

**MINUTES  
MARATHON COUNTY BOARD OF ADJUSTMENT**

Members present remotely: Richard Lawson, Arnold Schlei, Karen Piel, Jim Servi, Carolyn Opitz, Kerry Brimmer  
(alternate #2 attended remotely and was not called upon to vote, since a quorum was present)

Members not present: Roger Zimmerman

Also present remotely via phone: Don Southworth Jr.

Also present via WEBEX: Teal Fyksen, Brenda Iczkowski, Diane Hanson, Dominique Swangstu, Lane Loveland, Becky Frisch, Paul Daigle, Jared Mader, Don Napiwocki, Chris Mrdutt, Jeff Peterson, Dustin Vreeland, David Krautkramer, Andrew Altenhofen, Mark Kolbe.

**Called to order** at 9:06 a.m., 210 River Drive, Wausau by Chair Lawson, who explained the **rules of the hearing** and the reason for the establishment of the Board of Adjustment.

**1. Approve May 28, 2020 minutes – Motion** / second by Servi / Schlei to approve the May 28, 2020 minutes as distributed. Motion **carried** by voice vote, no dissent.

**2. The application** of Robert and Heidi Pachniak for a conditional use permit per Section 17.401.02 of the General Code of Ordinances for Marathon County Chapter 17 Zoning Code for the purpose to construct a detached accessory structure for personal use with floor area differing from the standards in the L-D-R Low Density Residential district, described as part of the NW ¼ NW ¼ Section 27, Township 26N, Range 8E, Town of Guenther, described as Lot 1 on Certified Survey Map #175018, further described as, PIN # 032.2608.272.0988 with a property address of: 160499 County Road C, Mosinee, WI 54455.

Teal Fyksen was sworn in for case and all additional cases, asked the Board to use the determination worksheets in their decisions and cited the provisions of law which apply. Exhibit 1 – Staff report: Town of Guenther has adopted county zoning. The property is not located in shoreland zoning or a mapped floodplain. There are no mapped wetlands on the property. There are no known violations on the site. Exhibit 2 – Petition for Conditional Use Permit application. Exhibit 3 Location within township. Exhibit 4 – Certified Survey Map. Exhibit 5 – Proposed site plan. Exhibit 6 – Proposed sidewall and height dimensions. Exhibit 7 – Future land use map. Exhibit 8 – Surrounding zoning. Exhibit 9 – Aerial Photo wide angle. Exhibit 10 – Aerial photo. Exhibit 11 – Required vs Proposed dimensions. Exhibit 12 –Town of Guenther resolution.

Fyksen discussed Ordinance Section 17.401.02 related to the construction of detached structures outside of the building standards. Code allows for 1200 square feet of floor area, 14’ side walls, 24’ overall height, 12’ overhead garage doors. This application is for 1792 square foot detached accessory structure. Fyksen stated that the proposed building square footage did not meet the code, all other applicable regulations would be met. The detached accessory structure would be used for personal use.

The Applicants were not present to provide any additional testimony.

Chair Lawson asked for any additional testimony.

There was no additional testimony in favor, opposed, or as interest may appear. Testimony portion of the hearing closed at 9:23 a.m.

**Motion** / second by Piel / Schlei to **grant** the conditional use request, without any additional conditions.

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 KLM Acres 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 boundary expansion and continued operation of an existing permitted nonmetallic mining operation (Reclamation Permit #15-003) on properties currently owned by Randolph and Teresa Konkol. The property is located in the G-A General Agricultural district, on parcel described as part of the NW¼ NW ¼ Section 34, T26N, 7E Town of Knowlton further described as PIN# 048.2607.342.0980 with a property address of: 201631 County Road DB, Mosinee, WI 54455.

