

**STORY COUNTY  
PLANNING AND DEVELOPMENT  
STORY COUNTY ADMINISTRATION  
900 6<sup>TH</sup> STREET  
NEVADA, IOWA 50201-2087**



*"Commitment, Vision, Balance"*

**515-382-7245**

**MINUTES  
STORY COUNTY  
BOARD OF ADJUSTMENT**

**AN AUDIO RECORDING OF THE FULL MEETING MAY BE FOUND IN THE PLANNING AND DEVELOPMENT DEPARTMENT, OR BY VISITING [WWW.STORYCOUNTYIOWA.GOV](http://WWW.STORYCOUNTYIOWA.GOV)**

<b>DATE:</b> January 19, 2022	Steve McGill, Chair	2022
	Matthew Neubauer, Vice Chair	2026
	Kelli Excell (Zoom)	2023
	Nathan Hovick	2024
	Elara Jondle	2024
	*Absent	

**CALL TO ORDER:** 4:00 PM

**PLACE:** Story County Administration Building

**PUBLIC PRESENT:** Jeremy Rydl, Mark See, Ray Ringenberg, Chub Myers, Mark Jones

**STAFF PRESENT:** Amelia Schoeneman, Planning and Development Director; Andrea Wagner, Planner; Stephanie Jones, Recording Secretary

**ROLL CALL:** McGill, Neubauer, Jondle, Hovick, Excell

**ABSENT:** None

**APPROVAL OF AGENDA (MCU)**

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**APPROVAL OF MINUTES (MCU)**

November 17, 2021

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**PUBLIC COMMENTS:**

None

**OTHER BUSINESS:**

**Election of Officers for 2022 Calendar Year**

**Motion by, Hovick Second by Jondle for the officers to remain the same with McGill as Chair and Neubauer as Vice Chair.**

**Voting Aye: Excell, Hovick, Jondle, Neubauer, McGill**

**Voting Nay: None**

**Not Voting: None**

**Absent: None**

### **Approval of 2022 Board of Adjustment Meeting Schedule. (MCU)**

#### **Amendment to Rules of Procedure**

Amelia Schoeneman briefly stated that rules that have always been followed by the Board of Adjustment were not in the Rules of Procedures, specifically attendance requirements. The changes reflect current policies.

**Voting Aye: Jondle, Hovick, Excell, Neubauer, McGill**

**Voting Nay: None**

#### **HEARINGS:**

#### **CUP21-000012 InRoads Temporary Asphalt Plant Winter Shutdown Modification and CUP21-000013 Mineral Extraction Extension**

Amelia Schoeneman stated that this is for an asphalt plant and mineral extraction use which are located on the same site. The asphalt plant is not in use, but want to keep it on the site. It is required that asphalt plants be removed at the end of the construction project, but there is an exception in the code that if there is a mineral extraction on the site that an asphalt plant can be permanent. The mineral extraction use consists of two phases to the process. A backhoe is used in phase one to dig to depths of 40', phase two would use a dredge which goes to 80' depths. Approval has only been given for phase one, and included an extraction deadline. This modification would change the date to allow phase one to continue since it has not been going as quickly as anticipated. There is a timeline in place due to the site having a required restoration plan, so there is a bond in place in the event that restoration doesn't happen.

Schoeneman stated the location is unique due to no nearby residences so the site is compatible, as well as being a good distance away from any commercial sites in the area. It is in the floodplain, so the floodplain permit would require being updated. Schoeneman went through the compatibility for both the asphalt and mineral extraction modifications.

- Compatibility - Nothing is changing, only extending timeline, asphalt plant is not set up so it can't be seen very easily from I-35.
- Transition - There is an existing tree line between the site and the parcel to the North (Hallet Materials). Berms were previously required around the mineral extraction use that were landscaped.
- Traffic – No new traffic.
- Parking – No new parking and loading impacts.
- Signs and Lighting – no new lighting or signage proposed.
- Environmental Protection – Floodplain management considerations. Three feet of elevation is now required instead of 18", so the gravel pad on the site would need to be increased in height for the fuel storage containers if it is continued to be used for an asphalt plant, which would be addressed in the future. Neubauer asked if this is due to an update since the permit was originally approved. Schoeneman agreed and stated that normally there would be nonconforming, but in this instance since it is not a continued use and removing the plant from the site, the floodplain permit expires and will need renewed and brought into conformance with current standards.

Schoeneman stated if the board concludes that all the standards are met, there are also five other standards to conclude won't happen. All the findings were noted in the Staff Report, so stated she would not summarize them unless there were questions.

