

**MINUTES**  
**CLAY COUNTY BOARD OF ADJUSTMENT**  
**5:30 PM, TUESDAY, MARCH 15, 2022**  
**3<sup>RD</sup> FLOOR BOARD ROOM, CLAY COUNTY COURTHOUSE**

**Members Present:** Ezra Baer, Tim Brendemuhl, Paul Krabbenhoft, Dennis Loock

**Members Absent:** None

**Others Present:** Matt Jacobson, Brian Melton, Erika Franck, Rita Rueckert, Justin Sorum, Sheree Eilertson, Jarrett Robertsdaahl, Shelley Hendrickson Steichen

The meeting was called to order at 5:30 PM by Chair Ezra Baer.

**APPROVAL OF AGENDA:**

**On motion by Dennis Loock, seconded by Tim Brendemuhl, and unanimously carried, the Board approved the meeting Agenda.**

**APPROVAL OF MINUTES DECEMBER 21, 2021:**

**On motion by Tim Brendemuhl, seconded by Dennis Loock, and unanimously carried, the Board approved the Minutes from December 21, 2021.**

**PUBLIC HEARING(S):**

**AGGREGATE INDUSTRIES – REQUEST FOR VARIANCE**

The applicant is seeking approval of a variance to the road right of way and residential setback standards in the Clay County Development Code for a gravel mining operation in part of the W1/2W1/2 of Township 141N, Range 45W, Section 18, Parcel 11.018.0260 in Goose Prairie Township.

**On motion by Paul Krabbenhoft, seconded by Tim Brendemuhl, and unanimously carried, the public hearing was opened.**

Matt Jacobson, Planning & Zoning Director, advised the request for the Variance is to the standards for setbacks from road right of way and also residence setbacks. This is a 152-acre parcel in Goose Prairie Township. The property is zoned Agricultural General (AG) and has Resource Protection – Aggregate (RP-Agg) zoning district overlay. The current land use is agricultural and aggregate mining.

Considerations for a Variance:

- Variances may be granted when the applicant for the variance establishes that there are practical difficulties in complying with the official control. “Practical difficulties”, as used in connection with the granting of a variance, means:
  1. That the property owner proposes to use the property in a reasonable manner not permitted by an official control;

2. The plight of the landowner is due to circumstances unique to the property not created by the landowner;
  3. And the variance, if granted, will not alter the essential character of the locality
- Economic considerations alone do not constitute practical difficulties.
  - Practical difficulties include, but are not limited to, inadequate access to direct sunlight for solar energy systems. Variances shall be granted for earth sheltered construction as defined in section 216C.06, subdivision 14, when in harmony with the official controls. No variance may be granted that would allow any use that is not allowed in the zoning district in which the subject property is located.
  - The Board of Adjustment may impose conditions in the granting of variances. A condition must be directly related to and must bear a rough proportionality to the impact created by the variance.

Policy Considerations reviewed from the Comprehensive Plan:

**Land Use Goal #2:** Support the long-term protection of agriculture in the County.

1. **Policy #1:** recognize and support the agricultural character of the County in all planning efforts.

**Land Use Goal #5:** Plan land uses and implement standards to minimize land use conflicts.

2. **Policy #3:** Require adequate buffering and landscaping for new mining operations when adjacent to existing residential areas as well as when an existing operation expands or is substantially modified and would negatively impact existing land uses in the surrounding area.

**Natural Resources Goal #1:** Identify, protect, and preserve the County's high quality natural, scenic, cultural and open space areas.

3. **Policy #19:** Balance the preservation of native prairie areas with mining of the County's gravel resources.

Zoning: The subject property and all immediately adjacent properties are zoned Agricultural General (AG) and Resource Protection – Aggregate Resource (RP-Agg).

