; Consider a motion for**
23 **action if necessary:**

24 In June of 2015 Jackson issued a Notice of Violation to Beacon Marine for having boats parked
25 on a vacant lot in a residential district. The owners of that establishment have requested that
26 Village officials consider Zoning Code text amendments which would allow them to park boats
27 on their vacant lot.
28

29 Several of the Commission members pointed out that this issue has come up in the past when
30 the property in question was owned by Cal-Marine. At that time the decision was made that the
31 existing regulations should stand as Cal-Marine was deemed to have a detrimental non-
32 conforming use.
33

34 Connie Carlson was present and indicated that if Beacon Marine's request is granted their
35 clients would have easier access to their parking lot.
36

37 *A motion was made by Lienau, seconded by Grutzmacher that Agenda Item No. 2 – Discussion*
38 *on Chapter 66.0404 – Boat and Trailer Parking; Consider a motion for action if necessary, shall*
39 *be tabled until the next meeting of the Plan Commission. Motion carried – All ayes.*
40

41 **Item No. 3. Discussion on a proposed Mural Code; consider a motion for action if necessary:**

42 *It was the consensus that the proposed Mural Code should not only pertain to murals but all*
43 *types of public art.*
44

45 *A motion was made by Lienau, seconded by Grutzmacher that discussion on a proposed Public*
46 *Art Code shall be tabled until the next meeting of the Plan Commission. Motion carried – All*
47 *ayes.*
48
49
50

1 **Item No. 4. Discussion on §66.0501(b)(3)(e) – Accessory buildings in the front yard setback**
2 **area; consider a motion for action if necessary:**

3 At the present time accessory structures are not allowed in the front yards of properties which
4 are not on the water unless a Conditional Use Permit is issued to the property owner. A draft a
5 proposed text amendment was included in the meeting packets.
6

7 *A motion was made by Howard, seconded by Grutzmacher that a public hearing shall be*
8 *conducted on the proposed amendment to §66.0501(b)(3)(e) – Accessory buildings in the*
9 *front yard setback area, at the next meeting of the Plan Commission. Motion carried – All ayes.*
10

11 **Item No. 5. Plan Commission review of a zoning determination of front vs. side yard**
12 **placement of a propane tank at 2241 Maple Drive; Consider a motion for action if necessary:**

13 A complaint has been received that a propane tank is located in the front yard of a residence at
14 2241 Maple Drive. The Commission members reviewed an aerial photo of the property in
15 question, and determined that the propane tank was actually in the side yard of the property in
16 question; not the front yard. They did indicate that they would like to see the propane tank
17 screened.
18

19 **Item No. 6. Report by the Zoning Administrator regarding development activities, various**
20 **enforcement actions, and issuance of Sign and Zoning Permits:**

21 A copy of the Zoning Administrator's Report for August was included in the meeting packets
22 and the Commission members jointly reviewed that document.
23

24 **Item No. 11. Discussion regarding matters to be placed on a future agenda or referred to a**
25 **Committee, Official or Employee:**

26 It was the consensus that the following issues shall be addressed at the next meeting of the Plan
27 Commission:

- 28 • **A public hearing shall be conducted on the proposed amendment to §66.0501(b)(3)(e) –**
29 **Accessory buildings in the front yard setback area.**
- 30 • **Discussion on Chapter 66.0404 – Boat and Trailer Parking; Consider a motion for action**
31 **if necessary:**
- 32 • **Discussion on a proposed Public Art Code; consider a motion for action if necessary:**
33

34 **Adjournment:**

35 *A motion was made by Baker, seconded by Grutzmacher to adjourn the meeting of the Plan*
36 *Commission at 9:17 P.M. Motion carried – All ayes.*
37

38 Respectfully submitted,

39 

40 Janal Suppanz,
41 Assistant Administrator

December 4, 1012

Robert L Kufrin
Zoning Administrator
Village of Sister Bay
Sister Bay Administration Building
2383 Maple Drive
P.O. Box 769
Sister Bat WI 54234

Re: Door County Custom Stone Quarry Expansion

Dear Mr. Kufrin,

We are writing to you to express that we are adamantly and vehemently opposed to the expansion of the size and the operation of the Door County Custom Stone Quarry located behind the Mobil station on South Bay Shore Drive.