Teal Fyksen asked the Board to use the determination worksheets in their decisions and cited the provisions of law which apply. Exhibit 1 – Staff report: Town of Knowlton has adopted county zoning. The property is located in shoreland zoning. The property is not located in a mapped floodplain. There are mapped wetlands located on the property. There are no known violations on this site. Exhibit 2 – Petition for Conditional Use Permit application. Exhibit 3 – Narrative. Exhibit 4 – Aerial photo mine site. Exhibit 5 – Aerial photo future pond. Exhibit 6 – Aerial photo two lane access road. Exhibit 7 – Approximate project area. Exhibit 8 – DNR wetlands. Exhibit 9 – Project Site – G-A Zoning District. Exhibit 10 – Aerial photo Knowlton pit. Exhibit 11 – Location within township. Exhibit 12 – Future land use map. Exhibit 13 – Site

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contours. Exhibit 14 – Site Map. Exhibit 15 – Mine profile north-south. Exhibit 16 – Mine profile east-west. Exhibit 17 – Town of Knowlton resolution.

Fykseen discussed Ordinance Section 17.204.54 related to the requirements of nonmetallic mining within the Code. The purpose of this application is for renewal and expansion of the current mine. The Town of Knowlton approved the request with the following conditions: Hours of Operation - 7:30 am- 6pm Monday through Friday, 7:30 am-12 pm Saturday; setback from County DB right of way of 250', total excavated area limited to 12 acres, limited to 10 years expiring on 06/01/2030 and must provide map reflecting setback and area conditions. All other applicable setbacks will be met.

Servi questioned where the setback discussions originated. Fykseen responded that the discussions were at the Town Plan Commission meeting and then moved on to the full Town Board discussion.

Servi questioned in Exhibit 12 related to the small ponds in the northeast portion of the property and whether they had been created via mining activities. Fykseen stated to his knowledge, the small ponds were excavated and permitted but felt that the applicant could answer the question better.

Brimmer stated the Town of Knowlton didn't request a setback but the applicant had asked for a setback because the applicant may parcel off lots along County Highway DB. Brimmer also stated that the town has always opposed the mine since the beginning.

Lawson asked if the revised setback limit would allow for the actual area of the mine to be no more than 12 acres that the town also specified. Fykseen answered yes.

Schlei questioned about the buffer of trees along County Hwy. DB, and if the trees would be removed if any future development of the property occurred.

Fykseen responded that would be referred to the future land use and the owner would be able to better answer the question and the trees are in the right of way which would be up to the County Highway department to remove them.

Mrdutt was sworn in. In response to the question regarding the ponds on the property, Mrdutt stated that they are recreational ponds that were created due to mining of less than 1 acre which did not require a permit. Mrdutt further explained the history of the current mine site. Mrdutt also stated that Exhibit 12 shows the buffer of trees which is on the KLM acre property. Currently, there is no need to remove the buffer of trees. There are currently no plans to develop this area but want the option for the future.

Servi asked the applicant if he had any concerns with the Towns conditions. Mrdutt stated they welcomed the conditions, and are willing to comply with all of the conditions. Many of the conditions the applicant provided.

Lawson questioned Exhibit 13. Does that satisfy the last recommended condition of the town requesting an updated map showing the setbacks? Mrdutt added the map shows the setback and the maximum acreage to be mined of 11.17 acres.

Lawson asked approximately how much of the total area proposed for the mine has been currently mined? Mrdutt stated that approximately 25-33% of the site has been mined.

Lawson asked if Integrity is still working the site and will continue into the future. Mrdutt stated that Integrity is the operator and will continue operating the mine on this site.

Piel asked for information on the truck traffic in and out of the mine site. Mrdutt explained that a large quantity of materials removed from the mine is being hauled to Mosinee with about 15-20 trucks in/out of the mine site per hour and as low as 3-5 trucks an hour. Signs are place on Highway DB with trucks entering/hauling. The operation is also set up for black dirt or smaller loads of dirt for neighbors.

Lawson asked if Integrity Grading has complied with the conditions in the prior permit. Mrdutt responded that they have.

