WABASHA PLANNING COMMISSION

January 13, 2015 7:00 PM

MEETING MINUTES

Commission Members:	Brian Wodele, Chair	Scott Durand
	Craig Falkum, Vice Chair	Charles Bricher
	Jim Miller	Tim Wallerich
	Dave Kruger	

Staff Present: Chad Springer, City Administrator
Kristi Clarke, Contracted City Planner
Wendy Busch, Planning & Zoning Assistant

Others Present: Mayor Rollin Hall
City Attorney Peter Ekstrand
Molly Patterson-Lundgren, WSB Planning Consultant

1) Call to Order

Vice Chair Falkum called the regularly scheduled meeting for January 13, 2015 to order at 7:00pm. Roll found all commissioners present.

2) Appointments

Vice Chair asked the commission for any nominations. Commissioner Wallerich nominated Brian Wodele for Chair, which was seconded by Commissioner Durand. Adopted unanimously. Commissioner Miller nominated Craig Falkum for Vice Chair, which was seconded by Commissioner Durand and adopted unanimously.

3) Approval of Minutes – December 9, 2014

Commissioners Bricher and Miller made a motion to approve the December 9, 2014 minutes as presented, adopted unanimously.

4) Changes or Additions to Agenda – Commissioner Falkum would like to add New Business item 8 a) fees for mining.

The commission welcomed new commissioner Dave Kruger to the meeting. Kruger will hold the City Council representative seat on the Planning Commission Board.

Chair Wodele spoke to the audience regarding the general public comment period that takes place during each meeting and the public hearing public comment that is taking place tonight.

5) Public Comment – Hearing no general public comment the commission went on to the Public hearing for the Mining Ordinance.

6) Public Hearings – Mining Ordinance.
Chair Wodele began by stating that the Planning Commission is not required to hold a public hearing to provide a recommendation to City Council, since the topic of Mining is

a concern within the City of Wabasha the Commission and staff agreed it would be best to hear from the public their concerns.
City Administrator Springer indicated that he had three emails that would be a part of the public comment once the commissioned opened the public comment portion of the meeting.
Molly Patterson-Lundgren provided a background on the purpose of the ordinance. In early 2012 the City started hearing about the Frac Sand industry in Wisconsin and some of the issues they were facing. In March of 2012 the Planning Commission formed a subcommittee to study the silica sand mining, processing and transportation. Molly referenced a memo that went out to City Council at that time focusing on extraction, processing and transportation and by that point our zoning ordinance does regulate those uses. Both extraction and mining operations are only allowed within the highway commercial and industrial zones with an Interim Use Permit. Staff and the commission did feel they needed to make some differentiations on the types of mining. We did recognize that we have two existing legal non-conforming mines within the city limits. By March of 2013 the City passed a moratorium for no new silica sand mining or growth of existing mines. The City also adopted another moratorium for Major Traffic Generators at that time. In late spring or early summer of 2013 the State Legislators passed a law which allowed extension of all mining moratoriums that dealt with silica sand. In March of 2014 the City than extended the mining moratorium for another year relating to silica sand and mining operations. The Planning Commission then decided to develop a standalone ordinance within City Code for Mining. In August of 2014 the Planning Commission had the first draft of the ordinance which was sent to the Silica Sand Technical Advisory Team. In December the Planning Commission made a recommendation for City Council to do a first reading at the January 2015 meeting and the potential for second reading and adoption at the February City Council meeting.
Chair Wodele added a reminder of the public comment protocol and suggested that they limited themselves to two minutes or less as it allows everyone time to speak. Chair Wodele opened the public hearing for the Mining Ordinance at 7:22pm.

