

ONEIDA COUNTY BOARD OF ADJUSTMENT – PUBLIC HEARING

Tuesday, June 12, 2012

1:00 P.M. – Committee Room 2, Second Floor

Oneida County Courthouse, Rhinelander WI 54501

Chairman Harland Lee called the meeting to order at 1:00 p.m. in accordance with the Wisconsin Open Meeting Law.

Roll call of Board members present: John Bloom, “here”, Elmer Goetsch, “here”, Guy Hansen, “here”, Harland Lee, “here”, Alternate Phil Albert, “here”, and Alternate John Young, “here.” Bob Rossi is excused from the meeting today.

County staff members present: Karl Jennrich, Zoning Director; Lila Dumar, Secretary III; Brian Desmond, Corporation Counsel

Other individuals present: Chris Baker, Carolyn Lurvey, Karen Baker, Betty Baltz, Ken Baltz, Jennifer Zakrzewski, Mark Zakrzewski, Robert Bach, Carla Bach,

Chairman Harland Lee stated that the meeting will be held in accordance with Wisconsin open meeting law and will be tape-recorded and sworn testimony will be transcribed. The Board of Adjustment asks that only one person speak at a time because of the difficulty in transcribing when several people are talking at once. The Board of Adjustment is made up of five regular members and two alternates, one of which is present today, who will take part in the hearing until the public hearing is closed, at which time alternates will not take part in the deliberation. Anyone wishing to testify must identify themselves by name, address and interest in the appeal and shall be placed under oath.

Chairman Harland Lee swore in Chris & Karen Baker, Carolyn Lurvey, Karl Jennrich, Betty Baltz, Robert Bach, Mark Zakrzewski,

Secretary Elmer Goetsch read the notice of public hearing for Appeal No. 12-003 of Christopher & Karen Baker, and Others, 7504 County Road D, Lake Tomahawk, WI 54539, objecting to the issue of Conditional Use Permit (CUP) No. 12-55 to Pitlik & Wick, Inc., 8075 County Road D, Eagle River, WI 54521, approved on March 21, 2012, which amends existing CUP No. 736-02, originally granted on June 20, 2002, by deleting Condition No. 2 which specifies a project completion date of ten years after issuance, June 20, 2012. Appellants also assert that the CUP does not comply with all nine requirements for approval as specified in Section 9.42(E), Chapter 9, Oneida County Code of Ordinances.

The Notice of Public Hearing was published in the Northwoods River News, weekend editions of May 26, 2012 and June 2, 2012; and was posted on the Oneida County Courthouse bulletin board on May 7, 2012. Mr. Goetsch read the certified and first class

mailing distribution list into the record.

Mr. Goetsch stated that prior to the hearing on today at approximately 10:00 am, the Board visited the nonmetallic mine at 7524 County D, Lake Tomahawk, Wisconsin. No measurements were taken at the site. Measurements were not required as the appeal is a request for interpretation of Section 9.42 E. The Board noted the existence of excavation; piles of gravel, sand, stones; and one front end loader belonging to the Town of Lake Tomahawk. Two Town of Lake Tomahawk trucks were entering the pit as the Board of Adjustment was departing. The Board noted that the excavation site is some distance from County D, approximately ¼ mile.

Chairman Harland Lee stated that the Board will hear testimony from the appellant/agent first and then the opposition. Following that, the appellant and opposition will have an opportunity for rebuttal and then closing statements. The public hearing will then be closed from further testimony. Consideration and additional questions can be asked by the Board members of the appellant or the opposition during deliberations. You may stay for the disposition of the appeal. Upon conclusion of the deliberation of the Board, the Chair will call for a motion and a second, and a roll call vote will be taken for the decision of the Board.

Elmer Goetsch read into the record, Oneida County Code of Ordinances, Section 17.04 Powers and Duties of the Board.

Motion by Elmer Goetsch, second by Robert Fries that the entire record of previous proceedings before the Oneida County Planning and Zoning Committee relating to an application for a Conditional Use Permit by Pitlik & Wick be incorporated into the record of these proceedings before the Oneida County Board of Adjustment for appeal #12-003 of Chris & Karen Baker. With all members voting "aye" the motion carried.

