

CITY OF COLORADO SPRINGS PLANNING COMMISSION

RECORD-OF-DECISION

DATE: September 17, 2015
ITEM: 5
STAFF: Mike Schultz
FILE NO.: CPC UV 14-00126
PROJECT: DRENNAN INDUSTRIAL LOOP USE VARIANCE

STAFF PRESENTATION:

Senior Planner, Mike Schultz gave a staff presentation. (Exhibit A)

APPLICANT PRESENTATION:

Neil Olesky of Olesky Investments. In 2011 he leased out to a company called Go Green Recycling. At that time the Go Green Recycling was written up in the Kansas City Times what a tremendous job they were doing with recycling of asphalt shingles. In four months it went from that to the city was suing Go Green Recycling and Go Green Recycling disappeared. At the same time they quit paying him. He tried to evict them around November of 2012 and finally got them off site around January 2013. During that period of time they hauled the majority of pile of shingles came into the area. After a hailstorm in 2012 when the majority of pile came in, the company paid people bring their shingles and stockpiled them right there; they took the cash but did not pay him. Being a landlord he went to an attorney and was told he could not block the gates or he could get into other type of legal problems. Early 2013 he started to try see how to get rid of the stockpile of shingles. He was told by a company in Denver of a gentleman who had done this before. He contacted him and it turned out to be the Colorado State Health Department. He had the State of Colorado came on-site and informed him it was an illegal dump site. In addition to the shingles on site there was also wood, tar material, asphalt with tar that was bordering right up to fence of the creek. He immediately took care of that because they knew it could not be recycled and it was removed early on. They hauled 690 tons to the landfill which cleaned up the most westerly boarder and northerly section next to the creek. Since then he has tried to find a way to get rid of the pile. He initially looked to have this material recycled which is done around the country, including Colorado, however due to Colorado's weather it has not worked well to do this. Colorado was still allowing a 2% mix in with their asphalt for road base but no one is using it because it has failed wherever they have tried it. It is as high as a 25% mix in Texas. He had looked at shredding the material. There is some asbestos in the shingles. The asbestos is in the paint. It is unknown exactly where or how much it is. The paint is silver and was used in the 1970's to reflect the heat of the sun. From the information he has gathered asbestos in shingles is less than 1%. He worked with the State on how to sort the material if he were to shred but there was no reason to shred if he could not recycle the product. Therefore nothing has been done other than clean up around it. He looked into moving it to Texas but the cost of railing it to Texas was prohibitive. The pile is on a little over two acres but the estimate is there are 32,000 tons which adds up to 3200 railroad cars. To move it to Texas is over a million dollars; to deal with it here in Colorado Springs is over a million dollars so he is here to see if he can bury the product that is there – the asphalt shingles only. If there is anything else that is run into in that pile he has an agreement with the State they will have to stop and get someone else in to see what could be done. When he spoke with the State he got an engineering firm out of Denver called KRW they are known for their landfills and he has been

CITY OF COLORADO SPRINGS PLANNING COMMISSION

RECORD-OF-DECISION

working with them for two years along with the State and Mr. Schultz to try and get everything together and come up with some type of solution.

Commissioner Markewich stated that it seemed Mr. Olesky wanted to resolve the problem but it did not seem feasible. If they were to grant these two motions and include a technical modification that gives a five year period, would that be enough time how to mitigate the issue. Mr. Olesky stated it had already been three years he did not know if it could be solved in five years. He would like to see longer. It could cost him approximately \$100,000 to get the plan along with the proper seeding and soil content on top. Commissioner Markewich stated he was hesitant to grant this type of variance in perpetuity therefore in his mind having some sort of time limit that is reasonable and Mr. Olesky becomes overburdened by it. Mr. Olesky stated he would like a ten year time frame.

Commissioner Gibson asked if moving the stockpile trigger any ordinances with the city or state since there could be asbestos and you have to move it back with the proposal. Mr. Olesky stated from what the State told him, short of shredding it and cutting it up into a powder-like sand they will not volatilize any of the asbestos

Commissioner Shonkwiler in the present proposal is there anything that requires the shingles to be removed, ever. Mr. Olesky stated the State has not required him to move the shingles his understand from the State if for a landfill full-time. Commissioner Shonkwiler stated, not the State, what they were looking at, there was no time limit? Mr. Olesky stated none that he was aware of.

Commissioner Walkowski asked if the property was in a flood plain. Mr. Schultz answered by stating it was not. Commissioner Walkowski stated there was a financial assurance that the landscaping grows. What would that look like and how does it work? Mr. Schultz stated there would be two financial assurances. One Mr. Olesky will have to post with the State that will then run in perpetuity with the State and will be adjusted by inflation. The other part is what staff will ask for to complete the landscaping and get some vegetation to take on that slope but the amount had not been determined. Commissioner Walkowski stated this would be a hill with dirt packed down on it and you will try to get things to grow on it will be a challenge so what assurance will be made to ensure that it stays intact. Mr. Schultz stated financial assurances were usually held until grass is established. The landscape architect will inspect the site to make sure the grass is established to her satisfaction.

