

**City of Columbus  
Regular City Council Meeting  
July 10, 2013**

The July 10, 2013 meeting of the City of Columbus City Council was called to order at 7:03 p.m. by Mayor Dave Povolny at the City Hall. Present were Council Members Denny Peterson, Jeff Duraine, Bill Krebs & Jessie Messina. City Administrator Elizabeth Mursko; Attorney Bill Griffith, Jr., Engineer Larry Bohrer and Deputy Clerk Emmy Robinson.

Absent: None.

Also in attendance were: Troy Blanchard, Audi Wolff, Mary Erkenbrack, Dave Denzer, Diane Lincoln, Leslie Lincoln, Bob Rellen, Ron Hanegraaf, Bob Moorehouse, Kris King, Paul Peskar, Ken Hansen, Rosie Ulrich, Steve Ulrich, Cathy Nelson, Glick Nelson, Curt Nelson, T Doyle, Chad Green, Sheila Maasser, Bill Eisenmenger, Nancy Eisenmenger, David Guzzo, David Sugg, Connie Sugg, Noah Sugg, Robin Wood, Deborah Rettner, Joe Rettner, Linda Larson, Loran Larson, Rick Robinson, Myron Organ, David Liska, Tom Mike, Carol Mike, Wayne Nelson, Judy Nelson, Rod Skoog, Sandra Skoog, Duane Guckeen, Ilene Guckeen, Joe Dina, Cindy Dina, Jan Palmer, Ben Quamme, Paul Zahradka, Ceil Neihart, Pete Neihart, Joan Schliesing, Laurie Myren, Dan Mike, Jill Wallar, Jim Wallar, and Paul Ringell Forest Lake Times.

**A. CITY COUNCIL REGULAR MEETING**

1. Call To Order - Regular Meeting - 7:00 P.M.
2. Pledge of Allegiance

**B. CONSENT AGENDA**

3. Motion - Agenda Approval with Additions
4. Motion - Approval of the City Council Meeting Minutes 06/26/13
5. Motion - Pay Bills as Posted
6. Motion — Acceptance of Gifts.....Resolution (Page 1)

**Motion by Krebs to approve the consent agenda including Resolution 13-14 Authorizing Acceptance of Gifts Received by the City of Columbus and to Authorize the City to Administer the Gifts in Accordance with the Terms Prescribed by the Donors for lighted landscape curbing around the city's flag poles. Second by Duraine. Motion carried.**

**C. PRESENTATIONS**

**7. MOTION — 5027 190TH LANE VARIANCE CLARIFICATION (PAGES 2-3)**

A motion was made at the last meeting approving a variance for the side yard setback. Mr. and Mrs. Nelson are the applicants. When they applied for the permit they measured from the house wall, not the edge of the soffit. The city code requires measuring from the outside edge of the soffit (overhang). The soffit is 1 foot on each side, so the motion needs to be for a 2 foot side yard setback.

**Motion by Messina to reconsider the motion made on June 26<sup>th</sup> for the variance request for 5027 190<sup>th</sup> Lane, Columbus, MN by Roger and Susan Nelson for the property at 5027 190<sup>th</sup> Lane N.E., from the required minimum side yard setback of ten feet (10) to a five (5) foot side**

**yard setback on the east side of the property. Second by Krebs. Votes as follows: Peterson - aye; Messina - aye; Duraine - aye; Krebs - aye; Povolny - aye. Motion Carries.**

**Motion PLZ 00200 by Messina to approve the variance request for 5027 190<sup>th</sup> Lane, Columbus, MN by Roger and Susan Nelson for the property at 5027 190<sup>th</sup> Lane N.E., from the required minimum side yard setback of ten feet (10) to a *two (2) foot* side yard setback on the east side of the property with a recommendation for approval based on the finding that the Zoning Ordinance causes a practical difficulty. Second by Peterson. Votes as follows: Peterson - aye; Messina - aye; Duraine - aye; Krebs - aye; Povolny - aye. Motion Carries.**

A question was asked if this is an acceptable method of measuring if the soffit is less than 2 feet. The Attorney noted that many ordinances measure from the base of the structure. The City Administrator explained the ordinance reads that the outmost portion of the building is the point for the measurement for the setback. The request was for staff to review this and make a recommendation if soffits are less than 2 feet wide.

## **8. DISCUSSION & MOTION — JOHN'S BLACK DIRT (PAGES 4-15)**

A neighborhood meeting was held last night. Several documents were in the agenda packet including Restrictions for John's Black Dirt 1993, a memo dated November 5, 2012 from the City's Attorney, a John's Black Dirt Permitting History from 1973 – 2012 and an aerial of the area.