We purchased Lot 21 in the Orchard Highland Subdivision back in June 2011 with the hope and dream of building our retirement home because this area was quiet, clean and within the Village of Sister Bay. The allowing of this expansion would adversely affect not only our property but all the residential properties within the area. Therefore, we are extremely opposed to any and all expansion of this quarry or development of this or any type of noxious operation within the Village of Sister Bay for the following reasons:

- o The expansion would clear-cut existing trees, shrubs and vegetation on the proposed site expansion that do clean the air of today's current pollution.
- o The blasting and crushing operations will create noise pollution that will affect the areas residences. Any perimeter vegetation, existing or new, will have a limited effect on noise reduction.
- o The heavy equipment and truck traffic noise will also affect the area residences in the same way.
- o The vibration pollution from the crushing and blasting will be felt by all of the area's residences. There is absolutely no way of eliminating or even minimizing this pollution.
- o The heavy equipment and truck traffic vibration pollution will do the same.

- The dust pollution from the operation will become airborne throughout the area, and the wetting of the perimeter vegetation will have little effect on its reduction. My wife has asthma, which this type of pollution as well as carbon pollution will have an adverse effect on her health. Is Door County Custom Stone prepared to face litigation should this affect her if we build our Sister bay dream home and this quarry expands?
- The heavy equipment and truck traffic will also do the same.
- Dust and debris will be deposited by the truck traffic along the Village streets which will become airborne from any and all traffic, will stick to and damage any and all vehicles using these streets, and will become an eye sore.
- The truck traffic will cause congestion of the Village streets especially during the tourist season.
- The carbon footprint of this operation will expand adversely causing more carbon monoxide pollution from the heavy equipment and trucks.
- Any oil, grease, chemicals, etc. from the operation, heavy equipment and trucks will most certainly find its way onto the ground and streets and eventually into the area's waterways and groundwater.
- An access road to and from this operation will more than likely be created at the parcel along Fieldcrest Road, which will intensify the effects of this operation on the area's residences.
- The expansion of this quarry will create an even larger eye sore from the open quarry within the Village limits for decades to come. We now live near numerous quarries in Waukesha County which are very noxious and unsightly.
- The streets utilized by the truck and heavy vehicle traffic will be adversely affected in the area. This type of continuous heavy traffic will destroy the surfaces causing pot holes requiring numerous repairs and or resurfacing. This in turn will cause the Village to more than likely raise taxes to cover this required work by the Village. Should these streets require frequent resurfacing from this damaging traffic, this will also cause an inconvenience to the area's residences using these streets, let alone more dust and pollution.
- The increased commercialization of a residential neighborhood will forever change its appeal to current residents as well as future.
- All of the above reasons will also have a negative effect on the area's property values. If this quarry is allowed to expand, it will make it extremely difficult to sell any property, even our lot, let alone paying the higher taxes when the property values are decreasing. It will also not be very attractive for prospective buyers to move to this area.

There is absolutely nothing that Door County Custom Stone is able to do to eliminate any or all of the above adverse effects on the area's residences as well as the tourism trade.

The Village already does not allow any new quarries within its limits, and we do not want or believe that even expansion of this facility (which is a new type of quarry operation) would be in the best interest of the Village and its residents. We strongly request that the Sister Bay Plan Commission reject Door County Custom Stone's request to increase their operation within the Village limits! We would like to proceed with our dream retirement home on Lot 21 of Orchard Highlands Subdivision, and hope that the Village takes the responsible and appropriate action by rejecting this expansion request.

This area and Village is a beautiful, quiet and attractive area to retire. The Village has even taken appropriate steps to beautify the bay area. It would be a shame to allow this noxious use within the Village.

We look forward to a positive outcome for our sake and the area residences as well as the Village's.

If you have any questions and/or comments regarding our opposition to this expansion, please don't hesitate to call us at (262) 251-0797.

