

MINUTES OF A PUBLIC HEARING CONDUCTED BY THE ST. LOUIS COUNTY BOARD OF ADJUSTMENT HELD VIRTUALLY VIA WEBEX AND IN-PERSON AT THE ST. LOUIS COUNTY GOVERNMENT SERVICES CENTER, LIZ PREBICH ROOM, VIRGINIA, MN ON THURSDAY, MAY 18, 2023.

9:00 AM – 12:04 PM

Board of Adjustment members in attendance: Tom Coombe
Steve Filipovich
Dan Manick
Pat McKenzie
Dave Pollock
Ray Svatos
Diana Werschay, Chair

Board of Adjustment members absent: None - 0

Also present: Nick Companario, St. Louis County Attorney's Office

Decision/Minutes for the following public hearing matters are attached:

NEW BUSINESS:

A. Melissa Bell, S24, T52N, R15W (Fredenberg)

OTHER BUSINESS:

None.

NEW BUSINESS:

Melissa Bell

The only hearing item is for Melissa Bell, subject property located in S24, T52N, R15W (Fredenberg). The applicant is appealing to the Board of Adjustment per St. Louis County Zoning Ordinance 62, Article VIII, Sections 8.1.E and 8.6, and Article X, Section 10.6.B, and Minn. Stat. § 394.27, Subds. 5–6 (2022), concerning the Director's administrative determinations for the Conditional Use permit BG-00012 at 6464 Fredenberg Lake Road, Duluth MN, 55803.

Nick Companario, St. Louis County Attorney's Office, stated:

- A. In October 2022, the Planning and Community Development Director made a series of administrative determinations with respect to the gravel pit located at 6464 Fredenberg Lake Road.
- B. The determinations were related to if the conditional use permit holder, LTI Holdings, is in compliance with various aspects of the permit and the zoning ordinance. In particular, those administrative determinations were related to whether there is adequate vegetative screening at the borrow pit, in compliance with reclamation standards, issues related to entrance gates, the no-disturbance setbacks, and wetland issues.

- C. These are the administrative determinations that are before the Board of Adjustment today being appealed.
- D. If the Board of Adjustment feels the administrative determinations are right, they should be upheld. If the Board of Adjustment feels the administrative determinations are wrong, they should be reversed. If the Board of Adjustment feels the administrative determinations are both right and wrong, they can be upheld in part and reversed in part.
- E. Some issues that may be heard today could be outside the scope of the administrative appeal. One example is the conditional use permit should never have been issued and should be null and void. The reason the Planning and Community Development Director did not address that as an administrative determination is because that was brought up too late. The County had communicated this to Ms. Bell and others over the years. The state district court in Duluth communicated this to Ms. Bell and others as it dismissed her claim.

Mark Lindhorst, St. Louis County Senior Planner, reviewed the staff report as follows:

- A. The applicant is appealing the Administrative Determinations dated October 27, 2022, by Matthew Johnson, St. Louis County Planning and Community Development Director regarding the operation of a permitted borrow pit at 6464 Fredenberg Lake Road, Duluth, MN.
- B. The Administrative Determinations were sent to Melissa Bell in response to her formal complaint against LTI Holdings at 6464 Fredenberg Lake Road.
- C. The borrow pit received conditional use permit (CUP) approval at the May 14, 2020, Planning Commission meeting, and a conditional use permit on June 12, 2020.
- D. The St. Louis County Planning and Community Development Director reviewed the complaint and determined that the borrow pit located at 6464 Fredenberg Lake Road is in compliance per the administrative appeal.
- E. The timeline as follows:
 - a. On May 14, 2020, the borrow pit received conditional use permit approval.
 - b. On June 12, 2020, the conditional use permit was issued.
 - c. On August 14, 2022, a formal complaint was filed against the borrow pit at 6464 Fredenberg Lake Road.
 - d. On October 27, 2022, an administrative determination was sent to Melissa Bell regarding the formal complaint.
 - e. On December 12, 2022, an appeal was submitted of the administrative determination.
- F. While other borrow pits may be referenced, the administrative determinations were made for 6464 Fredenberg Lake Road.

Mark Lindhorst reviewed the facts as follows:

- A. Is the operation of the borrow pit located at 6464 Fredenberg Lake Road, Duluth MN 55803, pursuant to an active borrow pit?
 - 1. Determination: The subject party is subject to an active conditional use permit - namely, the conditional use permit approved by the St. Louis County Planning Commission in May of 2020 and issued in June of 2020.
 - 2. Ordinance: St. Louis County Zoning Ordinance 62, Article VI, Section 5.6 B., indicates general purpose borrow pits (Extractive Use) are an allowed use with a conditional use permit.

