

EUREKA TOWNSHIP

**DAKOTA COUNTY
STATE OF MINNESOTA**

**Planning Commission Public Hearing
Zoning Ordinance Text Amendment for Dan Ames
May 3, 2016
7:00 PM**

Call to Order

Planning Commission Chair Sauber recused herself for the text amendment public hearing. Commissioner Frana called the Public Hearing to order at 7:00 PM. Planning Commission members present: Chair Nancy Sauber (recused), Commissioner Fritz Frana, Commissioner Donovan Palmquist and Commissioner Randy Wood. Township Attorney, Chad Lemmons was also present. See attendance sheet for additional residents in attendance.

Commissioner Frana stated the purpose of the Public Hearing is to consider a text amendment of the Mining Ordinance 6, Chapter 13, Section 2.H.1, Source of Materials. The current Ordinance reads, “ *Only materials from the site shall be processed at the mineral extraction facility, subject however to the following exceptions: Recyclable concrete and recyclable asphalt may be crushed and mixed on site if the crushing and mixing do not exceed 15 working days per calendar year and if the recyclable concrete and recyclable asphalt originated from a road demolition or road repair project in the Township of Eureka*”. The request is to allow operators of existing mines to bring in recyclable concrete and recyclable asphalt from outside of the Township to be crushed for a period not to exceed 15 days.

Dan Ames, 10005 235th Street West – We want to crush material for 15 days to blend our existing aggregates with recycled materials to make a product that is more usable in the construction and road industry. The virgin gravel does not set up as well. Should not be any more noise than is currently going on.

Gary Smith – 4628 235th Street West – Mr. Smith stated he was on a committee that wrote up the gravel-mining Ordinance. It took us a year and the committee did a lot of research. We determined we did not want cement plants, asphalt plants or crushing of cement or asphalt in this township. The cement dust is carcinogenic. I do not want our township to turn into a dump and I feel this would create a hazard. How much cement is going to be hauled in?

I want to go on record to say I oppose the change in the Ordinance.

Commissioner Frana –In source of Materials it states the operator may import materials on the subject property for the purpose of mixing with minerals, provided the importing of minerals does not exceed 25% of the minerals extracted from the subject property on an annual basis.

Sharon Buckley – 10355 225th Street West – I was on the task force to write the Mining Ordinance as it is now written. Gravel is a valuable resource and we have to mine it where it is. However, we need to have the Ordinance to minimize the effects of the health and safety of people and the environment. We need to limit what is brought in to make sure we are not creating an industry instead of mining a natural resource and extending the life of the mines. This Ordinance was not written to support an industry of bringing materials in but the wording allows that any concrete and asphalt in the Township can be crushed here. This was allowed as a very limited crushing period for the purpose of recycling. We do not want to create a recycling industry. In this application it says that two-way hauling will be utilized, however, that is something that is nice, but not required. It is not written into the Ordinance. As you know we have an enforcement problem in this Township, so if two way hauling is the intention, it would be something very difficult to enforce. I am opposed to this expanded use.

Matthew Abramson – 23041 Woodland Ridge Drive- My property borders the property where Mr. Ames is requesting a change. There is already a huge amount of noise in my residential area. I know Mr. Ames stated there would be no increased noise, but how do you crush these materials without an increase in noise. There is going to be increased noise and there is no way to get around it. I should not have to suffer through this in a residential neighborhood and it is only going to exacerbate the problem that already exists. I would like it to go on record that I am against changing the wording of the Ordinance.

Ken Metzla - 23535 Jersey Court – I am more worried about air pollution and noise pollution. I suspect it will be significant. I am against changing the wording of the Ordinance for that reason.

Charlie Liane – 9020 235th Street West – I live directly across from the facility. My concern is about lack of communication. He is working for you. The noise is tremendous. That pit has destroyed my way of life, my mental health and my physical health, not to mention what it has done to my property value. The Township will never address property values.

Acting Chair Fritz Frana stated this particular text amendment does not apply to Kelly Aggregate. The Ames pit is not located across from your residence. Mr. Liane stated please deny this-it is not going to be 15 days-it will end up being year round and hauling in product from all over the state.

