

REQUEST FOR COUNCIL ACTION

Date: January 25, 2016
Item No.: BOA

Department Approval



City Manager Approval



Item Description: Vogel Mechanical Appeal of Administrative Decision

BACKGROUND

The City of Roseville approved an Interim Use (IU) for Vogel Sheetmetal, Inc. (now Vogel Mechanical) at 2830 Fairview Avenue (Attachments A and B). A condition of that approval include the following requirement:

The applicant shall install opaque fencing of 6' – 8' in height and coniferous plantings or landscaping along the northern edge of the property.

The IU process allows the City Council discretion to provide specific conditions that may exceed the normal zoning requirements. In this instance, the condition exceeded the City's normal screening requirements in three ways:

1. Mandating a specific location for the opaque fence (along the northern edge) that is away from the activities to be screened
2. Specifying that the fence run the entire length of the property rather than just screening the rear and front parking/loading areas where the activities to be screened occur
3. Specifying the the fence height exceed the normal height limitation of 6.5 feet high

The installation of this fence has been been very difficult, with numerous disputed issues between the applicant and the adjacent neighborhood. The primary issues have fallen in the following areas:

1. The feasibility of installing a fence within utility easements for CenturyLink and Xcel energy
2. The location of the property line and potential conflicts with encroachments
3. The design details of the fence because fences over 7 feet high are regulated by the building code which requires demonstration that they meet frost resistance and wind loading requirements. Demonstrating compliance with this section would require evidence such as an analysis from a structural engineer that the fence design is compliant. Fences under 7 feet high are not required to be structurally engineered and are commonly installed throughout the community.

In the hope of resolving some of these issues of dispute/complications, staff brought the IU approval back to the City Council on August 24, 2015 for clarification of the City Council intent (Attachment C). The City Council's direction was as follows:

McGehee moved, Etten seconded, clarification and direction to staff that the City Council's Interim Use condition of June 23, 2014, as referenced in the RCA dated August 24, 2015, that

33 the opaque fencing of 6' to 8' in height, coniferous plantings, and landscaping will be installed
34 along the northern property line in its entirety, unless easement agreement(s) preclude a fence
35 from being installed at that point; and if so the fence installation will occur at the northernmost
36 point allowed and tied into the eastern property line, in which case, if plantings are allowed on
37 the easement in accordance with easement language, and if neighbors agree to it, plantings will
38 all be located on the north side of the fence.

39
40 The motion passed unanimously.

41 On November 13, 2015, a letter was received from the applicant's attorney (Attachment D)
42 requesting that the fence be installed 5' – 10' south of the property line. The letter indicates that
43 the applicant believed *"This provides the best option for placing the fence where it will not be*
44 *subject to ongoing damage from the neighbors' encroachments, allows access to easement*
45 *holders and gives the neighbors an effective and attractive visual/physical barrier."*

46 Staff also received communication from one of the neighbors (Attachment E) which consisted of
47 email from a representative of CenturyLink and another fencing contractor indicating that the
48 location of the underground CenturyLink cable would not prevent the installation of a fence
49 within the Centurylink easement.

50 Finally, information was received from Vogel Mechanical's fencing contractor (Attachment G)
51 indicating that the utility locates for the buried cable were generally indicating the buried cable
52 was likely on the property line in some areas and north of the property line in others, but likely
53 not venturing significantly into the Vogel property.

54 Staff reviewed the Vogel request against the language in the City Council's 8/24/15 clarification
55 and determined that the only flexibility staff had been provided to move the fence significantly
56 south was if it could be demonstrated that an easement agreement prevented installation where
57 the City Council had directed it be installed. Based on the lack of definitive evidence that the
58 fence was prevented from installation by one or both of the utilities and the presence of
59 information from Centurylink indicating an acceptance of a fence in this location, staff was left
60 no choice other than to deny the request from the applicant. Staff acknowledges there are utility
61 and encroachment complications that make it difficult to install the fence at this location and
62 there may be long term maintenance issues from neighbor vegetation growing back into a fence
63 installed at this location. However, it appears to still be possible to install the fence, in
64 accordance with the standard provided in the City Council's direction.

65 Staff then communicated with the applicant that based on the direction it has received, it was
66 unable to approve the request and cited the reasons for that denial (Attachment G).

67 On November 27, 2015, staff received a request to appeal the decision in accordance with
68 Section 1009.08 of the Zoning Code.

69 Section 1009.08 requires the following:

70 *When an appeal is filed, a public meeting regarding the matter shall be held before the City*
71 *Council, acting as the Board of Adjustments and Appeals, at a regular meeting held within 30*
72 *days of the receipt of the appeal. The Board of Adjustments and Appeals will reconsider only the*
73 *evidence that had previously been considered as part of the formal action that is the subject of*
74 *the appeal. New or additional information from the appeals applicant(s) may be considered by*
75 *the Board of Adjustments and Appeals at its sole discretion, if that information serves to clarify*
76 *information previously considered by the Variance Board and/or staff.*

Notices of appeals of administrative decisions are only required to be mailed to the appeal applicant and the subject property owner. In this instance, this would require notice only be provided to Vogel Mechanical since it is both the property owner and the appeal applicant. Therefore, staff expanded the notification area to include the impacted residential properties that abut the proposed fence location.

In order to assist the Board of Adjustment and Appeals in its deliberation, the following code references and other facts are provided in order to be of assistance:

1. Definition of limited production and processing

Limited production/processing - accessory use: Light manufacturing, fabrication, assembly, processing, packaging, research, development, or similar ancillary or accessory uses which are conducted indoors and which would not be disruptive of, or incompatible with, other office, retail, or service uses that may be in the same building or complex. Limited production/processing generally does not include industrial processing from raw materials. (Ordinance 1445, 7-8-2013)

Limited production/processing - principal use: Light manufacturing, fabrication, assembly, processing, packaging, research, development, or similar principal or primary uses which are predominately conducted indoors and which would not be disruptive of or incompatible with other office, retail, or service uses that may be in the same building or complex. Limited production/processing as a principal/primary use generally does not include industrial processing from raw materials. (Ordinance 1445, 7-8-2013)

2. City's Typical Buffer Standards Requirements (Sec. 1011.03.B)

B. Buffer Area Screening: *The setback requirements established for uses in each district are intended to act as buffers between those districts and uses, but heightened screening is appropriate between low-density residential dwellings and more intensive uses. For all new construction in all districts that lie adjacent to or across the street from LDR Districts, therefore, additional screening shall be implemented as required herein.*

1. Exception: The requirements in this subsection shall be applied in addition to the preceding general landscaping requirements, except that they shall not apply to Low Density Residential or Park and Recreation Districts.

2. Acceptable Screening: Screening requirements of this Title shall be satisfied through the use of buildings, berms, solid board-on-board fences, walls, planting screens, evergreen trees, hedges, or some combination thereof. If the topography, existing vegetation, permanent structure, or other feature creates a barrier which achieves the standards of this section, they may be substituted.

a. Screen Fences and Walls: Any screen fence or wall shall be constructed of attractive, permanent finished materials, compatible with those used in the construction of the principal structure. Such screens shall be at least 6 feet in height and shall be 100% opaque.

b. Planted Screening: Any planting screens shall consist of healthy plants, shall be at least 6 feet in height, and shall be designed to provide a minimum year round opacity of 80% at the time of installation.

c. Notwithstanding these requirements, screening along street rights-of-way shall be maintained at a height not less than 3 feet nor more than 4 feet.

3. *Maintenance: Screen fences and walls which are in disrepair shall be promptly repaired. Planted screens shall be maintained according to the normal landscape maintenance requirement of Section 1011.03A8*

3. City's Typical Fence Height Limitations – All Districts (Sec. 1011.08.A.3)

Fences in front yards shall not exceed 4 feet in height. Notwithstanding this limitation, fences in front yards which are adjacent to the side or rear yards of abutting lots may be as tall at 6.5 feet.