1. Al Wharton, resident of Wabasha. City Council Member. Questions. 1. Why are we having a public hearing if it's something you've already approved? Does that mean that this public hearing could change what we approve? Chair Wodele indicated that with this public hearing we can forward on to City Council as is or with suggested changes, once it gets to City Council they can make any changes they see fit. Al Wharton's next question is directed toward City Attorney Peter Ekstrand, Wharton thought that the current moratorium could be extended twice for a total of three years. Molly Patterson-Lundgren provided the language to Ekstrand for review who stated the language is vague and he doesn't support extending it another year. Wharton next addressed the 22 page ordinance and felt the City will need to be many occupations to be able to understand the ordinance. He also wanted to state the hazards that mining silica sand can cause. 1. air quality, the ordinance allows 2.5 parts per million, but not 2.6? What's the difference?
   2. Allows them to take ground water for the processing, more water out of the water table then the city uses, will it lower it? 3. All the water that is taken out has chemicals added to it to process the silica sand and now get into our City's water source. 4. The truck traffic that it's going to create, amounting to one truck every minute, what will it do to city tourism and property values. Wharton's final point proposes to prohibit any addition or expansion of mines in the City limits and it doesn't take a 22 page document to do so.
2. John Friedmeyer, resident of Wabasha, recent past Planning Commission Chair and member of many years whom helped formulate the mining ordinance. When we talk about air quality we start at the top and work down. The city is going to

monitor 10 ppm, 4 ppm, 2.5 ppm and then total particles suspended in the air. MNDH states there is a certain level which is allowable which they call Health Base Value (HBV). In Winona in the last year that they have monitored not once has any of the monitoring sites hit the MNDH level they have all been below that at the 10, 4, 2.5 as well as total suspended particles. That holds true as well for the Shakopee and North Branch sites. We are following the recommendations that the EQB set out in the Tools Manual for that. Water, An applicant if they are going to make a change to their mine has to make application to the County as well as to DNR and it's up to the DNR hydrology department to determine if what they are requesting if our region can handle or not. Also, there is an opportunity to deny it for a couple of reasons 1. If it decreases levels in our ground water by any degree 2. If there is any potential for contamination. Truck Traffic, we've addressed that in the traffic generator portion to each zoning district within the zoning ordinance. How do we monitor this stuff? Citizen involvement? We are going to ask the applicant to come up with a lot of money to help review, monitor this stuff. In regards to the extension of the moratorium, by state law/statue, it's one year and you can extend it 6 months and they allowed us to extend it up to a year. They did look into a 3 year moratorium but it did not make it to the Governor's desk.

John Friedmeyer - handed out the following text to the Council at the First Reading on January 6, 2015 and wanted this to be reviewed by the Planning & Zoning Commission during their public hearing -

> This information was forwarded by Heather Arends, MnDNR, on December 16, 2014 as drafted text on non-conforming mines that will be used in the Houston County Mining Ordinance.

January 7, 2015

Subd. 7. Nonconforming Mines. All legal, nonconforming mining and extraction operations currently operating within the ~~un~~incorporated areas of the City of Wabasha without a Conditional Use Permit as of the effective date of this chapter may continue provided the mining and extraction use does not expand beyond the boundaries of the legally described parcel in which the mining operation was established prior to the time it became nonconforming as filed in the office of the County Zoning Office. Legal, nonconforming mining and extraction operations may not expand in the nature of the use. For purposes of this Section, "expansion" means any increase in a dimension, size, area, volume of the mine site. Expansion also includes any placement of a structure or part thereof where none existed before, any addition of a site feature that would allow the land to be more intensely developed, any move of operations to a new location on the property, or any increase in intensity of use when compared to the original nature, function or purpose of the non-conforming use, the hours of operation, traffic, parking, noise, exterior storage, signs, exterior lighting, types of goods or services offered, odors, area of operation, number of employees, and other factors deemed relevant by the County. Legal nonconforming mining and extraction operations that fail to meet biennial re-registration requirements lose any rights as nonconformities to continue operations. All legal, nonconforming, mining and extraction operations shall comply with all setback, performance, and land reclamation standards set forth in Section 0110.2606 hereof. All mining and extraction operations currently operating in Houston County and legally commenced prior to the adoption of this chapter shall submit a reclamation plan completed in conformance with this chapter to the Zoning Administrator for review and approval. Any existing legal, nonconforming mining and extraction operation determined by the Zoning Department to pose a real environmental hazard, a potential or real negative impact on the health, safety, or welfare of the residents of the County; or that fails to comply with the setback, performance and land reclamation standards set forth in this chapter shall be subject to the provisions of the Mineral Mining Section and the owner shall apply for an Interim Use Permit.

