

The **North Royalton Planning Commission** met in the City Hall Council Chambers, 14600 State Road, on Wednesday, **February 3, 2021 to conduct the Regular PC Meeting**. The meeting was called to order at 7:07 p.m. by Acting Chair Gene Baxendale and opened with the Pledge of Allegiance.

PRESENT: Planning Commission: Acting Chair Gene Baxendale, Mayor Antoskiewicz, Paul Marnecheck, Holly Michalke, Marie DeCapite, PC Secretary Diane Veverka. Administration: Law Director Thomas Kelly, City Engineer Justin Haselton, Building Commissioner Dan Kulchytsky.

REGULAR ORDER OF BUSINESS:

Mayor Antoskiewicz introduced Marie DeCapite as the newest member of the PC. He proceeded to swear her in to the position. The Acting Chair welcomed Ms. DeCapite to the Commission.

Mayor Antoskiewicz introduced and also welcomed Justin Haselton who works for CT Consultants which is the firm the City is working with for Engineering services.

Organizational Meeting:

Election of Chairperson: The Acting Chair opened the floor for nominations for the election of Chairperson to the PC. Mr. Marnecheck nominated Gene Baxendale, seconded by Holly Michalke. With no additional nominations it was moved and seconded to close nominations. Motion carried. Election of Gene Baxendale as Chair – Roll call: Yeas: Five (Marnecheck, DeCapite, Michalke, Mayor Antoskiewicz, Baxendale). Nays: None. **Motion carried.**

Election of Vice Chairperson: The Chair opened the floor for nominations for the election of Vice Chairperson to the PC. Mr. Baxendale nominated Paul Marnecheck for the position, seconded by Holly Michalke. With no additional nominations it was moved and seconded to close nominations. Motion carried. Election of Paul Marnecheck as Vice Chair – Roll call: Yeas: Five (DeCapite, Marnecheck, Michalke, Mayor Antoskiewicz, Baxendale). Nays: None. **Motion carried.**

The Chair continued with the Regular Meeting and asked for approval of the minutes.

Approval of the Minutes:

Moved and seconded to approve the minutes of **October 7, 2020. Motion carried.**

Moved and seconded to approve the minutes of **November 5, 2020. Motion carried.**

The Law Director provided an overview of the PC meeting process.

The Bldg. Commissioner provided an overview of the code regarding determination of similar use. He said the application before us is a two-part application. One part being a determination of similar use. Our zoning code describes the various uses that are permitted within our City in the various Districts. Since not every type of use in every type of business can be put into the zoning code there is a process for determination of similar use by the PC. We review the application's proposed use, how they intend to operate at the site and apply a series of four categories to it to see if it is the right fit for the municipality and appropriate planning for the City. The second part of the application before the PC is a site plan approval. The applicant not only is intending to bring a business to the location, which is described in the similar use application; there is also a structure that is going to be erected on the existing site.

The Bldg. Commissioner spoke of the four items on which we base a similar use determination. He continued; the following four categories are applied to a similar use determination as per Section 1262.08 of the City of North Royalton Codified Ordinances:

- 1) The use is not listed in any other classification of permitted buildings or uses;
- 2) That such a use is more appropriate and conforms to the basic characteristics of the classification to which it is to be added than to any other classification;
- 3) That such a use does not create dangers to health and safety and does not create offensive noise, vibration, dust, heat, smoke, odor, glare or other objectionable influences to an extent greater than normally resulting from other uses listed in the classification to which it is to be added; and
- 4) That such a use does not create traffic to a greater extent than the other uses listed in the classification to which it is to be added.

The Chair adjourned the Regular Meeting and called to order the Public Hearing portion of the meeting.

PUBLIC HEARING / OPEN MEETING

The Secretary stated public hearing notices were sent to property owners within 500 feet of the property in question and posted as required.

- a) **PC21-01: Morel Landscaping LLC** on behalf of property owner Beckwith Holding LLC / Woodland Mulch LLC is requesting a Similar Use Determination for proposed mulching operation (manufacture and sales) located at 12020 York Road also known as PPN: 483-06-003 in General Industrial (GI) District zoning.
- b) **PC21-02: Morel Landscaping LLC** on behalf of property owner Beckwith Holding LLC / Woodland Mulch LLC is seeking preliminary site plan approval for proposed mulching operation (manufacture and sales) located at 12020 York Road also known as PPN: 483-06-003 in General Industrial (GI) District zoning.

Rob Morel was present to speak as well as Luke McConville, Attorney with Nicola, Gudbranson & Cooper, LLC. Mr. McConville stated he is representing his client but he also serves as the Law Director for a couple municipalities in northeast Ohio. He said he would like to make clear upfront that their desire is to work collaboratively with the City to try to achieve a site plan that both achieves the interest of his client and is conscientious in terms of the concerns of the neighboring properties.

