

**City of Columbus
Regular Planning Commission Meeting
February 19, 2014**

The February 19, 2014 regular meeting of the Planning Commission for the City of Columbus was called to order at 7:01 p.m. by Chair Barbara Hvass at the City Hall. Present were Commission members Andy Anderson, Mark Daly, Pam Wolowski, Jesse Preiner, Jody Krebs, and Garth Sternberg; City Administrator Elizabeth Mursko, Planner Dean Johnson, and Recording Secretary Karen Boland.

Also in attendance were City Council members Denny Peterson, Jeff Duraine, Bill Krebs, and Mayor Dave Povolny; Wayne and Pat Krueger, Emmy and Rick Robinson, Myron Organ, Steve Wagamon, Kris King, Paul Peskar, Richard Mike, Duane Guckeen, Verlo and Kay Larson, Linda Myer, Chad and Sheila Maassen, Joan Schliesing, Ceil Neihart, Bob Vollhaber, Curt and Cathy Glick Nelson, Kathy Haluptzok, Diane Denzer, and Dave Denzer.

AGENDA APPROVAL

Motion by Krebs to approve the Agenda as presented. Second by Anderson. Motion carried.

APPROVAL - REGULAR PC MEETING MINUTES OF FEBRUARY 5, 2014

Motion by Anderson to approve the minutes of the February 5, 2014 regular Planning Commission meeting as written. Second by Krebs. Motion carried.

PUBLIC HEARINGS – FOREST LAKE CONTRACTING, INC., REVOCATION OF CUP AND INTERIM USE PERMIT APPLICATION (PC-14-101)

At this time a public hearing was held to receive testimony regarding the request of Forest Lake Contracting, Inc. to revoke the Conditional Use Permit originally issued to Leroy Haluptzok d.b.a. John's Black Dirt, in exchange for an Interim Use Permit issued to Forest Lake Contracting, Inc. Separate minutes are prepared.

FOREST LAKE CONTRACTING, INC., CUP REVOCATION/IUP APPLICATION DISCUSSION

There was discussion about the revocation process for a CUP. PC members looked at the existing CUP from 1993, which lists ten conditions. The slopes on the side walls in the excavation site were discussed. Mursko said the City Engineer has visited the site. Any recommendation to revoke the CUP would need to be supported with findings that there is non-compliance.

PC members discussed the implications of doing nothing. Under the current CUP the excavation can continue indefinitely, the CUP is transferable if the land is sold, Saturday hauling is allowed, and there are no restrictions on roads used for hauling.

Discussion took place about an end-plan for the property. Vollhaber said Forest Lake Contracting intends to create one large body of water from the five eastern basins on the land in question. There will be some peninsulas, and wetlands will be created around the edges of the pond. That has already been approved in their wetland mitigation plan. The intent of Forest Lake

Contracting is to restore the property allowing for development of two residential lots on the remaining upland.

PC members discussed concerns that have been raised, and debated the best ways to address safety, traffic and noise issues during operation; while allowing enough operation activity to complete the project as quickly as possible. They concentrated on specific conditions and determined to recommend a period of three years for the IUP, rather than the requested five years. Monday-Friday hours of operation were kept as is in the current permit, but PC members recommend no operations on weekends or holidays. They also recommend a later start time, 8:30 a.m., for hauling on school days. In an effort to restrict traffic, while acknowledging the desire to get the project completed, PC members recommend allowing a maximum of 10 truckloads per hour on either access route, with a 20 mph voluntary speed limit for truck drivers. A recommendation is being made to allow a maximum of 1750 cubic yards of material to be removed from the property per day. PC members agreed that an appropriate financial surety amount should be determined with input from the County Engineer and Attorney.

Motion by Daly to forward to the City Council the request of Forest Lake Contracting, Inc. to revoke the Conditional Use Permit originally issued to Leroy Haluptzok d.b.a. John's Black Dirt, in exchange for an Interim Use Permit issued to Forest Lake Contracting, Inc. with a recommendation for approval, based on the findings of fact and conditions in the City Planner's memo dated February 14, 2014 with revisions to conditions #2, #4, #7, #8, #10, #18, #19, #20, and #25 as noted in underlined bold below; and a financial surety amount to be determined in conditions #15 and #29 below. Second by Wolowski. Motion carried.

