

MINUTES OF A PUBLIC HEARING CONDUCTED BY THE ST. LOUIS COUNTY PLANNING COMMISSION HELD VIRTUALLY VIA WEBEX AND IN-PERSON AT THE ST. LOUIS COUNTY GOVERNMENT SERVICES CENTER, LIZ PREBICH ROOM, VIRGINIA, MN ON THURSDAY, NOVEMBER 9, 2023.

9:15 AM – 2:17 PM

Planning Commission members in attendance: Tom Coombe
Steve Filipovich
Dan Manick
Pat McKenzie, Chair
Dave Pollock
Diana Werschay
Andrea Zupancich

Planning Commission members absent: Commissioner Keith Nelson
Ross Petersen

Also present: Nick Campanario, St. Louis County Attorney's Office

Decision/Minutes for the following public hearing matters are attached:

NEW BUSINESS:

- A. Review of petition for an EAW
- B. Blair Smith, a zoning map amendment involving parcel 340-0010-03592 within S20, T57N, R17W. The proposed zoning change is from Residential (RES)-7 and RES-10 to Limited Industrial (LI)-10.
- C. Mark Rock and Concrete Company, a conditional use permit for a general purpose borrow pit as an Extractive Use - Class II.

OTHER BUSINESS:

Motion by Pollock/Manick to approve the minutes of the October 12, 2023 meeting.

In Favor: Coombe, Filipovich, Manick, McKenzie, Pollock, Werschay - 6

Opposed: None - 0

Abstained: Zupancich - 1

Motion carried 6-0-1

Donald Rigney, Acting Secretary, stated there will not be a December Planning Commission hearing due to no cases.

NEW BUSINESS:

Petition for EAW

The first hearing item is for a citizen petition for an Environmental Assessment Worksheet (EAW). The subject property is located in S15, T63N, R18W (Beatty).

Nick Campanario, St. Louis County Attorney's Office, introduced the case. About six months ago, St. Louis County Planning and Zoning received an application for a rezoning and an application for a conditional use permit, both in connection with a proposed campground on Lake Vermilion. Shortly after, a petition was received from area citizens to do an Environmental Assessment Worksheet (EAW). The first order of business should have been a Planning Commission decision on whether to move forward with the EAW. From there, it would be completing the environmental review process. After that review, the Planning Commission would consider the rezoning and conditional use permit. The Planning Commission is not the final say when it comes to rezoning applications. The Planning Commission makes a recommendation to the St. Louis County Board, which has the final say on the rezoning.

What happened was the Planning Commission was not asked to take action on the EAW. Instead, the Planning Commission took action on the rezoning application. The Planning Commission denied the rezoning and that recommendation was never forwarded on to the St. Louis County Board. The conditional use permit was also not acted on.

This came to the attention of St. Louis County Attorney's Office during a lawsuit on behalf of the landowner/proposer of the rezoning. They decided to realign everything and restart the process and go through the process the way it was meant to be gone through. The first step should be whether an EAW is required to be completed. This is not about the campground or the rezoning. The Planning Commission should determine whether the character or nature of the proposed project has the potential for significant environmental impacts. In making the decision, a requirement should also include specific findings of fact on the basis of the decision made.

If the Planning Commission determines that an EAW should be required, staff will go to work and reach out to the project proposer to get the information needed for the EAW. If the Planning Commission determines that an EAW is not required, the next step will be the rezoning application. This will not happen today.

The ongoing lawsuit in MN State District Court in Duluth has no impact on moving forward with today's decision.

The *Planning Commission* discussed the following prior to staff's presentation:

- A. Commission member *Pollock* asked if the Planning Commission's decision at the May 2023 hearing to deny the rezoning means nothing. *Nick Campanario* stated that should the Planning Commission determine today that an EAW is a requirement, the Planning Commission should consider any information obtained during the environmental review process. The Planning Commission will need to start from scratch.
- B. Commission member *Pollock* stated during their discussion, there was nothing decided on an EAW. *Nick Campanario* stated the problem was the EAW issue was not brought before the Planning Commission. The Planning Commission was not asked to make that decision.
- C. Commission member *Pollock* asked if the rezoning is denied, the conditional use permit should be null and void, too. *Nick Campanario* stated that is getting ahead of the process. Everyone recognizes that without a rezoning approval, the conditional use permit goes nowhere. Commission member *Pollock* stated that there is activity on this property. Nothing has been done as far as the rezoning or conditional use permit. Permits are needed

for the activity on this property. *Nick Campanario* stated he heard there was activity on the property. The conditional use permit issue is complicated. The position the project proposer has taken in the litigation is the conditional use permit has been issued because the application was not acted upon within 60 days after the application was made. That position is not correct.

- D. Commission member *Filipovich* asked what the Responsible Government Unit is. *Nick Campanario* stated this is St. Louis County. A petition gets submitted to the Minnesota Environmental Quality Board, which is a state agency. The agency reviews the petition and designates the appropriate Responsible Government Unit, which was St. Louis County.
- E. Commission member *Manick* asked what the odds are an attorney will pick apart any facts and findings the Planning Commission could come up with. *Nick Campanario* stated it is important that nothing is left out.
- F. Commission member *McKenzie* asked why the Planning Commission decides this when St. Louis County is the RGU. It would be difficult for commission members to answer some of these questions because the board is not full of professionals. *Nick Campanario* stated the St. Louis County Board is partially to thank for that. The zoning ordinance specifies these types of decisions are made by the Planning Commission.
- G. Commission member *Pollock* stated that this decision would have been passed on to the St. Louis County Board within 60 days. *Nick Campanario* stated this has almost always happened that way before. Commission member *Pollock* asked what was different about this one. *Nick Campanario* stated this was never given to the St. Louis County Board to look at. Matters are placed before them for their decision. That did not happen with this rezoning. If it had, this might have caused a bigger problem because the EAW was not acted upon.
- H. Commission member *Filipovich* asked about mandatory environmental reviews. *Nick Campanario* stated the aspects of this situation have been gone through and vetted. The only possible way an EAW would be appropriate is if the Planning Commission makes a discretionary assessment and the petitioners do not believe otherwise.
- I. Commission member *Pollock* stated he does not recall that anything was mentioned about the EAW in previous information and past presentations. *Nick Campanario* stated an EAW was never brought up.

Mark Lindhorst, St. Louis County Senior Planner, reviewed the staff report as follows:

- A. St. Louis County Planning Department received a citizen petition for an EAW from the Minnesota Environmental Quality Board (EQB).
- B. The petition is regarding a potential request for a rezoning and proposed campground on Lake Vermilion.
- C. An Environmental Assessment Worksheet (EAW) is a brief document, which is designed to set out the basic facts necessary to determine whether an Environmental Impact Statement (EIS) is required for a proposed project. Its primary legal purpose is to provide the information needed to determine whether the project has the potential for significant environmental effects.
- D. The Minnesota Environmental Quality Board determines if the petition complies with the requirements of MN Rule 4410.1100 subparts 1 and 2 and forwards the petition to the Responsible Government Unit (RGU) within five days of receipt of the petition. The petition was received from the Environmental Quality Board on March 20, 2023.

- E. The Responsible Government Unit reviews the petition and decides to approve or deny the need for preparation of an EAW.
- F. The mandatory threshold for construction or expansion of a campground accessed by a vehicle is 50 sites. The applicant is proposing two campsites on the two lake shore parcels that can be accessed by a vehicle from Black Bay Road.
- G. There is no mandatory threshold for construction or expansion of a campground for water access parcels.
- H. In deciding whether a project has the potential for significant environmental effects, the following factors shall be considered per MN Rule 4400.1700 Subp. 7.:
 - Type, extent, and reversibility of environmental effects.
 - Cumulative potential effects. The Responsible Government Unit shall consider the following factors: whether the cumulative potential effect is significant; whether the contribution from the project is significant when viewed in connection with other contributions to the cumulative potential effect; the degree to which the project complies with approved mitigation measures specifically designed to address the cumulative potential effect; and the efforts of the proposer to minimize the contributions from the project.
 - The extent to which the environmental effects are subject to mitigation by ongoing public regulatory authority. The Responsible Government Unit may rely only on mitigation measures that are specific and that can be reasonably expected to effectively mitigate the identified environmental impacts of the project; and,
 - The extent to which environmental effects can be anticipated and controlled as a result of other available environmental studies undertaken by public agencies or the project proposer, including other Environmental Impact Statements.

Mark Lindhorst noted five items of correspondence from Karen Whisler, Dale and Jan Mulfinger, Lisa Simensen, Philip C. Simensen, and Robert Leif, Charlotte Leif, and Phillip Mattson. These items were provided to the Planning Commission prior to the hearing. Three additional letters were handed out to the Planning Commission at the hearing from Jon Grinnell, Amy Andrews, and Marnie Bigler. A resolution from Beatty Township was handed out at the hearing.

RECOMMENDATION

Approve the preparation of an Environmental Assessment Worksheet (EAW) if evidence presented demonstrates the project may have the potential for significant environmental effects.

Deny the petition for the preparation of an Environmental Assessment Worksheet (EAW).