Chris Baker: The basic gist of this is the top four items (General Standards) is what we feel, for us that are going to be our focus today. From our perspective, we are the newest kids on the block, so to speak, in the area. And we purchased the property 3 years ago and part of the negotiating process with the owner was that this was a temporary permit. So it wasn't going to have long term effects. Hence, the surprise, when we found out that they were starting a permanent pit. We know from personal experience that it definitely has effects on the property. And we are afraid that more, a deeper impact will be felt if this is turned into a permanent pit. The previous owner also had difficulties selling the property. We are concerned with that now that it is permanent. We don't want to have issues with that down the line. The other thing that we noticed that we are downwind from the pit, which is different than some of the pits I've looked at. I've looked at 7-8. We are directly downwind from the pit, directly southeast of the pit. So the noise, dust and anything that happens down in that pit needs to be carried right through us. So it does impede our enjoyment during the day. If we want to spend time outside, the action of dump trucks slam, bang, and the speed

that some of the trucks go down the graveled road. Sometimes when it is busy, they are waiting on Hwy D, waiting for the other guy to come out so they wait. It's scary being in that close proximity. It seems a long ways away, but when you are standing in your back yard raking, or just enjoying a campfire, or whatever, it's seems frighteningly close. It could be just because of the area, could be because there's not a whole lot of other noise incurred by the houses. And it is a natural setting. I've seen other pits around the area seem to be on some major highway where there is other noise and helps to blend in the noise. Last year wasn't as bad of course, and it was a slow year. The previous year I remember being outside and the noise was loud enough, it actually forced us away because it was so disturbing. I recall one time when I was at Captain Hook's in Town, and the gravel pit was functioning and we could actually hear it in Town which is miles away. So that's how loud it is. But other issues we have are going up and down the road, rumbling the jake breaks. Pretty constant noise when it is busy and it's early and it goes until late. And there doesn't seem to be much....we thought we heard an earthquake a couple of times, a very slight one. The house actually shakes. Many days I have woken up to the noise, it does start early, and I am an early riser. It is disturbing. Especially when Karen and I bought this place, we were looking forward to being out in the country a little bit and enjoying the serenity of the river. We also have concerns about the trucks driving up and down the highway; it's a 55 mile an hour speed zone there. There is a corner around the one side, sometimes if we pull out by the time we get around...it's just part of this whole scenario. The last thing I remember is that I had my son paint some of the garage this past week. And I told him to clean up the under side of the eaves and as I watched him do some of this, it literally looked like smoke; it was a real fine grey dust. That our perspective. The values of the properties are being depreciated.

Elmer Goetsch: You say you bought it three years ago but you believe it was temporary.

Chris Baker: We questioned the pit and the owner said it was a temporary pit and it would absolve in a few years. That was part of our buying, that it wouldn't be around, so why worry about it.

Elmer Goetsch: If the pit were to continue with more strict conditions than are on the CUP...?

Chris Baker: I suppose there could be a discussion. Yes. As far as some way of getting around, taking care of our limitations, as far as not being able to be outside.

Harland Lee: When the pit is operating, how frequent is that?

Chris Baker: Full operation. Stuff being hauled out; That's a daily occurrence. All summer Monday through Saturday.

John Bloom: In your opinion, is the dust comes mainly from the trucks on the gravel road or the pit?

Chris Baker: A combination, but I think the dust that I have encountered the most is coming from the pit.

Harland Lee: When it's in full operation. Is that what you say?

Chris Baker: Yes, and with a combination with the trucks driving down the road.

Guy Hansen: It sounds like your main objection is the truck traffic. When does it start in the morning and when does it end in the evening.

Chris Baker: I'd say as early at 5:30 am and to dark. It was endless when they were working on Hwy J. This morning there were 20-40 trucks the came to the pit. The trucks are bothersome, but the crushing and the noise of crushing is an issue with me.

Brian Desmond, Corporation Counsel: Did you ever talk to zoning about the permit for the gravel pit?

Chris Baker: No.

Brian Desmond, Corporation Counsel: Have you ever...that land that the gravel pit sits on is zoned residential and farming. Have you ever reviewed that zoning district to see what other uses could be allowed?

Chris Baker: No. I have not. Not until recently.

Brian Desmond, Corporation Counsel: There are other uses with loud noise, such as a skeet range?

Chris Baker: I just thought it was for agricultural, farming.

Brian Desmond, Corporation Counsel: The property between your back property line and the pit, what is the make up of that?

Chris Baker: I would say partially wooded.

Brian Desmond, Corporation Counsel: There is some concern about asphalt, the hot mix plant, that sometimes it is operated in that pit. Do you know how often it is, what your recollection is.

Chris Baker: I'm not going to...but there are others here that would be more up on that.

Brian Desmond, Corporation Counsel: Very good.

Mark Zakrzewski: It was before this permit was issued. Dan Kloes said, "Give me 5 years, I'll get a haul road back to my 40's, get my driveway paved, get your driveway paved." But it's been a lot longer than 5 years. I noticed this morning; I used to go to work fairly early. Now I know why I don't. It's the pit. This morning at 6:00 there were about 30 trucks out there before you came out there. And that not even construction, that's just maintenance. There have been times there have been 100's of trucks there. The asphalt plant is bad. I would say it comes in probably once a month for 3-4 days at a time. As low as that gravel pit is...it comes right over the crest and seeps into the woods and into our houses. It's a fog sometimes. My property is pretty close to them. I never knew about this meeting. I found out later. Between that, and being zoned single family, quiet neighborhood. You wouldn't imagine a 100 trucks coming through single family. It's hard to stay at home and enjoy it. I'm always going somewhere.