Findings

- 1) Forest Lake Contracting, Inc. (hereafter the "Applicant") submitted an application, received by the City on December 31, 2013, for an Interim Use Permit (IUP) for mineral extraction on property described as part of the SW ¼ of the NW ¼ of Section 36, Township 33, Range 22 (hereafter the "Property"). The Property (approximately 36 acres) is owned by Kathryn Haluptzok.
- 2) The application was found to be complete.
- 3) The 60-day review period will end on March 1, 2014. The 120-day review period, if required, will end on April 30, 2014.
- 4) The Property is zoned RR Rural Residential.
- 5) City maps do not identify the property as being located within a Shoreland Area or Floodplain area. Any Floodplain determination for the site would not result in an impact to the Floodplain, as the flood storage area would be increased rather than decreased from excavations on the Property.
- 6) City records indicate the Property has been mined since at least 1973.
- 7) The former Columbus Town Board issued annual special use/excavation permits to John Haluptzok, then Leroy Haluptzok, dba John's Black Dirt between 1973 and 1981.
- 8) The annual excavation permit was converted to a Conditional Use Permit (CUP) in 1982.
- 9) In 1993, the CUP was amended for Derek Haluptzok, dba John's Black Dirt, and included 10 conditions.
- 10) Chapter 9 of the City Code currently allows excavation and extraction in all zoning districts by IUP.

- 11) The Applicant began excavating and extracting sand from the Property in 2010.
- 12) Wetland delineations were performed on the Property in 2010.
- 13) The Applicant proposes to continue mining the Property as authorized in an IUP.
- 14) The proposed end use of the Property will be residential.
- 15) The proposed IUP will be considered for the Property in exchange for revocation of the CUP on all contiguous properties owned by Kathryn Haluptzok.
- 16) A wetland mitigation plan for the Property was approved on November 14, 2012.
- 17) An appropriations permit for continued dewatering during extraction by the Applicant was issued by the Minnesota Department of Natural Resources on February 14, 2013.
- 18) A monitoring well, required in the appropriations permit, has been installed.
- 19) The Applicant applied for an IUP on April 18, 2013 to replace the CUP issued to John's Black Dirt.
- 20) Access to the Property had customarily been from the north on 189th Avenue.
- 21) In 2013, the City of Wyoming posted its portion of 189th Avenue as a 5-ton road, precluding the practical use of 189th Avenue as a local haul route.
- 22) The Applicant withdrew the April 18, 2013 IUP application.
- 23) On September 24, 2013, the City Council entered into a Memorandum of Understanding (hereafter "MOU") with the Applicant to allow for temporary mining on the Property and temporary hauling on Vassar Street, Tulane Street, Notre Dame Street, 181st Avenue, 186th Avenue, and County roads.
- 24) The MOU was effective until December 31, 2013, to allow the Applicant time to reapply for an IUP.
- 25) The Applicant proposes to remove a maximum of 340,000 cubic yards of material from the Property during a proposed 5-year permit term.
- 26) The average annual removal of material during the proposed 5-year life of the facility is estimated at 68,000 cubic yards per year.
- 27) An 8-month operation for removing 68,000 cubic yards of material per year from the site on week days only would result in an average daily removal of approximately 425 cubic yards, which is an average of approximately 24 truckloads (48 truck trips) per day, based on an average 17.5 cubic yard load.
- 28) Materials for site reclamation may be backhauled to the Property. A minimum of 4 inches of topsoil will be placed on upland areas for final restoration.
- 29) The Applicant has indicated the maximum amount of material to be removed on any day would be 3500 cubic yards. This would be equal to 200 truckloads (400 truck trips) per day and an average of 20 truckloads per hour during a 10-hour day.
- 30) The Applicant has indicated the maximum peak hour truck traffic would not exceed 20 truckloads or 40 truck trips per hour.
- 31) Equipment used and routinely stored on the Property includes hydraulic excavators, dozers, front end loaders, motor graders, sweepers, dewatering pumps, and a water truck. Dump trucks are not stored on the Property.
- 32) Maximum material stockpile heights are proposed to be 15 feet. An estimated maximum of 20,000 cubic yards of material will be stockpiled at any given time on the Property.
- 33) The Applicant has proposed to conduct mining on the Property from 7:00 am to 6:00 pm Monday through Friday and from 8:00 am to 5:00 pm on Saturdays.
- 34) The Applicant proposes hauling of materials on the Property from 7:00 am to 5:30 pm Monday through Friday and from 8:00 am to 4:30 pm on Saturdays.