Dick Nowlin, 9014 Little Sweden Road, Cook, the petitioner, stated they own 3109 Blueberry Island. The fact the Planning Commission expressed confusion and asked questions is not unusual. He reached out to Lake County to ask about how they dealt with campgrounds. Site determinations need to be made to know how much land needs to be set aside for tents, etc. He spoke with Jenny Bourbonais, former Land Use Manager, at length and asked if the EAW would be brought forward before the rezoning and she determined that the Planning Commission could go forward with the rezoning. He did not agree but this was a staff decision. If the rezoning passed, the conditional use permit could be heard. Their testimony in May was about how beautiful and sensitive this piece of property is. That testimony should be considered in this proceeding, too. That was all directed at

why an EAW should be done and why this is not a good project for this area. They had 164 signatures on this EAW petition within 24 hours. There has not been any development on these parcels. There is development all along Lake Vermilion that is high-end and very expensive. This land brings tremendous opportunity, but it is also very sensitive as there is the Partridge River. This river goes from the Big Bay entrance down to Black Bay. This is a great walleye production resource. There are bays along the river. The little neck by the peninsula is five to nine feet deep, which is good for walleye movement but is subject to water quality impacts. That is why people are sensitive to this area and how it gets developed. This property is also rocky with a very steep slope and full of native vegetation, such as white pine. This is not an easy to develop site.

He was involved in writing the Environmental Rights Act. He did this for 45 years in the private sector to help people avoid impacts before they get a petition. This project is a perfect example of what needs an EAW. They do not know the impacts that this project will have. This is sensitive property and needs to be looked at for what it will do to water quality and the walleye or any other natural resource. A lot of natural resources could be impacted by this land. Cumulative potential impacts are a given if anything is done on this property. There are two large peninsulas, and the proposal is to use all the property. The assessment should be on the whole property, including if they are cutting down trees and putting in a septic system, any thing that could cause a potential environmental impact. This is why staff are there to do this or someone could be hired to do this. It is not that complicated.

He will not repeat what he said in May. There are a ton of potential cumulative impacts. The fish resource and the water need to be looked at carefully by someone that is not them. This should be looked at by the applicant who, in March, requested to do an EAW. She wanted to help. The law does not allow the applicant to prepare for the EAW. This is why a petition was submitted. This is a sensitive property that should be assessed before any development occurs.

He recommended the Zoning Ordinance be revised as far as how it deals with campgrounds and how many of what sites are allowed on property. The Planning Commission needs to know what they are looking at as far as campgrounds. St. Louis County is the biggest geographical area in the state. There are also indigenous issues to consider as the Department of Natural Resources sent archaeologists to the southern part of Blueberry Island and they discovered two sites.

His wife stated that the landowner is already using the property. She was told no by the Planning Commission and by county staff. Three docks went up in June. A tent platform went up for a number of tents. Breaking the law should cost money and there was no question that what happened on that property was a violation of the law. The applicant had advertised. Regulatory enforcement is slow because a lawsuit could mess everything up. Does this give the applicant the right to build platforms and decks?

What the Planning Commission is doing now is cleaning up. This was not just the Planning staff that made the mistake, but the applicant did, too. This was not a one-sided deal. This was a complicated issue that needed to be cleaned up.

Christine Wyrobek, the landowner and project proposer, presented a PowerPoint presentation. She and her husband are surprised to hear the county admit it screwed up. This mistake has cost them

over \$30,000 in legal fees. She hopes this does not happen to anyone else. Would it not be wonderful to just start over? However, this land has been developed. In May, she submitted a petition with over 350 signatures from those that supported their campground.

A conditional use permit for a commercial campground was filed on February 3, 2023, which is what the EAW petition is based on. Seven months ago, the Planning Commission had a non-public meeting to discuss the petition on April 13, 2023, that was not acted on. The conditional use application was canceled on June 2, 2023 and a refund check for this application was issued on June 8, 2023. The rezoning and conditional use permit are currently under litigation.

Per MN State Rule 15.99 for time deadline for agency action, resolution or properly made motion to approve a request fails for any reason, the failure shall constitute a denial. If a RGU cannot act on a petition, it is because no permit application has been filed, the application has been withdrawn, or the application has been denied. The RGU cannot act on this conditional use application because this was canceled on June 2, 2023. Because this request failed by cancellation, the failure shall constitute a denial. There is no project proposer at this time, there is no active proposal at this time, and no government action is required at this time. They will not be adding anymore residential dwelling sites. Changes will qualify under EAW exemptions. They are waiting for the outcome of the litigation before deciding their final, long-term direction. They have no proposed project at this time that needs a government decision. There is no active request or application for a petition at this time.

The four parcels she owns are now developed as individual residential dwelling sites. They are utilizing a Residential Use-Class I, which is a category of uses that includes, but is not limited to: hunting shacks, residential dwellings (less than five units or sites). A dwelling site is defined as a designated location for residential use by one or more persons using temporary or movable shelter, including camping and recreational vehicle sites. Each dwelling site is a campsite.

There is a difference between the definition of a campground and a campsite. In MN Statute 6105.0040 Subp. 17, a campground means an area accessible by vehicle and containing campsites or camping spurs for tent. A primitive campground is defined as an area that consists of individual remote campsites accessible only by foot or water. Based on building this type of residential use, they did not defy the Planning Commission.

There are exemptions to an EAW, which includes:

- Projects for which no governmental decisions are required.
- Construction of private residential docks for use by four or less boats and utilizing less than 1,500 square feet of water surface.
- Minor temporary uses of land having negligible or no permanent effect on the environment.
- Construction of accessory appurtenant structures including garages, carports, patios, swimming pools, agricultural structures excluding feedlots, or other similar buildings not changing land use or density.
- Construction of less than ten residential units located in shoreland, provided all land in the development that lies within 300 feet of the ordinary high water level of the lake or river, or edge of any wetland adjacent to the lake or river, is preserved as common open space.

- Maintenance of existing landscaping, native growth, and water supply reservoirs, excluding the use of pesticides.
- Anything that is already built.

The current petition gave an inaccurate status of the land. There was an inaccurate land and legal description, increasing the area significantly by over 100 percent. There was inaccurately stated land use. The land is no longer raw land and has been developed. She contacted the Minnesota Environmental Quality Board and asked what to do when there is a petition that does not have an accurate description. That person said to adjust the description to match the project according to the proposed legal plan. It is not whatever someone thinks it will be. She did offer to do the EAW herself. If the petition is denied today, it will put it aside until a solid plan is available for an actual EAW to be done on. She will be solely responsible for the cost, which is \$10,000. All of these rules have been broken and she has spent tens of thousands of dollars to correct this. Will they ask her for another \$10,000 on an EAW for a plan that may or may not exist. The petition still stands, and one can be done at any point. She asked the Planning Commission to deny the EAW petition until litigation is complete and they have an actual plan.

Twelve audience members spoke.

Lori Melbostad, 8864 Raps Road, Cook, stated she supports what *Dick Nowlin* said. The true victims are those who use Lake Vermilion. What they are trying to do is keep the environment as pristine as possible. These are little bays and not just peninsulas with loons and an eagle on the landowner's property. They have watched the landowner develop the site with residential dwelling units and advertise on VRBO without getting proper permits from the county and state. She has watched the campers on the property not respect that property. This is a commercial business on a residential property in a residential neighborhood.

Philip Simensen, 3061 Black Bay Road, Cook, stated he agrees with what *Dick Nowlin* and *Lori Melbostad* said. They are confused about this situation and why they are at this point. He asked that anyone who submitted correspondence on a previous case should be added to the record for the EAW petition. Lot 46 has been cleared and he has seen people going in and out of the campsites. He has been asked where to park to get to the campsites. This seems more commercial than residential.

Lisa Simensen, 3061 Black Bay Road, Cook, stated they are adjacent to Lot 46. It is hard not to assume what is being proposed. Her concerns are with sanitation, animals such as dogs being allowed onto the property, and any waste. The proposal had also stated mini golf, a visitor's center, recreation room and a tremendous amount of waste. During a fire ban this past spring, there was a fire on the peninsula. The fire brigade was called, and the MN Department of Natural Resources (DNR) water plane helped to put out the fire. As a neighbor this was reckless.

Karen Whisler, 3047 Black Bay Road, Cook, stated the neighbors on Raps Road and Black Bay Road meet up to support each other and to keep each other safe. They are not bad people. They have not been involved in this. They have not been privy to any information about what is going on. They are concerned about the environmental impact of human activity on its condition. They need to protect this environment for the future. They have been doing this for years. Another

concern is composting toilets and if they are being used right, especially with a hundred guests on this site. If dumped too soon, that waste could contaminate the land and runoff into the water supply or the lake with parasites and disease. It is almost like a Holiday Inn out there with all of these people. Another concern is fire, especially with how the winds come up. How are these people going to get off this property in a fire. A concern is noise pollution because she can hear all the workers on that property and their language can be foul, which is not safe for children or grandchildren. She checked with the Assessor's Office who stated they do assess tents on top of platforms when there are permits, but the landowner has no permits. The fact these people are not investing in the land and people all around them affects the neighbor's environment. This could be a big project that causes a lot of problems.

Dick Nowlin, the petitioner, spoke again. He stated he had not heard one thing that would mollify the petition.

Peter Wunsch, 3059 Black Bay Road, Cook, stated his family has been on Lot 45 for over 70 years. He agrees with the other petitioners. He would appreciate the Planning Commission's consideration for requiring an EAW. He has seen brush removed from a platted cul-de-sac that goes back to the 1930s when the land was originally platted. The surveyor out yesterday stated this was public land.