4. City's Typical Fence Height Limitations – Residential Districts (Sec. 1011.08.B.1)

No fence used for screening or security shall exceed 6.5 feet in height;

5. Sound Fence on the Property to the East (Bridging Building)

The fence on the property to the east of the subject property has been often cited in discussions before the Planning Commission and City Council. This fence is not a Buffer Area Screening fence but is a fence designed to solve a sound problem that had historically occurred on that site when it was zoned industrial and before the two buildings were connected. Noise from those earlier industrial operations had evidently exceeded the L50 nighttime levels and a series of steps were taken to reduce the sound level to below L50 levels through connecting the structures, construction of a sound deadening wall/fence, and better management of noisy operations in the nighttime hours.

Any use that was exceeding the L50 nighttime levels on the Vogel property would also be exceeding the definition of limited production and processing and therefore not be allowed at this location. Consequently, staff has viewed the Vogel property's visual screening requirement to be a different regulatory situation than the adjacent property's sound barrier requirement when it comes to necessary fencing/wall construction standards.

STAFF RECOMMENDATION

The City Council, acting as the Board of Adjustments and Appeals, should review the relevant materials, deliberate and make a determination on the appeal.

REQUESTED COUNCIL ACTION

Offer a motion to approve the attached Resolution (Attachment I) memorializing the decision and findings of the Board of Adjustments and Appeals.

Prepared by: Paul Bilotta, Community Development Director
Attachments: A: 6/23/14 Resolution 11160
B: 6/23/14 City Council Minutes
C: 8/24/15 City Council Minutes
D: 11/13/15 Letter from Dan Wall
E: Emails from Centurylink and Midwest Fence
F: Graphic of buried cable location prepared by Vogel's fence contractor
G: 11/19/15 Community Development Department Decision
H: 11/27/15 Letter from Dan Wall
I: Draft Resolution of Decision

**EXTRACT OF MINUTES OF MEETING OF THE
CITY COUNCIL OF THE CITY OF ROSEVILLE**

Pursuant to due call and notice thereof, a regular meeting of the City Council of the City of Roseville, County of Ramsey, Minnesota, was held on the 23rd day of June 2014 at 6:00 p.m.

The following Members were present: Laliberte, McGehee, Willmus, Etten, Roe; and the following Members were absent: None.

Council Member Willmus introduced the following resolution and moved its adoption:

**RESOLUTION NO. 11160
A RESOLUTION APPROVING A TEMPORARY LIMITED PRODUCTION AND
PROCESSING FACILITY AS AN INTERIM USE AT 2830 FAIRVIEW AVENUE
(PF14-012)**

WHEREAS, Vogel Sheetmetal, Inc. has applied for approval of the proposed temporary sheetmetal fabrication facility as an INTERIM USE in conjunction with BDLM Vogel Properties, LLC, owner of the property at 2830 Fairview Avenue; and

WHEREAS, the property at 2830 Fairview Avenue is legally described as:

PIN: 04-29-23-42-0030

That part of the South 1046.0 feet of the North 1446.0 feet of the Southeast 1/4, Section 4, Township 29, Range 23, Ramsey County, Minnesota described as follows:

Beginning at a point on the West line of said Southeast 1/4, distant 400.0 feet South of the Northwest corner of the Southeast 1/4; thence South along said West line of the Southeast 1/4, a distance of 400.0 feet; thence East along a line drawn at right angles to said West line of the Southeast 1/4, and also being the centerline of Terrace Drive, a distance of 548.0 feet, thence North along a line drawn parallel to the West line of said Southeast 1/4, a distance of 396.49 feet, more or less to an intersection with the North line of the South 1046.0 feet of the North 1446.0 feet of the said Southeast 1/4; thence West along the said North line of the South 1046.0 feet of the North 1446.0 feet of the said Southeast 1/4, a distance of 548.01 feet, more or less, to the point of beginning, according to the United States Government Survey thereof.

WHEREAS, the Roseville Planning Commission held the public hearing regarding the proposed INTERIM USE on June 4, 2014, voting 6 – 0 to recommend approval of the use based on testimony offered at the public hearing as well as the information and analysis provided with the staff report prepared for said public hearing; and

WHEREAS, the Roseville City Council has determined that approval of the proposed INTERIM USE will not result in adverse impacts to the surrounding properties based on the following findings:

- a. The proposed limited production and processing use would not be expected to have significant negative effects on the land because the byproduct of the proposed light sheetmetal fabrication would be recyclable scrap metal;
- b. The INTERIM USE does not constitute an excessive burden on streets, parks, or other facilities because The main operations (i.e., office activities and limited sheetmetal fabrication activities) of the facility would be conducted indoors, and the traffic volume from deliveries and installation crews should be considerably less than the former distribution use of the property; and
- c. Noise from fabrication of ducts and other sheetmetal accessories stands to be the only potential nuisance for surrounding property owners, and §1011.02 (Environmental Regulations) of the City Code requires all uses to comply with regulations pertaining to noise and other environmental considerations. By meeting these requirements, the proposed limited production of sheetmetal ducts and accessories would not be injurious to the surrounding neighborhood or otherwise harm the public health, safety, and general welfare.

NOW THEREFORE BE IT RESOLVED, by the Roseville City Council, to APPROVE the proposed temporary limited production and processing facility as an INTERIM USE in accordance with Section §1009.03 of the Roseville City Code, subject to the following conditions:

- a. The applicant shall install opaque fencing of 6' – 8' in height and coniferous plantings or landscaping along the northern edge of the property; and
- b. The approval shall expire, and the sheetmetal fabrication shall cease, by 11:59 p.m. on June 30, 2019, or upon the earlier cessation of the business, unless limited production and processing is allowed to continue through renewed approval as an INTERIM USE or by virtue of more permanent approval(s) (e.g., ZONING CHANGE, CONDITIONAL USE, etc.), whichever comes first.
- c. Doors shall be closed during operation.

AND BE IT FURTHER RESOLVED, by the Roseville City Council that representatives of the property owner and the applicant shall sign the form attached to this resolution to acknowledge that each has received, reviewed, and understood the terms and conditions of the approval and agrees to abide by said terms and conditions prior to commencement of the drive-through activity.

The motion for the adoption of the foregoing resolution was duly seconded by Council Member Etten and upon vote being taken thereon, the following voted in favor: Laliberte, McGehee, Willmus, Etten, Roe; and none voted against.

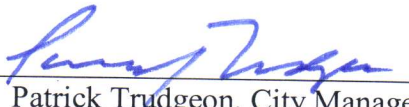
WHEREUPON said resolution was declared duly passed and adopted.

Resolution approving limited production and processing as an interim use at 2830 Fairview Avenue (PF14-012)

STATE OF MINNESOTA)
) ss
COUNTY OF RAMSEY)

I, the undersigned, being the duly qualified City Manager of the City of Roseville, County of Ramsey, State of Minnesota, do hereby certify that I have carefully compared the attached and foregoing extract of minutes of a regular meeting of said City Council held on the 23rd day of June 2014 with the original thereof on file in my office.

WITNESS MY HAND officially as such Manager this 23rd day of June 2014.


Patrick Trudgeon, City Manager

(SEAL)

Resolution approving limited production and processing as an interim use at 2830 Fairview Avenue (PF14-012)

I, the undersigned, do hereby acknowledge that I have received, reviewed, and understand the attached and foregoing extract of minutes of a regular meeting of the Roseville City Council held on the 23rd day of June 2014 and that I agree to abide by the terms and conditions of the approval as they apply to the temporary limited production and processing facility at 2830 Fairview Avenue.

Representative of BDLM Vogel Properties, LLC

Bonnie L. Vogel, Chief Manager
printed name and title

Bonnie L. Vogel
signature

6/26/14
date

Representative of Vogel Sheetmetal, Inc.

Bonnie L. Vogel, CEO
printed name and title

Bonnie L. Vogel
signature

6/26/14
date

EXTRACT FROM THE JUNE 23, 2014 CITY COUNCIL MEETING MINUTES

i. Request by Vogel Sheetmetal, Inc. for Approval of Limited Production and Processing of Sheetmetal as an Interim Use at 2830 Fairview Avenue

At the request of Mayor Roe, City Manager Patrick Trudgeon briefly reviewed this item, as detailed in the Request for Council Action dated June 23, 2014. Mr. Trudgeon noted the additional condition by the Planning Commission based on public comment at the Public Hearing, for fencing and/or plantings to protect adjacent single-family homes adjacent to the site on the north. Councilmember McGehee advised that she had heard from some residents in the area of problems from previous stamping machine business, and their concerns with noise when doors are open during those operations. Since this use would involve a benching machine as part of their process, Councilmember McGehee suggested some accommodation be made to address any potential noise concerns.

