

# LAWRENCE COUNTY PLANNING & ZONING BOARD

## MINUTES OF OCTOBER 1, 2020 SPECIAL MEETING

The special meeting of the Lawrence County Planning & Zoning Board was called to order by Chairman Rick Tysdal on Thursday, October 1, 2020, at 10:30 A.M. in The Lodge at Deadwood, 100 Pine Crest Lane, Deadwood, SD. During the pendency of the Coronavirus pandemic, remote public participation at meetings is being facilitated using GoToMeeting.

Present: Rick Tysdal, Daryl Johnson, Amy Allen, Julie Stone, Kelly Fuller, Mike Whalen, and Travis Schenk

Absent: None.

All motions passed by a unanimous vote of all members present unless otherwise noted.

Moved-Seconded (Fuller-Schenk) to approve the Agenda. Motion Carried.

Declaration of Conflicts of Interest: Stone & Allen

**PUBLIC HEARING** ~ Conditional Use Permit #453 **APPLICANT:** VMC LLC; G & L Properties now known as Limestone LLC and the Ayes Family Trust. Atlas Development (Paul Bradsky), Ms. Nancy Bradsky, Mr. Keith Smit Smith, and Louise Chafee Revocable Trust. **LEGAL:** As shown in application **PARCEL ID:** Numerous Parcels (See Application Packet) **VICINITY LOCATION:** Off Wharf Mine Road/Spearfish Canyon Area **SUMMARY:** Large Scale Mineral Mining Conditional Use Permit **ACREAGE:** Multiple

[https://www.lawrence.sd.us/DocumentCenter/View/930/VMC-CUP-Application-\\_revised-09042020](https://www.lawrence.sd.us/DocumentCenter/View/930/VMC-CUP-Application-_revised-09042020)

Proponents:

John Frederickson, Attorney in Deadwood SD, a representative for VMC LLC. Made introductions of the applicants. Mark Nelson, Certified Professional Geologist, Dana Bender, the permit coordinator for VMC, and Dr. Chuck Kliche, Professor of Engineering and Mining Mgmt. at the School of Mines & Technology, Rapid City. Nelson, 12445 Misty Mountain Rd., a resident of Lawrence County, presented the Deadwood Standard 2020 proposal. He gave history on the 2012 proposal and the changes that have been made to the current request. Such as no onsite processing, fitting into the natural environment, and the Life of Mine Permit affirmed by the SD Supreme Court for SD Mining Permit #416. The mine would be 14 small pits, each ½ to 5.2 acres with a 17-68 ft.depth. There would be 870,000 tons of rock removed and then backfill and overburden used for reclamation to current land use. Highway gravel trucks would be used to remove rock for processing from the mining site. He stated that this mine would be 1/50th the size of the Coeur Wharf Mine. The start would be within 12 months and will take two years; there will be a stockpile of topsoil and overburden with concurrent reclamation. Mining would be 1-2 pits at a time. Options for a processing site are being assessed. The nearest neighbor is over 1000 ft. away from the boundary. Socio/Economic study states no measurable effect on the current population base. Access is by Forest Service special permits and easements with Wharf and neighbors.

Opponents:

# LAWRENCE COUNTY PLANNING & ZONING BOARD

## MINUTES OF OCTOBER 1, 2020 SPECIAL MEETING

Cindy Knapp, 21464 Hanna Rd, President of the Spearfish Canyon Owners Association. The Association's main objective is to protect Spearfish Creek and Canyon. Knapp referred to a report on water contamination that SCOA has submitted to the P&Z Board to consider. They are asking for a hydrological study to be done at VMC LLC's expense. They are asking for pit designs to be made available. There is concern about the pit depths, eventual expansion and the quality of the ore to be excavated. They would like to see the processing site to be secured before mining. SCOA has concerns about large trucks using main highways in the Canyon and suggested that this may inhibit tourism in the area. She mentioned the violations of the 2017 exploration permit by VMC LLC.

Mike Kain, 20977 Hickok Pl, asked several questions about the slide show presented and had questions about the applicant's claims. He asked for clarification of several items.

Jim Nelson has a cabin in Spearfish Canyon. He would like to see an independent hydrology study with groundwater, flows, and drainage information. He has a concern about the quality of the drinking water from Spearfish Creek.

Shane Malsam, neighbor to the proposed mine site, shared that the easement cited in the introduction is through his property and said that this easement expired in 1991. He is questioning trust in the mining company.

Bob Freyensee, 21012 Calamity Gulch, questioned the type of blasting method to be used. He would like to know where the processing will be and if it will be OK'd by a regulating agency before permitting and which agency it will be.

