

PLANNING COMMISSION MINUTES - CITY OF INVER GROVE HEIGHTS

Tuesday, December 3, 2024 - 7:00 p.m.
City Council Chambers - 8150 Barbara Avenue

1. CALL TO ORDER

Chair Weber called the Planning Commission Meeting to order at 7:00 p.m.

The Pledge of Allegiance was recited.

2. ROLL CALL

Commissioner's Present: Jonathan Weber (*Chair*)
Scott Clancy (*Vice-Chair*)
Trisha Presley (*Secretary*)
Jason Teiken
Lance Twedt
Aida Schaefer
Robert Heidenreich
Amy Hunting
Dennis Wippermann

Commissioner(s) Absent: None.

Staff Present: Jason Ziemer, Community Development Director
Kris Wilson, City Administrator
Stacy Bodsberg, Community Development Support Specialist

3. CONSENT AGENDA

A. Minutes of November 19, 2024, Planning Commission Meeting.

Motion by Heidenreich, Second by Hunting, to approve the minutes as submitted.

Ayes: 9

Nays: 0 Motion Carried.

4. PUBLIC HEARING

Chair Weber stated that item 4.A. will be switched to the end and items 4.B. & 4.C. will go first.

B. Vacation of a current Drainage and Utility Easement and the Dedication of a Drainage and Utility Easement in a new location on the property located at 17 High Road. (Susan McNeely - Case No. 24-41VAC)

Reading of Public Notice

Secretary Presley read the Public Hearing Notice.

Presentation of Request

Community Development Director Ziemer presented the staff report.

The property at 17 High Road is currently zoned LDR, Low Density Residential and E-2, Estate District.

The applicant is seeking to vacate the current Drainage & Utility Easement (DUE) and dedicate a new DUE in a new location that would be provided by agreement.

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In the 1970s, Lot 12 was replatted, creating the subject property. The easement was created in 1983 as part of the Mac Gregor Acres Subdivision.

The home currently encroaches slightly into the Drainage & Utility Easement, and the applicant desires to add onto the home.

Staff analyzed whether a public need for the current easement still exists and found that as there are no utilities in the area, it is no longer necessary and could be vacated.

The applicant has agreed to provide a new perimeter Drainage & Utility Easement that would meet the typical 10-foot easement along the western boundary.

Staff recommend approval of the vacation of the Drainage & Utility Easement located on Lot 1, Block 1, Mac Gregor Acres Rearrangement.

Motion by Twedt, Second by Schaefer, to add one email in favor of the Vacation of the Drainage and Utility Easement into the record.

Ayes: 9

Nays: 0 Motion Carried.

Opening of Public Hearing

Harry McNeely, 17 High Road, Applicant, said he had read and understood the report.

Chair Weber closed the public hearing.

Motion by Heidenreich, Second by Presley, to Approve the Vacation of the Drainage and Utility Easement located on Lot 1, Block 1, Mac Gregor Acres Rearrangement as listed.

Ayes: 9

Nays: 0 Motion Carried.

This item will go before the City Council on January 6, 2025.

C. Rezoning from A, Agricultural to E-1, Estate District located at property 9120 Rich Valley Boulevard. (Ky Fang - Case No. 24-24-40Z)

Reading of Public Notice

Secretary Presley read the Public Hearing Notice.

Presentation of Request

Community Development Director Ziemer presented the staff report.

The applicant is seeking rezoning the 5.53-acre lot at 9120 Rich Valley Boulevard to Estate Residential. The current land use is RDR, Rural Density Residential and the current zoning is Agricultural.

The current front yard setback width is about 320 feet.

The adjacent lots lack consistency in size and configuration, but they are all zoned Agricultural.

There are different uses in the area, but rezoning would be spot zoning; in addition, the lot is over 5 acres in size, which is more consistent with Agriculture.

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Staff considered rezoning the larger area, which would allow the City to ensure that zoning matched the land use. However, it is not an immediate priority, from the City's perspective.

The purpose of rezoning would be to create a second lot to construct a new home. This would require a replat of the property. However, the split of the lot would result in nonconforming lots, and two variances would need to be considered (a zoning variance for practical difficulty and a subdivision variance for undue hardship).

