

***PLANNING AND ZONING COMMISSION MEETING – AUGUST 13, 2019***

The Regular Bi-Monthly Meeting of the Andover Planning and Zoning Commission was called to order by Chairperson Bert Koehler IV on August 13, 2019, 7:00 p.m., at the Andover City Hall, 1685 Crosstown Boulevard NW, Andover, Minnesota.

Commissioners present: Dean Daninger, Karen Godfrey, Scott Hudson, Nick Loehlein, Jeff Sims, and Mary VanderLaan.

Commissioners absent: None

Also present: Community Development Director Joe Janish  
Others

***PLEDGE OF ALLEGIANCE***

***APPROVAL OF MINUTES***

*July 23, 2019*

Commissioner VanderLaan requested the following change:  
Page 5, Line 20, “Engineer Berkowitz” changed to “Sathre-Bergquist, Incorporated.”

***Motion*** by Loehlein, seconded by Godfrey, to approve the minutes as amended. Motion carried on a 6-ayes, 0-nays, 1-present (Daninger), 0-absent vote.

***PUBLIC HEARING: Interim Use Permit*** – Land Reclamation — 4239 165th Ave NW — Bobby Petersen

Community Development Director Janish located the subject property on a map and said on July 22, 2019, staff became aware the applicant had begun to stockpile fill in excess of 400 cubic yards at that location. He said once the applicant was aware of staff’s concerns, he met with City staff and obtained the permit application. Currently the amount of fill on the property is estimated at 3,000 cubic yards. The applicant is seeking permission for the fill already on the property and to add another 4,000 cubic yards to build a berm five feet from the northern property line 50 feet wide with a 3:1 slope. The fill material is coming from outside of Andover. The applicant is proposing to use 7th Ave, 165th Ave NW, and his driveway as a haul route. The applicant will need to contact Anoka County Highway Department to find out if “Trucks Hauling” signs will need to be placed along the route. Silt fencing is required on the south side of the berm; the applicant has placed silt fencing around the berm, so he has gone above and

beyond the requirement. He also seeded the berm to stabilize what has been done so far. The applicant said the berm will provide privacy due to the Preserve at Petersen Farms development. Referencing maps, he identified the berm location. A Memo from Assistant Public Works Director Todd Haas indicated the berm must be seeded and mulched or disc anchored within seven days, the berm must be graded at a 3:1 slope or flatter, and the applicant is responsible for obtaining all necessary permits. Also, the berm appears to impact the existing farm road. If there is a concern from others about any impact, that will need to be discussed between the property owner and the person bringing up a concern; the City would not be involved in the conversation.

Community Development Director Janish stated the City Code's definition of land reclamation as: "the reclaiming of any land by depositing of materials so as to elevate the grade. Any lot or parcel upon which 400 cubic yards or more of fill is to be deposited shall be considered land reclamation." In order to grant an Interim Use Permit (IUP), certain criteria will be evaluated: 1) Will not create an excess burden on parks, streets, and other public facilities. No damage to roadways is expected nor any burden to parks or other public facilities is expected with the construction of the berm. 2) Will not be injurious to the surrounding neighborhood or otherwise harm the public health, safety, and general welfare. The applicant shall establish vegetation as identified in the Resolution and recommended by City staff and there are no issues expected. 3) Will not have a negative effect on the values of property and scenic views. The land reclamation is taking place in an area the property owner desires to create a berm. The owner desires the berm to provide privacy from future development to the north. 4) Will not impose additional unreasonable costs on the public. The applicant is responsible for the cost to construct the berm, so there will not be any unreasonable costs to the general public. He stated there were Resolutions both approving and denying the application, and City staff and the applicant were available to answer any questions.

Commissioner Daninger asked how staff became aware of the situation, adding there may need to be something in the Resolution regarding that awareness if, for example, there was something on the road. Community Development Director Janish stated it was reported to the Natural Resource Technician. He went to the site, discovered trucks hauling the material, and told them they needed to stop. The property owner then contacted the City to set up a meeting. Commissioner Daninger commented it was both a question and an education, because if the complaint was that there was fill on the road, this was an opportunity for people to be educated and understand how to make things work better.

Commissioner Godfrey asked staff what the procedure would be if the IUP was approved and the Anoka source of dirt would no longer be available, whether the applicant would be required to amend the IUP or if the process would start over. Community Development Director Janish said it would be a negotiation process. The applicant requested, at staff's urging, a five-year period to provide the fill. At the time of the application, the source of the material may have been at risk so the thought process was to give the applicant five years in case the material source was no longer there or if a future source would arise, which would give the applicant the opportunity to complete the project as long as the conditions are followed.

