

**EUREKA TOWNSHIP
DAKOTA COUNTY
STATE OF MINNESOTA**

November 24, 2014

PUBLIC HEARING

TEXT AMENDMENT APPLICATION BY KENNETH MILLER

Call to Order

Planning Commission Chair Butch Hansen called the Public Hearing to order at 7:00 PM. Chair Hansen stated that the purpose of the public hearing is to take public comment on an application by Kenneth Miller for a Text Amendment of Ordinance 6, Mining Ordinance to address only Level 3 Interim Mining Permits (new permits), Ordinance 6, Chapter 3 Definitions, Principal Use—second sentence, delete the words “or a ready-mix concrete plant”. Ordinance 6, Chapter 7, Section 2. K, Accessory Uses – third sentence, delete the words, “or ready-mix concrete production plant”.

Planning Commission members present: Chair Butch Hansen, Commissioner Carrie Jennings, Commissioner Allen Novacek, and Commissioner Phil Cleminson. Commissioner Lu Barfknecht was not present. Attorney Chad Lemmons was also in attendance. Deputy Clerk Cheryl Murphy recorded the minutes. See attached sheets for additional persons in attendance and the speaker list.

Approval of the Agenda

A motion was made by Commissioner Jennings to approve the agenda as presented. Motion seconded by Commissioner Novacek. Motion carried by unanimous vote.

Mr. Miller presented a PowerPoint slideshow explaining the proposed concrete mixing plant would be run under the guidelines and monitoring of state agencies. The State agencies would also monitor the water being used and the discharge of the storm water, as well as the process for handling the washout water. He noted there is a 326-foot well on site and the wash plant uses recycled water. Mr. Miller stated that the plant itself is unobtrusive and would control the dust and noise through a bag house that filters out the cement powder, as well as the noise. He also discussed the hours of operation of the plant. It was noted that a hard copy of Mr. Miller’s presentation would be attached to these minutes.

Commissioner Jennings stated Mr. Miller may be required to obtain a DNR Water Appropriation Permit. Mr. Miller stated that he currently has one for a million six gallons per year and noted that the ordinance he is requesting to change will apply to the whole Township. If approved, he will then ask for an Accessory Use Permit for his proposed operation.

Chair Hansen opened the floor for public comment.

Gloria Belzer – 24335 Dodd Boulevard –had a question for Mr. Miller regarding the dust. Mr. Miller stated that the bag house filters all the dust and there is a vibrator with an electric motor that shakes the dust out.

Richard Lee - 5695 235th Street stated that most of his questions were answered by the presentation. Mr. Lee's main concern is increased traffic. He was also concerned about the hours of operation, currently 7:00 am -5:30pm with an hour before and after. Mr. Lee stated that Mr. Miller will be using a lot of water and wanted to know what effect that would have on area wells. Commissioner Jennings stated that the DNR will deal with that issue as part of the Water Appropriation Permit. Mr. Miller also stated the plant would be under the berm on his property. Attorney Lemmons stated, if this was to go forward, the Township could put conditions on the interim use. Mr. Lee also questioned noise levels.

Chair Hansen stated that Mr. Miller would have to request an extension for the hours of operation. Commissioner Jennings stated that the first step is to amend the ordinance which would be Township-wide.

Brian Ahern - 6215 235th Street West stated that deleting five or six words of text in the ordinance could open up quite a bit of industrial/commercial activity and could have repercussions. He also stated that the original language put in the ordinance was put there for a reason. He stated the other part is semantics, bringing in raw material for another process but housing it under the same ordinance. He stated he felt that could be a "slippery-slope". He also expressed concern over the longer hours of operation and the number of ready-mix trucks that would be hauling concrete and the effect they would have on the county roads. Mr. Miller explained that the operation would be under an annual review and complaints would be taken into consideration. Chair Hansen stated that the county road is a nine-ton road and the trucks in question are licensed and permitted to drive on the county roads.

Fritz Frana- 23655 Jersey Court stated his concern was related to the notice procedure. He had not seen the hearing notice posted in the newspaper. Chair Hansen stated the Clerk had an affidavit that the notice was published in the Dakota Tribune, as well as being correctly posted. Mr. Frana stated that it seemed inconsistent when an application for a mining extraction permit requires notice be sent to property owners within 1000 feet. Attorney Lemmons explained that this application is for a text amendment, not the actual use of the property.

Chair Hansen stated it was Mr. Miller's decision to hold a public hearing, as it was not a requirement for the text amendment. Mr. Frana also had questions regarding Chapter 7, Section 1K. Mr. Miller stated he is only addressing the new interim use permits, not the existing grandfathered permits. Mr. Frana also addressed the following points:

- Will a ready-mix facility affect property values and potential tax revenue?
- What affect will the ready-mix facility have on end use/timeline of the pit?
- Will it lengthen the pit life?
- Is this use more appropriate in a commercial zone?
- How does a ready-mix facility support the Township comprehensive plan?
- What is the effect on the public health and safety of residents?
- Asking the Planning Commission and the Town Board to do due diligence with respect to making a decision in the best interest of the residents.

Jeff Otto-25580 Dodd Boulevard stated he was on the Town Board five years ago when a similar text amendment application which included the recycling and production of hot tar was not denied

but was withdrawn and the concrete portion of the application was not pursued. He stated that the following items should be considered:

- Concerns about text and structure of the ordinance.
- The pit could close sooner and could be reclaimed sooner.
- The request is not a dramatic change of use, as long as it is contained on that property.
- Does the removal of this text open the door to allow a facility to be placed outside of a mine?
- By removing this language, does this imply that it is now a primary use? Can this be interpreted more broadly?
- The language in the ordinance needs additional text for clarity.
- Should this come before the Board, would Mr. Miller recuse himself from discussion and voting?

