

PLANNING COMMISSION MINUTES - CITY OF INVER GROVE HEIGHTS

Tuesday, July 5, 2022 – 7:00 p.m.
City Council Chambers – 8150 Barbara Avenue

1. CALL TO ORDER

Vice Chair Scales called the Planning Commission Meeting to order at 7:00 p.m. The Pledge of Allegiance was recited.

Commissioners Present: Anthony Scales
 Kate Challeen
 Dennis Wippermann
 Robert Heidenreich
 Joan Robertson
 Jaime Besser
 Scott Clancy

Commissioners Absent: Elizabeth Niemioja (excused)
 Jonathan Weber (excused)

Staff Present: Allan Hunting, City Planner
 Heather Rand, Community Development Director
 Kim Fox, Community Development Specialist
 Steve Dodge, Assistant City Engineer

2. APPROVAL OF MINUTES:

The Planning Commission Meeting Minutes for June 21, 2022 were approved as submitted.

3. APPLICANT REQUESTS AND PUBLIC HEARINGS:

A. Consider an Interim Use Permit to allow the crushing of concrete or asphalt on a temporary basis associated with the Argenta Trail/ CSAH 26 road construction project. (S.M. Hentges & Sons, Inc – Case No. 22-27IUP).

Reading of Public Notice

Vice Chair Scales read the public hearing notice to consider the request for S.M. Hentges & Sons, Inc. – Case No. 22-27IUP. The property is located on the south side of County Road 26/70th Street, between Arkansas Avenue and Argenta Trail. The request consists of an interim use permit to allow the crushing of concrete or asphalt on a temporary basis associated with the Argenta Trail County State Aid Highway 26 road construction project. Notices were mailed to 43 property owners on June 23, 2022.

Presentation of Request

City Planner Allan Hunting discussed the request to have crushing of asphalt and concrete from the county reconstruction project of 70th Street and Argenta Trail. The crushing operation portion would be located within construction limits at the intersection point of Arkansas Avenue. The applicant is the general contractor for the entire county project. Crushing would take place up to two (2)-10-day periods in 2022 and 2023. The zoning ordinance lists four general criteria:

1. Crushing is to occur in Inver Grove Heights.
2. Crushing is only allowed during the hours of 7:00 a.m. to 4:30 p.m. Monday through Friday (condition of approval).

3. Crushing is to cease within 30 days of completion of the project.
 - a. Crushing is being used for the aggregate base of the roadway.
4. Crushing must come from a public road construction project within Inver Grove Heights.

One of the conditions is that the interim use permit would expire on August 31, 2023. The staff report includes the approval of the interim use permit with six (6) conditions. A seventh condition is recommended to allow no more than the two separate 10-day periods maximum for each year. Staff recommends approval of the interim use permit.

Commissioner Robertson asked if other areas were reviewed.

Mr. Hunting replied the applicant could best answer that question.

Opening of Public Hearing

Joe Miller, Product Manager, S.M. Hentges & Sons, 650 Quaker Avenue, Jordan, Minnesota, replied to the question regarding locations stating many other locations on site were reviewed. The only other area they could use is within the roadway itself which would restrict traffic.

He stated he read and understands the report.

He described the unit they are using as a mobilized track crusher crushing 75% concrete and 25% asphalt. They have found the noise to be less than normal dirt moving equipment. The current location has a small dust compression system; sprinklers create a lot less dust than moving dirt.

Commissioner Clancy asked if the team has updated their plan regarding these operations and submitted a copy to the city.

Mr. Miller replied everything has been submitted to date. There is a double row silt fence at the low point and a two-foot ditch. The site is completely safe and secure.

Commissioner Challeen asked about oversight and making sure that is happening. She asked how often air quality and dust are measured.

Mr. Miller replied they perimeter sweep every week, an inspection is done, records are kept and sent to the County as requested, and a subcontractor helps out. They also monitor every time it rains.

Commissioner Challeen questioned if Husky Environmental is the only independent oversight.

Mr. Miller replied they are the subcontractor. They are not independent.

