

CLAY COUNTY PLANNING COMMISSION MINUTES
7:00 PM TUESDAY, OCTOBER 17, 2023
THIRD FLOOR BOARD ROOM, CLAY COUNTY COURTHOUSE

Members Present: Ezra Baer, Laura Johnson, Joel Hildebrandt, Jenny Mongeau, Sebastian McDougall, Brent Berg, Curt Stubstad, Kurt Skjerven, Davae Steichen, Ashely Heng

Members Absent: Brad Eldred

Others Present: Matt Jacobson, Michael Leeser, Erika Franck, Rita Rueckert, Khna Chroeung, Ed Mars, Ian Severson, Darcy Green, Jordanne Hogenson, Loren Richardson

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 SEPTEMBER 19, 2023:

On Motion by Curt Stubstad, seconded by Ashley Heng, and unanimously carried, the September 19, 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 Jenny Mongeau, seconded by Sebastian McDougall, and unanimously carried, the Planning Commission opened the public hearing.

Matt Jacobson, Planning Director, advised that on Monday, October 23rd, there will be the second hearing of the Study Review Committee. Anticipated topics are feedlots, Wind Energy, Solar Energy and any other topics that the group would bring to the table. Director Jacobson requested if there are any topics that the Planning Commission would like to see added to the Agenda for that meeting. There is also a small cities meeting within the County and Director Jacobson solicited input from the Planning Commission for that meeting as well.

There will also be a Clay County Association of Township meeting and Director Jacobson is hoping for input from that meeting that will be helpful for the Land Development Code Update.

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

KHNA CHROEUNG – CONTINUATION OF PUBLIC HEARING FROM 9-19-2023 REQUEST FOR CONDITIONAL USE

The applicant is seeking approval of a Conditional Use Permit for retreat center at 5112 110th St. S Glyndon, MN 56547, on parcel 10.036.2201, part of the NW1/4 of Section 36, Township 139N, Range 47W, Glyndon Township.

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

Matt Jacobson, Planning Director, recapped the specifics from the previous hearing of September 19, 2023. Policy Considerations reviewed include:

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.

Director Jacobson visited with the Applicant at his property and with Environmental Health Director Kent Severson present. Applicant intends to host weddings, graduations and family reunions. There is a need for event venues within the minority communities of the FM area.

The Applicant is requesting a Retreat/Event Center, intending to host weddings, graduations and family reunions. The Applicant has noticed a need for minority communities in the FM area for this type of space. All events would be held outdoors under tents. Events would only be held in the summer, with up to 100 occupants per event. Food and beverage would be provided by caterers. Some events may include live music. Temporary staff would assist with set up and take down of the events and parking would occur outside in two areas identified areas.

Long-term plans are to retrofit the shop building for a commercial kitchen and to potentially bring in small cabins for temporary lodgings and a nicer barn on the premises to be used for indoor events.

Retreat Center definition by Code:

A semipublic use oriented to using the natural features and outdoor character of the area for short term stays and featuring educational, contemplative and human development workshops and related training activities, which may include the following: religious worship and workshops; life events (i.e. weddings, reunions, birthdays); passive recreation (non-motorized) oriented to appreciating the outdoor and natural character of the area; a nature center, conservatory, interpretive center, exhibit, museum or library space; residential building(s) (rooms or cabins) for short term occupancy by a single family or unrelated individuals attending an education or life event or workshop at the retreated (but not designed or intended for use as a residence); and/or having limited communal facilities for dining, sanitation, meeting, educational or worship purposes.

Retreat Center Standards include:

- Meets all setbacks
- Meets parking standards
- Any converted buildings would need to be permitted by the Minnesota Department of Labor and Industry
- Outdoor tents would need to be permitted by the Minnesota Department of Public Safety
- Food, Beverage, Lodging and sanitation would need to be permitted by Clay County Environmental Health Department

There is a current code violation on this property under 8-6-23: Standards for Outdoor Storage of Automobiles, which the Applicant will remedy by the end of this fall. This includes buses being stored on the property. The buses are in decent condition but have hit their mileage capacity for use as school buses. There is a plan to remove these buses; they are over the Code limit by 1 vehicle. There was originally an idea to incorporate these buses into the original plan but that has since been dismissed and all buses will now be removed.

