

*With Troy's comments inserted regarding ordinance changes.*

## MINUTES

Pursuant to open meeting notice, the Hay Creek Planning Commission met on December 19, 2012, 7:00 p.m., at the Town Hall.

Members present: Keith Fossen, Scott Halverson, Lorrie Sonnek, Rick Peterson and David Tincher.

Keith Fossen, Chairperson, called the meeting to order at 7:06 p.m.

Motion: David Tincher moved to approve the minutes from our October 10, 2012, meeting, and the minutes from our joint November 14, 2012, meeting. Lorrie Sonnek seconded the motions. Both motions passed unanimously.

New Business: Keith Fossen proposed an agenda for our meeting to go through the Initial Rough Draft, dated 12-10-12, of the Hay Creek Township Zoning Ordinance submitted to us by Troy Gilchrist. We would go through it page by page sharing our thoughts and asking questions and then filling in any blanks that were provided. After the meeting we will e-mail Keith Fossen with any additional concerns, changes and recommendations.

At the outset, Keith Fossen suggested we make a provision to include property values at the permitting process to protect our residents.

A general observation of the Ordinance was that it seemed to contain two approaches, i.e., regulation by size or no mining at all.

Page 1, Article I, Section 1.2(e) there was discussion about size and types of buildings, and how small they would be, i.e., a chicken coop, etc., to require a permit. The question was posed whether we wanted to permit buildings.

*Troy: Because I was not sure if the town wanted to issue building permits (often called land use permits since you would not be issuing permits under the building code) I placed this and other language in italics. The town needs to decide what it wants to do on this issue as it will have an impact on various provisions.*

On page 1, Article I, Sections 1.2(f) and (g), Scott Halverson inquired for (f) if we should include wildlife corridors as part of "natural" areas, and in (g) if we needed to specify "bluffs" and map the bluffs and wildlife corridors. David Tincher identified the ECLUE data base of 1,000 Friends of Minnesota as a place to research wildlife corridors, and that he would send Scott some other possible links to explore dealing with ecology and such concepts as "mosaics."

Keith Fossen suggested that a mining impact zone gives exceptions for erosion and might be a place to strengthen our protection of bluffs.

*Troy: I added a line on wildlife corridors.*

On page 2, Article I, Section 1.5, Adoption by Reference was discussed and it was understood that if we add by reference, we will have to enforce it.

*Troy: This is absolutely correct. We want to adopt only those provisions the town actually wants to administer and enforce. This section just sets up how the language adopted by reference is to be interpreted.*

Page 3 was discussed.

On page 4, Article I, Section 1.9, it was noted we will need our own township forms and Keith Fossen said that Attorney Troy Gilchrist would help us develop some.

*Troy: Yes, I can help put together the necessary forms together once the town decides what it wants to regulate since there is no need to develop a CUP application if you will not be issuing any CUPs.*

On page 5, Article I, Section 1.13 was discussed. Scott Halverson felt its inclusion was to set up later provisions for nonconforming uses. Rick Peterson does not want the township to be involved in that type of permitting. David Tincher wondered to what degree do we want building permits to apply, and that when you need a building permit perhaps we could look to the county for what institutes a building permit. Keith Fossen thought type of building and size could require a building permit.

*Troy: This section is simply meant to require compliance with the requirements of the ordinance and is a standard provision. Again, if you do not elect to issue land use permits then I would need to revise this section on that point as well to reflect what you are actually regulating.*

Page 5, Article I, Section 1.14 was discussed at length. Where Attorney Gilchrist indicated choices, the following were made:

Section 1.14(d)(1), excavates “40” acres or more...; Lorrie Sonnek mentioned that 40 acres is the threshold for an environmental worksheet for what we call “large-scale mining.”

Section 1.14(d)(2) excavates “20” acres or more...shoreland;

Section 1.14(d)(3) excavates “40” acres or more...non-shoreland.

Section 1.14(d)(6) The operation generates (2) or more round-trip truck trips in any (1) day period

*Troy: I made these changes. As noted, the acreages I mentioned in parentheses were from the environmental review process and reflect the EAW and EIS thresholds. The town is not bound by those numbers for this purpose, but aligning your thresholds with the environmental review standards on the same use helps lend support for your thresholds.*

Section 1.14(d)(5) was discussed. David Tincher felt that blasting should be included for commercial mining as well as large-scale mining; that is, smaller commercial operations would

need to do some blasting. It was felt perhaps we could regulate blasting by limiting it to a certain number of incidents over a certain time period.