Mark Harelstad, 8741 Raps Road, Cook, stated St. Louis County instructed him on what he could do and what he should do when he built his cabin. Most people who live on this lake would abide by what the county says. The EAW would regulate and track what is going on, on this property. No one is following what is being done. For example, one would build a septic system based on the number of bedrooms they had. Land should be set aside for a replacement area. As this project goes on, an EAW would show the landowner is doing what she is supposed to be doing. He is frustrated seeing what has taken place.

Rita Lakmann, 8709 Raps Road, stated there are four big building projects in their area and explained how busy Raps Road can be.

Ron Johnson, 9084 Little Sweden Road, stated he owns and operates the Whispering Winds resort and is a previous President and board member of the Lake Vermilion Resort Association. His concern is that while they are not against a campground, they are against the campground not being well planned. The landowner does not have a current lodging tax permit and is in violation. As a licensed residential contractor and plumber, he is concerned about the landowner hiring non-licensed help to do this work. She may be in violation of state law.

Ethan Larson, no address given, stated he has worked on the land with *Christine Wyrobek*. He stated that it feels hypocritical of anyone who owns property and has developed their land by saying raw land should not be disturbed. This land is not at the mouth of any large river and should not impact fish spawning. The best place for fish spawning is across from the Y Store where the waterfall is and there are docks a hundred feet away from that. It is easy for people to say they live on the property and do not want anyone else to wreck the property around it. They are not trying to wreck the property. They are trying to clear as little as possible. They want a little niche of nature for veterans, who may be disabled, to come out and enjoy the property. They are not trying

to make as much money as possible. They care about these people. He taxied them over to this property. They give away free nights. This is what they think is important in this world. Their environmental impact is significantly less than anything else in the area and he feels an EAW is not needed.

Thomas Wyrobek, 2900 County Road 535, stated he has listened to what the concerns are. All projects go in succession. There has been confusion where everyone is trying to figure out what went wrong. The data is obsolete. The project will have the direction decided when the litigation is done. They have supported the EAW since day one. It is an effective way to get unification on what is required on this specific property. This may change when legal discussions are finished. The land is zoned Residential. All houses could be there, and they never would have purchased this property if they would flip it. They have a goal of giving back. These neighbors are passionate about this area and this property did not sell for a year and a half. Why did one of them not buy this property? They bought the property, invested in the property and are trying to protect the property. He would invite everyone here to tour this property to see how they would handle this or that and maybe get input on how to handle the property better.

Christine Wyrobek added there is a lot invested in this project. There is an investment in the Planning Commission, too, as far as public meetings are concerned. They, as landowners, are invested in this as far as money goes. They are not asking for this to be cancelled. To require an EAW would give the County Attorney's Office their reset button. She does not want to waste time and money until the proper time comes.

Tricia Wiitanen, 8785 Raps Road, Cook, submitted her testimony via Webex chat. She stated that she and her two teenage daughters were walking Raps Road at dusk on Saturday, October 21, and had to hide in a neighbor's yard when two trucks kept driving back and forth. One of the men asked if they knew where the Rough In camp was located.

Cathi Hively, 8972 East Wakemup Village Road, Cook, stated she is a supervisor for Beatty Township. Hundreds of thousands of dollars were spent to blacktop Raps Road for the residents. These residents will fix the road themselves. With more traffic coming in, she is concerned the residents will have to bear it. If the landowner is saying this is a residential property but is renting the property, it is a commercial property. The landowner said she does not have to pay lodging tax and she has been on the lodging tax committee for 30 years and that is not correct. She is in support of requiring an EAW.

No other audience members spoke.

The *Planning Commission* discussed the following when the hearing was open:

- A. Commission member *Pollock* asked if they are to base their decision today based on the number of campsites. *Mark Lindhorst* responded yes, as well as any other environmental impacts brought up today. Commission member *Pollock* asked if a conditional use permit was presented to the Planning Commission. *Mark Lindhorst* stated it was not. Acting on the petition is acting on the merits of what is being proposed in the conditional use application. Are there items that came up in the EAW that could be used should the conditional use permit move forward. Adding more conditions to protect water quality,

fisheries, etc. could be needed. The application could change or not come forward. This is just the EAW process.

- B. Commission member *Pollock* stated they have to decide based on the information how to protect the environment. The applicant requested 47 campsites. *Mark Lindhorst* stated there is no mandatory threshold for any campsite accessed by boat or water-access only land. The mandatory threshold is 50 sites when accessed by a vehicle. The applicant was proposing two campsites that would be accessed by vehicle. A mandatory EAW was not done because the threshold was not met. The only way an EAW could be considered is with a petition which is before the Planning Commission now. *Nick Campanario* stated the Planning Commission should decide based on 47 campsites. If the proposed project changes in scope, the law considers these possibilities. Different processes are in place to deal with a different or expanded proposal. Something that was approved for 47 campsites would not be what would be approved for 60 campsites or 100 campsites.
- C. Commission member *Manick* stated there are two campsites that are accessed by vehicle and the other sites are accessed by water. *Mark Lindhorst* stated the Planning Commission needs to act on the whole project, including the water-access sites. Commission member *Manick* commented that it is difficult to not hear what was discussed in May and to start over again. *Mark Lindhorst* stated that an EAW is not a decision that approves the rezoning or the conditional use permit. The EAW will provide additional information on if there are environmental issues that could be part of a decision made in the future for the rezoning or the conditional use permit.
- D. Commission member *Pollock* asked when considering no land access, is it assumed that there will be boat access or that there will be 20 to 30 cars parked on the side of the road? *Mark Lindhorst* stated they can only decide on what the application states.
- E. Commission member *Werschay* read from the Minnesota Environmental Quality Board letter, "A project may not be started, and a final governmental decision may not be made to grant a permit, approve a project, or begin a project, until a decision has been made for this petition. Project construction includes any activities which directly affect the environment, including preparation of land." Because this was filed, should the applicant have done nothing? *Mark Lindhorst* stated yes; a decision should not have been acted upon if there was a potential for this project to do that. No work would be allowed to start without knowing what impacts could exist in an environmental review. It does not matter what exists now on that site because this is just about the EAW. Commission member *Werschay* asked if the property should remain in its natural state until an EAW is decided. *Mark Lindhorst* stated yes. There was no authorization to do anything on that site.
- F. Commission member *Manick* stated the Planning Commission has been asked to go back in time to do this the right way. Why does the landowner not need to go back in time and do nothing? *Nick Campanario* stated when they discovered these issues, it was not known what position they were in.
- G. Commission member *Werschay* asked what the landowner wants the Planning Commission to consider on their behalf. She mentioned that there is no current proposal, but she keeps mentioning the proposal. *Christine Wyrobek* stated a plan is needed to look at environmental impacts or a petition because without a plan, no one knows how anything will be done. A very set plan will be needed to base an EAW off of. This is the law. Someone cannot just request an EAW because she wants a campsite. The Planning Commission cannot act on an EAW if there is no active conditional use permit.

- H. Commission member *Pollock* stated the landowner said the conditional use permit is done, gone, and canceled. There are no issues with that anymore. *Christine Wyrobek* had no answer for that. On June 2, 2023, St. Louis County canceled the conditional use application. They are questioning that cancellation in litigation. Commission member *Pollock* stated that the landowner approached development from the residential use. He asked how many sites are on this property. *Christine Wyrobek* stated they have their legal limit of how many sites they can have. Commission member *Pollock* asked about Residential Use-Class I and any sites that may have come from that, and if the landowner needed to get permits. *Mark Lindhorst* stated staff sent a letter to the landowner saying she was not meeting Zoning Ordinance requirements. *Christine Wyrobek* added that she did respond to the letter but has not heard anything back. Commission member *Pollock* stated this development is based on residential dwelling sites and not on a conditional use permit.
- I. Commission member *Werschay* asked if a tent becomes a structure with a floor. Would it become a yurt? *Mark Lindhorst* stated that would still be considered a tent. A yurt is designed to be year-round. This would be a platform for a tent to have a tent on a flat surface. How the landowner has everything set up is up to her.
- J. Commission member *Manick* asked about the EAW exemption for something that is already built. *Christine Wyrobek* stated that this was in the MN Rules. She can forward this information to the Planning Commission.
- K. Commission member *Werschay* asked if the refund check was cashed. *Christine Wyrobek* stated it was not.
- L. Commission member *Coombe* asked about the non-public meeting held on April 13, 2023. This meeting did not happen and was not discussed. *Mark Lindhorst* stated that this was a business meeting item that was not acted upon. *Christine Wyrobek* stated this was on everyone's radar as it was on the agenda, and it was not acted upon.
- M. Commission member *McKenzie* asked how the site has been developed so far. *Christine Wyrobek* stated they developed the sites with residential dwelling sites.
- N. Commission member *McKenzie* asked if an EAW cannot be approved unless there is an actual plan. *Mark Lindhorst* stated there was an application before. The rezoning application was the application. Her conditional use application was submitted at the same time. The Planning Commission is addressing the application that was submitted at the time. *Nick Campanario* added the rezoning application was acted upon by the Planning Commission and was denied. This was not forwarded on to the St. Louis County Board. The conditional use application was denied on June 2, 2023. He asked if the Planning Commission denied the application on June 2, 2023. There is only one body with the authority to deny a conditional use permit and that is the Planning Commission. That permit was not denied. He read from the Wyrobek complaint, paragraph 89: "Wyrobek, and the other plaintiffs, are entitled to a declaratory judgment that the conditional use application is approved." Approved, not denied. The fact is the conditional use application has not been denied. Ms. Wyrobek's position in court that the conditional use application was approved is currently in litigation. There is still a live rezoning application and a live conditional use application. The argument that there is no basis to consider to act upon the EAW petition is not valid.
- O. Commission member *Pollock* stated it was brought up that a potential way to resolve this is to deny an EAW at the present time because there is no plan. The EAW is based off the conditional use application now? There could be another EAW if there is a plan going

forward. In a short period of time, she could have to do this again. Is this the right time to do the EAW? *Nick Campanario* stated yes whether to approve or deny. There is an option available for a proposer that no longer wants to go forward with a project. There has been no withdrawal. The position taken in court is that the conditional use permit was approved. Commission member *Pollock* stated what they can go by is the information they have now. There has been nothing to withdraw it for some later plan.

