

**MINUTES OF A PUBLIC HEARING CONDUCTED BY THE ST. LOUIS COUNTY BOARD OF ADJUSTMENT HELD VIRTUALLY VIA WEBEX AND IN-PERSON AT THE ST. LOUIS COUNTY GOVERNMENT SERVICES CENTER, LIZ PREBICH ROOM, VIRGINIA, MN ON THURSDAY, AUGUST 10, 2023.**

10:52 AM – 1:43 PM

Board of Adjustment members in attendance: Tom Coombe  
Steve Filipovich  
Dan Manick  
Pat McKenzie  
Dave Pollock  
Ray Svatos  
Diana Werschay, Chair

Board of Adjustment members absent: None

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

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

**NEW BUSINESS:**

- A. Christopher Soares, S5, T62N, R16W (Greenwood)
- B. Bodri Enterprises Inc., S27, T62N, R14W (Eagles Nest)
- C. Melissa Bell, S27, T52N, R15W (Fredenberg)

**OTHER BUSINESS:**

**Motion by McKenzie/Manick** to approve the minutes of the July 13, 2023 meeting.

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

**Opposed:** None - 0

**Abstained:** Svatos - 1

**Motion carried 6-0-1**

**NEW BUSINESS:**

**Christopher Soares**

The first hearing item is for Christopher Soares, property is located in S5, T62N, R16W (Greenwood). The applicant is requesting relief from St. Louis County SSTS Ordinance 61 adopted Technical Standards 7080.2150, Subpart 2, Section F, Table VII, to allow a subsurface sewage treatment system installation at a reduced road right-of-way (ROW) setback and at a reduced structure setback. *Ryan Logan*, St. Louis County On-Site Wastewater Manager, on behalf of Emily Anderson, reviewed the staff report as follows:

- A. The applicant is requesting to replace a septic tank at a zero-foot road right-of-way setback where 10 feet is required, and at a two foot structure setback where 10 feet is required.

- B. This system is a replacement to abandon an imminent public health threat (IPHT) tank that was inspected at the point of sale.
- C. The parcel currently contains a dwelling, sleeper house, and storage structure.
- D. The system was deemed an imminent public health threat because the tank lid was not secured or fastened and there were structural integrity issues with the tank.
- E. The tank opening is currently within the road right-of-way. The proposed tank will move the tank out of the road right-of-way.
- F. The tank will meet all other setbacks, including well and property line setbacks.

*Ryan Logan* reviewed staff facts and findings as follows:

A. Official Controls:

- 1. SSTS Ordinance 61 states that all SSTS components must be setback in accordance with Table VII of the SSTS Technical standards.
- 2. The required setback from a road right-of-way and an existing structure is 10 feet.
- 3. The applicant is requesting a reduced setback from the road right-of-way of zero feet and a reduced building setback of two feet.
- 4. All other setbacks will be met.

B. Practical Difficulty:

- 1. The parcel is zoned Residential (RES)-9. The lot is 0.12 acres in size and 50 feet in lot width where 1.0 acre in size and 150 feet in lot width are required.
- 2. The lot has a well which requires a 50 foot setback which limits replacement area for the tank.

C. Essential Character of the Locality:

- 1. The plat is zoned RES-9 and consists of conforming and nonconforming residences.
- 2. There have been no similar variance requests within the plat. The variance request will not alter the essential character of the locality.

D. Other Factors:

- 1. There is limited septic replacement area due to the lot width and acreage.
- 2. A majority of the septic replacement area is occupied by the required well setback.
- 3. This system is an Imminent Public Health Threat. The tank needs to be replaced with a new tank. The existing tank is unable to be repaired.

*Ryan Logan* noted no items of correspondence.

## **STAFF RECOMMENDATION**

Conditions that may mitigate the variance for relief from St. Louis County SSTS Ordinance 61, 7080.2150, Subpart 2, Item F., (Table VII) to allow the replacement of a septic tank at a reduced road right-of-way setback of zero feet where ten feet is required, and a reduced building setback of two feet where ten feet is required as proposed include, but are not limited to:

- 1. All other On-Site Wastewater SSTS standards shall be met.
- 2. Following system installation, an inspection shall be performed by a qualified inspector to ensure setbacks are met prior to issuing Certificate of Compliance.
- 3. All other local, county, state and federal regulations shall be met.

*Christopher Soares*, 830 North Lake Avenue, Duluth, the applicant, stated they purchased the property in May 2023. An inspection of the septic revealed it was defective. The seller was able to place money in escrow to replace the septic. It was a 1,000 gallon plastic tank. It was damaged after being installed in the 1990s. He had it pumped in July 2023. It is a dream to have lake property and they are anxious to get this septic compliant. The neighbors have been supportive.

One member of the audience spoke.

Bruce Resman, 3609 Fectos Road, stated they own the property to the south and they are in full support of the applicant's request.

The *Board of Adjustment* discussed the following:

- A. Board member *Manick* asked what the well depth is. *Ryan Logan* stated the well is deep enough that it is not considered a sensitive well. A sensitive well would require a 100 foot setback.
- B. Board member *Werschay* asked if the septic plans have changed to a tank. *Ryan Logan* stated all septic system components need to be certified through the Minnesota Pollution Control Agency (MPCA) and those components can only be used if certified.

## DECISION

**Motion by McKenzie/Manick** to approve a variance from St. Louis County SSTS Ordinance 61, 7080.2150, Subpart 2, Item F., (Table VII) to allow the replacement of a septic tank at a reduced road right-of-way setback of zero feet where ten feet is required, and a reduced structure setback of two feet where ten feet is required, based on the following staff facts and findings:

A. Official Controls:

- 1. SSTS Ordinance 61 states that all SSTS components must be setback in accordance with Table VII of the SSTS Technical standards.
- 2. The required setback from a road right-of-way and an existing structure is 10 feet.
- 3. The applicant is requesting a reduced setback from the road right-of-way of zero feet and a reduced building setback of two feet.
- 4. All other setbacks will be met.
- 5. Official controls serve to regulate land use but allow varying from strict regulations when circumstances dictate as they do in this case. A small parcel size and structure placement on the parcel limit options of the placement of a holding tank.
- 6. The variance request is in harmony with the general purpose and intent of official controls.

