

City of Columbus
Regular Planning Commission Meeting
June 5, 2013

The June 5, 2013 regular meeting of the Planning Commission for the City of Columbus was called to order at 7:14 p.m. by Chair Barbara Hvass at the City Hall. Present were Commission members Andy Anderson, Myron Organ, Pam Wolowski, Jesse Preiner, Jody Krebs, and Garth Sternberg; City Administrator Elizabeth Mursko, Planner Dean Johnson, Engineer Larry Bohrer and Recording Secretary Karen Boland.

Also in attendance were City Council members Denny Peterson and Bill Krebs, Assistant Anoka County Engineer Andy Witter, Bob Moorhouse of Forest Lake Contracting, Ken Hansen, Chuck Weymann, Ceil and Peter Neihart, Michael and Kathleen Seiler, Teresa Nelson, Cathy Glick, Curt Nelson, Joe Dina, Roger Larson, Rod and Sandra Skoog, Paul Rignell of The Forest Lake Times, Michelle Welch, Joe Haider, B. Dellwo, Chad Maassen, Laurie Myren, Diane and David Denzer, Mike Vogel, Ken Devange, Todd Dupre, Ross and Becky Collier, Cindy Nelson, Pat Preiner, and Mary Preiner.

AGENDA APPROVAL

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

APPROVAL - FOREST LAKE CONTRACTING, INC. REVOCATION OF CUP AND IUP APPLICATION PUBLIC HEARING MINUTES OF MAY 15, 2013

Motion by Krebs to approve the minutes from the Forest Lake Contracting, Inc. revocation of Conditional Use Permit and Interim Use Permit application Public Hearing held on May 15, 2013. Second by Sternberg. Votes as follows: Sternberg – aye; Krebs –aye; Preiner – aye; Wolowski – aye; Organ – aye; Anderson – abstain; Hvass – aye. Motion carried.

APPROVAL - REGULAR PC MEETING MINUTES OF MAY 15, 2013

Motion by Preiner to approve the minutes of the May 15, 2013 regular Planning Commission meeting as written. Second by Krebs. Votes as follows: Sternberg – aye; Krebs –aye; Preiner – aye; Wolowski – aye; Organ – aye; Anderson – abstain; Hvass – aye. Motion carried.

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

Prior to the regular PC meeting, all PC members, accompanied by Engineer Bohrer and Secretary Boland, visited the site of John's Black Dirt.

Planner Johnson gave a brief explanation of the history behind this matter. The City has evidence of mining on this property continuously since at least 1973, when the first physical permitting of the mining by the Township began. Permits were issued on an annual basis until 1982. In 1982 the annual excavation permit was converted to a Conditional Use Permit. In 1993 that CUP was amended and included 10 conditions. That is the active permit currently on file with the City. In reviewing the current CUP, City staff determined that both the City and the property owner or operator of the mining activity, would benefit if the permit is redefined and converted from a CUP to an Interim Use Permit. Interim Use Permits have only been allowed in Minnesota for the

past 20 years. It's intended to be a temporary permit, and it can be limited to a party or a single individual. It can't be sold or transferred. The benefit to the community is that it is well-defined, it has a specific time limit, and it can't be assigned to anyone else. The existing CUP could be transferred from the current owner to anyone at any time, it does not expire, and very few conditions are assigned to the property.

In 2010 Forest Lake Contracting assumed mining of sand on this property in relation to a specific project in Forest Lake. Just over 100,000 cubic yards of material were removed that construction season. This permit application is for the removal of approximately 490,000 cubic yards.

Based on review by the City Attorney, the City would have no grounds to revoke a CUP without replacing it with something like an IUP. The PC is considering a five-year IUP to remove approximately 490,000 cubic yards of material from two parcels identified on site, in exchange for revocation of the existing CUP. The applicant applied for a ten-year permit. Within the mining provisions and rural residential zoning provisions of the City Code, IUPs are limited to a five-year term. The applicant will be eligible to re-apply at the end of that term, but has no vested right to a renewal. If an IUP is denied, the CUP remains in place. City staff recommend replacing the rather unlimited CUP on the property with a much more defined and regulated IUP.

