

# SPECIAL PLANNING COMMISISON MEETING

## Kelly Aggregate Application for a Level 3 IUP

February 17, 2009

Eureka Town Hall

Planning Commission Chair Sharon Buckley called the Meeting to order at 7:08 p.m. Planning Commission Members present included Sharon Buckley, Nancy Sauber, Ken Olstad and Vincent Mako. Clerk/ Treasurer Nanett Sandstrom was present to record the minutes.

Audience members included Town Board Members Jeff Otto and Dan Rogers, Ray Swedeen, Kelly Brosseth, Kate Kleiter, Richard Pennings, Shawn Dahl, Pat Mason, Kurt Quaintance and Pat Mason

Agenda: Continued discussion for the Kelly Aggregate Level 3 Extraction Permit.

Revisions were made to the draft permit conditions sent to the Planning Commission by TKDA on January 21, 2009, for the Public Hearing held on February 10, 2009. Ron Quanbeck, TKDA, incorporated the Planning Commission's revisions and Vermillion River Watershed Joint Powers Organization's (VRWJPO) recommendations into this document. *See letter from TKDA dated February 16, 2009, Draft Conditions Kelly Aggregate Level 3 Extraction Interim Use Permit*

The Planning Commission reviewed the draft conditions:

1. **Scope of Operation:** OK as presented.
2. **Hours of Operation:** *This condition was to be written as it was written in Windmill's IUP conditions. The conditions did not contain any specific language. It must have been part of the application. add: "e.g." inside of parenthesis.*
3. **Source Materials:** change: "**demotion**" to "**demolition**"
4. **Storage of Recycled Materials:** OK as presented.
5. **Fencing:** OK as presented.
6. **Access:** change: "**by-pass**" to "**bypass**" and "**advanced**" to "**advance**"
7. **Dust, noise, and Vibration:** OK as presented.
8. **Permits:** Add: "**all**"- Last sentence- before permits received.
9. **Water Use:** OK as presented.
10. **Wastewater:** OK as presented.
11. **Erosion Control:** OK as presented.
12. **Hazardous Materials:** First sentence after Fuel add: "**stored**". Change "**double walled**" to "**double-walled**" and "**Kits**" to "**Kit**"
13. **Groundwater Monitoring Plan:** change "**Ground Water**" to "**Groundwater**"

add an additional condition: “**The Town shall approve the location of the sentinel well prior to installation.**” (Becomes Condition #14)

14. **data-logger installed-** *the data logger is included in the Groundwater Monitoring Work Plan dated February 12, 2009 (Page 4). The quarterly reporting is part of the plan. - This condition is not necessary. **DELETE CONDITION***

*The Planning Commission reviewed the follow-up letter received from the VRWJPO dated February 17, 2009. Ron Quanbeck, TKDA, commented that the Town is the permitting authority, the VRWJPO is making recommendations. The Town has the authority to decide whether or not to accept the recommendations. From their staff review the monitoring frequency proposed address concerns. The Watershed is asking for a little more. The cumulative effects study was addressed in the memo. In recovery of costs the way the conditions are written right now they do not include requirements for the applicant to participate in the cumulative effects study, other than the information they collect becomes public information. The way it is written the Town can recover its costs for the monitoring, it does not include the Watershed's costs. If the Town requested the VRWJPO to review it and the watershed asked for money, then it would become a Town cost. If the information is sent to the Watershed and they want to review It, and someone else reviews It, and they are not charging the Town for it or the Town has not agreed to pay for it, then it is not a Town cost.*

*There is nothing in the conditions that require them to contribute monetarily to a future study. Given that the applicant has gone to some effort go through the environmental review that they have, it is difficult to require it. The Watershed is looking for partnering ways in funding the study. They are talking about future studies.*

*The Planning Commission agreed that it is not appropriate to place a condition on this permit relating to costs of future costs studies.*

