

MINUTES
CLAY COUNTY PLANNING COMMISSION
7:00 TUESDAY, FEBRUARY 25TH, 2020
MEETING ROOM B - THIRD FLOOR COURTHOUSE

Members Present: Amos Baer, Laura Johnson, Bill Davis, Randy Schellack, Steve Lindaas, Steve Mortensen, Mark Klevgaard, Tim Brendemuhl

Members Absent: Jenny Mongeau, Andrea Koczur, Curt Stubstad

Others Present: Matt Jacobson, Emma Notermann, Brian Melton, David Overbo, Rita Rueckert, Dan Huber, Kory Koester, Marc Pritchard, John Boulger, Marvin Anderson, Kris Knutson, Nick Carlin, Mike Stock, Cliff McClain, Loren Richards, Peyton Mاستera, Travis Schmidt, Julie Nash, Mark Ciernia

ROLL CALL:

Roll call was taken by Chair Amos Baer and has been recorded. The meeting was called to order at 7:00 PM

APPROVAL OF AGENDA:

On motion by Randy Schellack, seconded by Steve Lindaas, and unanimously carried, the Planning Commission approved the Agenda.

APPROVAL OF MINUTES FROM JANUARY 28, 2020 MEETING:

On motion by Tim Brendemuhl, seconded by Steve Mortensen, and unanimously carried, the Planning Commission approved the January 28, 2020 Minutes as presented.

CITIZENS TO BE HEARD: There were no citizens wishing to be heard regarding items not listed on the Agenda.

PUBLIC HEARINGS:

RJ ZAVORAL & SONS – INTERIM USE REQUEST FOR TEMPORARY ASPHALT PLANT
The applicant is seeking approval to allow for a five year extension of an interim use permit for a temporary asphalt hot mix plant. Said plant would be at an existing gravel mining operation on parcel 12.021.1700 in the S Half, NE Quarter, Section 21, T142, R45 (Hagen Twp.).

On motion by Randy Schellack, seconded by Tim Brendemuhl, and unanimously carried, the Planning Commission opened the public hearing.

Matt Jacobson, Planning and Zoning Director, Applicant is requesting a 5-year extension to an Interim Use Permit granted May 2019 for a temporary asphalt hot mix plant. There have been three previous requests for extensions; this particular request is for a 5-year extension instead of a 1-year extension. The proposed plant site is located on the northern tip of the existing gravel mine.

The haul route will be south on #200 and then to County Road 34 where it will go east or west as required.

This will put traffic past 4 residential properties on that route. There have been complaints from citizens regarding dust and traffic speeds. There is high activity on this road. Law enforcement checked on truck speeds in late summer/early fall 2019. Director Jacobson checked the dust conditions and dust control had been applied. There have also been reports of employees of this particular pit and/or asphalt plant staying in campers in the neighbor across the streets yard. The recommendation to this neighbor would be to apply for an Interim Use Permit for these campers. Director Jacobson's recommendation is to apply the previous conditions from the 2019 Permit to this Permit request.

Steve Mortensen clarified the date of the expiration to be 2025. Steve Lindaas asked about the water table at that area as his information is indicating approximately 10 feet. Matt Jacobson referred this question to be asked of the Applicant once they are presenting their information.

Applicant Nick Carlin from RJ Zavoral and Sons is a project manager. Carlin feels the workload justifies the necessity of an asphalt plant in that area. They are only in the pit 2-4 weeks per year. When they are working in that area they have a full time water truck operator to control dust. Regarding the groundwater, they do not mine but only use the material that is already up and present.

Mark Klevgaard asked what, if any, large projects they currently have scheduled and how many loads they will be anticipating to be hauled out. Carlin states they have a moderate size project scheduled in Traill County, North Dakota. They hope to obtain this permit so they are ready to take on additional projects and feel there will be many projects available for bidding. Carlin felt that they were hauling from the pit approximately 2 weeks last year. This request is only for asphalt.

