

**City of Cottage Grove  
Planning Commission  
October 27, 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 27th day of October 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: John McCool, Senior Planner

**Approval of Agenda**

*Booth made a motion to approve the agenda. Hale 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 CASES ICUP03-041 (continued from 9/22/03 meeting) and MP03-051**

**Aggregate Industries has applied for an interim conditional use permit to allow construction of a berm in the Mississippi River floodway at the Nelson Mining Pit on Lower Grey Cloud Island and for their 2004 annual mining permit to continue mining operations on Lower Grey Cloud Island.**

McCool summarized the staff report for the interim conditional use permit and recommended approval subject to the conditions stipulated in the staff report. He stated that the interim conditional use permit is recommended for a five-year approval period. At the end of the five-year period, Aggregate Industries would need to reapply for an extension to their interim conditional use permit if they wish to continue to use the earth berm.

Bob Bieraugel, property manager for Aggregate Industries stated that the report is accurate and he is open to answer any questions from the Commission.

Hudnut asked for details on the condition requiring Aggregate Industries to pay their proportionate share for road maintenance and construction. Bieraugel stated that he would address that condition during the discussion of the mining permit. McCool explained that the city added that condition to Aggregate Industries mining permit about four years ago to give notice to Aggregate Industries that they would be expected to share in any costs for repair and maintenance of city roads due to damage from their trucks.

Hale asked if that condition only applied to the berm project. McCool responded that the condition would be primarily for the material being hauled from the site; the earth berm would be constructed of material that is already on site. Hale asked how that condition was germane to this application. McCool responded that staff was trying to provide consistency between the mining operation and the earth berm, which is an integral part of their operation for flood water protection. Hale stated that he does not see the relevance to having that condition in this particular case, because everything is internal to the site. He suggested that this condition be removed from the approval.

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

***Hudnut made a motion to approve the conditional use permit application subject to the conditions listed below. Reese seconded.***

- 1. The berm shall be removed within five years or have said approved use extended by an additional conditional use permit review process.***
- 2. If the berm is found by the city, state, or other federal agency to have an adverse effect in the event of flooding, said berm shall be immediately removed. Prior to removal of the berm, an additional engineering report may be submitted to the city for additional review and processing related to the verification of any adverse effects.***
- 3. The maximum length of the berm shall not exceed a length greater than 10 percent of the proposed 3,400foot length.***
- 4. The maximum cross sectional area of the floodway that the berm will occupy shall not exceed a width greater than 10 percent of the 1,600 square feet proposed.***

5. ***Approval of the interim conditional use permit does not imply approval of the future mining area depicted in the river/backwater on the exhibit titled "2003 Operations Plan."***
6. ***Approval of the interim conditional use permit does not imply approval to disturb or mine within the required 200-foot setback from the Mississippi River.***
7. ***No bituminous/asphalt or concrete material shall be buried in the berm.***
8. ***All existing trees within the 200-foot buffer area shall be protected from damage during construction of the berm.***
9. ***Aggregate Industries pays its proportionate share in the cost of maintenance, construction, and reconstruction of roads, highways, street, or bridges along all designated haul routes.***
10. ***Erosion control devices shall be installed on the down slope areas of the berm during construction and in any other areas where erosion is evident. A drainage swale shall be constructed at the base of any eroding slope to control runoff and divert it to a sedimentation basin before entering any natural drainage system. Re-vegetation and other erosion control measures shall be implemented within a reasonable amount of time.***
11. ***Historic sites and landmarks on Lower Grey Cloud must be protected and undisturbed. A minimum of 100 feet shall be maintained between all mining operations and historic/landmark sites.***

Severson offered a friendly amendment to remove condition #9 from the conditions of approval. Hudnut and Reese agreed to the amendment.

***Motion with amendment passed unanimously.***

McCool summarized the staff report for Planning Case No. MP03-051, the annual mining permit application and recommended approval subject to the conditions stipulated in the staff report.

