

City of Columbus
Neighborhood Meeting
John's Black Dirt/Forest Lake Contracting Permit
July 9, 2013

The July 9, 2013 John's Black Dirt/Forest Lake Contracting Permit Neighborhood Meeting for the City of Columbus began at 7:10 p.m. at the City Hall. Present City Administrator Elizabeth Mursko, Engineer Larry Bohrer and Deputy Clerk Emmy Robinson.

Also in attendance were: Nancy Eisenmenger, Deborah Rettner, Joseph Rettner, Bill Eisenmenger, Joe Eisenmenger, Boyd Bonty, Troy Blanchard, Audi Wulff, Rhonda Sivarajah, David Liska, Ron Hanegraaf, Dave Sugg, Connie Sugg, Truman Doyle, Tom Bergum, Ken Hansen, Jan Palmer, Marta Bradshaw, Leslie Lincoln, Diane Lincoln, Ceil Neihart, Pete Neihart, Laurie Myren, Robin Wood, Jill Wallar, Jim Wallar, Joe Haider, Heather Jaider, Kris King, Paul Peskar, Arlie Post, Joe Dina, Cindy Dina, Dave Povolny, Steve Ulrich, Rosie Ulrich, Bob Rilen, Paul Zahradka, Donald Lockwood, Joan Lockwood, Chad Maasser, Sheila Maasser, Keith Welch, Michelle Welch, Mary Erkenbrack, David Guzzo, Dave Denzer, Diane Denzer, Wayne Krueger, Pat Krueger, Myron Organ, Dennis Peterson, Jody Krebs, Tom Mike, Carol Mike, Joan Schliesing, Doug Schliesing, Ben Quamme, Jean Quamme, Duane Guckeen, Ilene Guckeen, Rick Robinson, Rod Skoog, Sandra SKoog, Bonnie Shostedt, Ken Devange, Dan Mike, Mattew Nygard, Wayne Nelson, Judy Nelson, Robert Wendel, Susan Wendel, Tom Fast, Roger Larson, Jan Patrin, Stan Patrin,

The City Administrator explained that this is an informal meeting this evening that will be hosted by the City Engineer and her, the purpose of the meeting is getting input from the public to pass on to the city council. The City Administrator thanked everyone for attending.

The minutes once approved will be put on the website. This topic will be on the city council agenda tomorrow night shortly after 7:00 p.m. The City Administrator reviewed the materials that were available to the audience and noted that a chronology of the events of the site is available if requested at the city offices. Copies of the conditions are also available if requested.

In 2010 the city received a permit for dewatering. The City Administrator and Engineer visited the site and realized the plan from 1973 did not match what was going on in 2010. In the original plan the Haluptzok's owned 4 – 40 acre sites which was part of the original end plan, Mr. Haluptzok told the city they sold 2 of the properties that were included in that plan. A memo was drafted to Ms. Haluptzok and it indicated what needed to be done to bring the permit up to date. FLC was told that they were not allowed to haul additional materials until the permit was in compliance. Last year a mitigation plan was submitted and approved by the city. The City wanted to see an end plan, what it would look like and when the operation was going to end. Earlier this year FLC agreed that they would surrender their Conditional Use Permit and apply for an IUP. Shortly after FLC applied for an IUP they withdrew their application and indicated that they wanted to run the business under the old Conditional Use Permit with the 10 conditions. There are a lot of questions; the Cities Attorney will outline options for the council's meeting tomorrow night relating to next steps and options.

Robin Wood, 9013 181st Avenue

Mr. Wood said he read in the paper that this is already going to happen - this is a done deal. Can FLC haul today? The City Administrator said the paper takes quotes out of context, it is not a done deal, and circumstances have arisen that were not known, such as Wyoming posting roads. If they were under 5 ton they can haul today under the Conditional Use Permit.

Ceil Neihart 18156 Vassar St.

Mrs. Neihart said she saw the Attorneys review from November 2012 and thought it was very interesting and wanted to point out the reason the IUP was requested was because it (CUP) was out of compliance. Ms. Neihart asked why hauling would be allowed with an out of compliance Conditional Use Permit.

The City Administrator explained that in 2010 the city knew that the operation/property didn't match the Conditional Use Permit. The permits were Excavation permits, Special Use, and then Conditional Use Permit. Information was compiled over 40 years. If the Conditional Use Permit is out of compliance it is up to the Council to vote to hold a public hearing to revoke the Conditional Use Permit. The issues were addressed; the city has to give them (Ms Haluptok/FLC) time to come into compliance.

Paul Peskar, 18339 Tulane St.

In regards to out of compliance with the existing CUP, one of the main violations the Attorney noted was John's Black Dirt (JBD) dug outside of the permitted areas, how could they possibly come into compliance if the permit stated they could not dig outside that area. The only thing that would change that would be the city amending the permit, has that done?

The IUP that they applied for did allow for the excavation, there is case law for adjoining lots that this may or may not be allowed; the city identified this issue also.

So they are not in compliance with the CUP? How can they run on a permit that is out of compliance, how can that be?

It would take a council action to revoke the CUP, and for anyone who has an ordinance or CUP violation, the person is given time to come into compliance. When the violations were identified, they are allowed to come back with a plan to come back into compliance.

