

CLAY COUNTY PLANNING COMMISSION MINUTES
7:00 PM TUESDAY, MAY 21, 2024
THIRD FLOOR BOARD ROOM, CLAY COUNTY COURTHOUSE

Members Present: Joel Hildebrandt, Ashley Heng, Brad Eldred, Kurt Skjerven, Brent Berg, Dave Steichen, Sebastian McDougall, Jenny Mongeau

Members Absent: Curt Stubstad, Ezra Baer, Laura Johnson

Others Present: Matt Jacobson, Michael Leeser, Erika Franck, Rita Rueckert, Corey Bang, Leo Splonskowski, Scott Walz, Jon Langlie, Aaron Stenerson, Paul Krabbenhoft, Travis Schmidt, David Heng, Logan Langerud, Westin Dunham, Marc Pritchard, Jon Lowry

ROLL CALL:

Attendance was recorded by Acting Chair Joel Hildebrandt and the meeting was called to order at 7:00 PM. Ashley Heng was appointed acting secretary for this meeting due to absence of Chair Baer and Secretary Johnson.

APPROVAL OF AGENDA:

On motion by Brad Eldred, seconded by Ashley Heng, and unanimously carried, the Agenda was approved.

APPROVAL OF MINUTES OF APRIL 16, 2024:

On Motion by Sebastian McDougall, seconded by Brad Eldred, and unanimously carried, the April 16, 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 – CANNABIS ZONING ORDINANCE

The Clay County Planning Commission will consider a Cannabis Zoning Ordinance and make a recommendation to the Clay County Board of Commissioners.

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

Matt Jacobson, Planning Director, advised this hearing is for the Clay County Cannabis Code to be incorporated into the Development Ordinance. The retail sale of cannabis is set to begin in 2025. The bill likely to be signed into law amending cannabis legislation passed in 2023 to allow for granting of licenses prior to 2025. The purpose of considering cannabis zoning regulations now is to provide local regulatory certainty and to promote the public health, safety, and general welfare of County citizens. Licensing could begin as early as this summer or fall of 2024 as these entities would look to get licensed by the State.

Land Use Goals and Objectives:

- **Agricultural:**
 - Recognize and protect the agricultural character of Clay County.
- **Commercial and Industrial:**
 - 1. Encourage commercial and industrial development that is in harmony with the agricultural and rural character of Clay County.
 - a. Promote value-added agricultural commercial and industrial development in Agricultural Service Center areas and along transportation corridors and hubs.
 - 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.
 - 2. Promote the incorporated communities of Clay County as prime locations for commercial and industrial development.
 - a. Encourage commercial and industrial development to locate within the incorporated communities of Clay County.
- **Agricultural Goals and Objectives:**
 - 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.

Minnesota Statutes Chapter 342 sets out the Cultivation, Manufacturing, and Retail of Cannabis Use:

CULTIVATION:

1. Grow, harvest, package and transport. A cultivation license would allow someone to grow, harvest, package and transport cannabis.
2. Size limited indoors up to 30,000 square feet or up to 2 acres outdoors under a cultivation license. This could potentially be increased up to 4 acres at some point.
3. Operating and cultivation plans required (security, lighting, wastewater, solid waste filtration, air, etc.)
4. Cultivation license holders can also hold additional licenses (e.g. manufacturing, medical cannabis cultivation, industrial hemp cultivation, event organizer).

MANUFACTURING:

1. Purchase, make concentrate, artificially derived cannabinoids, manufacture products, sell to other cannabis business.
2. Operating Plan is required addressing security, lighting, transportation, solid waste, wastewater, etc. They can hold additional licenses as well.

RETAIL:

1. Sell cannabis and cannabis products.
2. There will be standards for operating hours, lighting, security, building conditions, deliveries, prohibitions (i.e. you cannot sell to someone clearly under influence), displays.
3. Retailers may operate up to five retail locations.

Cannabis Uses include Micro and Mezzobusinesses (M.S. 342.28 and 342.39)

1. Can cultivate, manufacture and retail
2. Limited size
3. Microbusiness can allow for on-site consumption of cannabis

Cannabis Uses by Zoning District were presented as follows:

<u>Zoning District</u>	<u>Cultivation</u>	<u>Manufacturing</u>	<u>Retail</u>
Agricultural General	C	NP	NP
Agricultural Service Center	C	NP	NP
Highway Commercial	C	C	C
Limited Highway Commercial	C	C	C
Resource Protection-Aggregate	C	NP	NP
Resource Protection-Wellhead	C	NP	NP

*C= Conditional Use NP=Not Permitted

Cultivation could be considered as an industrial use and limited to Highway Commercial and Limited Highway Commercial Zoning Districts. Wholesale could also be added to the use table. Every use would be considered as a Conditional Use.

