

Eureka Township
Dakota County
State of Minnesota

Special Town Board Meeting
June 26, 2008

Chair Jeff Otto called the meeting to order at 8:06 pm. Members present were Supervisors Cory Behrendt, Brian Budenski, Jeff Otto, Carrie Jennings and Dan Rogers and Clerk/Treasurer Nanett Sandstrom, to record the minutes.

The meeting opened with the Pledge of Allegiance

The only agenda item for tonight's meeting is the consideration of the application for an Interim Use Permit by Kelly Brosseth for mineral extraction.

Chair Jeff Otto stated for the record that this is a public meeting, not a public hearing. The public hearing was held by the Planning Commission on June 24th for this application.

The information before the Town Board included: The minutes from the Planning Commission Meeting and Public Hearing conducted June 24th. The minutes included a detailed list of all the exhibits that are part of the application and file on record. The Public Hearing minutes included public comments. The Township's Engineering Consultant TKDA provided recommended conditions for recommendation. The Planning Commission developed the Findings of Fact and recommendation.

The Planning Commission's recommendation included 14 specific conditions. This information was forwarded to the Township attorney. The attorney sent clarification of some of the language included. A Development Agreement was referenced in the attorney letter. The Town Board discussed the development agreement.

Chair Jeff Otto read the Planning Commission's recommended Finding of Facts & Recommendation: The following Findings of Facts and Recommendation was developed by the Town Board:

Findings of Fact and Recommendation

RE: Application of Kelly Brosseth, landowner, and Ames Construction, Inc., operator, for an Interim Use Permit for a Level 1 aggregate extraction (mining) facility on property located in the Southeast Quarter of the Northwest Quarter of Section 8, Township 113, Range 20, Dakota County, Minnesota, PID #13-00800-011-25.

On June 24, 2008, the Eureka Township Planning Commission met at a special meeting to consider the application of Kelly Brosseth (hereinafter referred to as "Applicant") and Ames Construction, Inc. (hereinafter referred to as "Operator") for an Interim Use Permit for the development of an aggregate extraction (mining) facility on the property described above. Landowner and representatives of Ames Construction, Inc., were present and the Planning Commission (Commissioners Sharon Buckley, Vince Mako, Kenny Miller, Ken Olstad, and Nancy Sauber in attendance) heard testimony from all interested parties wishing to speak at the meeting and now makes the following Findings of Fact and Recommendation:

FINDINGS OF FACT

1. On May 12, 2008, the Applicant appeared before the Town Board at its regularly scheduled meeting, as required by Ordinance 6, Chapter 6, Section 1 B.
2. Application was presented to the Planning Commission at its regularly scheduled meeting on June 2, 2008. The application was determined not to be complete. For purposes of the 60-day rule, June 2, 2008 was set as the date of receipt of application. A Special Meeting was scheduled for June 6, to review additional information for completeness.
3. At a Special Meeting of the Eureka Town Board on June 4, 2008, the Town Board agreed to waive the EAW requirement for this Level 1 Permit application as per Ordinance 6, Chapter 4, Section 3 A. This was based on responses from Dakota County Soil and Water District and from the Vermillion River Watershed Joint Powers Organization (VRWJPO) indicating no potential for significant environmental effects. There is no requirement for a Land Alteration Plan (LAP) review. The VRWJPO also confirmed by letter of June 25, 2008, that they require no LAP review for this project.
4. At a Special Meeting of the Planning Commission on June 6, 2008, the Applicant presented additional information. The Planning Commission accepted the application as complete.
5. The property consists of 155.53 acres. Of that, five acres are proposed for use in conjunction with the mining operation. Complete legal descriptions of the entire property and of the five acres proposed for extraction are included in the application.
6. The proposed project is compatible with local land use plans and regulations. The proposed project is located within Eureka Township. The current zoning of the property is Agricultural. Mining is an allowed use within the Agricultural Zoning District with an Interim Use Permit. Eureka Township has adopted a Comprehensive Plan which acknowledges the potential for sand and gravel extraction site development in the glacial outwash area in the northern half of the Township. The proposed project is consistent with the other comprehensive plan elements and with plan goals, objectives, and policies. The Township has adopted a mining ordinance and performance standards to minimize potential adverse impacts upon nearby residences and Township roads.
7. The application for an Interim Use Permit meets the standards and criteria for approval of the application outlined in Eureka Township Ordinance 6, Chapter 4, Section 2, A–J, as follows:
 - A. The use will not create an excessive burden on existing parks, schools, or other public facilities and utilities that serve or are proposed to serve the area. The site will be accessed off of C.S.A.H. 9 (Dodd Boulevard), a blacktopped, 9 ton, County collector Road. The operator has obtained a temporary access permit from Dakota County. The use is not anticipated to exceed allowable traffic levels for this type of roadway.
 - B. The use will be separated by distance or screening from adjacent agricultural or residentially zoned or used land in accordance with the requirements of Ordinance 6, Chapter 7 – Mineral Extraction Performance Standards. The proposed use will not depreciate housing values on adjacent properties or deter development of vacant land. No evidence was presented to the contrary.
 - C. The use will be separated by distance or screening from adjacent land, bermed areas will be landscaped, and the actively mined portion of the site will be sufficiently recessed, such that any dust from the use will be controlled and the use will not create adverse effects upon adjacent residential properties.
 - D. The current zoning of the property is Agricultural. Mining is an allowed use within the Agricultural Zoning District with an Interim Use Permit.