The applicant does road contract work for public agencies and the extraction is intended for contract work in this area. The rate of removal of materials from the site will be dictated by the number of projects and the need for material. The permit identifies the maximum amount of material that needs to be removed. That amount may not be expanded.

Hours of operation will be Monday through Friday 7 a.m. to 5:30 p.m. Outside of regular operating hours, dewatering will be done with electric pumps only. Occasional Saturday operation may be done with notice to the City, and it would be limited to 3 of 4 Saturdays in any month and a maximum within a particular year. These are changes from the current CUP which allows operation from 8 a.m. to 5:30 p.m. Monday through Friday, and 8 a.m. to 3 p.m. on Saturdays.

Organ asked Johnson to reiterate the difference between a CUP and an IUP. Johnson said that by law, a CUP runs with the land. It may be assigned, transferred or sold to any party, without approval by the City. As long as the original conditions included in the CUP are met, the permit is valid. The IUP may not be assigned, transferred or sold to any other party and it has a term limit of five years.

Krebs asked about the financial surety bonds being recommended in conditions #13 and #26. Johnson said #26 is a reclamation bond to guarantee that wetland corrections are going to be done. This was figured using a formula of 10 acres at \$4000/acre. He recommends this surety be required to make sure the wetland mitigation plan is implemented, and the upland is left suitable for its intended end use.

Krebs also noted that in Condition #15 it specifies the hauling routes within the City. She requested language be considered allowing alternative routes within the City during times of road construction. Johnson agreed that language could be added in case of detours, and

recommended allowing exceptions for local product deliveries, and in cases of local projects by the City itself. PC members agreed with this change.

Krebs asked about condition #19 which refers to an observation well. She asked if there would be a need for more than one observation well based on residence proximity. Johnson said this is a requirement of the DNR in issuing a water appropriations permit. He recommended allowing the DNR to regulate this and recommended changing the language to read: "Observation well(s) as required by the DNR..." PC members agreed with this change. Anderson asked who monitors the observation well. Johnson said the DNR requires the monitoring be done by the operator and they submit monitoring data to the DNR for review.

Johnson pointed out an error in condition #20. It should read: "...the Minnesota Department of Natural Resources..."

Krebs asked about condition #29 regarding weed control. Johnson said that is a state law requirement. Johnson said inclusion of the language gives the City the discretion to ask for action if they feel the weeds are out of control.

Preiner questioned whether the language in condition #36, regarding commencement of operations within six months, was necessary. Johnson said the language is standard and recommended leaving it in, but said the length of time could be modified. PC members agreed to change the language from "six months" to "twelve months".

Anderson again raised the issue of financial surety for 189th Avenue. The Applicant feels the \$250,000 surety for the roads is high and requested a single surety of \$50,000 to cover site restoration and the 189th Avenue road. The current CUP requires one \$5000 bond for both.

Bohrer said 189th Avenue was paved in 2005. It was an assessed project paid for by property owners. The City's standard residential street has 3 inches of blacktop. An extra inch was added and paid for by John's Black Dirt to accommodate the commercial traffic. Bohrer said the \$250,000 calculation would cover the complete removal and replacement of all four inches of blacktop for the entire length of the road within City limits. He added that after the hauling done for the County 83 overpass in 2010, he and Public Works Supervisor Jim Fraley walked the length of the road looking for rutting and cracking due to loads. They found no problems. He said he is confident the road is strong, but wants to cover the worst-case scenario. Johnson reiterated that he feels the \$40,000 site restoration surety is a necessity. Preiner asked if the Watershed is responsible for the wetland mitigation part of this. Mursko noted that in this case the City is the local government unit representing the Watershed. The PC considered and rejected the idea of setting the amount of the road performance bond lower than the \$250,000 recommended by the City Engineer.