The Planning Commission must review the standards as they are presented, make any necessary additions or changes, and then forward it to the Clay County Board of Commissioners.

Additional Use Standards: 8-6-35: Standards for the Cultivation, Manufacturing and Retail of Cannabis:

- A. The number of cannabis retail establishments in Clay County is limited to 1 per 12,500 population. A retail establishment must be registered with Clay County prior to operation.
- B. Home Occupation: The manufacture and retail of cannabis and related cannabis products is prohibited as a home occupation. Cultivation may also be added to this prohibited list.
- C. Setbacks: The cultivation, manufacture and retail of cannabis and related cannabis products are subject to the following setbacks:
 - a. 1,000 feet from a school
 - b. 500 feet from a church, daycare, library or residence
 - c. 500 feet from a residential treatment facility
 - d. 500 feet from a park, playground or athletic field
(500 feet from a residence was not in the proposed standards but was included by Director Jacobson as something for the Planning Commission to consider in their review.)

Proposed Performance Standards for Cultivation, Manufacturing and Retail of Cannabis:

- a. General Standards applying to cannabis and related cannabis product cultivation, manufacturing and retail:
 - i. Licensing: State licensing, if applicable, is required prior to establishment of the use.
 - ii. Nuisance: The use must not establish a nuisance in the form of noise, vibration, glare, fumes, odor, lighting, or electrical interference detectable off premise.

Proposed Performance Standards for Cultivation and Manufacturing of Cannabis:

- a. The cultivation and manufacturing of cannabis and related cannabis products is subject to the following performance standards:
 - i. Cultivation Plan: A business licensed or authorized to cultivate cannabis must prepare, maintain, and execute an operating plan and a cultivation plan, which must include but is not limited to:
 1. Water usage
 2. Recycling
 3. Solid waste disposal; and
 4. A pest management protocol that incorporates integrated pest management principles to control or prevent the introduction of pests to the cultivation site.
 - ii. Facility and Operations Plan: A business licensed or authorized to manufacture and wholesale cannabis and cannabis related products must prepare, maintain, and execute a facility and operations plan, which must include but is not limited to:
 1. Security – Provisions for fencing, lighting, personnel and video monitoring
 2. Wastewater – in accordance with MN Statute 342.28 Subd 3
 3. Ventilation and Filtration – In accordance with MN Statute 342.24 Subd 4
 4. Solid Waste – a plan to destroy all cannabis plant material and cannabis byproduct to render it unusable. Waste material must be stored in a secure location.

Proposed Performance Standards for Retail Sale of Cannabis:

- i. Compliance: Must be in compliance with MN Statute 342.27
- ii. Business Plan: A retail business licensed or authorized to sell cannabis and cannabis related products must prepare, maintain, and execute a business plan, which must include but is not limited to:
 1. Hours of Operation: 8:00 AM to 9:00 PM Monday through Saturday, and 10:00 AM to 9:00 PM Sunday;
 2. Building Conditions: In accordance with MN Statute 342.27 Subd 8;
 3. Security: In accordance with MN State 342.27 Subd 9;
 4. Lighting: In accordance with MN State 342.27 Subd 10;
 5. Deliveries: In accordance with MN Statute 342.27 Subd 11;
 6. Wastewater: Cannabis Mezzobusinesses must comply with MN Statute 342.28 Subd 3.
 7. Ventilation and Filtration: In accordance with MN Statute 342.24 Subd 4; and
 8. Solid Waste: A plan to destroy all cannabis plant material and cannabis by product to render it unusable. Waste material must be stored in a secure location.

Director Jacobson stated that the Office of Cannabis Management is working on administrative rules and a model ordinance that Counties may use as well. Because these rules are not yet developed, the draft Ordinance references M.S. Chapter 342.

Director Jacobson presented a drafted Ordinance No. 2024-1.

Jenny Mongeau inquired as to determination of agricultural designation for cannabis cultivation as opposed to an industrial use and also asked if there was a differentiation between being near a larger population/metro area as opposed to a smaller metro area. Director Jacobson indicated he feels that because of Clay County's heavy agricultural base, it would seem that this could be an additional option for agricultural use.

