



**CITY HALL**  
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April 3, 2013

Planning Commissioners  
Winona, Minnesota 55987

Dear Commissioner:

The next meeting of the Planning Commission will be held on **Monday, April 8, 2013, at 4:30 p.m. in the Council Chambers** of the Winona City Hall.

1. **Call to Order**
2. **Minutes – March 25, 2013**
3. **Transportation Impact Analyses for Silica Sand Facilities & Mines**
4. **Other Business**
5. **Adjournment**

Sincerely,

A handwritten signature in black ink, appearing to read "Carlos Espinosa".

Carlos Espinosa  
Assistant City Planner

## PLANNING COMMISSION MINUTES

**DATE:** March 25, 2013

**TIME:** 4:30 p.m.

**PRESENT:** Commissioners Boettcher, Gromek, Davis, Porter, Hahn, English and Buelow

**ABSENT:** Commissioners Ballard and Olson

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

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

### Approval of Minutes – February 11, 2013

The minutes from the Commission's meeting of February 11, 2013, were reviewed. It was noted that in paragraph two of page 3, the word "a", contained in the last sentence, should be removed. With this correction, it was moved and seconded to adopt the minutes. When the question was called, the vote of the Commission was unanimous to approve the motion.

### Transportation Impact Analyses for Silica Sand Facilities & Mines

Chairman Porter called on Carlos Espinosa, Assistant City Planner to provide a summary of this item. Mr. Espinosa noted that, as presented in the Commission's agenda package, the City Council, during recent review of Transportation Impact Analyses and Road Use Agreements, had directed staff to draft code amendments requiring that all frac (silica) sand processing, storage, and shipping facilities complete a Transportation Impact Analysis (TIA). The amendment would also require any future mines (excavating any materials) to complete a TIA.

Proposed amendments would also serve to define frac sand. The proposed definition for this term would parallel that found in House File 1367 which is currently being discussed by the state legislature.

In concluding, Mr. Espinosa suggested that once discussed by the Commission, a formal hearing be established to consider amendments.

Upon discussion, it was reaffirmed that a Traffic Impact Analysis would apply to any form of mining activity.

Commissioner Porter asked of the legality of regulating specific forms of truck industries. Mr. Espinosa noted that although the proposed amendment would require that all silica sand processing operations be subject to a traffic impact analysis, any use generating 200 or more heavy commercial vehicle trips per day, and proposing to use non truck routes or state aid highways would also be subject to such study.

## PLANNING COMMISSION MEETING MINUTES

MARCH 25, 2013

PAGE 2

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In response to a question from Commissioner Davis, Mr. Espinosa explained that the TIA requirement for non-silica sand facilities could be waived by the City Engineer. Again, if a haul route from a particular business fully includes designated truck routes or state aid highways, analysis would not be required.

Commissioner Porter again suggested that there may be legal issues with attempting to impose significant regulations of specific trucking industries. He suggested that the City Attorney be asked to provide an opinion of this issue. Mr. Espinosa responded that he would attempt to do this.

Following further discussion, it was moved by Commissioner Gromek and seconded, to recommend that this issue be moved to a Commission hearing. At that point, proposed amendments, as presented in today's agenda package, would be formally considered. When the question was called, the vote of the Commission was unanimous to approve the motion.

### **Air Quality Monitoring for Silica Sand Operations**

Chairman Porter again called on Mr. Espinosa to provide a summary of this item. Mr. Espinosa explained that during the recent sand moratorium, one issue studied by the Planning Commission related to air quality. At its meeting on July 9, 2012 the Commission recommended that requirements for moisture testing be added to City Code to address concerns about ambient silica dust from frac sand. The concept behind this proposal related to the fact that if sand is maintained in a wet condition, dust will not be produced.

In February 2013, Council did adopt the moisture testing requirement. However, on March 4, 2013, Council requested that staff further study air quality monitoring with the Planning Commission.

