

CLAY COUNTY PLANNING COMMISSION MINUTES
7:00 PM TUESDAY, JANUARY 23, 2024
THIRD FLOOR BOARD ROOM, CLAY COUNTY COURTHOUSE

Members Present: Ezra Baer, Brad Eldred, Curt Stubstad, Frank Gross, Laura Johnson, Joel Hildebrandt, Dave Steichen, Sebastian McDougall, Kurt Skjerven

Members Absent: Ashley Heng, Brent Berg,

Others Present: Matt Jacobson, Michael Leaser, Justin Sorum, Erika Franck, Rita Rueckert, Brandie Doll, Jim Rentz, Joel Paur, Philip Canoy, Jerry Riddle, David Canoy

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 Curt Stubstad, and unanimously carried, the Agenda was approved.

APPROVAL OF MINUTES OF NOVEMBER 21, 2023:

On Motion by Sebastian McDougall, seconded by Brad Berg, and unanimously carried, the November 21, 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 Sebastian McDougall, seconded by Brad McDougall, and unanimously carried, the Planning Commission opened the public hearing.

Matt Jacobson, Planning Director, advised the only update he currently has is that the next direction is to review the Use Table for permitted/non-permitted uses in each Zoning District, and the standards for each of those uses. There have been conversations with Moorhead Public Service regarding the Resource Protection-Wellhead overlay district. Future plans are to meet with someone from Moorhead Public Service and Minnesota Department of Health. He is also still looking to get together with Dilworth and Barnesville for the joint

districts that these two municipalities share with the County. Next Study Review to occur sometime late February.

On motion by Joel Hildebrandt, seconded by Brad Eldred, and unanimously carried, the Planning Commission closed the public hearing.

NORTHWOODS STRUCTURAL MOVERS – REQUEST FOR AN INTERIM USE PERMIT

The applicant is seeking approval of an interim use permit to temporarily store one house and one garage on parcel 19.030.1400, S1/2 of Gov't Lot 1, Section 30, Township 138N, Range 48W, Kurtz Township.

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

Matt Jacobson, Planning Director, advised that the request is for temporary storage of flood buyout home and garage. Standards reviewed from the 2045 Comprehensive Plan include:

Freight – 1. Support the movement of freight across Clay County roadways

- c. Collaborate and Partner with Clay County Sheriff, Minnesota State Patrol, and other applicable agencies, to enforce roadway weight restrictions or other freight-related regulations, especially during periods of time when a lot of commodities or freight may be traveling from adjacent counties and states.

Floodplains – 1. Foster a community resilient to the impacts of implementation for the benefit of Clay County residents, agriculture, and industry.

- a. Discourage inappropriate development in flood hazard areas.

Zoning on this parcel is Agricultural General (AG), Shoreland: Special Protection Rivers and Streams (300 feet in either direction of a public water course), Floodplain Fringe (FF) and Floodway. This is approximately a 19-1/2-acre lot and is located on 3rd Street South. This is allowed use with a Permit in these zoning district. Parcel is currently used for residential and agriculture and there are numerous buildings onsite, including 2 residences and several outbuildings. The proposed use can meet the setbacks as written in the Clay County Development Code.

The standards for temporary use is defined as:

Temporary Uses: 8-6-30: STANDARDS FOR TEMPORARY USES

- A. Temporary uses shall be of a truly temporary nature, and
 - 1. Shall not involve the erection of substantial buildings or structures; and
 - 2. Shall not exist for a period of more than three (3) months.

Interim use permits: 8-5-6E: USES THAT WILL BE CONSIDERED FOR INTERIM USE PERMITS:

- 1. An occasional special event or short-term use (i.e. music concert, flea market, carnival, house storage, etc.)

These particular structures were moved from North Dakota. Applicants have received Permits in the past for the same use. The Applicant will also need to acquire any over-dimensional load permits required by Clay County Highway Department when moving the structures offsite. This is an after-the-fact request as the

structures are

already on premises and the Planning office was made aware of these homes on Friday, November 17, 2023 while inspecting nearby properties.