Sebastian McDougall inquired about the setbacks that have been listed. Director Jacobson advised that the setbacks were set by the State Statute, with the exception of the residential setback. Joel Hildebrandt pointed out that this is not like growing sweetcorn to sell on the roadside. Jenny Mongeau asked if there would be a differentiation as to how properties would be assessed if they are labeled agricultural as opposed to industrial. Director Jacobson stated he would need to follow up with the Assessor to determine the answer to that. Ms. Mongeau pointed out that addressing this as an industrial use would place the operations in highly visible Highway Commercial locations. Dave Steichen asked if the setbacks applied to cultivation, manufacturing and retail; Director Jacobson advised they were all the same. Joel Hildebrandt pointed out that most of these setbacks would not apply if the business was identified as industrial and placed in Highway Commercial as schools, residential, parks, etc. are not located in those areas.

Ashley Heng brought up the disadvantages of putting in a fence around 2 to 4 acres, and then needing to do crop rotation which would then require the fence to be torn out; she leans toward an industrial designation for these uses.

Clarification was made that the Conditional Use Permit would apply to the *property*. A conditional use permit holder would not be able to grow, manufacture, wholesale or sell cannabis on a different property.

On motion by Ashley Heng, seconded by Brent Berg, 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 Ordinance Amendment.

Joel Hildebrandt inquired about someone building a 30,000 square foot grow building and wondering how that would impact the area electrical users. Director Jacobson advised that would be something that would need to be addressed at the time a Conditional Permit request would be submitted.

Jenny Mongeau voiced concerns for solid waste issues, how to deal with that waste in a manner that supports public safety, worker safety and the environment. She asked Clay County Solid Waste Manager Cory Bang for his input on this. Mr. Bang advised there are presently no rules on these issues. He has contacted the Minnesota Pollution Control Agency who advised that there currently are no rules but they are forthcoming. Mr. Bang advised that all components of cannabis materials need to be stored in a secure location until rendered unusable. He feels that simply fencing does not make it secure as there is always the opportunity to breach or open a fence. Other entities have advised that it has to be ground in with other by products at least 50/50 but those rules would come later as the laws are written. He read the solid waste standard from the draft Ordinance: A plan to destroy all cannabis plant material and cannabis by-product to render it unusable and waste material must be stored in a secure location. He stressed that it should not just be left in a dumpster at night.

Director Jacobson advised that the Ordinance that has been proposed is written as reflected by the State Statute; he feels that once the State model ordinance is written, the Ordinance should then be reviewed.

Staff minimum recommendations include:

- Move to recommend the Cannabis Zoning Ordinance (tentatively titled Ordinance 2024-1) to the Clay County Board of Commissioners for approval

On motion by Brad Eldred, seconded by Sebastian McDougall, and unanimously carried, the Planning Commission approved Resolution 2024-1 to be forwarded to the Clay County Board of Commissioners for approval.

JON LOWRY – REQUEST FOR INTERIM USE – MINING

The applicant is seeking an amendment to an interim use permit to open a gravel mining operation on Parcel ID: 17.031.0100, the N1/2 of Fractional Section 31 and Parcel ID: 17.030.0000, Fractional Section 30, Township 141N, Range 45W, Keene Township.

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

Matt Jacobson, Planning Director, advised this request was last heard in July 2023 and is now coming forward for an amendment to that Interim Use Permit.

Policy Considerations reviewed:

- **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.

This is a 388-acre tract comprised of two parcels. The applicants would like to shift extraction focus to the north. The current zoning is Agricultural General (AG), Resource Protection-Aggregate (RP-Agg) and Special Protection - Shoreland. The protected Shoreland zoning area is not near the focus area of the proposed extractions. Current property use is tilled and includes pivot irrigation.

Applicant is requesting an amendment for the Interim Use Permit granted in July 2023. Mining has not yet been started. The proposed area size is slightly larger than the July 2023 request: 39.9 acres vs. 33 acres. The pit life span is approximately 20 to 30 years and it is estimated that the amount of material to be mined in permit timeframe will be 2 million cubic yards.

The mining plan is essentially the same as the original request. Mining will be in two initial stages starting in the southwest corner of the parcel. Crushing will occur 2 times per year for Class 5 and screen sand as needed. No washing will occur onsite. No chemicals will be stored onsite. Two employees will be working onsite.

Requested operating hours are 6:00 AM to 6:00 PM, Monday through Saturday, April through December. Mining will be done by Westlund Excavating. The Variance would be required to mine through the 100-foot property line setback between these two parcels.

Director Jacobson advised that, although the two parcels have the same owner, there would still need to be a Variance requested and granted to allow mining through the 100-foot property line setback, even though the owners are the same for both parcels. Applicant would be required to have written permission from the property owner to allow for mining through the property line, and a Variance approved through the Board of Adjustment.

A review of the Aggregate Inventory Study map by the MN DNR shows that these parcels have high sand and gravel potential. These properties are not prime farmland. There are no wetlands within the proposed mining area.