Bieraugel stated that they object to Condition #8, which requires Aggregate Industries to pay its proportionate share of road maintenance and repair costs. He asked if a formula could be created so they would know what those costs would be or that the condition be removed. Bieraugel reported that Aggregate Industries pay aggregate taxes to the County for the purpose of road maintenance. Bieraugel then stated that they are fine with condition #11 allowing them to reduce the number of trees but requiring larger trees and hiring an arborist to try to ensure better survivability. Bieraugel stated he understands the general intent of condition #12, but disagreed that it has anything to do with their mining permit operations. He asked for clarification on what they would be required to do.

McCool stated that in relation to condition #8, the city has not collected or assessed any money to the project or property owner to date. He again explained that the city is merely

providing notice to Aggregate Industries that the City will likely require their participation in the payment of certain public improvements that they use. McCool stated that condition #12 was added for purposes of discussing and evaluating candidate sites for a public boat access to the River. Bieraugel stated that he understands staff's motivation but he challenges the relevancy of condition #12 because it has nothing to do with their business.

Bailey asked staff if provide a formula before the applications went to Council, would the applicant be agreeable to leaving in condition #8. Severson expressed concerns for the wording used in condition #8. Booth supported the wording. Bieraugel stated that they would like to look at the calculations to see if it would be a fair assessment.

Severson asked if there is an existing formula. McCool responded that there is no existing formula, but it would be based on the extent of any necessary roadway improvements. Severson asked if the evaluation would be done by the city or an outside resource. McCool responded that the city engineer would first prepare a feasibility report and calculate the preliminary cost estimates.

Hale pointed out that state law requires Aggregate Industries to pay a tax on the amount of extracted material, which is paid to Washington County. He explained that the collected money is used to reimburse municipalities for maintenance of roads and other infrastructure used by the industry, and the city gets annual payment from the County, which was \$18,000 last year. He noted that the majority of Aggregate Industries' product is sent by barge rather than by trucks. Hale then asked if this same stipulation is applied to other mining companies in the city. McCool responded that there are currently no other companies extracting materials in Cottage Grove.

Bailey noted that this is not a public hearing, but asked if anyone in the audience had any comments or questions. There were none.

Hale stated that he worked with city staff, Parks Commission, and property owner in trying to get public access to the river from land owned by the Schillings, but not Aggregate Industries. He objected to the using the word "facilitate" since the property owner ultimately has the final decision in this matter and suggested rewording condition #12 to read "...to cooperate with the City in its efforts to plan and make arrangements for installation of a public boat ramp."

Bailey asked Hale if he wanted to leave condition #12 in the approval but change the word "facilitate" to "cooperate." Hale asked Bieraugel if they would agree with that change. Bieraugel responded that they would be agreeable with that change, but asked that the words "property owner" be removed from the language. McCool pointed out that the property owner is part of the application process because they are the fee owner of the property and is required to co-sign the mining permit application.

Brittain asked if this condition is too restrictive on Aggregate Industries since they are merely tenants on this land and because the property owner does not want a public boat launch. He expressed concern that the property owner would not allow Aggregate Industries to continue their operations because the city wants a boat launch on the island. Bieraugel stated that the

city would have Aggregate Industry's cooperation, whether condition #12 is included or not, so he asked to have that condition removed.

Bailey asked if the assessment process for road maintenance would be similar to the way the city typically assesses other public improvement projects in the City. McCool responded by saying that it is to some degree, but could be different because the public improvement may not directly front the property and may be at some other location along their haul route.

Severson stated that the way he interprets condition #8 is that the company would be assessed for road maintenance imminently. He asked if it was the intent of the city to have Aggregate Industries pay anything for normal road maintenance this coming year. McCool responded that the City's Capital Improvement Program document does not propose any improvement next year that would cause payment to the City at this time.

Booth stated that he does not have a problem with the way the condition is written. He believes Aggregate Industries will help share with other property owners in the costs for future road maintenance and construction projects.

Lassen expressed concern that the proportionate share is subjective and the city will be able to negotiate with the company for the participation in road maintenance without the condition. Bailey agreed and stated that the city normally assesses property owners for roadway improvements. McCool responded that the intent was to put them on notice that they may have to pay for roadway improvements.

