

**BOARD OF ADJUSTMENT
Regular Meeting**

DATE: April 4, 2012

TIME: 5:00 p.m.

PLACE: Council Chambers, City Hall

PRESENT: Sanchez, Smith, Einsman, Krofchalk, Kouba, and Priem

ABSENT: Stone

Chairman Sanchez called the meeting to order at 5:00 p.m.

The minutes of the March 21, 2012 meeting were approved as submitted.

Chairman Sanchez turned the floor over to the Assistant City Planner Carlos Espinosa. Mr. Espinosa went through the Conditional Use Permit application submitted by Robert Hemker, Brannt Valley Excavating for the frac sand processing plant.

He put the site plan up on the overhead and went through all the performance standards required of the Conditional Use Permit. He then went through the performance standard requirements one by one and outlined the applicant's response to those requirements. He said that the applicant's application showed that they would comply with all of the standards.

Mr. Espinosa told the board that they had three choices to approve the Conditional Use Permit application with the resolution that the performance standards would be complied with, table the petition if the board needed further information or they could deny the petition.

Jon Krofchalk asked if the performance standards could change and Mr. Espinosa responded, yes, if it was determined that the standards were lacking that they could be changed. Mr. Krofchalk asked if the new standards would apply to any existing operations and Mr. Espinosa responded, yes they would.

Petition No. 12-5-CUP Robert Hemker – Brannt Valley Excavating

Chairman Sanchez opened the public hearing and read the petition.

- a) Robert Hemker – Brannt Valley - The specific ordinance modification is Section 43.63(b)(39), which requires sand processing facilities to obtain a Conditional Use Permit. Applicant wishes to construct a sand washing and drying facility at 1280-1330 Frontenac Drive. Properties are described as M-2 Zoning, Sec-36, Twp-107, Range-007, Blk-001, Lots 001-003, Technology Park or at 1280 – 1330 Frontenac Drive.

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Mark Palmer, N27128 Lindstrom Rd, Blair Wisconsin, a consultant to Mr. Hemker represented the petition. Mr. Palmer said he was working with Mr. Hemker in both Minnesota and Wisconsin with his mining, trucking and washing operations. He said to answer a question that came up earlier that the trucks coming in would be tarped both ways. He said Mr. Espinosa had covered everything concerning the operation and would answer any questions that the board had. He read a short statement to the board in which he said Mr. Hemker had leased this parcel of property and was in the process of working through all the state permits when the city changed the requirements for a Conditional Use Permit for sand handling operations. He said they had all their state permits and had their application in for a Conditional Use Permit prior to the time that the city put a moratorium on all new frac sand operations.

Jon Krofchalk said the number of trucks were listed at fifty per day and wondered if that number could go up to a hundred per day. Mr. Palmer responded that fifty per day was probably the max but it could possibly be more at some point in time if things change.

Chris Sanchez asked if there could be a limit put on the number of trucks per day and Carlos Espinosa said it could be a stipulation on the Conditional Use Permit, and in order to raise that limit they would have to come back before the board to amend the Conditional Use Permit.

Jon Krofchalk asked if the waste sand that was produced would be hauled back to the mine site. Mr. Palmer responded it could be taken back to the mine site to limit the amount of fill that would be needed to restore the land or it could possibly be used for agricultural purposes.

Dave Kouba asked where in Wisconsin the sand was coming from and wondered if it would be possible to use the I-90 Bridge versus the Highway 43 Bridge. Mr. Palmer responded it was coming from Trempealeau County and having to use the I-90 Bridge would add a lot of extra miles and cost to haul the sand in.

Chris Sanchez asked Mr. Espinosa if Mr. Hemker had all the proper permits and Mr. Espinosa responded yes he had applied for all his proper State permits. Mr. Sanchez then asked if the area was properly zoned for this type of operation and Mr. Espinosa responded yes it was properly zoned with a Conditional Use Permit. Mr. Sanchez asked if the truck route would handle the extra fifty trucks a day and Mr. Espinosa responded yes it was a truck route and it would handle the extra trucks with minimal impact on the route. Mr. Sanchez asked if the City can designate the routes that the trucks take and Mr. Espinosa responded yes the City could. He said the City designates the routes that the trucks could take so they are not traveling through residential districts and that is why they are taking Riverview Drive, Pelzer, Highway 61, Mankato Avenue, Bruski Drive and Frontenac Drive as the route.