Carol Hayse, Nemo, urged the County to look into whether application changes nullify the Permit #416. She also mentioned the violations of drilling to 800ft, near the Canyon floor in exploration. This leads her to question whether that is for shallow or massive mining. The SD Supreme Court only commented on ownership, not on the substance of the mining proposal.

Bill Knight, By GoToMeeting, 1212 Columbus, Rapid City, introduced himself as a Geological Scientist. He is concerned about geological science changes since 1984 and feels it should be reevaluated with today's standards. He wanted to know more about off-site processing and the cost of reclamation. He would like to see this cost paid in advance of permitting. He would like to see the environmental impact report and the cost/benefit analysis. What are the process for contamination spills and the process for clean up?

Rick Bell, By Go To meeting, 1206 Clark, Rapid City, Environmental Engineer, opposes CUP #453. Referring to the application, he explained that the pit depths are considered deep and opposed that they are presented as shallow pits. He is concerned about the number of trucks and the number of years claimed in the application does not match the tonnage of mined material claimed. Bell said that the ore removed will leave holes at the site and that more backfill should be brought in and that there should be a sulfite analysis program implemented. Bell has a concern about acid mine drainage and reminded that nothing in mining has zero risks. He urged the Board to deny the CUP.

Clover, By GoToMeeting, Rapid City, told the Board that Fires in the West are due to the native peoples not being able to use traditional fire safety practices on the lands and that the Lakota people have not ceded the land in question, which is held in a Trust. She pleaded the Board not to support the CUP.

# LAWRENCE COUNTY PLANNING & ZONING BOARD

## MINUTES OF OCTOBER 1, 2020 SPECIAL MEETING

Patrisse Vasek, By GoToMeeting, Student at Oglala Lakota College, studying Geology, Hydrology and Chemistry, was concerned about a repeat of leaching violations and how they will be handled. She asked if there will be a botanical survey of the top soil before removing them.

Break: 12:02 PM

Proponents:

Cheryl Bennet-21328 Park Rd. stated that she is a former employee of the US Forest Service and acknowledged water issues in the past but sees this as a good economic opportunity for the area. She added that Mark Nelson has a good record in Environmental Leadership. She sees issues such as septic and natural disasters contribute to water contamination, as does mining.

Gypsy, Moorcroft WY, grew up in Lead, voiced support for the mine and bringing progress and jobs to the area.

Mark Nelson mentioned that a water quality network is in place at the mine site. As he answered some of the prior questions, he said that they would be Permit #416 both approves and limits mining. There are limits on how deep and wide the pits can be. If they wanted to beyond what is in the permit #416, they must amend this permit or get a new one. He added that they have no intention of running trucks in the Canyon. For the mining to run 24/7, they would have to prove that there would be no noise issues in the Canyon. He shared that the DENR does the bond calculation and that they do not have that yet. The bond that they have now included groundwater and wells. The new bond will be taken care of before disturbance begins. He mentioned that there is natural degradation cyanide in the creek from Wharf mining. Addressing Jim Nelson's concerns about water quality in Spearfish Creek and cold- water fishing; he noted that there are strict rules for acid rock drainage. Addressing Rick Bell's concerns, he said that the overall acreage is 120 acres and the pits themselves are 31 acres. 416 does not allow expansion.

Dr. Chuck Kliche, retired from SM&T, a Professor of Engineering & Applied Rock Mechanics (blasting & effects), did the baseline studies from 2012 and has done sound monitoring in this area. In the past 6 inch diameter holes with 500 lbs. explosive were used. Modern techniques use electronics or shock tubes. In 2014 2-3- inch diameter holes were used with 20 lbs. of explosive. He said the vibration study did not detect anything measurable down in the Canyon since sound carries upward and very little noise detected at the rim. He noted that the sound is like distant gunfire and goes off like a string of fireworks.

Opponents:

Patrisse Vasek, By GoToMeeting, asked about how long the topsoil will be sitting before reclamation. She had several concerns about water, waste management and EPA reclamation codes.

Bill Knight, By GoToMeeting, has concerns about well monitoring in other areas besides the ones near the site. He stated that we do not need more mines in SD in this day and age. He would like to see the science behind the expected yield.

Lewie Sternhagen, 10636 Wildlife Lane, neighbor, shared his concern about loose and falling rock on his property due to mining. He has concern for the noise and air quality and would like to know the actual decibel levels that will result from blasting. He mentioned the history of

# LAWRENCE COUNTY PLANNING & ZONING BOARD

## MINUTES OF OCTOBER 1, 2020 SPECIAL MEETING

mining in the Hills and what consequences we deal with now.

Julie, Rapid City, a regular visitor of Spearfish Canyon, questioned why the exploration drilling was so deep, to the Deadwood Formation. She stated that the Wharf mine claimed that it would be a 4-5- year project and are still expanding. This company did not feel bound by Permit #416 when drilling for exploration and questions whether they will feel bound as an active mine. She reminded the Board of the Gilt Edge Mine and Richmond Hill violations. She asked that those be considered.

