

EUREKA TOWNSHIP

Dakota County, State of Minnesota

**PLANNING COMMISSION PUBLIC HEARING
Proposed Mining Ordinance Text Amendment
February 22, 2023
Meeting Minutes**

Call to Order

The Planning Commission Meeting was called to order at 7:00pm by Chair Clancy

Commissioners Present: Bill Clancy (Chair)
Randy Wood (Commissioner)
Beth Eilers (Commissioner)

Others Present: Brian Ahern

Zoom Participants: Deb Burkhard (Vice Chair), Amy Liberty (Deputy Clerk),
Liz Atwater (Clerk), Ralph Fredlund.

Chair Clancy stated the purpose of the public hearing is to review input from the 2/15/23 Mining Open House, allow further public input and discussion before making recommendations to the Town Board on the proposed language changes to the Mining Ordinance.

Due to the severe weather, and the lack of in-person attendance, The Planning Commission suggested the meeting be continued on a different date.

Motion: Chair Clancy moved to continue the Mining Ordinance Public Hearing on Monday, February 27th at 7:00pm at the Town Hall. Chair Eilers seconded the motion.

Roll call vote: Randy Wood-Aye; Bill Clancy-Aye; Beth Eilers-Aye; *Motion carried 3-0.*

The meeting reconvened on Monday, February 27th with Chair Clancy opening the meeting for continuation at 7:00pm and then made the following motion:

Motion: Chair Clancy moved to reconvene the February 22nd meeting. Commissioner Eilers seconded. *Roll call vote:* Randy Wood-Aye; Bill Clancy-Aye; Beth Eilers-Aye; Deb Burkhardt-Aye; *Motion carried 4-0.*

Commissioners Present: Bill Clancy (Chair)
Deb Burkhardt (Vice Chair)
Randy Wood (Commissioner)
Beth Eilers (Commissioner)

Others Present: Amy Liberty (Deputy Clerk), Ralph Fredlund, Mark Butler, Andrew Wojtowicz, Peder Larson, John Rivisto, Matt Mettling, Brian Ahern, Pat Mason, John Storlie, Annie Resop, Kelly Brosseth, Dan Ames.

Zoom Participants: Liz Atwater (Clerk), Donovan Palmquist, Kevin Foster, Greg T., Mike

Chair Clancy explained that the Planning Commission is appointed by the Town Board to make recommendations to the Board on planning and zoning issues. The recommendations are advisory only. The final decision on issues brought before the Planning Commission is made by the elected Township Board. With certain types of applications, such as this one, it is also the Planning Commission's responsibility to conduct a public hearing. The purpose of the hearing is to ensure that everyone with an interest in this matter has an opportunity to present testimony and evidence in support of his or her position.

Chair Clancy gave an overview of the efforts leading up to tonight's public hearing. The process began in 2022 with early reviews of the existing ordinance and a decision to place a moratorium on new mines. Goals were established by the Planning Commission and Town Board to help make changes to the ordinance terms that would be consistent with current best practices. An open house was held on February 15th, 2023, giving the mining industry and the public the opportunity to discuss and offer input on the proposed changes. At the end of the open house, an invitation was given to all interested parties to submit in writing any questions, concerns, and suggestions for consideration for the public hearing revision. These written submissions are included at the end of these minutes.

Responses to the written submissions were reflected in the 2/21/23 draft of the mining ordinance that was included in the posted packet. The following items were of concern by multiple mining companies:

Mining Superintendent Position/Cost

This part-time position's focus will be on the annual performances and permit reviews, as well as availability for investigating any specific issues that may arise. It is estimated that this position will have a total of 84 hours annually, with a current rate of \$65.00 per hour.

Aggregate Tax

Supervisor Kaufmann clarified the aggregate tax that comes back to the Township is specified to the general fund by Dakota County. The other piece of this tax is 10% going to pay for unreclaimed mines. Supervisor Kaufmann, along with the Clerk, investigated where these funds are located in Dakota County and how the Township could gather this revenue in the future. No answers were given.

Mineral Extraction Performance Standards/Recycling

Dan Ames was present at the meeting and discussed Section 165-13 in more detail.

1) (Currently Says) 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. We as an industry of miners believe there is great value in recycling and is essential to the sustainability of our planet. There is an extensive study that was conducted by Iowa State University that states (There appears to be no negative environmental effects from recycled asphalt and concrete that significantly offset the positive environmental effects) Attached are a couple of pages from that report.

Reasons for Recycling

- Economic benefits
 - Cost savings
 - Benefits to project execution
 - Potential performance improvements
- Environmental benefits
 - Conservation of aggregates, energy
 - Reduction of landfill use
 - Reduction of greenhouse gases
 - Sequestration of carbon
- Societal benefits
 - Reduced land use
 - Reduced impact to landscape
 - Potential reduction in traffic/noise (particularly with on-site recycling)

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Focus of this Webinar

Recycling is inherently an environmentally beneficial practice, but must mitigate potential adverse impacts on the environment and human health

There appears to be no negative environmental effects from using RCA that significantly offset the positive environmental effect of reduced use of virgin aggregate and landfills

(FHWA HIF-15-002, and Reiner 2008)



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2) I would propose not removing the right to recycle concrete and asphalt. Amend the new ordinance to allow for the recycling of concrete and asphalt for 15 working days per calendar year (same as before) with a maximum allowed import of the material to not exceed 25% of export material.

3) This would allow us to mix and blend this recycled material with our existing aggregates to create a product widely already used in our industry which would aid in the sales and competition of our aggregate resources.

Chair Clancy offered his individual response, which was added to the public packet. It is important to note that this was his opinion, and the Commissioners did not review his submission prior to the meeting.

At the 2/15/23 Open House and in subsequent follow-up correspondence, Mining representative Mr. Dan Ames is requesting that we continue to allow the recycling (crushing) of concrete for 15 days annually, and expand to asphalt, with same level maximum import material allowed to not exceed 25% of the export material. It must be noted the current ordinance only applies to concrete roads within the Township, which do not exist, so available scope is nil.