B. Practical Difficulty:

- 1. The applicant's parcel is too small to allow for a normally permitted setback of a holding tank from the road right-of-way and the structure on the parcel.
- 2. Practical difficulty has been demonstrated in complying with the official controls.

C. Essential Character of the Locality:

- 1. The installation of a tank will be mostly unseen and will not affect the essential character of the locality.

2. The structure has existed in its present location for nearly 25 years.
3. The variance request will not alter the essential character of the locality.

D. Other Factors:

1. The placement of the proposed tank will allow for a proper well setback and correct the imminent public health threat that currently exists.
2. Granting of the variance will also protect the applicant's property value.

The following conditions shall apply:

1. All other Onsite Wastewater SSTS standards shall be met.
2. Following system installation, an inspection shall be performed by a qualified inspector to ensure setbacks are met prior to issuing Certificate of Compliance.
3. All other local, county, state and federal regulations shall be met.

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

**Opposed:** None - 0

**Motion carried 7-0**

**Bodri Enterprises Inc.**

The second hearing item is for Bodri Enterprises Inc., property is located in S27, T62N, R14W (Eagles Nest). The applicant is requesting relief from St. Louis County SSTS Ordinance 61 adopted Technical Standards 7080.2150, Subpart 2, Section F, Table VII, to allow a subsurface sewage treatment system installation at a reduced shoreline setback from a Recreational Development lake where a minimum setback of 75 feet is required. *Ryan Logan*, St. Louis County On-Site Wastewater Manager, on behalf of Emily Anderson, reviewed the staff report as follows:

- A. The applicant is proposing to install a new septic tank at a reduced shoreline setback of 60 feet where a 75 foot shoreline setback is required.
- B. The new tank will be replacing noncompliant existing dry wells as required by the point of sale inspection requirements.
- C. The parcel currently contains a dwelling, two small storage buildings, and noncompliant dry wells that failed point of sale inspection.
- D. There is limited area for replacement due to the depth of the parcel.

*Ryan Logan* reviewed staff facts and findings as follows:

A. Official Controls:

1. SSTS Ordinance 61 states that all SSTS components must be setback in accordance with Table VII of the SSTS Technical standards. The required setback for Eagle's Nest Lake No. 3 is 75 feet. The applicant is proposing to install the tank at a reduced shoreline setback of 60 feet.
2. All other setbacks will be met.

B. Practical Difficulty:

1. With a road right-of-way setback of 10 feet and a shoreline setback of 75 feet, there is no area on the parcel that conforms to both setback requirements.

- a. The parcel is approximately 83 feet deep, limiting the conforming area for replacement.
- b. The existing structure layout limits the conforming area for replacement.
2. The existing dry wells were found to be noncompliant when a point of sale inspection was done and are required to be replaced.

C. Essential Character of the Locality:

1. The plat is zoned Shoreland Multiple Use (SMU)-7 consisting of conforming and nonconforming residences.
2. There have been no similar variance requests within the plat.

D. Other Factors:

1. There is no conforming septic replacement area due to shoreline and road right-of-way setbacks.
2. The existing system is noncompliant and failed a point of sale inspection.

*Ryan Logan* noted no items of correspondence.

### STAFF RECOMMENDATION

Conditions that may mitigate the variance for relief from St. Louis County SSTS Ordinance 61, 7080.2150, Subpart 2, Item F., (Table VII) to allow a subsurface sewage treatment system installation at a reduced shoreline setback of 60 feet where 75 feet is required as proposed include, but are not limited to:

1. All other Onsite Wastewater SSTS standards shall be met.
2. Following system installation, an inspection shall be performed by a qualified inspector to ensure setbacks are met prior to issuing Certificate of Compliance.
3. All other local, county, state and federal regulations shall be met.

The applicant and their contractor were unable to be present. No audience members spoke.

Board member *McKenzie* asked if drywells will automatically fail an inspection within St. Louis County. *Ryan Logan* stated that drywells will fail in shoreland areas. Board member *McKenzie* asked if there was one drywell or two drywells. *Ryan Logan* stated there was just one drywell. There was an existing tank that will be replaced, and the drywell will be abandoned.

### DECISION

**Motion by McKenzie/Manick** to approve a variance from St. Louis County SSTS Ordinance 61, 7080.2150, Subpart 2, Item F., (Table VII) to allow a subsurface sewage treatment system installation at a reduced shoreline setback of 60 feet where 75 feet is required, based on the following staff facts and findings:

A. Official Controls:

1. SSTS Ordinance 61 states that all SSTS components must be setback in accordance with Table VII of the SSTS Technical standards. The required setback for Eagle's Nest Lake No. 3 is 75 feet. The applicant is proposing to install the tank at a reduced setback of 60 feet.
2. All other setbacks will be met.

3. Official controls serve to regulate land use but allow varying from strict regulations when circumstances dictate as they do in this case. A small parcel size and structure placement on the parcel limit options of the placement of a holding tank.
4. The variance request is in harmony with the general purpose and intent of official controls.

B. Practical Difficulty:

1. The applicant's parcel is too small to allow for both a shoreline setback and proper road right-of-way setback for a holding tank. Neither setback can be met in this case (simultaneously).
2. Practical difficulty has been demonstrated in complying with the official controls.

C. Essential Character of the Locality:

1. The installation of the tank will be mostly unseen and will not affect the essential character of the locality. The tank will be placed out of view of the lake.
2. The variance request will not alter the essential character of the locality.

D. Other Factors:

1. There is no conforming septic replacement area due to shoreline and road right-of-way setbacks.
2. The existing system is noncompliant and failed a point of sale inspection.
3. The existing drywell will be decommissioned protecting groundwater.
4. Granting the variance will protect the applicant's property value.

