

PROCEEDINGS OF THE ST. CLOUD ZONING BOARD OF APPEALS

A meeting of the St. Cloud Zoning Board of Appeals was held on December 17, 2013 at 7:00 p.m. in the St. Cloud City Hall Council Chambers. Members present were Barkalow, Bright, Hultgren, Newman, Ugochukwu, Mohamed, and Zenzen. Barkalow chaired the meeting.

Approval of Minutes: Ugochukwu made a motion to approve the minutes of November 19, 2013. The motion was seconded by Bright and carried unanimously.

CUP-2013-14 / Coldspring / Charcoal Quarry 3: Dave Broxmeyer, Senior Planner, explained that the request seeks to continue operations authorized by St. Cloud Township in 1985, 1990, and 1995. The request proposes a geographic expansion to move the dimensional stone operation further into the granite vein. Broxmeyer summarized Staff's recommended conditions noting changes resulting from recent discussions between staff and the applicant. Broxmeyer noted that the conditions do not specify the location of the 3.4 acre expansion, but allow flexibility for Coldspring to follow the vein of higher quality granite. Staff is recommending approval.

Bright asked Broxmeyer to clarify the recent correspondence from Coldspring Attorney Greg Korstad. Broxmeyer indicated that Korstad's earlier correspondence raised concerns with staff's recommendations, but that staff's suggested revisions address those concerns.

Zenzen asked the status of the City's 60-day review timeline on this request. Broxmeyer explained that Staff has already extended the 60-day review period allowing the City until March to act on the request.

Barkalow opened the public hearing and invited testimony. The following persons testified:

Steve Konop, 818 5th Street North, Coldspring MN –

Konop presented a map depicting the proposed operation and clarified that the existing dimensional stone extraction is being relocated on the site. The operation is not being expanded in terms of intensity or frequency from its historic levels. Konop explained that the extraction technique has changed along with technology reducing the intensity of blasting, noise, and dust generation. Konop explained the intent to move further east from the existing quarry pit. Konop noted the uses, companies, and economic impact of Coldspring's operation to central Minnesota. Konop clarified that grout is the waste material generated from dimensional stone extraction and that it is broken on-site into pieces appropriate for relocation on site or use as riprap. The Sure

Strike equipment is moved between Coldspring's four sites each year to manage grout and was only at the Charcoal 3 quarry for 38 days in 2013.

Greg Korstad, Larkin Hoffman Law Firm, Minneapolis MN

Korstad offered an overview of the prior township and City actions regarding Charcoal Quarry 3. Korstad noted that mineral extraction is an allowed use in the Ag zoning district and is highly regulated, including the City's Environmentally Sensitive Areas Ordinance which was followed in this instance. Korstad noted the two prior actions of the City Council adopting negative declarations regarding an environmental assessment worksheet for the original aggregate quarry request and a citizen petition for the dimensional stone quarry. Korstad stated that there is not a history of complaints regarding the dimensional stone extraction. Korstad concluded that the proposal meets all of the City's zoning site requirements.

Bright noted that the existing operation is in violation of the terms of its St. Cloud Township conditional use permit. Bright asked how the violation came to exist given the operation is high regulated and the company is well aware of the applicable regulations. Korstad responded that there are a number of factors why the violation exists, but that the proposed annual report and survey should ensure that the property remains compliant into the future.

Newman asked if the proposed operation would generate dust, noise, and other impacts creating tax payer expense for school and public infrastructure repairs. Newman asked if Coldspring had been in contact with school officials. Korstad responded that historic operations have not had an impact and restated that the current proposal would operate in a similar manner. Korstad disagreed that the school property was adjacent. Konop indicated that Coldspring had spoken with ISD 742 and Fun Factory representatives to clarify misinformation and found no concern.