Carol Hayse said that mining in the Hills is increasing and that it spoils the environment. In Lawrence County, mining does not supply many economic benefits, but recreation and tourism do. She called for the Board to protect agriculture industries and tourism, and environment economies.

Amber Vogt, Planning and Zoning Admin. highlighted the packet available (see agenda link) and submittals from different individuals and groups.

Tonya Stands- Oglala Sioux Tribal Member, advocating for Native ceremonies and culture. She read the 1978 Religious Freedom Act and discussed protecting Native Americans' rights access to sacred sites and objects. She stated that blowing up rocks and mountains is destruction to these sites. Referring to the US Supreme Court ruling in the US vs. Sioux Nation, she indicated that the Black Hills were taken from Native Americans by schemes and frauds and that state and local governments are obligated to protect and defend the rights of religious freedom. The contaminants of the land are like contamination of the bodies of Native people. She asked the Board to deny the CUP.

Jim Nelson read from the State water quality rules regarding heavy metals. He was stating that a person may not discharge or cause discharge into surface water.

Bill Knight, By GoToMeeting, added that he supports Tonya's comments and believes that society needs to atone for mistakes made.

Don Kelley, By GoToMeeting, Nemo Resident, acknowledged the good intentions of the applicant and advocates but reminded the Board of mining's history in Lawrence County. He mentioned the costs of the Brohm Mine Superfund Site and soil and water pollution and that assurances were given before it was permitted that this would not happen. He agreed with the P&Z staff report and asked that the CUP not be granted.

Patrice, By GoToMeeting, reminded of the geologic and biodiversity involved that need protection. She asked if the Cost/Benefit Analysis is worth it.

Closed Hearing: 1:09 PM

Board Discussion:

Tysdal asked if the processing site will be in Lawrence County and if it is in city limits, would there be any problems with the chemicals used. Nelson said that they have not made that determination about the processing site but would like to be in LC and chemicals would be under the same regulation as other chemicals such as gasoline. Schenk asked if a processing plant would be up and running in 12 mos. Nelson replied that it would still be in process. Johnson explained that he was on the 2012 County Commission and that the applicant was to go to the DENR and have them bring a recommendation from the State to the Commissioners, which has not happened yet. He said that with the LC Superfund Sites, the bonds fall short,

LAWRENCE COUNTY PLANNING & ZONING BOARD  
MINUTES OF OCTOBER 1, 2020 SPECIAL MEETING

considerably. He noted that Dr. Kliche's information is different now than in 2012. He mentioned that he still has concerns about the noise of backup alarms on equipment. Nelson responded that the State went through the process in 1984. In respect to the bonding risk, there has been no pyrite found in this mining exploration as in the Gilt Edge Mine to cause the same problems. Johnson and Outka discussed the bond and that it is held with the State only. Fuller referred to page 36 of the application and stated that the mill at Homestake is not processing, which invalidates Permit #416. He also would like clarification of the easement with Mr. Malsam. Fredrickson shared that #416 allows off-site and that processing will be identified before mining begins. He stated the easement was an irrevocable easement from the previous owner and is recorded. Outka asked if CUP was approved today; can they start mining tomorrow and about the State's position on designation a haul road. Fredrickson said they could begin to develop but not extract. Nelson replied that Roberta Hudson with the DENR reviewed a submittal made to the State last year to widen the haul road and said that the request would trigger a new permit for widening the road but not if improvements were made to the road. Outka questioned what has been done in the eight years since 2012 to secure the state permit. Nelson repeated that the SD Supreme Court did validate Permit #416. Johnson asked again about whether moving the processing site invalidates the permit. Tysdal stated that there are too many questions left unanswered. He felt that a new state permit might protect the environment better than the old one. Whalen asked if the Board can apply conditions that are greater than the State permit. Outka explained the limits on that.

Moved-Seconded (Schenk-Fuller) motion Deny concurring with the Staff Report/Recommendation and lack of information on the processing site.

More Discussion: Whalen sees reasons to permit and not to permit. Johnson asked what the next steps will be. Vogt and Outka said that she would take the recommendation to the County Commission and a Public Hearing will be set there.

Roll call vote: Aye: 5- Whalen, Tysdal, Fuller, Schenk, Johnson. Nay: 0. Abstained: 2- Stone & Allen. Motion Carried.

**Items from Planning & Zoning Board Members**

None.

The meeting adjourned at 1:47 PM.

APPROVED: \_\_\_\_\_ Date: \_\_\_\_\_

Rick Tysdal, CHAIR

ATTEST: \_\_\_\_\_ Date: \_\_\_\_\_

Kelly Fuller, SECRETARY