



Request for City Council Committee Action from the Department of Community Planning & Economic Development—Planning Division

Date: September 24, 2009

To: Council Member Gary Schiff, Chair, Zoning & Planning Committee and Members of the Committee

Referral to: Zoning & Planning Committee

Subject: L and R Development LLC and Ramsey Excavating Co. have appealed the decision of the Board of Adjustment denying an appeal of the decision of the Zoning Administrator that rock crushing is a permanent use and is therefore not permitted on the property at 4022 ½ Washington Avenue North in the I2 Medium Industrial District.

Recommendation: The following action was taken by the Board of Adjustment on July 30, 2009 (BZZ-4451):

3. 4022 ½ Washington Avenue North (BZZ-4451, Ward 4)

L and R Development LLC and Ramsey Excavating Co. have appealed the decision of the Zoning Administrator that rock crushing is a permanent use and is therefore not permitted on the property at 4022 ½ Washington Avenue North.

Action: Dick Sandberg moved and Bruce Manning seconded the motion to adopt the findings and **deny** the appeal of the decision of the zoning administrator.

Ward: 04

Prepared by: Brad Ellis, Senior Planner (612-673-3239)

Approved by: Steve Poor, Planning Supervisor

Presenters in Committee: Brad Ellis, Senior Planner

Financial Impact

- No financial impact

Community Impact

- Neighborhood Notification: Webber-Camden Neighborhood Organization
- City Goals: See staff report
- Comprehensive Plan: See staff report
- Zoning Code: See staff report
- End of 60/120-day decision period: On August 7, 2009, staff sent a letter to the applicant extending the 60 day decision period to no later than October 14, 2009.
- Other: (Delete if not applicable)

Supporting Information

L and R Development LLC and Ramsey Excavating Co. have appealed the decision of the Board of Adjustment denying an appeal of the decision of the Zoning Administrator that rock crushing is a permanent use and is therefore not permitted on the property at 4022 ½ Washington Avenue North in the I2 Medium Industrial District. At its meeting on July 30, 2009, the Board of Adjustment voted 3-2 with one abstention to deny this application. The appeal (attached) was filed on August 7, 2009. The Board of Adjustment minutes and Planning Division staff report are attached.

The appellants have stated that the decision is being appealed because they are more akin to a temporary use than a permanent use. The appellant's complete statement of the action being appealed and reasons for the appeal are attached.

The applicant originally appealed the decision of the Zoning Administrator that rock crushing is a permanent use and is therefore not permitted on the property at 4022 ½ Washington Avenue North. The applicant is asserting that because the property is only used intermittently for crushing, this use constitutes a temporary use as outlined in sections 535.320 to 535.360 of the Minneapolis zoning code.

The City of Minneapolis zoning code does not have an "intermittent use" category. All uses are either: Permitted, Conditional, Temporary (as outlined in Chapter 535), Interim (as outlined in Chapter 525), or Accessory (as outlined in Chapter 537).

Findings:

- 1) Concrete/rock crushing is first allowed as a Conditional Use in the I3 General Industrial District as a Concrete, asphalt, and rock crushing facility, and is therefore not allowed in the I2 Medium Industrial District
- 2) Concrete/rock crushing is not substantially similar to the listed temporary uses as outlined in 535.360.
- 3) An interim use must be allowed as a conditional use in a zoning district to qualify as an interim use; as noted in finding 1, above, a Concrete, asphalt, and rock crushing facility is not allowed until the I3 General Industrial District
- 4) An accessory use is incidental to and customarily associated with the principal use served. There is no other use on the property other than building materials storage.
- 5) Section 59.40 allows temporary rock crushing with a permit issued from the assistant city coordinator, but stipulates under 59.40(d)(2) that "all materials crushed, ground, pulverized or milled must originate on the site where the temporary crushing activity is occurring unless the assistant city coordinator for regulatory services or their designee determines that it is to the public benefit to transport to an off site location." Materials moved off site must be crushed on a property in which rock crushing is allowed.

Department of Community Planning and Economic Development – Planning Division
Appeal of the Decision of the Zoning Administrator
BZZ-4451

Date: July 30, 2009

Applicant: L and R Development LLC/Ramsey Excavating Co.

Address of Property: 4022 ½ Washington Avenue North

Project Name: Ramsey Excavating Appeal

Contact Person and Phone: Brad Ellis 612-673-3239

Planning Staff and Phone: Steven C. Cox, applicant's attorney, 612-359-7617

Date Application Deemed Complete: June 16, 2009

End of 60-Day Decision Period: August 17, 2009

Ward: 04 **Neighborhood Organization:** Webber-Camden Neighborhood Organization
(Camden Industrial)

Existing Zoning: I2 Medium Industrial District
 FP Floodplain Overlay District
 SH Shoreland Overlay District
 MR Mississippi River Critical Area Overlay District

Zoning Plate Number: 4

Legal Description: Not applicable for this application

Proposed Use: Concrete/Rock Crushing

Appeal of the decision of the Zoning Administrator: L and R Development LLC and Ramsey Excavating Co. have filed an appeal of the decision of the zoning administrator that rock crushing is a permanent use and is therefore not permitted on the property at 4022 ½ Washington Avenue North.

