

**MINUTES
AUSTIN CITY PLANNING COMMISSION
TUESDAY, DECEMBER 9, 2008
5:30 P.M.
AUSTIN CITY COUNCIL CHAMBERS**

MEMBERS PRESENT: Tony Bennett, Lonnie Skalicky, Glenn Mair, Kathy Stutzman, Jim Mino, Elizabeth Bankes, Suzanne McCarthy and Lynn Spainhower

MEMBERS ABSENT: Shawn Martin

OTHERS PRESENT: Craig Hoium, Craig Byram, Council Member Dick Pacholl and public.

The meeting was called to order by Commission Member at 5:30 P.M.

Commission Member Skalicky made a motion to approve the November 12, 2008 Planning Commission Minutes as written, seconded by Commission Member Mino. Motion passed unanimously.

OPEN PUBLIC HEARING: To consider a request from Our Savior's Lutheran Church, 1600 West Oakland Avenue for a variance to the maximum 40% lot coverage for properties located within "R-1" Single-Family Residence Districts. Said petition relates to the proposed classroom and off-street parking addition pursuant to Austin City Code Section 11.30, Subd.5

Craig Hoium reviewed the request giving a brief history about the Conditional Use Permit that was approved at the November 2008 Planning Commission meeting. Tonight the petitioner is asking for a 6.5% variance to a 40% lot coverage maximum. Mr. Hoium pointed out a handout given to the Planning Commission members regarding the issues to consider when approving a variance: 1) The variance is in keeping with the spirit and intent of the Ordinance, and 2) "Undue hardship" is shown. Notices were sent to adjacent property owners with no response for or against the request.

Commission Member Mino asked about diagram A0.1.

Theresa McCormack, The Urban Studio, Rochester, MN said this project is possible without extra parking spaces but the church would like to pull cars off the street and into a parking lot. The parking lots are a one way and with all exiting to the south onto the frontage road there.

Commission Member Spainhower asked about the 131 stalls and if the ingress and egress would stay the same.

Mr. Hoium said there was discussion at the November 2008 meeting and the plans will stay as drawn.

Mrs. McCormack said with a 16th St NW access there are concerns with visibility and the buffer on that side of the property would have to be removed.

Commission Member Mino asked Mrs. McCormack to state hardships regarding this property.

Mrs. McCormack said the site is limited as it is long and narrow. With the proposed plan there will be better access to the building for parishioners.

Commission Member Mino asked if trees and shrubbery would be planted to offset the reduction of greenspace.

Mrs. McCormack said she believes there are already plans for additional greenery and shrubbery.

Mr. Hoium said one of the conditions for the conditional use permit is to have a landscape plan turned into and approved by the building department.

Mrs. McCormack said there were three trees that were deemed unhealthy and had to be removed but they will be replaced plus additional plantings.

Commission Member Stutzman said she appreciates that 31 more cars will not be parked on the street.

Lauren Bellrichard, 1601-A 3rd Ave NW, my 95 year old mother lives there, she has high blood pressure. Cars give off carbon monoxide which is a poison and you want to add 31 parking spaces on 2nd Avenue which is right across the street from all these residences. At the previous meeting we were told all the trees would be saved. Well they have already cut down three trees and put up a fence. I have no complaints about putting up an addition. All I did was request that parking be on the SW corner of the property. You say it will be a great improvement to reduce on-street parking but that is debatable, it depends on where you put that parking lot. Put the parking on the SW corner, there are too many people in this town that don't get enough exercise. Put the parking lot on the SW corner where there are not any people who are trying to breathe and live in that area. I hope you do not let them have their variance unless they put the parking on the SW corner of the property. I hope I have made myself clear tonight because I will be back next week if I haven't.

Commission Member McCarthy said she missed the last meeting and asked if there is a possibility to have parking on the SW corner.

Mr. Hoium said the access roads to the site are the service road on Oakland Ave W, 16th St NW and 2nd Ave NW. There was discussion relating to the parking on the southerly portion of the lot. The main entrance is on the east side of the current building and the church addition is planned for the north side of the building and the grade of the property goes upward from Oakland Ave to the church. With the addition planned for the north side of the structure the planned parking area is for direct access to the structure.

