

RESOLUTION NO. 7272

**A RESOLUTION OF THE CITY OF SHAKOPEE, MINNESOTA UPHOLDING THE
DETERMINATION BY THE BOARD OF ADJUSTMENT AND APPEALS OF
AMENDMENT NO. 5 TO CONDITIONAL USE PERMIT NO. CC-376 (AND
SUBSEQUENT AMENDMENTS NO. 1, 2, 3 & 4) AND THE MINERAL EXTRACTION
AND LAND REHABILITATION PERMIT TO OPERATE A MINE WITHIN THE
MINING OVERLAY (MIN) ZONE**

WHEREAS, the City of Shakopee received an application from Shakopee Gravel, Inc., property owner and applicant, for an amendment to the Conditional Use Permit (CUP) and Mineral Extraction and Land Rehabilitation Permit originally granted by Resolution No. CC-376 under the provisions of Chapter 11, Land Use Regulation (Zoning), of the Shakopee City Code, Section 11.85, Subd. 2, for a Conditional Use Permit to operate a mine; and

WHEREAS, this parcel is presently zoned Agricultural Preservation (AG) Zone with a Mining Overlay Zone (MIN); and

WHEREAS, the property upon which the request was made is legally described as:

*The Northeast Quarter of the Northwest Quarter of Section 16,
Township 115 North, Range 22 West, Scott County Minnesota.*

*Also: the West Half of the Northwest Quarter of Section 16, Township 115 North,
Range 22 West, Scott County, Minnesota, lying North and Easterly of the
Northeasterly right of way line of the Chicago, Milwaukee, St. Paul and Pacific Railway.*

*Also: That part of the Southeast Quarter of the Northeast Quarter of Section 17
Township 115 North, Range 22 West, Scott County, Minnesota, lying Northeasterly of the
Northeasterly right of way line of the Chicago, Milwaukee, St. Paul and Pacific Railway
(Property); and*

WHEREAS, notice was provided and on January 3, 2013, the Board of Adjustment and Appeals conducted a public hearing regarding the application, at which it heard from the Community Development Director and invited members of the public to comment; and

WHEREAS, on January 3, 2013, the Board of Adjustment and Appeals adopted resolution PC12-045 approving the CUP application. The approval included the following conditions:

1. The Shakopee Board of Adjustments and Appeals shall annually review the Permit to ensure that the Applicant is in full compliance with all provisions of the Permit.
2. The annual review of the Permit by the Board of Adjustment and Appeals shall be provided to the Shakopee City Council as an informational item.
3. Security fencing shall be used on the main access roads to control vehicular access to the mining and equipment area, and along any adjacent residential development.
4. Design/maintenance treatment of the berm adjacent to the residential properties along the Applicant's west property line shall be consistent with the following conditions:
 - a. Maintenance of a 1: 1 slope for the berm adjacent to the homes in Wyndam Ponds. Any areas of erosion shall be remedied and stabilized with the approved seed mix.
 - b. Removal of the weeds using the steps outlined by the Scott County Weed Inspector.
 - c. Stabilization of the slopes, establishment of plant/turf cover, and mowing at least once a year or as needed more than that to maintain a suitable appearance.
 - d. Landscaping shall be maintained in accordance with the landscape plan on file in the Community Development office (June, 2006).
5. All operations on the Property shall be allowed from 6 a.m. - 6 p.m., Monday thru Saturday, except upon approval by the Shakopee City Council of extended hours on a temporary basis.
6. Dust must be controlled by paving main access roads, watering haul roads and equipment and by any other means which will control adverse effects of dust on neighboring properties.
7. Two diesel tanks and two propane tanks for the storage of fuel shall be permitted on-site, and must be installed and maintained in accordance with State Fire Marshall Rules (Chapter 7510.3100 -7510.3280). Other fuel tanks on-site must receive permit approval from the Minnesota Pollution Control Agency (MPCA) or other required agency. There shall be no use or storage of explosives except as approved in advance as a part of this Permit.
8. No direct exterior lighting shall be visible from adjacent properties or the public right-of-way. Two 125-watt high-pressure sodium security lights can be installed on the site and they must be located on the site as shown on the submitted plan.
9. The Gravel Extraction Phasing Plan and the End Use Plan, as submitted by Applicant (November, 2012), shall be adhered to. Modifications will be submitted for approval to the Board of Adjustment and Appeals.
10. Applicant shall establish and maintain a monitoring well on the Property for ground water quality monitoring, and if/when Shakopee Public Utilities Commission (SPUC) notices evidence of a pollutant of concern in the testing of their wells, a testing shall be conducted of the monitoring well in an effort to evaluate and either identify or eliminate whether the pollutant of concern is originating from or moving thru this property.
11. Mining extraction shall not exceed a depth greater than ten (10) feet above the established ground water MSL elevation.
12. The sanitary sewer along 17th Avenue is shown, but not approved. Future extension of 17th Avenue will determine the ultimate alignment and depth. The City Engineer shall determine and propose a mutually agreeable location and depth for the trunk sanitary sewer along 17th Avenue.
13. Access spacing to CR 16/17th Avenue and CSAH 83 will be determined by Scott County, City, and Applicant upon approval of the preliminary plat for the end use.
14. Applicant will certify that the property meets any and all standards set by the MPCA or government board that regulates mine reclamation.