Commissioner Godfrey asked if a different material source and different haul route were to be identified, whether that would be a negotiation with staff. Community Development Director Janish stated that scenario would potentially require an amendment, depending on where the material was coming from and what streets would be used, and that a discussion with the applicant would be necessary at that time. Commissioner Godfrey followed up by saying the question was also more of an education/instruction.

Commissioner VanderLaan asked staff if all properties within 700 feet of the subject property were notified of the action and when that occurred. Community Development Director Janish said he did not have the actual mailing date but notice was sent out within ten days and he used the map feeder program to populate the list, using 705 feet as the buffer number instead of 700 feet to err in favor of notifying more people. Notice was also published in the local paper and a sign was put on the property.

Commissioner VanderLaan asked why the City of Anoka was not consulted for a mining permit due to the large amount of soil being moved. Community Development Director Janish stated the material being hauled is from a project in Anoka where a plan was approved so a mining permit is not needed. Once the grading plan is approved, the excavator has the ability to bring it down to the grading requirements and make some modifications such as soil corrections. It is part of the permitting process versus an independent mining process. City Code states the building permit is exempt from the land reclamation process if you have an approved building permit or approved grading plan.

Commissioner Sims asked if there were any zoning regulations regarding berm size or height. Community Development Director Janish said the berm being proposed is less than one acre in size with a 50-foot base and a 3:1 slope or 4:1 if it would be mowed or maintained, which is what the City would regulate. There is no maximum berm height in the Code. Using a map, he pointed out locations in the area which will be higher in elevation than the berm.

Commissioner Sims questioned whether the berm could be 20 feet as long as the applicant kept the 3:1 ratio. Community Development Director Janish didn't know mathematically if that would pencil out and stated the applicant would be restricted by the area identified and the amount of cubic yardage he wants to bring in, and if they want to construct what they're proposing, they would have to spread the fill out when they get to the 7,000 cubic yard number.

Commissioner Sims asked if the applicant was limited by the 7,000-yard restriction on the IUP and if they would have to come back if they wanted something else. Community Development Director Janish confirmed his comments were correct, adding if the applicant wanted to continue the berm along the west property line, he would be required to come back.

**Motion** by Daninger, seconded by Loehlein, to open the public hearing at 7:15 p.m. Motion carried on a 7-ayes, 0-nays, 0-absent vote.

Bud Holst, 4276 165th Ave NW, has lived in Andover since 1990 and lives across the street from the applicant. They have been landowners since 1985; at one time they owned 40 acres

north of City Hall. He said the notice went out August 2 and he received his notice August 3. Mr. Holst had three items he wanted to address: First, regarding the PUD to the north of the subject property, he commended the Commission for voting against it even though the Council approved it. He said the PUD created the need for the berm when the PUD replaced R-1 zoning requirements on the Petersen Farm application, he listed the requirements for R-1 zoning: 2½ acres minimum, 300 feet on a straight road, 75 feet minimum on a cul-de-sac, 60-foot minimum Right-of-Way on the roads, and a maximum of 500-foot cul-de-sacs. The maximum length of the cul-de-sac was never discussed at any of the public hearings. By extending the cul-de-sac to one-quarter or one-half mile, there are 75-foot front lots available instead of 300 feet for the builders, so there is 24 feet into a little less than 30 acres, which is about one acre per lot. With regard to the 2½ acre minimum, they put the lowlands in the number to increase the average lot size. He reminded the Commission there was ghost platting done in the original plat that was approved by the Council. In front of the Petersen property is the most dense population, city-size lots, which in his opinion is the ghetto. If he was Mr. Petersen, he would want a berm on the northern and western boundaries. Second, Ordinance 16, cited as causing the applicant to cease and desist, has to do with land reclamation. He was listening to the bulldozer and one night it just quit. He checked with the neighbors, and no one complained about the noise and everyone assumed a berm was being constructed. There was no dirt on the roadway so that was not the problem. Somebody complained, but it was not the neighbors. Until 1974 the area was Grow Township, and a lot of the Ordinances did not fit well with the City. People in responsible positions, City Council and otherwise, were touting Andover as "the Edina of the north," and there were people who wanted to run it as a city instead of the rural community it had always been. In addition to Ordinances, one City employee rented helicopters to fly over parcels and look for old cars that did not have licenses. At that point someone thought it was time to go through the Ordinances to make the rural parts rural and the city parts city. He was on a committee appointed by the Council in 92-93 to accomplish that task. They were up to Chapter 10-11 in terms of total Ordinances and the Council approved it. Now the City is up to Chapter 16 and it includes things such as "regulate the type of fill," "include a program for rodent control," and "include a plan for fire control." He stated the Council from 92-93 would have thrown up over these items. He believes once R-1 zoning is in place, with a five-acre minimum, an owner should be able to do what he wants, such as add outbuildings and move dirt around. The regulation they kept in place at that time was that a property owner could not mine more than 900 cubic yards for export per year without a permit. If a property owner wanted to mine 3,000 yards over a few years, the Council would not have heard about it. Third, if he were the applicant, he would want 30,000 yards and he would include the strip on the west because of what is coming. The Petersen property is the showplace in the neighborhood, with a gorgeous house and outbuilding, and a concrete driveway. Mr. Petersen takes very good care of everything and probably enhances the value of everybody's property within 700 feet of him. In his opinion, he is a great neighbor and he should get whatever he wants.

