

**MINUTES  
CLAY COUNTY PLANNING COMMISSION  
7:00 TUESDAY, JUNE 22, 2021  
THIRD FLOOR BOARD ROOM, CLAY COUNTY COURTHOUSE**

**Members Present:** Mark Klevgaard, Steve Mortensen, Jenny Mongeau, Bill Davis, Ezra Baer, Joel Hildebrandt, Kurt Skjerven, Laura Johnson

**Members Absent:** Curt Stubstad, Steve Lindaas, Andrea Koczur

**Others Present:** Matt Jacobson, Erika Davis, Caitlyn Hurlock, Rita Rueckert, David Overbo (by phone), Kevin Martin (by phone), Adam Altenburg (by phone), Jeni Haspel, Nate Haspel, Westley Dunham, Warren Dunham, Becci Dunham, Steve Westlund, Cynthia Westlund, Ryan Frisch, David Karlstrom, Steven Busse

**ROLL CALL:** Roll call was taken, and the meeting was called to order at 7:00 PM by Chair Bill Davis.

**APPROVAL OF AGENDA:**

**On motion by Ezra Baer, seconded by Steve Mortensen, and unanimously carried, the Planning Commission approved the Agenda as presented.**

**APPROVAL OF MINUTES FROM MAY 18, 2021 MEETING:**

**On motion by Ezra Baer, seconded by Steve Mortensen, and unanimously carried, the Planning Commission approved the May 18, 2021 Minutes.**

**AMEND MINUTES FROM APRIL 20, 2021 MEETING:**

Conditions 10 and 11 were left from page #5 of the minutes (page 11 of this June packet). Minutes need to be amended to include them. They were in the original Motion but were not included in the prepared Minutes that were previously approved. On Motion by Ezra Baer, seconded by Joel Hildebrandt, and unanimously carried, the Minutes were approved as amended.

**CITIZENS TO BE HEARD:**

There were no citizens wanting to speak on any items not on the Agenda.

**PUBLIC HEARINGS:**

**BRD DOG LLC – REQUEST FOR CONDITIONAL USE PERMIT**

The applicant is seeking approval of a conditional use permit for a commercial storage business on parcel 21.033.3000, the SW1/4 of Section 33, Township 139N, Range 48W, Moorhead Township.

**On motion by Ezra Baer, seconded by Joel Hildebrandt, and unanimously carried, the Planning Commission opened the public hearing.**

Matt Jacobson, Planning Director, states this is a request for a 32-unit commercial storage facility Conditional Use Permit. There are currently no structures onsite and the land is tilled. If approved, the Applicants would parcel off approximately 10 acres of the 147-acre parcel, just south of Moorhead in Moorhead Township. The portion they would be using for this requested use would be located in the Southeast corner of the current parcel, adjacent to the railway.

Policy Considerations from the current Comprehensive Plan:

**General Goal #1:** Maximize the potential of Clay County as a thriving center for agriculture, business and recreation, while maintaining and enhancing its livability.

- Policy #1 Promote the development and implementation of a Comprehensive Plan that effectively plans for agricultural protection, land use, transportation, housing, economic development and environmental protection for Clay County.

**Land Use Goal #4:** Plan for the orderly, efficient growth of commercial and industrial development in the County through the application of appropriate zoning districts and regulation.

- Policy #2 Encourage commercial and industrial developments, which do not need public sewer and water, to locate within Planned urban Growth Areas in locations with adequate road service.

**Land Use Goal #5:** Plan land uses and implement standards to minimize land use conflicts.

- Policy 6 Encourage the location of commercial and industrial development in areas that avoid adverse impacts on residential areas.

The subject property is zoned Urban Expansion District Tier-2. Commercial storage facilities are allowed within the Urban Expansion District Tier 2. The City of Moorhead adopted an update to their comprehensive plan in 2016. Site is located within an area of mixed-use. Director Jacobson has reached out to the City of Moorhead and Moorhead Township; they do not have any objections to this request. Surrounding property is mixed-use, low residential. There is currently not an access. The soils are considered prime farmland if drained.

If approved, the following proposed conditions are recommended for the CUP:

1. No outdoor storage shall be allowed.
2. Days and hours of operation shall be year-round, open 24 hours, seven days a week;
3. Obtain approved access permit from the Clay County Highway Department to establish access off County Highway 12;
4. Obtain necessary Construction Stormwater Permit from the MPCA for any land disturbance over an acre;
5. A detailed site plan should be submitted to the Planning Department;
6. An approved CUP from Moorhead Township is required; and
7. Any other conditions the Planning Commission deems necessary.