Steve Lindaas asked Applicant what their precautions and mitigations are for protecting the area water. Carlin stated the owner of the property has their own storm water pollution protection onsite. The Applicant states their products are basically clean rock and sand. Carlin described the process of asphalt creation; clean crushed rock, sand, crusher dust which is the dust made from when the rock is crushed, and oil. These items are fed into the plant. Oil is brought in by sealed tankers, the tanker hooks up to the plant, the aggregate gets heated in the hopper, the oil is then injected and churned to create the asphalt. Lindaas inquired if they have a written plan in the event of accidental water contamination onsite; Applicant states they have plans in place in the event of a spill or leak.

Lindaas asked about dust control standards. Carlin states that any driving issue in proceeding down the road would be considered an issue that needs to be addressed. They do have a full time person at the pit during operation periods whose sole job is maintaining dust control.

Bill Davis brought up the fact that there are many other pits in the area and there is significant traffic combined from all pits in the area.

David Overbo stated that they have had significant activity in this area with the amount of gravel trucks hauling from the numerous area pits. He does not feel that this request presents any significant problems. Overbo shared information on some of the many road permits the County has available by application.

Amos Baer pointed out that their period of activity for asphalt is very small and the temporary asphalt plant request is only for 5 years.

Mark Klevgaard states he uses this road many times a month and he has not experienced any issues with it.

There was nobody present wishing to speak for or against this Applicant's request.

On motion by Bill Davis, seconded by Randy Schellack, and unanimously carried, the Planning Commission closed the public hearing.

The Findings of Fact and Order were addressed by the Planning Commissioners as they pertain to the requested permit. All items can be addressed with conditions.

On motion by Bill Davis, seconded by Mark Klevgaard, with seven (7) in favor and Steve Lindaas opposing, the Planning Commission *GRANTED* the request for the Interim Use Permit for Applicant. Condition 6 to state expiration in 2025 and include all conditions as set out in the Staff Report. Mark Ciernia arrived late, he is attending to represent Hagen Township. He states RJ Zavoral's business overall operated quite well, with the exception of a short period of time when there was a communication breakdown between the management and onsite staff. After numerous complaints from area residents, a phone call was made to RJ Zavoral and the problems were immediately resolved. There are 3 families with several small children along this haul route, as well as 2 other families with small grandchildren, and they are concerned about the dust and safety of these children. Mark Ciernia states they will be insistent regarding truck speeds and operation within the conditions as set out. He states the Township is not in favor of a 5-year expiration, but would entertain 1 or 2 years and then review. Bill Davis asked if the Township is willing to accept a 2-year permit expiration. Mark Ciernia and the Planning Commission agreed that the Planning Commission could grant 5 years, but the Applicant would need to go to the Township yearly for approval of a Township permit.

DIRT DYNAMICS, LLC – REQUEST FOR INTERIM USE

The applicant is seeking approval of an Interim Use Permit to allow a 30-acre gravel mining operation on parcel 08.025.4000 in the SE ¼ less the NE ¼ of the SE ¼, Section 25 T141, R46 (Flowing Twp.)

On motion by Randy Schellack, seconded by Steve Mortensen, and unanimously carried, the Planning Commission opened the public hearing.

Matt Jacobson, Planning and Zoning Director, showed an aerial photo of the property in question. This was a gravel operation approved for Interim Use Permit in 2012 and was amended in 2015 to expand to 88 acres. An environmental worksheet assessment was done and found no significant environmental effects as long as no dewatering and/or washing activities occurred on the site and mining must also occur no closer than 10 feet from the water table to avoid impact to the wellhead. The assessment showed two calcareous ferns to the northwest of this parcel which also must be protected. There is DNR land to the west. There is an active mining operation to the north of the site; there was no activity at the applicant's site upon inspection on February 24, 2020. The parcel to the south is a reclaimed mining site. Proposed haul route options have been provided on handouts to the Planning Commission members. Matt Jacobson explained that an Interim Use Permit differs from Conditional Use Permits. One of the events that can change the validity of an Interim Use Permit is change of ownership. The permit issued in 2015 was in effect until 2023. However, since there has been a change of ownership and a new operator, a new Interim Use Permit is required. The staff report states that there appears to be one residence in the area but, upon further inspection, it appears that this is just a barn.

