



**Meeting of the Planning Commission
Held at the Elk River City Hall
Tuesday, May 28, 2024**

Members Present: Chair Perry Beise, Commissioner Tony Mauren, Commissioner Eric Johnson, Commissioner Robert Rydberg, Commissioner Dennis Booth

Members Absent: Councilmember Matt Westgaard, Commissioner Jill Larson-Vito

Staff Present: Community Development Director Zack Carlton, Senior Planner Chris Leeseberg, and Sr. Administrative Assistant/Recording Secretary Jennifer Green

1. CALL MEETING TO ORDER

Pursuant to due call and notice thereof, the meeting was called to order at 7:01 p.m.

2. PLEDGE OF ALLEGIANCE

3. CONSIDER AGENDA

Moved by Commissioner Johnson and seconded by Commissioner Booth to approve the Planning Commission agenda for May 28, 2024.

Motion carried 5-0.

4. CONSIDER MINUTES

4.1 Planning Commission - April 23, 2024

Moved by Commissioner Rydberg and seconded by Commissioner Booth to approve the Planning Commission minutes from April 23, 2024.

Motion carried 5-0.

5. PUBLIC HEARINGS

5.1 Conditional Use Permit: Commercial Cannabis Cultivation (amendment), 10700 165th Ave NW - Vireo Health

Mr. Carlton presented the staff report.

Chair Beise opened the public hearing.

Rich Tuzio – Director of Facility Development at Vireo Health introduced himself and was present to answer any questions.

There being no one else to speak, Chair Beise closed the public hearing.

Moved by Commissioner Johnson and seconded by Commissioner Booth to recommend approval of the Conditional Use Permit with the following conditions to satisfy the standards set forth in Section 30-654:

- 1. The facility must comply with all licensing and operating procedures required under Minnesota Statutes Chapter 342.**
- 2. The Conditional Use Permit may be issued prior to the applicant having received all necessary state permits and licenses, but the applicant shall submit proof of obtaining all state permits prior to beginning cultivation operations.**
- 3. Issuance of this CUP does not exempt the applicant from all standards outlined in state statute.**
- 4. The operation/building must connect to city sewer and water and pay the required SAC/WAC fees in accordance with city codes.**
- 5. Construction activities will require signed plans prepared by a qualified professional.**
- 6. All other uses of the property must cease prior to issuance of a certificate of occupancy.**

Motion carried 5-0.

5.2 Conditional Use Permit: Agricultural Animals on a Residential Lot, 20373 Vance St. NW - Katie Bedbury

Mr. Leeseberg presented the staff report.

Chair Beise opened the public hearing.

John Peterson, 20355 Vance Street NW, stated he thought the applicant was only requesting one horse. He expressed concerns with dust, manure and horse smell, as his house is about 50' from the proposed fenced area to hold the horses. He had hoped for more details about where the shelter, food, and water would be placed and how far away it would be from his house. He also asked about fencing and if a survey was required to determine the property lines. The area where the applicant is proposing to fence is heavy with buckthorn.

There being no one else to speak, Chair Beise closed the public hearing.

Commissioner Booth asked if the Planning Commission should delay this request for a month to get more answers from the applicant before making a decision.

The commission discussed the shelter location and asked if the city could determine where the shelter is placed.

Mr. Leeseberg stated the city cannot dictate where an accessory structure is located other than to guide setbacks, which in the R1a district, the side yard setbacks are 20'. He also noted any structure

under 200 sq. ft. doesn't require a permit.

Chair Beise asked how wide the lot is. Mr. Leeseberg stated the lot is just under 150 feet wide.

Commissioner Johnson asked about the guidelines for the manure management plan and asked if the applicant had formulated a plan.

Mr. Leeseberg stated the manure management plan will have to reflect the Minnesota Pollution Control Agency guidelines. Staff will continue to work with the applicant to craft a manure management plan and have it available for the City Council meeting.

Commissioner Mauren asked if the odor would still fall under nuisance ordinances.

Mr. Leeseberg stated it would.

The Planning Commission discussed the distance the shelter should be placed to allow for the least amount of conflict from neighboring homes.

Moved by Commissioner Johnson and seconded by Commissioner Rydberg to recommend approval of the Conditional Use Permit with the following conditions to satisfy the standards set forth in Section 30-654:

- 1. A Manure Management Plan must be approved by the city.**
- 2. No more than two (2) agricultural animal units shall be allowed on the property.**
- 3. If the city finds that the manure and other waste materials create a nuisance by attracting flies, other insects, rodents, or by creating offensive odors, the city may order the manure and other waste materials be removed on a more frequent schedule.**
- 4. No on-site commercial activities such as breeding, boarding, or selling shall be permitted.**
- 5. The shelter structure and area for feeding and water shall be located no less than 200' from any existing neighboring residence.**

Motion carried 5-0.

