

PLANNING COMMISSION MINUTES

DATE: June 25, 2012

TIME: 4:30 p.m.

PRESENT: Chairperson Porter; Commissioners Boettcher, Gromek, Buelow, Eyden, Ballard and Davis

ABSENT: Commissioners Olson and Briggs

STAFF PRESENT: City Planner, Mark Moeller; and Assistant City Planner, Carlos Espinosa

The meeting was called to order at 4:30 PM by Chairman Porter.

Approval of Minutes – May 29, 2012

The minutes from the Commission's meeting from May 29th were reviewed and it was moved by Commissioner Gromek and a seconded by Commissioner Davis to approve them as submitted. When the question was called, the vote of the Commission was unanimous to approve the motion.

Sand Moratorium Study: Habitat, Wetlands and Quality of Life

Chairman Porter noted that given the implementation of the Sand Moratorium Study in March, he had seen 3 basic public interest groups evolve. These included:

1. CASM – A group of citizens in the City of Winona and Winona County who are concerned about frac sand mining and related operations in our region.
2. Blasting Committee – A Committee which was formed to address concerns of Biesanz Stone Quarry mining operations relative to blasting.
3. A core group of sand mining industry representatives. Representing property owners, operators, and contracted services, this group has evolved for the purpose of representing industry interests.

Given the previous interests groups, Chairman Porter noted that the manner in which Commission open comment periods before, and after, Commission meetings, will change. As opposed to the previous schedule of simply allowing 2 minutes to each person who wished to speak to the Sand Moratorium Study, a total of 10 minutes will be allotted to the 3 primary interest groups. All other private comments, falling outside of interest groups, would be allotted 2 minutes to speak.

Given the previous, he called for any person present who wished to provide comments on behalf of the Blasting Committee to do so at this time.

Kim Sharpe then presented the statement as found on Exhibit A of the permanent minutes. In summary, he noted that there are over 440 residential dwellings located with the immediate neighborhood to the Biesanz property. In summary of his presentation, he noted that although he understood that the Commission would be

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discussing a nonconformity agreement for the Biesanz mine/quarry business later in meeting; he suggested that such an agreement not be considered by the City and that the operation should be subject to the same conditions as any other frac sand/mine operation within City limits.

Mr. Sharpe noted that although it was fully understood that the Biesanz mine/quarry has been in operation for decades, his group felt that the more historic use of the site has changed with the advent of frac sand mining and other factors listed on this written statement. Given this, he felt it was difficult to justify the nonconforming status of the property. He thanked the Commission for allowing him to make a presentation this afternoon.

At this point, Chairman Porter asked if a representative from CASM was present to speak.

Marie Kovesci, 133 Whispering Lane, thanked the Commission for allowing her, as a representative of CASM, to speak this afternoon.

She began by emphasizing that CASM's primary role is to protect citizens from the secondary effects of frac sand mining. She noted that CASM members are neighbors and have spent a significant amount of time in researching frac sand issues. She explained that many in the CASM Committee are also members of the Blasting Committee, and all have a vested interest in simply protecting the integrity of Winona neighborhoods.

In her comments, she echoed those of Mr. Sharpe relative to the City's need to undertake legal research of the ownership of the Biesanz property. With respect to this site, she questioned why the City would consider a nonconforming agreement for it versus simply requiring that it be subject to those performance standards pertaining to other mine/processing facilities.

At this point, Ms. Kovesci highlighted a number of concerns pertaining to the proposed nonconformity agreement. In part, these related to the presentation of an adequate reclamation plan, and the requirement for an environmental assessment worksheet. With regards to the worksheet, she suggested that rather than simply requiring it if excavation falls outside of the current work foot print, other thresholds should apply. This is a strategy that the County had undertaken with its worksheet requirements. She further noted that the Commission should be devoting more than one work session to various issues and that the Community has yet to see information pertaining to dust and dust control, including ambient dust control measures. With regard to dust, she stated that residents within Knopp Valley have seen an increase in dust as a result of sand mining operations.

She concluded by encouraging the Commission to conduct a thorough discussion of all issues, and to include comments of citizens in these.

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Chairperson Porter thanked Ms. Kovesci for her comments and asked if a representative from the mining industry wished to make comments.

Pete Schwab noted that he was a part owner in the Biesanz Quarry. He explained that Biesanz's history goes back to 1904 when it began mining limestone for a number of purposes, the most significant being the exterior applications to commercial and institutional buildings. He noted continuing demands for these applications and that Biesanz was ready to meet these demands.