Sincerely,

Rich & Sandy Blum
Village of Sister Bay Property Owners
The Architectural Workshop, LLC
Owner/Architect

C: Door County Soil & Water Department
Heather Olson – Kelstrom-Ray Agency, Inc.
Richard Horbinski – Developer/Trustee – Orchard Highland Subdivision

Zeke Jackson

From: archworkshop@att.net
Sent: Thursday, August 13, 2015 2:00 PM
To: Zeke Jackson
Subject: Objection to Brandon Small Quarry Public Hearing
Attachments: 12-05-12 Sister Bay Stone Letter.pdf

Importance: High

Mr. Jackson,

We stand by our previously sent Small Quarry Expansion letter dated 12-04-12, see the attached. It would be a mistake to allow this proposed ordinance change to the Zoning Code to allow this quarry to operate under a conditional use permit. The the Zoning Code does not allow this type of operation within the Village limits now and it should not through a conditional use permit. The Zoning Code as it stands now is there to protect the existing neighbors form such a nuisance operation. Please accept our previous letter on our behalf as an argument against such an operation from being permitted.

Thanks.

Rich & Sandy Blum
(262) 251-0797

Zeke Jackson

From: Greg carol Kenneweg <gckenneweg@yahoo.com>
Sent: Monday, August 17, 2015 3:18 PM
To: Zeke Jackson
Cc: Greg Carol Kenneweg
Subject: Brandon Small's request to amend zoning code

Zeke, the purpose of this e-mail to formally express our concerns regarding the request to change the zoning code.

If we understand this correctly, by changing the zoning , it would allow the quarry behind Shopko to expand it's operations into an adjacent parcel and continue to operate.

Our concerns are the noise and dust this will create as well as the possibility of our home values decreasing. The notice does indicate the dust may be controlled by watering. How would that be policed and what assurances would we have this solution would actually be acted upon?

The biggest negative impact will definitely be the decrease in property values for the surrounding areas.

Though you may dispute this the outcome will obviously not be good.

How is this possible that a non-conforming zoning code can arbitrarily change to a conforming zoning code

simply because it doesn't suit a company?

Although the notice says we can voice our opinion it also states the Village Board has the final say.

We would hope the Village Board would allow ample time for the citizens of Sister Bay to discuss this.

Sincerely,

Greg and Carol Kenneweg
10541 S. Highland Rd
Sister Bay, WI 54234
(854-3408)

Zeke Jackson

From: MaryKay Shumway <shumway.mk@gmail.com>
Sent: Monday, August 17, 2015 4:23 PM
To: Zeke Jackson
Subject: Proposed B-1 Zoning Change for Quarries

Dear Zeke (and I am assuming this letter will be also forwarded to the Distinguished Village Trustees):

Having been immersed in the B-1 code over the past few years while working in Sister Bay, I need to say as a private citizen and a real estate Broker that the proposed change to allow quarries is a mistake. The code, I am told by those who worked on created it, was created for tourism, service and trade based facilities, working carefully with what little land Sister Bay has that is undeveloped.

Please note that I oppose this proposed change based on nuisance, prudent zoning and the public welfare.

I hope to attend the meeting if possible, but please put my comments on record. I realize the quarry wants to expand, but some expanding businesses may need to move—there is a lot of Light Industrial land in Liberty Grove that would be perfect for this operation. That does NOT include the Sister Bay B-1 zoning district, which is a careful compilation of trade, tourism and service facilities, designed to strengthen the business districts and allow for careful growth that complements the nearby residential neighborhoods. We can hear the quarry operating at 6 a.m., half a mile away. It's a nuisance in its existing area.

Allowing this use would be a mistake.

Best wishes,

MaryKay Shumway

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Hearthside

10569 Fieldcrest Road
Sister Bay, WI 54234
920-854-7225
Fax 920-854-9048

Sister Bay Administration Building
2383 Maple Drive
Sister Bay, WI 54234
Fax 920-854-9637

August 22, 2015

Plan Commission:

Regarding the request for an amendment to the Village's Zoning Code which would allow quarries in the B-1 District as a conditional use.

I am against allowing an amendment to the Zoning Code which would allow quarries in the B-1 District. Even as a conditional use, this is not acceptable for the residents who live at Hearthside. We are able to live with the noise and dust from the quarry that presently operates near Shopko. Because of the distance away, it does not disturb their basic quality of life.

But to have a quarry in our back yard as a conditional use for 10 years would have a major impact on the quality of life for our residents. Just imagine you have 10 years or less left to live, you are dependent on your present living arrangement for care and comfort, and because of an unforeseen change in the town's zoning code, you have a quarry for a neighbor.

