

SILVER CREEK TOWNSHIP MINING
AND EXTRACTION ORDINANCE COMMITTEE

*Preliminary draft of possible ordinance considerations for presentation to the
Township Supervisors Meeting January 4, 2022.*

Outline of work of the committee for the eleven (11) meetings
held from July 12 to December 6, 2021.

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1 MINERAL RESOURCES AND NEED FOR MINING AND PROCESSING

OVERVIEW

1. Silver Creek township appears to have numerous areas of gravel deposits
2. The need for gravel and related materials will continue to grow due to general development and growth in the area, highway construction, road maintenance and related needs.
3. It is probably inevitable that in the future the township will see requests to develop mining and processing operations.
 - a. The purpose of a possible ordinance is not to eliminate or impede future mining operations, but to direct where they would be best located and what other controls will apply. This balanced with what regulations are necessary to ensure both the rights of the prospective mining operator and the rights and peaceful enjoyment of adjacent property owners and all the citizens of the township who might be impacted by a mining and processing business.

2 PERMITTING PROCESS

Permitting of mining and process operations will be on the basis of either an *Interim Use Permit* (IUP) or a *Conditional Use Permit* (CUP) depending on proposed operations to be permitted.

1. Minnesota statute 462.3597 gives local government police powers to regulate various business and zoning issues. Subdivision 1 defines an interim use as a temporary use of property until a particular date, until the occurrence of particular event, or until Zoning regulations no longer permit it. Subdivision 2 of this statute states:
 - a. In this way, a definite end date for operations would be part of the permit.
 - b. The regulations may set conditions on interim uses
 - c. The date or event that will terminate the use can be identified with certainty.
 - d. Permission of the use will not impose additional costs on the public if it is necessary for the public to take the property in the future.
 - e. The user agrees to any conditions that the governing body deems appropriate for permission of the use.
 - f. Any interim use may be terminated by a change in zoning regulations.
2. The township ordinance may provide for an abbreviated process associated with the renewal application of any permit.
 - a. Full notification to citizens in the manner and form in the original permit application would apply to renewal applications.
 - b. The township will hire a State registered professional engineer prior to each annual review to determine that the operation is being conducted in a manner outlined in the original permit and plan.
 - c. A deposit of \$10,000 will be required of the permit holder for the annual review and renewal to pay for the cost of the engineering report, mailings and notification of citizens as well as other out of pocket expenses to the township relating to the review process. Applicant will receive a full accounting of the expenses, and the township will return all money not spent.
3. A Conditional Use Permit (CUP) could be issued in conjunction with a new aggregate mining pit, along with directly associated secondary processes such as washing, classifying and storage of materials. A CUP is tied to the property and is typically issued without a defined end of operation time constraint, however, would be subject to annual reviews and renewals.
4. An Interim Use Permit (IUP) could be issued for non-mining operations including, however not limited to the placement of asphalt plants, cement plants, recycling of outside sourced materials and related industrial processes. An IUP would be issued to the operator for a specific time or other event.
5. A new permit could include both a CUP and IUP as a “hybrid” permitting approach where both original mining and further operations are being requested.

3 EXISTING OPERATIONS

Mining and processing operations presently operating in the township under a current Wright County permit would not come under the township ordinance and would continue to be regulated under the jurisdiction of the county.

1. Any significant change or request from present operators would come under the township ordinance.
 - a. Expansion into new areas not presently approved under the present county CUP or other regulation.
 - b. Expansion of further operations in an existing pit, such as adding recycling of outside materials, placement of an asphalt plant or similar changes which may require permitting on the basis of an IUP.

4 TYPES OF OPERATIONS PERMITTED

There may be several different types of operations taking place in one mining/processing facility. In that case, each separate type of operation will require an individual interim use permit.

1. Mining and removal of aggregate materials or other minerals
 - a. Removal of overburden, excavation of materials and trucking from the site only.
 - b. No further processing such as washing, crushing, or screening.
2. Operations secondary to mining including washing, crushing, or screening and classifying of materials of materials originating in the permitted pit.
 - a. May be issued an interim use permit with conditions
3. Further processing of materials originating outside of the pit, including bringing in concrete or bituminous debris for purposes of recycling and transport back out of the pit.
 - a. May be issued an interim use permit with more stringent conditions.
4. Placement of a bituminous asphalt plant may be allowed for a restricted time period/one season such as 6-12 months to provide for limited duration projects.
 - a. May be issued an interim use permit with defining conditions such as days and hours of operation, noise and air quality controls and related regulations.
5. Temporary mining pit may be allowed when operations will last for one season, such as 6 to 12 months to provide for aggregate need associated with limited duration construction projects.
 - a. May be issued on an interim use permit with conditions.
6. Other indirect processes not contained in the definition of mining

5 APPROPRIATE LOCATIONS OF AGGREGATE OPERATIONS

The granting of an Interim Use Permit or Conditional Use Permit should consider the need to balance aggregate need, property rights of the applicant and the property rights and expectations of the township citizens.

