

CLAY COUNTY PLANNING COMMISSION MINUTES
7:00 PM TUESDAY, FEBRUARY 20, 2024
THIRD FLOOR BOARD ROOM, CLAY COUNTY COURTHOUSE

Members Present: Ezra Baer, Ashley Heng, Sebastian McDougall, Laura Johnson, Joel Hildebrandt, Jenny Mongeau, Kurt Skjerven, David Steichen

Members Absent: Curt Stubstad, Brent Berg, Brad Eldred

Others Present: Matt Jacobson, Michael Leaser, Erika Franck, Justin Sorum, Rita Rueckert, Sara Simmons, Stacy Miller, Scott Miller, Ken Fuchs, Richard Menholt, Jesse Soper, Ian Severson, Loren Richards

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 Ashley Heng, and unanimously carried, the Agenda was approved.

APPROVAL OF MINUTES OF JANUARY 23, 2024:

On Motion by Sebastian McDougall, seconded by Laura Johnson, and unanimously carried, the January 23, 2024 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 Kurt Skjerven, seconded by Ashley Heng, and unanimously carried, the Planning Commission opened the public hearing.

Matt Jacobson, Planning Director, shared a few updates. There was an article in the FM Extra and the public input information doubled after that article. There were advertisements placed in the Hawley Herald, Ulen Union and the Barnesville Record Review as well. The next Study Review Committee will be reviewing the Land Use Table and Standards for Land Uses and will likely be held in March 2024. Matt Jacobson will be

attending the Township Officer's meeting on March 18th and will be reporting back on that.

Scott Miller was present and Stacy Miller was online. They are interested in Agri-hood development, which he describes as a park-like farmstead setting which is clean and using different methods of agricultural to produce more natural growth with residential opportunities onsite. He states there are currently 16 families gardening on 3 acres of his farm site. Most of these families are new Americans who farmed in their native country and they want to live on the farm. The perception is to create more of a communal-living farm and provide visits and opportunities for others for chickens, bees or flowers. His property is 15 acres and he would like to put 4 to 6 houses of various sizes on it with extra-wide garages and wants to have the County consider parcels smaller than 1.5 acres of land to minimize the residential footprints and maximize the farming use. He would like to determine if he can make the lots smaller with the smaller homes using a half-acre and the larger homes situated on three-quarter sized acres. His family roots are several generations deep in Clay County. He has a desire to work with the Moorhead High School Career Academy covering every aspect of farming from seed to table, for the students to learn the full cycle of farming in their agricultural program. He stated that they could have goats or sheep and rotate them every few days with chickens and the chickens would clean up after the livestock. He believes the multi-cultural opportunities are a great learning experience for the students as the New Americans are currently growing foods from other lands.

Director Jacobson advised that although this type of development is not permissible by the Development Code, there are other areas of the country that have implemented ideas such as this. This type of development would also align with goals and objectives found in the Comprehensive Plan. Commissioner Jenny Mongeau stated she was intrigued by this concept and feels that the Cass Clay Food Cooperative would be a great place to discuss this, as well as the Minnesota Extension Services.

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

MARILYN J FUCHS RLT – PETITION FOR REZONING

The applicant is petitioning to rezone Parcel ID: 26.008.3000, the SW1/4 of Section 8, Township 138N, Range 45W from Agricultural General; Resource Protection – Aggregate Overlay; Resource Protection – Biological Overlay to Agricultural General; Resource Protection Aggregate Overlay in Skree Township.

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

Matt Jacobson, Planning Director, states Applicant is looking to rezone a portion of a 160-acre parcel to allow for the reopening and expansion of an inactive gravel mine. The gravel would be permitted under current zoning with completion of an Environmental Assessment Worksheet. Current zoning is Agricultural General (AG), Resource Protection – Aggregate (RP-Agg), and Resource Protection-Biological (RP-Bio). The gravel would be permitted under current zoning with an Interim Use Permit (IUP) and the completion of an Environment Assessment Worksheet (EAW). The proposed zoning would be to remove RP-Bio overlay to allow for gravel to be permitted as an Interim Use.

Most of the parcel is Resource Protection-Biological (RP-Bio). It is located in Skree Township southwest of Hay Creek and southeast of the Magnusson Wildlife Area.