Lawson asked if any accessory, office area parking uses will be at least 75 feet from the right of way. Mrdutt answered yes.

Chair Lawson asked for any additional testimony.

There was no additional testimony in favor, opposed, or as interest may appear. Testimony portion of the hearing closed at 9:54 a.m.

**Motion** / second by Servi / Piel to **grant** the conditional use request with conditions as requested by the Town.

The Board deliberated and completed the Conclusion of Law and Decision Sheet

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

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**4. The continuation** of the public hearing regarding the James Peterson Sons, Inc. request for a conditional use permit application from the April 23, 2020 Board of Adjustment meeting.

Teal Fyksen asked the Board to use the determination worksheets in their decisions and cited the provisions of law which apply. Exhibit 1 – Staff report: Town of Marathon has adopted county zoning. Part of the property is located in shoreland zoning. Part of the property is located in a mapped floodplain. There are mapped wetlands on the property. There are no known violations on the site. Exhibit 2 – Petition for Conditional Use Permit application. Exhibit 3 – Parcel owners. Exhibit 4 – Narrative. Exhibit 5 – Location within township. Exhibit 6 – Future land use map. Exhibit 7 – Surrounding zoning. Exhibit 8 – Aerial Photo (wide angle). Exhibit 9 – Aerial photo PIN# 054.2806.013.0998. Exhibit 10 – Aerial photo PIN# 054.2806.013.0993. Exhibit 11 – Existing site currently permitted. Exhibit 12 – Proposed Pond (reclamation). Exhibit 13 – Pond Profile 1. Exhibit 14 – Pond Profile 2. Exhibit 15 – Revised Proposed Pond (reclamation). Exhibit 16 – Revised Pond Profile 1. Exhibit 17 – Revised Pond Profile 2. Exhibit 18 – Town of Marathon Input. Exhibit 19 – Letter of Opposition – Southworth. Exhibit 20 – Letter of Opposition – Kolbe/Paul Sturgis WI Agronomy Crops IMS. Exhibit 21 – Letter of Opposition – Jack & Cheryl Fenn. Exhibit 22 – Town of Marathon Resolution. Exhibit 23 – Basis of Determination Town of Marathon. Exhibit 24 – Peterson Letter Responding to Town’s Recommendation of Denial

Fyksen discussed Ordinance Section 17.204.54 related to the requirements of nonmetallic mining within the Code. Fyksen stated the Town of Marathon recommended denial. Servi asked why the Town of Marathon recommended denial and asked for their reasoning for recommending denial. Fyksen couldn’t speak on the Town of Marathon’s behalf and was not in attendance at the Town of Marathon meetings when this was discussed.

Lawson asked if the Department has been aware of any violations on/at this site since the staff report shows there were no known violations on record. Fyksen has reviewed the file for this mine site and did not find any complaints or violations in the file. The statement that there were complaints/violations on this site is inconsistent with CPZ files.

Lawson asked what specific conditions were placed on this mine site under the current permit and when the permit was granted. Fyksen stated the conditions per the letter dated April 14, 2004, the special exception permit from 2004 had the following conditions: setbacks along the Gertschen property are 20 feet and the slope is 10 to 1, all material is hauled offsite to the North onto County Road NN.

Lawson asked if a permit expiration date was given. Fyksen responded there was not an expiration date identified in the permit records. The applicant has been compliant with their existing Conditional Use Permit. Lawson questioned why the application is being presented if the applicant already has a permit with no expiration date. Fyksen stated the applicant is changing the final reclamation plan from a farm field to a pond and will be going deeper with the excavation. The applicant’s proposal is to mine to a depth of 44 feet (28 foot depth increase).

Servi asked about the towns concerns with possible well water contamination. Fyksen stated that the applicant is working with a hydrologist to study this issue of concern.

