

# **BOURBON COUNTY JOINT BOARD OF ADJUSTMENT**

## **Minutes of Special Meeting**

**May 18, 2022**

The Bourbon County Joint Board of Adjustment held a Special Meeting on Wednesday, May 18, 2022, at 5:30 p.m. in the City Commission Chambers of the Paris Municipal Building, Paris, Kentucky.

The meeting was called to order by Chair Wayne West. Roll call was taken. Present for the meeting were Board Members Darrell Poynter and Noel White. Steven Osborne and Wiley Faw had called in and their absences were excused. Quorum established. Also, in attendance were Legal Counsel Patrick Watson and Michelle Thornsburg as the acting secretary.

Chair West began the meeting by reading the only agenda item for the special meeting: KRS 100.263 Public hearing on Rex Simpson's appeal of the March 15, 2022, Planning Administrator determination that the current use of the property located on Shawhan Road (Parcel 023-00-00-011.01) is illegal under the Agricultural Zone classification within the Bourbon County Zoning Ordinance.

Mr. Watson asked Mr. Simpson to come forward as he explained the rules for the meeting: Mr. Simpson will be able to lay out his case on why he believes the violation is wrong. There will be an opportunity for questions. Then the Planning Administrator will be given the opportunity to present the Ordinance and the reasons that resulted in the violation being issued. A Public Hearing will be opened, but the Public will not be allowed to ask direct questions of Mr. Simpson or the Administrator. After these questions, the Public Hearing will be closed. Mr. Simpson and the Administrator will be allowed to present a summary to the Board. Afterwards, the Board will deliberate on what has been presented. The Board of Adjustments can then make a decision on this case, or it can be tabled.

Mr. Simpson was sworn in by Mr. Watson. He began by stating that when he bought the property, His neighbor, Ms. Walker, made it known they were not going to get along. She did not like change. He said he minded his own business. Farming. Hay Company. Hay in and out. Corn and beans. Trucks and trailers used to haul commodities. Commercially plated trucks. Commercial excavation company but no excavation work on that property. Only his equipment brought into his property. Solely used his own equipment to work on it. Parked equipment at his shop. Any commercial activity is done out on the road. This is for agricultural products: hay there and at his shop

The Commercial plated vehicles were parked on agricultural property, he understands that is why he is here. Everything the trucks haul is agricultural products. As for the road, it had been brought to his attention that the road was being torn up, but the road was in bad shape when he moved there. Mr. Hudson caused a lot of the damage. Mr. Simpson talked to Blaine Earlywine (State Road Department), they said they would fix it. Mr. Simpson repaired the road, Mr. Earlywine approved the repairs.

Chair West asked about his hauling of grain. He said that Commercial plates were needed to haul agricultural products across state lines when grain goes to market. He can haul other products than his own.

Mr. Watson asked if other people could hire him to haul for them and Mr. Simpson replied yes, they could.

Board Member Poynter inquired about the size of the farm and how it was used. Mr. Simpson said 14 acres, with 10 planted with alfalfa. He was also asked if he brought in hay from other places. Mr. Simpson said that he did bring in hay from his other farms.

Mr. Watson asked questions about number of full time employees: 3. Did he buy hay from other people? Mr. Simpson said they have him come in and clean up their farm and they give him the hay and which he sells. Board Member West commented that the hay would be sold to whoever wanted to buy the hay.

Mr. Watson said that he had questions to get to the nitty gritty. Questions were asked by Mr. Watson, Mr. Poynter, and Mr. West and Mr. Simpson replied:

Do you own the land? Yes

Is the business and LLC with the vehicles titled in it? Some are, yes.

Are you the sole member? Yes.

Lease agreement? No.

Do you own or lease truck? 5

Employees paid by LLC or you? Me, individually

Do they drive the trucks? Yes

CDL Licenses? Yes, for the one that cross state lines.

How long in business? Since 2014

When did you buy? 2020

Previous business? Leased ground on Bethlehem Road

Basically, same operation on Bethlehem Road? Yes

Did you apply with the Planning and Zoning Office to run this business? No, was not aware that I was supposed to.

Board Member West: If you have been doing it for 10 years in the same place you are grandfathered in.

Building built? 4-5 years prior to purchase.