Mr. McConville spoke regarding the City's Similar Use Determination code and presented a technical point that he felt should be looked at. He said the factors that were enumerated by the Bldg. Commissioner relate to 1262.08(b). He said we should also go through the provisions that are in 1262.08(a). That section reads: the determination as to whether a use is similar to uses permitted by right shall be considered as an expansion of the use regulations of the district and not as a variance applying to a particular situation. Any use found similar shall thereafter be included in the enumeration of uses permitted by right. He made the argument that what it is saying is that determinations of Similar Use that are made by the PC are then binding on the PC as they relate to other parcels or the same parcel in the same zoning classification. He continued, in other words you can't have a similar use in one instance and then not a similar use in another instance because you are evaluating the use and not the site plan under 1262.08(a). He said he feels that is significant in that there are PC meeting minutes from a September 4, 2013 that relate to this very same parcel in which a mulch

manufacturing business was determined to be a similar use. He said his interpretation of the code language is that once PC has made that determination, that becomes an expansion of zoning regulation so that in future applications related to General Industrial District zoning a mulch manufacture business would be permitted as a right. He questioned the Law Director as to whether we are in fact applying for a similar use permit or alternatively under the language of 1262.08(a) are we a permitted use based on the prior determination of similar use that happened with respect to this same parcel.

The Law Director stated Mr. McConville has struck upon an interesting provision of the code which he is reasonably familiar with and he knows what it says. He said it is at least arguably applicable here; however, the question before the PC is at least in part whether the use that is proposed to be made of the property is in fact the same use that has been made in the past and whether or not it is going to comply with other provisions in the code. For example, our code also requires that all manufacturing be done within an enclosed structure. He said he does not know what this applicant's intentions are with regard to making mulch but from our perspective while the property could sustain a usage that is in fact common enough and akin to the same usage that was previously made of it, he still would have to comply with other provisions in the code. He responded to the direct question; he is not at a point where he is prepared to grant some kind of blessing to Mr. McConville's client's particular application. He said he should have to go through the same procedure and process that everyone else has had to go through.

Mr. McConville responded they certainly are prepared to talk about their site plan, talk about their particular use. The Chair questioned if Mr. McConville has been authorized to speak on behalf of the property owner. Mr. McConville stated the property is under contract which is contingent upon the approvals being given. He said the property owner is present and has indicated that he can represent his support for the site plan. The Law Director stated since the owner is present in the audience we can proceed.

Rob Morel of Morel Landscaping spoke about the business and the site plan. He said his organization is already in North Royalton. He said in 2017 they purchased the last two parcels in the back on Progress Parkway. He said the business has grown to double in size and now employs twelve fulltime positions and about two and one-half million dollars in payroll. He said they have invested in equipment to make the business better. The recent growth has caused the company to outgrow what they originally purchased. He said the property they are speaking about today in addition to the property that they would be keeping on Progress Parkway will allow their business to stay in Royalton. As the growth is going to continue, they plan to add three to four fulltime positions per year for the next five years. He said they expect to have around 50 employees by 2025.

Mr. Morel spoke about his vision for the property. He said one part of the business is the manufacturing site for mulch material. The other part which is more towards the front of the property is focused on handling the excess growth of the landscape company. He said he plans to erect a warehouse building that will be between 9,000 to 12,000 sq. feet. After purchasing the property, they plan to invest approximately \$700,000 to \$1,000,000 in building that building to house their expanding operation.

Mr. Morel addressed issues related to the mulch making: the noise, smell and the site. The grinding that will occur on site is wood only, it will not be compost. The smell will not be an odorous foul smell that would occur when grinding grass and leaves. He said that would not

be too much of an issue. He said they have some ideas to block the site lines especially from the road. The building will be a big part that will help screen it and block it. He said they intend to have clients visit at this new office location. He said as far as the noise, they have done some testing on this and they are familiar with the regulations of what the decibel limits are for neighboring properties. He said they have a plan that everything they do will fall within those decibel regulations. He said he has done testing himself at a different site with a decibel meter and a grinder that they will be using. He said what they are proposing here will not create a problem with the neighbors; they want to be good corporate citizens.

Mr. Morel displayed the site plan on the projector for everyone to see. He said the production part is in yellow and turquoise in the back. The storage and warehousing part are in the front. He said any raw material that they will be storing will be placed along the side and rear property line. He said that will be done to help block a little bit of the other items but more importantly it helps deaden the sound. The manufacturing equipment will be along the rear parcel which will be lined with material; it will be producing in a way that effectively the mulch production happens along the edge. The idea is everything produced will screen the sound to a level where, when outside of the property, the sound will fall within the limits that industrial properties have. He said he hopes to achieve effectively a quiet enough operation that does not disturb anybody but also be able to keep it in the back so that it is not visible from the street. He said in order to achieve that he said they plan to erect the warehouse on the northern part. By putting it over there it helps to block the items in the rear from the street and from the neighboring property and it will help to contain the noise and anything that would be intruding on the neighbors around there. He said they plan on keeping the mulch bins, keeping the office the way it is and adding additional landscaping and parking in the front. He said in the blue area they plan on using it for equipment storage for a truck and trailer and equipment from the operation that is sitting there. They do not plan to produce anything that close to the road; it will all be happening in the rear part.

