

TOWN OF ARCADIA

Trempealeau County



W26051 State Road 95, Arcadia Wisconsin 54612 • Phone and Fax (608) 323-3470
Shop Phone (608) 323-1153
• Email: townofarcadia@triwest.net

Ronald Tuschner, Chairman (608) 323-3035

Ivan Pronschinske, Supervisor No. 2 (608) 323-7675

Mike Chitko, Supervisor No. 1 (608) 323-2414

Nancy Rohn, Town Treasurer (608) 323-7063

Town of Arcadia Minutes of Special Session Town Board Meeting Thursday, February 26, 2015 at 7:00 p.m.

The board meeting was called to order by Chairman Ronald Tuschner at 7:03 p.m. Open meeting certifications were met. Roll call was taken. Board members present: Chairman Ronald Tuschner and Supervisors Michael Chitko and Ivan Pronschinske. The list of residents in attendance is included with the hard copy of the minutes in the office file.

A motion was made by I. Pronschinske and seconded by M. Chitko to adopt the agenda. The motion was carried unanimously with a voice vote.

R. Tuschner led the Pledge of Allegiance.

R. Tuschner read through agenda item 5 and stated that the only input would be from the residents in the front; questions were to be directed to Superior Silica Sand and not the Town Board; the Town of Arcadia Board would be moderators only; and that this is an informational meeting.

The meeting proceeded with a discussion between Sean O'Flaherty and Paul Millis, attorneys, with some questions and comments made from the citizen group. The following are the main points of the discussion.

S. O'Flaherty asked about the contracts that were being referenced. Sharon Masek had a PowerPoint presentation to share. This PowerPoint was not shown, but a copy of the presentation was given to the clerk for the office file. Discussion continued on the contracts on property value guarantee with Superior Silica; in the pre-annexation agreement with the City of Independence the property guarantees are provided for all abutting properties; for the duration of the mining activities which are valid until operations cease; this pre-annexation is a condition upon receiving the proper permitting for the mining activity, and when that is approved the property value guarantees become effective; exhibit B and exhibit C were referenced; the timeframe for Superior Silica to talk to the landowners and public meetings; eligibility for fair market value for residential property that abuts up to the Superior Mine site, during the entire operation of the mine; discussion continued on the comparison of fair market value and the relevancy, comparing properties with minerals and properties without minerals.

Karen Geske wanted clarification on homes in the annexation purchased by Superior Silica. P. Millis stated that those were negotiated purchase price. Discussion continued on property value guarantees, fair market values, and payments made (questioned if they were above appraised value); repurchase options by owners referring to the meeting the night before; property was not purchased it was leased; royalties; pre-annexation agreement; 2 houses purchased, but no mine property is owned by Superior Silica; mine lifetime of 30-40 years; did the Town of Arcadia Town Board recommend property value guarantees, Sharon was aware that they wanted property value guarantees; timeframe of summer of 2014, July 7, at the same time as negotiations of the pre-annexation agreement with the City of Independence, negotiating with the City and getting feedback from the Town on the negotiations.

Brian Baumgartner asked if this was adjacent or abutting. P. Millis stated that it was the same thing.

Discussion continued on property value guarantees and the parcel the residence is on. Melissa Jasin wanted clarification. S. O'Flaherty asked about the land, house, and buildings. P. Millis stated that it would be the appraisal value. Discussion continued on the

parcel(s) and owners; examples of situations and exceptions; looking at specific situations; appraised versus assessed values; values secured/bonded; name changes; conditional use permits; mine company change; agreements for fair market value; bankruptcy; reclamation bond has not been established at this time, it is being worked on; and S. Masek explained the process/procedure.