Use? Storage for shop and work on equipment.

Planning Administrator, Andrea Pompei was sworn in. She began by stating that she put together information for and tried her very best to stay focused on information that she knows, not that she doesn't know. Going talk about the zoning districts and the other zoning districts that more specifically state freight and trucking. Did some research on the business itself and to provide you with some information.

Property is 103 Cemetery Road, aerial photo of the 13 acres. Second image shows zoning map of the agricultural zoning. Mr. Simpson stated the property is almost 14 acres in size. Water, electric, etc. have been listed. Agriculturally zoned properties allow some uses. Not listed for freight or trucking yard.

Bourbon County Zoning Ordinance Highway Commercial District or the General Industrial District both allow freighting or trucking yard or terminal. Using the lot as a place for parking freight vehicles constitutes it as a freight or trucking yard.

From her research she gathered this information:

Dept of Transportation - Simpson Trucking & Excavating LLC is listed on their website. Carrier business Power Units – 12

Drivers – 5

Operation Classification – Authorized for Hire and Private Property

Cargo Carried – motor vehicles, building materials, agricultural products, construction, metal, logs, etc.

Further research was done to provide more case history:

Research in PVA – 12/1/2020  
Business is listed on Facebook.

Steps taken during the case:

- 11/29/21 original complaint received from Ms. Clark.
- 11/30/21 Called the road supervisor to go out and take a few photos for her. At that time, there was no gravel down, no commercial trucks in photographs.
- 12/1/21 She spoke with Mr. Simpson and first and foremost, he said he had called the planning office prior to purchasing the property and was told that it was a permissible use. That is false. She stated she did not personally have a conversation with Mr. Simpson prior to his purchase.
- Equipment and vehicle were for agricultural purposes. No further follow up. Closed case.
- First week of January, Ms. Clark approached her once again and refiled a complaint. That first week, she conducted a site visit on January 4, 2022, and observed the commercially licensed vehicles and ruts in the side of the road. Clear large vehicles were coming in and out.
- Between 1/5/22 – 1/10/22 consulted with Legal Counsel and drafted the violation. First notice was returned for no postage. Second time sent to the address listed on the PVA website. That letter was returned to P&Z office as non-deliverable. Finally, she went on the Secretary of State website and got the registration of 160 Cemetery Road. Mailed the letter to that address and it was received.
- The week of March 16, 2022, the letter was delivered.
- March 18 2022, she spoke with Mr. Simpson and recommended he get an attorney. Last conversation she had with him. Between then and the filling of the appeal, met with Mr. Simpson's partner to discuss the appeal process.

Questions were asked of Mr. Pompei by Chair West, Board Member Poynter and Legal Counsel Watson  
Found commercial trucks? Correct. Road Supervisor's photos showed no trucks in December.

Is it possible that someone in your office could have spoke with him and given him permission?  
She said she can't say it didn't happen for sure. That she could only speak for myself.

Agricultural uses. If he is bringing hay in from another farm and storing it there, that's not a permitted use. Am I correct? Legal Counsel stated that was asking her to make a legal decision and she shouldn't answer the question. She said the letter states the violation. Commercial use of the property. Vehicles being stored as a truck lot. Freight vehicles.

Truck classification. Commercial licensed trucks shouldn't be on the lot is that what you are saying? Correct

Is he in violation because of those commercial trucks? Correct. Although there is no product coming in and out, the trucks are used for hauling freight and being stored there. Commercial use is where the violation lies not the storage of a tractor. Violation is freight vehicles used to haul.

No matter how they are licensed? She did know the answer to that.

Farm tag it is usually a farm related vehicle.

Need a professional to tell us about the exact reasoning for the farm license/tags.

Mr. Simpson had no questions for Andrea. Stated the truck in the picture was farm plated. Farm plated trucks cannot cross state lines. Some commodities go across state line and by law it has to have commercial plates. He does more agricultural than commercial. Does haul for other people under excavation.

Board Member Poynter said that he was not clear about Mr. Simpson's business. Hauling hay into property and then selling it back to somebody else. Is that not a commercial industry? Legal Counsel Watson said that it is making a profit, so yes, but it is agriculture related. If you think that it's purely agricultural or if you think that it is agricultural enough, you all are going to have to make a decision on it. Any questions that you think would help shine light on that, feel free to ask.

