

# **SPECIAL PLANNING COMMISSION MEETING**

## **PUBLIC HEARING**

### **Zoning Ordinance Text Amendment Application**

**April 27, 2009**

**Eureka Town Hall**

Planning Commission Chair Sharon Buckley called the Meeting to order at 7:02 p.m. Planning Commission members present included Sharon Buckley, Vince Mako, Kenny Miller and Ken Olstad. Clerk/ Treasurer Nanett Sandstrom was present to record the minutes.

Audience members included Town Board Members Nancy Sauber and Jeff Otto. See attached list for citizens present.

Agenda: To hold a public hearing regarding a Zoning Ordinance Text Amendment with Kelly Brosseth, 9235 235<sup>th</sup> St. W. as the requestor. Because the request has to do with a Mining Ordinance change, Planning Commission Member Kenny Miller chose to dismiss himself from the Planning Commission due to potential conflict of interest.

Chair Sharon Buckley read the following Published Notice for the Public Hearing:  
“Notice is Hereby Given; the Planning Commission of Eureka Township will hold a public hearing on Monday, April 27, 2009 in the Eureka Town Hall located at 25043 Cedar Ave., beginning at 7:00 pm for the purpose of considering a text amendment to Eureka Township Ordinance 6, Chapter 7, Paragraph B1, to read as follows: 'RAP may be crushed and mixed onsite as part of an approved Level 3 Extraction permit. All RAP stockpiles that have the stock pile base within 5 feet or less of the highest groundwater elevation shall be placed on Class 5 material which is compacted to a 98% proctor. All stockpiling and processing of RAP materials must adhere to all regulations as outlined in Ordinance 6 pertaining to a Level 3 Extraction Permits. Such persons desiring to be heard with reference to this matter will be heard at this hearing.’”

RAP is defined as Recycled Aggregate Products

In addition to the public notice that is required, notice was mailed to all property owners within 1,000 feet of each of the two Level 3 Mining Operations recently permitted under Ordinance 6. While that notice is not required for this text ordinance amendment request, it is the requirement for the IUP applications for mining.

Current Ordinance 6, Chapter 7, paragraph B1 & 2 reads as follows: *(The requested change is only to paragraph 1)*

B. Source of Materials. Only minerals from the site shall be processed at the mineral extraction facility subject, however, to the following exceptions:

1. Recyclable concrete and recyclable asphalt may be crushed and mixed on site if the crushing and mixing do not exceed fifteen (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.
2. The Operator may import off-site minerals onto the subject property for the purpose of mixing with minerals from the subject property provided the imported minerals on an annual basis do not exceed 25% of the minerals extracted from the subject property on an annual basis.

The applicant was asked to make a brief statement on the proposed text amendment. Terry Swor from American Engineering and Testing, Inc. spoke on the benefits of recycling concrete. Ames and Kelly are looking for a means for crushing recycled aggregate products onsite. They currently by the permit already approved have the right to do so. Currently it has to be materials derived from Eureka Township. There is great pressure by State regulation (in 1984 & 2000) to use recycled materials. LEED is Leading Energy and Environmental Design. There are points rewarded by reusing materials- Green Council. Kelly has an aggregate resource to mine. The permit goes for 22 years. By blending recycled materials with the aggregate it will extend the resource. Each person uses 10 tons of aggregate per year. There is an environmental benefit, less gas usage- two way haul. They will not exceed more than 25% of recycled materials per year. It will be within the permit already issued on the property. It will not have a negative impact on the surrounding property. The only change would be recycled concrete coming in. A handout was provided on the advantages of using recycled concrete. Concrete has latent cement in it, when it gets wet it cements and makes a denser material. It is cheaper to produce. The best materials are made in producing concrete, so by reusing you get the best materials under your buildings and parking lots. There is a lower cost to use recycled materials.

Sharon Buckley explained that the process for amendment changes of the ordinance requires the application be initiated by a resident, Planning Commission or Town Board. Kelly Brosseth is the resident making the application. Ames Construction is the operator on the permitted mine. This text change would apply to all Level 3 permits in place and any future Level 3 Mining Operations.