Mr. McConville made his argument regarding the four-part test under 1262.08(b) the first component of the four-part test is that the use is not listed in any other classification or permitted building or use. He said that is not a matter of controversy. He agrees that it is not listed under 1278.04 of the General Industrial uses. He said they believe that under #2 that the use is appropriate to an industrial use is not being contested. The third item is where the rub is in terms of the discussion between the applicant and the PC; that such use does not create dangers to health and safety and does not create offensive noise, vibrations, dust, heat, smoke, odor, glare or other objectionable influences to an extent greater than normally resulting from other uses listed in the classification to which it is to be added. He said Mr. Morel has given testimony about the aspects of the site plan that are meant to muffle the impact the noise that is generated on site. He said this is an analysis that is undertaken in comparison to other industrial uses. A use in a General Industrial District is a use that will generate some noise. He went on to say they do not think their industrial use will be any noisier than any other garden variety industrial use. He informed Mr. Morel the City has noise ordinances that it can enforce if they are being violated. They will have an obligation to control the noise on his property that does not exceed the decibel limits that are set forth in the code. He said Mr. Morel is prepared to do that.

He spoke on the prior PC decision that was issue in 2013; there was a lot of discussion between the PC and applicant at that time about screening elements towards the north of the property. He said they certainly are willing to engage in dialog with the PC about plantings and other screening elements that would achieve that kind of end.

He spoke on #4 which is that such a use does not create traffic to a greater extent than the other uses listed in the classification to which it is to be added. He said they do not anticipate there being a lot of traffic on site. It is not a retail operation. When looking at the front site plan, they show they will have a number of parking spaces that would be adequate for the employees and for someone who is coming in to discuss business. They do not see traffic as being a real issue on the site.

Mr. McConville provided a letter to the Clerk which states the legal points that he has raised as well as the minutes from the September 4, 2013 PC meeting.

Mr. Morel said the property is already mounded with an eight-foot mound on the side. Most of the plantings have not survived. He said the plan was to replant that north side which will block the visibility.

The Chair asked for specifics on the hours of operation. Mr. Morel stated the operation is year-round. Grinding is year-round but it is a fairly intense springtime activity. The bulk of the grinding, approximately 50-60 percent of it will take place after the new year for three months leading up to the spring. The bulk of the sales will occur April through July. The typical hours are Monday through Friday starting at 8:00 a.m. and are done between 6:00 and 7:00 p.m. He said they normally do not work late. He said sometime they work an occasional Saturday in Spring; hours would be 8:00 a.m. to 2:00 p.m.

The Chair asked the Department heads for their input. The City Engineer stated the existing conditions drawing needs to be updated as they move forward. They will need to submit calculations showing that the existing stormwater management facility (the pond) in the back is properly sized as well as the storm sewers for the additional impervious surfaces and improvement. The applicant has been given a list of needed documents which will need to be submitted by their Civil Engineer for our review.

The Bldg. Commissioner stated this is the third time we are meeting as to this property and the operation of a business at this location. He said very limited information has been submitted for the full approval of any sort. Typically, we see more information provided as to the site plan, the elevations and the appearance; we are still anticipating a follow-up submission. The applicant has stated they desire to operate a mulching business at this location. The manufacture of mulch as designated was on the northwest corner of this site. Given our ordinance and the way it is stated, such accessory use for the processing operations needs to be in an enclosed structure. Therefore, to the applicant, there would need to be an enclosed structure for the manufacture of the mulch. Furthermore, any retail that is proposed at this location would also need to be fully within an enclosed structure. Wholesale obviously occurs in a different fashion where they would ship it offsite. The two sections he was citing are 1276.04(a)(2) and 12762.04(c). As to the balance of the process he said the PC can decide and make their decision. He said in his opinion given the previous experience they have had with the previous mulching operation he would recommend against any open-air mulching operation at this location.

The Law Director stated in the application of this section of code the PC has very wide discretion as to how to apply and what limits can be placed upon an applicant seeking a similar use permit and similar use determination. He said he confirms and agrees with the Bldg.

Commissioner's position relative to the application of the provision that calls for manufacturing to be done within an enclosed structure.