Board Member Poynter said that if products are being hauled to another state with a commercial license is that not a commercial business? State line cause a commercial business. Legal Counsel Watson said to think about it's going to be commercial activity as he is buying and selling. The fact that its hay that he is dealing in. Does that still qualify as commercial? Mr. Simpson said people lease ground for crops, they take their crops to their property and then they sell it to the market. It is still agricultural. Same as selling corn or beans. It all comes off of this property, goes to my property and then it goes to market. Chair West said that most of the time the stuff is hauled with farm trucks. Mr. Simpson said he hauls commodities across state lines because market is better and that requires commercial plated vehicles.

Board Member Poynter said he was still hung up on use permit. Production of crops or commodities. Mr. Simpson are doing very little of that on that property. He is bringing in from another property. Legal Counsel Watson stated that a small portion is on that property. Is that significant enough to allow it?

Legal Counsel Watson asked if in addition to the hay that he brought onto the property, did he buy their product and bring it in. Mr. Simpson said that he had other properties that he leased and grew crops on and brought those on this property, but it is all his. Watson asked percentage is other people paying you for hauling. Mr. Simpson said he had no breakdown off the top of his head. He could get them something. Trucks being used for excavation too. Watson stated that excavating equipment was stored on property. Same trucks used to haul grain across state line. Mr. Simpson said Yes. Did he specialize for anything? No, he did not specialize in anything. Clean out fence lines, build ponds, barn pads. Mr. Watson asked him to estimate on percentage of annual receipts excavating versus farming. Mr. Simpson said about \$800,000 a year. Mr. Watson asked about agricultural receipts and how his time was spent. Mr. Simpsons said he spent more time farming than excavating. That he did a lot of hay.

The Joint Board of Adjustment took a 5-Minute Recess

After returning from the recess, the Public Hearing portion of the meeting was opened.

Keith Thompson - 'Hypothetical question – commercial vehicle, if I worked for a company and drove the company truck home, is that a violation? Coming in and out, say I go to Paris and bring it to my farm and then sell it to Cincinnati. Am I commercial, I am buying, housing at my farm, then selling it? Is that commercial? Gray areas, where does that stop. The way I see it, it's the same either way you look at it.'

Scott Wells – 'Just learned about this last week when Andrea told us. Started looking into this. Went out to pay a visit and look at the property. It is not different from a lot of other farms in the county. Spoke

with other farms and businesses, like Roe Brothers. Excavation includes agriculture – fence lines and things of that nature. I am here to support him and other farmers and small business owners especially agriculture related business such as him. Other farmers, property owners are worried is this going to set a precedent. Want to learn how we can nitpick about the license plates. Can't hardly do business in Bourbon County and people remember that. Want to see what's going on.'

Chair West: It's about the roads as well, life and health and safety on the roads out there. Roe Brothers are hidden and when they go home, they aren't seen. With this case, you can see everything.

Scott Wells: Here to listen and learn. Other people have asked what's going to happen here and I don't know. One of the largest agriculture counties in the state of Kentucky.

Chair West: Got to make sure we don't create a commercial trucking company.

Scott Wells: Part of his business is commercial and large part of it is agriculture.

Jimmy Mason: In support of anyone hustling to earn a dollar. Colorpoint not zoned right. That is a commercial operation down there. Now they want to widen Cane Ridge Road to accommodate the trucks. Was I in violation when I stripped that tobacco and then hauled it out? I don't want you shutting the boy down. I hope he allowed to do it.

Debbie Walker: 100 Cemetery Road. Showed pictures of her property and Rex's property.

Richard Day Howard: 100 Cemetery Road – Scared me. He had more than 15 trucks at one time fired up at 5:00 am running. The diesel was so bad I thought my back yard was on fire. Less than 100 feet to my window. Can you imagine waking up smelling diesel? Mailbox has been moved; the road has been filled with sludge. Used to be a bank there and now there is nothing to stop you. About 8 other houses back there. Guardrail or have it fixed properly. He is constantly filling it and it's not taking care of the problem. Went to the road department, they didn't have any comment at this time. I have photos where it has washed out. Someone pulled the mailbox out and moved it down the road. 8 acres can only be farmed because of everything there on the property.

