

**OFFICIAL PROCEEDINGS OF THE  
BOARD OF ADJUSTMENT AND APPEALS**

**REGULAR SESSION**

**SHAKOPEE, MINNESOTA**

**OCTOBER 6, 2011**

**MEMBERS PRESENT:** Gorton, Mangan, Seidensticker Magin, Klemm, and Collins

**MEMBERS ABSENT:** McQuillan

**STAFF PRESENT:** Mark Noble, Planner II

**1. ROLL CALL:**

Chair Gorton called the meeting to order at 7:02 p.m. Roll call was taken as noted above.

**2. APPROVAL OF THE AGENDA:**

**Motion:** Mangan/Klemm moved to approve the agenda. No discussion.

**Vote:** Motion carried 6-0.

**3. RECOGNITION BY BOARD OF ADJUSTMENT AND APPEALS OF INTERESTED CITIZENS:**

Chair Gorton recognized anyone in the audience wishing to speak on any item not on the agenda. There was no response.

**4. APPROVAL OF THE CONSENT AGENDA:**

(All items listed with an asterisk (\*) are considered to be routine by the Board of Adjustment and Appeals and will be enacted by one motion. There will be no separate discussion of these items unless a commissioner so requests, in which event the item will be removed from the consent agenda and considered in its normal sequence on the agenda.)

**Motion:** Magin/Seidensticker moved to approve the Consent Agenda.

**Vote:** Motion carried 6-0.

**\*5. APPROVAL OF THE MINUTES OF THE SEPTEMBER 8, 2011 MEETING.**

**\*6. 2012 MEETING DATES AND DEADLINES FOR THE BOARD OF ADJUSTMENT AND APPEALS:**

7. **PUBLIC HEARING - CASELOG #11016: APPLICATION FOR C.U.P. FOR STRUCTURES OVER 45 FEET AND FOR AN ASPHALT PLANT IN THE HEAVY INDUSTRIAL I2 ZONE. THE PROPERTY IS LOCATED AT 6800 COUNTY HIGHWAY 101 EAST. APPLICANT: BITUMINOUS ROADWAYS, INC.**

Chair Gorton opened the public hearing for Caselog #11016.

Mr. Noble addressed the Board. He provided several photos and maps of the proposed business location. Bituminous Roadways, Inc., represented by Kent Peterson, have applied for a conditional use permit to allow an asphalt plant with over height structures to be established at 6800 County Highway (CH) 101. The property is approx. 20 acres in size, and is located adjacent to the CH101 frontage road and 70<sup>th</sup> Street South. Bituminous Roadways presently occupies the property adjacent to the south; they are looking to relocate primarily for better access, as their present location is limited by numerous rail car crossings throughout the day. There are no other planned changes from their present day operations.

The most recent use of this property was as a ready-mix plant, with some land reclamation activity. That use ceased operation within the past year, which included the removal of several buildings on site. The applicant has provided a narrative that describes their present and proposed activities, noting that approx. 1/3 of the site is a pond created from previous quarry activities. Included in their narrative are diagrams and photos that support their business activities, including their past production, number of vehicle trips per day, and hours of operation. They also have included a concept plan for the new site, which identifies the relocated asphalt plant, one (1) area of recycled aggregate, and two (2) areas for stockpiling of product used in their operation. They reference construction of a berm with landscaping along CH101, which will help provide screening of their activities. The I-2 District requires approval of a CUP for the asphalt plant and structures over 45 feet in height. They have noted that there would be several silos that are approx. 60 feet in height – these would be the tallest structures on site. They presently operate under a CUP for their current site. As noted previously, the only proposed change is the relocation north adjacent to their present site, just south of CH101.

The Zoning Code states that this type of business shall not be located within 500 feet of a residential zone, which is the case at this location. Additionally, the over height structure shall not create adverse shading patterns on adjacent properties, nor shall they be located any closer than one half the structure height (which

would be 30 feet) from a property line. Staff believes that this site will comply with both of these conditions.

Staff has received a number of comments from reviewing agencies. Xcel Energy has commented that they will need to be consulted regarding new electrical service to the new site, as well as note that there are existing underground and overhead facilities along the north and east sides of the property. CenterPoint Energy commented that they have an existing gas main running along the south side of CH101, and two (2) gas mains running along the west side of 70<sup>th</sup> Street South.

