



**JASPER COUNTY
COUNCIL CHAMBERS
BOARD OF ZONING APPEALS**

**358 THIRD AVE.
RIDGELAND, SC 29936
OCTOBER 8, 2009
10:00 A.M.**

MINUTES

Officials Present: Ben Mills-Chairman, Lawrence Bowers-Vice Chairman, Board Members – Barbara Bartoldus, Freddy Morgan, Dr. William Singleton

Staff Present: Judith Frank-Clerk to Council, David Jirousek- Planning Director, Lisa Lamb- Planning and Zoning Coordinator.

In accordance with the freedom of information act the electronic and print media were notified.

During periods of discussion and/or presentations, minutes are typically condensed and paraphrased.

Call to Order: Chairman Mills called the meeting to order at 10:07 a.m. and requested that all cell phones be turned off or put on vibrate.

Invocation: Mr. Bowers gave the invocation.

Pledge of Allegiance: Chairman Mills led the Pledge of Allegiance.

Variance Request for Communication Towers and Antennas:

Ms. Lamb informed the Board that the request for the variance is from the Jasper County Emergency Services for a radio tower located centrally on Okeetee Fire Tower Road. Ms. Lamb said the tower is to be 450 feet and according to state law, the Board can grant a variance. Ms. Lamb added that this would be a conditional use. Ms. Lamb informed the Board that the tower is designed to add up to 3 more antennas and private companies can lease space from the County. Ms. Lamb reviewed the various reasons the Board can grant a variance. The current zoning is that towers cannot exceed 185 feet. Ms. Lamb told the Board that this piece of property has received approval from the FAA, FCC, NEPA, Geotechnical and the SC Department of Archives and History. Ms. Lamb said the staff recommends approval of a variance for a tower to be built at 450 feet and by granting this variance, it would not be detrimental, and it

would be for the public good of Jasper County. Dr. Singleton asked about the three additional antennas and Steven Malphrus responded that the space was offered to communication companies and the income will help the County pay for insurance and maintenance. Mr. Malphrus added that it will also cut down the number of towers needed in the County. Dr. Singleton asked if the tower would be installed with a crane. Mr. Malphrus said the County is contracting with Motorola to construct the tower. Ms. Bartoldus asked if it would be feasible to have 2-3 more towers placed throughout the County for better cell phone reception. Mr. Malphrus said that more towers will be looked into in the future. Chairman Mills asked if 450 feet was overkill. Mr. Malphrus said that this tower will cover most of the County; however, there will still be some dead zones in the fringe areas. Chairman Mills asked for comments from the public. There were no comments. Ms. Bartoldus asked will this interfere with the airport if the airport is upgraded. Mr. Malphrus said that most of the concerns were regarding the Savannah Airport and the tower will have proper lighting. There were no more questions or comments. Ms. Bartoldus motioned and Dr. Singleton seconded the motion to grant the variance for this site to 450 feet. The motion carried with all members present voting in favor.

Appeal for Stop Work Order and Zoning Determination from Troy Baird:

Mr. Jirousek explained that the applicant has appealed a stopwork order and zoning determination for a sand mining operation in the Tarboro Community. Mr. Jirousek said the mining operation was established in the summer of 2007. Mr. Jirousek told the board that they must determine if the DSR properly administered the ordinance adopted by Council. Mr. Jirousek said the stop work order was issued because there is no record of a BZA appeal variance for setbacks or special exception granted for the original mine and both items are necessary for mining operations between August 15, 2005 and Nov. 13, 2007 the time of DHEC permitting and the establishment of the Baird Tarboro mining operation. Mr. Jirousek said there is no evidence of a verbal or written staff level approval for establishing the mining operation and activities on-site in 2007. Mr. Jirousek stated that pursuant to these facts, a stop order was faxed and mailed the applicant.