Chair West: You probably need to go to the Fiscal Court because we have no control over that. You need to approach them about that.

Richard Day Howard: If he builds another building, there is no way he can farm it. It has only been cut once. Reduced to 8 acres now.

Public Hearing Closed

Mr. Simpson: They moved the mailbox initially so I couldn't turn my trucks. I never destroyed a road. Everything they just said was bogus. I have never cut and baled my hay in the same day, you can't.

Closed the Evidentiary Portion of the Meeting.

Chair West: How many complaints about the property? Ms. Pompei: Only one person complained.

Ms. Pompei's closing statement: First clarify violation is trucking and excavation. That aspect of it is the reason why we have conditional uses. Currently this is not listed in the conditional uses however it is listed in the industrial zone. What you heard from the neighbor next door is what we usually hear from a non-compliant property. Zoning Ordinances require conditional uses for Bed and Breakfasts or Wedding Venues. Conditional Use is not available for trucking company. That is one way for us to have some sort of oversight that the use is not negatively impacting others surrounding that property. Even the least intensive use as a bed and breakfast. In closing is just that, it is clear that this is registered as a commercial type of business that is a tax classification as an agriculture property and a commercial business is being run on it. Yes, you are bringing in agriculture products from other farms, it's not about that, its about the storage of the trucks, the use of it as a freight truck lot.

Chair West: Is there a break in there somewhere?

Ms. Pompei: Not talking about the trucks that are. He admitted that yes, he is running the excavating business off that property. Not the products, the vehicles being stored on the property.

Chair West: If those trucks were stored somewhere else, that would be a different deal.

Ms. Pompei: Yes, that is correct.

Chair West: He could still store stuff there and agriculture stuff there. Just not storage of the trucks.

Ms. Pompei: Related to the trucking and excavation business only.

Board Member Poynter: There are a bunch of people that do this.

Simpson's closing statement: I don't know how I can be anymore agriculture than I am. I guess what I am not understanding is how a man separates the use of the commercial trucks, because those trucks are required to take agriculture product over state line.

Chair West: The trucks sitting on the lot and all the dozers.

Mr. Simpson: This neighbor did not like the previous owner either.

Board Member Poynter: That is hearsay, we have to rely on the facts in front of us.

Mr. Simpson: I don't know how I could be any more agriculture than I already am. I truly am sorry I don't mean to cause a problem. I wasn't raised that way. I am just doing a job and trying to feed my family.

## **Deliberation**

Chair West: I think the Judge needs to be called in on this issue. Call him before we make this decision. It is out of my league. There is a grey area. Let Judge Williams and the Fiscal Court help us make this decision.

Mr. Watson: Asking for policy guidance at this point. Would like a representative of the Fiscal Court to come into this. Continue this meeting to a specific date in the future. If you are going to ask him for more information you can give him 30 days. If you want to hear additional information, then you are going to

have to lay out the terms for hearing that. Specific who you need to hear from, if the person doesn't appear, you are still going to have to make a decision then.

Chair West: I think we are going to make a precedent, so we need to get the Fiscal Court involved.

Board Members Poynter and White both agreed.

Mr. Watson: Two absent members cannot be involved in the next meeting. I will be the one to ask for the Judge to weigh in on it. If he declines, this isn't something that the county wants to weigh in on, then you as the Board will have to make the decision.

Board Member White: Will the Judge read the minutes first?

Mr. Watson: We are looking for more policy advice from him and the Fiscal Court. If you do want the County to provide some policy guidance, we can ask the Judge. If he declines, you will still have to make a decision. If he can't appear in person, he can put something in writing and present it as part of the record.

Agreed to continue until June 15<sup>th</sup> at 5:30 p.m. Any other information needed? Percentage of commercial vs. ag? No. Need some guidance.

Mr. Simpson: If it's something being looked upon me the way my business listed, I can change it, if that's what it is, I will change it to Simpson Farms.

Chair West: Andrea does a great job – just upholds the ordinance.

Meeting adjourned. To reconvene on June 15, 2022, at 5:30 p.m.

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Chair Wayne West

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Date