

**MINUTES**  
**MARATHON COUNTY BOARD OF ADJUSTMENT**

Members present in person: Richard Lawson, Karen Piel, Carolyn Opitz, Tom Seubert and Kerry Brimmer

Members present via WebEx / phone: None

Member not present: Jim Servi, Roger Zimmerman

Also present remotely via phone / WEBEX or in person: Diane Hanson, Shad Harvey, Teal Fyksen, Nicole Delonay, Laurie Miskimins, Garrett Pagel, Aaron Anklam, Kurt Gibbs, James Schreiber, Rose Marie Popp, Dan McMullin, Scott Czerwonka, Hilary Schreiber, Mary Hart, William Hart, Don Aanonsen, Jason Hanson, Carolyn Oberholtzer, Jay Oberholtzer

**Called to order** at 9:00 a.m., 210 River Drive, Wausau by Chair Piel, who explained the **rules of the hearing** and the reason for the establishment of the Board of Adjustment.

**1. Approve February 24, 2022, minutes** – Motion / second by Brimmer/ Opitz to approve the February 24, 2022, minutes as distributed. Motion **carried** by voice vote, no dissent.

**2. The application** of Stuart Hanson on behalf of Hanson Sanitation & Excavating Inc. for a conditional use permit per 17.204.54 “Nonmetallic Mining” of the General Code of Ordinances for Marathon County Chapter 17 Zoning Code, for the purpose of operating a nonmetallic mining on property currently owned by Gunderson Farms Inc. The property is located in the G-A General Agricultural district, on property described as SW ¼ SW ¼ and NW ¼ SW ¼ Section 27, T27N, R10E and part of the SE¼ SE ¼, Section 28, T27N, R10E, Town of Elderon, further described as PIN#’s 022.2710.273.0997, 022.2710.273.0998 and 022.2710.284.0995

Teal Fyksen was sworn in and stated this application is for a conditional use permit per Ordinance Section 17.204.54 related to the requirements of nonmetallic mining. Fyksen reviewed the current property ownership, parcel location, current zoning districts, and the future land use plans per the Town of Elderon Plan.

The parcel is not located within a mapped floodplain or DNR mapped wetland but is located within the shoreland overlay district which will require DNR Stormwater permitting to address this. Fyksen then reviewed the approximate mine boundary, aerial imagery of the proposed mine location, adjacent property owners and setbacks from neighboring properties, mine access location, cross section of mining area with approximate depths of groundwater and mining area.

There are no known violations on the parcel Fyksen then reviewed the provisions of law and the general standards that apply to this conditional use. The Town of Elderon recommended approval to Marathon County on April 19, 2022, but then on May 10<sup>th</sup>, 2022, the Town of Elderon Town Board passed a motion to change their approval of the resolution to one of “no vote either for or against the proposed mine.”

Fyksen did state that he has received a letter of opposition and Chair Piel suggested that this be read into the record at the appropriate time during the hearing.

Lawson questioned the area to be known as the Czerwonka pit and the connection to Gunderson Farms. Fyksen stated that he believes Czerwonka’s mailing address is the same as Gunderson Farms and that Mr. Czerwonka was present and could respond to that. Lawson also questioned whether any previous mining has occurred on this site and Fyksen stated that he was not aware of any previous mining.

Jason Hanson was sworn in and discussed the driveway access. Preferred access would be onto State Hwy 153 but the state would not allow this so the Town provided access off of off of Mission Lake Road, which would follow the west property line. Hanson stated the possibility of adding irrigation sprinklers to keep down the dust. He said there should be no concerns with silica dust. He stated this will be a sand and gravel mine primarily for bedding sand for farmers. Very unlikely any crushing would occur and there may be some washing at this location.

Brimmer questioned the mining area and proximity to the neighboring property. Hanson stated there are lowlands in that area, that berms would be installed and silt fence would be used along ponds and wet areas. .

Opitz questioned if blasting will take place and Hanson responded that there will not be any blasting taking place at this location.