Hultgren asked about Coldspring's long-term plans for the property given the Comprehensive Plan's designation of the area for low-density housing. Konop responded that extraction is a long-term endeavor and that the 3.4 acres would accommodate 10-15 years of operations. Korstad stated that the site is difficult to develop in a traditional manner given the granite resource. Korstad added that expediting removal of the resource would allow site remediation to occur more quickly. Hultgren asked if the company had any expert testimony indicating the site cannot be developed.

Korstad noted that it is well known that rock is difficult to build upon. Ugochukwu stated that architects and engineers can develop creative solutions to developing the site. Korstad noted that those solutions would come with a significant cost.

Chris Brixius, 126 25th Avenue North, St. Cloud MN -

Brixius noted that the Zoning Board of Appeals has the authority to approve or deny the conditional use permit request. Brixius felt that the current proposal was the first phase of a longer-term expansion. Brixius disagreed with City staff's findings that first phase would have a local benefit and was not injurious to property values. Brixius expressed concern with condition #5 of staff's recommendation allowing Coldspring to apply for a Temporary Excavation Permit. Brixius felt that this was provision is an indication of Coldspring's intent to produce aggregate on the site.

Barkalow asked if there was documentation of a negative impact upon property values. Brixius indicated that he was not aware of such a study, but that the property is in close proximity and will be considered by home buyers.

Paul Schwinghammer, 3135 County Road 136, St. Cloud MN –

Schwinghammer stated that he represents 15 members of his family which own property immediately south of Coldspring. Schwinghammer expressed concern with the proposal citing negative impacts upon existing property owners. Schwinghammer indicated that the property has been on the market, but no offers have been made given the recent housing market. Schwinghammer felt that the proposal will create greater concern about development potential of the property.

Barkalow asked if Schwinghammer was aware of any studies addressing property values in this area rather than national/international studies. Schwinghammer indicated that there were not given the fact that impact will come from expected aggregate production on site. Barkalow clarified that aggregate production was not part of the current proposal. Schwinghammer felt impacts of grout management were similar to aggregate concerns. Schwinghammer shared concern with the impact upon property tax payers in St. Cloud to address impacts to public infrastructure and tax loss if development does not occur as planned.

Jerry McCarter, 1931 17th Street South, St. Cloud MN –

McCarter stated that the current Coldspring proposal will not increase property values in the area. Recent property value studies show properties within 3 miles of mining operations have been negatively impacted. McCarter researched the cost of having a property valuation study done and indicated that it would cost approximately \$100,000 to complete a local study. McCarter stated it is cheaper to use studies from elsewhere in the United States and Canada. McCarter stated that these impacts are injurious to home owners and justify denial of the request.

Barkalow asked if McCarter had seen Coldspring's study of impacts to properties in St. Cloud. McCarter indicated he was not aware of that study.

Mike Lehn, 2544 42nd Avenue South, St. Cloud MN –

Lehn stated that real estate agents had indicated the quarry was of limited use during his home purchase in Boulder Ridge. Lehn noted that tiles have cracked in his house, as has concrete in his garage floor. Lehn noted that blasting shakes has knocked him to the ground. Lehn questioned who should be sent the bill for these impacts. Lehn stated this is a political issue, noting that workers in attendance are not St. Cloud residents. Lehn felt that the operation will only grow over time creating more impacts.

Barkalow asked how often the blasting occurs. Lehn indicated that it happens daily lasting for 15-20 seconds. Barkalow asked how close Lehn lives. Lehn indicated within a quarter mile.

Eve Wallinga, 3123 Alden Lane, St. Cloud MN –

Wallinga stated that blasting sounds like a sonic boom at her residence 1 mile away. Wallinga questioned the ESA process and the number and qualifications of the scientific members. Wallinga noted that a study of the impact of soil compaction from the berm construction on the adjacent wetland was needed. Wallinga noted that the oak

woodland on the site has been misidentified and that no action has been taken to correct that error. Wallinga added that the site is designated a Natural Heritage Site and requires protection as a high priority amenity. Wallinga stated that the City's review and enforcement efforts have been ineffective. Action should not be taken without enforcement. Wallinga noted that the site is not just a rock and has environmental value.