Development Code Considerations reviewed:

8-6-16B-3

- I. Setbacks: Structures, storage of excavated materials, and the excavation edge shall be setback the following distances:
  1. One hundred feet (100') from the boundary of adjoining property lines unless written consent from the adjoining property owner is secured and a variance is granted from the Board of Adjustment.
  2. Two hundred feet (200') from the right-of-way of existing roads and highways.
  3. One hundred feet (100') from the boundary of adjoining property upon which a residence, school, church, public or commercial establishment is located and a minimum of five hundred feet (500') from any structure used as a residence, school, church, public or commercial establishment.
  4. Two hundred feet (200') from the shoreline of any protected water.
  5. The operation shall be completely located outside the one-hundred (100) year floodplain.

The request is for mining within the 500-foot residential setback from the residences on parcel 17.013.1000 (owned by Applicant) and 17.012.4000 (owned by Westlund Materials) and to also mine within the road right-of-way. The Applicant did have a setback Variance from 2010 that allowed mining up to 50 feet from the road right of way (or 110 feet) on the west edge of the property and stockpiling of topsoil. The 2010 Variance also stated "Mining/mine activities shall not take place closer than 125 feet from the center of any road right of way..." The current request includes asking for mining to take place as close as 100' from the centerline of the adjacent right-of-way (ROW) of public roadway Clay County Highway 33 for 11.018.0260 and to allow stockpiling of topsoil within the setback.

Aerial photos were shown which outlined where the setback requests are being considered. The Highway Department has some concerns of visibility and snow issues regarding the Keene Township pit as the stockpile is bermed and is 100 feet from road centerline. The recommendation is to allow mining 100 feet from the road centerline and to not have any stockpiling greater than a 2-3 foot berm for safety. The Highway Department has no issues with allowing mining in the 500' setback from the residences owned by the mining operators and recommends approximately a 52% reduction of the residential setback of 500' to 240' for mining. The residence is currently occupied and is owned by a different mining company and will likely be vacated and removed within the next 1-2 years, and may already be vacated. The Highway Department recommends that the setback should be no closer than 80' from the centerline with a maximum stockpile height of 15 feet.

The applicant states that strict interpretation of the existing setback requirement at the project area would result in valuable reserves being left behind, in the amount of roughly 225,000 tons. The failure to optimize the aggregate reserves equate to higher production costs, which ultimately result in higher costs to local consumers.

Recommendations are to work through the Findings of Fact and Order with the following recommended minimum conditions:

1. Mining and mining activities can occur within the 500' setback of the residential structures on Parcels: 17.013.1000 and 17.012.4000 (owned by mining operators) up to 240';
2. Modification of Variance dated 8/17/10 (Document #687239):
  - a. The top edge of the excavation should not be closer than 100' from the centerline of CSAH 33 and mining must maintain a 1:1 slope as to prevent collapsing or sliding of the banks;
  - b. No stockpiling within setback except for a 2-3' high safety berm
3. Reclamation will need to occur at 3:1 slope from 100' setback of centerline prior to any grade widening projects of CSAH 33.

Ezra Baer clarified that the Goose Prairie pit is the location that has a current Variance from 2010.

Sheree Eilertson, Environment and Land Manager, and Jarrett Robertsdahl, Operations Manager, represented Aggregate Industries. Paul Krabbenhoft asked if they could identify an alternative stockpiling area and Mr. Robertsdahl advised that could be possible. Mr. Robertsdahl verified the reclamation slope is agreeable, and he advised there was not a 100' setback for mining variance for the Goose Prairie mining site.

Shelley Steichen of Goose Prairie Township spoke on behalf of the Township. Ms. Steichen advised the township had no objections to the requests being made.

**On motion by Tim Brendemuhl, seconded by Dennis Loock, and unanimously carried, the public hearing was closed.**

The Findings of Fact and Order were addressed by the Board of Adjustment as they pertain to the requested permit. Any items of concern may be addressed through Conditions.