The current use is agricultural. There is a history of gravel mining on the property since at least 1981, possibly into the 1970s, in the northwest and the southeast areas of the property. The property was converted to cropland in 2013. It was a former greater prairie chicken booming ground and designated as disturbed land in the Minnesota Biological Survey in 1991 due to the grazing and mining. Aerial views from 1981 and also 2014 were reviewed, as well as most recently as August 2023. There was a conservation plan created in 2013 through the USDA-FSA.

A review of the Zoning Overlay District from the Development Code:

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.**

Director Jacobson pointed out that the overlay districts do not follow parcel lines, however they do follow where the resources exist, which there may be areas where they overlap.

The County does require an Environmental Assessment Worksheet:

- **EAW in RP-Bio District:** An application for an extractive use in a Resource Protection-Biologically Significant Areas District shall include an Environment Assessment Worksheet conforming to the requirements of the Minnesota Environmental Policy Act of 1973 and 6 MCAR 3.021.

Comprehensive Plan Goals and Objectives 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.
 - b. Avoid or mitigate against impacts to groundwater, surface water, native prairie, woodlands, and wetlands for new or expanding mining operations.

A map of the County Biological Survey was reviewed, showing the valuable ecological resources in the Magnusson Wildlife Area. The area marked as disturbed land was potentially prairie chicken booming grounds. There are minor wetlands likely created as a result of the previous mining.

Clay County has an estimated 47,796 acres (7% of Clay County) that have a high or moderate aggregate potential per Clay County Aggregate Resource Inventory. The actual amount of available aggregate potential is likely much higher due to study limitations. The County currently has 64 active gravel mines comprised of approximately 2,564 acres. This property aggregate potential is considered moderate.

Considerations for rezoning were reviewed:

- Removing the Resource Protection-Biological Zoning Overlay District for the purpose of permitting a gravel mine without an EAW could be considered appropriate as the parcel has a

history of gravel mining, grazing and cultivation uses.

- Greater Prairie Chicken activity (the basis for the RP-Bio zoning) has not been observed on this parcel in over 20 years.
- Mining activity would occur in the eastern extent of the parcel, buffered from areas of ecological significance to the west.

Chair Baer asked if the landowner was notified of the RP-Bio overlay district being applied to the parcel. Director Jacobson stated he does not believe they would have personally been advised at the time the overlay district was applied.

Ken Fuchs states the property has been in the family since 1998. Chair Baer states he believes the overlay district was applied in the 2000's.

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

Staff recommends the Findings of Fact and Order be worked through to finalize determination.

On motion by Ashley Heng, seconded by Joel Hildebrandt, and unanimously carried, the Planning Commission approved recommendation to the Board of Commissioners to remove the Resource Protection-Biological overlay on parcel 26.008.3000.

Director Jacobson concurred that in this instance the recommendation makes sense.

RICHARDS FAMILY PARTNERSHIP – EIS NEEDS DECISION

The Planning Commission will make a determination of need for an Environmental Impact Statement for the Richards Gravel Pit. An Environmental Assessment Worksheet was completed for the project with the comment period ending on January 24th, 2024. The project is located at Parcel ID: 08.025.0400 in part of the NE1/4 and NE1/4 SE1/4 of Section 25, Township 141N, Range 46W, Flowing Township.

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

Matt Jacobson, Planning Director, advises the Applicant, Richards Family Partnership, was recommended by the Planning Commission to complete an Environmental Assessment Worksheet (EAW) and the necessity of an Environmental Impact Statement (EIS) needs to be determined. Director Jacobson pointed out that the essential question is this: Does the EAW provide enough information to determine potential impacts, or does there need to be an EIS completed? The EAW has been properly noticed with State rules governing environmental review, as well as all the State and Federal agencies. The last EAW completed within Clay County was in 2015.

There are currently 76.8 acres opened, and 24.9 acres have previously been reclaimed. Imagery was reviewed of the parcel. The parcel is zoned Agricultural General (AG) and Resource Protection-Aggregate (RP-Agg). The proposed expansion would be 57.3 acres, bringing the total from 101.7 acres to 159 acres. The proposed life of the project/pit is estimated at 5 to 10 construction seasons.