Mr. Jirousek continued that in 2007 general mining on a five acre area 20 feet deep was approved by DHEC, there was no approval for processing. Mr. Jirousek added that no dirt has been moved since the stop order was issued. Mr. Jirousek said that 5 memos are on file, one memo states that Mr. Baird would be giving away the dirt at no

charge; this was never adopted by Council. Mr. Jirousek stated that on April 20, 2009 a zoning permit for "dirt mine" (5.0) acres; stockpile; scale, processing area and temporary office (3.0 acres) was also included. This zoning permit was withdrawn and canceled on August 17, 2009 because it was based on information from the applicant that the County provided approval for the operation in 2007. However, the proper approvals for a variance and special exception were not granted. Mr. Jirousek continued that more importantly, the county ordinance affecting mining and excavation was adopted on May 4, 2009 and the permit acknowledges that temporary structures and activities were allowed at the time in the rural preservation district as they were ancillary to the 5 acre excavation area. Mr. Jirousek said a letter was sent on Feb. 23, 2009 explaining this position prior to the zoning permit, but it did not address processing. Mr. Jirousek said that at the time there was no definition of mining included in zoning ordinance article 4 definitions, so the additional activities and structures were considered temporary and ancillary to the mine operation. Mr. Jirousek told the Board that between April 20, 2009 and May 4, 2009 building permits could have been issued for structures and equipment on the site. Mr. Jirousek said that no applications were submitted. Mr. Jirousek said that mining extraction ordinance was passed on May 4, 2009, and it impacted mining in Jasper County. Mr. Jirousek said the ordinance is very comprehensive and that no site expansion applications were received from Baird. Mr. Jirousek recommended that the BZA address this issue in two parts; does the DSR have the authority to issue a stop order, determination of development rights and withdrawal and cancellation of the zoning permit due to the May 4th, 2009 excavation and resource extraction district ordinance.

Tom Johnson, attorney for Mr. Baird, said they asked for a variance and appeal to try and solve a problem and undo some confusion. Mr. Johnson outlined the history and the limbo of state law, the state of the staff, and there was more going on than the staff could keep up with. Mr. Johnson stated that there is an existing burrow pit and if one load is taken across the property line, the hole is defined as a mine. Mr. Johnson said that Mr. Baird applied for a permit from the state for 130 acres because it was just as easy with the state to apply for 130 acres as it is for a smaller amount and the expansion is to expand the level of activity, not just digging and hauling, but to process the sand. Mr. Johnson said it is a simple process like panning for gold. Mr. Johnson said the equipment is on a lowboy trailer and brought to the site, and it has a series of screens that filters the sand and gravel. Mr. Johnson said the impact on the earth is not changing; only the processing is added. Mr. Johnson stated that taxes and

business licenses' fees will increase, and it will bring a number of new jobs to the county. Mr. Johnson said the impact on the environment is virtually none and the noise would be like a log shredded operating at a distance. Mr. Johnson said that Mr. Baird realizes that if he would try to go beyond the 5 acres, he would have to comply with the new ordinance. Mr. Johnson added that Mr. Baird has spent over \$100,000.00 on establishing the processing and there will be a pond remaining when the mining operation is complete. Mr. Johnson said that there are many other ponds in the County and there is no greater danger in drowning in this pond than the other ponds. Mr. Johnson told the Board that Mr. Baird was trying to get the necessary appeals and variances so that he can get on with his economic endeavors. Mr. Johnson added that this is not the best time to eliminate jobs. Mr. Johnson informed the Board of Mr. Baird's extensive operation in the Purrysburg area, and he pays taxes and provides jobs in the County. Mr. Johnson said there has been resistance from the Tarboro community who does not want this activity near them. However, the buffer is greater than most of the mines in the County and there have been variances granted to other mines. Mr. Johnson said that they were requesting objective consideration of the request.

Mr. Jones said the Mr. Baird would have to be sworn in if he was going to testify. The court recorder swore Mr. Baird in.

Mr. Baird said that he had a permit to mine 5 acres, and he was not requesting to make it larger. Mr. Baird said the state said that 133 acres were minable, but it was never his intention to go to the 130 acres, and he would amend his permit. Mr. Baird said the pond is 5 acres and the machine is 10 ft. x 40 ft. to wash the materials. Mr. Baird said that 10,000 ton could be done in two weeks, and he was not requesting to expand the pond. Mr. Baird said he started in 2007 with the State and the County, and he met with Mr. Moyd and Mr. Moyd told him a he had to send a letter to the County to make sure complied. Mr. Baird said that Mr. Moyd visited the site and he sent the County letters stating where the dirt was going. Mr. Baird said he was already mining before the setbacks were set. Mr. Baird said the County Administrator called about the pit, and he was told to proceed as the County had no grounds to stop his operation. Mr. Baird said he spoke with Ms. Lamb and the Administrator, who were handling the issue, and he was told he could move forward. Mr. Baird said he had a permit from the state for the washing process. Mr. Baird said he should not be held accountable since the County did not send a letter. Mr. Jirousek said to keep the footprint and gave the permit, and then he got the permit from the state. Mr. Jirousek said he has not received the permit yet, but he was told verbally that the permit was approved. Mr. Jirousek said the stop order was issued when he was