This home and garage will be stored until they are sold and moved to a new, permanent location and reused. The proposed storage site is located just west of the unincorporated community of Rustad, MN. There is a 3-month deadline for temporary storage, and that would expire at midnight on April 23, 2024. Because the use is within the Floodplain, it is requested a condition be included on the permit to remove the structures should a flood event occur.

Photos of the structures and their locations were reviewed. It was clarified that per our Code, the Permit is only valid for 3 months. Joel Hildebrandt asked about road restrictions if the structures weren't moved before the spring and Director Jacobson agreed that was a good point, and it may result in a request for a new Permit.

David Canoy advised that they do have potential buyers for these structures but he is hopeful these will be gone by April. If they are not moved by then, he will probably need to request an extension.

On motion by Kurt Skjerven, 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 Temporary Interim Use Permit. Any issues or concerns may be addressed with conditions.

Staff recommends the following minimum conditions:

- All structures stored on the site shall be removed and this permit shall expire at midnight on April 23, 2024. If before the April 23rd, 2024 deadline, a Flood Declaration has been declared by Clay County, then all structures shall be removed within 24 hours of the signed declaration.
- The site and structures thereon shall be kept and maintained in good condition, order and repaired at all times so they will not endanger life or property of any person.
- No more than one (1) home and one (1) garage shall be stored on the site.
- A \$100 administrative penalty per structure per day (maximum \$2500) will be issued for any structure that is on the premises after the permit has expired.
- Overweight and over-dimensional permits need to be obtained, if required, from the Clay County Highway Department.
- Other conditions as the Planning Commission deems necessary.

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

- 1. All structures stored on the site shall be removed and this permit shall expire at midnight on April 23, 2024. If before the April 23rd, 2024 deadline, a Flood Declaration has been declared by Clay County, then all structures shall be removed within 24 hours of the signed declaration.**
- 2. The site and structures thereon shall be kept and maintained in good condition, order and repair at all times so they will not endanger life or property of any person.**
- 3. No more than one (1) home and one (1) garage shall be stored on the site.**

4. A \$100 administrative penalty per structure per day (maximum \$2500) will be issued for any structure that is on the premises after the permit has expired.
5. Overweight and over-dimensional permits need to be obtained, if required, from the Clay County Highway Department.

BORDER STATES PAVING, INC – REQUEST FOR INTERIM USE

The applicant is seeking approval of an interim use permit for a gravel mining operation on Parcels 24.035.4500 and 24.035.1800 in the N1/2 SE1/4 and the E1/2 NE1/4, Section 35, Township 138N, Range 44W, Parke Township.

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

Matt Jacobson, Planning Director, advised that this request is for a renewal of an aggregate mine.

2045 Comprehensive and Transportation Plan 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.

Zoning on the two parcels in question are Agricultural General (AG), Resource Protection-Aggregate (RP-Agg), and Resource Protection-Biological (RP-Bio). Mining is allowed in the RP-Bio zoning district with an Environmental Assessment Worksheet (EAW), which has been completed.

History of these two parcels include:

Parcel 24.035.1800

2005 CUP for a 15-acre gravel mine

2010 CUP to re-establish a 15-acre gravel mine

2013 IUP for a 63-acre gravel mine (Environmental Assessment Worksheet completed)

2017 IUP for temporary placement of an Asphalt Batch Plant

Parcel 24.035.4500

2013 IUP for a 63-acre gravel mine (Environmental Worksheet completed)

2017 IUP for temporary placement of an Asphalt Batch Plant

There was a Variance granted to 100 feet of property line and 200 feet road right-of-way (ROW) setbacks by

Board of Adjustment on this date. All mining operations must be a minimum of 500 feet from residences. There is a 100- foot setback from RP-Bio zoning district and native prairie.

Part of the Environmental Assessment Worksheet is to maintain a 100-foot buffer from the RP-Bio area; however, that has been encroached upon at this time. They will be working with a restoration company to restore this area to like-native prairie to match the adjacent prairie.

The current pit size is approximately 20 acres. The Mining Plan is to occur in 8-to-15-acre cells. An estimated 500,000 cubic yards of material will be processed on site. An asphalt batch plant and processing area will be staged in the middle of the mine. Crushing, screening, and stockpiling will occur onsite. There will be a scale and scale house onsite. They have all required State permits and will have approximately 5-6 employees onsite.

