

**City of Columbus
Regular City Council Meeting
August 28, 2013**

The August 28, 2013 meeting of the City of Columbus City Council was called to order at 7:08 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 Julie Perrus, Engineer Larry Bohrer and Deputy Clerk Emmy Robinson.

Absent: None.

Also in attendance were: Rick Robinson, Myron Organ, Diane Denzer, Dan Mike, Dough Schliesing, Tom Mike, Paul Peskar, Kris King, Ceil Neihart, Jan Palmer, Mary Erkenbrack, Mike Meath, Diane Meath, Rosie Ulrich, Steve Ulrich, Jason Heinen, Joe Rettner, Jody Krebs, Nancy Eisengmenger, Bill Eisengmenger, Barbara Hvass, John Gross, Dave Denzer 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 - Approval City Council Meeting Minutes on 08/14/2013
4. Motion - Agenda Approval with Additions
5. Motion - Pay Bills as Posted

Motion by Peterson to approve the consent agenda. Second by Krebs

6. PLANNING COMMISSION REPORT

Barbara Hvass presented for the Planning Commission tonight.

Motion - Variance Request Block 1 Lot 3 Deer Marsh (Pages 1-8 & Handout)

The Planning Commission held a public hearing for a variance request. The Planning Commission recommended sending the application for the variance request by Jason Heinen to construct a new home from the required 75 foot front yard setback to a 35 foot front yard setback including the overhang for Lot 3, Block 1 - Deer Marsh, Columbus, MN to the city council along with the results of the public hearing and findings from the Variance Checklist for approval. Commissioner Hvass noted that voting was unanimous on all questions except #3, "the variance is in harmony with Zoning Ordinances", some commissioners wanted to follow the code exactly, however the majority agreed on this question also. The application, photos of the property and variance checklist were included in the agenda packet. The action is approval or denial of the request. Most of the Planning Commission members visited the site. There was no public testimony given.

Council Member Peterson asked if a different size house or different location could be considered. Commissioner Hvass said there is not another location for the house because of the wetlands on the property.

Motion PLZ 02400 by Duraine to approve the variance request by Jason Heinen to construct a new home from the required 75 foot front yard setback to a 35 foot front yard setback including the overhang (37 foot total) for Lot 3, Block 1 - Deer Marsh, Columbus, MN based on the results of the public hearing and findings from the Variance Checklist. Second by Messina. Votes as follows: Peterson - aye; Messina - aye; Duraine - aye; Krebs - aye; Povolny - aye. Motion Carries.

Continued Discussion regarding promoting commercial/residential construction in Columbus.

Commissioner Anderson gave his report on his visit to the Planning Commission. Planning Commissioner Sternberg reported to the Planning Commission his findings regarding zoning codes in other cities, Hugo and Blaine both have had phased developments. Planning Commissioner Preiner and Krebs toured a Mattamay home and visited with the developer last Thursday. Some of the Planning Commissioners felt there may need to be some changes to the number of units allowed in the commercial area and would like to continue their discussion regarding this. Council Member Krebs complimented the Planning Commission and said they did a really good job at their last meeting.

7. PRESENTATION - CONCERNED CITIZENS RE: JOHN'S BLACK DIRT / FLC (PAGES 9-17)

A letter dated August 22, 2013 was received from Cecile Neihart requesting to be on the agenda tonight and to present information regarding Forest Lake Contracting (FLC/ John's Black Dirt (JBD) and the City. Mrs. Neihart created a timeline of events from April 20, 2010 through July 2013 which was included in the agenda packet.

Mrs. Ceil Neihart 18516 Vassar Street, Kris King 18339 Tulane Street and Joan Schliesing 18504 Vassar Street presented.

Mrs. Neihart said they have a petition from over 100 people that they would like to submit. Mrs. Neihart read the petition at this time. The petition and pictures of trucks delivering equipment to the site were accepted by the City Administrator. The City Administrator will make copies of the accepted items and forward them to the City Council.

Mrs. Neihart asked for any questions from the council at this time and said she spent 30 hours to create the timeline document. Mrs. Neihart said in looking back at the history and violations she found the initial motion for approving the excavation permit was made by Bob Moorehouse (FLC) September 17, 1973 she found it troubling that with the violations that have occurred over the history of the operation that the city is still trying to figure out how to keep it going.

Mrs. King asked for clarification on the mitigation plan. Mrs. King contacted Dennis Rodacker from BSWR to ask what needs to be done for the mitigation and why. The answer from Mr. Rodacker was nothing needs to be done unless they (FLC) start digging at the site. Mrs. King asked what the minimum amount of work is for this plan and expressed her displeasure with the process the city is taking.

