

**MINUTES
CLAY COUNTY PLANNING COMMISSION MINUTES
7:00 TUESDAY, APRIL 19, 2022
THIRD FLOOR BOARD ROOM, CLAY COUNTY COURTHOUSE**

Members Present: Ezra Baer, Kurt Skjerven, Steve Lindaas, Curt Stubstad, Brent Berg, Brad Eldred, Laura Johnson

Members Absent: Andrea Koczur, Bill Davis, Joel Hildebrandt, Jenny Mongeau

Others Present: Matt Jacobson, Brian Melton, Erika Franck, Rita Rueckert, Rick Kroll (via Teams), Ronald Butenhoff, David Leach, Cory Schwantes, Sara Hough, Dustin Hough, Ben Jacobson, Loren Richards, Alice Richards

ROLL CALL:

Attendance was recorded by Chair Ezra Baer and meeting called to order at 7:00 PM.

APPROVAL OF AGENDA:

On motion by Steve Lindaas, seconded by Brad Eldred, and unanimously carried, the Agenda was approved.

APPROVAL OF MINUTES FROM MARCH 15, 2022 MEETING:

On motion by Steve Lindaas, seconded by Brad Eldred, and unanimously carried, the Planning Commission approved the March 15, 2022 Minutes with this correction.

CITIZENS TO BE HEARD:

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

PUBLIC HEARINGS:

DUSTIN AND SARA HOUGH – PETITION FOR REZONING

The petitioner is seeking a rezone to remove the Resource Protection – Aggregate Overlay Zoning District on parcel 05.022.2802 in part of the S1/2 of the SE1/4 NW1/2 of Township 138N, Range 46W, Section 22, Elkton Township.

On motion by Curt Stubstad, seconded by Brad Eldred, and unanimously carried, the Planning Commission opened the public hearing.

Matt Jacobson, Planning Director, advised the Applicant is attempting to remove the Resource Protection – Aggregate overlay on this parcel located within Agricultural Service Center Zoning District, to allow for future development of commercial storage units. The parcel is approximately 15.8 acres, with current Residential and Commercial Use (mink farm). It is located just to the east of Downer along County 10. The entire townsite of Downer is zoned Resource Protection – Aggregate.

Review of the Zoning Overlay Districts from the Development Code were reviewed in regard to their relationship to other zoning districts, per 8-5C-3: RELATIONSHIP OF RESOURCE PROTECTION OVERLAY DISTRICTS TO OTHER ZONING DISTRICTS:

- The three Resource Protection districts are overlay districts. These districts overlay other underlying zoning districts such as the AG districts. The requirements of the overlay districts in this Article provide regulations that shall apply to structures and the use of land in addition to the regulations of the underlying zoning districts. **Where requirements in this Article impose greater restrictions than the underlying zoning district, the provisions of this Article shall apply.** Two overlay districts may occur in the same area, for example significant biological resources may be present in a wellhead protection area. **Where two overlay districts occupy the same area, the requirements that impose greater restrictions shall apply.**
- The purpose of the Resource Protection – Aggregate Overlay District is to protect areas with existing significant aggregate resources as shown in the Clay County Aggregate Resources Inventory completed pursuant to Minnesota Statutes Chapter 84.94.
- MN DNR Aggregate Resources Inventory and Mapping project focused on the aggregate rich Agassiz Beach Ridge and glacial deposits of eastern Clay County.

The purpose of this is to prevent that resource of becoming inaccessible. The identification of the aggregate deposits was done by aerial flights with ground penetrating radar and core sampling. Clay County has an estimate 47,796 acres of high or moderate aggregate potential which is approximately 7% of the County. Due to study limitations, the aggregate potential is likely much higher. A map was shown which outlined the areas of high and moderate sand and gravel potential, mostly in the beach ridge area and the southeast area of the County.

A 1939 aerial was reviewed of the area of Downer which showed rather significant aggregate extraction, as well as additional aerial photographs from 1948, and another from 1981. A lot of the pits from these prior times are no longer in existence.

The area of the property at the subject of this request shows that the entire parcel is identified as aggregate potential; however, most all of the aggregate has already been extracted, with less than 2 acres of this 16-acre parcel having any potential to be developed for aggregate extraction.

The loss of this property as Resource Protection-Aggregate would not be a significant impact to the County's overall inventory of aggregate, due to most all of the aggregate already having been extracted. The property and surrounding area are old gravel pits. Setbacks would limit the amount of minable area on this property.