Chair Sharon Buckley covered the protocol and procedures for holding a public hearing.

At 7:19 p.m. Chair Sharon Buckley opened the floor to public comment.

Steven Maxa, 23525 Dodd Blvd, Lakeville

Steven owns property on the corner of 235<sup>th</sup> & Dodd. There are 3 gravel pits in the vicinity. Recently it has become busy, dust, dirt, noise, truck traffic. When the weather is nice his mom has to look outside and check current pit activities, wind conditions before choosing whether or not to hang her clothes outside to dry. They can't open the windows in the summer because of dust and dirt. Have had broken windshields from increased gravel hauling in recent years. The original text was to limit recycled materials from within the Township it was to limit the liabilities of real large recycling projects that were located outside the boundaries of Eureka Township. Liabilities are additional truck traffic, safety concerns that go along with that, as well as noise, air pollution, wear and tear on the roadway. Currently there is a gravel tax for materials hauled out of a pit. On recycled products – is there a fee paid for every truck brought in and that

goes out? There is a significant amount of wear and tear on the roads. There aren't a lot of rules and regulations - they can bring in mountains of this stuff and leave it for years and years. Could piles of this be left after the 22 year permit has expired? Who benefits by doing this? He heard the word "green" mentioned. To be truly "green" it should be recycled onsite, rather than trucking it back and forth all over the country, causing wear and tear on the roads and disrupting people's lives that live near this type of operation. He doesn't totally buy into two way hauling. Every truck load hauled in another truck goes out. Most likely where the material is coming from will not be where material is going to be hauled to. In reality he doubts that a lot of it will be a two way haul. He understands the principle of private property owner's rights. Mr. Kelly exercised his right to sell the minerals from his property. He went through the Level 3 permitting process. Now he wants to bring more stuff in from outside the Township and process it and haul it back out. That might infringe upon the rights of other adjoining property owners. He likes the ordinance the way it is currently written. We can be green and recycle products that come from within the Township. Materials that originate outside the Township can be green somewhere else.

Richard Lee, 5695 235<sup>th</sup> St W., Farmington

Richard was involved in creating the current ordinance. He would like to see the ordinance stay the way it is. How much noise is this going to make over what we have now? He lives a half of a mile from Kenny's pit. On really quiet days he can hear quite well, but he can live with it. He understands the need for gravel. If we change our ordinance to recycle, when are we going to change the rest of the ordinances to recycle aluminum and steel? He is curious about how much noise it is going to make, how much trucking is going to increase. Why can't they do it onsite or closer to where they are going to be at? Green? Save the fuel.

Randy Wood, 23775 Essex Ave., Farmington

Randy was present to oppose the change to the ordinance. He asked that the Planning Commission deny the crushing and mixing of recycled aggregate products. Randy is one of the original members of the mining ordinance task force. Their philosophy was to mine the products and put the property back into Ag use as soon as possible. By recycling materials it will take much longer. In the future others will ask for an asphalt plant, a concrete plant, a block manufacturing plant- these are all businesses that go with gravel mining. There may be a need for this type of recycling, but let it stand on its own. Don't add it to the mining ordinance. It's not mining. It's recycling. It was originally worded to save taxpayers money by allowing recycling of just roadwork being done within the Township.

Donald Holz, 23787 Essex Ave., Farmington

We hear about environmental benefits for doing this. He doesn't see environmental benefits to the property owners when they have dust and noise. We can live with local mining operations. They remove the gravel and are done with it, but now to go to an industrial operation. This could go on forever, because it will increase the length of this operation. As we look ahead to selling our property, he talked to realtors. They could not tell what it would do to the value of their property. He believes in the rights of individuals to make a profit, but yet when one is so close and could get hurt so badly by their investment, we need to make a living also. He is concerned about depreciation of his property. The noise level of the mining operation is not extreme, they can live with it. What is next? When they came in and heard about the mining operation they felt it was something they could live with. We got the idea it wasn't going to go any farther. Now here we are, what is going to happen three years down the road? He is really

opposed to this, it would damage the neighborhood. With recycling of materials it could go on indefinitely.

