

CLAY COUNTY PLANNING COMMISSION MINUTES
7:00 PM TUESDAY, JULY 18, 2023
THIRD FLOOR BOARD ROOM, CLAY COUNTY COURTHOUSE

Members Present: Dave Steichen, Laura Johnson, Ezra Baer, Joel Hildebrandt, Deb White (for Steve Lindaas), Curt Stubstad

Members Absent: Kurt Skjerven, Jenny Mongeau, Ashley Heng, Brent Berg, Brad Eldred

Others Present: Matt Jacobson, Erika Franck, Rita Rueckert, Justin Sorum, Jon Lowry, Steve Westlund, Philip Rogers, Alisha Retzlaff, Sean Lawler, Brady Bjornson (by telephone)

ROLL CALL:

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

APPROVAL OF AGENDA:

On motion by Joel Hildebrandt, seconded by Laura Johnson, and unanimously carried, the Agenda was approved.

APPROVAL OF MINUTES OF JUNE 20, 2023:

On Motion by Deb White, seconded by Laura Johnson, and unanimously carried, the June 20, 2023 Minutes were approved.

CITIZENS TO BE HEARD:

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

PUBLIC HEARINGS:

CLAY COUNTY LAND DEVELOPMENT CODE UPDATE – REQUEST FOR PUBLIC INPUT

Clay County is in the process of updating the Land Development Code. The Planning Commission will take public comment at their regularly scheduled meetings. Comments and questions can also be submitted by calling the Planning Office or by email at planning@claycountymn.gov.

On motion by Joel Hildebrandt, seconded by Deb White, and unanimously carried, the Planning Commission opened the public hearing.

Matt Jacobson, Planning Director, advised this is the first of monthly opportunities for updating the public on the progress of the update to the Development Code, and to also provide opportunity for public input. There is an online survey that the public is asked to provide their input. The first Study Review Committee will be meeting on August 16th, 2023.

On motion by Curt Stubstad, seconded by Laura Johnson, and unanimously carried, the Planning Commission closed the public hearing.

BRADY BJORNSON – REQUEST FOR CONDITIONAL USE

The applicant is seeking to renew a conditional use permit for a commercial storage agribusiness on parcel 26.001.2203, part of the NW1/4 NW1/4, Section 1, Township 138N, Range 45W, Skree Township.

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

Matt Jacobson, Planning Director, shared this that this Conditional Use request is for a 6-unit commercial self-storage facility to include a seed warehousing facility.

Objectives reviewed from the 2045 Clay County Comprehensive and Transportation Plan include:

Commercial and Industrial

1. Encourage commercial and industrial development that is in harmony with the agricultural and rural character of Clay County.

Transportation – Freight

1. Support the movement of freight across Clay County roadways.
 - a. Coordinate with local jurisdictions and use proper planning and zoning methods to locate industrial and commercial developments on or near roadways that can handle heavy commercial truck traffic.

This property is approximately 5.5 acres in Skree Township and is zoned Agricultural General (AG). Applicant received a CUP for this a couple years ago but was unable to establish their use within the 12-month period. The request is for a commercial self-storage building, with one of the units being used for seed storage for the Applicant's business. There are no structures on the property, which is currently being used as cropland.

The Applicant did receive a CUP for this a couple years ago and the proposal was similar but they were unable to establish the Use within 12 months, which then voided their Permit.

Proposed structure is for 6 self-storage units and a seed warehouse measuring 48x120. Each unit is roughly 20x48 and will include 16'x14' overhead doors as well as an access door. Sidewalls will be 16 feet high. Units will be used for storage of RVs, campers/trailers, snowmobiles/ATVs, ice houses, vehicles, general storage. Applicant will use one unit of storage for his seed business's bulk packs and pallets of seed. The unused portion of the lot will remain cropland as test plots for the applicant's business, Red River Agriservice.

The structure will be 125 feet off the centerline of 60th Avenue and 10 feet off the east property line. A gravel pad of 100'x12' is proposed on the west side of the building. The building will have a 4-foot apron on the west side to provide a solid base to drive into the units.

There is a residence to the south and there is a new access proposed off of 60th Avenue. Applicant submitted light and noise pollution mitigation plan. Photos of views from each direction were reviewed. Proposed conditions are the same as those included on the May 2021 CUP. Joel Hildebrandt asked if the Highway Department is in approval of the change of access; Engineer Justin Sorum advised they were in agreement with the proposed access.