Consideration should be given to allow placement of aggregate operations in locations that look at the current zoning and land use and make the best use of all land resources. We would expect Silver Creek Township to have continued housing growth and demand near term. Taking land out of areas currently zoned or possibly rezoned for housing may not be a good use of land use.

Mining would be defined as the excavation of sand, soil, rock, or gravel in the amount of 1,000 cubic yards of materials for the site. Exclusion of this definition would be in a case where removal of materials is in conjunction with the construction of a building, and that removal is part of a building permit.

1. Mining only of aggregate materials without further process such as washing, and classifying would be allowable in county land use plan designated Agricultural-Residential areas with a minimum lot site of 20 acres.
2. Mining with additional processes including washing and classifying would be allowable in county land use plan designated Agricultural-General areas with minimum lot size of 40 acres.
3. Mining with further processing of materials originating outside the pit would be allowable in the Agricultural-General district with a minimum lot size of 40 acres, or any parcel zoned commercial or industrial.
4. Short term placement of a bituminous plant would be allowable in any otherwise permitted site.
5. A temporary mining pit would be allowable in any otherwise permitted site.
6. No mining operation would be allowable in, or immediately adjacent to, any residential district, shoreline area or similar higher density residential development.
7. Any other process or manufacturing facility not meeting the definition of mining would fall outside the mining ordinance and require a different permitting approach outside the township ordinance. These might include permanently installed ready mix concrete plants, cement block or septic tank factories, architectural building materials processor or other non-mining operations.

6 GENERAL PROVISIONS

1. If any originating application is denied by the township, no reapplication could be made for a period of six months.
2. The mining operation will not be allowed to interfere with surface water drainage beyond the boundaries of the mining operation.
3. The mining operation should not adversely affect the quality of surface or subsurface water resources.
4. Mining extraction only operations should not be conducted closer than 100 feet to the adjacent property line, and not closer than 500 feet to a residential or other structure unless the written consent of the fee owner of such adjoining property is obtained.
5. Further processing of site mined materials, including crushing, washing, and classifying should not be conducted closer than 200 feet from the adjacent property, and not closer than 750 feet from a residential or other structure unless the written consent of the fee owner of such adjoining property is obtained.
6. No contaminated or hazardous materials can be brought into the site for recycling.
7. Operations should not be closer than 50 feet to the edge of the right-of-way line of any street, road, or highway.
8. Mining and processing operations should be conducted between the hours of 7AM and 6PM Monday through Friday. Operations on a Saturday or Sunday on special needs basis with town approval only with proper application and notice to adjoining neighbors affected.
9. Access roads from mining operations to the public road need to be paved or surfaced with gravel and other appropriate applications to minimize dust.
10. Access roads should be considered from a safety perspective to the driving public. Permitting may require acceleration and bypass traffic lanes.
11. Driveway and access roads need to meet county and township standards with appropriate permits obtained for access.
12. The ordinance could include truck traffic operations including the exclusion of engine exhaust (Jake) breaking or other noise issues.

7 APPLICATION AND PERFORMANCE ISSUES

The permit application for a mining operation has more far-reaching implications than many other types of business operating permits.

The goal of the ordinance should not be to make entrance into the industry overly difficult. However, with the scope of these types of operations, and complexity of issues relating to mining and processing, it would appear appropriate to set a high standard of up-front requirements to assure the best outcome for both the applicant and the citizens of the township.

