

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, AUGUST 10, 2023.

9:00 AM – 10:37 AM

Planning Commission members in attendance: Tom Coombe
Steve Filipovich
Dan Manick
Pat McKenzie, Chair
Commissioner Keith Nelson
Ross Petersen
Dave Pollock
Ray Svatos
Diana Werschay

Planning Commission members absent: None

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

NEW BUSINESS:

1. Hannon Road Sand and Gravel LLC, a conditional use permit for a general purpose borrow pit as an Extractive Use - Class II.
2. Elizabeth Chapman, a conditional use permit for five animal units, equivalent to 25 dogs, where one animal unit, equivalent to five dogs, is allowed.

OTHER BUSINESS:

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

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

Opposed: None - 0

Abstained: Nelson, Svatos - 2

Motion carried 7-0-2

NEW BUSINESS:

Hannon Road Sand and Gravel LLC

The first hearing item is for Hannon Road Sand and Gravel LLC, a conditional use permit for a general purpose borrow pit as an Extractive Use - Class II. The property is located in S15, T59N, R21W (Unorganized). *Mark Lindhorst*, St. Louis County Senior Planner, reviewed the staff report as follows:

- A. The applicant is proposing a general purpose borrow pit to include crushing, screening, portable hot mix and recycling of asphalt.
- B. It is estimated that 10,000 cubic yards of material will be removed each year.

- C. The applicant is proposing the standard hours of operation which are from 7:00 a.m. until 8:00 p.m., Monday through Saturday.
- D. It is estimated that up to ten trucks will be leaving the pit per day.
- E. The parcel is currently undeveloped with access to the proposed borrow pit.
- F. The property contains wetlands that have been delineated. The Wetland Conservation Act shall be followed for any proposed impacts.
- G. Per the survey and site map, the maximum area for excavation is 23 acres.

Mark Lindhorst reviewed staff facts and findings as follows:

- A. Plans and Official Controls:
 - 1. Zoning Ordinance 62, Article V, Section 5.6 B., indicates general purpose borrow pits are an allowed use with a Conditional Use Permit.
 - 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 and agricultural land. These large tracts of land are under both private and public ownership.
 - 2. The development density in this area is very low except for lake shore development along Island Lake which is over one-half mile from the haul road and borrow pit.
- C. Orderly Development:
 - 1. This is a rural area consisting primarily of 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 Factors:
 - 1. The applicant has an approved access from the St. Louis County Public Works Department and the wetlands have been identified.
 - 2. A Stormwater Pollution Prevention Plan has been prepared for the proposed use.
 - 3. The total pit area to be excavated is 23 acres.

Mark Lindhorst noted one item of correspondence received after the deadline from Janel Rutherford with concerns. This item was passed out to the Planning Commission during 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:

1. All minimum extractive use standards shall be followed.
2. The extractive use activity shall be limited to less than 40 acres.
3. The applicant shall adhere to all local, county, state, and federal regulations.
4. The Wetland Conservation Act shall be followed.

Jeff Cimermanic, 121 Highland Drive, Hibbing, the applicant, stated he and his wife use this property as hunting land with a shack located down the road. This is a project they have worked on for some time in preparation for retirement. He had the Ullands dig holes to see what material exists in this pit. This is not a great gravel pit, but there are a few different types of sand. There is a need for sand. He has had some material removed. He does not haul material himself and he has no intention to at this time. He just wanted access to the material that is needed. When he was notified by staff he was in violation, he no longer allowed material to be removed from the pit. He has added berms along the haul road. He has double silt fence along side the road. He installed 1,400 lineal feet of silt fence along the edge of the road and he added berms to the top of the road. He installed 40 feet of crushed rock. That is to stop any material from tires getting onto the county road. They do not have any mud or anything in this pit. Everything is sloping into the property. Whatever material is below is as good or better than what they already have.

There were two existing pits in the area; one was on Green Rock Road which has been depleted and one is owned by St. Louis County on Sunset Lake that the public can no longer haul from. He does not want to sell this pit off to a larger operator. He wants to see this through. He has done the stormwater and MPCA permits. He is continuing to learn about the process and enforcement. He worked with Benchmark Engineering.

No audience members spoke.

Janel Rutherford declined to speak and stated she had submitted her written comments.