Rachel Coon from the law firm of Kaman & Cusimano, LLC was present to represent Independence Place West Condominium Owners Association. She said she is also personally familiar with the geography, zoning, residential and business interests of this community. The Association consists of 124 residential units situated off of York Road immediately north of the property of issue in today's hearing. The Association opposes granting Morel Landscaping's request for a similar use determination to operate a mulch manufacturing and sales operation on the property. The provision that is the issue is section 1262.08 of the North Royalton Codified Ordinances. She spoke on the second two prongs of the section. The proposed use does not create dangers to health and safety and does not create offensive noise vibration, dust, heat, smoke, odor, glare or other objectional influences greater than normally resulting from other uses listed in the classification to which it is added and that such use does not create traffic to a greater extent than the other uses listed in the classification to which it is to be added.

Ms. Coon said the listed permitted uses for General Industrial District includes, according to Section 1278.04, offices, laboratories and manufacturing conducted wholly within an enclosed building. The requested mulch manufacturing and sales operation clearly based on the site plan presented will involve outdoor production and storage of mulch and other equipment. In addition, the increased traffic of trucks, deliveries, employees and sales would create additional traffic concerns on York Road. This is not similar to the listed uses. The use will create safety dangers along with increase traffic, noise, odor, dust and glare. All of this will have an adverse impact on the Association and the property values. Although the property in question is in a General Industrial area there are residences directly bordering the property, in particular to the north. A prior mulching business did exist on this site in 2013. The business not only resulted in noise, dust and odor from the manufacture of mulch but also there was a great deal of headlight glare, beeping, horns and other noises from trucks and vehicles loading mulch. That noise was occurring on that site as early as 6:00 a.m. and it resulted in a number of noise ordinance phone calls to the Police. Currently the mulch business onsite is only for storage.

Ms. Coon said Section 1278.04(c) specifically provides that storage materials, products and process must be within walls or fencing so materials are not visible from adjoining properties or street. The site plan was not clear of how they were going to block view of mulch and storage from the north, specifically from Independence Place West property. The properties continue to have issues with the requirement of 1268.08 for the granting of a similar use determination. For example, in 2015 the PC denied a similar use application for a trucking facility also based on many of the same concerns of the residence of Independence Place West.

Ms. Coon stated that if against the Associations request this application is approved the Association asks that the site plan be revisited with a great deal of scrutiny to make sure all materials, trucks and equipment are enclosed behind a building so it is not visible, that all manufacturing as required by the code be conducted inside of a building and there be sufficient buffering to reduce noise, dust, odors and light.

Sean Cooper, President of Independence Place West Condominium Association, living at 9935 Independence Drive, stated the mulch business wasn't horrible but it was the mulch

machine that was their greatest problem creating noise and dust. He said the Association had to power wash their buildings because they were covered with brown mulch dust. He said the industrial buildings to the south of this proposed area house a multitude of things, but they are in buildings. He said they hear an occasional noise but it is not unbearable. He asked the PC to not allow the mulching machine and to require it to be contained in a building. He said in the past it was said that the machines didn't make any more noise than the traffic on York Road. He said that is hard to believe because they were able to hear the mulch machine all the way down at the party center located at the end of their street which is the farthest point away from that property you can go. Residents from Sunrise Cove, which is the property to the North of Independence Place, said it sounded like their Condo Association was cutting trees down all the time. While in our houses with the windows closed and air-conditioning on, we could not hear the TV. He asked that the PC take these issues into consideration and have the mulch machine contained in a building. In the past, it was promised they would have adequate screening which was not provided. The view from their windows is of dumpsters, garbage cans, machines, piles of mulch, etc. He asked that a fence be put in where the mulch bins are to contain the mulch and also plant trees down the rest of the property line.

Jean Walters, 10235 Independence Drive, stated she has been a resident of Independence Place for 35 years. She stated according to the applicant, the machines could be running from 8:00 a.m. to 7:00 p.m., almost 12 hours a day of that noise. She asked where the mulcher would be located. She asked if they plan to have a tub grinder, which is very noisy, as part of their production. The trucks using hydraulics to raise the truck beds for unloading the wood also causes a great deal of noise.

Joanne Krejci, Ward 3 Councilperson, asked the PC to consider the residents' concerns. Their request to have it in an enclosed 4 wall building to minimize the noise and also to consider sound barriers on the north side of the property between where the business would be and where the residents live.

The Clerk read into record two affidavits:

- Lucille Markowski, 9899 Independence Drive, spoke against the approval of the application. It states the Condo complex which has been in existence since 1973 prohibits private businesses to be established in the units. It states the manufacturing/production aspect of the applicant's request is extremely objectionable due to the close proximity to their units. The noise as well as airborne particles would directly impact them. The applicant's interest to grow a business would overshadow the resident's basic day to day right to quiet enjoyment living in their units. The applicant has a location at 13928 Progress Parkway in North Royalton which could be considered a less burdensome alternative for the manufacturing/production aspect he seeks.
- Dena Butcher, 9793 Independence Drive, states she disapproves of this application because of the foul/undesirable odors that will travel into their units; the wind normally comes out of the southwest. Ms. Butcher spoke of her concerns regarding the noise because she works different shifts; sleeping most mornings until noon or later.