The County may want to consider looking at modifying the Resource Protection – Aggregate overlay in and around Downer, as well as in areas zoned Special Protection – Shoreland as aggregate mining is not allowed in Shoreland areas.

Dusty Hough was present with his wife Sara. Mr. Hough indicated that the land has minimal value as it is across the street from a junkyard. His intent is to develop commercial storage units with possible small office capability on the end of the building. He feels this will significantly improve the street view of his property.

On motion by Steve Lindaas, seconded by Curt Stubstad, and unanimously carried, the Planning Commission closed the 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.

On motion by Steve Lindaas, seconded by Curt Stubstad, and unanimously carried, the Planning Commission approved recommendation to the County Commission to remove the Resource Protection-Aggregate Zoning District overlay.

BEN JACOBSON – REQUEST FOR AN INTERIM USE HOME OCCUPATION PERMIT

The applicant is seeking approval of an Interim Use Home Occupation Permit to operate a wedding and event venue in part of the NE1/4SE1/4 of Township 137N, Range 46W, Section 7, Parcel 02.007.4101, Barnesville Township.

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

Matt Jacobson, Planning Director, advised that this is a request for allowing continuation to operate an event center after a change of ownership. The following items were reviewed from the 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.

Land Use Goal #1: Establish a comprehensive growth management strategy for Clay County that that promotes orderly and efficient growth of residential, commercial and industrial development while preserving the County's rural character.

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 #3: Allow for home occupations in agricultural areas and small, community-based retail in the County's unincorporated rural communities.

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

The subject property and area properties are all zoned Agricultural General. An Interim Use Permit (IUP) Home Occupation may be allowed in this zoning district if it meet minimum requirements and receives an Interim Use Permit. The subject property is approximately 6 acres and contains a residence, a restored barn, a bridal suite and a stable on the site. The Applicant proposes to utilize the restored barn, bridal suite and stable for the home occupation.

The Standards for Conditional/Interim Home Occupations were reviewed:

- 1. Conditional/Interim Use: Home occupations allowed under this section shall be processed as a Conditional/Interim use permit meeting the requirements of this section in addition to the general requirements for a condition/interim use permit. A site plan shall be submitted with the Conditional/Interim use permit application, showing the location of all existing structures and describing the proposed use.
- 2. Review of Permit: Conditional/Interim home occupation uses shall be reviewed and inspected by the planning department at least once every five years for compliance with

conditions.

- 3. Where Located: Conditional/Interim home occupations shall be located on lots not located in platted subdivisions. Conditional/Interim home occupations may be located within the dwelling or in a separate nonresidential or farm building.
- 4. Size Limited within Dwelling: If the home occupation is located within the dwelling, the area of the dwelling where the home occupation is located shall not exceed 25% of the main floor area, but not including basement or garage floor space. Structural additions may be made to a dwelling to accommodate a home occupation provided the alterations shall not exceed 25% of the main floor of the area of the dwelling, but not including basement or garage floor area.
- 5. Size Limited in Nonresidential Structures: A new nonresidential structure or structures principally used for the home occupation shall not exceed 10,000 square feet in total for all structures thus used. A new nonresidential structure shall mean any structure built at the time the conditional/interim home occupation permit is applied for or a structure built within the immediately preceding five (5) years. If an existing nonresidential structure, or combination of structures, is proposed to be used for the home occupation, the structure or structures shall not exceed 30,000 square feet in total for all structures thus used. Existing nonresidential structures shall have been in existence for a period of more than five (5) years prior to the application for a conditional/interim home occupation. If a combination of new and existing nonresidential structures is proposed to be used for the home occupation, only one new structure is allowed and shall not exceed 10,000 square feet and the existing structures combined with the new structures shall not exceed 30,000 square feet in total. Proposed uses exceeding the size limits in this paragraph shall be located in ASC Agricultural Service Center Districts or other commercial districts because of associated traffic, parking, employee, utility and signage needs. Home occupations located in nonresidential structures may result in a split tax classification for the parcel where the structures are located. A commercial property tax rate may apply to home occupations in nonresidential structures.
- 6. Minimum Lot Size: The minimum lot size required for a lot on which a conditional/interim home occupation is permitted shall be 80,000 square feet.
- 7. Employees: Employees shall be limited to person(s) residing in the dwelling, immediate family members and up to five (5) additional non-family employees. The Planning Commission may allow additional employees if traffic, parking, utility and impact on surrounding properties are addressed.
- 8. Sign: One non-illuminated sign only of a maximum size of 32 square feet is allowed to advertise the home occupation on site. Such sign shall meet the setbacks for structures for the zoning district within which the home occupation is located.
- 9. Traffic and Roads: Traffic generated by the use shall be considered by the Planning Commission and traffic generated by the home occupation shall not exceed that which is reasonable for the area in which it is located and the road adjacent to the home occupation.
- 10. Adverse Effect: The occupation shall not adversely affect the character of the uses permitted in the district in which it is located.
- 11. Performance Standard: No equipment or processes used in the conditional/interim home occupation shall create noise, vibration, glare, fumes, odors or electrical interference detectable off the premises.
- 12. Buffering: Buffering may be required by the Planning Commission to minimize adverse effects on adjacent properties and roadways.