Deb White inquired if placing a limit on the hours of operation was considered as a condition. Director

Jacobson indicated that there has been no objections or concerns from neighborhood residents in either 2021 or for this current hearing.

Brady Bjornson states he has been owner of Red River AgriService since 2019. He stated there will not be farm equipment on this site.

On motion by Joel Hildebrandt, seconded by Deb White, 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 Conditional Use Permit. Any issues or concerns may be addressed with conditions.

On motion by Deb White, seconded by Curt Stubstad, and unanimously approved, the Planning Commission *GRANTED* the Interim Use Permit with the following conditions:

1. Applicant shall obtain all applicable local/State/Federal permits/reviews (i.e. Septic system, Storm Water Pollution Protection Plan (MPCA, WCA review, etc.) before any construction and shall provide copies of them to the Planning Office.
2. Facility shall meet all applicable setback requirements as per the County Development Code.
3. No outdoor storage shall be allowed.
4. Days and hours of operation shall be year-round, open 24 hours, seven days a week.
5. Obtain an approved access plan from Skree Township/Clay County Highway Department for access off of 60th Avenue South.
6. Facility signage shall meet County sign standards 8-3-13.
7. No day-to-day business operations shall be conducted at the site, only storage of business materials allowed. If in the future a business would like to operate at the site, an amended CUP would be required.

ALISHA RETZLAFF – REQUEST FOR INTERIM USE

The applicant is seeking approval of an interim use permit to continue operation of a horse stable facility at 10456 40th St S, Moorhead, MN 56560, Parcel 19.026.2301 in part of the SW1/4 SW1/4, Section 26, Township 138N, Range 48W, Kurtz Township.

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

Matt Jacobson, Planning Director, states the request is to continue an Interim Use Permit for operating a horse boarding facility.

Standards reviewed from the 2045 Clay County Comprehensive Plan reviewed include:

Land Use: Agricultural

1. Recognize and Protect the agricultural character of Clay County.
 - b. Protect prime agricultural soils from commercial, industrial and residential development.

Land Use: Commercial and Industrial

1. Encourage commercial and industrial development that is in harmony with the agricultural and rural character of Clay County.
 - b. Avoid or mitigate against commercial and industrial development in and near environmentally sensitive areas.

- c. Avoid or mitigate against commercial and industrial development that increases the potential for land use conflicts with rural residential or agricultural uses.

Agriculture:

1. Support the long-term protection of the County's strong and diverse agricultural economy.
 - a. Maintain an environment that supports agriculture at all scales throughout the County.
 - b. Recognize and support the agricultural character of the county in all planning efforts.
 - c. Ensure that all new development is compatible with the character and quality of the County's agricultural areas.

This property and surrounding properties are zoned Ag General. There is a homestead on the 7.4-acre parcel and several outbuildings. The remaining areas of the parcel are woodlands and pastureland so there would not be any cropland taken out of production. All required setbacks can be met as set out in **Code 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 any driveway affecting access to a dwelling or farm field. 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.

8-3-14: Storage of Manure:

- Animal waste produced by an animal feedlot or stable facility shall not be stored within three hundred feet (300') of edge of drainage ditch, wetland or public water.

There was an Interim Use Permit issued in January 2016 for a horse boarding/training facility with up to 25 horses. There was a change in ownership with the parcel and this would void the previous Interim Use Permit. The current owner/Applicant was part of the previous permitted operation. The Applicant is requesting a maximum of 35 horses. There are no other residence, other than the owners', within 2,500 feet of the facility.

Applicant has submitted a proposed Manure Management Plan:

- Collect manure on the northeast side of the property to compost to be used as fill, lawn leveling, etc.
- The remainder is spread on the owner's hay land and local farmer's nearby agricultural fields.
- Manure is applied yearly as weather and time allows.

Staff Minimal Suggested Conditions include:

1. A maximum of 35 horses may be on site at any given time.
2. Facility shall meet all County regulations and any other applicable Local/State/Federal requirements.
3. Hours and days of operation: 6AM to 10PM, Sunday through Saturday.
4. Applicant shall have manure removed from site and land applied at least once a year.
5. Facility must be in compliance with applicable statutes, ordinances, and related rules including, but not limited to, feedlot rules and well-separation.
6. Other conditions as the Planning Commission deems necessary.

Chair Baer recommended changing Condition #4 to read: Applicant must have a manure management plan. Director Jacobson advised there have never been any complaints received on this operation.