Kenneth Maxa- 23525 Dodd Blvd., Lakeville

Last fall when he cleaned his gutters there was a ½” of mud. They operate the pit in light rain. They drag mud and rocks onto the blacktop. Windshields get busted. They can't open windows in the house. If he looks out to the north he sees a gravel pit- it looks like a junk yard. He opposes the ordinance to bring in concrete or blacktop. He is tired of it.

The applicant and representatives were asked to answer questions.

Chair Sharon Buckley asked why do you want to haul the concrete to Eureka Township and crush it here rather than crush it on site. At some sites crushing takes place onsite. Why is it green to process it at one location or another?

Shawn Dahl, Ames Construction commented that the County Road 70 Bridge will be processed onsite. Not every construction project has the space, right of way or room to process materials onsite. It is more economical to process onsite. When you can't and you still have to haul the material away that has to be moved, you still need to take it some place to turn it into a reusable product. The material often needs to be blended with other materials for it to be used. If you are in an existing mining operation, it allows you to do that. The equipment needed for crushing and processing is the exact same equipment used to process material taken out of the pit. In terms of dust and noise, it is no different than what occurs in an every day mining operation. All nearby pits do this type of recycling. It is a commonplace in the industry. The two way haul will be used a high percentage of the time. It is not economical to haul one way.

Sharon Buckley asked if the noise and dust are exactly the same as crushed rock coming out of the pit. Does the concrete make more dust or a different type of dust? Shawn stated the noise is no different. The system used for crushing uses a spray bar system to keep the dust down. When crushing rock, the strength is 25,000 lbs. per square inch, it is very hard. To crush concrete it is only 5-6,000 lbs. per square inch. It takes less energy to crush concrete than aggregate itself. It breaks down easier. Two way haul saves money and is fewer trips on the road. It makes sense if managed properly. The aggregate source is very clean. There aren't many small particles. The product is used for base product under highways. The stock piles will come out. There is a reclamation plan as part of the permit. The current ordinance does allow the recycling of concrete. The permit is for 22 years. You can only recycle up to 25%, it won't extend the life of the pit. It will reduce the amount of natural aggregate materials removed over time.

Sharon asked for specifics about stockpiling. How long do stock piles stay, how big of a stock pile will you keep? Is it economical to crush it and to get the material out as soon as possible? Do you save it and crush it all at once. Shawn stated you need to have enough raw materials to make it worth the time to change over for say a week's period to process what you have on hand. At most every 45-60 days they would change over and process the material they have on hand and create a stockpile no greater than they are allowed to have. The 25% is plenty adequate on an annual basis. It all depends on how much is available from construction projects that year. 20,000 tons per year would be processed and sold. 100-150,000 tons of sand and rock products would be processed per year. 17-18 tons per truck.

Ken Olstad asked for clarification on the comment that allowing RAP processing would imply less material being mined over the 22 years of the permit.

Terry Swor commented that aggregates are a limited resource. It saves the consumer by having local resources. If the source can be supplemented with recycled materials it makes sense to do so. In the 22 years of the mine operation, less material may be mined, due to using recycled products.

The material has binding qualities. If it blows into your gutters, will it bind together and be hard to clean out? When it rains the stock piles self cement, so the wind does not move the materials. If the materials are processed correctly, it should minimize any of those effects.

Shawn Dahl commented that they understand that these types of facilities are located where you live and they affect you in some way. Dust is a problem, dirt on the roads, particularly when it rains. Last year's operation was a high volume of material. What got hauled out in a hundred days was probably equivalent to what will be hauled out in a normal operating year. They had a vacuum sweeper truck available that was used at least once a day. A water truck is dedicated to the mining site.

Randy Wood asked where is the recyclable product coming from, buildings? Would there be lead from painted buildings?

Terry Swor commented that recyclable concrete would only come from pavement. It uses a high quality aggregate product. Cement used in buildings does not. Concrete is tested before it is approved for recycling.