Mayor Dave Povolny started by saying the council will hold discussion, and then he will open up the floor for public comments with some restrictions.

The Attorney started by reviewing the history saying John's Black Dirt (JBD) was originally permitted as an excavation permit, it evolved into a special use permit and ultimately filed in 1993 as a Conditional Use Permit. The courts view of a Conditional Use Permit is a protectable property interest. The record was reviewed several months ago. Staff met with Forest Lake Contracting (FLC) and suggested a process where they would voluntarily relinquish the Conditional Use Permit (CUS) and apply for and Interim Use Permit (IUP) and the city would not suspend pursuing violations of the permit while the IUP was being processed. The idea was to bring the use to an end and properly close the use. This was processed through the Planning Commission, the applicant withdrew the application before the council could act and the city is left with the Conditional Use Permit. The options for the council are similar to what they were when the process started before. Any of the processes that the council would follow is in lieu of doing nothing and allowing the violations to continue and the operations to continue outside the original permitted area.

The Attorney reviewed the council's options at this time:

1. Send FLC a notice of violation and ask them to correct it.
2. Notice FLC for a public hearing where the CUP would be revoked or modified.
3. Pursue a limited permit with a stated time period under an IUP.

### **What are the violations under option #1?**

The violations are:

1. Excavating outside the permitted area,

2. Not maintaining the side slopes of the ponds and the areas they are excavating, which creates what can be a dangerous situation.
3. Type of mining being done, originally it was for black dirt.
4. The size of operations.

**It wouldn't be for the haul route?**

The haul route was specified in earlier permits, not in the 1993 permit. The city could indicate that the haul route was out the north route.

The City Administrator added that the violation on the side slopes was addressed in the mitigation plan. It was noted this has not been completed; it is part of the mitigation plan.

The main violation is this area of excavation was not permitted originally.

**Council Member Messina asked under option 1(a) hasn't the city already let the property owner known about the violations in 2010 when the site visit was conducted?**

Ms. Haluptzok and FLC are well aware of the state of the permit. The city has been working with the property owners over the winter, regarding wetlands and the Wetland Conservation Act. The mitigation plan was accepted by the various government entities. They have to complete the mitigation plan, so there has to be some activity to complete this.

**Is there a time frame on the mitigation plan?**

The City Administrator speculated that it may be 2 years, but the exact time was not known at this time.

**There were a lot of comments at the meeting last night regarding the violations being grounds for revocation of the CUP and are they legitimately working under a CUP now.**

There is a process for revoking the CUP. The permit doesn't go away; it has to be legally revoked. (Option #2).

**A question was asked regarding who is responsible for executing the mitigation plan?**

The Attorney responded that the land owner is responsible for restoring the land. It was noted that the mitigation plan is not from the city, it is through other government entities that deal with wetlands and storm water.

There was discussion regarding the mitigation plan execution and who is responsible for executing the plan and the timeline for its completion. In addition discussion regarding the time tolerance of residents to the operation was discussed. It was thought that some trucking would need to occur.

Mayor Dave Povolny asked for comments from the council at this time regarding the three options.

Council Member Duraine said he thought the intent of the original Conditional Use Permit was removal of black dirt from a small family operated business and Forest Lake Contracting is not a small family operated business; they are not hauling black dirt anymore. The proposed use is not within the Conditional Use Permit that was originally given out. Council Member Duraine said there needs to be some sunset date set.

Mayor Dave Povolny added that the operation needs to stop. Council Member Krebs asked if there is a potential lawsuit for the city.

The Attorney replied that to answer these two questions, the question is are they outside of the original scope of the business and clearly they are. They are outside the original excavation area. The Attorney described the process if revocation was sought after.

Council Member Krebs asked to make comments at this time. Council Member Krebs said he listened last night and it hit home and he would like to see this resolved, closed down in a quicker fashion than 10 years or 5 years, that is too long and he believes the residents believe that too. Council Member Krebs wants to get feedback from the residents on how long they feel the operation could continue before it should be closed. The goal is getting the property mitigated so buildable lots are created and the neighborhood gets back to order. He understands the truck issue, dirt, dust and other factors. Forest Lake Contracting is willing to take care of the gravel roads and is willing to put dust preventative on the roads. It is still an excessive amount of trucks however.

The Engineer said the intent was to implement the mitigation plan in stages from east to west. They would do it as they were mining sand. If they were not allowed to mine dirt, and mitigate the site it would be done sooner than the 5 year IUP or some other permit.

**Council Member Duraine asked if JBD had a mitigation plan.**

No there was an end plan not a mitigation plan. Under BWSR they must do the mitigation plan. The question is how quickly it can be done.

