

## PLANNING COMMISSION MINUTES - CITY OF INVER GROVE HEIGHTS

Tuesday, May 21, 2019 – 7:00 p.m.  
City Hall Chambers - 8150 Barbara Avenue

Commissioner Scales called the Planning Commission meeting to order at 7:00 p.m.

Commissioners Present: Armando Lissarrague  
Elizabeth Niemioja  
Tony Scales  
Dennis Wippermann  
Pat Simon  
Jonathan Weber  
Joan Robertson  
Brett Kramer

Commissioners Absent: Annette Maggi (excused)

Others Present: Allan Hunting, City Planner  
Heather Botten, Associate Planner  
Tom Kaldunski, City Engineer

### **APPROVAL OF MINUTES**

The minutes from the May 7, 2019 Planning Commission meeting were approved as submitted.

### **SOURCE LAND CAPITAL – CASE NO. 19-14ZPD**

#### **Presentation of Request**

Allan Hunting, City Planner, explained that the request was tabled from the May 7 Planning Commission meeting. The applicant has since modified the request to eliminate the request for setback variances from Highway 3 and added some minor modifications.

Tom Kaldunski, City Engineer, addressed some of the issues discussed by the Planning Commission at their last meeting, and stated that the Engineering Division supports the proposed project. Mr. Kaldunski advised that there is a 24” culvert running from the west side of Highway 3 to the east side which has existed since 1936. The ends of the culvert were lengthened as part of the TH 3 and 65<sup>th</sup> Street project. Based on information that was discussed at the last meeting the developer has proposed some modifications, which are generally to increase the amount of stormwater retained on site and reduce the discharge through the 24-inch culvert going under TH 3 to a level that is in essence zero from a volume perspective and up to a 100-year rain event from a rate perspective; this exceeds our standards. There was also discussion at the last meeting of addressing concerns raised by the adjacent landowners on the 65<sup>th</sup> Street/TH 3 road project. That project is still on-going, and the City has a plan of action to address the erosion-related concerns once we have the proper weather conditions. Engineering staff believes that is a separate issue and should not weigh heavily on the decision on this preliminary plat. The current proposal as modified by the developer exceeds the requirements from an engineering perspective and the Engineering Division recommends approval of the preliminary plat.

Commissioner Simon asked who would be responsible for the infiltration basins once the developer leaves.

Mr. Kaldunski replied that the City would continue its longstanding practice of asking developers in the Northwest Area to give those land bodies to the City as outlots as part of the preliminary plat.

The City then becomes responsible for retaining those regional basins. Homeowner associations, or things of that nature, would then become responsible for infiltration basins, rain gardens, and treatment features outside or in the upper stream areas of the regional basins.

Commissioner Simon asked if the calculations for impervious surface were based on the original plan rather than the flexibilities they may be asking for in the future (i.e. pool, deck, etc.).

Mr. Hunting replied that his understanding was that the proposed stormwater plan included future features up to 30%. It does not cover anyone coming in later requesting a conditional use permit for additional impervious surface.

Commissioner Simon asked for more information on the proposed berm south of the Lojovich property.

Mr. Kaldunski replied that the developer is planning on building that berm.

Commissioner Scales asked if the building of that berm would help them get to the 100-year rain event.

Mr. Kaldunski replied in the affirmative, stating that the neighbors' house is above the top of that berm.

Commissioner Simon asked for clarification of proposed street widths.

Mr. Hunting replied that Street 1 would be a 60-foot right-of-way and Streets 2, 3, and 4 would be a 50-foot right-of-way.

Commissioner Simon asked for clarification that the modified plans were referenced in the conditions of the preliminary plat.

Mr. Kaldunski replied that the correct date of May 15, 2019 was listed in the conditions.

Commissioner Weber asked what the height was of the proposed berm and would it negatively impact the property to the north.

Mr. Kaldunski stated his understanding was there would not be any standing water on the neighboring property as a result of the berm, but that would be part of their final submittal.