- P. Commission member *Coombe* asked for clarification on what was read from. *Nick Campanario* stated he was reading the complaint filed to MN district court in Duluth. The document is signed by the attorney representing Ms. Wyrobek and other plaintiffs. Commission member *Coombe* asked who the other plaintiffs are. *Nick Campanario* stated there are two companies affiliated with Ms. Wyrobek and two individuals who are either previous or current owners of the property.
- Q. Commission member *Manick* asked if something gets recorded on the day a conditional use application is denied. *Mark Lindhorst* stated any Planning Commission or Board of Adjustment decision gets recorded.
- R. Commission member *Zupancich* asked if the landowner is still developing the property. *Christine Wyrobek* stated no. Commission member *Zupancich* asked the landowner to clarify residential dwelling sites. *Christine Wyrobek* stated it is state law that would allow four tent sites per parcel. This is why a tent can be popped up at any house or cabin.
- S. Commission member *Zupancich* asked if these sites are being advertised on Airbnb or VRBO. *Christine Wyrobek* stated they are. Commission member *Zupancich* asked if the landowner had gone through the county requirements for an Airbnb. *Christine Wyrobek* stated there is a spot written that tents do not require these. If that were illegal, they would have heard something back from the county. This has hurt them financially because they have been unable to get sponsors or make bookings because of the legality.
- T. Commission member *Zupancich* asked if people are parking on a residential lot. *Christine Wyrobek* stated yes because they only rent one or two sites at a time. There may be a car or two parked on that lot. This is not their long-term plan. *Thomas Wyrobek* added that while they have a long-term plan, having 40 cars parking there is not one.

The *Planning Commission* discussed the following after the hearing was closed:

- A. Commission member *McKenzie* stated they need to decide if there is potential for significant environmental effects based on the four criteria. *Nick Campanario* noted the definition of environment in the Environmental Quality Board rules. "Environment" means physical conditions existing in the area that may be affected by a proposed project. It includes land, air, water, minerals, flora, fauna, ambient noise, energy resources, and artifacts or natural features of historic, geologic, or aesthetic significance. There was testimony provided about ambient noise and any indigenous artifacts that may be located in this area.
- B. Commission member *Manick* asked about the definition of "significant" as far as a significant environmental impact. *Nick Campanario* stated that unlike "environment" there is no definition for significant in MN Rules. There is a sense of what "significant" means. In this case, something can be significant or insignificant.
- C. Commission member *McKenzie* stated they should start with the first criteria: the type, extent, and reversibility of environmental effects. If a road has been cleared, how is that reversible in a place that has never been disturbed before? Some things are not reversible

in the development of a property. A bulldozer can come in, clear a lot and while trees are eventually replaced, the property will never be the same as it was. The proposer admitted she cleared land and the lot used for parking has been cleared. These are not reversible. Are they significant environmental effects? Commission member *Filipovich* noted that developing land will create changes. It is not all one way. Commission member *McKenzie* stated it would not be the same. Commission member *Filipovich* stated that it is blind to say “nothing will be the same.”

- D. Commission member *Manick* stated to approve or deny, there could be significant potential impact on one of these four criteria. It is easy to see what could be impacted based on the definition of “environment.” Air quality could be impacted by having a number of campfires. That could be reversed. Ambient noise, if there are a lot of campers, could be reversed. There could be a ledge rock with not a lot of vegetation. Once that is stripped, that vegetation is gone and all that is left is ledge rock. All the flora and fauna are gone.
- E. Commission member *Filipovich* commented there is a lot of shoreland and 5,000 parcels. How can you expect something to stay the same for the next 10, 20, or 30 years? Commission member *Werschay* stated if people cut things down and ruin the water, there will be nothing. To continue this path, what will we have in 20 years? Commission member *Manick* stated this is not about someone building a home.
- F. Commission member *Pollock* stated it may be easier to discuss an item and its effect. There is the water and its effect on fishing. This could be directly impacted by runoff from the land. There is the septic effect due to the septic, health, and waste. This could be an extreme problem. There is the slope effect and if the property would be buildable or non-buildable even with a residential use. The number of people would have a profound effect on this property and what will go on with the property. The disturbance with putting this project up is greater than what building a home would do. There is also an indigenous site potential. If that is an indigenous site, that would need to be considered environmentally. The last effect is fire. While fires can be had during burning season, there needs to be a permit and the fire should be in a fire pit. Recreational Vehicle (RV) parks have a set number of fire rings allowed in a campground. Not every site will have a fire pit. There are rules.
- G. Commission member *McKenzie* stated if he were a current resident, noise would be a concern. As a result of this proposal, that could be considered a significant environmental effect. If one lives in this area and one is subjected to noise, it would be a factor.
- H. Commission member *Manick* asked how to reverse water quality impacts due to the shallow bays. Commission member *Pollock* noted that sanitation or runoff would impact the water.
- I. Commission member *Manick* stated there is nothing but rock underneath the vegetation. A tree could fall over and there is just ledge rock underneath. Trees will not seed in. There may not be much vegetation. Commission member *Zupancich* stated without any vegetation, where will a shower house or bathroom go?
- J. Commission member *McKenzie* asked about the potential significant environmental effects which may be the result of this proposal starting with “type.” Commission member *Manick* stated land. Any other part could be impacted, including air quality, ambient noise, etc. Commission member *Pollock* stated water quality. Commission member *Manick* agreed and said this is why there are so many rules for septic. Commission member *McKenzie* asked about flora and fauna. Commission member *Pollock* stated the slope and terrain are what make a buildable or non-buildable lot. Commission member *Coombe* stated he would

look at wildlife, such as fish and other aquatic life. Commission member *McKenzie* asked if this would be called a wildlife disturbance. Commission member *Manick* stated wildlife habitat impacts were included in the petition. Commission member *Coombe* stated life starts with water and that should be one of the most important points they look at.

- K. Commission member *McKenzie* asked about the “extent” of environmental effects. Commission member *Pollock* stated that the extent would be the number of sites and the number of people.
- L. Commission member *Werschay* asked if this property is on a bluff. *Mark Lindhorst* stated some portions of the property are a bluff.
- M. Commission member *McKenzie* asked about the “reversibility” of environmental effects. Commission member *Werschay* stated once water starts a path down a bluff, there is no changing that. Commission member *McKenzie* stated that trees could grow back. Once a property is disturbed, however, it is never the same. This is true with heavy machinery. For the current proposal, the landowners may need heavy machinery for earth removal to develop the site with septic systems or accessory structures or 47 campsites. There are things that are not reversible with the removal of trees, plants, and terrain. Commission member *Manick* noted there could be artifacts on the site, too, which can shut down the project just like discovering artifacts shut down Duluth’s multi-million-dollar road project. Commission member *Pollock* stated that the landowner could cut down on the number of sites and people. Commission member *McKenzie* stated that is not what was proposed. Commission member *Pollock* stated that avoiding the number of sites and people, it could avoid all other effects. Commission member *Manick* stated all items as defined in “environment” could have potential impacts. The list could include wildlife habitat and the fishery. Commission member *Pollock* stated they can list the different items that define “environment.”
- N. Commission member *McKenzie* moved on to the second criteria for “cumulative potential effects” which means “the effect on the environment that results from the incremental effects of a project in addition to other projects in the environmentally relevant area that might reasonably be expected to affect the same environmental resources, including future projects actually planned or for which a basis of expectation has been laid, regardless of what person undertakes the other projects or what jurisdictions have authority over the projects. Significant cumulative potential effects can result from individually minor projects taking place over a period of time. In analyzing the contributions of past projects to cumulative potential effects, it is sufficient to consider the current aggregate effects of past actions. It is not required to list or analyze the impacts of individual past actions, unless such information is necessary to describe the cumulative potential effects. In determining if a basis of expectation has been laid for a project, a Responsible Government Unit must determine whether a project is reasonably likely to occur and, if so, whether sufficiently detailed information is available about the project to contribute to the understanding of cumulative potential effects. In making these determinations, the Responsible Government Unit must consider: whether any applications for permits have been filed with any units of government; whether detailed plans and specifications have been prepared for the project; whether future development is indicated by adopted comprehensive plans or zoning or other ordinances; whether future development is indicated by historic or forecasted trends; and any other factors determined to be relevant by the Responsible Government Unit.” *Nick Campanario* stated this would consider this proposed project in relation to the effects