Mayor Dave Povolny thanked everyone for coming, and wanted everyone to know they are the elected officials and are here on the residents' behalf and asked for respect to be shown and eliminate slanderous comments and accusations. Questions should be directed to the Mayor and he asked that people don't talk over other people and keep comments to less than 2 minutes. All the council members were at the meeting last night. Repeating what was said last night isn't necessary. Try to bring new ideas, suggestions like the gentleman that spoke last night that talked about incompatible land uses, who did a great job.

**Rosie Ulrich, 8914 186<sup>th</sup> Ave. The question is we've heard about the process to revoke, what exactly is the process to revoke this CUP?**

The Attorney explained that the process is a notice is sent to the holder of the Conditional Use Permit, in this case it would be the land owner, the land owner is given typically 30 days before a public hearing is held, the city staff presents its case for revocation or modification, and the holder of the permit would be heard. This is not a trial so there is no cross examination. The public is given an opportunity to testify. The Attorney noted that this is not a public hearing tonight, public comment is at the Mayor's discretion; the Mayor tends to want to make sure everyone is heard. The rules would be more formal than they are tonight in terms of time limits and what can be testified and relevance because it is a quasi judicial proceeding. It's an opportunity for the council to hear all sides, the council is the decision maker, and then the council can close the hearing and continue the matter or they can take action that night. That action is to revoke, modify or leave in place the CUP.

**Section 7A541B. Mayor Dave Povolny said this is the section the Attorney just review and he read this section of the code at this time. Mayor Dave Povolny asked the Attorney to speak to “vested rights”.**

The Attorney said vested rights is until a permit holder puts the use in place there is no vested rights, the circumstances can change, the ordinances can change. But once the use is put into place there are vested rights. There is an argument that since this operation has been going on for some time there is some vesting. The operations that they have conducted over the years define the vested rights.

**Matthew Nygard, 18261 Tulane St. - When it comes down to the legal problems of the damages to the roads, who will be held responsible for the cost of the road repair, for example 181<sup>st</sup> and Notre Dame are in bad shape now, will the residents be responsible for that?**

The city is always liable for its roads. The time when the city assesses for road repairs is when it's initially constructed. The city has a maintenance plan and road fund for repairing roads. In the case of the Conditional Use Permit there was a fairly small bond (\$5,000) posted which was required many years ago. Today that bond amount would be a very insignificant amount. The Engineer agreed the bond amount is an insignificant amount in today's dollars. If there is modification, provisions could be made for repair of the road whether an increased bond amount, letter of credit, cash deposit, or even some improvements ahead of actual hauling, that could all be part of a modification.

**What is the state of the southern roads?**

The Engineer explained that 181<sup>st</sup> is blacktop already, the thickness and original blacktop date was not known at this time. The city has a plan to maintain their blacktop roads and 181<sup>st</sup> and Notre Dame were scheduled for a bituminous overlay next year. The gravel roads are maintained by adding gravel periodically, however it tends to build up overtime.

**Tom Mike, 18429 Vassar ST. - You mentioned vested rights are you saying FLC can't run anymore trucks than Leroy Haluptzok did?**

The Attorney said the city would look at the evidence regarding trucks that were run out of there over the years, and what the size of the JBD operations was over many years.

**Ceil Neihart 18516 Vassar St. - First we were talking about the mitigation process and now we're back to the roads. Going back to the mitigation issue, my feeling is that since 1973 money has been made on all the black dirt that has gone out of the pit, if there is a mitigation to be done it is the responsibility of the person who has been making that money all these years. I have not a lot of sympathy if they are saying they don't have the money to do it so that's why they are calling on FLC. We all know that IUP would not work, because in 5 years they weren't going to get all the sand out of there, they wanted 10 years and you know they would have re-applied and we'd be back here in 5 years fighting it again. The IUP sounded like an easy out for everyone; it was not, because the main thing that was left out was all of us. We were not considered in any of that until we showed up here and questioned it. Have you talked to the residents, been down our roads, and the people on 189<sup>th</sup> who had to put up with it. To my knowledge I have not heard anything going on for the last 2 years, I was working in 2010. I'm retired and it's been quite, it's almost nonexistent, there's no black dirt. Isn't there something that if the CUP**

**isn't used after a year it's not valid? This is a whole different thing, its apples to oranges, there is no way those trucks are going to make it down our roads, number one being forgotten is public safety and number 2 is property values, what will they be like if there are trucks barreling down the road. Let's quit talking about the trucks barreling down the road, let's move on from what's been obvious from that memo that he never applied for a Conditional Use Permit, the Town Board at the time gave it to him, and this was a sloppy poor operation for many years. If they don't make any money or do anything, not our problem. They made money in 2010, I hope they saved some because they need to do the mitigation that is required and they've known all this.**

**Response:**

The view is that there is a Conditional Use Permit in place because there is a continuous line back to the excavation permit, which was then treated as a special use permit and then there was a CUP.