Sternberg asked if loads are required to be covered. This is not required under state law and is not laid out in the conditions. Sternberg noted in condition #9 that it says the Applicant has to keep 189th Avenue clean, so it may benefit them to keep the trucks covered. Bob Moorhouse, representing Forest Lake Contracting said the sand being hauled out is damp, which keeps the blowing to a minimum. They cannot take a dripping, leaking load. The purpose of dewatering by

temporary stockpiling is to keep the sand from being too wet. Johnson said condition #28, which states that a stockpile remaining for more than 10 days must be seeded or mulched, is to help eliminate sand blowing off the piles from the property.

Anderson said citizens have raised concerns about the speed of the trucks travelling to and from the site. He said it's his understanding that the speed limit is not within the City's jurisdiction. Bohrer explained that speed limits are set by the Commissioner of Transportation. The only statutory speed limits are 30 mph in residential districts, and 55 mph every place else. Residential districts are defined by specific densities, and Bohrer doesn't believe 189th meets that criteria. Right now, it is not posted, so the legal speed is 55 mph. The City can request by resolution that the Department of Transportation perform a speed-zone study. They review existing traffic, the road, the alignment, curves, etc. and recommend a speed limit. The City is then allowed to post and enforce that speed limit. The truck hauling would be taken into account.

Anderson asked who ensures the Applicant complies with the stated conditions, and who bears that cost. Johnson said it's up to the City to ensure compliance of all permits. To some degree, the City relies on people to let us know if there is an issue. Mursko said one condition here (#22), is that complaints go first to Forest Lake Contracting to be addressed. If not resolved, they go to the City. The City may send out a Community Service officer to investigate. Forest Lake Contracting is report to the City on a monthly basis any complaints and actions taken. It was also noted that under this condition the word "Township" should be changed to "City." Bohrer pointed out that condition #37 requires the Applicant to reimburse the City for out-of-pocket expenses related to enforcement of the IUP.

Johnson said the Applicant has requested a change in the language of condition #23. It reads that: "Site restoration shall occur completely within individual mine phases before subsequent mine phases are opened." They are suggesting the word "concurrently" replace the word "completely." Johnson feels their suggestion is too open-ended, but agrees that "completely" may be too restrictive. He recommends inserting a percentage. He suggested requiring 75% completion in one area before starting on the next phase. PC members agreed to change the first sentence of condition #23 to read "Site restoration shall be 75% complete within individual mine phases before subsequent mine phases are opened."

Mursko pointed out with regard to the speed limit, that a condition of the 1993 permit was: "Applicant shall work with haulers to ensure safe speed limits." She said that the City asked John's Black Dirt to drive 30 mph on 189th while conducting operations, despite the posted 55 mph limit. That has been a practice for all these years. That request was honored by Johns' Black Dirt. They tried to convey that message to all haulers leaving the pit. She suggested adding this condition to an IUP. PC members agreed to add this language as condition #39.

Motion by Preiner to forward to the City Council a recommendation for approval of the revocation of the Conditional Use Permit held by John's Black Dirt, to coincide with approval of the application by Forest Lake Contracting, Inc. for an Interim Use Permit for mineral extraction at John's Black Dirt, based on the findings of fact and recommendations in the Planner Memo dated May 30, 2013, with the added condition #39 noted above, and noted changes to conditions #15, #19, #20, #22, #23 and #36. Second by Krebs. Motion carried.