Mr. Otto also asked if Mr. Miller would recuse himself when the Board reviews the application. Mr. Miller indicated that he would recuse himself.

Gary Smith – 4628 235th Street stated he was on the committee for the mining ordinance in 2000 and 2001 and a year was spent writing the ordinance. He stated he did research on the internet (see additional information attached to the minutes) regarding the cement powder used to make concrete. He noted it is not good for the environment and studies have shown that adverse respiratory health effects are seen in people exposed to cement dust. He also expressed concern about cement dust blowing on his alfalfa plants and hayfields. He recommended that the Town Board not pass the text change. He further suggested that a committee be set up to investigate the impact of a cement plant, including water pollution, health repercussions and traffic.

Mr. Miller stated that the MPCA and other State agencies are on site twice a year and that he would be monitored by three different State agencies who would file reports to control potential problems. Commissioner Jennings stated the Board can require additional checks in areas of concern.

Commissioner Cleminson stated that most enforcement is complaint driven. Commissioner Jennings noted that data from Kelly Aggregate should be reviewed.

Randy Wood – 23775 Essex Avenue stated that as a member of the Task Force and co-author of the current mining ordinance he opposes the text amendment. He stated that mining was meant to be only a temporary use of the land, that once the sand and gravel was removed, its purpose as a mine ceases. He noted the text amendment, as proposed, would allow the mine site to be permanent. He further noted that ready-mix concrete plants are heavy industry and should be located in an industrial zone, and if the Township wants such businesses, the zoning should be changed to industrial.

Sharon Buckley – 10355 235th Street was unable to attend the Public Hearing, but requested her letter be read at the meeting. Randy Woods read her letter (attached to the minutes), which indicated she is in vehement opposition to the change in the mining ordinance language.

Terry Petter – 10132 235th Street West stated the proposed text amendment is a change to an ordinance that affects the whole township and she expressed her concern that notice of the public hearing was not mailed to residents.

Doug Houser - 9130 235th Street West stated he had heard nothing but negativity during the meeting and asked if anyone had anything positive to say.

Don Holz - 23787 Essex Avenue asked about the vacuum system and expressed concern about health issues should the system break down.

Mr. Miller stated in 2001 the state mandated that safeties be put in place. If the vacuum system goes down or malfunctions, mix cannot continue.

Commissioner Novacek questioned the likelihood of dust ruining crops and how rain would impact the situation. Chair Hansen stated concrete dust vs gravel dust is a concern. Commissioner Jennings stated further investigation should be done on this issue.

Resident Gary Smith expressed concern over the impact dust would have on his hay and alfalfa. He also stated that in reference to the plant shutting down if the vacuum system malfunctions, the automation could be bypassed.

Mark Ceminsky - 7226 235th Street West addressed Mr. Holz' question regarding the Vermillion Watershed, noting the Watershed would not be involved in the text amendment but would be a part of the permitting process in regard to water use consumption, setbacks of the Vermillion River, water runoff, etc.

Mike Slavik - Dakota County Commissioner District 1 - 1590 Highway 55, Hastings stated he had been contacted by several Eureka Township residents regarding use of the County roads in the Township. He stated that County roads are meant to be used for heavier uses such as industrial, commercial or residential. He noted that the gravel roads will remain gravel even though activity may increase.

Mr. Slavik explained the difference between the Vermillion Watershed and the Soil and Water Conservation District per a request from Commissioner Jennings

There being no further public comment, Chair Hansen closed the public hearing.

Commissioner Jennings stated that, given the amount of information that needs to be reviewed, she felt discussion should be held at the next Planning Commission meeting before forwarding the public testimony to the Town Board.

Discussion was held regarding the need for the public hearing and what is required of the Planning Commission.

Chair Hansen made a motion to send the information gathered to the Board along with the minutes and the recording of the Public Hearing. Commissioner Novacek seconded the motion.

Chair Hansen noted that the minutes from the public hearing would be approved at the next regular Planning Commission meeting prior to being sent to the Board. He further stated that he felt it was not the responsibility of the Planning Commission to make a decision on Mr. Miller's text amendment application. Commissioner Jennings stated that she felt it was the responsibility of the

Commission to conduct further research before forwarding the issue to the Board. Attorney Lemmons noted that the Commission could consider making a recommendation to the Board, as the text amendment request has to do with land use within the Township.

Commissioner Cleminson stated he felt Mr. Miller's application should be placed on the next Planning Commission agenda for further review.

Attorney Lemmons was asked if the minutes of the public hearing would serve as findings of fact. He indicated that they would.

Commissioner Jennings questioned Chair Hansen's motion in that he was ruling out the Commission's ability to make a recommendation. Chair Hansen stated that was the intent of the motion.

A roll call vote was taken on the motion. Commissioner Novacek-Aye; Commissioner Jennings-Nay; Commissioner Cleminson-Aye; Chair Hansen-Aye. Motion carried.

Commissioner Jennings stated the reason for her nay vote was she felt the citizens expect that the role of the Planning Commission is to weigh out public testimony and then make a recommendation to the Town Board.

Chair Hansen made a motion to adjourn the meeting. Commissioner Jennings seconded the motion. Motion carried by unanimous vote.

Meeting adjourned at 9:14 pm

Respectfully submitted,

Cheryl Murphy
Deputy Clerk

ATTACHMENTS to Minutes:
Attendance List
Speaker List
Kenneth Miller Presentation
Gary Smith letter
Randy Wood Letter
Sharon Buckley letter

Minutes approved as amended on December 1, 2014