At this point in time I cannot recommend to the PC nor TB that change for reasons I will detail.

Let us focus on Recycled Concrete Aggerate (RCA):

- 1- Sustainability- We all understand the need to minimize the use of landfills for every possible material. The use of RCA can reduce the use of virgin aggregate and landfills. The US Highway Department of Transportation study FHWA-HIF-15-002 conducted in 2015 by Applied Pavement Technology of Urbana ILL as referenced by Mr. Ames does a nice job of explaining the complexity of measuring Sustainability. The 31-page Executive Summary of the 458 page document makes two very key points that are relevant directly - Sustainability is an aspirational goal and is very context sensitive. An example of context- The Sustainability of having a mobile crusher on site to remove, crush and use as new base for miles of highway 35 in Lakeville has a high level of sustainability benefit, versus, trucking in broken concrete from a highway project many miles away, unload and crush during the 15 day period allowed, and store until future sale / use at a unknown location at an unknown distance.
- 2- For those of us not familiar with this topic, a helpful publication is the DOT Tech Brief published in February 2022 FHWA-HIF-22-020 titled "Use of Recycled Concrete Aggregate in Concrete Paving Mixtures". It details the complexity of the topic, and provides context on page 1 of 11 stating ".....used in over 100 pavement projects.....most of these have exhibited satisfactory performance over several decades and a number of these pavements are still in service today."

On page 2 of this report two paragraphs stood out to me:

"Both agency and contractor respondents were interested in increasing the use of RCA, although several barriers to increased use were cited. These included regulatory barriers, a lack of guidance on how to use RCA without compromising performance and a lack of guidance on how to mitigate potential environmental concerns."

"In addition to crushers and screens, other equipment typically used for RCA processing includes conveyors and equipment to produce and manage stockpiles. RCA stockpiles should be kept clean and free of deleterious substances such as organic material, soil, and other construction debris. Stockpiles should be managed in a way that reduces the chance of segregation and contamination, as well as any adverse environmental impacts due to rainwater runoff from the stockpiles, such as high pH."

3- The Township must look beyond just the 15 days of requested allowed crushing activity and recognize it also triggers the import of the material, any day, truck by truck, across as many days

4- The impact of RCA on mine depletion is an interesting variable. In theory the ability to import and crush concrete makes the mined aggregate material more marketable, assuming demand, thus possibly depleting the mine faster...even though the use of the recycled material inherently reduces need for virgin material. However, if one inspects previous reports of mines crushing concrete, there was a tonnage figure for crushed concrete sold. Therein lies the rub; will it be simply used as an additional product sold and not mixed as an additive to sell more aggregate material already being mined? What is the projected close date of an existing mine and how would this new permitted use impact timeline, accelerate or decelerate?

5- We already have challenges remaining on how to verify production numbers that hopefully can tie to Dakota County records versus our historical dependence on a simple self-reporting spreadsheet with zero attachments / documentation.

Even without recycling; where do we get the data on how many trucks in and how many trucks out for material mined and shipped?

The addition of recycling with a 25% proportion rule has been unenforceable.

We saw one mine's concrete plant become the true primary use instead of the permitted accessory use when mining played out and they were simply stockpiling aggregate to create mine activity to cover the concrete plant production while in reality importing concrete rubble for crushing.

We saw concrete trucked in and when challenged told by Mine operator it was from Township road which was impossible. And then we saw "Asphalt-gate" ...the removal of a huge asphalt private parking in the Township trucked in via a long line of trucks over several days even though offending mine knew it was not permitted, for which we required removal.....so citizens had to watch the illegal parade in and out past their homes.

How many more trucks in and out would RCA bring to the Township?

Summary:

This topic would require a lot of joint study and discussion with the Mining Industry given it has been a major headache at the one active cement plant we had in the Township until recently removed. (Perhaps a great example of why we need joint meetings with the proposed Mining Industry Consortium.)

Bill Clancy Chair Planning Commission

At this time, it was decided between the Commissioners and the mining industry to go through all 33 pages of the latest revision, dated 2/23/23, one by one. Chair Clancy read the document, pointing out the changes and allowing feedback. Each page was scrutinized and agreed upon before moving forward. The mining industry had time to review most changes prior to the public hearing, except for two larger revisions. These were placed in the public packet and copies were given to those present at the hearing. A brief recess was allowed to digest the changes.

Article II
Permits

Pages

§ 165-4 Permit required.

It is unlawful for any person, firm, company, or corporation to extract or process minerals in the Township without first obtaining an interim use permit required in this chapter ~~unless otherwise permitted~~. An existing mineral extraction facility that qualifies as a nonconforming use and satisfying because it was lawfully established prior to the adoption of mining regulations and has remained continually operated since its establishment is not required to obtain an interim use permit, but is required to comply with all of the requirements of Article XI of this chapter. Penalties for operating without a permit will be strictly applied according to Article VI, Termination; Violations and Penalties, hereof.

No new Level 3 mines will be permitted until an existing Level 3 mine in the Township has ceased operating and completed all reclamation.

§ 165-5 Criteria for granting permits.

In granting a permit, the Eureka Town Board shall consider the advice and recommendations of the Planning Commission and the effect of the proposed use upon the health, safety and general welfare of occupants and

Article XI Preexisting Mineral Extraction Facilities

§ 165-29 Preexisting mineral extraction facilities as lawful nonconforming uses.

All mineral extraction facilities that were lawfully established prior to the effective date of this chapter, and that were not discontinued for a period of more than one year since establishment, are subject to the provision of Article I of this chapter and those portions of Articles II-V specified in this article as well as Articles VI-X of this chapter. The Town Board determines the application of these provisions to lawful nonconforming mineral extraction facilities is necessary in order to address potential nuisances created by the facilities and to protect the public health, safety, and welfare. Any nonconforming operation when it was originally established is required to apply for and obtain an interim use permit from the Township prior to expanding the operation.