Staff recommends denial of the request to rezone 9120 Rich Valley Boulevard to avoid spot zoning.

Commissioner Clancy pointed out some mismatches of zoning types in the area. He asked about a definition or metric for spot zoning.

Community Development Director Ziemer said it is based on adjacent properties. If everything else around the subject property has consistent standards and lot sizes, changing the zoning for that property would constitute spot zoning. If other lots in the area were smaller, there could be an argument saying that the other lots in the area conform to E-1 standards. However, the lots adjacent to this property conform with Agricultural zoning (5+ acres, complying with minimum standards, aside from the properties to the south which are impacted by the roadway).

Chair Weber asked about the road frontage.

Community Development Director Ziemer said the property extends to Rich Valley Boulevard, so there is a 33-foot easement back from the centerline. The lot width would be roughly 320 feet. He said that if this were to be approved, the County would take needed right-of-way for a minor arterial street (100-120 feet of right-of-way; 50-60 feet back from centerline), which would shrink the overall lot area. He said, however, that those questions could not be considered yet. When meeting with the landowner about lot division, staff identified challenges in meeting the practical difficulty and undue hardship evaluations. Legal counsel advised that the property owners would find it difficult to meet one or both of those standards in the future.

Opening of Public Hearing

Ky Fang and Pa Foua Yang, 12542 Danbury Way, Rosemount, Applicant, said they had read and understood the report.

Ky Fang said they want to divide the lot into two units, taking the easement from the east to fulfill the width requirements for each lot. He said if it's not approved, they plan to build a barn and raise some poultry and pigs. He asked if, in some time, all the lots in the area are rezoned to E-1, whether their lot would be grandfathered in as Agricultural.

Community Development Director Ziemer said that if the use of keeping animals was a legal use at the time the zoning changed, it would become a legal non-conforming use, and the use could continue on.

Pa Foua Yang said that their goal when they acquired the land was to build two homes to help their kids out with housing expenses.

Kelly Fiebiger, 9185 Rich Valley Boulevard, asked whether the current house would remain in place and where the driveways would emerge if the lot were split.

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Chair Weber said that that type of development plan would be considered if the rezoning was approved.

Kelly Fiebiger asked whether he would be informed about future decisions on this property as he lives nearby.

Chair Weber said that he would be notified.

Chair Weber closed the public hearing.

Commissioner Heidenreich pointed out that there are nine properties listed as Agricultural in the area, and that four of those are less than 2 acres. He said that a split of the property would result in lots consistent in size with those smaller lot sizes. Because of the irregularity of the area's lot configuration, he is in favor of approving the rezoning to E-1 in this case.

Commissioner Teiken said that adding another residence did not seem to represent a drastic change to him. He said that this particular property did not seem like it would set a bad precedent, for similar reasons to those expressed by Commissioner Heidenreich.

Commissioner Hunting said that she disagreed and is not in favor. She noted that properties to the immediate north, south, east, and west are zoned Agricultural, so this is spot zoning.

Commissioner Twedt said that if the Planning Commission were to recommend approval, and City Council approved it, it would trigger the need for a Variance which has almost no chance of being approved (due to the applicants' inability to demonstrate practical difficulty or undue hardship). He recommended denial so that the applicants could try another path.

Chair Weber mentioned a lot five parcels to the east and two parcels to the north that were rezoned from Agriculture to E-1. He recommended that the area be re-examined.

Commissioner Heidenreich pointed out four lots in the area don't meet the requirement for Agriculture zoning (5+ acres), but they are zoned Agriculture.

Chair Weber said that City Code currently requires that Agriculture lots be 5+ acres, but he clarified that parcel sizes weren't considered the same way in the past.

Commissioner Schaefer said the house on the lot is currently deemed uninhabitable, so the applicants would need to do something. She suggested a large house with an attached "in-law" ADU (accessory dwelling unit). She said this would be spot zoning, and she opposes the rezoning request for that reason.

Commissioner Wippermann said that this would be spot zoning, and in his opinion, would set a bad precedent for other areas of the City. He is not in favor of approving the rezoning request.

Commissioner Clancy said that surrounding properties could be considered legal non-conforming for Agriculture, which could be the rationale for approving rezoning despite the spot zoning precedent. He brought up the potential difficulties if the E-1 is approved.