Mr. Bellrichard said it is only a few feet if the parking were on the south side of the property.

Mr. Hoiu stated that the building is actually 300 feet long.

Mr. Bellrichard said they are already doing the work anyway. Why are you having a meeting after the fact?

Commission Member Spainhower said this is the procedure.

Mr. Bellrichard said they have already killed three trees; they are already digging and put up a fence. Just put the parking on the SW corner, that is all I am asking. I am concerned about the environment of this city. So many trees on the boulevards in town have been killed and I do not understand why. This is supposed to be a tree city. Trees give off oxygen which makes it easier for people to breathe. Times are changing. You have to realize that in the future there will not be many cars. Right now the American people are dependent on the automobile, in thirty years we will no longer have automobiles. So why are you putting all these parking places here for something that is only going to be around in twenty years. Think about the future!

Mrs. McCormack said they looked at having the parking in the SW corner but site drainage is an issue and the SW area is low and being used as a natural drainage area. That area is important to this project environmentally.

Commission Member Spainhower asked if that area is a place for water to perk so there is less of an effect on the storm drains.

Mrs. McCormack said down pouring rain would still impact the storm drains but the SW area of the property is the best place for a greenspace where water can go back into the soil system.

Commission Member Skalicky asked if the only reason the parking lot cannot be on the SW corner is environmental.

Mrs. McCormack said planning wise a parking lot in the SW corner would not tie into the addition as easily. An entrance to the educational wing for non-church related events that is close to parking is important. The youth activity and community uses of this new addition will require parking that can enter into the education entrance.

Commission Member Skalicky asked for verification of the tree replantings.

Mrs. McCormack said that is definitely in the plan. They were only removed because they were unhealthy.

Commission Member Spainhower asked about parking on the SW corner and how far it would be for handicap citizens.

Mrs. McCormack said the distance is not so much of an issue but the incline is.

Commission Member McCarthy said if the sixteen parking stalls closest to 16th St and 2nd Ave were moved down to the SW corner it may relieve some congestion.

Mrs. McCormack said another problem with parking in the SW corner is the proximity to the intersection of Oakland Ave and 16th St is to get correct distance between a drive and a parking entrance and exit.

Mr. Hoium said at the November Planning Commission meeting the parking was approved as drawn. The only thing being voted on tonight is the lot coverage. You can choose to deny the variance and make the petitioner eliminate some parking stalls or approve the variance and allow the 6.5% extra lot coverage.

Dick Pacholl, 815 10th Ave SW, said he believes the entrance to the parking area should have been on 16th St NW and not 2nd Ave NW.

Commission Member Stutzman said the parking was approved as drawn at last months meeting.

Commission Member Mair said he recommends approval of the 6.5% variance as it is in keeping with the spirit and intent of the ordinance, it is a reasonable request and this project will not alter the character of the locality, seconded by Commission Member Bankes. Motion passed unanimously.

OPEN PUBLIC HEARING: To consider a request from Gregg Johnson, 800 1st Dr NW, Austin, MN, and Ulland Bros. Inc. 2400 Myers Road, Albert Lea, MN, for an amendment to an existing conditional use permit that approved the extraction of gravel from the property located east of the intersection of 8th Avenue SE and 10th Drive SE. The property under consideration is located in an "R-1" Single-Family District with this request action pursuant to 11.30, Subd.3, and 11.56

Mr. Hoium reviewed the request with a brief history. The conditional use permit was originally approved in 2004 with a requested amendment in 200_. The petitioner would like to extend this conditional use permit for another five years. Currently it would expire December 31, 2008. In the back up material there are a number of items in the staff report I would like to go through:

Staff Report suggestions:

- 1) That the extension of the conditional use will not impede the normal and orderly development and improvement of surrounding vacant properties for uses predominant in the area.
- 2) That adequate utilities, access roads, drainage and other necessary facilities have been or are being provided (Infrastructure still in place from CUPP)
- 3) That adequate measures have been or will be taken to provide sufficient off-street parking and loading spaces to serve the proposed use. (In place)
- 4) That adequate measures have been or will be taken to prevent or control offensive odor, fumes, dust, noise and vibration, so that none of these will constitute a nuisance, and to control lighted signs and other lights in such a manner that no disturbance to neighboring properties will result. (Still in place)