- A. Two mineral extraction facilities hold IUPs as of the effective date of this chapter. Those facilities will continue to operate under their respective IUPs as legal nonconforming uses. When the IUPs expire, new applications and development agreements fully compliant with Articles II-IV of this chapter must be completed. Beginning in January 2024, these mineral extraction facilities must file reports that satisfy the requirements of §165-12 and must operate in compliance with the performance standards in Article V except for (N)(Phasing Plan) and (U)(Reclamation Plan) unless those performance standards conflict with its existing development agreement or approved Phasing and Reclamation Plans. If requested by the Mining Superintendent or the Town Board, the holder of a permit will discuss necessary changes to its operations if immediately important to abate a nuisance or to protect public health, welfare, or safety even if its practices are consistent with previous standards or approved plans. If the Town Board cannot reach agreement with the mineral extraction facility, it may take steps to enforce the standards of this chapter as needed to address nuisances created by the noncompliant facility. An operator of one of these mineral extraction facilities may request a reasonable extension of time to comply with any updated performance standards in Article V. The Town Board will grant the request if in its sole judgement good cause is shown.
- B. One mineral extraction facility formerly owned by the State of Minnesota was acquired by another owner after 2002, however the Township has not yet required an application for an Interim Use Permit be filed. The legal property description for this mine is at §165-31. By December 2028 the operator and/or owner of this mineral extraction facility must have fully complied with Articles II to IV of this chapter. Beginning in January 2024, these mineral extraction facilities must file reports that satisfy the requirements of § 165-12 and must operate in compliance with Article V. The owner and/or operator of this mine may request a reasonable extension of time to comply with any enhanced performance standard in Article V. The Town Board will grant the request if in its sole judgement good cause is shown.
- C. There are four mineral extraction facilities that existed prior to 2002 and have continued as lawful nonconforming uses since that time. The legal descriptions for these Previously

Permitted Mineral Extraction Facilities are in §165-31. Notwithstanding Article II, § 165-4, those mineral extraction facilities in the Township that exist as of the effective date of this chapter and obtained from the Town Board an annual mining permit ~~for~~ prior to calendar year 2002, shall have the right to continue as mineral extraction facilities under the original licenses and as legal nonconforming uses without first obtaining an interim use permit for a mineral extracting facility required by §165-4 as long as there is compliance with the conditions of this article. This right shall run with the applicable property and this right shall be subject to Minnesota Statutes, section 462.357, subdivision 1e.

Public Comment

Mark Butler, 1905 3rd Avenue, Mankato, MN-representing MPM

Chair Clancy wanted to address the letter that was sent to the Township, dated February 20, 2023, that he personally found to be without merit. This letter is included at the end of these minutes, along with Chair Clancy's personal responses.

Discussion opened with Commissioner Wood addressing the statement MPM made regarding Section 165-6 Levels of Permits.

Subsection (C) Level 3 Permit – As stated above, placing a restriction on ready-mix concrete plants is contrary to the Township's intent. Allowing accessory uses, such as ready-mix concrete plants, accelerates the mining process, thus expediting the mining process and reclamation of the mine to end use purposes.

Commissioner Wood stated although it could be true that this would expedite the reclamation of the mine, regarding the MPM pit, this is not the case. Material was being brought in for the concrete plant. Mr. Butler commented that these materials were to be blended with materials onsite. This has been proven not to be true. Stockpiles of concrete were onsite and eventually were ordered to be crushed and hauled out. It has been confirmed that the landowner is not allowing MPM to start the reclamation.

Mark Butler stated that Minnesota Paving and Materials is making a concerted effort to clean up the site. The burden has been placed on them. He added that communication between MPM and the Township needs to improve.

Email Question submitted by Linda Ripley

When was the Ordinance changed to notify residents living in close proximity to mining pits from sending a notice regarding meetings about mining through the US mail to notifying via the Town Hall website and physically at the town hall.

Thank you,

Linda Ripley

The Planning Commission answered by stating this was a Town Board's decision around two years ago not to send postcards since notices were arriving after the event. For this public hearing, the notice was posted at the Town Hall, published in the newspaper, uploaded to the website, and sent via email to those that are registered for Township's news and notices.

John Rivisto, General Manager of Dakota Aggregates

Mr. Rivisto shared that prior to this role, he ran Kraemer Mining out of Burnsville, MN and truly understands the complexities that go into mining and mining ordinances. He stated that a Mining Superintendent was a good idea, but a better idea would have been to consult with the mining industry first, there is a wealth of knowledge available. Dakota Aggregates wants to be part of the solution.

Chair Clancy appreciated his comments and added that his expertise would clearly bring value to the table.

Peder Larson, Larkin Hoffman Law Firm

Mr. Larson wanted to address language on page 28 of the 2/23/23 revision.

H. The operator and or Owner must obtain approval by the Town Board of a revised reclamation plan and the operator must thereafter comply with the approved reclamation plan. The revised reclamation plans must fully comply with §165-13 (U). To the extent that physical slopes, setbacks or depth permitted by the prior plan make meeting those standards impracticable, the operator and or owner may provide an explanation and evidence supporting a deviation from the standards. Once approved, the operator and or owner must comply with the revised, approved reclamation plan. Previously Permitted Mineral Extraction Facilities must obtain approved revised reclamation plans by the following dates:

§165-31 A-B December 2025

§165-31 B-C December 2026

Mr. Larson stated that the reclamation plan is really a business plan for the value of the property. The ordinance language in this section should be written so it allows reclamation plans, that have already been approved by the Township, and the operator and owner are still in compliance, to be honored, unless the Township later determines that it is inappropriate to protect the community.

It was agreed that Mr. Larson could provide language to be considered for the final draft.

Annie Resop and John Storlie, 23449 Dodd Blvd.