525.170. Appeals of decisions of the zoning administrator. All findings and decisions of the zoning administrator, planning director or other official involved in the administration or the enforcement of this zoning ordinance shall be final subject to appeal to the board of adjustment, except as otherwise provided by this zoning ordinance. Appeals may be initiated by any affected person by filing the appeal with the zoning administrator on a form approved by the zoning administrator. All appeals shall be filed within ten (10) calendar days of the date of the decision. Timely filing of an appeal shall

Department of Community Planning and Economic Development – Planning Division
BZZ - 4451

stay all proceedings in the action appealed, unless the zoning administrator certifies to the board of adjustment, with service of a copy to the applicant, that a stay would cause imminent peril to life or property, in which case the proceedings shall not be stayed. The board of adjustment shall hold a public hearing on each complete application for an appeal as provided in section 525.150. All findings and decisions of the board of adjustment concerning appeals shall be final, subject to appeal to the city council as specified in section 525.180.

Background and Analysis: The applicant is appealing the decision of the Zoning Administrator that rock crushing is a permanent use and is therefore not permitted on the property at 4022 ½ Washington Avenue North. The applicant is asserting that because the property is only used intermittently for crushing, this use constitutes a temporary use as outlined in sections 535.320 to 535.360 of the Minneapolis zoning code.

According to the applicant, the owner has been conducting concrete crushing activities at the property since the building was constructed in 2003. The crusher in question is mobile, and according to the applicant has also been used at off-site jobs.

According to 535.320, the temporary use provisions are established to allow for certain uses and structures which have only a seasonal or temporary duration such as community festivals, fresh produce stands and temporary promotions by permanent businesses. There are eight enumerated temporary uses:

- 1) Storage of building materials and equipment or temporary buildings.
- 2) Temporary real estate tract office.
- 3) Temporary amusement events
- 4) Seasonal outdoor sale of holiday items
- 5) Farmers' markets.
- 6) Promotional activities involving outdoor sales and display.
- 7) Searchlights.
- 8) Additional temporary uses.

The storage of building materials and equipment or temporary buildings is expressly intended for construction sites, as outlined in its description:

The indoor or outdoor storage of building materials and equipment and temporary buildings for construction purposes may be allowed as a temporary use, provided that such storage or temporary building shall be located on the site under construction and shall not exceed the duration of such construction or one (1) year, whichever is less.

“Additional temporary uses” is explained as follows (emphasis added):

In addition to the temporary uses and structures listed above, the zoning administrator may allow other temporary uses and structures, not exceeding fifteen days (15) in one (1) calendar year, provided the zoning administrator determines that the proposed temporary use or structure is substantially similar to a temporary use or structure listed above in the manner provided for in Chapter 525, Administration and Enforcement, governing determination of substantially similar uses.

The zoning administrator has determined that concrete/rock crushing is not substantially similar to any of the listed temporary uses. In addition, a temporary use permit has never been applied for on this property.

The neighborhood association has called with concerns about the use of the property, but had not submitted a written statement at the time of this report.

Findings:

- 1) Concrete/rock crushing is first allowed in the I3 General Industrial District as a General Industrial use, and is therefore not allowed in the I2 Medium Industrial District
- 2) Concrete/rock crushing is not substantially similar to the listed temporary uses as outlined in 535.360.

RECOMMENDATIONS

Recommendation of the Department of Community Planning and Economic Development – Planning Division for the appeal of the decision of the zoning administrator:

The Department of Community Planning and Economic Development – Planning Division recommends that the Board of Adjustment adopt the above findings and **deny** the appeal of the decision of the zoning administrator.

Attachments:

- 1) Written descriptions and findings submitted by the applicant
- 2) Correspondence from neighbor
- 3) Zoning map

Appeal Transcript BZZ-4451 4022 ½ Washington Avenue North

Brad Ellis: Chair Perry, members of the Board, item number 3 is an appeal of the decision of the Zoning Administrator regarding concrete and rock crushing activities at 4022 ½ Washington Avenue North. It is a large industrial property on the North side. It's my understanding that this working, it is now working again. So just to give an example of the size of the property on there, it is my understanding there are no existing buildings on there. The concrete rock crushing is a general industrial use first allowed in I3 General Industrial District and is therefore not allowed in the I2 Medium Industrial District of which this is zoned. The applicant, or the appellant is stating that due to the fact that is not actually a permanent use they're only using it there occasionally that it is more akin to a temporary use and have stated that in the packet and also here in the presentation I'll point out that temporary uses are only those allowed under 535.320 which includes the seven listed, or eight listed total, storage of building materials and equipment of temporary buildings, temporary real estate tract office, temporary amusement events, seasonal outdoor sale of holiday items, farmers markets, promotional activities involving outdoor sales and display, search light, and then finally, additional temporary uses. Additional temporary uses however, as it pointed out then in that section, must be substantially similar to a temporary use or structure listed above in that initial seven. Rock or concrete crushing is not akin to, or not substantially similar to those uses. Therefore, staff is recommending that the Board adopt the findings and deny the appeal of the decision of the Zoning Administrator.

Matt Perry: Thank you, I want to, I do this every time we have an appeal of the Zoning Administrator. I want to be clear, as our Board knows, that what we're looking at here is not a variance in whether they should or should not be able to do something due to special circumstances but whether the Zoning Administrator interpreted the Code correctly. And so I would appreciate those speaking before us today constrain your comments to that particular issue. Is the applicant here?

