

**BOARD OF ADJUSTMENT
Regular Meeting**

DATE: May 2, 2012

TIME: 5:00 p.m.

PLACE: Council Chambers, City Hall

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

ABSENT: Smith & Stone

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

The minutes of the April 18, 2012 meeting were approved as submitted.

Petition No. 12-9-V, Joe Bronk

Chairman Sanchez opened the public hearing and read the petition.

Joe Bronk - The specific ordinance modification desired is Section 43.33.1(e)(4), which limits the operation of detached heating appliances from November 1 to March 31. Petitioner desires to extend the operation of his detached heating appliance from October 16 to April 15 of each year. Property is described as R-1 Zoning, Sec-29, Twp-107, Range-007, LIMITS, 66 AC COM, 361.5 E of NW COR, of NW ¼ NE ¼ S 271', E 133.5', N, 271 W 133.5' or at 1881 Gilmore Avenue.

Mr. Bronk told the board that the ordinance does not allow for a long enough heating season and he would like to extend it fifteen days either side. His only source of heat is wood and if he can't burn wood there is no heat in the house. He has a back up wood burner inside the house but it only heats the addition that was put on some years ago.

Laura Priem asked if he had received any complaints from the neighbors and Mr. Bronk responded not personally but he had heard rumors of complaints. He said the MPCA had been down investigating the complaint recently about him burning garbage in his outside wood burner and they had determined he was not burning garbage and everything was in compliance.

Ken Mogren, 1830 Ralph Scharmer Drive, addressed the board. Mr. Mogren said he was against the board granting the variance to extend the time. He stated that his wife had some respiratory problems for which she took medication and when the wind was right they could smell it in their house, which is over 500 feet away from Mr. Bronk's

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property. He said the bigger issue is the nuisance and health issues that outside wood burners pose to the community on a whole. Do to the way outside wood burners are designed to operate they create a lot more smoke from incomplete combustion than inside wood burners. He felt that the five month time period that the ordinance allowed was already too long and asked that the board deny the variance request.

Adam Zanzig, 533 Hiawatha Blvd, addressed the board. He said he would voice the same concerns that Mr. Mogren had. When this wood burner is burning they cannot keep the smoke out of their house and at times it actually sets off the smoke detector in their home. He said he had presented a petition to the chairman just before the meeting started and asked that it be read into the record.

Jim Stevens, 527 Hiawatha Blvd, addressed the board. Mr. Stevens said they have lived there since 2000 and smoke has been a problem in the neighborhood ever since they have been there. He said it's a problem even in the winter when the windows are closed you get smoke in the house and you can't even go outside to shovel snow because the smoke is so thick at times that it chokes you. He said he would like to second what Mr. Mogren and Mr. Zanzig had said. He said that New York State had outlawed outside wood burners and Juneau, Alaska outlawed them and if a person had one they had so many days to take it out or find another source of heat.

Mr. Bronk addressed the board again. He said if there were that many complaints and that much opposition against it, he thought he would have known about it by now. He said he has been burning wood for thirty years and has no other source of heat other than wood. He said the one inside wood burner he has to heat the addition he can't control and the original boiler that was in the house is not longer operational. Chris Sanchez commented that he had two heat sources in the house, one of which he can't control and the other one which does operate anymore and those were the only two heat sources that he has in the house and Mr. Bronk responded, yes that was right.

Laura Priem asked if he could replace the boiler that was no longer operational and Mr. Bronk responded that it was originally coal and was converted to oil and he has no gas into the house.

Dave Kouba asked if the house was insulated and Mr. Bronk responded that they have insulated it three times. Mr. Kouba asked if he had considered other sources of heat such as solar and Mr. Bronk responded no that he has pine trees forty feet tall surrounding the house.

The Chairman then read the petition signed by nineteen of the neighbors that were against the variance.

There being no other comment from the audience, the Chairman closed the public hearing.

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Laura Priem said she did not feel that this variance request met the criteria to be granted a variance. She said it would definitely alter the character of the neighborhood if the neighbors could not open their windows.

Dave Kouba said that there are fireplaces all over town that also create smoke. The secretary explained to the Board that fireplaces and inside wood burning appliances are completely different than the outside ones. The inside ones burn hotter and more constant than the outside ones do. The outside wood burners heat water which they can only heat to 180 degrees and at that point, the dampers on the burners close down, depriving the wood of oxygen and thereby creating a smoldering fire which creates smoke and when the damper opens, the appliances belch a lot of smoke until the fire gets hot enough again and by that time, the damper shuts down again so as not to overheat the water. The outside wood burners do not burn as clean as the inside fireplaces and furnaces and create a lot of foul smelling smoke.