Mr. Peskar continued that in the Attorney's letter it says the duration of a Conditional Use Permit is perpetual only as long as the conditions agreed upon are observed, a CUP terminates upon violation of conditions imposed, therefore it is the city's position that the Conditional Use Permit for JBD could be terminated as a result of ongoing permit violations that there are significant in nature in addition to the area outside of the CUP the area that has been mined has seen both violations as well as illegal use of that property. (Read from Attorneys memo). These are pretty significant violations and the city can't just sweep this under the rug by applying for another permit and then pulling back that application and then say they are in compliance.

The City Administrator said that no one has said they are in compliance. Until the council makes a decision to hold a hearing and take testimony and find them in violation, before the CUP is no longer in affect.

Mr. Peskar said because they are illegally using the property can the sheriff be called to stop them from running as they are out of compliance?

The City Administrator said this is an Attorney question because you're talking about criminal action and permits are usually civil action, and again the Council has not found them in violation of the Conditional Use Permit, this is a staff memo that was read from. This memo was presented to the council and agreed at the time that staff would work with Kathy Haluptzok and FLC to see how to get them into compliance and come with an end plan. As mentioned earlier the end plan didn't match what they initially indicated and we definitely had to get a mitigation plan because they were not in compliance with the Wetland Conservation Act.

Mr. Peskar – They pulled back the IUP, the end plan or mitigation plan that they submitted, the claim by the city is they have no power to revoke the Conditional Use Permit, isn't the mitigation plan just thoughts in the air if there is not the IUP to back it up.

The City Administrator agreed, and said that is a council action to make those findings, tomorrow night the Attorney will outline the next steps. At the last meeting routes were discussed, holding this meeting to get input from residents, the council is working through the process now. The council will need to make the decision on what the next steps they are willing to take.

(Unidentified person) In the mean time can they haul? Through 181st?

Several comments were made at this time by various people.

Based on this they should not be able to.

They are running trucks on 189th; there were dump trucks last week.

Until the council takes action the current Conditional Use Permit is in place.

Several people were talking at this time.

Diane Denzer – 9621 189th/250th, who is the Attorney is representing – us or the business? This is why he is not finding fault with these contracts the way the people have discussed tonight. He's not willing to look into that.

The Attorney represents the City. The memo is created by city staff, neither the City Attorney nor City Administrator gets to vote on action, tomorrow night the Attorney memo will go to the council and they will make a determination on the next steps.

Mrs. Denzer continued that the average person here has found several defects with this operation and she wondered why the Attorney didn't oppose these or find them at fault.

Dave Guzzo, 18512 Tulane St.

This is the first time I've heard about the compliance, if anyone else did something out of compliance they would shut us down. (Applause at this time) Mr. Guzzo (approached the map) and pointed to his property and said that the yard stake and trees are gone because JBD dug too far and he would like that checked into.

Mary Erckenbrack – 18237 Vassar St. said she didn't understand why they didn't get any of this information maybe a month ago, I didn't know anything about any of this until the neighbors brought something around and then I got the letter. Nothing at all.

The letter (Attorneys memo) was addressed to Kathy Haluptzok and FLC as they were the entity in violation. The remedy was to apply for an IUP and anyone can have copies of anything.

Matthew Nygard 18261 Tulane Street – Mr. Nygard asked if any of our roads are rated for 20 ton loads. How can this be considered because they will destroy the streets.

(Engineer) correct, they are not posted at all. That is definitely a consideration, they way the law reads if a road is not posted its 9 ton axle load on gravel roads and 10 ton axle load on blacktop. Should all the roads be posted, maybe but they are not.

Mr. Nygard just knowing the roads will be destroyed they are offering \$5,000 in retribution for repairs, that wouldn't even cover grading roads, now you are asking us to cover the costs for the road repairs, instead of getting the \$250,000 bond for road repair, the costs will be on the citizens and that is wrong.

(Applause)

The City Administrator asked for people to make statements for the record.

Mr. Roger Larson, 8936 191st St.

In the Conditional Use Permit is there a limit as to the quantity of dirt that can be removed from the site? How deep will they de-water and has a hydrologist evaluated how far away from the site that dewatering will be affective.

The City Administrator began answering but was interrupted at this time.

Ken Hanson, 9052 189th said he could answer this question and said his pond went dry in 2010 when they began dewatering.

The City Administrator said none of the permits (excavation, special use, and CUP) addressed the amount of material that would come out on a yearly basis and they didn't put a cap on the number of trucks that could come in and out of that facility. Hours of operation and condition of roads were conditions identified in the CUP.

Ceil Neihart 18516 Vassar St said only black dirt not sand was listed.

The City Administrator explained that this was an excavation permit, and there was a question regarding what type of material could come out. There was a question about what type of

material could come out of the excavation permit. Hydrology, the DNR takes care of the dewatering permits, in 2010 the DNR issued a permit based on certain conditions; this year issued a dewatering permit based on certain conditions. The area hydrologist Kate Drury indicated she reviewed the dewatering permit and felt the conditions under that permit were appropriate for this operation. The City has not reviewed beyond that.

Mr. Roger Larson, 8936 191st St. do you know how deep they will go with the dewatering?