Robert Petersen, 4239 165th Ave NW, said the haul road in the application was to use his driveway when five years was the length of time to complete the project. The dirt is currently available and should still be available in a week. He would like to amend the haul road, using Jivaro and then going across his uncle's land, to avoid the trucks up and down on the driveway, and he would repair the road if any damage occurred. He offered to have Fred Petersen sign any

necessary documents so he could cross over that property. He indicated the 7,000-yard number was used because the contractor said that is how much he had to export but the amount could be more or less. He wants to make the berm look right and he wants the ability to use however many yards it will take, although he does not want 30,000 yards and he does not want a berm on the west side. He won't know until the project begins how many yards it will take and asked if the application could be amended tonight to reflect the change in the haul road and that he may potentially need another 500-1,000 yards. His plan is to seed both sides of the berm, put trees on top, and irrigate it. He does not want a big dip in the berm because he ran out of dirt.

Chairperson Koehler asked, if the applicant erred on the high side, what would be the maximum amount of dirt needed. Mr. Petersen stated he did not think it would be more than 10,000 yards and the low spot referenced earlier is a concern. He will keep the slope, but in order to keep the slope he may have to go to 55 feet for the base. He does not think it is a major argument but does not want to go through this process again. He wants it to look right, be right, and not erode or wash out because it is so steep. If he follows the rules that are set and it does not look right, he will get the application amended, but he would like the ability to do it once and be done.

Chairperson Koehler stated that is why he is asking about the maximum number, because he also would like this to be done once. Mr. Petersen said that is his argument about using the road from Jivaro and across the field, because he would like to do the project now rather than when the new streets and curbs and houses are there. He guesses there are 1-2 days of hauling.

Commissioner Loehlein stated the IUP limits the applicant to 7,000 yards and he is now asking for more, but according to his math the berm would be about 5,200 cubic yards. Mr. Petersen said if that is accurate, they are already over what they would need, but they were guessing on the numbers. He never dreamed, owning 21 acres, there would be an issue building a berm and so they started the project but then had to stop and come up with numbers. The contractor has 7,000 yards to get rid of and they are halfway done, so that is the number they used. They have not done the math and stakes and grading plans; they just want it to look good. Commissioner Loehlein stated he brought that information up for consideration by everyone.

Commissioner VanderLaan asked if the City of Anoka or the hauler advised the applicant of the possibility of needing a land reclamation permit. Mr. Petersen answered no and that the hauler never dealt with the City of Anoka.

Commissioner VanderLaan commented that if the hauler was experienced, he would have saved the applicant some trouble. Mr. Petersen said the hauler is an excavator friend who does quite a bit of work with the City of Andover and who said this would not be an issue.

Commissioner VanderLaan asked if the hauler was a professional excavator, which Mr. Petersen confirmed as correct. When his friend called the City Engineer, he learned it was an issue.

Commissioner VanderLaan referenced the applicant telling staff he thought he could construct the berm because he was zoned as rural and asked if he knew his property had changed from

agricultural to R-1 zoning, which occurred on September 11 of 2018. Mr. Petersen confirmed that and stated R-1 is a rural zoning. Commissioner VanderLaan clarified it is rural residential.

Commissioner VanderLaan asked the applicant what the berm would be achieving since his house is approximately 700 feet from the northern lot line. Mr. Petersen stated he could plant trees and never be asked a question. He has the ability to bring that amount of yardage in for free, he wants to build a berm, and there is no reason not to.