**Motion by, Hovick Second by Neubauer to approve the presented Findings of Fact for CUP21-000012 InRoads Temporary Asphalt Plant Winter Shutdown Modification and CUP21-000013 Mineral Extraction Extension.**

**Voting Aye: Hovick, Neubauer, Jondle, McGill, Excell**

**Voting Nay: None**

**Absent: None**

**Vote (5-0)**

**MOTION:**

**The Story County Board of Adjustment recommends approval of the Conditional Use Permit for temporary asphalt plant as put forth in case CUP21-000012 with the following conditions:**

- 1. The tanker on site has secondary containment placed around it.**
- 2. The tanker is removed from the site when extraction ceases for the season.**
- 3. The InRoads Paving temporary asphalt batch plant facility shall be removed by April 25, 2022 and the conditional use permit expire on this date.**
- 4. The floodplain permit for the asphalt plant shall be renewed.**

**Motion: Neubauer**

**Second: Jondle**

**Voting Aye: Neubauer, Jondle, Hovick, Excell, McGill**

**Voting Nay: None**

**Absent: None**

**Vote: (5-0)**

Schoeneman stated that the two conditions on the mineral extraction are extending the expiration to December 31, 2024 or must apply for the second phase, and all other conditions of the previous mineral extraction CUP are still in place.

**MOTION:**

**The Story County Board of Adjustment approves the minor modification to the Conditional Use Permit for Mineral Extraction as put forth in case CUP21-000013 to allow the extension of the mining cell, with conditions:**

- 1. The extraction use shall cease by December 31, 2024, and the site be restored based on the restoration plan if no modifications to the conditional use permit for phase two of extraction are approved. Once restoration is completed, the site shall be inspected by Planning and Development staff for conformance with the submitted restoration plan and prior to releasing bond security.**
- 2. All other conditions in CUP07-18 remain in effect.**

**Motion: Hovick**

**Second: Jondle**

**Voting Aye: Hovick, Jondle, Excell, McGill, Neubauer**

**Voting Nay: None**

**Absent: None**

**Vote: (5-0)**

## **CUP22-000001 City of Nevada Trunk Sewer**

Andrea Wagner presented the staff report and stated that the request is for a conditional use permit modification for the proposed route of the City of Nevada's sewer. A sewer line is proposed between the existing Wastewater Treatment Facility and the new facility, which was approved by the Board in October of 2020. The new facility's previous approval included locating the sewer along the S-14/620th Avenue road right-of-way, provided that the appropriate permits were granted by County Engineering. Due to safety concerns with the bore pits in the road right-of-way, the sewer is now proposed to go through private, agricultural land. The proposed sewer route is approximately 2.8 miles long. All impacted lands are currently in row-crop production—two of the parcels contain single-family dwellings in addition to row-crops. The width of the temporary construction easement is 80 feet, and will be reduced to 40-foot width once the project is complete. Wagner shared a route map of the proposed sewer line.

### **Background**

- ❖ The proposed sewer line is a necessary component of the new wastewater treatment facility that is under construction.
- ❖ The existing wastewater treatment facility is approximately 60 years old. It no longer has the ability to meet the current requirements of the Iowa Department of Natural Resources.
- ❖ The sewer line is proposed to be completed in Spring 2023. Due to the route through agricultural lands, staff is recommending 18 conditions intended to better protect the soils and continued use of the row-crop areas.

### **Standards of Approval**

Wagner presented the standards of approval for conditional use permits and staff's findings.

**Compatibility** – Once the sewer route is completed and operational staff feels the operational component of compatibility will be met.

- ❖ Manhole covers where crop production occurs will be buried. The sewer line will be at or below grade, buried 6 to 18 feet. Once complete staff does not feel it will be unsightly or obnoxious.
- ❖ The applicant has stated that the City has not yet established a maintenance schedule, but non-emergency maintenance activities would likely be scheduled to occur outside of the planting/growing seasons when crops are not in the ground.
- ❖ Wagner stated that compatibility for construction is what staff is concerned about. In order to be compatible with the zoning district, staff is recommending several conditions intended to deal with the soils within the easement area.
- ❖ Approximately 24 acres of agricultural land will be impacted along the 2.8 mile sewer line route.
- ❖ The sewer line will be constructed through open trenching. With the amount of heavy equipment in the easement area, the excavation, and backfilling, staff feels that it is necessary to recommend the conditions to try and protect the future land productivity under the circumstances of installing the sewer line.