3. Facts: St. Louis County Planning Commission conducted a public hearing for the proposed extractive use and based on facts and findings and public testimony the request was approved with conditions on May 14, 2020. The conditional use permit was issued on June 12, 2020.
- B. If there is an active conditional use permit, is the operation of the borrow pit located at 6464 Fredenberg Lake Road, Duluth MN 55803, subject to and compliant with the conditions of the 2020 St. Louis County conditional use permit?
1. Determination: The subject property is subject to the conditions in the applicable conditional use permit. Based on an evaluation of the property during an inspection conducted in August 2022 and all other information in our possession, the permit holder is in compliance with all of the conditions in the conditional use permit.
 2. Ordinance: St. Louis County Zoning Ordinance 62, Article VI, Section 6.22 G., states that a conditional use permit shall be reviewed by the Director after five years, for continuance, without a public hearing if standards are met.
 3. Facts: Based on the evaluation of the property conducted in August 2020, the permit holder is in compliance with all of the conditions in the conditional use permit.
- C. If there is an active conditional use permit and, if the pit activity can be viewed from a neighboring property, is the operation of the borrow pit located at 6464 Fredenberg Lake Road, Duluth MN 55803, in compliance with the permit and St. Louis County Zoning Ordinance 62, Article VI, Section 6.22 G. 11?
1. Determination: This request implicates the third condition concurrent in the applicable conditional use permit, which states, in relevant part, “The applicant shall adhere to all county... regulations” and Article VI, Section 6.22 G.11, of the zoning ordinance, which states, “Adequate vegetative screening shall be required to screen the operation from ordinary public view. If vegetative screening is not sufficient, the Director may require the placement of a fence or berm.” Based on an evaluation of the subject property during an inspection conducted in August 2022 and review of the images in the relevant portion of the email dated July 10, 2022, the permit holder is in compliance with this condition in the conditional use permit.
 2. Ordinance: St. Louis County Ordinance 62, Article VI, Section 6.22 G.11, states that adequate vegetative screening shall be required to screen the operation from ordinary public view. If the vegetation is not sufficient, the Director may require the placement of a fence or berm.
 3. Facts: The vegetative screening is adequate based on the site information that was completed in August 2022 and review of the images provided by the appellant.
 - o All no disturbance setbacks are being maintained.
 - o No condition was approved by the Planning Commission requiring the placement of a fence or berm.
- D. If there is an active conditional use permit, is the operation of the borrow pit located at 6464 Fredenberg Lake Road, Duluth MN 55802, in compliance with the permit and St. Louis County Ordinance 62, Article VI, Section 6.22H?
1. Determination: This request implicates the third condition concurrent in the applicable conditional use permit, which states, in relevant part, “The applicant shall

- adhere to all county . . . regulations,” and Article VI, Section 6.22.H, of the zoning ordinance, which enumerates minimum standards with respect to reclamation. Based on an evaluation of the subject property during an inspection conducted in August 2022, our review of the reclamation plan submitted by the permit holder in connection with the conditional use permit, and our understanding of the degree to which the permit holder has engaged in extractive-use operations at the subject property to date, the permit holder is in compliance with this condition in the conditional use permit.
2. Ordinance: St. Louis County Ordinance 62, Article VI, Section 6.22 H., states that all extractive uses shall implement minimum reclamation standards.
 - o St. Louis County Solid Waste Ordinance 45, Article IV, defines woody debris as yard waste and not solid waste and therefore is not subject to ordinance requirements.
 3. Facts: Based on an evaluation of the subject property during an inspection conducted in August 2022, our review of the reclamation plan submitted by the permit holder in connection with the conditional use permit, and our understanding of the degree to which the permit holder has engaged in extractive-use operations at the subject property to date, the permit holder is in compliance with this condition in the conditional use permit.
 - o Non-working banks do not exist.
 - o The logged trees left on the property meet the provisions of Solid Waste Ordinance.
 - o Topsoil, native seed and sloping to a 2:1 is not required unless there are non-working banks, or the pit is at completion for final reclamation.
- E. If there is an active conditional use permit, is the operation of the borrow pit located at 6464 Fredenberg Lake Road, Duluth MN 55803, in compliance with the permit and St. Louis County Ordinance 62, Article, VI, Section 6.22.G.14 (entrance gates)?
1. Determination: This request implicates the third condition concurrent in the applicable conditional use permit, which states, in relevant part, “The applicant shall adhere to all county . . . regulations,” and Article VI, Section 6.22.G.14, of the zoning ordinance, which states, “An extractive use shall have a gate for controlling access. The use of cable, chain, or similar barrier is prohibited.” This provision applies only to access points used for extractive-use operations; it does not apply to other access points. Although the subject property has multiple access points, only one of them – the haul road that enters the property from the south – is used for extractive-use operations. Based on an evaluation of the subject property during an inspection conducted in August 2022, the permit holder is in compliance with this condition in the conditional use permit.
 2. Ordinance: St. Louis County Zoning Ordinance 62, Article VI, Section 6.22.G.14, states an extractive use shall have a gate for controlling access. The use of cable, chain, or similar barrier is prohibited.
 3. Fact: Based on an evaluation of the subject property during an inspection conducted in August 2022, the permit holder is in compliance with this condition in the conditional use permit.

- A gate is located on the main borrow pit entrance that was granted through an easement and was approved by the Planning Commission and Public Works Department.
 - Other access points that are not being used per conditional use permit approval are not required to be gated.
- F. If there is an active conditional use permit, is the operation of the borrow pit located at 6464 Fredenberg Lake Road, Duluth MN 55803, in compliance with the permit and St. Louis County Ordinance 62, Article VI, Section 6.22.G.9 (no disturbance setbacks)?
1. Determination: This request implicates the third condition concurrent in the applicable conditional use permit, which states, in relevant part, “The applicant shall adhere to all county . . . regulations,” and Article VI, Section 6.22.G.9, of the zoning ordinance, which enumerates standards with respect to no-disturbance setbacks from property lines, public road rights-of-way, public utilities, municipal boundaries, and wetlands. Based on an evaluation of the subject property during an inspection in August 2022, review of the images in the relevant portion of the e-mail of July 10, 2022, and review of other aerial imagery of the property, the permit holder is in compliance with this condition in the conditional use permit.
 2. Ordinance: St. Louis County Zoning Ordinance 62, Article VI, Section 6.22.G.9, states that a no disturbance setback including haul road are required.
 3. Facts: Based on an evaluation of the subject property during an inspection in August 2022, review of the images in the relevant portion of the e-mail of July 10, 2022, and review of other aerial imagery of the property, the permit holder is in compliance with this condition in the conditional use permit.
 - No excavation or vegetative removal has taken place within the required property line of adjacent parcels, public right of way or public utilities.
 - Staff determination on excavation and vegetative removal:
 - Right of way 175 feet.
 - Excavation from wetland 165 feet.
 - Vegetative removal from a wetland averages 50 to 100 feet.
 - Permit holder has not engaged in any observable activity within 50 feet of a wetland.
 - The haul road is approximately 230 feet from the wetland boundary.
- G. If there is an active conditional use permit, and if vegetation has been removed in the direction of wetlands, is the operation of the borrow pit located at 6464 Fredenberg Lake Road, Duluth MN 55803, in compliance with the permit and St. Louis County Ordinance 62, Article, VI, Section 6.22?
1. Determination: Our understanding is that this request is directed toward setbacks from wetlands. This request implicates the third condition concurrent in the applicable conditional use permit, which states, in relevant part, “The applicant shall adhere to all county . . . regulations,” and Article VI, Section 6.22.G.9.d., of the zoning ordinance, which states, “A no disturbance setback, including the haul road, shall be . . . 50 feet from the boundary of a wetland.” Based on an evaluation of the subject property during an inspection in August 2022, review of the images in the relevant portion of the e-mail of July 10, 2022, and review of other aerial imagery of

the property, the permit holder is in compliance with this condition in the conditional use permit.