Joel Hildebrandt asked if this is currently drained; Director Jacobson stated he did not know if it was drained, but he is aware that Moorhead's comprehensive plan is to build out toward Highway 12 to the south. Jenny Mongeau asked about setbacks if 20<sup>th</sup> Street were to expand further south, and Matt Jacobson advised he could investigate this and check with the City of Moorhead.

Applicant David Karlstrom states he is the landowner and the operator of BRD DOG LLC. He said there are high-line wires running through and the City of Moorhead purchased land involving the power lines. He currently rents out the land. They want to set up this property to not further interfere with farming. Jenny Mongeau clarified that Moorhead bought the buffer underneath the high wire lines; applicant confirmed that.

Gary Euren of 2865 35<sup>th</sup> Str S, Moorhead attended, President of Our Redeemer Lutheran Church which owns 10-acres in this area. He is asking where the access would be for this commercial business. Their future plans may be to build a church and/or daycare and there is concern about increased traffic. He also asked if the commercial business will be fenced. Applicant Karlstrom advised that there will be fences and it would be near County 12. Ezra Baer asked if it will be lit at night; Mr. Karlstrom advised it would be lit.

Mr. Karlstrom states there is a residence straight west to the next corner. This homeowner has contacted him asking what the request was for and he advised he had no problems with this.

Kevin Martin of Moorhead Township states the Township no objections to this request. The land is well-drained, and it is prime farmland.

Director Jacobson advised the Applicant would need to obtain an access permit before any building permits could be approved.

**On motion by Steve Mortensen, seconded by Ezra Baer, and unanimously carried, the Planning Commission closed by public hearing.**

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

Bill Davis felt that a better site plan would be more beneficial as to what the Applicant's intentions are and to have a better understanding of how the Applicant's commercial business would lay out.

Jenny Mongeau pointed out the proposed future land use of the City of Moorhead, with the map showing low and medium density in this area. There was a request to locate where the church property was located in relation to the Applicant's property.

**On motion by Ezra Baer, seconded by Steve Mortensen, and unanimously carried, the Planning Commission *GRANTED* the Conditional Use Permit with the following conditions:**

- 1: No outdoor storage shall be allowed;**
- 2: Days and hours of operation shall be year-round, open 24-hours, seven days a week;**
- 3: Obtain approved access permit from the Clay County Highway Department to establish access off County Highway 12;**
- 4: Obtain necessary Construction Stormwater Permit from the MPCA for any land disturbance over an acre;**
- 5: A detailed site plan should be submitted to the Planning Department;**
- 6: An approved CUP from the Moorhead Township is required; and,**
- 7: Adequate lighting and fencing required for the site.**

#### **WESTLUND MATERIALS LLC – REQUEST FOR INTERIM USE PERMIT**

The applicant is seeking approval of an interim use permit to allow a 39.5-acre gravel mining operation on parcel 17.012.4000, the SW1/4 of Section 12, Township 141N, Range 45W, Keene Township.

**On motion by Ezra Baer, seconded by Mark Klevgaard, and unanimously carried, the Planning Commission opened the public hearing.**

Matt Jacobson, Planning Director, states that this is a request to open a 39.5-acre aggregate mining operation. It is 160-acre parcel between Ulen and Hitterdal, and to the west. There is a registered feedlot on the property but there does not appear to have any cattle on it since last year. It is zoned the following: Agricultural General (AG), Resource Protection-Aggregate (RP-Agg), Special Protection-Shoreland, General Floodplain zoning and Special Protection Biological (RP-Bio).

The following Policy Considerations from the Comprehensive Plan were reviewed:

**Land Use Goal #2:** Support the long-term protection of agriculture in the County.

- Policy #1: Recognize and support the agricultural character of the County in all planning efforts.

**Land Use Goal #5:** Plan land uses and implement standards to minimize land use conflicts.

- Policy #1: Prepare and adopt a land use plan that designates land use areas to ensure desirable land use patterns and minimize conflicts.
- Policy #2: Require adequate transitions between different land uses through appropriate land use planning and zoning standards.
- Policy #3: Require adequate buffering and landscaping for new mining operations when adjacent to existing residential areas as well as when an existing operation expands or is substantially modified and would negatively impact existing land uses in the surrounding area.
- Policy #4: Require phased end-use reclamation plans as a condition for a gravel-mining permit so that areas are reclaimed as they are done being mined.

**Natural Resources Goal #1:** Identify, protect, and preserve the County's high quality natural, scenic, cultural and open space areas.

- Policy #19: Balance the preservation of native prairie areas with mining of the county's gravel resources.

**Natural Resources Goal #3:** Protect and enhance the County's rivers and streams for wildlife/fish habitat, human recreation and erosion control.