This was not known, the Engineer explained that they plan to excavate below the water level, and there is not a depth. (The ponds are water table) The dewatering permits issued by the DNR indicated that certain maximum pumping rates were allowed and monitoring wells are required between the dewatering and the closest residential wells, and if the residential wells appear to be affected by looking at the monitoring well, FLC was to adjust their pumping rate down. Surface water ponds were not addressed by the dewatering permit.

Ken Hanson, 9052 189th stated his concern for trees and landscaping in the area being affected by the dewatering and if the affects for this was reviewed.

The Engineer said only the drinking water wells were addressed.

Tom Mike, Vassar St.

It seems the question is the Conditional Use Permit, if they were out of compliance, I think 3 years ago they were out of compliance when they were digging in the NE corner, how can you continue the Conditional Use Permit in 2010. Are they going to fill the hole in the NE corner (shown on the diagram 35.96 acre lot)?

The City Administrator said she isn't familiar with the mitigation plan to tell Mr. Mike which ponds are being filled and which are being taken out.

They were out of compliance when they dug there in 2010.

The City Administrator responded that they were not operational until they come into compliance.

How can they go on the CUP when the CUP is out of compliance?

Joan Schliesing - 18507 Vassar St.

We have put up with JBD for 40 years and been promised the moon for 40 years, the reason a lot of these people are here and we notified everyone is the running of the trucks on the road. We live on a substandard road right now and we were told that 181 was only a 7 ton road (by the City Administrator), how are these belly dump trucks going to come down our road and go down on 181st.

The City Administrator said she was corrected by the Public Works Superintendent and said the roads in 2009 state statute said if roads are not posted gravel roads are 9 ton per axle.

MS Schleising said most of the people here tonight are upset about those trucks, we had problem with John's Black Dirt years ago, we got them to go over to Tulane, then to 189th, nobody wants the trucks, the dust alone, the road is narrow, you can't pass a truck on the road when it comes down the road, even a school bus, this is a big issue and it seems no one is listening.

Matt Nygard, 18261 Tulane St., the belly dump trucks weight over 20 tons.

Yes, a loaded belly dump truck in total with its' 2, 4, 5 or more axles would likely be more than that.

(There was a loud outburst by the audience at this time)

Mr. Nygard, you will destroy all our properties.

The Engineer replied that this concern is understood.

Debby Rettner, 8616 181st Ave

If they've been out of compliance for 3 years, how many years do you give them, shouldn't they have been in compliance one year later?

The City Administrator agreed that when code enforcement is done throughout the city regardless of the issue, they are given a time frame and it depends. From the City's perspective we want people to come into compliance and not go to court and if good faith progress is made, in this case they applied to the DNR for the Water appropriation permit, they applied to the Watershed district to get the mitigation plan, and they submitted an end plan.

What is the time? (Many people talking)

The City Administrator said the City Council has to make that finding; you are looking at a staff report.

Debby Rettner said if you are stopped by the police, there are fees and time limits associated with violations. The weight doesn't make sense.

Paul Zahradka, 8960 186th Ave

Where is exactly is the proposal for the new truck route going to be? And how many trucks are they talking about daily.

The truck route has not been determined, the council has discussed 189th /250th was looked at, and asked Wyoming to work with the City, Wyoming in turn posted their portion of the road, they looked at the south route, Vassar, Tulane, 181st, alternate routes going through Carlos Avery and other opportunities, but that has not been determined yet at this time. This is why the letters were sent out.

Unidentified person – You're going to start hauling tomorrow? You were quoted in the paper.

FLC gave the impression that they would start at that time.

Wayne Kruger 18242 Tulane St. The paper says a vote will be taken tomorrow whether to allow it or not.

The City Administrator said tomorrow the council may or may not vote, choices will be outlined by the City Attorney, it is on the agenda to be discussed but whether action is taken is not known, a direction and or a motion by the council.

Mr. Kruger, they have not abided by all the amendments, they have not gotten the OK yet, today they hauled in heavy excavating equipment on our road, a tri-axle, 100 ton, 30 ton back hoe on it, and they are pumping water, the input is that going to have any strength tomorrow night? According to the paper it quotes sometime after the 10th they (FLC) are going to haul.

The City Administrator agreed and said that was the best information she had at the time, it is still flexible. The council has to take action to stop the hauling.

Mr. Kruger said he has lived there for 30 years, 15 years ago the same thing came up, they said it was amended and they were going take the north route, they even paved the road heavier, now you say our gravel road is a 7 ton road, they (Wyoming) put a 5 ton on the blacktop road).

The City Administrator again said the weight limit on a gravel road is 9 ton per axle not 7, unless otherwise posted.

Mr. Kruger said they violated the weight limit today, and asked how can we get these postings up so we can change this? (They came in on Tulane St)

The Engineer asked if Tulane posted, it is not, and he stated that the legal limit is 9 ton per axle.

Mr. Nygard 18261 Tulane St., asked if the city post the road to stop this traffic now.

The Engineer responded that is a consideration but staff does not make that decision. By expressing the opinion tonight, there are council members listening as citizens in the audience tonight, they are not convened as the council, and that will probably be one of the topics tomorrow evening.

(Unidentified speaker) Tomorrow night it could go to a vote or may not, if it doesn't go to a vote can they start hauling on the 11th?

Yes

Marta Bradshaw 18125 Tulane St.