Severson asked if that intent is clear even if we don't have this condition. McCool responded that city staff believes the annual mining permit application is an excellent opportunity to have it part of the mining permit approval for purposes of documenting the city's intent that they may be required to pay for certain future public improvements.

Hale stated that typically adjacent property owners are assessed for road improvements and this is stating that the assessment would be based on use.

Bieraugel stated that they would be more comfortable with the condition if they could see a formula.

Brittain asked if staff would be able to have a formula put together before the application goes to the City Council. He agrees that the condition is vague but if the company is bound by these conditions, the city should provide as much as information as possible. McCool responded that it would be doubtful that there would be anything available for the Council meeting on November 19, but staff can work on it.

Severson stated that this condition should be left in but the wording changed to simply allude the fact that the city will expect Aggregate Industries to participate in paying for future public improvements.

Reese asked if the city was going to require other businesses to also be responsible for a portion of reconstruction or maintenance. McCool responded that would also be looked at, particularly in the industrial park.

Bailey stated that he does not believe that condition #12 is necessary, because the city, Aggregate Industries, and property owner are already discussing the public boat access issue. He agrees that there needs to be a condition regarding participation in paying for future road improvements, but the wording needs to be changed.

Lassen stated that the city should not use conditions of approval to provide the City's intent since Commission minutes are prepared and placed on file for future reference.

**Severson made a motion to approve the mining permit application subject to the conditions listed below, deleting conditions #8 and #12 as recommended in the planning staff report. Reese seconded.**

- 1. The provisions as stipulated in Title 3, Chapter 10 of the City's Codes (Mining, Sand, and Gravel Operation) shall be complied with, except as modified below.**
- 2. The applicant is responsible for removing any materials that may have spilled onto any public roadway. This material shall be cleaned up immediately.**
- 3. The outer edge of mining limits abutting public right-of-way or private property shall not be closer than 100 feet to any right-of-way or property line.**
- 4. The "future mining" designation on the 2004 Operations Plan is only an illustration of the applicant's future desire to mine in those areas. City approval of the 2004 Operations Plan does not guarantee mining permit approval for areas shown as "future mining. Approval of the 2004 Mining Permit does not imply approval to mine within the required 200-foot setback from the Mississippi River or within the Mississippi River itself.**
- 5. No bituminous/asphalt material shall be buried on the premises. Bituminous/asphalt, concrete, and street sweepings originating within the geographical boundaries of Cottage Grove may be temporarily stockpiled on the site for processing (e.g. crushing, screening, etc.) and/or reuse.**
- 6. The applicant may operate the mining operation 24 hours a day, 7 days a week. Upon notification by neighboring residents that the night-time operations (i.e. between the hours of 10:00 p.m. and 6:00 a.m.) are disturbing, the applicant agrees to voluntarily cease operation during night-time hours until such time the noise source is identified and appropriate corrections are made.**
- 7. All existing trees within the area shown on the Operations Plan as "Future Mining" as shown on the 2004 Operations Plan shall remain undisturbed.**
- 8. Aggregate Industries pays to the City a proportionate share of any costs relating to maintenance, construction, and reconstruction of public roads, highways, streets, or bridges along all designated haul routes. Cost participation will be based on the amount of truck traffic, and aggregate hauled, associated with the Aggregate Industries – Nelson Plant mining operations.**
- 9. Aggregate Industries installs erosion control devices at the base of any slope where erosion is evident. A drainage swale shall be constructed at the base of any eroding slope to**

***control runoff and divert it to a sedimentation basin before entering any natural drainage system. Erosion control measures shall be implemented within a reasonable amount of time.***

***10. Historic sites and landmarks on Lower Grey Cloud must be protected and undisturbed. A minimum of 100 feet shall be maintained between all mining operations and historic/landmark sites.***

***11. The number of annual tree plantings may be reduced to 250 of plantings per year, the plant stock size be increased, and the applicant hire a certified arborist meeting city approval to create a revised planting plan and to monitor the planting survival. Progress reports shall be required to be submitted to the city twice a year, and recommendations of the arborist shall be complied with. Said reduction and monitoring may continue for a five-year basis to determine if a survival improvement can be obtained.***