Sincerely hoping the request is denied,



Martha Coventry
Administrator

Hearthside Assisted Living

DATE: August 26, 2015
TO: Village of Sister Bay Plan Commission
FROM: Paul Kelnhofer, adjacent property owner
RE: Ordinance change to allow quarries

The Plan Commission should deny the applicants request to change the zoning code to allow quarries in the B-1 district, or anywhere within the Village for the following reasons;

- 1) The change would **not be in the best interests of the public** and would **not promote the health, safety, welfare and convenience of the public.**
- 2) The change would be **contrary to the Villages own land use plan established to protect residential neighborhoods from impacts of non-residential uses not appropriate for the neighborhood. Residential areas should be distanced, buffered, or otherwise mitigated from physical hazards, unhealthy conditions, and protected from traffic, noise, and incompatible uses.**
- 3) The change would be **contrary to the Villages Land Use Projections because the Village has not allocated any land for industrial uses on the 2020 General Plan Design and the Village does not wish to encourage industrial uses within the Village.**

A quarry operation is simply an inappropriate use of property within the Village of Sister Bay. The Village properties must be considered in its entirety and not just in isolation within one zoning district. The primary use of Village properties is residential, both primary residential and tourism related residential occupancy. The businesses within the Village offer services and support for those residential neighborhoods and for the tourist related occupancy. Changing the ordinance to allow quarries, even with conditions, is totally inappropriate and is not in the best interest of the residents and property owners of Sister Bay.

The existing quarry should be issued orders to cease operations because the use has changed, expanded, and intensified in violation of the non-conforming status.

By the quarry owner's own admission in his letter of November 15, 2012 the character of this operation has already intensified and expanded, and even more expansions are contemplated; *"there will be considerable and ever increasing need to blast."* *"As we quarry deeper, there is a greater need for crushing."* *"Commercialization. The quarry will become more commercialized as we will be selling gravel in addition to decorative stone. We will need another loader so we will have one to quarry and one to feed the crusher. This will also lead to dump trucks in and out of the quarry on a regular basis."*

Expansion or enlargement of a nonconforming use which changes the use invalidates not only the illegal change but the legal nonconforming use as well. *Village of Menomonee Falls v. Preuss*, Case No. 98-0384 (Ct. App. March 17, 1999) (publication recommended) citing *Waukesha County v. Pewaukee Marina, Inc.*, 187 Wis.2d 18, 31, 522 N.W.2d 536, 542 (Ct. App. 1994).

The penalty for illegally expanding a nonconforming use is severe. An illegal expansion of a nonconforming use invalidates the legal nonconforming use as well as the illegal change.

This quarry has been in existence for decades as a very small and incidental operation used occasionally and in a casual way. This was part of the Krist's Grocery property and the quarry

was a secondary use. Over the years the neighboring properties were developed as residential neighborhoods. The very low key, casual operation of the quarry was of no concern to those establishing residency in the area.

When Krist divided the property and sold the quarry off separately from the Grocery Store, that is when the quarry was no longer a secondary use of the main parcel. There is no way that transaction should have elevated this non-conforming use to the primary use of the property.

A property owner does not acquire a "vested interest" in the continuance of a nonconforming use, and such status will be denied if the specific use was casual and occasional, or if the use was merely accessory or incidental to the principal use. *Walworth County v. Hartwell*, 62 Wis. 2d 57, 214 N.W.2d 288 (1974).

I am aware that the Court has ruled that the current operations are normal procedures for quarries. The Village should appeal this as either the Court was not aware of how this use has expanded and intensified, or the Court was simply in error.

This quarry operation is not the same use of the property that has existed for decades. The character has changed by intensifying and expanding operations.

The power to regulate nonconforming uses includes the power to limit the extension or expansion of the use if it results in a change in the character of the use. *Waukesha County v. Pewaukee Marina, Inc.* 187 Wis. 2d 18, 522 N.W.2d 536 (Ct. App. 1994).

The current quarry operation is not operated in the best interests of the public and does not promote the health, safety, welfare and convenience of the public.

A nonconforming use, regardless of its duration, may be prohibited or restricted if it also constitutes a public nuisance or is harmful to public health, safety, or welfare. *Town of Delafield v. Sharpley*, 212 Wis. 2d 332, 568 N.W.2d 779 (Ct. App. 1997), 96-2458.