Scott Ferriss, 1630 71st Street West, located on the backside of the project, President of the Blackstone Vista Homeowners Association, stated he was present on behalf of his family and the Homeowners Association. They are opposed to this plan. The dust with the project has been something they have already been dealing with. He mentioned the concrete and asphalt that would potentially be blowing is full of things such as fly ash (coal ash), silica, and asbestos. The proposed location for crushing is less than 100 feet from some homes. He mentioned it is a young neighborhood with many children under age 10. Even if minimal, he does not want his kids breathing in that dust. He asked about a vibration study. A lot of residents in the area work from home, he hears the construction constantly, and it shakes his home at times. He questions if crushing would disturb people from having the ability to be on conference calls. He said they are gathering signatures in opposition to present to the City Council. He referenced the northern part by Highway 65 which is less densely populated and questioned why they could not have done the

crushing there, alongside 65th, northwest of Argenta, or truck it off site and do it somewhere else. As a homeowner and President of the Homeowners Association, he urged the Commission to vote no on the interim use permit.

Mark Johnsen, 1663 71st Street West, mentioned his backyard is right next to this, within 100 yards. He has had to clean his deck repeatedly due to the amount of dust. He said as a veteran, he was exposed to burn pit exposure and has respiratory issues. He stated there were numerous locations within their area this could be crushed offsite; business areas have land they are not using, and he questioned why it could not be trucked there. He is the Vice President of their HOA Board. As a representative of their community, he requests the Commission vote no against this.

Pat Simon, 1636 69th Street West, displayed photos of what they have been putting up with since February 9th. She mentioned that on May 11th and 12th a culvert was blown out on the corner of 70th and Argenta twice after 1 ½ inches of rain. She referenced a regional basin on the corner of 69th Street where water in the basin is no longer clean; it still looks that way today. The culvert that blew out went up and over into that basin on July 5th. She referenced a photo of a pile of dirt that showed up behind some homes without a silt fence on June 7th. On July 5th, a photo was taken of a pile sitting in the base of a regional basin. She mentioned that everything on the north side from Argenta on the north side of 70th is well and septic. They are all concerned about their wells and septic ending up with contaminate in it. She shared that asphalt is made from No. 6 fuel oil and gravel, and if there was rain, she was concerned about how to keep that fuel oil out of the basin. She asked at what point a silt fence is required and who inspects these places. She referenced letter D of the review permit where it states "all materials are to be used in the road construction project and it's limits are all located within the city." She mentioned they are doing 70th all the way down to Highway 55, which is not in Inver Grove Heights. She asked if the IUP covers the City of Eagan and Inver Grove Heights, or if they would have to go to Eagan and get the proper IUP. She referenced 70th, Holiday Lane, and McDonalds, stating the County owns at least eight acres of land on the north side. The asphalt and cement could be taken there because it is empty land or somewhere without homes. She said she received a letter from the city stating her property is within 350 feet.

She mentioned she had questions for Assistant City Engineer Steve Dodge regarding his memo on numbers 9, 11, and 14:

Who controls where the material comes from, if it came from a gas station or field station in Eagan and if it was still in the pile or moved someplace else.

She referenced #11, based off her photos there is no erosion control. A silt fence on the west side does not take care of anything on the east side.

She referred to #14 asking if anyone checked to see if environmental worksheets were required and state permits. She felt it was more of a convenience to grind it up where chosen.

Assistant City Engineer Steve Dodge answered questions posed by Ms. Simon stating he worked with the contractor to make sure they agreed that only Inver Grove Heights materials would be going to or from the project.

Dakota County would control where it comes from since it is their project, and they hired the contractor. The city would inspect erosion/sediment control (#11) to make sure it is in compliance before operations start. In this case, he would send an inspector out because it is an IUP with the city to inspect the construction site. He addressed #14, stating he checked with Kimley Horn and Dakota County and verified that they check with their own environmental staff. They were not aware of any other permitting.