The following conditions shall apply:

1. All other Onsite Wastewater SSTS standards shall be met.
2. Following system installation, an inspection shall be performed by a qualified inspector to ensure setbacks are met prior to issuing Certificate of Compliance.
3. All other local, county, state and federal regulations shall be met.

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

**Opposed:** None - 0

**Motion carried 7-0**

**Melissa Bell**

The third hearing item is for Melissa Bell, concerning the property located in S27, T52N, R15W (Fredenberg). The applicant is requesting an appeal to the Board of Adjustment per St. Louis County Zoning Ordinance 62, Article VIII, Sections 8.1.E and 8.6, and Article X, Section 10.6.B, and Minnesota Statute § 394.27, Subds. 5–6 (2022), concerning the Director's administrative determinations for the Conditional Use Permit at 6297 Lavaque Road, Duluth MN 55803. *Mark Lindhorst*, St. Louis County Senior Planner, reviewed the staff report as follows:

- A. The applicant is appealing the Administrative Determinations dated March 31, 2023, by Matthew Johnson, St. Louis County Planning and Community Development Director, regarding the operation of a permitted borrow pit at 6297 Lavaque Road, Duluth MN 55803.

- B. The Administrative Determinations were sent to Melissa Bell in response to her formal complaint against Lakehead Trucking at 6297 Lavaque Road, Duluth MN 55803.
- C. The St. Louis County Planning and Community Development Director reviewed the complaint and determined that the borrow pit located at 6297 Lavaque Road, Duluth MN 55803 is in compliance per the administrative appeal.
- D. The timeline as follows:
  - a. July 10, 2022: formal complaint filed against the borrow pit at 6297 Lavaque Road.
  - b. August 14, 2022: a letter was sent to Melissa Bell regarding her formal complaint.
  - c. March 31, 2023: administrative determination sent to Melissa Bell regarding the formal complaint.
  - d. May 1, 2023: appeal of the Administrative Determination.

*Mark Lindhorst* reviewed the facts as follows:

- A. Is the operation of the borrow pit located at 6297 Lavaque Road, Duluth MN 55803, pursuant to an active conditional use permit?
  - 1. Determination: The subject property is subject to an active conditional use permit, namely the conditional use permit approved by the St. Louis County Planning Commission in February 2006.
  - 2. Ordinance: St. Louis County Zoning Ordinance 62, Article VI, Section 5.6.B, indicates general purpose borrow pits (Extractive Use) are an allowed use with a conditional use permit.
  - 3. Facts: The St. Louis County Planning Commission conducted a public hearing for the proposed extractive use and based on facts and findings and public testimony the request was approved with conditions on February 6, 2006.
- B. If there is an active conditional use permit, is the operation of the borrow pit located at 6297 Lavaque Road, Duluth MN 55803, subject to, and compliant with the conditions of the 1988 Fredenberg Township conditional use permit?
  - 1. Determination: The subject property is no longer subject to the conditional use permit approved in 1988; again, the applicable conditional use permit is the conditional use permit approved by the St. Louis County Planning Commission in February 2006.
  - 2. Ordinance: St. Louis County Zoning Ordinance 62, Article VI, Section 5.6.B, indicates general purpose borrow pits (Extractive Use) are an allowed use with a conditional use permit.
  - 3. Facts: The property is subject to an active conditional use permit, namely the conditional use permit approved by the St. Louis County Planning Commission in February 2006.
- C. If there is an active conditional use permit, is the operation of the borrow pit located at 6297 Lavaque Road, Duluth MN 55803, in compliance with St. Louis County Zoning Ordinance 62, Article VI, Section 6.22.H (Reclamation Standards)?
  - 1. Determination: Based on information provided by the permit holder and review of aerial imagery of the property, an area in the south portion of the property has been reclaimed, an adjacent area to the northwest of the reclaimed area and another area in the north portion of the property area are partially reclaimed and are being sloped,

- and extractive-use activities are in progress in the remaining areas. The permit holder is in compliance with this provision.
2. Ordinance: St. Louis County Zoning Ordinance 62, Article VI, Section 6.22.H, states all extractive uses shall implement reclamation standards and enumerates minimum standards with respect to reclamation.
  3. Facts: Based on information provided by the permit holder and review of aerial imagery of the property, an area in the south portion of the property has been reclaimed, an adjacent area to the northwest of the reclaimed area and another area in the west are actively being reclaimed, and extractive-use activities are in progress in the remaining areas. The permit holder is in compliance with this provision.
- D. If there is an active conditional use permit, is the operation of the borrow pit located at 6297 Lavaque Road, Duluth MN 55803, in compliance with St. Louis County Zoning Ordinance 62, Article, VI, Section 6.22.G.9 (no disturbance setbacks)?
1. Determination: Based on an evaluation of the subject property during an inspection conducted in August 2022 and review of aerial imagery of the property, the permit holder is in compliance with this provision.
  2. Ordinance: St. Louis County Zoning Ordinance 62, Article VI, Section 6.22.G.9, enumerates standards with respect to no-disturbance setbacks from property lines, public road rights-of-way, public utilities, municipal boundaries, and wetlands.
  3. Facts: Based on an evaluation of the subject property during an inspection conducted in August 2022 and review of aerial imagery of the property, the permit holder is in compliance.
    - Pit activity is setback from Lavaque Road approximately 750 feet.
    - No disturbance setbacks from property lines meet or exceed the setback requirements.
- E. If there is an active conditional use permit, and if water table or water retention issues have been observed, is the operation of the borrow pit located at 6297 Lavaque Road, Duluth MN 55803, in compliance with the permit and St. Louis County Zoning Ordinance 62, Article, VI, Section 6.22?
1. Determination: We did not observe any water issues during our inspection in August 2022. With respect to the images included in the relevant portion of the applicant's e-mail of July 10, 2022, it does not appear that the water shown in the images implicates any condition in the applicable conditional use permit or any aspect of Article VI, Section 6.22.
  2. Ordinance: St. Louis County Zoning Ordinance 62, Article VI, Section 6.22, does not include standards for water table or retention issues.
  3. Facts: We did not observe any water issues during our inspection in August 2022. With respect to the images included by the applicant, it does not appear that the water shown in the images implicates any condition in the applicable conditional use permit or any aspect of Article VI, Section 6.22.
    - Note that Article VI, Section 6.22.G.18, provides, "All extractive uses shall take measures to control erosion and runoff that has the potential to damage adjacent land." This standard is being met.