The Director of Parks, Recreation and Natural Resources provided a memorandum that referenced two (2) conditions of approval which have been incorporated into the draft resolution. City Engineering and City Fire Department also provided memorandums that included several conditions to include in the resolution, should this application be approved. Shakopee Public Utilities verbally commented to staff that there is a water main that runs along the north side of this property, and that no berming shall encroach in that easement. The applicant shall consult with SPUC concerning water service connections. It should be noted that there is a sanitary sewer that runs along the north side of this property, and extends along 70<sup>th</sup> Street just south of Cretex Avenue. The applicant shall consult with City Engineering regarding connection to the sanitary sewer service line. Scott County Environmental Health has commented that the applicant must make some site improvements prior to them reviewing and approving a solid waste license for this business.

The criteria required for the granting of conditional use permits are listed below with staff findings.

**Criteria #1 The use will not be injurious to the use and enjoyment of other property in the immediate vicinity for the purposes already permitted, nor substantially diminish and impair property values within the immediate vicinity;**

Finding #1 Staff has received no evidence that the proposed use will be injurious to the use and enjoyment of other property in the immediate vicinity, nor would it substantially diminish or impair property values in the area, provided the conditions of the resolution are met.

**Criteria #2 The establishment of the conditional use permit will not impede the normal and orderly development and improvement of surrounding vacant property for uses allowed in the area;**

Finding #2 The conditional use permit will not impede future development and improvement in the area, provided the conditions of the resolution are met.

**Criteria #3 Adequate utilities, access roads, drainage and other necessary facilities have been or will be provided;**

Finding #3 Adequate utilities, access roads and drainage are provided or will be provided at the site.

**Criteria #4 The use is consistent with the purposes of the zone in which the applicant intends to locate the proposed use; and**

Finding #4 The use of the subject property is consistent with the purposes of the Highway Heavy Industrial (I-2) Zone.

**Criteria #5 The use is not in conflict with the Comprehensive Plan.**

Finding #5 The use is not in conflict with the Comprehensive Plan. The Comprehensive Plan designates this area for commercial uses.

Mr. Noble noted that if the Board approves the CUP, then a motion to approve the conditional use permit for an asphalt plant with over height structures, subject to the following conditions is recommended:

1. The site shall develop generally consistent with the submitted concept site plan and asphalt plant layout, provided the plans do not conflict with City Code, Building Code, and Fire Code regulations. The over height structures shall be located consistent with these submitted plans.
2. Berming and landscaping shall be installed along the north property line consistent with the Performance Standards of the City Code, with the berm to be installed outside of any drainage and utility easement, at no more than a 4 to 1 slope, with a mix of coniferous and deciduous plantings located on the berm of a size, species, and spacing as approved by City Staff.
3. The applicant shall consult with Xcel Energy, CenterPoint Energy, Shakopee Public Utilities Commission, and City Engineering regarding connections to utility services available for this site, prior to applying for a building permit.
4. The applicant shall consult with Scott County Environmental Health regarding solid waste licensing requirements, prior to applying for a building permit.
5. Applicant shall obtain a solid waste license/hazardous material generator license for the proposed site from Scott County.
6. Any activity or change that could affect the natural watercourse surrounding the site must be approved by the Minnesota Department of Natural Resources.
7. Any smoke, discharge or by product into the air or on the ground must meet the standards of the Minnesota Pollution Control Agency.
8. This request does not approve any signage for this project; all signage requires the appropriate sign permit(s).
9. No additional accesses to the site will be allowed without obtaining a right-of-way permit from the City (70th Street) or the County (County Road 101 frontage road).
10. If sanitary sewer service is required for the new facility, the applicant will connect to the existing public sanitary sewer adjacent to the property.

11. The existing “groundwater pond” will not be used for the required storm water management. A separate lined storm water basin must be constructed.
12. An erosion and sediment control plan will need to be provided outlining the proposed measures to protect adjacent waters.
13. The property owner will dedicate drainage and utility easements per requirements set forth in the City Code. The applicant will be responsible for all recording fees.
14. The applicant will pay all Trunk Storm Water Charges.
15. Approval of the CUP does not constitute approval of the submitted plans.
16. Fire apparatus access roads shall be provided in accordance with Minnesota Uniform Fire Code Section 902.
17. Provide emergency vehicle access to site during construction. Access to be approved by the Shakopee Fire Inspector.
18. Applicant shall apply for a building permit with the City of Shakopee. This submittal shall include a list of hazardous materials and quantities to be used and stored at the location; details of approved oil separators or traps on all floor drains, where provided; and locations of all sources of ignition.
19. Applicant shall apply for a Fire Permit for the relocation of any aboveground or underground flammable or combustible liquid storage tanks. This submittal shall include details of each tanks construction type, contents, spill protection and secondary containments. A site plan shall also be provided showing the location of each tank.
20. Applicant shall contact the Shakopee Fire Department to coordinate completion of a pre-fire plan for the facility.