***12. The applicant and property owner shall facilitate the planning and arrangements for the installation of a public boat access on Lower Grey Cloud Island that is consistent with long-term public and private conceptual development plans.***

***Motion passed unanimously.***

## **6.2 CASE V03-050**

**Jay C. and Suelin J. Werner have applied for a variance to City Code 11-15-8B, Lot Density and Size in the Mississippi River Corridor Critical Area Overlay District, to deviate from the density limitation requirements of four units per quarter/quarter section and to Title 11-15-8C(1), Structure Setback from Bluff Line, to allow the construction of a house less than 100 feet from the Mississippi River bluff line at 7641 – 113th Street South.**

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

Severson asked for the definition of bluff line. McCool responded that it is a change in grade of 18 percent or greater. He stated that the bluff line on Werner's property is heavily wooded.

Hale asked if the requirement to bring the property into compliance with all city ordinances includes the storage building. McCool responded that the condition only refers to the vehicles parked on the property.

Jay Werner, 7641 – 113th Street South, stated that he would like to build a home on the lot next to his current residence. He explained that the determining factor for the Planning Commission and City Council to stipulate that lot as unbuildable in 1987 was due to the critical corridor act. He pointed out that there have been a number of exceptions to this act made in recent years and asked for approval to allow him to build a new home on the vacant parcel next door. Werner explained that they have lived on the property for 35 years and the accessory structure that sits on the property line was there when they bought the property. He noted that the building was built with a building permit and had been used for commercial purposes. He stated that there was a stipulation in the sale that an easement be created for

that building. He stated that the his current house and all the other houses on the south side of 113th Street were built on the bluff line, and his variance request was to keep his new house in line with the existing homes in the area.

Willhite asked what would happen with the current house. Werner responded that they would sell it.

Hudnut stated that the staff report notes that alternative locations exist on the property where a structure could be built that would meet the minimum 100-foot bluff line setback. Werner stated that is correct but it would be the only house in the area situated that way.

Willhite asked if the other houses in the area needed variances or were built prior to the overlay district. McCool responded that they were constructed prior to the overlay district requirements. Booth asked if those homes would be considered nonconforming. McCool responded yes.

Severson asked Werner to point where the house would be located if there was a 20-foot setback. Werner pointed out on the contour map an area that is relatively flat, but there may issues with location of their septic system.

Brittain pointed out that there are numerous larger lots that could be subdivided in the area, and noted that granting the variances could set a precedent. He also noted that while other density variances granted have been granted, none of them appear to be south of 113th Street. Brittain stated that a condition of the lot split approval in 1987 was that the lot could not be built on. McCool responded that the condition only restricted development of the parcel, such as with city services that would allow greater densities. He explained that the current minimum lot size in the area is 1.5 acres due to the need for septic systems. Brittain asked to be shown where the overlay district is. McCool referenced the location map.

Booth asked about the DNR's response to the application. McCool responded that staff received their response today via fax and a copy was distributed to the Commission members. Booth asked for clarification on how the city and the DNR interpret the critical area overlay district ordinance. McCool responded that Sandy Fecht from the DNR cites in her letter what the city's ordinance requirements are as it relates to the Mississippi River corridor Area. Because it is in the critical area, she is recommending that there are no findings that should allow for more density because the density level has already been exceeded. She recognizes that there are other structures that exist at the zero lot line but does not believe that should be continued. Fecht also referenced lot density and noted that size requirements for single family residential to be at least three acres. McCool explained that while the lot is greater than three acres, some of the property is in the river and on the other side of the railroad tracks. He stated that Fecht also identified that the septic system and drainfield cannot be located on slopes greater than 13 percent. McCool reported that Werner is proposing to locate the drainfield on the north side of the home in a flatter area away from the bluff line.