- Policy #2: Maintain or establish native vegetation and riverine forests along ditch, stream and riverbanks to run-off, reduce erosion and provide wildlife cover.

Applicant request is to open a 39.5-acre mining operation to include excavation, screening, occasional crushing, stockpiling and berming. An aerial map of the proposed pit was reviewed. It does include all setbacks from property lines, closest residences, road right-of-ways and 100 feet from the RP-Bio Zoning District. Felton Creek runs east to west through the center of the property. There are buildings, including barns and sheds currently on the property but they would be removed except for the shed which they are keeping for storage. There are two (2) accesses to the property that both connect to County 33.

The Mining Plan is set out as follows:

- Excavation will occur intermittently as material is needed for fill sand and Class 5 aggregate materials.
- Mining will begin to the south and move north toward the road.
- Crushing, screening, and stockpiling will occur on-site. Crushing is anticipated to occur no more than 2X annually. No de-watering or washing will occur.
- The estimated depth to the water table is between 20-60' as indicated by boring tests. The applicant does not intend to mine below the water table.
- Two (2) employees would work onsite.
- Applicant anticipates traffic of 8-10 trucks per day with up to 50 on peak days. Average Daily Traffic (ADT) count on County 33 is 530 vehicles per day. County 33 is a paved road.
- The anticipated life of the operation is 20-30 years.
- The applicant is requesting operating hours of April-December, Monday-Saturday from 6:00 AM

to 6:00 PM and April-December, Monday-Friday from 6:00AM-6:00PM for processing facilities (e.g. crushing).

A picture was shown laying out the plans for the phases of the mining.

Environmental Considerations are:

- Felton Creek, a designated trout stream, is hydrologically influenced by groundwater. Groundwater is cooler and provides a habitat for the trout. Director Jacobson states that Felton Creek is impaired due to water temperature.
- Much of the property outside the proposed mining area is zoned Resource Protection – Biological due to the presence of biologically significant shrub-swamp habitat.
- The riparian area around Felton Creek is also zoned General Floodplain, meaning no hydrological modeling has been completed to determine the floodway and floodplain fringe.

Mitigation would include the following:

- The Applicant will need to obtain NPDES and SDS Nonmetallic Mining and Associated Activities Permit from the MPCA.
  - This will include additional best management practices (stabilization of exposed soil, temporary sediment basin, permanent stormwater treatment system) as Felton Creek is by statute a protected trout stream.
- Mining activities should maintain a 100-foot buffer from land zoned Resource Protection – Biological.
- A ten-foot buffer from the groundwater table should be maintained to prevent any unintentional dewatering, contamination or temperature impacts to the Felton Creek, and to also avoid impacting neighboring well.
- Applicant will apply dust control to haul roads.

The National Wetland Inventory was reviewed for this parcel and Director Jacobson does not feel this would be an issue for the area the Applicant is intending to mine. There is no native prairie nearby but no native prairie of significance on the actual property.

Reclamation is set out as:

- Excavated area will be sloped 4:1, no highwall, benching or terracing will be required.
- Oversized materials and existing topsoil will be spread over the site.
- The reclaimed pit will be returned to pasture.
- Operator will maintain seeding and erosion control until grass is established.
- Estimated reclamation cost is \$40,000 or approximately \$1,000 per acre.

Elevation drops to the northwest approximately 20 to 25 feet. Photos of the site were reviewed.

The Highway Department does not feel that the additional traffic should not present a significant impact to County Highway 33. The Highway Department does recommend removing the south access and use the north access to bring into compliance with County Access Management standards and to reduce impacts on adjacent residence to the south.

Keene Township has advised that they would like to see operating hours from 7:00 AM – 7:00 PM.

Director Jacobson recommends the following Interim Use Permit (IUP) Conditions be applied if the Permit is granted:

- 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 follow all local/state/federal regulations prior to commencing mining operations;
- 4. Operator shall contact Clay Soil & Water Conservation District to identify any potential wetlands;
- 5. A maximum of 38 acres be approved for mining operations (excavation, screening, crushing, stockpiling, berming, etc.). If additional acres are proposed to be opened in the future, a new or amended IUP would be required.
- 6. Require applicant to post a reclamation bond of \$1,000 per acre;
- 7. Require applicant to reclaim mined out areas. Require areas to be reclaimed to a native prairie.
- 8. Applicant shall provide parking, screening, lighting, drainage, and portable sewer facilities consistent with County regulations as determined by the Planning Department and the County Environmental Health Department.
- 9. Mining operations: April 1 through December 31, 7:00 AM to 7:00 PM, Monday through Saturday with no noise producing operations to occur on Saturdays. If the operator needs to operate beyond stated days/hours, they shall first notify the Planning Office with the reason and the length of time requested so the extended hours can be approved and affected property owners notified;
- 10. Maintain a 100' buffer from Resource Protection-Biological Overlay District; No extractive use allowed in the General Floodplain District;
- 11. All mining activities must occur at minimum 10 feet above the groundwater table;
- 12. Conform to the current Clay County access management specifications by removing the current south access and using the existing access to the north;
- 13. Permit shall expire June 22<sup>nd</sup>, 2031;
- 14. Other conditions as the Planning Commission deems necessary,