- 13. Utilities: The home occupation shall not create usage exceeding the capacity of available on-site sewage treatment and drinking water.
- 14. Parking. Additional parking spaces may be required by the Planning Commission for the use of clients, deliveries, etc.

Applicant has requested to continue an Interim Use Permit which was issued in 2012 as the property has changed ownership. This request would include continued use of the restored barn/hayloft (approx. 2400 sf) as the event center, and the 30x24 (720 sf) bridal suite constructed in 2015, and the 70'x40 (2800 sq ft) stable building constructed in 2014. Total area of 5,920 square feet would be within the maximum 10,000 square foot standards for all buildings used. The buildings are able to be rented for special occasions such as weddings, receptions, holiday parties, birthday parties, anniversaries, etc. The facility would be available May through mid-October, primarily weekends Friday through Saturday. Staff for the facility would include the applicants.

Previous Conditions on the 2012 Interim Use Permit included:

- Food to be provided by an off-site caterer. Any alcohol served on-site will be provided by a properly licensed facility and would be served by that facility's staff. Adequate and appropriate restroom facilities are provided and approved by the County Sanitarian.
- Due to the nature of the proposed use, a minimum of 100 parking spaces would be required. Each space needs to be at least 300 sf in area (including the access drive) and 10 feet in width and 20 feet in length. The previous applicant had procured, through a rental agreement, approximately 300'x125' of land on the adjacent property to the north that is utilized for parking purposes. A copy of the updated lease agreement between the applicant and landowner should be submitted to the Planning & Zoning Office. The graveled parking area on the adjacent property is approximately 37,5000 square feet. The graveled parking area on the applicant's property is 150'x150' totaling approximately 22,500 sf. Combined, this is area for approximately 200 vehicles meeting the minimum parking spaces required.
- The nearest residence to the site (other than the owner's) is approximately 1000 feet north of the site. There are three other residences located approximately ½ mile to the south, north and northeast of the proposed use.

Director Jacobson advises the only community comment he has received on this request was from the Township indicating that they were in favor of this application. Chair Ezra Baer asked if there had been any complaints about this venue and Director Jacobson advised he had not received any. Staff recommendation includes the use of the same Conditions as 2012. It was pointed out that the change of ownership was from parents to a son.

Ben Jacobson advised that he grew up on this property and he and his wife have operated the business since the origin; however, he has now removed his parents from the business and it is solely in his and his wife's name. Steve Lindaas asked Ben Jacobson if he was in agreement to the stated hours of operation and he acknowledged he was in favor of May through mid-October, Friday through Saturday.

On motion by Steve Lindaas, seconded by Curt Stubstad, and unanimously carried, the Planning Commission closed the 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.

On motion by Curt Stubstad, seconded by Steve Lindaas, and unanimously carried, the Planning Commission *GRANTED* the Interim Use Home Occupation Permit with the following conditions:

- 1. This permit will terminate if the Applicants close the facility for a period of 12 or more consecutive months or when the property is transferred to a new owner.**
- 2. The Applicant must provide a detailed parking plan providing parking spaces for a minimum of 100 vehicles to Planning Office for review and approval. Each space must be at least 10 feet wide and 20 feet in depth and 300 square feet in area.**
- 3. A copy of the signed lease for event parking on the adjacent property should be provided to the Planning Office.**
- 4. Facility may operate May through mid-October and Friday through Saturday. Events shall end by midnight on the day of the event.**
- 5. Food and alcoholic beverages must be supplied by a licensed caterer and/or licensed liquor establishment.**
- 6. Sanitary facilities shall be constructed to meet all standards as required by Clay County and the State of Minnesota.**

SCHWANTES PROPERTIES LCC – REQUEST FOR A CONDITIONAL USE PERMIT

The applicant is seeking approval of an after-the-fact Conditional Use Permit for an Agricultural Service Establishment in part of the NE1/4 of the NW1/41/4 of Township 137N, Range 48W, Section 27, Parcel 15.027.2001, Holy Cross Township.