told that a permit was never issued. Mr. Jirousek said he was trying to clean up this mess. Mr. Baird said he met with Ms. Lamb and was told he must meet the requirements, and he was grandfathered in because other permits were issued. Mr. Baird said that under a FOIA request he knows that from 2006-2008 permits issued for operations that did not meet the setback requirement. Mr. Baird asked why would he contact the County if he knew the County would not give him a permit. Mr. Baird said that he was upset that he spent \$100,000.00 and felt the County should be accountable. Mr. Baird said that he felt Ms. Lamb and the administrator were following procedure. Mr. Baird said this subject was never questioned until the state meeting held at the high school. Mr. Baird said he met with Ms. Lamb and was told that he needed to meet the requirements. Mr. Baird said he met with the staff and he was never told he did not have a permit. Mr. Baird said he was not being bull headed, and he doesn't buck the law, but he wanted the board to understand that he does things first class and the process started in 2007 and he was told he was grandfathered in and he did not think he should be held accountable to the new ordinance and he would meet with the committee to make this work.

Mr. Morgan asked if he wanted to expand beyond the five acres. Mr. Baird responded that he did not want to expand beyond the five acres, and he discussed that there was clay on top, then 1-15 feet of good sand and the clay cannot be used on the depth of the pond and the processing water is recycled stays on the site. Mr. Baird said he spent \$100,000.00 of which \$70,000.00 was to meet the state requirements. Mr. Jirousek reminded the board that the application for the appeal was for an administrative decision and action authorized by the planning department and not a debate about the site. Mr. Jirousek said that the appeal was filed to decide if Mr. Jirousek acted accordingly.

Mr. Johnson said they filed for a variance and an appeal. Mr. Baird said he needed to learn the process and needs to know what he has to do. Mr. Baird said he would like simple talk and a checklist of what he is to do.

Mr. Jirousek said that it was very clear in the stop order what was needed to be done. Mr. Jirousek said the notice of appeal was filled out, but there was no application for a variance. Mr. Jirousek said it was very clear what needed to be appealed and the applicant checked all three on the cover sheet where it states check one. Mr. Baird said he hired an attorney so that it would be done right. Mr. Johnson said he checked the box for variance, and if it was not the proper form, he would take the blame, but he did not know of a lawyer that specializes in the Jasper County Land Use Ordinance which has been a moving target for the past 4-5 years. Mr. Johnson said that if another form

was to be used, he did not know it. Mr. Johnson said they were dealing with an appeal and a variance and sometimes things don't lend themselves to forms. Mr. Johnson said if he needed to do something else, he asked to amend the application to ask for a variance as he did not know what forms were needed.

Chairman Mills asked what specifically were they appealing. Mr. Jirousek said that he approved a stop order, and they wanted a variance to go back to square one to clarify everything that should have been done in 2007 and a variance for a 100 ft. set back like the other mines. Mr. Jirousek said this can be addressed through an appeal, and currently they are not allowed in rural preservation and the 1,000 foot set back no longer applies. Mr. Jirousek told the board that a use variance cannot be granted, and they need to apply for rezoning to resource extraction which is the only zoning that allows mining.

Mr. Baird said the zoning law went into effect in May, and he started 2 years ago and it does not seem legally right to stop something that started in 2007 and he was told he was grandfathered in and he felt only new property should have to comply, not something that started two years ago. Mr. Baird said he was never given proper documentation, only a verbal approval.

Dr. Singleton said he is not the only one confused by what was said in comparison to the paperwork. Dr. Singleton said that being a successful business man, he should have made sure that all the proper papers were issued. Mr. Baird said he provided documentation and what he is asking for is that the board go back and approve something that he was given approval of verbally. Mr. Baird said that he provided memos and notes in 2007 and inaction to him was another form of approval. Dr. Singleton asked if he had anything in writing granting approval and Mr. Baird said that he was told verbally 1 ½ years ago his operation was okay, and he was never notified that he was operating illegally. Mr. Baird said he took the staff at their word and the staff visited the site prior to the meeting at the school. Mr. Baird said that after the notice in the paper he was told he needed to bring it down from 130 acres, he was told not to expand and he would get a permit through the state, but after the state meeting, he got the stop order. Mr. Baird said he met with Mr. Moyd a half a dozen times and the county and the state have letters from him stating where the dirt was going.