S. O'Flaherty asked about the CUP (conditional use permit) and what specific things were not acceptable with the County. He referenced the Mayor of Independence's statement at the last night's meeting that he thought it would be fine if the County ordinance would be the same as the City ordinance and the County could do the inspections. P. Millis stated that the objection when they approached the City was that the County had a moratorium and there is no certainty on the rules until the ordinance study was completed. Now there is a comfort level working with the City and the Town versus our experience with the County. S. O'Flaherty asked which regulations were objectionable. P. Millis stated the decibel level is an issue and the hours of operation. Discussion continued on hours of operation and the loss of 26% of available hours; examples of farming were given; processing hours; equipment shut down and start up; height limit of 35 feet and needing a variance, examples were given; location of the tall structures; possibility of the City of Independence adopting the County ordinance; not willing to start over; not knowing the new County ordinance; willing to work with the City; other mines regulated by MSHA and DNR; inspections and reimbursements to the City of Independence; turning over the inspections to the County and only using County rules; 3 specific objections to the County rules; and the City will decide who they want to use, and they enforce the CUP.

K. Geske spoke about the meeting the night before and that she heard Kevin Lien say that they are willing to work with the variance. Other companies have come in with requests and they worked with them (3 cases were given). Is Superior willing to work on that at the County level? P. Millis stated that they are so far along in the process that to re-start the process at the County level, it just wouldn't be feasible; not willing to risk not getting a CUP from the County. He continued explaining the pre-annexation agreement including incorporating the Cameron Rail conditions which are attached, but aren't binding until going through the conditional use process. S. O'Flaherty asked what the current draft looked like, pollution of air, dust, light, and noise; and it's too late to consider any other regulations. P. Millis talked about the proposal of the conditional use permit: 2 dust monitors and elaborated, stockpiles with a minimum moisture content of 2%, fugitive dust control plan with the DNR, noise decibels no more than 60 unless a waiver is obtained, low frequency back up alarms, and no truck hauling from 8 p.m. and 6 a.m. The City will be sending the draft out of the conditions. Setbacks were discussed, these are unknown at this time; there will be a public hearing. S. O'Flaherty asked if the Town Board has seen the proposed conditional use permit draft. S. Masek stated that they saw the original one. R. Tuschner agreed with the original one. Discussion continued on the original conditional use permit and that it included all of the Town of Arcadia's conditions plus the County's conditions. Some of the conditions were referenced. S. O'Flaherty asked when this/initial draft was reviewed. P. Millis stated that on May 5, 2014 they talked to the Town of Arcadia Board about the inspections; NR135; in February/March met with the City, not on the conditions, but approached the Town Board and what they wanted; the pre-annexation agreement was in July, 2014, and it was just after that. S. O'Flaherty asked if the Town knew the conditions were being discussed with the City. S. Masek stated, yes. S. O'Flaherty requested the draft, because they didn't know what it was. S. Masek stated that the conditions were above and beyond. Discussion continued on the conditions and feedback from the City, and what they would like to see. S. O'Flaherty asked if that will go back to the Town so our voice will be heard. P. Millis stated that they won't know what the final conditions are until after the public hearing. They won't have a final set of conditions until the City says this is the conditions for the proposal. It's up to the Town if they want to review them before the public hearing; he is sure that they will have a copy and that they are talking with the City on a regular basis regarding this and getting information from the City. The Town Clerk will get a draft, even though they are preliminary, prior to the public hearing with the City of Independence, but that won't necessarily be the conditions. S. Masek asked if that would be OK with the Town. I. Pronschinske stated absolutely.

A citizen asked about the bond and the number of mining companies that have been at that site. S. Masek stated 4 companies. R. Tuschner stated 3 companies, but the same people. The citizen stated that the name changes, but it is still the same property. P. Millis stated that the City can issue a cease-and-desist order and that the County did. Discussion continued on this topic and that the harm done was not on the city constituents, but on the residents outside the city. P. Millis said property guarantees are property guarantees and there is no financial assurance that is set aside for property values; it is done for reclamation and roads. Discussion continued on the road guarantee; S. Masek stated that this is public record and explained the agreement made with the Town of Arcadia; Melissa Jasin asked about the road and the design, because they travel it regularly; R. Tuschner stated that the construction of the road has been handed over to the engineers, and he explained the basic design and that the Town of Arcadia will be giving the approval to our specifications; M. Jasin asked if the road would be marked with a center line; discussion continued about the agreement; M. Jasin gave her personal history on the road; remains a Town road; safety; road use agreement with the City; no engineer hired at this time, due to legal issues; survey data has been collected; road use agreement completed on February 20, 2014; and Ayres Associates will be the engineers.