**On motion by Tim Brendemuhl, seconded by Dennis Loock, and unanimously carried, the Board of Adjustment *GRANTED* the Variance with the following conditions:**

1. **Mining and mining activities can occur within the 500' setback of the residential structures on Parcels: 17.013.1000 and 17.012.4000 (owned by mining operators) up to 240';**
2. **Modification of Variance dated 8/17/10 (Document #687239):**
  - a. **The top edge of the excavation should not be closer than 100' from centerline of CSAH 33 and mining must maintain a 1:1 slope as to prevent collapsing or sliding of the banks;**
  - b. **No stockpiling within setback except for 2-3' high safety berm**
3. **Reclamation will need to occur at 3:1 slope from 100' setback of centerline prior to any grade widening projects of CSAH 33.**

### **AGGREGATE INDUSTRIES – REQUEST FOR VARIANCE**

The applicant is seeking approval of a variance to the property line, road right of way and residential setback standards in the Clay County Development Code for a gravel mining operation in part of the N1/2 of Township 141N, Range 45W, Section 13, Parcels 17.013.1400; 17.013.1500; 17.013.1000; 17.013.1102 in Keene Township.

**On motion by Paul Krabbenhoft, seconded by Tim Brendemuhl, and unanimously carried, the public hearing was opened.**

Matt Jacobson, Planning & Zoning Director, advised this request is basically similar to the previous hearing. This property is on the west side of CSAH 33 and is 320 acres located in Keene Township. It is zoned AG, RP-Agg and also Resource Protection-Biological (RP-Bio). There is also some flood plain zoning on this property; however, the RP-Bio and the flood plain are not included in the area being considered for mining. Current land use is Agricultural, Aggregate Mining and Wetland Complex.

Variance considerations and Comprehensive Plan Policy Considerations are as outlined in the immediately previous hearing.

Development Code Considerations include 8-6-16B-3 for Setbacks; Applicant's request is for a Variance for standards 1, 2 and 3 as set out in the immediately previous hearing.

The Variance request includes:

- 100% reduction to the northern property line setback for mining
- 62% reduction to the road right-of-way setback (200' setback from the 120' wide right-of-way) to 100' from centerline for mining
- Approximately 52% reduction of the residential structure setback of 500' to 240' for mining. *A setback needs to be maintained from the sanitary system as well.*
- Permission to stockpile within the requested 100' from centerline. *No dimensional setback value was given for the stockpiles.*

The applicant currently has a Variance which was granted in 2007 for mining activities up to 175 feet from the centerline of CSAH 33. Topsoil stockpiles are currently stored 100' from the centerline.

The residence setback in question is for a residence that the Applicant currently owns. There were discussions about setbacks from the existing well and septic for that residence. There was also another



residence just south of the residence in question and Ezra Baer asked that the Applicant be asked to clean up any existing well or septic systems on that previous residential lot.

The applicant states that strict interpretation of the existing setback requirement at the project area would result in valuable reserves being left behind, in the amount of roughly 350,000 tons. The failure to optimize the aggregate reserves equate to higher production costs, which ultimately result in higher costs to local consumers.

Staff recommends working through the Findings of Fact and Order with the following recommended minimum conditions:

1. Mining and mining activities can occur within the 500' setback of the residential structures on Parcels 17.013.1000 and 17.012.4000 (owned by the mining operators) up to 240 feet;
2. Modification of Variance dated 4/17/2007 (Document #642902):
  - a. The top edge of the excavation should not be closer than 120' from centerline of CSAH 33 and mining must maintain a 1:1 slope as to prevent collapsing or sliding of the banks;
  - b. Stockpiling of topsoil and overburden should be setback no closer than 100' from centerline of CSAH 33 with a maximum stockpile height of 15'.
3. Reclamation will need to occur within the 100' setback of centerline prior to any grade widening projects of CSAH 33.

Ezra Baer confirmed if the 2-3' berm is to be located within the 100' setback and Director Jacobson confirmed that it could be within the 100' setback. Paul Krabbenhoft confirmed that this is the same residence as referenced in the previous hearing. Mr. Krabbenhoft inquired about the well depth and Director Jacobson indicated that the static water depth is about 50 feet.