- F. If there is an active conditional use permit, and if the setback from Lavaque Road is less than 800 feet, is the operation of the borrow pit located at 6297 Lavaque Road, Duluth MN 55803, in compliance with the permit and St. Louis County Zoning Ordinance 62, Article, VI, Section 6.22?
1. Determination: The applicable conditional use permit does not contain any condition concerning a setback from Lavaque Road. With respect to the ordinance, Article VI, Section 6.22.G.9.b, provides, in relevant part, "A no disturbance setback, including the haul road, shall be 50 feet from the edge of all public road rights-of-way." Based on an evaluation of the subject property during an inspection conducted in August 2022 and review of aerial imagery of the property, the permit holder is in compliance with this provision.
  2. Ordinance: St. Louis County Zoning Ordinance 62, Article VI, Section 6.22.G.9.b, states that a no disturbance setback of 50 feet from edge of all public road rights-of-way.
  3. Facts: Based on an evaluation of the subject property during an inspection conducted in August 2022 and review of aerial imagery of the property, the permit holder is in compliance with this aspect of the provision (and all other aspects of Article VI, Section 6.22.G.9).
    - Pit activity is setback from Lavaque Road approximately 750 feet.

*Mark Lindhorst* noted no items of correspondence.

### **BOARD OF ADJUSTMENT DETERMINATION**

This is an appeal concerning the Director's administrative determinations as set forth in his letter dated March 31, 2023.

As to each administrative determination, the Board of Adjustment may reverse or affirm wholly or partly, or may modify the administrative determination, as provided in Article VIII, Section 8.6.B.4.c.i, and Article X, Section 10.6.B.2, of the zoning ordinance and Minnesota Statute § 394.27, subd. 6.

To the extent the Board of Adjustment affirms the administrative determinations, the administrative determinations that the permit holder is in compliance will remain in full force and effect.

To the extent the Board of Adjustment reverses the administrative determinations, the matter will be returned to the Director for further action under Article VIII, Section 8.11.C, of the zoning ordinance, which establishes the procedures to be followed in the event of noncompliance.

The Board of Adjustment's decisions concerning this appeal are subject to judicial review in state district court, as provided in Article VIII, Sections 8.1.E.4 and 8.6.C, and Article X, Section 10.6.C.5, of the zoning ordinance and Minnesota Statute § 394.27, subd. 9.

*Melissa Bell*, 6382 Beaver River Road, the appellant, presented a Powerpoint and a handout. The information obtained for the presentation and the handouts was obtained through St. Louis County data requests. She noted the three inspections done on this borrow pit. The inspection dated August

8, 2008, was done by Mark Johnson. A group of concerned Fredenberg citizens asked the Director on October 14, 2020, to look into the violation on this borrow pit. The response by Director Matthew Johnson on October 13, 2020, stated that he would not respond to the letter. On February 26, 2021, Commissioner Nelson wrote the Fredenberg Town Board and stated they would check for compliance and where violations are determined, work with the operators to bring the operations into compliance. On February 23, 2021, Director Johnson said via email that he wanted to offer Fredenberg Township a peace offering and realized there are complications with this. On August 3, 2021, the McKeever pit was visited and toured by Commissioner Nelson and Director Johnson. There was no compliance or inspection checklist. There were just pictures of the site. On June 30, 2022, a letter was sent to Commissioner Jewell by Director Johnson. In this letter, it read that Commissioner Nelson had asked if staff could do a formal inspection of the gravel pits in Fredenberg Township to honor Fredenberg Township's request. Director Johnson indicated that staff would contact the owners and schedule an inspection. On August 4, 2022, a letter was sent from Jennifer Bourbonais, the Land Use Manager at that time, to Gregory Kaneski stating that the borrow pit was in compliance. There were no other documents regarding this site visit.

There were two permits issued for the McKeever pit. One was issued in 1988 by Fredenberg Township and the other was issued in 2006 by St. Louis County. Under Determination A, does Lakehead Trucking have an active conditional use permit? There is an active permit that was issued in 2006. However, the 2006 conditional use permit was for an expansion only. The 1988 conditional use permit was only for five years. Lakehead Trucking operated from 1993 to 2006 with no active conditional use permit.

Lakehead Trucking is not in compliance with the conditions of the 2006 permit. There were five conditions for that 2006 approval. Four of the five conditions are not in compliance and the other condition may be out of compliance. This was a part of Determination B, is Lakehead Trucking's McKeever pit in compliance with their conditional use permit.

The condition "No access into the pit from the west and any trails shall be blocked at the pit property line" is not in compliance. The pit has dug into the trail and the trail is not blocked. This has created a public safety hazard. This is the existing snowmobile trail. She took pictures of the trail when walking the trail with her children.

The condition "A 50 foot buffer from any wetlands shall be maintained unless the wetland technical committee authorizes wetland impact. Authorization for pit operations within 50 feet of the west and south boundary shall be obtained prior to issuance of a land use permit. There shall be a wetland determination relating to the existence of wetlands on the site. The determination must be done before July 1, 2006" is not in compliance. There was no wetland determination located. A permit would not have been issued if the conditions were not met.