other projects in the same area may have. This would be an accumulation of this and the other campgrounds. In the petition and testimony presented, there was not much discussed about this particular aspect. Commission member *Pollock* stated if there were one or two items, they could be mitigated. With this project, there are a number in the list that could make the impact worse and worse. Commission member *Werschay* stated that one cannot compare residential living to commercial living. Commission member *McKenzie* stated this means that if there is a campground and residences on one side of the bay and on the other side of the bay is nothing, there are cumulative effects for potential development on both sides of the bay. *Nick Campanario* stated if this project had small impacts and there could be 99 additional projects like this one, the cumulative impact would be larger. Commission member *Pollock* stated there are residences all along this area. With this project, they need to look at the cumulative impact of the campground along with the residences. *Nick Campanario* stated that, while true, this adds up environmental impacts added up with respect to this single project. The “cumulative criteria” is trying to address taking the effects of this project and add them to the effects of other projects in this area. Commission member *McKenzie* asked if the “project” would include an existing neighborhood. *Nick Campanario* stated the rule states “other projects in the environmentally relevant area that might reasonably be expected to affect the same environmental resources, including future projects actually planned or for which a basis of expectation has been laid...” Commission member *Manick* stated they may not know of any potential projects as of this moment. *Nick Campanario* stated these criteria go from elements to factors. Elements all need to be satisfied or else the answer is a no. These are factors which may not all need to be satisfied, but all need to be considered. The ultimate question is the first criteria.

- O. Commission member *Pollock* read the criteria point “the degree to which the project complies with approved mitigation measures specifically designed to address the cumulative potential effect.” It would be a hard question to answer. There may be cumulative effects but what will be done to mitigate them? That is why there is a study. Commission member *Manick* agreed. Commission member *Filipovich* stated there is no car traffic on the island. Commission member *McKenzie* stated this is not an island. This is just land not accessible by vehicle as far as they know. Commission member *Filipovich* stated other islands where cars cannot get to would cut down boats. There may be more things advantageous than just bad.
- P. Commission member *McKenzie* stated they have to follow specific factors under “cumulative potential effects.” They agreed on the first criteria that the definition of “environment” found in MN Rules are significant. This would answer the second question. *Nick Campanario* stated if the Planning Commission determines the effects of this project alone are significant, the only thing the second criterion could do is add effects from other projects.
- Q. Commission member *McKenzie* asked about the third criteria, the extent to which the environmental effects are subject to mitigation by ongoing public regulatory authority. The first thing that comes to mind is On-Site Wastewater and sanitation. Septic systems can be installed, work perfectly, and cause no health hazards. How does one mitigate water quality, wildlife habitat disturbance, mineral disturbance, flora, fauna, etc.? Mitigating this can be very difficult. Commission member *Pollock* stated something could be added that “all items subject to mitigation by ongoing public regulatory authority be adapted.”

Commission member *McKenzie* stated they are looking at significant environmental effects. Commission member *Pollock* stated they are not expected to spell out what action should be taken on each item. It can be said that they are subject to mitigation using the rules from the county, state, and federal. *Nick Campanario* stated the criteria asks this. For example, septic is subject to mitigation. Commission member *Pollock* stated if something is added about mitigation, the number of sites or the number of people could be mitigated and that might be impacted by the slope and terrain. These items all tie in together. *Nick Campanario* stated an example could be noise. If there was a 47-site project, it would generate noise and would have an environmental effect. Is that environmental effect subject to mitigation by ongoing public regulatory authority? Commission member *McKenzie* stated potentially yes. Commission member *Manick* noted a decibel meter. Commission member *Werschay* stated there is also disturbing the peace.

- R. Commission member *Pollock* stated the extent to which environmental effects can be anticipated and controlled as a result of other available environmental studies undertaken by public agencies or the project proposer, including other Environmental Impact Statements. This is why the Planning Commission is hearing this.
- S. Commission member *Coombe* stated we can require or not require an EAW. There are questions on a number of elements like water, air, wildlife, as well as other things like septic, dark sky standards, noise pollution. The last question asks how to control these things. Commission member *McKenzie* stated what they are pulling together is a motion to approve or deny an EAW. *Nick Campanario* stated the rules said they shall consider these four criteria. This demonstrates that the Planning Commission is considering these four items at length. This will allow them to say yes or no to an EAW. If they say yes, he wants a concise summary of the environmental effects that exist. If they say no, he wants the opposite, understanding that the environmental effects have not risen to what they need to be to require an EAW.
- T. Commission member *Coombe* noted that they have to consider all of this with the proposed project of 47 sites, not the four sites.
- U. Commission member *Manick* stated he would want any motion to include the MN Environmental Quality Board 4410.0200 rules using the definition of “environment.” That language should be cited. After aesthetic significance, they could add wildlife habitat impacts, noise, and light pollution. *Nick Campanario* asked if they feel there was a lot heard on the first criteria and not a lot on the other three. This would be a situation where that first criterion would weigh heavily over the others. Commission member *Manick* asked if it would hurt staff if they did not consider the three criteria as strongly as the first criterion. *Mark Lindhorst* stated the first criterion has a good answer. What the Planning Commission is stuck on is if they are going to ask for an EAW or not. If they require an EAW, how will it meet the first criterion. If they do not require an EAW, why does it not meet the first criterion.
- V. Commission member *Manick* asks what happens if an EAW is approved. *Mark Lindhorst* stated they will have to do an environmental assessment. *Nick Campanario* stated this would involve county staff working with the project proposer to obtain the information as needed and fill out the Environmental Quality Board form.
- W. Commission member *Pollock* asked for the motion to address the cumulative potential effects, environmental effects are subject to mitigation by ongoing public regulatory

authority, and the extent to which environmental effects can be anticipated and controlled as a result of other available environmental studies.

- X. *Nick Campanario* asked for formal consideration of the criteria. Commission member *Pollock* stated that the fourth criteria read “environmental effects can be anticipated and controlled as a result of other available environmental studies undertaken by public agencies or the project proposer.” They may not know who they are. *Nick Campanario* stated there was no information presented about other available environmental studies undertaken for the project proposer. Commission member *Manick* stated there has been nothing presented about controlling any of these issues. Commission member *Filipovich* stated this is like doing a realty appraisal.
- Y. *Nick Campanario* stated that the record will reflect the discussion and consideration of each factor.
- Z. Commission member *Werschay* asked if it mattered if the landowner wanted an EAW? *Mark Lindhorst* stated no, this should be based on the petition.

DECISION

Motion by Coombe/Pollock to request an Environmental Assessment Worksheet (EAW) be performed highlighting on qualities of land, air, water, fish habitat, wildlife habitat, plant life, Native American heritage, dark sky light pollution, noise pollution, and including the MN Rules 4410.0200 Subp. 23 definition of "environment" meaning physical conditions existing in the area that may be affected by a proposed project, including land, air, water, minerals, flora, fauna, ambient noise, energy resources, and artifacts or natural features of historic, geologic, or aesthetic significance. Because of the nature or location of the proposed project, the project may have potential for significant environmental effects. This EAW will address the cumulative potential effects, environmental effects are subject to mitigation by ongoing public regulatory authority, and the extent to which environmental effects can be anticipated and controlled as a result of other available environmental studies. This motion is based on consideration of the following factors:

- A. Type, extent, and reversibility of environmental effects.
- B. Cumulative potential effects. The Responsible Government Unit shall consider the following factors: whether the cumulative potential effect is significant; whether the contribution from the project is significant when viewed in connection with other contributions to the cumulative potential effect; the degree to which the project complies with approved mitigation measures specifically designed to address the cumulative potential effect; and the efforts of the proposer to minimize the contributions from the project.
- C. The extent to which the environmental effects are subject to mitigation by ongoing public regulatory authority. The Responsible Government Unit may rely only on mitigation measures that are specific and that can be reasonably expected to effectively mitigate the identified environmental impacts of the project.
- D. The extent to which environmental effects can be anticipated and controlled as a result of other available environmental studies undertaken by public agencies or the project proposer, including other Environmental Impact Statements.

In Favor: Coombe, Filipovich, Manick, McKenzie, Pollock, Werschay, Zupancich - 7

Opposed: None - 0

Motion carried 7-0

Blair Smith

The second hearing item is for Blair Smith, a zoning map amendment involving parcel 340-0010-03592 within S20, T57N, R17W. The proposed zoning change is from Residential (RES)-7 and RES-10 to Limited Industrial (LI)-10. The property is located in S20, T57N, R17W (Fayal). Commission member *Coombe* recused himself from this case because of his involvement with this property. *Mark Lindhorst*, St. Louis County Senior Planner, reviewed the staff report as follows:

- A. The proposed rezoning has been initiated by the applicant.
- B. The proposed change from Residential (RES)-7 and RES-10 to Limited Industrial (LI)-10 will involve only one parcel owned by the applicant.
- C. The parcel was rezoned from Shoreland Multiple Use (SMU)-7 to Residential (RES)-7 and RES-10 per Resolution No. 682 that was approved by the St. Louis County Board on October 22, 2002, for implementation of the Fayal Comprehensive Plan.
- D. The Fayal Comprehensive Plan was replaced by the St. Louis County Comprehensive Land Use Plan on January 22, 2019.
- E. No request for zoning amendments were initiated as part of the adopted St. Louis County Comprehensive Land Use Plan.
- F. The applicant has stated that should the rezoning be granted, it would allow a proposed Minnesota Power Service Center as an allowed use with permit.
- G. Previous uses on the parcel, which are no longer in operation, included a borrow pit, racetrack, and timber yard.
- H. The St. Louis County Assessor's Office identified the tax classification of the parcel as industrial.