Lowell Olson, 23 Pandolfo Place, St. Cloud MN –

Olson supported condition #12 limiting tree removal, but remained concerned about the impact of the removal for the proposed berm and road. Olson felt that these areas will impact wetlands and fragment the natural area. Olson questioned the significant water use; where it comes from and where it goes. Olson added that the property is on the top 10 list of properties to be acquired for parkland. Olson noted that this is an appropriate use of the site and that not all property needs be developed or built upon.

Maureen McCarter, 1931 17th Street South, St. Cloud MN –

McCarter stated that she does hear blasting. McCarter believed that Coldspring's study of property values is biased and should be commissioned by the City. McCarter added that welfare of St. Cloud residents is primary consideration. McCarter stated the number of diesel trucks and exhaust are of concern and will be passing Stride Academy. McCarter was concerned about the notification process which was limited given the impact of the proposal. McCarter concluded noting that many of the attendees are not residents of St. Cloud.

Zenzen asked the date of the diesel exhaust studies. McCarter stated that the first study was conducted in 1998 and the second in 2005. Zenzen asked if McCarter was aware of changes in regulations since those studies. McCarter indicated that those regulations would not be applicable to older vehicles operating on site.

Barkalow asked Coldspring for clarification on changes in trip generation from historic volumes. Konop indicated that the trips would remain the same and that company follows emission requirements.

Bright asked if trips are typically tractor-trailer or other heavy vehicles such as dump trucks. Konop indicated that 90% of vehicles are tractor-trailer, but that other vehicles are occasionally used.

Doug Schmitz, 12 11th Avenue North, Cold Spring MN –

Schmitz stated that Coldspring has been a good community member committing significant resources to the redevelopment of Downtown Cold Spring. Schmitz appreciated the difficult task of the ZBA members in responding to citizen concerns and believed that Coldspring has a positive impact on St. Cloud.

Loren Schwinghammer 3135 County Road 136, St. Cloud, MN –

Schwinghammer and his family have lived on the adjacent property for decades. He has also traveled the World and is very familiar with stone construction projects. Schwinghammer encouraged the ZBA to be on the right side of history and protect the woods. Schwinghammer indicated that the City would require a builder to remove a home built in the wrong spot and that Coldspring should have to do the same.

Al Hommerding, 1816 22nd Street South, St. Cloud MN –

Hommerding has lived within 2 miles of the property and worked for Coldspring for 41 years. Noise and dust have never been concerns. Hommerding does hear gunfire from hunting in the area, which is more noticeable. The expansion will not change the operation and will remain a good neighbor.

Margaret Tschida, 2837 23rd Street South, St. Cloud MN –

Tschida noted that she lives in the area on a big rock and has electric and water supply. Tschida shared concerns with displacement of wildlife. Tschida explained that neighbors do hear the operation, but choose not to file complaints. Tschida was offended by the lack of respect for resident opinions throughout the hearing.

Joan Schwinghammer, 3135 33rd Street South, St. Cloud MN –

Schwinghammer stated that the proposal is an expansion of the original request and will impact the surrounding area. Schwinghammer was offended by the questioning and heckling of property owners.

David Schwinghammer, 3135 County Road 136, St. Cloud MN –

Schwinghammer believed that the quarry operations make the area felt like a war zone. Schwinghammer stated that the quarry is affecting his health and asked how to submit that complaint.

Barkalow asked Staff how the stated health concerns should be addressed. Glaesman stated that staff is not able to respond this evening, but noted additional information could be submitted to City Hall.

Jason Kron, 17324 Floralview Court, Cold Spring MN –

Kron stated that he grew up within ¼ mile of the dimensional stone quarry in Cold Spring and the operations were noticeable, but did not have a negative impact. Kron noted that mining technology has continued to improve thereby reducing potential impacts.

Ugochukwu asked Kron if the quarry operations had disturbed his residence. Kron said that it did not and was very controlled.