### **Opening of Public Hearing**

Pat Hiller, Source Land Capital, 10739 Allison Way, introduced his team and advised they were available to answer any questions. Regarding the berm, Mr. Hiller advised that it would be higher than the outlet structure as an extra layer of protection. Any water that could accumulate on the north side of the berm would go through a drain with a check valve back into the pond. It would stay entirely on the Windsor Ridge site and should not impact the Lojovich site. They have also redesigned the outlet control structure that feeds the culvert located under TH 3 and will hold a 100-year rain event on the Windsor Ridge site. The design also features a weir and a gate valve that will be used in extreme situations if the pond level ever needed to be reduced. He advised the reason they are asking for 50% tree removal is because after having lowland basins set aside for storm ponding, meeting the 20% open space requirement with 75% of it being contiguous, and the 2 unit per acre density, it is physically impossible to cut down only 30% of the trees on this site. Allowing 50% tree removal would still be a significant financial burden related to this project. The stormwater analysis assumes that each lot has 30% hardcover even though that will not be the case. At the last meeting there was also a comment about Street 1 not exiting the site at a 90-

degree angle. He explained that it was designed that way so as to wrap around the existing basin. The concern was the 12-foot difference in elevation between the road and the property line. He stated a huge amount of fill will be needed and raising the road up would only create more of a problem.

Commissioner Simon asked about the property in the southeast corner of Windsor Ridge labeled undisturbed that appeared to be disturbed.

Mr. Hiller explained that the City purchased the basin in the southeast corner of Windsor Ridge from Source Land Capital. The agreement was that in return for them selling the property to the City, Source Land Capital would be able to use that in their calculations.

Commissioner Simon stated it looked like more land had been cleared in and around that basin, and she asked if it would be seeded or sodded.

Mr. Hiller replied that they had not touched anything out there yet and that the question would have to be directed to Mr. Kaldunski since it was related to a City project.

Commissioner Robertson commended the applicant on specifically addressing their concerns so quickly.

Brad Lojovich, 6385 South Robert Trail, questioned why this project would be considered with all the flexibilities needed, stating there was plenty of available flat land on the east side of Highway 52. He was opposed to the proposed berm, stating they already took land on the east side of his parcel and came in with a 1:4 slope into his garden. When it rains he now has a big puddle because they did not make it wide enough. He questioned what would happen in the winter when the berm is full of water and it freezes and backs up onto his property. He would prefer they dig down deeper and make a pond rather than constructing a berm. He was concerned about mosquitos that will be breeding in the ponds. He stated silt removal is needed on the west side of TH 3 as water no longer filtrates into the ground like it used to. He feels the project is poorly planned and he believes there will be water backing up into the culvert going under TH 3 and he's concerned it will either go to his yard or out the storm drain into the front of his driveway.

Bruce Tiemann, 6308 South Robert Trail, lives across from the proposed development. Last year, as part of the 65<sup>th</sup> Street project, most of the trees were removed on his property along TH 3 and now the applicants are proposing to construct a 20-foot wall across the street from him which will include the removal of those trees as well. As part of the TH 3 project tons of sediment came onto his property, buried his gardens, and flooded his pasture. He is concerned about the additional water that will impact him once this development is built and impervious surface is increased.

Bill Nichols, 6302 South Robert Trail, lives across from the proposed development and respectfully disagrees with staff telling the neighbors to stay calm while millions of gallons of water flood their land. He disagrees with the City Engineer's statement that water always runs downhill, and we can move water to the next property owner. The issue is that Barr Engineering based their calculations on existing conditions today; however, what exists today is broken due to the TH 3 project. They also based their calculations off the elevation of the new pipe, and he disagreed with the City Engineer's statement that the old pipe has been in the ground since 1936, stating it was extended and replaced twice because it did not meet MNDOT standards. He never had water coming to his side of the road prior to the TH 3 project so Barr Engineering should not be using that as their starting point. Also, the plans show four storm drains; however, there are actually eight that drain to his land and he started out with none. He questioned whether Barr's calculations included the 500 feet of road that is now coming to his property from the outlet near the berm. He advised that his engineer will not be back in town until tomorrow and he would like to have the time for him to

review this. The six acres of land that used to infiltrate into the ground on the east side of TH 3 now runs to his property through the culvert. He is very frustrated and would like them to dig down to the sand vein so the land functions properly. He is trusting that the City will fix his land at some point. He does not believe there will be no discharge onto this property.

Mr. Tiemann stated that in the 30 years he has lived in his home he has never seen the pasture flood like it did this spring after the TH 3 project.

