

The following are minutes of the Bettendorf Board of Adjustment and are a synopsis of the discussion that took place at this meeting and as such may not include the entirety of each statement made. The minutes of each meeting do not become official until approved at the next board meeting.

**MINUTES
BETTENDORF BOARD OF ADJUSTMENT
JULY 12, 2012
5:00 P.M.**

Voelliger called the meeting to order at 5:00 p.m.

Item 1. Roll Call

PRESENT: Falk, Gallagher, Voelliger
ABSENT: Johnson, Spranger
STAFF: Connors, Fuhrman, Soenksen

Item 2. Review of Board Procedures.

Item 3. The Board to review and approve the minutes of the meeting of June 14, 2012.

On motion by Gallagher, seconded by Falk, that the minutes of the meeting of June 14, 2012 be approved as submitted.

ALL AYES

Motion carried.

Item 4. The Board to hold a public hearing on the following items:

- a. Case 12-039; 2701 Devils Glen Road (C-2) - A request for a variance to allow an 8-foot high fence, submitted by Scott Rubins.

Voelliger asked if there was an affidavit of publication. Soenksen stated that notice of public hearing had been received. Notice and affidavit of publication are Annex #2 to these minutes.

Soenksen reviewed the staff report. Staff report is Annex #3 to these minutes. He indicated that he had received two letters in support of the request from Doug Nelson of Wallace's Garden Center and Dr. Scott Sandeman of Glenroads Veterinary Clinic.

Gallagher commented that it appears as though the proposed fence would not adversely affect any nearby property owners.

There being no one present wishing to speak in favor of or in opposition to the request, Voelliger closed the public hearing.

On motion by Falk, seconded by Gallagher, that a variance to allow an 8-foot high fence be approved in accordance with the Decision and Order.

ALL AYES

Motion carried.

Decision and Order is Annex #4 to these minutes.

- b. Case 12-041; 1460 Isle Parkway (C-7) - A request for modification of an existing special use permit to allow auctions, submitted by U.S. Auctioneers.

Voelliger asked if there was an affidavit of publication. Soenksen stated that notice of public hearing had been received. Notice and affidavit of publication are Annex #2 to these minutes.

Soenksen reviewed the staff report. Staff report is Annex #5 to these minutes. He indicated that he had received a letter in support of the use from Scott Tunnicliff of 718 Holmes Street.

Voelliger asked if there was anyone present wishing to speak in favor of or in opposition to the request.

Jerry Sechser, 1304 Broadlawn Avenue, expressed concern about the possible contamination of the site from fluids leaking from the smaller vehicles that have been allowed. He questioned if the taxpayers would be responsible for cleanup of any contamination of the river, adding that the citizens had already funded the cleanup of a lime pile on a nearby property. He asked if the storm water utility fee would be used to fund this cleanup.

Sechser stated that the applicant's website shows that three construction vehicles are slated to be sold at the next auction, adding that there already is a bulldozer on the site.

Voelliger explained that the storm water program and the associated fee is an unfunded Federal mandate so that problematic storm water drainage areas can be ameliorated. He indicated that because the applicant is attempting to sell the vehicles at the sales, it is unlikely that fluids would leak from them. Voelliger commented that it is unlikely that the applicant would bring unworking equipment to the site to be sold.

Soenksen stated that the reason that city funds had been used to clean up the lime pile is that the property in question is city-owned. He added that the property on which the auctions are held is privately owned.

Sechser suggested that the applicant be required to place pans underneath any equipment that is leaking or clean up any spills immediately.

Sechser asked for clarification regarding the weight capacity of the George Thuenen bridge. Falk stated that the Board does not have the ability to answer engineering questions.

Sechser requested that the request for modification of the original request be delayed until such time as all of his questions have been answered.

Connors stated that the George Thuenen overpass was designed according to state and federal standards.

Falk asked if any cleanup of the site in question would be the responsibility of the property owner. Soenksen confirmed this. Connors commented that the Iowa Department of Transportation would be acquiring a portion of the auction site as a part of the I-74 bridge reconstruction project.

