

Minutes

December 12, 2022

Planning Commission Meeting

The agenda for this meeting was posted in the legal paper of record, the Plattsmouth Journal, on December 1, 2022. The Chairman, Alan Mueller, opened the public meeting at 7:00 pm & stated that the open meetings act is posted on the wall. The Pledge of Allegiance was recited. Roll call for the Planning Commission Members Sullivan, Staben, Tesar, Felthousen, Oehlerking, Dennis, Mueller, Crofoot and Widick met as advertised. Althouse was absent.

Approval of minutes:

A motion was made by Crofoot, seconded by Staben to approve the minutes from November 15th, 2022 meeting. A voice vote followed with all voting aye.

Mueller opened the public hearing @ 7:02 pm with the **first item** on the agenda, Conditional Use Permit # 11462 – Ash Grove Cement – Rickey L. Bond LF EST, owner -10617 Mynard Road, Louisville – parcels 130142557, 130142476 & 130142654 – Legal description: NW1/4, PART OF NE1/4 PART OF SW1/4 33-12-12 – Mining. Mueller then asked Jensen to introduce this item.

Administrator remarks:

There are 7 residences that could possibly be affected by this proposed operation. Additional conversations with both the County Department of Roads, Zoning Office and representatives from Ash Grove yielded more progress toward hard-surfacing of 108th Street. November 22 Board of Commissioner's meeting clarified that any modification to road specifications needs to come from the State of Nebraska. Details of road design will be finalized by the Cass County Board of Commissioners. Our public hearing this evening will be to recommend or not recommend this Conditional Land Use based on the information that has been provided.

Cass County Regulations:

- Matrix page 52 – Industrial – Mining, Extraction of minerals, sand and gravel, clay, shale, limestone, and sandstone quarries.
- Conditional Use – Agricultural District – section 8.14
- Section 5.07 – Agricultural District – section permitted Conditional uses – subsection M.
- Section 7.06 – Consideration Examples.

Mueller then invited the Ash Grove representative up to speak. Jim Lang, an Omaha attorney, representing Ash Grove, came up to speak. He introduced the other gentlemen that would be speaking also. They were John Dale, James Fowler from Ash Grove and Eric Beiermann from Olsson Associates. Discussion followed about the history of Ash Grove and the steps they have taken to gather all of the required testing and information for the Planning Commission. They will continue to work on addressing the concerns of the property owners and answering any questions they may have. They express the need for the particular location and explained why that area was needed for their concrete production. If they aren't successful at opening this mine, their option would be to go back to Missouri for the raw materials. They would like to set the hours of operation as 6 am to 5 pm Monday through Friday. Crusher would run daily as needed. Berm heights were discussed – being roughly 12 feet. They discussed the route taken and stated that this route will be paved with 12 foot wide roads with 4 foot unpaved (rocked or grass) shoulders and ditches. Putting in berms was discussed and how they would be made. They discussed the distance from the closest residence. Paving was also discussed. Ash Grove is willing to pave 108th Street from Hwy. 66 down to Mynard Road past the Kurt Bond property. As the Engineer firm for the roadway, Olsson will be designing the roadway based off of Board of Public Roads classifications and standards. Mueller asked about turn lanes onto Hwy 66 from 108th Street. According to the Nebraska Department of Transportation (NDOT), this is a high safety concern and will not be added in. However, this will continue to be monitored by the Department of Transportation. Per a request from NDOT, they will also put in some added shoulder on Hwy 66 to trucks make the turn south on 108th Street. Mueller than asked if there would be a written agreement with NDOT pertaining to this. Beiermann stated that there will be. Mueller then asked if there were any more questions from the board. Since there were none, he asked Leonard Thorne, Cass County Roads Department Superintendent, to step up and answer some questions. He asked Thorne if the County Board can require certain improvements made on Hwy 66. Thorne stated that the Board can request it. He stated that it is ultimately the States' decision. Mueller also asked him if the roadway construction as presented meets his standard requirements. Thorne asked the board chairman what exactly they need to make a good decision. Mueller stated that they need a full set of plans so the Roads Departments can say that this meets their requirements. Thorne stated that they don't have that right now. He mentioned that Beiermann stated that he could get the process for the right-of-way done but Thorne has his doubts. They need to get the processes done so they can see how it fits in with the right-of-way. He says they are 30% set right now. There are steps they need to complete before they can get the whole picture. Once they get to that

point, Thorne will have their County Consultant review the completed plans before he hands them over to the Planning Commission. He guarantees it will be done to standards. He then went over the steps that are taken to get to this point. Mueller then asked if there were any more questions. Beiermann they went over the right-of-way. Mueller asked if there was any more discussion. Since there was none, he opened up the hearing to any public comments. Eight people came up to speak with the following concerns/questions:

- Verification on boundaries for the mining area. **The ownership is the highlighted area as depicted in current map. It will not go all the way to 108th Street.**
- Ash Grove plan for grading, extraction of ground water. ***see ground water below***
- Devaluation of the residential properties around this mine – how will that be addressed. **No studies have been done – he is not sure of the effect on the housing values. He isn't disagreeing with this.**
- Light pollution – requesting mine hours to be 8 am to 4 pm. **The proposed time was from 6 am to 5 pm. No flood lights would be needed.**
- Dust. **A haul road will be established. They will have different permitting and laws. The trucks will be tarped. They also have wheel washes at the new and current entrances. Water trucks and sweepers will also be used as needed.**
- Noise pollution. ***See truck noises below***
- Ground water – residents are concerned and per County regulations, Ash Grove should have submitted something stating how they are going to protect it. **There was an exhibit in the packet provided on ground water. Beiermann brought Colby Osborn, with Olsson, up to address this. They utilize the existing State ground water model and the figure is 50-year protocol trace runs for every registered well in the area of the map. If there was some sort of a contamination event, it would be loss of time to remediate it properly before it would affect anyone's well. The ground water is monitored by The Natural Resource District and two different State agencies – NRD and NDEE. There is no requirement for them to review this. They evaluate this every year, but if there is a specific complaint, that would initiate a review.**
- Safety issues, will gating be used? **Yes, it will be a gated entrance and will be locked after hours & weekends.**
- Prediction of up to 60 trucks (1 every 4 minutes) per day at peak operation is too high. Peak use, there will be 30,000 trucks per year pulling on and off of Hwy. 66. This is a major safety issue.
- Truck noises, engine noises, jake brakes in use – noises from the pit itself. **Smaller equipment will be used. Noise from inside the pit should be minimal. No jake-braking and speed control (County Board controls) should help the noise levels also.**
- Red dust from the Dakota clay will get on everything. **This won't be an issue with the hard-surfacing plan. For the ones off of the rock road, water treatment and pressure washing every summer will be done.**
- Concerns on the road width with farming equipment using this road. **Paving of shoulders is quite a stretch and likely will not be done at this point.**
- Screening plans
- Maintenance of road, road width, shoulder quality. **Shoulders will not be paved, rock or grass is typical.**
- During road construction, dust could be an issue for the Wedding Venue. **They would work with the Contractor and the County would also provide access at all times.**
- Property is 200 feet higher than the mining area – they will see everything.
- Berms need to be east of the property – 300 feet long, 100 feet wide and 4 feet above the driveway which would make it level with the yard. Also for screening purposes, three to four rows of 9 foot fir trees, 25 feet apart, 25 feet between 3 or 4 rows will possibly work for soundproofing and dust prevention. **They would need to discuss screening with the property owner – that would not be their property or active mine site. A line of site study could be done – they aren't opposed to screening with trees.**
- This company will come in, take what they want, and leave the mess behind. A reclamation plan would go a long way to gaining property owners trust.
- Hwy 66 & 108th Street would become very dangerous with the additional traffic. A 35 – 40 mph speed limit is recommended. **This would not be an issue. This is up to the County.**
- Speed will be a factor.
- Any provisions for tire washes to prevent mud, dirt causing slick roads. *** see dust above***
- Suggested a 4-way stop at 108th & Agnew Road. **This would not be an issue. Again, up to the County.**
- Were there studies on Hwy 66 & 108th street with the dips in the road and limited site distance? **Yes – the State has no concern about this intersection.**
- Young drivers are an added risk – will this be taken seriously only after a fatality?