Shawn Dahl commented that when buildings are demolished, it requires a special permit dictating where the material is going. Before it can leave the site the materials are tested for lead, asbestos or other contaminants. If they are present, it must go to a specific landfill recycling site.

The Public Hearing was recessed so that the Public Hearing scheduled for 8:00 pm could take place. At 8:22 pm the Public Hearing was reconvened. The question and answer session continued.

Vince Mako asked what would happen to the material if it was not brought back to Eureka Township for recycling.

Shawn Dahl commented they would have to find another facility. Gravel is all about geographic circumference. Which ever gravel pit is the closest to a project is where the gravel will come from. All metro projects will not source from Eureka Township. 494 would probably be the dividing line. West of 169 would go to Carver County. The recyclable materials will go to the facility that is closest to the job that allows recycling. Every 17 miles that gravel needs to be hauled doubles the price.

Steven Maxa asked about bringing in up to 25% of recyclable material. Is that going to extend the life of the pit? Most of us want the gravel removed quickly and turn it into the lake. No one

wants the headache of putting up with the mining operation. You are extending the useful life of the gravel in the pit, the time it takes to take it out. It will take 25% more years to use up the gravel in the pit.

Shawn Dahl commented that he is correct. It is a market driven thing. The permit is for 22 years. At that time the Town Board will decide if there is gravel left, if it will get used up or not. The reason materials are being recycled is to extend the life of the gravel in the ground for future generations.

Ken Maxa expressed concerns with mining into the water table. When a backhoe goes into the water table it is polluting it.

Chair Sharon Buckley stopped this line of discussion. The permit has already been issued for the mining. It is not related to the text amendment on recycling of aggregate products.

Nancy Sauber- 9445 225<sup>th</sup> St. W. Lakeville presented her written comments to the Planning Commission. Nancy Sauber commented that the Special Meeting was not posted as a possible meeting of the Town Board, which it would be if a quorum of the Town Board was present. Jeff Otto and Nancy Sauber were the only Town Board Members present. This does not constitute a quorum so she was able to speak without violating the open meeting law. She had a number of points that she would like the Planning Commission to take into consideration. *See attached comments and recommendation.*

Nancy pointed out other portions of the ordinance that would need to be looked at. It is the Planning Commission and Town Board responsibility to look at any other phrases that might need to be modified. RAP needs to be defined. The ordinance talks about recyclable concrete and asphalt.

Terry Swor explained that both materials are used for pavement. Recycled asphalt comes from blacktop that is recycled and crushed. It performs very well as a base aggregate when recycled. Concrete is a ridged pavement, not flexible like the blacktop. It is known to last longer and uses a higher quality of aggregate base. The only difference is the source of the material. One uses asphalt material for binder, the other uses cementitious materials for a binder of the aggregate. The term RAP includes both asphalt and cement products.

A citizen asked what happens with the rods in the concrete. It is recycled. There is a first sort on site. Steel rebar that is imbedded in the concrete is removed with a magnet in the crushing process and then recycled.

Shawn Dahl explained that the same mining equipment that is used to crush gravel being removed from the pit would be set up to process recycled materials. Depending on the amount of materials the recycling process would take 3-5 days. The conveyor is set up to create a stock pile that will only consist of recycle materials. The material goes through a series of sieves.

Don Holz asked about the process for recycling asphalt. The ordinance change would allow the recycling of asphalt also.

Terry Swor commented it is the same base as concrete. It is a softer material. It makes virtually no noise or dust. It is crushed and sized same as the concrete. It is crushed cold, so it is brittle and broken up.

Don Holz asked to make a final comment. He commented that we have worked very hard on this ordinance. He is very satisfied with this ordinance. To change it now is not in the Township's residents' interest in his opinion. He is totally against it. He understands green. It's just not good for him.

Is there a tax on recyclable products? Taxing of the product was discussed. If taxing of materials is the same as in blended materials from Kenny Miller's pit there is no import tax. The tax is paid on the product when it is first mined. If it is blended with virgin materials a tax is paid on the portion of the load that is virgin material.