15. **Groundwater Monitoring Reporting:** *change first sentence to read: “**The operator shall provide monitoring reports as described in the Groundwater Monitoring Plan to the Township, with copies to the Watershed and MnDNR Area Hydrologist.**”*

*The Town's costs will be covered if reports need to be reviewed.*

*Kate Kleiter from American Engineering and Testing commented that their reports will have the data and an explanation on what it means. It includes recommendations to their client.*

*The applicants asked that the Town and/ or its agent review the reports. Not to have many agencies look at the reports that would add additional costs unnecessarily.*

16. *Change to read: To gather information, groundwater monitoring shall be conducted for five consecutive years before mining below the groundwater level.*

17. *Insert a “.” Rather than a “,” after 19-414. Change the last sentence to read: “**The mitigation plan shall be reviewed and approved by the Township, and by the Watershed, MnDNR, MPCA, Township, or other regulatory agency that has jurisdiction.**”*

18. **Accessory Uses and Storage:** *add this sentence: “No painting shall be allowed onsite.”*

19. **Setbacks:** *Chair Sharon Buckley could not find language in the Ordinance that states that a property owner can mine closer than 1,000 feet of his residence. Page 144 of the Ordinance outlines a procedure to deal with a request of lessened setbacks. Notification*

*needs to be sent to all property owners within 1,000 feet. The property owners were notified of the Public Hearing, but not specifically the lessened setback. The Planning Commission felt that the intent and spirit of all the requirements have been met. Chair Sharon Buckley asked the Town Board Chair Jeff Otto to check with the attorney to find out if something needs to be written in the development agreement, findings or conditions, that we are aware that Mr. Brosseth is mining within 1,000 feet of his house and we are not objecting.*

19. **Setbacks:** OK as presented.

20. **Phasing:** OK as presented.

Berm Discussion: Ron Quanbeck, TKDA commented that the plans do not show the overburden material being used to make a secondary berm along the south edge of the mining area. If you want to make this a requirement of the IUP it will need to be included in the plans or as a condition.

The current plans show an 8-foot berm by the road. Trees would have a hard time surviving on an 8 foot berm. Trees would have a better chance of survival on a 4-foot berm. Kelly Brosseth felt that both berms along the road should look the same.

After discussion the Planning Commission came to an agreement that the 8-foot berm shown in the plans dated February 12, 2009, is the best option for screening.

The overburden will be removed for the site. It will be bermed along the south edge of the pit. It will be at least 10 feet high with 3:1 side slopes, and it will be seeded. It will extend as far as the overburden allows it to extend. As the mine progresses, it will be used to restore the slopes in the mine. The berm will shift as they mine. As they get to the other edge, dredging below the ground water, that material will be used and the berm will no longer exist. As each phase opens, the berm will be in place.

The reclamation plan does not show the berm being removed. Thus it will be staying in place.

21. **Berms:** OK as presented.

The Planning Commission took a brief recess. The meeting was called back into session at 9:04 pm.

add an additional condition: ***“The applicant shall construct a berm at least 10 feet high with 3 to 1 side slopes along the south edge of the pit. The berm shall be constructed adjacent to each of the first six phases from overburden as it is removed from that phase. The berm may be removed as slopes are restored for the completed phase from which it originated. Vegetation shall be established and maintained on the berm until it is removed.”***

22. **Height:** OK as presented.

23. **Weed Control:** OK as presented.

24. **Reclamation:** OK as presented.

*We need details or an agreement of a reclamation plan that is in conjunction with the neighboring pit. The current plan shows the adjacent contours and it shows the contours*

*tying into the contours. They fit together. The Ordinance requires written approval from the adjacent property owner, to make sure he is in agreement with this set of reclamation plans.*

*Kelly Brosseth commented that they have an agreement. John Storlie is in agreement with the plan and in favor of it. He is out of Town. He has given permission to sign the agreement and will sign when he comes back into Town. The joint reclamation plan was reviewed by the Planning Commission. It shows how the two properties tie together.*

The signature on the agreement needs to be executed before the IUP is issued.