3. Deb Navarre, resident of Wabasha. Concerns with truck traffic and truck routes. Water table does not stop at the City limits, if polluted will extend outside of the city limits.
4. Lynn Schoen, Resident of Wabasha. Provided documentation prior to the meeting which will be scanned below in the minutes. Since the document, has attended a Silica Sand Advisory meeting for rule making at the state and has a couple points that we have not considered yet 1. If we do allow blasting would highly discourage it, but if we do allow blasting she would like to see a point in the ordinance about pre-blasting surveys ½ mile from the blasting site would be costmary. 2. Hours of operations be a more restrictive suggesting during daylight hours of 7am to 7pm. 3. Bluff ordinance should be included in the mining ordinance we need to address bluff territory. Other comments on the front of the memo.

   Lynn Schoen asked the following questions via email:
   MINING CODE CHANGES REQUESTED:

   Pg. 5 – references Chpt 8 of City Code. How can we approve if we don't have a copy of referenced material?
   Pg. 6 – permit renewal required every 3 years. Would like to change that to annual until three consecutive years of compliance, then would be reviewed every three years.
   Pg. 7 – Add D. Failure to prevent contamination of water table.
   Pg. 9 – Blasting – just do not allow it within city limits. Do we currently allow?
   Pg. 11 – Monitoring water pollution – who is going to do this?
   Pg 13 – Hours of Operation – change to 7:00 to 7:00.
   Pg 15. – Blasting criteria – who will monitor and how?
   Pg. 16 - #4 – amount of water is too high. We don't want heavy industry in city limits. Where did the definition come from and can we change amount of water usage?
   Pg 7 - 100 feet from property line seems too close.
   Pg. 22 - $1.000 isn't much of a fine. Would like to see this raised.

5. Victoria Jaskierski, resident of Wabash. Two years ago was one who requested a moratorium. When first reading this document was very humbled by the work that was put into it. In a paper article in Houston County with the same issues with the heading "Why not just say NO." What is all the fear of lawsuit? 70% of Wisconsin mines have gone out of compliance; this is an industry that has eaten up time and communities that could have been spent on something else. Articles linking Autism in Children to air pollution. If we are not having mining in the County, why would we want to put it in the highest population in this City where things are close together. Page 3 at the end before definitions it says "preventing mining and extraction operations from creating a nuisance and health hazards within the community." Jaskierski feels this document already recognizes that it has more potential than other types of industry for doing this. Jaskierski would like to reinforce what was said earlier regarding hours of operation, 6am-10pm is not acceptable. Jaskierski also feels that the comprehensive plan should be in place before we can say how something is going to affect the future development in the future. What kind of town are we going to be? Jaskierski would like to see the publishing of notices such as the silica sand topic be put on the front page of the Wabasha Herald in box. Also would like some other information within City code regarding the bluffs. Jaskierski will provide staff with a list of typos within the document.

6. Richard Morris, Attorney representing the Bruegger Family, Minneapolis MN. The family has had a family farm in the City since the 1930's and they have

mining activity on that farm. The mining quarry is of gravel and sand which has been in good standing and legal compliance. Morris applauds the City and its staff for the efforts in trying to regulate mining. The family is an existing business and complying with the law and should not get shut out of business with a new wave of regulations. It's illegal, improper and inappropriate. They have been mining with an established mining plan and the present ordinance should very specifically allow an existing mine owner, who is operating legally, to continue on and not be affected adversely by this ordinance. All concerns heard tonight regarding air quality, hydrology and truck traffic are legitimate but have not been an issue from the Bruegger Mine. As a commission I would urge you to take into consider the existing quarries in town. They are not the source of problems that are being addressed and not having a meaningful exception in this law is going to cause more problems. Attached the email document from Mr. Morris and the Bruegger Family.