Chairman Mills asked if Mr. Moyd visited the site after the mining began. Mr. Baird said that Mr. Moyd did visit the site after the mining started and Mr. Moyd told him to send the county letters as to where the dirt was going. Mr. Baird asked who he needs to talk to so he can get this straightened out.

Ms. Bartoldus asked what procedure he followed for his other site. Mr. Johnson said that Mr. Baird does not have another exaction business. Ms. Bartoldus said that when you get a state permit, it states that you have to come to the county and Mr. Moyd would have had to get the approval from his superior. Ms. Bartoldus said that Mr. Moyd only did his job of inspecting the mine to make sure it was compliant with the county guidelines.

Lisa Lamb was sworn in by the court recorder. Ms. Lamb said she met with Mr. Baird. Ms. Lamb said at the time of the meeting she was only in that position for 11 days, and she did not if the project was grandfathered. Ms. Bartoldus asked who was her supervisor and Ms. Lamb responded that Steve Sagar was her boss. Ms. Lamb said she did not think it was classified as a mine since he gave away the dirt. Mr. Baird said one person took the dirt for the landfill. Ms. Bartoldus asked if Mr. Baird could remember the name of the person who gave the verbal approval. Mr. Baird said the verbal approval came from Mr. Moyd and Lisa Lamb told him he could continue what he was doing after Mr. Moyd left the county. Ms. Bartoldus asked Mr. Baird if he thought the first DHEC permit was all that he needed. Mr. Baird said he started mining with the state permit. Ms. Bartoldus told Mr. Baird that he needed to follow through and the letter said he must contact the county. Mr. Baird said that Mr. Moyd came out and told him what he had to do, and he did it. Mr. Baird told the board that DHEC told him they sent the letter to the County and the letter said that the County needed to notify the state and the county does have the authority to stop the mining and this letter was sent in 2007.

Mr. Jirousek said that Ms. Lamb interpretation of the letter was that some sort of authorization was given. Mr. Jirousek said that in January he felt the same way. Mr. Jirousek said he spoke with Mr. Moyd and Mr. Sagar and neither of them remembers, but both felt it was authorized and that a county official may have given a verbal approval. Ms. Bartoldus said that, in reality, both sides failed to follow through. Mr. Baird said he did not do it illegally, he had state approval and did not dig any dirt until Mr. Moyd came out and told him the letters regarding where the dirt was going were needed by the county. Ms. Bartoldus asked if Mr. Moyd was present when the verbal approval was given. Mr. Baird said that Mr. Moyd told him the letters were for his boss to review. Mr. Baird said he did what Mr. Moyd told him to do and no one came back.

Chairman Mills asked why a stop order was never given if what he said is not valid. Mr. Jirousek responded that they were fully aware, but nothing was done. Chairman Mills said that Mr. Baird point was valid. Mr. Jirousek said that some sort of authority was given, not

appropriately, but given by a county representative, and it was not handled properly.

Ms. Bartoldus said that Mr. Baird is making the board believe that there was a verbal approval, but there was nothing on file and Mr. Moyd's superior gave verbal approval. Mr. Baird said he did not know written approval was needed, and if he did anything wrong it was because of the verbal approval. Mr. Baird said he has moved 50,000 tons and the county has never said he was doing anything wrong. Mr. Baird said he has not done or moved anything since the stop order. Chairman Mills said that if there was not some kind of approval, Mr. Moyd would have issued a stop order. Mr. Baird said that he provided Mr. Moyd with letters telling the county where the dirt was going. Mr. Bowers asked who told Mr. Baird that the project was grandfathered. Mr. Baird said that Mr. Moyd told him and Ms. Lamb also told him and she told him the only issue was the setback. Mr. Baird said the county issued five other permits that did not meet the setbacks. Mr. Jones said that if Mr. Baird wanted information regarding the other permits, he would have to file under the FOIA and they need to be made part of the record.