Commissioner Simon asked if he lived there in 1987 when they got 12 inches of rain.

Mr. Tiemann replied he did not.

Mr. Lojovich replied that he lived in his home in 1987 and the water only stood for a day and did not reach his property. With the drain getting plugged now his whole yard would have been flooded.

Commissioner Scales closed the public hearing.

### **Planning Commission Discussion**

Commissioner Weber asked for clarification of whether the regional basin in the middle of Windsor Ridge was shrinking in size compared to what is currently there.

Mr. Kaldunski explained that what he was seeing on the drawing was the watershed that drains to that wetland.

Commissioner Robertson stated she heard the concerns from the neighbors and also how the various engineers believe this will play out. In her opinion it was the Planning Commission's responsibility to take the information they have and move it forward. If the City Council chooses to, they can request additional data. Based on that she supported approval of the request.

### **Planning Commission Recommendation**

Motion by Commissioner Robertson, second by Commissioner Kramer, to approve the request for a rezoning of the property from A, Agricultural to R-1C/PUD, a preliminary plat for a 66-lot subdivision to be known as Windsor Ridge, and a preliminary PUD development plan for 66 single-family homes on 30.25 acres, for property located at 6477 South Robert Trail, with the conditions listed in the report.

Commissioner Niemioja felt for the neighboring property owners and agreed that giving up heritage trees was difficult, but also acknowledged the challenging topography and water concerns. She was leaning toward approval as she did not necessarily feel the stormwater issues the neighbors are experiencing should fall on the shoulders of the applicant. Development is very important to our community and she believes the property owners have the right to move forward with their request as long as the other property owners are taken care of. If additional information becomes available between now and the Council meeting City Council can take it into consideration when making their decision.

Commissioner Weber asked if Commissioners could add a condition that Mr. Nichols' engineering report be received by the City Council prior to their voting.

Mr. Hunting stated that staff would provide the engineering report/comments if received by Mr. Nichols' prior to the meeting.

Commissioner Niemioja stated that Council would likely automatically accept the report.

Motion carried (8/0). This item goes to City Council on May 28, 2019.

### **CHS – CASE NO. 19-19IUP and 19-20IUP**

#### **Reading of Notice**

Commissioner Simon read the public hearing notice to consider the request for an interim use permit to allow a park-and-ride facility, for the property located at 5869 Babcock Trail and 8055 Barbara Avenue. 47 notices were mailed for Case No. 19-19IUP and 18 notices were mailed for Case No. 19-20IUP.

#### **Presentation of Request**

Heather Botten, Associate Planner, explained the request as detailed in the report. She advised that CHS recently received approval to construct a new parking deck. This project will temporarily displace 495 existing parking stalls. The applicant is requesting an interim use permit to allow temporary park-and-ride facilities to be located at two sites in Inver Grove Heights from June-September 2019. The first is at Salem Hills Elementary School at 5869 Babcock Trail and there would be 75 total spaces at three sites at the school. The parking would be only until September and would not overlap the school year. The second site would be at the VMCC at 8055 Barbara Avenue where there would be 100 parking spaces. CHS would have a shuttle that would transport employees from the parking facilities to their site. The spaces would be utilized from 7 AM – 6 PM Monday-Friday. The two properties have existing impervious surface that the temporary parking facilities would be using so there would be no site improvements proposed. Staff recommends approval of the request with the conditions listed in the report with the added condition that the parking facility is allowed to operate during the hours of 7 AM-6 PM, Monday-Friday. Staff heard from one of the neighboring property owners at the school site with general questions about the request. Commissioners also received a letter from two of the neighbors across from VMCC that had concerns about the added noise and traffic along 80<sup>th</sup> Street. They also feel there are other sites that could have been considered closer to the CHS facility.

Commissioner Niemioja asked if Site 3 at Salem Hills School was currently grass.

Ms. Botten replied her understanding was that it was dirt, which is considered impervious surface.

Commissioner Niemioja asked if the parking would be on the listed sites, not the back corner of the property.

Ms. Botten replied in the affirmative, stating they would utilize Sites 1, 2 and 3. Salem Hills School would be a secondary site; however, as they would first request everyone to use the VMCC site.