If approved, the following are suggested conditions of the conditional use permit:

- 1) A restoration bond of \$20,000 shall be provided and valid through June 30, 2014.
- 2) Permit will expire on December 31, 2013.
- 3) Extraction of gravel shall be limited to area shown on map.
- 4) Stockpiling of aggregate shall be at least 400 feet from existing residential property.
- 5) The gravel pit sides when completed will have a slope no greater than 4:1 horizontal to vertical.
- 6) Hours of operation shall be Monday-Friday, 7:00am to 6:00pm.

- 7) Owner must contact the Mower County SWCD regarding the Wetland Conservation Act and provide the City a copy of one of the following:
 - a) A "No Loss Determination" (no wetlands on site)
 - b) A "Wetland Exemption" (the act does not apply)
 - c) A "Wetland Replacement Plan" approval

It is my understanding that the area involved in this mining operation would not change as originally approved, therefore this information has already been provided.

- 8) Owner must provide a copy to the City of an Erosion Control Plan.
- 9) Final Grading Plan shall include a buffer between the pit area and Jennings property as determined by the City of Austin City Engineer and City Planner.
- 10) Provide protection to existing underground utilities.
- 11) Completion of agreement with City for material storage site.
- 12) "No trespassing" signs shall be posted around entire site.
- 13) Dust control shall be provided when necessary through the life of permit.
- 14) All phases shall be completed as shown.
- 15) Gate shall be provided at all road accesses.
- 16) Tree plantings of poplar trees on berm used for screening and shall include coniferous trees ranging from 2ft. to 3ft. in height planted, 25 ft. o.c. Poplars planted a maximum of 10ft. o.c.
- 17) 6 foot high security fence has been installed and extended further than originally required. (original condition stated that a 4 foot high security fence be installed)

Notices were mailed out to surrounding property owners and also published in the local newspaper with no responses for or against this request.

Commission Member Stutzman asked if any of the seventeen conditions have not been met.

Mr. Hoium said all the conditions have been met.

Commission Member McCarthy asked what the buffer is between the site and residents.

Mr. Hoium said there is a high berm on the north side of the mining area.

Commission Member McCarthy asked if the trees have been planted.

Mr. Hoium said the trees have not been planted, that will be done after the work is complete and material has all been extracted.

Commission Member McCarthy asked if that is a new condition or one of the original conditions.

Mr. Hoium said one of the original conditions.

Commission Member McCarthy said it seems that conditions have been disregarded.

Mr. Hoium said this site is not easy to get to. If the trees were planted before the work is complete they would have to be moved to get the large equipment needed during material extraction in and out.

Val Raverty, Ulland Bros., 2400 Myers Road, Albert Lea, MN showed a map to the Commission Members to explain the site set up. The entrance is in the SW corner and is a gated entrance.

The berm on the north side is 10' to 12' high and wide enough to drive a vehicle on. If you are in the pit you cannot see out and if outside the pit you cannot see in. There is a gentle slope to 4:1 for safety. On the south border is a ramp that is about 50' wide and above that are the settlement ponds that are used when we dewater the pit. With a permit from the DNR we pump the water out of the pit and into the settlement ponds before it is discharged into the ditch and then the river. Val stated it was her understanding that the trees would be planted upon the completion of the project. The settlement ponds and berm would come out and the site regraded, then the tree plantings could occur. The east end of the pit has heavy trees, the north end has a 6' high chain link fence. I apologize that the fence was not put up right away, it was not our intention to ignore that condition. There were staffing changes in our office and the fence was an oversight on our part. There was a lot of discussion during our last amendment request regarding the safety of the pit and its proximity to Ellis Middle School and residential neighborhoods. Because of that we chose to install 6' high fencing instead of the 4' high in the condition. We also extended it an extra hundred feet along the NE corner to further deter any trespassers. The west end of the pit still has material available for use and the end use of this site will still be a retention pond.