Commissioner Robertson mentioned that she heard from Pat Simon that some material did not come from Inver Grove Heights. She said Ms. Simon mentioned Kwik Trip and another site, which

are not Inver Grove Heights materials.

Mr. Dodge replied that question could be answered by the contractor.

Commissioner Challeen said it was mentioned that the city would have oversight on the interim use permit. She asked how often Mr. Dodge checks the site once it is up and running.

Mr. Dodge replied an initial inspection is done and work in conjunction with Dakota County inspectors. He said they would be out there once a week unless there is a major rainfall event.

Commissioner Heidenreich referenced Ms. Simon's comment about it taking a number of phone calls and a couple of weeks to get a silt fence put in. He questioned if that was typical.

Mr. Dodge replied when in violation it would be typical to respond within a 48-hour period.

Commissioner Heidenreich asked if the two-week wait was excessive.

Mr. Dodge replied that was not the norm if in violation.

Commissioner Robertson asked who the entity was that would be responsible for getting the silt fencing in place within 48 hours; the city, contractor, or County.

Mr. Dodge replied the contractor is responsible. The city is the local governing unit; the MPCA provides the city to act on their behalf.

Commissioner Heidenreich asked what happens when sediment fences fail, how long it takes, if it destroys the environment, the groundwater, and overwhelms sewer systems.

Mr. Dodge replied it is meant for surface sediment control. The basin is a temporary sediment basin. Its currently in a temporary state, any material in the basin will be removed once they dig out the rest of the basin once operations are done.

Commissioner Robertson asked if there were materials in the sediment that could leach into ground water.

Mr. Dodge replied he would refer to Dakota County and the contractor for that answer.

Mr. Johnsen asked what amount of rain is considered to be excessive. He referenced the fields behind his home that people use to grow foods for the Farmer's Market. A rainstorm would cause sediment to seep into food that may be sold. He felt more studies should be done for this.

Mr. Dodge replied the materials are only meant for a one-inch rainfall. For larger rain events, what is out there works well.

Mr. Miller responded to questions previously asked:

Materials brought in were from Metro Storage. This was done before they knew an IUP was needed.

Once learning the crusher was necessary, he contacted City Planner Hunting.

He has let operations know that everything must come from or be from the job, nothing would be imported or exported.

He displayed a diagram of the proposed crusher site. The pile of asphalt currently there is roughly one-third of the 81,000 square yards of asphalt they must remove from the project.

The dust is coming from the County project and has nothing to do with the crusher.

The asphalt and concrete are being purchased from Dakota County Aggregate. It is a mixture of 30% concrete, 30% virgin aggregate, and 30% of asphalt, concrete, and virgin aggregate.

When doing road jobs, they typically use asphalt and recycled concrete.

He addressed a photo shown earlier stating at that time the ground was frozen, they used bio-logs, not silt fence around the asphalt pile. When the frost came off, a double row of silt fence was placed around the lowest perimeter. There is a 3-foot berm as well.

They looked at putting the crusher at 65th Street.

With a crusher, they want it to be wet in the pile, it gives off less dust.

The company has never had a violation. They inspect every time it rains and weekly.

Vice Chair Scales said it was mentioned that part of the project takes place in Eagan. He asked if those materials would be brought into Inver Grove Heights for crushing.

Mr. Miller replied in the affirmative. They go all the way to Highway 55. It is a Dakota County/Eagan/Inver Grove Heights project.

Vice Chair Scales said it was his understanding materials from outside the city were not allowed.

City Planner Hunting replied the intent of the condition is that the material is not coming from other sites. It is the same material coming in with Inver Grove Heights and Eagan.

Vice Chair Scales suggested cleaning up the language. Commissioner Robertson agreed.

Commissioner Robertson suggested changing it from Inver Grove Heights to Highway 55.

Commissioner Challeen asked why 65th Street would not work.

Mr. Miller replied the area is completed now and would be hydroseeded tomorrow. There is no place to put it, there is very limited room from Dakota County.

Commissioner Robertson asked if the property adjacent to that northern phase up to Delaware was private property.

Mr. Miller replied those were private lands.