- E. The use is consistent with the purposes of the zoning ordinance and the purposes of the zoning district in which the applicant intends to locate the proposed use.
 - F. The use is in conformance with the Eureka Township Comprehensive Plan as outlined in Finding #6 above.
 - G. The use will not cause traffic hazard or congestion. Dakota County reviewed the potential traffic impact on County Road 9 and determined that no highway upgrading such as turning lanes would be required and has issued an access permit.
 - H. The use will be separated by distance or screening from adjacent agricultural or residentially zoned or used land in accordance with the requirements of Ordinance 6, Chapter 7 – Mineral Extraction Performance Standards, and must comply with Minnesota Pollution Control Agency (MPCA) guidelines governing noise generation. Nearby land uses will not be adversely affected by intrusion of noise, glare or general unsightliness.
 - I. Extraction is not proposed nor allowed to be conducted within one foot of groundwater level. The maximum depth of the proposed excavation area does not exceed 20 feet.
 - J. No dewatering will be permitted in conjunction with the proposed use.
8. This application for an Interim Use Permit has followed the permitting procedure outlined in Ordinance 6, Chapter 6, Section 1, as outlined in Findings #1-4 above. A complete application meeting the requirements of Ordinance 6, Chapter 5, Section 1 – Application and Section 2 – Supporting Documentation, have been filed with the Planning Commission; TKDA, an independent engineering firm, was selected by the Town Board in May 2008 to review the application; the application was reviewed by Ronald Quanbeck, a registered engineer licensed by the State of Minnesota and qualified in this field; TKDA submitted results of its findings, along with recommendations for action, to the Township on June 16, 2008.

RECOMMENDATION

The Planning Commission recommends approval of the Level 1 aggregate extraction (mining) permit on property located in the Southeast Quarter of the Northwest Quarter of Section 8, Township 113, Range 20, Dakota County, Minnesota, PID #13-00800-011-25 in accordance with and subject to all documents submitted in the application as well as the conditions attached hereto as “Exhibit A”. This permit shall expire one year from the date of approval by the Town Board. Mining activities shall be completed by the end of the 2008 construction season. Reclamation activities shall be completed by June 30, 2009.

EXHIBIT A

Conditions

1. The Applicant must comply with all rules and regulations of Federal, State, County, and local agencies, including obtaining an NPDES permit, and maintain compliance with all permits granted by these agencies for operations on the site. Copies of all such permits and inspection reports shall be provided to Eureka Township as proof of compliance.
2. The lowest elevation of mining activity shall be 974’, unless the Applicant completes a wetland delineation on the site, or installs a monitoring well or piezometer, that indicate that the elevation of the DNR Wetland #414 is lower than 972’. The maximum depth of the proposed excavation area may not exceed 20 feet.