Sheree Eilertson, Environment and Land Manager of Aggregate Industries, and Jarrett Robertsdahl Operations Manager of Aggregate Industries, stated that the Variance request is to reach full potential of the available volume for mining. She states that the recommendation to speak with Environmental Health to clean up the septic and well issues on the residential lots makes sense. Ezra Baer stated that the well and septic issues should be added to the conditions applied. Mr. Robertsdahl indicated that they would follow up on the well and septic for the previous residence that has already been removed.

There was no comment from the Township on this request, per Director Jacobson.

**On motion by Tim Brendemuhl, seconded by Dennis Loock, and unanimously carried, the public hearing was closed.**

**The Findings of Fact and Order were addressed by the Board of Adjustment as they pertain to the requested permit. Any items may be addressed using Conditions.**

Chair Ezra Baer stated that, in addition to the 3 previously outlined conditions applied in the previous request, he would like to see a 4<sup>th</sup> condition included to clean up the septic and well situations on the residential site, as well as the previously removed residence.

**On motion by Tim Brendemuhl, seconded by Dennis Loock, and unanimously carried, the Board of Adjustment GRANTED the Variance with the following conditions:**

- **1. Mining and mining activities can occur within the 500' setback of the residential structures on Parcels: 17.013.1000 and 17.012.4000 (Owned by mining operators) up to 240';**
- **2. Modification of Variance dated 4/17/2007 (Document #642902):**

- a. **The top edge of the excavation should not be closer than 120' from centerline of CSAH 33 and mining must maintain a 1:1 slope as to prevent collapsing or sliding of the banks;**
- b. **Stockpiling of topsoil and overburden should be setback no closer than 100' from centerline of CSAH 33 with a maximum stockpile height of 15'**
- **3. Reclamation will need to occur within the 100' setback of centerline prior to any grade widening projects of CSAH 33.**
- **4. In coordination with the Clay County Health Department, determine current status of the well and septic for residence on Parcel 17.013.1000, as well as an additional residence that was previously removed south of that location, to determine well depths and ensure that the onsite septic systems and any abandoned wells are properly capped.**

#### **UNFINISHED BUSINESS:**

- **Matt Jacobson: Clay County Comprehensive Plan update: Tonight, the Planning Commission will be having a Public Hearing on the Comprehensive Plan update. If there is an agreement, the Planning Commission will then send the updated Plan to the Board of Commissioners for final approval.**

#### **NEW BUSINESS:**

- **Review of Applications for Board of Adjustment vacancy - There was a Board of Adjustment Interest Form received from Leo Splonskowski and it was reviewed.**

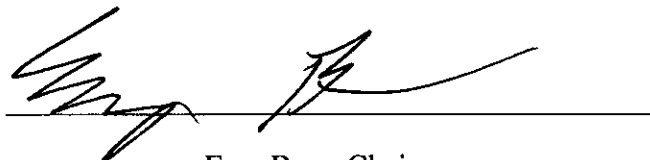
**On motion by Tim Brendemuhl, seconded by Dennis Loock, and unanimously carried, the Board of Adjustment approved the recommendation of Leo Splonskowski to the County Board of Commissioners as Board of Adjustment member.** This vacancy was created due to Ezra Baer being voted as Chair of the Planning Commission.

Due to the expiring term of Paul Krabbenhoft, there will be an immediate opening on the Board of Adjustment.

- **Recognition of Service – Paul Krabbenhoft (expired term) – Chair Ezra Baer presented a plaque of recognition for Mr. Krabbenhoft's 9 years on Board of Adjustment.**

#### **ADJOURNMENT:**

On motion by Paul Krabbenhoft, and seconded by Tim Brendemuhl, and unanimously carried, the meeting was adjourned at 6:18 PM.



Ezra Baer, Chair  
Clay County Board of Adjustment