Mitigation includes:

- Wetlands limited to far southeast corner of the parcel. None are in the vicinity of the mining area.
- Depth to groundwater is greater than 25 feet below grade.
- Interior sloping to control runoff
- The northern extent of the mine will be bermed.
- Topsoil will be stored in surrounding berms and stored for future reclamation.
- Vegetative debris will be burned or hauled offsite.
- Haul roads would be watered and chemical dust control of calcium chloride will be applied when necessary.

All mining operations must be a minimum of 500 feet from residences. There is a 100-foot setback from the Resource Protection-Biological (RP-Bio) Overlay Zoning District.

Proposed reclamation includes sloping the site 4:1, pit leveled, and stored topsoil will be placed over the disturbed area. One post-mining water feature is anticipated in the center of the pit. The land will be reclaimed to pasture or grassland. Reclamation costs are estimated to be \$40,000.

Photos were reviewed of the site.

Minimum staff-proposed conditions include:

1. Permit shall terminate on May 21, 2034.
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 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 the State of Minnesota Noise Pollution Rules.
6. Operations must comply with all provisions of Wetland Conservation Act (WCA). Operator must conduct a wetland review with the Clay Soil and Water Conservation District.
7. Operator permitted a maximum of 39.9 acres for mining operations (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 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 timeframe 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 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 are to be seeded to a pasture seed mix upon reclamation.
14. Mining operations and all related mining activity must maintain a one-hundred-foot (100') setback from any property lines, unless a Variance is granted from the Board of Adjustment.

Jon Lowry was present on behalf of the landowner and the excavating company. He states that they have talked to the neighboring residents and they have no issues with the project. They have also visited with Keene Township and he states the Township has no issues.

On motion by Ashley Heng, seconded by Jenny Mongeau, 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.

Ashley Heng recommended changing the operating months to March through November to maintain consistency with other recently issued Permits.

On motion by Brad Eldred, seconded by Ashley Heng, and unanimously carried, the Planning Commission GRANTED an amended Interim Use Permit with the following conditions:

1. Permit shall terminate on May 21, 2034
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 39.9 acres for mining operations (excavation, screening, crushing, stockpiling, etc.). If additional acres are proposed to be opened in the future, a new or amended IUP would be required. An Environmental Assessment Worksheet or Environmental Impact Statement would be required.
8. Facility may operate March through November, Monday through Friday, 7:00 AM to 7:00 PM, hauling 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 timeframe 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 area.
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 are to be seeded to a pasture seed mix upon reclamation.
14. Mining operations and all related mining activities must maintain a one hundred-foot (100') setback from any property lines, unless a Variance is granted from the Board of Adjustment.

SPLONSKOWSKI HOLDINGS, LLC – REQUEST FOR PLATTED (MAJOR) SUBDIVISION

The applicant is seeking to plat a seven lot, one block residential subdivision on Parcel ID: 05.027.2001, part of the NW1/4, NE1/4 and SE1/4 of the NW1/4, Section 27, Township 138N, Range 46W, Elkton Township.

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

Matt Jacobson, Planning Director, stated that the Applicant is requesting a 7-lot residential subdivision located just south of Downer. The current use is agricultural general (AG), primarily pasture. There are a number of wetlands on the property and there is a gravel access and pad. There is also one shed on the property. There was gravel mining on this parcel in the past. The subdivision has been named Hay Creek Meadows.

The following Goals and Objectives were reviewed from the 2045 Comprehensive Plan:

- *Residential*
 2. Provide opportunities for quality rural residential development in Clay County.
 - a. Implement residential density standards that allow for rural residential development while retaining the rural character of Clay County.
 - c. Permit large lot non-farm residential development if a portion of the property is preserved or converted to a use that retains the rural character of the land.
 - d. Avoid or mitigate residential development on or near environmentally sensitive lands or lands with high-quality natural resources.

Development Code requirements:

- 8-7-14: LAND DIVISION BY REGISTRATION OF A PLAT OF SUBDIVISION/MAJOR SUBDIVISION:
- 8-7-14-A:
 - A. When Required: Except for land divided under the provisions of section 8-7-12, above, of this chapter, land division by registration of a plat of subdivision shall be required for proposed land divisions that will result in either of the following:
 1. Nonresidential: One or more nonresidential lots; or
 2. Three or More Lots: Two (2) or more developable residential lots and the remainder of the parcel, totaling three (3) or more lots.