The following people were sworn in and gave testimony **in favor** of the James Peterson Sons Inc. Conditional Use Permit request:

Dustin Vreeland, 6103 Dawn St Weston, WI. Vreeland stated that Peterson and Sons have been working with a hydrologist from REI Engineering Inc. and DNR regarding the groundwater concerns. They received a map from the DNR showing the ground water flow to the north. The Southworth’s are to the south of the property so the ground water would not flow toward the Southworth property. The DNR has requirements on setbacks with a minimum 500 feet from all existing wells and this mine site will be exceeding this setback. Submitted into evidence was the map from the DNR referenced by Vreeland. The other concern in the Town’s denial recommendation was stormwater management specifically affected Mr. Kolbe’s property. Petersons will continue to work with Mr. Kolbe to make sure there will be no stormwater runoff impacts to his property. The Petersons have built berms around their sites to keep the stormwater runoff from going onto neighboring properties.

Servi asked for clarification of Exhibit 23 which in the packet was Exhibit 16, the Town of Marathon’s rational for denying the application. Vreeland addressed the concerns in the denial. Since the water contamination was just discussed, Vreeland explained the “tracking” on County Road NN. In discussion with County Highway Commissioner Jim Griesbach regarding the tracking, Griesbach stated to Vreeland that he has had no complaints or violations related to this mine operation. Vreeland then discussed dust control and stated that there have been no complaints or violations for dust on roads. Peterson’s will continue to use water trucks as needed to control the dust and are in compliance with DNR guidelines. In regard to the hours of operations concern, there are no violations or complaints.

Fyksen asked Vreeland for clarification on the expansion of the mine site. Vreeland stated that the boundary of the mine site will not change, Peterson’s will be excavating deeper only.

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Servi asked for the current approved hours of operation. Vreeland stated that under the current permit there are no restrictions on the hours of operation. The applicant is recommending hours of operation as 7am- 7pm Monday through Friday and no Saturday hours.

Piel asked the length of the current permit. Fyksen stated the existing special exception permit does not have an expiration date. The zoning permit runs concurrently with the reclamation permit. The conditional use permit is specific to the land use related to the depth of mine expansion.

Piel questioned the applicants understanding of the length of time for the permit and how long they anticipate mining this site. Vreeland stated it will depend on the market and the need for sand.

Jeff Peterson, PO Box 120, Medford WI. Peterson provided a history of the mining activity at the site and amount of material being removed. In 2004-2005, with the Interstate 39 and Highway 51 projects, approximately 600,000 yards of materials were taken out. Currently, 8,000 - 14,000 yards mined annually depending on the need and areas of work. The timeframe for the mining will depend on the needs of the communities and area roadwork.

Peterson stated they have never had any issues with complaints from neighbors and that he talked with Mr. Kolbe and another neighbor to discuss their issues of concern. Schlei asked if any crushing is being done in the mine. Peterson responded it is just a course sand product and no screening or crushing is done.

Fyksen shared Exhibit 24 the letter from Mr. Peterson regarding working with an engineer in response to the concerns listed in the Town's denial that was referenced earlier.

Lawson asked Mr. Peterson why the proposed pond is smaller than it had been. Peterson said it is the result of listening to the Zoning Committee and DNR. The pond was reduced in size to make sure there was room to meet all setbacks.

Lawson added as Mr. Vreeland suggested, James Peterson Sons is willing to construct berms so Mr. Kolbe won't suffer any reduction in his cropland area for manure spreading. Peterson stated that is part of the stormwater plan that the DNR requires. Fyksen included that after the April 23<sup>rd</sup>, 2020 hearing, he talked to the Marathon County Conservation staff asking for solutions to mitigate the restriction area for Mr. Kolbe's manure spreading. The Conservation staff concurred that a berm could be a possible solution. Peterson added that Matt Repking, Conservation Analyst with CPZ, stated Mr. Kolbe has 470 acres of land in the Farmland Preservation Program of which in 2020 he used 50 acres for manure spreading. Peterson wants to work with Mr. Kolbe so that he can manage his cropland as he wants.