The condition "A reclamation bond be submitted to the county for the cost of reclaiming the borrow pit in the NW 1/4 of the NE 1/4 and the NE 1/4 of the NE 1/4, Section 27, Town of Fredenberg. The bond shall equal \$10,000 plus \$2,000 per acre of disturbed area. A reclamation plan for both forties shall be submitted to the Planning Department" is not in compliance. There was no reclamation plan on file. A permit would not have been issued if the conditions were not met. On April 23, 2023, Mark Lindhorst spoke with Todd Kaneski requesting a reclamation plan

by April 28, 2023. No reclamation plan was found when the data request was completed August 3, 2023.

Under Determination C, Facts: Based on information provided by the permit holder and review of aerial imagery of the property, an area in the south portion of the property has been reclaimed, an adjacent area to the northwest of the reclaimed area and another area in the west are actively being reclaimed, and extractive-use activities are in progress in the remaining areas. The permit holder is in compliance with this provision. However, if the reclamation is not complete, how is the permit holder in compliance? Jennifer Bourbonais was to follow up with Lakehead regarding its reclamation plan and reclamation activities. This was part of a draft administrative determination. The actual determination read: "Based on information provided by the permit holder and review of aerial imagery of the property, an area in the south portion of the property has been reclaimed, an adjacent area to the northwest of the reclaimed area and another area in the north portion of the property area are partially reclaimed and are being sloped, and extractive-use activities are in progress in the remaining areas. The permit holder is in compliance with this provision." There was no reclamation plan on file.

On December 18, 2020, an email from Jennifer Bourbonais to Donald Rigney stated: "Response to reasons to revoke Lakehead Trucking conditional use permit at 6464 Fredenberg Lake Road: the only potential violation that may need resolution on other property is reference above as to the bank slope and reclamation. It is part of our compliance process to work with property owners to resolve any outstanding issues prior to moving on to revoke a permit. If property is not brought into compliance in a timely manner, then we may pursue the revocation process via the St. Louis County Planning Commission."

Reclamation standards have not been followed. If reclamation is supposed to be at a 3:1 ratio, a 40 foot excavation would require 120 feet of reclamation, which is a lot of reclamation.

In response to Determination D: If there is an active conditional use permit, is the operation of the borrow pit located at 6297 Lavaque Road, Duluth MN 55803, in compliance with St. Louis County Zoning Ordinance 62, Article VI, Section 6.22.G.9 (no disturbance setbacks)? There was no inspection in August 2022. It was a site visit to one of the five parcels of the McKeever Pit. How can a setback be determined in a site visit and looking at aerial imagery? The County Land Explorer is not survey quality. Review of aerial imagery of the property is not accurate to determine a setback. This has been an issue since the 2006 conditional use permit. The air photo indicated the southern part of the pit may be within 50 feet of the south boundary line. The December 18, 2020, email from Jennifer Bourbonais to Donald Rigney stated: "Setbacks appear to be met as per buffer setback maps provided. Using County Land Explorer to determine setbacks can be misleading depending on the angle of the photo, etc. A setback between 46 feet and 50 feet could be negligible." Condition 2 in the 2006 conditional use permit approval stated: "There shall be a 50 foot no disturb buffer area along the north property line. No excavation shall take place within 50 feet of the line except for final reclamation." This was also discussed in the 2008 inspection report, which stated: "Current pit wall in parcel 04855 is 164 feet from the Older property line on north. The height of wall will likely result in the sloping to the property line" and "Condition 2 could be a problem if working face continues northward."

For Determination E, the Facts stated that staff did not observe any water issues during the inspection in August 2022. Ordinance 62, Article VI, Section 6.22.G.18 provides “All extractive uses shall take measures to control erosion and runoff that has the potential to damage adjacent land.” She provided drone imagery showing that there are erosion concerns and there is no reclamation visible.

The 2006 conditional use permit stated there would be an 800 foot setback to Lavaque Road. It was marked down on the site map showing the 800 foot setback. Why does the site map setback not matter?

In review, why are there no documents, reports, or pictures from the 2021 and 2022 site visits? Why was the McKeever pit not properly inspected after the first complaint was filed in October 2020? What is a reasonable amount of time for reclamation compliance? There were warnings of reclamation issues in the 2008 borrow pit inspection. The timeline has been from October 2020 to the present date, which is two years and nine months. Ordinance 62 reclamation must be completed within six months of termination. The staff report withheld the fact that there is no reclamation plan on file. The land alteration violation is a period of 14 days that St. Louis County gives to landowners to bring property into compliance. Aerial images from the County Land Explorer are not acceptable. They are not survey grade so why is the Planning Department using it this time?

The review of the conditional use standards from the 2006 approval are that the trail is not blocked (there is no fence or anything else for safety), there has been no wetland determination, no reclamation bond was submitted, there is no reclamation plan or reclamation activity, there has been no erosion control and the Planning Department refuses to check the no disturbance setbacks.

On October 19, 2020, Todd Kaneski contacted St. Louis County to ask if the county was aware of the complaint against the McKeever pit operation and within 90 minutes a Webex was set up for Mr. Kaneski to talk to Director Johnson, Jennifer Bourbonais, Brian Fritsinger, St. Louis County Administration, and Thomas Stanley, St. Louis County Attorney’s Office. Director Johnson wrote on December 24, 2020, to Clayton Cich, “If non-compliance continues at a specific parcel after such outreach and a reasonable amount of time, the ordinance provides tools for enforcement, including the potential to revoke county-issued permits.”

Lakehead Trucking’s McKeever pit is in noncompliance of the conditions of the 2006 conditional use permit and of Ordinance 62. The permit should be revoked.

Six members of the audience spoke.

*Mike Anderson*, 6456 Olson Drive, stated the presentation was compelling and it shows how things have been side-stepped and how nothing has been done with this issue for a long time.

*Clayton Cich*, 4955 Vista Bay Drive, stated he has served as a Fredenberg Town Supervisor for the past ten years. In May 2023, he was on the snowmobile trail and took pictures and video. He recorded pit activity on the north face where there was digging. At some point, Todd Kaneski informed the snowmobile club that the snowmobile trail would be closed, and it would be his (Mr. Cich’s) fault. There is a permanent easement for this trail on the property. He passed out a letter

with this information to all the restaurants and other businesses in the township that benefit from the snowmobile trail. The trail has been unsafe because of the way it was dug into.