1. Interim use permits could require a posting of a performance bond to the township in the amount of \$5,000 per actively mined acre to ensure compliance with the permit.
 - a. In the case that a pit or operation was abandoned and not reclaimed, or the permit holder did not, at the discretion of the township, adequately or appropriately complete the process at the end of the interim use permit period, the township can call upon the bond to complete the work.
 - b. The township may require a cash deposit in the amount of \$10,000 to be held during the course of the interim use period that could be used for the same purposes as the bond if a need arose on a short-term problem.
 - c. The township could require a non-refundable application fee of \$5,000 to include expenses relating to notification of residents, engineering consulting services, legal opinions, and related expenses to the township.
 - d. Interim use permits should include both the fee owner of real estate as well as the operator if the landowner will not be the operating entity.
 - i. The fee owner of the land needs to be responsible for compliance to permitted rules and regulations.
 - e. The township will develop a packet of requirements and documents necessary to accept an application for an interim use permit.
 - f. A gravel mining and processing operation can have potential impact on township residents in a larger area than other types of development, such as noise and environmental issues. Accordingly, it would be advisable to attempt to notify all township residents by means of a mailing of a proposed application, as well as other legal publication directed by state statute.
 - i. The cost of this notification process is part of the \$5,000 application fee.
 - g. As part of the application process and further notice to the public, the township could post a sign on the subject site announcing a mining application permit request and give directions to the township web site for details relating to the application.
 - i. The cost of this sign is part of the \$5,000 application fee.
 - h. Applications for a renewal of an interim use permit, and/or application for an additional permit for additional operations or expansion should carry the same notification process as the original application.
 - i. Any application, new or renewal, should allow 30 days for notification and scheduling of township zoning and planning meeting.

8 ADMINISTRATION AND ENFORCEMENT

It appears that Wright County would be able to administer and enforce a township ordinance. This would save the township possible expenses relating to enforcement and provide assistance and direction in the permitting process if requested by the Township.

1. The county Attorney's Office would need to review an ordinance and make recommendations in order for that office to enforce the ordinance.
2. Wright County is currently administrating the Rockford Township gravel and mining ordinance.

9 ENVIRONMENTAL AND ESTHETIC CONSIDERATIONS

As apart of any application for a permit for any type of mining or processing operation, the Minnesota State applicable standards regarding noise and air pollution will govern.

Each individual permit application may have unique and specific requirements due to location or other considerations.

Accordingly, some or all of the following considerations should be part of the township ordinance. In no case can these standards be less restrictive than State mandated or current Wright County standards.

1. To help minimize dust and noise and to shield mining operations from the public view, a visual screening barrier shall be maintained adjacent to residential properties.
 - a. Barrier would include planting of fast-growing trees and other ground cover of a type native to the area with a minimum height of 6'. Plantings to be completed during the first operating season of the permitted operation.
 - b. Existing trees and ground cover prior to operations along public roads should be preserved and maintained except where traffic safety requires cutting and trimming.
2. Earth berms as a visual screening barrier may be required as part of the application in specific locations.
 - a. Such berms to be constructed on 2 ½ to 1 slope.
3. Air quality standards including dust, noise, and air pollutants will be part of any site plan in the application and be governed by appropriate Minnesota State rules. The township plan and permitting process may require additional regulations which might be stricter than state standards in specific situations.
- 4.
5. Safety Fencing. Any Mining operation adjacent to a residential dwelling or within three hundred (300) feet of two (2) or more residential structures shall be bound by the following standards.
 - a. Where collections of water occur that are one and one-half (1-1/2) feet or more in depth existing for any period of at least one (1) month and occupying an area of seven hundred (700) square feet or more, all access to such collections of water shall be barred by a fence or some similarly effective barrier such as a snow fence at least four (4) feet in height.
 - b. In locations where slopes occur that are steeper than one (1) foot vertical to three (3) feet horizontal existing for a period of one (1) month or more, access to such slopes shall be barred by a fence or some similarly effective barrier such as a snow fence of at least four (4) feet in height.
6. A plan to address concerns relating to odor from processes including, however not limited to asphalt processing plants will be required as part of the permit application.

10. WATER RESOURCES

All water quality issues as part of a site plan and permit will be governed by appropriate Minnesota State rules. The township plan and permitting process may require additional regulations which might be stricter than state standards in specific situations.

The mining operation shall not be allowed to interfere with surface water drainage beyond the boundaries of the mining operation.

The mining operation shall not adversely affect the quality of surface or subsurface water resources.

- a. Minnesota DNR regulates and permits ground water resources and extraction for wells and the aquifer.

Surface water originating outside and passing through the mining district shall, at its point of departure from the mining site, be of equal quality to the water at the point where it enters the mining site. The mining operator shall perform any water treatment necessary to comply with this provision.

- a. Application must include a ground water protection plan.