Donald Holz – 23787 Essex Avenue – We came here in 1986 after losing our home in Eagan due to eminent domain and took a 10% loss. We live west of the operation on 235th. Once

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we change the laws on one pit, it will apply to all pits. We are facing another dilemma and I have talked to two real estate agents and have been told our property values will take at least 5% loss per operation. We have the gravel, we've got cement and now the crusher. We are talking at least a 15% loss. I am opposed to this. I cannot afford another loss like I did when we lived in Eagan. My wife has some lung issues and if there is more dust we may be forced to move

Robert Ripley – 235th Street West – Most of what I wanted to say has already been touched on. A lot of research was done to determine what should go into the original Ordinance. What the Board and the Planning Commission have to do is balance the businesses of the gravel mines with the homeowner's property values and quality of life. When they wrote the original Ordinance, they made some things that were allowed and stated some things that were not allowed, trying to maintain that balance. The Township continually tips it in favor of the gravel and mining pits at the expense of the homeowner and the surrounding community. What I see happening is that we will be here in another year and they will want to crush to 30 days and the next year six months. This is a slippery slope. It will become an industry taking over the Township and our lives. I think the main job of the Board and the Planning Commission is to keep the balance of the gravel pits and the balance of the residents. I feel that granting this will continue to tip the teeter-totter in the wrong direction.

I think there should be clarification – I believe you said to Mr. Liane that by changing this Ordinance it did not affect the gravel pit across from him, but indeed it will because by amending this Ordinance, it can now apply to all pits.

Commissioner Frana – it would affect the Storlie pit and the Barton pit and the Friedges pit. It would now potentially affect more than just pits. By slipping this balance in favor of the pits it will negatively affect the Township and surrounding properties. I ask that we do not pass this amendment.

Doug Houser – 9130 235th Street – I would like to know why we make Ordinances if we keep changing them. We have already changed the Mining Ordinance twice within six months and this will be the third time. There will be more traffic and more noise and way more dust. Mr. Houser then played an excerpt from his phone of the noise from his home coming from the pit. Mr. Houser stated he has heard no one tonight who is in favor of this except Mr. Ames. It is time to start thinking about the people. No one is in favor of this.

Commissioner Frana asked for some follow-up from Attorney Lemmons. Mr. Frana said any citizen can request a change in a text amendment.

Bill Flom – 10265 West 235th Street – We are directly across from the pit on the south side. I met Dan, and like Dan but this is my property value. If you do get a disease from the dust, it is irreversible. Mr. Funk handed out some pamphlets. The dust and the noise is a huge problem. I was surprised there were two separate Ordinances. I am confused why

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they give two different Ordinances for two different pits. He is going to dig 30 feet from my property. This is our backyard. He also says he can stay out until 7:00 PM and also on Saturdays. I am totally against this.

Attorney Lemmons stated that grandfathering under state law states that if the use was legal at the time the Ordinance was changed, that use could continue. It can't increase or change in nature, but it can continue and the right to that use passes with the land. That is why a new owner can continue the same use. It is non-conforming to the present Ordinance.

Shane Tregel - 10355 235th Street West – Five years ago we moved into the community –we have three small boys. We purchased the property knowing there was a gravel pit next to our property and researched it and found that it was a small operation. Concerning to me is that the change in the Ordinance could ramp up the operation of the pit considerably.

A lot of the points mentioned tonight were also some of my concerns. The truck traffic has increased significantly as well as the noise level on a regular basis. I also have concerns about my property value. I did not know before tonight that the Ames pit was grandfathered in. Dust is hugely concerning for me knowing that that silica dust is carcinogenic especially with my three small children. The groundwater from the activity is most likely getting into our well and coming into my home. If this were allowed to change and to increase their operation, would they be required to notify people near the mine when they would be doing this so we could at least keep our children in the house and keep windows closed. Who is benefitting from this change? The only thing I can see happening is health detriment to the residents.

Susan McPhee - Woodland Ridge Drive- I sat on the corner of 235th and Dodd for 20 minutes and I counted 28 side dumpers going into that property within 20 minutes. I am angry that I had to take time out of my life to come to another gravel pit public hearing.

To begin with, I would like to know who owns the gravel pit (formerly Barton Sand) being discussed and titled "Vermillion River Aggregates" as per the signage along 235th Street. I have had a difficult time finding any information on the Internet. Is it Ames Construction?