Mrs. King asked if FLC/JBD were in compliance with the slopes in 2010. The City Administrator responded they were not.

There was discussion at this time regarding the violations at the property for the CUP, how the operation will affect property values, the residential atmosphere of the area, peace and tranquility, excessive noise, damage to roads, corresponding costs (to the citizens) associated with heavy truck traffic on city roads, and public safety. Mrs. King said she read Chapters 7A, 8 and said what is written (in the code) does not seem to be what is being followed.

There was discussion regarding who is ultimately responsible for the property, how the city would be involved, the end plan for the property and the condition of the site and length of time the property has been in disrepair.

Mrs. Neihart asked if Public Forum could be held after the Attorney's report. Mayor Dave Povolny said he'd open the floor so the public could speak at that time.

8. PUBLIC OPEN FORUM

Diane Denzer, 9621 189th Avenue.

Mrs. Denzer said she is afraid that the sand pit may lend itself to sand fracking.

The Attorney responded by saying that in Minnesota there is silica sand mining, there is not hydraulic fracturing (fracking). There is no hydraulic fracturing in this state.

D. STAFF & CONSULTANT REPORTS

9. ENGINEER REPORT

Update - 147th & Zurich Speed Zone Study Request (Page 18)

A letter dated June 27, 2013 regarding a speed zone study the Council requested for Zurich Street and 147th Avenue between Lake Drive (CSAH 23) and West Freeway Drive (CSAG 54) was included in the agenda packet.

A response has been received via email from MNDot and their recommendation is the speed limit be established at 40 mph. If the city concurs, the Engineer can respond by email and the city would be responsible for erecting the speed limit signs. The Engineer explained that traffic levels and geometrics of the road are taken into account to make the speed determination. The Engineer reviewed the traffic study at this time. This would require 2 speed signs northbound and 2 southbound. The advisory sign would remain in place (at the curve of Zurich Street to 147th).

Motion PWE 01800 by Duraine to authorize the Engineer to respond to MnDot that the city would like to proceed with the recommended speed of 40 mph for Zurich Street/147th Avenue. Second by Krebs. Votes as follows: Peterson - aye; Messina - nay; Duraine - aye; Krebs - aye; Povolny - nay. Motion Carries.

The Engineer will respond to the MnDot email.

10. ATTORNEY REPORT

Update - John's Black Dirt / Forest Lake Contracting (Pages 19-25)

A Memorandum of Understanding Regarding Forest Lake Contracting (FLC) Use of Public Streets Within the City of Columbus was included in the agenda packet.

The expectation is that FLC will submit an application for an IUP by the end of this year. In the interim this MOU is to assist with maintaining the property, create clear direction on some items from the CUP including hours of operation, hauling routes. The MOU no longer allows Saturday hauling.

There were questions regarding letters “A” through “W” (pages 19, 20 of the agenda packet) of the document and if these were conditions that would be put in place. The Attorney explained that these are the recitals, the findings or factual information known about the operation at this time.

The agreed upon items (conditions) are on pages 21, 22 and 23 of the agenda packet MOU. These items speak to the joint effort communication (2), the new IUP application timeline (3), the conditions of operation of mining and hauling (4), waiver of rights (5) and the term of the MOU (6).

It was further explained that the purpose of the MOU is to provide clarity to the City and Forest Lake Contracting on the expectations of the city and needs expressed by Forest Lake Contracting. The intent has always been to have a reclamation plan. Any new excavation operations would be required to have a reclamation plan. The IUP is a way for the city to find an end date.

Comments from Council regarding the MOU:

- The number of trucks is still a concern (in the MOU) as there is no maximum number of trucks stated only an average with fluctuations allowed.
- The time frame for submittal of a new IUP seems too long.
- There was concern and consensus to remove “future projects” from the MOU under item “U”, or make the consensus of the council clear in the statement of understanding. The consensus of the council is they would not agree to allow sand removal for any other projects than the one FLC has at this time (Lexington Ave) this year.
- FLC has to stop bidding out of this pit for any more jobs, and that should be included in the MOU.
- There needs to be an end date to the operation.

The City Administrator said Forest Lake Contracting has seen this MOU.

At this time there was discussion regarding what other options the council has. The Attorney explained that options were given to the council previously; the option chosen was for staff to negotiate with FLC for a new IUP. The MOU is an expression of those negotiations. The MOU is a hold over while the details of the IUP are worked out, and the expectation is the IUP comes in before December 31, 2013. The MOU cannot be used in place of the CUP if it were revoked. The enforcement of the MOU is under 4a.

