

City of Columbus
Public Hearing – Forest Lake Contracting, Inc. Revocation of CUP
and IUP Application (PC-14-101)
February 19, 2014

The February 19, 2014 Public Hearing 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. was called to order at 7:03 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 member 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, Pete Neihart, Bob Vollhaber, Curt and Cathy Glick Nelson, Kathy Haluptzok, Diane Denzer, and Dave Denzer.

Hvass: Next we will have a Public Hearing and discussion on John's Black Dirt Conditional Use Permit revocation and Forest Lake Contracting Interim Use Permit application, pages 1 to 25. And I will ask our recording secretary to read those two notices.

Notices were read at this time.

Hvass: Thank you. Who is here to present for the hearing? Who is the...someone for the applicants?

Vollhaber: Good evening. I'm Bob Vollhaber with Forest Lake Contracting.

Haluptzok: And I'm Kathy Haluptzok.

Hvass: Okay. Do we have addresses for both of you?

Vollhaber: Yes. It's on the form.

Haluptzok: Do you want my address?

Hvass: Yes.

Haluptzok: 5580 314th Street, and that would be Stacy, Minnesota.

Vollhaber: 14777 Lake Drive.

Hvass: Thank you. Okay. Who would like to present to tell us what we're looking at here?

Vollhaber: I'll do that. What we're doing here is very similar to the application we submitted last spring. The only real changes from what we submitted in the initial IUP of the spring of 2013, is we've down-sized the extent of the mining proposed. So, whereas before we had two parcels, Parcels 1 and 2, now we have reduced it only down to Parcel 1, which is the eastern parcel shown on the map. So the volume of dirt that we're proposing to mine is reduced from around 500-some thousand yards, down to 340,000 cubic yards. And also, another change on the application was, initially, we had asked for a ten-year duration and we reduced that down to five years now.

Hvass: We're not taking questions right now (directed to public). I see that we have a memorandum of understanding between Forest Lake Contracting regarding the use of the public streets. How is that changed from before?

Vollhaber: That was just a temporary agreement between Forest Lake Contracting and the City while we were...After we got shutdown from the City of Wyoming to go to the north, that was the temporary agreement between us and the City, and that's expired now.

Hvass: Planning Commission members, do you have questions of the applicant?

Anderson: I have a question. When the City of Wyoming changed their weight restrictions on the road, essentially preventing them from using those roads as access off the freeway, did you challenge that legally or do you intend to challenge it?

Vollhaber: We attempted to comply with their new ordinance, which was if you wanted to run trucks on their new 5-ton roads you were supposed to submit a permit for each truck you were going to propose to cross on their streets. So, we did that process. We submitted 12 applications to the City of Wyoming, and, they basically, ignored our requests. And then, further, they came up with a new ordinance, and, as you see now, they posted that 'No Commercial Traffic.' So they excluded us from running the trucks on there, even empty now, so...And we did not challenge that legally.

Anderson: Did, did you seek legal counsel regarding the legality of what they did?

Vollhaber: No, we did not.

Anderson: You did not? Okay. Thank you.

Hvass: Are there questions?

Preiner: Madam Chair, I have a question for our City Planner. Dean, could you give us a little bit of background please?

Johnson: In what area?

Preiner: Right off of Vassar. (laughter)

Hvass: The history or...?

Preiner: Uh, maybe regarding the memorandum of understanding.

Johnson: Well, I can...

Preiner: In my packet that's page 9.

Johnson: Yeah. I, I can certainly describe parts of it. I didn't have anything to do with its creation. Um, Mr. Vollhaber indicated that it was a temporary document and it was. It was entered into late September and it, it was intended to address the impasse of truck-haul routes which had traditionally been to the north on 189th Street. And, as a result of Wyoming's action, it was an attempt to moderate the activity within the mining area, having to use new hauling routes that hadn't been used in quite a number of years. So, the agreement had a number of findings that described the history or the chronology of the Haluptzok permit itself, which had begun back in the 1970s, was originally issued as an annual extraction permit, and so it was reviewed and renewed by the Town Board every year. And, in the '80s that got converted to a conditional use permit, and in the '90s that conditional use permit was modified another time, and that currently exists on the property as a legal mining permit. Certainly some of the conditions may have changed, but the current document did not identify particular haul routes. It did not identify quantities of material. It did not identify limits or maximum numbers of trucks or things of that magnitude. So, it was a fairly limited conditional use permit from a regulatory standpoint, but it is certainly a legal document that allows mining on the property indefinitely. A couple of years ago, when Forest Lake Contracting first entered the scene, if you will, and extracted material, it resulted in a level of activity that was certainly different from John's Black Dirt, which, over the years was more traditionally a black dirt operation, which might be a little more predictable. As I'd indicated in my memo to you, the nature of contracting work is that every contractor would like to have a pit that's convenient for local jobs. It keeps the price down and so on and so forth. Hauling material is one of the more expensive components of construction work. And that can be for buildings or for roads. And, the nature of that business is, you competitively bid for jobs, and, you may not have any for three months and then you get one or two local projects and, all of a sudden, the mine activity picks up. So, rather than having five or ten truckloads every day throughout the mining season, you may have no activity for three months, and then, rather intense activity for several weeks. So, there's been a little bit of change historically. When Forest Lake Contracting came in our, our position at the City kind of evolved into one of having discussions about using the interim use permit process to create some specific regulations to create a specific end-date, and eliminate the conditional use permit, provided that that negotiating process was satisfactory. Um, we can't change the nature of many things. There's not much black dirt, so there's not a prospect to, 'Why don't you just go back to removing black dirt?' It's basically gone. This is removing sand now. And, the removal is based upon the proximity of this facility to jobs in this community or close to it. It's how it works in any community. And, we've got a number of neighbors that are here this evening and obviously they haven't experienced any kind of trucking for some of them, since they've probably lived there. Others might remember that at one time there was some hauling on the local streets here. So, the purpose of the memorandum of understanding was to allow for some mining in this particular