At this point, Mr. Espinosa referenced information, included to the Commission's agenda package, relative to recent crystalline silica sand testing that had been conducted at one processing facility and two mines located within Wisconsin. At these operations, EOG Resources had retained the services of Dr. John Richards to monitor crystalline silica in the ambient air at the PM<sub>4</sub> particle size level. Mr. Espinosa emphasized that Dr. Richards methods for monitoring crystalline silica at these locations have been previously used to monitor for the California crystalline silica standard (3ug/m<sup>3</sup>). Dr. Richards' methods for monitoring PM<sub>4</sub> are also being studied by the Minnesota Department of Health for recommendation to the MPCA (Minnesota Pollution Control Agency). He felt it was highly likely that Dr. Richards' monitoring methods as well as California standards would be recommended by the Minnesota Department of Health to the MPCA sometime in 2013. Following that, it would be the responsibility of the MPCA to determine how to implement the standard in Minnesota. As such, this Wisconsin study is particularly informative and preliminary results show that the three sites examined are not producing ambient crystalline silica dust at levels that are potentially hazardous to the public.

## PLANNING COMMISSION MEETING MINUTES

MARCH 25, 2013

PAGE 3

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Mr. Espinosa further referred to a testing procedure that had been conducted in January of this year by Dr. Crispin Pierce of the University of Wisconsin Eau Claire. In that, a small sampling had been made of ambient air quality in the area of the Central Garage at 1104 W. 3<sup>rd</sup> Street. The results showed that when samples were taken, air quality at the Central Garage was below federal standards for PM<sub>2.5</sub> in a 24 hour period, but above federal PM<sub>2.5</sub> standards for an annual period. As noted by Dr. Pierce, conclusions drawn from this data should be cautiously interpreted in that they provide a simple snapshot of air quality affected by wind, precipitation and activities in the area. An improved assessment of air quality would entail longer-term PM<sub>2.5</sub> measurements of PM<sub>2.5</sub> concentrations.

Mr. Espinosa stated that a number of bills were currently working their way through the state legislature relative to the silica sand issue. These bills differ in approach, but all include provisions for technical assistance to local governments from state agencies such as the MPCA. At the same time, state agencies themselves are studying how to address silica sand issues. This is important because, as stated at previous Planning Commission meetings, the resources and expertise for air quality monitoring lie with air quality consultants and the MPCA. Local governments do not always include experts to conduct or interpret information. As such, it may be prudent to wait for the state to implement appropriate air quality standards and regulations – especially given recent monitoring results from Wisconsin.

Mr. Espinosa noted that one option discussed at Council was requiring all frac sand facilities conduct air quality monitoring on site. To accomplish this, an amendment to the City's performance standards for dust would have to be made. At this point, he presented language that could be introduced to accomplish this goal. This language was included at the bottom of page two of the agenda item. Given this amendment, monitoring would only be required at facilities with uncovered or unenclosed sand piles. Facilities that entirely enclose sand would not be subject to monitoring. Additionally, monitoring would be the financial responsibility of the operator who would need to employ an air quality consultant to conduct the operation. The MPCA would provide technical assistance by reviewing the monitoring plans and helping to interpret monitoring results. If monitoring should show that a facility was in violation with applicable laws, the operator would be required to make changes to minimize dust creation and monitoring could be required for another year to demonstrate compliance.

Exclusive of the previous, Mr. Espinosa stated that other action options available to the Commission this afternoon would be to refer the matter to the Citizens Environmental Quality Commission for further study, or to simply recommend that nothing further be done with the issue until the State has implemented appropriate air quality regulations.

In response to a question, Mr. Espinosa noted that the Chippewa Falls processing facility is one of the largest in the country at this time. He again reiterated that the study conducted by the University of Wisconsin–Eau Claire would require a lot more work before drawing valid conclusions from it. Again, that study that presented a small snapshot in time of air quality within the area of the Central Garage.

## PLANNING COMMISSION MEETING MINUTES

MARCH 25, 2013

PAGE 4

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Commissioner Davis stated that she would prefer not to develop specific amendment language until such time that the state has had a chance to adopt standards/procedures pertaining to the issue.

Commissioner Gromek agreed and suggested that to do otherwise would be getting the cart before the horse. As such, his preference at this point would be to refer the matter to the Environmental Quality Committee for study and referral back to the Commission.

In response to a question from Commissioner Davis, Mr. Espinosa explained that the MPCA is currently looking at a number of emission factors, standards, and processes in dealing with the silica sand air quality issue. As of this time, nothing has been cast in stone.

Commissioner Porter noted that in review of Wisconsin data, ambient air quality problems do not exist with facilities that have been studied.

In response to a question from Commissioner Davis, Mr. Espinosa responded that equipment used in the University of Wisconsin–Eau Claire monitoring was different than that used in Wisconsin. Additionally, methods of measurement were also different.