Wagner summarized these conditions:

- ❖ notification to owners when the construction easement is marked
- ❖ providing contact information to landowners for whom to contact should issues arise
- ❖ results of soil borings being provided to property owners
- ❖ no topsoil removal during wet conditions, as well as limiting work in wet conditions
- ❖ separation of topsoil and subsoil stockpiles and stabilization of stockpiles
- ❖ standards for dewatering the trench
- ❖ standards for subsoil deep tillage
- ❖ standards for topsoil replacement
- ❖ weed management

- ❖ standards for restoring rutted land and surface drainage ways
- ❖ communicating with landowners regarding private drain tile lines and standards for repairing drain tile lines, including communicating to landowners about said repairs

### **Transition**

- ❖ Due to the sewer line and manholes being at or below grade, intent for the area to return to an agricultural use, staff finds that this standard is met. Staff is not recommending any buffers.
- ❖ The sewer line is approximately 33 feet from a dwelling inside of City limits; however, the DNR standards do not appear to have restrictions on proximity to dwellings—only waterworks structures, such as private wells.
- ❖ Known wells exceed the minimum DNR required distance of 75 feet.
- ❖ The impacted land is in an agricultural use, with two properties containing single-family dwellings/farmsteads closer to the northern end of the route. These dwellings are over 200 feet from the proposed sewer line.

### **Traffic**

- ❖ No new permanent traffic will be created once completed. Will be accessed on an as-needed basis via the public road right-of-way.
- ❖ At this time, the volume of construction traffic has not been determined. There would be equipment deliveries and employee traffic. Parking would be in the temporary construction easement or on property owned by the City.
- ❖ Both 250th Street/South S Avenue and 270th Street will undergo closures, limited to a maximum of 48 hours, and not to be closed at the same time.
- ❖ There will be a detour route sign.

### **Parking and Loading**

- ❖ No permanent parking areas are proposed for the project. Maintenance work will be completed using the permanent easement area.

### **Signs and Lighting**

- ❖ There is no permanent lighting or signage proposed for the project. Anticipated construction hours are Monday through Saturday, 7:00 AM to 7:00 PM.
- ❖ Temporary traffic control signage is also proposed, and requires a permit from the County Engineer.
- ❖ For construction occurring during evening hours, the project must follow Story County Land Development Regulations for lighting of construction projects, which are intended to minimize up-light, spill-light, and glare.

### **Environmental Protection**

- ❖ Visual resources will be safeguarded due to the sewer and accompanying manholes being at or below grade. Staff does not anticipate any nuisance conditions once complete.
- ❖ The applicant has stated that Statewide Urban Design and Standards (SUDAS) will be called out on the bid package for contractors.
- ❖ In regard to weed management, staff is recommending a condition that weed management is done in the easement area with mechanical means such as disking or mowing.
- ❖ The sewer line will be designed to meet the Iowa DNR standards, staff finds that the standard of environmental protection will be met.
- ❖ Staff is recommending a condition that all DNR permits are provided to the Planning and Development department staff.

Wagener continued reviewing the standards for approval. If the Board concludes that all the above development criteria will be met, it must recommend approval of the application unless it concludes that, if completed as proposed, there is a strong probability the development will:

1. Not adequately safeguard the health, safety and general welfare of persons residing or working in adjoining or surrounding property.
2. Impair an adequate supply (including quality) of light and air to surrounding properties.
3. Unduly increase congestion in the roads, or the hazard from fire, flood, or similar dangers.
4. Diminish or impair established property values on adjoining or surrounding property.
5. Not be in accord with the intent, purpose and spirit of the Land Development Regulations or County Cornerstone to Capstone (C2C) Plan.

Regarding the fifth standard related to the C2C Plan:

- ❖ The subject properties that are intersected by the sewer are designated as Agricultural Conservation Areas.
- ❖ Principle 3 of the C2C plan for Agricultural Conservation Areas is to “encourage high-value agricultural lands to remain as agricultural and discourage non-agricultural development of such lands. Direct future non-agricultural development toward the designated Urban Expansion, Rural Residential, Rural Village, and Commercial Industrial Area designations on the Future Land Use Map.”
- ❖ The selected sewer route runs through land that has higher than average scores on the Corn Suitability Rating 2 (CSR2) scale. A CSR rating can range in value from 5-100, where a rating of 100 is the most productive soil and five (5) is the least productive. The average CSR2 for Story County is 80.2
- ❖ Overlaying the proposed sewer route with soil survey maps indicates that much of the impacted land has CSR2 scores of 83-91.