Shannon Przybylla asked if a draft copy of the CUP would be given to the Township of Arcadia, and if they are willing to listen to changes that the residents would like to have made. P. Millis stated that there would be a public hearing. Discussion continued on changes to the CUP; number of public hearings, meetings, and the procedure. S. O'Flaherty stated that September 30th was the

meeting being referred to when the public could attend; S. Masek stated October 9, September 30th was the last meeting that the CUP was discussed by the City of Independence; and that there was a gap between when the Council discussed it and the public hearings.

S. O'Flaherty began to discuss the next thing on the agenda: well water quality guarantees and the draft. S. Masek stated that it is in the conditional use; this was discussed at a meeting here at the Town and found out about the 2500 foot inspections; the City requires 1000 feet in their draft; Superior will be requesting to get that changed; it was mentioned in the pre-annexation agreement that it was mentioned in the original Town agreement; it's mentioned in the County conditions; several places and will be finalized in the CUP. S. O'Flaherty asked if they could see it. S. Masek stated that they are proposing the 2500 feet, offer pre-testing of those wells; collection of water samples—further discussion on the sampling; ongoing; and refusal of inspections. S. O'Flaherty asked if the Town Board, who represents these people, would be weighing in on the guarantees. He has asked for open records for everything with respect to the CUP for this particular mine from the Town of Arcadia, but the package has nothing in it; he has a lack of understanding; would like to share it with them and be able to talk about the conditions. The information was exchanged. P. Millis stated that these appear to be the ones recommended by the Town when Cameron Rail went through the County. S. Masek stated on May 5th they were attached to our agreement. When they first came here, they intended to go through the County. Discussion continued on the correct packet, the packet from the Town. P. Millis stated that the minutes may reflect discussion of the conditions, but they don't have any separate document regarding them. We are referring to when Sharon came to the Town Board on May 7th and they discussed the well inspections, and the fact that they wanted 2500 feet. Is there a document, a conditional use permit document that was...S. O'Flaherty interjected that he keeps hearing that the Town gave conditions that they had, previous conditions, and they handed them to you, and that is what we are saying. S. Masek stated: here are our conditions and if you follow those, and there was a letter that the Township wrote to the County recommending approving our takeover of the Cameron Rail Site, and it said as long as you follow all of the existing conditions along with the County's. We agreed to all of that stuff. She submitted their pre-annexation, conditional use permit application to the City of Independence, all of those were attached to that permit. I. Pronschinske stated that all of the existing conditions, we never scratched out any of them. S. Masek stated that they discussed them, but did not change anything. There were specifically 2 others that were included. S. O'Flaherty was looking at the application/conditional use permit application dated July 7, 2014, and the letter written dated September 12, 2014 putting the CUP in the annexation letter. The letter of September 12th said, please consider this, meaning your conditional use permit application; nothing from here is in here. He is wondering why it is not and wants to make sure it is there. S. Masek stated that they are. S. O'Flaherty stated that he got his from the Clerk of the City pursuant to what they are saying. S. Masek stated that it is possible that what happened is that they submitted this and then they asked for a different format to take to their consultant. S. O'Flaherty asked for a copy. P. Millis stated that what you got was the application, the application doesn't include the conditions, this is the application to the City for the conditional use permit, but the conditions will be established once they have the application. S. O'Flaherty stated that the conditions should have been submitted with the application, so the City would know what was done at the Town level; he spoke about the dates/times of May, July, follow up letter on September 12th; in the final conditions to make sure the Town Board conditions for Superior Silica were included along with the City's. P. Millis stated that this would have been shared with the City separate from the application. The conditions were shared. They would have been aware of the conditions prior to the application being filed. A lot of information was given: County, Town, and 2 additional conditions that the Town wanted back in.

