

BOARD OF ADJUSTMENT
Regular Meeting

DATE: December 5, 2012

TIME: 5:00 p.m.

PLACE: Council Chambers, City Hall

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

ABSENT: O’Laughlin

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

The minutes of the November 20, 2012 meeting were approved as submitted.

Petition No. 12-28-CUP, CD CORPORATION

Chairman Sanchez 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.

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Dan Nisbit of CD Corporation addressed the board. Mr. Nisbit told the board that they had started out as a trucking company in 1993 and had taken over the river terminal in 2005. The truck and barge traffic through the harbor has declined since a high in 2002. He would not be increasing the truck and barge traffic numbers but rather changing commodities. He said there is less and less demand for coal that they handle and would like to replace the loss with sand.

Mr. Nisbit told the board the Minnesota Pollution Control Agency said that 1.5% moisture is acceptable and he is asking to reduce it to 1.5% so they would be under the same standard as the rest of the state. At 3% moisture the sand clumps and it is harder to handle. The sand is tested for size prior to the time it is shipped and has to be between 841 to 297 microns which is 85 times larger than the 10 microns of airborne silica that would be breathed in to cause silicosis.

Chris Sanchez asked why they were asking to increase from 24 barges per month from last season to 48 for the next season. Mr. Nisbit responded that they have a customer for next year that will be taking almost all of the 24 barge loads and they would like to add the extra 24 to accommodate new customers.

Laura Priem asked how many trucks would be in 48 barges and Mr. Nisbit responded there are 60 trucks per barge so it would be 2,880 trucks and 48 barges.

Dave Kouba asked how long the sand would stay on the site before being loaded onto the barges. Mr. Nisbit responded they would be off-loading the trucks right onto to the barges so that it was a lot more efficient. They would not have any stock piles on site but when they were changing barges they may have to dump four or five trucks and as soon as the barge was in place, they would be loading it right onto the barges. Mr. Kouba asked where their sand was coming from and Mr. Nisbit responded that it was coming from Wisconsin. He said that Council was currently limiting them to only load sand from two wash sites in Winona. Having to haul the sand into Winona to wash it was not efficient because 50% of the sand they hauled in was waste sand and it had to be hauled back out. The site they were hauling from in Wisconsin has installed a washing facility there so they would cut the number of trucks from 120 down to 60 per barge.

Jon Krofchalk asked if they were proposing to haul 120 loads per day into the harbor and Mr. Nisbit responded that was correct. Mr. Krofchalk asked how many hours a day they would operate and Mr. Nisbit responded about twelve hours a day. Mr. Krofchalk asked how many truck loads of corn came into the harbor area in a day and Mr. Nisbit responded probably 300 a day. Mr. Nisbit said that the corn trucks are coming in full and leaving empty, but when they haul sand in, they often load coal or sand onto the outgoing trucks, so they really aren't adding more trucks per day.

Laura Priem asked Carlos Espinosa if they were amending the moisture content of the sand, the barges per day and where the sand comes from. Mr. Espinosa responded that

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the request was only to change the moisture content and number of barges. The requirement for the sand to come from the two Winona wash facilities would be dropping off at the end of the 2012 season. Ms. Priem asked if the 4% moisture content would be dropping and Mr. Espinosa responded no.

Chris Sanchez asked Mr. Espinosa what the barge capacity of the harbor was and Mr. Espinosa showed the board a graph of barge traffic from 2001 to 2011 with a decline from 2002 to 2011. Mr. Sanchez asked Mr. Espinosa if the harbor would be able to handle the capacity of the extra sand barges. Mr. Espinosa responded even with the additional sand barges the total number of barges would not exceed the 2002 levels.

Dave Kouba asked Mr. Nisbit for a breakdown of the commodities that they transported last year. Mr. Nisbit said they handled 45 barges of sand in two months in 2012 but could not actually give him a breakdown of the other commodities that they handled. Dave Kouba asked how many barges could be staged in the harbor and Mr. Nisbit responded approximately 100.

Laura Priem asked if the state had changed the moisture content from last year and the response was no it was the same as last year.