Wagner shared a map of the CSR2 of impacted soils.

- ❖ The intent is for the area impacted by the sewer route to be returned to an agricultural use. Due to Principle 3 of the C2C Plan, as well as the higher than average CSR2 scores present on the impacted properties, staff is recommending several conditions for protecting and restoring (decompacting) the subsoils and topsoil that is excavated for the open trench construction.
- ❖ These recommendations are based on Chapter 199.9 of the Iowa Utilities Board division—“Restoration of Agricultural Lands During and After Pipeline Construction.”
  - ❖ Staff contacted the Iowa Utilities Board (IUB) to determine if these rules would apply to this project. The IUB determined that they do not have authority over this project.
  - ❖ However, 199.9 of the *Iowa Administrative Code* includes what staff believe to be best practices for restoring agricultural uses after open trench construction. Requiring some of these practices through conditions on the permit will better align the sewer installation with Principle 3 of the C2C Plan.

### **Interagency Review**

- ❖ Engineer’s Comments: Recommending condition that the closure of 270<sup>th</sup> Street for the sewer crossing will be limited to 48 hours during construction.
- ❖ Environmental Health’s Comments: No known private septic systems appear to be near proposed trunk line being installed.

Public notification letters were mailed to surrounding property owners within a ¼ mile of the sewer route on January 7, 2022, regarding the Conditional Use Permit modification and public hearing. No comments had been received at time of presentation.

Wagner read through all 18 of the recommended conditions.

Hovick asked for clarification on why the County Engineer did not want 620<sup>th</sup> closed with the previously proposed route. Wagner stated that she believes the Engineer had concerns about the ability to have an adequate detour, due to being only one lane. Schoeneman stated she believes there were some questions about the road easement for the sewer project and if there was sufficient room with other utilities within the easement for the sewer to be routed in the road right of way. The City did pursue that option, and instead changed the route to what's being proposed.

Michael Roth stated that Wagner did a great job summarizing the submittal. All the presented conditions were worked through with the Planning Staff and there are no issues.

McGill asked if there has been communication with the landowners along the sewer route. Roth stated that yes, communication had been made.

Hovick asked if HR Green will have an inspector on site during the construction process. Roth stated that the intent is to offer construction phase services, including on-site observation during the construction phase for the City. There is not yet an executed agreement to provide those services, but that is the intent.

Neubauer asked what the timeframe is that the land will be out of production. Roth stated the construction period for this phase of construction will start in April of 2022 and be substantially complete by June of 2023, with a final completion in September of 2023. The impact to use of the land for Ag purposes would be about one growing season. Schoeneman clarified that the project is being completed in segments, meaning that the entire 2.8 miles will not be done all at once. Roth stated the work would begin at one end and progress up stream in generally the way that gravity sewer lines are installed. There would not be work happening on the entire route at the same time.

Neubauer asked if the land owners are compensated for the loss of production. Roth stated that yes, there is compensation for the permanent easement, use of property and compensation for crop damage/loss of production within the work area which is a three year time frame.

Hovick asked if the compensation is 100% for three years. Roth stated he would need to look at the purchase agreement to clarify that.

Mark See spoke from the audience to attempt to answer the question, McGill asked him to wait for public comments for his turn to speak.

McGill stated that this project has been in front of the board before and at that time the board routed back to the applicant and asked what alternatives the City has if the board does not approve. Roth stated that if the CUP is not approved that the only other alternative was what was previously denied, so at this point there are no other options.

Hovick asked if all of the affected property owners have signed an agreement. Roth stated that every property owner affected has not executed their purchase agreement at this time, and there are three property owners who have not executed the agreements.

Hovick asked if approval of the CUP would allow for eminent domain. Wagner stated if a purchase agreement is not reached it would then go to the condemnation board, and an amount of compensation would be worked out at that point for eminent domain.

Jondle asked about the boring holes and open trench. Wagner stated that the road right-of-way proposal was for pits with 20'-30' depths, and shifting to private land the construction would be open trench with 6'-18' depths. Schoeneman asked Roth to clarify if the reason for the bore pits was due to

the depth of the trench, it wasn't trenchless construction that was inappropriate. Roth stated with the previous alignment along 620<sup>th</sup>/S14 there were segments of open trench and other segments that used trenchless construction methods that had boring pits located on either end of those segments at various depths, but generally relatively deep. The trenchless construction was used in those segments due to what would have resulted in a very wide open trench construction. Those segments that were previously proposed to be trenchless construction were planned to be constructed with that method to minimize the excavation need.

