

PLANNING COMMISSION MINUTES - CITY OF INVER GROVE HEIGHTS

Thursday, February 9, 2012 – 7:00 p.m.
City Hall Chambers - 8150 Barbara Avenue

Chair Bartholomew called the Planning Commission meeting to order at 7:00 p.m.

Commissioners Present: Tom Bartholomew
Armando Lissarrague
Dennis Wippermann
Pat Simon
Harold Gooch
Tony Scales

Commissioners Absent: Paul Hark (excused)
Mike Schaeffer
Victoria Elsmore

Others Present: Allan Hunting, City Planner
Heather Botten, Associate Planner
Scott Thureen, Public Works Director

DAVID WHEATON – CASE NO. 11-34VAC

Reading of Notice

Commissioner Simon read the public hearing notice to consider the request for a vacation of unimproved right-of-way generally located east of Conrad Avenue and north of 102nd Street, owned by Macalester College. 4 notices were mailed.

Presentation of Request

Allan Hunting, City Planner, explained the request as detailed in the report. He advised that the applicant, Macalester College, is requesting to vacate the unimproved road right-of-ways within Dorr's Third Inver Grove Addition, which was platted in 1888. Macalester College is in negotiations with Dakota County to protect a large portion of the property with a permanent conservation easement. He advised that from a planning perspective, it would be logical to support the vacation request as the land could not be developed in the pattern it was platted, and since it appears no streets would ever be built, the right-of-ways should be vacated. During the Engineering Department's review they found a study that was prepared in 2000 which addressed some concerns of pond KP-34 relating to future storm water routing. The study suggested three possible storm water alignments and determined that the most likely would be what is known as the northern alignment. Engineering supports the vacation request but is recommending that a 30 foot wide drainage easement be dedicated over the portions of the property that relate to the proposed northern alignment. Staff recommends approval of the request with the four conditions listed in the report.

Commissioner Simon asked why they chose the northern alignment over the other two.

Scott Thureen, Public Works Director, advised that the northern alignment is the longest of the three routes, however, because of the grades and the potential to have some open channel it was the preferred alignment in the study. He advised that it may be that the City would never need an outlet but if they do this is the only viable location in this area. Engineering feels that some public means of access must be retained if the right-of-way is to be vacated.

Commissioner Lissarrague asked if the railroad could potentially hinder the project since part of the recommended alignment lay in the railroad right-of-way.

Mr. Thureen stated the City would need a permit and license from the Union Pacific Railroad to build a storm water system along the recommended alignment.

Commissioner Simon questioned why the College was being required to grant access rather than putting in the conditions that they would cooperatively work with the City if a storm water system was needed in the future.

Mr. Thureen replied that the City feels they need leverage in the future since they are giving up existing right-of-way, and it makes sense to acquire access now when the City has the opportunity.

Commissioner Simon asked if there was the potential for the railroad to deny access.

Mr. Thureen stated he believed they would be able to get across the railroad.

Opening of Public Hearing

The applicant, David Wheaton, Macalester College, 1600 Grand Avenue, St. Paul, advised he was available to answer any questions.

Chair Bartholomew asked if the applicant had any concerns about the conditions.

Mr. Wheaton stated he perceived the conditions regarding a future access as a separate issue from the vacation request.

Chair Bartholomew asked if the applicant was stating he was opposed to the conditions listed in the report.

Mr. Wheaton replied they were in favor of vacating the unimproved right-of-ways but needed to sit down with the City regarding granting access for a future storm water system.

Chair Bartholomew stated that staff is recommending approval based on the four conditions listed in the report; therefore the applicants should state which conditions they were opposed to.

Commissioner Lissarrague asked if the applicant had a chance to review the request and the four conditions.

Mr. Wheaton replied in the affirmative.

Commissioner Lissarrague stated the applicant's reservations about the conditions should be cleared up before going any further.