Again I respectfully request that the Plan Commission deny the petition to change the ordinance to allow quarries, by conditional uses, anywhere in the Village. And I also ask that the Village order the current quarry to cease operations.

Submitted by:

Paul Kelnhofer
10805 N Bay Shore Drive
Sister Bay, WI 54234

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Owner of 34 acres adjacent to the existing quarry.

PLAN COMMISSION MEETING - August 26, 2015
Text Change Amendment - Our Comments

It seems ironic that a Village with an extensive zoning code which details even windows and siding is now considering expanding a quarry operation in a residential area.

Allowing a quarry as a conditional use in the B-1 business district is an open invitation to expand the problem. A permit for a conditional use can not just be denied without good reason. Once a conditional use permit is granted for a quarry in one business district, how do you deny an identical or similar conditional use permit in another part of the business district to another operator, or the same operator?

In addition, if a quarry is allowed as a conditional use in the B-1 Business District, any land owner in that district would be able to register their land under NR135.54 with the DNR as a nonmetallic mineral deposit. Registration would prevent a unit of government from :

1. Permitting the erection of permanent structures, by zoning, granting a variance, or other official action or inaction, or
2. Otherwise permit the use of registered land in a manner that would permanently interfere with the present or future extraction of the nonmetallic mineral deposit.
NR135.62(1)

Registration applies to contiguous land under common ownership. NR135.57

Registration of a nonmetallic mineral deposit is good for 10 years, and can be renewed automatically for unlimited 10 year periods as long as active mining is taking place.

Zoning text change amendment takes effect. So does NR 135
The same day the quarry, or any other land owner, applies for registration.
The applicant has one year to complete application requirements.
Once complete, essentially unlimited time to operate.

Per the DNR, repealing the text change to limit quarry expansion to one owner will almost certainly end up in court.

It seems the original frac sand bill was political retribution, but the issues in the bill have been around for a long time. Legislation creating NR 135 was passed under the Thompson administration.

Regarding property values, in a talking points document given to the Plan Commission, (June 2015 Plan Commission packet, page 54, Item 6), the quarry operator states he talked to a realtor about how an active quarry affects abutting property values. Lori Flick of Door Real Estate told him "she could not put an exact number on it but most buyers will not even consider purchasing property next to an active quarry". The quarry operator further states, "The (future) planned closure of the quarry will drastically increase property values", apparently ignoring how the operation of the quarry today is decreasing property values.

What is the value of a property which can't be sold? Is the Village going to lower assessed property values or suspend property taxes for these "unsaleable" properties? Will the Village guarantee home loans, mortgage equity, and value of properties in the area around the quarry?

Some industrial sand mining companies have addressed mining's effect on property values. If a property sells below fair market value in less than 6 months, the mining company pays the difference. If it does not sell in 6 months, the mining company buys the property.

The Village zoning code, Conditional Use Permits, Sec 66.1535(i)(4), Neighborhood Protections, states in part, "The conditional use will not be injurious to the use and enjoyment of other property in the immediate vicinity for the purposes already permitted, nor substantially diminish and impair property values within the surrounding area".

A quarry as a conditional use would be contrary to the Villages own land use plan.

Village Comprehensive Plan – Chapter 8,
Residential Land Use Strategy,

Policies:

Protect residential neighborhoods from impacts of non-residential uses not appropriate for the neighborhood. Residential areas should be distanced, buffered, or otherwise mitigated from physical hazards, unhealthy conditions, and protected from traffic, noise, and incompatible uses.

Five Year Incremental Land Use Projections:

The village has not allocated any land for industrial uses on the 2020 General Plan Design. The village does not wish to encourage industrial uses within the village.

In the Village of Sister Bay meeting minutes, Tuesday, May 13th, 2008. Bob Kufrin states Keith Krist has not complied with a number of conditions of the Development Agreement he entered into with the Village regarding the Pamida project. One of those conditions was that the access road to the quarry must be paved. At a previous meeting, residents have pointed out this unpaved road is part of the dust problem. If the Village can't get compliance with this agreement, why should residents and businesses expect compliance with any of the conditions in the proposed agreements?

My wife and I are opposed to expanding quarrying to the entire B-1 Business district

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