Steve Cox: Good afternoon Board members. My name is Steve Cox. I'm an attorney at the Fabyanske Law Firm. I represent the applicant Al Ramsey, who owns the property. His company is Ramsey Excavating. I represented Al when he purchased this property back in 2004 from the railroad. At the time it had a track across it, which still remains I guess, in part of the property. Al owns an excavating business. He bought this as his headquarters, he built a small office building on it and most of the site is used for sand and gravel storage. He also stores his equipment there. This equipment includes a mobile crushing facility. As part of his business, on just about every project, some component of it is rock, is concrete crushing. He does projects throughout the City, many projects for the City. In excavating his site in 2004 to build his office, he found a large volume of buried concrete rubble. We don't know who buried there, when it was buried, where it came from. The pile of concrete rubble that's on his site right now is about 60% composed of that original rubble excavated from the site. 30% of that pile that's on the site right now consists of rubble from the structure that was demolished immediately adjoining his property, the Holsom (sp) Cement Plant had a structure. They demo'd it in place, bulldozed it across the property line and there it sits as part of the rubble pile on his

property. 5% of the property, the pile, is probably composed of rubble from a recent project at Heritage Park. And then 5%, a small amount is waste from the nearby Cem Stone plant and they have concrete waste. The concrete hardens up, they need some where to go, they bring it there. Al has never concealed the fact that he's done crushing on the side occasionally. Whenever he does a project with the City it's clear that sometimes they'll need to have a little bit of stuff crushed off of , I should back up and say on most of Al's projects he moves his crusher to the site and crushes on the site wherever he is. Then he brings it back when he's not using it on site. Occasionally he will bring material from another site to this site and crush it there. He's never hidden the fact that he does that very occasionally.

Al Ramsey: Only if it's within the City of Minneapolis, I don't know, do I need to stand up?

Matt Perry: I'd like one person to speak at a time. If your attorney could complete his presentation then you're welcome to make your comments.

Steve Cox: The rubble that Al excavated on site is next to a lot of dirt and he can't, because it's mixed with a fair amount of dirt, he can't just crush it and get rid of it, sell it, in it's current state. It needs to be mixed with a little, with more clean concrete to get it up to a level that he can sell it and dispose of it. So it's taken a while for him be able to work that pile down. Unfortunately, of course, someone submitted a complaint and obviously we don't know who it was. We would have to suspect that it was a competitor of Al's and not a neighbor. We don't think any neighbor has any objection to this use. The crusher that he uses is a modern crusher mounted on wheels. It's extremely quiet. It has an onboard watering system to control dust. It's got silencing systems. It makes no more noise, emits no more dust, doesn't do anything apparent that's more obnoxious than simply dumping a pile of sand or gravel, or loading it back onto a truck. Which, of course, what he's permitted to do there and which is his primary use of this site: storing materials. Immediately to the south is an I3 zoned district in which a Condition Use Permit would be available for concrete crushing. All the other adjoining uses are industrial. It's a very industrial area and I suspect the only reason this site is zoned I2 is its historical use as a railroad site. Railroad, I think the railroad didn't need I3 zoning and so it was zoned I2. So our, this use is temporary not permanent. It's only occasional, it's only intermittent, and it's principally in order to get rid of stuff that was excavated on site. It complies with the requirements for temporary use. It's (sic) Zoning Administrator read this illustrative list of uses in 535.320 suggesting that they're the only permitted uses but that's not the way the Ordinance reads. It says it's for certain uses and structures which have only seasonal or temporary duration. It says such as, but it's not an exclusive listing. We think it's, there are other projects nearby that would support the idea that this is a temporary use. At Dowling and 94 adjacent to the old Port is City owned property. The City has leased it on a long-term basis to a private operator. There is, for the last two years, private contractor Thomas and Sons has been taking material excavated from the Lowry Project, bringing it that site which is zoned I2, just like this one, and crushing it there. It's been going on for two years on City owned property. Apparently that seems to be a temporary use. Linden Yard ...

Matt Perry: Excuse me for a moment, going through a number of other sites really isn't addressing the particular question, so again, I would respectfully request you constrain your comments to the issue at hand.

Steve Cox: Very good. So the alternative would be to have the property rezoned to I3. That's inconsistent with the long-term use of this site as, or the intended long-term use of this site as a park. It's within the Above the Falls Park District. I think it makes more sense to allow the property to remain zoned I2. This is a very environmentally appropriate use. It doesn't harm the site, it doesn't create pollutants, it recycles material, it's more consistent with the City's long-term use of the site than rezoning to I3. So again, it's temporary, it's not the, the Ordinance does not exclude this as a temporary use it just suggests possible temporary uses in the Ordinance. It's an intermittent, very occasional use. It's part of disposing waste that was excavated as part of the initial construction of the building on the site.

Matt Perry: OK. Thanks. Any questions? I see none. Oh, I'm sorry Mr. Gates.

Paul Gates: Thank you Chairman Perry. I want to make sure I understand your point about the source of the material which is being crushed. I heard you say that much of it is material which was found on the site and you're crushing that and that will be depleted at some point, presumably, and then that is done. But then you're also taking the waste from a concrete plant and that would seemingly continue into perpetuity as long as you are operating your business. Is that correct?

Steve Cox: Correct. I'm sure Al could, it's a small amount I'm sure he could stop doing that. This is what he has done in the past.

Matt Perry: Mr Manning?

Bruce Manning: Has the applicant requested the, and if so what response has he received, to the request to use it for this purpose for 15 days and one calendar year as provided by the Code?

Steve Cox: I believe he has not requested a ...

Al Ramsey: I can answer that too.

Bruce Manning: I can hold off for the applicant if that's better. Thank you sir.

Matt Perry: Any further questions? I see none. All right. Thank you. Yes, sir, you'd like to speak in favor?

Al Ramsey: I'll answer the last question first because that's the one I remember. I'm Al Ramsey. I'll answer the first question because I remember that. We can stop at any time. I can tell Cem Stone I'm not taking your material any more. We've just been adding to the bad materials just so that we can make what is called a gradation, a MNDot class 5

gradation is a product that is usable, allowed by the State, the City, as a road base material. The last question, could you repeat it for me please?

