

**North Oaks Planning Commission
Special Meeting Minutes
City of North Oaks Community Meeting Room
June 9, 2020**

CALL TO ORDER

Chair Azman called the special meeting of June 9, 2020, to order at 7:15 p.m.

In compliance with Governor Walz's Stay-at-Home Order and pursuant to Minnesota Statute 13D.021, the meeting was conducted via Zoom.

ROLL CALL

Present: Chair Mark Azman, Commissioners David Cremons, Jim Hara, Stig Hauge, Nick Sandell, Sara Shah, and Joyce Yoshimura-Rank. City Council Liaison Rick Kingston.

Staff Present: Administrator Kevin Kress, City Planner Bob Kirmis, City Attorney Bridget Nason, and Engineer Larina DeWalt.

Others Present: Videographer Maureen Anderson.

A quorum was declared present.

PLEDGE OF ALLEGIANCE

APPROVAL OF AGENDA

MOTION by Yoshimura-Rank, seconded by Shah, to approve the agenda as submitted. Motion carried unanimously by roll call.

CITIZEN COMMENTS

Chair Azman opened the meeting up for Citizen Comments, noting there was a new policy in place recently passed by the City Council where individuals may speak on any topic except items on the agenda. After seeing no hands up on Zoom, he closed the Citizen Comments portion.

BUSINESS ACTION ITEMS

a. Public Hearing to discuss CUP #20-05 for fill in excess of 100 cubic yards: 7 Eagle Ridge Road

- Engineer DeWalt presented the information regarding Conditional Use Permit (CUP) #20-05 for fill in excess of 100 cubic yards at 7 Eagle Ridge Road. Staff recommends approval for work to begin as soon as possible.
- Yoshimura-Rank said she visited the site and it is pretty impressive. She knows a lot of fill is being brought in and the information said only three plantings. She thinks three plantings is pretty miniscule for the huge incline. First, there is quite a run-off; second, it is all going into the wetland with no talk about cleaning up the wetland. She asked if that could be added to the work being done.

- Engineer DeWalt stated the potential conditions are up to the Planning Commission to decide. She understands the concerns and agrees that it is important to ensure that vegetation is established to try to avoid any future erosion. The plantings referred to do not include the specified seed mix that would be implemented throughout the topsoil.
- Chair Azman asked if there was vegetation included in the plan and, if so, to what extent.
- Engineer DeWalt said the plans indicate the proposed seed mix and shrubs that are specified. She does not recall what the plantings were specifically.
- Chair Azman indicated it looked like some shrubs, dogwood, and burning bush will be placed in the gully area. He asked if there was going to be any removal and remediation of the wetlands at the bottom.
- Administrator Kress suggested the public hearing should be opened to see if anyone is present, close it, and then have the discussion. He noted the Applicant is present as an attendee.
- Chair Azman asked for any further comments from Engineer DeWalt.
- Commissioner Shah said she had questions but it sounded like the public hearing should be held first.
- Chair Azman said he commonly will have Staff give a report. He opened the public hearing at 7:27 p.m.
- Bernard Bosley, the applicant, stated 88% of the erosion happened almost overnight. No one is sure how it started, but there was a large rainstorm and it opened up overnight and he has been working since then to get it fixed. There are plantings planned such as native plants and seeds. Pinnacle Engineering has been working with the Department of Natural Resources (DNR) and they have approved the plan. He does not believe they are pulling the silt back out of the wetland because the DNR feels that would cause more damage. He has a no-loss order from the DNR, and the DNR is okay with the plan as-is.
- Chair Azman asked if Mr. Bosley was looking for approval of the CUP.
- Mr. Bosley said he is looking for approval, the problem will continue to get worse, and that if it rains hard again, who knows what might happen. There is a power pole about six feet away. He would like to fix it as soon as possible. He clarified that it is the Vadnais Lake Area Watershed Organization (VLAWMO) that is copied on the plan, specifically Brian Corcoran.
- Gary Schulte, 5 Eagle Ridge Road, said he is the most affected neighbor to the erosion event; he is immediately to the south and it is only a few feet from the property line. In the process of getting things fixed, there have been considerable delays. He has seen the area get larger having gone through this past summer, as well as other times. He strongly advocates that this be worked on because he is concerned about his property getting eroded and property values.

He has lived in North Oaks since he was a child, about 60 years, and it makes him full of anguish to see the valley full of sand. If it would destroy the valley to have the sand removed, maybe that is the way it has to be. He would like to see it removed. He stated the man who did the tree shedding told him that VLAWMO/DNR would like to see the sand removed. As far as vegetation, if plants are in the path of where drainage is going to go down the hill, it creates more turbulence and erosion. A lot of times they advocate having various grasses rather than woody plants, at least in the beginning.