Commissioner VanderLaan asked whether the applicant had considered using that fill for a potential subdivision in the future since he has 21 acres. Mr. Petersen stated he is not presently considering developing that land and if he would, he would deal with the fill issue at that time.

Commissioner VanderLaan asked what the purpose of the berm would be as far as keeping people from traversing into his property or was it a sight issue. Mr. Petersen said he could put a 30-foot fence up if Commissioner VanderLaan would like that better. Commissioner VanderLaan stated it is not about what she would like. Mr. Petersen said he did not understand why Commissioner VanderLaan was having trouble with him wanting to build a berm. Commissioner VanderLaan asked whether it was because the applicant did not want to look at other houses. Mr. Petersen stated he also did not want others to see in and the reason he bought 21 acres was to be away from everyone.

Commissioner VanderLaan asked if he was part of the Petersen Turkey Farm family. Mr. Petersen responded that he is the outlaw division of them, the redheaded stepchild that got kicked to the side. Commissioner VanderLaan responded that she did not want to get into family issues and she suspected as much since he was doing something different with his inherited property. Mr. Petersen said he did not get any inherited property and he bought the property from the family. He added that what they are doing is their problem and that is why he is trying to separate himself from them.

Commissioner VanderLaan asked to clarify that the applicant's berm is not with Petersen Farm or Preserve. Mr. Petersen confirmed that as correct.

Chairperson Koehler asked that everyone take a breath and get back on topic and that audience members keep their voices down because microphones pick up noise easily.

Chairperson Koehler thanked Mr. Petersen for taking the time to attend the meeting.

Hope Luedtke, 16932 Jivaro, stated she and her husband live down the street that they would have been using to add the extra dirt. She encouraged everyone to look at the area in question. She said Bobby and Beth have a very nice place and the berm will not be intrusive, huge, or stick out of place but give them a nice buffer to stay at the place they have with the number of homes that are coming in the area. She said homeowners in the area are surprised at the density numbers and how different this area is looking compared to what they thought the 2½ acre lots would look like. She said the berm will probably be an asset to the area versus something negative.

Marvin Christenson, 4065 165th, has lived in Andover for 53 years. He asked what Petersen Farms thinks about the berm or whether they had been contacted. He does not believe there is anything negative about the proposed project.

There was an unintelligible comment from the audience.

**Motion** by Daninger, seconded by Hudson, to close the public hearing at 7:37 p.m. Motion carried on a 7-ayes, 0-nays, 0-absent vote.

Commissioner VanderLaan asked whether, each time subdivisions occur in the City, berms will be requested and wondered whether there was a plan regarding that potential issue. Community Development Director Janish stated he had an answer but would first like to address other questions that came up regarding the request. He believed staff would be open to the idea of inserting the Jivaro haul route in the Resolution as long as the route is available and property owners allow for access. Regarding 7,000 versus 10,000 cubic yards, staff does not necessarily have a concern with the amount of fill being hauled there. The concern is regarding how much area would be disturbed, which could trigger additional permitting through different agencies. For example, if 1½ acres were disturbed, some agencies might say permits are required, which could slow down the process, and the applicant should be aware of that possibility if a larger number of cubic yards is granted. He stated staff could do some checking to get guidance from the appropriate agency and also talk to the applicant, because he knows the applicant would like the berm built quickly. If Planning & Zoning is okay with the larger number, staff could be directed to work with the applicant to get the desired amount. He stated the City Council feels a property owner has the right to install a berm, whether it is located in rural or urban developments, as long as it does not negatively impact surrounding properties. Also, if somebody in a rural area was proposing a berm, it would be looked at. However, a 50-foot berm on a residential lot in an urban area has a much different impact than on a 20-acre parcel. The negative aspect is usually regarding how the berm impacts drainage. Also, a property owner has a right to remove trees; the City does not regulate the number of trees a property owner has. The IUP is the only regulation for land reclamation regarding berms, and staff is not aware of a regulation that would prevent someone from building a berm around their property.

Chairperson Koehler asked if additional permits were triggered, what agencies would be involved. Community Development Director Janish stated the Lower Rum River, a water management organization, could require additional permitting process when the one acre is disturbed. Different agencies such as NPDS and MPCA have different threshold requirements as to when their authority may kick in. He felt the applicant, because of the time frame in which he would like the berm constructed, would want to avoid that kind of permitting process because it would cause delays.

Chairperson Koehler asked if there would be any other permits from the City of Andover that would be required if the cubic yards went from 7,000 to 10,000. Community Development Director Janish responded there are no additional permits required by the City. Chairperson Koehler added he heard Mr. Petersen say he does not want to come back to the City, nor does he want to make the applicant come back.