Khna Chroeung had no questions or comments.

Environmental Health Director Kent Severson was online and advised he had no additional comments or questions. He feels after meeting onsite with the Applicant, the County is in a good position to work with the Applicant and Director Jacobson agreed with this.

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

Staff Minimum Conditions include:

1. Retreat Center must be in compliance with all applicable standards in the Clay County Development Code.
2. Must provide a detailed parking plan to the Planning Office.
3. Must be compliant with all State of Minnesota Fire Code regulations, as applicable
4. Must be compliant with all State of Minnesota Department of Labor and Industry regulations for places of public accommodation.
5. Must be compliant with all Clay County Environmental Health Food, Beverage and Lodging regulations.
6. No outdoor sound amplification is allowed onsite after 10:00 PM.
7. Must have township permitting and approval, if necessary.

The Findings of Fact and Order were addressed by the Planning Commission as they pertain to the requested permit. Any items of concern may be addressed through Conditions.

On motion by Curt Stubstad, seconded by Jenny Mongeau, and unanimously carried, the Planning Commission *GRANTED* the Permit with the following conditions:

1. Retreat Center must be in compliance with all applicable standards in the Clay County Development Code.
2. Must provide a detailed parking plan to the Planning Office.
3. Must be compliant with all State of Minnesota Fire Code regulations, as applicable
4. Must be compliant with all State of Minnesota Department of Labor and Industry regulations for places of public accommodation.

5. **Must be compliant with all Clay County Environmental Health Food, Beverage and Lodging regulations.**
6. **No outdoor sound amplification is allowed onsite after 10:00 PM.**
7. **Must have township permitting and approval, if necessary.**

ED MARS – REQUEST FOR INTERIM USE

The applicant is seeking approval of an interim use permit for a temporary campground for employees of an asphalt batch plant at 17622 200th St. N, Ulen MN 56585, Parcel 12.022.2300 in part of the SW1/4 of the NW1/4, Section 22, Township 142N, Range 45W, Hagen Township.

On motion by Jenny Mongeau, seconded by Dave Steichen, and unanimously carried, the Planning Commission opened the public hearing.

Matt Jacobson, Planning Director, states the Applicant is requesting an Interim Use Permit for Temporary Use of a work camp site. This has been operating for a number of years and is looking for a permit for next season.

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.
 - 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.

Without the gravel mining operation and batch plant across the street, this situation would not be coming to the Planning Commission. Chair Baer asked if there are no campgrounds permitted; Director Jacobson clarified that these type of work camps have been permitted to be allowed in the past.

Director Jacobson clarified that this situation is unique because the sole purpose is for the batch plant employees across the road.

Policy Considerations from the Clay County Development Code reviewed include:

- 8-4-3-B.4. Temporary Uses: The Planning Commission shall have the power to allow the temporary use of a building or premises in any district for a purpose or use that does not conform to the conditions prescribed by this Ordinance; provided, that such use be of a truly temporary nature and does not involve the erection of substantial buildings or a use existing for a period of more than three (3) months.

The property is zoned Agricultural General (AG) and Resource Protection-Aggregate (RP-AGG), as are all adjacent properties in the area. This request would be allowed as an Interim use in these zoning districts. The subject property is approximately 23.4 acres. The current use is residential with a livestock shed and pasture.

The Applicant intends to host up to five (5) recreational vehicles onsite. There are portable toilet facility and the RVs are pumped regularly. Potable and non-potable water are supplied by an onsite well. RVs would be onsite anywhere from 2-6 weeks. Employees are able to monitor the batch plant for any after-hour issues due to the close proximity to the site. There were no complaints received about this property until about a week ago.

Hagen Township does not require a permit; however, there was discussion about this request at the October 9,

2023 Township meeting. The Planning Office has received conflicting information from the Township regarding whether the use presents an issue. Concerns of nearby residents include:

- Safety of the neighborhood residents due to increased late night traffic
- Property is an eyesore with minimal screening from the roadway
- Why can't the use be located at a proper campsite facility with hookups, such as the Ulen Park?