25. **Depth of Excavation:** OK as presented.
26. back-up alarms...- OK as presented.
27. Operator will take all...- OK as presented.
28. **Annual Review:** OK as presented.
29. **IUP Expiration:** The IUP shall expire on December 31, 2030, and all restoration be complete by September 30, 203, unless extended by the Town Board.
30. *The Planning Commission decided to start with \$3,000/ acre to be consistence with Windmills financial guaranty. The bond would start with a bond for acreage in phase 1 and 2 and increase to include additional acreage as mining progresses across the property. Once the mining progresses back across the property, creating the lake, and restoration takes place, the bond amount would decrease.*

**Financial Guaranty:** change first line to read as follows: *“To ensure compliance with Town requirements and the completion of restoration the operator shall provide a financial guaranty in a form acceptable to the Township in the amount initially of \$3,000 per disturbed and unrestored acre in all phases forecast to be active within one year. The amount of the guaranty shall be adjusted annually according to the current and forecast annual activity and consumer price index.”*

### **Findings of Fact and Recommendation**

RE: Application of Kelly Aggregate, Inc., Kelly Brosseth, landowner, and Ames Construction, Inc., operator, for an Interim Use Permit for a Level 3 aggregate extraction (mining) facility on property located in the Northwest Quarter of Section 8, Township 113, Range 20, Dakota County, Minnesota, PID #13-00800-011-25 and in the Northeast Quarter of Section 7, Township 113, Range 20, Dakota County, Minnesota PID #13-00700-020-02

On February 17, 2009, the Eureka Township Planning Commission met at a special meeting to consider the application of Kelly Aggregate, Inc., Kelly Brosseth (hereinafter referred to as “Applicant”) and Ames Construction, Inc. (hereinafter referred to as “Operator”) for an Interim Use Permit for the development of an aggregate extraction (mining) facility on the property described above. Landowner and representatives of Ames Construction, Inc., were present and the Planning Commission (Commissioners Sharon Buckley, Vince Mako, Ken Olstad, and Nancy Sauber in attendance) now make the following Findings of Fact and Recommendation:

## **FINDINGS OF FACT**

1. On July 14, 2008, the Applicant appeared before the Town Board at its regularly scheduled meeting, as required by Ordinance 6, Chapter 6, Section 1 B.
2. Application was presented to the Planning Commission at its regularly scheduled meeting on September 2, 2008. The application was determined to be complete and was forwarded to TKDA, Eureka Township's consultant engineering firm, for preparation of Environmental Assessment Worksheet (EAW).
3. In consultation with TKDA the Town prepared the EAW and distributed it for review. The comment period began November 17, 2008 and ended December 17, 2008.
4. At its regularly scheduled meeting on January 5, 2008, the Planning Commission reviewed recommendations of TKDA, comments received, and response to comments. The Planning Commission made recommendations to the Town Board not to require an Environmental Impact Statement (EIS).
5. At its regularly scheduled meeting on January 12, 2008, the Town Board adopted a negative finding on the need for an EIS.
6. On February 10, 2009, the Planning Commission held a Public Hearing, hearing testimony from all interested parties wishing to present testimony and questions related to the application.
7. The proposed project is compatible with local land use plans and regulations. The proposed project is located within Eureka Township. The current zoning of the property is Agricultural. Mining is an allowed use within the Agricultural Zoning District with an Interim Use Permit. Eureka Township has adopted a Comprehensive Plan, which acknowledges the potential for sand and gravel extraction site development in the glacial outwash area in the northern half of the Township. The proposed project is consistent with the other Comprehensive Plan elements and with Plan goals, objectives, and policies. The Township has adopted a mining ordinance and performance standards to minimize potential adverse impacts upon nearby residences and Township roads.
8. The application for an Interim Use Permit meets the standards and criteria for approval of the application outlined in Eureka Township Ordinance 6, Chapter 4, Section 2, A–J, as follows:
  - A. The use will not create an excessive burden on existing parks, schools, or other public facilities and utilities that serve or are proposed to serve the area.