Chairperson Koehler asked whether the City could work with Mr. Petersen to figure out the largest number of cubic yards that would not trigger more permitting. Community Development Director Janish stated the applicant and staff are open to that and, as long as the Planning & Zoning Commission is open to that, staff could try to provide guidance to the applicant to keep the project moving forward.

Commissioner Daninger said he is okay with the project and reminded everyone that Planning & Zoning gives a recommendation. He suggested approving the current Resolution so nothing else gets triggered between now and when the Council meets. In the meantime, staff can be directed to help the applicant, and when the Council makes a final recommendation, they could maybe go with 10,000 and the haul route could be confirmed. Planning & Zoning should move forward and approve something; staff could work with the applicant and get final approval from City Council.

Commissioner Loehlein asked if there was any limit other than cubic yardage regarding the berm in terms of approval, or if it could be upon approval of City staff, or working with City Staff, etc. Chairperson Koehler stated he trusts City staff and was hopeful that someone would do the math to figure out what the largest cubic yard number would be without triggering permits from anyone else so the applicant can get the berm done. The haul route should also be figured out before it goes to City Council.

Commissioner Loehlein asked whether approval would be given using language such as “a number that City staff would work out” and that he would be comfortable approving that language. Chairperson Koehler felt that would be appropriate and reminded the Commission that theirs is a recommendation and it can be approved with whatever number they want and it could be changed by City Council.

Commissioner Daninger said the Commissioners know 7,000 does not trigger anything, so his suggestion would be to use that number with the understanding staff will work with the applicant, because if a recommendation is made using 10,000 cubic yards, that may trigger the Rum River to get involved. He suggested approval because everyone is in favor and then getting the correct number before the City Council makes its decision.

Chairperson Koehler stated Commissioners Daninger and Loehlein had valid points and the number needs to be known but it does not need to be known now. He said the City needs to know the number and staff can be trusted to get it and work with the applicant. The Resolution could be approved as-is with the recommendation the applicant work with City staff.

Commissioner Hudson stated he supports the comments already made. He does not care how much dirt the applicant moves as long as it does not create any problems. The applicant should get the berm. He has 21 acres, it sounds like it is a beautiful property, and the neighbors are in support of it. He does not want to stand in the applicant’s way and is all for making him happy, so he should work with staff and get it done.

Commissioner VanderLaan referenced Mr. Christenson's question regarding the master development plan for the PUD which was approved October 23. She stated it looked like two lots would be on the northern part of the boundary. Since the developer has not indicated resistance, the Commissioners should consider the applicant's property rights. She stated she would not like a big berm on her lot, but it is not her choice and the applicant has the right to construct the berm within the guidelines and laws of the City and she feels approval is necessary.

Chairperson Koehler asked staff whether notification was given to the development in that area. Community Development Director Janish said notice was given to property owners, including owners to the north. It is also published in the City's official newspaper, and there was also a sign posted at the applicant's property. Historically, the City has not contacted a developer in the area saying somebody is doing X, Y, or Z. The City follows the process which is guided by Minnesota State Statute and the Zoning Ordinance.

Chairperson Koehler asked if whoever owns the land where the PUD is going was notified, which Community Development Director Janish confirmed as correct.

Chairperson Koehler stated Mr. Petersen has plans of putting the berm in and wants to make it look right, he wants to seed it, he wants to irrigate it, so he is not going to be dumping a pile of dirt there and leaving it. He does not feel there is a reason not to proceed.

**Motion** by Godfrey, seconded by Loehlein, to recommend to the City Council approval of the Resolution as written. Commissioner Daninger noted the applicant will work with City staff, since the Commission is approving the Resolution as presented, to look at the haul road and the increased amount of cubic yards. Motion carried on a 7-ayes, 0-nays, 0-absent vote.

Community Development Director Janish stated the item will be before the City Council at the August 20, 2019 meeting.