Mr. Storlie came to the table with a 2002 document in hand. He informed the Planning Commission that he has been in business for 42 years and when he signs a contract, it's a contract and should be honored. He added that it does not seem fair to have a new Board come in and change a contract. Annie Resop, daughter of John Storlie, wanted to touch on the topic of the Mining Superintendent position. She began by saying that sometimes people look great on paper, but that doesn't mean they're perfect for the job. There has been a negative relationship between the newly appointed Mining Superintendent and the mining pit. Annie stated that she can't come in here with any legal expertise or with a lot of mining expertise, but she can come in as a person who has lived in the Township most of her life, moved away and then moved back. People want to be heard and they want to be listened to.

Dan Ames, 10265 235th St.

Mr. Ames wanted to clarify item B., § 165-29.

- B. One mineral extraction facility formerly owned by the State of Minnesota was acquired by another owner after 2002, however the Township has not yet required an application for an Interim Use Permit be filed. The legal property description for this mine is at §165-31. By December 2028 the operator and or owner of this mineral extraction facility must have fully complied with Articles II to IV of this chapter. Beginning in January 2024, these mineral extraction facilities must file reports that satisfy the requirements of § 165-12 and must operate in compliance with Article V. The owner and or operator of this mine may request a reasonable extension of time to comply with any enhanced performance standard in Article V. The Town Board will grant the request if in its sole judgement good cause is shown.

The question is why a new IUP would be required in December 2028. He would argue that this should be viewed as a pre-existing pit and shouldn't require a new IUP.

Technically, once the state-owned pit, which did not qualify for a pre-2002 mine, was sold to a private owner, the township could have mandated the new owner file for an Interim Use Permit and immediately have a reclamation plan. Under this proposal, it was explained to Dan that he has until 2028 to fully comply with the Eureka Township Mining Ordinance. This is only a proposal at this point, and it was suggested to continue this discussion at the Town Board level during his annual review.

Chair Clancy asked three times if anyone had additional comments, either in person or on Zoom. Hearing none, the public comment period was closed.

The Planning Commissioners thanked everyone and expressed gratitude to the mining industry for their comments and input.

Motion: Chair Clancy moved that the Planning Commission recommend approval by the Town Board of the mining text amendment as most recently updated, with any additional changes discussed herein tonight, as approved by the PC, as well as any additional changes that may be recommended by the PC, the Township attorney, and/or the Township's liaison, to be determined by continued dialogue and public mining industry input so that the Town Board proceeds to the text amendment review for final review, action and approval by the Town Board, by March 6, 2023 joint PC/Town Board meeting. Commissioner Wood seconded. Chair Clancy asked if there was any discussion for the Commission and asked if anyone from the mining industry wanted to comment. No comments or disputes.

Roll call vote: Randy Wood-Aye; Bill Clancy-Aye; Beth Eilers-Aye; Deb Burkhardt-Aye;

Motion carried 4-0.

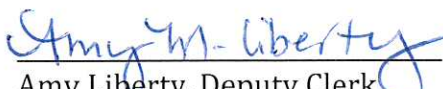
Supervisor Kaufmann announced that if anyone wanted to give suggestions of language need to do so by 3:00pm, tomorrow. (February 28) Pat Mason responded that this would not be possible. He continued by saying this is very important to them, but he would appreciate a little leeway. The process seems rushed. Annie Resop agreed and was curious why the tight timeline, especially knowing that adjustments needed to be made. Supervisor Kaufmann explained that a moratorium on the mining ordinance will be over on April 1st and March 6th is the scheduled date the Town Board has set to get the new ordinance in place.

Motion: Chair Clancy moved to adjourn the meeting at 10:03pm. Supervisor Wood seconded.

Roll call vote: Randy Wood-Aye; Bill Clancy-Aye; Beth Eilers-Aye; Deb Burkhardt-Aye;

Motion carried 4-0.

Respectfully submitted,


Amy Liberty, Deputy Clerk

Minutes Officially Approved by:



on:



Written Submissions

Dan Ames, Vermillion River Aggregates, 10005 235th St. W.

Section 165-24

1. Additional fees for mining superintendent (current fee is Minimum \$150.00 or \$6.00 per 100cy removed) what is the new proposed rate? Will it be a set rate per CY removed or an hourly rate for the Mining superintendent based on actual hrs. onsite?
2. How is this split between mines? (Some are level 3 which will require more review than the CUP pit's)
3. What if there is an issue with one of the other pits, how will payment and reimbursement be handled? Will that time be split between the pits or billed directly to that pit/owner?
4. What was the process for hiring the new mining superintendent. Was this position advertised. Were multiple people interviewed for the position?
5. Currently Dakota County collects a tax on aggregate material that is produced within the County in accordance with Minnesota Statute 298.75. Of that Eureka Township receives 42.5% of the \$0.15 cents per ton. For the year 2022 the townships portion received was Roughly \$47000.00. Where does that money go to and why couldn't that be used to pay the mine superintendents wages?

Section 165-12 1.

Currently the ordinance says (1) Amount of material removed; amount of material imported from off site. A proposed addition if item 14 is suggested (14) Evidence to substantiate Level 3 Mining Facility meets minimum tonnage extraction and removal requirement to be considered an Active Mining Facility. Moving minerals around the site does not satisfy this requirement. Failure to do so may trigger requirements for reclamation and/or revocation of the IUP as determined by the Town Board. To me this is doubling up on the information if we report #1 you will have the quantity removed (One way to verify our quantity's is through the reporting quarterly we provide to Dakota county for the aggregate taxes)

2. #15 MSHA Violations why are you requiring those.