It seems like the city is working awfully hard to make this work for JBD. (Applause) Wyoming stepped up for its citizens and Ms. Bradshaw wants to know when our council will step up for us? (Applause) This is going to rip apart our roads, the roads are used by residents and they (FLC) is going to make a lot of money and the residents will lose a lot, and what will the city be gaining from this?

Dave Sugg, 18320 Tulane

What does the City of Columbus gain by this and does the City of Columbus make money on this somehow?

Property taxes are paid to the city, there is no gravel tax, and no permits are required for the trucks.

So they pay \$700 of taxes on the land that's all they pay?

Yes, (the exact tax amount was unknown)

(Unidentified persons) Doesn't the city have a larger say than for 1 entity, why should the citizens have to pay for road damage, all citizens of the city would have to pay.

Mr. Sugg asked why would Columbus even consider doing this at the number per hour proposed tearing down the roads, what are you possibly thinking?

Everyone is allowed to come in for a permit and ask for "X". Staff collects the information and facts, and transfers this information to the Planning Commission and Council.

Marta Bradshaw – the city is bending over backwards to make this happen for them, why?

The City Administrator said she couldn't answer why.

Mr. Guzzo 18512 Tulane St. , Do you think the facts are good facts that this will be allowed, when they are out of compliance?

The facts and the chronology is there, the City Administrator is the Zoning Administrator and looking at residential uses and commercial uses and apply it against zoning, today the Zoning Administrator would say to the council it is a non compatible use. However in this case, they have 40 years of history.

Dave Sugg 18320 Tulane St.

Suggested that everyone on Vassar and Tulane Street should take date stamped detailed pictures of their foundation, every 10 feet of the interior sheet rock taped walls, and put them all together for the class action lawsuit when the houses are destroyed, which is not the right thing to do.

(Unidentified speaker) They are out of compliance, why are you even discussing giving them road rights until they do everything they are supposed to do.

Chad Monson 189th Ave., everyone is talking about the money, there are kids on these roads, who gets charged with homicide if an adult or child gets hit, because someone is responsible because the city knows this is wrong.

(Applause)

(Unidentified speaker) The paper says this is a 10 year haul, is that true or not true?

When FLC contracting submitted the IUP they asked for 10 years, the Planning Commission recommended 5 years, at that point before it went to the council the IUP was withdrawn by the FLC.

Sheila Monson 189th Ave., How do we get the roads tested, Wyoming got it done very quickly, they took plugs and posted it quickly, the roads are going to be ruined by the heavy truck traffic. What is the backup plan for when the roads are destroyed, are we going back to FLC to fix the roads when they are destroyed, we paid for the road and we are still paying for the road, we need to have this figured out before we even consider FLC and if they are in the business of road construction why doesn't the city look into an alternate plan through Carlos Avery or somewhere else that none us has to be disrupted, no kids have to be put at risk. These roads are narrow, they are not meant for that type of hauling, this is residential not commercial.

(Applause)

Jenny Nelson, 18321 Vassar St, I've lived there for 43 years. In 1973 JDB got a 20 year to haul black dirt, and then he was supposed to have a lake at the end of the road, and that's we were told in 1973, now you want 20 more years, it's enough.

(Applause)

Laurie Myren 9271 189th the mitigation plan included them submitting their IUP, now they have withdrawn this, doesn't that take away their mitigation plan and take them back to being out of compliance? They don't have a mitigation plan anymore if they've withdrawn their IUP.

Regardless of what happens the mitigation plan has to be put in on the property. There would be some hauling because material is needed to bring the area into compliance for the mitigation plan. The other part is the end plan, when a company comes in for an excavation permit; you have to show how many cubic yards of material will be excavated and then what will happen when that excavation is complete. In this case in 1993, there was a big lake and a dozen houses shown in the end plan. Over the years property was sold, and in 2010 when the city staff visited the site the property didn't match the end plan. At that time, the staff was told that over the years different parcels were sold. It was not known when those parcels were sold.

Kris King, 18339 Tulane St. You keep going back and forth that there was an end plan, and that happened, are they not out of compliance by not meeting the first end plan, it doesn't make sense , they can do whatever they want?

In 1989 there wasn't an end plan.

When they did the excavating permit was it not required with the end plan, wasn't there an end plan with the original excavating permit?

Yes, the original there was, in 1989 when they put the 1993 conditions in place, there was not an end plan attached to that (inaudible).

The City gave away everything in the 1989, they quit requiring the excavating permit, they quit charging for a haul fee of 2 cents per yard pulled out, the city has given away all their

control, all their rights and the rights of the citizens for one piece of property, this was done just for JBD and having read a lot of the files, I'm amazed at what the city has done, it seems that all control has been given away, and I think it's time to put a stop to it, because it's never going to end.

Rosie Ulrich, 8914 1896th Ave.

I would like to ask the Mayor and council to officially call for a public hearing to revoke the Conditional Use Permit and to post our roads so the trucks can't go up and down them.

(Applause)

Less Lincoln, 18410 Vassar I want to know what environmental study has been done to protect us? You talk about going through Carlos Avery, if you try that the DNR will say it's environmentally unsound, but it's ok to go down my road.

(Applause)

Dave Denser, 9621 189th Ave

Wyoming put the 5 ton restriction on their road, the Engineer walked up and down the street and made an assessment that the road is really good, I work off facts and figures, the city council should too, why doesn't the city should take a sample and see what the roads are rated at. Everything should be postponed, the city council should work off facts and get that tested. We're a big city now let's act like a big city.