**Is there a statute on time limitation, because they didn't haul for two years therefore they lose their rights?**

The general treatment is there has to be an intent to abandon the Conditional Use Permit, they would have to take action to show they don't intend to use the CUP, entering into a contract with FLC doesn't show this.

**Paul Peskar, 18339 Tulane St.**

I think you have a strong case to revoke the Conditional Use Permit, the argument that the size of the operation is much different than JBD. The contract that FLC has for Lexington Avenue project is 7.2 million dollars; there is no way that JBD had contracts anywhere near that size. I think they are in violation of the current permit, they're way outside the original intent, and the permit was for black dirt, now they've moved onto sand. Again, if we let them in there, they are going to keep digging until we stop them. Now is the time to do this, I'd rather see the city spend their money for a legal action to stop this now than to defend against citizens having to fight for our own rights under incompatible land use. Mr. Peskar thanked the council for their time.

**Sheila Monson, 189<sup>th</sup> Avenue**

I understand we have to do this mitigation, we need to set a time frame and get straight facts, numbers and figures so that we can all come together to get this done. We also need to figure out when the end path, sunset will be, if we can see an end 2 years down the road and we don't have come back and fight this I think that would solve a lot of anguish.

Mayor Dave Povolny agreed, and said if it was 6 months that might not be fast enough for some and not for others.

**Kris King 18339 Tulane - This is a legal question, we keep talking about the mitigation, are we in mitigation because of the violation that they over dug this property?**

The City Administrator explained that the mitigation is a result of the Wetland Conservation Act. The Wetland Conservation Act was administered in 1991, and that regulated wetlands, when JBD started digging ponds he started creating wetlands, which are now protected. Mr. Haluptzok has to do the mitigation to make up for all of the lost

wetlands as a result of all the digging, and taking out the roads. They are under orders to come into compliance, compliance is achieved with a mitigation plan, and this is state mandated.

**Kris King - Is it because the scope grew so much, even when Leroy or John was digging and they were digging more than they should have? Or digging an area and making it larger than it ever should have been. I know you said you went in there and you noticed roads weren't where they were supposed to be, it wasn't anything like the plan that you expected to see, and in my mind if they didn't follow the plan we're in this position because of them.**

The original plan included more acreage, which over the years he sold; the city was unaware of this. The excavation area was identified in that plan. There were two phases to the excavation; there was an excavation area and a proposed area. In the memo the legal description covers a certain area and then again the proposed areas there is a question whether it was or was not included and that's what the Attorney is referring to as outside the scope of the original area. At this point the excavation did take place over three parcels; JBD doesn't own one of the parcels anymore. Because it was dug and there are ponds, now they have to do the mitigation across the entire area.

**Was selling the property also a violation?**

The Attorney said anybody can sell property, the only limitation would be if the property was under some plan for restoration (The Mayor interjected that it was), then it could be a violation.

**Robin Wood, 9013 181<sup>st</sup> - Did the mitigation plan not call for them to digging all the sand out? Isn't this just an end run they did on us?**

The Engineer said some of the ponds are fairly deep right now. Anything below six feet of water depth is not considered a wetland. The wetland today is the fringes from the ground surface down to water depth of 6 feet or less, the center parts of the ponds are not wetlands and not regulated as wetlands. The excavation plan was not to disturb the wetlands that are there today by mining the sand that's below six feet of water. The restoration is in changing the slopes, because those edges have become wetlands over time, just the fact of flattening those slopes disturbs the wetland that is there today. They have to compensate for altering those wetlands. When the operation began in 1973 that was before wetlands were protected this started in 1991.

**In their mitigation plan does it call for them to remove the sand to redo the wetlands?**

The Engineer said it isn't necessary for them to remove any sand to meet the mitigation plan. Other than the economics of it.

**Dave Guzzo 18512 Tulane St**

I agree with my neighbor and I think we have a strong legal case. I think if you took this to court any judge would see there are a lot things going on. Going back to bringing them into compliance, there have been so many things they have not done in good faith, can we ask FLC if they want to show good faith, let's bring in the black dirt and mitigate and get into compliance, then we can sit down and talk about moving forward.

**David Liska, 18126 Vassar St.**

Is it possible to put a stop to this right now and have them come back to us with an end plan in a short period of time?

Mayor Dave Povolny said it would involve an injunction, a lawsuit, and a public hearing.