The *Planning Commission* discussed the following:

- A. Commission member *Svatos* asked if there was gravel removed prior to the conditional use permit because the site looks disturbed. *Mark Lindhorst* stated the applicant purchased this property some time ago. The applicant had removed material to create the haul road and was working on erosion control. There may have been more activity.
- B. Commission member *Filipovich* asked if this property is near the state forest boundaries and asked if this proposal would have anything to do with that development. *Mark Lindhorst* stated that is not in the Zoning Ordinance. The use is allowed on private land when applying for a conditional use permit.
- C. Commission member *Coombe* asked where the correspondent's property is located. *Donald Rigney*, Acting Secretary, stated the correspondent is on virtually and her property address is 12317 Hannon Road.

- D. Commission member *Werschay* asked if there were pictures of the haul road. *Mark Lindhorst* stated that there were two included in the presentation. The haul road is 700 to 800 feet long.
- E. Commission member *Svatos* asked if the applicant had the material tested for septic systems because there is demand for that. *Jeff Cimermancic* stated that Tim Grahek from Ullands came and dug 12 holes and sampled eight locations. There is the overburden material on top which goes from one to six feet in depth. Below that is sand and gravel, which is still good material. There is likely a lot of septic system material down there.
- F. Commission member *Coombe* stated the correspondence referenced that the applicant had removed material from this gravel pit for two years. *Jeff Cimermancic* stated he has done this off and on over the past two years. There was not a lot of activity. These are one-man operators that are removing this material.
- G. Commission member *Manick* asked if the applicant is just managing this pit and is not operating. *Jeff Cimermancic* stated he is the manager. Commission member *Manick* added that the manager will need to oversee that those operating in the pit will follow the rules.
- H. Commission member *Manick* asked if the applicant had located the rock needed to have an asphalt plant. *Jeff Cimermancic* stated it was Mark Lindhorst that recommended he apply for it now in case there was ever local road work done. If he did not apply for that use now, he would need to come back later to add that use. He will not invest on a crusher or a screener, but if someone like Ullands wanted to come in for that type of use, this request would cover that.
- I. Commission member *McKenzie* asked about the four-wheeler trail. *Jeff Cimermancic* stated the trail does not go through his property. He used this property for hunting and did not want four wheelers on his property. He helps four wheelers get through the wetlands. The trail is to the west of his property near the rifle shooting range.

DECISION

Motion by Manick/Pollock to approve a conditional use permit for a general purpose borrow pit as an Extractive Use - Class II, to include crushing, screening, portable hot mix, and recycling of asphalt, based on the following facts and findings:

- A. Plans and Official Controls:
 - 1. Zoning Ordinance 62, Article V, Section 5.6 B., indicates general purpose borrow pits are an allowed use with a Conditional Use Permit.
 - 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 and agricultural land. These large tracts of land are under both private and public ownership.

2. The development density in this area is very low except for lake shore development along Island Lake which is over one-half mile from the haul road and borrow pit.
3. The use is compatible with the existing neighborhood.

C. Orderly Development:

1. This is a rural area consisting primarily of 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 an approved access from the St. Louis County Public Works Department and the wetlands have been identified.
2. A Stormwater Pollution Prevention Plan has been prepared for the proposed use.
3. The total pit area to be excavated is 23 acres.

The following conditions shall apply:

1. All minimum extractive use standards shall be followed.
2. The extractive use activity shall be limited to less than 40 acres.
3. The applicant shall adhere to all local, county, state, and federal regulations.
4. The Wetland Conservation Act shall be followed.

In Favor: Coombe, Filipovich, Manick, McKenzie, Nelson, Petersen, Pollock, Svatos, Werschay - 9

Opposed: None - 0

Motion carried 9-0

Elizabeth Chapman

The second hearing item is for Elizabeth Chapman, a conditional use permit for five animal units, equivalent to 25 dogs, where one animal unit, equivalent to five dogs, is allowed. The property is located in S23, T63N, R12W (Morse). *Skyler Webb*, St. Louis County Planner, reviewed the staff report as follows:

- A. The applicant is requesting approval of five animal units for 25 dogs where one animal unit for 5 dogs is allowed.
- B. The parcel is 4.3 acres in size, where a parcel greater than 4.5 acres is required to accommodate five animal units.
- C. The owner currently has 18 dogs for personal use located on the parcel.

- D. The parcel contains a house and garage serviced by a permitted septic system. There is a kennel building located on the property.
- E. The property appears to be well vegetated with good screening from the road and adjacent properties.
- F. The parcel has an elevation change of 14 feet sloping gently from the east to the west side.
- G. All animal waste will be collected daily and disposed of off-site at a landfill location.