Section 165-18 1. (Says) The Operator grants the Township's officers and representatives, including the Mining Superintendent and Planning Commission, access to the facility during normal operation hours to inspect the mineral extraction. (Officers, representatives, and mining superintendent will be required to be accompanied by the site operator per MSHA and Our Site-Specific Training Program. Therefore, we will need a reasonable amount of notice to set up the site visit)

Section 165-13

- 1) (Currently Says) 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. We as an industry of miners believe there is great value in recycling and is essential to the sustainability of our planet. There is an extensive study that was conducted by Iowa State University that states (There appears to be no negative environmental effects from recycled asphalt and concrete that significantly offset the positive environmental effects) Attached are a couple of pages from that report.
- 2) I would propose not removing the right to recycle concrete and asphalt. Amend the new ordinance to allow for the recycling of concrete and asphalt for 15 working days per calendar year (same as before) with a maximum allowed import of the material to not exceed 25% of export material.
- 3) This would allow us to mix and blend this recycled material with our existing aggregates to create a product widely already used in our industry which would aid in the sales and competition of our aggregate resources.

Pat Mason, Dakota Aggregates

Comments pertaining to the proposed mining ordinance text amendment pertaining to the Brosseth and Storlie Facilities. Note all comments are of concern to us so there is no specific order to our concerns. You can see that we have a significant number of comments. Township officers and participants in the open house acknowledged that the ordinance revisions are being discussed and acted on in a compressed public process schedule, meaning that not all comments on the proposed revisions can be fully discussed and considered before the Town Board acts on adopting some new ordinance text this month. We respectfully suggest that the Township carefully select the ordinance text revisions that it believes must be adopted this month and postpone action on other revisions to allow the Township to consider comments and suggestions on those revisions. Dakota Aggregate will commit the time needed to work with the Township and others to work through unresolved issues.

General Comment: Continued Operations under Storlie CUP and Brosseth IUP:

- The Storlie Pit operates under a CUP and was approved and regulated under the previously adopted mining ordinance. Dakota Aggregate may continue to operate pursuant to the terms and conditions that approval and ordinance.
- The Brosseth Pit was issued an Interim Use Permit (IUP) in 2009 subject to conditions of approval. The 2009 IUP and documents incorporated by reference broadly authorize mining activities through 2030. Dakota Aggregate may continue to operate pursuant to the terms and conditions of the 2009 IUP and may continue to mine the site as contemplated in the 2009 approvals.

165-3

Accessory Uses:

- Per discussion at the Open house, importing materials for use in reclamation will be permitted. This definition only refers to topsoil. Common Borrow should be added to material permitted to be imported for reclamation.
- The Brosseth Pit is permitted for a dry ready mix concrete plant. Per the amended developer agreement dated July 2015, there is no reference that the plant must be in place and in operations for any given period to keep the permit of the plant active. The Township should recognize that the developer agreement terms continue in place as incorporated into the IUP.

Active Mining Facility:

- Please confirm that the minimum annual sales of 5,000 CY to keep a permit active will only apply to Level 3 permits.

Mineral Extraction Permit:

- Please define surface excavation. The assumption is surface excavation is mining/excavating which occurs above the ground water. If correct, future permitted facilities and or any expanded facilities would not be permitted for wet mining? Can you please explain why this is being eliminated?

Water Table:

- 'This level fluctuates with changes in precipitation, and it is the highest water table that is protected'
 - a. Brosseth Pit
 - The approved plan set dated 12-12-09 that is incorporated into the Brosseth IUP includes a defined reclaimed pit floor elevation based on a calculated water table elevation at that time. Since the end use is a lake, we are mining and reclaiming the lake concurrently as the wet mining occurs based on the final floor elevation in the approved plan. Please confirm that the floor elevation per the approved plans in the existing IUP remains in place? This is a significant issue since we have reclaimed the pit floor as we wet mine based on the calculated and approved floor elevation.

b. Storlie Pit

-The approved Reclamation Plan dated 12-11-02 depicts the water elevation. All other concerns noted in the Brosseth Pit above apply to Storlie pit as well.

165-4 Permit Required

- "No new Level 3 mines will be permitted until an existing Level 3 mine in the Township has ceased operating and completed all reclamation" It appears Eureka Residents / or outside entities that may want to apply for a Level 3 permit will not have the ability to do so until one of the two existing Level 3 permits is completed. Does this apply to expansion of an existing level 3 permits that are in good standing with the Township? One suggestion is to limit an operator/permit holder that has not met the terms of their existing level 3 permit from applying for additional level 3 permits until their existing mine is reclaimed. What happens, for example if one of the preexisting permitted pits proposes to expand to a level 3 permit?

165-5. Criteria for granting permits (K Depth of Excavation)

- As previously noted, the depth of excavation has been approved per the terms of the Brosseth IUP and approved plans and as per the approved Storlie's reclamation plans.

165-6 Level of Permits (C Level 3 Permit)

- As previously noted, our water elevation standard has been previously established so the determination of the water elevation should only apply new permits
- "Unless the end use is a lake or wetland" As previously mentioned, can you please define surface excavation. If surface excavation is defined as mining above the water table per the definition of Mineral extraction permit, can you please clarify if future mines have the ability to wet mine below the water table.
- As previously mentioned, the Brosseth Pit is permitted for a dry ready mix concrete plant. Per the amended developer agreement dated July 2015, there is no reference that the plant must be in place and in operation for any given period to keep the permit of the plant active. We request acknowledgment that the IUP terms remain in place.
- The Brosseth EAW was approved January 12, 2009, and if referenced in the IUP.

165-7 Zoning:

- "Mineral Extraction shall be allowed in all agricultural zones districts as identified in the Eureka Comprehensive plan." (Except for Level 3 permit will not be permitted until an existing Level 3 permit is expired. Is this contradictory?)
- 165-11 Interim Use Permit D) I am curious why notice was not sent to at the very least the 4 mining permit holders in the township pertaining to the moratorium when the existing permit holders may be directly affected.
- (M) the last sentence is incomplete

165-12 Review of Permit

- (6) This applies to mining operations permitted for mining only above the water table. Should that be clarified?
- (15) MSHA federally regulates the safety aspects of our facilities and the MSHA program is quite stringent. If violations occur, MSHA shuts the operation down until corrective action occurs. Why is this being required as a submittal item when MSHA performs all of these inspections and facilitates corrective action.