Mark Lindhorst reviewed staff facts and findings as follows:

- A. Plans and Official Controls:
 1. Per Zoning Ordinance 62, Article V, Section 5.4, the Residential (RES) district is intended to be used in those areas of the county with extensive or the potential for extensive residential development. This district shall be used to promote a high-quality residential living environment where non-residential uses are restricted. This district may be used in shoreland and nonshoreland areas that are typically platted, or, if not platted, have a development density of dwellings of more than one dwelling per 300 lineal feet of lot frontage.
 2. Per Zoning Ordinance 62, Article V, Section 5.4, the Limited Industrial (LI) district is intended to accommodate those industrial and manufacturing uses that foster orderly economic growth, without adversely affecting the residential and recreational character of the surrounding area, by imposing performance standards, additional standards through conditional use review or by prohibit a use. The district may be used in a shoreland area if permitted by an adopted land use plan.
 3. The property falls under the Lakeshore Development Areas (LDA) land use category of the St. Louis County Comprehensive Land Use Plan.
 - a. These areas are intended for rural development adjacent to lakes, including infill, new development, or redevelopment of existing residential, commercial, or mixed-use areas. The scale and intensity of Lakeshore Development Areas are to be distinguished from uses requiring approval as planned resorts.
 4. The Future Land Use Maps guide all changes to the zoning map. Each map defines land use categories as opposed to zoning districts. Land use categories are broadly

defined as opposed to zoning districts which specifically detail lot size regulations, structure location requirements, and which uses are allowed, not allowed, or conditional.

- a. In many instances, land use categories simply indicate general locations that can support future growth and development.
 - b. Those categories may accommodate several uses and several differed zoning districts.
5. The existing Residential zoning is consistent with properties located within the shoreland area. The requested zoning map amendment proposes to extend existing Limited Industrial zoning that has existed since the early 1980s. Portions of these parcels are located within the shoreland area.

B. Zoning:

1. The parcel is bordered by Residential zoning to the west and south and Limited Industrial to the north which are all located within the shoreland area.
2. The Residential zone district is intended to be used in those areas of the county with extensive or the potential for extensive residential development. However, Limited Industrial zoning has been established on the adjacent parcel to the north since St. Louis County took over zoning authority in the 1980s.
3. The request may be considered spot zoning because there is only one parcel that benefits a single landowner. However, this parcel has had previous nonconforming uses that have been established that would be considered industrial or commercial in nature. In addition, the request is an extension of the Limited Industrial zoning from the parcel to the north which is not out of harmony with surrounding parcels.

C. Public Need:

1. The existing neighborhood consists of both residential lakeshore parcels to the south and west and established industrial businesses to the north.
2. The requested use of the property per the zoning request is for a Minnesota Power Service Center, which will provide services to the surrounding communities.

D. Public Interest:

1. The current zoning was established for the protection of existing residential development and to restrict incompatible uses. However, there have been several nonconforming uses that have been established on the parcel that were industrial and commercial in nature. The Limited Industrial district may be used in a shoreland area if permitted by an adopted land use plan. The St. Louis County Comprehensive Land Use Plan adopted the zoning map which included the Limited Industrial that has been established on the parcels to the north.
2. This is the only area within Fayal Township with Limited Industrial zoning. Extending the zoning to an adjacent parcel with past industrial uses would better serve the public interest than rezoning other property in the community.

Mark Lindhorst noted three items of correspondence, including a Fayal Township resolution in support, Earl and Jude Koste not in support, and Mark Walsh with questions. These items were provided to the Planning Commission prior to the hearing. An additional item was received from

Scott and Carol Whiteford this morning and was handed out to the Planning Commission at the hearing.

RECOMMENDED CONDITIONS

The Planning Commission's responsibilities with respect to a proposed zoning map amendment are addressed in Zoning Ordinance 62, Article VIII, § 8.7.C.2.

The Planning Commission will determine if the proposed zoning change of parcel 340-0010-03592 from Residential (RES)-7 and Residential (RES)-10 to Limited Industrial (LI)-10 meets the criteria for a zoning map amendment. Its recommendation to approve or deny along with supporting factual determinations will be provided to the St. Louis County Board.

Joanne Nephew, the applicant's representative, stated that Blair Smith is her daughter and Ryan Smith is her son-in-law. She purchased this property with her ex-husband in 2004. They had a logging business, and their intent was to add a wood yard. They had timber on this property that they stored to move it to the mills. They purchased the property from Jola and Sopp for \$70,000 as industrial land. They bought and financed the property through Agstar. They would not have paid \$70,000 if this property were zoned residential. She then sold the property to Ryan and Blair. Blair was going to add storage units to the property. Minnesota Power contacted Blair and Ryan. This property should be zoned industrial. Before Jola and Sopp purchased the property, it was used as a snowmobile racetrack. The property does not touch Horseshoe Lake. She checked to make sure where the boundaries were to make sure they would have no issues with the lake. The property boundary is 15 to 20 feet from the shoreline. She was part of the master logger program for the state of Minnesota, and she is familiar with buffer zones and what can and cannot be done around lakes. She is asking for this property to be industrial as they have paid taxes on this property for a number of years. When she sold the property to Ryan and Blair, it was industrial.

Eight members of the audience spoke.

Scott Smith, 4104 Miller Trunk Road, stated Ryan Smith is his son and he is in support of the rezoning. They brought the rezoning request to Fayal Township and the township approved unanimously. There was a business on the property in question called Performance Products where snowmobiles were tested for many years. For many years this property has had industrial use.

Edward Vest, no address given, stated his family has owned property across the road from this property in question for years. The neighboring property is a junk yard that was the old Bertucci pit that is included in the Limited Industrial zone district. He has no opposition to this project except to note it should be cleaned up more than it is. He is not sure why this parcel was taken off from the Limited Industrial zone district.

Ellen Ritter declined to speak.

Frank Berthold, 6484 Brackett Road, Eden Prairie, stated his property is to the south of the property in question. He needed more information to understand what will be placed there. When Woodline Manufacturing Inc. was operational, there was a lot of constant noise. He is concerned

about the noise when Minnesota Power moves to this property. He is neither for nor against this rezoning at this time.

Scott Whiteford, 7975 Horseshoe Lake Drive, stated they purchased their cabin on the south side of Horseshoe Lake in December 2022. He is unsure about what the Minnesota Power center would be like on this property. This industrial property could be quite a few things, such as manufacturing. The industrial properties to the north were developed when the requirements were likely different. It might not be fair to look at what was done in the past instead of going by what the current requirements would be. They were surprised when they learned there were industrial activities in this area, but they were far enough away that they were not an issue. This property may not border the lake, but the property is next to shoreland properties that do border the lake. One thing that needs to be addressed with the current standards would be the criteria that the land be in harmony with other nearby properties. An industry located so close to a quiet lake in the middle of the woods just does not feel very harmonious. There are more residential properties on the south side of the lake than to the north and both uses may not live in harmony.

John Baxter, Woodline Manufacturing Inc., 4947 Highway 53, stated as an adjoining property owner he has no problem with this request.

Steve Gro declined to speak.

Brittany Willard, Minnesota Power, stated they identified the Smiths' property as a potential site for a new service center. This is a great location for this center. They spoke with the landowners who believed the property to be zoned Industrial. However, the property was not zoned how they thought. In order to bring public facilities to the town of Fayal, they need this rezoning for industrial use.

Tim Langeley, Minnesota Power, stated he manages line operations. Eveleth is the headquarters for their northern division which allows them to reach both the east range and west range. They were looking for a location to build a sustainable service center. It is harder to find a location to build because of the rock the further north one goes. They are good neighbors. They are not going to be a manufacturing plant that makes noise. They will have materials that will be stored on site. Otherwise, this service center will be offices for engineers and meter staff. Their work is out in the community.

Greg Walsh, 7997 Shore Drive, Eveleth, stated his property is adjacent to this property. He wanted to comment where the property pin is at the corner of his property. The pin is four feet from the shoreline. He knows where this pin is because this is where he mows. He is concerned about runoff from this property and comes down across his property and into the lake.

No other audience members spoke.

The *Planning Commission* discussed the following:

- A. Commission member *Manick* asked if the St. Louis County Assessor's assessment that the parcel is industrial means anything. *Mark Lindhorst* stated that the applicant can provide more information on this. The information included was a tax classification.