This property is zoned Agricultural General (AG) with Resource Protection-Aggregate (RP-Agg) overlay. The use is allowed with an Interim Use Permit in the AG district and the RP-Agg overlay district. The subject property is a 198-acre parcel located in Flowing Township. Current use is cultivated ag land and gravel mining. No buildings are located on the site but there is a center-pivot irrigator.

Policy Considerations from the 2045 Comprehensive and Transportation Plan Goals and Objectives reviewed include:

Natural Resources and the Environment - Aggregate Resources

1. Recognize the importance of aggregate resources to Clay County and the region.
 - a. Continue to protect quality aggregate resources from the encroachment of incompatible residential, commercial and industrial development.
 - b. Implement policies and standards to ensure sound stewardship of aggregate resources and natural biotic 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.

Permit history on this parcel was reviewed. There was an Interim Use Permit (IUP) issued in 2013 for 40 acres (30 excavation, 10 topsoil). In 2022, an after-the-fact IUP for expansion up to 70 acres for 1 year was issued. In 2023, there was an IUP amendment for a 1-year extension to complete an EAW.

A map of the current mining at the gravel pit was reviewed that included reclamation phases, which also shows future project area.

The Environmental Assessment Worksheet (EAW) is well over 100 pages. Director Jacobson highlighted the following areas:

- Mining and reclamation would occur in stages
- Final land use/land cover would be 159 acres of cropland
- Estimate timeframe for the project is 5-10 years
- New Interim Use Permit will be required
- Variance to property line setback shared with adjacent parcel to the west (Dirt Dynamics) may be required
- National Pollutant Discharge Elimination System (NPDES) Permit and Stormwater Pollution Prevent Plan (SWPPP) acquire and valid through 2027.

Item 11 – Water Resources include:

- No wetlands or public waters located in project area

- Significant wetlands to the west and northwest (including a calcareous fen within 0.4 miles)
- DNR estimates depth to water table ranging from 0-100 feet in project area.
- No anticipated impact to wetlands or other water resources if mining activities occur above water table

A map of the wetlands on the property was reviewed. The Applicant intends to direct rainwater runoff from precipitation events back into the pit.

Item 13: Rare Features:

- Site of high biodiversity significance adjacent to north and west of project
- Calcareous Fens within 0.4 and 1.5 miles of project (Calcareous Fens are the most rare of wetlands in the entire world, most specifically protected by State statute and there are approximately 200 within Minnesota)
- Several state listed plant and animal species in project vicinity – primarily to the north and west
- Four federally protected animal plant species within 1-mile vicinity of project area
- Greater Prairie Chicken Booming grounds north of the project area

A map of these items indicates they are mainly to the north of the project site.

Items 15-17: (Air, Noise, Odor and Visual Impacts)

- Air Impacts: Fugitive dust (from pit, stockpiles and hauling), diesel fuel and generator emissions. State Air Emissions Permit is not required due to the size of the project.
- Noise: Equipment (front-end loaders, excavators, bulldozers, trucks)
- Odors: No odors are anticipated
- Visual Impacts: Pit is visible from Trunk Highway 9. No visual impacts to residential areas.

Item 18: Transportation:

- 10,000-14,000 annual truck trips
- 60-75 daily trips (June-November)
- Traffic distributed throughout the year with peak trips occurring during the construction season
- Haul Route is on 170th Street North, a township road
- West on CSAH 26, which was recently resurfaced
- Some trips go to Taracon (South on TH 9 and east on 70th Ave N, a township road)

The haul route proposal map was reviewed.

Item 19: Cumulative Impacts

- The environmental impact of a project that results from its incremental effects, as well as the effects of other projects in the past, present and foreseeable future
- Project has short duration and is seasonally variable
- Cumulative impacts addressed in other EAW items
- Fugitive dust is likely to have the biggest impact
- There are currently 2 active pits in the area, one inactive pit, and one pit recently permitted in 2023. There are no residences on the haul routes.

There were ten (10) comments received from two State Agencies – the MPCA and the MN DNR. No comments were received from Flowing Township or any members of the public or watershed district.

Director Jacobson went through the Record of Decision information. A copy of that Record of Decision will be included as a matter of record with these Minutes.