Mr. Noble noted that staff was made aware of a request from Kent Peterson, the applicant, on Friday, September 30<sup>th</sup>, requesting that they be allowed to have three (3) additional silos, and that because they currently handle recycled asphalt and concrete at their present site, they would like this operation to continue at the new location. They provided a short narrative and a partial site plan that addressed this new information.

At the time of the request, the BOAA/PC agenda had been completed and in some cases already distributed. The applicant had been asked to provide a full site plan to replace those that are included in the report and noted in the draft resolution. Mr. Noble noted that did receive the information and it is part of the packet provided at tonight’s meeting. In addition, as the Board reviews the information, please note the direction of your decision to staff and City Council whether the Board would recommend the original site plan, which included three (3) silos, or the subsequent request, which included six (6) silos. There also had been supplemental discussion regarding the addition of berming along the east side to provide some screening from the road and to the neighboring businesses. He asked that the Board also include that in any recommendation.

Mr. Noble opened the discussion to any questions or comments from the Board.

The Board inquired about the location of a water basin on the property and any concern for potential water contamination. Mr. Noble responded that the location was a condition from the City Engineer and would be further addressed if the Resolution were approved. In addition, the applicant was available tonight to answer questions regarding location and potential pollution. Several different agencies were notified of the proposal and no one addressed any specific concerns.

The Board discussed if the proposal complied with the proper amount of setback from the property lines and if any additional berming would be necessary. Mr. Noble did not have exact numbers but estimated that there was a sufficient amount of setback.

Chair Gorton inquired about the application for additional silos and if the pertinent agencies would need to be informed of the revisions, especially since there would be recycled asphalt and concrete at the site. Mr. Noble addressed the issue and noted that the site plan was almost identical to the previous proposed plans except for the addition of 3 silos. They still meet the required amount of setback and the only issue is the oversize height of the silo. Otherwise, the two stockpiles and recycled aggregate areas remain exactly the same.

The Board inquired if the property was cleared from the prior business. Mr. Noble noted that the majority of the business operations had been removed; however, some piles of surplus concrete remain. A condition of the resolution was the removal of those materials. The Board specifically inquired as to the estimated height of the previous buildings. Mr. Noble stated that he did not have exact numbers but as he could recall, the principal building was taller than what is being proposed.

The Board also inquired as to the proposed condition of the existing site and the requirements as they vacate the current property site. Mr. Noble deferred the question to the applicant.

Chair Gorton invited the applicant to address the Board.

Mr. John Kittleson, Vice-President of Bituminous Roadways, and Michaela Whalen, Engineer for Bituminous Roadways, were present on behalf of the applicant.

Mr. Kittleson addressed the question regarding the plans for their existing site. He stated that the site was originally a quarry and a significant amount of the site was gravel. Since then, about half of the site has been paved and the remainder the location is well graded with sufficient drainage. It will take them approximately two years to remove the remaining stockpiles. The Board also inquired if they would remove the bituminous surface and return it to a more natural state. Mr. Kittleson responded that they could leave the paved area since

it could be kept clean and would have less of a dust issue. Otherwise they have no plans for additional work on the site. The Board inquired about erosion control since the site is bituminous and gravel. The applicant responded that the perimeter is bermed and landscaped.

The applicant was also asked about the location of the future storm water drainage pond. Ms. Whalen stated that they were currently working on a sufficient site for the drainage pond and would work with the City to find the best area.

Chair Gorton stated that this was a public hearing and invited any interested persons to address the Board and/or the applicant. There was no response. She asked for a motion to close the public hearing.

**Motion:** Magin/Seidensticker moved to close the public hearing.

**Vote:** Motion was carried 6-0.

Chair Gorton asked for the wishes of the Board.

**Motion:** Magin/Seidensticker moved to approve Resolution No. PC11-016, a resolution approving a conditional use permit for an asphalt plant with over height structures as presented, with 6 silos and a change in item #2, which would include some screening along the northeastern corner.