Chair Weber asked about the possibility of pursuing a PUD (planned unit development).

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Community Development Director Ziemer said this request might not qualify for PUD zoning, as that designation is reserved for larger pieces of land with other challenges or special factors. However, he expressed willingness to work with the applicants on a different path forward.

Commissioner Schaefer asked about ADU permits in Agriculture zones.

Community Development Director Ziemer said he was not sure.

Commissioner Schaefer said she thought there was a 1,000-square-foot limit for ADUs. She suggested that as an alternative to splitting the lot.

Motion by Hunting, Second by Twedt, to Deny the Rezoning request for 9120 Rich Valley Boulevard from A, Agricultural to E-1, Estate District, due to the adjacent properties all being zoned A, Agricultural.

Ayes: 9

Nays: 0 Motion Carried.

Item will go before the City Council January 6, 2025.

A. Zoning Code Amendment, Conditional Use Permit and Non-Conforming Use Certificate Amendment to allow the proposed vertical expansion of the Pine Bend Sanitary Landfill located at 2495 117th Street East. (BFI Waste Systems of North America, LLC - Case No. 24-21NCUC) *Continued Item from November 19, 2024, Planning Commission Meeting.*

Presentation of Request

Community Development Director Ziemer reviewed the background information for the request, including the Zoning Code Amendment (allowing final height of a landfill in an Integrated Resource Management Overlay District not to exceed 1,105.8 feet and capacity not to exceed 42,123,200 cubic yards), the Non-Conforming Use Certificate amendment (triggered by expansion request), and the Conditional Use Permit (approving the additional height and the increased capacity with proposed conditions).

City Administrator Wilson reviewed a few specific conditions within the existing CUP. She said Condition 11 sets out the same requirements for surface water and groundwater monitoring as the current CUP. Condition 12 sets out the same requirements for dual gas/leachate extraction systems as the current CUP, but it sets the annual report due date on March 1 to line up with State deadlines.

Commissioner Schaefer asked about runoff management to prevent surface water contamination before the final cover is placed.

City Administrator Wilson said the leachate extraction system collects the runoff before it reaches surface water. She said that most property owners in the area were connected to municipal water years ago to prevent them from needing to use private wells.

City Administrator Wilson continued by reviewing conditions 13, 14, and 15, which all address subsurface gas migration. The existing CUP required the landfill to come into compliance with MN Rule 7035.2815 and maintain compliance for 6 consecutive months. While Pine Bend Landfill has made improvements, they have not achieved compliance. The Minnesota Pollution Control Agency has advised that there is no definite path forward towards compliance. The current steps in place are an annual progress report to the City, a gas collection system, and 39

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probes around the perimeter of the landfill that are monitored quarterly (or monthly if exceedances are detected). The conditions in the draft CUP extend the deadline for compliance by 2 years or to 35 million cubic yards of landfill capacity. The draft CUP also grants City Council the authority to waive this requirement if adequate progress is being made. Annual reporting will continue, with added trend analysis. Once more definite solutions are identified to the gas migration issue, the City can require implementation using the conditions in the CUP.

Commissioner Heidenreich asked about the reasoning for the 35 million cubic yard capacity limit. He said more needs to be done to address methane gas and toxic chemicals, and he suggested a lower capacity limit to ensure that the problem is fixed sooner than later.

City Administrator Wilson clarified that there are two deadlines – the gas migration compliance deadline and the landfill closure deadline. The 35 million cubic yard capacity is the former.

Commissioner Heidenreich asked about the leachate and gas migration mitigation plans in the existing CUP.

City Administrator Wilson deferred to the applicant.

Commissioner Schaefer asked how the City plans to ensure compliance with the capacity limit and what the consequences are if the limit is exceeded.

City Administrator Wilson said land use approvals are wrapped into state permits and enforced by the State. The State and County do on-site monitoring; City staff are not involved.

Commissioner Schaefer asked what happens if the state determines the landfill has exceeded the height.

City Administrator Wilson said she did not know the answer, but she said it was unlikely that the landfill would accidentally exceed the maximum height.

Commissioner Schaefer summarized that the City doesn't foresee noncompliance and doesn't have systems in place to respond to potential noncompliance.

