

**City of Cottage Grove  
Planning Commission  
September 22, 2003**

Pursuant to due call and notice thereof, a regular meeting of the Planning Commission was duly held at City Hall, 7516 – 80th Street South, Cottage Grove, Minnesota on the 22nd day of September 2003 in the Council Chambers and telecast on local Government Cable Channel 16.

**Call to Order**

Chairperson Bailey called the meeting to order at 7:00 p.m.

**Roll Call**

Members Present: Myron Bailey, Tim Booth, Ken Brittain, Rod Hale, Robert Hudnut, David Lassen, Chris Reese, Bob Severson, Chris Willhite

Staff Present: Kim Lindquist, Community Development Director  
John McCool, Senior Planner

Others Present: Pat Rice, Councilmember  
Corrine Thomson, City Attorney

**Approval of Agenda**

*Hale made a motion to approve the agenda. Severson seconded. Motion carried unanimously.*

**Open Forum**

Chairperson Bailey asked if anyone wished to address the Planning Commission on any non-agenda item. No one spoke.

**Chair's Explanation of the Public Hearing Process**

Chairperson Bailey explained the purpose of the Planning Commission, which serves in an advisory capacity to the City Council, and the City Council makes all final decisions. In addition, he explained the process of conducting a public hearing and requested that any person wishing to speak should come to the microphone and state their full name and address for the public record.

**Public Hearings**

**6.1 CASE V03-045**

**Darrel and Iris Johnson have applied for a variance to allow a density transfer at 9255 Military Road South.**

McCool summarized the staff report and recommended approval based on the findings of fact and subject to the conditions stipulated in the staff report.

Severson asked if that was the only parcel in that area which could get a density transfer. McCool responded yes, noting that the other three parcels have been built on.

Hale asked about the area that the South Washington Watershed District (SWWD) is interested in reserving for watershed overflow. McCool stated that the normal water storage on the parcel would only be for that area below the 906 elevation, which is located in the south-east corner of the property. Hale asked if the future home would have to be three feet above ground level. McCool responded that the city requires a minimum two-foot elevation above the high water elevation. Hale then asked if the Watershed District had acquired that property or drainage easement yet. McCool stated that the SWWD has not acquired any portion of the property or drainage easement, but they have talked with the property owners. Hale asked if the city is restricting the building use on that portion designated by the Watershed District. McCool responded yes, and that in this particular case there is a 100-foot setback requirement on the rear lot line where most of the easement would be located.

Bailey asked what the difference was between conditions #6 and #7. McCool responded that it is just a duplication and condition #7 should be deleted.

Darrel Johnson, 9255 Military Road South, stated that the portion of the property proposed for the house is high enough above the water level. He then stated that he has not yet been contacted by the Watershed District, but the area has been staked. McCool stated that is what he understands from Matt Moore of the Watershed District.

Bailey asked if the proposed house would be prohibited from locating in those areas reserved for watershed overflow. McCool responded that is correct.

Booth asked if there is an easement, would the parcel still be considered buildable as far as the overall acreage. McCool responded yes, and explained that the parcel is about 3.8 acres and the easement area consists of about a half acre.

***Bailey opened the public hearing. No one spoke. Bailey closed the public hearing.***

***Hudnut made a motion to approve the application subject to the conditions listed below. Willhite seconded.***

- 1. A building permit application and all required construction information must be filed with the Building Division and a building permit must be issued prior to construction of the new single family residential unit.***
- 2. A soil boring and percolation test shall be filed with and approved by Washington County prior to construction of the new single family residential unit.***
- 3. A drive access permit shall be filed with and approved by Washington County prior to construction of the new single family residential unit.***

- 4. The lowest floor elevation of the new single family residential unit shall be no lower than three feet above the maximum high water level of CDP86S.**
- 5. If the required park dedication fee of \$275.00 per lot was not paid to the city prior to recording of the final plat, then the dedication shall be paid at the rate current at time of building permit application.**
- 6. The rural friendly surface water area charge payment of \$1,189.89 shall be paid prior to the issuance of the building permit. The balance of the required area charge shall be required upon future subdivision of the property, and at the rate applicable at the time of development.**

***Motion passed unanimously.***

## **6.2 CASE V03-040**

**Richard Voita and Linda Strachota, 7733 Inskip Trail South, have applied for a variance to City Code Title 11-3-3C, Accessory Structure Setbacks, to allow construction of a 240 square foot accessory structure 5.5 feet from the side property line when 6 feet is required and 5.5 feet from the rear property line when 10 feet is required.**

McCool summarized the staff report and recommended denial based on the findings of fact listed in the staff report.

Willhite noted that the diagram in the packet shows the front of the shed is 12 feet from the rear property line and only the back of the shed is too close. McCool responded that what is measured is the closest part of the structure to the property line.

Richard Voita, 7733 Inskip Trail South, stated that in addition to the signatures in the packet, eight more neighbors signed letters stating that they don't object to the shed location. He explained that when he constructed the shed, he dug down eight inches, put down class V gravel, placed 6 X 6 timbers on top of the gravel, and put the frame on top of that. He stated that it would be difficult to move the building. He then explained that there are no drainage easements near the structure. Voita displayed a picture of what the shed would look like when it is completed and pictures of the construction process. He also displayed a photograph of the shed that shows a tree on the left side in front of the structure, which had some bearing on its location.