- Chair Azman noted there were no further hands up and asked for a motion to close the public hearing.

MOTION by Yoshimura-Rank, seconded by Cremons, to close the public hearing. Motion carried unanimously by roll call.

- Chair Azman referenced questions from the adjacent landowner and members of the Commission about dealing with the wetland at the bottom and appropriate vegetation. He asked Staff for comments/opinions.
- Administrator Kress asked for Attorney Nason's input as far as conditions being placed relating to vegetation.
- Attorney Nason said it is a unique circumstance to have a fill permit be granted via the CUP process. It is the process in place in the City Code. With respect to a CUP, any relevant conditions can be placed. For a typical use permit, they are conditions meant to address any of the concerns raised by the particular use. If the Planning Commission has some parameters regarding the vegetation, those conditions can be put in. It is an unusual circumstance to see any of those requirements in the fill context.
- Chair Azman said it is an Engineering question/VLAWMO issue and asked if VLAWMO needed to be involved from a wetland standpoint.
- Administrator Kress indicated Mr. Corcoran was available for questions.
- Commissioner Shah stated Mr. Corcoran was copied on the Pinnacle Engineering summary and it looks like VLAWMO is working closely with the solution.
- Mr. Bosley said they are trying to match the native vegetation and what will grow well in the area. He was told the native vegetation is more rugged, more likely to stay, and it will look better if they match what is already there.
- Chair Azman asked Mr. Corcoran if he is familiar with the gully situation on Eagle Ridge.
- Brian Corcoran, VLAWMO Water Resources Manager, said that he is familiar with it.
- Chair Azman noted one of the concerns expressed by the Commission is what to do with the washout at the bottom of the gully and whether there needs to be some remediation of the

wetlands as part of the process or if something is recommended. He asked what VLAWMO/Mr. Corcoran's thoughts were on that topic.

- Mr. Corcoran said he is not sure how many cubic yards are in the wetland, but they issued a no-loss order for removal of 100 cubic yards, or whatever can be safely removed, while avoiding underlying wetland vegetation, soils, or causing additional harm to the area.
- Chair Azman asked if that meant the removal of the washout that flowed down from the gully.
- Mr. Corcoran noted it was as much as they safely can remove.
- Chair Azman asked if there was any further remediation recommended after the removal or if the wetland will self-heal.
- Mr. Corcoran said it will self-heal.
- Chair Azman asked Engineer DeWalt if part of the application includes removal of the material at the bottom as part of the CUP.
- Mr. Bosley stated he believes that is in the plan.
- Engineer DeWalt said the application is specifically for the fill, but the plan provided with the application indicates removal of up to about 100 cubic yards.
- Chair Azman indicated the vegetation selected is native, which looks to be appropriate, and a portion of the project has to do with removal of the washout fill that goes down to and into the wetland with a self-healing concept. From a background standpoint, he noted he was asked to call a special meeting to deal with the situation and there were extenuating circumstances so that he felt justified moving forward with a special meeting. He said there was litigation resulting from the issue that was resolved. The property owner has been moving forward diligently. There is significant concern, including from a neighboring property owner, that further rain events may cause further damage and the time to move is now, along with further damage including potentially the roadbed, power lines, etc. He stated that is why he was concerned about getting the application in front of the Commission as soon as possible so that the property owner can move forward assuming there is an approval. He asked if other Commission members had questions of anyone.
- Commissioner Shah said she understands the sense of urgency with the application. She sees the CUP and the solution but did not see a definitive reason for the cause and is wondering why the erosion happened in the first place, because she does not want to be back in five years trying to mitigate the same problem. She asked if anyone had an idea of what caused the situation.
- Mr. Bosley said it was explained to him that the ground in the area isn't particularly rugged, and part of the plan is to compact it and make it more rugged against erosion. There are

several speculations as to the cause, but no one knows for sure because the source is gone. There is a thought that a tree fell over with its roots coming up and pulled up dirt that may have started it. An engineer said a small erosion starts and then keeps on getting bigger with more water. He was never told a definitive reason.