Commissioner Robertson asked how many people they anticipated using the shuttle buses.

#### **Opening of Public Hearing**

Ian Ellis, CHS, 5500 Cenex Drive, advised he was available to answer any questions.

Commissioner Scales asked the applicant if he read and understood the report.

Mr. Ellis replied in the affirmative. He advised that in addition the temporary parking, CHS was increasing the number of people who work remotely and paying for Uber rides for some nearby employees. He stated most employees would come to CHS via Hwy 52, realize there were no parking spots, then head down Hwy 52 to the VMCC. The shuttle would also be using Hwy 52 as it was quicker than coming down Babcock Trail. They are planning on using a 20-passenger shuttle

vehicle but can change to a smaller or larger one if needed.

Commissioner Simon asked when construction of the parking deck was expected to take place.

Mr. Ellis replied it would begin on June 3 and they would get some of the parking back in their lot on September 1.

Commissioner Simon asked if they were expecting to do work over the winter.

Mr. Ellis replied they were not.

Mike Ketterling, 5847 Babcock Trail, stated there was an existing traffic problem with the school and he was concerned that this would exacerbate it. People park in front of his driveway on Babcock Trail while waiting to pick up their kids at 3:00 PM. The school itself has a nice entry/exit but the one leading to Site 3 is difficult to get in and out of.

Commissioner Robertson asked what Mr. Ketterling anticipated being the source of traffic during the summer months when school was out of session.

Mr. Ketterling stated his concern was that CHS employees would sit on Babcock waiting to get in or out in the morning. He does not believe employees would use the VMCC first since Salem Hills School is a more direct route.

Commissioner Niemioja felt it was unlikely that all employees would come to work at the same time. She asked when the current backup took place at the school.

Mr. Ketterling replied the morning traffic was a big issue but 2:55-3:10 PM was the worst.

Erin Staples, 5881 Babcock Trail, stated she had the same concerns as Mr. Ketterling and would prefer they use a different location for their overflow parking. She advised there is a summer program that goes on at the school so there are an additional 130 parents that are dropping off and picking up during the day. She had safety concerns with the additional traffic.

Commissioner Robertson asked if kids were bused to school for the summer program.

Ms. Staples replied that children were driven by their parents rather than by district buses.

Kelly Kayser, 1953 – 59<sup>th</sup> Court, had safety concerns with the proposed parking, stating the school purchased the property where the house was raised with the intent of improving the entrance/exit. That has not happened yet. Traffic is often at a standstill during pick-up/drop-off. The school put up 'No Left Turn' signs during certain periods of time so people use her street as a turnaround. There are also many people in the community that go to the park or playground at the school so there is a fair amount of foot traffic, especially during the summer months. This temporary parking will be an added concern. It will also be aesthetically unappealing as people will likely park wherever as there are no parking lines. She encouraged Commissioners not to let this parking go into the school year because someone will likely get hurt. Since this lot is closer than the VMCC she believes employees will use the school site first rather than as a secondary location.

Mr. Ellis stated their agreement with the school district is they would not allow us to go during the school year. Their intent is to use the VMCC first and not use the school unless they run into a problem. They are not even going to run the shuttle or tell employees it exists unless absolutely necessary.

Commissioner Niemioja hoped CHS was not encouraging its employees to walk to work from the school as there were safety concerns.

Mr. Ellis replied that CHS has specifically asked their employees not to use Babcock for parking because it is a County road with a higher traffic count and no crosswalk.

Commissioner Niemioja asked if there was more parking space anywhere on the CHS property in their area.

Mr. Ellis replied that he has one secret spot for overflow, but he is reserving it for instances where they have too many visitors come in. He does not want to allow parking on the lawn as it would destroy the grass and sprinkler system.

Commissioner Simon suggested using the former Rainbow site for parking.

Mr. Hunting replied that there were two different ownerships there and that a fair amount of it was used during the day by the school.

Commissioner Lissarrague asked who would be responsible for putting in a crosswalk on Babcock.

Mr. Hunting replied Dakota County.