City Administrator Wilson said annual landfill reports are reviewed by Barr Engineering, City staff, etc.; therefore, the City will know when the limit is being approached.

Opening of Public Hearing

Aaron Janusz, 2495 117th Street East, Applicant, responded to Commissioner Schaefer's leachate question. He said berms and channels are built into slopes to minimize erosion and slow runoff.

Commissioner Schaefer summarized that there are interim steps to mitigate the increased erosion from the higher runoff rate due to the steeper slope.

Mr. Janusz added that the final cover will be applied in stages.

Chair Weber asked for more information about the gas issue and areas of noncompliance.

Mr. Janusz said the issue is in the northeast corner due to the unlined area. 5 to 6 gas detection probes are still consistently showing exceedances (down from 20+ in the past).

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Chair Weber asked for more details about the standards.

Mr. Janusz clarified that a Minnesota rule limits methane to under 25% of the lower explosive limit at the property boundary. The probes are spaced 500 feet apart around the perimeter of the landfill. The probes are perforated tubes with a vacuum and an instrument for measuring methane. There are also probes added on the east and west more recently – those are not showing exceedances.

Commissioner Heidenreich asked about the leachate plume maps.

Mr. Janusz clarified that there were groundwater issues in the past, but he said Pine Bend was removed from the Superfund list 20 years ago. He said monitoring wells are checked three times a year, and the leachate plume is shrinking.

Commissioner Heidenreich asked about the two landfills being considered one site due to the commingling plumes in one aquifer. He asked about 31 toxic chemicals and whether they will reach the Mississippi River and Pool 2.

Mr. Janusz said all that information is gathered for the annual reports to MPCA.

Commissioner Heidenreich asked about what the five-year testing cycle is for. Mr. Janusz stated that it was for the EPA.

Commissioner Heidenreich asked if a plume map could be shared. Mr. Janusz said he would be happy to share that.

Chair Weber closed the public hearing.

Chair Weber re-opened the public hearing at 8:11p.m. so that the applicant could answer Commissioner Twedt's question.

Mr. Janusz stated that Commissioner Twedt was correct in saying the landfill is following best industry practices. The plume is shrinking and nothing new is coming out of the lined portion.

Planning Commission Discussion

Commissioner Heidenreich stated that nothing is being done to address the leachate plume in the aquifers to the north and east of the landfill. He is concerned about pollution of Pool 2 and the Mississippi River. He said the chemicals are not being treated, and he suggested adding additional conditions for leachate and methane control.

Commissioner Twedt said it was difficult to hit a target that keeps moving. He said the Pine Bend Landfill is closely monitored by MPCA. He added that it's in the landfill's interest to stay in compliance, and he said it seems like they are doing what they can. He asked whether there's evidence that leachate is contaminating groundwater in the area.

Commissioner Heidenreich said there is information on this in the private well data.

Chair Weber mentioned that City Council can't approve the CUP until the Host Community Agreement is signed.

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City Administrator Kris Wilson said that both Condition 19 and 20 tie the CUP with the Host Community Agreement.

Chair Weber asked about the number of revisions for the HCA.

City Administrator said that they are currently on the fourth revision.

Motion by Twedt, Second by Clancy, to Approve the request for Zoning Code Amendment, Conditional Use Permit, and Non-Conforming Use Certificate Amendment to allow the proposed vertical expansion of the Pine Bend Sanitary Landfill located at 2495 117th Street East with all conditions listed.

Ayes: 5

Nays: 2 (Heidenreich, Teiken) Motion Carried.

Abstained: 2 (Schaefer, Weber)

This item will go to City Council on December 9th, 2024.

5. REGULAR BUSINESS

Community Development Director Ziemer said the second meeting in December was cancelled and that January's first meeting will be a work session.

Commissioner Schaefer asked about staffing in the Planning Division. Community Development Director Ziemer said there is currently a Planning Manager position posted, and a Senior Planner position will be posted soon. The department's goal is shift to a more proactive approach - addressing lingering questions/issues and helping applicants through processes in different ways.

6. ADJOURN

Motion to adjourn the meeting at 8:18 p.m.

Respectfully submitted by Will Clashe, Recording Secretary.