

GLENN M. STODDARD
ATTORNEY AT LAW

130 S. BARSTOW STREET
SUITE 2C
EAU CLAIRE, WI 54701

www.stoddardlawoffice.com

TELEPHONE: (715) 852-0345
FACSIMILE: (715) 852-0349
glennstoddard@gmail.com

September 24, 2009

Mr. Jeffrey B. Fuge
Corporation Counsel
Polk County Justice Center
1005 W. Main Street, Ste. 100
Balsam Lake, WI 54810

Re: Kraemer Mining & Materials, Inc. SEP Application

Dear Mr. Fuge:

I represent an organization made up primarily of residents of the Town of Osceola, named "Friends of Rural Communities and the Environment of Wisconsin" ("FORCE WI"). The President of FORCE WI is Mr. Dan Burch of 2141 90th Avenue, Osceola, WI 54020. I am writing at this time in response to your letter to me of August 20, 2009, and in response to the letter to you of September 18, 2009, from Attorneys Behling and Thiel, who represent Kraemer Mining & Materials, Inc. ("Kraemer"), concerning Mr. Bob Clark.

First, you should know that FORCE WI has been organized out of concern--and in opposition to--the Kraemer Mining & Materials, Inc. ("Kraemer") blasting quarry proposal, in the Town of Osceola ("Town"). I will be actively involved in representing FORCE WI as the County reviews Kraemer's pending SEP application.

I. Response to Your Letter of August 20, 2009.

In your letter to me of August 20, 2009, you asked me to advise your office of the names of the Land Information Committee ("LIC") members that had a private tour of the Kraemer property at the invitation of Kraemer.

Based on information received from my client, it is my understanding that your letter is correct that Ms. Carrie O'Connell, who is the spouse of LIC Chairman Kim O'Connell, did, in fact, tour the proposed Kraemer blasting quarry site at Kraemer's invitation. This is of serious concern to me and my client. In addition, I would note that one member of FORCE WI has reported to me that Kim O'Connell recently commented to her that he had been reviewing Kraemer's SEP application and that FORCE "had better have good arguments against approval of the SEP," or words to that effect. Taken together, Ms. O'Connell's touring of the site and Mr. O'Connell's recent comment in

support of the Kraemer SEP application indicate to me that Mr. O'Connell is already fully supportive of Kraemer's proposal, regardless of the facts, and has thus arbitrarily prejudged this matter in Kraemer's favor. As such, I plan to raise this issue at the public hearing on Kraemer's SEP on October 21, 1009, and request that Mr. O'Connell recuse himself from participating in the hearing and from taking any part in the decision on Kraemer's SEP application.

II. Response to September 18, 2009 Letter to You from Kraemer's Attorneys.

In addition, I feel it is necessary to respond to a recent letter, dated September 18, 2009, which was sent to you by Kramer's attorneys, John Behling and William Thiel.

In their letter, Kraemer's attorneys essentially argue that Mr. Bob Clark of the Town of Osceola Planning Commission should have recused himself from taking any role in voting as a member of the Planning Commission to provide an advisory recommendation on Kraemer's SEP application. Their argument was that Mr. Clark was biased against Kraemer because of anti-quarry signs displayed on or near his property.

Since that letter was written, I understand that the Town of Osceola Plan Commission did vote to recommend denial of Kraemer's CUP application. I also understand that Mr. Clark participated as a member of the Planning Commission and explained his position on the issue, as well as that the signs were not his but had, instead, been placed on or near his property by others who oppose Kraemer's proposed quarry. I also understand that in explaining his position against the proposed blasting quarry that Mr. Clark set forth a number of very sound and rational reasons that cannot be taken as arbitrary in any way.

Based on my understanding of the facts, and my reading of the letter from Kraemer's attorneys I would, therefore, offer the following observations:

First, Kraemer and its attorneys are obviously desperate to try to disqualify all legitimate and rational opposition to Kraemer's proposed blasting quarry in any way they can. As such, they are now making ridiculous arguments like the one made in their letter of September 18, 2009.

Second, the letter of September 18, 2009 from Kraemer's attorneys is really nothing more than a predictable attempt to intimidate Mr. Clark and other Town and County officials from voting in opposition to Kraemer's proposed blasting quarry.