period where we couldn't simply say, 'Sorry, you have to use this route which you customarily used, because that's not available. And, since there hasn't been a challenge on the legality of that, the only other alternative is to go south. And so, this memorandum of understanding basically said, 'We'll allow you to continue mining and hauling until the end of December', and that's when this document ended, which should give Forest Lake Contracting time to submit an application for the interim use permit. And, in the memorandum of understanding, it identified the different roadways that would have to be used, and it also required that there be a one-way routing of the vehicles. So they come in on one local street, and they exit or go out on the other local street, so that vehicles did not pass themselves. And, again, if you had five vehicles a day, I don't know that neighbors would be as upset as if you've got 200 trucks a day, and, that's, that's a difference. It's a practical dilemma. And, the purpose of the two hearings would be that if a permit is negotiated that becomes satisfactory in the minds of the community – and that's going to be, ultimately, your recommendation and the Council's action, taking into consideration the concerns of all the neighbors – then it would allow the City to eliminate the conditional use permit, which has essentially no regulations. So, that's the nature of the MOU itself, and that expired on December 31st, which is the day that Forest Lake Contracting submitted its application, so, we're in the next chapter. And, again, we've got two public hearings: one to consider how you might issue an interim use permit, and, if that is issued, then it would revoke the existing conditional use permit. Did that answer your question?

Hvass: Yes.

Preiner: Yes. Thank you.

Vollhaber: I would like to add one thing here, in that, we're here at the request of the City to go through this process. We feel we have a valid conditional use permit right now, that has very few restrictions. And, we're willing to work with the City on this, but it's got to be in terms that we can live with also, to continue our operations out there. So, we're trying to work with the City here to that end.

Krebs: Madam Chair, may I address the applicant?

Hvass: Please.

Krebs: Okay. Just going back quickly to the City of Wyoming and the roads, I guess I wasn't clear on the permits you weren't allowed? Or they weren't going to accept your permits on the trucks? Or...

Vollhaber: They never responded. We applied and they never responded. And then, furthermore, they came up with the new restriction of no commercial trucks whatsoever. So, apparently that excluded any truck over five tons, so...how that affects people that live in the City of Columbus, I...that's also a question for the City to view. Is it something that the City is gonna just accept?

Krebs: Okay. Um, in looking at the findings – I’m looking at number 14 -- it says the proposed end use of the property will be residential. I think the City Council was kind of looking at a timeline. What you thought with your production of work, when you thought you could complete and move into that timeline of resolution on the property to restore it back to that residential. And I think that’s what most of the residents here are looking for tonight, just so that you know that they’re going to come up here and say, ‘We want this done.’

Vollhaber: Sure.

Krebs: And...and so, that’s exactly what we’re looking for. We’re looking for an end time; we’re looking for something that we can propose back to the City Council to say, ‘They’re working on it.’ And something that the residents are going to say, ‘Yeah we understand they need some time.’ What can you offer here?

Vollhaber: Well, we are looking at... we’re committing to the five years here. We will, as we’re excavating, we’re going to be restoring the site, which includes providing some wetland mitigation work along with our excavation. And, uh, eventually it’s all going to be seeded and vegetated and moving into residential in five years from now.

Krebs: Okay. So what’s, what have you done since the last time you applied to now, as far as, since the City Council put that out there then, to now, as far as a timeline of something getting moved progressively to that way?

Vollhaber: Well, we were asking ten years, and now we’re...

Krebs: I meant actual work out on the property.

Vollhaber: Oh, this year we’ve mined nine days out there. We hauled about 12,000 cubic yards of sand.

Krebs: Has there been any sections of any of the properties been restored to the residential...?

Vollhaber: The residential areas, we’re not working those areas. We set those aside. Those have not been disturbed. The future lots?

Krebs: Right. Okay. But on this...Okay, go ahead Elizabeth.

Mursko: I was just going to say, I think what Commissioner Krebs is asking you is, you’re presenting an end plan here, and you have Lots 1 through 4 on the west side, and you have two lots on the east side. And really what she’s asking you is the timeframe. Now that you’re only working on one lot, what is your proposal for the west side? Are you going to actively market? Are you going to restore it? Are you going to take the fence down? What are you going to do between now and then in order to get to the end plan?

Vollhaber: You want to speak on the west?

Haluptzok: Well, on the west side, right now, as you all know, I lost my husband, and I'm not planning on doing anything right at the moment. So, I guess, that might just sit as a piece of land, 'til I can either afford to or have a developer come in and develop it and work out plans at that time. Other than that, that parcel is just going to sit still for awhile, until I can sell it or, you know, get somebody to properly do the work then. I can't do it myself, so...

Krebs: So at this time, you don't have a timeline, is that right?

Haluptzok: For my...? That side? Yeah. I mean, as far as excavating on the west side, no.

Krebs: Okay. All right.

Wolowski: Madam Chair?

Hvass: Yes?

Wolowski: Can I address the applicant?

Hvass: Go ahead.

Wolowski: I was wondering just why did you decide to just go down to the one side, because when we were here last year, it was you were going to mine both sides? What was the decision behind that?

Vollhaber: It was kind of the direction of the City. It was, obviously it was a lot of opposition.

Wolowski: Okay.

Vollhaber: And, um, if we were to reduce our timeframe to five years, realistically, we're not going to be able to get both sides mined out in five years. Or, the chances are very slim. So, it was our decision to try to lessen the impact on the neighborhood. And so, we'll give up that other section.

Wolowski: So it was your compromise on this?

Vollhaber: Yes.

Wolowski: Okay. Thank you.

Preiner: When you're finished with Parcel number 1 on the east side, how many lots would you have?

Vollhaber: It looks like there's only going to be two lots, building sites available. One will be up near where it says Lot 2?

Preiner: Yeah.