Bruce Manning: Sure, my question was, have you requested the 15 days of use in any given calendar year from the (unintelligible) Administrator, I suppose for purposes of grinding down what you found? At all? (unintelligible) ...at the property and did you get a response if you did request it?

Al Ramsey: We did not do that. I was unaware of that requirement and since I have planned for this public hearing that I understand that there is a new requirement, a new permit required enacted in '08 of last year for actual temporary crushing. And that's not a 15-day, that's a 120-day consecutive permit. I'm willing to apply and pay for that. My biggest argument is that it's temporary. I don't know what else to say other than it could be gone in a month, it could be gone in 3 weeks, it's temporary. It's not a permanent operation. I do very little of my crushing there. I'm at Hiawatha Maintenance Facility right now. Recycling all that old buried concrete we pulled out of there. My crusher is stored at my yard and it was, you know, picked up and moved in a matter of 4 hours to the site at Hiawatha and 26th Avenue South, I think it's South. I've been involved with the Heritage Park Project since 1998. We found many, many yards of buried debris there. Due to site limitations it's been brought to my yard. That has been recycled and brought back. The City has bought many tons of product from me. You know, was this staff that came up first?

Matt Perry: Yes sir.

Al Ramsey: Ok, I didn't get that right off the bat. I was trying to address a concern if a neighbor had a concern. We've done it off and on for 5 years. I've had the people from the Above the Fall Citizens Advisory Committee standing in my yard while I've been doing it. Barb Johnson's been aware that I've been doing it. You know, I don't want to do anything subversive or wrong. I was surprised to get the guy in the Zoning car pulling up. The day he pulled up, I just, know that this is an Overlay District I believe that by deeming this a temporary use this is the best thing that could happen for that property. I don't want to own the property forever. I'd like to sell the property in 15 to 20 years. I don't want to have to build a building there, but in order to support what I pay for taxes there now, after the railroad went tax free for a hundred years or whatever it was, I need to do something that makes a few bucks off that property and this would do that. My other options are, I've been contacted from scrap yards out of Chicago to buy it so they could barge out of that property. I understand that maybe the City's actually thinking about moving the Linden (sp) Yard down to the Second Street site where a lot of the scrap yards are located now. Those people have contacted me about possibly buying it. With that being said, whatever they do there they'll have to build a building on that property to do what they need to do. And knowing that one day that it should park land as it is state in the future, it's been my opinion not to pursue any of that and try to keep this as a temporary use and be able to be out of there and when the City comes to me with the big check I'll be out of there in 6 months.

Matt Perry: I forgot to tell folks to state their names for the record, if you'd do that now.

Al Ramsey: It's Allan Todd Ramsey, 4060 Washington Avenue North. The City is confused about the address.

Matt Perry: Thank you very much. Mr Koch?

Chris Koch: So Mr. Ramsey, whether you should be able to grind stone there is not the question I guess, but just so I understand, you're not disputing that it's an I2 District right?

Al Ramsey: Nope.

Chris Koch: And you're not disputing that if you had a permanent rock crusher there you know that you couldn't do that right?

Al Ramsey: Correct.

Chris Koch: Okay. So the question is what is temporary and what is a permanent rock crusher? Out of 365 days in a year how many days are you grinding rock at your facility would you say on the average?

Al Ramsey: Four months would be a long period. So 160 days. No, 120 days, four months. And it's not consecutive, it's intermittent.

Chris Koch: Okay. So then the question is even if that is temporary, is rock crushing on a temporary basis even allowed? Because the Code says temporary means Christmas tree sales for 2 months or farmers' markets, things like that. So just so I understand, you're dispute is that my 120 days of rock crushing should be lumped into these 8 enumerated items in the Code, right?

Al Ramsey: I don't know if you're asking me a question that I answer the wrong way and I get hung by it. I know this, I know that the City enacted a permit required to temporarily crush rock or recycle concrete. And temporarily in that permit is allowed 120 days. Consecutive. That has just come to light to me, so the City has said that a temporary operation can take place for 120 days. If that's what I'm allowed that's temporary. I'm not, I'll stay within those confines. It also states in that permit that the Assistant City Administrator has the right to accept the material being hauled to a different site from which it is generated if it's to the better good of public health and the City. With that being said, I think that the projects that I'm involved with have greatly benefitted the City, the Heritage Park Project, Cedar high rise apartments project, an MPHA project that just started a month ago. Little Earth Indian Community project. Those projects are benefitting the City. I know they're benefitting them because I'm the low bid on the publicly bid project and the reason I'm low bid is because I'm able to, in my eyes, temporarily crush product at my site versus somebody from Maple Grove bidding the job and taking the product to Maple Grove and then bring it back to the City.

Chris Koch: So you're crushing at your site. So rock crushing is a major component, or concrete crushing is a major component of your business?

Al Ramsey: No, it isn't. We currently do about \$12,000,000 a year in my rock, my concrete recycling business does about \$640,000 a year. So it's a very small percentage of my business.

Chris Koch: Alright, okay thank you.

Matt Perry: Any further questions? Mr. Sandberg.

Dick Sandberg: Yeas, thanks Mr. Chair. I think after hearing Mr. Ramsey I have a question for staff. Would it be appropriate to ask that right now?

Matt Perry: Sure.

Dick Sandberg: Okay, thank you. Mr. Ramsey mentioned that the City does issue a permit for, a temporary permit for concrete crushing. Will that permit only be issued for a site that's I3 or higher? Or will it issue a permit to occur on other zoned property?