2. Ordinance: St. Louis County Ordinance 62, Article, VI, Section 6.22.G.9, states a no disturbance setback of 50 feet from the boundary of a wetland.
3. Fact: Based on an evaluation of the subject property during an inspection in August 2022, review of the images in the relevant portion of applicants e-mail of July 10, 2022, and review of other aerial imagery of the property at the time of our review the permit holder is in compliance with the conditional use permit.
 - o Vegetative removal from a wetland averages 50 to 100 feet.
 - o Permit holder has not engaged in any observable activity within 50 feet of wetlands.
 - o The haul road is approximately 230 feet from the wetland boundary.

Mark Lindhorst noted two items of correspondence from Patty Wheeler and Debra Roach in support of the appeal. This correspondence was provided to the Board of Adjustment prior to the hearing. A packet was also handed to each Board member by Melissa Bell and will be submitted into the record.

BOARD OF ADJUSTMENT DETERMINATION

This is an appeal concerning the Director's administrative determinations as set forth in his letter dated October 27, 2022.

As to each administrative determination, the Board of Adjustment may reverse or affirm wholly or partly, or may modify the administrative determination, as provided in Article VIII, Section 8.6.B.4.c.i, and Article X, Section 10.6.B.2, of the zoning ordinance and Minn. Stat. § 394.27, subd. 6.

To the extent the Board of Adjustment affirms the administrative determinations, the administrative determinations that the permit holder is in compliance will remain in full force and effect.

To the extent the Board of Adjustment reverses the administrative determinations, the matter will be returned to the Director for further action under Article VIII, Section 8.11.C., of the zoning ordinance, which establishes the procedures to be followed in the event of noncompliance.

The Board of Adjustment's decisions concerning this appeal are subject to judicial review in state district court, as provided in Article VIII, Sections 8.1.E.4 and 8.6.C., and Article X, Section 10.6.C.5, of the zoning ordinance and Minn. Stat. § 394.27, subd. 9.

Melissa Bell, 6382 Beaver River Road, the appellant, presented a Powerpoint. They missed their 60 day appeal window. She was unaware that *Nick Companario* would be present, or she would have more documentation about the court case. The extractive use permit given to LTI Holdings at 6464 Fredenberg Lake Road was given in error and shall be made null and void. The group is not anti-gravel pits. They understand and respect the need for gravel. However, 6464 Fredenberg Lake Road is not the place for a gravel pit, and the law was not followed when approving this permit.

She responded to each administrative determination. She did a data request in order to obtain information relevant to the case. There was no inspection conducted in August 2022. There were no pictures or paperwork. After being told at the last Planning Commission hearing for LTI Holdings that aerial imagery does not work to measure distance, she spoke with the Planning and Community Development GIS Manager who stated the mapping system has flaws.

There are three sections in the Zoning Ordinance that explain why the permit should never have been given, was given in error, and shall be made null and void. Ordinance 62, Article VIII, Section 1.C., stating the voiding of a permit issued in error. Any permit issued on the basis of an application which is in error, whether the error is intentional or not, shall be null and void. Any permit issued on the basis of a mistake in fact or law, whether the mistake is intentional or not, shall be null and void. She has spoken with lawyers and this language is concrete language. There was no language suggesting that this is only within the 60 day appeal. In Ordinance 62, Article VI, Section 6.22 B.4, it states "No permits shall be issued to an operator/owner who has not reclaimed a previously approved extractive use or is in violation of the conditions of their permit." The same owners that own the McKeever pit own this borrow pit. There are four points as to why this conditional use permit must be made null and void.

As a civilian trying to prove or disprove these issues, these issues were not brought before the Planning Commission at the time of the LTI Holdings public hearing on May 14, 2020, for the 6464 Fredenberg Lake Road. The Planning Commission should have been told of the compliance concerns and they were not. While no documentation was provided, there were letters sent. A letter was sent in August 2022 after the inspection as four parcels were missing in the letter.

She showed photo documentation of the erosion control issues taken from the snowmobile trail in September 2020 on the McKeever Pit. The snowmobile trail is being dug into. This is a major compliance concern as LTI is still digging on the north side of the property and no reclamation has been done. Pictures were also provided from May 16, 2023. The Planning Commission approved a conditional use permit to allow the expansion of an asphalt plant at the main LTI Holdings pit. She then showed a drone video taken May 16, 2023, of the McKeever Pit that showed the erosion. It is a huge safety concern that the snowmobile trail has been dug into. There has been no reclamation. She showed pictures of Fredenberg Township pits that have been reclaimed.

LTI Holdings did not own the 6464 Fredenberg Lake Road property until July 14, 2020, after the Planning Commission public hearing and after the conditional use permit was issued. They were neither the owner nor the agent for the owner at the time of the Planning Commission.

At the time of the public hearing, Mark Toms was the property owner. He applied for a land use permit that was denied because of the status of the septic system. The County was told there was a septic issue in 2016. On June 2, 2020, internal correspondence between staff discussed the septic issue and it was stated by Keith Wiley, the On-Site Wastewater Manager, that Jason and Emily would visit the property. It was not until July 13 that the inspection came out. It took 45 days from the point the permit was approved until the inspection report came out. The applicant was required to submit a copy of the septic permit certificate because of the proximity of the property to the lake. Under the agreement section of the conditional use permit application, it states: "Intentional

or unintentional falsification of this application or any attachments thereto will make the application, any approval of the application and any resulting permit invalid." How does this law apply?