Ron Smith asked if the operation would be twelve months a year or if it would be shorter. Mr. Palmer responded that for a period during the winter that they would

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not be in operation. The recycled water in the pond that is used for washing would freeze and the mine areas would also freeze. Mr. Smith asked about the tracking pads that were proposed and Mr. Palmer responded that they were a corrugated area that was designed to knock the dirt off the tires and the vehicles so it was not tracked onto the road. He explained it was the operators' responsibility to make sure that these tracking pads were cleaned of debris.

Chris Sanchez asked about the hours of operation and Mr. Palmer responded it would in operation from 7:00 a.m. until 7:00 p.m.

Laura Priem said there would be fifty trucks in and fifty trucks out and wanted to know if the fifty trucks going out would be hauling waste product back to the mine site. Mr. Palmer responded yes some of the trucks could possibly be hauling waste sand back to the mine site. Ms. Priem said she was wondering how the material left the site and she was wondering if the fifty trucks coming in were leaving empty and there would be fifty other trucks coming in to haul the material out. Mr. Palmer responded that there were other trucks that would be hauling finished product out and a lot of the trucks would be leaving empty and at times there would be no product coming in, but trucks would be coming in empty to haul the finished product out for loading on barges at the dock.

Chris Sanchez asked if the dust was being monitored and Mr. Palmer responded yes it would be monitored constantly and the daily inspection report would have to be filled out.

Laura Priem asked if the City would be inspecting the operation daily. Mr. Espinosa responded that the City would monitor the site periodically and if there were any complaints they would inspect the site and any problems that were found, the operator would be notified to make required corrections.

Dave Kouba was wondering what watering the stock piles regularly meant. Mr. Palmer said the moisture in the sand would be monitored and when it was drying out that water would be added to the stock piles. Mr. Kouba asked who determines when water would be added and Mr. Palmer responded that it was the operator's responsibility and watering would not be required daily but only when the pile was starting to dry out and that would be dependent upon the weather. He said watering may be required everyday at certain times and at times it may only be required weekly depending on the weather and how dry the sand gets. Mr. Kouba wanted to know who determined that a six foot fence around the property was required. Mr. Espinosa responded that the City did. Mr. Kouba responded that it was his understanding that junk yards required an eight foot fence around them and Mr. Espinosa responded yes they did. Mr. Kouba asked why the difference and Mr. Espinosa responded that it was because of the actual visual impact of a junk yard versus this operation.

Dave Kouba wanted to know how high the washed sand pile, waste and finished sand piles would be. Mr. Palmer said that they would not be very high as there is limited space to store the products. Mr. Kouba asked if the finished product piles

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would be loaded out daily. Mr. Palmer said the finished product is stored in silos and not in piles. The washed sand is stored in piles in order for the water to drain out of it before it is dried. Mr. Kouba asked if the product is constantly moving and Mr. Palmer responded yes, that the product would constantly be moving around the site.

Chris Sanchez asked how much noise would be produced on the site and how loud it would be. Mr. Palmer responded that most of the noise would come from loaders and from the trucks and they did not expect to exceed the limits for the zoning district.

Ron Smith addressed the dust plan, stating that when you follow a sweeper through a construction zone there is nothing but a big cloud of dust. Mr. Palmer responded that is this is different, when they sweep they use water to keep the dust down.

James Johnson, 802 West Broadway, addressed the board. Mr. Johnson stated that both the city and the county had moratoriums on mining operations until further studies could determined what the impact of the frac sand industry was having in the city and the county. He talked about health problems created by the frac sand industry across the rest of the country and said that the mining operations in Winona County were complicit in pollution from frac driving operations across the country.

Marie Kovecsi, 133 Whispering Lane, addressed the board. She said the board should act cautiously because of health and safety issues related to the operations. She thought a traffic analysis should be required prior to adding additional truck traffic to this route. She said the size of the trucks had not been addressed and if they were going to be semi size trucks, bigger turn lanes would probably be required. The height of the buildings could have an impact on the area also.