Commission Member McCarthy said when this conditional use was originally passed we were told the pit was only for the airport project and then would be closed. I do appreciate the fence that was installed. I feel the only reason it was installed was because of a lot of emails and requests from me. I have a hard time with this request since the conditions were not met the first time.

Ms. Raverty said it was only one condition that has since been met. We have complied with all the rules and I feel we have been good neighbors. I cannot apologize enough for the fencing oversight, there were significant staffing changes in our company. That is not an excuse but when one person steps out and another one in there can be some overlap.

Commission Member Spainhower asked what projects have benefitted the city and what future projects that could make this a viable pit that needs to remain open.

Mr. Hoium said the direction taken by the Planning Commission shouldn't be for economic reasons. It should be based on surrounding land use, any adverse conditions for the area. When the conditional use permit was originally approved in 2004 there was a \$20,000 restoration bond put in place. The sole purpose of that is to do the final grading and plant trees if the petitioner does not complete the project.

Commission Member Spainhower said her thought process is whether this pit is centrally located for upcoming projects and would it impact what the city has to pay if this pit is closed. To me economic value is a deciding factor in this request.

Commission Member Stutzman said she is questioning whether that has any bearing on the conditions that we have authority over.

Commission Member Spainhower asked if economic hardship would be a factor.

Mr. Hoium asked Mr. Byram to respond to that question.

Craig Byram pointed out in Section 11.56, Subd.1,c. where it is stated: The use, in the opinion of the Planning Commission is reasonably related to the overall needs of the City and to the existing land use. You should not consider whether this would be an economic boom for Ulland

Bros. but one thing you can consider is whether mining in this location will promote economic welfare in Austin.

Commission Member Bennett asked how many people Ulland Bros. employs.

Ms. Raverty said there are 80-100 people and about 1/3 of them are from Austin. This pit was initially opened in 2004 for the airport project. There is material left and we were planning to empty this pit for the Oakland Ave project, but we were asked by the City of Austin to use material from another location that would provide flood water retention. Because of that opportunity we were unable to empty this pit as planned. There is about 15,000 – 18,000 cubic yards of material left in the pit now.

Commission Member Skalicky said the initial conditional use permit was requested in 2004. Why do you want five years now?

Ms. Raverty said the county goes in five year increments. Two years is not long enough, some projects take that long just in planning. We do not know what our next projects are yet that this pit could serve.

Commission Member McCarthy said the Oakland Ave project only took a couple of months, why do you need five years.

Ms. Raverty said once a project comes up it does not take long to use up the material. We would like five years to wait for a project that this pit would be appropriate for.

Commission Member Mino said there are two things that need to be pointed out that would be an advantage to Austin. Besides jobs there would also be a cheaper source of aggregate for projects and also the storm water control upon completion which is needed in that area.

Mike Garry, 1216 4th Ave Se, I have been fighting this project for four years now. I do not understand how extending this project makes any sense. If extracting the material is the issue, then get it out and store it somewhere and get on with the project so the flood control can be put in place. This pit is just an open ended cash cow for the Ulland Bros. When told something will be fenced in I think that should include the entire project, not just one side. They have been out of compliance with this project since it started. This project is supposed to be finished on December 31, 2008. That is only three weeks away, if this extension is not approved, and I hope it isn't, then the petitioner has to have the project complete in three weeks. There should be some kind of penalty if it is not complete. I urge you to deny this request.

Commission Member McCarthy said in 2004 Mr. Beckel from Ulland did not want to install a fence at all. We finally settled on a partial fence to protect the residential area.

Commission Member Spainhower said she agrees with Commission Member Mino's comments on the economic impact for Austin and for storm retention use. I am concerned with the fence and agree it should surround the pit, I do appreciate the extra 100' though. If I had a pool in my backyard I would not fence in one side of the pool but the entire pool if safety is a concern, which it should be. The trees and plantings upon completion of the project should have been clear in the original conditional use permit.

Commission Member McCarthy said the permit ends at the end of the month and it would be hard to plant trees in December. Something should have been done to make sure all the

conditions had been met. I would have to make a motion to deny this request based on the fact that the conditions were not met the first time.