- B. The use will be separated by distance or screening from adjacent agricultural or residentially zoned or used land in accordance with the requirements of Ordinance 6, Chapter 7 – Mineral Extraction Performance Standards. No evidence was presented to indicate that the proposed use would depreciate housing values on adjacent properties or deter development of vacant land.
  - C. The use will be separated by distance or screening from adjacent land, bermed areas will be landscaped, and the actively mined portion of the site will be sufficiently recessed, such that any dust from the use will be controlled and the use will not create adverse effects upon adjacent residential properties.
  - D. The current zoning of the property is Agricultural. Mining is an allowed use within the Agricultural Zoning District with an Interim Use Permit.
  - E. The use is consistent with the purposes of the Zoning Ordinance and the purposes of the zoning district in which the applicant intends to locate the proposed use.
  - F. The use is in conformance with the Eureka Township Comprehensive Plan as outlined in Finding #7 above.
  - G. The site will be accessed from C.S.A.H. 9 (Dodd Boulevard), a blacktopped, 9 ton, County Collector Road. The operator has obtained an access permit from Dakota County and will construct a bypass lane to improve safety for southbound traffic. The use is not anticipated to exceed allowable traffic levels for this type of roadway, or to cause traffic hazard or congestion.
  - H. The use will be separated by distance or screening from adjacent agricultural or residentially zoned or used land in accordance with the requirements of Ordinance 6, Chapter 7 – Mineral Extraction Performance Standards, and must comply with Minnesota Pollution Control Agency (MPCA) guidelines governing noise generation. Nearby land uses will not be adversely affected by intrusion of noise, glare or general unsightliness.
  - I. The use must not cause significant adverse impact to surface or groundwater resources. The plan incorporates Best Management Practices to protect surface water resources and a Groundwater Monitoring Contingency Plan to protect groundwater.
  - J. No dewatering will be permitted in conjunction with the proposed use. Equipment such as draglines, trackhoes, backhoes and dredges to obtain materials intersecting groundwater shall be allowed.
9. This application for an Interim Use Permit has followed the permitting procedure outlined in Ordinance 6, Chapter 6, Section 1, as outlined in Findings #1-8 above. A complete application meeting the requirements of Ordinance 6, Chapter 5, Section 1 – Application and Section 2 – Supporting Documentation, have been filed with the Planning Commission; TKDA, an independent engineering firm, was selected by the Town Board in September 2008 to review the application; the

application was reviewed by Ronald Quanbeck, a registered engineer licensed by the State of Minnesota and qualified in this field; TKDA submitted results of its findings, along with recommendations for action, to the Township and has continued to advise the Township throughout the permitting process. Recommendations were provided by the Vermillion River Watershed Joint Powers Organization (VRWJPO) and were incorporated into the conditions of the permit.

### **RECOMMENDATION**

The Planning Commission recommends approval of the Level 3 aggregate extraction (mining) permit on property located in the Northwest Quarter of Section 8, Township 113, Range 20, Dakota County, Minnesota, PID #13-00800-011-25 and in the Northeast Quarter of Section 7, Township 113, Range 20, Dakota County, Minnesota PID #13-00700-020-02 in accordance with and subject to all documents submitted in the application as well as the conditions attached hereto as "Exhibit A". This permit shall expire on December 31, 2030. Reclamation activities shall be completed by September 30, 2031. This recommendation for approval is with the condition that the applicant and owner of the adjacent mining operation provide written agreement of a common reclamation plan at the common boundary.

Moved by Sharon Buckley. Motion Seconded by Ken Olstad. Motion carried by unanimous vote.

Motion by Ken Olstad: To adjourn. Motion seconded by Nancy Sauber. All in favor. Motion carried.

Meeting adjourned at 10:20 pm