*Ann Cich*, 4955 Vista Bay Drive, wanted to address the snowmobile trail. She has snowmobiled for over 50 years. The most dangerous situation was the trail along McKeever pit. There are a lot of fast drivers along that trail, and she is happy nothing ever happened along the trail because it is straight down. An accident could happen at any time.

*Oly Olson*, 4931 Fish Lake Road, stated this is a nice and peaceful place to live. They have children and grandchildren that love being out here. The information presented shows how things get swept under the rug and it shows how people get special determinations just for them. If he was building a home and the dimensions were changed, he would be in trouble. This stuff has to be taken care of instead of being swept off to the side. There are rules and the rest of the county folks should follow them. The rules should not be that difficult.

*Bruce Anderson*, 4929 Fish Lake Road, stated if Ordinance 62 had been followed way back, there would be no administrative appeal cases. He noted the letter from Mark Lindhorst to Todd Kaneski in April 2023. With no reclamation plan on file and with two years and nine months of non-compliance is staggering. There are so many facts here and a lot of information. He asked the Board of Adjustment to review the facts and look at the pictures. There are 35 days to go through this information and this does not have to be gone through today.

*Chris Bell*, 6382 Beaver River Road, stated they are getting tired of this ongoing situation. This is overwhelming that Melissa Bell has done her homework and there is overwhelming evidence that this permit should be revoked. The pictures are very clear. It should not have gone on for this long. This is evidence from St. Louis County. The Board of Adjustment has the power to revoke this permit and they should.

No other audience members spoke.

The *Board of Adjustment* discussed the following:

- A. Board member *McKenzie* asked if Ms. Bell was aware of the pictometry feature on the County Land Explorer which is more detailed, and photographs were taken by airplane. *Melissa Bell* asked how this pictometry feature would impact property lines. Board member *McKenzie* stated these property lines are not survey grade, but the imagery and detail are much better than the regular County Land Explorer. *Melissa Bell* stated she spoke to *David Yapel*, Planning Manager for the GIS division and she asked specifically if there was any other program more accurate than the County Land Explorer and was told that all programs were the same. There is no accurate system for property lines. She used drone imagery to show reclamation and the erosion.
- B. Board member *Werschay* asked the appellant if she had been treated fairly in this public hearing and was given enough time to say what she needed to say. *Melissa Bell* stated no.
- C. Board member *Pollock* asked what was the 60 day information that needed to be turned in. *Nick Companario*, St. Louis County Attorney's Office, stated that the 60 day information was about 6464 Fredenberg Lake Road. This is a separate borrow pit. Board member *Pollock* stated the 60 day rule does not apply here. *Nick Companario* stated that nobody

has taken a position, and nobody asked the Board to declare that the McKeever pit permit should not have been issued in the first place.

- D. Board member *Svatos* asked about the unsafe conditions along the snowmobile trail and how were they addressed? *Mark Lindhorst* stated that this is an easement, and the Planning Department does not control easements. There are no provisions in the Ordinance regarding setbacks. Those are between the easement holder and the property owner. There was nothing received from the snowmobile club regarding the snowmobile trail and its condition. There was nothing in the 2006 conditional use permit that addressed the snowmobile trail or addressed setbacks from the snowmobile trail. There are no setback standards or reclamation standards for that snowmobile trail.
- E. Board member *Manick* asked about sloping during the reclamation and added that material can be brought in to help with sloping. *Mark Lindhorst* stated if setbacks are met, there are opportunities to reclaim by bringing material in and backfilling. Several pits use this to operate in order to get the most value out of the material that is there. Board member *Manick* stated some of the timelines seem impractical. It seems there is some waste when owners reclaim before all of the material can be used. *Mark Lindhorst* stated this is what the owner here is utilizing on the property and only he can speak to that.
- F. Board member *Coombe* asked if the court case referenced during the last administrative appeal included this borrow pit at 5297 Lavaque Road. *Nick Companario* stated no.
- G. Board member *Filipovich* asked if there is a reclamation deadline for what the borrow pit is doing now. *Mark Lindhorst* stated in the 2006 conditional use permit there is a reclamation standard which allows sloping, and this is the reclamation plan on file. Whether or not there is a copy from 2006, there might not be anything in the folder. Even if the paperwork is not there, the landowners would still need to meet the reclamation standards. This is their way of saying they agree to those standards. Some people will submit reclamation plans for a pond.
- H. Board member *Werschay* asked if there is no control over the snowmobile trail and how dangerous it appears to be. *Mark Lindhorst* stated that this is an easement and not a property line, so there is no property line setback. That setback is between the snowmobile club and the landowner. This has nothing to do with the borrow pit at this time. *Nick Companario* stated in the 2006 conditional use permit, it read that there appears to be a trail coming into the property off of the Pontoon Bay Road to the west. It was noted that the trail should not be used to come into the pit. The first condition also reads “No access into the pit from the west and any trails shall be blocked at the pit property line.” If there is a trail that enters the property and it has not been blocked, there may be an issue there. The requests for administrative determinations with respect to the McKeever pit did not raise this issue. No administrative determination was made on this issue. Based on what he heard, there may be an issue here. There is little that can be done on this matter, but it deserves follow-up. Board member *Pollock* asked if the entire trail is an easement or is there a part that is on this property that can be blocked off. *Melissa Bell* stated that Determination B asked if conditions in the 2006 conditional use permit are being met. This administrative determination does go through that permit. They are related and it is a part of the administrative determination. Board member *Pollock* asked for Ms. Bell’s response to administrative determinations A, B, C, D, E, and F. The Board of Adjustment can affirm wholly or partially each one of the six administrative determinations.