A ten-minute recess was given for the Board of Adjustment to read through the packet Melissa Bell provided.

Nick Companario stated this may be new to the Board of Adjustment but is not new to him. The argument that the conditional use permit should be null and void because of the septic system matters was one claim presented in court. This was one claim that was covered by the district court's ruling that it needed to be brought within 60 days. This is all covered by the 60-day statute.

Melissa Bell continued and stated a declaration was made by the landowner at 6423 Olson Drive, which is the residential property. The landowner is the granddaughter of the one that signed the lease with LTI Holdings. There was no disclosure that this was residential property. She does not know how the electrical box would be allowed at the location of the easement. There was no safety factored in. She would have provided more documentation from the district court hearing. The Judge did not deny them but stated this was not the jurisdiction for this case.

She went through the facts and findings as presented during the May 2020 Planning Commission hearing. The use conforms to the land use or comprehensive plan of the county, if any. Only part of the information was provided on the Lakeshore Development area. There was only information that would fit the approval of a borrow pit and minimizing language used. In the St. Louis County Comprehensive Land Use Plan, the Lakeshore Development Area is defined as an area intended for rural development adjacent to lakes, including infill, new development, or redevelopment of existing residential, commercial, or mixed-use areas. This category may include uses of the size, scale and intensity consistent with the county's developed lakeshore areas, primarily characterized by uses such as single family residential, convenience grocery and fuel service, roadside restaurants, etc. Instrumental to Lakeshore Development Areas is the flexibility to allow for the evolving and eclectic nature of the rural economy. This includes allowances for home occupations and isolated small businesses that are essential to the ability to live and work in rural areas.

Under neighborhood compatibility, it was stated that the use is compatible with the existing neighborhood. There was no one point that stated they wanted a gravel pit in their neighborhood. She has a binder with 220 letters that were written during the time to St. Louis County and Fredenberg Township. There were 18 people who wrote in support of the gravel pit and 202 people wrote against this gravel pit.

Under orderly development, it stated the use will not impede the normal and orderly development and improvement in the surrounding area of uses permitted by right in the zone district. There was mention of two gravel pits being within one-half mile. The gravel pit located 600 feet from the subject pit is inactive and she does not know the last time it was used. The other gravel pit within one-half mile is the Dirt Works borrow pit. There was a 1988 lawsuit because the conditions of the pit are not being met. Neighbors have their gardens covered in dust. The trucks are jay braking. Hours of operation are not being upheld. This is still a point of contention in this neighborhood because the pit affects their daily lives. Most of the pits noted are inactive or are being reclaimed.

Under the desired pattern of development, it was stated the location and character of the proposed use is considered to be consistent with a desirable pattern of development for the area. Of the two borrow pits discussed, one is inactive, and one is still a point of contention in the neighborhood. The LDA category is given flexibility to allow for a gravel pit.

When in the opinion of the Planning Commission, a conditional use permit may result in a material adverse effect on the environment, the applicant may be requested by the Planning Commission to demonstrate the nature and extent of the effect. *Timothy Craig*, a professor in the Department of Biology at the University of Minnesota Duluth discussed the sensitive nature of bogs. These bogs are sensitive to dust that can impact the health of these bogs.

She shared photographs of the little vegetative screening along Fredenberg Lake Road. This was discussed in the August 2022 inspection.

In Zoning Ordinance 62, Article VI, Section 6.22.H.3, it states that all trees, brush, stumps and any other debris removed, shall be disposed of in a manner acceptable to the local solid waste authority. This is being called yard waste. According to Minnesota state statute, yard waste is garden waste, leaves, lawn cuttings, weeds, shrub and tree waste, and prunings. She disagrees that this is a house with yard waste, but this was area cleared for extractive use. The language reads “shall be disposed of” and not “managed in accordance with.”

In Zoning Ordinance 62, Article VI, Section 6.22.G.14, states “An extractive use shall have a gate for controlling access. The use of cable, chain, or similar barrier is prohibited.” This is the country. Children are on four wheelers and there are people in the area. The alternate access point on Fredenberg Lake Road has no gate. There is nothing to stop access from the private residential driveway before entering the pit. If any vehicle can get into the property, there is no control on access.

The setback she has issue with is along the wetlands. There are a few trees that separate the gravel pit from the wetlands. Staff cited the inspection in August 2022 and aerial imagery. She was told that the aerial imagery was not sufficient. Who is measuring the wetland, where it ends and where the excavation and tree clearing is. She would expect someone to go out and measure exactly where the wetland is. Who will manage the erosion if this continues?

She does not believe the 60-day appeal rule applies to this. The court case was dismissed. Being ruled on versus dismissal are not the same. The Board of Adjustment does not need to make the decision today. Just because the court dismissed this case, she believes that the Board of Adjustment has the information necessary to make a decision. Zoning Ordinance 62, Article VIII, Section 8.6, states the Board of Adjustment has the power to reverse or affirm wholly or partly, or modify the order, requirement, decision or determination appealed.

The Director did not address the appeal in the complaint about considering the permit null and void. She stated from Zoning Ordinance 62, Article VIII, Section 8.9, that "Material evidence newly discovered which, with reasonable diligence, could not have been found and produced at the hearing and that would have likely resulted in a change in the final outcome of the decision."

She is giving evidence that was not found. The Board should have the right to determine because this is new evidence that was not given to the Planning Commission at the time of the hearing.

It was said by *Nick Companario* at the time of the court case that their venue for this appeal was the Board of Adjustment.

She concluded that the Lindberg family lives on the property and still uses the road, which has become a major safety concern the Board of Adjustment needs to be aware of.

Twelve members of the audience spoke in support of the appeal.