Harland Lee: How long have you lived there?

Mark Zakrzewski: 25 years.

Harland Lee: Have you ever come to any of these hearings that have come up periodically?

Mark Zakrzewski: I was never notified. I'm a little over 100 feet, but I'm right there.

Harland Lee: You've never made any objection before?

Mark Zakrzewski: Dan and I have been good friends. It's temporary; it's going to end soon. But when I found out it was going to be forever, that makes it hard. Knowing that you are not going to live in your house, at times, forever.

Betty Baltz: My house is right next to Mark's. We bought the house when we retired. The asphalt smells are so bad...that I got a sore throat and I had to take aspirin at night to sleep. The sounds are morning until night all day long. My allergies are kicking up. The smells and the dust. I can vacuum the house and dust and a day later I can write my name in the dust. That's from the crusher. And I'm sure you gentlemen saw this morning how strong the winds can become.

Harland Lee: Have you ever come to any of these hearings that have come up periodically?

Betty Baltz: No. We didn't know. When we bought the house we were told it was a temporary permit—a 5 year permit. We were told by the realtors. We thought it would

be done in 5 years. We didn't even know about the asphalt plant or the crusher. We thought it was just a gravel pit. You load up and go out.

Brian Desmond, Corporation Counsel: Did you ever talk to zoning about the permit for the gravel pit before you purchased the property?

Betty Baltz: My daughter talked to all of the realtors and they had the inspections done and things like that. So I'm not familiar with that. But the realtors made sure the septic and everything else was good. And they told us it was a temporary pit.

Robert Bach: I live approximately $\frac{3}{4}$ mile away. As far as the noise is concerned, it can be heard from our house, especially the crusher. It is bad, even where we are. Nobody was notified of the public hearing. It was in the paper, I'm sure, but not everybody reads that. I would think something would be done, by mail, for something like that.

Harland Lee: How long have you lived there?

Robert Bach: 25 years.

Harland Lee: Have you ever come to any of these hearings that have come up periodically?

Robert Bach: We just heard about it. Approximately a month ago.

Harland Lee: But nothing else, in the previous 25 years?

Robert Bach: No.

Guy Hansen: What direction from the gravel pit do you live?

Robert Bach: Southwest.

Carolyn Lurvey: I am the environmental engineer for Pitlik & Wick. I have worked for my family's company my entire life. I can tell you that we are very proud of our employees and on a daily basis our company focuses on four areas. Safety, quality, environment and production. And these three areas are obviously very much intertwined and are crucial for our success as a company. We also take great pride in our working relationships with our fellow business associates and neighbors. We have come before the Planning and Zoning Committee before and had neighbors testify on our behalf about the relationships. It is one of the top things we concentrate on. I am not aware of any complaints that have been filed with the Town of Woodruff, Oneida County or even with our company over the years. Back in 2005, there were some residents on Poplar Drive that had a concern that trucks going between Hwy D and

Woodruff Road, the trucks used that as a cutoff. And they went to the Town Board and they tried to get the Town Board to pass an ordinance that no trucks was allowed on that Town Road. The Town Board did not want to do that. So the people came to us with their concerns and we worked with them and we worked it out. I have a letter from one of the gentlemen thanking us for our help. We keep good working relationships because this is where we do business. We live here, we work here, we play here, we employ a lot of local people, and we pay taxes here.

Harland Lee: How long do you bring crushers into the pit?

Carolyn Lurvey: You have to remember how we run our business. You go to these gravel pits because of the demand for the gravel, hot mix, and products we produce.

Harland Lee: So you have pits throughout the county in different areas and you move your crushers around.

Carolyn Lurvey: Yes. And obviously the ability to have more pits throughout the county, gives a cost effective products for the tax payers and private individuals who buy our products. It leads to less trucking, more convenience. If we didn't have them disbursed throughout the County we wouldn't be able to be successful bidders on projects.

Harland Lee: As far as this particular pit. How often are you crushing?

Carolyn Lurvey: In the last ten years the hot mix plant has been there for five of the years, on a portable basis. It averages 11 days a year. One year it was there for 4 days. Another year could be more. In the last ten years the crusher has been there 9 of the years. It averages 14 days. Same thing. One year it was there for 8 days (Hwy J). The crusher that year was there for 41 days. Otherwise, it is on a portable basis. We've never been there more than one setup. It depends on the project. Often times we are there to crush gravel for the Town of Lake Tomahawk. Last year the hot mix plant was there for the County Highway Department, they were paving County D by the Rainbow Flowage. We sold them hot mix.