Kathy Unruh, 5888 Babcock Trail, stated she lives directly across from Salem Hills School and she appreciated the installation of the 'No Parking' signs as they used to park on her grass. Her biggest concern is the traffic as she has a hard time getting out of her driveway. She noted that a lot of kids from the apartment buildings on Babcock walk to the school to play basketball, there is a free lunch school program at Salem Hills for part of the summer, and they have a summer daycare program there as well. For nine months out of the year she has to fight the school traffic and she would like to not have to deal with extra traffic the other three months. The extra traffic will also wear out the road sooner which she will be assessed for.

Ms. Staples suggested they check with the movie theater for temporary parking as they are closer to CHS and seem to have open spaces.

Commissioner Scales closed the public hearing.

### **Planning Commission Discussion**

Commissioner Robertson suggested increasing the police presence in the Salem Hills School area during the summer months while the temporary parking is in effect

Commissioner Niemioja questioned whether the 'No Left Turn' signs could be covered up during the summer months as she did not foresee a traffic backup on Babcock for the temporary parking like occurs during the school year where everyone is trying to get in and out of the school at the same time.

### **Planning Commission Recommendation**

Motion by Commissioner Weber, second by Commissioner Niemioja, to approve the request for an interim use permit to allow a park-and-ride facility, for the property located at 5869 Babcock Trail and 8055 Barbara Avenue.

Motion carried (8/0). This item goes to the City Council on May 28, 2019.

## **SCOTT AND KRISTINA GORDEN – CASE NO. 19-18C**

### **Reading of Notice**

Commissioner Simon read the public hearing notice to consider the request for a conditional use permit to exceed the maximum impervious surface allowed on property located at 11640 Aileron Circle. 27 notices were mailed.

### **Presentation of Request**

Allan Hunting, City Planner, explained the request as detailed in the report. He advised that the applicant is proposing to construct a pool and patio space around the pool, which would put them 663 square feet over the maximum allowed. The applicant is applying for a conditional use permit for the additional impervious surface which would be within the additional 10% allowance. Engineering would be working with the applicant on the design and location of a storm water management system to address the additional impervious surface. Staff recommends approval of the request.

### **Opening of Public Hearing**

Scott and Kristina Gorden, 11640 Aileron Circle, advised they were available to answer any questions.

Commissioner Scales asked the applicant if they read and understood the report.

The Gordens replied in the affirmative.

Commissioner Scales closed the public hearing.

### **Planning Commission Recommendation**

Motion by Commissioner Wippermann, second by Commissioner Weber, to approve the request for a conditional use permit to exceed the maximum impervious surface allowed on property located at 11640 Aileron Circle, with the conditions listed in the report.

Motion carried (8/0). This item goes to the City Council on May 28, 2019.

## **JOE PUCEL – CASE NO. 19-17V**

### **Reading of Notice**

Commissioner Simon read the public hearing notice to consider a request for a variance to exceed the maximum size of an accessory structure, for property located at 10423 Amy Court. 9 notices were mailed.

### **Presentation of Request**

Allan Hunting, City Planner, explained the request as detailed in the report. He advised that the applicant is proposing to construct a two-story detached accessory structure. The footprint of the structure would be 1,500 square feet; with the second floor and some dormer space the proposed structure would be 3,126 square feet in size whereas 1,600 square feet is the maximum allowed. The lot has steep topography and the proposed garage would essentially be a two-story walkout and would limit the amount of disturbance and tree removal. Staff recommends denial based on lack of a practical difficulty.

Commissioner Scales asked if there was a reason the square footage of both floors was counted.

Mr. Hunting replied that Council wanted size to be based on gross square footage so as to avoid

massive two-story buildings.

Commissioner Scales asked when that was put in place as he recalled other two-story garages in which that calculation was not used.

Mr. Hunting replied that has always been used. He added that attic space within a roof peak is not counted, but in this case there are two full-story walls.

Commissioner Robertson commented that unique topography was irrelevant because the maximum size structure could be built and the size would be the same whether it was built on a flat pasture or steep slopes. She questioned whether the many trees with red ribbons were slated for removal.

Commissioner Lissarrague stated this was a similar situation to a recent request for a two-story accessory structure. The previous request was for a lot under five acres whereas this one was four acres.

Commissioner Niemioja asked what the maximum allowed would be on a lot five acres or larger.

Mr. Hunting replied 2,400 square feet.

Commissioner Simon asked if this would comply if they shifted the dormers.