Ms. Raverty said it is her understanding that they are allowed to extract until December 31, 2008. The bond expires in June 2009 and Ulland Bros. have until that time to do the grading, plant trees and complete the site. I do not believe it is a good idea to fence in water areas. There are many areas in Austin where there are no fences, berms or gates around water. I understand the neighbors concern for safety but with the berm, gate, fence, vegetative barrier and no trespassing signs I feel we have done everything we can to provide safety. A perimeter fence is excessive, this is a known body of water and there have been no incidents there.

Commission Member McCarthy said the kids at the middle school do not know it is there.

Ms. Raverty said the perimeter of the area is set, we would only be extracting from what is established. The initial theoretical plan was that the site would be graded to open up the site with a bike path. If a fence is put up what to you do with it in five years when the project is complete. The pit is established, we have met the conditions, we would like to finish it and do it right.

Commission Member Skalicky asked what the end result would be in five years.

Ms. Raverty the berm would be regarded to a gentle slope toward the water so there are no sharp drop offs. It would be a storm water retention pond.

Commission Member Spainhower said there is a difference between fencing in natural bodies of water like rivers and lakes versus a manmade hazards. I do not see this pit as a natural feature. I do have to think about the City of Austin's economic interest and you have told me there are no projects in Austin for this pit right now. It could lay dormant for years like it has.

Mr. Hoium said when a contractor such as Ulland Bros. bids for a project they have to know specifically where they are going to get material from ahead of time.

Mr. Byram asked if there is no further extraction in the pit is a pond feasible.

Mr. Hoium said there is a ditch that drains a considerable amount from the airport that would discharge into this storm retention pond. The design of the outlet of the pond is designed in such a manner that it slows down the flow of water that goes through Dobbins Creek. The more extracted from the pit, the more water it can eventually hold.

Commission Member Spainhower asked if the limit could be changed from five years to three years.

Ms. Raverty said they bid the Oakland Ave project out of this pit. We chose to work with the City of Austin to get the material from a different location because it benefitted the greater good. I had the opportunity to exhaust the material in this pit but chose to go elsewhere at the city's request.

Commission Member McCarthy said the 3rd Ave SE pit behind the Eagles was opened at the same time as this pit.

Mr. Hoium said that is where the material for Oakland Ave came from.

Commission Member Stutzman said all the conditions for this conditional use permit have all been met.

Commission Member McCarthy said they have been met but I have plenty of emails at home and I feel I am the one who got the fence up.

Mr. Garry said this project was supposed to have been completed in 2008. How can you say the conditions have been met. Kids could go over that berm and cannot be heard. If this is fact a flood control issue for goodness sake lets do it.

Commission Member Skalicky asked what the immediate use of this property is now.

Ms. Raverty said there is currently a stockpile that is being used for small jobs. The dewatering of the pit is the best way to get at the sand and is quite an endeavor. We are looking at putting up the rest of the material in a stockpile. If it is there and ready we can use it.

Commission Member Skalicky asked how much material is left.

Ms. Raverty said between 15,000 and 18,000 cubic yards. Oakland Ave took 50,000 cubic yards and would have more than exhausted this pit but we took that out of the 3rd Ave Se pit.

Mr. Hoiium said the City of Austin asked Ulland Bros to use the material from the 3rd Ave Se pit to get that material out of the flood plain. If the City of Austin had not asked Ulland Bros. to use that material we would not be here because this pit would have been exhausted.

Commission Member Bennett said in the end we will have a man made pond that is still not fenced off. Is that a safety issue.

Commission Member Skalicky said five years is a long time.

Commission Member Spainhower said she would like to see the pit fenced while it is active and that it be a three year instead of five year project.

Commission Member Skalicky said he agrees with Commission Member McCarthy that this request be denied and have the petitioner come back with something else.

Commission Member McCarthy said she hates to seem like a bully to the Ulland Bros. but she is very tired of conditions not being met in this town. Somewhere there has to be a line drawn.

Ms. Raverty said they have met the conditions and she would be willing to put up construction fencing and enclose the site until the project is complete.

Commission Member Spainhower asked what the depth of the pond would be upon completion.

Ms. Raverty said fifteen feet throughout with a 4:1 slope.