Clayton Cich, 4955 Vista Bay Drive, stated he has been a Fredenberg Town Board member for ten years. He is speaking as an individual. The Board of Adjustment has been shielded from all of the information brought before them today. The Board will hear from Fredenberg Township again in the future. Generations of a company that has violated in their Township forever while others have not. How different would the decision have been if the Planning Commission had been presented with all of the information? There was no telephoto lens involved as they are not used anymore.

Bruce Anderson, 4929 Fish Lake Road, stated he carries Ordinance 62 with him all the time. It is a great ordinance if followed. The Board of Adjustment was presented with a lot of paperwork today. The County Board has also had this paperwork. They have asked for meetings. They only have received silence. They have asked for the facts and they hate them for the facts. The appellant has paid a lot for this meeting, and it is unfortunate she was given such narrow criteria. Ordinance 62, Article VI, Section 6.22 B.4, states "No permits shall be issued to an operator/owner who has not reclaimed a previously approved extractive use or is in violation of the conditions of their permit." The ordinance also states that no permit application will be accepted from landowners or their agents on property on which there are current or past unresolved violations of any St. Louis County ordinance unless St. Louis County determines that the permit is a part of resolving the violation. This section of Ordinance 62 was read at the April 13, 2023, Planning Commission hearing held to determine if LTI Holdings should be granted an extension of their conditional use permit to include asphalt recycling. He witnessed a total disregard for and apathetic response to proof that was provided of blatant violations of this section of Ordinance 62. Several violations have been made. He has attended County Board meetings, nearly every one of the meetings, since June 2022 and he knows that St. Louis County does not follow Ordinance 62. St. Louis County is focused on acquiring any and all gravel and sand they can and look the other way from complications such as violations.

Bonnie Anderson, 4929 Fish Lake Road, stated she agrees with Mr. Cich. Almost all of the Board was presented with written documentation and with proof of violations in Ordinance 62 by LTI Holdings at the April 13, 2023, Planning Commission hearing. It is their responsibility to not only be familiar with this ordinance, but be knowledgeable about LTI Holdings' history, having done their own fact checking concerning the issues surrounding this company. Aerial footage was ignored showing LTI Holdings' ongoing reclamation issues, one of which has become a public safety issue. It was ignored because it was not survey quality. Even though this exact type of aerial footage is used by St. Louis County. Further, it was discovered with one question asked the following week, that St. Louis County does not use survey-quality aerial footage, but must the

neighbors in order to prove a violation? Nevertheless, since they failed to present any harm, it was decided to grant the conditional use permit extension without any further inquiries on the part of the Planning Commission. LTI Holdings has been forced recently, because of pressure the neighbors have exerted on St. Louis County Commissioners, to resolve some past violations concerning their operation. There is more that must be brought into compliance. The 6464 Fredenberg Lake Road conditional use permit was issued in error and, according to Ordinance 62, Section 8.1 B., it must be rescinded.

Oly Olson, 4931 Fish Lake Road, stated he confirms what is being said. There are things that get held off the table. There is no time frame for that. The Board needs to stop by what someone puts on the cover at this meeting. The Board needs to go by all of the facts. They have been presenting facts for over three years now. This is a null and void permit. He has been on the property and inside the house at 6464 Fredenberg Lake Road. Each time the property changes hands, there is a septic inspection required. There have been no updates to that site. Someone may have signed off that the septic system is compliant, but it is not.

Mike Anderson, 6456 Olson Drive, stated there are likely not a lot of dissensions when discussing granting a conditional use permit. It could be whether a township is for something or whether a neighborhood is for something. This is in a neighborhood that is not for it. The township is not anti-pit. The neighborhood is not anti-pit, but the pit does not belong in this neighborhood. He agrees with what has been said against this pit. There is a time to make the right decision and to do what is right. There was a difference in noise even when there was logging, but they have not been to leave the house because of the sound. This has had an impact on his family.

Kristi Anderson, 6456 Olson Drive, stated she concurs with the points made. She appreciates the detailed, factual information that Ms. Bell presented.

Janet Olson, 4931 Fish Lake Road, stated in the beginning, they were given two weeks to come together and figure out the original May 2020 request. Everything they do is such a battle to get answers. Ms. Bell is someone that is a fact finder. Had she been told of the 60-day process she would have been on it. They chose peace and quiet and pay the taxes for that. They did not choose to live next to a gravel pit. The University of Minnesota Duluth professor comes through with his classes to talk about the bogs.

Allen Process, 4829 Fish Lake Road, stated they heard about the 60-day process. There would have been a large amount of evidence had it been included in the 60-day limit. One thing that pertains to this timeline is Covid. On March 19, 2020, the Supreme Court stipulated there would be time extensions on any sort of limitations when it comes to the appeals process nationwide until of the time of de-escalation of the global pandemic which was only a few weeks ago. Such extensions have included anywhere from, at minimum, 60 days from the time of failing filing to 60 days of de-escalation which they are still within. Many proceedings and meetings held to approve the 6464 Fredenberg Lake Road conditional use permit were obscured from the public eye as a result of the global pandemic. At the time when digital and virtual attendance of such meetings were not yet in place, the meetings were held in a place where the public was precluded from attending in person. He is viewing the borrow pit from the living room at 6412 Olson Drive by naked eye, no telephoto lens required. He is not asking the Board to do anything that violates

an existing court order. He is asking the Board to use their authority as covered the verbiage of Ordinance 62 to protect the neighbors, protect their homes, and protect their communities. The Board was given the power and ability to protect their livelihoods and he hopes the Board will choose to exercise that power now.

Greg Flanagan, 6467 Fredenberg Lake Road, stated there was mention of two residences of the pit, one at 890 feet and one at 1,300 feet. His is a third residence located 175 feet from the pit site. Ms. Bell had photos where judgment passed this was done by telephoto lens. The photo with the pile of wood is seen from his driveway and is right next to his residence. To call this yard waste is ridiculous and there is a clear path from the photographer to the woodpile. There is no obstruction. There is no berm. There is no fence. There is no vegetation. To say the intent of this call was to look at these issues and to say the statements provided supporting this initiative is outrageous. Even in the case of mature trees, there is no foliage beyond 25 feet. There is clearly an ordinary public view. To say anything other than that is absurd. Just on those issues alone, this should be null and void.