Severson asked about the height of the building. Voita responded that the shed is 12 feet by 20 feet and 10 feet tall. Severson asked how he planned to use the space behind the building. Voita stated that he was going to put in raised beds for vegetable gardens.

***Bailey opened the public hearing. No one spoke. Bailey closed the public hearing.***

***Willhite made a motion to approve the variance based on the findings of fact in the staff report. Hale seconded.***

Hudnut stated that he went over to the property and was extremely impressed with the yard. He feels an honest mistake was made by not getting a building permit. He noted that it is a feather in the cap of Cottage Grove that a domicile in the city has been featured in three major magazines. He was also impressed that all the neighbors are okay with the location of the shed. Lastly, he feels it would be a considerable hardship to move the shed because it would interrupt the flow of the beautiful yard.

Severson asked if there are any issues related to safety or utilities. McCool responded that there would not be any effect to the existing utilities in the area. Voita stated that all the utilities are underground. Severson asked if since this lot went was developed, if there have been any changes in setbacks for accessory structures. McCool responded that there have been changes to the minimum setbacks for rear and side yards since the lot was created in the 1970s. Severson stated that if this application is approved, there needs to be conditions of approval and findings of fact. Bailey suggested to Willhite and Hale that if the Commission votes to approve the variance application, the findings of fact in the staff report be included in their motion. Hale suggested adding a sixth finding of fact that only a portion of the structure does not meet setback requirements. Severson stated that another point might be that setbacks were less at the time the lot was created.

Hale asked staff if a building permit would be required since the structure has already been built, and if there would be a penalty because of their failure to get a permit. McCool stated that a building permit would still be required and the permit fee would be doubled.

Bailey asked Willhite if she accepted the sixth finding of fact. Willhite agreed, as only a small portion of the structure is out of compliance.

Booth asked if the shape or topographical conditions of the parcel are a special hardship. Willhite stated that the property does slope, especially with the way the landscaping was done.

Lassen stated that he believes that the unique hardships are addressed in the second half of the first criteria for granting a variance, that there are unique conditions that apply to the structure or land in question that do not apply generally to other structures or land in the same zoning district. The Planning Commission concurred.

Brittain stated that other citizens of the community have told him that they are unaware of the requirements for getting a building permit, and asked if the city could educate the community on these issues. McCool stated that the city has put several articles in the Cottage Grove Reports regarding building permits and there is also information on the city's web site.

***Motion passed unanimously.***

### **6.3 CASES CUP03-042 and V03-043**

**Verizon Wireless has applied for a conditional use permit to allow the installation of a monopole at the Cottage Grove Public Works facility at 8635 West Point Douglas Road South and a variance to Title 11-4-7D(4) to allow the monopole to be setback 34 feet from**

**the west property line and 107 feet from the south property line when a 327-foot setback from all property lines is required.**

McCool summarized the staff report and recommended approval subject to the conditions stipulated in the staff report.

Severson asked if the city would receive lease payments from Verizon. McCool responded yes.

Hudnut asked if there are other wireless companies that want to locate their monopoles in Cottage Grove. McCool responded that staff has not heard of any recently, but several antennas have been approved and constructed throughout the city, of which the majority are mounted on existing water towers.

Brittain asked about the antenna located at County Road 19 and 70th Street. McCool responded that that property is owned by Tom Goebel and the 150-foot monopole was approved by the Planning Commission and City Council about a year ago. Brittain then asked about the properties that abut the Public Works property where variances are needed. McCool responded the property on the west side is Acorn Mini-storage and the property to the south is located near the railroad tracks and a wetland that exists on 3M's property. Brittain asked if there would be anything constructed in those areas. McCool responded that Acorn Mini-storage is expanding their facility on the west end of the property, but won't be impacted by the monopole. Brittain asked why monopoles have to be setback three feet for every foot in height. McCool responded that the setback requirements are to place the structures away from the property lines.

McCool displayed Verizon's coverage maps showing the current and future coverage areas within the city.

Hale asked if the building would be located in a secure area of the Public Works facility. McCool responded yes. Hale then asked if the lease gives the city permission to erect a siren or other antennas on the monopole. McCool responded that Harry Taylor from Public Works is working with the city attorney in preparing the lease agreement and that is one of the issues they will be discussing. Hale asked if a condition of approval could be added that the city would be allowed to place a public safety antenna and siren on the monopole. McCool stated that would be part of the lease agreement.

Roger Bromander, Buell Consulting, representing Verizon Wireless, stated that the monopole would be 109 feet tall with a lightning rod on top and designed for at least two other users besides Verizon, and the 12-foot by 30-foot building would be designed to match the Public Works building. He explained that the monopole and the air conditioning end of the building would be enclosed with a six-foot high chain link fence, and the monopole would be painted the same color as the water towers in the city. He stated that the monopole would be located in an industrial area and will be clustered with other public utility uses. Bromander explained that the reason for their variance request is that Public Works wanted the pole and building to be located out of their driving lanes and fueling areas. He stated that they looked at other sites in the area, but those sites would not work. He then stated that they had contacted 3M and UpNorth Plastics about erecting a monopole on their properties or placing an

antenna on a building, but those companies were not interested. He further explained that the monopole on Kimbro is too far out of range for the coverage area they wanted to improve.