- B. Commission member *Manick* stated the staff report mentioned spot zoning and this is one of the criteria for approval to ensure that the proposed rezoning is not spot zoning. *Mark Lindhorst* stated this is based on the fact this is a single landowner. There is also the factor of spot zoning where someone requests rezoning for a zone district that is out of harmony with the area. If there was no Limited Industrial here, this would be a whole new zoning classification in an area where there is no similar zone district.
- C. Commission member *Werschay* asked about the borrow pit on the property and if there is an active conditional use permit on it. *Mark Lindhorst* stated the borrow pit has not been worked in since the late 1990s and has been reclaimed.
- D. Commission member *Filipovich* asked about Thunderbird Trail splitting the zone districts. *Mark Lindhorst* stated the map is not survey-grade and this is the request in front of the Planning Commission.
- E. Commission member *McKenzie* added that Minnesota Power noted they would improve Thunderbird Trail. *Mark Lindhorst* stated he included this information based on what this proposed zoning would be used for. The project has no merit in the rezoning.
- F. Commission member *Manick* asked if there is any significance for this parcel to be in a shoreland area. *Mark Lindhorst* stated Limited Industrial is allowed in the shoreland area if it is included in a land use plan. There is Limited Industrial zoning in this area based on the existing uses. It is up to the Planning Commission to determine if the Limited Industrial zone district should be extended to include this property.
- G. Commission member *McKenzie* asked how this land was zoned the way it is. *Mark Lindhorst* stated that Tufco Inc. and Woodline Manufacturing Inc. were in this location. This zone district has been in place since the 1980s when Fayal did their land use plan. The surrounding area was originally zoned Shoreland Multiple Use (SMU)-7 and Fayal rezoned this area to Residential in 2002. The St. Louis County Board adopted the zoning change from SMU to RES but kept the Limited Industrial. It is not known if Limited Industrial would have been an allowed zone district otherwise.
- H. Commission member *Manick* asked Minnesota Power to explain what a service center is. *Brittany Willard* stated a service center is a home base for the line trucks and the line workers. *Tim Langeley* added this will be mostly an office building with some indoor storage for their trucks, service vans, etc. They are currently working on the initial design right now and the size of the structure is not yet known.
- I. Commission member *McKenzie* asked about the existing service center in downtown Eveleth. *Tim Langeley* stated their current facility in downtown Eveleth has reached the end of its useful life because it has a pit on one side and neighborhoods surrounding it.
- J. Commission member *Manick* stated knowing more about what was going on this property would have helped him as well as any neighbors who are not sure about what is going to happen on this property. *Brittany Willard* stated this is something their engineers are working on, taking into account environmental studies and wetlands. Commission member *Manick* stated that could complicate things because the service center may need to be moved around on the property because of wetlands.
- K. Commission member *Pollock* stated Minnesota Power may have a general idea of how many people this new service center will have. *Tim Langeley* stated the number is hard to come by with remote workers and post-Covid, but the number would be around 40. Commission member *Pollock* asked how many trucks will be on this property. Without knowing an exact number, how many trucks are currently stored in Eveleth? *Tim Langeley*

stated there are four line crews with three trucks each and they are kept on site. There may be 15 to 20 vehicles on the site. Commission member *Pollock* stated that this will be a decent-sized facility with a potential warehouse area for storage. Any structure will need to adhere to rules and regulations as far as the wetlands go.

- L. Commission member *Werschay* stated she used to live on Horseshoe Lake. They did hear some highway noise. Her concern is for the neighbors who live in the immediate area. How much noise will these trucks make? Are these trucks diesel? *Tim Langeley* stated if these trucks are the service center, they will be inside and not running outside.
- M. *Mark Lindhorst* reminded the Planning Commission that this is for rezoning this property and this Minnesota Power service center is not being requested now. Any request by Minnesota Power will come later. Commission member *Werschay* stated that if this property is rezoned, anything could go here. That is why it is important to know this information. *Joanne Nephew* stated between the lake properties and this property, there is a wooded buffer zone. They owned property on the east side of Horseshoe Lake. There is no way they would have paid \$70,000 for residential land back in 2004.
- N. Commission member *Manick* stated he is still uneasy about approving a rezoning without knowing how the property will be used. Minnesota Power may change their plans.
- O. Commission member *Pollock* asked if there is a purchase agreement contingent upon approving the rezoning. If this project is for public welfare, that would help. *Brittany Willard* stated this is one of the final steps.
- P. Commission member *Manick* asked if Minnesota Power comes in after this property is rezoned, would they still have standard conditions to follow. *Donald Rigney*, Acting Secretary, stated that Minnesota Power will need to follow standard conditions depending on what they apply for.
- Q. Commission member *Werschay* asked if a wetland delineation would be required. *Donald Rigney* stated that is a possibility. *Brittany Willard* stated they did a phase one environmental site assessment (ESA) already.

DECISION

Motion by Manick/Pollock to recommend that the proposed zoning change of parcel 340-0010-03592 from Residential (RES)-7 and Residential (RES)-10 to Limited Industrial (LI)-10 meets the criteria for a zoning map amendment, and to forward this recommendation on to the St. Louis County Board for their approval. The following facts and findings shall apply:

- A. Plans and Official Controls:
 - 1. Per Zoning Ordinance 62, Article V, Section 5.4, the Residential (RES) district is intended to be used in those areas of the county with extensive or the potential for extensive residential development. This district shall be used to promote a high-quality residential living environment where non-residential uses are restricted. This district may be used in shoreland and nonshoreland areas that are typically platted, or, if not platted, have a development density of dwellings of more than one dwelling per 300 lineal feet of lot frontage.
 - 2. Per Zoning Ordinance 62, Article V, Section 5.4, the Limited Industrial (LI) district is intended to accommodate those industrial and manufacturing uses that foster orderly economic growth, without adversely affecting the residential and recreational character of the surrounding area, by imposing performance standards, additional

- standards through conditional use review or by prohibit a use. The district may be used in a shoreland area if permitted by an adopted land use plan.
3. The proposed zoning shall be consistent with the comprehensive or land use plan adopted by the county.
 4. The property falls under the Lakeshore Development Areas (LDA) land use category of the St. Louis County Comprehensive Land Use Plan.
 - a. These areas are intended for rural development adjacent to lakes, including infill, new development, or redevelopment of existing residential, commercial, or mixed-use areas. The scale and intensity of Lakeshore Development Areas are to be distinguished from uses requiring approval as planned resorts.
 5. The Future Land Use Maps guide all changes to the zoning map. Each map defines land use categories as opposed to zoning districts. Land use categories are broadly defined as opposed to zoning districts which specifically detail lot size regulations, structure location requirements, and which uses are allowed, not allowed, or conditional.
 - a. In many instances, land use categories simply indicate general locations that can support future growth and development.
 - b. Those categories may accommodate several uses and several differed zoning districts.
 6. The existing Residential zoning is consistent with properties located within the shoreland area. The requested zoning map amendment proposes to extend existing Limited Industrial zoning that has existed since the early 1980s. Portions of these parcels are located within the shoreland area.

B. Zoning:

1. The parcel is bordered by Residential zoning to the west and south and Limited Industrial to the north which are all located within the shoreland area.
2. The Residential zone district is intended to be used in those areas of the county with extensive or the potential for extensive residential development. However, Limited Industrial zoning has been established on the adjacent parcel to the north since St. Louis County took over zoning authority in the 1980s.
3. The request may be considered spot zoning because there is only one parcel that benefits a single landowner. However, this parcel has had previous nonconforming uses that have been established that would be considered industrial or commercial in nature. In addition, the request is an extension of the Limited Industrial zoning from the parcel to the north which is not out of harmony with surrounding parcels.
4. The proposed zoning is not considered spot zoning, which is zoning to discriminate in favor of one lot or parcel out of harmony with surrounding lots or parcels and the comprehensive or land use plan and without benefit to the community. This is an extension of the Limited Industrial zone district that exists in the area.

C. Public Need:

1. The existing neighborhood consists of both residential lakeshore parcels to the south and west and established industrial businesses to the north.
2. The requested use of the property per the zoning request is for a Minnesota Power Service Center, which will provide services to the surrounding communities.

3. There exists a clear public need for and benefit from additional zoning of the type proposed, which shall be above and beyond any benefit or convenience to the landowner.

D. Public Interest:

1. The current zoning was established for the protection of existing residential development and to restrict incompatible uses. However, there have been several nonconforming uses that have been established on the parcel that were industrial and commercial in nature. The Limited Industrial district may be used in a shoreland area if permitted by an adopted land use plan. The St. Louis County Comprehensive Land Use Plan adopted the zoning map which included the Limited Industrial that has been established on the parcels to the north.
2. This is the only area within Fayal Township with Limited Industrial zoning. Extending the zoning to an adjacent parcel with past industrial uses would better serve the public interest than rezoning other property in the community.
3. There is a showing that the public interest would be best served by rezoning the property in question rather than other property in the community. With the industrial work already happening on this property, it would be better to extend the zone district.

In Favor: Filipovich, Manick, McKenzie, Pollock, Werschay, Zupancich - 6

Opposed: None – 0

Abstained: Coombe - 1

Motion carried 6-0-1

Mark Rock and Concrete

The third hearing item is for Mark Rock and Concrete Company, a conditional use permit for a general purpose borrow pit as an Extractive Use-Class II. The property is located in S30, T64N, R19W (Leiding). *Mark Lindhorst*, St. Louis County Senior Planner, reviewed the staff report as follows:

- A. The applicant is proposing crushing, screening, washing, portable hot mix and recycling of asphalt and concrete.
- B. It is estimated that 30,000 cubic yards of material will be removed each year.
- C. The standard hours of operation are from 7:00 a.m. until 8:00 p.m., Monday through Saturday.
- D. The property was previously permitted for a public works pit in 2019.
- E. This property is a rock quarry.

