

FINDINGS, REPORT AND RECOMMENDATION

1. By Application dated March 8, 2018 (the “Application”), Long Shore Development, LLC has requested a Conditional Use Permit (“CUP”) to allow for construction and operation of a sand and gravel pit, with associated processing of mined material, on approximately 115 acres of land located generally in the north 1/2 of Section 31, Township 139N, Range 41W in Becker County.
2. Chapter 8, Section 11 of the County Zoning Ordinance identifies the decisional criteria that apply to CUP requests. Subpart F of this Section indicates:

No conditional use shall be recommended by the County Planning Commission or granted by the Board of County Commissioners unless the Commission or the Board shall find that all of the following criteria are met:

1. **Affect on surrounding property.** That the conditional use will not harm the use and enjoyment of other property in the immediate vicinity for the purposes already permitted, nor substantially diminish or impair property values within the immediate vicinity.
2. **Affect on orderly, consistent development.** That establishing the conditional use will not impede the normal, orderly development and improvement of surrounding vacant property for uses predominant in the area.
3. **Adequate facilities.** That adequate utilities, access roads, drainage and other necessary facilities have been or are being provided.
4. **Adequate parking.** That adequate measures have been or will be taken to provide sufficient off-street parking and loading spaces to serve the proposed use.
5. **Not a nuisance.** That adequate measures have been or will be taken to prevent or control offensive odor, fumes, dust, noise and vibration, so none of these will constitute a nuisance, and to control lighted signs and other lights so that no disturbance to neighboring properties will result.
6. **Additional criteria for shoreland areas.** In Shoreland areas, it shall be found that adequate measures have been or will be taken to assure that:
 - a. **Pollution.** Soil erosion or other possible pollution of public waters will be prevented, both during and after construction;

- b. **View from public waters.** That the visibility of structures and other facilities as viewed from public waters will be limited;
 - c. **Adequate utilities.** That the site is adequate for water supply and on-site sewage treatment; and
 - d. **Watercraft.** That the types, uses, and number of watercrafts that the project will generate can be safely accommodated.
- 3. The Application came before the Planning Commission at its meeting on May 8, 2018. The Commission conducted the public hearing required by law, and took extensive testimony from the Applicant and interested parties. The Commission also received extensive written documentation and written testimony.
- 4. Based on review of the documentation submitted and the testimony provided, the Commission recommends to the County Board that it deny the CUP request for the following reasons:

a. The Applicant has failed to demonstrate that the proposed sand and gravel mine and operation would not harm the use and enjoyment of other properties in the immediate vicinity for the following reasons:

- 1) The proposed project is located very near many developed residential properties. Many residents offered testimony expressing concerns about the effect industrial mining activities would have on the enjoyment of their properties. These concerns were validated by those that offered testimony about impacts from the existing Rock Ridge mine, also operated by Strata, on nearby residential properties.
- 2) Several resorts are located within approximately 1/2 mile of the proposed project site. Resort owners expressed concerns relating to effects on tourism and their businesses given the proximity of the proposed project to Long Lake. Tourism is an integral part of the local economy. The City of Detroit Lakes recently imposed a lodging tax to raise funds for community betterment. Adverse impacts on tourism would negatively impact the community betterment effort.

- 3) Concordia College owns approximately 134 acres of land immediately east of the project site. The property was donated to the College for operation of a biological and environmental field station. Linda Brown, Vice President at Concordia College, testified the property contains lakeshore, wetlands, woodlands, and native prairie components. Dr. Brian Bishop, chair of the Concordia College Biology Department, testified that the College has restored much of the property to its virgin habitat, including habitat for pollinators. He testified the pollinator population has doubled. He testified the property is used by the College and local school district for environmental education and research. He testified that in his professional opinion the dust, noise, and other effects from the mining operation would adversely effect pollinators, plants, wildlife, and migratory birds that utilize the restored areas.

- 4) Mike Ring, a local realtor with Counselor Realty, provided his opinion concerning the impact of the proposed project on property values and property sales in the immediate vicinity. Mr. Ring has been engaged in real estate in the area for 20 years. He testified he has sold many properties in the area of Long Lake. He currently has two listings of residential properties in the project area he said were being negatively affected by the proposed project. He testified that, in his opinion, the value of residential properties would be negatively affected near the project location. The record also contains references to studies on the negative impact of mining operations on values of residential properties. Strata provided a generalized report from an out-of-area appraiser with no specific experience in the immediate real estate marketplace. The Commission finds Mr. Ring's testimony more credible.