Hudnut asked if the map shows the entire coverage from that one monopole and what the radius of coverage would be. Bromander stated that the radius is about a half mile to one mile. He explained that monopoles work in a grid system so they need to be located certain distances from each other.

Severson asked how many towers are currently located in Cottage Grove. McCool responded that there are antennas mounted on four water towers and there four freestanding monopole structures. Severson asked if the map shows a composite coverage of all these antennas. McCool stated that the illustration shows only Verizon Wireless's coverage area and does not include the other wireless companies. Severson asked if the city has a conceptual plan for coverage by the various wireless companies and how many towers and antennas could be scattered throughout the city to provide that capability.

Hale asked if there is legislation requiring wireless carriers to cooperate with each other to minimize the number of towers necessary in an area. McCool responded yes and the city's ordinance requires co-location of antennas on monopoles. Hale asked how many antennas could be located on the proposed tower. Bromander responded that it was designed for two other users. Hale asked if one of those users would be the City. McCool that it could be. Hale reiterated that he would like to add a condition of approval requiring that one of the users would be the City of Cottage Grove. McCool responded that this would be included in the lease agreement. Hale stated again that he would like that stipulation added as a condition of approval. Lindquist responded that the conditional use permit application would not be taken to the City Council without the lease agreement. She stated that because of federal legislation, the city does not want to unduly restrict these types of uses and the conditional use permit would not be the appropriate location to address that concern, but the lease would outline that information. She stated that staff could forward that concern to the Council, and if the lease did not contain that, the Council could deny the variance.

Brittain asked if the other sites they looked at include existing towers from other companies. Bromander responded that they looked at the tower on Kimbro, which is an Qwest monopole, but it was too far from the area that Verizon is trying to cover. They also looked at the tower outside City Hall, but it does not meet their needs due to its height and structure.

Severson asked for Bromander's definition of who is a user and if the Cottage Grove Police and Fire Departments would be considered a single user or individual users. Bromander responded that a user would be a wireless telecommunications facility and if police and fire were working together, they would be one user.

Booth stated that he would like to see a citywide plan to minimize the number of towers constructed in the city.

Severson stated he would like to ensure that the city has access to the tower for city services.

Hale asked if technology would soon render these poles obsolete. Bromander stated he did not know. Hale stated that he does not want the city to get stuck with these poles if they become obsolete in the near future. Bromander responded that there is usually a provision in the lease that states that the poles needed to be removed if they are not being used.

***Bailey opened the public hearing. No one spoke. Bailey closed the public hearing.***

***Hale made a motion to approve the application subject to the conditions listed below. Hudnut seconded.***

- 1. All applicable electrical and building permits must be obtained prior to commencement of construction.***
- 2. No advertising shall be displayed on the antennas or antenna panels.***
- 3. The applicant enters into an agreement with the City for the leasing of City-owned property for the building, driveway, antenna installation on the Public Works property, and all other pertinent details recommended by the City Attorney.***
- 4. The equipment building shall be constructed with exterior materials and colors that are comparable to existing Public Works' structures.***
- 5. The monopole shall be painted light blue (Tnemec's Cumulus acceptable) and Verizon Wireless is responsible for maintenance of the monopole and equipment building.***
- 6. The City Council approves the lease agreement.***

***Motion passed unanimously.***

#### **6.4 CASE TA03-036 (continued from 8/28/03 meeting)**

**The City of Cottage Grove has applied for a zoning amendment to amend Title 9-8, Sign Ordinance.**

Lindquist summarized the staff report and recommended approval.

Councilmember Rice asked if the signs along Highway 61, which would become non-conforming due to the new height restrictions, were damaged by a storm, would be allowed to be replaced. Lindquist responded that if they were more than 50 percent destroyed, they would need to be rebuilt in compliance with current code requirements. Willhite asked what the height of the tallest sign along Highway 61 was. McCool stated that the Mobil sign was 65 feet tall at one time, for which a conditional use permit was granted. He stated that Perkins and Super 8 Motel also had received conditional use permits for the height of their signs. Willhite asked for an example of a 30-foot sign. McCool responded Applebee's and Country Inn & Suites.

Willhite asked if product advertising on signs would be prohibited, such as at G-Will Liquor. Lindquist responded that reader boards are not allowed in the current ordinance as free-standing signs. Willhite asked about the Walgreen's sign. Lindquist responded that their electronic signs are allowed as long as they don't flash, but technically they would not be able to advertise products, though the Walgreen's sign would be grandfathered in under existing conditions.

Severson asked if digital signs would not be allowed. Lindquist responded that was correct, except to show time and temperature.

Willhite stated that she has a problem with not allowing product advertising, and asked if restaurants would not be allowed to advertise their specials on reader boards as several currently do. Lindquist responded that they could advertise their specials in their windows but not on a freestanding sign; similarly they cannot list the products that they offer on their signs. Lindquist stated that cities typically allow businesses to have their tenant identification and logo, but they cannot list the products that they offer.

Severson stated that the purpose of a sign is to advertise a place of business, but not their products and services.