Al Singer, Dakota County Land Conservation Manager, advised that the subject property is considered high quality and sensitive and therefore the County has been working with Macalester College to protect it with a permanent conservation easement. The County has received public and private funds to put towards this conservation easement. If they do not close this easement by the June funding deadline they will lose \$400,000. He advised that conservation easements protect the natural resource values of the property and do not allow roads or drainage easements. This raises a sequencing issue. The County would be agreeable to allowing the drainage easement to go onto the property prior to the County acquiring the easement because they want to avoid putting a conservation easement on first then putting a drainage easement over the top. He stated that theoretically they could go ahead with the conservation easement and except out the

street right-of-way. If we were to do that the City would not be allowed to put a drainage easement over the County's conservation easement. However, the County and the College are willing to work cooperatively with the City by allowing them to put a drainage easement in place beforehand. The issue, however, is gaining access to this easement for construction purposes. The subject property has steep slopes and sensitive soils and is used for research purposes. It does not meet the intent of the College nor the County to have a wide open agreement that allows the City at some future time to construct and maintain this type of facility. He stated it does not seem logical to condition the street vacation on the drainage easement, especially since none of the platted right-of-ways would have been used for putting in the recommended drainage alignment. Mr. Singer advised that the County would also be willing to not put an easement on the south side of the railroad tracks to preserve a potential corridor on College property along the railroad.

Commissioner Simon asked if the applicant would be amenable to tabling the request to allow them time to discuss the issue with City staff.

Mr. Hunting advised that the 60 day limit expires on February 14 therefore, without the applicant's consent to an extension; action should be taken tonight so it could go to City Council on February 13.

Commissioner Lissarrague asked what would happen if there was a need for that easement today.

Mr. Thureen replied that the City would approach the property owner regarding acquisition of the necessary easements. If that were not possible, staff would then have a discussion with the City Council regarding possible eminent domain.

Commissioner Simon asked if the City could put eminent domain on a conservation easement.

Mr. Singer replied they could not, which is why the sequencing is so important. They would like to be cooperative in meeting the needs of the City; however, the issue is they do not want to have a blanket agreement for a potential access road that could significantly damage the bluff lands. They also want to keep moving this forward so they do not miss the deadline and lose their funding.

Chair Bartholomew stated that Condition 1 makes it clear that it is going to be a 30 foot wide easement over those portions of the college property labeled parts A and B.

Mr. Thureen stated they also need access to the easement area for future construction of the storm system.

Commissioner Lissarrague stated it sounds as if the project could potentially be hindered should the college not agree with the proposed plan.

Mr. Singer stated the County and the College are willing to work in good faith to determine a route for the best possible access if something like this was ever needed. However, they are not prepared to guarantee an access for something that is conjectural at this point in time. He stated they also object to Condition 4 as they feel it is unreasonable to require the applicant to pay for the costs incurred for the drafting and preparation of the easement documents since it is the City that is requiring the drainage easement.

Chair Bartholomew stated it sounds like the applicants are agreeable to the vacation with a condition that the applicant work cooperatively and in good faith with the City to potentially design and construct a storm water system and that the City pay the legal fees instead of the applicant.

Mr. Singer stated the County and the College would agree 1) to a 30 foot wide drainage easement

over areas A and B as proposed by the City, 2) that the County would not put a conservation easement on a strip 30 feet to the east of the rail line to allow the City not to use railroad right-of-way to get to areas A and B, and 3) the College would work in good faith with the City to find a correct alignment and the technology and access to allow this drainage easement to be implemented if a need has been demonstrated that is in the public interest to provide an outlet for storm water to River Lake.

Chair Bartholomew asked if Mr. Singer was stating they wanted to be involved in how the actual development occurs.

Mr. Singer stated the exact design details are undetermined at this time so they are suggesting that as a condition there be an agreement between the College and the City that they would work in good faith to come up with a suitable design and location to deal with the storm water for this part of the City and that there be no financial burden on the College to pay for the legal expenses to draft the necessary documents.

Commissioner Simon asked if the applicants agreed to any of the stated conditions.

Mr. Singer replied that he agreed with Conditions 1 and 2 but objected to Conditions 3 and 4.

Mr. Hunting stated a portion of the College property abuts Inver Grove Trail so that is a logical route for getting trucks in and out of the property. The rest of the details would have to be worked out after Council approval as they are getting close to the 60 day deadline. The City at this point would just like a guarantee that they will have some kind of access in the future.

Commissioner Simon asked how close the actual route would be to Inver grove Trail.

Mr. Hunting replied that none of the details have been determined at this point.

Chair Bartholomew asked for clarification that the applicants are agreeable with Conditions 1 and 2 and would like Condition 3 modified to the language suggested earlier by Mr. Singer.

Mr. Singer replied in the affirmative.

Planning Commission Discussion

Commissioner Lissarrague stated that Conditions 1 and 2 are irrelevant if Condition 3 is not met.

Chair Bartholomew agreed, but advised that the applicant has stated they are willing to grant access; however, they want to be involved in the discussions. He stated the Commission could either eliminate Condition 3 altogether or state that the City will work closely with the property owner in granting future access. He added that he would be in favor of having the City pay for the legal costs.

