

**WAUPACA COUNTY BOARD OF ADJUSTMENT MEETING
MINUTES – JUNE 15, 2016**

ON-SITE INSPECTION: The Board made an on-site inspection starting at 8:15 a.m. on the Thiel Farm House LLC & Thiel Gravel Pit LLC property, Town of Little Wolf.

Vice Chair Johnson called the meeting to order at 9:36 a.m. Roll call was taken with the following members present: D. Johnson, A. Richardson, J. Fulcher, P. Leder and S. Strathe, all present.

P. Leder moved and A. Richardson seconded the motion to approve the agenda as presented. The motion was carried.

P. Leder moved and A. Richardson seconded the motion to approve the minutes from the April 14, 2016 meeting. The motion was carried.

PUBLIC HEARING:

The public hearing was called to order at 9:43 a.m. by Vice Chair Johnson for the **Thiel Farm House LLC & Thiel Gravel Pit LLC**: Located in part of the SE ¼ of the NW ¼ and part of the NE ¼ of the NW ¼ of Sec. 5, Town of Royalton, and part of the SE ¼ of the SW ¼ of Sec. 32, Town of Little Wolf, all lying off of Baldwin Road, Fire Number N4797, Waupaca County, Wisconsin; to hear an Appeal of an Administrative decision made by the Planning and Zoning Committee for the determination of legal nonconforming status made on January 7, 2016 for an existing Non-Metallic Mineral Extraction in an RI-G (Rural Industrial-General) District and an AE (Agriculture Enterprise) District on approximately 87.8 acres. Roll call was taken with the following: D. Johnson, A. Richardson, J. Fulcher, P. Leder and S. Strathe, all present. Deb Giuffre read the names of persons notified of the hearing. Vice Chair Johnson declared the hearing legal and gave the general procedure.

Vice Chair Johnson said we will first hear from those whose position is the Committee's administrative decision should be upheld.

Sally Thiel was sworn in to testify. Ms. Thiel gave a history of the property that is the subject of the hearing, pertaining to the existing mining operations.

Attorney Andrew Phillips was sworn in to testify. Attorney Phillips gave statements and arguments on behalf of the Waupaca County Planning & Zoning Committee.

Vice Chair Johnson called three times for any testimony in support of the Committee's administrative decision.

Attorney Mitchell Olson was sworn in to testify. Attorney Olson is representing American Asphalt of Wisconsin. Attorney Olson gave his legal opinions to uphold the decision for the mining operation.

Vice Chair Johnson said we will next hear from those whose position is the Committee's administrative decision should be overturned.

Attorney Hans Thompson was sworn in to testify. Attorney Thompson gave statements and arguments on behalf of the Town of Little Wolf.

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Vice Chair Johnson called three times for any testimony to overturn the Committee's administrative decision.

Anthony Kowaleski was sworn in to testify. Mr. Kowaleski presented his concerns with the legal opinion regarding the diminishing asset rule.

David Abrahamson was sworn in to testify. Mr. Abrahamson lives near the mining operation and is in support of the Town of Little Wolf's appeal. Mr. Abrahamson expressed his concerns regarding the mining operation.

Susan Vater Olsen was sworn in to testify. Ms. Vater Olsen is a resident of the Town of Little Wolf and is concerned with the reclamation plan, roads and safety of the mining operation.

Alan Moede was sworn in to testify. Mr. Moede is the Chairman for the Town of Little Wolf. Mr. Moede questioned as to who is the enforcement agency for the mining operation.

Vice Chair Johnson noted the question from Mr. Moede.

Kelly Hamilton was sworn in to testify. Ms. Hamilton questioned if an EIS has been filed for the sale of the mining operation from Amercian Asphalt to Waupaca County.

Vice Chair Johnson noted the question from Ms. Hamilton.

John Ashby was sworn in to testify. Mr. Ashby observed a magenta overcast near the mining site and wanted it on record.

Jackie Beyer was sworn in to testify. Ms. Beyer is the Clerk for the Town of Little Wolf.

Attorney Olson objected to Ms. Beyer testifying because she is a Board of Adjustment member and the Clerk for the Town of Little Wolf.

Jackie Beyer withdrew herself after being contested by Attorney Olson.

Attorney Thompson explained that Ms. Beyer had recused herself from the decision making process in regards to the appeal.

George Vater Olsen was sworn in to testify. Mr. Vater Olsen expressed his concerns with groundwater contamination.

Tania Wadzinski was sworn in to testify. Ms. Wadzinski commented on the operations of the mine and growth.

Are there any letters?

Rebuttal by those holding the position to uphold the Committee decision.

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Sally Thiel reiterated that the pit had been in operation for near sixty (60) years and the intention is to continue mining within the same parcels.

Attorney Andrew Phillips addressed the concerns of the existing mining operation and explained Zoning Ordinances and Regulatory Ordinances.

Rebuttal by those holding the position to overturn the Committee decision.

Attorney Hans Thompson discussed the continued use of the mining operation with a Conditional Use Permit application for legal conformity.

Anthony Kowaleski requests that the receipts for operations be gone through to make sure there was no twelve (12) month interruption in the mining operation.

Alan Moede said that two (2) County employees, Ryan Brown and Dean Steingraber, repeatedly told the Town of Little Wolf's Board that American Asphalt would have to go through the Conditional Use Permit application process.

Vice Chair Johnson declared the hearing closed at 11:05 a.m. for deliberation.

A. Richardson moved and J. Fulcher seconded the motion to **TABLE** the Appeal of an Administrative decision made by the Planning and Zoning Committee for the determination of legal nonconforming status made on January 7, 2016 for an existing Non-Metallic Mineral Extraction for additional information about the Thiel Pit, including:

- Documentation/proof of continuous operation from 1967-2015 with no 12-month break.
- Does the addition of the asphalt plant to the operation change/expand the use to the extent that it loses any legal nonconforming status it may have had as a gravel pit?
- Does the fact that American Asphalt does not have a reclamation permit and/or that the County has exceeded its permit from 2002 in both boundaries and time limit, constitute a violation of other laws such that at the time that the non-metallic mining ordinance was adopted in 2015, the pit was operating in violation of law and thus loses any legal nonconforming status that it may have had?

Roll call vote was taken: D. Johnson —yes; J. Fulcher —yes; A. Richardson—yes; P. Leder —yes and S. Strathe —yes, unanimous vote to **TABLE** the Appeal request. The motion was carried.

D. Johnson moved and A. Richardson seconded the motion to adjourn the meeting at 11:27 a.m. The motion was carried. The Board adjourned.

Debra Giuffre
Recording Secretary

cc: County Clerk