Hovick asked how deep the manhole lids would be buried. Roth stated the minimum would be 3'. Hovick asked if it would be fully tillable over the top of the manholes or if it would require going around. Roth stated it is his understanding based off of farming practices that the 3' depth would be sufficient and be able to farm over the top without interference with the manholes. Roth also clarified that would be the minimum bury depth, and a landowner could request more in a purchase agreement.

### **Public Comments**

Ray Ringgenberg – Asked for clarification of the sewer line depth and wanted to know if the 6' minimum is closer or further away from the town of Nevada or is the topography different from his assumption. Roth stated that the buried depth is 6'-18' which is above the top of the pipe and the deeper parts are throughout the alignment, and it is a function of the existing topography which results in the bury depths along the alignment. Roth stated he would need to check to be certain of the locations, but that there are multiple spots throughout that shallow up, and then the same in terms of the greater bury depths, and again the topography creates the bury depth. Ringgenberg is concerned that some of his tile lines could be close to the 6' depth, and is concerned due to any erosion afterwards. Ringgenberg also asked about the wet soil condition since his definition might be different than a contractor's definition, and asked for clarification on the definition. Wagner stated that had been talked about with the applicant and is hard to define so would be left up to the contractor as far as what is too wet. Schoeneman stated that the real concern besides rutting is if the top soil and sub soil mixes. Schoeneman stated that if the top soil is removed from the 80' easement and stockpiled, there is less concern, along with the condition that ruts would be fixed. Ringgenberg asked about the soil settling over time causing shifting of the tile and who would he would need to call if there was an issue.

McGill asked if there is anyone with the City of Nevada that could answer Ringgenberg's question about who to call if there are issues in the future.

Erin Clanton, Nevada City Attorney - stated individuals would contact the City of Nevada to go through the appropriate mechanisms to contact those that need to make repairs.

Mark See - See complimented staff with the thoroughness of the staff report. See feels the Board of Adjustment is a safeguard for landowners to ensure the project is done correctly and that the project is beneficial to the citizens of the City of Nevada, but not harmful to the residents or land owners. See feels there are a number of safeguards, but no one yet designated to call is concerning. Being told to call the City of Nevada isn't good and feels the experience hasn't been good so far with the plant project. See stated that he did not attend the previous meetings and wondered about approval for the site. McGill didn't recall that process and Hovick stated previous discussion was in regards to routing. See feels that the City put the cart before the horse regarding the process of multiple routes that cost many dollars for engineer fees. Feels it was preposterous to think the County should allow the sewer line to be placed along S-14 with sewer line right next to the road. Ultimately those concerns led to that route not being able to be utilized. See would like the board to require independent oversight for the conditions made by the County and concerns made by landowners. See stated the permanent easement is 40' wide and the temporary easement is 80' wide for a total of 120'. The entire temporary easement on his property is on the east side of the permanent easement where the trench would be constructed. He stated that if the requirement to separate the soils and put one type on one side of the trench and another type on the other side of trench may not be possible on any of the route given the