Skyler Webb reviewed staff facts and findings as follows:

A. Plans and Official Controls:

- 1. St. Louis County Zoning Ordinance 62, Article VI, Section 6.21 A., allows one animal unit per any 2-to-4.5-acre parcel.
 - a. The applicant is requesting five animal units on a parcel containing 4.3 acres.
 - b. A parcel size greater than 4.5 to 10 acres is required to allow up to five animal units.
- 2. Zoning Ordinance 62, Article VI, Section 6.21 A., states that animals, with the exception of up to five domesticated dogs or cats, shall not be penned within 200 feet of a neighboring residence. The nearest residence is approximately 350 feet from the kennel area.
- 3. Zoning Ordinance 62, Article VI, Section 6.21 A., states animals shall not be penned within 150 feet from any well. The well is located 196 feet from the kennel area.
- 4. The St. Louis County Comprehensive Land Use Plan Objective LU-5.3 encourages the protection of established residences from encroachment and the unintended impacts of incompatible uses.

B. Neighborhood Compatibility:

- 1. The surrounding area is zoned Shoreland Multiple Use (SMU)-11 and Multiple Use (MU)- 5 which allows for a variety of uses.
- 2. The property is located approximately 0.3 miles from Shagawa Lake.
- 3. There are approximately 14 residential properties within one-quarter mile of the applicant's property. These residential properties are a mix of seasonal and year-round.
 - a. The noise of the dogs may be an issue for neighborhood compatibility.
 - b. The closest residence is approximately 350 feet from the dog kennel.

C. Orderly Development:

- 1. The property is located in a relatively rural area north of Ely, but some residential growth may be anticipated because of its location near the city of Ely.
- 2. The area is developed residentially.

D. Desired Pattern of Development:

- 1. The development in the area is fairly low and consists mostly of residential and forested properties.
- 2. The Shoreland Multiple Use zone district would allow for a variety of uses with land use and conditional use permits.

E. Other Factors:

1. The applicant has constructed a fence surrounding the kennel building.
2. Zoning Ordinance 62 limits the number of animal units allowed on a parcel.
 - a. The number of animals that are anticipated to be on this parcel at any given time is not within the allowed animal units.
3. The town of Morse has submitted an official resolution of disapproval.

Skylar Webb noted eight items of correspondence from Morse Township resolution not in support of, Terence H. Cooper and Pamela Davis, Carlin Ryan, Erin and Pat Moravitz, and Larry Gotchnik not in support; and Leslie Clapper-Rentz and Dr. Jennifer Freking in support; and Patrick B. Steinhoff on behalf of the applicant. These items were 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 for five animal units where one animal unit is allowed, the following conditions shall apply:

1. A minimum 50 foot buffer of trees and vegetation shall be retained along the property lines to help mitigate noise created by the dogs.
2. An animal waste management plan shall be approved by the county and implemented by the property owner.
3. All other local, state, and federal regulations shall be followed.
4. The Minnesota Department of Health isolation distances from a water-supply well shall be followed.

One member of a government agency spoke.

Terry Soderberg, Morse Town Supervisor, stated a resolution was sent in opposition to this conditional use permit. This use is in a residential area and sled dog-type dogs tend to bark. This is not an area where this should be allowed. He has personal experience living near sled dogs and it was unpleasant.

Elizabeth (Beth) Chapman, 1385 Winton Road, Ely, the applicant, stated she recently moved to Ely because of the outdoor recreation available in the area. She has lived in northeastern Minnesota all her life. She has enjoyed being outdoors with her pets, which is what these dogs are. These dogs are not a business. She does take friends out for fun. Before she moved to Ely, she called the Planning Department asking if she would be allowed to purchase this property and bring her animals. Those she talked to were unsure what the rules were. She talked to Mark Lindhorst in Virginia before she purchased the property. He had stated a conditional use permit was not required and there was no issue. She bought the property and became a part of this community.

She is only 0.2 acres away from the 4.5 acres required for 25 dogs. The chart in Zoning Ordinance 62 contradicts itself based on the number of units allowed per acre. Her property is backed by a forest preserve so there is a natural buffer area there. She is conscious of her dogs, and she has trained dogs for years. She understands noise. There is a snowmobile trail behind her property which produces noise. There is a multi-use trail which has side by sides going up and down. There

is a bar located nearby where motorcycles and trucks go up and down the road. There is also a shooting range near this property. There is other noise located nearby.

Two audience members spoke.

Patrick Steinhoff, applicant's attorney, stated he submitted a letter on what the Zoning Ordinance says. The animal acres are on a per acre basis and not on the entire property basis. Based on the language, the applicant would be allowed one animal unit per acre. The applicant should not require a conditional use permit and is already in compliance. If the Planning Commission feels that the Zoning Ordinance reads correctly, there may be an amendment needed at the County Board.