Findings

- 1) Forest Lake Contracting, Inc. (hereafter the “Applicant”) submitted an application, dated March 18, 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 (hereafter “Parcel 1”) and on part of the SE ¼ of the NE ¼ of Section 35 (hereafter “Parcel 2”), both in Township 33, Range 22 (hereafter jointly the “Property”). The property is owned by Kathryn Haluptzok.
- 2) The application was found to be incomplete.
- 3) The Applicant submitted a revised application, dated April 23, 2013, which was found to be complete. The application materials (hereafter “Plan A”) shall be attached to any permit issuance by reference.
- 4) The 60-day review period will end on June 22, 2013. The 120-day review period, if required, will end on August 21, 2013.
- 5) The Property is zoned RR Rural Residential.
- 6) 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.
- 7) City records indicate the Property has been mined since at least 1973.
- 8) 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.
- 9) The annual excavation permit was converted to a Conditional Use Permit (CUP) in 1982.
- 10) In 1993, the CUP was amended for Derek Haluptzok, dba John’s Black Dirt, and included 10 conditions.
- 11) Chapter 9 of the City Code currently allows excavation and extraction in all zoning districts by IUP.
- 12) The Applicant began excavating and extracting sand from the Property in 2010.
- 13) Wetland delineations were performed on the Property in 2010.
- 14) The Applicant proposes to continue mining the Property in three phases from east to west.
- 15) The proposed end use of the Property will be residential. A concept plan for the possible future subdivision of the Property indicates the potential for two lots on Parcel 1 and four lots on Parcel 2.
- 16) The proposed IUP will be considered for the Property in exchange for revocation of the CUP.
- 17) A wetland mitigation plan for Parcel 1 was approved on November 14, 2012.
- 18) Wetland impacts are not proposed on Parcel 2.
- 19) An appropriations permit for continued dewatering during extraction was issued by the Minnesota Department of Natural Resources on February 14, 2013.
- 20) The applicant proposes to remove approximately 340,000 cubic yards of material from Parcel 1 (~36-acre parcel) and approximately 150,000 cubic yards of material from Parcel 2 (~22-acre parcel).
- 21) Access to the Property has been and will continue to be from the north on 189th Avenue.
- 22) The average annual removal of material during the proposed life of the facility is estimated at 49,000 cubic yards per year.

- 23) A 12-month operation for removing 49,000 cubic yards of material per year from the site would result in approximately nine 20-yard trucks per day or approximately eighteen 10-yard trucks per day.
- 24) A 6-month operation for removing 49,000 cubic yards of material per year from the site would result in approximately eighteen 20-yard trucks per day or approximately thirty-six 10-yard trucks per day.
- 25) 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.
- 26) The Applicant has indicated the maximum peak hour truck traffic would not exceed 20 trucks per hour.
- 27) Equipment used and routinely stored on the Property includes hydraulic excavators, dozers, front end loaders, dewatering pumps, and a water truck. Dump trucks are not stored on the Property.
- 28) 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.
- 29) The Applicant has proposed to operate the facility from 7:00 am to 7:00 pm Monday through Friday and from 7:00 am to 5:00 pm on Saturdays.
- 30) 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.
- 31) 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.
- 32) Fugitive dust from the haul road within the Property to 189th Avenue, active mine areas, and from material stockpiles will be controlled by watering. The haul road was surfaced with millings in 2010.
- 33) Noise from the operation of the facility will be required to meet noise standards established by the Minnesota Pollution Control Agency.
- 34) The Applicant has requested a 10-year IUP to allow the removal of the remaining estimated volume of material on the site.
- 35) 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.
- 36) 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.
- 37) The City Planner has submitted a memo on the proposed IUP with draft Findings and Conditions, dated May 9, 2013.
- 38) The City Engineer has submitted a memo on the proposed IUP, dated May 8, 2013.
- 39) The City Engineer has indicated the proposed Property Stormwater Management Plan is adequate.
- 40) The City Engineer has also recommended requiring a letter of credit in the amount of \$250,000 for potential road damages.
- 41) The Planning Commission held a public hearing on May 15, 2013 to consider the proposed IUP.

- 42) The Planning Commission also held a public hearing on May 15, 2013 to consider the revocation of the mineral extraction CUP issued to John's Black Dirt in 1982 and amended in 1993.
- 43) The City Planner has submitted a memo on the proposed IUP with updated Findings and Conditions, dated May 30, 2013.
- 44) The Planning Commission toured the Property on June 5, 2013.