I have read through some of Eureka Township's Ordinances and one common theme I noted over and over again in a variety of those Ordinances was verbiage stating how important and necessary the health, safety and general welfare of the community is. At this stage, those words mean nothing. The outcome of this vote will show us if there are actions on your part to back those words up.

I find it interesting that this newly purchased location of less than one year is already trying to get an amendment to one of the few things that they have to adhere to, changes which will benefit them. It is almost as if this has been planned all along prior to the

purchase of the property. This has been in the works since at least April of 2009 in which Pat Mason of Ames Construction stated that their goal was to be able to bring recycled road material from outside Eureka into the mine site and process it there.

Minnesota Nuisance Statute – 561.01 states, *“Anything which is injurious to health, or indecent or offensive to the senses, or an obstruction to the free use of property, so as to interfere with the comfortable enjoyment of life or property, is a nuisance. An action may be brought by any person whose property is injuriously affected or whose personal enjoyment is lessened by the nuisance.”* I am here to tell you that the noise that has come from Vermillion River Aggregates is offensive, is a nuisance and has affected my personal enjoyment of my property.

The Minnesota Pollution Control Agency states that local governments are required to take reasonable measures to prevent the approval of land use activities that will violate the state noise standard immediately upon establishment of the land use.

Eureka Township Ordinance 2011-05 Regulating Noise and Nuisance within the Township: This Ordinance states *“The Town wishes to protect the public health and the values of property within the Township.”* As with other Ordinances, this one also goes into detail about what residents can and cannot do as it relates to they themselves creating a nuisance that ma affect public health, safety and welfare. Examples: *“The operation of lawn equipment, construction activities, radios, music or gatherings between 10:00 PM and 7:00 AM which produces noise plainly audible at the property line or at a distance of 50 feet.”*

Of interest is that applications can be made by individuals for a permit for relief from noise restrictions on the basis of undue hardships (#5 of this Ordinance). If granted, the approved activity, operation, noise or vibration source will be of a temporary duration. The permit must also contain all of the conditions to include effective dates, time of day, location, sound pressure level, and equipment limitations. The Township may prescribe any reasonable conditions deemed necessary to minimize adverse affects upon the community or the surrounding area.

My take away from that is the noise that residents make, that fall outside of the Noise and Nuisance Ordinance must be on a temporary basis and yet this company wants the blessing of the Board members to intentionally disrupt lives and bring additional stress on a continual basis.

Home Devaluation – Many factors can influence housing prices. Detrimental conditions such as landfills, pollution, airports, highways and other noise sources and have a negative impact on the price of the home.

What type of impact analysis or methodology was used to conclude that home values would not be negatively affected? Realtors are required to disclose proximity of such

things as gravel pits to potential homebuyers. You can find copies of letters submitted by realtors in other cases stating how difficult it is to sell property near a gravel pit.

I read that the Township Attorney had previously stated that those in opposition to Kelly Aggregates who had legitimate concerns of home values going down and that there would “Have to be concrete testimony to the fact, or it will be overturned. The only type of evidence that the court will recognize would be from an appraiser to determine the effects on surrounding properties.”

I find the Attorney’s statement interesting. Its one thing to get an appraisal BEFORE the site was to go into full operation mode before any amendment were to be approved. In order for an appraiser to accurately give an AFTER appraisal, you would have to have the gravel pit operating as it its been approved with the actual levels of traffic and noise that comes with it.

The sound was bad enough starting last fall to the point where it was no longer enjoyable to sit on the balcony or have windows open. Anyone living near these conditions deserves compensation. I am proposing that Vermillion River Aggregates put into place a “Property Value Guarantee” in which they would pay the homeowners the difference between the sale price and the appraised fair market value of homes nearby. (This has been done before in Illinois under a proposal from McHenry based Meyer Material Company).

There is a growing movement of people in this country who are done with elected officials who serve their own best interests or that of acquaintances. Keep that in mind when you cast your vote.

My Conclusion: Positions on the Eureka Township Planning Commission have become an attractive temporary “pit stop” for people in both the gravel pit and construction industries in which they are going about getting Ordinances changed that will benefit them personally.