The Chair asked for a motion and second to move this item to the Regular Order of Business and to adjourn the Public Hearing portion of the meeting. Motion carried.

REGULAR ORDER OF BUSINESS

The Regular Order of Business portion of the meeting called to order at 8:10 p.m.

Old Business:

- a) **PC21-03: Sal's Heating and Cooling, Inc.** is seeking final site plan approval for proposed parking lot expansion at 11701 Royalton Road, also known as PPN: 483-18-005, in General Industrial (GI) District zoning. Preliminary site plan approval received 9-2-20.

Thaddeus McCollough was present to represent Sal's Heating and Cooling. He stated they had no additional comments regarding their application. The Bldg. Commissioner stated this applicant was before the PC previously with a proposed expansion of parking which Sal's Heating and Cooling is in need of. They are adding parking by extending their paving into both side yard and rear yard parking setbacks. He questioned if variances were secured for those setback incursions. They have maintained a five-foot space between parking and sidewalks as was requested by the Building Division at the earlier submission. They have however omitted a landscaping plan on their drawings related to the landscaping which separates the vehicles from the pedestrians. He asked it be submitted separately to the Building Division to be reviewed; if they have concerns, the applicant would be required to go back to the PC. He said a landscaping plan is required for the entire west side along the sidewalk area as well as whatever is going to be put in to screen some of the parking from the south side.

The Bldg. Commissioner said there were also questions on the dumpster location which has been designated on the site plan and questions regarding the items which are currently stored on site on the parking lot. A fence was recommended at that time however it is not shown on the revised site plans submitted. He asked the applicant if the fencing has been omitted to screen their coil storage and the roll-away containers.

Mr. McCollough stated if they were to have the fencing on the east side of the property by the coil cages and the scrap roll-away containers, it would cause difficulty for them to maintain their regular function of business. He said they have a scrap truck that comes to pick up the roll-away bin. With the fence that is required, it would cause issue with where the parking is. He said they have parking on the east side; putting a fence there would not allow spacing for the bin to be pulled out and the truck to pull in, possibly crashing into the fence.

The Bldg. Commissioner stated he is familiar with the plan, the layout and the site. He recommended the applicant place a fence directly to the north of the coil cage and to the south of the roll-away container in order to screen that equipment as a condition of the application. He said there is adequate space in there to pull out vehicles and adequate space for the roll-out cage to be placed there without damaging the fence. Ballasts can be placed at the fence line to prevent the fence from being damaged. The City wants that screen because it has become an eyesore of which we have received complaints. He added in the interest of getting this resolved he recommended this be placed as a condition and discussed internally.

Mr. McCollough stated he would accept the fencing and landscaping as a requirement. The Secretary questioned if the applicant received approval from the BZA for the variances or was it actually handled through PC. Mr. McCollough stated it was discussed at the PC meeting and was told he would not need to go before the BZA for the variance approval.

The Law Director stated the code allows for the PC authority to make variances on a site plan for a particular development as such only if it is consistent with the other requirements of the

code. He said it is within the PC discretion to grant those variances. He said the applicant is constrained on the property. He added part of the effort that is being made here is to get some of the cars off the street. To that extent that is a valuable effort that serves more than simply the applicant's own interest. On the other hand, the issue of the fence and landscaping was plainly known to them at the last meeting and it is more than disturbing that we are constantly dealing with applicants that come back after they already said they were going to make these changes and not make the changes. He said from his perspective he advised the PC that they have the authority to make the variances; he would recommend that the applicant be given the opportunity to move to table the application and come back at the next PC meeting with plans that properly reflect the conditions that were laid down at the last PC.

The Chair questioned if it was a five-foot variance. He said he recollected that was approved at the previous PC meeting. The Bldg. Commissioner stated that is correct the modification of the site plan is along the westerly property side that encroaches a common setback. It is 20 feet; 5 feet is left in place as a landscaping bed to separate the sidewalks from the parking. The Bldg. Commissioner stated in review of the site plan by PC they have the latitude to provided minor variations in the interest of safety and implementation of the acceptable site plan. Mayor Antoskiewicz stated we have granted similar variations on parking lot expansions, such as the plan for Mr. Asimes Royaltan Road property. The Mayor stated he is aware that this applicant desperately needs parking. He has received multitude of complaints regarding the parking on Progress Parkway making it difficult for the big trucks to make deliveries and be able to turnaround to exit. We feel this parking lot expansion would alleviate the problem.