Matt Perry: Mr. Poor

Steve Poor: Chairman Perry, Board Member Sandberg. I think permit he's referring to comes out of Regulatory Services and Environmental. It is not a land use permit. It probably has more to do with the stipulation of on site. On site is when you're tearing down a building on site. Off site is when the material is brought somewhere else. The fact he's talking about they have 120 day permit, that kind of jibes with demolishing a building, a bridge or road. So the permit he's referring to is not in the land use regulations. I'm sure if it's coming under the Deputy or the Assistant Coordinator it's a Regulatory Services and Environmental. So you know, I can't speak with a high level of expertise, but I am familiar with it and it's saying that even when you tear a building down, like the grain elevators over here some years ago, there's conditions on that. How you handle it, dust mitigation. Most rock crushers these days are on wheels. I'm not as familiar with that permit, but I'm sure it Regulatory Services and Environmental.

Dick Sandberg: Okay, thank you.

Matt Perry: Any other questions? Mr. Gates.

Paul Gates: Thank you Chairman Perry. I'm interested in the distinction between temporary and intermittent. Maybe we can get into that some in our Board discussion here. Related to that, I wonder if you can explain Mr. Ramsey, why for the buried material which is on site that you've uncovered, why isn't that crushed all at one time and stock piled as crushed material as opposed to crushing it as you need it?

Al Ramsey: It costs me money to crush it and unless I can sell it I don't want to spend the money.

Paul Gates: For me that may get into the question of intermittent versus temporary which we'll take up later. Thank you.

Matt Perry: Any further questions? Thank you very much. Is there anyone else to speak in favor of, it's not this application, to speak on behalf of the applicant's appeal of the Zoning Administrator's decision? I see no one. Is anyone here to speak in opposition? I see no one. Let's close the public hearing. Board comment? Mr. Finlayson?

John Finlayson: Sounds temporary to me.

Matt Perry: Mr. Manning?

Bruce Manning: This seems to fall into the category of: really, this is an issue? This is a lot surrounded by other industrial uses and a use that seems appropriate for the neighborhood that's turning formerly unused property into rather productive uses. Preserving it for future development that's harmonious with the river which is something the applicant is been quite fluent in and cares about. It all seems entirely appropriate except for the small hang-up of the language of the Code. I'll stop there at the moment.

Matt Perry: And again, I'd like to remind my colleagues that we're not really looking at the quality of work or the community contribution of the applicant, but rather what the Zoning Administrator has properly identified this is a temporary or non-temporary use. Mr. Gates?

Paul Gates: Thank you Chairman Perry. As I said a minute ago, I'm seeing a distinction between temporary and intermittent. I don't see the work intermittent listed in any of the Code language. Maybe staff can add something to that. To me this is clearly an intermittent use and I would not consider it to be a temporary use. However, when I look at the examples, the eight examples of approved temporary uses some of them, to me, are clearly intermittent uses. Seasonal outdoor sales of holiday items, somebody selling Christmas trees, that occurs for a month every year and repeats and repeats. Farmers market may occur every weekend throughout the summer go dormant and then repeat the next year. Other uses are much more clearly temporary. For example a temporary real estate tract office, somebody selling units in a condominium building put a trailer on the site, they sell the units, the trailer is gone and it's never there again. But the fact that there are clearly some intermittent uses that are recognized by the Code, gives me pause about saying that even though this is an intermittent use that it shouldn't be allowed. Because we have some intermittent uses that are clearly allowed. So I don't have a conclusion here yet, but I'd look for more direction, or guidance from other Board members or perhaps staff wants to weigh in?

Matt Perry: Mr. Poor would like to expand the City's position with regards to intermittent versus temporary?

Steve Poor: Sure. Chairman Perry, intermittent, I guess we don't tend to look at intermittent as much as what's an allowed accessory use. Because that's what accessory often is, is an intermittent use. I just want to say I think I figured out where his permit is. I think it was a 389 permit. Because we actually, when we define rock crushing, if I may, we do talk about you can have on site rock crushing. And it's as the gentleman suggests whether it's Heritage Park, Riverview Homes, the grain elevators by the Guthrie, they do allow for on site rock crushing. But under 389, which is the noise ordinance, there are some other environmental issues that they regulate these and I think that's permit he's really referring to. We don't look at intermittent uses really, we look at temporary uses, they have a prescribed time as Board member Manning talked about. Generally 15 days. If it's not one of the 8 that's listed we have to make a substantially similar use analysis or find out some other way to accommodate them. Rather than intermittent uses we look into something allowed as an accessory use. And when you see a use that's I3 and still needs a conditional use it's not even permitted in the I3, it is a conditional use in the I3. That tells you how seriously the City regulates rock crushing. The current Ordinances came out of a big controversy when they took down all the grain elevators off of Washington. There was huge uproar about the noise. The site of the cascading conveyor belts that rock crushers have. There's often a three-tiered system. They often disaggregate the material going through a series of conveyor belts. These Ordinances came out of that. It was not a small, I worked here. I was the Inspector on the site. It was very controversial and I would just say that we don't look at intermittent uses. We look at allowed accessory uses. We have temporary uses. But the fact that the City made a judgment about rock crushing, the appellant says he brings material there. It's not on site. It's a business. And I would challenge you to say that if he's talking about price, he talked about price and materials. If the price of rock crushing came up do you think it would be Al's Excavating and it might not be Al's Rock Crushing if there was more money in that? He's already said he brings material on site. He's bringing it there. So we don't look at it as intermittent, we don't look at this as an allowed accessory use because it's permitted one district higher with a conditional use permit. And that frankly, when did you get your order? It's been a few months? I mean, you've been operating since you got the initial orders in May?

Al Ramsey: Am I allowed to talk?