Applicant Alisha Retzlaff advised she was managing this operation since 2016. She previously ran the operation with her now ex-husband and bought the operation from him. She states she understands the proposed conditions. She currently has 25 horses and does not feel she wants to ever be as big as 49 horses and doesn't feel her 7.5 acres is big enough for that many horses.

Joel Hildebrandt advised he is aware of this Applicant and her business and feels she has done a good job cleaning up the property and running an efficient and relevant business.

On motion by Curt Stubstad, seconded by Deb White, 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 Interim Use Permit. Any issues or concerns may be addressed with conditions.

On motion by Joel Hildebrandt, seconded by Curt Stubstad, and unanimously approved, the Planning Commission GRANTED the Interim Use Permit with the following conditions:

1. A maximum of 35 horses may be on site at any given time.
2. Facility shall meet all County regulations and any other applicable Local/State/Federal requirements.
3. Hours and days of operation: 6:00 AM to 10:00 PM, Sunday through Saturday.
4. Applicant shall have a manure management plan.
5. Facility must be in compliance with applicable statutes, ordinances, and related rules including, but not limited to, feedlot rules and well-separation.

NORTHERN STATES POWER/XCEL ENERGY – REQUEST FOR CONDITIONAL USE

The applicant is seeking approval of a conditional use permit for an electrical transmission substation on Parcel 08.033.4401 in part of the S1/2 SE1/4, Section 33, Township 141N, Range 46W, Flowing Township.

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

Matt Jacobson, Planning Director, advised this is an upgrade and expansion of an existing substation. Standards from the 2045 Clay County Comprehensive Plan Goals reviewed include:

Agriculture

1. Support the long-term protection of the County's strong and diverse agricultural economy.
 - a. Maintain an environment that supports agriculture at all scales throughout the County.
 - b. Recognize and support the agricultural character of the County in all planning efforts.
 - c. Ensure that all new development is compatible with the character and quality of the County's agricultural areas.

Zoning on subject property is zoned Agricultural General (AG) and this use is allowable by a Conditional Use Permit (CUP). Lot is located in Flowing Township and is approximately 1.5 acres. It appears all setbacks can be met.

Essential Service Standards 8-3-10 from the Development Code were brought to the attention of the Planning Commission by Director Jacobson.

Application is for a substation expansion to replace the existing substation with standardized substation equipment. Reconstruction will include expanding the existing parcel. The Applicant is looking at placing a new access to the west of the current one. An access permit would need to be applied for.

Staff recommends the following minimum conditions:

1. Applicant shall provide proof of NPDES/SDS and Storm Water Management, as required, to the Planning Office and shall comply with all local/state/federal regulating agencies prior to commencing construction;
2. Receive approved access permit with Clay County Highway Department.
3. Current access must be removed if a new access is to be established.
4. Any other conditions that the Planning Commission deems necessary.

Applicant Sean Lawler representing Xcel Energy advised that the staff presentation of the project was very good. He states that the current station is nearing end of life and has potential for failure. They are looking at purchasing a small amount of property to help with the access and there is a purchase agreement with the adjacent landowner. They will use a mobile substation on a flatbed semi-trailer while the service transfer from the old one to the new one occurs. Mr. Lawler expects that the construction period will last approximately a year.

On motion by Deb White, 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 Conditional Use Permit. Any issues or concerns may be addressed with conditions.

On motion by Curt Stubstad, seconded by Deb White, and unanimously approved, the Planning Commission *GRANTED* the Interim Use Permit with the following conditions:

1. Applicant shall provide proof of NPDES/SDS and Storm Water Management, as required, to the Planning Office and shall comply with all local/state/federal regulating agencies prior to commencing construction;
2. Receive approved access permit with Clay County Highway Department.
3. Current access must be removed if a new access is to be established.

JON LOWRY – REQUEST FOR INTERIM USE – MINING

The applicant is seeking approval of an interim use permit to open a gravel mining operation on Parcel 17.031.0100 in part of the SW1/4 N1/2, Section 31, Township 141N, Range 45W, Keene Township.

