

MINUTES
CLAY COUNTY PLANNING COMMISSION
7:00 TUESDAY, AUGUST 18, 2020
MEETING ROOM B - THIRD FLOOR COURTHOUSE

Members Present: Bill Davis, Ezra Baer, Mark Klevgaard, Tim Brendemuhl, Curt Stubstad, Laura Johnson, Steve Lindaas, Jenny Mongeau, Andrea Koczur, Steve Mortensen, Randy Schellack

Members Absent: None

Others Present: Matt Jacobson, Katie Stock, Rita Rueckert, Leon Schlafmann, Derek Bartholomay, Irene Meyers, Jarrett Robertson, Patty Bestler

ROLL CALL:

Roll call was taken by Chair William Davis and has been recorded. The meeting was called to order at 7:00 PM. Director Matt Jacobson went over the rules and helpful tips for participation in this virtual meeting.

APPROVAL OF AGENDA:

Per Matt Jacobson, Earthwork Services Inc are deferring to the September 2020 meeting for the hearing for their request for Interim Use.

On motion by Ezra Baer, seconded by Steve Lindaas, and unanimously carried, the Planning Commission approved the Agenda with the deferred Earthwork Services hearing.

APPROVAL OF MINUTES FROM JULY 21, 2020 MEETING:

Ezra Baer pointed out that there is a correction required on page 4, in item #3 conditions. The Township states Tansem and it should be Eglon.

On motion by Ezra Baer, seconded by Jenny Mongeau, and unanimously carried, the Planning Commission approved the July 21, 2020 Minutes as presented to include the above correction.

CITIZENS TO BE HEARD: There were no citizens present to speak on any matters not on the agenda.

PUBLIC HEARINGS:

EARTHWORK SERVICES, INC – REQUEST FOR INTERIM USE <deferred to 9-15-2020 hearing>

The applicant is seeking approval of an interim use permit to open a 39-acre gravel mining operation in part of the SW1/4 of, Section 33, Township 139N, Range 45W, parcel 13.033.4800 in Hawley Township.

DEREK BARTHOLOMAY – REQUEST FOR INTERIM USE HOME OCCUPATION

The applicant is seeking approval of an interim use home occupation permit to operate an automobile repair business in part of the N1/2 of the NE1/4, Section 9, Township 142N, Range 48W, parcel 09.009.1002 in Georgetown Township.

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

Matt Jacobson, Planning and Zoning Director, advises the Applicant is seeking an Interim Use Home Occupation Permit in the Agricultural General zoning district for an automobile repair shop. This is an allowed use in this zoning district. Applicant wishes to establish an automobile repair facility in an existing 8000 sq. ft Quonset on this 11-acre site. Owner will be the only employee and will be residing onsite. Proposed operating hours will be Monday-Friday 9AM-5PM. There will be a gravel space allowed for parking. Director Jacobson believes this would be a good use for the property. Applicant is recycling the oil and fluids onsite to heat the building during the winter months and has plans in place for any spills. Director Jacobson recommends approval of this request as it is well within the Home Occupation standards. He referred the Planning Commission to 8-6-23B of the Clay County Code regarding outdoor storage of automobiles and the criteria that they must be licensed, insured and road-worthy. No parts are allowed to be stored outside.

Applicant Derek Bartholomay shared the set-up he has in his building. Andrea Koczur asked about the storage of extra automobiles. Derek Bartholomay states he has space inside for storage of the vehicles he is working on. Any unlicensed or non-roadworthy vehicles parked outside must not exceed 2 automobiles. Applicant acknowledged these restrictions.

Irene Meyers states her family owns the section that the Applicant's parcel is on. She asked if there was going to be any auto body work being done. Applicant confirmed he will only be doing auto mechanic repairs. Irene Meyers asked how many vehicles Applicant may have lined up any given time to repair and Applicant felt that it would be approximately 2-5 vehicles at most given times.

Ezra Baer asked how long the Applicant has owned this parcel and Applicant Bartholomay advised he has owned the property for one year. Chairman Bill Davis noted that the aerial photo shows a very neat and tidy property; Director Matt Jacobson confirmed that when he did a site visit he felt that the property was being very well maintained.

On motion by Ezra Baer, seconded by Andrea Koczur, 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 through Conditions.