Brian Ahern – 6215 235th Street – If you are willing to change one pit, I think you are fooling yourselves that it is going to only stay in one pit. The comment about no increase in traffic is false. We have more trucks per hour than we used to have per day. To be fair it can be related to a local project. Personally I work next door to the Gleason pit in Northfield where they crush cement and asphalt. They only crush for two or three weeks per year, but they probably crush about a year’s worth in that short period of time. In the meantime, materials are brought in every day and stockpiled to be crushed. That pile never goes away. It gets reduced during the crushing period. The “to be crushed pile” keeps expanding. I think the possibility of this going to other pits will become a very large-scale operation. The pit I live next door to there is a lot of extra dust. Crushed concrete is a valuable resource, but where do we want it crushed. Do we want to be a rural community or do we want to be a mining community. There are so many pits so close together in this community. You are opening the door to other pits doing the same.

Commissioner Frana asked for final comments.

Elizabeth Ennenga -23130 Woodland Ridge Drive – I am a new member to the community and live here with my husband and three children.

When I received the letter stating this was in my back yard, I started crying. I have a 4-week old son and my 6 year-old son has asthma. He will not be able to ride his bike outside anymore if this is going to happen. I ask you all to think of yourselves as a parent and what you would do if you had to tell your 6 year-old son that he can no longer ride his bike. I would like you to think about your 4 week-old and how the quality of life you just brought him into will affect him. Do any of you live next to this?

Commissioner Frana stated he lives on Jersey Court, which is across the street. Commissioner Palmquist stated he lived on Grenada and Commissioner Wood stated he lives on the East side of the pit.

Ms. Ennenga stated she respects what this process is. I don't live in the Township, but made a point to come to this meeting. This is right on the border of the Township. If you approve this, I will have to go to Scott County and New Market to oppose this. On the realtor disclosure, it is interesting what the realtor connection is and that it does not get disclosed. Thank you for your time.

Charlie Liane – I would just like to comment on the new people in the room. What you don't know is that what you are saying tonight does not mean a thing to the Planning Commission members. They are going to give a recommendation to the Board and the Board has the final say. When it goes before the Board, you will not have another chance to express your opinion. They are going to pass this. Why do members of the Planning Commission have to recuse themselves? They have to recuse themselves because they have an interest in this—a financial interest. Chair Sauber had to recuse herself and I don't know the reason.

Commissioner Frana interrupted Mr. Liane to let him know we are here to focus on the issue. There is no value to going down this road.

Mr. Liane said the value is in enlightening the people in this audience. When Kenny Miller had his Ordinance changed, the Board Chair stated to the Attorney, is there anything you would recommend? The Attorney stated, and this is verbatim, you cannot vote against this purely because the people want it. He is telling the Board how to vote. Our Board had no integrity.

Commissioner Frana requested that Attorney Lemmons address this issue.

Attorney Lemmons stated what we are dealing with tonight is a legislative change. In a legislative change the Planning Commission and the Town Board have great discretion as to whether they adopt the change or not. They don't have to justify why they are making the change or why they are not making the change. They should at least explain it, but they don't have to justify it. On the other hand, once the Ordinance is changed and someone proposes a plan that meets the Ordinance as it is written, then you have to follow the Ordinance rules, in which case the Planning Commission and Town Board are bound to follow the rules that they set forth in their own Ordinance.

If the plan meets those rules, they have to grant it, but tonight it is legislative. There is a lot of discretion here. There is no obligation to either adopt this or turn it down. It is strictly up to the Planning Commission in front of you, as long as they are not acting in an arbitrary and capricious manner.

Acting Chair Frana requested Attorney Lemmons address the question of conflict of interest.

Attorney Lemmons stated that whenever a member of the Planning Commission or the Board as any potential financial interest in the outcome, no matter how nebulous that may be, they should recuse themselves from voting. It doesn't require a direct interest in the property in question. It simply requires some interest in the issue at hand, which is why the Chairperson recused herself tonight. She has some potential interest in the overall question of the gravel pits and did the right thing.

Sharon Buckley – 10355 225th Street West - Help me to understand which Ordinance we are looking at a potential amendment to. The old one or is this a potential amendment to what we worked on for over a year?