Larry Gotchnik, 1347 Winton Road, Ely, stated his property is to the right of the subject property. The property line is about a hundred yards from their cabin. Noise has been an issue. There is traffic on Winton Road but that traffic does not occur in the middle of the night. He has nothing against sled dogs. They have been dog owners and took strict care of the dogs to ensure they did not bother neighbors. The laws are in black and white. There is a wildland management area behind his property called a shock farm. There is a snowmobile trail that goes through the heart of that. There is some snowmobile traffic at night. People walk the property as there are walking trails through the property. There are also grouse and deer hunters. They have had the least number of deer on this property than they have seen. While there are factors of rough winters and wolves, he feels deer are being shied away by the dogs. They have approximately 34 acres and theirs is the fourth generation to own this property as it once belonged to his great-grandfather. Upon retirement, they moved to this property in 2019. Other close neighbors provided their testimony about the noise issues. He asked the Planning Commission to consider the neighbors.

No other audience members spoke.

The *Planning Commission* discussed the following:

- A. Commission member *Svatos* asked how long the applicant has had 18 dogs on this site where only five dogs are allowed. *Skyler Webb* stated the applicant would have the answer to that.
- B. Commission member *Manick* asked if the applicant had 0.2 acres more than she currently does, she could have 25 dogs. *Skyler Webb* stated yes.
- C. Commission member *Svatos* asked if this permit were denied would the applicant need to reduce the number of dogs on the property to five. *Skyler Webb* stated that in order to come into compliance, the applicant would need to reduce the number of dogs on the property.
- D. Commission member *Coombe* asked if this permit request is after-the-fact or a compliance issue. *Skyler Webb* stated a complaint was received on this property and that is what led to this permit request. This conditional use permit would allow the applicant to come into compliance.
- E. Commission member *Filipovich* commented that the Winton Road is a heavily traveled road.
- F. Commission member *Werschay* asked if the applicant removes animal waste daily. *Elizabeth Chapman* stated that she does not bring the waste to the landfill every day, but she does bag it up. She goes once a week to the landfill.

- G. Commission member *Werschay* asked how far the dwelling is from the dogs on the property. *Elizabeth Chapman* stated it is not very far. Commission member *Werschay* asked if there are cameras on the property to monitor the dogs. *Elizabeth Chapman* stated not at the moment. Commission member *Werschay* asked how big the pen is these dogs are penned in. *Elizabeth Chapman* stated the fenced in area is approximately 60 feet by 80 feet in size.
- H. Commission member *Manick* asked if the applicant has any support from neighbors. *Elizabeth Chapman* stated she just moved to the area but there were no letters from the neighbors in support.
- I. Commission member *Petersen* asked if all 18 dogs were sled dogs. *Elizabeth Chapman* stated no. There are two border collies, one terrier, one lab and there is a mix of some pointer. With the exception of two, she has raised these dogs from birth. There are 14 sled dogs.
- J. Commission member *Svatos* stated the applicant quoted Mark Lindhorst stating everything was fine to purchase the property. *Elizabeth Chapman* stated she never had anything in writing. Commission member *Pollock* asked if Land Use Planners keep phone logs. *Donald Rigney*, Acting Secretary, stated there is nothing official kept and each Planner has their own way of keeping notes. *Mark Lindhorst*, St. Louis County Senior Planner, stated the first time he heard about this property was when it became an enforcement issue. He told the applicant what she needed to do to be in compliance. The applicant would need to acquire more property to be in compliance or the applicant would need to seek conditional use permit approval.
- K. Commission member *Manick* stated if the animal unit were allowed per acre there would be no table required. The second table identifies the number of animal units per acreage listed. There may be some words missing in the language, but that table is there for a reason. *Patrick Steinhoff* stated if the language is not clear, the tie goes to the landowner, and it is up to the county to defend what the language says. He cited a number of cases that were included in his correspondence. The government would need to say what the law is.
- L. Commission member *Petersen* stated he is familiar with this area. He is concerned about noise. He had dog kennels at the same elevation as his property that was a mile or so away from his house. He heard a lot of noise from that property, especially in the winter. This is a developing area. This is the wrong area for this type of use.
- M. Commission member *Coombe* stated he understands where the applicant is coming from, and he understands where the neighbors are coming from. The intent of the Planning Commission shows one animal unit for that size property in each Zoning Ordinance since 2004. If someone wants to interpret that differently that would be up to someone else to decide.
- N. Commission member *Pollock* asked if this case was discussed with Tom Stanley, St. Louis County Attorney's Office, at all. *Donald Rigney* stated he had a discussion with him yesterday. The way the typo has been written there may be some support for this case. This case is being heard today because of how staff has interpreted this ordinance. Commission member *Pollock* stated that this is the way this rule has been written. The applicant has legal recourse on how this is written. Commission member *Coombe* stated he does not feel the Planning Commission has the right to deviate from the Ordinance.
- O. Commissioner *Nelson* stated the text ambiguity is for the court to decide. His concern is that these are not animals the applicant is buying and selling. These are animals that she