K. Geske asked if the test results could be sent to the residents. She spoke about the previous inspections and no results given. S. Masek spoke about the process of Superior Silica. Discussion continued about the type of test used and the County test; full scale water test; baseline data; not really baseline because it is already open, but the beginning of Superior Silica and documentation of when they begin; what is tested depends upon the City; give input to the City; what happens with the results; yearly; who pays for the previous problems, if any; procedure used in the past; State Statutes and water protection; Superior Silica pays for someone to do the test and get the results; County tests; Dairyland Lab and them being local; ask Bob Hemker from Winona for previous results.

R. Tuschner asked if the citizens learned anything different from what they knew previously. S. Przybylla stated that without having papers to look at she has a hard time absorbing and learns best with something written down. Tony Przybylla stated that there is vague language. Sara agreed that she wanted to see something in writing. Peg Baumgartner added with specific terms, not vague terms. M. Jasin stated that her husband could not be here tonight and now she has to relay the information back to him; she has been taking notes, but this will difficult without paper in hand, without things written down, to be able to discuss this from that piece of paper. R. Tuschner asked about the slide presentation, and if the citizens wanted to see it. Discussion was held on the contents of the presentation. It was agreed that the printed slide presentation would be given to the Clerk. S. O'Flaherty stated that the group should decide if they wanted to see the presentation or if they wanted to see what the well guarantee would look like, what the proposed conditions for the permit would be, or the property value guarantee would be; the pre-annexation agreement. His sense is that the group is looking for what was on the agenda: the 2 guarantees and the regulations that would affect this particular mine. He has asked for these. S. Masek and P. Millis stated that they have no conditions, no conditional use permit. They will send it (rough draft) to the attorney if she has his contact information. P. Millis stated that they did not bring a set of conditions; there are 3 items on there: property values, water well quality guarantees (2500 feet), 2 air monitors, lights will be shrouded, no flashing, and they would be focused on the work. Sara asked if there was a picture of the layout. S. Masek referred to the map and explained the site which will not have the rail. R. Tuschner stated that Board members toured the Barron site. S. Masek invited everyone to come and see the Arland site which is more

like this one will be. R. Tuschner gave his rationale for visiting the site. Rocky Lisowski stated that they weren't interested in seeing the processing; wanted to see what it is doing to the surrounding area and property; and that nothing happens beforehand, contacting the homeowners of what is going on in the area. S. O'Flaherty stated that this group has tried to do that; in the spring, notices were required to be sent on the 1500 acre mine, but this group never received notices on the meeting of the conditional uses; the older, smaller mine got specific conditions, notice of the bigger mine, this group would have been there.

K. Geske asked, when you proposed the annexation to the City of Independence, which her representatives knew of in February, did you know that this would be a 1500 acre mine or a 580 acre mine; when you were moving from the Town of Arcadia to the City of Independence, during that move from here to there were you moving a 580/600 acre mine or a 1500 acre mine. Did you fully know? P. Millis said the property included in the annexation didn't change. K. Geske was confused; when you came here, did my representatives know; you initially notified the 600 acre mine, the Guza pit on the 28th, you initially notified all those people. P. Millis asked if she was asking about the original permitting of the Guza Mine. K. Geske said in 2014 all of us got missed; wants to know when they came to the Town of Arcadia you were permitted, you were going to take over the original Guza pit, the original 600 acres; am I correct in thinking that or not. S. Masek stated that one of the original thoughts were that it was already permitted and it was a way to get started, with the County having a moratorium they couldn't do that, so they decided to go with the expanded property right away. K. Geske asked if it was February that they notified her Town officials that they were considering annexation or in the process of annexation. I. Pronschinske and R. Tuschner stated no, that is when they were working on the road use agreement. K. Geske asked what month it was, because August 19 it was annexed into the City of Independence; she didn't know anything about this until July, and that she had heard a rumor. S. Masek said that in at least one case someone approached her and said they never heard about this or got a letter. Someone stated that it was he, and it was at the March 3rd meeting on annexation; the 600 acre mine and nothing on the expansion. S. Masek said she didn't know if it was ever that small after the first meeting; we knew that we would be processing; a mine without processing is worthless; we were processing from day one. K. Geske's original question was what day did you move to Independence. P. Millis said the pre-annexation agreement was dated July 7, but they knew before that, but the exact date is unknown. K. Geske said the month is fine; she said she was lost in the process: her Town Board talked with them about the original part of the mine, when they talked with her Town Board, did they understand that it was a 1500 acre mine at that point before it went to Independence. S. Masek stated that she was not sure; they talked about expansion; she was not sure they had all the people signed up; after they started talking to people more people came to us and asked if they could be included in the mine; people came to us and asked if they could be part of the group; it probably did grow from the original expanded area that we drew up; she honestly couldn't say when that all happened, because it was all happening at the same time. K. Geske stated that it initially moved from here and didn't quite get there yet; we had a month or two; do you know others, I alluded to a timeframe when she talked to her Board about this, Sharon mentioned at one meeting the 14 farmers; she's gone through, meticulously through, the minutes and could not find out where she was missed in this whole process; when you were moving into Independence was there any sort of notification, because at that point you already knew you possibly had 14 other farmers who possibly may have come to you, was there any notification at that point, because you already had this mine to notify the surrounding neighbors of the 1500; that's when we were never notified. Do you get what I am saying? Did something get lost in the transformation from here to there? P. Millis stated, no, that statutorily for annexation you don't have to notify surrounding property owners; you give townships notice; the pre-annexation agreement would have preceded the petition for annexation which would have triggered notice to the townships; what failed you is the way the law is written, the law doesn't require it (notice to the adjacent property owners). S. O'Flaherty stated that for clarification, the issue has more to do with the rules of the Town saying in its conditional use permit to discuss that the abutting landowners be invited; there are 2 sets: the 600 acres mine and the 1500 acre mine. Discussion continued between P. Millis and S. O'Flaherty on the procedures of the County and the procedures of the Town of Arcadia.