Harland Lee: So the bigger use of the pit on a daily basis is for trucks coming in, loading the product and leaving.

Carolyn Lurvey: Yes. Like today, the Town of Lake Tomahawk was there. We don't necessarily haul gravel at all.

Harland Lee: So its people contracting with you.

Carolyn Lurvey: It's mostly the Town of Lake Tomahawk. There are private contractors. They are allowed, but primarily it is the Town of Lake Tomahawk. We do adhere to our hours of operation. They change from site to site. And we are going according to the conditional use permits.

Harland Lee: Here it is 6:30 am – 7:00 pm Monday-Friday and Saturday 6:30 am – 2:00 pm and not on Sundays and Holidays.

Carolyn Lurvey: Right.

Harland Lee: We've heard testimony that it starts before that and goes beyond that. Are you aware of that? How would one go about policing that?

Carolyn Lurvey: It would probably be me, checking our operators more. It could be trucks waiting for the plant to start up. We are very cognizant of our hours. Usually in the last few permits, we are confined to 6:00 am – 7:00 pm. The construction season is very short. Our hot plants don't usually start up until May. And they are shutting down the end of October. The crushers can go earlier and later. The construction season is only so long and we try to get our work in when we can.

Elmer Goetsch: The question of hours. The current permit you have doesn't mention crushing and hot mix asphalt hours.

Carolyn Lurvey: Yes and they usually don't. I've gotten all of our permits over the years; hours of operation are for trucking and operating time.

Elmer Goetsch: Crushing. That's quite early for crushing.

Carolyn Lurvey: The operations of the crushers are extremely regulated by the DNR, the Air Program, Stormwater Program, Wastewater Program, Emissions, EPA, Reclamation Permit, Recycling Division, and Air Permits. This is the DNR's job. They do not grant you a permit until you meet air quality standards.

Harland Lee: When we were out there this morning, you indicated that if you did any future expansion, it would be to the west and east.

Carolyn Lurvey: We could go to the west.

Harland Lee: One of the concerns is the depth of the pit. Do you have any idea how close you are to the water table?

Carolyn Lurvey: Well, the last time we came in for conditions to be changed, it was 1615 feet. Just above the ground water. In one area of the pit would have...we are not going any deeper.

Harland Lee: I did not observe any water this morning. But, I just wanted to know how close you were.

Carolyn Lurvey: And water is part of the hot mix process.

Phil Albert: There is no gate on the front entry way.

Carolyn Lurvey: Yes there is. Right by the blacktop and the gravel. It's got our lock on it and Dan Kloes has one.

Phil Albert: It's open.

Carolyn Lurvey: A lot of times we have been leaving it open, quite frankly, for the truck drivers. But Dan Kloes is right there.

Phil Albert: Have you ever been approached by the neighbors with any suggestions on the daily operation?

Carolyn Lurvey: No.

Jack Young: Do your people work 5 days a week, or do they work 4 10's during the summer?

Carolyn Lurvey: No. We usually work 5 days a week. We actually work half days on Saturday when we are really busy.

Jack Young: Oneida County works 4 10's and the Town of Crescent does. They do that for a reason. Friday is a busy day on the highway. They don't want those trucks on the road.

Guy Hansen: Just to verify, the environmental controls you have on your equipment, you have spray for dust control on the crusher and a bag house for dust control on the asphalt and air emission standards for the crusher and asphalt.

Carolyn Lurvey: When the DNR issues a permit they actually run emission modeling, they engineer, go through all the National Air Quality Standards to make sure, based on your equipment and annual production. It is part of their permitting process. That is all controlled. The bag house is kind of like big vacuum. It traps the dust in that drum.

Guy Hansen: Do you or the DNR sample the emissions? Annually or less?

Carolyn Lurvey: For emissions from the hot mix plant we have to do a stack test every three years.

Guy Hansen: And in this testing, are you compliant?

Carolyn Lurvey: Yes.

Guy Hansen: As far as modifying something, if the neighbors did approach you, would you be willing to discuss..?

Carolyn Lurvey: Yes. We always do. They can talk to me or my brother Brian. If they are reasonable requests, in our eyes. For the most part we work with them, as much as we can.

Harland Lee: Mr. Baker, you are the principle appellant. I would appreciate it if you would return to the table. Do you have any questions for Pitlik?

Mr. Baker: As you expand, you will be approaching closer to our property. What are your plans as far as expanding to the south?