Public Comment**Lisa McCormick**

Ms. McCormick submitted a written petition, *attached hereto and made a part hereof*, from the neighborhood, addressing their concerns regarding this Interim Use and potential future rezoning.

Ms. McCormick asked to clarify the points of the conditions approved and revised by the Planning Commission, where it had been made clear that the neighbor-hood's preference was for both fencing and trees, with staff having initially noted the potential for lights from vehicles in the back parking lot affecting the single-family residents to the north of the site. Ms. McCormick opined that a fence would also serve to address noise concerns; and with living on the eastern portion of the subject site, where there used to be a fence, she attested to the reduced impacts that would arise from having both a fence and trees in place. With the potential for rezoning in the near future, Ms. McCormick advised that residential neighbors felt strongly that there needed to be a barrier between residential and commercial properties, since there was only 50' between those uses and residential backyards against the site; and asked that language for the condition specifying "a fence 'and/or' coniferous plantings" be revised to "fencing 'AND' canopy trees." Ms. McCormick noted that the petition had twenty-four signatures, representing eighteen homes in the area; with their unanimous support of both trees and fence to be included.

Speaking to Councilmember McGehee's point about noise, Ms. McCormick advised that residents would also like doors closed during operations whenever possible to limit noise from the facility.

Councilmember McGehee sought clarification as to whether the residents were looking for summer and winter shielding, and for those plantings to be as tall as the fence when initially planted.

Ms. McCormick noted that City Code required 6', but the neighbors wanted to be reasonable, but were seeking canopy trees for year-round protection. In the context of rezoning, Ms. McCormick expressed concerns of neighbors that when re-zoned, the Interim Use would terminate, and under code the property owner had one year to comply with conditions, but if rezoning took place before then, she questioned if the applicant would still be required to comply. Ms. McCormick advised that the neighbors were simply requesting that if possible, this condition survive the Interim Use and potential rezoning at which time the Interim Use would terminate.

Steve Gjerdingen, 2553 Fisk Street

Mr. Gjerdingen opined that he was not too excited about an Interim Use versus a Conditional Use; based on this being part of the Twin Lakes Redevelopment Area, and intended for re-use as a more

43 vibrant area with better improvements for properties. With the Hagen site proposed for development as
 44 a multi-family apartment complex near this site, zoned as High Density Residential (HDR), Mr.
 45 Gjerdingen noted that this property was the only one on the east side of Terrace Drive with a gap in
 46 sidewalk. Mr. Gjerdingen asked that, as part of this approval, the City Council require that sidewalk
 47 segment to be installed at this time.

48 **Applicant Bonnie Vogel, Owner/CEO, Vogel Sheetmetal, Inc., 10684 Lansing Avenue N,**
 49 **Stillwater, MN 55082**

50 Ms. Vogel noted that the Planning Commission meeting discussion included fencing, and it was her
 51 understanding that the property would be rezoned Commercial/Mixed Use. Ms. Vogel assured the City
 52 Council and adjacent residential property owners that it was the firm's intent to beautify the property,
 53 and that they were willing to address neighborhood concerns by installing fencing and trees. However,
 54 Ms. Vogel asked for specific heights and parameters for them to meet, since this would be part of their
 55 budget and financing, and affect other plans for the property and business.

56 At the request of Councilmember Willmus, Ms. Vogel advised that they were willing to address
 57 neighborhood concerns and keep doors closed during operations to the extent feasible for their
 58 business. Ms. Vogel noted that this issue had been discussed during the Open House with neighbors.

59 Specific to the sidewalk segment along Terrace Drive, Ms. Vogel advised that this took her by
 60 surprise, as she was not clear as to whether this was a responsible of the City or developer.

61 Mayor Roe clarified that installation and maintenance of sidewalks in commercial areas were typically
 62 the responsibility of the developer and/or property owner.

63 Ms. Vogel noted that there was a monitoring well in that sidewalk area that the City claims ownership
 64 to, but from their property survey, appeared to be on the private property rather than public right-of-
 65 way, creating the need to make a de-termination on the responsible party to remove that monitoring
 66 well.

67 Councilmember McGehee noted that a large portion of the segment without a sidewalk along Terrace
 68 Drive was taken up by the property's driveway, which should reduce sidewalk installation costs to
 69 some extent.

70 Ms. Vogel recognized that; however, she asked for more specifics and why that would be required as
 71 part of this Interim Use approval process.

72 Councilmember Willmus noted the sidewalk along the south side of Terrace Drive from Fairview to
 73 Lincoln Drive, which served this area.

74 Councilmember McGehee thanked Ms. Vogel for her complete notes, including questions and
 75 responses, provided as written record of their open house.

76 Mayor Roe thanked Ms. Vogel for providing their firm's perspective of the project.

77 Councilmember Willmus stated that he was in support of adding language to the recommended
 78 Condition A to reference "fencing, plantings, and landscaping" and an added condition that "doors be
 79 closed during periods of operation.

80 Willmus moved, Etten seconded, Resolution No. 11160 (Attachment F) entitled, "A Resolution
 81 Approving a Temporary Limited Production and Processing Facility as an Interim Use at 2830
 82 Fairview Avenue (PF14-012);" ***amended as follows:***

- *Condition A, revise language as follows: “The applicant shall install opaque fencing of 6’ to 8in height, coniferous plantings [AND] landscaping along the northern edge of the property; and...”*

- *Add Condition C: “Doors shall be closed during periods of operation.”*

Senior Planner Bryan Lloyd noted a typographical error in the draft resolution (Attachment F), line 34, amending, the first line of Item “a” (page 2 of 4) to read as follows: “The proposed limited production and processing use would [NOT] be expected to have...”

At the request of Councilmember McGehee, Councilmember Willmus clarified with agreement by Mayor Roe that, as typically done during the process, staff would work with neighbors and the business owner to work out details, such as type of trees, landscaping, and fencing to be installed.

Regarding installation of a section of sidewalk along this property, Councilmember Willmus noted that this application was for an Interim Use of an existing facility; and with an existing sidewalk along the south side of Terrace Drive, an installation of sidewalk would be quite expensive for this owner in addition to other improvements they’ve already committed to for the property. Councilmember Willmus opined that the existing sidewalk served the neighborhood.

Regarding buffers between residential and commercial properties along this area, Mayor Roe noted the need for a broader discussion in the near future across the entire zoning district; at which time any discussion of additional sidewalk segments would be more appropriate.

Roll Call

Ayes: Laliberte; McGehee; Willmus; Etten; and Roe.

Nays: None.

Extract of the August 24, 2015 Roseville City Council Meeting Minutes

Determine Fence Screening and Landscaping Requirements for Vogel Sheetmetal Interim Use, 2830 Fairview Avenue

City Planner Thomas Paschke reviewed the chronology of actions and submittals to-date for the initial Interim Use (IU) permit for Vogel Sheetmetal, also known as Vogel Mechanical, located at 2830 Fairview Avenue; and as detailed in the RCA dated August 24, 2015.

Mr. Paschke advised that the outstanding issue remained for compliance by Vogel with the condition for IU ultimately revised by the City Council from the original condition applied by the Planning Commission and further defining it as: *"The applicant shall install opaque fencing of 6' to 8' in height, coniferous plantings, and, landscaping along the northern edge of the property;" and "Doors shall be closed during periods of operation."*

Mr. Paschke reviewed meetings held to-date with the Vogels, neighbors and staff to resolve ongoing issues in complying with the condition and meeting expectations of the adjacent neighbors. Details of these meetings and negotiations are outlined in the RCA. As noted in lines 54 - 61 of the RCA, Mr. Paschke advised that on August 11, 2015 the Vogel's submitted their new proposal (Option 2, Attachment D) to comply while addressing requirements of the utility easements, and staying out of those respective Xcel Energy and CenturyLink easements along their northern property line.