Vollhaber: There's an existing high ridge there, that hasn't been disturbed. And then the other potential spot would be on the corner of Vassar and 186th. Right on Vassar.

Preiner: Thank you.

Hvass: Does it look like there are going to be jobs this year where you're going to need to do this mining, or are you just speculating?

Vollhaber: It's all crystal ball right now. A lot of the public work doesn't get publicly bid until March, April, May. I'm not aware of any big projects in the immediate area for this year. Of course there is, you know, coming up, the bridge on 97, there's...that's in the design stages apparently now. I'm not sure what that timeframe is. And, of course, a lot of it would go to, possibly development too. So, if the building and private starts building in Columbus and in the other areas here, some of the dirt could go there too. So, hopefully the economy keeps growing. But like the Planner said, there's times when we don't, we don't truck much. When you look at this last year, we could've hauled all year, but the...all we had a use for was 12,000 cubic yards. So, that could happen again this year or it could be 100,000 yards. It just depends on what's happening in the local area here.

Hvass: Are there more questions? Mark?

Daly: I have one question for you. Uh, last year what was the maximum amount of trucks you had in one day? I see right here that you could have up to 20 truckloads per hour in a ten-day period, at maximum. What was the maximum you ran last year when you had that short burst? I think we're going to hear from the residents in the area, so I want to compare what you might need to what you had last year.

Vollhaber: We were around 7 or 8 trucks per hour. So, around 75 trucks in a ten-hour day.

Daly: Okay. Thank you.

Mursko: Madam Chair, I think for the audience too, I think when we talk about trucks and round trips, I think if we all decide we're going to use certain terms, so everyone knows what a truck versus a trip kind of thing, because it's a pretty educational process, so, why don't you just go over briefly what the difference is. 'Cause I know that when we do averaging and everything else, it's trucks, not trips, and trips are roundtrips...

Vollhaber: Yeah, when I refer to how many trucks per hour, it's how many trucks are accessing the mine. So there's, for every truck, of course, he drives in once and drives out, so, the trips you can say, is twice the number of the trucks entering, because they come and they go.

Preiner: Madam Chair?

Hvass: Go ahead.

Preiner: Dean, would you please touch on – it's my page 17 then – this is the background of the...uh, regarding the IUP. I think it kind of follows the...followed what you explained to us first, and it lists all your...oh, like on page 22, the preliminary conditions.

Johnson: Well, as my memo to you indicated, I updated the findings, which are essentially matters of fact, and so, that's an easy part in any kind of permit review. They were updated from the application last year. On the conditions, what I had indicated was, uh, you may not have a comfort level and I don't always have a comfort level without having people an opportunity to speak at a public hearing like this, to come up with final recommendations. But, I have a set of preliminary conditions, many of which were a part of the draft permit from 2013. But, as you noted, I had a lot of blanks in here. Um, there are some options to consider. This, this is a negotiating process, and, uh, again, for many people, there isn't going to be enough regulations, or, in fact, any activity with trucks isn't going to be acceptable to them. And that's difficult to understand and put into final conditions without keeping it in context. And so, I intended that after tonight I would attempt to re-draft conditions or refine them, if you will, for further discussion, based upon public input and comments that you had, any comments from the applicant... This is a controversial issue. It always is. Every community that I work in, it's no different. But, for the folks that are here this evening, it's a serious concern and you ultimately have to balance the issues and determine, do we simply go back to the old conditional use permit? It doesn't solve much, because it doesn't give you any guidance whatsoever. The attempt at an interim use permit is to define the maximum timeframe and put other conditions on. Um, I'd like to follow up on a comment the City Administrator made and, that is, the nomenclature we have in this. If you consider a truckload on a one-way routing system, then the number of trucks or the truckloads equal the number of trips. But, on a road like 189th, which was the sole access at one time, a truckload is two trips. They are, really two different times that a truck is passing. They just happen to be going one direction in and the other direction out. In this situation, whether it's right or wrong, the memorandum of understanding suggested, to prevent the burden to be any worse than it has to be, consider a one-way movement. And so, in that regard, a truckload is one trip, because it won't pass the same property twice. Uh, in the application by Forest Lake Contracting, it would allow a maximum of 200 truckloads per day. On a one-way system that's 200 truck trips – that's what they're requesting. And, compared to the memorandum of understanding, the Council limited it to 7 to 8 loads averaged throughout the day, which ends up being the 70 or 80 loads. I think Bob suggested, you know, maybe their average was 75. It's actually – there's a half-hour period in there – we didn't have 10 hours of operation, it was 9 ½. The particular issues with all mining operations does regard safety, public nuisance, noise, dust, and, in this particular situation, you have gravel roads, any kind of permit activity or any attempt to operate under the existing conditional use permit requires enforcement. It will require constant monitoring by the City. I suspect you'll get frequent complaints, particularly if you've gone two months without activity and all of the sudden the trucks are coming. You've got to have somebody that can act on your behalf and determine, 'Is the dust control adequate?' Somebody else is going to have to determine if the road is taking any exceptional wear and tear. Uh, there is one provision in the existing conditional use permit that related to dust, and it's adequate. It's up to the Township to determine what adequate dust