Piel questioned the quantity of material being removed and truck traffic effect. Hanson stated roughly 100-150 loads will be hauled per week. This would be at the most. The average would be 50-60 loads (10-15 per day)

Brimmer questioned if it was a glacial deposit and Hanson responded yes.

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Opitz questioned the status of the access road and Hanson stated it would have to be built up some. Most of the work is to be done on the eastern side of the proposed mine site and will be reclaimed to farmland upon completion. The timespan of the mine was questioned, and Hanson stated that the Town allowed them for 8-10 years with the opportunity for a renewal.

Seubert asked about funding for reclamation and Hanson stated that there is a law that requires reclamation which has to be completed within 3 years after the mine is closed. Hanson stated that he plans to reclaim the mine site as he goes. Fyksen stated Elderon is a County zoned town and that there are two tracks that are being followed related to nonmetallic mining and today we are asking the Board to deliberate based on Chapter 17, which relates to everything operational with the mine. Fyksen then reviewed the Chapter requirements related to nonmetallic mining reclamation and final land use.

Seubert asked about the possibility of mining deeper and creating ponds and Hanson stated that they would not be allowed due to the setback from water table and the preference.

Piel questioned the operating hours and if they were discussed at the town level. Hanson stated the proposed operating times are Monday- Friday 6am-6pm, Saturdays 6am-5pm and indicated the town allows an 8-10-year time span with possible extension for mine operation. The hours of operation were not discussed with the Town.

Seubert asked about the west side tree line that could be used as a noise or dust buffer. Hanson stated that if dust became an issue, they will water and that there will be crushed black top on the access road to reduce dust

Brimmer questioned about dust control and options to control dust. MSHA would be the entity that would be monitoring for dust control. Fyksen stated that Marathon County would not monitor for particulates but more general observation of dust. Fyksen questioned moving the access road to create a berm along the west side of the driveway to reduce the potential for dust.

Peil asked for any additional testimony in favor of the proposal.

Scott Czerwonka was sworn in and stated he is the owner of the property and is in favor of this conditional use. He explained the possible driveway to the east being a safer option than the driveway being proposed on the application due to the topography. He stated the State would not allow the driveway at that location and Czerwonka would prefer the safer option. Czerwonka plans to continue farming this property while mining is occurring. Discussion took place regarding the driveway location and safety concerns. Fyksen discussed the access location, the DOT's decision for denying access to 153 and the possibility of placing signage to ensure notification of trucks entering the highway as a condition of this permit.

Piel asked for any additional testimony in favor of the proposal. Piel then asked for testimony in opposition to the proposal.

Hilary Schreiber was sworn in and read written testimony submitted by her husband James Schreiber in opposition (Exhibit #1). The letter referenced concerns regarding dust, water supply, surface water drainage, groundwater quality impact, quality of life impact, haul routes, impact to property values, application data that he believes is missing, lack of notification of neighboring property owners, errors in the ordinance, lack of completed permit and mishandling of permit application.

Mrs. Schreiber added additional testimony related to the mine proposal and the concern that their family has. Mrs. Schreiber stated that she moved back to the area to be closer to family and is connected to both parties involved and was not notified of this proposal until 2 weeks prior to this hearing. She is concerned about the impacts to the family members with asthma, noise impact as she works remotely at home, and encourages consideration of health and safety.

Brimmer questioned some of the written testimony and asked Fyksen to address some of those concerns. Fyksen stated that there are some errors in Chapter 21 code references in the application were incorrect and this occurred due to the Hanson's being given an old application form. To date, the Chapter 21 nonmetallic mine application is still deemed incomplete, and no fee has been paid for this permit application. It was agreed by Fyksen and Hanson to wait until a decision was reached by the BOA on the operational aspects of the conditional use permit application. There is information from the Chapter 21 permit application that was included in this application because it does pertain to the conditional use permit application.

The Board is present to deliberate Chapter 17 standards and not the Chapter 21 Nonmetallic Mining Reclamation

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standards addressed in the written testimony. The County notification of this hearing and application complied with the State Statute (Class 2 notice) and Chapter 17 requirements. The Town is provided notice earlier so that they have time to act upon this proposal.