On motion by Tim Brendemuhl, seconded by Mark Klevgaard, and unanimously carried, the Planning Commission *APPROVED* the Home Occupation Interim Use Permit as requested.

AGGREGATE INDUSTRIES – REQUEST FOR INTERIM USE

The applicant is seeking approval of an interim use permit to open a 37-acre gravel mining operation in part of the N1/2 SE1/4 and E1/2 NE1/4 of Section 13, Township 140N, Range 046W, parcel 27.013.4500, Spring Prairie Township.

On motion by Ezra Baer, seconded by Laura Johnson, and unanimously carried, the Planning Commission opened the public hearing.

Matt Jacobson, Planning and Zoning Director, states the Applicant just received a Variance earlier this evening from the Board of Adjustment to mine within 100 feet of the west property line of this parcel. This parcel is adjacent to a parcel owned by the Applicant that they have been mining since before 2009 under a Conditional Use Permit. This request is for a 37-acre mining pit request. This is not an expansion of the current operation as their current pit has been established in a time period greater than 3 years ago. Their plan is to mine in stages to 25-30 feet below natural grade. The lifespan of the mine is anticipated to be 10-12 years with an estimated 100,000 to 150,000 tons of material to be extracted from the site. Material will be removed using a front end loader and dozer. Screening and crushing will occur on site. Applicant is requesting crushing and screening hours of 7AM-7PM Monday through Friday and mining and hauling hours from 6 AM-9PM Monday through Saturday. The Spring Prairie Conditional Use Permit grants hours of operation from 6AM-6PM Monday through Friday and Saturday as a load out only day from 6AM to 2PM if necessary.

There is one residence approximately 500 feet from the proposed mining site. Aerial photos of the site and surrounding area were shown. Because this residence is directly across from 70th Ave from the proposed site, view from the property will be obstructed by mining activities. Noise from mining operations could also be an issue. Applicant does use white-noise back up beepers at most or all of their pits. The Applicant also uses berms to control noise and sight pollution. Other mitigations such as a higher berm or stricter setback could be considered by the Planning Commission. The Commission could also determine if the berm would be considered as part of the mining setback closer than the 500 foot setback. The pit will be reclaimed in stages during use and will be sloped inward to control erosion and runoff. Site will be reclaimed as cropland. There will be no dewatering or watering to occur at this site. Groundwater depth is estimated at 50 feet by both Applicant and the DNR.

Aerial photos were shown for the access road and also the proposed haul route from the proposed mine through the current mine. All of the truck traffic is expected to go west on 70th Avenue toward the Fargo-Moorhead area; this haul route would eliminate traffic going by the existing residence on 70th Avenue across from the pit.

Spring Prairie Township has granted their Conditional Use Permit, which states the following conditions:

- 3. Adhere to a road maintenance agreement to include the following:
 - 3.1 Maintain four miles of township road east from MN Highway 9 (70th Ave N)
 - 3.2 While hauling, chloride or water from the pit entrance must be applied and maintained to provide dust control
 - 3.3 Because the permit is for a 6-year period, 2 to 3 inches of Class 5 gravel must be applied by the applicant to the roads from time to time and/or at the discretion of the Spring Prairie Township Board
 - 3.4 Regular grading of the roads will be required to maintain road crown from time to time and/or at the discretion of the Spring Prairie Township Board
 - 3.5 Applicant will abide by seasonal load limits unless the Spring Prairie Township Board approves a variance
 - 3.6 70th Ave N has drain tile in several marked locations, and damage and repair of those tile lines due to excessive truck traffic will be the responsibility of the Applicant.

The County Highway Department does the road maintenance on 70th Avenue. These conditions that are in the agreement with the Township should also be included in the permit with the County.

Mark Klevgaard questioned if the existing Aggregate Industries parcel pit has been reclaimed. Matt Jacobson advised it does not appear that reclamation has happened and believes there is still material being extracted.

Andrea Koczur asked if the Applicant will be using both of the pits at the same time, and if there will be increased traffic or if they will be using one pit and going through the other one. Matt Jacobson indicated he understands that the current pit is only used rarely for hauling out or stockpiling and that the new pit will be the only pit extracting. Anticipated truck traffic is 10-45 trucks per day, per the Applicant's application.