- 35) Saturday hauling would be limited to 10 days per year.
- 36) No mining or hauling would be allowed on Sundays or holidays.
- 37) The current CUP issued for John's Black Dirt allows excavation and hauling between the hours of 8:00 am to 5:30 pm Monday through Friday and hauling only from 8:00 am to 3:00 pm on Saturdays. The current CUP also allows electric (well) pumps to operate anytime, if they cannot be heard beyond the Property.
- 38) Section 9-105 of the City Code limits the hours of operation for "...trucks, vehicles, machinery, heavy equipment, pumps, engines, and other noise generating devices or machines..." from 7:00 am to 5:30 pm Monday through Friday.
- 39) Fugitive dust from active mine areas, from material stockpiles, and from haul routes will be controlled by watering.
- 40) Noise from the operation of the facility will be required to meet noise standards established by the Minnesota Pollution Control Agency.
- 41) The Applicant has requested a 5-year IUP to allow the removal of the remaining estimated volume of material on the site.
- 42) Section 7A-734 of the City Code identifies the term of an IUP in the Rural Residential District to be valid up to five years.
- 43) Section 7A-530 of the City Code allows for the renewal of an IUP; however, there are no vested rights in the issuance of an IUP that require a renewal by the City.
- 44) The Planning Commission toured the Property on June 5, 2013.
- 45) The City Planner has submitted a memo on the proposed IUP with draft Findings and Conditions, dated February 12, 2014.
- 46) The Planning Commission held a public hearing on February 19, 2014 to consider the proposed IUP.
- 47) The Planning Commission also held a public hearing on February 19, 2014 to consider the revocation of the mineral extraction CUP issued to John's Black Dirt in 1982 and amended in 1993.

Conditions

- 1) The Applicant shall, at all times during the life of this IUP, maintain the Property in compliance with the City Code, state and federal law and with the other conditions of the Permit. Noncompliance may result in modification, suspension, or revocation of this Permit or in prosecution as the law may provide.
- 2) The Applicant is hereby authorized to mine a maximum of **340,000** cubic yards of material from the land.
- 3) The legal description for the property for which this Permit is issued and where mining is permitted is limited to the 36-acre Property located in the SW ¼ of the NW ¼ of Section 36, Township 33, Range 22.
- 4) The Permit shall expire **three** years from the date of its issuance by the City Council.
- 5) The Applicant shall notify the City Administrator in advance of any truck hauling activity, when such hauling has been preceded by a minimum of three weekdays of no truck hauling activity. The Applicant shall also inform the City Administrator of the estimated duration of truck hauling.
- 6) Section 7A-530 of the City Code allows for the renewal of an IUP; however, there are no vested rights in the issuance of this IUP that require a renewal by the City.