Can the Conditional Use Permit be pulled and FLC operate under the MOU?

No, they need an actual permit in place. This MOU is an expression of voluntary terms that are agreed to by the city and FLC.

The Attorney said that if the intent was to revoke the Conditional Use Permit, the city would have to find existing violations, hold a public hearing, notify the applicant and go through a technical legal process.

If they (FLC/JBD) have already mined beyond the permit and the slopes are not right is that not a violation in itself?

The Attorney explained that there are existing violations in the Conditional Use Permit, which were laid out in the memo provided to the council previously. The question would be what the plan would be for the property. That was part of the reason the council decided to go down the IUP path.

Council Member Messina added that this should not be the reason for perpetuating the problem and asked if a motion could be made to revoke the CUP.

Council Member Peterson added that this (MOU) is a means to the end plan; this is a start on that for FLC to come in for an IUP.

Council Member Messina added that he doesn't think the burden to mitigate the property should fall to the city.

Motion ATT 00700 by Messina to direct staff to set a public hearing for revocation of a Conditional Use Permit. Second by Duraine. Votes as follows: Peterson - nay; Messina - aye; Duraine - nay; Krebs - nay; Povolny - nay. Motion Fails.

The Attorney explained the process the council would follow if this motions passes.

Discussion on motion:

Council Member Peterson, Council Member Krebs and Mayor Dave Povolny disagreed with the motion. Council Member Duraine said he would agree to FLC mining for the job (Lexington Ave) this year, but not to any future bidding for jobs out of the pit, have them submit the IUP application as soon as they can and if the IUP is not

acceptable then go through the revocation process. Mayor Dave Povolny agreed with Council Member Duraine. Council Member Messina said he wants to convey that the city is serious, the city wants action taken sooner than later, the residents are not happy, FLC and Kathy Haluptzok put the city into this position, the property is rural residential it is not commercial property.

Motion ATT 00700 by Peterson to accept the MOU. Second by Krebs. Votes as follows: Peterson - aye; Messina - nay; Duraine - nay; Krebs - aye; Povolny - nay. Motion Fails.

The consensus of the council is this is the beginning of the end process. If changes are made to the MOU and FLC does not agree then the city is back to the motion made previously by Council Member Messina (for revocation). Mayor Dave Povolny added that the people in the audience tonight might not like what's in the MOU, but it's more than what the city has now, it is going down the right track.

The council wanted to make changes to the MOU before accepting it and decided to take a vote on the previous motion before continuing the discussion.

The Attorney explained that the "Statement of Understanding" is the portion of the MOU document the City and FLC are agreeing to. The current findings and today's facts are listed under "Recitals".

The following comments were made by the council:

- 4a. Replace "Noncompliance may" with "Noncompliance will". It was decided that making this change would not benefit the city. It will remain "may".
- 4i. This is the agreed upon truck traffic levels. The statement "there will be fluctuations from hour to hour and day to day" was questioned. There was no change made to this section.
- The mitigation plan has already been approved which allows FLC to bring the property in compliance with the 6 to 1 slopes. The haul routes have been limited due to Wyoming's actions on weight restrictions. Mitigation will be done at the same time as the sand removal. The message to FLC has been clear that the mining needs to end, the time frame is a year or so, FLC's message back to the City has been they understand that and that is why they came in for an IUP and have agreed to relinquish the CUP.
- There is no clear consequence if an IUP is not in place by the end of this year and that action will be taken to revoke the CUP. The Attorney said the inference is addressed in #3 on page 3 of the MOU. In addition #5 allows the city the right to proceed with revocation.
- The City does not want another failed iteration of an IUP, which will leave the city in the same position it is now.
- How does the city know what a future bid project is and what FLC have already committed to? The Attorney explained that this is in the recital and not part of the statement of understanding and when the IUP application is received, the

council will prescribe the end date of the operation, rather than attempt to determine what someone's contracts are.

- Put the end date in the MOU. The Attorney explained that the appropriate place for the end date is the IUP.

Mayor Dave Povolny asked what the land is worth and what the minimum mitigation could be. Is the mitigation plan more than the land is worth?

The City Administrator explained that the price for the mitigation plan will be different depending on what is done, if it is the 6 to 1 slopes only, this will cost less than taking out sand.