A preliminary plat was reviewed. Some lots will have access from Highway 9 and others will have access from 100th Avenue South. The majority of this parcel is not prime farmland. Crop Equivalency ratings range from 9 to 52, out of a score of 100. The wetlands are in the center of the parcel and extend toward the northeast. The larger 11-acre lot has the majority of those wetlands. Setbacks for side yard, road and rear yards were reviewed, and there is sizeable developable area on each proposed parcel.

There are seven proposed residential lots averaging 8.5 acres. Three accesses are off trunk Highway 9 for Lots 1-4. Lots 3 and 4 would share an access. Three lots access off 100th Ave S and would require township approval. Private sewer and water will service each lot. The well on Lot 6 has a rate of 100-gallons per minute. The well has been tested for contaminants and the arsenic standard is exceeded per RMB Environmental Laboratories so some sort of a reverse osmosis system will be required for each lot. There will be restrictive covenants applied.

The developer did get two additional accesses and a change of use for one of the accesses through MNDOT and those permits have been provided to the Planning office.

Comments regarding the Plat include:

1. Remove elements (contours) not required by MN Statutes 505
2. Title Opinion is required
3. Minimum 10-foot utility easement on rear lot lines. Utility easements on side lot lines would be preferable as well.
4. Legal Description and Signature Page is required.

Staff minimum recommendations are:

1. Planning Commission Review:
 - a. The Planning Commission has the authority to review and comment on a final plat.
 - b. They can either recommend approval or waive this right.
 - c. If they choose to review, it may take up to 40 days from the date of the public hearing to issue a decision on the preliminary plat.
2. Staff Recommendation:
 - a. The Staff recommends waiving the right to Planning Commission final plat review.
 - b. If waived, the Planning Commission conditions will be communicated to the applicant as an *Acceptance of Conditions form*.
3. Conditional Approval:
 - a. Conditional approval allows the Applicant to proceed with preparing the final plat.
 - b. The final plat must be submitted to the Planning Office within six months of the date of the preliminary plat approval.

Scott Walz from Meadowland Surveying questioned the utility easement at the rear of the properties and on each lot line. They have spoken to the utility companies and they are in agreement with having the easements on the front and rear of each parcel. The concern about easements on the side lot lines is that these would create hardships for planting trees or placing fences. Director Jacobson advised that the Development Code states a minimum of 10 feet and that this easement along the rear property lines would be acceptable. Joel Hildebrandt asked if potential buyers would know that they will not have cheap septic or drinking water options. Mr. Walz advised that the developer is aware of that and there will be a disclosure with each purchase agreement.

David Heng of Elkton Township was present. He advised that Mr. Splonskowski has been present in front of the Township Board regarding this matter. He advised he is not for or against the development but he wanted to share that the developer was present at a Township meeting and was given approval for a driveway on 100th Avenue; however that is a minimum maintenance road and the Township will not be changing it to a full maintenance road due to improvements and changes required to the road and the adjacent ditches. It is bladed in the summer for gravel. There is an easement that goes through one of the lots and utility services do come through one or two of the lots to service one of the adjacent neighbors.

Mr. Heng advised that there was an old landfill dump in this parcel and nobody knows what is in there. He feels that the dump area was closed sometimes in the 1970s. Mr. Heng advised that he was previously on the County Planning Commission and he attended a presentation by a DNR Hydrologist named Bob discussing how water flows west toward the river. He feels this could be a potential problem for future wells placed on these parcels.

Director Jacobson advised he has spoken with the County Engineer and they advised that they will be willing to conduct winter maintenance on 100th Avenue.

Leo Splonskowski states he has spoken with the County Highway Department. He states there is an easement through Lot 7; this was to keep the easement road through only one lot. He does feel that he may already have a buyer for this lot. Mr. Splonskowski shared research on the dump site in question. There were also soil tests done. Kost Brothers bought the land in the 1930's and mined gravel into the 1970s. After that there was an area where there was a burn pile. In April of 2024, Mr. Splonskowski met with a former owner of this land, Matt Halverson, together with a lifelong resident of the area, Brad Anderson, who worked for Kost Brothers at the proposed plat site. Mr. Anderson recalled when the refuse area was in use and also when it was shut down. Mr. Anderson stated that once the site was closed, there were semi-loads of debris removed from the property and the gravel pit area was later reclaimed. The site is cleaned of debris and is now a mature forest area. Mr. Splonskowski presented a report from Northwest Laboratories who did testing for the water and wells. Ten soil samples were sent for testing and came back negative for contaminants. Mr. Splonskowski advised that his attorney has recommended disclosure of the property history, as well as well and water testing reports. Mr. Splonskowski advised they will be building homes on 4 of the lots to sell them off. Three of the lots have already been spoken for purchase. Covenants were based off covenants of another subdivision within Elkton Township.