Subsequent to that submittal, Mr. Paschke noted that that option was rejected by the neighborhood and on August 12, they submitted their own alternative plan (Attachment E) with their belief that the Vogels can install the fence on the property line without severing underground cable or violating Xcel's overhead easement.

Mr. Paschke advised that staff had requested both parties or their legal counsel to be present at tonight's meeting; and is seeking clarity from the City Council regarding their IU condition of June 23, 2014 and direction for staff to work with the Vogels on a provision that meets this confirmed requirement to finally resolve this situation.

Councilmember McGehee had several questions of staff, with staff responding accordingly and addressing plan submittal timing and site plans displayed and their creators; comparisons of submittals from the applicant and the neighborhood, and staff's rendition for a potential resolution of their interpretation of the City Council's intent with their condition; fence locations and heights as well as their beginning and end; and the status of and intent for the existing fence in disrepair and poorly maintained as currently evidenced.

Further clarification was requested by Mayor Roe and Councilmembers Willmus and Laliberte specific to clarifying the location of the property; what is left of the existing fence; actual location and width of the easement area as it relates to the property lines and existing fence; intent of the applicant to retain the existing fence and install a secondary wooden fence at a height of 6' in front and 8' for the remainder to the other end of the Vogel property; and defining changes between the City Council's June of 2014 condition applied by the City Council and the situation today that

Attachment C

would prohibit the Vogels from complying and locating the fence in that location, with staff confirming there was nothing preventing that compliance to his knowledge.

Further discussion ensued regarding unconfirmed requirements of Xcel Energy and CenturyLink easements for over ground and/or underground utilities that would preclude installation of a fence; or whether hardships could be addressed for future access by hand digging versus machine excavation as necessary; and the intent of Vogel for maintenance of the existing fence.

Applicant Representative, Dan Wall, Esq.

*As legal counsel for Vogel Mechanical, Mr. Wall provided written comments to staff earlier today via e-mail dated August 24, 2015, and presented as a bench handout, **attached hereto and made a part hereof.***

As outlined in his written comments, Mr. Wall noted his client was unaware of the existence of easements already in place; but questioned the City Council demanding that the applicant go to the expense of \$30,000 to \$40,000 installing a fence over a utility easement that may later be removed or destroyed if and when access is required. Mr. Wall stated his intent to perform further due diligence and research in searching the title for the origin or potential existence of other easements on this property before an application is submitted to the City's Building Department for installation of the fence.

Mr. Wall referenced meetings of himself, Mr. Bilotta and Mr. Paschke, and the fence contractor that they thought responded to neighborhood concerns and located the fence 20' back in addition to plantings to shield the parking lot from neighbor's decks to the north and provided for a visual extension of their backyards as well, and further softening the area. Mr. Wall clarified that it is not the intent of the Vogels to obstruct anything, simply to realistically address neighborhood concerns while complying with the City's IU conditions and meeting requirements of the utility easements on their property. Mr. Wall admitted that, when the IU was applied for and subsequently granted, the existing of the utility easements had been an unknown.

When they became available, Councilmember Willmus requested a copy from Mr. Wall of the actual easements and also for the actual language; opining that there were fences installed in easements all over the community.

Mr. Wall responded that he would comply with that request; however, he suggested Councilmember Willmus consult with the City Attorney on whether or not the City Council could require a fence to be installed on an easement whether or not Xcel Energy was insistent regarding its location or not.

Councilmember Willmus further opined that the actual language of the easement could make a difference in what would be placed within that easement.

Mr. Wall advised that the easement language would be included in the fence permit application when the process evolved to that point. Once the easements were defined, Mr. Wall noted that the project could proceed without further delay avoiding further disruption from a small pocket of the neighborhood to the north of the Vogel parcel.

With Mr. Wall's request that the City Council take immediate action to vote up or down the Vogels' permit application for the fence installation, Mayor Roe clarified that this was a staff action based on the City Council's direction, at least under normal circumstances.

At the request of Councilmember McGehee, Mr. Wall advised that the Vogels were willing to go back 20' from the existing fence for installation of the new fence, which was of no consequence to the applicant.

Regarding Councilmember McGehee's request about maintenance of that area, Mr. Wall advised that it was Vogel property so they needed to maintain it. However, Mr. Wall noted that at issue was the neighbors' objection to a greenway allowing dog walkers or lawn mowing; opining that was an unrealistic objection and part of living in an urban environment. Mr. Wall offered the Vogels' willingness to apply for a building permit to install a fence to comply with the easements or back 20' staff, however, recommended by staff. From his point of view, Mr. Wall opined that the option of 20' back provided the neighbors with the best alternative.

At the request of Councilmember McGehee, Mr. Wall advised there was no reason to extend the fence along the entire northern property line when the original intent and request of the neighborhood was to screen the parking area. However, when the actual permit application is submitted, Mr. Wall advised that they would rely on staff's discretion as to their approval or denial based on the City Council's direction regarding the utility easement issue.

At the request of Councilmember Etten, Mr. Wall advised that he anticipated a timeframe to confirm the easements and their specific language would be approximately two weeks. Based on the land record in the process survey recently completed by the Vogels, Mr. Wall advised that it shows that some neighbors on the north may actually be encroaching with a fence post of structure (shed) on the Vogel parcel. Once the land title information has been provided, Mr. Wall advised that more refined information would be available to clarify the situation. Mr. Wall noted that the easement shows up on a prior deed but not on the Vogel deed they received when purchasing the property. Mr. Wall reiterated that the applicant had no intention of installing a fence on top of a utility easement protecting underground power lines. Mr. Wall noted that the easement was intended for the protection of the neighbors and for their benefit.

Lisa McCormick, Terrace Drive North Neighborhood Representative (*legal representative*)

In response to Mr. Wall's comments, Ms. McCormick sought to clarify a few facts regarding the initial Vogel IU request before the Planning Commission in June of 2014; and addressing some misrepresentations or minor inaccuracies she found in staff's RCA. Ms. McCormick stated that the original request was not just to screen the parking lot, but as recorded in the Planning Commission minutes, the neighbors' request was for a barrier between the commercial and residential uses, not simply to screen the parking lot. With parallel conversations at that time about the potential rezoning of this area for community mixed use (CMU), Ms. McCormick noted neighborhood concerns for potential increased density or intensity of adjacent uses, thus prompting this additional barrier; and subsequent responses by the Planning Commission and City Council with relevant conditions applied.

Attachment C

Ms. McCormick noted that the Vogels signed the IU agreement, as conditions, and between then and now sufficient time should have been available for them to research this situation. As referenced by the Vogels' legal counsel, Ms. McCormick noted a misquote specific to apparent neighbor objections about lawn mowing or dog walking in the easement area, clarifying that the author of that e-mail was Community Development Director Bilotta, not the neighbors or their representatives.

Ms. McCormick noted the increasing animosity between the neighbors and Vogels throughout this process, which seemed to indicate a tall fence may be a good, ultimate solution and prove most beneficial for the neighborhood. Ms. McCormick noted concerns of the neighbors with the opening behind their lawns; but clarified that any fence or fence posts or other structures did not belong to the neighboring properties, but had been placed - and never maintained - by former Vogel parcel and building owner Aramark. With the Vogels indicating the existing fence could or would be removed, Ms. McCormick advised that this prompted the neighbors' rejection based on potential trespass issues and in response to Vogel concerns about neighbors potentially encroaching onto their property. Ms. McCormick noted the fence is shown on the property line, and in her personal observation of the site, she found stakes indicating that the existing fence had actually been constructed on neighbor properties.

Ms. McCormick opined that the point about easements was being missed, since a fence currently exists, the Vogel parcel would benefit from that fence since Xcel had installed a new transformer feeding off those underground utility lines within the easement area to facilitate their business needs. Ms. McCormick noted there had been no interruption from any parties while Xcel Energy was digging the trench to construct those transformers.

While appreciating easement concerns, Ms. McCormick noted that the applicant had not provided any documentation to support their concerns. In her work with an Xcel designer for another municipal client, Ms. McCormick asked for an Xcel contact who confirmed for her that this utility easement was only 10' in width; and referred her to materials online (e.g. Xcel Energy guidelines, general policies and procedures, tree maintenance near power lines supported by diagrams, distances for plantings, and brochure outlining plantings for safety near electrical service distribution versus transmission lines), as displayed for the City Council and public audience, indicating another inaccuracy alluded to in the RCA.