Commissioner Clancy asked who proposed the storing of the asphalt material.

Mr. Miller replied it was their team. Even if a reclaimer were brought in and reclaimed in place, it would have to be picked up, put in the pile, and still must be put through a crusher. It would still be the same conditions they are looking at today.

Commissioner Robertson referenced 70th Street towards Eagan, county owned land that could be used.

Mr. Miller replied the County owns Pond B land. Most areas east and west from there, the County has a permanent easement but only to the back of the bituminous bike path. Everything further south/further north of the bike path is a temporary easement during construction.

Commissioner Robertson asked if there was another site. She questioned what the alternatives were so crushing does not happen right behind houses.

Mr. Miller replied that the only other place he knows of at this time would be right in the middle of the road. There would still be residences in the area. The existing crusher does not make any more noise, vibration, dust, than the construction equipment out there today. It is quieter, makes less

dust, and is more efficient than any other equipment there.

Commissioner Clancy asked what the timeline was between crushing the material, storing it on site, and using it in construction.

Mr. Miller replied if receiving approval from the City Council on July 25th, the crusher would move in five days after that. The current pile would take approximately six days to crush. All the material is currently needed, they did not know they needed an IUP.

Commissioner Clancy inquired if there was a timetable for pile up/pile gone or if there was a temporary way the material is not exposed.

Mr. Miller replied they water the piles as it goes through the plant. They like the pile to have plenty of moisture in it. The water truck goes around the piles as they are being built. From the time the pile is up, it takes six days to crush, it might last a week to 10 days until it is hauled off. Hauling takes 2-3 different times so they can place about 4,000 tons a day.

Commissioner Robertson felt the concerns expressed by residents are not because of the crusher, it is because of everything else that is happening around the construction. What is being addressed this evening is the crushing activity and if that is less noise, less interruption, and only 10-day blocks.

Mr. Miller stated there would be one crushing block this year with the pile they have. Next year there would be two blocks because they want to keep the traveling public on a nice road for as long as they can.

Commissioner Heidenreich commented that hauling off site sounds like it would cost more money. He asked who was responsible for that cost.

Mr. Miller replied that would come out of his pocket. He said they would have a discussion with the county if it went that far.

Commissioner Heidenreich asked Mr. Miller if he would go back to the county and ask for more money.

Mr. Miller replied they believe they can use the county right-of-way to build a county project. If they are wrong about that, it would come out of their pocket.

Commissioner Challeen asked what the area looks like in between the 10-day sessions.

Mr. Miller referenced a photo stating between crushing one pile would get bigger. If cleaned out and trucked out, there would be nothing there, the crusher would be gone. That process repeats twice in 2023.

Scott Ferriss, 1630 71st Street West, said as residents they acknowledge the dust is already there. The concern is with the additional dust. They think about what is in the dust being crushed. He said it was mentioned that materials were brought in from the construction of a storage facility in Eagan. That took place January 2022. He said Mr. Miller mentioned they did not know an IUP was needed until after that happened. He said the drawings were dated February 2021; he was unsure how it can be said they did not know an IUP was needed. He referenced the material coming in from Eagan and asked what Eagan was doing to chip in and if they were a part of the process.

Brett Crowe, 1647 71st Street West, stated his concern was with the debris coming directly to this

pit Monday through Saturday. It would create extra dust that is not already there. He has lost his back yard and deck this entire summer and next year. They cannot open windows or go outside. The crusher brings more noise, more dust. He said he has never noticed a water truck in the space where the crusher is supposed to be. He opposes.

Pat Simon, 1636 69th Street West, referenced an area off Lone Oak Road and the Holiday Station where it seems Dakota County owns eight acres. She questioned why they could not move the 2023 crushing there, no homes were nearby. She suggested crushing be done there.

Mr. Miller replied to the suggestion Ms. Simon made stating they would look into it.

Commissioner Robertson asked about what communications, support, and information has been shared with Eagan, and what Eagan's response is that some of this is their property.