Throughout its history, Mr. Schwab noted that the Company has also processed crushed stone as well as sand, gravel, and other aggregate materials. In part, some of these materials have been used for Mississippi River bank riprap.

The mining of frac sand at this site started in approximately 2011, in response to demands from the oil industry. In part, the company sees this production as being an extension of what it has been doing for the last 100 years, and that this production is part of its revenue base.

Mr. Schwab emphasized that when the company began in 1904 there were no resident homes in the area. He estimated that the sand mining operation generates approximately 40 trucks per day from the site, and that material involved is approximately ½ of 1% of the total market.

In addressing blasting concerns, Mr. Schwab noted that quarry operations require blasting to separate rock. Although minimum blasting occurred between 2008 and 2011 it has again resumed. Although he understood that people were concerned with this activity, his company was doing everything possible to mitigate problems. As part of this, Biesanz does notify neighbors prior to blasts and has been trying to keep neighbors in mind while blasting occurs. He further noted that approximately 13 blasts have occurred during the first half of the year.

Mr. Schwab noted that one characteristic of quarries and mines are that they do generate dust. Although sand mined from the Biesanz site is generally wet, dust can occur from vehicle tires on gravel roadways. Here, Biesanz is doing everything possible to control roadway dust by watering roads at regular intervals. Outside of this, he felt that distances to neighborhoods, hillsides and vegetation, provided reasonable barriers in controlling dust issues.

Mr. Schwab further noted that in addressing reclamation concerns, Biesanz has received approval to stock pile unused resources for reclamation purposes.

Chairman Porter thanked Mr. Schwab for his comments. He then asked if any other person was present to speak to the issue and noted that each would be allotted 2 minutes for this purpose.

Della Schmidt, Executive Director of the Winona Area Chamber of Commerce, emphasized that as long as any business is being conducted in accordance with

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applicable laws, they should be allowed to continue, and encouraged to grow. She encouraged the Commission to consider this input as it deliberates on the nonconforming agreement for Biesanz Stone.

James Johnson, 802 West Broadway, stated that grandfathering of any use should only apply if the scope of the use or business does not change. Here, he felt that the addition of frac sand mining represented a change to the previous historic use of the site. As such, he felt that this factor along with the observation that new machinery has been added to the site for the use meant that the business is no longer nonconforming. He strongly suggested that the City secure a legal opinion of the nonconformity issue before proceeding with the agreement.

There being no one else present to speak at this time, Chairman Porter called on Carlos Espinosa, Assistant City Planner, to summarize today's agenda.

Mr. Espinosa noted that the primary focus of this afternoon's meeting was to obtain Commission feedback of a proposed nonconformity agreement with Biesanz Stone Company. He explained that no action by the Commission was being required. However, staff was attempting to solicit any input it could from the Commission. Mr. Espinosa reviewed the staff analysis, found as Exhibit B of the permanent minutes. In summary, he emphasized that staff was proceeding on the basis that Biesanz Stone is a nonconforming use and became so in 1996 when it was annexed into the City. As part of that annexation, the township (Winona Township at the time) had required that the City, in applying land use regulations to annexed areas continue permitting those which had existed. Given this, the Biesanz site was split zoned between agricultural, allowing for mining applications, and M-2, relating to the stone processing plant area. Since that time, the Biesanz Quarry was "grandfathered in" as a legal nonconformity when AG zoning was applied to the site in 1998. This grandfathered status meant that the quarry had been allowed to mine stone and aggregate products including sand despite not having required approvals (i.e.: CUP) as required for new extraction activities in the AG zoning district. In short, it is because of this opinion, that staff was promoting the nonconformity agreement.

At this point, Mr. Espinosa reviewed the contents of the proposed agreement, again as found on Exhibit B of the permanent minutes.

In concluding, he noted that the Commission was being presented with a significant amount of information to digest this afternoon. He emphasized that, given the nonconforming status of Biesanz; staff felt that the agreement would promote minimal performance standards to the use.

In response to a question from by Commissioner Davis, Mr. Espinosa responded that official approval of the agreement was not being sought this afternoon. As such, opinions could change between now, and the point at which the document is forwarded to Council for consideration.

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In response to a question from Commissioner Eyden, Mr. Espinosa noted that pursuant to the proposed agreement, the EAW requirement would only apply to sand excavation outside of the 2011 mine footprint shown on page 15 of the agreement. The agreement would not extend to stone extractions.

In response to a question from Commissioner Gromek, Mr. Espinosa stated that although grandfathering provisions work very well as applied to buildings, the application to something like mining operations is a bit more complex. In this case, given that mining operations are a diminishing asset, staff feels that if controls are needed, these are best implemented through something like a nonconformity agreement, rather than a conditional use permit.