Mr. Hunting replied it would not as they would still have two full stories of 1,500 square feet each.

### **Opening of Public Hearing**

Joe Pucel, 10423 Amy Court, advised he was available to answer any questions.

Commissioner Scales asked the applicant if he read and understood the report.

Mr. Pucel replied in the affirmative. He stated the main reason for this construction design was to minimize the impact to the environment. He advised that a 1,600 square foot building pad would require massive retaining walls, extensive tree removal, and much more impact to the neighbors relative to what they would see in terms of structure. He advised that if he attached the garage to his house there would be no size limitation; however, the topography makes it challenging to get utility equipment in and his well stem would be right in front of the garage door. He advised that the trees with flags that were previously referenced by Commissioner Robertson were ones that could potentially be removed if he moved forward with the project.

Commissioner Scales closed the public hearing.

### **Planning Commission Discussion**

Commissioner Scales stated it was a good plan for the yard and the neighborhood, but he could not come up with a practical difficulty. He hoped that City Council would take a good look at it and consider approval.

Commissioner Robertson stated she was mostly concerned about the precedent this would set, in addition to the request not meeting the variance criteria.

Commissioner Scales stated he would like to understand the reasoning behind counting the second story as it did not add imperious surface which is the most common concern.

Commissioner Lissarrague agreed with Commissioner Scales, stating there are areas in the City

where this would work.

Commissioner Niemioja agreed with her fellow commissioners and could not find a practical difficulty.

Commissioner Weber did not see the basement as an addition as it did not impact the neighboring landowners. He suggested the practical difficulty could be the access to Mr. Pucel's well being cut off if he attached the garage.

### **Planning Commission Recommendation**

Motion by Commissioner Robertson, second by Commissioner Niemioja, to deny the request for a variance to exceed the maximum size of an accessory structure, for property located at 10423 Amy Court, based on the reasons listed in the report.

Motion carried (7/0 with one abstention - Weber). This item goes to the City Council on June 10, 2019.

## **MARK ENGEN – CASE NO. 19-13ZA**

### **Reading of Notice**

Commissioner Simon read the public hearing notice to consider a request for an ordinance amendment allowing contractor's shop – indoor in an E-1, Estate Residential and A, Agricultural zoning district as a conditional use. No notices were mailed.

### **Presentation of Request**

Heather Botten, Associate Planner, explained the request as detailed in the report. She advised that the request is to amend the zoning ordinance to allow indoor storage of tree trimming and removal equipment on residential property. Currently the zoning code considers this type of use a contractor shop indoor which is a permitted use only in the I-1 and I-2 industrial zoning districts. A contractor's shop is currently prohibited in residential districts. This ordinance amendment would not allow for landscaping businesses or similar uses to fall under this category and no outdoor storage would be allowed on the residential property. If approved, should a tree trimming business be allowed as an accessory use or a conditional use? A conditional use would require neighbor notification and a public hearing. If this use is approved, staff would suggest a minimum lot size of 2.5 acres so as to minimize negative impacts to the neighboring properties. Also, what should the setback requirements be as setbacks are different in the residential and industrial districts. If this was approved it would seem reasonable to impose the same impervious surface and accessory structure size and number requirements that you would typically see in a residential district. Converting an accessory building into business storage could result in more vehicles, toys and yard equipment being parked outside. The City's comprehensive plan defines the rural density residential district as a category that features lots 2.5 acres or more containing detached single-family housing without public water or sanitary sewer facilities. In addition to housing units, lots in this area are likely to have accessory uses such as small storage buildings associated with hobby farms or other related uses. There are 16 policies guiding rural districts; the ones most relevant include maintaining the rural character of established neighborhoods, discouraging non-residential and/or non-local traffic on local streets, and prohibiting commercial or industrial uses. Staff recommends denial of the request based on the inconsistency with the policies in the comprehensive plan, lack of tax base, the belief that industrial uses should be located in commercial industrial districts, and the concern of the amendment being misconstrued to allow landscape or other type of contractors yard businesses in accessory buildings. If the Planning Commission supports the request there are two options listed in the report: Option 1 is the one presented by the applicant and Option 2 is for the use to be a conditional use with the eight

conditions listed.