- 5) Several residents expressed concerns relating to the potential negative health effects of silica dust. Mike Herzog owns and operates a roofing business, and testified about the significant and developing OSHA standards that limit silica exposure to workers. Here, the project site is located upwind from many residential properties. While Strata in its application

described fugitive dust control and mitigation measures it would undertake, fugitive dust cannot be completely controlled (as is evidenced by testimony from those downwind of the Rock Ridge Mine), and thus the mine is, simply, in a bad location in terms of presenting a potential health risk. In addition, Dr. Robert Koshnick, a local physician, testified about silicosis and the negative health effects of excessive exposure to silica dust.

b. The Applicant has failed to establish that the sand and gravel mine would not impede the normal and orderly development and improvement of surrounding properties for the following reasons:

- 1) The proposed project site is located ¼ mile or less from the existing limits of the City of Detroit Lakes. Matt Brenk, Mayor of Detroit Lakes, testified concerning the City's position on the proposed project. Mayor Brenk indicated the City had just awarded a multimillion dollar contract to run City water and sewer services around Long Lake. Mayor Brenk testified the area in the immediate vicinity of the proposed project was urban, or about to become urban in character, and that a large mining operation did not fit within the character. He testified the proposed project would impede the City's plans for development as reflected in the City's 2006 Long Lake Area Land Use Plan. Charles Ramstad, Detroit Lakes City Attorney, also testified on behalf of the City. Mr. Ramstad testified that the City ultimately intended to expand City limits in the area through annexation. Mr. Ramstad also testified that the City's plans for orderly growth into the area would be negatively impacted by the proposed project. The City also presented a letter dated April 5, 2018, that more fully discusses how the project would impede development in the area. The Commission finds the contents of the letter persuasive.
- 2) The County's Comprehensive Plan indicates that it is a land use goal and objective of the County to work with the City of Detroit Lakes to assure and encourage orderly growth of the City within the area outside the City limits but within planned

growth areas. Granting a CUP for a mining operation within planned growth areas, which include the areas in the immediate vicinity of the proposed project, would be contrary to this goal and would impede orderly growth and development in the area.

c. The Applicant has failed to demonstrate there would be no offensive odor, fumes, noise, vibrations or other nuisances from the operation that could adversely affect neighboring properties for the following reasons:

- 1) A number of residents testified about existing adverse impacts on their properties from the Rock Ridge Mine. The Commission finds this testimony to be relevant and important and probative about effects that may result from the proposed project, particularly given it would be operated by the same mine operator. Residents testified that they did have negative experiences with fugitive dust. One resident located 3/4 miles from the Rock Ridge facility testified about noise from the operation, including noise of backing vehicles and rail car loading occurring during the night. Strata representative Bill Lafond testified Strata could not control or limit this activity, since federal regulations required loading within 24 hours of rail car delivery. Another resident who lives on the east side of Long Lake offered written testimony that he can hear and is impacted by rock crushing occurring at the Rock Ridge mine. It is reasonable to expect those same impacts would occur with the proposed project.
- 2) While there was some discussion of the months in which mining activity would occur, Strata could not agree that it would not mine and engage in mining activity during peak summer tourism months.

d. The Applicant has failed to demonstrate that the proposed project would not present a risk to nearby public waters. This finding is supported by the following information:

- 1) Strata proposes in its Application to mine into the water table. Bill Lafond specifically testified that Strata might mine 11 feet into the water table.
- 2) Planning Commissioner Robert Merritt is a licensed geologist (PG) and worked as a DNR Hydrologist for 32 years with particular expertise in hydrological matters and the effect of gravel mines on local hydrology. Mr. Merritt shared with the Commission his concerns and belief that the proposed project may negatively affect Long Lake by redirecting underground flows away from Long Lake.
- 3) A 2005 study from the DNR, co-authored by Planning Commissioner Merritt, supports the concern that Long Lake hydrology may be negatively affected by the proposed project.
- 4) Strata offered the opinion of Jason Kirwin, Strata's environmental consultant, that the proposed project will not negatively impact local hydrology. Mr. Kirwin is neither licensed as a PG (professional geologist) or PE (professional engineer). The Commission finds the concerns expressed by Planning Commissioner Merritt and other residents concerning potential impacts on Long Lake to be more persuasive.
- 5) Mr. Kirwin also cited as support for his opinion the fact the Rock Ridge mine did not adversely affect recharge of Long Lake. The Commission notes, however, that underground water flow from Rock Ridge is to the South/Southeast, away from Long Lake.
- 6) The City of Detroit Lakes' 2006 Long Lake Area Land Use Plan contemplates the extension of City utilities around Long Lake. The purpose of extension is the gradual elimination of septic systems, which can adversely affect lake water quality. Impairment of this effort would negatively affect the effort to eliminate or reduce lake pollution.

5. This Report and Recommendation are provided per the requirements of Section 11 (D) of the County Zoning Ordinance.

Dated: May 22, 2018

By _____
Chairperson