Mr. Hunting replied it is a county project, there was no direct contact with Eagan. He was unsure of what Eagan's rules were. He said city staff could check with Eagan's staff to see if there are any rules/regulations.

Mr. Miller requested approving the IUP for 2022 so they could get the pile crushed and moved out. They could then make other decisions, look at Eagan, and other places for next year. They would like to get the pile crushed as it sits today. He mentioned that they need to provide a check for \$10,000 in escrow for the inspections, sweep, and are willing to offer that. They believe they would receive the entire sum back because they do what they say/say what they do.

Vice Chair Scales asked City Planner Hunting if a change could be made.

Mr. Hunting replied that a timeframe could be established, the IUP would be for the one crushing period to occur this year. There would be no crushing in 2023 and the operation would cease and expire in 2022 or by the end of the year.

Vice Chair Scales asked the applicant if that was agreeable.

Mr. Miller replied they would request to approve this with the conditions that they would work with Eagan and try to get an IUP for next year's crushing.

Vice Chair Scales questioned if that were something the Commission could do for just 2022. Mr. Hunting replied it would be cleaner to address what could be addressed tonight with the one time period.

Vice Chair Scales closed the public hearing.

Planning Commission Discussion

Motion by Commissioner Robertson, second by Commissioner Wippermann, to add an email to the record.

Motion carried (7/0).

Commissioner Clancy stated the importance of understanding the communities concerns with this operation. He suggested proper precautions and procedures are taken while the work is underway. He was interested in seeing a better location. He suggested the conditions as stated before in looking at a one year permitted use or expiring at the end of 2022 (Item #5 of the condition of approval) and approving this location understanding that the Commission is respecting what the applicant says they are going to do.

Commissioner Challeen mentioned if this had come before the Planning Commission last year it would have been denied because it is too close to homes. She said she has a lot of discomfort with it, even for this year.

Commissioner Heidenreich liked the idea of the compromise. It holds to high standards especially if the community documents what is not going on/going on. He thought it was a great idea.

Planning Commission Recommendation

Motion by Commissioner Clancy, to approve the interim use permit to allow temporary crushing of concrete or asphalt/aggregate for the 70th Street and Argenta Trail construction project subject to the six (6) conditions noted with the additional comments for Item #5 that the interim use permit shall expire at the end of the year 2022 (December 31, 2022).

Commissioner Heidenreich asked if they would be addressing the materials coming from Eagan, Page 2, Item D, where it states asphalt must come from the City of Inver Grove Heights.

Commissioner Clancy replied he was fine with changing the motion and agreed with Commissioner Heidenreich's addition. He added to his motion the additional note that Item D on the report, concrete or asphalt being crushed, must come from the construction project in Inver Grove Heights. At least 90% must be reused in the public road construction project in the City of Inver Grove Heights to extend of the same project use as noted in the report.

Motion by Commissioner Clancy, second by Commissioner Heidenreich, to approve the interim use permit to allow the temporary crushing of concrete or asphalt/aggregate for the 70th Street and Argenta Trail construction project subject to the six (6) conditions noted with the additional comments for Item #5 that the interim use permit shall expire at the end of year 2022 (December 31, 2022), with the additional note stating Item D on the report, the concrete or asphalt being crushed, must come from the construction project in the City of Inver Grove Heights. At least 90% must be reused in the public road construction project in the City of Inver Grove Heights to extend of the same project use as noted in the report associated with the Argenta Trail/ CSAH 26 road construction project. (S.M. Hentges & Sons, Inc – Case No. 22-27IUP).

Motion carried (6/1) – Challeen. This item goes before the City Council on July 25, 2022.

4. OTHER BUSINESS

A. Consider an appeal to the interpretation of City Code Section 10-15-17 Exterior Building Materials (Keith Joyce – Case No. 22-35X).