The issue with broken windshields, does the driver of the truck have the responsibility? Kenny Miller commented that it is the truck drivers' responsibility to make sure the truck is free of loose materials.

Jeff Otto, 25580 Dodd Blvd

Jeff asked if other materials (minerals or poor quality gravel) are being imported to be blended with the recycled products. Would it be materials that may need to be crushed, screened and washed?

Shawn Dahl commented that he doesn't know what other types of materials would be brought in. Whatever you would bring in would need to be sized and blended to what you have there to complement it.

The ordinance was written so that minerals from another pit (one that is small and does not have the capabilities to process materials) could be brought in, crushed, washed or sorted.

Is there a difference in the amount of water usage if you process RAP? No, it is not washed. Spraying to control dust is part of the routine operation.

In terms of the capacity of the mine, the crushers and screening determine the amount being processed. Shawn does not foresee the pit maxing out on the use of the crusher. The market is not there for material. Things could change in the next 10-15 years, but he doubts it will.

A comment had been made that in the Level 1 Permit the amount of material removed from the permit in 100 days is probably equal to what will be removed in an average year of the Level 3 mining operation. Approximately 100-120,000 cubic yards. (170,000 tons)

Are there different issues with asphalt than concrete products on what might leach out of the stockpiles, because it is an oil based material? That is the initial intent of the Level 3 Permit to create a pad if they are within 5 feet of the water table. There are small amounts of contaminants that may wash out of the products. The stock piles are on a pad. Any runoff is directed to a sedimentation basin and is confined. Studies show there is no contamination. They monitor the level in the wells. Concrete is self cementing, so run off after the first flush is virtually nothing. With asphalt, after the first flush no contaminants remain.

Sharon Buckley entered e-mail communications into the record.

A question was directed to Ron Quanbeck on the proposed text change. Sharon asked if he had any concerns. *See the attached memo dated April 20, 2009 from Ron Quanbeck.* Supervisors Jeff Otto and Carrie Jennings were cc on this e-mail. Both Supervisors responded to e-mail. *See attached e-mails.*

Past members of the mining task force were contacted and asked for input. This list included Gary Smith, Glen Shirley, Don Storlie, Kenny Miller, Randy Wood and Patricia Steege.

Glen Shirley submitted written comments. His concern was policing the amount/ percent of material being brought into the site. Without a staff person other than the clerk, no one is available to count trucks and monitor paperwork at the end of the year. He just doesn't want another slippery slope like another operation in the Township that started as a borrow pit for the airport. Recycling is good for the environment and the operator.

Sharon had a telephone conversation with Don Storlie. His comments included that he felt it should be allowed, it is a good thing to do and that Ames will do a good job of it. At the same time we know this is a broader issue.

Terry Swor responded to items addressed in the e-mails. He commented that no additional water will be used except in the processing of RAP materials. The original permit has gone through water quality. RAP piles are required to be at least 5 feet above the water table and base aggregate to control run-off. The length of time that stockpiles can stay in place is not an issue. There are stockpiles that have been in place many years and they do not have run-off problems. The height issue- the ordinance addresses this. The green issue of doing it onsite, sometimes it is easier to bring it to the facility where the equipment is set up and the proper controls for monitoring. Two way hauls are a management tool to control costs and to keep the price to the public economical. They have a permit for air quality. It meets the standards. The materials are sprayed during the crushing process to keep the dust and particles in the air down. Virgin materials from the pit are very clean, there is very little dust.

Ken Olstad asked for clarification. Ken commented that his understanding is the economics of the situation are limited by the demand. Recycled aggregate would replace the amount of mineral extracted. Would more material total be crushed per year if recycled aggregate product is brought in?

Shawn Dahl responded – Not really, they will only have one crushing operation. If they dedicate a week to crushing aggregate products, they will not be processing materials from the site at that time. What they can process in a year is what they can process. Because of winter, the market, construction season, it is impossible to process 52 weeks in a year. They will set up and crush a certain quantity and won't crush again until a certain portion of that material is depleted. He doesn't expect to have enough volume to operate 5 days a week.