Mr. McCollough stated by expanding the parking lot this will also allow them to have a large number of vendors/industrial trucks to deliver equipment in the morning. This will allow them more room for the vendors to use the parking lot as well to eliminate the trucks from being on the street in the morning.

The City Engineer stated the applicant has received the comments regarding the documents needed, including but not limited to: a full set of site civil plans, clarification on the water vaults to be removed, storm sewer requirements and required ADA compliant parking stalls, etc.

The Mayor proposed rather than table the application, the requirement that the applicant have a full landscaping plan including the fence screening, including type, on a set of revised plans into the Bldg. Commissioner's office and approved prior to any construction being done on the parking lot. The Bldg. Commissioner stated a reasonable timeframe would be 21 days to have something in his office for his review. Mr. McCollough agreed.

Mr. Marnecheck stated the city has a sewer easement on the property. If the City needs to go in and repair it, it is the business owner's responsibility to repair the parking lot. The Bldg. Commissioner stated that is correct. Mr. McCollough stated that is acceptable.

The Chair stated at the previous meeting there were concerns about the location of a utility pole. The Bldg. Commissioner stated it appears they have avoided all of the utility poles in question. The Chair asked if the City Engineer has any concerns regarding the grading at the south end. The City Engineer stated the applicant is raising it only one foot. He said there is plenty of green space there to grade it at a reasonable slope.

The Clerk read into the record an affidavit received from Sandy Nemeth of Allied Witan Company. She questioned, with the parking lot pavement and curb being elevated along their property line how are they going to control the land and water flow from going onto her property.

The City Engineer stated the proposed impervious area on the southern part of the site will drain back to the north away from Allied Witan's business. It should not be an issue.

Moved by Mayor Antoskiewicz, seconded by Mr. Marnecheck **to approve the final site plan for parking lot expansion with the requirement that plans be submitted and approved within the 21-day time frame before they can start.** Roll call: Yeas: Five (Marnecheck, Baxendale, Michalke, Mayor Antoskiewicz, DeCapite). Nays: None. **Motion carried.**

New Business:

- a) **PC21-01: Morel Landscaping LLC** on behalf of property owner Beckwith Holding LLC / Woodland Mulch LLC is requesting a Similar Use Determination for proposed mulching operation (manufacture and sales) located at 12020 York Road also known as PPN: 483-06-003 in General Industrial (GI) District zoning.
- b) **PC21-02: Morel Landscaping LLC** on behalf of property owner Beckwith Holding LLC / Woodland Mulch LLC is seeking preliminary site plan approval for proposed mulching operation (manufacture and sales) located at 12020 York Road also known as PPN: 483-06-003 in General Industrial (GI) District zoning.

Rob Morel spoke on the noise concerns. He said they would like to find a way to do this without creating a noise disturbance. The idea of the design was to put it in a place to best muffle it and make it as quiet and invisible as possible. He said by keeping it in the back where it is surrounded by (inaudible) and would also have a lot of space to do things around the area. It can be done in such a way that makes the rear area fully contained, quiet and follow the ordinances. He said the outer layer is a large amount of mounding and trees, a 15-to-20-foot blockade. Inside that is the plan to mound the material to help deaden the noise. When they properly mound and screen it, they will have the ability to keep it contained, but also the greater blockage will be done by that material and deaden the sound. He said they tested it and it will be below the 70-decibel limit in that specific area; not in all the areas. They are open to other ideas.

Mayor Antoskiewicz stated it was clearly said that it needs to be enclosed. The proposed plan does not show a totally enclosed structure. He said that needs to be addressed. He asked what exactly is raw material and is there any possibility of switching the location of the raw material storage and mulch mounds and putting it on the industrial side of the property. Mr. Morel responded that is a reasonable idea; they could modify the location of the building to the other side.

Mr. McConville asked if the enclosed building is related to the machinery or the mulch. Mayor responded it is related to the manufacturing of the mulch. The Bldg. Commissioner said the code clearly states that all materials outside need to be screened from site; that is just for storage. Furthermore, and manufacturing process, the actual mulching equipment and its processing must occur indoors. Any retail operation shall need to occur indoors. He said there are some concerns as to how the material has been stored to date; it is not screened and the mulching operation has not been indoors to date. That will need to be rectified in any kind of proposal here before PC.

Mr. McConville said the Bldg. Commissioner is referencing 1278.04(c) which clearly indicates that products and processes be screened although it does not necessarily have to be within an enclosed building. The provision says within an enclosed building or within walls or fencing. It then goes on to say so that the materials are not visible from adjoining properties or streets.