Review of a site map showed an area that will be reclaimed in 2024. Topsoil will be stripped, stockpiled and seeded. Runoff will be directed towards the pit interior. No dewatering or water discharge will occur onsite. Any diesel fuel will be stored within a bermed containment area. There is a residence approximately 2700 feet to the south, and another one approximately 2600 feet to the southwest of the site.

Haul road map and identification of nearby residences was reviewed.

Reclamation will occur in 8-to-15-acre cells as mining progresses. Site will be sloped 4:1, pit leveled and stored topsoil will be placed over the disturbed area to match surrounding landscape as close as possible. The site will be returned to pastureland. Reclamation costs are estimated to be \$1,000 per acre.

Photos of the area from November 2023 were reviewed, looking west from 290th Street and across the pit.

Joel Hildebrandt requested if there were any other violations in the past several years, other than encroachment on the RP-Bio area. Director Jacobson advised he was not aware of any.

Jim Rentz, Operations Manager of Border States Paving, thanked the Board for their time. He feels they have a good working relationship with the landowner, Marvin Spillum. Frank Gross asked if there was gravel under the native prairie; Mr. Rentz indicated there was but that was under the wind turbine and the prior encroachment by a subcontractor will be addressed right away this spring. They will send out surveyors to mark the areas appropriately and they will be more active in monitoring the site by having onsite people and also security cameras.

Jerry Riddle, a neighbor residing at Clay County 6 and 290th Street stated he is concerned about dust control. There have been promises made in the past and, although sometimes dust control occurs, mostly it doesn't. He feels he has been given the run-around. He has asked for chloride to be placed, as well as asking for a water truck to go through on the roads and nothing happens. He boards dogs and cannot have the windows open due to the dust, which also coats his residence, vehicles and lawn. He inquired who he can contact for dust control and wants to see some stipulations for dust control. Jim Rentz indicated he or his office personnel can be contacted in these situations.

Frank Gross asked how the dust will be controlled. Mr. Rentz indicated that chloride will be used, as well as water. Mr. Gross asked who is maintaining the road and Mr. Rentz indicated Border States Paving has been doing maintenance, as well as another gravel operator in the area.

Chair Baer asked Engineer Justin Sorum as to who does the maintenance. Engineer Sorum advised this is an hourly maintenance road done upon request by the Township.

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

Staff recommends the following minimum conditions:

1. Permit shall expire on December 31, 2039.
2. Applicant shall operate within provisions of the Clay County Development Code.
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 by the Planning Office, and shall follow all local/state/federal regulations prior to commencing mining operations.
5. Operations must comply with all provisions of Wetland Conservation Act (WCA).
6. A maximum of 63 acres is approved for mining operations. This includes previously mined acreage. Any additional acreage proposed in the future shall require a new or amended IUP.
7. Operation shall be allowed five days a week, during daylight hours, up to 12 to 14 hours per day.
8. Operator to reclaim mined out areas as mining activities progress. Require areas to be seeded with native prairie grasses or landowner's specification upon reclamation.
9. Applicant shall provide parking, screening, lighting, drainage, and portable sewer facilities consistent with County regulations as determined by the Planning Department and the County Environmental Services Division.
10. Require operator to present a detailed mine plan to Planning Office indicated the 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.
11. Applicant to post a \$1,000/acre reclamation bond.
12. Operator shall maintain a minimum 100-foot buffer from all native prairie.
13. Operator shall reclaim area of native prairie on parcel 24.035.4500 disturbed by previous mining operations with a prairie species mix consistent with existing, undisturbed native prairie.