The City Administrator summarized the council's direction as they want FLC to do the mitigation plan but don't want them to take on any contracts for this pit until the IUP is in place.

Mayor Dave Povolny invited the public to speak at this time:

Paul Peskar, 18339 Tulane St.

Mr. Peskar stated that there are three sets of operating documents and he asked which takes precedent.

The City Administrator said the MOU supersedes the Conditional Use Permit, once this document is agreed upon and accepted by both parties, the MOU would be the governing document.

(Following is a document Mr. Peskar submitted)

1. *The MOU states that the conditions A thru T shall govern mining operations. In condition "A" it states, that at all times the applicant shall be in compliance with the conditions of the CUP. Then in condition K, operations shall be consistent with the IUP application submitted April 23rd, 2013. "Which document takes precedence CUP, IUP, or MOU? For example MOU makes no mention of bond for road, CUP has \$5,000 bond, and the IUP had \$250,000 bond. What are we requiring Forest Lake Contracting to put up? Also MOU makes no mention of mining/hauling on Saturdays, Sundays or Holiday. CUP allows hauling on Saturdays, Which is it???*
2. *There has been a history of the town/city giving away operating conditions on the existing permit. This MOU seems to continue in that same direction.*
 - a) *Electric pump noise outside the boundary has been deleted.*
 - b) *Adding Notre Dame to the proposed haul route from what was discussed.*
3. *Time frame, number 3 from statement of understanding says the applicant has until Dec. 31st 2013 to submit the application for the IUP. This is way too long; we were told about 40 days ago that this process would go very quickly, no more than 30 days. Why are we giving them so much time? They only need to change the date and resubmit their application. Furthermore #6 term of MOU allows operation under the MOU until end of construction season 2014. This extra year operating under the MOU takes away any incentive of Forest Lake Contracting to negotiate the IUP quickly. This should be amended to the end of 2013.*

4. *The number of trucks per day, we should not be using an average this condition should have a max not to exceed number per hour and per day, The way the condition is currently worded makes it very clear that they can exceed the 7 per hour or 73 per day any time they want, because it is only an average. This condition is meaningless the way it is worded.*
5. *Lack of any penalties, the MOU, CUP and IUP have no teeth, if any of the conditions are broken, say mining on a holiday the current procedure would be for the city to notify them and then they get a number of days to rectify the situation. When the next holiday comes along they can be mining again and we start the whole process over.*

The conditions of operations in these documents have no meaning, because there is no penalty behind the conditions.

You guys have said you want to get control of the mining back there and get it shut down in a timely manner. This document, the way it is currently written does not accomplish this. This is the same thing that has been done for years, just kicking the can down the road. If the intent of the city is to end the mining, why are we going with the MOU at all? We should go directly to the IUP as quickly as possible. This would give FLC some incentive to get these negotiations moving.

Mrs. King 18339 Tulane Street

Mrs. King asked when FLC came in originally to start digging (in 2010), did they come to the city before they started digging, and is that a violation of city ordinances?

The City Administrator responded that FLC did not come in before they began digging. The Attorney said the challenge is there is an existing Conditional Use Permit on the property and that runs with the property. They can do what is allowed under the Conditional Use Permit. The CUP supersedes other excavation requirements in the code.

Diane Denzer, 9621 189th Avenue

What is the difference between sand and black dirt, wasn't the original agreement black dirt? It's John's Black Dirt not John's Sand Pit. Mrs. Denzer thought there must be a way to shut this mine down, because of the name of the business.

The Attorney responded that there were no original conditions that discerned between the types of material excavated. The name of the business is not relevant. This was an area that has already been reviewed.

Ceil Niehart, 18516 Vassar Street

When this happened in 2010 the city asked them (FLC/JBD) to come into compliance, it took 18 months before the IUP came in. In the meantime, FLC took that time to make the long range mining plan and got the mitigation plan to support that. 35 days ago a deadline was given of 30 days and now there is a new MOU and the time has been extended again. Mrs. Niehart is concerned that this will not be resolved and 2 years from now this will continue to be an issue and she would like that not to happen.

There was discussion regarding FLC's understanding and willingness to accept this document at this time.

The following is a summary of comments and suggestions from the public for the MOU:

- The MOU should be clear as to which document is governing.
- The time allowed for the IUP submittal should be reduced.
- Put a maximum not to exceed number of trucks per day.
- There is a lack of penalties for violations.
- If activity were stopped now, the only mitigation required would be any wetlands disturbed since the mitigation plan was accepted.

The Attorney will provide clarification for the order of governance in the MOU and will review the MOU for definitions or words that need clarification.