**PUBLIC HEARING: Conditional Use Permit (CUP) — Interim Performance Standards (Curbing) — 3017 161st Avenue NW — Upper Midwest Athletic Construction/Erik Hicks**

Community Development Director Janish used a map to orient the area of Andover allowed to have Interim Performance Standards and also oriented the applicant's property. He said Interim Performance Standards are intended to establish an alternative level of site improvements for properties located in the rural industrial area generally referred to as the Hughs/Westview Industrial Park. The City acknowledges there is a lack of municipal utilities, limiting the development potential of these properties. The performance standards are intended to allow continued use, expansion, and redevelopment with a level of site improvements that commensurate with the development potential of the properties. City staff reviews applications using Conditional Use Permit criteria along with additional criteria such as: 1) Existing appearance of the building and site; 2) Compatibility of the proposed site development plan with other industrial properties in the area; 3) The effect of the proposed use and proposed site development plan on the adjacent residential neighborhood, including traffic, noise, glare, buffers, and environmental impact. There are deviations allowed in the Code which is related to

parking and impervious surface areas related to a new development proposal as the City Council may deem appropriate or relevant. The term of the approval identifies that at the time of any future expansion or redevelopment of the affected property, it shall be required to conform to the regular performance standard. Essentially, if an Interim Performance Standard is approved for a property, that time period lasts until City water and sewer is there and the applicant expands again. The applicant would then need to become compliant with the regulations. There is not presently a set time period for when City utilities will be extended to the industrial park.

Community Development Director Janish said City Code states parking lots are required to have a high back curb; the applicant is proposing to deviate from that requirement. Commercial areas such as Walmart and Target have high back concrete curb consisting of concrete gutter and then the curb, which channelizes water. The area sheet drains, hits the back of the curb, and then flows to either catch basins or a riprap outlet that goes into ponding areas. Due to the sugary sand material in the area, the applicant would like to sheet drain the water and use curb stops. Using the overhead projector, a curb stop was identified, which can be concrete, painted yellow, or painted blue. If someone is driving and their tires hit a curb stop, it will stop them. A curb stop acts similar to a high back curb but does not function like a high back curb does in regards to water. Water hits the curb stops and then continues on. Using Document C300, he pointed out the ponding for the area and stated the area would sheet drain and flow to the ponding area. From an environmental standpoint, a curb stop functions similar to diverting water to an area, allowing for infiltration and settlement. He indicated City Engineer Berkowitz provided a Memo expressing concern about using curb stops versus the high back curb. The Memo discusses the longevity of curb stops versus the high back curb, the plowing process and potential damage to the curb stops, and the aesthetics of the area when using curb stops. The City Engineer indicated the stormwater flow could function. The City Engineer would not like to see the Commission move forward with a recommendation. He stated there was some discussion with a Commission member related to the curb stops deteriorating. When a Conditional Use Permit is granted, the City has the ability to go on the property to look at things; and one of the conditions, if approved, could be that City staff would be able to go on the property and look at the curb stops and verify they are still in working order.

Community Development Director Janish explained there is standard criteria for granting a Conditional Use Permit: 1) The effect of the proposed use upon the health, safety, morals, and general welfare of occupants of surrounding lands. The applicant is proposing the utilization of ribbon curb vs. high back curb and parking stops, which will allow for sheet draining of the site. It is expected, due to the soils in the area and the ponding adjacent to the parking lot, no negative impacts to the health, safety, morals and general welfare of occupants of the surrounding lands will occur. The applicant is proposing to utilize eight-foot long rubber curb stops to prevent vehicles from leaving the impervious surface. 2) Existing and anticipated traffic conditions, including parking facilities on adjacent streets and land. The applicant is looking at expanding the parking area which allows for ease of movement of equipment and is also proposing to sheet drain to the ponding versus a high back curb. 3) The effect on values of property and scenic view in the surrounding area. The applicant is proposing to utilize curb stops and proposing to transplant trees between 161st Ave NW and his proposed parking expansion to screen the property more, which was shown on documents using the overhead projector. He stated

Engineering indicated maintenance issues could exist for parking stops because they can break down over time. The curb stop does meet the stormwater requirements within the Comprehensive Plan. He reviewed the Interim Performance Standards criteria again. He stated both he and the applicant were available to answer questions.

Commissioner Loehlein referenced two comments from Mr. Berkowitz: First, he is not aware of the normal curb requirement being waived in other parts of the City; second, if this is approved, it could set a precedent. He asked whether the same sheet draining and curb arrangement could be requested in another part of the City or is it unique to the Hughes/Westview area and could only be requested there. Community Development Director Janish said anybody can request anything anywhere but the way the current Ordinance is written, the Conditional Use Permit for the Interim Performance Standards applies to the Hughes/Westview Industrial Park area. As a result, if someone wanted to propose park stops or curb stops in other locations of the community, they would have to pursue some other type of avenue to do that versus the Interim Performance Standards through the Conditional Use Permit process.