control is. And the other was that, under any kind of conditions, if you had too much rain in a period of time and it's not during spring load restriction time, the City could shut the operation down on the basis of that. These are neighborhood streets; they weren't designed for this particular amount of traffic, and yet, it doesn't mean that the roadways themselves won't support it. The City has done no engineering studies to come back and suggest that, you know, in a practical matter, even over five years, you should post this at 7 tons, otherwise your road is going to disappear. There are no studies to that effect. Certainly one of the conditions or recommendations is that there be an adequate performance bond, so that, in the event of road damage, the City taxpayers aren't fixing that. What that amount is, is undetermined at this point in time. But that is a standard provision of any mining, and it's a standard provision that all the miners understand, or the contractors understand. If they're going to beat up the roads, they're responsible for it. But taking care of that doesn't address other safety issues. Uh, I'm sure like every local street, you've got children out here and having even 7-8 truckloads per hour driving on residential streets when kids are standing at a bus stop does not represent the best safety situation. It doesn't mean that there's going to be a problem, but it's a particular concern. A lot of haul routes that you find in other communities are, quite typically, county roads or their built locally at standards that match county roads – ten-foot shoulders – so, when kids are standing on the side of the road or if people want to just walk their dog or take a walk, there's a place for them to do that. These are not particularly wide streets, so there's a safety issue, and, again, that's not uncommon, but it's part of any kind of negotiation that you attempt to accomplish. And, again, I guarantee you, I don't think any, or many of the residents are going to be happy with any kind of truck activity, and that just underlies the challenge that you've got in trying to create balance to allow this to happen or force it to go back to the old conditional use permit. And, uh, you don't have a lot of options either way, other than to reason with the people that live here and the people that do business here to work out something that actually is safe, tolerable, and, I think as Jody mentioned, has a specific timeframe. You have a lot of options. You may simply say, 'Ten years was crazy; five years is still too much. Two years tops.' Well, they're not going to be able to haul all that material out of there and then you've got to talk about, what's the restoration with half of the material used? Is Forest Lake Contracting interested in the property if that's the situation? It's all part of the discussion that you have to have. You can't take one component of this out, and expect that it balances. You may consciously say, 'Two years, eh, the neighbors can live with that, but not five years.' Well, there's going to be a change in activities, because the contractors can't create a situation where there's a market to remove the same amount of material in a shorter timeframe. They did move out 100,000 yards or tons – I can't remember which – in 2010 on the Forest Lake bridge job. And, as he indicated, last year was a whopping total of 9000. So, you can't look at this situation with any certainty. We haven't gotten into the major bid season for the year. All the contractors know that the County's doing this, and the State's doing that. They have some idea about what the potential might be, but, until those contracts come out, and you see the kind of quantities, they can't answer you with certainty. But, there are other things that you might be considering in trying to negotiate a permit, and that includes a notification system. They'll know days, if not weeks, in advance, when major hauling is going to happen. There can be a mechanism, whether it's signage on the roads, whether it's an e-mail notification, even postcards. But people get a heads-up that, just because nothing happened for two months, all of a sudden you're going to have three weeks of pretty intensive hauling. And, you've got to keep all of that framed in your heads in trying to say what's

reasonable and what isn't. And, again, the request here, based upon the amount of material that's there, the wetland mitigation that's been approved by the watershed, they have a reasonable expectation of a timeframe that would be required to remove 340,000 yards. And that would be consistent with this wetland mitigation, it creates the lake, and the reclamation is completed. You shorten that timeframe up, something else has to happen. There's less material going on. It doesn't mean it can't be done, but you can't simply cut the timeframe in half and expect that the marketplace will allow for the same amount of removal. It doesn't happen that way. All the jobs might be in Ramsey County this year instead of Anoka County or Washington nearby. We don't know that.

Hvass: Are there other questions at the Planning Commission level at this time? Okay. I can open this up for public discussion, but I'd like some of you to look at the back of your agenda, if you looked at that. We'd like if we do not have one person repeating what the other person just said, and we would like to keep the speeches to a minimum. And, don't ask for a second request to speak when not everyone else has spoken already. Do you want to step back? (to applicants)

Schliesing: Hi.

Hvass: Hi. State your name and address for the record.

Schliesing: Hi. My name is Joan Schliesing, and I live at 18507 Vassar Street, Columbus City. And I thank you for letting me voice my concerns and opinions. I'm against this mining pit and trucks hauling sand on our residential street, due to the following reasons: Last year, Forest Lake Contracting hauled many dump trucks up Vassar Street and into the pit with millings to build a road around the ponds. This was very noisy and dusty. Large tractors on semi-trucks were delivered to the pit area for digging. These same Cats were taken in and out and in again. Seven trucks started running up Vassar to the pit every 25 minutes, empty trucks bringing lots of banging noise. Then digging in the back, and slamming into the ground. We put up with the noise from the trucks, and beeping of the trucks and Cats all day. Many times I called the City Hall to complain. On a couple of occasions, our house was shaking. One time, you could hear my dishes in the china cabinet rattling. The road chemicals that were put down on the road, and then watered by the water truck going up and down, made puddles on the road. We had these chemicals, with sand in our driveway and garage, making it impossible for walking, riding bikes, and our dog being out on the road. We called a vet, and the vet said it wasn't a good idea for the dog to be walking in these chemicals. We were unable to sit on our deck during the trucks running and the noise in the back. So, I feel like we have to give up many things to let them continue to operate a mining pit, with heavy dump trucks running up and down our rural residential street. At one point I called the City Hall, because Jim Fraley was grading the road and had to go into the ditch, because he could not pass the Forest Lake Contracting hauling truck. Then the Forest Lake Contracting water truck came down the street out in front of our house. He was on the side, 'cause he had nowhere to go. Then a school bus - really, this was like a comedy of errors. And, as Elizabeth knows - she was on the phone with me - when I was on my deck explaining to her what was in front of our house. Some trucks were not going slow enough and we had to call and complain. We do have a 15 mph sign in our front yard, due to the hill and a sharp turn to the left. Between the dust and the diesel smell, our windows were shut

most of the summer when the trucks were hauling. We couldn't use our deck, which is in the front of our house. It was difficult to sit outside when it was so noisy, dusty, and the smell of the fuel on the trucks. I attended the City Council meeting last Wednesday and listened to the concerns about truck noise while running onto property, and traffic, which was the issue on 23 with the junkyard coming in. Council members decided that business was not right for 23 and should be in the freeway district. They listened to the people. And, I'd just like to ask, 'What about us? Are we going to go through another summer we can't walk on the roads, can't take our dog, and you can't ride your bike, because you...I would not pass one of those huge, gigantic trucks with my bike. That's all I have to say. I hope you take that into consideration.