Commissioner Eyden stated that she was a bit uneasy at this point with the proposed agreement in that it does not address dust monitoring. Given earlier testimony it appeared to her that a secondary effect of the quarry was that it was generating dust that was settling in residential developments adjacent to the quarry. She emphasized that this type of issue needs to be addressed before forwarding the agreement to Council for consideration.

Commissioner Davis noted that the issue of dust can be a bit illusive in definition. Although she understood that mining operations may generate dust to a certain extent, she questioned whether the dust, experienced by neighbors adjacent to the Biesanz operation was related to that operation or to some other source. Mr. Espinosa further noted that if the source of dust is defined, staff can address the problem.

Commissioner Eyden stated that she felt there were scientific monitors in existence that could appropriately measure ambient dust levels. Again, she suggested that some form of measurements be established as part of the nonconformity agreement. Chairman Porter observed that if dust is evolving from the mining operation, it is evolving from road beds as they dry out. He did not feel that this was an issue with sand which is being extracted from the site since it was wet when this occurs. He further emphasized that Biesanz is a quarry which has, historically, mined not only stone but sand and aggregate materials for over 100 years. In his opinion, he did not feel that is what was occurring at the site at this time is different than how the site has been used for decades. He was curious as to why it is an issue at this point. He further noted that comments have been made to the fact that Biesanz has employed new equipment to process sand extracted from the site. In his opinion, he did not feel that new equipment translated into an expanded operation.

Commissioner Buelow echoed concerns presented by Commissioner Eyden in that a method of measuring ambient air quality should be a part of the agreement. Through these measurements, the agreement should also identify acceptable standards for dust control and how problems will be mitigated.

On a recent trip through Chippewa Falls, Mr. Buelow noted that he had passed a sand processing operation which, appeared to him, to be generating a fair amount of dust.

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Again, he was not stating that problems will exist. Rather, if they should exist, some method of mitigating the problem should be identified.

Commissioner Davis felt that dust issues at the Biesanz site could be adequately mitigated by simply ensuring that roadways are watered. Chairman Porter stated that given the absence of the nonconformity agreement, Biesanz does not operate in a vacuum. At present, there are a number of entities that monitor and regulate every aspect of the operation.

At this point, Chairman Porter opened the second session of public comments.

Kim Sharpe noted a number of concerns with the draft nonconformity agreement. These included:

- The lack of any reference related to traffic/traffic flow to and from the quarry.
- The lack of dust control monitoring requirements and mitigation standards (should problems occur).
- Although hours of operations are mentioned, he suggested that the distance of the mine from adjoining residential development be a consideration in establishing these.

Marie Kovesci noted that blasting, compounded by prevailing winds through the area, can have an adverse affect on adjoin residential development to the Biesanz site. Another concern she had related to the depth of frac sand mining activities. At present, activities were being conducted within the Jordan sandstone level. She had concerns that this activity could lead to potential ground water pollution. She suggested that this be a consideration in standards pertaining to the Biesanz site.

Jim Gurley, 22505 Betty Jane Drive, Winona, thanked the Commission for maintaining an opened mind to comments that are being made. As stated by others, he emphasized that the interest in this issue directly relates to maintaining as high an environment as can be achieved in the Winona area.

James Johnson, 802 West Broadway, stated that he felt more information was needed before the agreement could be forwarded to Council. In part, he strongly suggested that staff solicit a legal opinion from the City Attorney pertaining to the nonconformity status of Biesanz Stone. In his opinion, the issue needs more study and he did not feel it needed to be forwarded to Council until a later date.

Tammy Palubicki, 394 Pleasant Hill Drive, noted that she had resided in Knopp Valley for approximately 13 years. During that time, although she has experienced blasting impacts, these activities picked up significantly in 2011. It was not until then that people became concerned not only of the impacts of the blasting, but also of the dust, and other issues related to blasting.

Alice Keller, 407 Pleasant Hill Drive, noted that she and her husband had been part of the development team for the Knopp Valley Development. She emphasized that the

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Planning Commission had approved the development in the early to mid 1970s and that blasting was not an issue at that time.

Janel Schultz, 406 Pleasant Hill Drive, stated concerns with mining and processing machines. She suggested that the hours of operation for the Biesanz mine be limited to a 12 hour period between 6 am and 6 pm rather than the currently proposed 6 am to 10 pm timeframe.

There being no other person present to speak further, Chairman Porter called for other business.