Commissioner Loehlein asked staff why he thought no one had done so before. Community Development Director Janish said he could not really respond to that, although he thought it may be due to the particular area. He said in the early to mid-2000s there was work done on some of the buildings in the area. Using the overhead projector, he referenced Code which talks about the ability to deviate related to parking and impervious surface and could not speculate why someone would ask for another type of deviation from Code versus the parking.

Commissioner Godfrey asked for confirmation that the presentation focused on the Hughes/Westview Industrial Park because in the documents it says "Hugh/Westview" and "Hughes Industrial Park," and she wanted to make sure it was the same site. Community Development Director Janish stated she was correct.

Commissioner Godfrey asked whether the proposed use of ribbon curb and sheet draining will accomplish the goal consistent with the Comprehensive Plan of effectively controlling stormwater with no negative impact to the health and safety of the occupants in the surrounding lands. Community Development Director Janish confirmed she was correct.

**Motion** by Loehlein, seconded by Godfrey, to open the public hearing at 8:06 p.m. Motion carried on a 7-ayes, 0-nays, 0-absent vote.

Chairperson Koehler asked the applicant to take the podium and to ask any questions he had.

Applicant Erik Hicks, 3017 161st Ave NW, had no questions.

Chairperson Koehler asked the applicant why he was choosing this method as opposed to the high back curb. The applicant stated he does the work himself and does not pour high back curb. He owns 5½ acres, and if at some point in the future he wants to expand parking or change any grading or make the storm ponds bigger, he will not have to rip out the curb and have somebody else do it again.

Chairperson Koehler commented the applicant's reasons were basically financial and future-proofing his property, which the applicant stated was correct.

**Motion** by Daninger, seconded by Hudson, to close the public hearing at 8:08 p.m. Motion carried on a 7-ayes, 0-nays, 0-absent vote.

Commissioner Sims asked whether the applicant is required to have the curb there, if this is rural enough that he would not need the Conditional Use Permit, or what was requiring the curb at that location. Community Development Director Janish said Code requires curb be provided around a parking space, and the definition of curbing is that you have the channel and high back to catch it and drain it. Instead of creating a high back curb and perhaps at a future date having to tear it out, haul it away and/or crush it, to meet staff's concern about vehicles going over the concrete/asphalt area, the applicant suggested curb stops rather than bollards, because if you hit a curb stop, you know you've hit something. Because of the location and the Interim Performance Standards, the applicant can and did ask for something other than the high back.

Chairperson Koehler stated he heard there is no issue with the water leaving the area, City Engineering has no concerns, and environmentally it's sound. The issue is the longevity of the curb stops compared to the longevity of the curb from the City's perspective, a plowing perspective, snow removal, and things like that. From the applicant's perspective, he may expand down the road or would like to expand down the road and wants to put in something that is easier to expand without tearing things out. He asked if anyone on the Commission heard anything different or had any thoughts to share.

Commissioner Loehlein referenced the Memo from the City Engineer recommending the City hold to its standard curb. He said when he evaluates this proposal against City criteria, he does not see any reason why it should not be approved by the Commission. It then becomes a City Council decision as to whether the issues raised by City Engineering make it worthy of approving or not approving.

Commissioner VanderLaan said her position would be to vote no on this proposal, stating the Commission weighs heavily on the City Engineer, who has been with the City for 23 years, and his recommendation is to hold to the required standard of the B6 concrete curb. Also, by changing the standard, this commercial property could lead to setting a precedent for other commercial projects in the future. She accepts other Commissioners will listen to the reasons given, but she feels the City Engineer is highly skilled and she will listen to him and vote no.

Commissioner Daninger commented that Commissioner VanderLaan does not yet know the motion. Commissioner VanderLaan clarified she will vote against the furtherance of the project.

Commissioner Godfrey commented the Interim Performance Standards for the industrial park recognize that an alternative level of site improvements for this rural industrial area is appropriate. Since it lacks municipal utilities and other niceties other industrial parks in the City may have, the intent with the Interim Performance Standards, as she understands, is to allow

continued use of the property, expansion, and redevelopment of property within that area commensurate with the potential development of the property. She feels this argues for flexibility on the part of the Commission as long as the core health and safety requirements are met. It has been established that the water flow will be appropriate. The property owner has been put on notice that under an approved Conditional Use Permit, the City would have the right to enter the property at an appropriate time, inspect, and perhaps require repair or replacement if necessary, of those curb stops. She believes it is appropriate to approve this exception within the Hughes/Westview Industrial Park and does not believe doing so would set a precedent for all industrial parks in Andover, because this is a special case.