Carolyn Lurvey: Generally we try to stay in the area we are currently in, as long as there aggregate and quality there. We try to go deeper, as far as we can. We never clear 20 acres and use 5. We clear as we go. When we open up the areas we salvage the top soil. I can't say exactly what direction we will go, but in the last few years we have been more in the south.

Carolyn Lurvey: That is all controlled. That is a rotating cylinder and all goes through the bag house. The bag house is kind of like big vacuum. It traps the dust in that drum.

Mr. Baker: What about the noise? Do you consider the noise that the neighbors have to deal with?

Carolyn Lurvey: Yes, we do. We've done noise studies on decibel readings on the hot mix plants and crushers. We have had neighbors a lot closer to the pit that have less woods in between, and we don't hear complaints about the noise like I am hearing today. We continue to look at the noise data. The Safety Officer looks at the decibel readings; he goes out with a meter 100 feet from the plant, 500 feet, 800 feet. The best thing right now is that State land, that's a sound barrier. The back up alarms on our trucks and motors, you can't disconnect them. They are there for safety.

Karen Baker: I'd like to address the ongoing question of zoning. All of us have reiterated. All of us were told and research indicated that the CUP was a temporary grant. At that time, we all knew there was an end date to this. We were being good

neighbors. When we purchased our property, it was a huge consideration. We knew that the property had been vacant for over two years. The property was in disrepair. And we took that risk of buying the property, investing our dollars in this, knowing that the CUP was going to expire. We had no reason to approach zoning at that time. At the time that we heard about the new CUP through the grapevine, we did feel that we should have been notified. And if they were being a good neighbor, we would have been notified. This is where some of concerns are. We are looking at not being able to enjoy our property.

Mr. Harland: Mrs. Baker, at this point in the hearing, I am asking you to ask Pitlik questions, not to make additional testimony, which is what you are doing. I would ask you if you have questions for Pitlik, to do that now.

Karen Baker: I would ask why as a good neighbor, we were not made aware of that application?

Carolyn Lurvey: We just follow the rules that are put in place by the permitting process, like we do in all towns, all counties. We submit the application and go according to the current requirements.

Brian Desmond, Corporation Counsel: Do you have any data over the last ten years regarding what you average, when you first started using that pit in any given year, and when you generally stop using a pit in any year. Is it generally six months a year, or when the snow is gone until the first snow fall? Do you have an average time frame?

Carolyn Lurvey: As far as the plant being there, or just activity?

Brian Desmond, Corporation Counsel: Activity.

Carolyn Lurvey: Roughly May to the end of October. But once those gravel piles are there, Lake Tomahawk will go in as needed for their road gravel. Same with the Town of Woodruff. Oneida County is allowed to go in there for winter sand. The same thing.

Harland Lee: The issue of notification has come up a number of times. Recognizing the fact that the public has an obligation to be aware of things and know where things are published and to respond to those things. How do you respond to the comments regarding notification of various meetings and hearing and so forth?

Karl Jennrich: Section 9.42 CUP Application Review Process. Town Recommendation, Notice and Public Hearing. Requires us to publish a Class II notice pursuant to Chapter 985, WI Stats. In addition, at least 10 days prior to the date of the public hearing, written notice of the application and public hearing shall be mailed to the following:

1. The clerk of any municipality exercising extraterritorial jurisdiction where the proposed conditional use is located; 2. The clerk of the town where the proposed conditional use is located; 3. The applicant. As a courtesy, we try to send out notices to adjacent property owners; those are property owners who actually abut the property. So if you look at the file, notices were sent to Kloes, and American Legion Highlands. I also sent out notices to the adjacent property owners.

Harland Lee: Is that required by statute?

Karl Jennrich: No.

Harland Lee: So you met your statutory obligations. Is that right?

Karl Jennrich: Yes.

Harland Lee: The Town of Woodruff is involved in all of these hearings.

Karl Jennrich: Yes, we are required to send notices to the Town of Woodruff. In particular, when I was contacted by Pitlik & Wick, I did contact Mike Timmons to have it on an agenda. The first thing I always ask is: Do you have a current CUP? Because if at that time we are opening up a CUP it is possible to address any concerns of that municipality. I don't believe that Mike Timmons, or Larry Greschner before him, has ever received any complaints regarding this non-metallic mine. I have not heard any complaints about this non-metallic mine.

Harland Lee: It is my understanding that the history of this CUP, not only has the County made notices available and had hearings and so forth, but the Town of Woodruff did also have this on their agenda and had it published according to whatever the requirements are. And have from time to time made comments about items that ought to be included in the CUP, such as the last one regarding fire and safety hazards. All of this history has been supported by the Town of Woodruff.

Guy Hansen: You have several gravel pits throughout this area. This is the only pit in the Lake Tomahawk area.

Carolyn Lurvey: Correct.

Guy Hansen: Does anybody else have a gravel pit; say within 5-6 miles of your pit there.