Willhite stated that in her opinion reader board signs are a good thing and she does not believe that businesses should only be allowed to advertise products and specials in their windows. She also expressed concern that new businesses would not be allowed to have a reader board, which many current businesses have. Bailey stated that typically signs are not the driving force between a business coming into the city or not. He then stated that if allowed, all businesses would put up a reader board.

Hale asked why the term "legal non-conforming" is used and if it should just be "non-conforming." Lindquist responded that legal non-conforming means that it was approved at one time and is grandfathered when the ordinance changed. Corrine Thomson explained that the term "legal non-conforming use" is used to refer to a use that was lawfully established prior to the date that it became nonconforming. An "illegal nonconforming use" was never authorized under the ordinances and would not be grandfathered in and would be required to be removed.

Lindquist explained in reference to Rice's question, a non-conforming sign must be replaced with a conforming sign if the damage is 50 percent of its fair market value, which can be difficult to determine. She explained that when a billboard was damaged along Highway 61, the city determined that it would cost more than 50 percent of the structural value of the sign to repair. However, the court ruled that the fair market value of the sign related to the income generation associated with the sign, which was substantially more than the structure. She does not believe that would apply to the business signs because they don't have the same kind of income stream related to their use. Brittain asked if the language could be changed to "the cost of reconstruction is more than." Thomson responded that a change was made to the corresponding language in Title 11 of the zoning ordinance to add the language "fair market value as determined by the Building Official." Lindquist stated that that language gives the implication that it relates to the structural aspect of the sign.

Hale asked if "Moveable Signs" on page 10 is different than reader board signs. Lindquist responded just in terms of what's displayed, which is limited to only time and temperature. Hale asked if reader boards are permitted. Lindquist stated that a reader board that only displays time and temperature is allowed.

Reese requested that the exception in 9-8-5A(11) on page 10 be made consistent with 9-8-5F(1) on page 11. Lindquist suggested that removing the language in 9-8-5A(11). It was the consensus of the Commission that 9-8-5F(1) would read "Motion signs with the exception of time and temperature information signs and barber poles." Brittain stated that he would like to keep the definition of motion signs that is included in 9-8-5A(11). Lindquist stated that was also included in the definition portion of the ordinance. The consensus of the Commission was to leave the description of motion signs, but remove the second half of the language.

***Bailey opened the public hearing. No one spoke. Bailey closed the public hearing.***

***Brittain made a motion to approve the application as modified. Hudnut seconded. Motion passed on an 8-to-1 vote (Willhite).***

#### **6.5 CASE TA03-037 (continued from 8/28/03 meeting)**

**The City of Cottage Grove has applied for a zoning text amendment to amend Title 11-6-4 to add a requirement for mechanical equipment screening.**

Lindquist summarized the staff report and recommended approval.

Severson asked about the City of Woodbury's response to the survey. Lindquist stated that they did not respond to the survey. Willhite asked if a survey was sent to Hastings. Lindquist stated that the surveys were sent out to most cities in the metropolitan area.

***Bailey opened the public hearing. No one spoke. Bailey closed the public hearing.***

***Severson made a motion to approve the application. Hale seconded. Motion passed on an 8-to-1 vote (Willhite).***

#### **6.6 CASE TA03-044**

**The City of Cottage Grove has applied for a zoning text amendment to amend Title 11-2-6, Appeals, to reduce the time limit for appeals from 90 day to 10 days.**

Lindquist summarized the staff report and recommended approval.

Severson asked if the intent of the ordinance amendment was to start the process earlier. Lindquist responded that was correct.

Willhite asked if this change would be consistent with the time frame that other cities have for appeals. Thompson responded that she did not do a specific survey of other cities, but she believes that this is more consistent with other cities' ordinances than a 90-day appeal period. Willhite stated that while 90 days is lengthy, she feels that 10 days is too short.

Thompson stated that a 10-day appeal period is not extremely short, but the Commission could modify that. She stated that this time period allows two working weeks to decide whether to ask the Planning Commission to review a decision. She explained that a letter is sent to the property owner advising them of the zoning administrator's decision and of the time period for appealing.

Booth asked about the procedure for handling these issues, expressing concern that 10 days to appeal may not give enough time. Lindquist responded that before a decision is made by the zoning administrator, typically correspondence between the city and the other party has occurred over several months. The property owner is informed in writing of the zoning administrator's decision and their right to appeal. Booth asked if that final document includes notification of the appeal process. Lindquist responded yes.

Severson stated that he assumes plenty of time has elapsed between the initial communications and the official letter. Lindquist explained that when the city receives a complaint, it is investigated and the enforcement process is started. This process includes letters and phone calls over several months to try to resolve the situation before the final decision by the zoning administrator is made.

Hale asked if they are notified by certified mail with return receipt. Lindquist responded yes. Hale stated that he is concerned about cutting the time period from 90 days down to 10 days, and he wants to ensure that the property owner gets the full 10 days to appeal. He stated that he is also concerned that they be given time to consult an attorney and asked if 10 days gave them enough time. Lindquist asked if Hale had another suggestion for an appeal deadline. Hale stated that he just wanted to ensure that they had the full 10 working days from the day they receive the notice.