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

Matt Jacobson, Planning Director, advised this Interim Use Permit request is to open a new 33-acre mining pit. 2045 Policy Considerations reviewed include:

Natural Resources and the Environment – Aggregate Resources

- 2.** Foster a balanced approach to aggregate resource extraction that is compatible with the natural resources and the rural character of Clay County.
 - a. 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.
 - b. Avoid or mitigate against impacts to groundwater, surface water, native prairie, woodlands, and wetlands for new or expanding mining operations.
 - c. Require phased-end reclamation plans and bonds to ensure mines are reclaimed as mining progresses.
 - d. Consider the cumulative impacts of existing nearby mining operations for new or expanding operations on the environment, agricultural lands, residential areas, and transportation infrastructure.

The parcel is 137 acres and is currently tilled and pivot irrigated. It is almost entirely zoned Resource Protection-Aggregate. There is some area of Special Protection-Shoreland on the parcel; however, this is not located within the area of the proposed mining.

Applicant is requesting to open 33 acres to mine material for Class 5, fill sand and rock. The anticipated time frame is 20-30 years with an anticipated 2 million cubic yards of material to be mined. Current mining plan is to mine in two initial stages (10 acres and 23 acres) and open further stages for mining. They will crush 2 times per year for Class 5 and screen sand as needed. No washing will occur onsite and no chemicals to be stored onsite. There will be two employees onsite. Requesting operating hours of 6:00 AM to 6:00 PM, Monday through Saturday, April through December. Mining will be done by Westlund Excavating.

Setbacks and buffer lines were reviewed on an aerial map. Haul route, nearby residence and mining operations map was reviewed. There is a 100-foot property line setback. All mining operations must be a minimum 500 feet from residences. There is a 100-foot setback from the Resource Protection-Biological zoning.

Wetlands are limited to far southeast corner of parcel and there are no wetlands in proposed mining area. The depth to groundwater is greater than 25 feet below grade. The interior of the mine will be sloped to control runoff. The northern extent will be bermed. Topsoil will be stored in surrounding berms for future reclamation. Vegetative debris will be burned or hauled offsite. Haul roads will be watered and chemical dust control of calcium chloride will be applied when necessary.

Reclamation plans include that the site will be sloped 4:1, leveled and stored topsoil will be placed over the distributed area. One post-mining water feature is anticipated in center of pit. Mine will be reclaimed to pasture or grassland with an estimated reclamation cost to be \$40,000. Photos of the site were reviewed.

Proposed conditions include:

1. Permit shall terminate on July 18, 2033.
2. Operate within provisions of the Clay County Land Development Ordinance, especially the specific setbacks required for mining operations.
3. Operator shall control dust and provide necessary maintenance on any/all gravel haul roads. Chloride must be used for dust control within 1000 feet of any residence along the haul road.
4. Operator shall provide proof of NPDES/SDS, Storm Water Management, and Air Quality Permits, as required to the Planning Office and shall comply with all local/state/federal regulating agencies prior to commencing mining operations.
5. Operator must comply with State of Minnesota Noise Pollution Rules.
6. Operations must comply with all provisions of Wetlands Conservation Act (WCA). Operator must conduct a wetland review with the Clay Soil and Water Conservation District.
7. Operator permitted a maximum of 26 acres for a mining operation (excavation, screening, crushing, stockpiling, etc.) If additional acres are proposed to be opened in the future, a new or amended IUP would be required.
8. Facility may operate April through December, Monday through Friday, 7:00 AM until 7:00 PM, hauling only on Saturdays from 7:00 AM to 2:00 PM. If the need arises to operate beyond state hours or 24 hours a day, the operator must contact the Planning Director in advance with the details of the anticipated time frame for the extended mining hours to obtain approval.
9. Operator shall present a 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.
10. Operator shall provide parking, screening, lighting, drainage, and portable sewer facilities consistent with County regulations as determined by the Planning Department and County Health Department.
11. Operator shall control all County and State listed noxious weeds in the mining areas.
12. No part of the mining operation shall be placed or take place in the Resource Protection-Biological (RP-BIO) overlay zone or within one hundred (100') feet of this zone.
13. Operator shall post a reclamation bond of \$40,000 and reclaim mined out areas as mining activities progress. Final reclamation should be to a maximum 4H:1V slope in mine interior. Areas are to be seeded to a pasture seed mix upon reclamation.

Director Jacobson advised that this pit isn't in a heavy residentially developed area.

County Engineer Justin Sorum advised that there will be paving from County 26 west toward Averill. This project will start approximately August 30th and will last about 2-1/2 to 3 weeks. Future years the paving will continue west until it is reached to the Red River.