Ceil Neihart 18516 Vassar St, said she has a document and wanted to follow up on a previous comment. This gives the history, he was (Haluptzok) excavating without a permit in 1973, he was granted an excavation permit and special use with conditions that allowed for the mining of black dirt. The permits lapsed on several occasions in the 70's and 80's generally because of Mr. Haluptzok's failure to meet the renewal requirements. During this period, permit violations were also noted, at some point during the 80's the Town Board began to use the term CUP in relation to the approvals, at no time did Mr. Haluptzok apply for a CUP and it is unclear if the ordinance ever permitted the use under a CUP on the property. From then on the Town Board started referring to it as a CUP, even though he didn't apply for a CUP. They had many hearings; they did do the permitting in 1993 with the 10 conditions. It does say it was expanded on the size later on. While no CUP application was ever received by the Township or the City and it is unclear whether the use was ever allowed by CUP on the Haluptzok property, it would be difficult to assert that a CUP never existed for JBD. The minutes from 1992 reflect that the first CUP was issued in 1982 and revised several times? The Town Board minutes of 2001 said the CUP does not have a sunset, how can that come in (never having a sunset), the Haluptzoks intend to mine until they run out of black dirt. They are out of black dirt and now they will have to bring black dirt to bring it up to compliance. Consequently the city does not take the position that a CUP does not exist for JBD even if the ordinance did not provide for such a mechanism at this time, it is clear that the Town's intent was to grant a CUP for the property or convert the existing permit. The Town Board did the CUP and the Haluptzoks's didn't even apply for it. I know you said this is staff notes; this is our city attorney that wrote this. When we were looking at 189th and the Engineer asked for \$250,000 bond for 189th, nothing has been said, there is a \$5,000 bond for 181st, Vassar.

Ms. Neihart said this copy is available at the city offices, the document is called the review of historical permitting for JBD.

The \$5,000 bond was way back in time and never updated over the years.

Michele Welch, 18745 Jennings St.

When FLC was hauling in 2010 they were supposed to keep the road clean and dust free, they did not do this, Ms. Welch said she called almost every day. Ms. Welch said the trucks are going down 189th and they keep violating their permit but nothing is being done. How can that be?

Mrs. Schliesing 18507 Vassar St. When you had a meeting with FLC did you find out if trucks would start running after the 10th?

FLC could not give an exact date for hauling. The City Administrator explained that about 4 weeks ago was when she was told they might start hauling on July 10th. When there are violations the Community Service Officer (CSO) is called upon to check the violation. This officer works once a week usually on Thursday.

There were several people speaking at once at this time. (Inaudible)

Tom Mike- 18419 Vassar St, Is there a Conditional Use Permit?

In the record, there was a public hearing notice, there was mailed notice, and in the minutes it shows they refer to it as a Conditional Use Permit. It went from an excavation permit to a special use permit and then to a Conditional Use Permit.

Kris King 18339 Tulane St

When Ms. King read the minutes, in 1982 it was referred to as a special use, in the 3 years from 1982 – 1984 the name of the permit changed more than once.

The City Administrator explained that the terms “special use” and “conditional use” were interchangeable.

Mr. Mike – 18419 Vassar St. Did Mr. Haluptzok have to apply for a Conditional Use Permit? And did he apply?

They applied for the excavation permit, required an annual permit, the process changed and that’s why the terminology changed in those years?

Mr. Mike again asked if there is a CUP.

The Attorney has determined that there was a CUP.

Mr. Mike said township shall record all violations and any violation will result in this permit to be reviewed or terminated. What is a major violation?

It’s is not defined. The list of conditions is used to determine violations. When there is no condition, it is the intent that is used.

Mr. Guzzo 18512 Tulane St

How many violations were found?

The violations are in the memo – the end plan, the mitigation, and the slopes. It had to do with the state of the land.

A comment was made that there were 39 violations.

The City Administrator explained that there were not 39 violations, there were 39 conditions in the IUP that FLC had previously applied for and later withdrew.

Tom Bergin, 18523 Vassar St. If there are not trucks allowed back there, how will the land go back to what the DNR wants to make the big pond? Who is requiring the mitigation plan?

They have to meet the mitigation plan as far as the wetlands are concerned. The DNR or BWSR would be the enforcer of this.

That would still mean vehicles; heavy equipment would still come in to do this work.

The City Administrator couldn't say how much or how long it would take to complete the mitigation plan. The mitigation plan is available at the city office for review.

Mr. Paul Peskar, 18339 Tulane St.

Mr. Peskar addressed the Mayor and City Council members in attendance tonight. I know you're looking for a solution and I have the solution. It is incompatible land use. Mr. Peskar read the following:

Incompatible Land Use

It is incompatible land use to have a sand mine of this size and scope in a rural residential zone. Without the proper infrastructure to access the mine, and with houses literally across the street from the mine. It would be extremely irresponsible for the City to allow the mine to continue operations at this time. This mine has grown from a mom and pop type of operation with a few small trucks, to a major commercial sand mine operation with 20 or more large truck per day. The Town/City long ago lost reasonable control of this mine. Each time an issue would come up they would knuckle under and the CUP would get more watered down. Don't kick the can down the road again, now is the time to gain control. This mine, with its expanded scope of operations has clearly exceeded the reasonable land use for this area, and should not be allowed to continue.