Since the existing fence has been in existence for at least thirty years, Ms. McCormick stated that she would like to see proof that they can't comply with the condition as applied. However, Ms. McCormick noted that it was up to the City Council to decide if Vogel was required to abide by those conditions before operations; further noting the expiration of provisional occupancy as of August 15, 2015, yet without compliance.

Ms. McCormick referenced and read a portion of the neighborhood petition originally submitted to the Planning Commission and City Council regarding the applicant's request, seeking 100% opaque fencing for the entire length of the northern parcel boundary as part of any conditions applied for IU approval; and for the purpose of providing a barrier and visual screening for immediate neighbors related to light and noise, and at no time requested only for the purpose of screening just the parking lot.

Attachment C

At the request of and referencing the currently displayed landscaping diagram, Ms. McCormick clarified that the neighborhood proposal was seeking replacement of the existing fence versus previous consideration and discussion of a sleeve to convert the existing fence posts for board on board fencing. While not having heard whether or not that option remains viable, Ms. McCormick stated that in her own independent consultation with a fencing contractor, if the Vogels' contractor didn't think that was possible, she had been advised that there were augers to accomplish that task.

Councilmember McGehee sought confirmation as to neighborhood agreement if the fence was moved 10' to 15' closer to the Vogel property with their maintenance of trees from boundary to boundary.

Without further consultation with neighbors, Ms. McCormick advised that she was unable to respond. However, Ms. McCormick noted that the Vogels had made it clear that they do not want trespassing on their property, causing her to think that proposed solution may be problematic for the Vogels' lawn care of that property.

In response to Ms. McCormick's statement, Councilmember McGehee opined that would be the Vogels' problem based on assurances from their representative tonight that they would maintain the area.

If the Vogels shifted the fence to the south and installed plantings on the north side of the fence, Councilmember Willmus asked Ms. McCormick if that would provide a potential solution, if it was determined that vegetation could be installed on the utility easement versus a fence.

Ms. McCormick questioned what would happen under that proposal with the space between, depending on what was determined sufficient for the utility company if they only needed 10' or 15' easement; and whether or not the existing fence would remain or be removed. Ms. McCormick opined that she'd expect the neighbors would want some barrier on the property line, but reiterated that the existing fence had not been maintained for years. If the Vogels agreed to do maintenance and clean it up from their side, Ms. McCormick stated that she would still need to consult with the neighbors to confirm their agreement with that proposal.

Mr. Wall clarified that this last proposal would benefit the neighbors not the Vogels, with the fence on the south and plantings on the north, since most of the growth is on the neighbors' side, not the Vogel side. If the growth was on the Vogel side, Mr. Wall advised that it would have been addressed already.

Ms. McCormick responded that she and/or the neighbors could walk the property to confirm that statement by Mr. Wall, but had been told not to trespass on Vogel property.

Councilmember Laliberte questioned the topography of the properties along the boundary lines if the fence was located 10' further to the south and closer to the Vogel building and whether this would impact views if the fence was higher in one place than the other.

Attachment C

Mr. Wall responded that it would not; and Mayor Roe responded that only the sight line may be impacted.

Regarding his original proposal for the fence shifting to the south and plantings on the north side and what it would look like, Councilmember Willmus asked if there wasn't some compromise for both parties, and leaving the existing fence in place.

Mr. Wall confirmed that this was the Vogels' proposal for resolving this issue.

At the request of Councilmember Etten as to how that differed substantially from the Vogels' proposal #1 or #2, Councilmember Willmus advised that the only difference would basically be the fence would not be continuous.

Councilmember Laliberte referenced the latest rendition of the diagram most recently created by Mr. Paschke, stating her preference the fence not on the line and continuous from the east to west property lines, with the only reduction in height to 6' on the east edge and the remainder at 8' in height.

Mayor Roe noted the 6' height was based on City Code and that location closer in proximity to the street.

Public Comment

Kathleen Erickson, 1790 Centennial Drive

*Ms. Erickson provided written comment to staff via e-mail dated August 21, 2015 regarding this agenda item, presented as a bench handout, **and attached hereto and made a part hereof.***

Ms. Erickson referenced her written comments as noted above and history of this IU and proposals related to conditions applied to its approval.

Ms. Erickson provided a photo of the Vogel property being mowed immediately adjacent to the existing chain link fence and to her residential property and deck as an example of why the neighbors were insistent in the need for the opaque fencing. In the picture, Ms. Erickson noted the person on a riding mower with protective headgear unable to hear their requests to vary mowing times, or in some way respond to their concerns about disrupting meals or family gatherings on the deck. Ms. Erickson addressed visual issues, with the photo taken from their kitchen table that very evening and immediately adjacent to their deck creating additional issues with fumes and noise. Ms. Erickson noted a recent family gathering that had to be moved indoors from the deck due to fumes and noise.

Ms. Erickson reiterated Ms. McCormick's comments that the fence had been installed by Aramark at least thirty years ago. Ms. Erickson also noted the unknown with the Vogels as to traffic generated and their operations and what all that entails, opining it may prove worse than the Aramark operation. Ms. Erickson noted their observations of the Xcel work on the line for the Vogel operation.

Attachment C

Ms. Erickson stated that it had been sixteen months since Vogels agreed to the conditions, and while the neighbors had tried not to complain, there kept waiting for resolution.

Ms. Erickson noted a recent situation where she observed from her property that there were two men out behind their property looking through the fence; and when she asked them what they were doing, they responded that they were performing a survey for Vogels to determine their property line, at which time she requested their business card for verification. When pursuing the conversation, Ms. Erickson stated their response was that whoever installed the existing fence did a good job as it was almost right on the property line.

Ms. Erickson repeated that neither she nor the neighbors were trying to be mean or cause trouble for the Vogels, but they just wanted to have their privacy and have the Vogels take responsibility for their own property and provide a differential between residential and commercial properties, as was the neighborhood's understanding.

Councilmember Willmus asked the City Attorney to opine regarding legalities of locating a fence within an easement area.

City Attorney Gaughan advised that a review of each specific easement agreement would be critical in defining requirements. However, Mr. Gaughan clarified that the question before the City Council for direction to staff and interested parties was strictly related to whether or not a 6' to 8' opaque fence and plantings - as conditioned - should be installed at the northern edge of the property line if the easement language prohibits fence construction there, or installation at the northern edge of the easement point as the second option.

At the request of Councilmember Willmus, City Attorney Gaughan agreed with the applicant's legal counsel that two weeks seemed a reasonable amount of time to obtain and verify easements.

Councilmember Willmus suggested having this item return for formal action by the September 14, 2015 regular City Council meeting.

Mayor Roe suggested, since the City Council condition was already memorialized, the only direction needed to staff was to clarify that the fence must be built on the property line or northern most point not encumbered by a utility easement.

City Attorney Gaughan confirmed Mayor Roe's comments, including installation of coniferous plantings as part of that condition as well.

McGehee moved, Etten seconded, clarification and direction to staff that the City Council's Interim Use condition of June 23, 2014, as referenced in the RCA dated August 24, 2015, that the opaque fencing of 6' to 8' in height, coniferous plantings, and landscaping will be installed along the northern property line in its entirety, unless easement agreement(s) preclude a fence from being installed at that point; and if so the installation will occur at the northernmost point allowed and tied into the eastern property line at that point.

At approximately 10:00 p.m., Etten moved, Willmus seconded, extension of the curfew to finish this discussion, to hear the presentation and update related to the draft tree preservation ordinance amendments (Item 15.a), and to address any Councilmember initiated items for future meetings (Item 17).

Roll Call

Ayes: Laliberte, McGehee, Willmus, Etten and Roe.

Nays: None.

Willmus moved an amendment that if the easement requires fencing move to the south of the northerly property line, and if plantings are allowed on the easement in accordance with easement language, and if neighbors agree to it, plantings be located on the north side of the fence. Willmus further clarified the point, with agreement by the makers of the motion, that the plantings be placed on the northern edge of the fence, subject to easement requirements.