Steve Poor: I'm just asking. I think he's had ...

Al Ramsey: You know when I got it.

Steve Poor: No, I don't. Forgive me. He had orders several months ago. He filed an appeal. We held the order in abeyance. I would suggest that he still continued to work there. So I would suggest that this is not intermittent it's part of the business plan. I understand what he's doing. Nobody argues about the merits or the value of what he does. But the City made a decision that if you're going to do rock crushing, it's an I3

with a conditional use permit. It's not allowed except on site. We have a provision in the definitions 521.60 Concrete Rock Crushing. On site is permitted. On site is demolishing a building, bringing in the conveyor belts. Do it as fast as you can. Get a permit through Regulatory Services and get off the site. It is not setting up an I2, oh, occasionally I bring some material in to my rock crusher. That's a business model. That's an I3 with a conditional use permit.

Matt Perry: Thank you Mr. Poor.

Steve Poor: We don't have intermittent uses.

Matt Perry: Thank you. Mr. Gates does that clear up your question.

Paul Gates: Not completely. I guess I'm not understanding how this would differ from say, a farmers' market that might operate 120 days a year.

Steve Poor: Farmers' markets have a different set of rules. We have farmers' markets such as the Village Market that have been approved, that some people think are shopping centers. The farmers' markets have a different set of rules. In fact, the City has done a lot of changes in the rules around farmers' markets. They're seasonal. But this use, it's not on our list because rock crushing was never seen as a temporary use in the same way selling Christmas trees is. That's why in the definition of the Code it has a provision. It defines on site rock crushing and it's associated with tearing down a structure. When the City has a use that's enumerated and it's only permitted only as a condition use in the I3 we generally don't allow accessory uses that aren't permitted in the district in which they're asking for it. You can't do a catering business in a church because it's not allowed in that district. You couldn't get a health license to run a catering business out of a church that zoned residential. It's not allowed there. So again, the City has rules to allow on site rock crushing because they recognize you're going to demolish a structure and it's the best way to handle the material in the efficacious way, least impact, most cost effective, saves tax dollars - do it on site. Other than that, you need to find a site that's I3. You need to have the proper permitting through the conditional use permit process. I've never issued one temporary permit for rock crushing other than on site demolition. Riverview Townhomes was the last one I looked at.

Paul Gates: The question that is running through my mind is whether or not, although the intention may well be here that rock crushing is a particular activity which would not be comparable to the temporary uses that are laid out here in the Code, but this may be a loophole in the Code. But if we just look at the language that's before us in the Code whether or not we're making the right call here and saying that it is or is not a temporary use. You're giving us a lot more feedback, a lot more nuance perhaps, about the intention of the Code. But as we're instructed we're trying to determine exactly based upon this language, is the correct call being made? And it may be that we make a determination which then results in the need for the, a clear need for the revision of the Code to be more stringent about the way that rock crushing is regulated. But I think that's not before us right now, so thank you.

Matt Perry: Sir, the public hearing is closed.

Al Ramsey: So can he stand up here and say something that's not true?

Matt Perry: Staff is allowed to speak, if requested, for a clarification on an issue by the Board Members.

Al Ramey: Okay.

Matt Perry: So is there additional Board comment?

Chris Koch: Actually, I have a question for Mr. Ramsey.

Matt Perry: Okay

Chris Koch: Sorry, but there was an assertion by Mr. Poor that ...

Matt Perry: Is it ...

Chris Koch: That he was doing something and I just want to see

Matt Perry: Does it, is it confined to the issue at hand? Because if Mr. Poor made an assertion about something that is not, I'd rather not have that be part of this public discussion.

Chris Koch: Um, I don't know if it is or not.

Matt Perry: I would err on the side of caution.

Chris Koch: Okay, never mind.

Matt Perry: Is there further Board comment? Mr. Sandberg?

Dick Sandberg: Yes, thank you Mr. Chair. I think Mr. Ramsey is doing a useful piece of work on this site. I would be happy to see it happen on this site. I wish it could continue to happen, but the fact that it's zoned I3 and not, or I2 and not I3. If it were zoned I3 I would, I think it would be, you know, a great business to be there. The fact that it's zoned I2 and I2 is the first district in which concrete rock crushing is permitted specifically, and it's not one of the temporary used that we can imagine, but it is specifically only permitted in an I3, I think I'm inclined to side with the Zoning Administrator's decision.

Matt Perry: Thank you. Mr. Finlayson?

John Finlayson: In observation, I3 is where it's permitted with a conditional use permit. That is a full time use in I3. And it's not a full time use in this I2 instance. So the

distinction is, is I3 is where it permitted with condition use but once you've got it that's a full time thing. You're allowed to just continuously do it. But this individual is not doing that. He's in an I2 and he's doing it on a temporary basis and the language says: Number 8 additional temporary uses. It's not full time.

Matt Perry: Thank you. Any other? Mr. Koch.

Chris Koch: I look at this as akin to let's say, Mr. Ramsey's repairing a vehicle or some equipment on his site. Clearly it's not zoned as an auto repair business, but occasionally he has to repair something. That's not his primary job there. That's not his business there. But we're not going to say no, you have to a garage if you're going to change your tires or replace a motor, whatever it is. But the fact is that does that maintenance - I look at it as a situation like that. It's more like that rather than a full time part of his business.

Matt Perry: Thank you Mr. Koch. Mr. Gates?

Paul Gates: Thank you Chairman Perry. Does it matter if the rock crusher itself is there full time? If I have a garage on my property and the car leaves the garage in the morning and comes back in the evening is that a temporary garage? Temporary use? It's a full time garage. There's a rock crusher that's there 356 days a year, which is moving away from the temporary nature of rock crushing here to me. Again, I'm still questioning I'm not concluding anything yet.