Mike Stock of Dirt Dynamics indicates that they have a good working relationship with area residents. Stock states that there is an individual that does live in the nearby barn previously referred to by Matt Jacobson. He states that they will not be mining enough to hit the water table as he believes the water table to be 50-60 feet at this site. Knife River previously owned the site and they did not reclaim it before it was purchased by Dirt Dynamics. Dirt Dynamics will absorb the responsibility of reclamation. Stock indicates they will not be removing as much volume of product that Knife River previously did, only fill sand.

On motion by Steve Lindaas, seconded by Tim Brendemuhl, and unanimously carried, the Planning Commission closed the public hearing.

The Findings of Fact and Order were addressed by the Planning Commissioners as they pertain to the requested permit. All items can be addressed with the conditions set out on Staff Report and that were applicable to the previous Interim Use Permit. Applicant asked for a 24-hour operation permit and was told, in the event of an area emergency such as flood, etc, he can request special permission through the Planning & Zoning Office at that time.

On motion by Steve Lindaas, seconded by Steve Mortensen, and unanimously approved, the Planning Commission *GRANTED* the request for the Interim Use Permit for Applicant to mine 30-acre gravel operation with the following conditions as set out on the previous Interim Use Permit:

- 1. Operate within provisions of the Clay County Land Development Ordinance;**
- 2. Operator shall control dust and provide necessary maintenance on any/all gravel haul roads;**
- 3. Operator shall provide proof of NPDES/SDS, Storm Water Management, and Air Quality Permits, as required, to the Planning Office and shall be in compliance with any and all local/state/federal regulating agencies prior to commencing mining operations;**
- 4. Require operator to present a detailed mine plan to Planning Office indicating exact area to be mined, current topography, final topography, phases of mining operation, equipment locations, locations of hazardous material storage and sanitary facilities and stormwater management plan prior to commencing any operations at the site;**
- 5. No trees can be removed to allow for mining operations;**
- 6. Operations will only occur Monday through Saturday from 6:00 AM to 7:00 PM or 24 hours if request is approved by the Planning Director;**
- 7. Propose a maximum of 88 acres (including existing 50 acres) be approved for mining operations (excavation, screening, crushing, stockpiling, etc.) If additional acres are proposed to be opened in the future a new or amended IUP would be required;**
- 8. Require applicant to post a reclamation bond of \$1,000 per acre;**
- 9. Require applicant to be responsible for all necessary reclamation from mining activities on the site;**
- 10. Require applicant to reclaim mined out areas as mining activities progress. Require areas to be seeded to native prairie grasses or returned to agricultural production;**
- 11. Applicant shall provide parking, screening, lighting, drainage, and portable sewer facilities consistent with County regulations as determined by the Planning Department and the County Health Department;**
- 12. Applicant shall maintain all mining operations at least 100 feet away from the Resource Protection-Biological zoning districts;**
- 13. The IUP shall expire December 31, 2030;**
- 14. Other conditions as the Planning Commission deems necessary.**

Matt Jacobson stated that the applicant had requested 24/7 operations and Director Jacobson recommended that the hours of operation from the previous IUP be followed. The applicant asked if they could operate 24 hours a day. Chair Baer stated they could so long as a request was made to and approved by the Planning Director.

KORY KOESTER – PETITION FOR REZONING

The applicant is seeking to rezone part of a quarter section from Urban Expansion District Tier 1 and Wellhead Protection Overlay District to Limited Highway Commercial District on parcel 10.006.0400 in the SE ¼ of Section 6, T139, R47 (Glyndon Township).

On motion by Randy Schellack, seconded by Steve Mortensen, and unanimously carried, the Planning Commission opened the public hearing.