Severson asked if the DNR statement was valid if the house were to be moved away from the bluff line and would there still be the 1.5 acres for the septic system. McCool responded that the higher elevation from the bluff line to the roadway is about 1.9 acres. He then stated the Fecht's comments are consistent with all the applications that have been previously re-

viewed as it deals with the Mississippi River Corridor Area. She has been consistent in recommending denial of those variances and she is merely saying that the city needs to document the reasons why. Her point is that the situation was self-created by the applicant and for that reason she does not support granting any variances.

***Bailey opened the public hearing.***

Pieter Bierma, 7653 – 113th Street South, stated that he has owned the property directly to the east of the Werner property since 1991. He explained that when he bought the property, there was an easement that ran from June 3, 1977 through 1992, for the building straddling the property line. He stated that he has asked Werner to address this issue several times, but nothing has changed. He asked that the old building be moved from the property line because it is causing him difficulty in getting a clear title to his property. Bierma reported that Werner did write a letter to him stating that they intend to tear down the building, but only after their new house has been built, otherwise they have no intention of removing the building. Hale asked if Bierma knew where that the building was on the property line when he bought his property. Bierma responded that there was an easement at that time, and he asked for help in addressing this issue. Hale stated that this is not an issue with which the Planning Commission can help and Bierma needs to resolve it with Werner.

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

Hale stated that the response from the DNR is no different from what the city has received for other applications. He stated that the city needs to define what it believes is the appropriate use of the river. He stated that he has no objections to the setbacks because all the other properties are built on the bluff line. He explained that people buy property along the river for the view and houses are usually built according to that amenity. He stated that the only reason to deny the setback variance would be based on environmental factors, but in this case there are none. Hale also explained that the reason Werner could not build at the time of the lot split was due to a moratorium that was established around the time when the critical area ordinances were passed. He stated that this particular property is separated from the river by railroad tracks and does not front on the river but the backwaters of the river. He sees no reason why the city would not grant this landowner the same courtesy granted to other recent applicants and allow them to build a home on that lot at the same setback as the other structures in the area.

Willhite asked what other applications Hale was referencing as it was stipulated that the other applications were for properties located on the north side of 113th Street. Hale stated that there was only one on the bluff line; the others were dealing with lot size and density limitations. McCool stated that those are discussed in the staff report.

Booth stated that one of the issues the city has faced in the past is if a home was built on the bluff line, there would be no place for an accessory structure to be built behind it, and a variance would then be required to build it in front of the principal structure.

***Willhite made a motion to deny the variances based on the findings of fact in the staff report. Brittain seconded.***

Severson said he does not agree with the motion. He asked if there was a moratorium when the lot split was approved, which made the lot unbuildable. McCool responded that he does not believe there was a moratorium in 1987, as the critical area standards were being considered in the late 1970s.

Bailey stated that he would vote against the denial because he disagrees with Hale that this is a buildable lot, and other homes in the area are located on the bluff line. He stated that he could support a 20-foot setback, but not 100 feet. Severson agreed with Bailey.

Brittain stated that several other lots could potentially be divided and more houses would then be built on the bluff line. He stated that if the city does not want to abide by the DNR critical area overlay district, then something should be done officially. Bailey stated that the DNR notes that there is a buildable area on the lot that meets the 100-foot setback requirements, but the lot does not meet city density requirements.

Brittain stated that a precedent has already been set regarding density limitations for applications on the north side of 113th Street, but there are no precedents to allow a variance to the 100-foot setback requirement.

Hale stated that the regulations for the critical area were written for a particular purpose and the DNR is responsible for enforcing it, but the city needs to decide if that would uphold our community values. He stated that the reason lots in that area are so expensive is because they front on the river and those property owners should be able to build their home where they can view the river.

Willhite stated that the job of the Planning Commission is to uphold the zoning ordinance, but the City Council has the authority to change that. She then called for the question.

***Motion failed on a 3-to-6 vote (Brittain, Lassen, Willhite voted for the motion).***

***Booth made a motion to approve the variance application for density limitations but deny the variance to the 100-foot setback requirement. Hale seconded.***

***Motion failed on a 4-to-5 vote (Brittain, Booth, Hale, Severson voted for the motion).***

***Hale made a motion to approve the variance for density limitations and to approve a 20-foot setback for the house. Hudnut seconded.***

Willhite asked why the recommendation for denial could not be sent to the Council. Bailey responded because there was not a majority of Commissioners voting for denial. Willhite clarified the denial of the second motion. Bailey responded that both motions were denied.