Carolyn Lurvey: Not that I'm aware of.

Guy Hansen: People are allowed to haul from there. You said you make a gravel pile for the people you sell gravel to. Lake Tomahawk, Woodruff, Oneida County. Are there other people involved?

Carolyn Lurvey: It's not that we make specific piles for them. There are contractors...we sell truck loads too. We do that also.

Guy Hansen: Do you know if this is Lake Tomahawk's only source of gravel?

Carolyn Lurvey: I don't that. But I do know that it is pretty consistent, as far as having gravel for them.

Elmer Goetsch: If this appeal is granted, and the permit ends, what impact would that have?

Carolyn Lurvey: We would lose a very valuable gravel source for the area. For example, in 2009, Hwy J was being constructed. Without this pit, the chances of us winning a building project like that are very slim. We would have to haul from 30 miles away. That is the most important thing, having gravel pits in different towns to do less hauling. Projects are done faster, more timely. More convenient to the traveling public. It would be devastating honestly. It is a very valuable source for the last 15 years. Asking for the indefinite time frame, we are not looking at changing our operations because we asked for the permit not to expire. We are not planning to move a hot mix plant in there permanently, it will continue as it has on a portable basis. This is the fifth CUP revision on this site; we are looking for longevity in business. So if we bid a job in the fall that we won't be closed the next June.

Elmer Goetsch: What if you were granted part, by putting a condition of no hot mix plant operation; or the crusher. You could have gravel and block and such. How would that affect you?

Carolyn Lurvey: You can't make gravel without a crusher. If the plant couldn't operate the pit would close. You can't make gravel without a crusher.

Elmer Goetsch: What about asphalt?

Carolyn Lurvey: If we couldn't operate a hot mix...

Elmer Goetsch: What if a condition was imposed of no hot mix plant?

Carolyn Lurvey: Same thing. We wouldn't be able to go on with business the way we have in the past. We wouldn't be able to supply hot mix from that area for the prices we currently do. We would lose the work. We do a lot of work for the towns in that area.

Elmer Goetsch: You'd lose the business in that area? Is that what you are saying?

Carolyn Lurvey: Probably. The Town of St. Germain would have to start supplying Lake Tomahawk and Woodruff with black top. Or Arbor Vitae or somewhere else where there is a gravel pit. Chances are we'd have to haul it from another 20-30 miles away it wouldn't be economical.

Elmer Goetsch: Are there any conditions that we could add to the existing permit that would be acceptable to you?

Carolyn Lurvey: I submitted it the way I would like it. I guess we asked for an indefinite timeframe. I guess if they wanted to put 12-15 years back on it, I guess that you have the right to do. And then we'll be back here in another 12-15 years.

Elmer Goetsch: What about the operating conditions? Such as hours?

Carolyn Lurvey: I really like the hours the way they are. I don't think we have any sites on record past 6:30 a.m. That's when we go to work. We actually go to work at 5:30 am but by the time we get to the pit and get the guys going, its 6:30 am.

Elmer Goetsch: How about no trucking until 6:30 am. No trucks. Period. Is that impossible?

Carolyn Lurvey: You mean the trucks not being allowed on the property?

Elmer Goetsch: Truck traffic. Maybe the same thing.

Carolyn Lurvey: You have the right to consider that.

Elmer Goetsch: A question for the County, if we were to add these conditions, it would end operation there. Is that correct?

Brian Desmond, Corporation Counsel: That is correct. It's one of those issues as Pitlik & Wick brought up. The County needs gravel for projects in that area. It will become more expensive for the tax payers; get less work out of the crew, driving further to get the gravel. And again, the Highway Department in the summer time work 4 days a week...I can totally back up Pitlik & Wick that those are the hours that people do construction. Especially for our County workers, we have a big concern, especially when it is 90 degrees out, to have our guys out there. They can work early in the morning when it is cool. That's when they want to work. That's when we want them out there. That's just generally what happens. That's the perspective the County takes, and that's when they work. I support what she says. People get up and work in the morning from Memorial Day to Labor Day. If the County had a job they were trying to do in that area,

and the pit hours start at 7:00 am, we have an hour where we have to find something for the workers to do. As far as the zoning aspect of it, if the CUP were denied, I don't know what the County would do. In the zoning ordinance, there are other applications that people could come in with for conditional use permits for that area. Other uses that may be more or less intrusive depending on what the owner wanted to do with it.

Karl Jennrich: Just because the conditional use permit expires, it does not mean that Pitlik & Wick couldn't come back and re-apply for another CUP. It is an allowed use. We just renewed the permit because Pitlik and Wick was interested in continuing. So when it came in, it is really just to extend the length of time. All the conditions of the conditional use permit are continued. Ms. Lurvey noted that most of the CUP's taken out in the last 5-6 years have been indefinite. It's easier for them and easier for us rather than coming back for a new permit.