Joe Judge, representing the applicant, stated that US Auctioneers is required to abide by state and federal standards with regard to potential contamination of the site and any overpass weight limits.

Greg Gackle, 1116 Coffelt Avenue, asked if US Auctioneers or the property owner applied for the special use permit. Soenksen explained that US Auctioneers is listed as the applicant for both the 1993 and current special use permit applications.

Gackle asked if the special use permit is attached to the property or the applicant if US Auctioneers decides in the future to discontinue the sales. Soenksen explained that a special use permit is attached to the property and therefore the use could continue. Gackle stated that if this is the case, then the legal notice relative to this case is wrong along with the information that has been circulated. Connors stated that in order to make a determination, staff would check the original application to ascertain the original applicant. Gackle stated that this is important information as it relates to the current request.

Gackle asked for clarification of the term ancillary as used in the text of the staff report. Soenksen explained that his use of the term ancillary is meant to indicate that the vast majority of items to be sold on the site are indeed semi-tractors and trailers, but that other, smaller items might also be for sale. Gackle indicated that he believes that the term ancillary could be construed as a broad generalization and stated that the applicant has not always had items such as passenger cars and boats for sale. He added that the upcoming auction listing includes two 41-foot boats and questioned whether a boat is to be considered ancillary to the trucks.

Gallagher suggested that the Board make a more specific determination of what is allowed to be sold at the auctions. He indicated that restrictions could be placed on type of vehicle, number of vehicles, etc.

Gallagher stated that the application lists US Auctioneers as the applicant and his assumption is that the property owner has consented.

Gackle stated that the Board should clarify the definition of ancillary and define precisely what items are allowed to be sold rather than give blanket approval to the applicant. He indicated that it is not accurate to say that the applicant has been selling boats, cars, and ancillary equipment since the original special use permit was granted. He added that it has only been in recent years that such a large variety of items for sale has been on the site in clear violation of the conditions of the special use permit. Gackle stated that just because no one has complained about the violations is no reason to not enforce the original conditions.

Gackle requested that the special use permit be revoked. He stated that the applicant has continued to place items on the site prior to the allowed date as specified in the decision and order. He submitted a photo of a piece of construction equipment on the site taken several days before the date that it would be allowed.

Gackle asked why it is necessary for the city to receive a complaint in order to enforce the ordinances. He stated that in his opinion the auctions have adverse effects on the city and the adjoining property owners.

Gallagher explained that the current request, according to the application, is for permission to sell motorized vehicles to include, but not limited to, cars, pickups, lawn mowers, construction equipment, boats, other recreational vehicles, farm tractors, etc. He indicated that the Board must now determine whether sale of those types of items is appropriate. Gallagher stated that staff had used the word ancillary, not the applicant.

Judge stated that the applicant has operated a successful business for 19 years and that the proposed expansion would actually be less intense than the allowed one. He indicated that the applicant would be open to any limitations the Board feels necessary in order to regulate the sales.

Voelliger stated that it is inappropriate for the applicant to violate the terms of the original Decision and Order by storing items for sale on the site prior to the approved date. Judge concurred, adding that he would speak to the applicant about the violation.

Gackle asked if the city receives any compensation from the applicant and questioned where the applicant's business office is located. Connors stated that he is unaware of any fee that is paid to the city. Voelliger explained that there is likely a business license fee. Gallagher added that the applicant's business is located in Rock Island. Judge stated that he would ensure that the applicant is appropriately licensed.

There being no one else present wishing to speak in favor of or in opposition to the request, Voelliger closed the public hearing.

Gallagher suggested that the applicant be reminded of the conditions of the original decision and order with regard to when equipment is allowed to be placed on the site prior to a sale.

Soenksen stated that after the meeting during which the issue had been addressed, he sent the applicant a letter reviewing the conditions of the special use permit along with a copy of the original Decision and Order. He added that after the most recent complaint of items other than semi-trucks and trailers being sold, he sent another letter informing the applicant of the violation of the terms.