If the City is bound and determined to allow the mine to continue operating, it should be re-zoned. This would require the City to buy out all the affected land owners, and the proper infrastructure to operate the mine would need to be put in place. If they don't, they are going against several of the intended goals of their own Comprehensive Plan "to protect residential areas from incompatible uses" and "Prohibit unplanned commercial or industrial uses from developing near residential areas". Additionally they are opening themselves up to liability. Under the Land Use Law the citizens have the right to file legal action against the City and the Mine Owner to stop this Incompatible Land Use.

With the city only notifying the citizens that live south of the mine 1 week ago, about this important issue that directly affects them. I think the city should terminate the CUP and table any further discussion about operating this mine until more research on this Incompatible Land Use issue can be done.

General Growth Management Goal from the City of Columbus comprehensive plan *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 rural features and environmental systems: the protection of the rural character and identity of the city.*

Paul Peskar & Kristine King

18339 Tulane St NE

The above paragraph came right out of the City of Columbus' Comprehensive Plan.

Standing Applause at this time.

Jan Palmer, 18118 Tulane

No one has addressed the noise, if I wanted to live on a super highway I would have bought a house on a super highway. It will be disgusting. I have deer in my yard, children across the street. This is a disaster and I can't believe that you are allowing FLC to continue and their not complying and no one cares. If I did something without a permit I would have someone out there instantly. It is nonsense that you put up with this; you are supposed to be for us, not FLC. Ms. Palmer said she spoke with FLC and he said if we couldn't do this we would have to drive so far, that's not my issue, you own the business, and you have to take care of your business. We're putting up with stuff we shouldn't have to. We are a residential community. (Several people repeated this).

Debby Rettner, 8616 181st, corner of Notre Dame and 181st.

Last week she was awakened by the screeching sound of one of the dumper trucks stopping at the stop sign. Not only are they going to be driving by, but they will be using their brakes. Ms. Rettner said she's called the police many times on vehicles running the stop sign. Will the trucks be stopping?

Ceil Neihart 18516 Vassar St.

Mrs. Neihart said they live close to the pit area, No matter what they do they do, we listen to it all day long, not just the trucks, today it was noisy all day. When we built a sun porch and when we got the permit and we had to go through putting "X" crosses on the screens, I can't even back out of my driveway now, because up this blind hill are the trucks going to be barreling. We listen to the noise.

Ken Hansen, 9052 189th - Who is going to control the dust that will be coming out of the pit? Are they responsible for watering in the pit?

In the IUP there were conditions to address this, the current permit talks about roads and at the time the permit was issued it was a gravel road.

Mary Erckenbrack 18237 Vassar St.

We've been through this for 40 years, now we have to go through this again? They do not water, you have to call the roads are just like washboard, it's terrible. Now we have to go through this again? It's ridiculous.

Ken Hansen 189th – is anyone going to be responsible for the dust?

FLC would be responsible for addressing this and any public nuisance they create. The City Council is responsible for enforcing this.

Mr. Hansen asked if the City Council is going to help with this. Who is the City Council for?

Matt Nygard – 18261 Tulane St

Why is this even being considered, who is gaining from this, who is going to benefit, not any of the residents, not the city?

Several people were speaking at the same time (inaudible) and whether someone/city is getting paid.

There were many questions and comments from several audience members questioning why this is being allowed.

The City Administrator said the permit is in place; the staff went out and drafted a memo to the Council. City staff was working with FLC to get an Interim Use permit.

Ceil Neihart introduced County Commissioner Rhonda Sivarajah and said someone emailed her to come and listen to the concerns, she also said they can't do anything jurisdictionally.

(Applause at this time)

Spencer Pierce Environmental Issues was introduced.

Ms Sivarjah said they have no legal jurisdiction or authority over this issue. They were invited to come in to listen tonight. Spencer Pierce with Anoka County is the Environmental Issue specialist and she wanted to make sure he was here also.

(Applause at this time)

Rhonda Monson 189th said Kettle River is in very bad shape and she said if traffic is increased on the road the county will also pay for repairs.

Ms Sivarjah said they recognize the road is in bad shape. Most of the county roads are 9 ton roads; state statute doesn't allow restricting traffic on the road as long as they are in compliance.

Kris King 18339 Tulane St. - There was a big piece of equipment on Tulane Street going to Vassar, that road is restricted, if a house catches on fire down on that end and a fire truck can't get in does that not jeopardize all of us as residents.

The City Administrator received 4 emails from people who could not attend. In the letter that was sent to the residents, it indicated that for people who could not attend they could submit something in writing for the meeting.

The City Administrator read the letters at this time.

(Copies of the letters/emails are at the end of the minutes)

(Unidentified person) Legally what can the city do at this point?

The Attorney will outline three scenarios for the City Council for their meeting tomorrow evening. The City Council will have to decide what action they want to take. The City Administrator confirmed there is a legal option that can be taken.

There was a comment that everyone should show up tomorrow night for the meeting.

(Unidentified person) Will the council allow us to talk?

Tomorrow is not a public hearing; however the Mayor has allowed people to speak. Whether he will tomorrow night was not known for sure. Generally Public Open Forum is after agenda items, but comments can be taken at the Mayors discretion.