Elmer Goetsch: But in this case, circumstances that that these people had reason to believe that it was a terminating permit. The facts have changed. It's not the same as if you find a piece of land where your might start a gravel pit and now you are beginning the process.

Karl Jennrich: Even if there was no use on that property, the owner of that property could come in for a CUP and go through the process and possibly get a permit for non-metallic mining, or for any other use that is allowed in residential and farming.

Elmer Goetsch: With conditions. The conditions might be different. It was understood to be temporary. That is where the problem rises.

Brian Desmond, Corporation Counsel: If this permit had expired on 6-20-12, the pit would no longer be allowed to be operated? Is that correct?

Karl Jennrich: That is correct.

Brian Desmond, Corporation Counsel: What would happen if Pitlik & Wick came in one day, one month, one year later, would they be able to re-apply for a conditional use permit?

Karl Jennrich: There is nothing in the ordinance to prevent them from reapplying.

Brian Desmond, Corporation Counsel: So while one permit and a termination date does not necessarily mean that that use could never be placed on that property again. Is that correct?

Karl Jennrich: Yes.

Brian Desmond, Corporation Counsel: To your knowledge, are there any other gravel pits in the Lake Tomahawk or Woodruff area?

Karl Jennrich: Not to my knowledge. There was an attempt to open a gravel pit in the western side of Highway 47, but it was denied by the Board of Adjustment.

Brian Desmond, Corporation Counsel: You spoke earlier about having published this in the newspaper. Do you get a notification from the newspaper indicating that it has been published?

Karl Jennrich: Yes, we are required to have a proof of publication.

Brian Desmond, Corporation Counsel: Elmer, is that in your file? If not, I have copies of that proof of publication for your record. And your proof of publication indicates that this was placed in the Northwoods River News on what dates?

Karl Jennrich: 3/6/2012 and 3/13/2012.

Brian Desmond, Corporation Counsel: And the last date was at least 7 days prior to the date of the hearing?

Karl Jennrich: Yes.

Brian Desmond, Corporation Counsel: And as part of your computer system here at Oneida County, are you able to review property values and assessments. Do these documents represent those property values and assessment that were printed off the computer?

Karl Jennrich: Yes. Nadine Wilson, from my office, printed the inquiries for several parcel identification numbers, WR 452-9, WR 523-6. Plus as part of that there is an assessment value for those parcels for 10 years approximately.

Brian Desmond, Corporation Counsel: In reviewing these assessment values on the second page, do you know any changes or fluctuations in the property values.

Karl Jennrich: Yes, there is a little bit of fluctuation in the total property values, from 1998-2011, the total values have gone up until about 2009, in some cases. They have gone down a little bit after that.

Harland Lee: These properties you are talking about, are they in this immediate area?

Brian Desmond, Corporation Counsel: They are the properties owned by the Bakers, Baltz, and Zakrzewski. I am providing these to the Board of Adjustment to be placed in the record as an exhibit.

Karl Jennrich: The only thing to clarify is that the Baker's have gone down a little bit in 2010, all the others for the most part have gone up as far as total value.

Harland Lee: Has most property gone down since 2009 or 2010?

Karl Jennrich: Yes.

Brian Desmond, Corporation Counsel: Most properties have gone down in the fair market value.

Brian Desmond, Corporation Counsel: Have you had concerns about other gravel pits as far as noise levels and things of that nature?

Karl Jennrich: Yes. We have

Brian Desmond, Corporation Counsel: And in this case, you see where the non-metallic mine is located and where the homeowner's properties are situated?

Karl Jennrich: Yes.

Brian Desmond, Corporation Counsel: And Mr. Baker described some partial tree cover on that property. Would you agree with that assessment?

Karl Jennrich: Yes.

Brian Desmond, Corporation Counsel: And generally, when you have these permits come through how does the Committee address those noise issues, generally speaking.

Karl Jennrich: Sometimes the Committee will request additional buffers to be placed on the actual property if it is immediately adjacent to single family residential properties. Actually, the people in the area may not feel this way, but this is an ideal situation as far as placement of a non-metallic mine. It's on three parcels of property and is 40 acres from the single family residential home owners. Actually, North American Legion Highland if they wanted to get into the business could have one on property zoned Forestry 1-A, which is between this property and the single family residential. Again, ideally we would like to see placed on these non-metallic mines a distance away of 1,000 feet from the property.