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

- 1. Permit shall expire on December 31, 2034.**
- 2. Applicant shall operate within provisions of the Clay County Development Code.**
- 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 by the Planning Office, and shall follow all local/state/federal regulations prior to commencing mining operations.**
- 5. Operations must comply with all provisions of Wetland Conservation Act (WCA).**
- 6. A maximum of 63 acres is approved for mining operations. This includes previously mined acreage. Any additional acreage proposed in the future shall require a new or amended IUP.**
- 7. Operations shall be allowed 6:00 AM – 8:00 PM, Monday through Friday, and hauling on Saturday from 6:00 AM to 2:00 PM year-round.**

8. Operator to reclaim mined out areas as mining activities progress. Require areas to be seeded to native prairie grasses or landowners specification upon reclamation.
9. Applicant shall provide parking, screening, lighting, drainage, and portable sewer facilities consistent with County regulations as determined by the Planning Department and the County Environmental Health Department.
10. Require operator to present a detailed mine plan to Planning Office indicating the 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.
11. Applicant to post a \$1,000/acre reclamation bond.
12. Operator shall maintain a minimum 100-foot buffer from all native prairie.
13. Operator shall reclaim area of native prairie on parcel 24.035.4500 disturbed by previous mining operations with a prairie species mix consistent with existing, undisturbed native prairie.

BORDER STATES PAVING, INC – REQUEST FOR INTERIM USE

The applicant is seeking approval of an interim use permit for a portable bituminous hot mix plant on Parcels 24.035.4500 and 24.035.1800 in the N1/2 SE1/4 and the E1/2 NE1/4, Section 35, Township 138N, Range 44W, Parke Township.

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

Matt Jacobson, Planning Director, stated this is a request for a portable bituminous hot mix batch plant. The Applicant did receive a Variance earlier this evening from the Board of Adjustment for a reduction of property line, residential and road right-of-way setbacks. The closest residence would be approximately 2700 feet south. The request is for a temporary basis with a proposed timeframe of 15 years. The plant would support local road projects. Zoning and land uses of these parcels are the same as those identified in the previous hearing. Director Jacobson stated that these portable batch plants are set up for use in an area where they are needed, they run for 3 to 6 weeks, usually only in the summer, and are then moved on to the next location.

David Rentz asked if there were any questions. Joel Hildebrandt commended the Applicant for their placement of trying to keep this batch plant as far away from the residence as possible, and also putting it more into the pit to reduce noise.

Jerry Riddle asked for clarification on the map and distance from his residence. It was confirmed that the batch plant would be approximately 2700 feet from the Riddle residence.

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

Staff recommends the following minimum conditions:

1. Permit shall terminate on December 31, 2039.
2. Operator 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. Facility may operate April 1 through November 15th, Monday through Saturday, starting at 6:00 AM until 9:00 PM. If the need arises to operate 24 hours a day, the operator must contact the Planning Director in advance with the details of the anticipated timeframe for the extended mining hours to obtain approval.
6. 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.

On motion by Curt Stubstad, seconded by Brad Eldred, and unanimously carried, the Planning Commission

1. The permit shall terminate on December 31, 2034.
2. Operate within the 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 operations.
5. Facility may operate April 1st through November 15th, Monday through Friday, starting at 6:00 AM until 8:00 PM, and hauling on Saturday 6:00 AM until 2:00 PM. If the need arises to operate 24 hours a day, the operator must contact the Planning Director in advance with the details of the anticipated timeframe for the extended operating hours to obtain approval.
6. Operator shall provide parking, screening, lighting, drainage, and portable sewer facilities consistent with County regulations as determined by the Planning Department and County Environmental Health Department.

UNFINISHED BUSINESS:

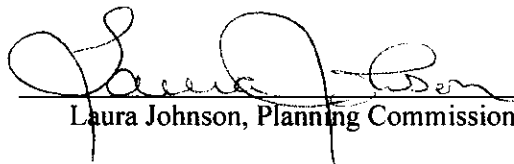
None

NEW BUSINESS:

- Joel Hildebrandt's first term ends in February. He has been reappointed by the Soil and Water Conservation District.
- Election of Officers will be held at the February 2024 meeting.
- There was an update to the meeting schedule for the June 2024 meeting. New calendars were distributed with this correction.
- Mileage is now 67 cents per mile and this is new mileage reimbursement is reflected on the January Vouchers.

ADJOURNMENT:

On motion by Brad Eldred, seconded by Laura Johnson, and unanimously approved, the meeting adjourned at 8:12 PM.



Laura Johnson, Planning Commission Secretary