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

Dave Steichen recommended removing the easements from the side property lines, leaving the easements for the front and back property lines remaining.

Staff recommends that the Planning Commission approve the preliminary plat provided the following conditions and plat revision be met:

- Conditions:
- a. Final plat must contain revisions to address items listed in the Staff Report.
 - b. A Title Opinion is required.

On motion by Sebastian McDougall, seconded by Brad Eldred, and unanimously carried, the Planning Commission authorized preparation and submission of Hay Creek Meadows Subdivision Final Plat with conditions to the Clay County Board of Commissioners for approval, with the following change:

- **Remove the setback for utility easements along the side property lines.**
- **Final plat must contain revisions to address items listed in the Staff Report.**
- **A Title Opinion is required.**

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 Jenny Mongeau, seconded by Ashley Heng, and unanimously carried, the Planning Commission opened the public hearing.

Matt Jacobson, Planning Director, stated this request may be familiar as it was previously heard in January and since the 90-day Permit has expired, the Applicant is returning with a request to continue storage of flood buy-out structures.

Comprehensive Plan goals reviewed:

- 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 is Agricultural General District (AG), Shoreland: Special Protection Rivers and Streams, Floodplain Fringe. The approximately 19.5-acre parcel is located in Kurtz Township.

The property is currently used for residential and agriculture . There are several other structures on site.

Land Development Code criteria reviewed:

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.)

Applicant seeks an after-the-fact permit to allow for the continued temporary storage of one flood buyout home and one detached garage on the property. The buildings have been moved from a flood prone area in North Dakota impacted by the construction of the FM Diversion. The Applicant received an Interim Use Permit from the Planning Commission on January 23, 2024, which expired on April 23, 2024. Applicant has been unable to move the structures due to soft roads and a bridge closing along the transportation route. Staff has been documenting the presence of the structures daily from April 24-May 8, 2024. This date range covers the maximum fine of \$2,500 to be imposed per Condition #4 of the Interim Use Permit of January 23, 2024.

The Applicant will also need to acquire any over-dimensional load permits required by Clay County Highway Department when moving the structures off-site. A three-month deadline for the temporary storage would expire at midnight on April 23, 2024. Because the use is located within the Floodplain, a condition to remove the structures, should a flood event occur, should be included and has been added to the recommended minimum conditions. The Applicant has not yet paid the \$2,500 penalty as required per Condition #4:

A \$100 administrative penalty per structure per day will be issued for any structure that is on the premises after the permit has expired. The Planning Commission has the authority to waive or reduce this penalty.

Photos of the site were reviewed.

John Canoy of Northwoods Structural Movers states that Director Jacobson did a good job of presenting the situation. The weather has not been helpful with rain, bridge closures and winds preventing movement of the buildings. Acting Chair Hildebrandt asked if the Applicant has a buyer for the structures and he responded he did have buyers and would need to move these structures near Hitterdal.

Jenny Mongeau expressed her understanding of the weather and spring delays in moving items like structures across soft, gravel roads.

On motion by Ashley Heng, seconded by Dave Steichen, 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.

Minimum staff-recommend conditions are the same as the previous Interim Use Permit that was issued, with the exception of the expiration date changing to August 19, 2024.

Dave Steichen feels some of the situations were out of the Applicant's control and feels that the proposed \$5,000 penalty seems quite high. Director Jacobson stated that the Planning Commission may waive or reduce the proposed penalties. Jenny Mongeau feels there are a lot of components at play and would like to see a portion of this penalty waived. Brent Berg asked if the Applicant was communicative about the issues he was facing such as the bridge out, the road restrictions, etc. Director Jacobson advised that the Applicant was responsive and shared the issues as they occurred. Staff time for documenting the continuing violation was discussed.

Minimum Staff-recommended conditions:

1. All structures stored on the site shall be removed and this permit shall expire at 11:59 PM on August 19, 2024.
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) detached garage shall be stored on the site.
4. A \$100 administrative penalty per structure per day (to a maximum of \$2,500) 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.
6. Other conditions as the Planning Commission deems necessary.

Dave Steichen feels that the penalty is high, given the extenuating circumstances with weather and road situations. Jenny Mongeau feels that there should be a portion of the penalty waived if the house is moved within 30 days, with documentation of the extenuating circumstances from the Highway Department, as the road restrictions went on early this year. Director Jacobson recommends keeping the \$100 fee/per structure/per day which would start on August 20, 2024. Brent Berg asked Director Jacobson if the Applicant was communicative regarding the issues and delays; Director Jacobson felt that that he was communicative but also indicated that if he was in contact earlier the Applicant could have been informed that the new permit needs to be in place before the current one had expired to avoid penalties. Director Jacobson also shared that there has been a significant investment of staff time resources for documenting the continuing violation.