easement or blueprint drawings he has seen. See does not want the permanent easement to go further east and be further on his property, but he does want the soils properly separated and the compaction addressed and the soils put back properly which is a large concern. See stated he does not trust the City and their engineering firm to police themselves. This concern goes back to the acquisition of the land and what has happened the last twelve months with the plant construction. When the land for the plant was purchased, a purchase agreement with the seller allowed the seller to continue to farm the land for five years and if the city were to exercise construction plans sooner than that they were required to provide notice to that land owner and cease the lease prior to September 1<sup>st</sup> like any other farm lease. The City failed to do that and entered on the land, unloaded trucks and scrapers and started moving dirt until the seller, Bill See, had a conversation with them about being able to continue to farm the land. The response was that he didn't have the right and some of the family members who had set up hunting tents on the property were told they had to get off the property, no trespassing signs were placed on the property and as this was brought to the attention of the City, the Seller who is See's father, Bill See, attempted to negotiate to allow them to go ahead with construction, thinking he had to, attempted to negotiate to allow him to continue to farm the land, and they denied it. He requested to be compensated and the City was going to allow a minimum amount of \$100 for the acres they were going to be using and not pay him for the rest of it. At that point he signed over power of attorney to him and he believes that most people know that the law and situation, if played out, would have been in favor of the land owner and the equipment be removed and the dirt placed back. See stated in an attempt to allow the construction to continue and to be cooperative with the City and to allow the plant to try to be built on schedule, they eventually negotiated a minimum \$200 an acre for all the tillable acres. That was settled and construction continued. To See's dismay, the remaining crop acres have grown to weeds the past summer and 6'-10' tall with every weed imaginable, including marijuana on the property, and finally after watching for the summer See brought it to the attention of the County Weed Commissioner who was in contact with the City to try to remedy, and See was asked to say that the results were not very positive. See stated he has been in negotiations with the land acquisition agent on behalf of the City and feels that what they are offering in terms of damages is unsatisfactory and doesn't cover what he believes will be the total potential loss in crop damage and it's limited to a per acre rent. See pointed out on the property map where his parcels are located and stated that the property drains toward the proposed sewer line and believes there is a county tile that runs under the road and goes onto the site where the sewer plant is. See stated that growing up as a kid on his dad's farm he remembers seeing that tile dug up and it was a rather large clay tile and he thinks the City has already constructed their driveway with three large tubes allowing for surface drainage to pass under the roadway and he doesn't know if anyone who worked out there knows if there is a County tile there or not. See has a huge concern about who to call. He doesn't care who to call, but he wants to know who is going to do something about it. While there is compensation offered for an area that he pointed out on the map, and wondered if the area is bermed, dirt stockpiled, would it allow drainage without losing topsoil. If tiles are damaged and not properly repaired, he feels potential crop loss is closer to 30 - 40 acres and has large concerns about that. See feels that after the fact this can be tough to correct which is the reason he proposes consideration of requiring an independent overseer, ensuring that all the conditions are met and DNR conditions are met and documented to protect land owners. See stated another concern is that the project is supposed to be for the betterment of everyone, cleaner water, treated sewer, but the City refuses to allow any of the property owners to connect to the line unless they agree to be annexed into the City of Nevada, and See feels that is no value to him. He is not adjacent to the existing city limits, so that is not possible but feels he is expected to allow the use of his land and if he doesn't agree it will be taken from him through eminent domain to put in the sewer line that is of no personal benefit to him or his property. See stated there is one standard that jumped out at him that allows him to deny the application, which is if the project devalues the surrounding properties and he thinks that has occurred and anyone owning property near the plant that their property will be devalued. See is sure that the project is necessary, but feels that the purchase of the land is another example of issues. To his knowledge there was no public seeking of any other land to acquire or consider for this project. See feels it was bought behind closed doors and twice the amount of land needed. See stated that had he known about that he would have considered some of his land that is two miles closer to the City of Nevada as a site to be considered, saving what he believes would

have been a tremendous amount of expense to the City of Nevada and the sewer users and he feels is another example of the cart being in front of the horse the entire way along that the City has gone about this. See asked the board again to consider his concerns and be overseers and protect the rural residents to ensure that the land, if utilized, is returned to as good or better state as before. See stated he has thought about things he's done his entire life, and we all make mistakes, but he believes when he leaves the earth we should leave it in a better place than when he came into it. That has been his thought in the process with his work to require 250 acres and the timber that someday as the City and County grow that could be a site and opportunity for quality rural housing, and the use of the sewer line would be a lot better than septic systems. See again stated that he doesn't believe the City or the engineering firm can be trusted to fully police themselves.

Roth stated that See's comments related to the plant site that has already been approved through the conditional use permit process, which is not part of the modification for the trunk sewer. Roth stated he was not involved in the process when the City acquired the sewer treatment site, however he is knowledgeable that the City's acquisition agent at the time, did contact every property owner within two miles of the City and there was not a single property owner that agreed to sell any land for the use of the treatment plant, so that is an inaccurate statement by See that nobody was contacted, but again that is not what we are here for today.

### **Public Hearing Closed**

Schoeneman clarified how wet work is defined. Beyond the top soil and sub soil mixing, when removing the top soil in the first place, part of the recommended condition is that doesn't occur during wet conditions when that top soil and sub soil mixing could occur. Again, this is hard to define. Schoeneman believes that a sample can be taken and ribboned to see how far the ribbon stretches. You can see how wet the soil is and if it is a certain ribbon size that means the soil is too wet and work could cause soil structure damage. She has also heard of throwing a clump of soil and when it lands, if it doesn't fall apart that it is too wet. Schoeneman stated that she had talked to the County Engineer and with county projects he would determine if the soil is too wet for the contractor to wet. The City was asked if this would be the case, and she believes the City stated it would be up to the contractor. In terms of an independent oversight, Planning and Development does not have the staff capacity to be independent inspectors and that with larger pipe line projects, the State of Iowa requires the county hire an independent inspector and then the pipe line company has to reimburse the County for the inspection costs. If that is something the board is interested in doing, Schoeneman asked that the item be tabled so that staff could determine if that is even possible to require in this case.