Commissioner Lissarrague stated he would support having the City pay for legal costs but was concerned about Condition 3.

Commissioner Wippermann agreed that Condition 4 should be eliminated, but stated Condition 3 should specify there is going to be a working relationship between the College and the City to determine appropriate access to the easement.

Chair Bartholomew stated he supported changing Condition 3 to the verbiage suggested by Mr. Singer regarding the City and College working cooperatively in gaining access to the property.

Commissioner Lissarrague stated he would prefer that the language be more specific so anyone reading the condition 20 years from now would be clear on its intent.

Commissioner Gooch stated the way he reads Condition 3 it simply says 'they shall enter into an agreement to grant access', the terms of which could be determined at a later date. He suggested leaving Condition 3 as is but omitting Condition 4.

Commissioner Scales asked why the applicants were being asked to pay for legal fees for something they do not need or want.

Mr. Hunting replied it is the City's standard practice with all developments that the applicant pays their share of some of the easement costs.

Commissioner Scales stated the applicants should not be forced to pay those costs.

Chair Bartholomew recommended approving the request with Conditions 1 and 2 as stated, dropping Condition 4 or restating it to say that the City will pay for the fees associated with the easement, and modifying Condition 3.

Planning Commission Recommendation

Motion by Commissioner Bartholomew, second by Commissioner Wippermann to change Condition 3 to state 'the College and the City would work cooperatively and in good faith in which the College provides access by the City or designee to potentially design and construct a storm water pipe/system within the College property between the two rail lines and to provide an appropriate outlet to River Lake on, over or under College property', and to omit Condition 4.

Commissioner Gooch stated Condition 3 is of utmost importance as the City needs to gain access otherwise Conditions 1 and 2 will probably not be allowed.

Commissioner Lissarrague suggested omitting Condition 4 but leaving Condition 3 remain as written, stating any changes could be done at the City Council level.

Chair Bartholomew stated he thinks Condition 3 is too strong and binds the College to entering into an access agreement even if it is contrary to what they want.

Commissioner Gooch stated the College and the City would still have to come to an agreement that was satisfactory to both parties.

Commissioner Simon stated if the applicant would choose not to cooperate, however, they would still get their dedication.

Commissioner Scales supported Chair Bartholomew's motion.

Motion carried (4/2 – Lissarrague, Gooch).

Motion by Chair Bartholomew, second by Commissioner Wippermann, to approve the request for a vacation of unimproved road right-of-way generally located east of Conrad Avenue and north of 102nd Street, owned by Macalester College, with the three conditions as restated.

Motion carried (4/2 – Lissarrague, Gooch). This item goes to the City Council on February 13, 2012.

INVER GROVE STORAGE – CASE NO. 12-01IUP

Reading of Notice

Commissioner Simon read the public hearing notice to consider the request for an interim use permit extension to continue the use of allowing metal portable shipping containers and storage pods associated with the mini-storage facility, for the property located at 10125 Courthouse Boulevard. 9 notices were mailed.

Presentation of Request

Heather Botten, Associate Planner, explained the request as detailed in the report. She advised that the property is zoned I-1, Limited Industrial. In April 2004, Inver Grove Storage received an interim use permit to allow metal portable shipping containers or storage pods associated with their conditional use permit for a mini-storage facility. The approved interim use permit expires on April 1, 2012 so the applicants are requesting a one time extension of an approved use with no changes to the use of the property. She advised that an interim use is defined as a temporary use of a particular property until the occurrence of a particular date, event, or until zoning regulations no longer permit the use. Staff recommends a 10 year extension; however, the applicant is asking for a 20 year extension. Staff feels the extension proposed by the applicant goes beyond the purpose and intent of the interim use permit and would make the storage pods become almost a permanent use of the property. Staff recommends approval of a 10-year interim use permit from the expiration date with the conditions listed in Alternative A.

Commissioner Gooch asked what would happen if a 10 year extension was granted.

Ms. Botten replied that at the end of 10 years the applicant would have to either 1) stop using the pods or remove them from the property, 2) work with staff to amend the Zoning Code to allow it as a permanent use, or 3) amend the Interim Use Ordinance.

Commissioner Lissarrague noted there was a 12 year extension granted to another property along Highway 52 and asked for clarification of the City's guidelines regarding the length of interim use permit extensions.