- 7) The hours of operation during which trucks, vehicles, machinery, heavy equipment, engines, and other noise generating devices or machines may be used are restricted and shall be no earlier than **8:00** am and no later than **5:30** pm, Monday through Friday.
- 8) Hauling on school days during bussing hours shall be restricted as follows: **8:30 am to 5:30 pm.**
- 9) The use of electric pumps for dewatering is not restricted by any hours of operation.
- 10) There shall be no operations on Saturdays, Sundays or holidays.**
- 11) Dust control measures shall be employed at all times during the life of this Permit on the Property, on exposed stockpiles, and on any gravel roads used under this Permit. Mud and dirt from the Property shall be promptly cleaned from all roads.
- 12) Erosion and sedimentation control shall be consistent with City standards and upon recommendation of the City Engineer.
- 13) The Applicant will install any traffic control signs (e.g. "Trucks Hauling") required by the City.
- 14) The Applicant will abide by all normal and seasonal axle weight restrictions on authorized haul routes.
- 15) The Applicant shall provide a \$_____ financial surety, in a form acceptable to the City Attorney, for potential damages to City streets.
- 16) Suspension of hauling may be required by the City due to weather or road conditions.
- 17) Haul routes within the City shall be limited to:
 - a) "Southerly Access" - Vassar Street, Tulane Street, Notre Dame Street (north of Broadway Avenue), 181st Avenue, 186th Avenue, and County roads. The hauling pattern shall be one-way on Vassar Street, Tulane Street, Notre Dame Street, 181st Avenue, and 186th Avenue; so that, no truck entering the Property uses the same route to exit the Property. Trucks shall not pass each other in the same or opposite direction on Vassar Street, Tulane Street, Notre Dame Street, 181st Avenue, or 186th Avenue.
 - b) "Northerly Access" - 189th Avenue, 250th Avenue, Kettle River Boulevard and County roads.
- 18) The maximum number of trucks accessing or exiting the Property from the Southerly Access or Northerly Access shall not exceed **ten** truckloads per hour on either access route.
- 19) The maximum amount of material removed from the Property shall not exceed **1750** cubic yards per day.
- 20) The Applicant shall impose on its truck drivers a voluntary speed limit of **20** mph on all local streets.
- 21) The Applicant shall be required to obtain and maintain all other permits and actions required for the operation, including but not limited to any future wetland delineations, any wetland permitting, any floodplain delineations and permitting, any Anoka County licensing, additional water appropriations permitting, NPDES permitting, and any other agency permitting.
- 22) Facility operations shall be consistent with the IUP application and the supporting documentation submitted to the City on December 31, 2013, attached hereto by reference, except as modified in this IUP.
- 23) The Applicant shall be responsible for providing potable water to and the correction to or replacement of any adjacent private well determined by the Minnesota Department of Natural to be negatively impacted by water pumping on the Property.

- 24) The Applicant shall abandon all wells on the Property according to State standards upon completion of mining.
- 25) The Applicant shall respond to all calls from neighbors or the City regarding facility complaints within 48 hours of receipt of the calls. The Applicant shall record all complaints and the proposed resolution to complaints and shall furnish such record to the City on a monthly basis.
- 26) Final site restoration and wetland mitigation shall be completed within 12 months of final site extraction.
- 27) A minimum of four inches of topsoil shall be required as cover over all upland areas on the Property, except wetland areas shall be restored with materials and seeding consistent with the approved wetland mitigation plan. All restored upland areas shall be seeded and maintained to establish permanent turf.
- 28) Only clean fill and topsoil may be back hauled to the Property for site restoration. Back hauling traffic shall be included in the maximum number of truck trips allowed per day.
- 29) The Applicant shall provide a \$ _____ financial surety, in a form satisfactory to the City Attorney, to guarantee wetland mitigation and site restoration.
- 30) The maximum height of stockpiles shall be fifteen feet and no more than 20,000 cubic yards of material shall be stockpiled at any given time.
- 31) Any material stockpile remaining on the Property for more than ten days without disturbance or removal shall be seeded and mulched.
- 32) Weeds shall be controlled on the Property at all times.
- 33) Litter and debris shall be cleaned from the Property on a regular basis.
- 34) Portable toilets shall be provided and serviced regularly at all times during site operations and shall be screened from visibility by neighboring residences.
- 35) Hydraulic excavators, dozers, front end loaders, motor graders, sweepers, dewatering pumps, and a water truck are allowed to be kept on the Property. No other equipment, vehicles or materials shall be stored on the Property.
- 36) The potential end use of the Property for residential use is subject to subsequent plan submission, review and approval in accordance with Chapter 8 of the City Code.
- 37) The Applicant shall allow access to the mining facility by the City's representatives, or other local, state or federal officials and agents, upon reasonable notice and in the company of a competent site representative, to inspect permitted facilities and site conditions, at intervals chosen by the City.
- 38) The Applicant shall defend and indemnify and hold harmless the City and its agents, officers, employees, against any and all claims, damages, losses, and expenses, including attorney fees, arising out of or resulting from the issuance of the IUP or the enforcement thereof.
- 39) The City may rescind this IUP if, after thirty (30) days following written notice of violation, the Applicant has not corrected the violation and then following a public hearing wherein the City finds a violation of the terms of this IUP. This IUP will also terminate if the Applicant does not commence operations under this IUP within six months, or if any provision of the City Code causes a termination of the IUP.
- 40) The Applicant shall reimburse the City for all out of pocket expenses incurred in the IUP application review and approval, facility inspections and enforcement of this IUP and local ordinances, including planning, engineering, and attorney's fees.