Patty Bestler of Aggregate Industries and Jarrett Robertsdahl, Operations Manager of Aggregate Industries, responded to the questions posted by the Planning Commission members. She advised that they will not be having a loader at both mine sites at the same time. No reclamation has been done in recent years in the previous/existing site.

Patty Bestler acknowledged that the Schlafmanns have had some concerns and they are taking those concerns seriously. The Applicant is proposing to construct a berm up to 10 feet tall to limit the dust, noise and sight from the project site. Typical berms are usually around 4 feet tall. They also propose to wrap that berm around to the north and also keep the mature trees at that area. She states that the existing pit has been operating since before 1980. Noxious weeds will be controlled in the new site as well as the existing site.

She confirmed the reclamation process as set out by Director Jacobson, as well as their hours of operation. The 500 foot setback severely impacts the amount of materials able to be excavated from this mine. Truck traffic would average 10-45 trucks per day. The 100 truck per day traffic information was added in case there was ever a large project needed for a limited time, and it is only a possibility that they are addressing ahead of time.

The Applicant states that they would add this site to their existing non-metallic general air permit, as well as general storm water permit through the Minnesota Pollution Control Agency. Any tanks onsite would be double-walled tanks and would be operated under the provision so the Minnesota Pollution Control Agency regulations. All onsite personnel would be trained in proper spills and would be properly reported. The excavating will be 10-25 feet below grade which will naturally also mitigate noise, visual pollution and dust. There will be a designated employee onsite to conduct routine inspections to ensure all MPCA rules are being followed.

Jarrett Robertson, Aggregate Industries Aggregate Operations Manager, commented that 70th Avenue is only open from July on and, with their use of this facility, it is probably only a month or so of their operating season when the road is actually opened because of the seasonal load restrictions. They do take their grader blade up there and grade frequently on that road to assist the County and Township with maintenance of that road. He pointed out that there are also other truck companies that use 70th Avenue and it isn't just the Aggregate trucks using that road. He acknowledged the Township is cognizant of Aggregate's road usage and maintenance procedures.

Leon Schlafmann stated that Aggregate Industries has been a good company as far as neighbors go. He provided several photos of the neighborhood around his property, which were shared with the hearing attendees. He states that he moved to that neighborhood in 1991. Kost Brothers was mining a bit to the west at that time. Aggregate was going to reopen the pit and put in the berm that was previously discussed, they were stating that it was to be a 7-year pit. Aggregate asked to reopen the pit in 2012 and Mr. Schlafmann feels that some of their promises have been kept, while others were not. He felt that Aggregate Industries was doing

well with dust control. He states in 2007 the setback was changed from 500 feet from the nearest residence to 500 foot setback from the property line. He states he has lived there for 30 years and this is their retirement home. He states they have made significant effort to buffer the mining operations by planting many trees. He feels that the current setback is from the back corner of their house. Leon Schlafmann proposes that the setback from berm to their home be increased from 500 feet to 750 feet and be at least 10 feet in height, no closer than 750 feet to their house, seeded and proper weed control. He also asks that there would be a dust control provision included on any Permit issued. He also asks that at least 95% of all truck traffic be routed out the current site egress and only proceed west.

Lori Schlafmann, wife of Leon Schlafmann, urged the Planning Commission to consider the requests and issues that Leon Schlafmann has presented.

Patty Bestler believes that a 10-foot high berm would be very advantageous to reduce the noise and dust concerns for the Schlafmanns. The typical berm they construct is approximately 4 to 5 feet high. She states that reclamation has not occurred as they are not in this pit on a daily basis so they are not able to reclaim as they go along, but all of their sites will be reclaimed. They carry reclamation bonds on all of their pit sites. She asks that the 500-foot setback be observed.

Bill Davis asked Patty Bestler plans regarding the weed control for the berms. This was a concern for the Schlafmanns. Patty Bestler acknowledged this is a concern and she will follow through with her operations team that this should be addressed in Clay County and at the proposed project site. She states that the ingress-egress site will be strictly adhered to only the one current location.