***Motion failed on a 4-to-5 vote (Booth, Hale, Hudnut, Lassen voted for the motion).***

Bailey stated that these applications will go to the City Council with no recommendation from the Planning Commission.

Severson asked if there should be a motion on each variance application. It was the consensus of the Planning Commission to leave it as and send the applications to Council without a recommendation.

## **Applications and Requests**

None.

## **Approval of Planning Commission Minutes of September 22, 2003**

*Hudnut made a motion to approve the minutes of the September 22, 2003, Planning Commission meeting. Lassen seconded. Motion passed unanimously.*

## **Reports**

### **9.1 Recap of October City Council Meetings**

McCool stated that at the October 1 City Council meeting, the Council approved the density transfer for the property at 9255 Military Road.

McCool reported that at the October 15 Council meeting, The Council approved the mechanical screening ordinance amendment, the amendment to the appeals time limit ordinance changing it from 90 days to 10 working days, the sign ordinance, and the variance for the accessory structure on Inskip Trail. They also received a report on the clean-up effort at 8724 – 95th Street, which the city has been dealing with regarding exterior storage issues, particularly boats. The Council took no action on the decision by the Board of Zoning Appeal to deny the appeal by Barrel Reconditioning, Inc. McCool noted that the city sent a notice via registered mail to Barrel Reconditioning giving them until November 24, 2003, to bring the property into compliance; failure to do so could result in the Council revoking their conditional use permit for the business. In addition, the Council approved a pilot program to place historic plaques at some of the sites on the city's historic register.

### **9.2 Committee Reports**

None.

### **9.3 Planning Commission Requests**

Severson stated that the city needs to think about the process it would use if businesses are required to pay for road maintenance on roads that they use but may not own property on. He then asked about future plans for Cottage Square Mall. McCool responded that there has been discussion about possibly redeveloping that area, which could include mixed uses such as senior housing and retail.

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

McCool stated that he provided information to the Commission on wireless communication antennas. He stated that of the 20 applications the city has reviewed, it is important to note

that only three new freestanding monopoles have been constructed. A fourth monopole was recently approved by the Planning Commission located at the Public Works facility. McCool stated that the City's ordinance appears to be working since most of the wireless communication systems have been locating on existing structures. He stated that the Commission also asked about coverage areas and how the antenna locations overlap. He explained that because that technology is unique for different types of users, it is hard to geographically show the Commission what that the coverage area means for the various types of systems. He stated that coverage areas for each of the users are reviewed at the time application is made, and the city will continue to require that information with the application so the city can decide if the locations proposed are appropriate. Brittain requested that the map showing existing antenna locations be included with the planning staff reports for future antenna applications. Severson requested that information on communication systems, which is becoming part of our infrastructure, be included in future amendments to the comprehensive plan.

Bailey clarified that the walls of the Kohls building currently under construction will not be the white; the white coloring is a primer. McCool displayed the exterior materials for the Kohls building. Willhite asked when the opening date would be. McCool responded mid-July to beginning of August 2004.

Booth asked what would be considered the front yard of a property facing the river. He is asking that question to clarify procedure if a house were allowed to be setback that far from the street and the property owner wants to build an accessory structure, which is not allowed to be built in front of the principal structure. Hale believes the city interprets that a view is the front, such as on River Acres Road where all the garages are on the street side. McCool responded that was interpreted that way because there was no space to put the garage on the river side, but by definition in the city ordinance, the front is where the public right-of-way frontage is located. Booth asked if Werner were to build his home on the bluff line, would he need to get a variance to put an accessory structure between the house and the street. Hale stated that he built accessory structures between his home and the street and variances were not required.

## **Adjournment**

***Lassen made a motion to adjourn the meeting. Severson seconded. Motion passed unanimously and the meeting adjourned at 9:00 p.m.***