MORRIS LAW GROUP, P.A.

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*ADMITTED IN IOWA

January 13, 2015

Via Electronic Mail (planning@wabasha.org)

Kristi Clarke, Planning Coordinator
Planning Department, City of Wabasha
900 Hiawatha Drive East
P.O. Box 268
Wabasha, MN 55981

RE: City of Wabasha Ordinance Relating to Mining & Extraction Activities

Dear Ms. Clarke,

I represent the interests of Bruegger Valley, LLC, Bill Bruegger, Kathy Webb, and the Bruegger family interests in connection with the City of Wabasha's proposed mining ordinance (the "Ordinance").

My clients own property in the City of Wabasha upon which they have a long history (dating back to the 1930s) of conducting a sand/gravel mining, extraction, and processing operation. The property is delineated on Exhibit A attached hereto (hereinafter referred to as the "Property").

On Monday, January 5, 2015, my clients and I met with the City Administrator, yourself, and other members of the planning staff with respect to the Ordinance. Also in attendance were representatives of the Bruening Rock Products, Inc., one of the operators of the Bruegger Property. At that meeting, we were assured that it is the intention of the City to move forward with a mining ordinance which does not and will not affect or impact the existing activities of the Property or the mining plan presently in effect for the Property.

The assurances that were provided are encouraging and provide the Bruegger family members with comfort as to the City's intentions. However, we are concerned that the language of the proposed Ordinance does not sufficiently articulate the intent stated at our meeting. In that regard, we believe that it would be helpful and necessary for the Ordinance to specifically provide that any Mining Plan in effect with respect to existing mining operations within the City will be provided a legal non-conforming use status.

I understand that you have been working with Howard Stenerson, a representative of the Bruegger family, to formulate a modification to the proposed Ordinance to provide and confirm

the assurances that we have been given by the City's planning staff. I encourage you to reach an agreement as to a modification that will document the staff's stated intent.

Please include this correspondence in the public record for the public hearing to be held this evening with respect to the Ordinance.

Sincerely,

MORRIS LAW GROUP, P.A.

Richard L. Morris

Enclosure(s)

cc: Bill Bruegger;
Kathy Webb;
Howard Stenerson

7. Bob Kohner, Owner of Wabasha Sand and Gravel, Winona, MN. Existing mine operator since 1959. One pit has been reclaimed. We are taking care of our land. One issue discussed was Water. They do a lot of washing of materials and the water is all ponded and reclaimed and goes back into the original pond. They recirculate their waters. They do not do any blasting they have been responsible over the years to help out others also one of the leading employers in town and last year had 1.1 million dollars in wages, property taxes are over 100 thousand dollars. Issues in the ordinance that are pretty vague, 1. when talking about layers, would you need a permit to take a layer of black dirt then another to get the clay off and another for the gravel? Peter Ekstrand indicated that if they expand outside of there boundaries then they would need to comply with the new ordinance.

8. Don Brown General Manager for Bob and Steve Kohners Companies throughout Minnesota and Wisconsin. Resides in Winona. Would like the city to take great consideration to those existing operations in the city limits going forward that they stay in business.

9. Howard Stenerson, representing the Bruegger Family, Red Wing MN. The concern the family has is drafted language concerning legal non-conforming uses. It is all open to interpretation. There is nothing in the ordinance that is asking the current mines for information. One concern comes with what is the boundary? Subject to interpretation depending on the person. Products are sold long in advance. Stenerson provided a document via email that will be attached below for

suggested language.