Third, the letter of September 18, 2009 from Kraemer's attorneys has no legitimate basis in law, and the case citations included in it do not apply to the facts of this situation at all. Instead, the law clearly supports the role of Mr. Clark and other similarly situated Town and County officials in deciding this and similar issues based on rational public health, safety, and general welfare considerations, as well as their own

personal experience and community concerns, as long as their decision is not merely arbitrary.

In *Peace Lutheran Church v. Village of Sussex*, 200 WI App 139, 246 Wis. 2d 502, 631 N.W.2d 229 (Ct. App. 2001), the court addressed an allegation of prejudgment bias made by a church that was denied a variance by the Village of Sussex's Board of Fire Appeals from a local requirement under the Village of Sussex's Fire Prevention Code, which was stricter than the State of Wisconsin's provisions for the installation of automatic sprinkler systems. The court explained that:

...an arbitrary action or decision is "one that is either so unreasonable as to be without a rational basis or one that is the result of an unconsidered, willful or irrational choice of conduct--a decision that has abandoned the 'sifting and winnowing' process so essential to reasoned and reasonable decision making." Generally, we have equated the term "unreasonable" with irrational or lacking a "rational basis."

...We determine whether the Board's action had a rational basis, not whether the Board acted on the basis of factual findings. *Rational choices can be made in a process that considers opinions and predictions based on experience.*

Id., 200 WI App 139, ¶24, 246 Wis. 2d at 519, 631 N.W.2d at 237-38 (citations omitted) (emphasis provided).

In another case, *Town of Hudson v. Hudson Town Board of Adjustment*, 158 Wis. 2d 263, 461 N.W.2d 827 (Ct. App. 1990), the court upheld the denial of a special exception permit by a town board for the expansion of a truck service center. The permit application was originally denied by the town board but later approved by the town's board of adjustment. The circuit court reversed the board of adjustment's approval of the permit and reinstated the denial by the town board. In doing so, the court deferred to the decision of the town board and stated that, "it was reasonable for the town board to infer that there would be additional truck traffic in Hudson" and that this did not conform to a provision of the town's zoning ordinance which provided that special exception permits shall not be "allowed which would be contrary to the public health, safety, or general welfare...." *Id.*, 158 Wis. 2d at 277, 461 N.W.2d at 832.

In *Sills v. Walworth County Land Management Committee*, 2002 WI App 111, 254 Wis. 2d 538, 648 N.W.2d 878 (Ct. App. 2002), the court fully recognized, "the localized and political nature of zoning decisions, and the status of Committee members as representatives of the community." *Id.*, 2002 WI App 111, ¶44, 254 Wis. 2d at 566, 648 N.W.2d at 891. Moreover, the *Sills* court elaborated on this issue in a footnote, with

Mr. Jeffrey B. Fuge
September 24, 2009
Page Four

the following quote from a law review article on the issue of zoning decision making:

...Although such decisions are made pursuant to established criteria, there is little doubt that sensitivity to local concerns plays a role in decision making because of the potential impact change has on neighboring land. Further, the primary expertise that such boards have is arguably in their capacity as representatives of community concerns. In this respect, they not only reflect their own natural biases, but it is not inappropriate to listen to community concerns.

Id., 2002 WI App 111, ¶44 n.9, 254 Wis. 2d at 566 n.9, 648 N.W.2d at 891 n.9 (quoting Mark W. Cordes, *Policing Bias and Conflicts of Interest in Zoning Decision making*, 65 N.D. L. Rev. 161, 209 (1989) (footnotes omitted)).

In conclusion, it is my opinion that Mr. Clark did exactly what he should have done by participating in the Town of Osceola Planning Commission's consideration of Kraemer's SEP application. It is also my opinion that the letter from Kraemer's attorneys is without any merit whatsoever. Clearly, Mr. Clark and other similarly situated public officials at the Town and County level should not recuse themselves in the face of such obvious and groundless intimidation tactics by Kraemer and its attorneys. Instead, they have a duty to carry out their official roles by fully participating in such decisions unless they have arbitrarily prejudged the matter, as appears to be the case with LIC Chairman Kim O'Connell. However, that was certainly not the case with Mr. Clark's vote as a member of the Town of Osceola Planning Commission in this matter.

Thank you for your attention to this matter.

Sincerely,



Glenn M. Stoddard

cc: Polk County Land Information Committee
Gary Spanel, Polk County Zoning Administrator
Sara McCurdy, Polk County Land Information Director
Town of Osceola Town Board