Pete Seglem, 6520 Fredenberg Lake Road, stated the goblin is the 60-day rule and everyone hiding behind it. They had their chance, and they did not realize what was illegal what they passed. After 60 days it will stay. If it is wrong and done in error, it should not be legal. It does not make it legal after the statute of limitations has passed when any judgment can be passed. There are things that have been put out that this was done in error. If this is done in error, this should be null and void. It should not matter how long it has been. With Covid, there was nothing in place. Everyone has given heartfelt testimony here because this is a neighborhood where they have spent their life's fortunes to live in peace and quiet on a lake. Now, they have to smell diesel smoke and listen to recycling asphalt and rocks seven days per week. The Board should have some kind of moral conscience that with the neighborhood and facts, it should be done today.

P. Haworth, no address given, stated she has listened to everything, and it is frustrating. She did a data request long before Melissa Bell. The County never responded to that particular question. She had sent the Director a question that brought up the septic permit. The Director called her personally after the first meeting and after the second meeting and she asked if there was any recourse and he said no. This is what Fredenberg Township has been up against since the beginning. They could not get any information. The County has always protected LTI Holdings.

Frank Koshere, 5327 Driftwood Estates Road, stated he believes the rural development of Fredenberg Township is changing and the rural community depends on the rural quality of it. This is based on a lot of recreation. On the roads, there is a lot of trucking. This is not the quality of life anyone would want. The quality of life on Fredenberg Lake Road would be very difficult to handle for the number of recreational people. He read up on the conditional use permits seemed loose and subjective to interpretation. His question is about the standards being applied to the permit. How does one determine if there is compliance or noncompliance with an existing permit? Is there a report on that to indicate that? Is there any consideration of the record of a permit holder for being compliant or noncompliant? What is the measurable standard for compliance? Is that standard subjective or objective? What are the timelines for compliance for a permit such as restoration? The quality of life is already impacted. He is within earshot of the McKeever Pit, and he can hear what goes on there easily. There is also an impact to sound quality. From a rural perspective, gravel

pits and hauling on the roads add to sounds traveling far which adds to the aspect of it not being such a rural area anymore.

No other audience members spoke.

The *Board of Adjustment* discussed the following:

- A. Board member *McKenzie* asked for a definition of ordinary public view. *Mark Lindhorst* stated during a public hearing and if there was a question about an opening along a public road and the Planning Commission wanted a barrier at the time of the hearing, a fence or berm could be placed in that opening at the time of the hearing. There were no concerns at the time of this hearing. In this case, there is short vegetation along a long wetland and people can see the borrow pit. However, LTI Holdings is meeting all of the conditions of the borrow pit conditional use permit.
- B. Board member *Pollock* asked if there were violations at another borrow pit owned by LTI Holdings, would that make any borrow pit they applied for null and void. *Mark Lindhorst* stated this is not what the Board of Adjustment is here for today. Board member *Pollock* stated one of the first things brought up is how the McKeever Pit is relevant. If this pit is in violation, no permit could be issued to LTI Holdings. *Nick Companario* stated there is a claim the permit should not have been issued in the first place. This relates to the null and void language stated today. There was a mistake in fact or in law that should have led the Planning Commission to not issue the conditional use permit. This is what the County and state district court stated was too late to bring forward and why the Planning and Community Development Director did not address this. It is too late to make the claim. The second point is LTI Holdings in compliance with the conditions in the conditional use permit and with the provisions in the ordinance. In court, it was determined that this information cannot be brought directly to court. There is a process which is this administrative appeal process where that information can be brought forward. That is the distinction between the issues. Board member *Pollock* stated the McKeever Pit is in operation and is allowed. He does not understand if the inspection shows another pit is not in compliance, does this come into play? *Nick Companario* stated this should have been brought up in the appeal process, not now. Board member *Pollock* asked if this property should have been allowed a conditional use permit if there were compliance issues with the McKeever Pit? *Nick Companario* stated that is the claim that was brought too late. That is the claim that needed to be brought within 60 days of when LTI Holdings received notice of decision in 2020.
- C. Board member *Pollock* asked why this was not brought forward within 60 days. *Melissa Bell* stated when she first started looking into this, she was not aware of what the zoning ordinance was. She had a data request that was specific about what was needed. It took a while to get the documents from the County as staff would need to gather and review the data. She had to pay for this information. This information should have been given at the May 14, 2020, hearing in the first place. Board member *Pollock* asked if, at any point, she had requested additional time from the Planning and Community Development Department stating they were going to appeal. *Melissa Bell* stated that one member of the group, *Patty Wheeler*, asked the Director if there was anything that could be done after the approval. At no point in that email from the Director did he mention that there was an appeal process. Board member *Pollock* stated that being outside the appeal window. It would be hard to

make a decision based on this. If all of this information had been brought in, it may have changed the decision. *Melissa Bell* stated the County is good at picking and choosing which ordinance they will follow. She spoke with lawyers that agreed with her about making the appeal that the McKeever Pit is an issue. This is an issue as this is a business neighbor and how they treat neighbors they already have.