R. Tuschner, through recollection, stated that in the original Guza mine the conditions of the notification of surrounding or abutting landowners were done; then Cameron Rail came in and the original landscape wasn't changed; then Superior Silica Sand came and the only change was the additional land across the ravine toward the south to Wineski's coop. Those conversations did not require more notification, because they did not go beyond the previous boundary, people of the Cameron Rail or Guza Site. He remembers the conversation of we are going to go try with the City of Independence; from that point on when you are going with the City you approached other people or they came to you to do the expansion, and you are going to the City then; it basically is a different set of rules that you had to use.

S. O'Flaherty is asking Superior Silica tonight to explain the meeting with the Town and what conditions should be used with the City CUP, specifically May 5th, those been discussed repeatedly; what they are wondering if the Town already knew on May 5th of the expansion. S. Masek didn't think so. R. Tuschner stated that if they had known of the expansion, they would've had surrounding landowners notified. I. Pronschinske talked about the trip last February 27/28, 2014 because they wanted to build a facility on the Guza 500-600 acres, and explained the design; when they started and had a CUP with the Town, and the County Board wanted to wait until after the election/moratorium, got put off, and it went south after that. S. Masek met with the County and asked for wiggle room; County said they had to wait until the moratorium was over; then they decided to go to the City; instead of approving smaller, expanding later, and to go big; and it all happened at once.

I. Pronschinske spoke to R. Lisowski about Korpall Valley and the rumor, and the road use agreement; he gave the description.

B. Baumgartner asked about property extending across other town roads and asked about the conditions. Discussion was held about the conditions and errors that had been made; and set route and the process of changing it. S. O'Flaherty stated that the pre-annexation agreement doesn't say that. I. Pronschinske repeated the roads being used. Discussion continued on the pre-annexation agreement and haul routes. K. Geske read the agreement. R. Tuschner stated that the Town has no control over the City; but our condition for the road use is in our condition. Discussion continued: road use agreement; if it does not take place there will be a cease-and-desist; this has been done; that is our only control; history was given; routes for sand trucks; construction trucks; maintenance; 1.6 miles of City of Independence roads and the agreement to pay the Town of Arcadia \$34,071; section 11 and other roads; the map; crossing roads and getting permission, using conveyors, or possibly not mining that area.

R. Tuschner adjourned the meeting at 9:18 p.m.

Respectfully submitted by,

Beth Killian, Town of Arcadia Clerk