Ed Mars advised he has had this campground for approximately 5 years and was not aware he needed a permit. He states the employees don't use the Ulen campground because it fills up so fast. He likes having them onsite because they are available for middle-of-the-night alarms. He does live onsite. He does not feel the RVs are an eyesore and that the guys work 16-hour days so they aren't creating nuisance or noise. David Steichen asked if the number of campers is usually 5; Mr. Mars stated that is about all he can accommodate there. Chair Baer asked how long the recreational campers usually stay onsite and Mr. Mars indicated they usually don't stay over 6 weeks because they are only onsite during the time RJ Zavoral has the batch plant operating in the gravel pit.

Minimum staff recommended conditions include:

1. Must be in compliance with the Clay County Development Code standards.
2. No more than five campers may be placed on the site.
3. All campers must meet structure setbacks as defined in the Clay County Development Code.
4. Must be in compliance with the Clay County Environmental Health regulations.
5. Campers must not remain on the site for a duration exceeding three (3) months. The Applicant must provide notice to the Planning Office on the arrival and departure dates of campers.
6. The Permit expires October 17, 2029.

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

The Findings of Fact and Order were addressed by the Planning Commission as they pertain to the requested permit. Any items of concern may be addressed through Conditions.

There was discussion regarding what defines a recreational camping vehicle and the definition of a camper unit is defined within the Development Code.

On motion by Curt Stubstad, seconded by Brent Berg, and unanimously carried, the Planning Commission *GRANTED* the Interim Use Permit with the following condition(s):

1. **Must be in compliance with Clay County Development Code standards.**
2. **No more than five recreational camping vehicles associated with the Use may be placed on the site.**
3. **All campers must meet structure setbacks as defined in the Clay County Development Code.**
4. **Must be in compliance with the Clay County Environmental Health regulations.**
5. **Recreational Camping Vehicles must not remain on the site for a duration exceeding three months. The Applicant must provide notice to the Planning Office on the arrival and departure dates of campers.**
6. **This Permit expires October 17, 2029.**

RICHARDS FAMILY PARTNERSHIP LLP – CONSIDER STATUS OF INTERIM USE - MINING PERMIT

The Planning Commission will consider the status of the current Interim Use - Mining Permit for an existing gravel mining operation on Parcel 08.025.0400 in part of the NE1/4 and NE1/4 SE1/4 of Section 25, Township 141N, Range 46W, Flowing Township. This consideration could include suspension or revocation of the interim use permit.

Commissioner Jenny Mongeau disclosed that she is distantly related to the Applicant as their grandparents are first cousins. She disclosed that she has no financial interest in the matter to be heard. Clay County Assistant Attorney Michael Leaser advised it is up to the Planning Commission discretion to determine if she needs to be recused from this hearing.

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

Matt Jacobson, Planning Director, advised this hearing is to consider the continued status of this Interim Use-Mining Permit.

Policy and Permitting Considerations from the 2045 Comprehensive and Transportation Plan were reviewed:

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

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

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

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

Policy and Permitting Consideration – Clay County Development Code Extractive Use Standards – Property Line Setbacks:

- Section 8-6-16B-3I-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.
- Section 8-6-16B-3I-2: Two hundred feet (200') from the right of way of existing roads and highways.

Another Consideration from the Policy, which has come up on this parcel, is Minnesota Rules 4410.4300 Mandatory Environmental Assessment Worksheet (EAW) Categories:

- Subp. 12.B. 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.

The history on this mining pit was reviewed and is as follows:

- Interim Use Permit #722765 was issued on May 21, 2013. Condition #6 stated: Propose a maximum of 40 acres be approved for mining operations, 30 acres of excavation and 10 acres for topsoil storage, screening, stockpiling, etc. If additional acres are to be opened in the future a new or amended Interim Use Permit (IUP) would be required.
- Maximum acreage exceeded by approximately 6.1 acres in 2019, for a total of 46.1 acres.
- Pit growth was reviewed. In 2013 it was 2.9 acres, increasing to 15.7 acres in 2015. By 2017 the mining was at 26.9 acres.
- The mining area increased to 46.1 acres in 2019 and in 2021 it increased again to a total of 63.2 acres. In 2022 it increased to 79.3 acres.
- As maximum acreage was exceeded by approximately 23.2 for a total of 63.2 total acres in 2021 and by 39.3 acres for a total of 79.3 in 2022, in April 2022, after acreage exceedance was discovered as part of a permit inspection, the Planning Commission then approved an Interim Use Mining Permit #828652
- Condition #6 of Permit #828652 stated: 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 eight (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. The pit operator determined that the mean depth of that pit was approximately 4.59 feet, which is under the 10-foot depth so an EAW was not triggered at that time. The Planning Commission approved the IUP but strongly recommended the operator get an EAW.
- In April 2023, after the operator had started on the EAW, the Planning Commission granted an extension for another year allowing for the completion of the EAW, keeping the acreage the same, allowing the operator to do reclamation work, haul out could occur for any stockpiles.
- Now, in 2023, the pit is currently up to 101.7 acres. The mean depth is not certain, and it is a pretty shallow pit. The imagery is from drone flying and was mapped September 2023.