- Concerns with the Contractors staying on the route.
- Maintenance on other roads in the area.
- Would like to see a traffic study.
- 20 – 25 truckloads – could become 50 – 60 truckloads during peak mining? **Yes, during peak mining.**
- What would the Community impact of this mining be for income of these small towns?
- Matting and seeding should be used in reclamation to bring it back to original land.
- Will there be mining and driver training on this operation? **Drivers are DOT trained and miners are MSHA (Mine Safety and Health Administration) trained.**
- The potential job market from this new mine will benefit the county.
- This has been a mining county for years – people don't like the mining until they need it.
- The positive effects that Ash Grove has to this county are huge.
- Without mining in the county, cost of materials go up, cost of schools go up.
- A question about mud on the roads was asked by Tesar – the speaker from Final Grade Construction stated that they are currently engaged in a project in Council Bluff with roughly 1400 loads hauled per day. This is roughly 24,000 yards of dirt – 500,000 yards per month. 80 trucks per day arrive – on the trail to Wabash, there are approximately 14 homes. There is no engine braking, tarps are used for dust control, there are wash outs, water wash outs and clean outs so mud is not tracked on the roads. If anything is tracked onto the roads, the sweepers clean it up. Keeping the property owners on the path happy are a high priority. They do have speed regulations and they are followed. This project has been operating for 6 years with several more years to come. If there are any complaints, corrective action is done to rectify these complaints.
- Question about corrosion in the truck boxes was asked. **There is no corrosion – just damage from the beds from the large material. That's why they can't use the softer aluminum beds.**

Mueller asked if anyone else wished to speak. Since there were no more comments or questions, he asked Beiermann to come back up and address some of the questions/concerns. These are addressed above in red. Jensen stated that we never received the ground water analysis that was supposedly sent in - he wasn't sure if we never actually received it or if it didn't print with the rest of the packet – and we requested the Post Project Remediation plan a couple of times - he requested that they send these items to us again. Mueller asked if there were any other questions or comments. Since there were none, he closed the hearing at 9:10 pm. Mueller then made a motion to table this Conditional Use permit until a time that they can review the additional submittals along with the Conditional Use Agreement and the details from Roads Superintendent and County Board on Road recommendation in a complete packet. Seconded by Crofoot. A roll call vote followed with the following votes: Tesar – aye; Dennis – aye; Staben – aye; Mueller – aye; Felthousen – aye; Sullivan – aye; Widick – aye; Oehlerking – aye; Crofoot – aye. Passed with a 9 to 0 recommendation.

The **second item** on the agenda was opened for public hearing at 9:15 pm by Mueller - Regulations update – Action item Mueller asked Jensen to introduce this item.

Administrative remarks:

Additional discussions with Board Chairman Alan Mueller and consulting Commissioner George Tesar have resulted in proposed setback changes in CSCS. The 300 feet to a residential use in T/A would remain and the setback would be reduced to 150 feet in AG. Additional discussion related to the possibility of reducing the 120-foot road setback for CSCS. County Attorney Chris Perrone will be made aware of these changes if adopted, but should not affect the legal review.

Mueller then asked where we were with the legal review. Jensen then called on Chris Perrone for comment. Perrone stated he did go over them in detail and talked to Jensen briefly by email. He has been working on grand jury stuff and was able to dedicate a lot of time to it. In general, what the County Board wants is a full recommendation with the edits, changes, everything there is complete. They want a sheet that the Planning Commission put together shows all the changes – they'd like to know why or if all those changes were approved unanimously or if there were some close ones so they can focus more on those. The biggest issue is the Solar – so if you could supply some input as to why you are for or against having it in Transitional Ag. There are no major concerns with the regs – just make a recommendation on each item that was presented as big issues. Mueller then asked Jensen if he had anything else he wanted to add. Jensen stated that the primary change in Commercial Solar is the setback in T/A will be 300 feet; the setback in AG for residential use will be 150 feet. In addition to that, they had discussed the possibility of decreasing that 120-foot setback from the centerline of the road to 50 feet. With that, there will need to be a provision within a couple hundred feet of an intersection so it doesn't interfere with any site line interference there. Mueller asked if the Planning Board had any questions. Felthousen asked what the reason was for the change. Jensen stated the reasoning behind the additional setbacks in T/A is that it's a different zoning district with a different housing density and the board believes there needs to be a higher standard in T/A for Commercial Solar. The 50 feet instead of the 120 feet gives them an opportunity for

another row of Solar panels. On the screening, 8.21.05, #6 – “Visual screening shall be required if the closest exterior wall of an abutting, occupied non-participating residence within 500 feet of the CSCS panel and equipment (excluding fencing). The CSCS owner may use fencing, walls, berming, vegetation, or some combination thereof to provide visual screening. The CSCS owner may use existing natural features, topography and vegetation to provide visual screening. In the AG Agricultural Zoning district, the CSCS owner shall provide visual screening only along the portion of a lot line abutting a non-participating residential use, for a distance equal to the parallel wall of the residence. In the TA Transitional Agricultural Zoning district, the CSCS owner shall provide visual screening along the portion of a lot line abutting a non-participating residential use, for a distance equal to the parallel wall of the residence, plus 75 feet in both directions or until the lot line meets a public right-of-way, whichever comes first. Screening is not required where the CSCS abuts a participating residential use, or where the homeowner requests a waiver of screening by written notice to the County Zoning Administrator. There are no requirements for screening from public roads or streets. A sight line study will be conducted which may modify or reduce screening requirements for residential properties.”