- 41) Approval of the IUP is conditioned upon the revocation of the 1993 mineral extraction CUP issued to John's Black Dirt, affecting all property owned by Kathryn Haluptzok in Sections 35 and 36, Township 33, Range 22.
- 42) The Applicant shall be required to enter into a development contract or performance agreement, as may be recommended by the City Attorney.

Motion by Wolowski to recommend to the City Council consideration of revocation of the existing Conditional Use Permit if the Interim Use Permit application is not approved. Second by Daly. Votes as follows: Sternberg – nay; Krebs – nay; Preiner – nay; Wolowski – aye; Daly – aye; Anderson – aye; Hvass – aye. Motion carried.

ORGANIZATIONAL MEETING

• Election of Chairperson

Anderson nominated Hvass as PC Chairperson based on her 24 years of experience on the Planning Commission. Wolowski seconded the nomination.

There were no other nominations.

Votes as follows: Sternberg – aye; Krebs – abstain; Preiner – aye; Wolowski – aye; Daly – aye; Anderson – aye.

Hvass was elected as PC Chairperson, and accepted.

PUBLIC OPEN FORUM

City Council member Bill Krebs said that he felt the IAAI application was a huge missed opportunity. He commended PC members on their hard work on the issue.

Sternberg suggested that PC members put it on their goal list to look at current ordinance language allowing mineral extraction as a use in a rural residential area, and determine if changes should be made.

Planner Johnson pointed out that nothing in the CUP restricts the mining to black dirt. He also told PC members that revoking an existing CUP is extremely complex and Cities rarely prevail. Mursko reiterated that she believes it is key to give residents an end plan.

Myron Organ spoke and there was discussion about the role of the CC in election of the PC Chairperson.

CITY ADMINISTRATOR'S REPORT

Mursko had nothing to report.

PLANNING COMMISSION MEMBERS' REPORT

STERNBERG COMMENT

Sternberg said that the CC would like PC members presenting at Council meetings to elaborate more. He was liaison at the last CC meeting, where IAAI was discussed, and the CC told him they want to hear more of the PC discussion that takes place with applications, and the concerns of the people attending. This is what they are referring to as far as “deliverables.”

PREINER COMMENT

Preiner feels that the CC members have access to all the discussion by way of attending the meetings, talking to PC members, reading the PC minutes provided to them, or listening to the tape.

With regard to John’s Black Dirt, Preiner feels they have been charged with trying to bring about a good conclusion to a difficult situation. With the current CUP they can mine indefinitely. Switching to the IUP is an attempt to be able to set conditions and wrap the operation up.

WOLOWSKI COMMENT

Wolowski agreed that John’s Black Dirt is unacceptable the way it is, and there needs to be an end for the people in the neighborhood.

ANDERSON COMMENT

Anderson said Chapter 9 of the City Code currently allows excavation and extraction in all zoning districts by IUP. He thinks discussion of that language should be on the PC’s goal list, as Sternberg suggested.

ATTENDANCE - NEXT CC MEETING

Wolowski is scheduled to attend the City Council meeting on February 26, 2014.

Motion by Preiner to adjourn. Motion carried.

Meeting adjourned at 10:22 p.m.

Respectfully Submitted:

Karen Boland, Recording Secretary