Severson stated that 10 days is tight and maybe could be increased, but he believes that by the time it gets to that point, they have had ample opportunity to consult attorneys and make their decision.

Lassen asked if city staff would have discretion to extend the deadline to appeal upon request. Lindquist responded that could be a concern about equity. She stated that if the Commission is uncomfortable with the proposed 10 working days, they could suggest another deadline, but anything less than 90 days would be an improvement. Bailey suggested tabling this application for additional information.

***Bailey opened the public hearing. No one spoke. Bailey closed the public hearing.***

***Hudnut made a motion to approve the application. Brittain seconded.***

***Hale made a motion to amend the time period from 10 working days to 20 working days. Willhite seconded. The amendment to the original motion failed on a 2-to-7 vote (Hale and Willhite).***

***The original motion approving the proposed 10-working day appeal filing period passed on a 7-to-2 vote (Hale and Willhite).***

## 7.1 APPEAL

**Barrel Reconditioning Industries, 10500 Ideal Avenue South, has filed an appeal to the Zoning Administrator's decision to rescind their conditional use permit for noncompliance with the conditions of approval.**

Bailey explained that the Planning Commission is acting as the Board of Zoning Appeals. He asked that the Board hold all questions until each side has stated their case. Severson asked what options the Board has. Bailey responded that the Board of Zoning Appeals can make a motion to affirm, deny, or modify the Zoning Administrator's decision. Severson asked if the Board could request additional information that may not be available. Bailey responded yes.

Lindquist gave a history of the property and summarized the findings that led to the appeal. She passed out and read a letter prepared by the City Attorney earlier in the day in response a letter received from the applicant's attorney regarding the recollections of past Planning Commissioners.

Jack Clinton, attorney for Barrel Reconditioning Industries, passed out and read from a letter (dated September 22, 2003) by Glen Kleven, who was the Planning Commission Chair when an appeal to re-occupy the property for industrial use was adopted in 1988. Clinton stated that he talked to Steve Ingram, another former Planning Commission member, who indicated that there was discussion at that time regarding trailers being on the site to be used for storage, but the Planning report only referenced the removal of exterior items outside the building. Clinton stated that the first issue he wants to address is the condition that prohibited outside storage, and that it was never the understanding by Barrel Reconditioning that would prohibit trailers on the site. He stated that the parking area was asphalted in 1996 and that they have asked the city where additional blacktop is needed. He stated that he also wants to address accessory uses, noting that as he understands the argument by the city, the accessory uses that were on the site in 1983 are the only accessory uses that can be done on the property. His understanding is that accessory uses are subordinate to and flow from the nonconforming use of the property, which was allowed by the Planning Commission in 1988. He does not understand how the city can now restrict the property's use and not allow accessory uses that are essential and necessary to the operation of the business. Clinton stated that it was clear from the discussions he had with the former Planning Commissioners that the city knew there would be trailers on the property. He noted that the applications in the packet showed that the use to which the property was going to be placed in 1988 was clear and that any accessory use that is necessary to what was allowed as a nonconforming use should be permitted.

Clinton then stated that he only found out recently that there was a complaint made against the property, but he is unsure what that complaint consisted of other than that the complainant stated that Barrel Reconditioning was subletting the property for a trailer repair business. He explained that the only trailer repair occurring on site is by the applicant to ensure that the trailers are in proper working order, and he noted that the trailers are inspected on site by MnDOT.

Walter Ahern, owner of the Barrel Reconditioning property, stated that they refurbish a lot of equipment. He explained that due to the economy, they have not been able to sell many new systems so they are doing more repair work. He explained that when a system comes in to be repaired, refurbished, or redesigned, there are typically 10 to 20 trailers full of equipment. He did note that there are more trailers on the site now than there has ever been. He explained that the reason that the earlier aerial photos, which were taken in April, don't show trailers on the site is because there are none in the spring due to concerns about the trailers sinking in mud after the winter. He stated that they are currently designing a system for a company in Worthington to cut steel drums in half for a cattle feeding operation and they need 15 to 20 trailers to do their testing. He stated that the other trailers on the site contain totes, which is a 250 gallon stainless steel or aluminum container, that are cleaned in Hastings and shipped to Cottage Grove for repair, testing, and modification. They are also doing a system for a Nebraska company for plastic drums, and storing a system for future repair from a company in Fargo. Ahern stated that he employs 12 workers, who are paid well. He reiterated that the trailers are an integral part of the business, and he does not know where else the trailers could be stored.

Bailey asked if the Ahern or Clinton had any other documentation for the Board of Zoning Appeals. Clinton stated that other than the two letters passed out earlier in the meeting, there are no other documents to be submitted.

Severson asked about the status of pavement and what the vehicles are parked on. Clinton replied that the areas in front of the building and on the north side of the building (employee parking) were asphalted. Severson asked what percent of the trailers are parked on paved surfaces. Clinton responded that they are all parked toward the back of the property on gravel. He stated that after the asphalt was inspected, nothing was stated that indicated anything further was required. Willhite asked when the inspection was done. Clinton responded in 1996.

Severson asked if they have just one client at a time or multiple clients. Ahern responded that they have multiple clients.