Voelliger indicated that he feels that the applicant should be more restrictive regarding the items that are auctioned and when they are put on site. Falk concurred, indicating that the Board should be very specific with regard to any expansion of the existing special use permit. He stated that none of the items listed in the current application would be any more damaging to city streets and bridges than what is already allowed. Falk stated that he is not at all concerned that any negative environmental impact

would be the city's responsibility to remediate. He suggested that the case be deferred until more specific information is available with regard to size, number, and type of equipment that the applicant wishes to include in the sales. Gallagher concurred, suggesting that perhaps the applicant could be restricted to either a certain number or percentage of items that would be allowed besides those originally permitted in the Decision and Order. He requested that staff meet with the applicant to determine a specific proposal that details the requested information.

Gallagher asked when the next auction is scheduled to be held. Soenksen stated that it would be July 26. Falk commented that he is not opposed to allowing the applicant to hold one more auction until such time as a final decision is made. He indicated that it is unacceptable for the applicant to place equipment for sale on the site before the time period allowed by the Decision and Order and asked what recourse the Board would have to ensure that it does not happen again. Soenksen explained that the Board could revoke the special use permit in toto. He indicated that staff would meet with the applicant to more clearly specify type, number, and size of equipment that would be for sale. Connors stated that he would be willing to attend the July 26 sale in order to determine what types of items are typically on the site.

On motion by Gallagher, seconded by Falk, to defer the request for modification of an existing special use permit to allow auctions until such time as a more specific request can be made with the understanding that the July 26 auction is allowed to be held.

ALL AYES

Motion carried.

- c. Case 12-042; 3656 Moencks Road (A-2) - A request for a variance to increase the allowable square footage of a garage from 720 square feet to 1860 square feet to allow construction of a 30-foot by 36-foot garage (barn), submitted by Kyle Howard.

Voelliger asked if there was an affidavit of publication. Soenksen stated that notice of public hearing had been received. Notice and affidavit of publication are Annex #2 to these minutes.

Soenksen reviewed the staff report. Staff report is Annex #6 to these minutes.

There being no one present wishing to speak in favor of or in opposition to the request, Voelliger closed the public hearing.

Gallagher commented that the proposed garage is in keeping with the neighborhood.

Falk asked if the possibility exists that the proposed garage could be used for commercial purposes in the future. Soenksen explained that this would not be allowed by the ordinance in this zoning district. Gallagher added that the structure could not be allowed to be used for residential purposes.

On motion by Falk, seconded by Gallagher, that a variance to increase the allowable square footage of a garage from 720 square feet to 1860 square feet to allow construction of a 30-foot by 36-foot garage (barn), be approved in accordance with the Decision and Order.

ALL AYES

Motion carried.

Decision and Order is Annex #7 to these minutes.

- d. Case 12-044; 2312 Spruce Hills Drive (C-2) - A request for a special use permit to allow a drive-up window, submitted by TM & AC2, Inc.

Voelliger asked if there was an affidavit of publication. Soenksen stated that notice of public hearing had been received. Notice and affidavit of publication are Annex #2 to these minutes.

Soenksen reviewed the staff report. Staff report is Annex #8 to these minutes.

Voelliger asked if there was anyone present wishing to speak in favor of the request.

Chris McGuire, representing the applicant, explained that the proposed hours of operation of the restaurant would be from 10 a.m. to 11 p.m. He added that the restaurant would close most evenings at 10 p.m., but would remain open until 11 p.m. for occasional special events.

There being no one else present wishing to speak in favor of or in opposition to the request, Voelliger closed the public hearing.

On motion by Gallagher, seconded by Falk, that a special use permit to allow a drive-up window be approved in accordance with the Decision and Order.

ALL AYES

Motion carried.

Decision and Order is Annex #9 to these minutes.

There being no further business, it was unanimously approved to adjourn the meeting at approximately 6:05 p.m.

These minutes and annexes approved

John Soenksen
City Planner