11. END OF USE AND RECLAMATION

1. All mining sites shall be rehabilitated after mining operations cease. Reclamation shall be complete within one (1) year. The following standards shall apply:
 - a. Within a period of three (3) months after the termination of a Mining operation, or within three (3) months after abandonment including, however not limited to the cancellation of their bond or the expiration of any State permit, of such operation for a period of six (6) months, or within three (3) months after expiration of a Mining permit, all buildings, structures and plants incidental to such operation shall be dismantled and removed by, and at the expense of, the Mining operator last operating such buildings, structures and plants. A temporary variance may be granted for those buildings, structures, machinery and plants required to process previously mined materials stored on the site. Such variance may apply for only one (1) year, after which said buildings, structures, machinery and plants shall be removed.
 - b. The peaks and depressions of the area shall be graded and backfilled to a surface which will result in a gently rolling topography in substantial conformity to the land area immediately surrounding and which will minimize erosion due to rainfall.
 - c. Reclaimed areas shall be composted or surfaced with soil of a quality at least equal to the topsoil of land areas immediately surrounding and to a depth of at least three (3) inches. Such required topsoil shall be planted with grasses or other natural vegetation. Trees and shrubs may also be planted but not as a substitute for legumes and grasses. Such planting shall adequately retard soil erosions. If an open water pond is requested and accepted by the Township the water depth of the proposed pond shall be a minimum of 10 feet in depth. Soil conditions may require that a liner be constructed to maintain a constant 10-foot water depth.
 - d. The finished grade shall be such that it will not adversely affect the surrounding land or future development of the site upon which Mining operations have been conducted. The finished plan shall restore the Mining site to a condition whereby it can be utilized for the type of land use proposed to occupy the site after mining operations cease. All reclamation must comply with the following:
 - 1) Reclamation must begin in conjunction of Mining operations in progression as each section of the mine is depleted.
 - 2) The pit must be reclaimed to a usable surface for future use as approved in the reclamation plan which is part of the original permit.
 - 3) If reclaiming a pit for use as wetlands, it shall go into an approved wetlands bank.
 - 4) Reclaiming the pit shall place the property back to a marketable purpose.
 - 5) Foreign materials such as concrete, rubber, plastic, wood or metal or any excavated pipes are strictly prohibited and are not allowed for restoring the pit. No contaminated / hazardous materials. Further governed by Minnesota MPCA clean fill or unregulated fill standards.
 - 6) Grass seed or other vegetation must be planted and show signs of growth within 30 days.

The Town must be notified, in writing, 90 days prior to the discontinuation of mining and/or related processing operations.

12. PERMITTING INFORMATION REQUIRED

1. The following information shall be provided by the person requesting the Mining permit, and updated from time to time during the life of the permit, as required by the Town Board:
 - a. The name and address of the property owner and operator if applicable requesting the permit.
 - b. Title work from a reputable title company or attorney's opinion in form acceptable to the Town Board setting forth the identity of the current fee owner of the property requested to be mined.
 - c. The exact legal property description and acreage of area to be mined.
 - d. The following maps of the entire site, which shall include all areas within five hundred (500) feet of the site. All maps shall be drawn to scale.

Map A Existing conditions to include:
Contour lines at two (2) foot intervals.
Existing vegetation.
Existing drainage and permanent water areas, and wetlands and impaired waters within 1,000 feet.
Existing and proposed structures.
Existing and proposed wells.

Map B Proposed operations to include:
Structures to be erected.
Location of sites to be mined showing depth of proposed excavation.
Location of stockpiles showing maximum height of stockpiles of materials currently being mined.
Location of machinery to be used in the Mining operation.
Location of storage of mined materials, showing height of storage deposits.
Location of vehicle parking.
Location of storage of explosives.
Erosion and sediment control structures.

Map C End use plan to include:
Final grade of proposed site showing elevations and contour lines at two (2) foot intervals.
Location and species of vegetation to be replanted.

PERMITTING INFORMATION REQUIRED - CONTINUED

- e. A soil erosion and sediment control plan per the MPCA general permit requirements including a stormwater pollution prevention plan (SWPPP)
- f. A staging plan setting forth the anticipated staged life of the Mining operation, in form and substance and detail acceptable to the Town Board.
- g. A plan for dust and noise control.
- h. A full and adequate description of all phases of the proposed operation to include an estimate of duration of the Mining operation.
- i. A detailed reclamation plan consistent with all requirements of this Ordinance including for reclamation of the turf and foliage.
- j. Detailed photographs of the Mining area and surrounding property within 500 feet, acceptable to the Town Board.
- k. Plan to include an air photo overlay indicating the location of the operation within the township.
- l. A ground water protection plan (SPPC) including oil and fuel spills, containment plan and equipment utilized in the case of a spill.

13. ENVIRONMENTAL ASSESSMENT WORKSHEET (EAW)

An EAW will be required with every application with a parcel of forty (40) acres or more, regardless of the initial projection of area to be mined at the time of application.

An execution to the EAW requirement will be in a case of temporary mining pit as defined in the ordinance.