Acting Chair Frana stated it is the old Ordinance-the pre-existing Ordinance, which essentially stayed the same reading the minutes from your meeting. It is Chapter 13 of the Mining Ordinance 6 – the grandfathered one.

Ms. Buckley stated that is the old one, which had some problems with it, which we updated and reworked. Why would we go back and amend the old Ordinance? It seems to me that am just silly. Why would you be grandfathered under it as it existed and then change it to a new use? It seems to me that if an applicant wants to operate with additional privileges that weren't allowed in the previous old grandfathered Ordinance. They would need to go under the newly revised Ordinance to obtain new privileges. Obviously they would have to apply for a permit under the new Ordinance and then follow any obligations, regulations and requirements of the new Ordinance in order to obtain the privileges that would come with that as well.

Attorney Lemmons stated there is one Ordinance for mines and that is Ordinance 6 for Mining. What we are dealing with is Chapter 3 of that Ordinance. Chapter 3 was designed

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to deal with pre-existing pits. Under Chapter 13 you are dealing with legal non-conforming uses which you adopted rules that applied to those pits at the time they were operating.

Ms. Buckley stated she did not understand why you would allow a modification of a grandfathered pit.

Attorney Lemmons stated what Ms. Buckley is calling the old Ordinance doesn't exist anymore. Whatever provisions you had were incorporated in the new Ordinance, Ordinance 6. Chapter 13 is an incorporation of the old Ordinance, as I understand it.

Ms. Buckley stated that if this amendment is allowed, it appears not only to this specific mining operation, it applies to every mine that chooses to extend the crushing of outside material. It is a text amendment that then applies to everyone that is governed under that regulation.

Attorney Lemmons state it is a text amendment that applies only to mining operations that are governed under Chapter 13-for pre-existing mining operations. It would not apply to any operation that was created after the Ordinance was passed, Ordinance 6.

Ms. Buckley asked what other mines would it apply to.

Acting Chair Frana stated the Storlie Mine, the Vermillion (which belongs to Mr. Ames) and the Friedges Mine.

Mr. Ripley asked Attorney Lemmons if he could repeat what he previously said regarding grandfathering.

Attorney Lemmons stated it incorporates what is existing state law. If the use is legal at the time it commenced, you can't zone it out of existence. It has the right to continue. However there are conditions. One is you can't alter the use. Only the use that exists at the time the Ordinance was changed can continue. Another condition is you can't expand the use.

Mr. Ripley stated that this whole meeting is then a moot point. You have to choose. You clearly stated under state law he can't increase the use that he was grandfathered in to do. He is clearly asking to increase that use. You are either grandfathered in and you have to abide by the law like you just said, or you go in and apply for a new permit. This meeting is a moot point because he cannot expand.

Mr., Lemmons stated it is not a moot point. He doesn't have the right to crush reclaimed cement or asphalt from outside the Township unless the Town grants him that right. I hear a lot about why we are always changing the Ordinance. Any citizen of the Town has the right to petition to have an Ordinance changed or the Town Board can initiate a change in the Ordinance. If the Ordinance changes so that the use request now becomes permitted they can adopt that new use.

Mr. Ripley stated he agreed with everything Attorney Lemmons just said.

Attorney Lemmons stated that if the Ordinance doesn't change the fact that they are non-conforming doesn't allow them to use the new use.

Mr. Ripley commented that it is out of the hands of the Planning Commission and/or the Town Board to determine if the new applicant can be grandfathered in under the pre-existing Ordinances. You fell back to state law basically saying we have to give him the grandfathered rights. By saying that you are taking it out of our hands and going to defaulting state law. But under state law he can't expand his operation. What that does is kick it back to them, because what you are saying is we don't have to honor him being grandfathered. If he is going to expand, then that gives us more jurisdiction. You can't fall back on the state statute if he is trying to amend it.

Attorney Lemmons stated that Mr. Ripley was correct. If you are trying to expand the use, you cannot rely on your grandfathered status. Does that make sense?

Mr., Ripley stated yes, but that makes it a moot point. He cannot expand or increase. I could Google the word expand. Currently under the Ordinance you can only crush materials from the Township and now you want to crush material from outside the Township that would be expanding what he is currently doing.