The makers of the original motion agreed with that amendment, allowing for three possibilities to resolve this issue.

Ms. McCormick noted that the original Planning Commission record indicated coniferous and over-story canopy trees.

Mayor Roe clarified, with confirmation by City Attorney Gaughan, that the language of the Interim Use as conditioned was the official record, not discussion at the Planning Commission meeting and was not under consideration be changed at this point.

Councilmember Laliberte expressed concern with plantings on the northern side if the fence was moved to make room, this brought up the grey area again between one location or another.

Mayor Roe noted that the safeguards were in place for the neighborhood's approval of tree placement.

Based on his reading of the Interim Use, City Attorney Gaughan advised that it struck him that the Vogels would be in compliance if they installed the fence on the northern most edge of the property - or subject to easement restrictions. While placement of the line of trees could be subject to a discussion between the Vogels and neighbors, City Attorney Gaughan advised he didn't think it was appropriate to have that included in the directive to staff that installation was subject to neighbor approval as it would not be consistent with the original condition.

With Mayor Roe expressing confusion as to how to word the motion to provide for that discussion with neighbors regarding location of plantings, City Attorney Gaughan reiterated that discussion with neighbors was not nor should it be part of the Interim Use.

Mayor Roe noted that whether the plantings were all north or all south of the fence should not make a difference to the Vogels.

Regarding the existing fence and lack of maintenance, Councilmember Laliberte sought to confirm who was responsible for that maintenance.

Attachment C

Mayor Roe clarified that the maintenance of the existing fence continued to be the responsibility of the existing owner; and they could take it down or leave it at their discretion, since it was their property.

Specific to the purpose of the trees, Community Development Director Bilotta noted that while the neighbors may view this as a second barrier, staff's interpretation of that purpose would be more aesthetic to break up the fence, and was intended as one tree per 50 linear feet to achieve that aesthetic perspective. Mr. Bilotta sought confirmation and agreement with that perspective from the City Council allowing staff to work out the details.

According to Mr. Paschke's drawing, Councilmember McGehee opined that it seemed to provide even distribution and an aesthetic second barrier without creating a solid windbreak. Councilmember McGehee noted her recollection of a noise attenuation stated at some point, with Mayor Roe clarifying that it may have been requested, but had not been included as a condition of IU approval.

Councilmember Willmus agreed that noise had been referenced by a member of the Planning Commission, but not included in the IU; or as confirmed by Mayor Roe that it was part of their discussion, but not a recommendation to the City Council.

Councilmember Etten agreed with the aesthetic purpose, allowing staff to make a determination on the exact number of trees.

Mayor Roe advised Mr. Bilotta that the City Council agreed with staff's perception regarding an aesthetic purpose for tree plantings.

Motion Restated as Amended

McGehee moved, Etten seconded, clarification and direction to staff that the City Council's Interim Use condition of June 23, 2014, as referenced in the RCA dated August 24, 2015, that the opaque fencing of 6' to 8' in height, coniferous plantings, and landscaping will be installed along the northern property line in its entirety, unless easement agreement(s) preclude a fence from being installed at that point; and if so the fence installation will occur at the northernmost point allowed and tied into the eastern property line, in which case, if plantings are allowed on the easement in accordance with easement language, and if neighbors agree to it, plantings will all be located on the north side of the fence.

Roll Call (As Amended)

Ayes: Laliberte, McGehee, Willmus, Etten and Roe.

Nays: None.

Wall Law, LLC

DANIEL G. WALL, Esq.

2233 HAMLINE AVENUE N
SUITE 200
ROSEVILLE, MN 55113
PHONE 651-636-7697
dwall@gmwlaw.com

November 13, 2015

Patrick Trudgeon, City Manager
City of Roseville
2660 Civic Center Drive
Roseville, MN 55113

Re: Vogel Mechanical

Dear Pat:

As you know, Vogel Mechanical has spent a substantial amount of time and money trying to appease the neighbors and get a fence installed along their north property line in accordance with the IUP. To date they have worked with easement holders, had the property surveyed, planted 7 evergreens and 4 maples - all mature trees, hired a certified arborist, built an attractive landscaped berm, removed the cyclone fence and, at their own \$1,285 expense and at their own risk, removed huge overhanging limbs from neighboring properties. Throughout this process Vogel has asked for cooperation from the abutting property owners so a new fence could be installed. Not one of them agreed to remove the encroachments, bear the expense of removal, reimburse Vogel for the cost of removal or even so much as grant Vogel a release from liability to remove the encroachments.

We are now at the point of dealing with an easement for a buried telephone cable along that property line and encroachments from neighboring properties that make unfeasible to place the fence there. Dean Turner, Certified Arborist hired by Vogel, stated in his attached October 12 "Description of Services" that placing a fence on the property line with the existing trees, stumps and other encroachments in place **"... would be an impossible task."** It is his opinion that the existing fence be left in place and a new fence be installed 10' south of the property line.

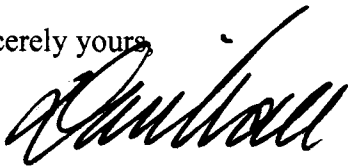
We are aware that city staff has been bombarded by misinformation and unreasonable demands by Mrs. Erickson and her former attorney Lisa McCormick. Both of them have been very antagonistic towards Bonnie and Dave Vogel personally. This entire process has been extremely stressful to the Vogels and unduly disruptive to their employees and their business. We believe that had city staff, the planning commission and the city council been aware of these pre-existing conditions there would have been adequate flexibility in the IUP for placing the fence. In light of all these difficulties, none of which are created by Vogel, Vogel proposes that a fence be

Patrick Trudgeon, City Manager
November 13, 2015
Page two

installed 5' to 10' south of the property line. This provides the best option for placing the fence where it will not be subject to ongoing damage from the neighbors' encroachments, allows access to easement holders and gives the neighbors an effective and attractive visual/physical barrier. Please keep in mind that any neighbor who wishes to do so can erect a fence on their property. Because time is running short for installing the fence I ask that you get back to me at your earliest opportunity.

Thank you.

Sincerely yours,

A handwritten signature in black ink, appearing to read "D. Wall", written in a cursive style.

Daniel G. Wall
cc: Bonnie Vogel, CEO; Paul Bilotta; City Council

From: Molenaar, Shawn [REDACTED]
To: [REDACTED]
Subject: Centennial/Fairview Locate
Date: Wed, Nov 18, 2015 4:14 pm

Lisa,

I'm writing to confirm that with appropriate care and cable locates as prescribed by the Minnesota Office of Pipeline Safety, CenturyLink has no objections to the proposed fence placement within the utility easement.

If you have questions, please let me know.

Thanks,

Shawn

Shawn Molenaar
CenturyLink
Manager Field Operations Support
O- [REDACTED]
C- [REDACTED]

This communication is the property of CenturyLink and may contain confidential or privileged information. Unauthorized use of this communication is strictly prohibited and may be unlawful. If you have received this communication in error, please immediately notify the sender by reply e-mail and destroy all copies of the communication and any attachments.



Lisa McCormick [REDACTED]

Wood Fence

Steve Wilson [REDACTED]
To: Lisa McCormick [REDACTED]
Cc: Dan Larsen [REDACTED]

Tue, Nov 17, 2015 at 7:40 AM

Lisa,

I understand the existing fence was removed, and there are concerns about the location of the new fence.

The new fence can easily be installed in the same location as the previous fence.

Moving the fence further north onto the homeowners' properties is even possible, but it's more labor intensive. Most of the holes would have to be dug by hand, and there are a few trees to navigate around. These things are not a problem and do not prevent installation of a fence. We install over 3,000 jobs per year, and we encounter sites with much heavier brush and tree cover. The utility line creates the need for hand-digging. If the post holes are within 24" of an underground utility, state law prohibits the use of mechanical equipment to dig holes. The fence can still be installed, but it requires more manual labor. Again, this is something our crews encounter every day.

The 8' high fence specs are:

4" x 6" posts set into 12" x 48" concrete footings at 8' centers

(3) rows of 2" x 6" rails

1" x 6" boards

All materials are cedar

Let me know if you have further questions.

