

The Madison County Board of Zoning Appeals met on the above date at 9:00 A.M. with, Mary Jane Baker, Chairman, presiding.

Members Present: Mary Jane Baker, John Simmermon, Rick Durham, and Amanda Bousman

Also Present: Tim Westerfield, Planner, and Elizabeth Bruns, Board Secretary.

Members Absent: Bill Hobbs

CURRENT BUSINESS

1. Pledge of Allegiance
2. Prayer – Member Durham
3. Roll call taken with one Member absent.
4. Member Durham made a motion seconded by Member Bousman to approve the January 27, 2015 Minutes. Vote was unanimous in favor of the motion.

BUSINESS

(Continued from January 27, 2015 meeting)

1. **Petition:** 2015-SU-001
Address: 00 North State Road 13
Location: E side of SR 13 approximately .27 miles north of CR 280 North.
Petitioner: Sylvanus Investments, LLC & Likens Holdings, LLC
Owners: Sylvanus Investments, LLC & Likens Holdings, LLC
Zoning: (AG)
Request: Special Use to allow for the expansion of their existing mineral extraction operation to encompass their contiguous lots.

Mr. Westerfield informed the Board that after speaking with Attorney Jerry Shine it was determined that there were no meetings regarding the original mineral extraction location due to the property not falling within the flood plain area and not encroaching upon the urban area. As a reminder we are not here to discuss Drainage Board issues. We are here today to discuss the dust control issue that was brought before us last month.

Attorney Graham asked if the Staff had any changes to the Staff Report from the January meeting.

Mr. Westerfield stated that our Findings of Facts remain the same as presented at the January meeting.

Mr. Westerfield stated that the Petitioner is required to bring this matter before the Drainage Board before they can move forward with the proposed expansion.

My name is Steve Hardin I am a Partner in the firm of Fagre Baker & Daniels. I am here representing US Aggregates. After the last meeting the Board had asked for a Dust Control Plan. The Petitioner put this in writing so that it could become a condition of approval.

Ed Clements and Marty Mann met with Mr. Epperly at his home and asked what they could do to help alleviate the situation. They walked the property. The Petitioner will be going to the Drainage Board. There was also a question regarding the location of the mound in relation to the property line. It is currently planned for the toe of the mound to be 10 feet, and will probably be pushed a little bit to the north to allow for that swale and that will be cut and finalized during the final engineering with the Drainage Board.

Member Simmermon asked 10' from where?

Mr. Hardin stated from the southern property line (10' from neighbors property line.)

Member Simmermon asked if the dust control plan was pretty much the same as before.

Ed Clements – US Aggregates – Yes this is just the formal written version of it.

Member Simmermon said if this is the same dust plan as before how is the dust going to be any better than it was before.

Mr. Clements stated that they would be more diligent than we...we have a water truck on site that we can water our um sight with and will make a more diligent effort to control it.

Member Simmermon asked if most of the dust is coming from where the mounds are and stated that the processing part isn't changing from its current use. Wouldn't most of the dust come front that than actually from the digging? So all that this Petitioner is really doing is digging another hole.

Mr. Clements replied that the material that is processed is mostly wet.

Member Simmermon said whether you enlarge your area or not the dust will be the same.

Mr. Clements stated that the digging will be dry until they hit the water table, but then at that point it will all be wet.

Member Durham stated that he's comfortable with the dust control plan. I do feel that you should get with the property owners and give them a contact name that they can call if there is a problem.

Mr. Westerfield stated that there were not any complaints in the past regarding dust issues and now that it has been brought to light with us and I have contacted Steve Schmidt with the Soil and Water office as well and there will be more eyes on this if it is approved.

Kathy Moreland of 2924 N SR 13 expressed her frustrations with the dust, noise, and the possibility of a monetary compensation. What about Sunday afternoon if there is a dust storm when the wind kicks up? I feel that they are disturbing our way of life, life for my dad is very valuable right now and he needs to enjoy what he has left. I would like to see the following stipulations take place. I would like to have our well water tested and the level of it to make sure that it does not get contaminated or take our well water away. It kind of sounds like the flooding and what they discussed kind of sounds like it could work but you have to remember that most of that flood water doesn't come from our property it comes from Pipe Creek over into the property. I would like to have a second opinion on that. The dust can be controlled while they are working but what happens when they aren't there? Are we going to have to call and then wait for somebody to get there? They say they are going to dig for two years, who is going to respond to issues that arise after that? There is no way to keep the noise down, those trucks are going to be beeping all day long and I propose that they compensate us daily for the noise. There should be some kind of payment if we have to listen to this. I don't want to have to go and sue someone and have it all tied up in court for years. I understand they want to make money, but I am also looking out for my father.

Al Epperly – I have witnessed the dust when over at my brothers house. I also had the misfortune of going over there and trying to find someone to water it down. The operator said that the person was not on the property and didn't know when he was to return. I asked if they could get the truck and water it down to stop the dust. I was at my brothers for two hours and it never happened. I don't see where the dust is going to improve. Would you like to keep your house closed up 24 hours a day? Why not expand to the east towards Perkinsville?

Mr. Westerfield reiterated that if this is approved today the Petitioners would still have to be granted approval from the Drainage Board and the State of Indiana. I would like to see the Dust Control Plan recorded if this Petition is approved today.

Attorney Graham stated that this is an ongoing mining process, in the event hypothetically that this is denied the mining will continue correct.

Mr. Westerfield said that the mining in operation today would be allowed to continue.

Attorney Graham continued by saying there is nothing that the Board can do about this due to the Statute. That would continue regardless.

Mr. Westerfield stated that would be more of an IDEM or Environmental as mentioned with Steve Schmidt and his group. The only difference would be that we would become more cognoscente of it if this were to be approved.

Attorney Graham asked Mr. Westerfield to remind everyone here including the Board, in the event that this is approved today and we find out that the dust is getting worse and the plan is not being followed what would the Planning Department do at that time?

Mr. Westerfield replied that Brad Newman would want to take that on pretty aggressively. Our department would work with Steve Schmidt with Soil and Water to put a stop work order at the

location until the issues are resolved. There could potentially be fines and court costs if this is not resolved in a timely manner.

Ms. Bruns stated that we cannot fix a problem if we don't know that one exists. There have never been any complaints filed against this operation and if brought to our attention we will work diligently to resolve them.

Member Simmermon asked the Petitioner to come forward and discuss what will happen with the property after the two years is up.

Steve Hardin – The plan is that after the two year period is over they would then remove the mound and go back to the way it was. There is also a local church that requested that a farm fence be installed on the US Aggregates property line and they have agreed to do that. The farm fence will be along the southern property line.

Member Simmermon asked what the feasibility of the little notched area there giving them a little bit more room than 10 feet. I would like to propose 25 feet this would allow more area for the water to flow, and would give them a little bit more room.

Mr. Westerfield asked if US Aggregates would be willing to make a commitment to enlarge this.

Steve Hardin said that US Aggregates would be willing to revise the 10 feet to 20-25 feet.

Member Durham made a motion to approve 2015-SU-001 with a stipulation of the dust control agreement being put into place and a buffer on the south side of the property line to be at least 25 feet to the toe of the mound. Member Simmermon and Member Bousman seconded the motion. Roll Call was taken with a unanimous vote. **2015-SU-001 Approved with Conditions.**

Member Durham made a motion to adjourn seconded by Member Bousman.

Adjournment: 9:40:54 A.M.

Mary Jane Baker, Madam Chairman

Elizabeth Bruns, Board Secretary