**I saw an aerial view of the property and it's in bad shape and can't be sold, is it possible they can put a plan together to finance fixing it and fixing it all within a short period of time.**

Mayor Dave Povolny responded that the IUP was an attempt to do this and he agreed that 5 years was probably too much time for the residents in the area, they endured enough. The council can't just do things without following the law, as elected officials they sworn to uphold the constitution of Minnesota. Mayor Dave Povolny said they don't want to infringe on anyone's rights and they are trying to balance this. It's great to have people in attendance and hear opinions from the residents. The way to accomplish this is to sit down and do another plan with them and have it happen faster than five years.

Council Member Duraine said FLC always thought they had the support of the council, now they will get a message that the majority doesn't and the council would like to see it end sooner than later. It was noted that this created a big problem in 2010; there were a lot of complaints, they have not hauled since then. Now they (FLC) want to go back and haul and nobody wants it. Mayor Dave Povolny added that it (hauling on 189<sup>th</sup>) wouldn't be as bad as if they hauled south.

**Joan Schliesing, 18507 Vassar I'm 1 house from the pit.**

I would like to know the road restrictions put in Wyoming and when will 181<sup>st</sup>, Tulane and Vassar get road limits? Mrs. Schliesing expressed concern regarding the width of the road, the hill and her grandchildren. She said a bus and truck have gone off the side of the road in the past. Ms Schliesing thanked the council for listening.

**Mayor Dave Povolny said last night road limits were discussed and he asked the Engineer to clarify.**

The Engineer said the roads are not posted today, so today the weight limits on gravel roads are 9 tons (18,000 lbs) per axle, that's why trucks have several axles; a typical belly dump has 5 axles. Legally the unit could weigh 45 tons, but there is a maximum of 80,000 lbs. Mayor Dave Povolny added that putting the 5 ton limits on roads may not be the best answer because by Wyoming posting roads they've created a burden for our city for getting our own gravel to our own roads, for people who have RV's or other large vehicles. The weight limit is a band aid approach; a solution needs to be achieved.

**Pete Neihart, 18516 Vassar - Mr. Neihart asked if there is a place to spread the dirt over the land, then they don't have to haul black dirt in either. There's a lot of acres back there, they could pull the dirt out and spread it back over.**

The Engineer didn't know how much black dirt is available at the site presently, what are left are the small dividing roads between the various ponds. When it's all done, the plan was that it would be one large water body.

**Mr. Neihart said apparently nobody knows how much is left to be taken out - are there 20 truck loads or a thousand truck loads. I think you should be able to spread it on the land instead of just hauling it someplace else.**

**Duane Eisenmenger 18155 Vassar - All these road in between are they considered wetlands? Can they dig that up and put that where they shouldn't have dug?**

The edges are wetland the first 6 feet is wetland. The City Administrator pointed to a map displayed on the projector and explained which parcels were previously owned by Mr. Haluptzok and what is currently owned. Some parcels were sold.

**Jim Waller 17914 Rutgers Street - It this zoned commercial now? When it was the original CUP it was a fairly small operation, this is a major operation now and it really should be zoned commercial to have this type of operation. Is that something that you could use legally to shut it down, that is not commercially zoned?**

The City Administrator said it is zoned residential. In 1973 at that time the Town Board felt it was appropriate. Mayor Dave Povolny said they would never allow a commercial operation to haul this kind of traffic in a residential area.

**Ken Hanson 9052 189<sup>th</sup> - What is the db rating for residential next to commercial, my understanding is state statute is 60db. 60 db is the volume noise level of talking in a room. With the heavy equipment being on the edge of the property, would that not violate MN Statute noise levels?**

The Engineer said we would look to the MN Pollution Control agency to determine if the noise level would be exceeded. The City wouldn't do that, we don't have the equipment to measure it, but we could call them in to monitor it.

The City Administrator said we adopted the MN Statute and we follow those rules, we don't have the equipment but it could be obtained. The Attorney noted that there are daytime and nighttime standards. The standard quoted is a nighttime standard.

**Pete Neihart – 18516 Vassar How deep are they going, are they going down to where they were in 2010? They are pumped pretty far down now. Will they keep pumping as they do that?**

The center roadways would be dug down to about 6 feet below the water level and the slope would not be above the water. If they were only going to restore the wetlands, they would pump it far enough to re-slope and take out those roads. Then they let the water come back.

**Ceil Niehart – 18516 Vassar - In discussions on the weight restrictions, her understanding was if someone needs a heavier vehicle (to deliver furniture, concrete, etc.) on a posted road are those vehicles exempt?**

There is permitting options to allow heavier truck traffic for weight restricted roads. The Attorney added that weight restrictions alone don't solve the problem. The way to resolve this is to consider revoking the permit and requiring them to start over in some fashion.