Brimmer questioned the other concerns such as lack of a topographic map. The packet showed an elevation cross section but no topographic map of the area. Brimmer also questioned the presence of airborne silica sand, it was stated that there would not be any present and has this been determined. Fyksen stated that he has not received any verification of that statement. Brimmer questioned the chemicals that could be used in the washing process. Fyksen stated he contacted Hanson's and was told water would only be used for washing; no chemicals would be used. Brimmer questioned about the status of Mission Lake Road and an agreement with the Town for road repairs.

Don Aanonsen, Town of Elderon Chair, was sworn in and explained that Mission Lake Road is a chip seal road, the mine operation would utilize about 100 feet of the road and there are weight limits on the road. The Town does not have an agreement with the operator for road repairs. Schreiber asked about the amount of traffic heading west on Mission Lake Road. Hanson stated that maybe 1% of the mine traffic would head west.

Piel asked for any other questions for Mrs. Schreiber. Lawson asked for clarification from Fyksen that the conditional use application is true and complete. Fyksen stated that it is, and a topographic map is not a requirement for Chapter 17 application and what is missing is related to Chapter 21 Nonmetallic Mining which the BOA has no jurisdiction.

Piel asked for any other testimony in opposition to this proposal.

William Hart was sworn in and stated he is a local resident in opposition and concerned about the driveway access on Mission Lake Road, traffic safety issues, removal of trees knocked down due to a storm, changing the road access to Cherry Drive through the neighboring farm, rock crushing/noise concerns, vague application, and that Chapter 21 should be considered in this decision,

Don Aanonsen stated that he was in attendance to observe and answer any questions about the Town of Elderon's actions.

Harvey asked if anyone on the phone wished to testify in opposition to the proposed mine.

Piel asked for any testimony of anyone as interest may appear.

Piel questioned the Town's discussion related to the hours of operation. Aanonsen stated that he was not in attendance at the April Town meeting and stated the Town posting process. Aanonsen had contacted the Towns Association on guidance as to whether neighboring landowner notification should have occurred, and he was informed that the Town did not need to notify the neighboring owners. Aanonsen did repost it for the May town meeting and that the Town Board chose to rescind the initial approval and have the town take no action and allow the BOA to decide. Aanonsen stated that the Town is not experienced with nonmetallic mining operations.

Opitz questioned the possibility of a road going east toward Black Cherry Drive. Hanson stated that it has not been discussed and he is not sure of the feasibility of that and is not sure of the ownership of the buildings on the parcels. Fyksen asked if there was willingness on the part of Hanson's to explore alternative options. Hanson stated that, if necessary, they are willing to explore that option.

Seubert asked about moving the access road to the east and berm to the west and plant trees. Hanson stated that would be doable.

Brimmer questioned how to handle the possibility of a different access road. Hanson stated that the Town did provide them access onto Mission Lake Road. Piel stated that the BOA has no documentation from the Town stating that authorization.

Discussion occurred related to the possibility of encouraging the state to approve the access road onto Hwy 153 as the safest option. Staff and Board members stated that would not be something that we could do.

Piel asked again for any testimony of anyone as interest may appear. No additional testimony was requested. Piel then reminded the Board that once the hearing was closed, no additional questions could be asked.

Seubert then asked if the haul road be covered with crushed asphalt. Hanson stated that they should be able to come up

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with something or utilize a sprinkler.

Lawson asked how to proceed with this application and placing conditions on the permit. Fyksen provided some examples of conditions that may be placed on applications/permits such as this.

Lawson asked the applicant if they are willing to provide any and all measures to reduce dust issues on this property at their expense. Hanson agreed.

Eugene Borg was sworn in and stated he lives across the street from the proposed nonmetallic mine and concerned about the impact of dust on his property.

Piel asked Fyksen if there is a list of possible conditions for nonmetallic mines that the Board could review from past permit application processes. Lawson stated it was a “laundry list” of items that could be possible conditions for the permit. Discussion occurred on the deliberation process once the hearing is closed and how to proceed with possible conditions.