Hvass: Thank you.

Neihart: My name is Ceil Neihart. I live at 18516 Vassar. And I brought along a picture that my brother-in-law took from an airplane in the late '70s. And this is what...this was the dirt pit when John Haluptzok owned it. And it was just a little dirt pit. And he sat at my kitchen table and said, 'We're just going to do this for a few more years.' It's 36 years later, and now, we've reverted, or we've gone into a whole new phase, that I have questions about, on the IUP request. Um, on the IUP request, it seems like they're only talking about working on the one side. And, can I pass this (referring to photo) so you guys can look at it while I'm talking?

Hvass: Sure.

C. Neihart: You can, you can see real clearly Vassar Street coming down, and I think you can see 189th in the back. It's just interesting to see what a nice piece of property that was. And you know what it looks like today, right there. Now, those two ponds to the left of the middle are the only ones that were there at the time. Since then, that whole nice field has been dug up, and, my question about the IUP – I'd like an answer on this first – are they talking never touching that side over there? Just selling that for property? And then just excavating this side? Is that the...is this whole thing 35.6 acres, the whole thing? Or is it just on the right-hand side?

Mursko: My understanding, and Mr. Vollhaber can say...My understanding is the mining area is just going to be this red area.

Vollhaber nodded.

C. Neihart: Okay.

Johnson: I could add - that is the 34-acre parcel. The other was 22 acres to the west.

C. Neihart: Okay.

Johnson: The application before the Planning Commission is strictly limited to the parcel on the east, which is hash-marked.

C. Neihart: Okay. I re-read the IUP application just before I came, and there's still talk of phases. And, originally, it was phased from here all the way over. And that's my concern, is that they're talking about this, but they're still talking three phases in the IUP.

Johnson: It's two phases in the current application and it still moves from east to west, but it's all contained on that parcel.

C. Neihart: But it stops there?

Johnson: Yes.

C. Neihart: Okay. I just wanted that for clarification. The other thing is the number of trucks. Yes. We sit and it's quiet, and then all of a sudden – Boom! – it's busy. And it's more than seven trucks an hour. And, now, the big haulers don't come back out our road, but the dump trucks do. And the pick-up trucks do, that go down there and check things. Who in the City, and does the City have the money to monitor, for years to come, this mess? Nobody's monitored it. You can see what we had; you can see what we have. Nobody looked at it, except the neighbors, for 36 years. They put the fence up. I never went over the fence to see, but I know for a fact that there's a lot of trash that got buried up in that white area, 'cause we could see that from afar. When they start putting in a lot there for somebody to buy, good luck digging the hole. You're going to find all kinds of motor parts, and everything else, from John's Auto Parts over on Highway 65. We're not stupid. We saw truckloads of trash go down, and nobody...we called, I called and said, 'There's trash going down there.' This is years ago, years and years ago. And nobody came and looked. We don't have the size or the money in this City to monitor this operation. And, I can't sit home with my three grandsons, who are three, two, and going-on-one all summer and keep those kids locked in, because I'm afraid they're going to run down in front of those trucks. And all of a sudden they just appear and they are right in my face. It is horrible living there. Our property values are going to go down, because we're going to have this pit. At any given time...you can send me postcards all day long and it's not going to help. It's still going to happen. You can warn me. I don't, what am I going to do, leave town so that I don't have to watch it? I object to the five years. I don't, I don't want it at all. I say, she's got this piece of property. They came in – never said a word – came in in 2010 and started digging, and created the problem with the wetland thing. I say they should fix what they did now, leave, and let her sell that to a developer and have somebody come in and fix it properly. And eliminate the wear and tear on the road, the wear and tear on all of our nerves, that live in that neighborhood. And the safety factor is unbelievable – when you pull out the driveway, you've got to sit there and look. I feel like I live on 35E sometimes, the way I've got to pull out. 'Cause you never know. And I understand that this person was left with this property. Her husband passed away. My first husband passed away. Guess what? I got left with bills, a house, problems, and a five-month-old baby. Guess what I did? I figured it out. I fixed up my house, 'cause I couldn't afford it, I painted it, and I sold it and moved on. That's what you do. You don't just have somebody come in and say, 'Here.' And they're taking advantage...I want to know why...she lives in Stacy; she's not a resident here. Why are we so careful? Is it because only the IUP – we've gotta have that or they're going to nail us with the CUP. I object to any kind of company or person who's involved in this that would think that way: 'Well, if they aren't going to give us what we want with the

IUP, hell, we still got the CUP.’ That’s the reality folks. That’s the reality. And anybody that’s going to hold that over your head, you better think about it, as a City, is that okay, for a company and a person to hold that over your head and say, ‘Hmm-mm. Well so what. We’ll get you one way or the other.’ We’re in a lose-lose, us neighbors. The only way, is to say, ‘Shut it down. Take the chance on what they want to do about the CUP.’ The CUP is not what was intended in 1982 or ’92. That’s not at all what we’re talking about today. We’ve changed gears, and why we’re still living under that fear, I don’t know. But, I’m living in fear for my grandkids, for anybody that pulls...My kids drop their kids off in the morning. They’ve got to pull out. They’ve got to wait for the trucks. It is no fun at all. And our road is so narrow...all the roads around there. That whole thing, you can see those roads, they’re very narrow roads. So, that’s my piece, and I hope you listen to us, and not just unanimously say, ‘Hmm, let ‘em go.’ That’s not fair. That’s not fair. I’m a taxpayer for 37 years here, and I won’t be able to get property, money for my property if I say, ‘The heck with this town, I’m leavin’.’ I don’t want to leave, but I don’t want to be driven out either, and that’s what’s happening. Other people have been driven out. Thank you.

Hvass: Thank you.

Mursko: Did everyone get to see the picture?