He said they would be amendable to other alternatives that would accomplish those goals of screening. He said part of which in his view is focusing on the northern end of that property; significantly screening that by mounding and putting trees up in a significant number. With respect to the mulch itself, he said if the PC would like to move it south away from the residential area, we would be amendable to doing that.

The Mayor asked if he was talking about the mulch or the manufacturing of the mulch. Mr. McConville responded the use that they are proposing is the same use that was approved at a prior PC meeting. He feels by operation of the code that use which he would describe as an open-air mulching/grinding/manufacturing use is really identical to the use and therefore serves as an expansion of the permitted uses. He said he feels he is talking about a permitted use. He said the practical issue is what the City has in mind for achieving the kind of screening that would perhaps not be in an enclosed building but be within walls or fencing that would have an impact both on the aesthetics and on the amount of noise it generates.

Ms. DeCapite referred to PC minutes from January of 2018; which states the Bldg. Commissioner asked the applicant to confirm the following statement: no mulch production will occur on site which includes chipping and or dying. The applicant at that time responded that is correct. She asked Mr. McConville is that what he is making reference to being similar. Mr. McConville said no; the particular meeting that he is referring to is the September 4, 2013 meeting. The applicant, Jim's All Seasons York and Wallings LLC, were conducting an outdoor mulch operation. He said in his interpretation of the Code Section 1262.08(a), a use is either a similar use or it's not. So once a determination is made that it is a similar use, it does not operate as a variance on the particular property; it operates as an expansion of the use under the code that would apply to all property within that zoning classification.

The Law Director stated he can understand Mr. McConville's argument. It may well be that the 2013 PC exceeded what ordinarily might have been thought to be an appropriate application of the code by permitting the manufacture of mulch on that property in the manner in which it was ultimately produced. However, even if you were to grant the similar use permit that does not mean the PC is unable to enforce the other provisions of the code which were unenforced at the time. He continued, our failure to have enforced the separate and distinct requirement for manufacturing within an enclosed building doesn't preclude us from requiring it in this instance. He said you might want to argue that he is entitled to make mulch on the property but he has to make it within an enclosed building if that is the determination of the PC.

Mr. McConville stated as a practical matter they are seeking PC approval. He said it begs the question whether there is an alternative that would be acceptable to the PC.

The Chair asked the applicant to go through the process of making the chips which would help clarify the equipment and space needed. Mr. Morel stated some chips will be brought in which have already been kind of passed through a grinder once, small pieces; others are a little bit larger. They are not trees but it could be chunks of wood. It would pass through a grinder once and possibly a second time. It would then typically go in a large trammel to be colored. That would be the stuff that would be delivered. He said with outdoor grinding operations some processes would include leaves or grass; that can be very odorous. He said his process is just wood. He said he is not necessarily proposing to enclose that piece of equipment. The Chair asked if this room would be big enough to put the chipper and dying machines in? Mr. Morel stated this room would be big enough. The Chair asked is it reasonable to have a building of this size, approximately a 1,000 sq. ft. industrial building to have the chipping and dying equipment. Mr. Morel responded not just from a cost perspective;

but he fears it will actually be louder. He said the machine will be in the building with a bucket of mulch with a grinding machine that is echoing off metal walls. It will be loud. He feels it would be worse than if it were just surrounded by trees or on three-sides by some sort of absorption situation. The Chair stated he is familiar with someone who lives along the freeway; there is 100 feet of trees between the house and the freeway and they also put the noise deadening walls up; it does no good. He added he is not sure how effective some of the things being suggested by the applicant will be in cutting the noise from traveling over to the residential area.

Mr. Morel said in addition to the screening and the trees the best idea is basically by putting the mulch there, it is an excellent absorber. He said when they were testing it with the grinder it dropped by 40-decibels 20 feet away when he had a 10 to 12 ft. pile of mulch between him.

Mr. McConville added from a legal perspective the noise issue is relative to other industrial uses that are permitted. We know the property is zoned industrial so it is likely that if it is used for industrial purposes it is going to involve an operation that makes noise. The industrial uses are pushed to certain areas of the city for a reason. The Mayor stated regarding many of the industrial businesses in that area, the work they do is basically enclosed. The comparison is not equal when you compare an indoor industrial business to an open-air manufacturing.

The Mayor said many promises are made to the PC of what they intend to do and they do not do it. He said we have to be cautious. He said he would like to see more information regarding the type of building in the plans as well as the applicant's intention of possibly leasing out a portion of that building for something else.

The Chair stated there are a lot of issues involved and a lot of questions that are not going to be answered tonight. He suggested the applicant consider tabling his application. The applicant can then have time to explore some other alternatives and possibly meet with the Mayor and Bldg. Commissioner to discuss some of the issues. The Chair said if it were to go to a vote tonight, he would not be comfortable approving it.