Mike Sjogren, 3038 Santa Fe Trail, St. Cloud MN –

Sjogren noted the valuation studies on record and those assessing Waite Park comparables. Sjogren acknowledged the commitment of citizens to neighborhood preservation, the efforts of Coldspring to improve communities, the effort of staff to balance competing interests, and comments of Mayor Dave Kleis in the St. Cloud Times regarding the importance of neighborhood to the American Dream. Sjogren came looking for compromise, but is concerned about Coldspring's comments about their long-term intentions for the site. Sjogren noted concern with traffic counts at the skewed access onto County Road 74. Sjogren felt that the annual survey requirement is a useful enforcement tool. Sjogren asked that the hours of all operations on the site be limited to 7 a.m. to 5 p.m. Sjogren shared concern about the lack of specific information regarding tree removal around potential storm water ponds on site

John Nierenhausen, 618 Main Street, Cold Spring MN -

Nierenhausen is part of Coldspring's sales team and travels nationally and internationally to sell St. Cloud granite. Coldspring is a proud company with a strong

reputation. Neirenhausen noted that Coldspring is also important to the local economy and contributes to community. Nierenhausen noted that no complaints have been filed for 30 years and found it interesting that claims are now being shared.

Dan Pfannenstein, 1110 1st Street North Cold Spring MN –

Pfannenstein chose to work for Coldspring and grew up within ¼ mile of the Cold Spring dimensional quarry and experienced no impacts. Pfannenstein noted that the technology improvements will only reduce the need and intensity for blasting.

Ugochukwu asked if the operations had impacted his youth. Pfannenstein indicated that the operations were noticeable but not detrimental.

Konop explained that quarry operations in Cold Spring/Rockville are three times the levels at St. Cloud's charcoal quarry.

Janice Lyendecker, 3 14th Avenue, Paynesville MN –

Lyendecker noted that the Coldspring employees are attending to share their support. She shared concerns with heckling of employees during the meeting. Lyendecker felt that Coldspring is good community member.

Teresa Bohnen, President of St. Cloud Area Chamber of Commerce

Bohnen noted that she had worked for Coldspring and knows their commitment to community. Bohnen reiterated that the proposal does not increase quarry operations at the site, but relocates it on the property. Bohnen noted that Coldspring is a strong member of the community contributing to its economy and community projects. Bohnen estimated the economic impact as much as 10 times the \$3 million estimated by Coldspring. Bohnen stated that the company is highly regulated by agencies at multiple levels and that penalties are assigned for very small infractions noting a specific weed violation. Bohnen concluded that Coldspring and its employees are vital to the economy of the St. Cloud area and the on-going success of local businesses. Bohnen noted that she has experienced no impact of blasting having lived in the area and worked in the industry.

Jim Burns, 4965 Pine Lane, Eagan MN –

Burns reiterated that this proposal will negatively impact the future development potential of south St. Cloud. Burns noted the importance of the area to St. Cloud's growth. Burns added that the operations will have a negative impact upon property owners in the neighborhood through decreased property value. Burns indicated that the proposal did not meet the required criteria for these reasons.

Ugochukwu asked Burns if both neighbors and Coldspring have legitimate concerns about the value of their properties. Burns responded that both parties are injured due to the location of the mining operation in an urban area.

Susan Burns, 447 Madison Street NE, Minneapolis MN –

Burns noted that she is an owner of adjacent land. Burns stated that the application should not be considered by the Zoning Board of Appeals as the applicant's township approvals have expired and is currently in violation. Burns shared concern over the existing violation stating that the City has either not enforced or chosen to selectively enforce the issue. Burns noted that Coldspring officials have written that their operations on site will continue indefinitely. Burns disagreed with earlier comments that

the site has not use and noted the requirement for a suitable site reclamation plan as part of earlier approvals. Burns noted that the City should rely on existing studies and the guidance of the Comprehensive Plan which find the proposed use inappropriate for the area.