Mario Einsman said maybe it's time that Mr. Bronk puts a gas line into his house and installs an economical gas fire boiler.

Laura Priem made a motion to deny the variance request and was seconded by Mario Einsman.

Vote of the Board was unanimous in favor of denying the petition.

Petitioner was informed that there was 10 day appeal period during which time he could appeal to council if he so desires.

The Chairman turned the floor over to Lucy McMartin at that time. Ms. McMartin said that she would like to explain the definition of the terms that would be used during the hearing. She explained who the Port Authority was, what the current commercial harbor area was and what the harbor dock was. She went on to say that there are over two million tons of commodities that pass through the commercial harbor area every year and it is the third largest port on the Mississippi river in the state of Minnesota. She said that the Port Authority leases the commercial harbor and harbor dock area to CD Corp.

Assistant City Planner, Carlos Espinosa then did a presentation on the CUP application along with an overhead of the area that would be covered under the CUP. He pointed out the entry area into the harbor area, the area where the sand would be dumped and loaded on barges by conveyer and the area where the trucks would exit the site. He said the stock pile would be a minimal size and probably would not be more than one barge at a time. He then went through the performance standards for the conditional use permit for this operation explaining that the petitioner would be complying with all the performance standards and had most of their plans in place. They have their storm water permit and would be holding run-off water on site and use it for water to wet the sand if needed.

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Petition No. 12-10-CUP, CD CORPORATION

Chairman opened the public hearing and read the petition.

CD Corp – The Specific Ordinance Request For A Conditional Use Permit Is Section 43.63(B)(40), Which Requires Transportation Facilities Used To Ship Sand To Obtain A Conditional Use Permit. Applicant Proposes To Load Sand Barges At 890 Riverview Road. Property Is Described As Sect-21, Twp-107, Range-007, Limits Lot-006 9.18 Ac Part Govt Lot 6 Sec 21 & Part Govt Lot 3 Sec 22 Com At W 1/4 Corner Of Sec 22, N 0 Deg E Along W Line Of Sec 22 939.66 To Center Line Of U.S. Army Corps Of Engineers Flood Control Dike, N 88 Deg E Along Said Center Line 485.36, N 639.87 To Sly Line Of Crooked Slough Channel Easement As Described In Perpetual Row Eas Dated 6/22/1956 Recorded As Bk 19 Of Misc Pg 267 & Pt Of Beg, S 639.87 More Or Less To Flood Control Dike Center Line, S 88 Deg W Along Flood Control Dike Center Line 704.84, N 2 Deg W 533.66 More Or Less To Sly Line Of Crooked Slough Channel Easement, Nely Along Sly Line Of Crooked Slough Channel Easement 740.78 More Or Less To Pt Of Beg Ex: Part Lying Sly Of A Line Distant 35 Nly Of As Measured At Right Angles To & Parallel With The Following Described Line: Com At W 1/4 Corner Of Sec 22, N 0 Deg E Along W Line Of Sec 22 934.95 N 88 Deg E 485.41 To Pt Of Beg Of Line To Be Herein Described, S 88 Deg W 485.41 To W Line Of Sec 22, S 88 Deg W 219.22 & Herein Described Line There Terminating; The Nly Line Of Said Exception Is To Be Prolonged Or Shortened Ely To Terminate On The Ely Line Of Said Hereinabove Described Property & Is To Be Prolonged Or Shortened Wly To Terminate On Wly Line Of Hereinabove Described Property.

Dan Nisbit of CD Corp. addressed the board. Mr. Nisbit said that they were applying for a CUP for the new dock at the commercial harbor area. He told the board that they had been loading sand at the old dock for the last couple of years and now they wish to switch the operation over to the new dock which requires a CUP. They would be using the same roads to come in and exit that they currently use for their operation at the commercial harbor area. There would be no sand processing at the site, they would only be dumping sand into a pit and loading it onto barges by a conveyer.

John Krofchalk asked where the sand would be washed and Mr. Nisbit responded that it would be probably be washed at the Hemker wash site. Krofchalk then said that he assumed that they would not be doing anything during the winter and Mr. Nisbit responded no, that their shipping season was approximately eight months long. Krofchalk asked how many additional barges would be loaded at the new dock and Mr. Nisbit responded that they shipped ten barges last year and would be shipping approximately twenty-four per month.

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Dave Kouba asked how many trucks CD Corp. operated and Mr. Nisbit responded twenty-five. Mr. Kouba then asked how many trips a day the trucks would be running and how much each truck carried. Mr. Nisbit responded that they would be running three or four rounds a day and each truck carries between twenty-four to twenty-five tons.