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

Matt Jacobson, Planning Director, advised this was a request for an after-the-fact Conditional Use Permit for an Agricultural Service establishment for trailer sales.

The following items were reviewed from the 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.

Land Use Goal #1: Establish a comprehensive growth management strategy for Clay County that promotes orderly and efficient growth of residential, commercial and industrial development while preserving the County's rural character.

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.

Subject property is 3.34 acres east of Comstock. The property is zoned Agricultural General, with portions of the property are zoned 500-year Flood Plain and Protection-Rivers and Streams. There is an agricultural use building on the site. Proposed use meets or exceeds the setback requirements if all onsite activities are outside of the 300-foot Special Protection – Rivers and Streams buffer.

Standards from 8-6-12: STANDARDS FOR AGRICULTURAL SERVICE ESTABLISHMENTS;

- A. Setbacks:** All establishments shall be located to allow at least three hundred feet (300') between its driveway and any driveway affecting access to a dwelling or farm field, other than that of the owner. All structures and activities (outdoor storage, corrals, etc.) associated with the Agricultural Service

Establishment shall be located at least five hundred feet (500') from any dwelling.

- B. **Related to Agriculture:** All establishments shall be necessary to the conduct of agriculture within the district.
- C. **Compatible with Agriculture:** The use shall not be one to which the noise, odor, dust or chemical residues of commercial agriculture or horticulture might result in creation or establishment of a nuisance or trespass.

8-6-29: STANDARDS FOR STORAGE YARDS FOR EQUIPMENT, MACHINERY, OR MATERIALS ACCESSORY TO COMMERCIAL USES:

- A. **Accessory Only:** Outside storage of equipment, machinery or materials shall not be a principal use and shall be accessory only to allowed commercial uses.
- B. **Maximum Area:** Outside storage of equipment, machinery or materials shall occupy no more than ten percent (10%) of the lot area or ten thousand (10,000) square feet, whichever is greater.
- C. **Not in Setback:** Outside storage of equipment, machinery or materials within any structure setback area shall be prohibited.
- D. **Screening:** Outside storage of equipment, machinery or materials shall be screened so as not to be visible from any residence on adjacent properties.

Definition from Clay County Land Development Code for Agricultural Service District: Any service establishment primarily engaged in performing animal husbandry or horticultural services, including businesses performing agricultural milling and processing, harvesting or agricultural land preparation, farm equipment sales and service, veterinary service, boarding or training of horses and agricultural product stands.

The Applicant purchased the property in August 2020 to operate his trailer sales business and was unaware of the need to have a Conditional Use Permit. The site is utilized as a drop spot for trailers including belt trailers for feed, seed and fertilizer, as well as side dumps for fertilizer and forage products. Surrounding land is agricultural, a cemetery and the nearest residence is 1500 feet east. Property is well-screened by trees. Property appears neat and tidy.

Outdoor Storage Standards were reviewed. The outdoor storage of equipment and agricultural service establishments are not allowed within the Shoreland-Special Protection – Rivers & Streams, so this use would not be able to occur within three hundred feet (300') of the Ordinary High-Water Level (OHWL) of Wolverton Creek. Outdoor storage of equipment shall meet the 8-6-29 Standards limiting it to ten percent (10%) of the lot area or ten thousand (10,000) square feet, whichever is greater. Ten percent of this property would be 14,500 sf and currently the property is well within the standard. All equipment storage must also meet the structure setbacks of the zoning district which is one hundred twenty-five feet (125') from centerline of CSAH 2.

Ezra Baer inquired if the business was already there when Applicant purchased the property or if he located the business at this location after purchasing the property. Director Jacobson understood that the Applicant located the business to the property after his purchase. There are no anticipated conflicts with any nearby uses. Trailers are only in and out and there is no loading on site. Some trailers onsite do need to be moved to remove them from the Special Protection – Rivers & Streams.