City Planner Allan Hunting presented an appeal to the interpretation of the code. The City received a complaint about a possible illegal structure. Code Enforcement went out and sent a letter of violation. The owner, Mr. Joyce, disagrees with the violation and interpretation and is requesting an appeal of the determination be heard by the Board of Appeals. The property is located at 5873 Concord and is zoned R-1C. The structure is a hoop framed with a canvas top and sides. Code Section 10-15-17 for exterior materials prohibits canvas as a final cover and prohibits hoops or tent garages. Photos of the structure were shown. He said Mr. Joyce believes this is a carport. Carport by definition is allowed with open sides and can have a roof over it. In his opinion and those of code enforcement, this does not meet the definition of a carport and is a tent garage.

Procedure: The code establishes the Board of Adjustment and Appeals (City Council) review and make determinations on the appeal request. Code requires the Planning Commission make a recommendation to the City Council before the public hearing if agreeing/disagreeing with staff's interpretation of the structure (tent garage that is illegal, or carport which is allowed).

Two resolutions have been prepared by the City Attorney, one stating it is a carport, the other that it is not a carport. Staff interprets the structure to be a tent garage, not a carport and to be a violation of the code.

Vice Chair Scales stated the Commission is being asked to review and provide a recommendation to the City Council in regard to the following questions:

1. Is the code compliance specialist and zoning administrators' determination that the accessory structure is not a carport erroneous.
2. Is the code compliance specialist and zoning administrators' determination that the accessory structure is an impermissible tent garage, hoop apparatus, or other similar apparatus.
3. Is the code compliance specialist or zoning administrators' determination that the accessory structure is constructed of cloth, fabric, or canvas, which are impermissible exterior building materials erroneous.

Commissioner Robertson said the person that sent in the appeal made a couple of comments related to the fact that initially his property was defined as legal non-conforming. He was suggesting that because it was legal non-conforming at the time he engaged with the city. She questioned if legal non-conforming has no bearing on any additional work Mr. Joyce did, it doesn't currently apply to this kind of thing.

Mr. Hunting replied he did not have all the history on the property, but there have been other issues. He did not believe this was the legal non-conforming issue, but relates to the structure itself, age, and other issues on the property. This code was adopted in 2010. He was unsure when the structure was placed.

Commissioner Clancy felt it would be tough to argue what the structure appears to be. His opinion was that it is not a carport, and the code compliance specialist was not acting erroneously in their judgement. His concern was if there were any other pertaining issues of the property that would be a disadvantage to the property owner. He does not believe the specialist was acting erroneously to any of the three questions posed.

Motion by Commissioner Clancy, second by Commissioner Robertson, to provide recommendation to the City Council of Inver Grove Heights that the Planning Commission does not find that the city specialists acted erroneously in the review of the property of the subject of the report. The Planning Commission's recommendation is that they do not accept this appeal for this interpretation of City Code Section 10-15-17 Exterior Building Materials (Keith Joyce – Case No. 22-35X).

Commissioner Wippermann asked if the motion should include that they are adopting the resolution.

Commissioner Clancy added to his motion that they adopt the resolution stated and have the last line of the resolution language changed to be adopted by the Planning Commission.

Motion by Commissioner Clancy, second by Commissioner Robertson, to provide recommendation to the City Council of Inver Grove Heights that the Planning Commission does not find that the city specialist acted erroneously in the review of the property of the subject of the report. The Planning Commission's recommendation is that they do not accept this appeal for this interpretation of City Code Section 10-15-17 Exterior Building Materials (Keith Joyce – Case No. 22-35X), and that they adopt the resolution stated and have the last line of the resolution have the language changed to be adopted by the Planning Commission of Inver Grove Heights on the fifth day of July, 2022.

Motion carried (7/0). This item will go before the City Council in a Public Hearing on July 11, 2022.

5. ADJOURN

Motion by Commissioner Clancy to adjourn the Planning Commission Meeting at 8:39 p.m.

Questions were asked off camera about public comment.

Mr. Hunting replied this was not the official Public Hearing. Public comments could be made at the City Council meeting on July 11th. The Planning Commission does not address items not on the agenda. There is a public comment period during every City Council meeting.
Meeting adjourned at 8:41 p.m.

Respectfully submitted, Sheri Yourczek, Recording Secretary