Mario Einsman said that if he understood correctly, this site would be only be used for transportation of sand and Mr. Nisbit responded yes, they were only in the transportation business and not in the processing business.

Marie Kovecsi of 133 Whispering Lane then addressed the board. She said that she was against this conditional use permit because they may be doing the same thing there but they were increasing the volume of material they handled. She has recently counted forty-two frac sand trucks coming off the interstate bridge in an one hour period. She had seen four trucks backed up on Fourth Street by the YMCA at one time. She felt that the increased truck traffic would pose a safety hazard.

Jane Cowgill of 317 Walnut Street then addressed the board. She asked that the board denied the CUP as she felt that the conditions outlined were ambiguous and incomplete. She was concerned about dust control of the airborne silica and didn't understand how some guy at the site would fill out a report and send it to some other guy to review. She did not feel that relying on the operator to monitor the operation was good and felt that there should be outside monitoring.

Jim Gurley, 22505 Betty Jane Drive then addressed the board. He was concerned about frac sand mining and felt that more research should be conducted on mining operations. He asked the board to deny the petition until such time that more information could be gathered. He was concerned about traffic at the intersection by the YMCA, which the trucks crossing the bridge would be using. He also said that the sand on Riverview Drive should be cleaned up immediately so that the fine sand particulate could not become airborne.

Amy Gernes of 473 East Broadway then addressed the board. She asked that the Board deny the CUP request stating concerns of the increased number of trucks on Riverview Drive and that Riverview Drive was already rough enough. She had concerns about the trucks turning off and on Riverview Drive into the site creating problems for traffic behind the trucks and a danger to bikes that use the road. She was also concerned about the hazards from the fugitive dust that would be created by the operation.

John Swanson curator of the Marine Art Museum at 800 Riverview Drive addressed the board. Mr. Swanson said he did not come to object or endorse the CUP but rather for more information. He said that Mr. Espinosa had already answered most of his questions, but he still had concerns about trucks backing up at the site and blocking the entrance to the museum as happens when there are a lot of grain trucks hauling. During

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the construction of the new dock, there has been quite a bit of vibration, which had set off sensitive sensors attached to paintings at the museum and he was concerned about that happening again and stated that they have always had a dust problem from the large pile of dredge sand that has been stored on the site.

Chris Sanchez asked Mr. Nisbit if the trucks would be backed up like they are in the fall during grain season and Mr. Nisbit responded that he did not see that happening, that during grain season there were approximately eight hundred grain trucks a day that haul into the elevators on Riverview Drive. Mr. Nisbit said he does not understand how Ms. Kovecsi can determine whether the trucks are carrying sand or not, because the same trucks would haul both sand and grain.

James Johnson of 802 West Broadway then addressed the board. He didn't understand why there was even a public hearing on this and why the Port was exempt from the moratorium. The harbor is existing as are six other facilities and the harbor is allowed to expand when the other six are not. He said that staff knew all along that the harbor was planning to expand and were not honest with people about the expansion. There was no logical or legal answer given to why the Port was exempt and he felt that the only reason the Port was exempt, was because they collect twenty-eight cents a ton or approximately one hundred thousand dollars a year for the sand operation. He felt the matter should be referred to Council as they are the ones that put the moratorium on in the first place.

Lynette Power of 252 East Sanborn then addressed the board. She said a little over a month ago that the Council Chambers had been overflowing with people that were there to ask the Council to put a moratorium on the frac sand operation. There are people that can't sleep at night because of the frac sand operations and that the property values are being destroyed by them.

Joe Morris of 23375 Buffalo Ridge Road then addressed the board. He said he is in Winona everyday and that the frac sand operations are a big concern of his. He did not understand why the Port was exempt from the moratorium and allowed to expand. He felt that this petition should be denied until a road impact study can be completed. More information is needed on frac sand and fugitive dust from frac sand, which would be part of the study undertaken during the moratorium. He was unclear to how often the frac sand would be cleaned up off the roads and how many trucks a day would be hauling into the Port.

Mellissa Gordon of 1078 West Broadway then addressed the board. She said the Board should deny the CUP petition for the same reason that they had denied the first petition, due to health concerns. Consideration should be given to the amount of dust that sixty trucks a day will create and the effects on the people that run and bike along that route. She said that part of the draw to Winona is the natural beauty of the area and that the frac sand operation is destroying that.

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John Finn of 352 West Fourth Street then addressed the board. Mr. Finn said he wasn't sure about the standards for noise generated by trucks and who exactly enforce that. He said that the noise varies from truck to truck with some being louder than others. There being no other comments from the audience, the Chairman closed the public hearing.