Language to Modify the Existing Proposed Language on page 5, section III, item 2 and, page 11, item 2 of the Mining Ordinance

A Property with an existing mine facility shall be allowed to continue to operate as a legal, non-conforming use provided it meets the following requirements:

1) Mandatory registration with the City within 12 months of the effective date of this Ordnance, which registration shall include the following:

   a) Name, address, phone number, and email address of the Property owner.

   b) Name, address, phone number, and email address of any third party operator if different than the owner.

   c) An accurate description of the Property and a list of all improvements constructed thereon.

   d) A copy of any mining plan in effect with respect to the Property.

   e) A list of all resources being mined.

   f) A description of all mineable resources within the Property.

2) Any mining activities outside the scope of the information contained in the registration data submitted in accordance with paragraph 1 above shall require the full compliance with the requirements of this Ordinance.

3) Provisions of this Ordinance may be waived or excused by the City pursuant to the terms of a Development Agreement between the landowner and the City if such Development Agreement specifically provides for non-compliance.

10. Jean Pietig, Wabasha County Resident, Pepin Township. Bluff protection. Email attachment just below. Another suggestion would be to have two public hearings. The first hearing would be for the reclamation plan, what is the vison that the company has for the Earth when they leave it, if we do not find that acceptable why go forward with the other public hearing for the specifics for the mine itself. One procedure the County has taken into place is not voting the night of the public hearing but rather gathering all the public comments and those being legally justifiable to the next meeting and inserting them into the document for the planning commission to vote yes or no to keep them.

(B)

Kristi Clarke Submitted text

From: Jeanne Pietig <jpietig@emich.edu>
Sent: Sunday, January 11, 2015 12:00 PM Sun.
To: Chad Springer
Subject: Mining ordinance suggestion

Chad,

I would like to see bluff protection language similar to that of the county added to the city of Wabasha's newly crafted mining ordinance (See material in quotation marks below.) Thanks!

Jeanne Pietig
Member, Friends of Wabasha
Member, County Planning Commission

Arguments for including the regulation. (1) The bluffs are a natural resource that deserve protection. (2) If the city's ordinance is not as strong as the county's, we could see mining companies urging the city to annex land in order to avoid stronger regulations in the county. At least, that's what's happening in Wisconsin.

"Nonmetallic mines and/or processing facilities shall not be located on a bluff or within 300 feet of the toe or top of a bluff.

The top or toe of a bluff shall be certified by a registered land surveyor or zoning administrator.
Definition:

BLUFF. A natural topographic feature such as a hill, cliff, or embankment having the following characteristics:

The slope rises at least twenty-five (25) feet above the toe of the bluff; and

The grade of the slope from the toe of the bluff to a point twenty-five (25) feet or more above the toe of the bluff averages thirty (30) percent or greater;

An area with an average slope of less than eighteen (18) percent over a horizontal distance of fifty (50) feet shall not be considered part of the bluff."

11. Bill Bruegger, owner of the Bruegger Mine, resides in Buffalo City, Wisconsin. This ordinance as it stands today will affect our mine and on the property and there are certain modifications that need to be made to the ordinance. Bruegger is hoping this can be worked out and if it cannot the Bruegger Valley LLC will have to bring legal action and we are prepared to do so. They are a legal non-conforming non-metallic mining operation. The mine is registered at the state level and been there many years.
12. Deb Navarre, Wabasha resident. Do not give up rights to the residents of the City just because someone threatens legal action.
13. Jim Roemer, Wabasha resident. If you put more restrictions on business in town, what’s going to happen.. Up goes the price. The community pays more. If they fail and move out then the City loses again with tax base lost. The City needs to stand behind the business they have in town right now.
14. Steve Schmidt, Wabasha resident and City Council Member. Thanked the board for all the hard work. Couldn’t we make an exception for the two existing mines? Then down the road write an ordinance that fits those two mines only because they are here. Not excited for voting on this when it includes our two existing mines.
15. Al Wharton, Resident of Wabasha. One other point, with regards to the existing two mines, his suggestion was not to allow new mines and or the expansion of the existing and has no problem letting them continue what they are doing.