Regards,

Steve Wilson

Sales Manager

Midwest Fence

525 E. Villaume Ave.

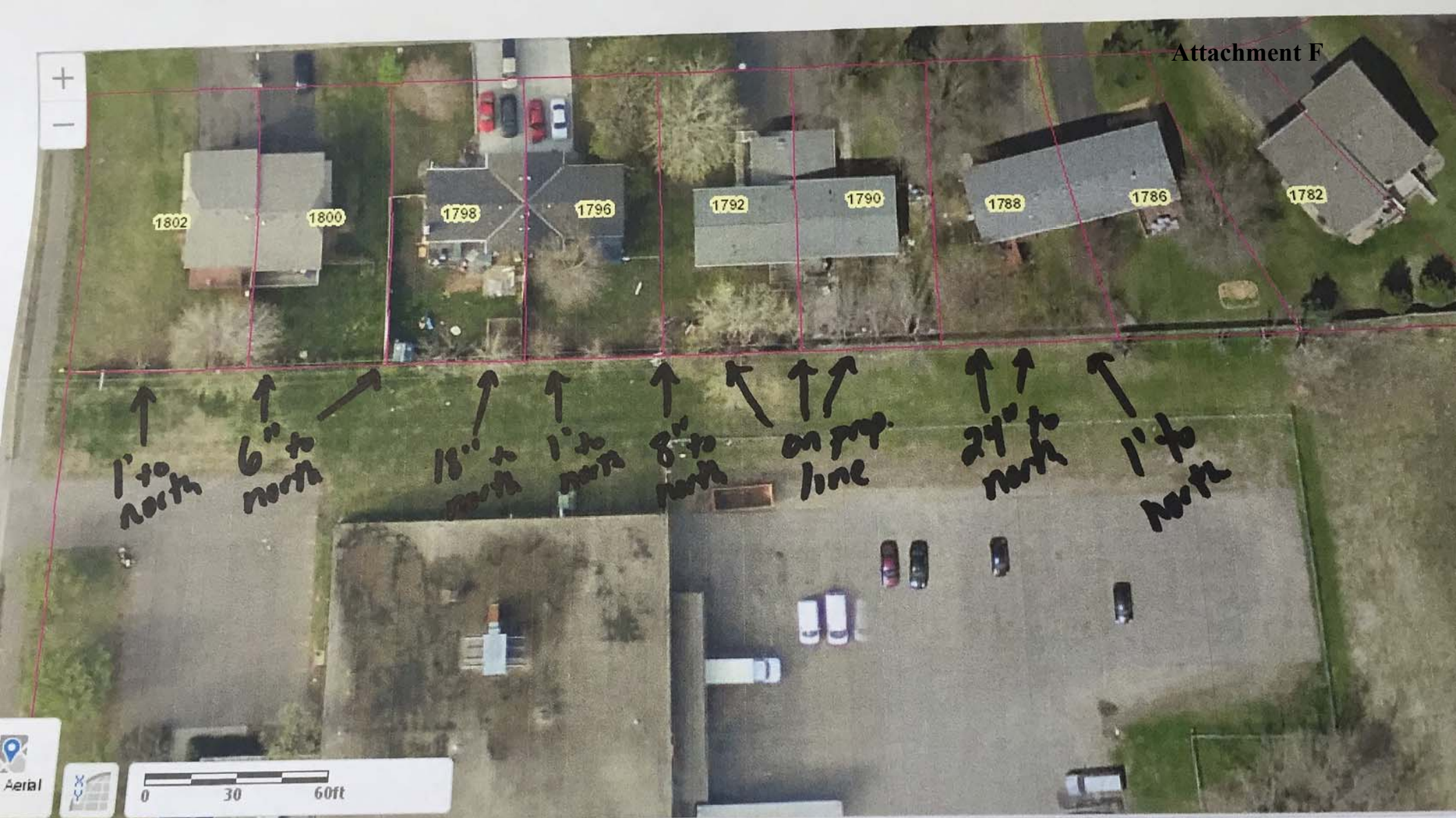
South St. Paul, MN 55075

Direct:

Cell:

Office:





* All measurements reflect utility distance
From physical property line *
(Markings are approx. per CenturyLink)

Community Development Department Decision (11/19/15)

We have considered the request to set the fence back 5' to 10' south of the property line that was contained in Mr. Wall's letter, dated November 13, 2015.

At the August 24, 2015 meeting when the City Council was asked to provide clarification as to its intent regarding the fence location, the following action occurred:

McGehee moved, Etten seconded, clarification and direction to staff that the City Council's Interim Use condition of June 23, 2014, as referenced in the RCA dated August 24, 2015, that the opaque fencing of 6' to 8' in height, coniferous plantings, and landscaping will be installed along the northern property line in its entirety, unless easement agreement(s) preclude a fence from being installed at that point; and if so the fence installation will occur at the northernmost point allowed and tied into the eastern property line, in which case, if plantings are allowed on the easement in accordance with easement language, and if neighbors agree to it, plantings will all be located on the north side of the fence.

The key statements in this motion in our determination are “unless easement agreement(s) preclude a fence from being installed at that point” and “northernmost point allowed”.

Last night, in response to our letter from earlier this week, we were provided with additional documentation from Centurylink and a second fence contractor by Lisa McCormick (see attached). Staff has independently contacted each of these individuals to verify what they wrote and to receive further clarification. The key points that were determined in those conversations were the following:

From Shawn Molenaar, Centurylink

1. They have no objections to placing the fence within the easement, no matter how close it may be to their line
2. They do not anticipate any need to be back in that corridor to maintain or upgrade the line within their planning horizon.
3. If they do need to perform work on the line, they will work around any fences that have been installed
4. If they should damage or need to remove someone's fence to access the line, Centurylink would restore it when they were complete

Based on Mr. Molenaar's email and conversation, we find that we must conclude that the Centurylink easement/buried cable does not preclude a fence being installed at that point. It should be noted that on the attached graphic from your fencing contractor that shows the line's indicated location, the cable is generally showing a location north of the property line with the exception of 1790 and 1792, where it is showing a location on the property line. We realize the exact locations can differ and at several locations the line is only inches north of the property

line, but in general, it appears from the graphic that the line is likely predominantly on the residential properties, not the Vogel property.

From Steve Wilson, Midwest Fence

Our understanding is that Mr. Wilson had been called out to the neighborhood by one or more of the neighbors to provide an estimate of what it would cost to put a fence up in case the Vogel fence were to slide southwards. He confirmed that he had walked the line and was familiar with the situations on the ground. He also confirmed that he does not have any financial interest in this project, but is just providing technical assistance because he was asked. The City does not recommend any fencing contractors but is reporting the conversation only as a professional opinion from an individual who is in the industry, works for a large fencing contractor and therefore appears to understand the limitations of fence construction. Key points:

1. Although fence construction is more difficult adjacent to a buried cable and therefore different techniques are used, the cable does not create a situation that would preclude fence installation at or near the cable.
2. If the line were damaged or severed, the liability would not fall on the property owner. If the contractor damaged the line and it was where it was supposed to be, then the contractor would absorb that liability. If the line had been marked incorrectly, then the contractor would take pictures, etc. and file a claim against the locator who erred in the locate.
3. 8' wood fences are not common and regulation of the relevant construction standard varies city by city. Because a few (but not all) cities require demonstration that a fence passes a particular wind load, a few years ago, his company did construct and test some fence designs and therefore he does have design information that has been wind load tested.
4. Mr. Wilson was asked if the fence could be installed in approximately the same location as the previous chain link fence and he indicated that in his professional opinion, it could.

Based on this new information from Mr. Wilson, it appears that installation along the cable trench does not create an impossible construction situation and therefore could be installed in the Centurylink easement area with proper techniques and care. With Mr. Wilson and Mr. Molenaar's combined information, it does not appear that utility issue precludes installation either from a utility or installer perspective and therefore the City Council direction shall be followed.