Mr. Sanchez asked what the truck traffic numbers were in the harbor and Mr. Espinosa responded that in 2011 it was 318 a day and in 2002 it was 515 a day. Mr. Sanchez asked if this was a truck route and Mr. Espinosa responded, yes this was a truck route that can handle the trucks.

Jon Krofchalk said he wondered why only sand was regulated where the other commodities were not regulated.

Jim Gurley, 22505 Betty Jane Drive of Winona, addressed the board. Mr. Gurley said the difference between the sand and the salt and grain commodities was that salt and grain do not cause cancer where silica sand dust does. He said that trucks dribble sand onto the driving areas and traffic crushes the sand turning it into silica dust.

Mr. Gurley said he understood that maybe one of the board members had a conflict of interest and felt that whoever it was should come forward. Chris Sanchez said that it was probably him as he managed some of Mr. Nisbit's rental properties and he intended to abstain from any vote. Mr. Gurley asked if he had a conflict of interest when the conditional use permit originally came before the board and Mr. Sanchez said he didn't believe so because he didn't think that they managed any of Mr. Nisbit's properties at that time.

Todd Paddock, 717 Main Street of Winona, addressed the board. Mr. Paddock said he is not fond of trucks because of the noise and impact on the roads and didn't like being near them. He said he is a benefactor of the services that trucks provide. He stated that the trucks going to this facility would not be using Main Street or Mankato Avenue and

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that they would be using Pelzer Street and the bridge and felt they would not have any impact using this route. Why frac sand trucks are such a big concern he was not sure of. He said many publications state that the dust from unpaved parking areas, construction sites and farming are where dust comes from. He said there is no evidence that he could find that this type of facility is a big health concern.

Reggie McLeod, 267 East Sanborn Street of Winona, addressed the board. He said the reason for the moratorium was so a survey could collect air quality data. He said allowing this type of activity at the harbor would corrupt the data on the air quality. He asked the board not to rush into anything until more baseline information could be obtained on air quality. The studies on black lung disease in coal mines has shown that some mines have higher incidences of black lung than others do and data showed that it was probably because of silica content in the coal being mined.

John Swanson of the Marine Art Museum, 800 Riverview Drive, addressed the board. Mr. Swanson said that this was an industrial area and that there was going to be trucks but they have a concern with additional truck traffic and the safety of the twenty thousand cars that come into their facility every year. He said there was some concern earlier about trucks blocking their driveway but it was not a problem this shipping season. They have a concern about dust mitigation but as long as they are not stock piling sand it should help the situation. He asked, if they exceeded the number of trucks or had dust problems who should they call and Carlos Espinosa said to call the Community Development Department.

Marie Kovacs, 133 Whispering Lane of Winona, addressed the board. She had a concern with the safety of the people by doubling the number of trucks. She wondered when the original application said no more than twenty four barges a month, why would you change it now when nothing has changed with the intersections on the route that the trucks take to the harbor especially on Fourth Street. She said the streets in this area are not designed to handle all of the trucks and felt the board should hold off on this until the infrastructure could be upgraded. She said diesel exhaust is a health hazard and increasing the number of trucks will just increase this hazard.

Helen Kowalski, 1415 West Fourth Street of Winona, addressed the board. She said she travels this route numerous times every day and when they are loading there is a lot of dust in the air. She stated there are OSHA site recommendations for silica sand sites and felt they were not being complied with. Carlos Espinosa responded that these were all part of the original conditional use permit.

Jane Cowgill, 317 Walnut Street of Winona, addressed the board. She said during her tour of CD Corporation operation she was impressed at what they were trying to do to be environmentally friendly but still had a concern about silica problems. She felt that the workers should be concerned about the effects of silica on their health. She felt the air quality base line studies should be completed before anything else is done in the

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harbor area. She said it looks pretty dusty and the original conditional use permit called for them to be putting water on it when it was dusty.

Della Schmit, President of Winona Area Chamber of Commerce, addressed the board. She said CD Corporation is a member of the Chamber and is held in high regard. She said variances are a standard tool for government and a necessary tool that show no unfairness to anyone. She stated that any business that meets the codes and ordinances should be able to invest in their business and seek customers. The issue is whether or not the business has met these thresholds.