Director Jacobson advises that with applying the necessary setbacks, this parcel would not be able to reach a maximum of 39.5 acres for mining. There are other mining pit operations on several of the neighboring parcels.

Ezra Baer asked about clarification on condition #7 regarding specification of reclamation to native prairie or if the area can be reseeded to pasture. Director Jacobson advised that the condition can be worded to include "landowner specifications".

Mark Klevgaard asked about the neighboring pit showing water and inquired if that was mining into the water. It appears that it was mined into the water; however, this parcel has sensitive RP-Bio with the Felton Creek proximity and has greater restrictions.

Applicant Steve Westlund advised their desire is to follow all required rules and regulations. He stated that Aggregate has mined right up to the south side of the property line and asked if he would be able to mine up to the property line since Aggregate has mined up to theirs. Applicant was advised that he would need to follow the property line setbacks and if his desire were to mine up to the property line, he would need to return for another hearing for that request. Ezra Baer asked the Applicant Westlund if he understood the conditions as they were set out and if he agreed; Applicant stated he understood the conditions and was in agreement. He did state that in the future if it is discovered that there is significant more material available past the groundwater table limitation, he may come back and address that later. Applicant also advised that he did receive the ground boring logs from Strata. He does not own a boring rig. He states he would be willing to share those logs if requested.

Warren Dunham, Chair of Keene Township, was present. Mr. Dunham stated that the Township has 5 gravel pits in their district and stressed that they try to deal with all the pit owners as evenly and fairly as possible. He states that Aggregate is not 200 feet from the road and that the Felton Creek has not had a fish in it for 40 years. He states that the Township has no problem with this gravel pit request.

Nate Haspel is a neighbor to the south. He voiced concern regarding moving the highway access to the north because the existing driveway is near his own driveway and does not want the truck traffic so near his home. He just put in a new well pump and advised it is only 60 feet into the water. He feels the hours of operation should be 7AM-7PM instead of 6AM-6PM.

Highway Engineer David Overbo reiterated the recommendation to move the haul route access to the north driveway and away from the residence to the south.

**On motion by Ezra Baer, seconded by Jenny Mongeau, and unanimously carried, the Planning Commission closed by public hearing.**

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

**On motion by Ezra Baer, seconded by Jenny Mongeau, and unanimously carried, the Planning Commission *GRANTED* the Interim Use Permit with the following conditions:**

- 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 follow all local/state/federal regulations prior to commencing mining operations;**
- 4. Operator shall contact Clay Soil & Water Conservation District to identify any potential wetlands;**
- 5. A maximum of 38 acres be approved for mining operations (excavation, screening, crushing, stockpiling, berming, etc.). if additional acres are proposed to be opened in the future, a new or amended IUP would be required;**
- 6. Require Applicant to post a reclamation bond of \$1000 per acre;**
- 7. Require Applicant to reclaim mined out areas. Require areas reclaimed to be reseeded to a non-invasive species;**
- 8. Applicant shall provide parking, screening, lighting, drainage, and portable sewer facilities consistent with County regulations as determined by the Planning Department and County Environmental Health Department;**
- 9. Mining operations: April 1 through December 31, 7:00 AM to 7:00 PM, Monday through Saturday with no noise producing operations to occur on Saturdays. If the operator needs to operate beyond stated days/hours, they shall first notify the Planning Office with the reason and the length of time requested so the extended hours can be approved and affected property owner may be notified;**
- 10. Maintain a 100' buffer from Resource Protection-Biological Overlay District; No extractive use allowed in the General Floodplain District;**
- 11. All mining activities must occur at minimum 10 feet above the groundwater table;**
- 12. Conform to the current Clay County access management specifications by removing the south**

**access and using the existing access to the north;  
13. Permit shall expire June 22, 2031.**

**UNFINISHED BUSINESS:**

- **Adam Altenburg – Clay County Comprehensive Plan Update:** Input has been received through:
  - Community Engagement Meetings;
  - Community Input Survey
  - Township/City Feedback
  - State Agency Responses
  - Personnel Meetings
  - Focus Groups and Targeted Outreach

On March 23<sup>rd</sup> there were 66 participants in the two sessions of Community Engagement Meeting that day.