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 490,000 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 included in Plan A.
- 4) The Permit shall expire five years from the date of its issuance by the City Council.
- 5) 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.
- 6) 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 7:00 am and no later than 5:30 pm, Monday through Friday.
- 7) The use of electric pumps for dewatering is not restricted by any hours of operation.
- 8) The City Administrator may, upon prior 72-hour written notice, allow temporary operations on Saturdays from 8:00 am to 4:00 pm for government road contract work. Temporary Saturday operations shall mean no more than three Saturdays during a calendar month and a maximum of twelve Saturdays during a calendar year.
- 9) 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 189th Avenue.
- 10) Erosion and sedimentation control shall be consistent with City standards and upon recommendation of the City Engineer.
- 11) The Applicant will install any traffic control signs (e.g. "Trucks Hauling") required by the City.
- 12) The Applicant will abide by all axle weight restrictions imposed upon truck hauling to and from the Property.
- 13) The Applicant shall provide a \$250,000 financial surety, in a form acceptable to the City Attorney, for potential damages to 189th Avenue.
- 14) Suspension of hauling may be required by the City due to weather or road conditions.
- 15) Haul routes within the City shall be limited to 189th Avenue, Kettle River Boulevard, Broadway Avenue, and Lake Drive. **Exceptions may be made in the case of detours due to construction on these routes, local product deliveries, and to access a local City construction project.**
- 16) The maximum number of trucks accessing the Property shall not exceed 20 trucks per hour.

- 17) 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.
- 18) Facility operations shall be consistent with the IUP application and the supporting documentation submitted to the City on April 23, 2013, attached hereto by reference.
- 19) **Observation well(s), as required by the Department of Natural Resources**, shall be installed between surface water pumping area(s) and the nearest residential well to monitor any influence on private wells.
- 20) 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 **Resources** to be negatively impacted by water pumping on the Property.
- 21) The Applicant shall abandon all wells on the Property according to State standards upon completion of mining.
- 22) 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.
- 23) Site restoration shall **be 75% complete** within individual mine phases before subsequent mine phases are opened. Final site restoration shall be completed within 12 months of final site extraction.
- 24) 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.
- 25) Only clean fill and topsoil may be back hauled to the Property for site restoration.
- 26) The Applicant shall provide a \$40,000 financial surety, in a form satisfactory to the City Attorney, to guarantee site restoration.
- 27) 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.
- 28) Any material stockpile remaining on the Property for more than ten days without disturbance or removal shall be seeded and mulched.
- 29) Weeds shall be controlled on the Property at all times.
- 30) Litter and debris shall be cleaned from the Property on a regular basis.
- 31) Portable toilets shall be provided and serviced regularly at all times during site operations and shall be screened from visibility by neighboring residences.
- 32) Hydraulic excavators, dozers, front end loaders, 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.
- 33) 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.
- 34) 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.

- 35) 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.
- 36) 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 **twelve** months, or if any provision of the City Code causes a termination of the IUP.
- 37) 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.
- 38) Approval of the IUP is conditioned upon the revocation of the 1993 mineral extraction CUP issued to John's Black Dirt.
- 39) Applicant shall work with haulers to ensure safe speed limits.**

Mursko explained the next step in the process, including the right of citizens to put their comments in writing for review by the City Council before next week's meeting, and their right to attend that meeting on June 12, 2013 at 7 p.m.

PUBLIC OPEN FORUM

There was no topic raised for discussion for Open Forum.

CITY ADMINISTRATOR'S REPORT

Mursko reported there will be a joint meeting between the PC and the City Council on June 19, 2013. The agenda has not yet been established. There will be two variance applications for consideration by the PC.

PLANNING COMMISSION MEMBERS' REPORT

Nothing to report.

ATTENDANCE - NEXT CC MEETING

Preiner is scheduled to attend the City Council meeting on June 12, 2013.

Motion by Krebs to adjourn. Second by Anderson. Motion carried.

Meeting adjourned at 8:44 p.m.

Respectfully Submitted:

Karen Boland, Recording Secretary