Cory Schwantes asked if the high-water mark was set before or after the Wolverton Diversion. Director Jacobson advised that it could change once the Diversion is completed; but it is generally wherever you see

emergent vegetation.

Ezra Baer asked Mr. Schwantes if this is just a dropping spot and the units are sold elsewhere, or if they were sold from that location. Mr. Schwantes advised it is only being used for dropping as their previous location no longer had room for them. They very seldom have people come to the site to look at the trailers. He advised that the trailers usually arrive very clean as they were just photographed for placing for sale. Chair Baer asked how many trailers are dropped each year and the Applicant stated normal years are 5 or 6; anticipated volume for this year is 2 or 3. Mr. Schwantes advised he worked with the adjacent neighbor to the south to till up some of the land and plant grass seed, which helps keep the property looking nicer and also reduces dust.

Staff recommends the following Minimum Conditions be applied:

1. **Agricultural Service Establishment shall comply with the Clay County Development Code Agricultural Service Establishment Standards;**
2. **Outside storage of equipment, machinery or materials shall occupy no more than ten percent (10%) of the lot area or ten thousand (10,000) square feet, whichever is greater;**
3. **No commercial activity can occur within the Shoreland: Special Protection – Rivers & Streams zoning district;**
4. **Outside storage of equipment, machinery or materials shall be setback 125 feet from the centerline of CSAH 2;**

On motion by Curt Stubstad, seconded by Kurt Skjerven, and unanimously carried, the Planning Commission closed the 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.

On motion by Brad Eldred, seconded by Curt Stubstad, and unanimously carried, the Planning Commission *GRANTED* the Interim Use Permit with the following Conditions:

1. **Agricultural Service Establishment shall comply with the Clay County Development Code Agricultural Service Establishment Standards;**
2. **Outside storage of equipment, machinery or materials shall occupy no more than ten percent (10%) of the lot area or ten thousand (10,000) square feet, whichever is greater;**
3. **No commercial activity can occur within the Shoreland: Special Protection – Rivers & Streams zoning district;**
4. **Outside storage of equipment, machinery or materials shall be setback 125 feet from the centerline of CSAH 2.**

RICHARDS FAMILY PARTNERSHIP LLP – REQUEST FOR AMENDMENT TO AN INTERIM USE - MINING PERMIT

The applicant is seeking approval of an after-the-fact amendment to an Interim Use - Mining Permit for an existing gravel mining operation in part of the NE1/4 and NE1/4SE1/4 of Township 141N, Range 46W, Section 25, Parcel 08.025.0400, Flowing Township.

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

Matt Jacobson, Planning Director, stated this request is an after-the-fact request to amend an Interim Use Permit (IUP) for a gravel mining operation.

Policy Considerations 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.

The location of this pit is north of County 26 in Flowing Township. It is a 198-acre parcel with the north half of the parcel being mined and the south half used for cultivated agriculture. The property is zoned Agricultural General with a Resource Protection – Aggregate overlay. There are no buildings on the site but there is a center pivot irrigator. The last Interim Use Permit was issued on May 21, 2013. The current permit was issued for a 40-acre gravel mine which included 30 acres of excavation and 10 acres for topsoil storage, screening, stockpiling, etc. Currently the mine is at 70 acres with approximately 62 acres open gravel mine with a mean depth of 4.59 feet, and 8 acres for stockpiling. A map was shown which outlined the expansion of the mine through the years 2013 to present.

Minnesota State Statute 4410.4300 sets the threshold for a Mandatory EAW (Environmental Assessment Worksheet). Subpart 12B states "For development of a facility for the extraction or mining of sand, gravel, stone, or other nonmetallic minerals, other than peat, which will excavate 40 or more acres of land to a mean depth of ten feet or more during its existence, the local governmental unit is the RGU." This would trigger a mandatory EAW. If the limitations have been reached and an EAW is not completed, the County, as the RGU, would be responsible. The mean depth of 10 feet has not been reached. The Applicant used a drone to determine the current LIDR. The last LIDR data compiled for this area was in 2009, which would show the pre-mining contours. Although Applicant has exceeded the 40 acres, the trigger did not review because they are currently well under the mean depth of 10 feet.

Applicant has reached the threshold for area, but not the threshold for mean depth of the pit. The applicant is requesting this IUP to amend his total acreage for mining activities to be 70 acres with a mean depth of less than 10 ft. If the applicant is able to receive the amendment to the IUP, any additional acreage that is opened or greater than the mean depth of ten feet requires an EAW be completed and reviewed by the Planning Commission as the Regulatory Government Unit before that mining commences.