- D. Board member *Werschay* allowed the drone footage. While it may not play a part in the appeal decision the Board of Adjustment is to make, it is important to make sure that the citizens of Fredenberg Township are heard.
- E. Board member *Pollock* asked why the septic system is being discussed. Is there an operational home on the site? *Melissa Bell* stated there is.
- F. Board member *Coombe* asked who logged the trees and on which property those trees are on. *Melissa Bell* stated the logged trees are on 6464 Fredenberg Lake Road. She does not know who logged the area. The Kaneski's own the property as part of LTI Holdings. Board member *Coombe* asked who owns the trees. *Melissa Bell* stated she does not know. The landowner is present. This was a previous tree farm.
- G. Board member *Pollock* stated it was mentioned the court case was dismissed. What was the ramification of what they said. *Nick Companario* stated the court case was filed, claiming the conditional use permit should be invalidated. The County defended the case. When there is a statute of limitations defense, the way to raise that is to make a motion to dismiss because this was outside of the 60 days. The court dismissed the claim under the 60-day rule. Board member *Pollock* stated there is relevant information here. However, this is due to being after 60-days. He does not believe the Board of Adjustment can make any decision on something the court has decided. The appellant should ask for an extension to the 60-day rule with all the information. What they can do is go through the step by step. There is nothing the Board of Adjustment can do.
- H. Board member *Pollock* stated they have Board of Adjustment has the information and they have the seven points to deal with. Does the Board of Adjustment have that kind of power in an appeal? They cannot just throw anything from 2008 or a septic system into the mix. *Nick Companario* stated yes. Not only are there affirmative determinations that were made, but the Board also has the Director's determination on the null and void theory. The Director may have foreseen something like this may happen.
- I. Board member *Werschay* mentioned it was said in the paperwork packet that Matthew Johnson and Commissioner Nelson have a conflict of interest when it came to inspecting gravel pits. She disagreed with that statement. It was part of Matthew Johnson's, as Planning and Community Development Director, job to inspect gravel pits. Commissioner Nelson is something of an expert on gravel and roads because he has overseen St. Louis County's 3,000 miles of roads. *Melissa Bell* noted this was written in a letter to Kevin Gray, St. Louis County Administrator.
- J. Board member *Pollock* stated the document is Planning Commission and Board of Adjustment rehearing language that states it is up to the Director to determine that "Material evidence newly discovered which, with reasonable diligence, could not have been found and produced at the hearing and that would have likely resulted in a change in the final outcome of the decision." *Melissa Bell* stated that the Director said he would not rehear part of the case beyond his purview as Director because she is presenting new evidence. The Director was refusing to rehear the case with the new evidence. Board

member *Pollock* stated it goes back to the 60-day rule. She needs to go back to court to ask for an extension of the 60-day rule.

K. Board member *McKenzie* went through each point of the administrative determination with the appellant:

1. He asked if the appellant agreed that the Ordinance states borrow pits are an allowed use with a conditional use permit. *Melissa Bell* stated that a borrow pit should follow the five conditions of approval. The Ordinance does contain the language.
2. Board member *McKenzie* asked about the five-year inspection. *Melissa Bell* stated that is not applicable and does not apply at this point in time. Board member *McKenzie* stated part of the reason the Board is here today is agreeing with Director Johnson's statement that the pit was inspected in August 2022. *Melissa Bell* stated she does not agree with that.
3. Board member *McKenzie* asked if the appellant agrees with the point on ordinary public view. *Melissa Bell* stated that she does not know the ordinance definition, but she does see the pit from Fredenberg Lake Road. Board member *McKenzie* stated 'ordinary public view' is defined in Zoning Ordinance 62 as "The view seen by the naked eye from any public road or waterway or from occupied dwellings, commercial establishments, clubs, or institutions on adjacent properties. Aerial view is not to be considered public view." There were photographs taken from long-lens that would not qualify under the Zoning Ordinance definition of ordinary public view. He asked if she had no issues with the no disturbance setbacks. *Melissa Bell* stated the only setback she questioned was the setback to the wetlands. Every other setback she saw she did not see an issue with. Mapping shows 50 feet or less of the wetland setback. She wants someone to measure the exact distance. Staff cannot prove to her that the setback is being met. Board member *McKenzie* stated the County Land Explorer may not have survey grade property lines, but the measuring tools are very accurate. *Melissa Bell* stated that it is difficult to determine where wetlands are located on a map. One must be on the ground to see the wetland and measure from there. When she measures the setback, it is close to 50 feet. But when she measures from other areas, it is not close to 50 feet.
4. Board member *McKenzie* asked if the appellant was told that Solid Waste Ordinance 45 states that the trees should be removed. The appellant then stated they were a fire hazard and asked why. *Melissa Bell* stated these trees have been sitting there since 2020 or 2021. They are drying right now and there is high fire danger. The ordinance also says "shall be disposed of" and not "shall be managed by." This means that the landowner needs to get rid of them.
5. Board member *McKenzie* stated the appellant made mention of access points. The Zoning Ordinance does not require a gate at every access point. *Melissa Bell* stated the Ordinance is unclear. Any truck can get into an access point by driving. Controlling access is also for safety.
6. Board member *McKenzie* asked if the appellant's one concern about a no disturbance setback was the setback to the wetlands. *Melissa Bell* said yes.
7. Board member *McKenzie* stated the final point was also regarding wetlands. He asked if the appellant stated there was impact to wetlands within the 50-foot setback. *Melissa Bell* stated she did not say there was an impact, but there is a concern about impact. She disputes what the actual wetland footage is. She was not given a proper answer.

She was given aerial imagery which is not appropriate. There are a lot of wetlands and a lot of creatures that live in those wetlands.