Applicant Jon Lowry felt Director Jacobson explained the situation well. He stated the lot is a government leftover parcel, so it isn't a full quarter-sized parcel. He asked if consideration could be given for a 39.5-acre permit. He stated Keene Township is in favor of the mine development and has also talked to the homeowner in the area and has been given their approval as well.

Joel Hildebrandt asked for clarification of the 33-acre request vs. the 39 acres. The 100-foot property line setback and the 200-foot roadway setback would trim the number of acres available for mining. They would still be able to have 39 acres but would need to come back and ask for that, as this hearing was only noticed to the public for a 33-acre request and the number of acres mined would not be able to be changed at this hearing.

Jon Lowry advised that they are looking at purchasing additional property to the north and to the east and inquired about mining closer to the property lines. He was advised that there would need to be a Variance requested to do that. Additionally, he was reminded about the distances required to remain away from the RP-BIO area.

Steve Westlund asked if any other gravel operators have received variances for the 200-foot road setback in that area. Justin Sorum advised that the County Pit has a Variance for the road setback for Highway 26. Jon Lowry stated that they were just wanting equal treatment to what other operators in the area have.

On motion by Joel Hildebrandt, 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 Interim Use Permit. Any issues or concerns may be addressed with conditions.

Director Jacobson advised if the Applicant wished to expand in the future, it may be that an EAW (Environmental Assessment Worksheet) would be recommended or required.

On motion by Curt Stubstad, seconded by Deb White, and unanimously approved, the Planning Commission *GRANTED* the Interim Use Permit with the following conditions:

- 1. Permit shall terminate on July 18, 2033.**
- 2. Operate within provisions of the Clay County Land Development Ordinance, especially the specific setbacks required for mining operations.**
- 3. Operator shall control dust and provide necessary maintenance on any/all gravel haul roads. Chloride must be used for dust control within 1,000 feet of any residences along the haul road.**
- 4. Operator shall provide proof of NPDES/SDS, Storm Water Management, and Air Quality Permits, as required, to the Planning Office, and shall comply with all local/state/federal regulating agencies prior to commencing mining operations.**
- 5. Operator must comply with State of Minnesota Noise Pollution Rules.**
- 6. Operations must comply with all provisions of Wetlands Conservation Act (WCA). Operator must conduct a wetland review with the Clay Soil and Water Conservation District.**
- 7. Operator permitted a maximum of 33 acres for a mining operation (excavation, screening, crushing, stockpiling, etc.). If additional acres are proposed to be opened in the future, a new or amended IUP would be required.**
- 8. Facility may operate April through December, Monday through Friday, 7:00 AM until 7:00 PM with hauling only on Saturdays 7:00 AM to 2:00 PM. If the need arises to operate beyond stated hours or 24 hours a day, the operator must contact the Planning Director in advance with the details of the anticipated time frame for the extended mining hours to obtain approval.**
- 9. Operator shall present a mine plan to the 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.**
- 10. Operator shall provide parking, screening, lighting, drainage, and portable sewer facilities consistent with County regulations as determined by the Planning Department and County Health Department.**
- 11. Operator shall control all County and State listed noxious weeds in the mining areas.**

12. No part of the mining operation shall be placed or take place in the Resource Protection-Biological (RP-BIO) overlay zone or within one hundred feet (100') of this zone.
13. Operator shall post a reclamation bond of \$40,000 and reclaim mined out areas as mining activities progress. Final reclamation should be to a maximum 4H:1V slope in mine interior. Areas as to be seeded to a pasture seed mix upon reclamation.

UNFINISHED BUSINESS:

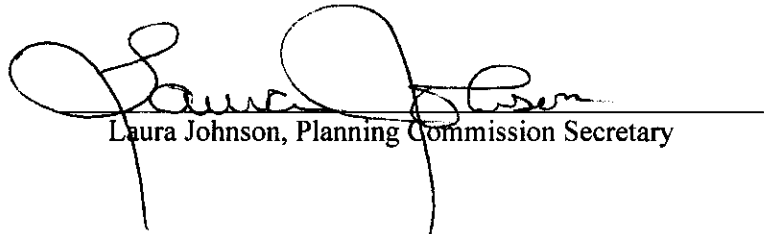
None

NEW BUSINESS:

Curt Stubstad has been appointed a new manager of the Buffalo Red River Watershed District.

ADJOURNMENT:

On motion by Laura Johnson, seconded by David Steichen, and unanimously approved, the meeting adjourned at 8:07 PM.



Laura Johnson, Planning Commission Secretary