

PLANNING AND ZONING COMMISSION MEETING – JULY 9, 2019

The Regular Bi-Monthly Meeting of the Andover Planning and Zoning Commission was called to order by Chairperson Bert Koehler IV on July 9, 2019, 7:00 p.m., at the Andover City Hall, 1685 Crosstown Boulevard NW, Andover, Minnesota.

Commissioners present: Dean Daninger, Karen Godfrey, Scott Hudson, and Mary VanderLaan.

Commissioners absent: Nick Loehlein and Jeff Sims

Also present: City Planner Stephanie Hanson
Associate Planner Jake Griffiths
Others

PLEDGE OF ALLEGIANCE

APPROVAL OF MINUTES

June 25, 2019 Regular Meeting: Correct as written.

Motion by Daninger, seconded by Hudson, to approve the minutes as presented. Motion carried on a 5-ayes, 0-nays, 2-absent (Loehlein, Sims) vote.

PUBLIC HEARING: Interim Use Permit — Land Reclamation — 16576 Hanson Blvd NW - Donovan Robarge

Associate Planner Griffiths described the location of the subject property and explained that in the fall of 2018, City Staff noted the property owner began to stockpile over 400 cubic yards of dirt, triggering the requirement for an Interim Use Permit (IUP). The intent of the property owner at that time was to create a berm left by a bunch of trees that had to be cut down due to disease. The trees had formed a noise buffer off of Hanson Boulevard, and the applicant's intention is to fill the area with soil and reclaim the land to restore that barrier. When looking at the IUP, there are a couple of conditions that need to be followed. First, the slope of the land reclamation cannot be more than 3 to 1 on areas of the berm that will not be maintained through activities such as mowing of grass. Also, for areas that will be maintained, the side slope cannot be more than 4 to 1. A number of wetlands, including a Federally protected wetland which runs through the middle of the

property, were shown on the Certificate of Survey and Location of Wetlands maps. In addition, the Watershed District indicated there is potential wetland next to Hanson Boulevard and the berm that is being put in. He stated the Engineering Department reviewed the application, and even though the site has already been graded, silt fencing will be required around the land reclamation area since no vegetation has taken to the soil yet. The applicant indicated he has attempted to seed the area, but silt fencing will be required until vegetation takes. No haul route is required for this IUP since the applicant indicated all the soil will come from his property. As far as coordination with other agencies, the applicant will be responsible to obtain all other necessary permits.

Associate Planner Griffiths stated the Planning and Zoning Commission shall recommend an Interim Use Permit and the Council will issue that IUP if it finds that such use: 1) Will not create an excess burden on parks, streets, and other public facilities. The placement of the fill will not create an excess burden on parks or other public facilities, and since there is no haul route required, there will be no utilization of the surrounding roadways. No grading/stockpiles shall occur within 50 feet of the adjacent property lines or Right-Of-Way unless it is approved by the City Engineer. 2) Will not be injurious to the surrounding neighborhood or otherwise harm the public health, safety, and general welfare of the community. Of note, the applicant shall establish vegetation and ensure proper erosion control to the satisfaction of the City Engineer. 3) Will not have a negative effect on the values of properties and scenic views. The land reclamation is taking place in an area that previously was naturally buffered. Since it is on the applicant's property, it is not expected to have an impact. 4) Will not impose additional costs on the public. The applicant will be required to observe both the potential wetland and the Federally protected wetland on this property. It will be the responsibility of the applicant to mitigate the effects of any things that fall outside this property. He stated both he and the applicant were available to answer questions regarding this request.

Commissioner VanderLaan asked the total acreage of the property. Associate Planner Griffiths stated he did not have the exact figure but it is well over one acre. After a comment from an audience member, he stated the size as ten acres.

Commissioner VanderLaan commented the Certificate of Survey indicates the subject property is one parcel and asked for confirmation of that. Associate Planner Griffiths confirmed that as correct.

Commissioner VanderLaan, looking at the Location of Wetlands map, asked what the white rectangle was behind the wetland area, speculating it may be some vehicles. Associate Planner Griffiths stated the applicant's property contains two structures: the principal structure off of Hanson Boulevard; and the second structure behind the Federally protected wetland, which is a detached garage. He stated the building is code-compliant and permission from the DNR was granted to build at that location.