If the Amendment to the IUP is received, the Applicant would be able to continue to operate his gravel mine (within the set acreage and depth parameters), while he works to have an Environmental Assessment Worksheet completed on the remainder of the acres and depth in the parcel that he anticipates mining in the future. If the Planning Commission denies the Amendment to the IUP, the Applicant will have to reclaim the acreage over the 40-acre limit to become compliant with his IUP conditions. He would also need to complete an Environment Assessment Worksheet on the remainder of the acres in the parcel that he anticipates mining in the future. If the Applicant intended to go deeper than the 10-foot depth, they would need to complete an Environment Impact Study (EIS).

The 2013 Staff Report set out the following information:

- Intended to utilize 40 acres (currently at 70 acres) of a 198-acre parcel for aggregate mining.
- Operations run, April to December, Monday to Saturday 7:00AM-7:00PM.
- Excavators, bulldozers and front-end loaders being used.
- Screen plant may be located onsite.
- Will be reclaimed back to agricultural uses.
- Property provides frontage on 170th Street North, located about 2 miles north of the intersection of 170th Street and 90th Avenue North (County Road 26). {It can be noted that staff has observed a lack of dust control on 170th Str N and poor road conditions}
- All mining operations (including material storage and/or stockpiling) must maintain a 100' setback from any property line, 100-foot setback from Resource Protection – Biological Overlay District and 200 feet from ROW of public roadways.
- The 100' property line setback has been mined into. Reclamation of this area or a variance to the standards would need to be attained.

The Minnesota DNR did have concerns in 2013 as there is a calcareous fen in the area. In response to the concerns presented by the DNR, the following condition was placed by the Planning Commission:

#7: No mining shall be allowed below the water table and no wash plant operation or de-watering may take place on the site.

This condition appears to have been followed to date.

Director Jacobson stated that the suggested action at this time should be to first determine if an EAW is or is not required; and then, if an EAW is not required, the Planning Commission should work through the Findings of Fact and Order. His present thought is that an EAW is not required at this time to approve the Amendment. However, if the Applicant were to expand in either terms of depth or area, an EAW would be required.

Staff Proposed Conditions Include:

1. Permit shall expire on December 31st 2033.
2. Operate within provisions of the Clay County Land Development Ordinance.
3. Operator shall control dust and provide necessary maintenance on any/all gravel haul roads.
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. Operator shall contact Clay SWCD and have wetland evaluation completed before any mining commences. Operations must comply with all provisions of Wetlands Conservation Act.
6. Propose a maximum of 70 acres with a mean depth of less than 10 feet be approved for mining

operations. 62 acres of excavation and 8 acres for topsoil storage, screening, stockpiling, etc. If additional acres are to be opened in the future or mining is to occur to a mean depth of 10 feet or greater a new or amended IUP would be required including a mandatory EAW.

7. No mining shall be allowed below the water table and no wash plant operation or de-watering may take place on the site.
8. Require applicant to post a reclamation bond of \$500 per acre.
9. Require applicant to reclaim mined out areas as mining activities progress. Require areas to be seeded to native prairie grasses or landowners specification upon reclamation.
10. Applicant must reclaim mined area within the 100-ft Resource Protection-Biological setback and maintain 100-ft setback for all mining activities.
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. 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.
13. No trees can be removed to allow for mining operations.
14. Operations at the site are limited to April through December, Monday through Friday 7:00 AM through 7:00 PM, and hauling on Saturday from 7:00 AM through 2:00 PM.
15. Reclamation of mining within the 100-foot property line setback must commence by November 1st, 2022.

Director Jacobson feels there will be a burden on proving the mean depth of the pit stays less than 10 feet. The drone and LIDR is costly and an EAW may be a better method to pursue.

Chair Ezra Baer confirmed that Richards is both the landowner and the pit operator. Both Chair Baer and member Steve Lindaas feel that requiring an EAW may be in order due to the large number of acres the Applicant exceeded his Permit allowance for mined acreage. Steve Lindaas felt that there could be other Conditions addressed to bring the Applicant into greater compliance. Director Jacobson has not received any comments from any neighbors, the DNR or the Township.

Applicant Loren Richards advised they do all the maintenance on the road themselves. He states that after they got down a few feet they reached clay and it is a shallow pit. He has been in business for 31 years. Mr. Richards states that they have not done any reclaiming, and they will try to determine the life expectancy of the pit later this year.