Eight key areas of importance were identified: Housing, Businesses, Agriculture/Food Systems, Transportation, Telecommunications, Natural Resources, Recreation, and Government Services/Other. Most comments received were quite positive. Areas for improvement were identified as: affordable rental housing, doing a better job of sharing information on available programs, greater transportation opportunities (especially for elderly in the outlying areas). Heartland Trail was a recurring topic.

Community Input Survey was available online from February 19<sup>th</sup> through April 23<sup>rd</sup>. There were 319 respondents to the survey and there were 35 questions. An open-ended question was asked “what do residents enjoy the best about Clay County in 5 words or less”. Six themes emerged from the Community Input Survey and were identified as: Community, Rural/small town feel, Natural environment, Economic development, Education, Affordability (good senior housing and housing for those with lower or fixed incomes).

All cities and townships in Clay County were solicited for input and responses were received from Seven (7) Townships and five (5) Cities. Township feedback included: Subdivision impacts, broadband should be installed, County roads improved, Road grading/dust control, Remember that Clay County is ag-based and the agriculture prominence and Property taxes. Cities’ feedback included looking at speed limits on county roads, sharing property with county shop, county-wide fire protection district, continued work on collaborate flood control measures, and food sovereignty.

Six State agencies were solicited for input and response was received from the following four: Board of Water and Soil Resources (BWSR), Department of Natural Resources (DNR), Minnesota Department of Health (MDR), and Minnesota Pollution Control Agency (MPCA).

Their feedback included: Erosion and sediment control on agricultural land; flood damage reduction and natural resource enhancement; maintaining open communication channel; monitor municipal source-water supplies for resiliency during drought and declining aquifer levels; wind and solar energy projects; prioritize the Surface Water Assessment Area (SWAA) for Moorhead; consider designing transportation infrastructure to deal with increasing and more extreme precipitation events.

Personnel meetings were held April 21<sup>st</sup> through May 4<sup>th</sup> with County Staff from the following departments: Administration, Assessor, Attorney’s Office, Auditor, Law Enforcement, Public Health, Social Services, Solid Waste, Technology Services and Capital Improvements Discussion. Their feedback included: Residential growth in rural areas, business recruitment and retention, additional staffing, space needs, emergency management needs have grown, emphasize health in all policies, lack of transportation is a chronic issue and impacts access to food/healthcare/childcare, affordable housing, regional cooperation/shared facilities.



Focus groups and targeted outreach included aggregate producers, natural resource groups, public safety and emergency response, and public school districts. Meetings with agricultural producers will occur in the fall. Feedback for aggregate: Permitting, hauls are getting longer, FM Diversion will play a huge part in aggregate demand, trucking to become a bigger issue. Natural Resources feedback included: Decline of grassland birds due to habitat loss and degradation, Continue to enhance water quality, Extension of Heartland Trail, Engage community in citizen science activities.

Public Safety and Emergency Response shared these issues: Lack of membership and ability to have volunteer responders during working hours, smaller towns not prepared, inadequate funding for smaller towns. Feedback from Public School Districts included: More funding for student mental health services in out-lying communities, and better coordination between rural schools and snowplowing scheduled to reduce school cancellations/late start events.

The next Study Review Committee meeting will be July 12<sup>th</sup> from 2:00-4:00 PM. Clay County Government Day at the County Fair is Thursday, July 15<sup>th</sup> from 3:00-7:00 PM. The next future Community Engagement Meetings are scheduled for October at this time. Mr. Altenburg states he will be back next month with another update.

Mr. Altenburg thanked Matt Jacobson for his assistance working on this project.

#### **NEW BUSINESS:**


- **Matt Jacobson: Return to Pre-Covid Minnesota Public Meeting Laws.** Starting July 1, 2021 we will be returning to pre-Covid meeting laws. Virtual/remote attendance will require to include the physical locations any virtual attendee will be at, and this address must be included in the public hearing notice posted in the newspaper, and that location must be open to the public to allow them the ability to attend at that location.

You will have 3 opportunities per year to attend remotely with a medical note.

As a reminder, the Planning Commission bylaws state that if you miss 3 meetings in a row, the Planning Commission can ask you to be removed.

#### **ADJOURNMENT:**

**On motion by Ezra Baer, seconded by Steve Mortensen, and unanimously approved, the meeting adjourned at 8:43 PM.**



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Steve Mortensen, Planning Commission Secretary