*Troy: I modified this provision to allow up to three blasts in a year before it trips into a large-scale mining operation. The town can certainly pick a different number and whatever number you pick will allow commercial operations to blast up to that point without rising to LSMO level.*

Section 1.14(d)(6) was discussed and it was felt that more thought would have to be given to fill in the “blank” for how many round-trip truck trips in any “blank” day period. Keith Fossen will try to make a calculation after consulting with Attorney Gilchrist for examples of what others may have. Rick Peterson noted that from his personal experience that two to three trips per hour is undesirable.

*Troy: This list of characteristics of a LSMO is not carved in stone. I simply provided some factors to consider and that seem to address the more troublesome aspects of large operations, but do not feel compelled to use this, or any other, characteristic in this list.*

On page 7, Article I, Section 1.14(d)(7), Keith Fossen suggested adding: “use of chemicals, i.e., flocculants.” David Tincher suggested adding tonnage or cubic yards as a measure for large-scale mining here. He noted that usually 14 cubic yards of sand were hauled per dump truck. A reference was made to page 7, Article I, Section 1.14(i)(5) as a measure for noncommercial mining. Lorrie Sonnek thought the issue of cumulative effect, i.e., 40 acres mined, 40 acres mined, etc., could be added here. A reference was made to page 9, Article II, Section 2.3, Connected Actions.

*Troy: I added settling ponds and flocculants. I was not certain how to add the tonnage/cubic yards provision as I wasn't sure what it would be based on (over a particular period of time, such as in a year or over the lifetime of the mine??). Also, the standards set out in (1) through (3) do get to this point to some degree.*

On page 7, Article I, Section 1.14(j), Scott Halverson suggested the work “lime” should be included.

*Troy: Done.*

On page 7, Article I, Section 1.14(k), Lorrie Sonnek suggested we add the following:

“Definition of Mining: The removal, stockpiling, processing, transferring or storage of sand, gravel, rock, clay, topsoil, and other minerals from the ground.”

There was then discussion on what constituted “stockpiling,” that is, how wide and tall the piles should be and for how long they would remain before removed.

*Troy: I revised the definition. If the town would like, we certainly could add a definition of stockpiling. I tried to make the definition broad, but we should perhaps look at the entire related activities use issue more broadly to make sure we are not missing something.*

On page 9, Article II, Section 2.5 we discussed the necessity of having certain districts. Keith Fossen will inquire of Attorney Gilchrist why we might want to have districts; and also the intent concerning Section 2.6(a)

On page 10, Article II, Section 2.6(c) Keith Fossen suggested adding:

- “(1) an environmental impact statement for any commercial mining,”
- (2) a reclamation plan,
- (3) a stockpiling plan.”

*Troy: I do not recommend automatically requiring an EIS for commercial mining. That is an extremely expensive process to go through and is arguably not warranted given the limitation on the size of these operations the town is imposing. The town could look at requiring the information required to be included in an environmental worksheet, but first I would encourage the town to look carefully at the list of requirement application information in Article 14, Section 5 of the county ordinance - it is rather extensive.*

*The ordinance currently would require the submission of a reclamation plan. See Article 14, section 5(Map C).*

*The ordinance currently would require a map showing the location of stockpiles. See Article 14, section 5, subd. 1(A)(14). Would the town want some additional information regarding stockpiling?*

General suggestion: Article II, Section 2.6(d): Correction: Reference to Article 14, Section 5, subd. 4 should say Article 14, Section 6, subd. 4. Modifications or additions suggested include: 1) Permitted hours of operation of 8:00 a.m. to 5:00 p.m. Monday through Saturday; 2) Lighting. All lights must have full cut-off shrouds so that no light is directed upward or at structures not on the property. Portable lighting shall be used only as necessary to illuminate work areas; and,3) A modified setback requirement for all new or expanded existing mining operations, providing that no mining operations or activities (including stockpiling) shall take place within fifteen hundred (1500) feet of any existing dwelling or platted residential subdivision, not owned by the mining operator or owner. This setback requirement may be reduced by approval of the Town Board if the Mining Operation and affected residential owners reach a buyout agreement or “property value guarantee” for possible sale of their residence(s).

*Troy: I made these changes.*

There was some discussion concerning the environmental impact statement and its cost. Scott Halverson expressed the thought that requiring an environmental impact statement for smaller commercial mines would be too costly and, therefore, not defensible.