Matt Jacobson, Planning and Zoning Director, states Applicant is seeking to rezone this 143-acre parcel at the corner of MN Highway 10 and County Road 11, by removing Urban Expansion District Tier 1 and Wellhead Protection Overlay District and rezoning to Limited Highway Commercial District. Minnesota Department of Transportation inquired of the zoning on this property last fall and they are interested in obtaining the southern portion of this property for installation of a permanent snow fence and an offer has been made to the Applicant. Storage units are prohibited under the current zoning districts. Applicant has stated that his intention is to remain farming the majority of this parcel after any rezoning. Descriptions of both zoning districts were discussed. The Urban Expansion District Tier 1 is for the future land use plans for the city of Dilworth. The purpose of Urban Expansion District Tier 1 is an identified urban growth plan for the city of Dilworth and this zoning overlay is to ensure that there are uses that are compatible with the city's future land use plans, if and when they grow this far. In Dilworth's 2018 comprehensive land use plan, the areas Applicant is exploring for commercial development and storage are areas that the city of Dilworth are considering zoned commercial in the future plans. The remainder of the area considered for zoning for low density residential, medium density residential and high density residential. It was confirmed that commercial storage is not an allowed use in Urban Expansion Tier 1 and is also not an allowed use in wellhead protection zoning districts. Commercial storage units are allowed in Urban Expansion Tier 2.

The Wellhead Protection Overlay District is intended to protect the City of Moorhead and City of Dilworth drinking water supply area, as well as any sensitive areas above the Buffalo Aquifer. This would be protection from contamination of any hazardous chemicals, hazardous material and petroleum products, as well as gravel mining. The city of Moorhead's drinking water resource is to the east of the County Highway. A handout was provided to show the Buffalo Aquifer and the groundwater pollution sensitivity. The Groundwater Pollution Sensitivity ranking for this parcel is very high. This would be the amount of time for infiltration to penetrate and run into the aquifer and is known as recharge. This time can range from a matter of hours to weeks.

Amos Baer asked if Dilworth has a Wellhead Protection area. Matt Jacobson referred this question to Administrator Payton Mastera in the audience but feels that the Wellhead Protection area for Moorhead and Dilworth would probably be the same area. Jacobson stated the full name of the proposed zoning district is Limited Highway Commercial in Sensitive Areas district, and is intended to provide zoning that will permit the conduct of certain highway oriented or commercial business that do not pose a threat to the environment by storing, transferring, or distributing hazardous materials including, but not limited to, chemicals, fertilizers, and petroleum products. The Limited Highway Commercial in Sensitive Areas district would apply to those areas of the county where it is necessary and desirable because of the nature of the soils, habitat and/or water resources to protect sensitive areas including, but not limited to, aquifers, wetlands, surface waters and prairies and to preserve and promote the use of land for limited commercial purposes in order to preserve and protect such land from encroachment by development that may cause contamination by petroleum products and/or other hazardous materials.

Steve Lindaas asked to clarify the wording from the Ordinance included in the Staff Report. Matt Jacobson confirmed it means storage of hazardous materials is not allowed.

Matt Jacobson indicated that there is a cluster of residential homes right next to this parcel in question. If the request is recommended by the Planning Commission for approval, it will still need to go to the Board of Commissioners for approval. Additionally, any development on this parcel would need to be heard by the Planning Commission.

Mark Klevgaard asked about septic systems in the area. Matt Jacobson states that the septic systems in the affected area are grandfathered in systems.

Kory Koester spoke and is the Applicant and owner of the land. He states he envisions a Morton-type cold-storage type building for large machinery on the parcel. Kory Koester was asked if he is looking to building storage for his own use and he advised that it would be for rental for commercial use. He is thinking in terms of large-scale seasonal storage. He would like to "square off" his parcel and keep the remaining square as

farmland. He is requesting to rezone the entire parcel and not just the areas he desires to be developed. He believes he can get homestead farm exclusion as well as participate through a "green acres" program. He states he would prefer to have a concrete floor instead of a dirt floor to keep the structure cleaner, rodent free and structurally sound.

Payton Mastera, Dilworth City Administrator at PO Box 187, Dilworth, spoke regarding the land use issues. He referred the Planning Commission members to the Land Use Map handout. He pointed out the several areas of development in the area. The future residential planning of the city of Dilworth includes residential as well as development on the parcel in question. The City is currently within a quarter mile of this parcel. He pointed out the difference between Land Use vs Zoning District. He feels the stated proposed use would not be in harmony with their potential future land development and could significantly impact any of their development toward the east.