Attorney Lemmons stated that Mr. Ripley was exactly right. If the Planning Commission recommends the Town Board not adopt the Ordinance change, he can't do it. He can only do it if the Planning Commission recommends the change and the Town Board adopts the change. I think we are talking by each other. Let me try this again. With a non-conforming use the Town itself cannot stop a legal non-conforming use from continuing as long as it meets the requirements of the Ordinance and the statute. However, if the applicant comes in to request an amendment to the text of the Ordinance that would allow them to expand, they have the right to do that, but they don't have a right to expect the Town Board or the Planning Commission to approve that.

Mr. Ripley said he is just saying this is a moot point because the Town Board or Planning Commission can simply default to State law and right now the Ordinance does not permit outside materials to come in.

Attorney Lemmons stated that the only chance he has to bring in outside materials is if the Planning Commission recommends the change and the Town Board adopts it. If the Town Board does not adopt it, he doesn't have the right. If he brought it in he would be violating the existing Ordinance.

Mr. Ripley stated we are granting him grandfathered status based on State law. He is defaulting to State law, which is fine, but there are two things you can't do. You can't have a non-conforming business and you can't expand your current business. Any way you slice it

he is asking to expand his current business. Basically he has put himself in a position where either you choose to be grandfathered and the State law protects you or you choose to amend what is currently there. Basically you are giving up your grandfathered status.

Attorney Lemmons stated that is not correct. If the Planning Commission does not recommend an Ordinance amendment, he is allowed to mine under a non-conforming use. He cannot do anything but mine.

Acting Chair Frana suggested that we move on.

Sarah Stolz – 23075 Woodland – This is my first Board Meeting. I came with an open mind. I feel that we haven't heard what the benefit to the community is from Mr. Ames. According to OSHA, one of the dust particulars can give us silicosis, lung disease and cancer. I am not sure what time of year Mr. Ames plans to do the crushing, but particulate matter causes more problems at certain times of the year. This is something that perhaps the Planning Commission would like to look in to. Every single person in the room stood up and talked against this. I do not want my children to grow up with this in their lungs. I hope you will take this into consideration.

Ms. McPhee asked if there were any studies done, prior to the re-opening of this pit regarding setbacks, the proximity to water tables, aquifers as well as residential wells in the neighborhood west of this pit?

Acting Chair Frana said none that he was aware.

Barton sand is the owner and currently owns Vermillion River Aggregates.

Commission Wood stated he believes it has been around since 1988.

Ms. McPhee asked what is the proposed date that this pit will be closed permanently.

Acting Chair Frana stated there is no date but they do have a reclamation plan in their file.

Ms. McPhee also stated that every single person who has a gravel pit is somehow linked to the Boards in this township.

Matt Abramson – I would like to know how does Eureka Township communicate to the people on Woodland Ridge. This number of people you have here would be greatly increased if it was better communicated.

Acting Chair Frana stated all public hearings are posted in the Lakeville Sun Times and Dakota County Tribune.

Ms. McPhee stated she has a copy of the notice it doesn't say the name of the company or where it is located and that is somewhat deceptive.

Acting Chair Frana asked for final comments.

Dan Ames – Vermillion River Aggregates commented on some of the questions being asked:

- The noise would not increase as we are currently crushing aggregate and will be using the same machine for crushing the concrete.
- We are looking at putting material on the east side of the pit, which is away from the house.
- We will only be crushing for 15 days, which is currently permitted.
- We are trying to work with everyone.
- There is probably about 10 years left to mine in the pit.
- I am not affiliated with Dakota Aggregate.

Gary Smith asked what is he doing with the asphalt. Mr. Ames stated that he would blend the asphalt with class 5. The state does allow asphalt to be blended. Ms. McPhee wanted to mention that last fall the conveyor belt noise was horrendous.

Acting Chair Frana asked three times for final comments. Acting Chair Frana closed the public comment of the meeting at 8:47 PM, and will continue at the June 6, 2016, regular Planning Commission meeting.

Commissioner Fredlund moved to adjourn. Commissioner Palmquist seconded the motion. Motion carried unanimously.

Acting Chair Frana stated the public hearing comments would be reviewed at the June 2016 Planning Commission meeting.

Respectfully submitted,

Cheryl Murphy
Deputy Clerk
Eureka Township

Planning Commission Public Hearing Meeting Minutes approved as amended July 6, 2016.