Brimmer questioned whether crushing will occur, and Hanson stated that it may occur. Brimmer questioned that we would need to state that as a condition as to whether they could or could not crush.

Lawson indicated this could be considered a condition on the permit.

Brimmer asked Schreiber what her biggest concern of this application is

Schreiber stated they are opposed to this proposal and feels that the application is very open ended specifically regarding hours of operation; a tree barrier between the mine site and her property would be beneficial; road safety; pond locations and potential irritants. Brimmer stated that if the Board placed conditions on the permit that would provide some assurances that things would not occur, if that would alleviate some concerns. Schreiber agreed. Brimmer mentioned the concern related to chemicals in the wash water and that a condition could be placed that no chemicals be used.

Rose Marie Popp was sworn in and stated that many of her questions have been answered but is concerned about the health risks. She is also concerned about living on Black Cherry Drive and the traffic and noise pollution.

Dan McMullin was sworn in and is a resident that resides on State Highway 153. His biggest concern is the safety at the intersection of Mission Lake Road and Hwy.153 intersection and concern about the potential impact to the town road.

Lawson asked Hanson if crushing will occur and if it does, for what period of time?

Hanson stated that they have not currently found any material that is worth crushing but in a 40-acre area, there may be some material that is crushable. Hanson stated that if crushing occurred, it would be during the summer months. If they found crushable material, they could haul it elsewhere to crush. Their main goal is screening and maybe washing material if needed.

Brimmer questioned the determination that there is no silica in the material and asked if that was anecdotal or if he confirmed that he did confirm that. Hanson stated that he did not have that tested.

Seubert asked about washing on site. Hanson stated that at this time they just want to screen but would like washing as an option.

Brimmer questioned the hours of operation. Hanson stated that they could do prep time from 6-7 and starting at 7.

Discussion occurred on road impacts and building the roads to a “4 season” level.

Brimmer asked about buffering and options available.

Fyksen provided some possible buffer options.

Czerwonka mentioned that he plans on utilizing the unmined area of the field for farming and the center pivot irrigation system needs to be able to operate around any buffers.

Brimmer asked about a standard size for a berm and Fyksen mentioned a 10-foot height.

Czerwonka noted the neighboring resident would not benefit from a berm due to the house being on a hill and discussion followed on the purpose of berms.

Piel asked if the Board had the information that they needed to move forward.

Schreiber stated that her husband has sent some additional input for conditions, and he would like the following considered: a geographical study showing no quartz content that would create the silica dust; no direct access to groundwater, no visibility from neighboring properties, dust barriers; property value protections; silica dust must be low in a sample study (8-10 years); and traffic safety concerns.

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Chair Piel asked for any additional questions from the Board. Brimmer questioned the berm requirements/conditions.

Hanson asked a procedural question if the Board chooses to postpone and what the next steps would be if it was postponed. Fyksen provided some preliminary guidance if this application is postponed. Opitz questioned if Hanson would go along with a postponement and Piel stated that Hanson provided no additional comment in favor of a postponement.

There was no additional testimony in favor, opposed, or as interest may appear via in person, or virtually. Testimony portion of the hearing closed at 10:52am.

Piel then reviewed the possible options for a motion (approve, deny, adjourn till next BOA meeting date, etc.) Brimmer stated that he feels that postponement is appropriate with lack of information related to berming, dust control, etc. Opitz stated that if postponement is the direction, then the Board should identify options for the applicant to investigate/outline to provide the Board with additional information. Discussion occurred on the process of postponement. Piel discussed the decision sheet and the ordinance and concern about the haul route and the options of how to move forward with action on this application. Discussion occurred on the traffic and trucks hauling in that area.

Piel asked for a motion to consider.