Commissioner Kramer asked if they could look at something for this specific property rather than changing the entire zoning code.

Ms. Botten advised they could not get a variance for this as it was for a use that was not allowed on residential property.

Commissioner Simon asked if an interim use permit or conditional use permit would be possible.

Ms. Botten replied that Commissioners could recommend it be allowed by conditional use permit; however, that would open it up for all lots in that district that fit the criteria.

Commissioner Weber questioned whether they could amend the home occupation regulations to allow storage of this equipment in a detached structure versus being so specific with tree trimming.

Ms. Botten replied that would open it up to all home businesses being allowed in accessory buildings.

Commissioner Weber suggested requiring that the equipment be stored inside of the structure, it was only the landowner using it, and it was being brought offsite.

Commissioner Simon stated they would then be running a business out of the building.

Commissioner Weber stated it was common for real estate and insurance agents and other people to run their business out of their home; the only difference is they are not getting caught because they are not dragging a trailer out of their garage. He does not see any difference between Mr. Engen dragging a piece of equipment out of his garage and a homeowner dragging his boat out of his garage every day to go fishing.

Commissioner Simon stated that tree trimming would likely be heavier equipment which impacts the roads and the neighbors.

Commissioner Weber commented that many boats were heavy as well.

Commissioner Niemioja stated there would be traffic impacts also.

Commissioner Weber replied that lawyers, insurance agents, etc. operating out of their homes also generate traffic. In this case it was unlikely that customers would come to Mr. Engen's home to get their trees trimmed. He would like to find a way for this to be allowed without having to be so specific to tree trimming, because there are currently businesses being run out of homes all over the city.

Commissioner Robertson was concerned about the precedent it would set to allow a business to come in with a specific set of needs and request a zoning change specific to those needs. She suggested that more research be done before doing this for one specific occupation.

Ms. Botten clarified that home occupations are allowed in the city as long as they are conducted entirely within the dwelling and not in attached or detached accessory structures.

Commissioner Robertson stated in her opinion if the code is amended it should not be based on one specific person coming in with one specific occupation.

### **Opening of Public Hearing**

Mark Engen, 9255 Courthouse Boulevard, advised he was available to answer any questions.

Commissioner Scales asked the applicant if he read and understood the report.

Mr. Engen replied in the affirmative. He advised that he has two lifts, weighing only 4,000-5,000 pounds. They are not just for tree trimming and often will stay offsite for a number of days. He started his business in South St. Paul and Code Enforcement said they had no issue with that as long as he kept his equipment in his garage. When he bought his home in Inver Grove Heights he was unaware of the ordinance and assumed it would be the same as South St. Paul. His lifts run off either a Honda generator (which is quiet) or lithium pack batteries, which need to be kept warm. He questioned how noise could be considered an issue since he lives across the street from the new fire station and Highway 52/55. As far as traffic is concerned, he leaves once a day and comes back once a day. He stated most of the tree companies in the area use his services as he has the only lift that can get through a 34-inch gate.

Commissioner Lissarrague asked the applicant how long he had lived in Inver Grove Heights.

Mr. Engen replied two and a half years.

Commissioner Lissarrague asked the applicant if he just found out about the code recently.

Mr. Engen replied the first time he knew of it was when the Code Enforcement Specialist saw him driving his equipment out of his driveway. He stated there were many other business owners in town storing equipment in their garages.

Vance Grannis, 9249 Barnes Way, stated the best way to rectify this situation would be to interpret the code correctly. If we were to use the interpretation as presented it would mean that if a painting contractor had a pickup truck with a couple ladders on it and some paint brushes in it parked in his garage he would be in violation of the ordinance. If we were to use staff's interpretation there would be people all over the city that would be technically in violation. The draft ordinance amendment they are proposing would allow Mr. Engen to continue his business without having to fight the battle as to all these other interpretations. The way the amendment is worded most people could not do it on their property. Mr. Engen's equipment is simply being stored in a building and removed from that building to go to somebody else's property to do the work there. He encouraged Commissioners to recommend approval of the proposed amendment and/or recommend to City Council that this not be a violation to store equipment in your garage.

Commissioner Lissarrague asked how this would have been handled when he was a Councilman.

Mr. Grannis replied that it would not have come up because they did not do silly things like this.