CITIZENS IN FAVOR:

None

CITIZENS IN OPPOSITION:

None

QUESTIONS OF STAFF:

None

REBUTTAL:

None

CITY OF COLORADO SPRINGS PLANNING COMMISSION

RECORD-OF-DECISION

DECISION OF THE PLANNING COMMISSION:

Commissioner Markewich asked if the other Commissioners were in agreement and he added a technical modification for a time limit that it would be appropriate to put it on the second item. Mr. Schultz state it would need to be added to the use variance portion of it. City Attorney Marc Smith stated they looked at and it would be appropriate under the chapter 7 application for the variance. In terms of the certificate of designation the code contemplates some modifications the recommendation but typically they do not see these and does not believe there are conditions and therefore the variance would be more appropriate.

Commissioner Markewich stated his preference would be to approve both items and set an eight or ten year time frame to get it cleaned up and if in eight or ten years if he it's not completed he would have to go before the Planning Commission that would be seated at that time or ask for an extension.

Commissioner Shonkwiler stated he would vote against the item. He did not feel ten years would make any difference. There is nothing in the application that has a time limit. He would like the state procedure to get started as soon as the state could deal with it.

Commissioner Phillips asked Commissioner Markewich if he wanted eight or ten year's time frame. Commissioner Markewich stated either would be acceptable, he just wanted it out there for discussion.

Commissioner Henninger stated with what the City is asking he did not see any need or benefit to set a time limit on this. Commissioner Markewich asked if he would accept a timeline if it was in the motion. Commissioner Henninger stated no.

Commissioner Gibson stated she would look for a timeline and would lean more toward seven vs. anything longer than that.

Commissioner Phillips stated that the question would be what would happen after the timeline. City Attorney Marc Smith stated, from an enforcement standpoint. Commissioner Phillips stated yes. Planning Director Peter Wysocki stated after the timeline was up a letter would be issued to the landowner with a list of options to remediate the site or come back and ask for an amendment to this approval to either extend the time or give additional time. If that is not granted depending on the code at that time a notice and order to clean up the violation. Commissioner Phillips asked what would trigger that and who would keep up with that. Mr. Wysocki stated the Planning and Development Department through Code Enforcement. Commissioner Shonkwiler stated he had no faith in Code Enforcement so the clean up needed to begin now.

Commissioner Smith stated he did not have a problem with this application. If this covering up and vegetation could allow this to stay there it would be fine with him. Mr.

CITY OF COLORADO SPRINGS PLANNING COMMISSION

RECORD-OF-DECISION

Olesky contacted the State authorities on it and therefore Commissioner Smith felt he could approve it without any timeline and he would not support a timeline and supports the application as it is.

Commissioner Donley stated he would support the application. He felt the materials there were relatively innocuous and putting covering and grass on it are probably acceptable solutions

Commissioner Phillips stated would be in support of the application and could agree with Commissioner Smith. Mr. Olesky has gone through the process it's in an area that when covered up it may not make too much difference and the timeline could not be enforced or upheld and he would not support a timeline being put on it.

Commissioner Phillips stated if Commissioner Markewich wanted to make a motion with his technical modification and see if it passes he could do that.

Commissioner Markewich asked the planner, Mike Schultz, about the certificate of designation and stated they had nothing in their packed other than the information regarding the application. Commissioner Markewich asked if he needed to qualify that certificate of designation. Mr. Schultz stated they could reference the file number along with the certificate of designation as part of the motion. The last certificate of designation that was done was last year for a medical waste facility, they took it forward as a development plan but it they approved only the certificate of designation and not the development plan.

Motion by Commissioner Markewich, seconded by Commissioner Smith, on CPC UV 14-00126 (quasi-judicial) to approve the certificate of designation for the shingle landfill facility located at 3320 and 3330 Drennan Industrial Loop based on the finding the request meets the review criteria in City Code section 6.3.106 Certificate of Designation.

Motion passes 6-2, (Commissioner McDonald excused)

Motion by Commissioner Markewich, seconded by Commissioner Walkowski, on CPC UV 14-00126 (quasi-judicial) to approve the use variance and the development plan for the proposed landfill in the M-2/SS zone district based on the finding the request complies with the review criteria in City Code section 7.5.803B for granting use variances City Code 7.5.502.E Development Review Criteria subject to compliance with the following conditions of approval technical and/or informational modifications to the development plan as outlined on pages 143 and 144 of the staff report including as number 5 condition of approval that this finding will go for a period of eight years

Motion denied 3-5, (Commissioner McDonald excused)

CITY OF COLORADO SPRINGS PLANNING COMMISSION

RECORD-OF-DECISION

City Attorney, Marc Smith stated they should follow up with a motion if it is the will of the Board to approve the variance without the timeline.

Motion by Commissioner Smith, seconded by Commissioner Henninger, on CPC UV 14-00126 (quasi-judicial) to approve the use variance and the development plan for the proposed landfill in the M-2/SS zone district based on the finding the request complies with the review criteria in City Code section 7.5.803.B for granting use variance City Code 7.5.502.E development review criteria subject to compliance with the following conditions of approval technical and/or informational modifications to the development plan as outlined on pages 143 and 144 of the staff report.

Motion passes 6-2, (Commissioner McDonald excused)

September 17, 2015

Date of Decision

Planning Commission Chair