15. The storm sewer discharge along 17th Avenue shall not exceed the design capacity in the CSAH 83 trunk storm sewer as determined by the City Engineer. The development of the Property will necessitate the lowering of the storm sewer along 17th Avenue. Applicant shall pay the cost of lowering this trunk line.
16. Applicant is to provide to City an earthwork quantity calculation, to be completed by a Registered Professional Engineer or Registered Landscape Architect, and Applicant is to provide to the City on an annual basis the quantity of export and import materials.
17. Applicant shall enter into an agreement with the City in which the Applicant agrees to allow the City to enter the property and to complete the reclamation plan and to assess the City's costs to the property, should the site not be reclaimed and made available for development consistent with the End Use Plan by the Applicant.
18. Berming shall be installed in phases around the perimeter of the site, beginning at the northwest corner and working easterly along the north side and then working southerly adjacent to residential use areas (generally consistent with the November/December, 2012 Potential Berm Improvement, Projected Reclamation Pile Location and Existing Berm/Proposed Reclamation Pile Section Plans). This berming process shall be evaluated at the yearly review, and is subject to modification based on the evaluation. Reclamation material may be 15 feet higher than the berm (max. 40 feet), and constructed as material is made available.
19. The design of the berms, existing and proposed, shall comply with standards set forth by the City of Shakopee's Design Criteria. Exceptions to these requirements may be granted by the City Engineer.
20. All final and permanent berms, existing and proposed, shall receive a minimum of six (6) inches of top soil. The top soil, whether salvaged or imported, shall meet the requirements of select top soil borrow as defined by MnDot's specification #3877.
21. The applicant shall comply with the conditions set forth in its National Pollutant and Discharge Elimination System (NPDES) permit.
22. The applicant will inspect, on a daily basis, all adjacent streets, sidewalks and trails for any off-site sediment attributable to the applicant's operation of the mine, and will conduct street sweeping as necessary or as directed by the City and/or Scott County.

WHEREAS, on January 14, 2013, Ms. Beverly Koehnen submitted an application of appeal of the Board of Adjustment and Appeals decision; and

NOW THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF SHAKOPEE, MINNESOTA, AS FOLLOWS:

The City Council adopts the following findings of fact:

Finding #1 After reviewing the evidence in the record, the City Council has concluded that with the conditions herein, the use will not be injurious to the use and enjoyment of other property in the vicinity.

Finding #2 The City Council finds that the amendment to the Permit, with the conditions herein, will not impede the normal and orderly development and improvement of surrounding property.

- Finding #3* Adequate utilities, access, drainage and other necessary facilities exist to serve the site.
- Finding # 4* The use, with the conditions herein, is consistent with the purposes of the Agricultural Preservation (AG) Zone and Mining Overlay (MIN) Zone.
- Finding #5* The Shakopee Board of Adjustment and Appeals did not commit any errors or omissions in its January 3, 2013 approval of the amendment to the Conditional Use Permit (CUP) and Mineral Extraction and Land Rehabilitation Permit originally granted by Resolution No. CC-376.

BE IT FURTHER RESOLVED BY THE CITY COUNCIL OF THE CITY OF SHAKOPEE, MINNESOTA, AS FOLLOWS:

That the approval by the Board of Adjustment and Appeals of the Conditional Use Permit Resolution PC No. 12-045 (amendment to the Conditional Use Permit (CUP) and Mineral Extraction and Land Rehabilitation Permit originally granted by Resolution No. CC-376) is hereby **UPHELD.**

Adopted by the City Council of the City of Shakopee, Minnesota this 5th day of February, 2013.



Mayor, City of Shakopee

ATTEST:



Julie Linnihan, City Clerk

PREPARED BY:
City of Shakopee
129 Holmes Street South
Shakopee, MN 55379

CERTIFICATION OF RESOLUTION NO. 7272

I, Julie Linnihan, City Clerk for the City of Shakopee, do hereby certify that the attached is a true and correct copy of Resolution No. 7272, presented to and adopted by the City Council of the City of Shakopee at a duly authorized meeting thereof held on the 5th day of February, 2013, as shown by minutes of the meeting in my possession.

Dated this 13th day of February, 2013.

Julie A. Linnihan
Julie Linnihan
City Clerk

SEAL