Bill Davis asked if there is a difference between rezoning the entire parcel or just rezoning only the proposed development area/areas. Payton Mastera indicated that rezoning only the proposed development area would be a more palatable allowance within what they see in their future.

Payton Mastera indicates that their Wellhead Protection is the same as the Moorhead Wellhead Protection as they receive their water from Moorhead Public Service. When directly questioned, Payton Mastera indicated that he is opposed to this rezoning request.

Cliff McClain of 2710 17th Street S in Moorhead, former Water Manager for Moorhead Public Service, represented the city of Moorhead in the late 1980s. He opposes the removal of the Wellhead Protection District as it was put in place to protect the water and aquifer. Before developing the protection district, the City of Moorhead spent a lot of time and money on water testing and monitoring. Cliff McClain gave a history of the aquifer and the wellheads, as well as previous hazards and contaminants from commercial activity of 2 previous truck stops in the area. There has been no detrimental affects determined from agricultural farming over wellhead protection overlay district. Specifics were given regarding the percentage of water used from the Red River and the Buffalo Aquifer. Over the years and after building the water treatment plant in Moorhead, the city now obtains approximately 50% of their water from the Red River and are keeping the aquifer access for periods of drought or other water issues of the river. Since the time the water plant was built, there has been a year (1988) that the river was very low with minimal flow. The driest years were in the 1930's when the Red River was barely a trickle. The State of Minnesota requested all counties to develop geological atlases to identify their groundwater sources and their sensitivity. A map of those sensitivity areas was included. He stressed that no wellhead resource protection overlay should be removed from anywhere within the county.

Kris Knutson, the current water division manager for Moorhead Public Service. He stated his opposition to the request for rezoning. Moorhead Public Services provides water for both Moorhead and Dilworth, or approximately 46,000 people in Clay County. He stated that the Wellhead Protection District was put in place after the contamination in the past and feels that this protection district serves the wells and aquifer well to protect safety of those waters. He advised that other counties have modeled after Moorhead's wellhead protection zoning because it has been highly effective and served the residents so well. The models used for the drinking water supply is dynamic and changes over time and this particular parcel could be brought right into the drinking water supply management area. Mr. Knutson stated his concerns regarding the close proximity of this parcel to the wells as well as the fact that Limited Highway Commercial allows several types of usage and commercial storage could involve contaminants. He would recommend denying the rezoning request.

John Boulger, an attorney representing Moorhead Public Service for over the past 20 years. He again referred to the sensitivity map presented. He stressed that the ultimate goal is to be for protection of the groundwater source for the drinking water. He stressed the goals as set out in the Wellhead Resource Protection Overlay District and addressed each of those goals in Article 5 Chapter C. He is asking that these set protection goals

be followed. John Boulger stated there is no problem with the discussed snow fence on this parcel; however, he does have a problem with only looking at the goals of the Limited Highway Commercial zoning and not addressing the goals of the Wellhead Protection overlay.

Mark Klevgaard asked about storage units near the drag strip and asked how old these storage unit buildings are. It was felt that these storage units are older than the inception of the Clay County Land Development Ordinance.

Julie Nash, a property owner in the nearby row of residences, spoke to represent the neighboring residential owners. She is concerned about having the entire quarter-section rezoned. She feels that rezoning opens up potential to multiple other interests, because that opens up the possibility for many other uses to the land that may not be in harmony with the existing residential.

Dan Huber, a neighbor to Julie Nash, asked about any potential access to the proposed development. Applicant Koester indicates that they would propose access going around Bel Air Kennels or obtaining permission from the Clay County Highway Department for access from the county road. There was discussion regarding the difficulty of access from the County road, especially in times of heavy snow.

Marvin Anderson, a neighbor to Huber and Nash, asked where the water line. He indicates his private well is 350 feet deep and has very good water. His neighbors have a 150 foot well and it is very hard water. He indicates that the Dilworth City limit is less than a quarter mile from their residences and doesn't feel commercial development is a good fit for the area. He is opposed to their entire cluster of homes to be surrounded by commercial development.

