

**CITY COUNCIL HEARING  
CITY COUNCIL CHAMBERS  
201 W. FRONT ST., HARVARD, ILLINOIS**

**May 25, 2010 – 7:00 p.m.**

**Thomas Merryman  
With Regard to the First Amendment to the Annexation Agreement**

Mayor Nolan called the public hearing to order at 6:30 p.m. and led the pledge to the flag. Clerk Wells called roll. Aldermen present: Leyden, Marzahl, Ulmer, Szczap, Adams, Logan, Perkins and Opper. Also present were Administrator Nelson and City Attorney Carlos Arévalo. Rick Zirk was present on behalf of the petitioner.

Mayor Nolan stated that the parties of interest in the petition were present. City Clerk Wells noted the Certificate of Publication from the Northwest Herald with a publication date of May 8, 2010.

Mayor Nolan asked for the identification and recording of any objectors as follows:

- Attorney Jay Filler on behalf of Elvis and Carolyn Henson, 21007 McGuire Rd., Harvard

Rick Zirk was present on behalf of Merryman Aggregate, 14212 Washington St., Woodstock, IL and upon being sworn gave an overview of the petitioner's request for a modification to the Annexation Agreement with Thomas Merryman that was entered into with the City of Harvard on May 17, 2009. Due to the poor economy, the sales at the pit on McGuire Rd. are not at sustainable levels. Other than loading out the stone that was crushed earlier in the year, the crushing operation has already ceased and the facility will not be run. There are a couple of local projects that have some demand for stone, but beyond that, the operation is at the end of any identifiable users of any appreciable amount. The original Annexation Agreement provides for two semi-annual payments to the City in the total amount of \$95,000 per year in lieu of a per ton fee. The 2009 payment was made per the original Annexation Agreement as will the 2010 payment. The petitioner is requesting that commencing 2011, Merryman Aggregate shall pay a fee to the City in the amount of \$585,000 for its mining operations payable on annual installments of \$42,785.72 until the Extraction Fee is paid in full. There is a provision that if the process were accelerated and Merryman would get done early, the balance of the money would be due in one balloon payment.

Mayor Nolan brought up provisions in the original annexation agreement that must be abided by:

- Berm on the west side of the haul road is not completed and needs to be 10' high.
- The haul road needs to be paved from McGuire Road in 300'
- Needs to be fenced
- Berm needs to be planted
- Keep dust under control
- Hours of operation Monday-Friday 6 a.m. – 6 p.m., Saturday 7 a.m. – 3 p.m. and no work on Sunday.

Rick Zirk stated they are working on those provisions. Rick specifically addressed the paving of the haul road from McGuire Rd. and noted that he originally sent the engineers out to get an access point designed according to county standards. The road was paved according to the plan developed with the County Highway Department, but he didn't reconcile that plan with the Annexation Agreement and the road was only paved 157' instead of the 300'. Rick is working to get a paver out there to complete the paving per the annexation agreement.

Mayor Nolan asked for the presentation of evidence by objectors.

- Attorney Jay Filler, representing Elvis and Carolyn Henson, 21007 McGuire Rd., Harvard referred to his written letter outlining the reasons for their objections and summarized those concerns. The

Henson's own two pieces of property, adjacent to the pit on the west side, that have issues of concern. Attorney Filler noted that the complaints they are raising are not objecting to the financial terms of the amendment, but that the City Council consider deferring that issue or at the very least begin enforcing the terms of the agreement as they exist. Other issues are excessive noise and dust, hours of operation outside of the hours permitted by the annexation agreement, water processing system and concrete pad not installed per agreement, permit and bond because their operations are in excess of 10 acres. Attorney Filler asked that the City enforce the safeguards and terms of the agreement that were put into place and hopes that will satisfy the problems. Attorney Filler requested that the City Council enforce the terms of the agreement and consider deferring approval of the modifications for at least thirty days so Merryman can make a good faith showing that they have tried to comply with the agreement.

Rick Zirk stated that there is no argument that the addressed items were part of the agreement and should have been adhered to. Rick asked for confirmation that the terms that are proposed in the agreement are consistent with what he received from the City Attorney this afternoon to which Carlos said it was.

At 7:29 p.m., moved by Logan, seconded by Perkins to adjourn the hearing. Aldermen voting aye: Leyden, Marzahl, Ulmer, Szczap, Adams, Logan, Perkins and Opper. All ayes. Motion carried.

Submitted by:

  
Andy Wells,  
City Clerk

6/8/10  
Date