Jensen then asked if there were any questions. He stated they also added in the Screening Maintenance (#7).

Discussion followed about the screening distances. Mueller then asked if anyone had any more questions for Jensen or comments. Since there were none, he opened up the meeting for public comment.

Two people from the gallery came up to speak – Matthew Jones from NextEra and Lee Greenwald from Baird, Holmes Law firm. They expressed their appreciation to the Planning Commission members for their diligence on the regulations pertaining to Solar. They believe a good balance has been struck with Solar and property owners.

Jensen stated – for clarification – on the 50 foot setback from the centerline of the road – he did discuss this with Roads Superintendent Leonard Thorne. He did not have an issue with this providing they add some kind of buffer to the intersections as he had mentioned – maybe a couple hundred feet. Jensen stated – if you are holding to the standard – it needs to be at least 250 feet from the center point of the County intersection. After going back the 250 feet, then you’re going back the 120 feet back to the 250 foot mark then you can go to the 50 foot mark. This is not detailed out yet but the verbiage need addressed. He suggests it be 250 feet in an effort to be consistent with the numbers. The 120 feet applies to the 250 feet. Jensen stated that the County Attorney, Chris Perrone, per the County Board, would like to approach this in three separate votes. One for the Administrative Subdivisions, one for Commercial Solar – or the Solar setbacks, in general, then the document as a whole. Mueller then asked if there were any more comments or questions. Since there were none, he closed the public hearing at 9:39 pm.

Mueller made a motion to approve keeping the 300 foot setbacks in TA Transitional Agricultural district and changing the setbacks in Agricultural zoning district to 150 feet. Seconded by Staben. A roll call vote was taken with the following votes: Tesar – nay; Dennis – aye; Sullivan – aye; Oehlerking – aye; Staben – aye; Mueller – aye; Felthousen – aye; Widick – aye; Crofoot – aye. Motion to recommend carried with an 8 to 1 vote.

Mueller made a motion to change the right-of-way setback to 50 feet from the centerline of a County Road and/or Highway and change the right-of-way setback to 75 feet on a U.S. or State designated highway. Seconded by Dennis. A roll call vote was taken with the following votes: Crofoot – aye; Oehlerking – aye; Tesar – aye; Mueller – aye; Dennis – aye; Felthousen – aye; Sullivan – aye; Widick – aye; Staben – aye. Motion to recommend carried with an 9 to 0 vote.

Mueller made a motion to approve the increased screening in Transitional Agricultural district to include the extra 75 feet on each side of the house in all directions. Seconded by Tesar. A roll call vote was taken with the following votes: Tesar – aye; Mueller – aye; Dennis – aye; Felthousen – aye; Sullivan – aye; Widick – aye; Oehlerking – aye; Crofoot – aye; Staben – aye. Motion to recommend carried with a 9 to 0 vote.

Mueller made a motion to strike last sentence (#8) on Stormwater Management. Seconded by Tesar. A roll call vote was taken with the following votes: Staben – aye; Oehlerking – aye; Crofoot – aye; Tesar – aye; Mueller – aye; Dennis – aye; Sullivan – aye; Widick – aye; Felthousen – aye. Motion to recommend carried with a 9 to 0 vote.

At this point, Jensen stated there was one more item of business. The re-appointment of members who will expire at the end of the year – the members expiring are Sullivan, Dennis, Widick and Oehlerking. Jensen asked if they would like to be reappointed. Next meeting on January 9, 2023 will be the election of officers.

Mueller then asked Jensen if he would get the regulation changes sent to the County Attorney for review with the possibility of it going to the Board of Commissioners on February 14th, 2023. Jensen stated he would do so.

Mueller asked if there was any further discussion. Since there wasn’t, he made a motion to adjourn the meeting. Seconded by Felthousen. A voice vote followed with all members voting aye. Meeting closed at 9:57 pm.

Linda Brouhard
Recording Secretary

*These minutes will not be approved until the next Planning Commission Meeting and are subject to change.