Hvass: Is there anybody else that wishes to speak?

Maassen: Sheila Maassen. 9759 189th Avenue. The big thing that I see, whether this is an IUP or a CUP, is this property owner is completely out of compliance. They need to meet the mitigation. This is her responsibility, not the City’s. She owns it, just like the last speaker said. She needs to buck up and move forward, basically. I don’t see our City being able to monitor this. We need to realize this is still zoned residential. How do you change it from a small town, or a small prop-, or a small business to this massive business in a residential area? Basically, even looking at this, when you say they’re not going to go to that part, when you showed the different lots that you were talking about, there’s still two ponds in there. Right there (referring to overhead map), on lot 3 and 4. Are those up to standards for the mitigation and the water safety district? The other thing is, if you do go forward on this, I think you do have to have an end date, and you do have to stick to this. We do not need to be back here in two or three years doing this all over again. It’s too hard on everybody that’s here. We all have families; we care about them. And Forest Lake Contracting needs to step to the plate if they’re even going to be in this ballgame. That they need to do something for all of these residents at the end. Those roads would need to be fixed, paved and taken care of. That’s their job; that’s their business. They should be able to move forward on that. And I think you, specifically, if this does go forward - which I am against - but if it does go forward, then you definitely need to limit the traffic on these roads. That is way too much for any person to deal with.

Hvass: Thank you. State your name and address please.

King: Kris King. 18339 Tulane Street. I’d like to address the mitigation part of this. Um, from what I understand, speaking with Dennis Rodacker (sp?) I think his name is, the gentleman that

worked with putting this mitigation plan together, up until Forest Lake Contracting came in and started digging there was no need for mitigation back there. And then, once they started digging is why the mitigation has to be done with the wetlands and the disturbing, um...I'd like to know how much they've impacted the land back there that really needs to be mitigated right now. I don't believe the whole area needs to be mitigated, unless they touched the whole area. The other thing, it seems the City is very concerned because the slopes supposedly are not in compliance with the City Codes. Um, what I don't understand is, if we're going to issue the IUP just on the one parcel, but not do the other parcel, how does that get washed away, but it holds importance on the one parcel? Um, I just, I'd like some clarity there. You know I realize part of what the City would like to do is have nice lots back there for homes. I mean, I think it's a beautiful idea. But, I think with the way the property has been mismanaged back there, to put that on us in this neighborhood to endure going through cleaning it up, is not a...it's not fair to ask of us. I mean, they've owned this property and mined it. They dug black dirt. What Forest Lake Contracting wants to do is dig sand, and dig deep. And I, I don't fault them for trying to make a living and work through this, but I, personally don't believe it belongs there. I don't believe that we should have to endure the hardship it causes us. And I know one of the first days they started running, I logged how many trucks. And, I live on Tulane, but I can see Vassar. So they come up, come back and down. And the first day, within the first hour I was home, 12 trucks went by my house. That's a lot of trucks, and we're not talking small trucks. We're talking semis. I've lived here only nine years. I did not ever experience a lot of John's Black Dirt. I mean, he was only in operation part of the time I've lived there, and, I was lucky to see maybe one truck, maybe two a week, if that. Um, compared to what's going by now, it's a completely different operation. But, back to the mitigation, I'd like somebody to clear this up for me, because it seems there's been a lot of misunderstanding on what really needs to be done back there. And if it truly is just the City looking for nice lots back there, I don't think that's your responsibility.

Hvass: Elizabeth can you answer?

Mursko: Our Engineer is most familiar with the mitigation plan. But, it is my understanding that one of the conditions of the original permit is that the slopes are supposed to be a one in six slope. And over the years, vegetation has grown in that area, and they have now become what we determined – or, not we, meaning I, but people that do wetland...determine wetland areas, have determined that it's wetland. And now, in order to dig in those areas, they're disturbing wetland. And that's, that's where the mitigation comes in. That they have to put wetland in other areas in order to mitigate where they're digging the sand from. So, I think it was two-fold. One is, in order to come into compliance with the conditional use permit, which is the slopes, they had to dig in the wetland. And, in order to dig in wetland today, you have to mitigate. And, and Bob, you're most familiar with this plan, so maybe you can kind of really answer it better than I, because I'm not a wetland person.

Vollhaber: Yeah, you explained it correctly. There are two components there. It's partially to be in compliance with the CUP if you get the 6:1 slopes. It looks like to do that, they are going to disturb what they now classify as wetlands. So, to do that, looks like there will be some mitigation, but the bulk of the mitigation is after we, because of our excavation work and mining.

Hvass: Question?

King: No. I just, I really...you guys have got a tough decision, but I, I think the City needs to decide really where their responsibility lies to the residents who live with this also.

Hvass: Well, as I understand it, one of the reasons we would rather have an interim use permit, is that we can have the conditions and whatever on it. And we'll be through the CUP. The CUP runs with the land, and if that's not given up, taken away, um, it would be there forever. You could have, you could have some company come in here and be hauling all kinds of sand out to South Dakota.

King: Well there's also the documentation that, I mean, the property has been in violation of the CUP. I understand what the intent of the IUP is, and we were asked at one of the Council meetings, how long can the citizens live with this. And it's a short time, really. If we had a year, we're pushing it. It was not easy living there in September when they started running. It was not easy at all. I mean, to sit out and try and read a book or anything, it just was not good. And I live further away from where the activity is, so I cannot even imagine what people go through down there. I understand you are trying to end this, and I really hope we can get it done. Thank you.

Hvass: Thank you.