- Commissioner Shah noted it looks like the soil is coming from a neighboring site. She asked if it has been confirmed that it is good soil.
- Mr. Bosley stated some is coming from a neighbor and some is being brought in. The engineers are testing the soil, it has to meet a certain criteria, and only a specific type of soil can go in.
- Commissioner Cremons referenced Engineer DeWalt's comments about not wanting to go through this again and that perhaps the solution proposed isn't as complete as it could be. He asked what more the Commission would do to make sure this is going to work, if anything.
- Engineer DeWalt said her concern is not necessarily that the plan is not complete. She thinks the plan is complete in what it is trying to repair. There is no guarantee that long-term viability, per Commissioner Shah's comment, is going to prevent future erosion. There could be discussion of periodic monitoring of the situation until vegetation is established to ensure that it is working and is not continuing to erode. She believes the property is for sale and she has concerns regarding future property owners' liability if, in the future, it doesn't work and needs to be repaired again.
- Commissioner Yoshimura-Rank asked if the repair would be disclosed to interested people who might purchase the property.
- Mr. Bosley stated it would be.
- Chair Azman asked Attorney Nason if that could be made a condition.
- Attorney Nason said it is a unique situation in that this is not a site plan application or something along those lines where the Commission would be having conversations regarding the potential fix and potential future erosion issues. The CUP is to allow the importation of a certain amount of fill that exceeds the threshold for the CUP. However, a CUP is supposed to be recorded against the property. Typically, on the resolution the Council would consider as far as approving the CUP, it authorizes the recording of the CUP against the property, which would provide some notice to anyone who is a subsequent purchaser. If they were to pull it and read what it says, they would be aware that there was some type of fill activity that occurred on the property. It would not get into any significant detail other than what the fill amount was, etc., but would provide notice to any subsequent purchasers.
- Commissioner Cremons asked Attorney Nason if there was a way to reference the possibility of follow-up during the project to make sure it is proceeding in accordance with the plan, even if it is soft language. He would like somebody to pay attention so if there is a hard rain halfway through the project, the City will be able to react to it and not have it turn into a

fiasco.

- Attorney Nason stated one of the recommendations of the Planning Commission could be that the appropriate City Staff would be requested to follow up to ensure the filling is completed pursuant to the fill permit requirements.
- Commissioner Shah asked if Commissioner Cremons was looking for a control plan beyond the fill and watching the plants, etc., to ensure that everything is stable.
- Commissioner Cremons said legally there are limits to what the Planning Commission is able to do on this application; but it is a major issue, especially for the neighbor. He would like for somebody to have it on their list that they will go by the area while the project is being done to make sure it is proceeding in accordance with the Commission's expectations. If there needs to be a sentence in the approval that there will be appropriate follow-up by the City Staff, he is fine with that.
- Mr. Bosley indicated he thought it would be fine for the City to check. He stated Pinnacle Engineering will be checking periodically and will approve the work when it is done, so if it is not done completely and efficiently, they will not approve it. He will also be checking it.
- Chair Azman asked how the Planning Commission could impose that condition within reason.
- Attorney Nason noted if the recommendation by the Planning Commission is for approval, it could be approval of the CUP as submitted with a request that the Council direct Staff to follow up to ensure the fill is established pursuant to the plan submitted with the CUP. She commented that the irony is when you fail to comply with a condition of the CUP, the typical remedy is revocation of the CUP. If that were included as a condition, that would put it on the City's radar. Council could direct Staff to ensure the fill is established on the site in accordance with the grading plans submitted to the City, and if there is any failure to comply or establish the fill in accordance with the plans, the City has remedies under the revocation of the CUP piece, as well as the general misdemeanor penalty under the City Code for violation of any code requirements or City permits.
- Chair Azman asked Attorney Nason if the Planning Commission could make a condition that the landowner has to notify the City when they are about to start work.
- Attorney Nason indicated that could be done.
- Chair Azman noted that way the City will have more of an opportunity to follow up.

MOTION by Shah to approve CUP #20-05 for fill in excess of 100 cubic yards at 7 Eagle Ridge Road with conditions as follows: one, the Applicant notifies the City when they start the project; two, the project is monitored by the City to ensure the CUP is meeting expected outcomes; three, the project will proceed as the application indicates.

- Chair Azman asked Administrator Kress if that was clear enough for the purpose of drafting a recommendation to the Council.
- Administrator Kress stated he thought Staff could build a resolution from that.
- Attorney Nason said she had no concerns with regard to the motion/conditions.

Seconded by Yoshimura-Rank.

- Chair Azman noted Mr. Schulte's hand was up but the public hearing portion was closed and it would be a little unconventional to allow him to speak. He stated that he is trying to stick with appropriate procedure.

Motion carried unanimously by roll call.

- Chair Azman reiterated that the passed motion is for recommendation of the CUP to the City Council, who will be considering it at its meeting on June 11.
- Administrator Kress confirmed that is the intention at this point.
- Chair Azman suggested to Mr. Bosley he make himself available for the Thursday, June 11 City Council meeting.

ADJOURN

MOTION by Yoshimura-Rank, seconded by Cremons, to adjourn the Special Planning Commission meeting at 7:55 p.m. Motion carried unanimously by roll call.

Kevin Kress

Kevin Kress, City Administrator

Mark Azman

Mark Azman, Chair

Date approved 7/30/2020