Chris Sanchez asked Mr. Espinosa if the EPA was looking into these types of operations. Mr. Espinosa responded the MPCA has taken an active position on the mining and other frac sand operations and the City would be watching what the MPCA is doing. MPCA would continue monitoring operations and if they change their requirements, then the City would follow the MPCA's lead. At that point the Conditional Use Permit, performance standards could be altered depending on what the MPCA does.

Ron Smith asked if any existing operations could be required to comply with the new standards or if it only applied to new ones. Mr. Espinosa responded that any change in the performance standards can be applied to existing operations.

Jon Krofchalk said he saw that the traffic volume report was from 2006 and was wondering if those numbers had increased. Mr. Espinosa responded that in some areas he was sure they had increased, but probably not too drastically.

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Chris Sanchez asked how often the MPCA and DNR monitored these operations and Mr. Espinosa responded that it depended on the type of permit and the reports that were submitted to them.

Steven Doerr, Dodge Wisconsin, who is now living in Gilmore Valley, addressed the board. Mr. Doerr said he had worked in a sand washing operation in Wisconsin last year and was currently unemployed. He stated that when he started this job, he had researched the affects of the industry and found it to be safe. There are different facilities operating throughout Wisconsin that have been there for some time and studies have been done on them.

Kay Shaw, 2281 Goodview Road, addressed the board. She lives approximately a quarter mile from Hemker's washing operation on Goodview Road and said that there is a lot of noise generated at that site. She said they operate from 6:00 a.m. until 11:00 p.m. and last fall they were actually operating 24/7. She said Hemker does not seem to be concerned about his operation out there and thought it would probably carry over to the new operation.

Laura Priem asked how close the closest house was to this operation. Dave Kouba responded that the closest house was four to five blocks away.

Dan Nisbit, 57 Lorraine Ct, from CD Corporation addressed the board. Mr. Nisbit stated that CD Corporation does most of the transportation of sand from Hemker's wash plant on Goodview Road. He said it would be a lot handier for the truckers if Hemker's operation was a lot closer to the road, but he chose to keep it back as far away from the road as he could to help cut down on the noise. There are two driveways into the site and they are only allowed to use the one driveway to keep the impact on the neighbors down. He said Hemker has a large dirt pile at the front of the site and he had asked Mr. Hemker about purchasing some of the dirt and Mr. Hemker said he had it there as a barrier between the operation and the neighbors and would not sell any. The trucks are not allowed to enter the site prior to 6:00 a.m and are not allowed to enter or leave after 6:00 p.m. The fuel tax on fuel per trucks in Minnesota is twenty eight cents a gallon and that equates approximately to \$200,000 in tax revenue from this operation, which 98% is dedicated to the road fund and 2% to other state funds.

Jon Krofchalk asked how many trucks a day went into the Goodview site and Mr. Nisbit responded approximately forty to fifty trucks. Mr. Nisbit stated that Mr. Hemker had accepted the longer route to transport the sand to the new operation and in doing so had accepted that it cost more money to take this route. The entire route that the trucks would be taking is built for truck traffic.

Jon Finn, 352 West Fourth Street, addressed the board. Mr. Finn stated that he lived approximately one block from the truck route. He wondered how facilities ended up on opposite ends of town. The response was lack of land and proper zoning for that type of operation.

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Jon Krofchalk asked if with the new wash facility on the east end, if the current facility on Goodview Road would see a decrease in the number of trucks per day. Robert Hemker responded that no the operation would remain at about forty to fifty trucks per day.

Dave Kouba asked Mr. Hemker how many jobs this operation would create and he responded approximately twenty five a year. Mr. Kouba asked what the pay scale was for these jobs and Mr. Hemker responded that it would be approximately \$45,000 for a truck driver and up to \$70,000 plus for welders.

Joe BJORLO, 1890 West Fourth Street, addressed the board. He told the board that he lives adjacent to the Mikrut property which is the former McConnon property. He said Mr. Mikrut has a huge dirt pile out there and they have to put up with blowing dirt and noise from the operations of trucks on the site. He stated that Mr. Mikrut had put up a six foot fence but they can see over the top of it and see everything that is going on at Mr. Mikrut's site.

Laura Priem asked how high the fence would have to be so they didn't see over it and he responded that it would have to be twelve feet.