Hovick feels some inspection needs to be included since it still had not been decided if there would be on-site observation. Schoeneman stated it is a matter of if HR Green is the on-site inspector, or an independent inspector that possibly the applicant would reimburse for.

McGill asked about contacting the City of Nevada for issues and wondered which department would have the responsibility to handle situations.

Jeremy Rydl, Director of City of Nevada Public Works stated the Streets, Water and Waste Water Departments are under Public Works. Although this is a waste water project, it is considered a collector line and would be taken care of by the Street Department. They are responsible for fixing tiles, intakes, water main breaks and would fix tiles. Rydl feels it is unfair for someone to say an issue won't be fixed when they have probably never contacted the City before to have something fixed. Rydl stated he has worked for the City for three years and that they fix things right. McGill stated he understands, but he has also been around bureaucracy and knows what it's like to call someone and be passed around. He feels the residents would like to know exactly who to get ahold of. Schoeneman stated that is one of the conditions that contact information is provided to landowners and the board could clarify that. Rydl stated his cell phone number is on the web site and he can be reached with that number.

Mark See again spoke from the audience. McGill stated his questions were answered by Rydl. Schoeneman stated the board could open the public hearing again. McGill stated he felt they have heard enough comments and asked the board if they would like to hear more public comments. Schoeneman stated she would like for Roth to talk more about the inspector question if the board would allow that.

Jondle asked if there is a geotechnical engineer involved. Roth stated that Terracon Consultants is their geotechnical engineer who has done the soils borings, physical work and analysis for the trunk sewer alignment and the final soil borings report was just received today. Roth stated as part of the conditions that staff is recommending, that report would be provided to property owners.

Jondle asked if the geotechnical engineer would be a part of the construction process as well at certain points in construction be called back to the site to observe. Roth stated that as part of the project and SUDAS specifications, there is a backfill compaction requirement that has to occur and be measured in the field, and a geotechnical engineering firm would generally be the type of entity who provides that testing during construction to ensure conformance with project specifications. It may not be the same consultant used during the design, although it could be. On other phases of this project that the City has already bid and awarded contracts, the city is providing the testing agency to perform testing. It avoids conflict of interest rather than having the contractor hire someone to inspect their work to see if their performance meets specifications. That has been taken out of the contractor's hands so there is not that perceived conflict of interest with the testing agency and the contractor. It is planned to proceed in the same manner for the City to provide the soils testing agency for soils compacting, rather than the contractor, and will contract with one of the geotechnical firms in the area to provide those services. Jondle asked if any as built plans are required after. Roth stated the testing is standard and there is a required testing report provided by the geotechnical engineering firm that shows results so there is accountability in terms of reporting and documentation to show the back fill is meeting the specified requirements. An as built is required to be provided so that any deviations from the plan that occur during construction are documented and recorded in a final set of drawings that show the as built condition of the improvement for record keeping purposes.

#### **McGill reopened the Public Hearing.**

See stated the sewer line constructed of 30" in diameter with a 20 year life expectancy plan, and he hopes that speaks to everyone that it may not be the only time the soil has to be disturbed and feels it's a poor choice on the part of the City to design it that way or the engineering firm and it invites more engineering in the future, as well as construction, reconstruction and replacement which is in the easement request and one of the reasons he has not agreed to it.

Roth stated the design life for the trunk sewer is actually 50 years per the DNR design standard requirements and the materials are approved pipe materials as per the SUDAS standard specifications that are adopted state wide, so all the pipe materials for this project have been approved by the State of Iowa for use of construction of sanitary sewers so all deemed appropriate materials for this application. The SUDAS specifications are being followed, so they are not allowing the contractor to pick a material that would not be appropriate for this application. Any project that follows SUDAS standards would do the same and have the same allowances for pipe material.

See asked if the 50 year design standard is allowed by the DNR.

Roth stated that the IDNR wastewater facilities design standards are required to have a 50 year design life.

See stated when he attended the City Council meeting about a month or more ago, he was told that the life expectancy of the service of this line is 20 years.

Roth stated that the design capacity is based on a 20 year design period, but the design life of an infrastructure is required to be 50 years.

See stated this came up when it was questioned about Dakota Access constructed a 36" line with an average depth of 6', and Nevada is putting in a 30" line with an average depth of 15' and Roth is requiring about half of the land in permanent easement and temporary easement that Dakota Access used. See stated if he understands correctly, the construction materials have a 50 year life capacity, but when talk about a capacity expectancy of only 20 years. See asked if it is correct that the capacity of the line to serve Nevada is only 20 years.