Commissioner Buelow agreed with Commissioner Gromek in that he felt it would be appropriate to refer the matter to the Environmental Quality Committee for further study. In response to a question from Commissioner Hahn, Mr. Espinosa noted that amendment language contained in the Commission agenda package would require monitoring for a one year period. If positive results occurred, this period could be extended. In response, Commissioner Hahn stated that he would prefer that continuous testing be employed during that period. Mr. Espinosa responded that during the one year period, testing would be continuous.

Mr. Espinosa noted that anticipated monitoring costs would fall in the \$40,000-\$50,000 per year range. In response to a question from Commissioner Davis, Mr. Espinosa explained that monitoring results would more than likely be reviewed by the MPCA.

At this point, Chairman Porter asked the Commission what its desire was for this issue. Following discussion, the consensus of those present was that it would be premature to consider Code Amendments, pertaining to this issue, at this time. However, given the realization that the Citizen's Environmental Quality Committee does include members who have both an interest, and some expertise in, the air quality discussion, it is recommended that the matter be referred to the Committee for further study.

It was then moved by Commissioner Boettcher and seconded by Commission Gromek to recommend that the Environmental Quality Commission be asked to provide its study and recommendation of the Air Quality Monitoring directive. Once completed, Committee recommendations will be submitted to the Commission for consideration. When the question was called, the vote of the Commission was unanimous to approve the motion.

**Adjournment**

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

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Mark Moeller  
City Planner

DRAFT

# PLANNING COMMISSION

**AGENDA ITEM: 3. Transportation Impact Analyses for Silica Sand Facilities & Mines**

**PREPARED BY: Carlos Espinosa**

**DATE: April 8, 2013**

## Summary

At the last Planning Commission meeting, Commissioners reviewed draft ordinance amendments requiring all future mines and silica sand processing and transportation facilities to complete a Transportation Impact Analysis (TIA). The proposed amendments are provided in Attachment A. Staff consulted the City Attorney about applying the proposed amendments only to silica sand uses. The response is provided in Attachment B. Basically, because silica sand operations and mines are conditional uses (where specific regulations are applied to specific uses because of their unique characteristics), it is within the City's legal authority to require that all future mines and silica sand operations complete a TIA.

In addition to the language discussed above, the proposed amendments define "silica sand" and specify that the City can request Transportation Impact Analyses as part of mine CUPs in other jurisdictions.

## Next Steps

At the last meeting, the Commission recommended forwarding proposed amendments to a public hearing. After the public hearing, options open to Commissioners are:

- 1) Recommend approval of the proposed amendments as written.
- 2) Modify the proposed amendments.
- 3) Recommend denial of the proposed amendments.
- 4) Table a decision on the amendments and allow staff to answer any further questions.

Attachments:

- A) Draft Ordinance Amendments
- B) City Attorney Opinion

AN ORDINANCE TO AMEND  
THE CODE OF THE CITY OF  
WINONA, MINNESOTA  
1979

The City of Winona does ordain:

Section 1. That Section 43.01 of Chapter 43 of the City Code of Winona, Minnesota, 1979, which Section sets forth "Definitions" of the Zoning Chapter, be amended as follows:

43.01 DEFINITIONS. For the purposes of this chapter, the following words and phrases shall have the meanings respectively ascribed to them by this section:

Silica Sand: naturally existing high quartz level sand for several industrial uses. Silica sand does not include common rock, stone, aggregate, gravel, or sand with a low quartz level.

Section 2. That Section 43.63 (b)(39) of Article XIV of the City Code of Winona, Minnesota, 1979, which is entitled "M-2 General Manufacturing District" be amended as follows and re-lettered accordingly:

(39) Silica Ssand processing facilities, including silica sand washing and drying facilities. In addition to the general performance standards set forth in Section 43.33, silica sand processing facilities shall also comply with the following specific conditions:

d. Transportation Impact Analysis. Notwithstanding the provisions of Section 43.89 (a), all silica sand facilities shall complete a Transportation Impact Analysis in accordance with Article IX "Transportation Impact Analyses and Road Use Agreements."

Section 3. That Section 43.63 (b)(40) of Article XIV of the City Code of Winona, Minnesota, 1979, which is entitled "M-2 General Manufacturing District" be amended as follows:

(40) Transportation facilities used to ship silica sand, except for dredged material (e.g. river sand) from the Mississippi River. In addition to the

general performance standards set forth in Section 43.33, transportation facilities used to ship silica sand shall also comply with the specific conditions set forth under 43.63 (b) (39) above.