A map was reviewed showing the years of expansion and approximate size of acreage included. The map also showed road and property line setback encroachments. All Permits have been issued as after-the-fact. Total acreage currently opened is approximately 76 acres.

The operator started on the Environmental Assessment Worksheet but it looked like this may not be completed by the time their Use Permit was to expire April 2023. The Planning Commission did grant an extension to do any reclamation work and haul out but they were not to expand at that point. In 2023, the pit now currently sits at 101.7 acres. Some of this was reclaimed but other areas were opened. The mean depth is not exactly known. The imagery was obtained by aerial imagery with drone in September 2023. There was a map showing areas opened and the dates they were opened. There have been encroachments on the property lines and on the road setbacks.

There have essentially been 3 Interim Use Permits granted for this site. Total open acres are currently at approximately 76.8 acres, but there has been 2.6 acres and 22.3 acres reclaimed. The Applicant feels that they understand the mining operation to be rolling acres so they can reclaim and then reopen the same amount of acres reclaimed. They are currently not continuing expansion and are working on reclaiming the encroachment areas.

Director Jacobson discussed Regulating Government Unit (RGU) responsibilities.

Chair Baer asked several questions on different ways the Operator could have avoided the noncompliant situation. Director Jacobson explained situations how the Operator could have proceeded. Chair Baer asked how close they are to completing the EAW and Director Jacobson states he feels they are approximately 99% complete. Once it is complete, the County would review it and then forward it to the State for filing and publishing. It would then come back to the Planning Commission for recommendation to the Board of Commissioners for a Determination of Need to determine if it meets all environmental concerns. Once the Board of Commissioners makes that decision, the Proposer (i.e. The Applicant) would return to the Planning Commission for a new Interim Use Permit and conditions could be set based on the findings in the EAW. An approved EAW would allow up to 160 acres up to a mean depth of 10 feet. Chair Baer asked what the maximum depth of allowed mining that would be with an approved EAW; Director Jacobson advised 160 acres to a mean depth of 10 feet. Director Jacobson advised that no Permits are able to be issued while the EAW is under preparation, consideration and review.

Director Jacobson stated that inspections at these gravel pits are extremely time and labor intensive; however, with the addition of a drone and a certified drone pilot on staff, these inspections will become more accurate and easier.

Operator Loren Richards was asked if he had anything he wished to say but only stated he would take any questions.

Director Jacobson gave the following Staff Recommendations:

1. Revoke the Permit.
 - a. This decision would be based on the following findings:
 - i. The permit holder violated Conditions #2 and #6 of the 2013 IUP (Document #722765) due to property line setback violations and maximum acreage exceedance.
 - ii. After obtaining an after-the-fact permit to address these violations in 2022 and an extension ins 2023, the permit holder again violated conditions #2 and #6 (Documents #828652 and #838236) due to property line and road right-of-way setback violations and maximum acreage exceedance.
 - iii. The acreage exceedances and setback violations are documented in the staff report.
 - b. The implication of revocation are as follows:
 - i. The Planning Commission could suspend Mr. Richards, Richard Family Partnership LLP, Richards Excavating or any subsidiaries from applying for a new Interim Use Permit for a period of time.
 - ii. Mr. Richards would not be permitted to haul out currently stockpiled material.
 - iii. Mr. Richards would need to reclaim the pit immediately.
 - iv. Mr. Richards could reapply for a new Interim Use Permit once the EAW has been approved.

Other implications for consideration are that the current Permit does expire in about 6 months. Also, the mining season will be closing shortly due to the weather.