Will the amount of time spent crushing increase if RAP is allowed to be brought in? The demand for the product is limited, so crushing of RAP would decrease the amount of virgin materials being processed.

The following scenario was presented: The ordinance would allow 15 days of crushing of RAP, the product must originate within 17 miles of Eureka Township. Shawn Dahl felt in the foreseeable future that scenario would be fine. 300 tons can be processed per hour, 3,000 tons in a 10 hour day a total of 45,000 tons per year.

Recycled products are used primarily in residential construction and residential roads as a base under concrete and driveways. The recyclable concrete and asphalt mainly comes from road projects in the spring of the year.

Vince Mako commented that two way trucking will not increase the number of trips in and out of the permit. It will not increase the hauling by 50%. If it is done efficiently it is economical.

Chair Sharon Buckley called three times for additional public comments, hearing none the public comment portion of the meeting was closed at 9:42 pm.

Chair Sharon Buckley commented that she felt this issue needs further study. Because this is the proposed language doesn't mean this is the only language. It is the Planning Commission's job to consider the language. Other portions of the Ordinance may need to be modified as well. The Planning Commission might want to contact the agencies that reviewed the EAW for the mining permit to see if the proposed change was implemented if their conclusion to the EAW would be any different with the recycling of materials being allowed at a higher level.

Vince Mako commented the first question that should be asked is, in any form, would we want to change the Ordinance. Is it good? Is it best for the community? Is it best for the State? We are not in charge of the State. We are in charge of Eureka Township. Is there any benefit to Eureka Township and the citizens of Eureka Township? If the answer is that we are not going to change it, then we should not bear any expense to move forward.

Ken Olstad commented that while a private citizen looks out for his best interest, he also acts in a larger responsible role, as a participant in something larger. Recycling is a good thing. Empty trucks are wasteful. Efficient utilization of everything is a good thing. He feels a responsibility to encourage that type of thing.

Sharon Buckley commented if we keep the cost of construction down, Ames Construction might make more money, but we as tax payers in the end may pay less for each new road that goes in for us. Sharon thinks the option of allowing recycled materials within a certain distance of the Township should be considered.

Shawn Dahl commented on the environmental agencies that weighed in on the EAW in the beginning. Recycling of materials was part of the application all the way through. They all reviewed it in the context of the application. If he understands the paragraph correctly you are allowed to bring in minerals to process. He can do that under the current ordinance. If he brought in the 25% allotment and crushed it, what would be the difference?

Sharon Buckley commented that they are two separate issues. They are really not connected. The recyclable materials are not limited to 25%.

Ordinance 6, Chapter 7, Section 1, B. Source of Materials.

Only minerals from the site shall be processed at the mineral extraction facility subject, however, to the following exceptions:

1. Recyclable concrete and recyclable asphalt may be crushed and mixed on site if the crushing and mixing do not exceed fifteen (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.
2. The Operator may import off-site minerals onto the subject property for the purpose of mixing with minerals from the subject property provided the imported minerals on an annual basis do not exceed 25% of the minerals extracted from the subject property on an annual basis.

Nancy Sauber commented currently there is no limit on the amount of recyclable concrete and asphalt materials that can be brought in and how much can be stored there.

Vince Mako felt that the two should be combined – 25% of any outside materials would be limited and expand the recyclable outside of Eureka Township. This would not be adding any additional material and closing the loop hole on recyclable material that would be hard to get in Eureka Township.

A motion by Vince Mako: He recommended that the Planning Commission do some research and come back and try to come up with a plan. (Continued study, with the idea that they would fix the loop hole that Nancy pointed out and consider expanding the RAP to outside of Eureka Township.) Motion seconded by Ken Olstad. Vince asked that the message be sent to the Town Board on what they are doing. This can be discussed at the next Town Board Meeting and placed on the Town Board agenda as part of the Board report. Vote was taken on the motion. The motion carried by unanimous vote.

A motion by Sharon Buckley: To adjourn. Motion seconded by Ken Olstad. Motion carried by unanimous vote.

The meeting adjourned at 9:58 p.m.