Brian Desmond, Corporation Counsel: And I guess as a last exhibit....a report from the State of New York Department of Environmental Conservation -- Assessing and

Mitigating Noise Impacts. They have projected noise levels as part of their report. They address some of the issues that...Pitlik & Wick would be running, such as a crusher, shovel loader, pit truck, caterpillar loader. Just for the purposes of the noise levels, they have these tables that you may find to be useful. They have the measurements, from 1,000 feet, 2,000 feet and 3,000 feet. They go from a crusher at 1,000 feet, 69 decibels; at 3,000 feet it is 59 decibels. Most of them are in that range...looking at what Mr. Jennrich pointed out, being 40 acres away, you are probably somewhere between the 1,000 feet and 2,000 feet for most of these properties. On the next page, they have an indication as to where in the decibel range those things actually fall. Again, there is a wooded 40 between the two.

Harland Lee: Karl, to the best of your knowledge, over the history of the CUP, has there been any public attendance or objection raised, including at the last meeting on March 21, 2012.

Karl Jennrich: I would have to rely on the minutes. At the last public hearing there was no one in opposition or had any comments. That is exactly why I called Mike Timmons, because he is the Town Chair. Sometimes the Town Chair will have a lead on what issues there may or may not be. He said it's been very quiet since that pit has opened up. He has not been the Chairman for all those years, but he has been on the Town Board for a long period of time prior to being Chair.

Phil Albert: Per Section 9.42, the standards for approval of a CUP. Where they discussed at the March 21, 2012 hearing? The nine standards?

Karl Jennrich: I did not put those in as part of my report due to the fact that all we were looking at was an extension of the timeframe. I probably would have done so if we had some type of concern. I did not include that as part of my report.

Phil Albert: There is quite a history. Back to 95, 97, 98. Why in 2002 for CUP #02-736, was there a 10 year expiration when there were four CUP's prior to that without an expiration date?

Karl Jennrich: I don't recall.

Harland Lee: Pitlik, what do you consider, if this were to go on as it has gone on, what is your estimate of the life of this pit. Your best guess.

Carolyn Lurvey: Obviously, it depends on the project and the demand in the area. I would say 15 years would be pretty practical.

Phil Albert: In terms of this property and zoning, why is a CUP required? It is an allowable use under Forestry.

Karl Jennrich: This is Residential and Farming, District #4; (j) non-metallic mining is a conditional use. Again, even though a conditional use permit was issued for this project, the only way to modify the conditional use permit is to go through the public hearing process to amend the conditional use. So because they wanted to go from 10 year life span to indefinite, Carolyn contacted me and I explained that we would have to go through the conditional use process, the Class 2 Notice and notice to the Town. It was a significant change.

Phil Albert: The hot mix plant is assumed a part of the operation?

Karl Jennrich: In the past we have had non-metallic mines open just with crushers and prohibited hot mix asphalt plants. But over the years the policy of my office and the policy of the County is try to give some flexibility to pull in crushers or hot mix asphalt plants. There is a lot of money sitting in those plants. Very rarely are they sitting in one location all the time. They are flexible. Time is money. Get in there and crush, mix it with hot asphalt and get out.

Phil Albert: Do any other permits for non-metallic mines have time limits on them?

Karl Jennrich: There could be some out there, but Pitlik, Musson Bros. Northeast Asphalt over the years have been indefinite pits. The Town of Crescent has a lot of pits that are grandfathered. As long as the use is there, and it has been continuous, it is grandfathered in, we don't come in and shut them down just because they did not have a conditional use permit and they are legal pre-existing.

Chris Baker: The valuations on the property, I'm a little concerned about. I haven't gotten a chance to look at them, but from personal experience the values are effected. The same as the noise. I challenge you to come sit in by yard when the crusher is running. Standards 1 & 2, of 9.42 are affected. And somebody also mentioned about the county workers working 4 days a week. Non-county trucks come whether it be Pitlik & Wick or some other.

2:12 pm - Harland Lee, Chairman, closed the public hearing 12-003 of Christopher & Karen Baker, and Others,.

The Board deliberated in open session.

Motion by John Bloom, second by Guy Hansen, to deny appeal #12-003 of Christopher & Karen Baker, and Others. The authorization of CUP 12-55 is affirmed subject to the conditions placed on the CUP by the Committee on March 21, 2012 and with all the general standards having been met. Roll call vote: Elmer Goetsch, "aye", Harland Lee "aye", Guy Hansen "aye," John Bloom "aye", Phil Albert "aye", Jack Young "aye." The motion carried.

Mr. Lee: Do we want to extend the time limit for filing the decision until Friday?

Motion by Guy Hansen second by John Bloom to extend the time limit to file the decision until Friday, June 15, 2012. With all members voting aye, the motion carried.

2:35 pm - The meeting was adjourned on a motion by Guy Hansen, second by John Bloom and all members voting "aye."

Harland Lee, Chairperson

Phil Albert, Secretary