Mark Lindhorst reviewed staff facts and findings as follows:

- A. Plans and Official Controls:
 1. Zoning Ordinance 62, Article V, Section 5.6 A., indicates general purpose borrow pits are an allowed use with a conditional use permit in a Forest Agricultural Management (FAM) zone district.
 2. The applicant's parcel is designated as FA within Planning Area 2 on the Future Land Use Map.

3. The St. Louis County Comprehensive Land Use Plan under Objective LU-4.5 states that the development of new general purpose borrow pits should be directed to areas designated as Forest and Agriculture (FA) on the Future Land Use Map.
4. The FA category typically consists of large tracts of land that are not intended for future urban or rural development.

B. Neighborhood Compatibility:

1. The area consists primarily of large tracts of undeveloped forest land. These large tracts of land are under both private and public ownership.
2. The development density in this area is very low. There is only one residence within one-quarter mile and is located on the adjacent parcel to the north.

C. Orderly Development:

1. This is a rural area consisting of primarily large undeveloped parcels.
2. The request for a borrow pit should have little to no effect on the future development of the surrounding area.

D. Desired Pattern of Development:

1. There is not a high level of future growth anticipated in the area.
2. The FA designation of the parcel specifically identifies these areas for extractive use.
3. The area is not intended for future urban or rural development.

E. Other Factor:

1. The applicant has indicated a National Pollutant Discharge Elimination System (NPDES) permit has been obtained for the property and a survey will be completed to ensure setbacks are being met.

Mark Lindhorst noted one item of correspondence from Ericka and Jeff Iverson with questions about the proposal. This item was provided to the Planning Commission prior to the hearing.

RECOMMENDED CONDITIONS

If the Planning Commission determines that the proposal meets the criteria for granting a conditional use permit to allow a general purpose borrow pit as an Extractive Use-Class II, the following conditions shall apply:

Condition Precedent:

1. The applicant shall obtain access approval from the appropriate road authority.

Conditions Concurrent:

1. All minimum extractive use standards shall be followed.
2. Vegetative screening along Highway 53 shall be maintained.
3. The extractive use activity shall be limited to less than 40 acres.
4. The applicant shall adhere to all local, county, state, and federal regulations.

Jeff Hatlewick, 525 Kennedy Park Road, Fergus Falls, the applicant, stated Mark Rock and Concrete purchased this property in 2021. During the ownership, they leased the property to Ulland Brothers for an open quarry. When that project was finished, they left about 20,000 tons of raw

material to be processed. They do not have a road project and they cannot have a Public Works permit. They were approached to provide railroad ballast, which means crushing the material there to a half-inch railroad ballast they could fill in. The correspondence from the north asked about blasting. They do not have a current project that would call for blasting. In the future, they may be blasting. It would likely be less than what Ulland Brothers did when they were on the property. They may move portable equipment in and do the crushing, such as riprap, railroad ballast, and road material. Everything would be portable and with different time constraints. They will not open up this operation and move a hundred people in. This is a small operation with two or three people working on the crusher or processing materials. To address a comment from the letter about blasting, someone is brought in with a seismograph to see if there are any impacts to neighboring residences from the blasting. They are aware if something is going on. There are videos taken with a drone during the blast to see what happens. This was opened as far away from the residence as possible on the south part of the property. When mining in a quarry, one will work from the ledge wall out. This is a unique area because there is quarry rock there and also pines and gravel.

The zoning ordinance asks for a survey to ensure that setbacks are being met. He contacted a survey group who did research and did not locate a survey marker. There is very heavy vegetation in this area. They would suggest a larger setback to forego the survey. *Mark Lindhorst* stated that the buffer in place is a 100 foot buffer to the property line if there is a residence within 300 feet. The residence to the north is within 300 feet.

One audience member spoke.

Ericka Iverson, 3902 Highway 53, Orr, submitted her testimony via Webex chat. She asked if any future blasting would affect underground rock that would affect their water supply. What is the environmental impact of sodium chloride when spraying dust and could the applicant use water only instead as it is uphill from their well? Could the jobs on site last longer than the two to six week period as noted?

Jeff Hatlewick stated blasting rock is solid rock from the current quarry to where their house is located. They are working 800 feet or more from their house. Any blasting should not move the rock. The road in the area is dirt leading back to the pit. They have water they can use for spraying. Some jobs might last longer than the two to six weeks period. There may be times when they have no projects. Everything is driven by local and railroad construction.

No other audience members spoke.

The *Planning Commission* discussed the following:

- A. Commission member *Coombe* asked if there was road authority approval since this was a Public Works borrow pit. *Mark Lindhorst* stated if there was previous approval, they would need to supply a copy of that approval. The MN Department of Transportation did not indicate if this was temporary access or if approval would be needed for permanent access.
- B. Commission member *Manick* asked if setbacks are different for a rock quarry from the property line, etc. *Mark Lindhorst* stated the applicant would still need to meet the buffer. The applicant may have different ideas for reclamation. The applicant may want to keep a pond. The borrow pit would still need to meet a 50 foot no disturbance buffer and a 100

foot buffer for a residence located 300 feet from the property line. Commission member *Manick* stated there is a slope and drop-off and some vegetation for a buffer. *Mark Lindhorst* stated reclamation information was included with the packet.

- C. Commission member *Coombe* stated Mine Safety and Health Administration (MSHA) has explicit standards for mining quarries and rock.
- D. Commission member *Coombe* asked what kind of rock there is. *Jeff Hatlewick* stated there is granite that they have to break up. Driving on Highway 53 past the property, one can see the 20 to 25 foot wall of ledge rock.
- E. Commission member *Manick* asked how the materials are broken up. *Jeff Hatlewick* stated they have an excavator with a jackhammer. Otherwise, the boulders are too large for the crusher.
- F. Commission member *McKenzie* asked if the applicant is willing to increase the buffer so as not to do the survey. *Jeff Hatlewick* stated yes.
- G. Commission member *Manick* stated this is a for-profit business. Should they be concerned to require pins? There may be pins in the area and it might take time to find one. This would be a big expense. Commission member *Coombe* stated with all the highway construction, there should be benchmarks. Has the applicant worked with the state to locate these road markers? *Jeff Hatlewick* stated he has not heard if the company contacted the state. Their next step would have been to contact another surveyor. Commission member *Manick* stated he has seen survey markers in the middle of roads before. It would not be unreasonable to stick with a survey if the cost of a survey can be spread out over the life of this borrow pit. It might be worth having the larger buffer. Commission member *Pollock* stated that without survey pins, they would not have a specific distance to have a setback from.

DECISION

Motion by Filipovich/Pollock to approve a conditional use permit to allow a general purpose borrow pit as an Extractive Use-Class II, based on the following facts and findings:

- A. Plans and Official Controls:
 - 1. Zoning Ordinance 62, Article V, Section 5.6 A., indicates general purpose borrow pits are an allowed use with a conditional use permit in a Forest Agricultural Management (FAM) zone district.
 - 2. The applicant's parcel is designated as FA within Planning Area 2 on the Future Land Use Map.
 - 3. The St. Louis County Comprehensive Land Use Plan under Objective LU-4.5 states that the development of new general purpose borrow pits should be directed to areas designated as Forest and Agriculture (FA) on the Future Land Use Map.
 - 4. The FA category typically consists of large tracts of land that are not intended for future urban or rural development.
 - 5. The use conforms to the land use plan.
- B. Neighborhood Compatibility:
 - 1. The area consists primarily of large tracts of undeveloped forest land. These large tracts of land are under both private and public ownership.
 - 2. The development density in this area is very low. There is only one residence within one-quarter mile and is located on the adjacent parcel to the north.
 - 3. The use is compatible with the existing neighborhood.

C. Orderly Development:

1. This is a rural area consisting of primarily large undeveloped parcels.
2. The request for a borrow pit should have little to no effect on the future development of the surrounding area.
3. The use will not impede the normal and orderly development and improvement of the surrounding area.

D. Desired Pattern of Development:

1. There is not a high level of future growth anticipated in the area.
2. The FA designation of the parcel specifically identifies these areas for extractive use.
3. The area is not intended for future urban or rural development.
4. The location and character of the proposed use is considered consistent with a desirable pattern of development.

E. Other Factors:

1. The applicant has indicated a National Pollutant Discharge Elimination System (NPDES) permit has been obtained for the property and a survey will be completed to ensure setbacks are being met.

The following conditions shall apply:

Condition Precedent:

1. The applicant shall obtain access approval from the appropriate road authority.
2. The applicant shall get a survey of the property.

Conditions Concurrent:

1. All minimum extractive use standards shall be followed.
2. Vegetative screening along Highway 53 shall be maintained.
3. The extractive use activity shall be limited to less than 40 acres.
4. The applicant shall adhere to all local, county, state, and federal regulations.

In Favor: Coombe, Filipovich, Manick, McKenzie, Pollock, Werschay, Zupancich - 7

Opposed: None - 0

Motion carried 7-0

Motion to adjourn by Werschay. The meeting was adjourned at 2:17 PM.