- I. *Nick Companario* stated that Determination B did not address if the landowner was in compliance with all conditions of the 2006 conditional use permit. This was in relation to the 1988 conditional use permit that no longer applies.
- J. Board member *Manick* stated in the packet was a copy of the 2006 conditional use permit decision. That condition read that there would be no access into the pit. Has the landowner and the snowmobile club come up with the agreement to not block the trail? The landowner would need that agreement to block the trail. If there is a side agreement, there is nothing in writing. If it were blocked, if someone walked that trail they would be trespassing. *Nick Companario* stated there was no administrative determination requested or issued with respect to the trail issue. The trail issue is not a part of this appeal.
- K. Board member *McKenzie* stated under the Ordinance an appeal should have been made long before now. Why is the Board of Adjustment considering this? *Nick Companario* stated there is a timeline for an appeal to an administrative determination from the Director to the appellant to this Board. The appeal was made in that timeline. There was a scheduling issue which is why this hearing is being heard today.
- L. Board member *Coombe* asked how does someone judge the appellant's information or the County's information? The appellant provided an informative presentation. The Board also received their packet from county staff. The Board cannot walk the property as that would be considered trespassing. This gravel pit has been there since 2006 and it is now 2023. These issues did not develop overnight. Was this brought to someone's attention and the Board is unaware of this. *Mark Lindhorst* stated there was just the first complaint. When he gets a borrow pit complaint, he sends a letter to the landowner stating the issues. This one was done, and they did not know until 2020. Board member *Werschay* asked if there had been no complaints on this pit for 15 years? *Mark Lindhorst* stated not that he is aware of. He noted that the pit was in operation for long before 2006. The pit was first permitted by Fredenberg in 1988 and it was in operation before that. *Melissa Bell* added that Mark Johnson's borrow pit inspection noted compliance issues in 2008. There were issues long before 2020.
- M. Board member *McKenzie* stated he may be more comfortable with extending the decision for some time in order to process this information. Board member *Coombe* stated this decision should be made unless there is more information. Board member *Pollock* asked for the six administrative determinations to be up in order to see whether or not to affirm, modify or not affirm each one. What was stated in Ms. Bell's Powerpoint raised questions. Board member *Manick* stated each point could be picked apart. A recess was called in order to provide the Board of Adjustment time to read through the information packet.
- N. Board member *Coombe* asked about requiring a reclamation plan and if a reclamation implementation date should also be added. Just because there is a plan, if there is an issue with banks, that would not make the landowner do anything. Board member *Manick* asked what happens if this plan does not include a bank? What if the landowner is still removing gravel from that location and it is not included in the plan? Board member *McKenzie* stated that would not be practical. The requirement would be to require a reclamation plan as well as an implementation plan. Board member *Pollock* stated that someone should say that the areas have been reclaimed. Board member *Werschay* asked what staff's intentions were about asking the landowner for the reclamation plan this year. *Mark Lindhorst* stated that he wanted to know which areas were being excavated, which areas were reclaimed, and which areas were in the process of being reclaimed where the material was exhausted and

resloping could be done. That information is used for future site visits to determine what has been reclaimed. Board member *McKenzie* stated that gravel pits are not neat, clean, orderly, or cut-and-dry. This requires a plan and implementation. Board member *Coombe* stated that if there is a plan, there should be an implementation plan.

- O. Board member *Pollock* stated that if there are reclaimed items, these items can be inspected. If they are working on reclamation, the landowners can say they are. Otherwise, the areas are still being mined. Board member *Manick* stated there should be some closure. There could even be an aerial map showing which areas are reclaimed or not reclaimed. This could be a part of the reclamation plan. If the slope is not 3:1, it is not reclaimed yet. Does staff go out there to get an idea of what is reclaimed? *Mark Lindhorst* stated this is still an active borrow pit. There may be another ten years of mining. If there are exhausted areas, the landowner should be in the process of reclaiming these areas. If the plan is on file in the office, any future inspections would be able to determine which areas are being reclaimed and which areas the landowner would need to start reclaiming. Board member *Pollock* asked if this plan should be updated every year. *Mark Lindhorst* stated getting the plan would be where to start.
- P. Board member *McKenzie* stated the Board needs to be careful about requiring things that are unfair to the landowner. Just because this pit has come to their attention, they do not need to make requirements that are unfair or unrealistic. Board member *Manick* added if there is an open, working face, it is none of their business. Board member *Werschay* stated they are not telling the landowner to do anything. They are simply asking what the landowner's plan is. Board member *Pollock* stated this is just a baseline to show what is active and what should be reclaimed. Board member *Manick* added this is what the intent of *Mark Lindhorst's* letter to Todd Kaneski was.
- Q. Board member *Pollock* asked if there was a standard reclamation plan form. *Mark Lindhorst* stated there is no standard form. The landowner can use the one that comes with a borrow pit application or they may create their own. How staff does their inspection has nothing to do with this administrative appeal. The Ordinance will take care of the rest of the process of this plan. Board member *McKenzie* stated the Board is making this too difficult.

## DECISION

**Motion by McKenzie/Manick** to affirm wholly the Director's administrative determinations A, B, D, E, and F, as provided in Article VIII, Section 8.6.B.4.c.i, and Article X, Section 10.6.B.2, of the zoning ordinance and Minnesota Statute § 394.27, subd. 6. Administrative determination C shall be modified to require a reclamation plan from Lakehead Trucking LLC within 90 days.

The administrative determinations are as follows:

- A. Is the operation of the borrow pit located at 6297 Lavaque Road, Duluth MN 55803, pursuant to an active conditional use permit?
  - 1. Determination: The subject property is subject to an active conditional use permit, namely the conditional use permit approved by the St. Louis County Planning Commission in February 2006.
  - 2. Ordinance: St. Louis County Zoning Ordinance 62, Article VI, Section 5.6.B, indicates general purpose borrow pits (Extractive Use) are an allowed use with a conditional use permit.