**Laurie Myren, 189th**

If we went through with option #2 and revoked them, does the mitigation plan legally have to be done?

Yes, it has to be done.

**Council Member Messina asked if a revocation can be done with a simple motion from council, and how the council initiates that process.**

The council would have to direct that a notice be sent to the landowner, and schedule a hearing and conduct a hearing. This would be done by a motion. It was noted that the mitigation plan still needs to be addressed.

**Kris King – 18339 Tulane St. - If you go through the mitigation plan is there someone that can come up with an exact timeline for its completion?**

Mayor Dave Povolny replied that would be one thing that would be asked for in an IUP.

The Mayor closed taking public comments at this time.

Mayor Dave Povolny asked for comments from the council at this time.

Council Member Messina asked if the city can give them a time frame to complete the mitigation.

The Attorney said that if the existing CUP is enforced, the council could give FLC 6 months because they are in violation, part of the reason they wanted a longer term is because of contracts. If they feel pressure because of the actions maybe there is a way to haul it out and stockpile it somewhere, so that it's out and removed and then the operation could close up earlier. The hope is FLC will be willing to cooperate and do it right.

The options were reviewed again at this time.

Option 1/a. The council can direct staff to send FLC notice of violation of the Conditional Use Permit. The violations currently are excavating outside the permitted area, not maintaining the side slopes they were excavating, the type and size of mining. FLC can be put on notice that if they haul above a certain threshold (what was typical for the JBD operation) that they will be in violation. The haul route was specified in earlier permits, the letter could indicate the haul route was out the north route since 1989.

Option 2/b Send them notice of a public hearing and revoke or modify the CUP.

The City Administrator explained that in 2010 a transaction had taken place and a contract was awarded and hauling began. The City received a DNR water appropriation permit. The Engineer and City Administrator visited the site to find out why this permit was being obtained. Mr. Haluptzok told them that they got the contract for the Howard Lake Drive bridge project, and that is when the violations were discovered. The violations included the end plan, the wetlands, and everyone knew at that time there was an issue. The mitigation plan took 18 months to put into place; it was completed in November of 2012. The City Administrator asked the Planner to do a chronology, the Attorney wrote the memo and the City met with FLC which

is why the report is dated 2012. Mrs. Haluptzok and FLC are fully aware of the memo and they understand the violations.

3/c - Sit down with them and pursue an IUP, with a quicker end date.

Ask FLC to come back in with a more appropriate IUP with a quicker end date more balanced haul routes, traffic levels, etc.

The conditions of the original IUP showed a huge amount of dirt being hauled which resulted in a lot of trucks.

Council Member Krebs said is there a happy medium; and that he asked that of the residents.

At this time the Mayor asked for a show of hands from the audience regarding if this was to end in a year was acceptable. The majority of audience raised their hands were raised.

The Mayor then asked for a show of hands for 3 years if that was acceptable. No hands in the audience were raised.

Mayor Dave Povolny said around a year is the goal, which is something to work with. Council Member Krebs, Mayor Dave Povolny both said they want to see an end to the operation; it's not fair to the people in the area to have a truck a minute drive by their house.

Mayor Dave Povolny asked for a show of hands for the number of trucks that would be tolerable.

10 trucks an hour was suggested, no one raised their hand, 1 truck an hour a couple people raised their hand.

The amount of traffic is also an issue. Council Member Krebs agreed that Vassar St at the end would make it difficult, they can go in empty on the north route and the trucks could be split between the 2 routes. Council Member Messina added that the south routes have not been used in many years.

A comment was made from an audience member regarding running the trucks down under the power lines. Council Member Duraine objected because this again would be pushing the traffic somewhere else and he emphasized no one wants the traffic.

Council Member Peterson said if they are restricted for a year he doesn't think they will be able to make money and they won't be able to do the plan. He would like to meet with FLC.

Council Member Krebs said the council already knows for the residents it can't be 5 or 10 years. The Mayor agreed and said this council is not "kicking the can down the road".  
(Applause at this time)

The Mayor asked if anyone on the council wanted to make an action at this time.

Council Member Duraine said the next step should be to meet with FLC, they are here tonight and know the sentiment of the council and they should sit down and seriously negotiate. If a compromise cannot be obtained then the council will take the next step.

Mayor Dave Povolny said FLC is a very reasonable contractor and a great tenant for this city and hopefully a compromise can be reached without an action.

Council Member Messina added that the business should be harmonious and compliant with our rules and the community has to want it also. The argument could be they have a CUP but it was for a good old boy with dump trucks, now we're talking belly dumps and mining. Just as great as it is litigiously against us, it is litigiously for us.