3. If groundwater is encountered during mining operations, the Applicant shall immediately adjust operations to excavate no deeper than 1 foot above the groundwater encountered.
5. The mineral extraction facility shall operate only between the hours of 7:00 a.m. and 5:30 p.m., Monday through Friday. A mineral extraction facility may be opened one hour before hours of operation to allow for staging. Staging is as defined in Ordinance 6, Chapter 3. No Sunday or holiday operations will be allowed. The holidays are New Year's Day, Memorial Day, July 4th, Labor Day, Thanksgiving and, Christmas. When New Year's Day, July 4th, Thanksgiving or Christmas falls on a Sunday, the following Monday shall be considered the holiday. When New Year's Day, July 4th, Thanksgiving or Christmas fall on a Saturday, the previous Friday shall be considered the holiday.
 - a. Operators are allowed extensions to the hours of operation for emergencies only. Operators must notify the Township Clerk or a Town Board member in advance of the proposed exception.
 - b. The Town Board must approve other exceptions to the hours of operation, such as Saturday operation, government agency contracts and other evening work.
6. The Applicant shall provide regular fencing in good repair around the permitted area to meet the requirements of Ordinance 6.
7. The Applicant shall implement a seeding and planting plan for the berm on the south boundary of the property as presented in Exhibit T. The Applicant shall be responsible for ongoing maintenance of the plantings for the duration of the permit.
8. The applicant shall within 30 days of the date of this resolution provide an estimate of the cost required to reclaim and restore the 5 acres that the Applicant estimates will be affected by the mining operation. The Applicant shall provide to the Township a Letter of Credit, bond or other security satisfactory to the Township in the amount equal to 115% of that estimate, or \$15,000, whichever is greater, to guarantee the reclamation of the site.
9. This Level 1 Extraction Permit shall expire one year from the date of approval by the Town Board. Mining activities shall be completed by the end of the 2008 construction season. Reclamation activities shall be completed by June 30, 2009.
10. That all fees and escrow are paid.
11. Any future mining permit(s) on this property, whether for expansion or extension, will require application as a Level 2 or Level 3 permit, including EAW as required by Ordinance 6.
12. No crushing, washing, imported materials, or activity other than extraction is permitted on said property in conjunction with this permit.
13. To minimize noise of back-up alarms, haul trucks will use a circular traffic pattern within the extraction site.
14. Operator will take all reasonable measures to assure sound suppression devices are fully operational on equipment within the extraction site.
15. Applicant will reduce the berm from 8 feet to 4 feet as part of the reclamation plan and the reclamation plan will be updated to reflect this condition.

Before condition 15 was developed the Town Board had discussion on berms. Supervisor Jeff Otto entered the following information into record on the berm: A berm is not specifically covered in the Township Ordinances outside of the mining sections of the ordinance. A berm can be created by anyone, anywhere on their property. The only regulations that could come to bear on the creation of a feature resembling a berm would be in wetlands or subject to Shoreland setbacks or issues. The current language specifically says the berm shall be along the roadway or the property of adjacent landowner if

they are within the 1,000 setback. There is no requirement in the ordinance that a berm be located at the actual extraction site. The nature of the extraction site is not a traditional site, where the mining is occurring from the top elevation down. The stripping operation will occur at ground level- to remove topsoil. The mining will be entering the pit from the existing pit. The equipment will start at an elevation approximately 16' below the ground level. This depth will provide some level of additional dust and noise control. The elevation at 235th Street is 4 to 6 feet higher than the elevation at the site. Requiring an additional berm at the mining site could create adverse effects, possible flooding of crops and it would take further cropland out of production.

Supervisor Carrie Jennings commented that it is unfortunate wording in the current ordinance. The berm as it is isn't doing a lot. The ordinance should be looked at in the future. It doesn't serve the purpose as intended in the ordinance. The main objection to the residences was the berm. If this is a temporary use then why is the berm permanent.

Mr. Brosseth desires to keep the 8-foot berm in place. The berm is to meet the ordinance requirement, to place the berm along the road and as a land owner he desires to have the berm there regardless. The reclamation plan shows the berm in place. Mr. Brosseth perceives that a berm is attractive and what he wants on his property.

Supervisor Carrie Jennings read from Ordinance 6, Chapter 7, Section 1, U. 7. Berms will be removed to the original elevation of the land, unless the Board has approved a different elevation as part of the End Use Plan.

Discussion on the berm continued. There is nothing in the ordinance stopping a property owner from constructing a berm on their property. Mr. Brosseth can be required to remove the berm as part of the reclamation and then reconstruct a berm if he chooses.

Robert Ripley commented that the following parts of the Ordinance 6, Chapter 4, Section 2 would give the Town Board reason for not grant a permit, if it violated one of these.