Grant Pylkas, 1885 – 96<sup>th</sup> Street, stated he did not know Mr. Engen but believed this whole situation was ridiculous, and that anyone so much as having a screwdriver or tool in their car and doing anything commercial in any way under this interpretation could be charged with the same violation. There is nothing illegal or immoral about a person storing a piece of equipment in his garage and it does not violate any law. Everyone in the community has at one time or another had a computer, or other instrument used in the way they make a living, in their car while it is parked in the garage. This is micromanagement. He encouraged Commissioners to pass the proposed ordinance amendment to get Mr. Engen off the hook and force City Council to review this.

Stephanie Engen, 9255 Courthouse Boulevard, stated had they known they were not allowed to keep their equipment in their garage they never would have moved from South St. Paul. They do

not have junk laying around and keep the equipment in their garage.

Commissioner Weber asked the applicant if he saw the staff conditions for Option 2.

Mr. Engen replied that he had not.

Commissioner Weber read the conditions listed in the report and asked Mr. Engen if he understood and could meet the conditions. The conditions related to a 2.5 acre minimum, inside storage only, no outdoor storage related to business, engaged only by person residing in the dwelling, no retail sales, compliance with E-1 standards for maximum amount and size of accessory buildings and impervious surface, hours of operation between 7 AM and 7 PM, and no landscaping or similar businesses allowed.

Mr. Engen replied that he could comply with all conditions.

Ms. Botten noted that at the next Planning Commission meeting Mr. Engen will be requesting a conditional use permit and variance related to impervious surface and number of accessory structures unrelated to this business.

Commissioner Weber asked if the impervious surface was added.

Ms. Botten replied in the affirmative, stating the property was in compliance prior to the Engen's purchasing the property.

Commissioner Robertson asked if the impervious surface and accessory structures they would be discussing at their next meeting was already in place, making it similar to an after-the-fact request.

Ms. Botten replied in the affirmative.

Mr. Engen explained that he replaced the existing blacktop with concrete, and filled in a small area, and was unaware he had gone over the maximum impervious allowed.

Commissioner Robertson asked the applicant at what point he became aware that it would have been wise to check with the City prior to acting on some of these things.

Mr. Engen stated he was told by some people in the concrete business that he did not need a permit to replace blacktop with concrete. He also did not realize that making a fire pit area would negatively affect his impervious surface maximum.

Commissioner Scales closed the public hearing.

### **Planning Commission Discussion**

Commissioner Scales stated he gets uncomfortable when the City starts trying to limit small businesses, stating many of them start out of their garages. Mr. Grannis and Mr. Pylkas brought up good points in that every painter or mechanic that takes an item out of his truck would be violating the code. He would prefer to find a different way to handle this situation.

Commissioner Niemioja stated that ignorance of the code requirements is no excuse; however, she does not think storing your things is wrong. If they have to amend the ordinance she will but she does not think it's necessary.

Ms. Botten asked if Commissioners were suggesting the home occupation ordinance be amended to remove the criteria that you are not allowed to have a home business in an accessory building.

Commissioner Niemioja does not think storing a piece of a vehicle is having a home business in an accessory building.

Commissioner Scales asked how a painter parking his truck in his garage would be different from Mr. Engen's situation.

Ms. Botten stated that City Code allows residents to have one commercially licensed vehicle not over one ton parked at the residence, so that protects the painter or mechanic examples brought up earlier.

**Planning Commission Recommendation**

Motion by Commissioner Kramer to approve the request for an ordinance amendment to allow indoor storage of a tree trimming and removal business in an E-1, Estate Residential zoning district as a conditional use, with the conditions listed in Option 2. He also recommended that City Council consider revising this ordinance.

Commissioner Robertson noticed a bit of reticence on the part of the applicant to some of the conditions in Option 2 and questioned whether they should restate the conditions to the applicant.

Commissioner Weber stated the applicant would simply have to meet the conditions.

Second by Commissioner Weber.

Motion carried (4/1 with three abstentions – Robertson, Simon, and Lissarrague due to this being an after-the-fact request). This item goes to the City Council on June 10, 2019.

The meeting was unanimously adjourned at 9:29 p.m.

Respectfully submitted,

Kim Fox  
Recording Secretary