The Attorney said it's clear the council wants to take some action. There has to be a negotiation with Forest Lake Contracting, they are in violation, we can't simply ignore the violation because we told them the IUP was in lieu of pursuing enforcement of the violation. So the question remains whether the council proceeds under 2/b, you give them formal notice that the permit is being revoked or 3/c give them one more opportunity to do something on a voluntary basis. Mayor Dave Povolny added that the council can proceed with enforcement action.

Mayor Dave Povolny asked how long it will take to implement the mitigation plan.

Council Member Duraine said he suggests talking with FLC again and see what can be worked out. Council Member Krebs agreed and summarized by saying the council knows what the tolerance of the residents is, there's a little give, but they want an end to this operation, and they don't want it a long way down the road, maybe 1 truck an hour may not be the answer, but (he emphasized) an end to it soon and have it cleaned up and houses built. He would like to talk again with FLC.

Mayor Dave Povolny re-iterated that the sentiment of the council is to proceed with option #3, which is bring FLC back to the table for a more restrictive IUP, have them surrender their CUP voluntarily, Council Member Krebs added that an end is needed.

**Motion PLZ 01200 by Peterson to direct staff to negotiate a new Interim Use Permit with Forest Lake Contracting/John's Black Dirt (option #3/c) that is more acceptable to the Columbus residents. Second by Duraine. Votes as follows: Peterson - aye; Messina - aye; Duraine - aye; Krebs - aye; Povolny - aye. Motion Carries.**

An IUP would go to the Planning Commission for a public hearing and then City Council. The fastest for this process is 45 days. The Attorney added that as a show of good faith in the negotiations, Forest Lake Contracting would voluntarily limit the operations to the low side.

It was noted that since the applicant withdrew the application, the previous IUP application cannot be used.

Council Member Messina said this is a mute point if the concerns raised are put aside and they start hauling tomorrow. Mayor Dave Povolny added that if tomorrow they are being a public nuisance, the city can fall back on the nuisance ordinance.

FLC is going to apply for a permit from Wyoming; they received a packet from the City of Wyoming to haul. The results were not known at this time.

Council Member Messina asked after the negotiation meeting what will happen and how will the residents know the results of the meeting. Mayor Dave Povolny said FLC has the right to say no, if they don't negotiate the topic would return for discussion at the next council meeting. If the negotiation is successful it will proceed to the Planning Commission on August 7<sup>th</sup> and come to the council August 14th.

The following email was received and was included in the agenda additions:

### City Offices

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**From:** rosieulrich@q.com  
**Sent:** Wednesday, July 10, 2013 12:30 PM  
**To:** dennypeterson@aol.com; mayor@ci.columbus.mn.us; krebsfl@hotmail.com; cityoffices@ci.columbus.mn.us; Sternberg, Garth  
**Subject:** Conditional Use Permit Problems

We are for small business, we are not for big government. We are for a government for the people and by the people, and I think they expressed themselves quite clearly last night. We have zoned commercial areas in this city. John's black dirt is not in one of them. This is an inappropriate use of this land. There are several violations that have been made by these owners. These were pointed out in the memo dated November 5th 2012 from the attorneys at Larkin and Hoffman. When this was received the city should have made the surrounding land owners aware of what was going on. They did not. We could have requested a public hearing at that time to revoke this conditional use permit. The hauling for the bridge had already been done, you could have set an end date and the land could have sold and been sectioned for housing, which is what rural residential zoning is. Instead you gave them a chance to get more heavily involved with Forest Lake Contracting.

It is time to change this, I hope you will step up and revoke the conditional use permit for Johns Black Dirt.

Forest Lake Contracting has been around along time, they have other pits they can use, they will survive. As business owners they should have been able to see this was going to be a bad investment. It is time to do something about this public nuisance. This business in a rural residential zone with utter disregard for their neighbors.

If I were a business owner in Columbus, I would be appalled at the way John's Black Dirt has gotten away with violation after violation. I am sure no one has been given as many breaks as the Haluptzok's have been given. You have had this information since Nov. 2012. Let's get this taken care of, revoke the CUP. I hope you are on the town council to do what is best for Columbus, and their citizens, not just because it looks good on your resume.

There is much more to say to about this project, but I wanted to keep this brief and to the point.

Our way of life is an issue here, we have a lot to lose if you do not shut this operation down.

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

## 9. PLANNING COMMISSION REPORT

The Planning Commission did not have a meeting last week. The next meeting is being re-scheduled to July 23<sup>rd</sup>. A meeting will not be held on July 17<sup>th</sup>.

## 10. PUBLIC OPEN FORUM

David Liska, 18126 Vassar St.