On motion by Brent Berg, seconded by Jenny Mongeau, and unanimously carried, the Planning Commission reduced the penalty to \$500 and GRANTED an Interim Use Permit with the following conditions:

1. All structures stored on the site shall be removed and this permit shall expire at 11:59 PM on August 19th, 2024.
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) detached garage shall be stored on the site.
4. A \$100 administrative penalty per structure per day (maximum of \$2,500) 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.

ALAYNA AND AARON STENERSON – PETITION FOR TEXT AMENDMENT

The applicant is petitioning to amend the Clay County Development Code to make commercial storage a separate conditional use in Use Table 8-5-1 and allow as a conditional use in the Resource Protection – Wellhead Protection Overlay Zoning District.

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

Matt Jacobson, Planning Director states that the request for the text amendment to the Clay County Development Code is to make storage units a distinct Conditional Use under the commercial section of the Clay County Development Code Use Table 5-1; and to add as a Conditional Use to the Resource Protection-Wellhead Protection Overlay Zoning District.

Comprehensive Plan Goals and Objectives reviewed:

- Commercial and Industrial:
 1. Encourage commercial and industrial development that is in harmony with the agricultural and rural character of Clay County.
 - a. Promote value-added agricultural commercial and industrial development in Agricultural Service Center areas and along transportation corridors and hubs.
 - 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.
- Environmental Health:
 3. Protect groundwater resources in Clay County to ensure safe and clean drinking water as well as adequate supply for people and agriculture during times of drought.
 - a. Continue to implement land use controls to guide development over or near major aquifers.
 - b. Recognize the impact of surface water quality on groundwater resources, particularly in the Buffalo River and Buffalo Aquifer systems.

Wholesale Business, Warehousing and Storage Units are classified together and are itemized in the current Development Code as:

- Permitted as a Conditional Use in the Agricultural General, Limited Highway Commercial Zoning District and Urban Expansion Tier 2 Overlay Zoning District.
- Permitted use in the Agricultural Service Center and Highway Commercial Zoning Districts.
- Not permitted in all other zoning districts.

The current Development Code does not have a definition for Storage Units, nor does it contain use standards. The use standards for outdoor storage are allowed only as an accessory to a commercial use.

Director Jacobson feels the following proposal would be in order:

Proposed Amendment – Chapter 8: Definitions:

- Storage Units: A commercial building or group of buildings that have a single open storage floor or contain varying sizes of individual compartmentalized and controlled access stalls or lockers for the storage of customers' goods, personal property, or wares.

Proposed Amendment – Chapter 6: Standards for Specific Land Uses:

Additional Use Standards 8-6-36: Standards for Storage Units.

- A. Storage Units must have direct access to a fully maintained road.
- B. Site Plan. Applications for Storage Units must include a detailed site plan.
- C. The storage structure and surrounding grounds shall be maintained in a clean, orderly and safe manner
 - *Hazardous materials must not be stored
- D. Outdoor Storage must meet the standards of Section 8-6-29; Standards for Storage Yards for Equipment, Machinery, or Materials Accessory to Commercial Uses.
- E. Additional Performance Standards for Storage Units in the Agricultural General Zoning District:
 - e. Storage Units must be designed and constructed to resemble agricultural or farm buildings similar in the vicinity.

Resource Protection – Wellhead Protection (RP-WHP) Zoning District:

- Purpose: to protect sensitive ground water drinking water sources from contamination.
- Specific to Cities of Barnesville, Dilworth, Moorhead Drinking Water Supply Management Areas and the Buffalo Aquifer.
- Buffalo Aquifer is relatively shallow and vulnerable to contamination from the surface.

A map of the Wellhead Protection Overlay Zoning Districts in Clay County was reviewed, showing the Buffalo Aquifer as well as the Barnesville Wellhead Protection Overlay. Groundwater Pollution Sensitivity Ratings map was reviewed, showing that the potential for groundwater pollution is very high (hours to days) over the Buffalo Aquifer.

The Proposed Amendment – Additional Standards for Storage Units in the Resource Protection – Wellhead Protection Overlay Zoning District:

- A. Additional Performance Standards for Storage Units in the Resource Protection – Wellhead Protection Overlay Zoning District.
- a. Outdoor storage is not permitted.
 - b. Storage units must have a concrete floor.
 - c. Sewage treatment systems and wells associated with the use are not permitted.
 - d. The Storage Units Use must not be of a size that requires a permanent stormwater retention pond
 - e. Not more than thirty percent (30%) of the lot area shall be occupied by buildings associated with the use.