Commissioner Hudson said information in the handout talks about “retroactively” and “future” and asked whether, in the eyes of the City, the project is complete or is in the

middle stage. Associate Planner Griffiths stated the City views this project as "in progress" and the City is submitting the IUP after the start of the project. The stockpiled dirt has already been graded into a point that will be the berm but it has not met the City requirements for vegetation and erosion control, which is why the IUP is being sought.

Commissioner Hudson asked whether there would be more soil moved. Associate Planner Griffiths said the applicant indicated all the soil is on the property and, for the most part, will remain where it is currently placed.

Commissioner Hudson referenced the document which states, "Also like to extend berm 30 feet north when trees are removed, about 100 yards of fill," and said that statement made it sound like the project was "kind of/sort of" done. Associate Planner Griffiths said the drawing was submitted in February, and that the berm, as colored in on the drawing, shows its expansion as it exists today.

Motion by Daninger, seconded by VanderLaan, to open the public hearing at 7:10 p.m. Motion carried on a 5-ayes, 0-nays, 2-absent (Loehlein, Sims) vote.

Robert Booker, 16632 Hanson Boulevard, stated he lives immediately north of the subject property and both he and his wife are in support of this activity. He said the tree decimation along Hanson Boulevard and the power line easement have impacted the value of the applicant's property and he is concerned his property values have been impacted as well. In addition, he feels this project will help retain property values as opposed to a loss of value.

Don Robarge, 16576 Hanson Boulevard, property owner, took the podium at the request of Chairperson Koehler.

Commissioner VanderLaan commented that someone notified the City or an action was taken seven or eight months ago regarding this issue and asked what caused the delay in the applicant's coming forward and getting this resolved. Mr. Robarge stated he understood he could haul 400 yards of fill in without a permit. He is an excavator and has been doing this work his entire life. He said he had his 400 yards and was fine with everything. He approached the City because more trees were dying and he wanted to extend the berm farther but wanted to do what he needed to do to make the situation right. He stated he is fine with the berm he has now, although it is not as big or as long as he wants. He reiterated he is under 400 yards but did not want to argue about the issue. He said Hanson Boulevard is busy and loud, he lost his big oak trees, and he wants to get some pine trees planted in the area.

Commissioner VanderLaan commented that in 1991 the applicant filed a Certificate of Assumed Name, Robarge's Excavating, and operated the business out of the ten-acre parcel. Mr. Robarge stated he used to operate the business there. Commissioner VanderLaan asked if Mr. Robarge had an office or a different site since the address was

still the same as presented. Mr. Robarge said Robarge's Excavating basically no longer exists and he now works full-time for Designing Earth Contracting.

Commissioner VanderLaan inquired as to a company called Round Trip Trucking which Mr. Robarge stated is no longer in business. Commissioner VanderLaan verified with Mr. Robarge that he no longer operates any business at that location. Mr. Robarge confirmed that but commented he keeps his dump truck and backhoe at that location.

Commissioner VanderLaan stated in 1999 Mr. Robarge incorporated his business, which apparently still stands, and asked if that is an LLC. Mr. Robarge responded it is an LLC and is probably still in existence.

Commissioner Daninger asked for an explanation regarding the line of questions. Commissioner VanderLaan stated she wanted to make sure, in the event a decision is given prohibiting this request, the applicant is protected against any kind of non-conformance because in 1990 there was a Home Occupation - Chapter 9 passed which required a grandfathering in. She said basically the questions were for the protection of both the City and the applicant.

Commissioner VanderLaan asked how the land in the middle of the property came to be Federally protected. Mr. Robarge explained that when he first built at that location, he dealt with all the permits. He put a road in the back of his property and other things and he never saw anything about the DNR or wetlands. They let him dig a pond in the back and he used black dirt in the area. He stated he is not sure when or how it started, but he wanted to dig his back yard out because there was a bunch of cattails there and make a nice pond but was told he basically could not touch it. He said his horses at that time trampled it down and there are no cattails left, very little water standing there, and that is basically a grass field now.

Commissioner VanderLaan commented that it seemed as though Mr. Robarge has been enjoying activities there -- building, horses, and nature -- which Mr. Robarge confirmed as true. Commissioner VanderLaan asked if he hunted on his property. Mr. Robarge stated he does not hunt on his property but goes across the street.