Mario Einsman said he heard the concerns about dust but that pretty much everything produces some kind of dust.

Dave Kouba said that he had some concerns that the Port area was exempt from the moratorium and had concerns about traffic coming over a deficient bridge and thought that MNDOT should be talked to about it. Carlos Espinosa responded that MNDOT was aware of the trucks and had said that the bridge would handle the truck traffic. He said that the Port area was legally exempt from the moratorium as it had been operating at the time of the moratorium went into effect.

Dave Kouba asked if the CUP petition were to pass, if a follow up and a revisit could be made to it and changes made if necessary. Carlos Espinosa responded that if there are violations of the CUP that the operation could actually be stopped. He said the City would be monitoring the operation for violations. The CUP runs with the land and if it is determined that there are problems with the performance standards for the CUP that the regulations could be changed at a later date.

John Krofchalk asked how many complaints had to come in about sand and dirt on the road for something to be done. Carlos Espinosa responded that if a complaint was received, it would be investigated and the operator would be contacted to clean it up immediately. Mr. Krofchalk asked if the City would monitor this and Carlos Espinosa responded yes. Mr. Krofchalk asked if Riverview was a County or City road. Carlos Espinosa responded it was a City road. Krofchalk asked if they would have to pay a per mile fee on the roads and Espinosa responded no, that was only in the County.

Chris Sanchez asked if they could stipulate the number of trucks or barges. Carlos Espinosa said as he explained in his presentation, that staff has recommended the board put a stipulation that there be an average of one barge per day with a maximum of twenty-four barges per month loaded at the Port dock.

Laura Priem said that she had listened to concerns about the dust control and was wondering what was being done about that. Dan Nisbit addressed that issue by saying that silica dust becomes airborne if there is no moisture in it. His research shows that when sand reaches a gradation of three hundred, it becomes an air quality issue and that the sand they were dealing with had a gradation of approximately seventy. The larger the gradation number, the smaller the particles are. Frac sand is not a type of sand, but rather it is any sand that is round and that you will find frac sand in river sand. Laura Priem said so most of the sand that you are shipping is wet. Mr. Nisbit responded

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that they only dealt in wet sand, that it was all raw sand that ran six to eight percent moisture and wash sand which ran fifteen to twenty percent moisture.

John Krofchalk said that this is an industrial area which is designed for this use.

Dave Kouba asked how long the board had to act because of the moratorium and the secretary responded that the sixty day rule applied.

Mario Einsman made a motion to deny the petition with a second by Dave Kouba. The vote of the board was three to two with the motion failing.

Chris Sanchez said that the CUP application appears to meet all of the performance standard requirements and that they were actually doing less at this site than the CUP they approved at the last meeting.

Dave Kouba made a motion to table the petition until a road impact study could be completed and Mario Einsman said that was not the part of the issue here. The motion died for lack of a second.

Laura Priem said that they had shown they would meet all the performance standards and if the petitioner met all the conditions for the conditional use permit, that the board needed to approve the petition unless there was good cause to deny it.

Laura Priem made a motion to approve the conditional use permit with the stipulation that there would be a limit of an average of one barge per day with a maximum of twenty-four barges per month. John Krofchalk seconded the motion, which failed on a three to two vote.

The secretary explained to the board that the sixty day rule applied here and if the board didn't take any action on the petition that the conditional use permit was automatically approved in sixty days.

Chris Sanchez said that the board granted the last sand CUP and didn't understand what the problem with this one was as this operation is less intrusive as the last one.

Dan Nisbit said that he could still operate at the old dock and would not need a CUP for that. There would be no limit on the number of barges he could load per day or per month at the old dock. He said he has agreed to the maximum of twenty-four barges per month which is actually penalizing him for trying to do the right thing. Carlos Espinosa said that was correct, he could use the existing land area to load as many barges as they wanted without creating an area for a new big stock pile or they could actually replace the sand and salt piles with sand piles. Because they were going to use the new dock for loading that required a CUP and required that they comply with the performance standards.

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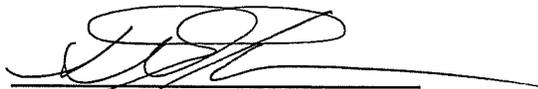
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Dave Kouba made a motion to approve the application with the limit of an average of one barge per day and a maximum limit of twenty-four barges per month. John Krofchalk seconded the motion and the vote of the board was unanimous in favor of approving the conditional use permit.

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

Meeting was adjourned at 6:45 p.m.

A handwritten signature in black ink, appearing to read 'Steve Carson', written over a horizontal line.

Steve Carson
Secretary