has raised since they were born. Would there be a way to limit the applicant to 18 dogs and then as the dogs die off the number would be lower to comply with the ordinance? There was one case where the applicant had to build a structure to keep the dogs in, in order to mitigate the noise. Commission member *Petersen* stated this does not really mitigate anything for the adjoining property owners. They may have the noise issue for the next ten years or more.

- P. Commission member *Pollock* asked how one would get from 18 dogs to five dogs. There are 14 sled dogs and four regular dogs. There is no current building for these dogs.
- Q. Commission member *Svatos* noted he appreciates what the township has said.
- R. Commission member *McKenzie* stated that while serving as a Deputy Sheriff, he has wanted to change a statute but could not because the law is written the way the law is written. The ambiguity in the Ordinance language is the result of an error where the table was created. There is no Ordinance language that supports what is in the table. He will interpret the Ordinance the way it is written. He also understands the criteria of approval as laid out in the motion. Commission member *Coombe* agreed and stated he has spent a lot of time on this case.

DECISION

Motion by Manick/Nelson to deny a conditional use permit for five animal units, equivalent to 25 dogs, where one animal unit, equivalent to five dogs, is allowed, based on the following facts and findings:

- A. Plans and Official Controls:
 - 1. St. Louis County Zoning Ordinance 62, Article VI, Section 6.21 A., allows one animal unit per any 2-to-4.5-acre parcel.
 - a. The applicant is requesting five animal units on a parcel containing 4.3 acres.
 - b. A parcel size greater than 4.5 to 10 acres is required to allow up to five animal units.
 - 2. Zoning Ordinance 62, Article VI, Section 6.21 A., states that animals, with the exception of up to five domesticated dogs or cats, shall not be penned within 200 feet of a neighboring residence. The nearest residence is approximately 350 feet from the kennel area.
 - 3. Zoning Ordinance 62, Article VI, Section 6.21 A., states animals shall not be penned within 150 feet from any well. The well is located 196 feet from the kennel area.
 - 4. St. Louis County Comprehensive Land Use Plan Objective LU-5.3 encourages the protection of established residences from encroachment and the unintended impacts of incompatible uses.
 - 5. The use does not conform to the land use plan.
- B. Neighborhood Compatibility:
 - 1. The surrounding area is zoned Shoreland Multiple Use (SMU)-11 and Multiple Use (MU)-5 which allows for a variety of uses.
 - 2. The property is located approximately 0.3 miles from Shagawa Lake.
 - 3. There are approximately 14 residential properties within one-quarter mile of the applicant's property. These residential properties are a mix of seasonal and year-round.
 - a. The noise of the dogs may be an issue for neighborhood compatibility.

- b. The closest residence is approximately 350 feet from the dog kennel.
- 4. The use is not compatible with the existing neighborhood. Vegetation will not limit sound.

C. Orderly Development:

- 1. The property is located in a relatively rural area north of Ely, but some residential growth may be anticipated because of its location near the city of Ely.
- 2. The area is developed residentially.
- 3. The use may impede the normal and orderly development and improvement of the surrounding area. The applicant may move and kennel the dogs elsewhere. The adjoining landowners may leave their home and move elsewhere because the 18 dogs make noise.

D. Desired Pattern of Development:

- 1. The development in the area is fairly low and consists mostly of residential and forested properties.
- 2. The Shoreland Multiple Use zone district would allow for a variety of uses with land use and conditional use permits.
- 3. The location and character of the proposed use is not considered consistent with a desirable pattern of development.

E. Other Factors:

- 1. The applicant has constructed a fence surrounding the kennel building.
- 2. Zoning Ordinance 62 limits the number of animal units allowed on a parcel.
 - a. The number of animals that are anticipated to be on this parcel at any given time is not within the allowed animal units.
- 3. The town of Morse has submitted an official resolution of disapproval. Their consideration carries some weight.

In Favor: Coombe, Filipovich, Manick, Nelson, Petersen, Pollock, Svatos - 7

Opposed: McKenzie, Werschay - 2

Motion carried 7-2

Motion to adjourn by Svatos. The meeting was adjourned at 10:37 AM.