**Motion/second** by Lawson/ Seubert to **grant** the conditional use permit for Hanson Sanitation & Excavating as requested subject to the following conditions:

- This conditional use permit will expire December 31, 2032
- Hours of operations shall be 6 AM to 6 PM Monday – Friday and 6 AM till 5 PM on Saturday with no heavy machinery operation starting before 7 AM.
- Any and all dust control measures will be employed to ensure that no dust impacts the Schreiber property
- No crushing on site.
- No chemicals to be used for washing nonmetallic materials onsite.
- Haul road shall be moved to the east along the 40-property line then move to the west around the pond north of Mission Lake Road to provide access to Mission Lake Road.
- A 10-foot berm shall be built between haul road and west property line

Discussion: Brimmer is still concerned about the barrier and dust control. Opitz asked about trees. Brimmer asked about the 2032 end date. Piel asked about the Town Board permission/agreement for Hanson's to use Mission Lake Road and damage repair. Lawson stated that he believes the Town has approved the access point and the Town should be the one working with the applicant on specific conditions for road damage. Piel stated concern about the public safety aspect of this application. The Board deliberated and completed the *Conclusion of Law and Decision Sheet*.

Motion **carried** 5 yes, 0 no, roll call vote.

**3. The application** of Jay L. Oberholtzer for a conditional use permit per Section 17.204.07 of the General Zoning Code of Ordinances under Marathon County Chapter 17 Zoning Code for a Kennel/Boarding Facility of more than seven dogs (for commercial purposes) within the G-A General Agriculture district, part of the SW¼ of the NE¼ of Section 5, T26N, R03E, Town of McMillan; PIN # 056.2603.051.0993, with a property address of: 209223 County Road E, Stratford, WI 54484

Miskimins was sworn in and asked the Board to use the determination worksheets in their decisions and cited the provisions of law which apply. Miskimins reviewed the staff report and discussed Ordinance Section 17.204.07 related to operating a Kennel/Boarding Facility within the G-A General Agriculture zoning district. Applicant is in the process of getting an Industrial Waste sanitary permit from the State and then will process with Marathon County POWTS permit requirements. The proposed development location on this parcel is not within a mapped floodplain; not located within DNR wetlands or within the shoreland overlay district. The zoning ordinances allows for a Kennel to be applied for under Section 17.204.07 for a Conditional Use Permit. There are no active or past violations on the property. The proposal will exceed allowable facility within the G-A District, all other applicable regulations and standards will be met. The Town of McMillan

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recommends approval of this Conditional Use Permit, with a condition that it adhere to McMillan Town Ordinance 214-10 related to noise.

Jay L. Oberholtzer was sworn in and stated they currently sell puppies but looking to grow their family operation.

Piel questioned how many dogs will be within the building/ and outdoor. Oberholtzer stated they plan to breed around 24 dogs and could have up to 60 dogs on site at any given time. Only the large breeding dogs will be allowed outdoor, and the puppies will be indoor. There will be no more than 60 dogs outside without supervision.

Lawson questioned if a kennel or grooming services will be operating at this property.

The applicant stated not at this time. Oberholtzer stated they currently breeding 3 dogs, which is allowed, but state licensing would be required to breed any additional. The structure can hold 80 dogs at any given time. The applicant will be pursuing necessary State and USDA licensing to breed.

Written testimony was submitted by Tyler Mueller with concerns regarding noise, boundaries, number of dogs and health concerns for the dogs (Exhibit #2).

There was no additional testimony in favor, opposed, or as interest may appear via in person, or virtually. Testimony portion of the hearing closed at 11:53a.m.

**Motion** / second by Brimmer/Seubert to **grant with conditions previous stated in the staff report**, the conditional use permit for Jay L. Oberholzer as requested. The Board deliberated and completed the Conclusion of Law and Decision Sheet. Motion **carried** 5 yes, 0 no, roll call vote.

4. **Board education and training as needed** None.

5. **Board Reappointments** - Dick Lawson reappointed for a 3-year term expiring on June 30, 2025.

6. **Announcements and Requests**

**Next meeting date** – June 23, 2022, at 9:00 am, Courthouse Assembly Room

7. **Meeting adjourned** – By consensus, Piel adjourned the meeting at 12:24 Motion **carried** by voice vote, no dissent.

Respectfully submitted,  
Carolyn Opitz, Secretary  
Marathon County Board of Adjustment

cc: Board of Adjustment (6), County Clerk, Town Clerk

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