- L. Board member *Pollock* asked if the septic issue has been resolved. *Mark Lindhorst* stated that is not covered by the Land Use division. *Nick Companario* stated the septic issue has been resolved for some time. Board member *Pollock* stated that if there is an issue, they can make a complaint to the On-Site Wastewater Division.
- M. Board member *Coombe* stated he was in the neighbors' shoes once. He had his own lawsuit against Fayal Township, and he lost because the case was dismissed. The Board of Adjustment has to follow state statute. They do have to follow the 60-day rule. They are not hiding behind the 60-day rule. Board member *Pollock* concurs with the comments on the 60-day rule. He wanted to speak of the Covid impact and that can be used in court. Is it within the Board's jurisdiction to say that until there is an allowance to Covid, these people would be allowed another 60 days to appeal? This would be an extension of the original 60 days so that this could be properly done. All information could be brought to light for a letter look at this situation. *Nick Companario* stated that rule is in a state statute. As much as the Board may like the authority to extend a state statute, they cannot.
- N. Board member *Manick* stated that Board Chair *Werschay* was liberal in allowing testimony that may not have been relevant.
- O. Board member *McKenzie* stated that most of them were on the Planning Commission during Covid and they did not miss a beat. Those public hearings were held via Webex and no meetings were missed. There have also been faulty assumptions made by some and one of the correspondences should be carefully read. Board member *Pollock* added that during Covid, the Boards did a good job. Data searches made it difficult to get information and responses on time. This is not the same as the Board being able to do their business. A 60-day window to appeal and ask for information. When dealing with bureaucracy, it is hard to get responses. This is just something that happens.
- P. Board member *McKenzie* asked if each one of the seven sections should have its own motion. Board member *Svatos* stated that may not be necessary to make individual motions.
- Q. Board member *Coombe* stated this is a review of an administrative decision. The decision may need to go up or down as a whole. *Nick Companario* stated the options available are to approve the whole thing, reject the whole thing or some combination of approving/rejecting. There is a flexibility to decide item by item. It should be done the way it makes sense.
- R. Board member *Pollock* asked what would happen if they reversed the administrative determinations and the matter was returned to the Director for further action. *Nick Companario* stated that for each point that the Board of Adjustment sides with the appellant, that would mean that there is a violation. If there is a violation, what would happen next? The Director would notify the permit holder and the question becomes what corrective steps could be taken to correct the violation. This would be the corrective action process. If that process does not work and the permit holder does not do this corrective action or if the Director determines that there is no corrective action to be taken, this is an incurable situation. The option of revocation would then be available. Board member *Pollock* asked who will determine what will be resolved? *Nick Companario* stated one example is an entrance gate. To reverse the administrative determination that an entrance gate means that there is a violation with respect to entrance gates. Under the ordinance, it is up to the Director to take the next steps of notifying the permit holder, LTI Holdings,

that there has been a violation and going through the corrective steps process. Board member *Pollock* said that in this example, the entrance gate is what it was supposed to be. Now the Board is saying that no, this entrance gate is not what it was supposed to be. How is there a resolution to something that the permit holder has been told is perfectly fine? *Nick Companario* stated the permit holder was told it was perfectly fine by the Director. The Board of Adjustment has review authority over the Director. The Board of Adjustment could say that the Director was wrong. Board member *Pollock* asked if the Board has the ability to say what they want the permit holder to do. *Nick Companario* stated no. The Board of Adjustment can say if the Director is right or wrong in terms of whether there is a violation. If there is a violation, there is an ordinance process in place for dealing with a violation in a conditional use permit.

- S. Board member *Pollock* stated the Board should be more specific about what they agree to. Otherwise, it would be like throwing every decision made to give the conditional use permit in the first place back into the mix. *Nick Companario* stated the Board can agree or disagree with the Director on each point or can agree or disagree with the Director all at once.
- T. Board member *Pollock* asked if the Board of Adjustment's criteria for approving or not approving a case would apply. *Nick Companario* stated this is different than other variance cases and does not require justifying the Board of Adjustment's criteria for approval.
- U. Board member *Filipovich* stated he heard talk there was crushing and hot mix going on at this pit. The conditional use permit stated there was no crushing, recycling of asphalt or concrete, or hot mix allowed. Does the conditional use permit have anything to do with what they are trying to accomplish today? *Mark Lindhorst* stated that the Board of Adjustment is looking at an administrative determination on seven points. The Board of Adjustment is not looking to rescind any conditional use permit. He is unaware of any crushing or hot mix going on in that pit. If someone brought up that complaint, staff would look into that more.
- V. Board member *Filipovich* asked if the neighbors have any recourse if this administrative appeal is affirmed. *Nick Companario* stated the Board of Adjustment's decision on this appeal is subject to judicial review in state district court. An aggrieved person can make that appeal which is allowed by state statute and the zoning ordinance. Board member *Pollock* stated the aggrieved person could bring up the 60-day rule. *Nick Companario* stated anything can be brought up and there are rights in that regard. It is a free country.
- W. Board member *McKenzie* stated it is unfortunate that most of the audience does not understand why they are here. This is a narrow issue. It has nothing to do with other pits or other things. It has to do with Director Johnson's determination on the 6464 Fredenberg Lake Road borrow pit and the conditions related to it. There is a lot of emotion about things in the neighborhood. The next stop would be district court if the neighbors are not happy today. Ms. Bell may have been helped out by having an attorney present.

DECISION

Motion by McKenzie/Pollock to uphold the administrative determinations A, B, C, D, E, F, and G regarding the 6464 Fredenberg Lake Road borrow pit. The nature of the request is an appeal to the Board of Adjustment per St. Louis County Zoning Ordinance 62, Article VIII, Sections 8.1.E and 8.6, and Article X, Section 10.6.B, and Minn. Stat. § 394.27, Subds. 5–6 (2022), concerning the Director's administrative determinations for the Conditional Use Permit BP-000012 at 6464 Fredenberg Lake Road, Duluth, MN, 55803. The applicant is appealing the Administrative

Determinations dated October 27, 2022, by Matthew Johnson, St. Louis County Planning and Community Development Director regarding the operation of a permitted borrow pit at 6464 Fredenberg Lake Road. The Administrative Determinations were sent to Melissa Bell in response to her formal complaint against LTI Holdings (Lakehead Trucking) at 6464 Fredenberg Lake Road. The borrow pit received conditional use permit approval at the May 14, 2020, Planning Commission meeting, and a conditional use permit was approved on June 12, 2020. The St. Louis County Planning and Community Development Director reviewed the complaint and determined that the borrow pit located at 6464 Fredenberg Lake Road is in compliance per the administrative appeal. The administrative determinations that the permit holder is in compliance will remain in full force and effect.

In Favor: Coombe, Manick, McKenzie, Svatos, Werschay - 5

Opposed: Filipovich, Pollock - 2

Motion carried 5-2

Motion to adjourn by Coombe. The meeting was adjourned at 12:04 PM.