The Bldg. Commissioner stated we are viewing the proposal as it has been submitted. This is the proposal that has been sent out to adjacent property owners within 500 feet and therefore we are reviewing the proposal we have at hand which is an operation for mulching outdoors with no information to screening which is not within our code guidelines. Furthermore, it is occurring during winter months where there is no tree relief cover. It is up to the applicant to make a submission that is adequate in scope to be reviewed and approved by the PC. He added what he sees here is something that is not compliant with our code in several major factors and is up to the applicant to decide how they wish to proceed.

Mr. McConville responded to the Mayor's questions and comments. He said regarding what the building will look like, it would be their expectation that in connection with any construction they would be back before the PC with elevations, dimensions so that they would be approving location, aesthetics, etc. He said they would not construct anything on site until coming back before the PC. He said they would be willing to have their approval conditioned on that so the PC can make sure the building that is going to go up meets their expectations. He said it puts the applicant in a position to pay a lot of money on engineering drawings and elevations prior to knowing if the use is approved.

Mr. McConville stated they are amendable to tabling the application tonight with the idea that they would have discussion with the Mayor and others regarding what conditions might be put on the site plan, what additional materials might be provided to the Bldg. Commissioner

for his review so that a presentation for an upcoming meeting would be in response to their concerns.

Mayor Antoskiewicz said there are a lot of open questions including what are the applicant's intention regarding leasing out the building. Mr. McConville responded the use has to comply with the code.

Ms. Michalke asked if there are any other cities in Cuyahoga County with a similar establishment this close to residential properties; she said this feels very rural. Something that we could look at to give us guidance on making this decision. Mr. McConville responded nothing that comes to mind but he would surely (inaudible). Ms. Michalke said that would be helpful. She agreed that the wind often comes from the south and the west in the spring and summer. She said the wind will blow spores onto the siding which increases the cost of maintenance fees on the Condo residents which then may cause a problem with trying to sell the property. Independence Place is one of the stronger condo establishments in North Royalton. She said from a real-estate standpoint those areas have been improving and striving. She said the noise would also increase when the wind shifts from the south as well. Even though the mulch operation may be contained in a building when the mulch is leaving that building, the equipment used to move the mulch such as tow motors would still be heard with the constant beeping because of the backward motion. She asked how would that sound be mitigated. She questioned if York Road is designed for the weight load of the mulch trucks. The City Engineer stated he would research the weight load limits for York Road and follow-up for the next meeting.

Mr. Marnecheck stated the applicant has mentioned noise and sound testing several times. He asked if they have any documentation that can be provided to the Board. Mr. McConville asked what in particular the Board would be looking for. Mr. Marnecheck asked if it is a print out? Did you do them yourself? Did you have a company come in? Mr. McConville responded they were field tests that he was using. Mr. Morel added his idea was to see if this was even a feasible plan before presenting it so he personally did the test with a decibel reader. Ms. DeCapite asked if they documented how far away? Mr. Morel responded he did but it was just on a note pad because he was testing it. He said he was doing like 50 feet, 100 feet. Mr. Marnecheck asked that it be done by some sort of neutral or something in writing; something that shows what was done. Ms. DeCapite said it would be of help to understand the sound levels of the equipment in different intervals away from the equipment. It would help the residents understand your business and the noise it will generate versus what was there before and what they heard. She said the applicant's business might not have that same sound coming out of the site.

The Law Director said Mr. McConville on behalf of his client has offered to request a table to allow him the opportunity to speak with the Mayor and Bldg. Commissioner about these things. He said it is a wise thing to do and he recommends to the Chair and the PC that they accept it and take a motion to table. If it goes to table the PC Secretary will notify the same residents for the next meeting.

The Chair asked the PC members if they have any other comments; with none they moved to table.

Mr. McConville asked to table both applications. Moved by Mayor Antoskiewicz, seconded by Mr. Marnecheck to table the application for Similar Use Determination. Roll call: Yeas: Five (Marnecheck, DeCapite, Michalke, Mayor Antoskiewicz, Baxendale). Nays: None. Motion to table carried.

Moved by Gene Baxendale, seconded by Mr. Marnecheck to table the application for preliminary site plan approval. Roll call: Yeas: Five (DeCapite, Marnecheck, Michalke, Baxendale, Mayor Antoskiewicz). Nays: None. **Motion to table carried.**

MISCELLANEOUS

The next scheduled meeting is March 3, 2021.

ADJOURNMENT

Moved by Mr. Marnecheck, seconded by Mayor Antoskiewicz to adjourn the February 3, 2021 PC meeting. Yeas: Five. Nays: None. Motion carried. Meeting adjourned at 9:08 p.m.

APPROVED: /s/ Eugene Baxendale
Chair

DATE APPROVED: March 3, 2021

ATTEST: /s/ Diane Veverka
Planning Commission Secretary