Staff recommendation is:

- Issue a negative declaration of need for an EIS based on the following findings:
 1. The project will occur on agricultural land that does not contain any significant ecological resources
 2. Though there are several significant ecological resources and sensitive species within a one-mile vicinity of the project, the duration and scale of the project should not have an adverse impact on these resources for the following reasons:
 - a. The project will expand an existing gravel pit from 101.7 (includes open and reclaimed areas) to 159 acres. This expansion would occur on pivot irrigated cropland.
 - b. The anticipated life of the pit is 5-10 construction seasons. Areas would be reclaimed in phases in order to put the land back into agricultural production.
 - c. The gravel deposit on this parcel is relatively shallow, The current mean depth of the pit is less than five feet. Groundwater levels are estimated to be 50 feet below grade. Mining would not occur within the water table.
 - d. There are no wetlands within the project area.
 - e. Fugitive dust on roadways and within the pit will be controlled.
 1. There will be minimal impacts to air, noise and visual aesthetics as a result of the pit expansion.
 2. 170th Street and the access to CSAH 26 will be maintained and in good working order. Dust control and regular road maintenance will be utilized.
 3. The project proposer will need to apply for an Interim Use Mining Permit from Clay County. Conditions for the Permit pertaining to the information contained in the EAW should address:
 - a. Compliance with all extract use standards as defined in the Clay County Development Code.
 - b. Control and removal of noxious weeds within the project area.
 - c. Construction of a perimeter vegetated berm along the west and north sides of the project area to buffer the adjacent high value ecological resources from noise and fugitive dust.
 - d. Maintain a minimum 10-foot-high vertical buffer between the floor of the mine and the seasonally high-water table elevation.
 - e. Provide regular maintenance and dust control on all haul roads.
 - f. Implement a phased-reclamation approach to minimize the open pit area.

Director Jacobson reviewed the Record of Decision. A copy of that Record of Decision is included as an attachment. The final determination would be that an Environmental Impact Statement is not required for the proposed project.

Joel Hildebrandt confirmed that the focus is to review the EAW to determine that there is not an Environmental Impact Study required. Dave Steichen asked about the 10 comments from the MPCA and the DNR and these were included in the Staff Report.

Applicant Loren Richards declined to add any additional information.

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

The items set out in the Record of Decision were reviewed and discussed by the Planning Commissioners as they pertain to the hearing.

Joel Hildebrandt stated that his previous concerns were regarding the ground water impact and he feels comfortable with the information outlined in the Environmental Assessment Worksheet. Director Jacobson states that he made sure that the Permit addresses any of the concerns and recommendations of mitigation in the conditions.

Chair Baer asked if they were approved, would the Applicant require another Permit. Director Jacobson advised the Applicant would need to come for a new Permit as their current permit will expire in April 2024 and had significant restrictions placed on it by the Planning Commission due to previous activity. Director Jacobson read Resolution PC 2024-1.

Commissioner Mongeau stated that she and the Applicant are distant relatives and she has no conflict and has no advantage or gain by the vote.

On motion by Ashley Heng, seconded by Kurt Skjerven, and unanimously carried, the Planning Commission adopted Resolution PC 2024-1 and the Record of Decision.

UNFINISHED BUSINESS:

None.

NEW BUSINESS:

- Election of Officers will be held at the February 2024 meeting: On Motion by Joel Hildebrandt, seconded by Kurt Skjerven, and unanimously approved, Ezra Baer was elected as Chair.

On Motion by Ezra Baer, seconded by Ashley Heng, and unanimously approved, Joel Hildebrandt was elected as Vice-Chair.

On Motion by Ezra Baer, seconded by Jenny Mongeau, and unanimously approved, Laura Johnson was elected as Secretary.

- Wind farm meeting of February 5, 2024 at Hawley, MN: On February 5, 2024 there was a meeting in Hawley for a utility-scale project wind farm, probably close to 100-megawatts. A single wind turbine can generate up to 4-5 megawatts. The project is 5-6 years out at this time and they are currently seeking interested landowners. They will then need two years of data from meteorological towers, which would need to come before the Planning Commission for an Interim Use Permit. The company is RES Energy based in Denver, Colorado. There is the potential to have a company representative come to give a presentation. The company is currently proceeding with engaging and committing landowners.

ADJOURNMENT:

On motion by Joel Hildebrandt, seconded by Laura Johnson, and unanimously approved, the meeting adjourned at 8:14 PM.



Laura Johnson, Planning Commission Secretary