Matt Perry: Mr. Manning?

Bruce Manning: (Unintelligible) ...confirm my recollection that in fact the rocker crusher is not there 365 days a year, that it's on wheels and goes off to Heritage Park and goes off to Hiawatha and I thought he was fairly clear on that, it that everybody else's memory

Dick Sandberg: I recall hearing what you heard Mr. Manning.

Bruce Manning: So I don't think its there full time.

Al Ramsey: You can see it on a web cam right now at Hiawatha.

Matt Perry: Is anybody prepared to make any sort of motion? If not, I would like some more Board comment so that we can get to that spot.

Dick Sandberg: I'll move staff recommendation for the purpose of giving us something to discuss further.

Matt Perry: Alright. Is there a second to Mr. Sandberg's motion?

Bruce Manning: I'll second it.

Matt Perry: And Mr. Manning has seconded. Further discussion. I see none. Will the clerk please call the roll?

Clerk: Mr. Finalyson?

John Finlayson: No.

Clerk: Mr. Gates?

Paul Gates: Yes.

Clerk: Mr. Koch?

Chris Koch: No.

Clerk: Mr. Manning.

Bruce Manning: Yes.

Clerk: Mr. Sandberg?

Dick Sandberg: Yes.

Clerk: Motion passes.

Matt Perry: Alright.... (end of tape – side two) ...

Steve Poor: Miss Lasky wasn't, I don't believe identified as coming in and so wasn't called on the roll and I think that you may want to call the vote again. I'm recognizing that Miss Lasky is in fact in attendance. I think the Clerk may have inadvertently not called her.

Miss Lasky: (unintelligible)

Clerk: Would you like me to call the entire roll?

Matt Perry: I think it is sufficient, it would be sufficient for me that you don't. But let's do the entire roll again. And let the record show that Ms. Lasky did come in during this and so should properly abstain. But I think there's a recusal and if so, could you give a reason for that recusal at the time that you're called on?

Clerk: Mr. Finalyson?

John Finlayson: No.

Clerk: Mr. Gates?

Paul Gates: Yes.

Clerk: Mr. Koch?

Chris Koch: No.

Clerk: Ms. Lasky?

Marissa Lasky: I'll be recusing due to late attendance due to family emergency.

Clerk: Mr. Manning.

Bruce Manning: It's really unpleasant to have to do this for a second time. I'm going to vote yes.

Clerk: Mr. Sandberg?

Dick Sandberg: Yes.

Clerk: Motion passes.

Matt Perry: Thank you Mr. Poor for pointing out that procedural error on my part. Again, the motion passes and the appeal is denied. You can see staff for your, what options you may be able to pursue.

NOTICE OF APPEAL
Explanation of Basis for Appeal

This is an appeal by Al Ramsey and his companies, L and R Development LLC and Ramsey Excavating Co., of the decision of the Board of Adjustment on July 30, 2009 rejecting Mr. Ramsey's appeal of the Notice of Non-Compliance dated May 1, 2009, identified as request number 09-0688244, regarding 4022 ½ Washington Avenue North, Minneapolis (the "Property").

Mr. Ramsey purchased the Property in 2003 from the railroad. The Property is next to the river. It is zoned I-2. It is bordered on the south by a property zoned I-3, and is otherwise surrounded by properties zoned I-2. The area is heavily industrial, and is not readily visible except from the immediately adjoining industrial areas. The portions of the Property Mr. Ramsey uses are on a bluff behind a buffer of trees and vegetation, so the site is not readily visible from the river. Mr. Ramsey is very interested in being a good environmental steward of the Property. Thus, in constructing his small building and an outdoor storage area for his excavation business, Mr. Ramsey was careful to make sure that the river bank area was not disturbed, that the work area is screened from view from the river, and that runoff from the site is appropriately controlled and treated. In addition, Mr. Ramsey voluntarily cleaned up a large amount of rubble and trash that he discovered on the river banks, and has planted native vegetation to restore the river bank area.

This area is within the Above the Falls zoning overlay district, which is guided for eventual acquisition by the City for use as parkland.

Mr. Ramsey uses the Property for a small office for his excavation business, and for storing equipment and materials, including stockpiles of sand, aggregate, and other building materials. No one disputes that these uses are permitted at the Property.

One of the pieces of equipment Mr. Ramsey stores occasionally on the Property is his mobile concrete crusher. Most construction job sites have existing concrete that must be removed and disposed of as part of any new construction project. Therefore, as part of his business, Mr. Ramsey often crushes concrete rubble for recycling as class 7 aggregate. But concrete crushing is only a minor part of Mr. Ramsey's business.

Mr. Ramsey uses a mobile crusher mounted on rubber tires. Typically, Mr. Ramsey uses the crusher on location at jobsites, usually within the City, and often under contract with the City. The crusher is typically offsite at job sites for months at a time. Currently, it is in use at the Hiawatha project. Between jobs, Mr. Ramsey stores the crusher at the Property. The crusher is small and mounted on rubber wheels and is easily trailered over city streets. It has an on-board watering system to control dust, and it incorporates sound control measures. Operating the crusher makes no more noise than loading and unloading aggregate, which Mr. Ramsey is permitted to do on the Property. And, because the crusher has an on-board watering system, it creates less airborne dust than simply loading and loading aggregate from a dump truck.

Clearly, Mr. Ramsey's crusher is not the sort of large, permanent, noisy and dusty rock crusher that the zoning restrictions seem to be concerned with. Moreover, it seems inappropriate

to overly restrict the use of crusher like Mr. Ramsey's when they perform the very environmentally beneficial service of recycling concrete that would otherwise need to be trucked long distances to be disposed of in a landfill.