Hale stated that at times there have been almost 100 trailers on site and asked what the turnover time was for a project. Ahern responded that it could be up to a year. Hale asked why the customer is not asked to hold the material until it can be processed. Ahern responded that they would probably lose the job. He then explained that the reason they had so many trailers on the site was that when they negotiated to buy those trailers, he agreed that they could be stored on the property until the purchase was complete. Ahern then stated that after he received the correspondence from the city regarding the trailers, he was advised to get the number of trailers down to what was actually needed. He stated that he now has only 60 trailers on site, which would be the maximum they would have. Hale asked if there would always be 60 trailers on site and if there would be turnover. Ahern responded that there would be turnover about every six to seven months. He then stated that they also consolidated and put the trailers back to back and closer together. Hale stated most businesses have semi-trailers coming in and out with deliveries and pick-ups, but his concern is the long-term storage of the trailers. Hale asked Ahern if they could build a storage facility instead of using the trailers. Ahern responded that there can be no further expansion on the

site. He again stated that he needs the trailers to operate his business, but would not be opposed to setting a timeframe for removal.

Severson asked if there could be a separate staging area off-site where the trailers could legally be stored and then bring them in as needed. Lindquist responded that the zoning ordinance does not have a zoning district that allows semi-trailer storage. Ahern stated that is a part of their business and they need the storage near their facility. He then explained how his business operates, noting the Hastings facility does the actual reconditioning. He invited the Planning Commission to stop out to see how the company operates.

Booth stated that condition #5 in Resolution No. 93-219 prohibits reconditioning. Ahern said they are reconditioning and repairing totes on the site and that the Hastings facility cleans tote containers, which are then taken to the Cottage Grove facility for repair and testing. Ahern stated that was correct regarding totes. Booth stated that Resolution No. 93-219 condition #5 prohibited barrel reconditioning operations and the current operation constitutes an expansion of the use that was permitted, which was the creation of reconditioning equipment. Ahern explained that reconditioning a barrel involves removing residual materials and cleaning it. Severson asked if that process is done at the Cottage Grove site. Ahern responded no. Severson asked if they are tested after the reconditioning. Ahern responded that they did some testing when they set up a tote system in the facility in 1996. Booth stated that condition #5 says that the use of the site shall be restricted to fabrication and assembly of the barrel reconditioning machinery systems and that barrel reconditioning operations are prohibited with the exception of testing operations, which is the testing of the reconditioned equipment. Booth stated that testing the totes is not an allowed use of the property, and is an expansion of the nonconforming use.

Severson stated that the original intent was to construct or refurbish systems, as opposed to bringing in product for testing. Ahern stated that they test equipment that is being manufactured to refurbish barrels and totes. Severson asked if hundreds of containers need to be run through the system for testing. Ahern responded that the system has to run 5,000 units a day, and explained that their first application was to get approval for the 60-foot by 70-foot building because the Saudi Arabian government had requested that they set the system up in its entirety and test it on site.

Brittain asked if the testing operations noted in the resolution that included testing of totes, because he believes that the resolution was referring to testing systems. Lindquist responded that testing is restricted to the fabrication of the systems for the assembly of barrel reconditioning.

Bailey asked what changed between April 1996, when the aerial photo showed very few trailers on site, and 2003, where they have over 50 trailers. Ahern replied that business is typically slow during the winter and spring, but picks up during the summer and fall. In addition, in the spring of the year, it is difficult to the park trailers anywhere on the property, because the trailers could sink in the mud. He also stated that they were purchasing more trailers as the business expanded. Bailey stated that it looks to him from the photos that shows the addition of trailers that they have expanded their business. Ahern stated that his business is very cyclical, and their business has actually shrunk as they have a smaller workforce and cannot work quite as fast to get the trailers emptied and off-site.

Willhite asked why the totes are there if they are not being used to test the system. Ahern responded that the totes are there for repair. He clarified that the word "testing" means checking for leaks. He explained that there are two separate operations, one is testing equipment and one is testing the individual tote to see if there is a leak in it. Willhite stated that in October 1988, the business was approved for making and testing barrel reconditioning systems. She stated her concern about the difference between what was being done then and what is being done now. Ahern explained that in 1990 they asked the city if they could set a system up and test it for their client in Saudi Arabia. Subsequently, the client decided just to have the system shipped over there for testing due to the war situation, so they did not construct the 60-foot by 70-foot building. In 1993, they requested a storage building, but the verbiage in the 1990 approval was carried on to the 1993 approval. He stated that they weren't doing any testing at that time, but that they have built leak testing operations and testing equipment. Willhite asked if that was what they were asking for back in October 1993. Ahern responded that they did not ask for that in 1993, and the only time he requested the testing was in 1990, but the verbiage was carried forward from the 1990 conditional use permit.

Severson asked if they test the totes on a company-owned system or on a client-based system. Ahern responded that they have their own equipment.

Brittain asked if they were testing totes in 1988. Ahern responded very few totes were tested at that time. Brittain then asked if the original part of the business was just designing and building the equipment and the secondary process of testing totes came in later. Ahern responded that was correct, but they were doing a small amount of tote testing from the beginning.