Roth stated that is incorrect and again explained that they have to project what the flows and loadings to the wastewater system are for a 20 year design.

McGill interrupted and stated that they are not here to discuss specs.

Hovick made a clarification from an earlier comment about the 80' construction easement and 40' permanent easement, for a total of 120'.

Roth stated the 40' is within the 80' so the total width of the construction area is only 80'.

**McGill closed the Public Hearing.**

Schoeneman stated if the board has any conditions they would like to recommend besides staff's, to relate those to the findings of fact.

Neubauer likes the conditions as they exist and feels they do protect the landowners, but is also sympathetic to the thought that those are words on a piece of paper, and wondered how it is ensured that all of those things happen. Neubauer would consider the option of investigating an independent inspector.

Hovick stated that he would be on board with tabling the item so further investigations could be looked into about an independent inspector and figuring out who would be the inspector.

Jondle stated that she does not disagree and that common practice would be that generally the city would hire their city engineer to inspect, and doesn't feel that is out of line, even though it may not always be right. The as built plan, geotechnical engineer could possibly be required to provide document such as an built plan is provided that shows this is where it was built, the differences in how it was designed and how it was built and would be worth exploring further, and if this is something the agency could provide, if it isn't possible to require an additional outside check.

McGill stated that he feels it is something that should be considered and that he struggles with the applicable regulations #4 and #5, not be in accord with the intent, purpose and spirit of the Land Development Regulations. Stating that with this project running through some of the best farmland in the County and after having seen issues with Dakota Access as far as getting the land back into condition is a lot of work. Applicable regulation #5 is regarding diminishing and impairing the established property values. McGill stated if the soil is damaged and put back it would impair the property values in his opinion. He feels there is a need for some independent oversight, and agrees that staff could look into that option further. Schoeneman asked for the Chair to ask if the applicant would be open to staff exploring the option for independent oversight. Roth stated that he would need to defer to City Staff and the City Attorney as it would impact the project schedule and compliance with the DNR requirements for the wastewater discharge permit.

Erin Clanton stated that she does not feel that any of those present for the City have the authority to answer that question. Obviously the City is wanting to work with the board to get the CUP approved so

if it is something wanted by the board they could take that back to staff and those with decision making powers to approve.

McGill asked if the item would need tabled to do research. Schoeneman stated yes, otherwise staff would have to bring the item back if that is not possible, so those are the two options. McGill recommended that the item be tabled to allow staff to look into the possibility of an independent inspector. Hovick stated that even it was a member of another engineering firm, which would at least be a third party.

**MOTION:**

**The Story County Board of Adjustment remands the Conditional Use Permit for the City of Nevada Wastewater Sewer as put forth in case CUP22-000001, back to the applicant for further review and/or modifications for establishing independent oversight and directs staff to place this item on the February 16, 2022, Story County Board of Adjustment agenda.**

**Motion: Neubauer**

**Second: Hovick**

**Voting Aye: Neubauer, Hovick, Jondle, Excell McGill**

**Voting Nay: None**

**Absent: None**

**Vote: (5-0)**

See asked from the audience that if the City agreed to the independent oversight prior to staff doing research, if the process could be sped up.

Discussion took place on the possibility of a special meeting, rather than waiting until the regularly scheduled February meeting.

**BOARD/STAFF COMMENTS:**

**Staff:** Schoeneman stated that the board should anticipate that at the next regularly scheduled meeting the Findings of Fact for the Raspberry Hill Bed and Breakfast will be coming back to reapprove for the campground.

**Board:** None

Jeremy Rydl asked if the City will have to hire an inspector that the landowners approve. McGill stated that answer is not known yet, and staff is looking into the possibility further. Rydl stated that quite frankly the City already hired an inspector with HR Green and if that isn't good enough, so are they going to have to hire another inspector to be good enough. The City is still paying the inspector no matter what, so there is an association with the City. Hovick agreed that the engineering firm isn't working for the contractor doing the work, so they should be inspecting them unbiasedly, but he understands the property owners concerns so seeing what the options are to appease both parties.

Neubauer asked about a potential relationship where the County could employ an inspector and then be reimbursed by the City. Schoeneman stated that is the only kind of independent inspector she is familiar with.

**ADJOURNMENT: 5:41 PM**

  
Approval of Minutes

  
Title and Date

2/16/2022