Other Business

In response to a question from Commissioner Eyden, Mr. Espinosa responded that the Commission's next meeting will be held on July 9th. In addressing potential speakers, he suggested that staff coordinate this issue rather than requiring formal applications and approval by the Planning Commission. Commissioner Eyden stated that she had asked Dr. Frank Bures to speak to the Commission at its next meeting. The consensus of those present was that coordinating speakers through staff would be a bit more user friendly than what had been proposed. This concept was supported on the basis that speakers are limited to a maximum of 20 minutes speaking time and that speakers provide bios as to what their expertise is in addressing specific issues.

Adjournment

There being no further business to come before the Commission, the meeting was adjourned.



Mark Moeller
City Planner



Exhibit A

Planning Commission – Biesanz status

Thank you for your time and the opportunity to present to you today.

We are residents and taxpayers, living in the valleys adjacent to Biesanz's mine in the City of Winona. This includes over 440 residential dwellings.

This new and expanded business has had a negative impact on our neighborhoods. Blasting, dust, traffic and noise have decreased our quality of life. Biesanz's has historically been a good neighbor, until they changed their business model to Frac sand mining.

We believe the city of Winona has a legal obligation to protect their citizens and their property. The city is still issuing building permits in these neighborhoods today, indicating the city continues to believe this is a good place for a residential neighborhood.

We disagree that Biesanz should be Grandfathered in:

- We have requested the city attorney provide a written legal opinion on Biesanz's grandfathered status concerning scope, ownership, and expansion
 - Regarding scope: This is a new business, now extracting Frac sand. Many Counties in MN have established moratoriums to provide more time to better study this new industry and its impact on the area; this includes the City of Winona with a one year moratorium as well. This industry extracts crystalline silica, a known carcinogen, as described last week by the MN Department of Health, a material before not extracted in high volumes.
 - This change in scope started in 2011 when the business focus went from veneer rock to Frac sand
 - More than 100 blasts in a 4 month period, this has never been done before at Biesanz
 - These are high intensity air over-pressure blast waves shaking homes and carrying dust into our neighborhoods
 - Moving 1000's of tons of overburden by trucks to adjacent property, this also has never been done before at Biesanz
 - This truck traffic generates both dust and noise moving across our valleys.
 - Hundreds of semi's per day are hauling frac sand down township roads into Winona, this has never been done before at Biesanz
 - Regarding ownership: We believe there is a change in principal ownership of Biesanz's, which the city attorney will also research
 - Regarding expansion: A number of expansion factors have also occurred in 2011
 - Additional land has been acquired
 - New equipment purchased (pictures)
 - 68,000 lb, Sandvik QA340 sand screening machine (approximately 58 x 55 x 20 feet footprint)

- 22,000 lb, 80 foot, Edge MS80 conveyor which can stockpile sand up to 37 feet.
 - Biesanz's also received a Winona County CUP to stock pile 1000's of tons of overburden on 155 acres, so they can get access to the frac sand (pictures)
- Again we, your resident, disagree with the Cities Grandfathered position
- We have also requested the Biesanz Permit include a re-open clause. This would include:
 - Any conditions agreed upon by the Blasting Committee in the future can be added to the permit
 - Please understand the scope of the blasting committee meeting is only blasting; ~~dust~~, noise, hours of operations, property value were not allowed to be discussed at these meetings.
 - Any information from the city attorney that may impact the permit needs to be included
 - Any additional conditions / ordinances would be added to the permit as well
- We believe there should be established a fund to handle any cost impact associated with property damage or home value depreciation
 - This has been done in other cities to handle the impact of reduced property values due to the mining activity
 - I have an example of a similar commitment from a mine in the Town of Howard, WI (Eau Claire, WI)

The county has wisely put in-place CUPs and conditions to help protect their residence, environment and quality of life. Many Counties and Cities are putting in new ordinances and conditions to better control this industry and reduce the impact on their communities; Biesanz should not be an exception, now that they are in the frac sand business.

Winona City is adopting the Winona County conditions and is working to align the CUP conditions used in the County with the City of Winona ordinances and conditions. Please allow this process to finish so we do not adopt an inaccurate or incomplete set of conditions. A good example is in the Biesanz "nonconformity agreement" before you, number 4, calls out hours of operation to be 6 to 10, however I believe the city sand processing is 7 to 7. The County does call out 6 to 10, but the mine is 1000 feet from a home vs. the 450 for Biesanz. The conditions need to be looked at as a whole

I ask the Planning commission not to accept these conditions for a "nonconformity agreement" with Biesanz. With Biesanz operating as a frac sand mine, they should fall under the same conditions as any other frac sand mine operation.

Thank you again for your time