Chairperson Koehler asked for confirmation that the use of parking stops would endure until City utilities are brought in. Community Development Director Janish stated there were two conditions: First, City water and sewer is available to the property; second, an expansion occurs. For example, if water and sewer is available and the applicant decides he wants to expand, at that point the curb stops would have to be removed and the high back curb would need to be installed.

Chairperson Koehler clarified that after water and sewer are in place, as long as the curb stops are in place and well-maintained, they can stay. As soon as any change is requested, City Code applies again. Community Development Director Janish agreed with his statement.

Chairperson Koehler asked if the City has the downstream capacity to expand sewer and water to the area. Community Development Director Janish stated if the City were to service the area, it would have to come from the rural reserve pipe, which is part of long-term growth. Chairperson Koehler commented that is a pipe that is not there yet, which Community Development Director Janish confirmed as correct.

Chairperson Koehler asked if the Conditional Use Permit in the area would last a while, potentially indefinitely. Community Development Director Janish stated that could be the case.

Commissioner Daninger asked if that would be the case until there is an expansion by the applicant. Community Development Director Janish stated water and sewer would have to be available and an expansion by the property owner.

Commissioner Daninger asked whether at that time the property owner could make an application to use the same type of curb stops. Community Development Director Janish responded that would not be allowed if water and sewer were there.

Commissioner Daninger referenced the two caveats, those being water and sewer or an expansion. Community Development Director Janish said it is “and” rather than “or.” He said if the Conditional Use Permit is granted by the City Council, the applicant would be able to use the curb stops. If there is an expansion that occurs without water and sewer, the request would have to come forward again.

Commissioner Hudson stated he thought Commissioner Godfrey was correct, that there is enough ambiguity within the district and the Interim Performance Standards that it will not create a downstream problem for other sites within the City. Although he does not want to go against Mr. Berkowitz, he felt it was a special and unique enough situation that he would probably vote for the plan.

Chairperson Koehler asked who was responsible for snow removal in the area. Community Development Director Janish stated it was the owner's responsibility since it is private property.

Chairperson Koehler questioned who would be responsible for fixing the curb stops if they were to break down and look bad. Community Development Director Janish responded that would be the property owner.

Chairperson Koehler seconded Mr. Hudson's comment, that although he has immense respect for Mr. Berkowitz and he understands about setting precedent, he does not see how it affects the City since the City is not responsible for snow-plowing or fixing the curb stops if they break down but the City has the right to tell Mr. Hicks they have to be fixed. He wondered what the extra work would be for the City because, as he sees it, the City would only be responsible for inspection. If the area was an "eyebrow curve" or there was extra plowing involved, he would understand the reasoning. He would like a better explanation but he does not have it.

Commissioner Sims said Mr. Berkowitz has to look at the situation and state his case as the City Engineer. The Commission's job is to look at the overall City. There is a business that wants to expand, and to make expansion more difficult would be against the better use of the City, and he is in favor of the plan. He does not wish to make things cost-prohibitive to the applicant by making him rip out curbs and redo them, because the applicant may take his business elsewhere.

Chairperson Koehler stated the sentence from the City Engineer's Memo, "Tire stops are problematic from a snow removal standpoint and break up over time due to the stops being run into and runover by vehicle tires and break down from plowing," are not the City's problems.

**Motion** by Sims, seconded by Hudson, to approve the Resolution as written. Motion carried on a 5-ayes, 2-nays (Daninger, VanderLaan), 0-absent vote.

Commissioner VanderLaan clarified her nay vote is that the recommendation of City Engineer Berkowitz is tantamount in this case regarding the activities.

Community Development Director Janish stated this item will be before the Council at the August 20, 2019 City Council meeting.

### ***OTHER BUSINESS***

Community Development Director Janish said the City Council approved the rezoning request for the Villas at Crosstown Woods. The City Council also approved the preliminary plat and Planned Unit Development for the Villas at Crosstown Woods.

Chairperson Koehler commented he has asked for a meeting since January/February regarding emergency services and things to consider as the Commission looks at PUDs and other zoning environments. At that time the suggestion was to wait until summer, but summer is coming to an end and the meeting hasn't been held yet. He realizes people are busy but does not want to hear this winter that it will need to wait again until next summer.

***ADJOURNMENT***

***Motion*** by Hudson, seconded by VanderLaan, to adjourn the meeting at 8:24 p.m. Motion carried on a 7-ayes, 0-nays, 0-absent vote.

Respectfully Submitted,

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