Commissioner VanderLaan asked if Mr. Robarge considered replanting trees instead of putting fill in the area to create a berm. Mr. Robarge stated he wants to build a little bit of a higher berm by putting soil there and then plant six- to eight-foot pine trees. He added it is sad to lose huge oak trees, knowing you cannot stop it from happening.

Commissioner Daninger said he noticed there is an ending date of October 1 for the project and realizes some of the work has been done but wanted to verify Mr. Robarge would not have to move any more fill. Mr. Robarge stated that is why he is in front of the Commission, because he thought he may need 700 yards of fill, because as the trees die, he wants to extend the berm farther. However, the application permit says 600 or so yards and he is okay with that. He reiterated he has 400 yards right now which will work fine.

As far as erosion control, he has Bio Logs around the area and he has seeded it several times and, although it is not the best dirt, it is growing.

Commissioner Daninger stated the applicant has already started and is in this process, and it is nice to hear a neighbor say he likes what the applicant is doing. He clarified that the Resolution contains an ending date of October 1 and wants to make sure the applicant understands that is the end date and is content with what he has. Mr. Robarge indicated he is content.

Commissioner Daninger indicated that sometimes Planning and Zoning makes a recommendation but between now and when the City Council meets things get changed, and he wanted to make sure everyone is aware of that.

Motion by Hudson, seconded by Godfrey, to close the public hearing at 7:20 p.m. Motion carried on a 5-ayes, 0-nays, 2-absent (Loehlein, Sims) vote.

Chairperson Koehler inquired of Staff whether someone moving dirt from Point A to Point B on their own property is required to get a permit simply because it exceeds 400 cubic yards. Associate Planner Griffiths said City Code states any time more than 400 cubic yards are stockpiled an Interim Use Permit is required, the purpose of which is mainly to control the slope of the stockpile and erosion.

Chairperson Koehler asked how the October 1 date was chosen. Associate Planner Griffiths said it was selected after consultation with the City Engineer and a member of the Watershed District. He stated the Commission was welcome to change the date. Chairperson Koehler responded that it was fine, but he wanted to make sure some thought was given when the date was picked.

Commissioner Hudson commented he felt the applicant was landscaping as opposed to stockpiling dirt and wanted to know the difference between the two. Associate Planner Griffiths stated City Code 12-2-2 defines land reclamation as the reclaiming of any land by depositing materials so as to elevate the grade on any lot or parcel upon which 400 cubic yards or more fill is to be deposited.

Commissioner VanderLaan referred to the last meeting, when the Commissioners initially were dealing with an Interim Use Permit but shortly before the meeting were alerted, they would be dealing with an Amended IUP due to a blanket use permit for the shopping center. She stated she assumed, given the longevity of this activity and location, City Staff made sure there were no Special Use Permits, no Conditional Use Permits, no Variances when he had the business that would need to be addressed in the Resolution. Associate Planner Griffiths confirmed that as correct.

Motion by Hudson, seconded by Daninger, to recommend to the City Council approval of the Resolution as written. Motion carried on a 5-ayes, 0-nays, 2-absent (Loehlein, Sims) vote.

Associate Planner Griffiths stated this item would be before the Council at the July 16, 2019 City Council meeting.

OTHER BUSINESS

City Planner Hanson said Family Funfest takes place the weekend of July 12-13 and invited everyone to attend. She stated the Variance Request for the Side Yard Setback on Holly Street was approved by the City Council. The Amended Conditional Use Permit for the holistic vet clinic in Hanson Commons II was also approved. The 2018 Comp Plan update was submitted to the City Council two weeks ago; there will likely be some changes. The next Planning and Zoning Commission meeting will be on July 23.

Chairperson Koehler brought up the discussion regarding how to handle permits going forward when the function of the permit has ceased to be used, whether the permit should expire, and wanted to know if that is an issue Planning and Zoning will be asked to discuss and make a recommendation on or if that would be coming from the City Attorney or someone else. City Planner Hanson stated she would find the answer.

ADJOURNMENT

Motion by VanderLaan, seconded by Daninger, to adjourn the meeting at 7:27 p.m. Motion carried on a 5-ayes, 0-nays, 2-absent (Loehlein, Sims) vote.

Respectfully Submitted,

Ruth Holdvogt, Recording Secretary
TimeSaver Off Site Secretarial, Inc.