Chair Ezra Baer asked how many more acres are anticipated to be opened at this pit; Mr. Richards stated he did not know.

Steve Lindaas asked about conditions applied on other mining requests for April through November, 7AM-7PM Monday through Friday, and 7AM to 2PM Saturdays for hauling only. Applicant was asked if this would be a hardship if those hours of operation were applied. Applicant Richards stated that they typically do not work on weekends unless there were rainy spells during the week; he did feel that longer workday hours would be helpful.

Chair Ezra Baer addressed the encroachment of the property line and asked Applicant if he understands the required setbacks from roads and property lines.

Brent Berg asked Applicant how many acres they intend to reclaim in the present; Applicant stated he was not sure. Mr. Berg then asked how many acres Applicant intended to have opened; Applicant stated he was not sure. Chair Baer asked Applicant how many trucks they run out of this pit daily; Applicant stated 8 to 10 trucks daily.

On motion by Steve Lindaas, seconded by Curt Stubstad, and unanimously carried, the Planning Commission closed the 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.

Steve Lindaas felt that an EAW requirement would be prudent in this situation. Matt Jacobson advised that if an EAW was required as a condition of the permit, it is a violation of the rule; a Responsible Government Unit (RGU) cannot issue a permit or take action on a permit until an EAW is completed. Essentially, this would shut down the pit and the current Request would need to be denied. If there was a determination that the Operator should be shut down, an additional public hearing would be required for that action. Operator does have their current Permit but a condition (acreage of pit) has been violated.

There was discussion about placing an expiration on the Permit of one year and re-evaluating its status at that time, due to the violations on the previous permit and to give Operator time to become compliant.

On motion by Steve Lindaas, seconded by Kurt Skjerven, and unanimously carried, the Planning Commission *GRANTED* the IUP with the following conditions:

1. Permit shall expire on April 1, 2023.
2. Operate within provisions of the Clay County Land Development Ordinance.
3. Operator shall control dust and provide necessary maintenance on any/all gravel haul roads.
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. Operator shall contact Clay SWDC and have wetland evaluation completed before any mining commences. Operations must comply with all provisions of Wetland Conservation Act.
6. Propose a maximum of 70 acres with a mean depth of less than 10 feet be approved for mining operations: Sixty-two (62) acres of excavation and 8-acres for topsoil storage, screening, stockpiling, etc. If additional acres are to be opened in the future or mining is to occur to a mean depth of 10 feet or greater, a new or amended IUP would be required including a mandatory EAW.
7. No mining shall be allowed below the water table and no wash plant operation or de-watering may take place on the site.
8. Require applicant to post a reclamation bond of \$500 per acre.
9. Require applicant to reclaim mined out areas as mining activities progress. Require areas to be seeded to native prairie grasses or landowners specification upon reclamation.
10. Applicant must reclaim mined area within the 100-ft Resource Protection – Biological (RP-Bio) setback and maintain 100-foot setback for all mining activities.

- 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. 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.**
- 13. No trees can be removed to allow for mining operations.**
- 14. Operations at the site are limited to April through December, 7:00 AM to 7:00 PM, Monday through Friday, and hauling on Saturday from 7:00 AM through 2:00 PM.**
- 15. Reclamation of mining within the 100-foot property line setback must commence by November 1st, 2022.**

MIDCO – REQUEST FOR A CONDITIONAL USE PERMIT

The applicant is seeking approval of a Conditional Use Permit for a telecommunications tower at 11936 123rd Ave S, Sabin, MN 56580, in the Townsite of Baker, Lot A-1, Township 137N, Range 47W, Section 1, Parcel 01.050.6001, Alliance Township.

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

Matt Jacobson, Planning Director, advised that the Westminster Presbyterian Church is the owner of this property and Midco is the Applicant. Policy Considerations from the Comprehensive Plan reviewed include:

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

Land Use Goal #1: Establish a comprehensive growth management strategy for Clay County that promotes orderly and efficient growth of residential, commercial and industrial development while preserving the County's rural character.

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.

The property is zoned Agricultural Service Center (ASC). Surrounding properties are zoned ASC and Agricultural General (AG). A telecommunication tower is an allowed use with a Conditional Use Permit in the ASC Zoning District.