Section 4. That Article XII of the City Code of Winona, Minnesota, 1979, which Article addresses "Extraction Pits" be amended as follows:

#### 43.48 EXTRACTION PITS.

- (a) General Requirements. Unless otherwise provided, the Board of Adjustment shall grant a conditional use permit for all such uses in accordance with Section 22.21, Section 43.30, the underlying zoning district, and the following conditions:
- (19) ~~Transportation Impact Analysis. Owner/applicant shall be responsible for the preparation of a traffic study in accordance with Article XVIII "Transportation Impact Analyses and Road Use Agreements" for operations generating 200 or more heavy commercial vehicle (over 33,000 lbs.) trips per day at maximum operating capacity. This threshold shall not prevent the City Engineer from requiring analyses for projects where heavy commercial vehicles from the operation would contribute more than 20% of the traffic on any road used to reach a truck route for which residential property makes up more than 50% of the street frontage. Notwithstanding the provisions of Section 43.89 (a), all extraction operations/mines shall complete a Transportation Impact Analysis in accordance with Article IX "Transportation Impact Analyses and Road Use Agreements."~~

Section 5. That Article IX of the City Code of Winona, Minnesota, 1979, which Article addresses "Transportation Impact Analyses and Road Use Agreements" be amended as follows:

#### 43.89 GENERAL PROVISIONS

- (a) When Required: A Transportation Impact Analysis and Road Use Agreement shall be required for any development subject to a site plan or CUP after 1/1/2013 which will generate 200 or more heavy commercial vehicle trips per day at maximum daily operating capacity. An analysis shall be required for projects where heavy commercial vehicles from the operation would contribute more than 20% of the traffic on any local street. These provisions shall not prevent the City from requesting a Transportation Impact Analysis be completed for projects outside the City

of Winona which will have any of the aforementioned impacts on non-truck route roads in the City of Winona.

Section 6. That this ordinance shall take effect upon its publication.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 2013.

\_\_\_\_\_  
Mayor

Attested By:

\_\_\_\_\_  
City Clerk

# MEMORANDUM

To: Carlos Espinosa, Assistant City Planner **VIA EMAIL ONLY**  
From: Christopher M. Hood, City Attorney  
Date: March 28, 2013  
Re: Amendments to Zoning Ordinance – Traffic Impact Analysis

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This memorandum briefly addresses your question regarding the City of Winona’s (City) legal authority to make specific amendments to its zoning ordinance, Chapter 43 of City Code, to require silica sand mining, transportation and processing facilities to undertake traffic impact analyses.

As you are aware, silica sand mining, transportation and processing facilities are conditional uses under City Code. The primary purpose of a conditional use permit (CUP) is to allow the zoning authority flexibility in evaluating a use that is conditional because of the potential hazards or negative effects that may be created by the proposed use. CUP’s allow the imposition of reasonable conditions that will allow the use to occur, but also protect the public health, safety and welfare of the community and neighboring uses. Conditional uses thereby seek to strike a balance between outright, unchecked permissive establishment and complete prohibition of the use. Thus, conditional uses are uses that will be allowed if certain conditions (that minimize the problematic features of the use) are met.

Since the proposed regulations to amend Chapter 43 now being considered by the Planning Commission relate directly to conditional uses and are intended to address the traffic impacts on the public health, safety and welfare there from, the City has a substantial interest and discretion in amending its zoning ordinance from a legislative standpoint to establish reasonable conditions specific to these uses since they directly relate to evaluating the impacts of these conditional uses. In this case, silica sand mining, transportation and processing facilities in the City have been designated in the zoning ordinance as conditional because of the hazards inherent in the use itself, and that specifically includes the hazards associated with the truck traffic generated by the uses. Thus, it is within the City’s regulatory authority to proceed with the proposed zoning ordinance amendments and impose specific and reasonable conditions in its Code for these uses, including the requirement to undertake a traffic impact analysis. See Minn. Stat. § 462.3595, subd. 1, which expressly permits cities to enact zoning requirements specific to individual designated conditional uses.

If you have any questions or need further information, please do not hesitate to contact me at your convenience at (651) 225-8840.

CMH/ch

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