Hale stated that the problem seems to begin in 1994, regarding not having the parking lot paved, but there was no mention in the city's correspondence about problems with the storage of trailers, and believes that former Planning Commission members would have recalled if there would have been over 100 trailers on the lot. He stated that the main issue is the storage of the trailers, which is not allowed in any other area of the city. He stated that he does not want to run the business out of town, and asked what options the city could provide if Ahern removed the trailers.

Ahern stated that he has not been offered any compromise so far. Hale pointed out that in 1994 they moved their operations to Hastings and didn't expand in Cottage Grove. Ahern stated that Cottage Grove offered no incentives to stay and Hastings gave them seven acres of land for \$1 an acre. Hale suggested that Ahern consult with the city's Economic Development Authority regarding expansion. Hale believes that BRI is in violation of city ordinances, but would like to come up with other solutions that would not force the company out of business.

Reese asked who is the primary owner of the trailers and are they all current on their licenses. Ahern responded that they are all currently licensed and are owned either by Ahern or his partner. Reese asked who brings the systems to Cottage Grove. Ahern responded sometimes the client brings them in and sometimes BRI picks them up.

Hudnut stated that according to the bottom of page 7 of the staff findings, it is noted that the property owner agreed to the conditions of the resolution and made use of the permit. Ahern stated that he did not agree to that. He explained that his representative, Mr. Malecha, attended the Planning Commission meeting and agreed with the conditions; however, he was not yet a partner in the business. Ahern stated that he first saw the resolution in 1996.

Lindquist stated that Exhibit X includes the staff report and the minutes from the 1993 application, and minutes reflect that Mr. Malecha stated that they agreed with all the conditions recommended by staff. She explained that when a representative from a business states publicly at a public hearing that they agree to the conditions, it is the city's assumption that that is correct. She noted that when a conditional use permit is made use of, the conditions of that permit are being agreed with. Ahern reiterated that Malecha was not an officer of the company nor an owner of the property at that time.

Lindquist stated that the resolution specifically restricts the use of the site to fabrication and assembly. She asked what percentage of the business is fabrication and assembly of barrel reconditioning machinery versus the other aspects of the business. Ahern responded that about 75 percent is equipment and 25 percent is totes, but that could be reversed in a couple of months. Lindquist noted that Clinton stated that the property as an industrial use is entitled to any accessory use allowed by the ordinance. Clinton stated that was correct but he does not agree that it is limited to only what was allowed in 1983. Lindquist stated that the existing ordinance allows for incidental storage and asked if Clinton considers the current situation incidental. Clinton compared the situation to UpNorth Plastics. Lindquist responded that UpNorth is located in an industrial zone and they are operating under a pre-existing condition. Clinton stated that Lindquist noted that no trailer storage is allowed, but UpNorth Plastics stores plastic in their trailers. Lindquist explained that an accessory use is defined as a use incidental and subordinate to the principal use or building located on the same lot. She stated that the trailer storage at BRI takes up three and a half times the space of the largest building on the site, so it would not be considered incidental based on the amount of area dedicated to that use. Clinton does not agree with that interpretation, because it depends on what the primary use is. Lindquist stated that the city's position is that no exterior storage, including using trailers for storage purposes, would be allowed. She then asked about the third building that was allowed by the 1993 conditional use permit, which was restricted to storage only, but in January, there was activity other than warehousing occurring in the building. Clinton responded that currently the building is only being used for storage. Ahern responded that he believed that he could operate in that building. Lindquist asked when operations ended in the building. Ahern responded that he did not know the exact date, but it was in the spring.

Willhite noted that Ahern has stated that he did not agree to the conditions in the resolution, and asked if BRI had a representative at the City Council meeting when they approved it. Lindquist responded that it was on the consent agenda so she does not know if anyone was there representing the applicant.

Hale asked if the city required UpNorth Plastics to build a facility to reduce their trailer storage. Lindquist responded that one of the more recent approvals by UpNorth Plastics was a conditional use permit that allowed for a slab to be placed behind the building and the re-

quirement that the semi-trailers be relocated to be out of public view but the overall intent is that the number of trailers would be reduced over time.

Brittain asked if the only activities that would be allowed were those approved in the non-conforming conditional use permits. Lindquist responded that the city takes a fairly narrow view of nonconforming uses and the intent of the ordinance is not to allow an increased or more intense use.

Willhite noted that on page 2 of the October 1990 staff report the last two lines indicate that in January 1991 the property owner's representative stated that production requirements had changed and they would letting the approved conditional use permit lapse. Lindquist responded that was correct. Willhite asked which approval they were operating under. Lindquist responded that until 1993, they were operating under the approval from 1988 with the six conditions listed, since they did not make use of the 1990 permit, and now they are operating under the 1993 permit.

Hudnut asked why the resolution of the UpNorth Plastics problem does not apply in this situation. Lindquist responded that this is a nonconforming use and the zoning ordinance does not allow for expansion for the exterior storage. Hudnut asked if would be possible legally to expand the definition so this could happen. Lindquist responded that the Planning Commission and City Council could rezone the property to an industrial use; however, in the last comprehensive plan discussion, there was strong opposition to allowing industrial uses on that side of Ideal Avenue, and she believes that has been borne out in more recent actions since that time. Hudnut asked if they could move to property on the other side of Ideal Avenue. Lindquist responded that they could.