Ms. Botten replied that staff recommended a 10 year extension for the business in question; however, the City Council granted a 12 year extension because of the fact that that applicant had to come in for an extension less than a year after receiving the original interim use permit. She advised this is only the City's second request for an interim use permit extension and staff has recommended 10 years for both.

Commissioner Lissarrague asked if staff recommends 10 years for all extensions or looks at each request individually.

Ms. Botten replied they look at each request separately.

Commissioner Simon asked if a permit was required for signage on retaining walls or fences.

Ms. Botten replied it requires a permit if it is advertising a business.

Commissioner Simon asked if the applicant had a permit for the existing signage on their fence.

Ms. Botten replied she was unsure.

Commissioner Simon advised there was also signage on a trailer sitting in front of the business.

Ms. Botten replied that the City has no regulations specifically prohibiting advertising on a vehicle.

Commissioner Simon asked if an original condition for this property was that signage would not be allowed on vehicles and asked if U-Haul vehicles were allowed to be parked outside the fence.

Mr. Hunting replied that the condition did not restrict business signage, but rather prohibited individuals from putting sale signs on their vehicles being stored. He advised that U-Haul trucks were allowed to be parked outside the fenced area of the property.

Commissioner Simon asked if staff heard from any of the neighbors.

Ms. Botten replied they had not.

Opening of Public Hearing

The applicant, Larry Koland, 4813 Blaine Avenue, gave a brief background of the property, stating they originally built an outdoor storage facility because it would have little impact to the site and would be a good fit until such time as they could potentially redevelop it to a higher and better use. Shortly after they opened the facility they decided to add storage containers/pods which required no footings, would not move, and would have little activity. At that time they worked with Tom Link, Community Development Director, and drafted the City's first interim use permit to allow the use of containers in a self storage facility. They were granted an interim use permit for 8 years. At this time they would like to continue this use and are asking for a 20 year extension versus the 10 years recommended by staff. Mr. Koland explained the commercial mortgage process and advised they may not be able to retain their mortgage if they lose the containers which are a third of their income. As far as staff's contention that this would become almost a permanent use, Mr. Koland stated they are hoping for development to occur in this part of the City and that the site can be redeveloped sooner than 20 years to a higher and better use. If it does not, however, at the end of 20 years the containers will be removed. Mr. Koland disagreed with staff's statement that 10 years would be an adequate amount of time to have a return on the property. He advised that the intent of the interim use permit was to provide flexibility for business owners, not to have a return on the property. Mr. Koland then addressed previous questions from Commissioners, stating that at the end of the extension period the containers/pods would be removed and likely replaced with recreational vehicles. In regards to the question about the arbitrary timeline, he stated the storage lot south of them on Highway 52 met their trigger event and therefore the owner was forced to request an extension. After meeting this trigger event he was still granted another 12 years.

Chair Bartholomew asked what the current surface was of the storage facility.

Mr. Koland replied that it was Class V.

Chair Bartholomew stated that storing recreational vehicles would be more intrusive than storage pods in that there would be the potential for dripping fluids.

Mr. Koland agreed, stating there would also be more traffic and they would have a less uniform appearance than the matching pods.

Chair Bartholomew asked if all the containers were filled.

Mr. Koland replied that two were currently vacant.

Chair Bartholomew asked if the containers were leased or owned.

Mr. Koland stated they purchased the containers.

Commissioner Lissarrague asked if the applicant was agreeable with the conditions listed in the report, with the exception of changing Condition 3 from 10 years to 20 years.

Mr. Koland replied in the affirmative.

Planning Commission Discussion

Commissioner Lissarrague stated he supported giving the applicant a 20 year extension or more.

Commissioner Gooch agreed with Mr. Koland's contention that losing the use of the containers/pods would likely affect his business loan, questioned why shipping containers were not an allowed use in a storage facility, and recommended a 20 year extension or perhaps 30.

Chair Bartholomew advised he supported a 20 year extension, stating it has been a well run business and it would not be fair to limit them during these tough economic times.

Planning Commission Recommendation

Motion by Commissioner Gooch, second by Commissioner Lissarrague, to approve the request for a one and only extension to an interim use permit to allow metal portable shipping containers or storage pods associated with a conditional use permit for a mini-storage facility with the conditions as listed and **a modification to Condition 3 to change the expiration date from April 1, 2022 to April 1, 2032.**

Motion carried (6/0). This item goes to the City Council on February 27, 2012.

ADJOURNMENT

Chair Bartholomew adjourned the meeting at 8:28 p.m.

Respectfully submitted,

Kim Fox
Recording Secretary