What happens if we do speak? Is it likely they will make a decision?

It is unknown at this time what direction they will take, it will be their first opportunity with the Attorney's comments, and they have the option to making a decision, giving direction or asking for more information.

Ceil Neihart – 18516 Vassar St. , Perpetuity with the Conditional Use Permit, where does this come into this, if they did approve a CUP, how does that fit in?

The Conditional Use Permit runs with the land, as long as the business is doing business and meets conditions as determined by the council, the permit runs with the land. Conversely, an IUP runs with a person and/or business and has a termination date.

Can the Conditional Use Permit be changed?

A Conditional Use Permit can be amended by the applicant, the land owner that holds the permit or by the city council, but it takes action by either of them. There have been other businesses that have come in to amend their CUP's.

Tom Mike 18429 Vassar St., questioned that the City council can amend this?

City Administrator said the council can amend a Conditional Use Permit; the Attorney will go through this tomorrow night.

(Unidentified person) Aren't we zoned residential, why would we have a big business like that right in a neighborhood, JBD was little business where dump trucks came down there and got some black dirt, this is big operation, this is not a little business. Why the zoning is laws not being enforced?

The City Administrator confirmed that the area is zoned residential. It was being addressed; FLC would voluntarily surrender the CUP and apply for an IUP.

(Several people were talking at the same time, commenting that they lived here since 1970).

A question was asked about having a graduation, wedding, or some other event and park along the road with the big trucks coming down the road.

Mr. Guzzo 18521 Tulane St., they are out of compliance, if this is passed tomorrow, what happens to being out of compliance, how do they get in compliance and use the Conditional Use Permit if they are out of compliance and wouldn't they have to be in compliance to use it before they start hauling dirt?

The City Administrator said this is a complicated question. Many people expressed their concern for the City Administrator having to take the brunt of the comments.

(Unidentified person) FLC is a huge construction company with many trucks, JBD doesn't have a lot of roads in there, they will haul as much sand as they can and the trucks will line up on our roads sitting there to go in to be loaded.

Dave Sugg, 18302 Tulane St. Mr. Sugg was looking at the aerial maps of the commercial districts displayed in City Hall and he pointed out that JBD is not on the Commercial Industrial Area of the Map.

The City Administrator thanked everyone for attending – it was important to have residents speak and get their comments on the record, she asked for further comments at this time.

No one else spoke at this time.

If there are any other questions contact the city.

Meeting closed at 9:08 p.m.

Respectfully Submitted:

Emmy Robinson
Deputy Clerk

City Offices

From: rosieulrich@q.com
Sent: Monday, July 08, 2013 6:02 PM
To: cityoffices@ci.columbus.mn.us
Subject: Sand Pit and Dump trucks

We live 30 feet from what has become known as the "south gate" of John's Black Dirt. We will be attending the neighborhood meeting on July 9th. We are very opposed to the hauling of sand out of the south gate. To haul sand requires "belly dumper" trucks and our dirt road is not made for this kind of traffic. We have weight restrictions on roads for a reason. Forest Lake Contracting has a product that they need to haul, they should have thought about how they would get their product to market before they got involved with this. Our city does not have a duty to a private company to make sure they can haul their product. They should have a duty to their citizens for our safety, our health and general welfare.

The owner of John's Black Dirt does not live in this city, the owner of Forest Lake contracting does not live in this city. Why do we owe them our way of life for their product? This area is zoned rural residential. Have you thought through the ramifications of allowing belly dumpers coming and going down 181st Ave? There is no ditch. People will not even be able to walk their dogs along this stretch, and forget riding a bike.

I would like a variety of questions answered at the meeting on the 9th.

- 1) What are the weight restrictions on our country roads?
- 2) What are the proposed hauling routes out and back into the sand pit?
- 3) Is there actually a copy of the conditional use permit for residents to see? It is my understanding that there would have had to have been a public hearing on this, and a recording at the county level.
- 4) Why is our city council not protecting their citizens, roads and environment?
- 5) What does the city take in for taxes on this piece of property? Do you make any more money off of this tract?
- 6) Environment, water quality. We were told at one of the meetings that the water that is pumped out into the creek is monitored by the DNR. Where is this data? How many creeks are on this site?
- 7) Is there going to be a monitoring well set up and checked? Who will check this?

The Wyoming mayor, Eric Peterson, cares about the people in his city.

Let's see if our mayor and council members care about the good people of Columbus. The dust, diesel fumes, noise and our children's safety should be considered. Our city manager was quoted in the Forest Lake Times that "shutting them down is not an option" Well, we say shutting them down is an option. Maintaining our roads by enforcing weight restrictions makes perfect sense.

We will lose a lot if this hauling is allowed. Let's hope you hear us on the 9th.

Thank you,
Steve and Rosie Ulrich
8914-186th Ave. NE
Columbus

City Offices

From: Kristine Halvorson [khalvorson1023@gmail.com]
Sent: Monday, July 08, 2013 8:30 PM
To: cityoffices@ci.columbus.mn.us
Subject: John's Black Dirt hauling down Vassar St NE

Hello, My Husband and I are unable to attend the neighborhood meeting on Tuesday evening, but wanted to express our concerns on the situation. We currently reside at 18264 Vassar St NE. Vassar St is a very dry and dusty road. Our home gets very dirty on the inside from the dust even though all windows and doors are closed at all times. The outside of our home and vehicles are often covered in dirt from the dust. We can't imagine how much more dust would be created with large heavy trucks coming down the road multiple times a day.