Chair Wodele asked the audience three times for any further comment and hearing none closed the public hearing at 8:18 pm.
Commissioners Wallerich and Chair Wodele moved for a five minute recess at 8:19.

Chair Wodele reconvened the meeting at 8:24pm.
The commission went on to discuss the public hearing before them. City Attorney Ekstrand has a strong feeling that the City should go forward with adopting the ordinance the way it is and make amendments to it in the future when you have had time to go through the suggested changes. Ekstrand feels that setting a bench mark for the existing mines first and then move forward with the edits to ordinance. Ekstrand looks to Molly for feedback. Molly indicated that she is here to answer questions that the commission might have. Kristi added that the public came up with valuable questions in regards to the existing mines that should be looked at but agreed that moving forward with the ordinance as it is and make modifications in the future. Commissioner Falkum feels that if a City Council member has concerns with the ordinance that is presented and it is a simple fix we should make the changes tonight for the Council to adopt or put through for another first reading if needed. The topic of hours of operation was brought up but the commission didn't have a reason for basis and need to look into the topic more before decided on it. Bricher wanted to clarify an area brought up during the public comment regarding Water and the 500 gpm amount, which was brought down from the original amount of 1000 based on information the commission received from the DNR regarding irrigation systems and the amount that is used. Falkum suggested perhaps using gallons per day instead of gallons per minute. There is more concern with the pumping volume. Bricher commented that our hydrology can support it per the Department of Health. The commission agreed that the existing mining ordinance still has some areas that may need to be changed. Falkum felt the follow areas should be addressed: hours of operation, gallons of water usage, and the bluffs. Kristi again recommended moving forward since we are under a time constraint with the moratorium.

Commissioner Miller made a motion to go forward with the mining ordinance as presented and as a planning commission along with Kristi and staff continue to meet with existing mines and try to resolve the legal non-conforming issue and resolve it. The motion was seconded by commissioner Wallerich. Discussion provided by the commission.
Ayes – Bricher, Miller, Wodele, Wallerich, Durand, Kruger
Nyes – Falkum
Motion carried and adopted with a vote of 6:1.

7) Old Business
a) Reservoir Silicates Update – no update
b) Meeting with current mine operators – As discussed earlier staff met with both mine owners and we will continue to work with them to set that baseline that is needed.
c) Comp Plan Update- Kristi reviewed the memo sent to the commission. She indicated that all the GIS data for the City has been completed and that she has started to assess the population, housing, education, land use, zoning, economic development, community facilities, utilities and transportation data. Kristi will provide the commission with information to be supplied at the workshops in the upcoming planning commission meetings. Kristi is looking for two planning commission members to be participants in the steering committee. Commissioners Falkum and Bricher accepted. The three workshops will meet the 4th Wednesdays of February, March and April from 6-8pm.

8) New Business
a) Fees for Mines, was previously addressed and presented in the minutes in December 9, 2014. Kristi's co-workers provided base guidelines for application reviewing fees for mining applications. Commissioners Falkum and Durand made a motion to recommend City Council to add the mining fees to City Code. Adopted unanimously.
Chair Wodele recessed the Planning Commission meeting at 9:03pm.

9) Board of Adjustment Business
a) Appointments Chair Wodele for the Board of Adjustment opened at 9:03pm and called on nominations for Chair and Vice Chair for BOA. Commissioner Miller nominated Brian Wodele for Chair and Tim Wallerich for Vice Chair, and was adopted unanimously.

Chair Wodele closed the Board of Adjustment meeting at 9:04pm and reconvened the Planning Commission meet at 9:04pm

10) Other Business – none

11) Next Regular Meeting Date –
The next regular meeting will be scheduled for Tuesday February 10th at 7pm at Wabasha City Hall.

11) Adjourn - Commissioners Wallerich and Kruger made a motion to adjourn at 9:05 pm. Adopted unanimously.

Respectfully submitted by: _____
Wendy Busch, Planning & Zoning Assistant

_____
Adopted Date