Bailey asked if Clinton or Ahern had any questions for the Commission or staff. Clinton reiterated that BRI needs to have trailers on the property for the business to continue operating with the use that was allowed under the 1988 resolution from the Planning Commission.

Lindquist stated that the city attorney prepared a resolution with findings of fact, which was distributed to the Board and the applicant, if the Board of Zoning Appeals agreed with the decision of the Community Development Director.

Clinton asked if the intention of the draft resolution is a determination that no trailers are permitted on this site. Lindquist responded that the approvals prohibit any exterior storage on the site, so if the trailers are used for storage, they would be prohibited; however, trailers used for transport would be allowed.

Hale asked if under point #2 in the resolution under "Decision," where it says use of trailers as part of the fabrication process is a violation, would deny the use of trailers to bring material to and from the site. Lindquist responded that BRI be allowed the same opportunities for loading and delivery as other businesses. Hale asked for clarification on that point. Lindquist suggested adding "the use of the trailers as currently on the site."

Bailey suggested changing #2 to read "use of trailers as currently on the site is a violation." Lindquist recommended "The use of the trailers currently occurring on the property, as part of the fabrication process, is a violation of the CUP, Resolution No. 93-219."

Hale asked what the next step in the process would be. Lindquist stated that the City Council can decide whether to hear the appeal or concur with the Board of Zoning Appeals. Hale asked if the Council could overrule the Board of Zoning Appeals' decision. Lindquist responded that they could.

Thomson stated that before the Board acts on the resolution, it would be appropriate to allow Clinton to respond. She explained that the Board is reviewing the decision of the Zoning Administrator, and the resolution consists of proposed findings based on the Zoning Administrator's decision, but the Board has to independently review it, determine whether the facts that are recommended are ones that the Board agrees and are applicable to this situation, determine whether the conclusions are ones with which the Board is in agreement, and whether it is in agreement with the final decision.

Clinton stated that he is not prepared to respond to the resolution at this time, but he would respond in writing at a later date. Thomson stated that all the factual findings were taken directly from the materials that were presented to the Board and the appellant, which everyone received in advance, and the conclusions are all consistent with statements in the staff report. Bailey concurred that the resolution consists of information that was included in the packet.

Severson called for the question with the modification that was made for point #2 under the Decision section, which was to change the wording to "The use of the trailers currently occurring on the property, as part of the fabrication process, is a violation of the CUP, Resolution No. 93-219."

Hudnut stated that while the question has been called, he wanted to make one observation. He stated that it would be appropriate to allow time for Clinton to respond to the resolution that was presented this evening. Hale asked if the applicant received a copy of the notebook with exhibits. Lindquist responded that it was delivered on the Friday afternoon prior to the meeting. Hale stated that he would conclude that there is nothing in the resolution that is not in the notebook, and they have had an opportunity to respond.

Bailey stated that Severson called for the vote on the resolution with the change to point #2 under the Decision section.

***Motion passed on an 8-to-1 vote (Hudnut).***

## **Approval of Planning Commission Minutes of August 25, 2003**

***Willhite made a motion to approve the minutes of the August 25, 2003, Planning Commission meeting. Brittain seconded. Motion passed unanimously.***

## **Reports**

### **9.1 Recap of September City Council Meeting**

Lindquist reported that at the September 3 City Council meeting, the Council approved the final plat for Hale's River Bluff Acres, discussed the plans and specifications for the Hamlet

Park Pond expansion project, held workshop on a possible dog park at Highlands Park, and discussed the signage for Almar Village.

Lindquist reported that at the September 17, Council meeting, the Council approved the variance for the porch addition at 7595 Lamar Avenue, discussed the Hinton-Tower assessments and timing of that project, and received the information on the building elevations for Grove Plaza.

## **9.2 Committee Reports**

Hale reported that the East Ravine Citizens Advisory Team held their first official meeting on September 9th and received an orientation of the overall project. The group will meet again when the consultants have something of significance to report.

## **9.3 Planning Commission Requests**

Severson asked as part of the city's comprehensive planning process, if there is an overlay relative to wireless communications systems. Lindquist responded that the comprehensive plan does not address this issue, but the city did update the zoning ordinance six years ago to address those issues. Severson stated that he would like to see the city come up with a long-range plan for locating those systems. Brittain stated that it would have been helpful to know where the other antennas are located and their areas of coverage, and requested this information be provided for future applications. Bailey suggested marking on a city map where the freestanding antennas and the water towers with antennas are located. Brittain added that the providers could draw a circle around those locations showing their coverage areas. Lindquist responded that could be done but the city cannot presume to understand the coverage needs. Brittain stated that this information could help the Commission achieve a better understanding of how it may impact the community. Severson reiterated that he would like to look at long-range planning for location of these antennas.

Bailey reported that Lindquist's last day with the city was on Friday, September 19, but she came back for tonight's Planning Commission meeting. On behalf of the Planning Commission, he wished her well in her new position at the City of Rosemount.

## **9.4 Response to Planning Commission Inquiries**

None.

## **Adjournment**

***Booth made a motion to adjourn the meeting. Reese seconded. Motion passed unanimously and the meeting adjourned at 10:50 p.m.***