Commission Member McCarthy made a motion to deny the request as the project is not neighborhood friendly, seconded by Commission Member Skalicky. Three ayes, five nayses, motion failed. The ayes being Commission Members McCarthy, Skalicky and Spainhower. The nayses being Commission Members Mino, Mair, Bennett, Bankes and Stutzman.

Commission Member Mino made a motion to approve the request with the seventeen conditions with the exception that a temporary construction fence be put around the total perimeter of the property for the five years, seconded by Commission Member Mair. Five ayes, three nays, motion passed. The ayes being Commission Members Mino, Mair, Bennett, Bankes and Stutzman. The nays being Commission Members McCarthy, Skalicky and Spainhower.

Mr. Hoium asked for verification on the location of the construction fence, would it be around the entire perimeter or would it go from one end of the existing 6' fence around the perimeter to the other end of the 6' fence.

Commission Member Mino said the existing 6' fence would be considered part of the perimeter fencing.

OFF-STREET PARKING

APPEAL:

To consider a request from the Hormel Historic Home, 208 4th Avenue NW, to appeal the number of off-street parking stalls pursuant to City Code Sections 11.42, Subd.5,(E), and 11.70, Subd.5. Property under review is located in a "B-3" Central Business District.

Mr. Hoium reviewed the request showing a map with a 300' radius which includes the Austin Drug parking lot that has 72 stalls and the Nemitz Lot that has 38 stalls. Currently there is a small parking lot on the NW corner of the property but with the addition and a handicap ramp there will not be space for the parking lot. Mr. Hoium showed a report from 2007 which showed the Austin Drug lot to be 67% occupied and the Nemitz lot to be 24% occupied during the study period. There was consideration that some of these stalls under the same provision could be utilized for the St. Olaf Church expansion. St. Olaf did include off-street parking in their development plans. The majority of the adjacent stalls to be utilized were in the Library parking lot and the Methodist parking lot.

Commission Member McCarthy asked if this is a request just to use the municipal lots and not worry about the times limits.

Mr. Hoium said without approval the petitioner would have to provide 41 off-street parking stalls. Since the project is in the business district there is an exception that with the Planning Commission and the City Council's approval the required off-street parking stalls may be waived up to 100%.

Commission Member Stutzman asked if any of the stalls in these parking lots are going to be utilized for the Jail/Justice Center.

Mr. Hoium said only a portion the Library lot that might be used for the Justice Center.

Commission Member Stutzman asked if there was any consideration to use the Red Cross lot.

Mr. Hoium said that is a private parking lot and would have to be arranged between the Red Cross and the Hormel Home.

Commission Member McCarthy asked if we are just stating these stalls are nearby or if they are going to be designated for the Hormel Home.

Mr. Hoiium said they are not designated but are available for public use.

Commission Member Stutzman asked about handicap stall requirements.

Mr. Hoiium said he is uncertain if either of the parking lots has handicap parking. It is possible to have handicap parking on the street.

Commission Member McCarthy commented that once the Justice Center is done employees may start leasing stalls in these lots.

Mr. Hoiium said he is familiar with the parking requirements for the proposed Justice Center and although he cannot make any guarantees the parking stalls in the plan far exceed the requirements.

Lynsie from Kane & Johnson Architects in Rochester, MN said if we supplied parking on the property it would require about 16,000 square feet. That would be three times the size of the addition so that is way more space than we have. Handicap stall we would be willing to put on the street on the west side of the building.

Laura Helle, executive director of the Hormel Home said currently they use street parking and the Austin Drug lot. Most events will be in the evening and would not be competing with the daytime businesses. We have talked to the Red Cross about their parking lot and they would be willing to work with us on a case by case basis since they have events during the day and evenings.

Commission Member Skalicky made a motion to approve this request, seconded by Commission Member McCarthy. Motion passed unanimously.

Mr. Hoiium took a moment to thank Elizabeth Bankes and Glenn Mair for their time of service on the Planning Commission. This was the last meeting for both of them. At the next meeting we would like to have a luncheon to introduce our new members and to show our appreciation to Glenn and Elizabeth.

Commission Member Bennett made a motion to adjourn the Planning Commission meeting at 7:10 P.M., seconded by Commission member Bankes. Motion passed unanimously.