3. Facts: The St. Louis County Planning Commission conducted a public hearing for the proposed extractive use and based on facts and findings and public testimony, the request was approved with conditions on February 6, 2006.
  4. There is no dispute that this is an active borrow pit. This has been an approved pit since February 6, 2006 and this extractive use is an allowed use.
- B. If there is an active conditional use permit, is the operation of the borrow pit located at 6297 Lavaque Road, Duluth MN 55803, subject to, and compliant with the conditions of the 1988 Fredenberg Township conditional use permit?
1. Determination: The subject property is no longer subject to the conditional use permit approved in 1988; again, the applicable conditional use permit is the conditional use permit approved by the St. Louis County Planning Commission in February 2006.
  2. Ordinance: St. Louis County Zoning Ordinance 62, Article VI, Section 5.6.B, indicates general purpose borrow pits (Extractive Use) are an allowed use with a conditional use permit.
  3. Facts: The property is subject to an active conditional use permit, namely the conditional use permit approved by the St. Louis County Planning Commission in February 2006.
  4. There is no dispute that the 1988 conditional use permit is no longer active.
- C. If there is an active conditional use permit, is the operation of the borrow pit located at 6297 Lavaque Road, Duluth MN 55803, in compliance with St. Louis County Zoning Ordinance 62, Article, VI, Section 6.22.H (Reclamation Standards)?
1. Determination: Based on information provided by the permit holder and review of aerial imagery of the property, an area in the south portion of the property has been reclaimed, an adjacent area to the northwest of the reclaimed area and another area in the north portion of the property area are partially reclaimed and are being sloped, and extractive-use activities are in progress in the remaining areas. The permit holder is in compliance with this provision.
  2. Ordinance: St. Louis County Zoning Ordinance 62, Article VI, Section 6.22.H, states all extractive uses shall implement reclamation standards and enumerates minimum standards with respect to reclamation.
  3. Facts: Based on information provided by the permit holder and review of aerial imagery of the property, an area in the south portion of the property has been reclaimed, an adjacent area to the northwest of the reclaimed area and another area in the west are actively being reclaimed, and extractive-use activities are in progress in the remaining areas. The permit holder is in compliance with this provision.
  4. The March 31, 2023, letter stated that the permit holder is in compliance with this provision based on aerial imagery of the property.
  5. Lakehead Trucking is required to submit a reclamation plan within 90 days to show what the landowner is going to do with a current status report.
- D. If there is an active conditional use permit, is the operation of the borrow pit located at 6297 Lavaque Road, Duluth MN 55803, in compliance with St. Louis County Zoning Ordinance 62, Article VI, Section 6.22.G.9 (no disturbance setbacks)?

1. Determination: Based on an evaluation of the subject property during an inspection conducted in August 2022 and review of aerial imagery of the property, the permit holder is in compliance with this provision.
  2. Ordinance: St. Louis County Zoning Ordinance 62, Article VI, Section 6.22.G.9, enumerates standards with respect to no-disturbance setbacks from property lines, public road rights-of-way, public utilities, municipal boundaries, and wetlands.
  3. Facts: Based on an evaluation of the subject property during an inspection conducted in August 2022 and review of aerial imagery of the property, the permit holder is in compliance.
    - Pit activity is setback from Lavaque Road approximately 750 feet.
    - No disturbance setbacks from property lines meet or exceed the setback requirements.
  4. There is no dispute that the pit meets no disturbance setbacks.
- E. If there is an active conditional use permit, and if water table or water retention issues have been observed, is the operation of the borrow pit located at 6297 Lavaque Road, Duluth MN 55803, in compliance with the permit and St. Louis County Zoning Ordinance 62, Article, VI, Section 6.22?
1. Determination: We did not observe any water issues during our inspection in August 2022. With respect to the images included in the relevant portion of the applicant's e-mail of July 10, 2022, it does not appear that the water shown in the images implicates any condition in the applicable conditional use permit or any aspect of Article VI, Section 6.22.
  2. Ordinance: St. Louis County Zoning Ordinance 62, Article VI, Section 6.22, does not include standards for water table or retention issues.
  3. Facts: We did not observe any water issues during our inspection in August 2022. With respect to the images included by the applicant, it does not appear that the water shown in the images implicates any condition in the applicable conditional use permit or any aspect of Article VI, Section 6.22.
    - Note that Article VI, Section 6.22.G.18, provides, "All extractive uses shall take measures to control erosion and runoff that has the potential to damage adjacent land." This standard is being met.
  4. Ordinance 62 does not include standards for water retention or water table issues. It does include erosion control requirements.
- F. If there is an active conditional use permit, and if the setback from Lavaque Road is less than 800 feet, is the operation of the borrow pit located at 6297 Lavaque Road, Duluth MN 55803, in compliance with the permit and St. Louis County Zoning Ordinance 62, Article, VI, Section 6.22?
1. Determination: The applicable conditional use permit does not contain any condition concerning a setback from Lavaque Road. With respect to the ordinance, Article VI, Section 6.22.G.9.b, provides, in relevant part, "A no disturbance setback, including the haul road, shall be 50 feet from the edge of all public road rights-of-way." Based on an evaluation of the subject property during an inspection conducted in August 2022 and review of aerial imagery of the property, the permit holder is in compliance with this provision.

2. Ordinance: St. Louis County Zoning Ordinance 62, Article VI, Section 6.22.G.9.b, states that a no disturbance setback of 50 feet from edge of all public road rights-of-way.
3. Facts: Based on an evaluation of the subject property during an inspection conducted in August 2022 and review of aerial imagery of the property, the permit holder is in compliance with this aspect of the provision (and all other aspects of Article VI, Section 6.22.G.9).
  - Pit activity is setback from Lavaque Road approximately 750 feet.
4. The pit has a 750 foot setback from Lavaque Road, which is far more than required.

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

**Opposed:** None - 0

**Motion carried 7-0**

**Motion to adjourn by Pollock. The meeting was adjourned at 1:43 PM.**