Opitz stated that she has some reservations regarding the Town's decision if the Town Board voted to deny without the Planning Committee's knowledge of the additional information and changes. Peterson state that he was told that it didn't pay for him to attend the Town Board meeting. Vreeland was not allowed to speak at the Town Board meeting. Opitz asked if the Town Board had all the information before their denial. Peterson stated the only thing that has changed is the contours and the 500 feet or more setback. There are multiple mine sites within the area and all these sites are doing the same thing.

Opitz asked Fyksen if the recommendation for denial came from the Plan Commission or the Town Board. Fyksen stated that the Plan Commission recommended denial of the application to the Town Board. The Town Board approved the resolution recommending denial to the Board of Adjustment.

The following people were sworn in and gave testimony **in opposition** to the James Peterson Sons Inc. Conditional Use Permit request:

Mark Kolbe, 144398 Whippoorwill Rd Marathon, WI. Lawson asked Kolbe if he testified at the April 23, 2020 hearing. He stated that he had. Kolbe serves on the Town of Marathon Plan Commission but is testifying today representing himself and farm. Kolbe addressed the timing issues between the Plan Commission and Town Board. Kolbe also stated that his concern relates to the added liability or risk to his farm operation related to water runoff and would like this looked at. He opposes installing a berm. Schlei asked Kolbe about his concerns with the berm. Kolbe stated that on the northern part of the property near County Road NN, the area collects water and naturally runs across the property line. If the berm is built, it will only block of the runoff to his property and would limit the natural water flow of the area.

Servi asking if there was pumping of the water out of the mine site would it affect Kolbe's property? Kolbe stated that the water naturally runs that way, it's how the land is sloped. Kolbe concerns are with the surface water quality management restrictions for manure spread and it would restrict a large part of the field from manure spreading. Schlei asked Kolbe if he feels if there was a waterway or drainage ditch put in would it solve his concerns. Kolbe feels it would solve the water issue. Schlei asked the applicant(s) if they feel they could work up a solution. Vreeland stated Peterson s will work on a berm with a grass ditch to continue the natural water flow. Lawson asked Vreeland as previously testified that Petersons will do whatever measures necessary to make sure Mr. Kolbe's manure spreading is not limited and water doesn't pond up on his property. Vreeland agreed.

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The following people were sworn in and gave testimony in as interest may appear to the James Peterson Sons Inc. Conditional Use Permit request:

David Krautkramer, 225601 Marathon Road, Marathon WI. Krautkramer Town Board Supervisor, stated when the Town voted for denial, the Town was unaware of any of the changes. The Town Board typically votes based on the decision of the Plan Commission vote. Servi asked Krautkramer that with the new changes, would he still recommend denying. Krautkramer stated that he could not speak for the Town right now. Lawson stated that the changes that have been proposed since the Town vote do address many of the concerns that were in the Basis of Determination. Krautkramer replied that the Town Board was not aware of the changes. Krautkramer responded the changes would have to be brought before the Plan Commission for any decision change.

Frisch advised the Committee to get better clarification of Mr. Kolbe involvement in the Plan Commission. Kolbe stated he was appointed Chair of the Planning Committee but when this application came before the Committee, Mr. Kolbe removed himself as chairperson and appointed an alternate chair and then he sat in the audience. Lawson asked if Kolbe offered any input as a witness or otherwise at the hearing. Kolbe spoke of only the information that he presented at the last BOA hearing that was presented to Swangstu. Peterson had contacted Kolbe after the hearing to discuss the issues and he did not discuss this with the Planning Committee. Opitz asked Kolbe if he participated in the vote on the Planning Committee meeting. Kolbe stated he did not participate.

Frisch commented that it is important for everyone to know as the Board moves forward with a decision, they have to base their decision on what is in the record. Depending upon the decision, there can be an appeal of the decision and that appeal would go to the circuit court.