Warren Barth, Buffalo City, Wisconsin, addressed the board. Mr. Barth told the board that he is a Certified Safety Professional. He stated that he had been handed an information sheet when entering the building and found that the handout information was accurate. He said before silica dust can enter the body to cause silicosis, it has to enter through the respiratory system in the form of crystalline silica. He said you need to get information on whether there is crystalline silica dust present from a professional using the proper test equipment. In confirming numerous tests all over including the enclosed mine at Maiden Rock, he had not found where there was crystalline silica in the air above the allowable limits. He said he was not here to speak for or against the petition, only to give the board information so they can make a decision. He said he had an issue with the perception that the industry is not regulated because mining operations are inspected by the federal government at least twice a year.

Steve Schild of Winona addressed the board. He said if the board is going to rely upon professionals, they need to consult more than one professional. In reading from the list of requirements, it states that the roadways need to be wetted down to prevent dust and if this is a requirement, it needs to be upheld along with all the other procedures.

Marie Kovacs readdressed the board. She said the ordinance states that part of the roadways on the site are to be paved. She said they have used reclaimed asphalt and reclaimed asphalt is basically dust.

James Johnson, 802 West Broadway of Winona, addressed the board. Mr. Johnson started talking about the moratorium on frac sand and was informed that if he had nothing to say to the issue of the request then he needed to sit down and turn the floor over to someone else.

Sarah Wexler-Mann, Houston, Minnesota, addressed the board. Ms. Mann talked about a Minnesota Environmental Quality Board meeting she had attended last September involving frac sand.

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

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Laura Priem asked the secretary about the quorum and the vote and the secretary responded that a quorum consisted of five board members and four votes were required to approve a motion which meant that one member could abstain or vote to the negative.

Laura Priem stated that if the trucks were hauling washed sand from Wisconsin to Minnesota rather than hauling dirty sand and washing it, there would actually be half as many trucks coming over, so there would be no increase in the amount of trucks if the number of barges were increased. She had a concern about the moisture content and felt that it should maybe be amended up to 3%.

Laura Priem made a motion to deny the petition as that state recommended 1.5 to 3% moisture content. The motion failed due to a lack of a second.

Dave Kouba said he was under the impression that the Planning Commission was going to change the moisture content from 3% to 1.5% and the traffic analysis would have to be done if there were over 200 truck trips per day. Carlos Espinosa said the traffic analysis only applied to trucks off of a truck route. Mr. Kouba said they would also have to be 200 feet from a residential district. Mr. Kouba asked if what was voted on tonight could be different if there were changes made to the code, would tonight's action be void. Mr. Espinosa responded yes, but the board could approve the petition with the condition that all standards follow decisions made by the Council.

Dave Kouba made a motion to approve the petition if they met all the proposed changes to the code.

Jon Krofchalk said the request met the comprehensive plan and would meet all City Code requirements and the change of moisture would not affect the public welfare of health as it met the moisture of the MPCA rules. He said, if it meets the standards the board needs to pass the amendment.

Mr. Espinosa said that after looking at the existing CUP, CD Corporation would have to meet all the performance standards as they change. As a result, Mr. Kouba's motion was not needed.

Dave Kouba withdrew his motion.

Mario Einsman made a motion to approve the request as stated in the presented resolution. Jon Krofchalk seconded the motion.

Dave Kouba said he had some concerns that if changes were made to the performance standards and whether or not they would have to be met. Jon Krofchalk said they would have to meet the new performance standards because they had accepted that as part of their conditional use permit.

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Laura Priem asked Mr. Einsman to amend his motion to change the moisture content to 3% and Mr. Einsman refused the request.

Laura Priem made a motion to change the moisture content from 1.5 to 3%. The motion died for lack of a second. The chair called for the vote on the original motion which was four in favor with Mr. Sanchez abstaining. The motion passed and the amendment to the conditional use permit was approved.

The petitioner and audience were informed that there was a 10-day appeal period during which time anyone aggrieved by the boards determination could file an appeal with the City Council.

Meeting was adjourned at 7:30 p.m.

Steve Carson
Secretary

DRAFT