Commissioner Rydberg asked about the fence concerns brought up by Mr. Peterson.

Mr. Leeseberg stated the city doesn't require a permit or survey to install a fence. The fence can be installed on the property line with a written agreement from both parties, or it could be set back 1-2 feet from the property line to maintain either side of the fence. If there is a property line dispute, the applicant and the neighbor would need to hire a surveyor or an attorney to resolve.

5.3 Interim Use Permit: Residential Occupation with Outdoor Storage, 10208 209th Ave NW - Jason Bye

Mr. Leeseberg presented the staff report.

Commissioner Booth asked if the applicant was using the building as part of the total storage amount.

Mr. Leeseberg stated the applicant is using 6700 sq. ft. of the building for storage and 20,000 sq. ft. of outdoor storage.

Commissioner Johnson clarified Condition number one that the accessory structure building would need to be brought up to commercial code, and if at any time the conditions of the IUP aren't met, the permit can be revoked.

Mr. Leeseberg stated that was correct, and if the conditions aren't met, the IUP can be revoked.

Commissioner Rydberg asked if the house located at the property is a residence or office space.

Mr. Leeseberg stated the homeowner/applicant lives in the home.

Chair Beise opened the public hearing.

Jason Bye - 10208 209th Avenue NW – the applicant, outlined the business activities of his wireless construction company. Most of the inventory is owned by cell service providers and the materials are not released to him until the job is to be completed, noting the materials need to be on site within 3 business days of being constructed. The items being stored on site are usually electrical wire, pvc conduit and wire, and deliveries are made by box truck or courier van. His outbuilding was not designed to be used for business, rather to store a small amount of his own personal items and equipment. He stated he is aware it will be required to be a commercial building and has no problem making that investment to bring it into compliance with the commercial building code. He stated he has no problem with the conditions as listed in the memo. He has installed privacy fencing along the west property line to alleviate concerns from neighboring properties. He stated employees don't work at the property and when employees are there, they drop off and leave. Many also take their work trucks home. He asked for the opportunity to be a good property and business owner.

Brian Rucks, 10296 209th Ave. NW – felt the applicant was working with city staff even prior to purchasing the property and thinks staff is trying to put this "under the rug." He expressed concerns with past practices/uses at the Bye property prior to the 2023 CUP application and would that behavior reoccur if an IUP was issued. He expressed concerns about the 2023 CUP conditions. He talked about traffic safety concerns on County Road 33. He felt the fence constructed by Mr. Bye was not placed properly. He stated he doesn't like the way the city is zoning things to allow this type of use.

Mr. Bye explained how he gathered information prior to purchasing the property. He explained a truck accidentally drove into the Wells property, but he didn't have any control over that. He stated he is trying not to create waves. He stated the fence he constructed was properly placed based upon city ordinance. He did have a survey done to ensure he was on his property.

Deann Wells – 10296 209th Ave NW – expressed her concerns with the details outlined in the 2023 CUP Planning Commission packet.

Chair Beise noted the application being reviewed this evening was not for the 2023 CUP request.

Ms. Wells stated she felt it important to note the documentation of the 2023 CUP and the code

enforcement visits where it shows that a trucking and construction company was being run, and felt Rothmeyer TEC stood for Trucking Exteriors Construction with multiple employees working at the property. She reviewed city ordinances which she felt were not being followed because she could witness them. She expressed the safety of County Road 33 and delivery trucks going to the wrong address. She asked if Sherburne County was notified to comment on the added traffic to the county road. She also noted a burn barrel violation currently on Mr. Bye's property.

Mr. Bye answered some of Ms. Well's comments, stating the employees working on the property were building the pole shed and working on the interior when Code Enforcement Officer Graham Schultz visited in 2023. He noted TEC stands for Tower Electrical Construction, and he was required to be a part of the US DOT to operate vehicles over 10,000 lbs. when being used for commercial use. He didn't know a burn barrel was illegal and hadn't used it in two years. He encouraged the Planning Commission to review the other businesses being operated on other properties in the area.

There being no one else to speak, Chair Beise closed the public hearing.

Commissioner Johnson stated the Planning Commission has looked at this a number of times and felt they have come up with something reasonable to allow residents of Elk River to operate a small business on their 13 acres. He felt Mr. Bye has done much to accommodate the city requirements to help with the neighbor's concerns. The IUP has a lot of very stringent conditions that need to be met, he didn't have a reason not to move forward with a recommendation of approval to the city council.

Commissioner Mauren agreed and while he wished the outdoor storage location was more than 50 feet, he didn't feel he could recommend denial and have the legal footing to do that. He questioned whether the 50-foot setback might need to be reviewed in the future.