Motions ATT 00700 by Peterson to accept the MOU with the conditions for changes discussed and clarify what document takes precedent. Second by Krebs. Votes as follows: Peterson - aye; Messina - nay; Duraine - aye; Krebs - aye; Povolny - aye. Motion Carries.

An updated document will be brought back to the council.

Council Member Peterson asked to address the audience at this time and he said he voted the way he did because this is a means to the end to get this over with, the way it is now it keeps on going, the entire council wants to see an end to this operation.

D. STAFF & CONSULTANT REPORTS

11. MAYOR & CITY COUNCIL MEMBER'S REPORT

Council Member Peterson

The Fall Fest committee met today, Anoka County did some ditch work on the north side of Kettle River Blvd. along the Columbus City Park. The Fall Fest committee is looking for a ramp, about 4 ft by 20 foot to allow a walking space and wheel chair access to the park across that ditch. If someone has a ramp available please let the Public Works Superintendent know.

Council Member Messina

No report.

Council Member Duraine

The Park Board met on August 15th. The Cable commission met last week, the contract is with the Attorney Bryon Grogan. Cable subscriptions are up.

Council Member Krebs

Council Member Krebs worked with Maris Strautmanis from LATV Saturday for the EDA video, the focus was on businesses and available land in

Columbus, they had 1 hour of filming with 4 hours of time spent. Council Member Krebs said he enjoyed the experience. Council Member Krebs attended the Planning Commission meeting they are working hard on meeting with developers.

Mayor Dave Povolny

No report.

12. Deputy Clerk Report

No report.

13. City Administrator's Report

Treasurer's Report - Receipts: Disbursements:

Receipts:	\$0.00
Disbursements:	\$69,665.14

Mayor Dave Povolny recognized audience member Joan Schliesing at this time.

Mrs. Schliesing asked if the petition submitted with the signatures has any meaning to the council, and said that they mean votes.

Council Member Peterson asked to address this comment. Council Member Peterson said the council will look at the petition, he voted as he did for the MOU to end this project, it is the means to the end. This process is just starting, it's not over as they still have to come in to apply for the IUP and this will all be taken into consideration when that time comes. Council Member Peterson thanked the residents for bringing in the petition and for the work that was done on this.

Council Member Messina said he voted the way he did to be consistent, but he can see the options, the court route may not work, the IUP will allow the council to set the rules and everyone has the end plan in mind.

The City Administrator added that she will make copies of the petition for the council.

Continued Discussion - 2014 Budget (Handout at Meeting)

The discussion began at 8:54 p.m.

Personnel Committee

The Personnel committee met, the recommendation is to maintain the pay scale budget level as last year and increase the medical benefit slightly, and this increase will maintain 50% coverage by the city. The consensus was to increase the medical benefit.

There was discussion regarding pay scales and pay equity. It was noted that Pay equity reporting is required every 3 years.

Park Worker Park Program

The Park worker and park program was left in the budget; there were no definitive decisions on either.

Senior Center

The budget was left the same as 2013, the commitment was made to the Senior Center that the city would fund the center for 2014 and the Senior Center would come back to the city with their decision in May.

Hours of operation

The Personnel committee recommendation is to have the flexibility to allow the Deputy Treasurer to work up to 35 hours and cover office staff time off by the Planning Commission Secretary. With the limited amount of staff there are times when people are alone in the office which is not acceptable.

Minute Taker

There are no backup minute takers at this time. The recommendation is to begin searching for backups.

Disbursements

General Fund 100 – Page 1

The City Administrator reviewed the various sections at this time. The following changes were made:

Page 2

No changes

Page 3

Cable Franchise

It was suggested that the fee to do the accounting for FL Cable Commission be increased. The original contract was 1 hour a week, at this time it involves more hours as other duties have been taken on. The consensus was to have the Deputy Treasurer account for the time she spends for FL Cable Commission.

There was discussion regarding the debt service and if the amount in the budget currently is set at the right amount.

The consensus is to keep the budget as presented.

Questions should be forwarded to the City Administrator prior to the September 11th meeting.

E. ANNOUNCEMENTS & REMINDERS

- ▶ Planning Commission Mtg. 09/04/2013 - 7:00 p.m.
- ▶ Calendar of Meeting (Page 26)

F. ADJOURNMENT

Motion by Krebs to adjourn. Second by Duraine.

Meeting adjourned at 10:05 p.m.

Respectfully Submitted:

Emilia S. Robinson
Deputy Clerk