After purchasing the property in 2003, Mr. Ramsey discovered a large amount of concrete rubble buried on the Property. Mr. Ramsey estimates that approximately 60% of the pile of concrete rubble on the Property today is concrete Mr. Ramsey excavated from this site in 2003. Because it was buried, the concrete is mixed with a large amount of dirt. The high dirt content means the crushed product does not meet the standards for class 7 aggregate, and therefore is not recyclable. Recycling concrete rubble by converting it into class 7 aggregate is the most commercially feasible means of disposing of concrete rubble. Therefore, in order to dispose of this concrete that originated on site, Mr. Ramsey must mix in cleaner concrete to yield salable class 7 aggregate. To do so, Mr. Ramsey has occasionally over the years brought to the Property clean concrete rubble from other sites. A large portion of the off-site rubble came from the demolition of a cement plant building immediately next door to the Property on a site zoned I-3. The rest of the off-site rubble typically came from projects where it was not practicable to crush the concrete on the site where it originated. Thus, approximately 40% of the concrete in the pile on the Property consists of concrete rubble from other sites, and most of that came from the immediately adjacent property. As the demand arises from time to time for class 7 aggregate, Mr. Ramsey crushes the on-site pile. This crushing is only intermittent and occasional, and doesn't last for long. Mr. Ramsey has never concealed from the City or others the occasional crushing at the Property.

Because Mr. Ramsey only uses the Property occasionally and intermittently for crushing, and because Mr. Ramsey is doing so to recycle concrete rubble that originated from the Property, this use constitutes a "temporary" use permitted under section 535.320 to 535.360. Specifically, this use of the Property satisfies the requirements in 535.340:

(1) The temporary crushing use is not detrimental to public health, safety, or welfare. And it is an industrial use compatible with the purpose and intent of the existing zoning; (a) the limitation on crushing to I-3 seems to be aimed at large, permanent crushing facilities that have a significant effect on neighbors, rather than smaller, mobile, intermittently used crushers; (b) all adjoining properties are industrial and the property to the immediate south is I-3; and (c) this Property was probably zoned I-2 because at the time it was zoned it was railroad property with tracks that have since been abandoned.

(2) This crushing use is compatible with all of the surrounding uses, which are heavily industrial. Mr. Ramsey has not received any complaints from neighbors about crushing, and believes that the complaint in this case did not come from a neighbor, but rather from a competitor of Mr. Ramsey's excavation business.

(3) This crushing use complies with all general standards, such as hours of operation and yard requirements. The crushing is also conducted in accordance with the requirements of Chapter 536.

(4) No off-street parking is needed for the crushing use.

The ordinance does not define “temporary”. However, a number of the “temporary” uses it contemplates, such as farmers markets, are obviously regularly-recurring, but occasional or intermittent uses. Similarly, temporary sales offices, which the ordinance expressly permits as a “temporary” use, are often on sites for extended periods, sometimes for years.

The use of the Dowling & 94 property adjacent to the old port supports the conclusion that Mr. Ramsey’s crushing use of the Property is temporary. That site is zoned I-2 and is owned by the City. The City leases the site to a private owner who operates the port. For the last two years, a private contractor has, with the City’s knowledge, been transporting concrete material removed from the Lowry project to this property for crushing there.

The Zoning Administrator and the Board of Adjustment would require Mr. Ramsey to rezone the Property to I-3 and obtain a conditional use permit for concrete crushing. The zoning ordinance would certainly require this if concrete crushing on the Property was a significant business for Mr. Ramsey, and if Mr. Ramsey’s purpose for crushing on site was not to recycle rubble excavated on site. But Mr. Ramsey’s minimal crushing use of this Property is plainly not the sort of on-going use that would justify or require rezoning.

In addition, rezoning to I3 would be inconsistent with the long-term goals of the Above the Falls Master Plan. Rezoning to I3 would permit other intensifications of use that might have a long-term adverse effect on the attributes of the site, such as constructing additional buildings. By contrast, Mr. Ramsey’s current use of the site will not leave behind soil contamination. Moreover, there is only a small building on site, which will reduce the cost to the City and environmental impacts when the City is ready to acquire this site for park use. The current I-2 zoning would permit much more intensive uses such as garbage transfer station and or a steel scrap yard, and Mr. Ramsey has been approached by people interested in acquiring the Property for those uses. Rezoning to I-3 would only add to the list of more intensive uses to which the Property could be put.

To summarize:

- Mr. Ramsey is a good environmental steward of the Property, and the current use has very little adverse effect on the Property from an environmental point of view.
- The current use of the Property is an excellent interim use until the City is ready to redevelop this area to parkland, because the current use will have minimal residual effects on the Property.
- Mr. Ramsey’s occasional crushing on site creates no adverse impact on any adjoining property owners, or on the river or boaters on the river.
- The current limited amount of crushing at the Property is a very “green” use because it recycles concrete that would otherwise need to be trucked longer distances and be disposed of in landfills, and reduces the need for new aggregate materials excavated from quarries that are much farther from the job site.

- Mr. Ramsey's concrete crushing on the Property is only occasional and intermittent, and therefore qualifies as a "temporary" use that is permitted. Mr. Ramsey's use is not the sort of use that would require or justify rezoning the Property to I-3.

Therefore, Mr. Ramsey requests that the Notice of Non-Compliance be rescinded on the grounds that Mr. Ramsey's current crushing use constitutes a temporary use permitted under section 535.320-.360.