Peskar: My name is Paul Peskar. I live at 18339 Tulane Street. And, I guess I had, was going to talk mainly about the Comprehensive Plan, but the last speaker brought up a very good point. I think one thing that everybody keeps talking about is that the IUP is going to have an end date, and that that's going to be it. But, they can always come back and reapply for a new IUP at any time. So, I think a key loophole in this current application is that they've only applied for Parcel 1, but that doesn't address the slopes, which is apparently a key issue that we need to get resolved on Parcel 2. So, we're going to be up here again in two or five years, whatever it is decided that this permit is going to go, and we're going to have to deal with the slopes on the other side. So, I think, like Ceil said, they keep telling us, 'It's only going to be a couple more years, and then we're going to be done.' 'It's only going to be a few more years.' And it just keeps going on and on and on. We have to put an end to this, and I think the best way is just to revoke the CUP. No more extending it out. We can't live with any long-term mining back there. It is horrendous. So, I just wanted to point out that the own Comprehensive Plan from the City, the general growth management goal, 'It is the goal of the City of Columbus to manage future growth in a manner consistent with the protection of public health, safety and welfare; the preservation of natural features and environmental systems; the protection of the rural character and identity of the City.' Allowing a mine to operate in a rural residential zone is not compatible. You guys got to put an end to this. Thank you for listening.

Hvass: Thank you.

P. Neihart: Pete Neihart. 18516 Vassar. Um, has anybody bothered to find out about perks here, as far as the lots? Can they actually build on something there? It's always been a joke that it's a

big swamp, you know. I don't know where they're going to stick a house. And how close can the house be to a wetland?

Mursko: Setback? 16 ½ feet.

P. Neihart: 15 ½ feet?

Mursko: 16 ½ feet. One rod.

P. Neihart: Oh. So it can be that close to a mud hole, right? That's what it's going to be. I mean, it's kind of a joke. We're going to have jet skis on this lake now, right?

Mursko: They generally are not.

P. Neihart: Yeah. So, nobody's bothered to perk anything yet?

Mursko: I, I'm not aware of any borings taken on this property.

P. Neihart: Don't know whether they can build or not, right? We don't know if we're going to get an apartment building or a house, right?

Johnson: Well, apartments aren't allowed, but the subdivision process is entirely separate from a previous use. And sometimes previous uses may preclude normal sewer systems. It may require alternative sewer systems. From the standpoint of a minimum upland area, I would have to agree with the applicant that said earlier, you know, we could meet your requirements with street frontage and so forth, with a maximum of two lots on the east side and four on the other. Whether they're suitable is never determined until someone comes and applies for a subdivision. And that's the same situation for land that's never been altered. Water table may be too high, and so forth. So that, there's been no determination of that, but...

P. Neihart: So, at the rate we're going here, we got residential areas with commercial operations going. What's to stop a commercial operation to be put there instead of homes?

Johnson: Well the City's zoning ordinance has pretty strict requirements.

P. Neihart: Uh, uh, uh, now we're getting into that gray area again.

Johnson: No, it's not gray. But, the entire rural residential district within the City, which is the majority of the zoning in Columbus, currently, by ordinance, allows mineral extraction. So, it's not just focused on this property or this neighborhood. That is a current provision in the ordinance. But, a shopping center, a filling station is not permitted. But, the City's zoning ordinance has provisions for home-based businesses. Some of you may have those. Otherwise, all other commercial and industrial uses would be required to be in one of the several commercial or industrial zoning districts. So, the practical use here would be limited to residential or...even farming is allowed, but it doesn't seem suitable for that.

P. Neihart: So we can have the commercial now, but not later?

Johnson: Uh, the commercial activity is, again, provided in the City Code under a separate chapter called, 'mineral extraction,' and, presently, it's allowed anywhere in the entire rural residential district. So, that's the only commercial activity that I can think of, other than a home-based business, which, everyone that has a home currently could apply for if they met the standards of that to have a home-based business, which is a little more than a home occupation. But, those are the only commercial uses, other than farming.

P. Neihart: All right. Thanks.

Hvass: Is there anyone else that wishes to speak?

Guckeen: My name is Duane Guckeen. I live at 18155 Vassar Street. And my concern is under the CUP. They're in violation of the CUP right now, are they not? I presume they are, because that was supposed to be all mitigated and taken care of – the slope and everything. Yet, for forty years it's grown up, so now it's under the wetlands. So, they can't do it. Well they're... under their CUP they were supposed to do that. So, right now, as that stands, you can revoke 'em from their CUP, can't you?

Mursko: If the Council ordered that, yes, they can.

Guckeen: Yeah. So why are you going to turn around and give them an IUP then, when they're doing the same thing? They're not going to take care of the lot or section 2 there, and that's in the same boat. It's going to grow up in another 40 years, and it'll be under wetlands again. Then that's all going to fall back to the City or the County to take care of? Is that true?

Mursko: I'm not sure if that's, I'm not sure if that's true or not. Um, I think the Planning Commission is going to look at an end plan, and an end plan over the entire area. And, in looking at that, the end plan is residential, so, I think that, at that time, they're going to have to address those, the slopes of the pond.

Guckeen: I don't care what the end plan is. They haven't kept up to it, have they?

Mursko: I agree with you.

Guckeen: So then they're in violation of their CUP. So why can't it be revoked, and this would be all done? Right?

Mursko: Yes. That is correct.

Guckeen: Okay. So, will let the Council vote 'em out, 'cause they're in violation of their CUP. Why don't they take it away then?

Mursko: They haven't ordered that.

Guckeen: Well, they'd better. Thank you.

Hvass: Is there anyone else that wishes to speak? Anybody else? If not, we'll close the open to the public for this hearing, and we'll bring it back to the Planning Commission.

Daly: Hey, Dean, I have a question for you. The IUP, is that - if I'm understanding this correctly - just for that 34-acre parcel?

Johnson: That's correct.

Daly: Okay. The other parcel at 22 acres, over there, does that fall under the CUP then, like this gentleman here before was saying? So, technically, could they come back and do that work on that property after this one's expired, because this only applies to that 30-something acres?

Johnson: No. Um, we have a statement from Mrs. Haluptzok that she understand that if an interim use permit is revoked, that all land that is in her control – the estate of Leroy Haluptzok – the conditional use permit terminates. So, there would be no opportunity anywhere under the old conditional use permit to do anything. It would be strictly limited to the interim use permit.