165-13 (B1 Source of Minerals)

-Since recyclable material processing is currently only permitted in relation to Eureka Township Road projects, would it be prudent to consider leaving this section in the ordinance? It seems to me that it would benefit a township improvement project that could permit its contractor to haul and process the material in close proximity to the Township Job which in return should result in cost savings on the township project since the material wouldn't be required to be hauled further away out of the township when trucking expense tends to be a major cost contributor to construction projects.

- (C Fencing) Should text be added that states berming, no trespassing signs, locked gates at access points and similar measures can be taken into account when determining how to secure a site? The other point is our two facilities also happen to be the residences of Brosseth and Storlie. That alone serves as the best watchdog we could have. Could text be included that if the mine is adjacent to the permit/landowner residence will be considered to determine the appropriate security measures? For example, retention ponds and larger regional municipal ponds facilities are many times adjacent to residences and or within municipal owned property that do not maintain fencing. We do not want any issues as well however if a youngster wants to take swim what is to say a fence is more of a deterrent than 8 foot plus berms, and no trespassing signs.
- (E Haul Routes) Note our traffic control measures have been in place since 2009, which include turn lanes improvements off Dodd and stop signs at our access points.
- (F Roadway Dust Control) The Brosseth Pit and Storlie Pit (East) access directly on to asphalt paved Dodd Blvd. The Storlie Pit (west) and MN Dirt Works have maintained and apply dust control measures on the stretch of 235th street as needed when either operation is hauling material. (controlled from the MN Dirt Works and Storlie (west) access point up to the intersection of 235th and Dodd.)
- (K Accessory Uses) As previously mentioned the Brosseth Pit is approved for a dry ready-mix plant.
- (M Setbacks) setback of less than 1000 feet was amended in 2021 and eliminated as an option from the ordinance. The last sentence states that any existing approved setback reduction in an existing IUP continues to have approved status. Should this statement be included in every section which of the draft ordinance where conditions have been previously established for existing permitted pits? Or could there be a section in the draft ordinance which states mines with existing and approved IUP's will be held to those exiting IUP/CUP and ordinance standards?
- (s General Compliance) In the last sentence which is underlined, what is the definition of "normal Sensitivities" as well as "to such a degree of intensity"

--(K) Reclamation-Topsoil: If the end use of the mine will be a water feature (lake), topsoil may be sold if the mine operator/permit holder can demonstrate there is sufficient topsoil to complete reclamation.

- (U) Reclamation: Our approved mining and reclamation plans and permits are designed based on the reclamation standards and per the terms in our IUP per the existing ordinance at the time the pits we permitted. Can text be included to state that previously approved Cup and IUP mines with approved mining and reclamation plans will be held to the existing reclamation standards. The entire proposed reclamation section is all of concern. A few examples are listed below.

- (1) The reclamation plan for the Brosseth Pit was approved in 2009 and is included in the IUP. Both of the Storlie and Brosseth reclamation plans are attached and are on file at the Township as well
- (2) A. As built surveys, soil borings and water table elevations should only apply to new mine facilities for these were not requirements at time of permitting and the cost associated with them was not figured into our negotiations with the landowner. Water table elevation has been determined per the approved plans. Please explain why soil borings would be performed at time of reclamation?

C. 9 months was previous standard

- (3 A-G) This entire section is a perfect example on why the Town should explicitly recognize that existing reclamation standards on existing permits stay in place. Since we are reclaiming the open

water features reclamation has been occurring concurrently with wet mining and based on our reclamation slope standards as approved in the 2009 plans. The new standards change those slope requirements where we have a significant amount of these areas interim reclaimed to date and to require our existing facilities to meet the new standards would result in very significant reconstruction of area that have been reclaimed.

165-18 Inspection

- based on discussion at the Open house, my understanding is the text will be revised to include inspection during normal hours of operation at and agreed specified time. We are required by MSHA standards that all guests check in at the scale house to meet a Dakota Aggregates representative to execute mine safety paperwork and then an authorized mine employee is required to escort the guest onsite.

165-24 Fees

- Instead of splitting the fees equally, one suggestion would be to set an hourly rate for the mining superintendent and list that hourly fee is the fee schedule and each mine is charged the actual hours spent on review to their site.

Pre Existing mine ordinance (Storlie) and Current Mining ordinance(Brosseth pit) Can it be considered to leave the both of the existing mining ordinance in place to cover the existing mines permitted today with the exception being to update the violations sections of both ordinances. That way the enforcement on existing mines where enforcement has been hindering most recently could be strengthened and the existing mines can finish out as originally approved

165-24

- Through communication at the open house it was discussed that the hired Mining Superintendent already has a full time job and was approached about the position had concern if they would have enough time to fulfill the role. One other idea for consideration. In lieu of a Mining Superintendent at a cost to the township, the industry recommends a mining advisory committee. This mining advisory committee would be made up of township miners and township board/planning commission members. They would meet/confer/advise on relevant matters of township mines, permits and ordinances as well as industry best practices.



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February 20, 2023

Attention: Planning Commission
Eureka Township
25043 Cedar Avenue
Farmington, MN 55024

RE: Proposed Mining Ordinance Amendments

Dear Planning Commission.

After reviewing the Chapter 165 Mining ordinance amendments dated February 6, 2023, Minnesota Paving & Materials (MPM) believes Eureka Township (Township) is placing undue restrictions on any and all aggregating mining operations in Eureka Township. As an initial clarification, MPM understands that its current and previous mining activities are controlled by the existing Interim Use Permit (IUP), and are not subject to any proposed mining ordinance. Not only are the Township's proposed mining ordinances an undue restriction, they are an overt attempt to thwart all mining activities and squarely position the Township to restrict private property owner's rights through government interference and restriction. Below are MPM's comments to the Township's proposed mining ordinance amendments.