Discussion ensued regarding the need for more specific language regarding the screening along the northeast corner of the property. Mr. Noble suggested the Board direct the length of the screening (i.e. how far do you want it to run along the east property line). Board members suggested bringing the berm and screening down to Cretex Avenue. Discussion ensued as to whether that berm and screening would interfere with the potential storm water drainage site and suggested that the Board provide language that would give staff the authority to determine the length of the berm after the size and location of the storm water pond is determined. It was determined that the current language would include provisions to utilize both fill and vegetation in the berming and screening, and that the Board would need to revise the motion only to include language as to how far they would like the berm/screening to run along the east property line.

The Board asked the applicant how much more usable space, if any, the proposed location has compared to its current location. The applicant stated that the proposed location probably has a little less space. In addition, the applicant stated that they are not opposed to building berms and it would not cause any hardships. However, they ask that they do it in stages that could potentially take a few years to complete. The Board inquired what timeframe they would like to attach to this application. Mr. Noble noted that in most site developments, they require the applicant to complete all design performance standards with the building permit. He noted that it was best to get trees in as soon as possible in order for them to

start maturing. However, it would be up to the Board to determine if they would accept this process in phases. The Board determined that as written now, the berm/screening would need to be completed at the time of the building permit and wanted the applicant to know that it would not be available to be completed in phases.

The applicant inquired about a height requirement. The Board advised that they would need to work with staff to determine the City's requirements for berms/screening and the surrounding storm water basin. Mr. Noble advised the applicant on the current requirements from the City.

The Board inquired if the City requires a certain number of trees to be planted for the screening and if so, can they be strategically planted. Mr. Noble stated that the applicant would work with city staff to determine the best number of trees and where to plant them. The Board suggested just a slight change in language that would leave the amount of trees, the species of trees and the spacing of the trees to be determined by city staff.

**Motion:** Magin amended the motion to include the berm/screening be extended along the east property line to Cretex Avenue and have the applicant work with staff to determine the size and composition of the berm/screening in addition to allowing staff to determine the number of trees as well as species and spacing. Seidensticker seconded the amended motion.

**Vote:** Motion was carried 6-0.

8. **OTHER BUSINESS:**

No other business was noted.

9. **ADJOURN:**

**Motion:** Magin/Seidensticker moved to adjourn the meeting.

**Vote:** Motion carried 6-0. Meeting adjourned at 7:44 p.m.

Amy Hulet  
Recording Secretary

**OFFICIAL PROCEEDINGS OF THE PLANNING COMMISSION**

**REGULAR SESSION**

**SHAKOPEE, MINNESOTA**

**OCTOBER 6, 2011**

**MEMBERS PRESENT:** Mangan, Seidensticker, Collins, Gorton, Klemm, and Magin

**MEMBERS ABSENT:** McQuillan

**STAFF PRESENT:** Mark Noble, Planner II

**1. ROLL CALL:**

Chair Klemm called the meeting to order at 7:44 p.m. Roll call was taken as noted.

**2. APPROVAL OF THE AGENDA:**

Chair Klemm inquired if there were any additions or corrections to the agenda.

**Motion:** Gorton/Magin moved to approve the Agenda.

**Vote:** Motion carried 6-0.

**3. RECOGNITION BY PLANNING COMMISSION OF INTERESTED CITIZENS:**

Chair Klemm recognized anyone in the audience wishing to speak on any item not on the agenda. There was no response.

**4. APPROVAL OF THE CONSENT AGENDA:**

(All items listed with an asterisk (\*) are considered to be routine by the Planning Commission and will be enacted by one motion. There will be no separate discussion of these items unless a commissioner so requests, in which event the item will be removed from the consent agenda and considered in its normal sequence on the agenda.)

**Motion:** Mangan/Gorton moved to approve the Consent Agenda.

**Vote:** Motion carried 6-0.

**\*5. APPROVAL OF THE MINUTES OF THE SEPTEMBER 8, 2011 MEETING:**

**\*6. 2012 MEETING DATES AND DEADLINES FOR THE PLANNING COMMISSION:**

7. **OTHER BUSINESS:**

Mr. Noble noted that there was an informational memorandum on the table at tonight's meeting. This memorandum will be addressed at the November 3<sup>rd</sup> Planning Commission meeting and if any Commission members have questions after tonight's meeting, please contact Julie Klima via phone or email.

Magin requested that Mr. Noble relay a couple of items to Ms. Klima. He inquired if Ms. Klima could contact the other communities that had inspired this policy and see if they are still using this policy.

8. **ADJOURN:**

**Motion:** Gorton/Seidensticker moved to adjourn the meeting.

**Vote:** Motion carried 6-0. Meeting adjourned at 7:47 p.m.

Amy Hulet  
Recording Secretary