Marilyn BJORLO, 1890 West Fourth Street, addressed the board. She said the hours of operation would be 7:00 a.m. to 7:00 p.m. but what happens when they broke down, would they be allowed to work longer.

Laura Priem asked Carlos Espinosa if there were exceptions to the 7:00 a.m. to 7:00 p.m. and Mr. Espinosa said the limit was for truck traffic and other operations could be longer as long as they meet the noise limits for that area. Ms. Priem asked if they wanted to change their hours of operations, would they have to come back before the board and Mr. Espinosa responded yes, they would have to come back to the board in order to alter their Conditional Use Permit.

Robert Hemker said their operations would be limited to 7:00 a.m. to 7:00 p.m. and any non noise producing activities could possibly exceed 7:00 p.m.

Marianna Byman, 427 West Wabasha Street, said she lives in Winona and owns a farm in Wisconsin and has attended frac sand meetings in both Minnesota and Wisconsin. She stated that each operating mine could generate forty to sixty trucks per day and any increase in the number of mines could increase the number of trucks that would be hauling. She was wondering if anyone had calculated the number of trucks that could be coming into Winona on any given day.

There be no other comments from the audience, the Chairman closed the public hearing.

Mario Einsman said from everything he could see the requirements for the Conditional Use Permit had all been fulfilled.

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Laura Priem said that a six foot fence may not be an adequate height. Jon Krofchalk replied that there were no residential neighbors and everything around it was commercial. Dave Kouba thought a six foot fence was inadequate and a higher fence would keep blowing sand and dirt contained better. Jon Krofchalk replied that there is a huge dirt pile down the street and there is no fence around it.

Laura Priem thought the number of trucks going to the site should be addressed. Ron Smith asked if they could stipulate the number of trucks that were entering the site and the response was yes, the board could place such a stipulation on the Conditional Use Permit. Jon Krofchalk wanted to know what happened if they exceeded fifty trucks per day, were they fined or what would happen. Mr. Espinosa said if it was found that they were running more than fifty trucks per day, the operator would be notified to bring it back into the compliance of the Conditional Use Permit and if they did not, it could void the Conditional Use Permit. Mario Einsman said he had a problem with the truck limit. Ron Smith said there shouldn't be a problem stipulating the number of trucks per day at fifty as the application already alluded to the fact that fifty would be the maximum. At the point, Robert Hemker said he saw no problem whatsoever with them placing a limit on fifty trucks per day on the permit.

Mario Einsman made a motion to approve the Conditional Use Permit as submitted. The motion failed due to the lack of second.

Ron Smith made a motion to approve the Conditional Use Permit with a stipulation that there be a limit of fifty trucks per day and Jon Krofchalk seconded the motion. Dave Kouba asked for an amendment to the motion to stipulate that there would be an eight foot fence around the property. Jon Krofchalk was opposed to amending his motion and called for a vote. At that point, the vote of the Board was unanimous in favor of approving the Conditional Use Permit with a stipulation that it be limited to fifty trucks per day.

The petitioner was informed that there is 10-day appeal period during which time no action could be taken on the petition.

Petition No. 12-6-V TRM Partnership

Chairman Sanchez opened the public hearing and read the petition.

- b) TRM Partnership - The specific ordinance modification is Section 43.32(b)(1), which requires Board of Adjustment authorization to substitute one nonconforming use for another, not more objectionable, nonconforming use. Petitioner desires to substitute an automobile body and windshield repair shop for the current auto glass repair business. The proposed use will not include automotive mechanical repair work. Property is described as R-1 Zoning, Sec-27, Twp-107,

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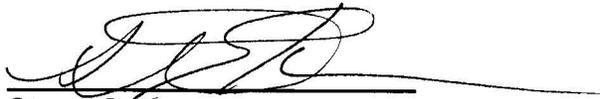
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Range-007, Lot-007, Blk-002, Sunnyside Addition, or at 828 West Sarnia Street.

Chad Moore, 1455 Oakview, St. Charles, MN, represented the petition. Mr. Moore said he was the tenant at the property, used it for storage and was not going to operate a repair business. At that point, he asked that the petition be withdrawn.

The board approved the request to be withdrawn and the Chairman closed the public hearing.

Meeting was adjourned at 7:00 p.m.



Steve Carson
Secretary