Mr. Liska asked if the city could stop application of calcium chloride in front of his house as it is eating his concrete driveway.

The City Administrator explained that in order for this to happen it has to be a majority of the people on the road. Years ago calcium chloride was used; recently magnesium chloride has been used.

### Road Improvement Project

The City Administrator wanted to let everyone in attendance tonight know about a possible road improvement project letter that will be coming to them soon. Notre Dame and 181<sup>st</sup> will likely have an overlay next year (this is part of the maintenance program and not assessed to residents on the road). Several neighborhoods have called and asked if a meeting could be held to talk about their roads for possible blacktopping. Some of the roads included are Vassar, Tulane, Rutgers, 159<sup>th</sup> and others. At this meeting estimated costs would be presented. The letters have not gone out yet this would be a 2014 project. If this was approved by the residents it would result in a fairly large project which would help make it more cost effective. It requires 60% of the property owners in favor to proceed.

Dave Sugg, 18302 Tulane St

Mr. Sugg suggested that during the negotiation with FLC maybe an act of good faith on their part would be to pave Tulane and Vassar Streets.

## 11. ENGINEER REPORT

A 2 minute recess was taken at this time.

### Quad 35 Plat (Page 2) – Hornsby Street

The final action is to transfer the right of way to the EDA. The EDA will sell it to the city and take the proceeds to pay off a portion of the bond. The surveyor has been on the site already. An estimate of \$3,000 to \$3,500 for platting was quoted and does include the field work, but it does not include meetings with various agencies. The City Administrator indicated that other agency meetings will not be needed. Hult and Hebeisen has been to the site and has some history and can do this most cost effectively. The action is approval of estimate to provide a final plat for the relocated Hornsby Street.

**Motion PLZ 01300 Peterson by to engage Hult and Hebeisen for the final plat of their estimated cost of \$3,000 to \$3,500 plus miscellaneous expenses for the relocated Hornsby Street. Second by Krebs. Votes as follows: Peterson - aye; Messina - aye; Duraine - aye; Krebs - aye; Povolny - aye. Motion Carries.**

## **12. ATTORNEY REPORT**

### Wood Quit Claim Deed (pages 3-5)

At the June 12, 2013 city council meeting, the City Council approved the sale of “Outlot B, Carlos Avery Estates” an approximately one quarter acre lot PIN# 29-32-22-33-0006 to Mr. Wood. The Quit Claim Deed was included in the agenda additions, the action is approval to execute the quit claim deed.

**Motion ATT 00700 by Duraine to direct staff to execute the Quit Claim Deed for valuable consideration, City of Columbus to convey and quitclaims to Michael Thomas Wood real property in Anoka County, Minnesota “Outlot B, Carlos Avery Estates” an approximately one quarter acre lot PIN# 29-32-22-33-0006, Anoka County , MN. as depicted on pages 3 and 4 of the agenda additions. Second by Krebs. Votes as follows: Peterson - aye; Messina - aye; Duraine - aye; Krebs - aye; Povolny - aye. Motion Carries.**

## **13. MAYOR & CITY COUNCIL MEMBER'S REPORT**

### **Council Member Peterson**

Council Member Peterson complimented the City Administrator on the job she did last night at the neighborhood meeting.

### **Council Member Messina**

Council Member Messina wanted to let people know that he left the neighborhood meeting last night because of the derogatory and slanderous comments being made by a few residents that has no bearing on the topic being discussed.

### **Council Member Duraine**

Council Member Duraine got 2 calls from residents on Zodiac Street off of Camp Three and 153<sup>rd</sup>, they are asking for dust control on their street. The City Administrator said some roads do not get dust control because the residents have requested not to have the product applied. With the current budget not all streets get calcium chloride, it is applied based on traffic levels.

### **Council Member Krebs**

No report.

### **Mayor Dave Povolny**

No report.

## **14. Deputy Clerk Report**

No report.

## **15. City Administrator's Report**

### Information – Land Use Incentive Update – Columbus (Page 6)

An email was received regarding who has received the training, three of the council members need to take the training. This is an online course, which takes approximately 45 minutes to an hour. Council Member Messina, Mayor Dave Povolny and Council Member Duraine said they would take the course.

## **E. ANNOUNCEMENTS & REMINDERS**

- ▶ Planning Commission Mtg. 07/23/2013 7:00 p.m. Meeting DATE Change
- ▶ Calendar of Meeting (Page 16)

## **F. ADJOURNMENT**

*Motion* by Duraine to adjourn. Second by Messina.

Meeting adjourned at 9:02 p.m.

Respectfully Submitted:

Emilia S. Robinson  
Deputy Clerk