Mark Klevgaard states that the parcel looks to be about 40 acres of mining with no reclamation. He asked for a time frame of when the reclamation will occur. The use permit on this parcel is a Conditional Use Permit and does not have a set end date and reclamation would be at the end of the pit life when all materials have been extracted.

Ezra Baer asked how wide a base would need to be for a 10-foot high berm. Jarrett Robertson stated it would depend how it was constructed. He feels it would be a 3-1 ratio but has concerns about that for safety with ATVs or snowmobiles. He states he wants to slope it attractively and also maintain safety. He also states that the reclamation issue is that they have a footprint where they stockpile in areas that have already been established so they don't lose access to additional minerals. They have recently been discussing doing some limited reclamation on the south end of the pit. The area on the north end of the new pit would probably stay until the reserves have been exhausted. He feels that they have been having conversations regarding next year's reclamation projects. They have another pit in the area that they are doing wetland restoration reclamation. He states that they have reclaimed several areas and returned them to native prairie or farmland and removed them from pit status. He feels the berm would be somewhere in the 30-40 foot range for a decent slope which would be aesthetically pleasing and also accommodate safety concerns. Patty Bestler states that they have also used warning signs on other berms.

Bill Davis asked about the life of the berms. Patty Bestler states that the berms would be in place until the end life of the mine and they would not be reclaiming the northwest corner of the existing site until the end life of the pit as that would be the access site. Jarrett Robertson advised that it would be difficult to establish an exact timeline as use of the pit will be dependent on the market and need for the classes of material available in the mine.

Leon Schlafmann asked that the berm be set back at least 500 feet from his property.

Jarrett Robertson asked the Applicant if they will consider moving the berm to be acceptable. Jenny Mongeau

asked Leon Schlafmann about the 10-foot berm height being acceptable. Matt Jacobson states that there is no requirement for the size of a berm. In the Code 8-6-16B 3B, it states "provide adequate planting, fencing or berming in areas where extracted uses are adjacent to public roads or residential uses. Sight-obscuring screening may be required between mined areas and adjacent residential property within three hundred feet (300') of the excavation activities".

Mark Klevgaard asked what the setback from the road is for the berm; specifically, he wants to know how close the berm can start from the road. Jenny Mongeau states that the Township Conditional Use states that you cannot do anything closer than 200 feet from the centerline of the road. Ezra Baer calculated that the required setback of the berm would already be near 500 feet, roughly 486 feet. It appears that the existing berm may not be in compliance with the current code but it was probably grandfathered in, being constructed in 2009 with the Ordinance in effect in 2012. It was clarified that the current setback requires 200 feet from the road right of way and not from centerline.

Lori Schlafmann asked for clarification of starting the 500 foot setback to the berm. The 500 foot setback refers to structures, edge of the pit, etc. Leon Schlafmann states that it is 200 feet from their house to the ditch, and then there would be the road, plus the 200 feet from the right of way before the berm would begin.

Bill Davis asked for clarification if the berm is considered as part of the 500 feet or if there were additional information required. Matt Jacobson advised that sight-obscuring screening can be within 300 feet. Excavation can't be any closer than 500 feet from the closest corner of the house, which includes stockpiling as well. The berm cannot be within 200 feet of the right of way of the roadway.

Matt Jacobson shared setback information the Clay County Code 8-6-16-L regarding setbacks which states:

Setbacks: Structures, storage of excavated materials, and the excavation edge shall be setback the following distances:

- (1) One hundred feet (100') from the boundary of adjoining property lines, unless written consent from the adjoining property owner is secured and a variance is granted from the Board of Adjustment.
- (2) Two hundred feet (200') from the right-of-way of existing roads and highways.
- (3) One hundred feet (100') from the boundary of adjoining property upon which a residence, school, church, public or commercial establishment is located and a minimum of five hundred feet (500') from any structure used as a residence, school, church, public or commercial establishment.
- (4) Two hundred feet (200') from the shoreline of any protected water.
- (5) The operation shall be completely located outside of the one-hundred (100) year floodplain.

Patty Bestler stated that typically their other sites throughout the state of Minnesota, they consider the berm to be excavated materials. This would mean that the berm has to start 500 feet from the nearest corner of the house.