Finally, there is the issue of "northernmost point allowed". There has been much written regarding encroachments including fence posts, sheds and vegetation. The encroachment situation has changed significantly since Mr. Paschke and I were inspecting the site last Spring. Items such as the fence posts do still exist and we do consider them to create a practical difficulty for the installation of the fence on the property line. The City will therefore not be requiring Vogel to remove the fence posts nor do we have any ability to require anyone else (such as neighbors) to remove the fence posts. Although we believe the City Council's intent

was likely referring to the utility companies “allowing” we find the presence of fence post encroachments to be a similar practical constraint.

Therefore, based on this new information from third party sources who appear to be acknowledged experts in their respective areas, we must reject the request to set the fence back 5 – 10 feet from the property line. We find that credible information has been provided to indicate that with proper care and installation techniques it appears that a fence could be installed in approximately the same location as the previously removed chain link fence. It is understood that the new fence will have footings that may require it be installed a small amount south of the previous fence line to accommodate the width of the footings and/or to avoid the cable and encroachments, including tree roots. Such minor deviations are understood and may be accommodated based on field conditions discovered during installation. However, in the absence of any of those practical difficulties, the fence installation should try to follow the path of the previous chain link fence.

We understand that this has been a very difficult issue for all parties, but based on the information we have received from Centurylink and a third party contractor, we are unable to find justification for setting the fence back 5 – 10’ from what the City Council directed. This decision shall be considered final and any further action will require following the requirements for appeals, located in Section 1009.08 of the Zoning Ordinance.

Wall Law, LLC

DANIEL G. WALL, Esq.

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ROSEVILLE, MN 55113
PHONE 651-636-7697
dwall@gmwlaw.com

November 27, 2015

Patrick Trudgeon, City Manager
City of Roseville
2660 Civic Center Drive
Roseville, MN 55113

Via email and drop

Re: Vogel Mechanical

Dear Mr. Trudgeon:

Pursuant to Section 1009.08 Roseville City Ordinances you are hereby notified that Vogel Mechanical, Inc. ("Vogel"), appeals the administrative ruling of Paul Bilotta, AICP, Director of Community Development, dated November 19, 2015, rejecting Vogel's request to install the fence along its northern property line by 5' - 10'.

I. Grounds Upon which the Appeal is Made.

A. Insufficient basis to determine that CenturyLink has waived its easement rights.

As a condition to Vogel's June 24, 2104, interim use permit, it was to construct a 6' to 8' fence along its long the northern property line. As Vogel undertook fence construction it was discovered that there were two easements along that line - one in favor of Xcel Energy for overhead power lines and one in favor of CenturyLink for a telephone cable buried along or in close proximity to the north property line. This is the presumed easement of record "... for utilities over the north 10.0 feet..." as recorded with the Ramsey County Register of Deeds, Document No. 1727132, in Book 2132, Page 178, in a Trustee's Indenture dated June 26, 1968.

On August 27, 2015, Xcel Energy provided Vogel with its written notice that "... Xcel has no objections to the placement of the 6-8' wooden fence on the property. If maintenance or repairs of Xcel's fence is necessary, Xcel will replace or repair the fence as is reasonably possible." This written notice effectively and legally binds Xcel to replace or repair the fence in the event it exercises its rights to disturb the fence.

Mr. Bilotta states on November 18 the City was provided with additional documentation from CenturyLink and a fence contractor, via Lisa McCormick, and that "... Staff has independently contacted each of these individuals to verify what they wrote and to receive further clarification." Patrick Trudgeon, City Manager

November 27, 2015

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Mr. Bilotta, with no legal basis, and after a conversation with a CenturyLink employee, further states "... that we must conclude that the CenturyLink easement/buried cable does not preclude a fence from being installed at that point." We submit that Mr. Bilotta's "conclusion" that the easement in favor of CenturyLink precludes a fence from being installed is legally insufficient.

B. Insufficient factual basis to determine that placing a fence in close proximity to the buried cable does not preclude installation from a utility or installer perspective. Here Mr. Bilotta relies exclusively on the opinion of a fence contractor (Steve Wilson from Midwest Fence) selected by the neighbors as to whether a fence *could* be placed on that property line. No one argues that fence posts could be dug and placed along that line - it can be. The question is whether it makes sense to do so from the perspective of installing a fence that may have to be removed for utility maintenance or may be subject to structural instability due to existing and future vegetation growth and trees roots. To install a fence along that north property line requires the installer to dig footings anywhere from 3' to 4' deep by hand so as to avoid cutting the buried cable. Notwithstanding Mr. Wilson's opinion, CenturyLink will not release Vogel from liable for damage to its cable and look to the contract to "absorb" liability. It is noted that neither Vogel nor its fence expert and its tree expert was given the opportunity to respond to or challenge the opinions of Xcel or Midwest Fence. We submit that Mr. Bilotta's reliance on Mr. Wilson's opinion is insufficient to base his conclusion that City Council direction shall be followed.

Mr. Bilotta does acknowledge that there are existing encroachments from neighbor's properties that "... create a practical difficulty for the installation of a fence on the property line." The extent of these encroachments was not, and could not have been, fully appreciated and evaluated until Vogel removed the former cyclone fence. Once discovered, Vogel engaged professionals to advise it on installing a new cedar fence along that same line and received new information that adds to and serves to clarify information previously considered by the City Council. We will offer this new information as part of the appeal process.

Due to the City's closure today, this letter will be deposited, along with my firm's check for the appeal fee of \$300, in the drop box located at City Hall.

Thank you.



Daniel G. Wall

Attorney for Vogel Mechanical, Inc./BDLM Vogel Properties, LLC
Enc.

**EXTRACT OF MINUTES OF MEETING
OF THE
CITY COUNCIL, SERVING AS THE BOARD OF ADJUSTMENTS AND
APPEALS OF THE CITY OF ROSEVILLE**

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Pursuant to due call and notice thereof, a regular meeting of the City Council of the City of Roseville, County of Ramsey, Minnesota was duly held on the 25TH day of January, 2016, at 6:00 p.m.

The following members were present: , , , and Mayor .
and the following were absent: .

Member introduced the following resolution and moved its adoption:

RESOLUTION No.

**RESOLUTION OF DECISION OF THE BOARD OF ADJUSTMENTS AND APPEALS
RELATED TO THE APPEAL OF VOGEL MECHANICAL REGARDING AN
ADMINISTRATIVE DECISION**

WHEREAS, on June 23, 2014, the City of Roseville (“City”) approved an interim use for Vogel Sheetmetal (now Vogel Mechanical) (“Applicant”) which included the requirement for the installation of a fence; and

WHEREAS, on August 24, 2015, the City Council (“Council”) met and clarified the intent of the City’s fencing requirement related to the interim use approval; and

WHEREAS, on November 13, 2015, Applicant requested to set the fence between 5 and 10 feet south of the location required in the interim use approval; and

WHEREAS, on November 19, 2015, the City staff denied the request; and

WHEREAS, on November 27, 2015, Applicant appealed the administrative decision in accordance with Section 1009.08 of the Zoning Ordinance; and

WHEREAS, on January 25, 2016, a public meeting was held of the City Council, acting as the Board of Adjustment of Appeals (“Board of Adjustments and Appeals”) to hear the appeal and issue a decision.

NOW, THEREFORE, BE IT RESOLVED, that the Board of Adjustments and Appeals of the City of Roseville as follows:

38 1. The Board approves/denies the appeal of the Administrative Decision requested by the
39 Applicant and makes the following findings in support of this decision:

- 40 a.
41 b.
42 c.
43 d.
44 e.

45
46 The motion for the adoption of the foregoing resolution was duly seconded by Member ,
47 and upon a vote being taken thereon, the following voted in favor thereof: , , ,
48 , and Mayor .
49 and the following voted against the same: .

50
51 WHEREUPON said resolution was declared duly passed and adopted.
52

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54 Attachments: None
55

STATE OF MINNESOTA)
) SS
COUNTY OF RAMSEY)

I, the undersigned, being the duly qualified City Manager of the City of Roseville, County of Ramsey, State of Minnesota, do hereby certify that I have carefully compared the attached and foregoing extract of minutes of a regular meeting of said City Council held on the day of, , 20 with the original thereof on file in my office.

WITNESS MY HAND officially as such Manager this day of , 20

SEAL

Patrick Trudgeon, City Manager