Chairman Mills asked if there was a spokesman for the group of residents present. Dr. Bostick said that some people feel it is better to ask for forgiveness and during that period of time things were slipping through and even though there were laws in place, they were not enforced, and eventually it catches up with you. Dr. Bostick said this issue was brought to the attention of the staff by the community and the staff followed up on the communities request. Mr. Bostick was sworn in to testify. Dr. Bostick informed the board that when Mr. Moyd first started with the county, if dirt was removed or sold it was considered a mining operation and maybe Mr. Moyd did not think it was mining since Mr. Baird was giving the dirt away. Dr. Bostick asked if it was a legal mining operation, he would not have to notify the county where the dirt was going, and just because someone else is doing it, that does not make it right. Dr. Bostick said there was no written permit, only a verbal permit, and he did not know how the county could vary the rules. Dr. Bostick said the law is not invalid because the county did not have the staff to enforce the law. Dr. Bostick said the man should have had the permit in his hand before investing in the equipment. Dr. Bostick added that the community is concerned because the mine is right in the middle of the community and things took place without the proper authority. Dr. Bostick said that if the 5 acre tract was under 2007 laws then something should have been given in writing. Chairman Mills asked what the concerns of the community were. Dr. Bostick responded that there were safety issues and the community has not heard about an approval from the

state. Dr. Bostick said they were appealing that this operation not to be allowed to go any further and how can it be overlooked since it does not have the necessary requirements to operate in Jasper County.

Freddy Brantley said the community's position is that this should never have been approved and that permits were never issued. Mr. Brantley said that before Mr. Baird went into business he should have had all the necessary paperwork and that losing money is part of doing business. Mr. Brantley said the roads will be damaged, and that it is a hazard for children. Mr. Brantley said he felt the negatives outweigh the benefits to the community.

Bruce Lawyer said that it is not good business to spend \$100,000.00 on equipment if you are only going to make \$60,000.00.

Chairman Mills said that the board cannot consider economics.

Mr. Lawyer said that they will come back and try to do additional mining.

Jesse Tyson stated that he lives across from the mine and there are a lot of homes around the site. Mr. Tyson said the site is a hazard to the children and the community. Mr. Tyson said the churches do not want the mine. Mr. Tyson said that the mine has caused the value of the property to go down and the water will be affected and it is not healthy.

Annette Green asked if the permit was granted for five acres and DHEC approved 130 acres what guarantee does the community have that he will not mine 130 acres.

Mr. Jirousek said that the 2009 permit is for five acres, 10 feet deep and processing is no longer allowed in rural preservation and that no expansion can be done at the mine without the land being rezoned. Mr. Jirousek said that it was not an ideal location for mining operations and not in a place the staff would recommend for mining. Ms. Green asked who spends \$100,000.00 without written authority.

Rev. Jackson said the mining affects the churches in the area and the BZA has to decide, the person spent the money, but the community does not want the mine. Rev. Jackson said there was a song titled "It's too late to turn back now" and they can decide to let the mine move forward, or they can stop it. Rev. Jackson said he was also concerned that if there was a draught that water goes to the deepest spot. Rev. Jackson asked the BSA to consider this deeply because \$100,000.00 is a lot of money, but the property in the community has dropped in value and it is hurting the churches. Chairman Mills asked how it was hurting the churches and Rev. Jackson said they cannot expand and the water situation.

Prince Jackson said that if he builds a house, he needs a permit and Mr. Baird should know he needs a permit and the mining has gone on

for years. Mr. Jackson said he feels Mr. Baird is breaking the law and the BZA needs to protect the citizens and people should abide by the law.

Dr. Singleton motioned and Mr. Bowers seconded the motion to take a five minute break. The motion carried with all members present voting in favor.

After returning from break, Chairman Mills closed the floor to the public.

Mr. Baird said that part of the money he spent was for studies regarding the water and DHEC requirements have been met. Mr. Baird said he did nothing illegal and the county official visited his site and a stop order was never issued until now. Mr. Baird said he only planned that the mine be 5 acres and 20 feet deep, which is 10 feet less than what was approved. Chairman Mills asked for a timeframe. Mr. Baird said he thought it would take a two year period to complete. Tom Johnson asked the board to remember that an ordinance that would exempt five acre mines was considered, but it did not pass. Chairman Mills said it was passed for two acres with no written permit. Mr. Johnson stated that the mindset was for an ordinance that would exempt 5 acres.

Mr. Jirousek stated that he felt the board has sufficient information to make a decision.

Ms. Bartoldus motioned and Dr. Singleton seconded the motion to go into executive session. The motion was carried with all members present voting in favor.

The board adjourned after the executive session and the attorney will issue a written response. The meeting ended at 1:30 p.m.

Respectfully submitted by:

Approved by:

Judith M. Frank, ccc
Clerk to Council

Ben Mills
Chairman, BZA