- B. The use must be sufficiently compatible or separated by distance or screening from adjacent agricultural or residentially zoned or used land so that existing homes will not be depreciated in value and there will be no deterrence to development of vacant land.
- C. The structure and site must have an appearance that will not unreasonably create an adverse effect upon adjacent residential properties.
- G. The use must not cause traffic hazard or congestion.
- H. Existing land uses nearby must not be adversely affected unreasonably by intrusion of noise, glare or general unsightliness.

Supervisor Cory Behrendt entertained that the berm be lowered to a 4-foot berm as part of the reclamation plan. This would be a compromise- The neighbors want the berm removed, the property owner wants to leave the berm in place. Supervisor Carrie Jennings felt that the berm should be removed completely.

Robert Ripley presented an EAW petition and supporting documents to the Town Board. (MN Administrative Rules 4410.1100 PETITION PROCESS)

Citizens may petition an EAW. This Rule supersedes the Town Board. For the record, Mr. Ripley commented that the petitioners want the berm back at the construction site, to reduce dust and noise, per Township ordinances. That is all that they have requested. They did not want to submit the EAW petition.

Chair Jeff Otto read the following statement from the petition: Environmental effects: Potential threat to protected trout stream (Vermillion River). Potential breach of water table. Risks to nearby residents: Increased mineral dust and potential noise pollution. Dangerous traffic level increase on Dodd Blvd. (Cnty Rd 9) There are 25 signatures indicated on the petition.

Chair Jeff Otto read from the 2007 Minnesota Statutes Section 116D.04 ENVIRONMENTAL IMPACT STATEMENTS. Subdivision 2a. (c) An environmental assessment worksheet shall also be prepared for a proposed action whenever material evidence accompanying a petition by not less than 25 individuals, submitted

before the proposed project has received final approval by the appropriate governmental units, demonstrates that, because of the nature or location of a proposed action, there may be potential for significant environmental effects. Petitions requesting the preparation of an environmental assessment worksheet shall be submitted to the board. The chair of the board shall determine the appropriate responsible governmental unit and forward the petition to it. A decision on the need for an environmental assessment worksheet shall be made by the responsible governmental unit within 15 days after the petition is received by the responsible governmental unit. The board's chair may extend the 15 day period by not more than 15 additional days upon request of the responsible governmental unit.

The Town Board reviewed a document titled "A citizen's guide: The Petition Process"

- **Step 1 Research the Project**
- **Step 2 Write a project description**
- **Step 3 Write about the project's potential environmental effects**
- **Step 4 Attach supporting evidence**
- **Step 5 Gather signatures** "Who should sign the petition and what do you tell them? While there are no requirements regarding where the petitioners live, you should remember that decision-makers may not be influenced by petitioners from outside the local community."
- **Step 6, Submit the petition** "Once the petition is complete, you should mail or fax it to the EQB."

"You are also required to send the project proposer a letter notifying them that the petition for an EAW has been filed".

The Town Board determined that all the steps that need to be taken in the petition process have not taken place. The Town Board appreciated that a copy of the petition was submitted to the Town Board. That the petitioners are interested in requesting a EAW, but the petition needs to be submitted to the EQB. Robert Ripley agreed he made several mistakes in the petition process and missed a few steps.

A motion by Supervisor Cory Behrendt: To approve the permit as submitted including the reference of the Findings of Fact and Recommendation from the Planning Commission and the 14 conditions as identified and revised tonight. Motion seconded by Supervisor Brian Budenski. Vote was taken on the motion. 4 supervisors voted in favor of the motion. Supervisor Carrie Jennings abstained. The motion carried.

A motion by Supervisor Brian Budenski: To adjourn. Motion seconded by Supervisor Cory Behrendt.

The meeting was adjourned at 10:12 pm.

Supervisor Carrie Jennings submitted the following written abstaining statement:

I abstained because it clearly states in our mining ordinance that a berm is to be removed as part of the reclamation process. I think this is particularly important when a short-term IUP is issued. As much evidence of the "use" should be removed as possible. I did not see a need to compromise on this since the reasons given by Brosseth were not compelling (wanting a berm; planning to build one in any event) whereas those provided at the public hearing by his neighbors were compelling: obstructing the view while providing little to no mitigation of dust, noise or even a view into the pit.

I do not understand why we bent to the applicant's wishes on this matter. It gives the appearance of complicity if future gravel mining is proposed or approved for this property.

I still have hopes that Mr. Brosseth will yield on this matter and make this grand gesture in an effort to restore the neighbors' good will.