Marv Schneider, 24942 Havenwood Road, Cold Spring–

Schneider stated that he had grown up within 4 blocks of the quarry. Schneider noted that technology has changed over time and will continue to improve. Schneider added it is possible that blasting may not be necessary at all in the future and replaced with new techniques.

Mark Gross, 532 Walnut St. Rockville, MN –

Gross reiterated the changing technology and that Cold Spring's operations have not had an impact to surrounding properties.

Allan Gully, 2837 23rd Street South. St. Cloud MN -

Gully was concerned with the number of unknowns related to the proposal. Gully questioned exactly where the vein is located and how far it reaches. Gully stated the operations have an impact on livability particularly with being outdoors during warm weather months. Gully estimated the blasting impacts happen weekly.

Don Vry, 11848 Mississippi Drive North, Champlin MN

Vry shared the history of the township and city actions regarding zoning and comprehensive planning for the charcoal quarry. Vry noted that the township actions were intentional in requiring review every 5 years to gauge progress and need for changes in site operations and the potential of expansion. Vry noted that miscommunication has occurred since annexation and that the 5 year periods no longer exist. Vry supported the proposed annual reporting tool for these reasons. Vry stated that he is also an engineer and can speak to several concerns regarding quarry operations. Vry noted that quarry blasting creates wind gusts similar to a light breeze or a furnace turning on, but in closer proximity to the blast than adjacent properties. Vry noted that blasting would have to be 180 times stronger than historic levels at the quarry to break concrete. Vry reiterated that blasting is getting less intense over time. Vry noted that the frequency of blasting is much less than stated this evening.

Bright asked Vry about the validity of claims about property damage. Vry stated that owners may have damage to their homes, but concluded that facts do not support a claim that quarry operations caused that damage. Vry noted that any number of factors may have caused that damage.

Jim Burns, 4965 Pine Lane, Eagan MN –

Burns noted that property damage may be the result of passing trucks rather than blasting.

Paul Schwinghammer, 3135 County Road 136, St. Cloud MN –

Schwinghammer stated that he had worked in granite sales and noted that it is not a rare resources. Schwinghammer asked that additional time be provided to learn more about the proposal that could have a significant impact upon adjacent property owners and the community. Schwinghammer noted that other metropolitan cities have banned mineral extraction, which causes Coldspring to expand mining out to St. Cloud to meet the metropolitan need. Schwinghammer did not support the TEP allowance.

Loren Schwinghammer 3135 33rd Avenue South, St. Cloud –

Schwinghammer noted that he has worked extensively in stone construction and understands site operations. Schwinghammer noted that he will wear both earplugs and earmuffs on construction sites because of noise levels associated with blasting.

Chris Brixius, 126 25th Avenue North, St. Cloud MN -

Brixius reiterated concern with Staff's recommendation which allow for a temporary excavation permit. Barkalow asked Staff about the temporary excavation permit process. Broxmeyer noted that the TEP requires Planning Commission and City Council action and is limited to one-year periods.

Andrew Johannes, 6839 22nd Street North, St. Cloud MN -

Johannes noted that Quarry Park has become an invaluable community resource. Johannes indicated that the charcoal quarry has the same potential to become a community asset upon Coldspring's completion of extraction on the site.

There being no one else wishing to speak, the public hearing was closed. Barkalow asked Staff to restate its recommendation. Broxmeyer reviewed the recommended conditions. Barkalow asked for definition of adjacent owners regarding the proposed neighborhood meeting. Broxmeyer noted that it is not defined, but suggested that a standard similar to the required City notice is appropriate. Bright asked for clarification of the consequences for the existing violation. Glaesman noted that an administrative citation will be issued in the amount of \$1,500 reflecting the time from which the violation was identified. Glaesman added that any owner has the right to seek a variance or amendment to their property restrictions. Hultgren asked if other actions would be taken if this permit were denied. Glaesman agreed that significant corrective actions would be necessary if denied. Hultgren asked if the applicant is correct that this is an allowed use in the Ag zoning district. Broxmeyer responded that mineral extraction is a conditional use in the Ag district. Hultgren asked if the application must meet all of the ordinance criteria for approval. Broxmeyer noted that all criteria must be met. Glaesman concurred and noted that questions from the board for those testifying are necessary to establish a finding of fact for these criteria. Hultgren noted that the Comprehensive Plan guides the area toward low density housing and asked if that was a compatible use. Broxmeyer indicated that the uses may be in conflict and noted that the 2003 Comprehensive Plan looks at full-build out over time. Glaesman added that the Comprehensive Plan does discuss a transition from