- **Section 165-3 Definitions**

- **Accessory Uses** – Placing a restriction on ready-mix concrete plants is contrary to the Township's intent. Allowing accessory uses, such as ready-mix concrete plants, accelerates the mining process, thus expediting extraction of minerals and reclamation of the mine to end use purposes.
- **Active Mining Facility** - The proposed requirement to remove a minimum quantity in a calendar year is arbitrary. Due to the Townships strong anti-growth and development stance, mining activity is dependent on County or State projects being let in the area. These projects are localized and not annual in nature. Thus, when the proposed minimum requirement is coupled to the anti-growth sentiment, an annual minimum is an undue restriction that is unrelated to the IUP.
- **Recyclable Concrete & Recycling** – Eliminating or restricting the mine operator's ability to recycle concrete or asphalt is contrary to public interest. The benefits of recycling concrete and asphalt material is common knowledge. Placing a restriction on this beneficial practice is contributing to environmental degradation for all American citizens.

- **Section 165-5 Criteria for Granting Permit**
 - **Subsection K** – Stating that the depth of excavation shall be limited to a depth determined by the board is arbitrary. The environmental impact assessments will determine the appropriate depth of mining, any limit placed by the board should be supported by environmental and engineering logic.

- **Section 165-6 Levels of Permits**
 - **Subsection (C) Level 3 Permit** – As stated above, placing a restriction on ready-mix concrete plants is contrary to the Township’s intent. Allowing accessory uses, such as ready-mix concrete plants, accelerates the mining process, thus expediting the mining process and reclamation of the mine to end use purposes.

- **Section 165-11 Interim Use Permit**
 - **Subsection M** – By allowing the Township sole discretion to approve an IUP transfer, without establishing criteria to support just cause for denial, the Township’s power become purely subjective. The proposed language allows the Township to strip land owners of property rights, allowing the Township to take property without just compensation.

- **Section 165-12 Review of Permit**
 - **Subsection A(14)** – As stated above, the proposed requirement to remove a minimum quantity in a calendar year is arbitrary. Due to the Townships strong anti-growth and development stance, mining activity is dependent on County or State projects being let in the area. These projects are localized and not annual in nature. Thus, when the proposed minimum requirement is coupled to the anti-growth sentiment, an annual minimum is an undue restriction that is unrelated to the IUP.
 - **Subsection B** – The proposed mining ordinances do not provide objective criteria for determination of an IUP’s compliance status.

- **Section 165-13 Performance Standards**
 - **Subsection B(1)** – As stated above, eliminating or restricting the mine operator’s ability to recycle concrete or asphalt is contrary to public interest. The benefits of recycling concrete and asphalt material is common knowledge. Placing a restriction on this beneficial practice is contributing to environmental degradation for all American citizens.
 - **Subsection C** – MPM agrees that the Township should take an active role with controlling and taking liability for trespassers on private property.
 - **Subsection E** – Additional objective criteria is needed to determine when the Township “deems it necessary” to construct a turn lane.
 - **Subsection K** – Placing a prohibition on ready-mix concrete plants is contrary to the Township’s intent. Allowing accessory uses, such as ready-mix concrete plants, accelerates the mining process, thus expediting the mining process and reclamation of the mine to end use purposes. Additionally, as stated above, concrete and asphalt

recycling is in the public interest. Any restriction that eliminates this practice is contrary to societal benefits.

- **Subsection U Reclamation Plan**
 - **Clarification:** While not addressed or clarified in the Townships proposed ordinance amendments, MPM understands its current submitted and approved reclamation plan is controlling its current and future mining activities. Additionally, all previous mining activities are controlled by the existing Interim Use Permit (IUP), and not subject to any proposed mining ordinances.
 - **Subsection (1)(i)** - Placing a condition requiring the mine operator to determine the “planned” or future use of adjoining property is an undue burden. The Township needs to provide a detailed criteria as to how the mining operator would know, and incorporate any future adjoining land owner use in its reclamation plan.
 - **Subsection (1)(j)** – A definition of maintenance is required to determine need and creation of a plan.
 - **Subsection (2)(a)** – The requirement to complete the reclamation in phases and with opening of new excavation is redundant. All mining and reclamation should comply with mining and reclamation plan approved as part of IUP.
 - **Subsection (2)(c)** - Placing a restriction of three months on reclamation after mining activities are complete is unrealistic. Once mining is complete, inventory is required to be sold, which will likely take longer than three months. Especially considering that Minnesota winters make mining and mining related industries seasonal. A realistic time frame is twenty-four months to thirty-six months.
 - **Subsection (4)(d)** – This language contradicts Subsection 4(i). Which requirement is controlling?
 - **Subsection (4)(e)** – What is the remedy if the existing pit or adjoining property has topsoil that is of poor quality?
 - **Subsection (4)(f)** – Language as written does not refer to appropriate Subsection.
 - **Subsection (4)(h)** – Language as written requiring a consideration of on-site septic’s is vague and over broad. A clear standard of what “consideration” requires is needed.
- **Section 165-14 Termination**
 - **Subsection (B)** – The proposed changes to the language to include “any applicable laws, rules, or Township Code” is overly broad. A mining operator is already subject to legal restrictions, the proposed changes provide the Township to arbitrarily introduce restrictions that are not related to mining or the approved IUP. Additionally, by removing the stepped notice process, the Township is proposing to allow permit revocation without providing the operator any opportunity to correct any real or perceived violation.
 - **Subsection (C)** – It would be much better for the Township and Operator to remove the permissive “may” from the “[t]he Town Board may, in its sole discretion, allow

the operator to enter a correction agreement...” Requiring a correction period to bring the operation back in compliance with the IUP ensures the process is followed.