Piel asked if we have the date the Plan Commission met. Lawson said the Exhibit from the Town Board was dated June 8, 2020. Swangstu stated the petitioner is currently looking through his files for that specific date of the meeting and requested to provide any additional comments. Piel asked for clarification around who completed the Basis of Determination (Town Board or Planning Committee). Swangstu stated Mr. Kolbe is ready to speak and the Plan Commission meeting was May 28, 2020. Kolbe believes Francis Martin was appointed as the secretary for the meeting and believes that he completed the Basis of Determination and then it was turned over to the Town of Marathon Secretary Kelley Bloome. Lawson asked Kolbe about the Basis of Determination (Exhibit 23), was prepared by someone on the Plan Commission at the May 28, 2020 meeting. Kolbe answered yes that the Plan Commission completed the Basis for Determination and that person called him for clarification on a name when he was doing the minutes. Lawson asked if Mr. Peterson still wished to address this issue or something else. Peterson stated that someone mentioned about why some of this information was not presented to the Town Board. Peterson stated that the Board did not open this up for discussion and he was told not to show up. Vreeland was at the meeting but wasn't given the opportunity. The water issues, the runoff issues and the dust issues are all regulated by the DNR.

Schlei questioned when the Plan Commission met, and why the Commission was not given any of information related to addressing the concerns. Peterson stated that the Plan Commission met and all of these concerns came out at that time. Immediately after that meeting, Peterson's talked to Mr. Kolbe, other landowners, and the Highway Commissioner to discuss and gather additional information. Concerns regarding road issues with the dust were not found. The Peterson's tried to and were willing to present the additional information but were told not it was not necessary for them to attend the Town Board meeting. Peterson discussed the information with Fyksen, asking for guidance. Fyksen told him to bring the information to the Board of Adjustment So that is what they did.

Schlei and Opitz discussed typical processes between a Town Planning Commission/Committee and the Town Board. Typically, the Town Board will accept the recommendation of the Town Planning Commission/Committee. Schlei and Opitz provided input on how their respective Towns work through these types of applications.

Frisch cautioned Chairman Lawson to ensure discussion is relevant to the application and not what a town board did or did not do in relation to how other town boards work. She encouraged the Board to focus on the facts that have been submitted, who submitted the facts and whether or not the Board has the information needed to make a decision and whether or not the information provides substantial evidence. If there is missing information, the Board has the ability to request more information.

Schlei asked Frisch a procedural question, related to when questions should be asked, after the hearing is closed, during deliberation or when. Lawson responded if anyone has any questions relevant to a decision that the Board will be making today, they should ask the question now before the hearing is closed. Lawson commented that the information on the history of the Plan Commissions/Committees and town boards are mute points and from what he heard today, many of the concerns have been addressed by the applicant and he thinks there is substantial evidence provided for the Board to make a decision.

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Chair Lawson asked for any additional testimony. There was no additional testimony in favor, opposed, or as interest may appear. Testimony portion of the hearing closed at 11:36 a.m.

The Board deliberated and completed the Conclusion of Law and Decision Sheet. Discussion occurred on conditions for the permit. Piel discussed conditions from the 2004 Special Exception Permit and whether those terms should be considered and also the information presented in the application as Attachment 2 and in testimony today. Swangstu noticed a numbering error in the Decision Sheet and Fyksen corrected this.

**Motion** / second by Piel / Schlei to **grant** the James Peterson Conditional Use Permit with the hours as noted in Question #4 and the operational specifics as noted in Question 6 on the Decision Sheet.

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

**5. Board education and trainings as needed** – None.

**6. Announcements and Requests** – Fyksen shared the staff report will be changing starting with the July meeting.

**Next meeting date** – July 30, 2020 at 9:00 a.m., 212 River Drive, Wausau Room 5 / remotely

**7. Meeting adjourned** – **Motion** / second by Schlei /Opitz to adjourn at 11:58 a.m. Motion **carried** by voice vote, no dissent.

Respectfully submitted,  
Arnold Schlei, Secretary  
Marathon County Board of Adjustment

AS/bi