On motion by Randy Schellack, seconded by Bill Davis, and unanimously carried, the Planning Commission closed the public hearing.

The Findings of Fact and Order were addressed by the Planning Commissioners as they pertain to the requested permit. None of the items of concern are able to be addressed with conditions.

1. Effect of Use: Steve Lindaas felt that the proposed rezoning was not consistent with the overall plan. The anticipated future land use by the city of Dilworth is not consistent with the request for rezoning and removing this Urban Expansion Tier 1 overlay.
2. Burden on Public Utilities: There should be no impacts on public utilities.
3. Related to Overall Needs: It was felt that rezoning is not related to the overall needs of the County to the existing land use. Removing the Wellhead Protection may or may not present a problem but can pose potential for risk to the aquifer without the protection. Mark Klevgaard asked the Applicant why the rezoning request was submitted for the entire parcel and he indicated that he requested the entire parcel due to time constraints to timely submit the application.
4. Consistency with Ordinance: Director Jacobson pointed out that we are looking at risk. While there is currently Urban Expansion Tier 1, looking at Limited Highway Commercial is not a consistent use for that area. The Ordinance was written to protect areas such as Urban Expansion Tier 1 or Wellhead Protection overlay. One of the whole purposes of Wellhead Protection overlay is to mitigate the risk and planning for the future. Although the Dilworth zoning map shows this area as future commercial, their proposed uses are not necessarily compatible with the future plans for this parcel if it was rezoned as Limited Highway Commercial.
5. Conflict with Comprehensive Plan: This request is in direct conflict with the Urban Expansion Tier 1 plans for the city of Dilworth. Matt Jacobson felt that the request could also be in conflict with the Clay County Comprehensive Plan, which does have a goal to protect the wellhead and aquifer areas. Matt Jacobson read that, in terms of wellhead protection, you need to protect and preserve quality groundwater resources for the water supply and the metrics needed to implement that. Director Jacobson read the following from the Comprehensive Land Use Goals: Regarding concerns of the

Urban Expansion district, one of the Land Use goals is to plan for the orderly and efficient growth of commercial industrial development within the county; Plan land uses and standards to minimize land use conflicts; Establish a comprehensive growth management strategy for Clay County that promotes orderly and efficient growth of residential, commercial and industrial development; Plan for an orderly and efficient growth for residential development.

6. Prematurely Stimulate Public Investment in Utilities: There was no concern in this area.

On motion by Steve Lindaas, seconded by Bill Davis, and opposed by Randy Schellack and Mark Klevgaard, the Planning Commission voted to DENY the request to remove Urban Expansion District Tier and Wellhead Protection Overlay and rezone to Limited Highway Commercial District. The decision was based on the items as set out in the Findings of Fact and Order, the size of the parcel involved in the rezoning request and the testimony of those present.

UNFINISHED BUSINESS:

Matt Jacobson advised that the Subcommittee for the Land Development Code will hopefully be finished at their next meeting. He proposed that the next Planning Commission Meeting scheduled March 17, 2020 be used to review the Subcommittee's proposed changes as there are no hearings currently scheduled for the next Planning Commission meeting.

NEW BUSINESS:

None

ELECTION OF NEW OFFICERS:

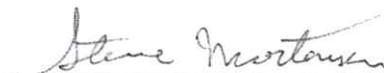
Director Matt Jacobson reached out to the members who stated they were unable to attend the meeting and asked if anyone was interested to be considered for any of the available positions. Present Vice-Chair Andrea Koczur advised she did not wish to be considered for any of the positions. A secret ballot election was held, voting first for the Chair, and then for the remaining two positions.

Voting results are:

Chair elected: Bill Davis with 8 votes
Vice-Chair elected: Mark Klevgaard with 8 votes
Secretary elected: Steve Mortensen with 8 votes

ADJOURNMENT:

On motion by Randy Schellack, seconded by Bill Davis, and unanimously approved, the meeting adjourned at 9:35 PM.



Steve Mortensen, Planning Commission Secretary