The location is at the northeast end of Baker at the ballfield area and the ballfield will not be affected by the placement of this tower. It is a 4.1-acre property within the Agricultural Service Center Zoning District of Baker Townsite. The Applicant requests to construct a 130-foot monopole telecommunication tower to provide high-speed internet to the area. Setbacks are 138 feet from the nearest road, 500 feet from the closest residence and church, and 80 feet from the north property line. Construction will include a fenced area and will be designed so that the tower falls within itself in the event of a disaster event.

Clay County Standards limit tower density to a two-mile radius unless justification is provided on why co-location is not possible. The nearest tower is approximately 3 miles from the proposed tower site. Co-locate

opportunities will be provided by the tower for other uses.

Director Jacobson has had received one comment from a nearby farmer with concerns about access to the tower. Midco will build an access into the lot for maintenance to the tower. All setbacks are met. It was confirmed that the current access is right on the property line. Fencing will occur around the tower and will not impact the current access.

Rick Kroll of Midco attended via Teams Meeting. Mr. Kroll advised that they currently have a tower at the top of a local grain elevator converted to a residence; however, the structure is not safe to climb and they are unable to access it for maintenance, upgrading and servicing. He feels that installation should be completed within a couple days. Construction will not have guy wires. A ladder would be required to access the ability to climb the tower. Photos were shown which depicted the construction phases of how this tower will be made and erected.

Staff proposes the following conditions:

1. Facility be permitted to a maximum height of one hundred thirty feet (130') above ground level (AGL).
2. All applicable licenses, including FAA and FCC, shall be obtained for the tower and copies provided to the Planning Office.
3. Tower shall meet all setback requirements set forth in Clay County Land Development Ordinance.
4. Tower must be designed and certified by an engineer to be structurally sound and, at minimum, in conformance with FCC and any other standards that apply to constructing a tower.
5. Tower must be reasonably posted and secured by a fence or some other form of protection to deter trespassing.
6. Access must be provided during normal business hours to all personnel allowed on site.
7. The tower and associated facilities shall be kept and maintained in good condition, order and repair.
8. Tower shall comply with the FCC at all times, including radio frequency emission standards and maintenance.
9. This permit shall automatically expire if no signals are transmitted for a period of 12 consecutive months.
10. Tower lighting between dusk and dawn shall be flashing red beacons. No white strobes are allowed.
11. Tower shall be constructed in accordance with the MN State Building Code requirements.
12. Applicant shall apply for a building permit for the tower, any buildings, or any fence taller than 6 feet in height.
13. Applicant shall meet all elements of the General Review Standards for Condition Use Permits.

There was review of 8-6-21: STANDARDS FOR TOWERS from the Ordinance.

On motion by Steve Lindaas, seconded by Brad Eldred, and unanimously carried, the Planning Commission closed the 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.

On motion by Steve Lindaas, seconded by Curt Stubstad , and unanimously carried, the Planning Commission *GRANTED* the Conditional Use Permit request with the following Conditions:

1. Facility be permitted to a maximum height of one hundred thirty feet (130') above ground level (AGL).
2. All applicable licenses, including FAA and FCC, shall be obtained for the tower and copies provided to the Planning Office.
3. Tower shall meet all setback requirements set forth in Clay County Land Development Ordinance.
4. Tower must be designed and certified by an engineer to be structurally sound and, at minimum, in conformance with FCC and any other standards that apply to constructing a tower.
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10. Tower lighting between dusk and dawn shall be flashing red beacons. No white strobes are allowed.
11. Tower shall be constructed in accordance with the Minnesota State Building Code requirements.
12. Applicant shall apply for a building permit for the tower, any buildings, or any fence taller than six (6) feet in height.
13. Applicant shall meet all elements of the General Review Standards for Condition Use Permits.

UNFINISHED BUSINESS:

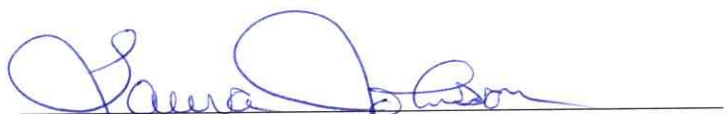
There was no unfinished business.

NEW BUSINESS:

Director Matt Jacobson welcomed Brent Berg to the Planning Commission.

ADJOURNMENT:

On motion by Brad Eldred, seconded by Laura Johnson , and unanimously approved, the meeting adjourned at 9:18 pm.



Laura Johnson, Planning Commission Secretary