2. Affirm the status of the permit.
 - a. This decision would be based on the following findings:
 - i. Mr. Richards misinterpreted the acreage requirement. His understanding was that the acreage requirement did not include reclaimed areas and only counted towards open or actively mined areas.

- ii. Mr. Richards has been prompt with addressing setback violations and reclaimed areas encroaching within setbacks. Mr. Richards is actively working on addressing the ROW setback encroachment.
 - iii. Mr. Richards has made a good faith effort to complete an EAW. The EAW is nearly complete and expected to be submitted on or before November 1, 2023.
- b. The implications of affirming the permit status are as follows:
- i. Clay County currently does not have fines or fees or other types of penalties for violations of use permits. Mr. Richards would effectively be able to violate the conditions of the permit without the imposition of any penalty. The one exception is that Clay County can impose a \$700 fine for commencing work on mine expansion before the completion of an EAW in accordance with 7-1-5-A and 1-4-1 of the Clay County Code.
 - ii. The burden of revoking the permit may outweigh the benefits of permit revocation on Clay County. Mr. Richards is cooperating with Clay County to ensure future compliance. An EAW will also be submitted.
 - iii. Mr. Richards will be required to apply for a new permit after the EAW has been submitted and approved by Clay County. The current permit expires on April 11, 2024. Per condition #14 of the current Permit, mining activities must cease by the end of December 2023.

Chair Baer asked if the Operator would answer some questions. Ian Severson and Loren Richards stated they now understand how the acreage applies. Dave Steichen asked if the Operator would be able to open any other acres and Director Jacobson advised that there would be no additional acreage allowed until the EAW is approved.

Chair Baer asked if there was any reclamation completed since the drone inspection; Mr. Severson and Mr. Richards both stated that they are in constant work of reclamation.

Kurt Skjerven advised that he is concerned about a gravel operator being taken out of business, as his Township needed gravel this summer and the only operator they could get was Richards.

Joel Hildebrandt emphasized that this operator is not a new operator and he feels that the encroachments and overages were intentional and should not have happened as the operator knew the rules.

Jenny Mongeau feels that Option 2 makes the most sense for the situation and feels that everything can be addressed once the EAW is received.

On motion by Brent Berg, seconded by Curt Stubstad, the Planning Commission closed the public hearing.

On motion by Curt Stubstad, seconded by Kurt Skjerven, with all in favor except an opposing No from Joel Hildebrandt, the Planning Commission affirmed the status of the permit with Option 2 as follows:

Affirm the status of the permit.

a. This decision would be based on the following findings:

- i. Mr. Richards misinterpreted the acreage requirement. His understanding was that the acreage requirement did not include reclaimed areas and only counted towards open or actively mined areas.**
- ii. Mr. Richards has been prompt with addressing setback violations and reclaimed areas encroaching within setbacks. Mr. Richards is actively working on addressing the ROW setback encroachment.**
- iii. Mr. Richards has made a good faith effort to complete an EAW. The EAW is nearly complete and expected to be submitted on or before November 1, 2023.**

UNFINISHED BUSINESS:

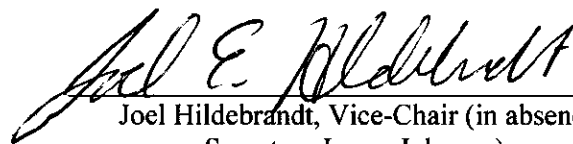
Director Jacobson advised that he had polled other counties as to how they would handle situations such as this last hearing. The majority responded that their County would just have a hearing to review the Permit, just as was just done. Minnesota Association of County Planning and Zoning Administrators (MACPZA) has previously been active with advocating legislatively for any land use/environmental type of issues. In the past, administrative penalties have been on their agenda but is currently a gray area as there is no legislation for imposing fees. Director Jacobson advised he would bring this to MACPZA and hopes to have discussions at their December meeting.

NEW BUSINESS:

- Ezra Baer was reappointed to a second term on the Planning Commission.
- Director Jacobson was asked if there were training opportunities available for the Planning Commission members and he advised he would look to find some.

ADJOURNMENT:

On motion by Curt Stubstad, seconded by Brent Berg, and unanimously approved, the meeting adjourned at 8:15 PM.



Joel Hildebrandt, Vice-Chair (in absence of
Secretary Laura Johnson)