Also, we are expecting our first child next month. When our child gets older we want to feel comfortable with letting him go outside and play or ride his bike in the driveway without worrying about large trucks flying down our road. The noise the trucks would create could be a nuisance too.

If John's Black Dirt will be using Vassar St Ne to haul dirt, they should at least pave the road to prevent any more dust.

Thank you for your time and letting us express our opinion.

Sincerely,

Trevor and Kristine Halvorson

City Offices

From: Rita Ferraro [Rita.Ferraro@century.edu]
Sent: Tuesday, July 09, 2013 2:15 PM
To: cityoffices@ci.columbus.mn.us
Subject: comments for John's Black Dirt meeting

Hello Ms. Mursko, the City Engineer, and the rest of the City Council,

My name is Rita Ferraro; and, I live near John's Black Dirt facility. I work in the evenings; so, I will be unable to attend the scheduled "Neighborhood Meeting" on 7/09/2013 at 7:00 PM. Consequently, I am submitting my comments via e-mail as suggested in Ms. Mursko's letter dated July 02, 2013.

I have lived at 18263 Vassar St. NE in Columbus since April 15, 1972. In the past, for many, many years, the large dirt trucks going to and from John's Black Dirt pit had wrecked the roads in this area. This business really should have been held accountable for past damage both to the gravel roads of Vassar St. and Tulane -- and, possibly, even to the paved roads of 181st Avenue, Kettle River Boulevard, Broadway and, Notre Dame depending upon which routes the trucks used to get to their destinations.

Not only did the trucks going to and from John's Black dirt pit cause physical damage to the roads, these trucks (both before picking up and after being loaded with dirt) barreled down the roads and frightened the children [and their concerned parents] as the kids waited for school buses.

Also, those of us who leisurely walked in the area each day were bombarded with flying rocks as the trucks torpedoed down the gravel roads at speeds which seemed well over 50 mph in our residential district. Our leashed dogs who walked with us were also terrified of the lumbering trucks.

The City of Columbus needs to accept the responsibility of protecting its residents and must, also, protect the roads by not allowing these heavy transport vehicles to ruin the roadways for the families who live in this area. The City of Columbus needs to be prepared for future destruction of the streets in this area if the City Council allows John's Black Dirt to accelerate its operation. Normal sized pickup trucks should be allowed to transport dirt from John's Black Dirt business; but, not heavy, or potentially overloaded, monster trucks. The City of Wyoming certainly did the right thing by setting a 5-ton limit and, thereby, protecting the area for its residents.

In the past, the Columbus Town board had repeatedly ignored the desires and requests of its residents. Instead, the Board often gave preferential treatment to businesses, such as John's Black Dirt and others, who were not held accountable to Columbus and did not take any responsibility for their actions, such as the destruction of our roadways and/or the defacement of the area.

I hope the new City Council respectfully listens to the residents of Columbus and, subsequently, has the courage to protect the City against businesses, such as John's Black Dirt, who wish to take advantage of past errors in judgment by the former Town Board/Engineer.

Respectfully submitted,
Rita Ferraro

RITA FERRARO
18263 Vassar St. NE
Columbus, Minnesota

City Offices

From: Kathleen Seiler [seilerk66@gmail.com]
Sent: Tuesday, July 09, 2013 4:14 PM
To: cityoffices@ci.columbus.mn.us
Subject: Hauling of John's Black Dirt

To the Columbus City Council members, the City Engineer and the City Administrator;

I feel after attending the prior meetings on the same subject that no one is listening to the people who live on 189th Ave. or 250th Street. Not listening and/or don't care.

We don't want belly dumpsters on our streets.

It is our quality of life you are taking from us, and if Elizabeth mentions one more time it has been going on for the last 20 years I would like to point out to her that she is wrong. We have not had the big belly dumpsters driving in front of our homes for the past 20 years and not at the frequency that you are talking about either.

It is very clear our mayor wants to push this down our throats, the reason he states; is we should all be concerned about where people that are building homes are going to get sand from. Well mayor, you should be concerned about the people that have homes here now. You yourself said you didn't want those trucks hauling on your street.

I wouldn't worry about the people's building needs, right off of Elk, behind us, down the road from the park, they are building homes. Where are they getting their sand from? Call and ask Bob Muske at Remax, he will let you know.

With all the talk of the road not being wide enough, the integrity of the road, the safety issues, all very good reason not to haul with belly dumpsters, but the main reason is we all have the right to the pursuit of happiness! We have a right to enjoy nature, beauty and peace and quiet. That is why we chose live here.

I walk with my dog every morning, neighbors are kind and friendly, they slow down and wave, and drive over to the opposite side and give us room. Belly dumpsters can't slow down like cars can, plus they don't have the room. I always pass by other walkers, runners, bicyclist, kids playing in the street. This is a community of people, not an industrial park.

I was going to attend the meeting tonight but unfortunately will not be able to do so, I will watch the minutes on line.

I beg all of you to reconsider and think of the families on 189th and 250th. Please!

*Sincerely,
Kathleen Seiler
9717 189th Avenue NE*