Daly: Thank you for clarifying that.

Mursko: But that doesn't preclude it from coming into compliance. In other words, there are a lot of residents today that come in for an excavation permit first, because they want to dig a pond or they want to put in a foundation or they want to do something on their land and they can excavate. So the corrections still can be done on the property under an excavation permit, in order for a correction to happen. It doesn't need to be a commercial operation for the mitigation to happen.

Hvass: Are there other questions?

Johnson: Could I make one other clarification? The question came up and I don't want to speak out of turn, because I don't work that often with the watersheds, - it's either Elizabeth or the City Engineer. But, in the course of this, over the past year that we've been discussing this, it's my understanding that unless there were mining to occur on the western parcel, there is no wetland impact. As any water body gets created, it ultimately has the potential to become a wetland. And then if you alter it, that is the impact. So, the creation of it isn't a violation of the wetland law, it is if you then tamper with it afterwards. You've all driven down the interstate highway and you see cattails coming up in the middle of the ditch. Those technically are wetlands, and even the State has to go through permitting, because they were changed; they became wetlands. So, the issue of the wetland mitigation, as one of the persons questioned before, is really limited to if there is any additional impact on that westerly portion. The clean-up and the mining that would address the final slope elevation - and that is a condition under water – is entirely different. And, because of the activity in 2010, it necessitated an application and a wetland mitigation plan for that activity, as well as any other. If the mining ceased, there would be two things to remedy, in my estimation. And this is not the final word. But, as I understand it, it would be complying with

the City's conditional use permit on that slope condition underwater, and any determination by the Watershed on the mitigation that's necessary if there's no further mining. And I'm not certain what that would be. It's a moving target that we deal with constantly in... under the Wetland Conservation Act. So, if there is an interim use permit, there is no opportunity for mining. It doesn't mean that someone could not come in and request an interim use permit. That's a whole separate, new process. But the conditional use permit would be revoked on all of the Haluptzok properties.

Hvass: Thank you, Dean.

Krebs: I have a question for Dean, if that's okay, Madam Chair.

Hvass: Go ahead.

Krebs: How do we determine the financial surety bond?

Johnson: Well, part of that is in determining if there's a permit issued and you understand what those haul routes are going to be, then you are looking at all of the potential roads that are included in that impact. A requirement under any permit would be to declare: what are those roads going to be. We have a good idea if you're going to maintain a one-way system, there's not a lot of opportunity to be creative. But, wherever that is, it would be, I think, the City Engineer that would ultimately have to make a recommendation on what the potential damages were, and that estimate's going to be tied to what his understanding of the maximum impact would be seasonally, and over whatever period of time – years that might be included in the permit. So, that's something that we would not influence here unless you had the City Attorney at your meeting. It would just be a condition that needs to be determined by them, with a certain level of certainty and science.

Krebs: Thank you.

Hvass: Are there any other questions at this time? If not, I'm going to close the public hearing with the right to reopen it if it becomes necessary.

Hearing closed at 8:13 p.m.

Respectfully Submitted:

Karen Boland, Recording Secretary

A letter was submitted by Mr. and Mrs. Thomas Bergum, dated February 14, 2014 and received in City Hall on February 18, 2014, to be part of the public hearing record. All Planning Commission members received a copy of the letter, which reads as follows:

Dear Columbus Planning Commission,

This is a letter in regards to the Interim Use Permit (IUP) to Forest Lake Contracting meeting February 19, 2014 @ 7:00 pm. We will not be able to make it and would like our voice to be heard.

We would like to state that the permit should not be accepted due to the road traffic incurred last year on Vassar Street NE. The excess truck (belly dumps) traffic is not a safe environment for kids, adults, and pets especially for those who walk with or without their pets, bike and drive. Vassar Street NE, and especially in front of our home 18523 Vassar Street NE, is not wide enough for two vehicles to pass side by side. The excess noise of the rattling belly dumps and the diesel fumes meant the windows were to be closed Monday thru Friday during the summer. Our backyard to north is where they have built a road to the dirt. It is very loud and very dusty. As the trucks drive by their gates bang the whole way back to the dirt areas. Their back up safety horns are going with the mix of the noises listed above.

The illegal use of asphalt millings between the ponds and driving on the wetland grasses should not continue according to the local Conservation Officer who did a walk thru last fall. I was told this was a direct violation of the Minnesota Wetland Rules (MN 7050.1086).

With that being said we are **strongly against** the use of the 18523 Vassar Street NE and the entrance/road to the dirt that runs on the south side of the pit/north side of our property.

In the past decision process for last summer where you did not listen to the people – there is a strong chance you will not be listening to the people of the community for the second time. So for this reason, we will also include how we would like it to run if you will not listen to the people of the community.

If you decide to allow this permit, we would like to ask for conditions

- 1) No Holiday, Friday, Saturday and Sunday truck traffic or mining.
- 2) The trucks start hauling after 9am and end at 3pm.
- 3) Provide the people of Columbus copies of paperwork for wetland mitigation plans before continuing the mining process.
- 4) Provide the contact name for the person in charge of monitoring the work done on the wetland mitigation.

In closing, we understand that John's Black Dirt and Forest Lake Contracting have a business and money to make, but would like a resolution to end the mining in our residential back yard. When we bought this property from Leroy and Kathy Haluptzok 10 years ago, they were done mining the black dirt north of our property. The wildlife was using the grasses and islands between the ponds. If made into a large deep pond (mining the sand out now) it would eliminate the grassy areas wildlife used and hardly be considered a wetland. (Look at Anoka County natural resources website on pond digging, best to be at 6ft or less for waterfowl). This area in Columbus is residential and a peaceful place to live. Please listen to the people of this area.

Sincerely
Mr. and Mrs. Thomas Bergum