*Troy: As noted above, I agree with this concern.*

On page 11, Article III, Section 3.1, there was discussion on kennels and other items we may want to adopt by reference. Suggestions included shooting ranges; motocross tracks; bluff protection, i.e., building houses on the top bluff line; and, adult entertainment.

*Troy: As to kennels, the county requires a CUP. Is it the intent of the town to adopt by reference the county's kennel standards, thereby requiring someone who wants to start a kennel to obtain a CUP from the town? If so, are there any stricter standards the town would want to impose.*

*Troy: As to shooting ranges, there is actually a shooting range protection act that limits the extent of local regulations. You can find the act here: <https://www.revisor.mn.gov/statutes/?id=87A&view=chapter>. The act was largely intended to protect existing ranges, but we would need to be aware of the limitations imposed by this act – though you can still adopt regulations on ranges. It appears the county classifies shooting preserves as a permitted use and so there isn't much by way of regulation at the county level. So, the town would need to identify the specific regulations it would like to add as part of its ordinance.*

*Troy: As to motocross tracks, are there any specific restrictions the town would like to impose? I do not see tracks regulated in the county's ordinance so we would need to add a section specifically on this use. If you can let me know what the town is thinking by way of regulation, I can add the language to address it.*

*Troy: As to building homes on bluff line, the county ordinance currently prohibits the placement of structures in the bluff impact zone (Article 12, Section 4, Subd. 1). Is there, for example, an area from the top of the bluff (and maybe the toe of the bluff) that the town wants to prohibit the erection of structures? Please let me know what the town has in mind.*

*Troy: As to adult uses, I could not find a county ordinance on the subject. Therefore, we would need to add an entire section on adult uses if the town wants to regulate such uses. We can try to keep the regulations as simple as possible, but the first amendment implications of such regulations necessarily makes this field of regulation more complicated. I didn't pull up our adult use ordinances, but my memory is that they can range from 10 pages to more than 30 pages. We have drafted a range of adult use regulations, so if you can let me know what types of regulations the town is interested in I can develop a section on adult uses for the ordinance.*

Article IV: Modifications or additions: 1) Article 12, Section 4, subd. 4 of the County Ordinance is modified by Township Ordinance to require that “no mining or quarrying operation or activity (including stockpiling) shall be done within three hundred (300) feet of the toe or top of a bluff; and 2) Article 12, Section 4, subd. 7 of the County Ordinance is modified by Township Ordinance to state that “no grading, excavating or filling (including Mineral

Extraction) shall be permitted within the bluff impact zones. Such zones shall be preserved in their natural state.

*Troy: This language was added.*

It was felt this would be a good point to conclude our page-by-page discussion for the evening. David Tincher would send out more information he found on bluff protection. Keith Fossen would inquire of Hay Creek Township Commissioner Arlen Diercks concerning shooting ranges, and will ask Attorney Troy Gilchrist for any boilerplate language he may have concerning adult entertainment. All planning commission members will continue to examine the Proposed Hay Creek Township Zoning Ordinance and send their concerns and comments to Keith Fossen.

Keith Fossen will continue to work with Attorney Troy Gilchrist to create a revised document for our January 9, 2012, meeting with the possibility of voting on it for recommendation to the Hay Creek Township Board.

Motion: Lorrie Sonnek moved to adjourn the meeting. Rick Peterson seconded the motion, which passed unanimously.

Meeting Adjourned: 8:52 p.m.

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*Troy: There were two additional items sent me for inclusion into the ordinance: 1) property value guarantee provision; and 2) water supply wells damage claims provision. I did not include either as they go far beyond what the town can regulate in the context of the small mining operations allowed by the ordinance. I question whether these provisions as drafted would be defensible even if you did not limit the size of mines. I realize these concepts are being talked about in the context of wind towers, but they simply do not fit into this ordinance. I think having the concept reflected in the ordinance as a way to possibly reduce the setback area is ok, but adding this sort of mandatory language goes beyond the scope of this ordinance.*

*I notice reference to the planning commission possibly forwarding the ordinance to the board for a vote. There remain a number of issues that need to be clarified before the ordinance will be ready for the required public hearing. Review and comment by the board on the draft if certainly fine, but we need to pin down further the specific regulations the town wants to impose so they can be worked in and the ordinance reviewed again as a whole once all of its parts have been included.*