Public comments received include input from Moorhead Public Service on performance standards for storage units in the Resource Protection-Wellhead Protection Overlay Zoning District. There were also citizen comments received with concerns of impacts to the Buffalo Aquifer. Director Jacobson had previously met with the Moorhead Public Service officials regarding wellhead protection zoning.

Sebatian McDougall asked if there was any more stringent method to enforce the standards to be sure the aquifer isn't contaminated. Director Jacobson indicated that the first step would be to adopt the proposed Amendment and then to follow up with any Permit every 5 years for compliance.

Applicant Aaron Stenerson states he lives a half mile away from the project site so this is his family's drinking water source as well. The site would not require a lot of excavation work and only removing topsoil and compacted with clay for non-heated, cold-storage buildings. Acting Chair Hildebrandt asked if the driveways would be pervious or impervious; Mr. Stenerson stated that the driveway area would be gravel.

Marc Pritchard, Water Plant Manager for Moorhead Public Service, states that he had previously met with Director Jacobson back in February or March of this year. He supports that inspection cycles recommended by Sebastian McDougall is something they would be in favor of, as well as inspection cycles by the Moorhead Public Service and to be granted access to the property to do these inspections. Mr. Pritchard feels that a favorable solution would be for Drinking Water Supply Management Area (DWSMA) setback distances to protect the Moorhead drinking water supply wellfields.

Joel Hildebrandt asked if they had a specific measurement in mind and Mr. Pritchard stated that the DWSMA boundary is defined based on visual references to protect against encroachment. Setback distances would need to be determined. Director Jacobson asked if setbacks would be from the well or the drinking water supply management area; Mr. Pritchard states from the wells themselves would be best. Jenny Mongeau asked if the

Moorhead officials currently do inspections on any of the properties located within the designated Resource Protection-Wellhead overlay districts. Mr. Pritchard advised they currently do inspections at the City of Moorhead Airport. Jenny Mongeau confirmed that property is actually city of Moorhead property and voiced concerns about a non-governing entity showing up on personal property to exert authority. Ms. Mongeau stated that she would be in agreement for County staff to do inspections and provide that information to the City of Moorhead. Director Jacobson advised he feels he and his staff are capable of doing any required or non-required inspections that may apply. Director Jacobson advised he has worked with law enforcement on other issues regarding storage units so it may not be a bad idea to add that permitted storage units should be inspected every 3 or 5 years. Jenny Mongeau pointed out that inspecting one type of business within the Resource Protection-Wellhead (RP-WH) may need to be expanded to inspection of any or all businesses/activities within the RP-WH overlay district so there is consistency.

Mr. Stenerson stated that their lease would have bold language regarding allowed uses and possibly even posting a sign on premises and the uses would be monitored. Mr. Stenerson also advised that the items allowed on site would be the extension of what the average person would have in their garages at home.

Director Jacobson reiterated that, while we are looking at one particular storage unit business at this hearing, the discussed storage unit amendment would apply to all storage buildings within the County. Mr. Pritchard followed up that his inspection comments were not to be taken as being obtrusive, but only as having dedicated efforts to protecting the entire wellhead area.

On motion by Brad Eldred, seconded by Ashely 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.

Staff recommends the suggested motion:

Move to recommended Ordinance 2024-3 to the Clay County Board of Commissioners for approval.

Dave Steichen questioned Director Jacobson about putting language in the Amendment regarding permission for inspections. Director Jacobson stated that residents have been cooperative regarding permission for any requested inspections; however, if there is a problem and an arranged inspection is not allowed, this could put the Permit in jeopardy as a hearing could be requested to revoke the Permit.

On motion by Ashley Heng, seconded by Kurt Skjerven, and unanimously carried, the Planning Commission recommended to the Clay County Board of Commissioners to amend the Clay County Development Code to make commercial storage units a separate use in Use Table 8-5-1 and allow as a Conditional Use in the Resource Protection – Wellhead Protection Overlay Zoning District.

UNFINISHED BUSINESS:

None.

NEW BUSINESS:

Director Jacobson advised that looking at the weeks of May 28th through June 9th, he will be out of the office and unavailable. Planning and Zoning staff are available to assist with any questions or concerns.

It was also noted that the June meeting will be held on June 25th, 2024 (the 4th Tuesday of the month) due to Board of Equalization.

ADJOURNMENT:

On motion by Jenny Mongeau, seconded by Sebastian McDougall, and unanimously approved, the meeting adjourned at 9:43 PM.



Ashley Heng (in absence of
Secretary Laura Johnson)