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

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

Matt Jacobson directed the Planning Commission members to review the recommended Conditions as set out in the Staff Report. The end-date was discussed, as well as the berm issue and weed control. Jenny Mongeau reminded that the County does have a Noxious Weed Board and any noxious weed issues can be addressed through Gabe Foltz at the Soil and Water Conservation District. The 10-foot height of the berm was also addressed. Randy Schellack pointed out that once digging begins in the pit, they will be 4 feet deep and so a 6-

foot high berm would maybe be adequate. Steve Lindaas asked if dust control is included or needs to be added. Matt Jacobson advised that this Permit is separate from the Township Permit and that this Interim Use Permit would need to also include the dust control issue as well. Matt Jacobson asked the Applicant if they understood the conditions being requested and Patty Bestler advised they did understand.

On motion by Ezra Baer, seconded by Steve Lindaas and unanimously carried, , the Planning Commission approved the Interim Use Permit to include the following Conditions:

- 1. Operate within provisions of the Clay County Land Development Ordinance.**
- 2. Operate within provisions of the Spring Prairie Ordinance and Conditional Use Permit.**
- 3. Operator shall control dust and provide necessary maintenance on any/all gravel haul roads per Spring Prairie Township road maintenance agreement.**
- 4. 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.**
- 5. Operations will only occur Monday through Friday, from 6:00 AM to 6:00 PM and Saturday from 6:00 AM to 2:00 PM unless a request is made to Clay County Planning and Zoning and a Variance is granted by Spring Prairie Township.**
- 6. Propose a maximum of 37 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.**
- 7. All mining activities must occur at minimum of 10 feet above the groundwater table.**
- 8. Operator must control the spread of noxious and invasive plants.**
- 9. Require applicant to post a reclamation bond of \$2,000 per acre.**
- 10. Require applicant to reclaim mined out areas as mining activities progress. Require areas to be seeded to landowner specification upon reclamation.**
- 11. Applicant shall provide parking, screening, lighting, drainage, and portable sewer facilities consistent with County regulations as determined by the Planning Department and County Health Department.**
- 12. The IUP shall expire in 10 years on August 18, 2030.**
- 13. The berm shall be no closer than 500 feet from the closest corner of the nearest residence and shall be constructed at minimum height of 10 feet.**

UNFINISHED BUSINESS:

Matt Jacobson stated that there was discussion last month about the Comprehensive Plan update. He plans to bring additional information and discussion to next month's meeting regarding this and will be looking for a recommendation from the Planning Commission to bring to the Board of Commissioners. This is a rare opportunity to get a quality product done for a very reasonable expense.

NEW BUSINESS:

- **CONFLICT OF INTEREST: Clay County Attorney Katie Stock**

Katie Stock provided an overview of conflicts of interest based on MN Statute 394.30 and case law for planning commission members. Conflicts are defined in Statute and case law, but not in the Bylaws. Katie Stock states that if a conflict of interest exists, that person should not vote on that decision. Essentially case law has defined conflict of interest as a direct financial gain. Simply knowing a person or living next to a person or that type of association by itself without more than that does not equate as a conflict of interest. She discussed E.T.O., Inc d/b/a "Fergie's Bar" v Town of Marion et al 375 N.W.2d

815 (Minn. 1985). She does not feel that the Bylaws need to be amended but does feel if anyone has a concern about a conflict of interest, that they bring it to the attention of Matt Jacobson or herself before the meeting.

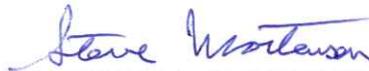
Matt Jacobson pointed out the subdivision 1 of MN State Statute 394.30 County Board's Planning Commission, which states:

"No voting member of the commission shall have received, during the two years prior to appointment, any substantial portion of income from business operations involving the development of land within the county for urban and urban related purposes."

- **Jenny Mongeau** brought up that Clay County has been allotted funds through C.A.R.E.S. Act, and approximately \$600,000 has been approved for technology services equipment.
- **County Commission** is looking for a Watershed Board member. If you are interested in serving a 3-year term, please complete your application with the Buffalo-Red River Watershed Board. Applications are being taken for the next 2 weeks.

ADJOURNMENT;

On motion by Steve Lindaas, seconded by Ezra Baer, and unanimously approved, the meeting adjourned at 9:20 PM.



Steve Mortensen, Planning Commission Secretary