- **Section 165-18 Inspection**
 - **Subsection** – The inspection section should include language that any inspection will comply with MSHA and MNOSHA regulation requirements for visitors at a mining facility.
- **Section 165-24 Fees**
 - **Subsection** – Will the Township provide a detailed accounting of the fees the operators are required to pay?

Thank you for the opportunity to provide comments and feedback on the proposed amendments to the mining ordinance. We look forward to a collaborative process for responsible mining and operation.

Regards,

Mark Butler

MPM

Eureka Township Public Input Mining Text Amendment MPM letter of Feb 20, 2023

The February 20th letter from Mr. Mark Butler of MPM Minnesota Paving & Materials contained the following key excerpts about Eureka Township Mining ordinance text proposal:

"Placing undue restrictions."

"overt attempt to thwart all mining activities and squarely position the Township to restrict private property rights through government interference and restriction."

"Contribution to environmental degradation for all American Citizens."

"without establishing criteria to support just cause."

"arbitrary"

"Due to Township strong anti-growth and development stance."

Suggests Township should take liability for trespassers on private property."

These statements are not accurate; refer our Comprehensive Plan as well as text itself.

It is significant and ironic to note that MPM letter also challenged changes proposed on two key areas:

- 1- Enforcement- "....by removing the stepped notice process, the Township is proposing to allow permit revocation without providing the operator any opportunity to correct and real or perceived violation." (Not correct, see text)
- 2- Reclamation- MPM challenges the revised reclamation plan and basically states no change is possible. "MPM understands its current submitted and approve reclamation plan is controlling its current and future mining activities. Additionally, all previous mining activities are controlled by existing Interim use Permit (IUP) and not subject to any proposed mining ordinances. (Not correct)

Let us review the well documented facts related to MPM's Reclamation and Enforcement:

Reclamation-

The development agreement and IUP from inception of this mine in 2007 called for, and still calls for, five phases of mining, with reclamation to commence within 90 days of completion of mining in each phase. This was NOT done despite repeated inquiries from Township. During discussions in recent years MPM representatives provided a long line of changing excuses for this continued failure to reclaim:

- a- "We can not bring in topsoil to conduct reclamation as it is illegal" per Mike Callahan in public meeting. (False)
- b- "We would need to take down the berms to begin reclaim and that is a catch 22 as we would not be in compliance with berming requirements. (Problem inherent in a poor reclamation plan they set up, so Township said "Fine, we understand, we can be flexible, tell us what you want to do to proceed." No action by MPM.)
- c- During the 4-28-23 joint site visit to mine with MPM representatives, following up on site on some initial dirt moving as part of reclamation, I suggested they take down at least portions of the berms to determine if any topsoil. "There is no topsoil in the berms" was the response.

- d- During the 4-28-23 joint site visit to mine with MPM representatives stated desire to submit a new reclamation plan that they could executive and Township expressed willingness to be flexible, even moving pond location to what might work better / easier. Township expressed desire for a reclamation plan MPM could implement. MPM agreed to submit. After several months I inquired status and was told "the drone broke, we will get back to you". No further word from MPM, another season lost.
- e- During the 4-28-23 joint site visit to mine with MPM representatives, I looked down into the deepest hole on the entire site, phase 5, in south rear of pit. Recalling the numerous statements made by several previous MPM representatives on the record in meetings about the existing pit aggregate being virtually exhausted, especially during the recent past review of MPM request to expand the pit due to lack of materials in existing pit, I asked why MPM had not begun any reclamation in phase 5 abandoned hole. The stated reason is the landowner would not agree to allow MPM to reclaim this final phase 5 section as landowner claims more material exists in this hole.
I expressed my surprise that representatives from the largest concrete and aggregate producer in the entire world, CRH of Dublin, could not determine if there was or was not more material in the hole to mine. MPM representative chuckled and said "There is nothing in that hole worth mining" and they would love to exit the pit and their relationship with the landowner. It should be noted that this property remains for sale by the landowner as an active mine. Perhaps the ability to sell land as an active mine might be impacted if all reclamation required by the existing IUP was completed?
- f- The landowner did months later in Fall come to a Town Board meeting and basically state all the problems with conforming to our ordinances in terms of citizen complaints as well as failure to reclaim was the fault of MPM, in his opinion, but no evidence presented.

Enforcement-

- a- The mine, currently operated by MPM, has a long painful history of non-compliance with Township ordinances dating to mine inception in 2007.
- b- MPM has triggered complaints beyond failure to reclaim, including multiple instances of weekend operation, concrete dumping (not from a township road), concerns about the percentage of imported materials versus excavated materials for the Ready-mix cement plant that was in operation, concerns about the Ready-mix cement plant actually being the primary use instead of permitted secondary use, and other issues. In fact in 2021 two violations were deemed "critical violations" under the existing ordinance language, one involving the blatant disregard of local ordinances on June 27th 2021 by dumping many truckloads of asphalt from a private parking lot in Township, that had to be removed.

All interested parties should be advised that MPM's long history of negative impact on citizen's quality of life due to non-conformance to existing ordinance as written was the driver forcing the Township to review our ordinances and improve same. It is something we must do, will do, while utilizing all valid factual input available to craft fair effective new ordinance.

Bill Clancy

EUREKA TOWNSHIP

Dakota County, Minnesota



Public Hearing Meeting

Attendance
February 22, 2023
7:00 PM

Continued to
Feb 27th
7pm

Printed Name

Address

Bill Clancy	25511 IPava Ave Litchville
Brian Rippe	6215 235 SW Foyton
Beth Eilers	Eureka Township
Randy Wood	Eureka Township
Renee Freeman	23080 Jensen Ct
MARK BUTLER	1905 3rd Ave, Mankato, MN
Andrew Wojtowicz	1905 3rd Ave, Mankato, MN

Printed Name

Lester Lison

John Rivista

Matt Metting

Bruce Ahern

Pat Mason

John R. Stahl

Annie Resop

Kelly Brosseth

Dan Ames

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