Commissioner Booth stated he agreed with Commissioner Mauren's comments and felt the process didn't give the Planning Commission an opportunity to deny something if it's "close enough." He stated the conditions were stringent.

Commissioner Rydberg stated there were some protections that have been added to the IUP but he agreed with Commission Mauren and felt they were stuck with it. He stated he goes back to the original intent of a home occupation on residential property and didn't feel this was the original use of this land, stating once it's approved, it's there. He asked how to clean up the other possible violations in the area.

Chair Beise noted the City Council just reviewed the residential occupation ordinance in 2023.

Commissioner Johnson feels the conditions added protect the neighbors.

Commissioner Mauren asked for clarification regarding the business operating hours.

Mr. Leeseberg stated the City Council codified 6 days a week, 7 a.m. to 7 p.m.

Moved by Commissioner Johnson and seconded by Commissioner Rydberg to recommend approval of an Interim Use Permit with the following conditions to satisfy the standards set forth in Section 30-658 (c):

1. The applicant and/or property owner must apply for all required commercial building, electrical, plumbing, and/or mechanical permits before any interior commercial activities can occur.
2. A code analysis finding commercial building code compliance shall be prepared by an appropriate registered professional.
3. The fenced outdoor storage area shall be:
 - a. Limited to 20,000 square feet.
 - b. Fenced with a 6-foot tall 100% opaque fence with gates, to be closed when not in use.
4. The fenced outdoor storage area must be paved with an approved surface (Class 5, concrete, asphalt, or crushed concrete/asphalt).
5. The following shall be located within the fenced outdoor storage area:
 - a. All equipment, vehicles, and products related to the business.
 - b. Garbage and recycling dumpsters.
 - c. All business/employee parking.
 - d. Portable outhouses.
 - e. Deliveries.
6. Dumpsters with lightweight materials shall be covered when not in use.
7. Except for company vehicles, equipment, and enclosed trailers, no materials or products can be stored higher than the top of the outdoor storage area fence.
8. The hours of operation shall be limited to 7:00 a.m.-7:00 p.m. Monday through Saturday.
9. Exterior lighting on the accessory structure and in the outdoor storage area shall comply with Section 30-937.
10. Dust control measures shall be used regularly in the fenced yard area.
11. A stormwater retention pond, if required, shall be reviewed by city staff and installed in accordance with all applicable plans.
12. Outside routine maintenance/repair, completed only by the property owner, there shall be no major repair/maintenance of company vehicles/equipment on site. Routine maintenance/repair shall only occur inside the building with all doors and windows closed.
13. Shall not be serviced by delivery vehicles larger than 26,000 pounds gross vehicle weight.
14. Access to the subject parcel, for business activities, shall occur only at the single driveway located on County Road 33.
15. The idling of a truck tractor or other business equipment in excess of 15 minutes from April 16 through October 31, and 30 minutes from November 1 through April 15, is prohibited.

Motion carried 5-0.

- 5.4 Conditional Use Permit: Motor Vehicle Specialty Service Station (retail tire service station), 17994 Zane Street - Les Schwab Tire Center

Mr. Leeseberg presented the staff report.

Chair Beise opened the public hearing.

Ron Erickson representing Cushing Terrell, 411 East Main Street, Bozeman, MT, introduced himself and was available to answer any questions.

There being no one else to speak, Chair Beise closed the public hearing.

Moved by Commissioner Johnson and seconded by Commissioner Booth to Recommend approval of the Conditional Use Permit with the following conditions to satisfy the standards set forth in Section 30-654:

- 1. The parking lot/driveway setback variance (V 24-04) shall be approved.**
- 2. The use of hazardous materials such as oils, lubricants, chemicals, and solvents shall be handled in accordance with all state standards.**

Motion Carried 5-0.

6. GENERAL BUSINESS

6.1 Resolution: Sale of Public Property

Mr. Carlton presented the staff report.

Moved by Commissioner Johnson and seconded by Commissioner Booth to adopt Resolution 24-01 finding the sale of approximately 14 acres of city-owned property within Outlot A, Natures Edge Business Center Fourth Addition, to be consistent with the Elk River Comprehensive Plan.

Motion Carried 5-0.

7. COUNCIL LIAISON UPDATES

Councilmember Westgaard was not present to provide an update.

8. MOTION TO ADJOURN REGULAR MEETING

Moved by Commissioner Booth and seconded by Commissioner Johnson to adjourn the meeting.

The meeting adjourned at 8:21 p.m.

Minutes prepared by Jennifer Green.

A handwritten signature in black ink that reads "Perry Beise". The script is cursive and fluid.

Perry Beise, Chair

A handwritten signature in black ink that reads "Tina Allard". The script is cursive and fluid.

Tina Allard, City Clerk