mining of the site to other urban uses over time, but does not specify when that should occur. Barkalow asked how many vacant platted lots exist in the area. Broxmeyer indicated that Boulder Ridge is full and that SunVilla has 30-35 single family and 30 attached lots. Broxmeyer noted Stone Gate to the southwest has roughly 50-60. Barkalow asked about 2013 building permits. Broxmeyer estimated the permits at 50 were issued as of November. Barkalow noted an absorption rate of roughly 7 years. Broxmeyer noted that required disclosures of the quarry operations were included in the SunVilla and Boulder Ridge PUDs.

Hultgren made a motion to approve subject to staff recommendations with a revision to condition 9 including heavy equipment in the trip generation limitation. The motion was seconded by Bright. Ugochukwu offered a friendly amendment to refer to both tractor-trailer and haul vehicles in conditions 9 and 11. Hultgren and Bright agreed to this amendment. Hultgren noted that this is not a question of whether Coldspring is a good corporate citizen; they are. This is a question of the quarry's impact upon adjacent properties and significant concern has been raised. Hultgren felt that the proposal would have a negative impact upon community health and general welfare. Hultgren referenced the testimony regarding historic impacts of quarry operations to owners. Hultgren noted that testimony has been received from an adjacent resident noting a specific health concern. Hultgren noted that the burden lies with the applicant to prove the operation will not have a detrimental effect on property values, which has not happened to his satisfaction. Hultgren noted that property owners are now in a position to fully disclose these concerns to future buyers given requirements of State law. These facts are in conflict with criteria 3 and 4. Hultgren disagreed that a reasonable use of the property does not exist aside from mining and noted earlier testimony. Hultgren agreed that extraction may be the most profitable use, but not the only appropriate use. Hultgren reiterated that Coldspring is a good corporate citizen, but that a quarry is no longer the best use of the property. Ugochukwu shared concern that allowance for a temporary excavation permit application is a backdoor to aggregate production. Barkalow suggested that the motion be revised to remove the last sentence of Staff's condition 5. Hultgren and Bright agreed to a friendly amendment removing that sentence.

Newman noted the employment benefit to the community. Newman noted that operations would halt if the permit is not approved. Bright noted that the recent publicity and the due process will necessitate disclosure during future sales and will have an impact upon property values. Bright stated that this is St. Cloud's last residential growth area and that continued quarry expansion is not appropriate. Zenzen stated that the approval would allow the City to establish new conditions of approval that better regulate the property. Mohamed noted the need to balance economic benefit and neighborhood impact. Mohamed shared concern with effective enforcement of the regulations and lack of an explanation for the existing violation and future efforts to comply. Barkalow agreed that an economic benefit exists to the community. Barkalow acknowledged the existing violation and believed the annual report is a better tool to ensure compliance. Barkalow shared concern about disclosure, but is not aware of past concerns in the real estate community. Barkalow noted that many trucks exist in the area.

Barkalow restated the motion including modifications to 9, 11, and 5. Broxmeyer clarified that the Board has discretion to adopt conditions. Barkalow called for a vote and the motion carried 5-2 with Hultgren and Bright voting against the motion. Barkalow acknowledged the right to appeal this request to the City Council.

Adjournment: There being no further business, the meeting was adjourned at 10:19 p.m.

Andrew Hultgren, Secretary