

Wade, Michael (CI-StPaul)

From: Cattanach.Robert@dorsey.com
Sent: Sunday, March 24, 2019 10:36 PM
To: Wade, Michael (CI-StPaul)
Cc: Crigerfamily@comcast.net; tsharp324@gmail.com; Allyson_Hartle@cable.comcast.com
Subject: Photographs of 321 Irvine slope destruction, seeps, and wall collapse at 322/324 Summit
Attachments: Response to Petition to Rezone 321 Irvine.3.23.19.docx

Michael, please accept the attached submission, with accompanying photographers, in response to the petition to rezone 321 Irvine. We would be happy to respond to any questions or discuss further at your convenience. Thanks. Bob, Allyson, Tom, Wayne and Sarah.



Backhoe destruction of soil retention fabric



Vertical cut in slope below 322/324 Summit



Unstabilized soil below 322/324 Summit



Seeps on 321 Irvine

Michael - Attached is our submission regarding in response to the petition to rezone 321 Irvine, as well as accompanying pictures. Please feel free to contact me if you have any questions. Thanks. Bob



Wade, Michael (CI-StPaul)

From: Cattanach.Robert@dorsey.com
Sent: Monday, March 25, 2019 7:30 PM
To: Wade, Michael (CI-StPaul)
Cc: Crigerfamily@comcast.net; tsharp324@gmail.com; Allyson_Hartle@cable.comcast.com
Subject: Re: Photographs of 321 Irvine slope destruction, seeps, and wall collapse at 322/324 Summit

Last picture showing "Debris from collapsed wall" was taken March 20, 2017. All others were taken March 30, 2017. Thanks for allowing us an opportunity to provide comments. Has there been any final decision on the date of the hearing? Thanks. Bob

On Mar 25, 2019, at 4:41 PM, Wade, Michael (CI-StPaul) <Michael.Wade@ci.stpaul.mn.us> wrote:

Bob Cattanach et. al,

Thank you for your submission to the record concerning this zoning case. The email and attached letter will be submitted to the Zoning Committee as a public comment.

For clarification, I'd like to request an approximate date or dates on which the attached pictures were taken, as well as a caption describing the last picture that appears to show a concrete platform with a brick-and-cinder block structure fallen and smashed on the ground. Once these items are sent, they will be added to your email and attached letter as an item for public record.

Thank you,

Michael

From: Cattanach.Robert@dorsey.com [<mailto:Cattanach.Robert@dorsey.com>]
Sent: Sunday, March 24, 2019 10:36 PM
To: Wade, Michael (CI-StPaul) <Michael.Wade@ci.stpaul.mn.us>
Cc: Crigerfamily@comcast.net; tsharp324@gmail.com; Allyson_Hartle@cable.comcast.com
Subject: Photographs of 321 Irvine slope destruction, seeps, and wall collapse at 322/324 Summit

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<image001.jpg>

Backhoe destruction of soil retention fabric

<image002.jpg>

Vertical cut in slope below 322/324 Summit

<image003.jpg>

Unstabilized soil below 322/324 Summit

<image004.jpg>

Seeps on 321 Irvine

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<image005.jpg>

Submission in Response to Petition to Rezone 321 Irvine

As owners of the property and structure immediately adjacent and uphill from 321 Irvine, we the undersigned write to express our concern that the petitioner has not complied with the Mandatory Design Standards contained in the Irvine Avenue Development Plan Recommended by the Planning Commission on October 11, 2002 and Adopted by the City Council on April 2, 2003.

There is no record in the City's file that petitioner has ever obtained the required engineering report by a registered hydrological, geotechnical or soils engineer, or provided any such report to the City for review and approval. Based on the materials in the City's file, and confirmed by first hand observations, it appears that the petitioner commenced excavation without conducting the required testing of slope stability, ground water and surface water as mandated by the Irvine Avenue Development Plan, and failed to apply "techniques that minimize disturbance to existing slopes and vegetation (for example, drilling cores for soil samples)." Instead, petitioner's contractor simply began excavating the site with a backhoe to flatten a portion of the slope in order to allow petitioner to start construction. Apparently after problems were encountered, petitioner retained Braun, and for the first time some soil samples were obtained. The petition states that the owners "changed their mind about building their own house on the property".

Because of the instability created on our property by the substantial soil excavation and then subsequent pile-driving activity to collect samples, we asked the owner of 321 Irvine to provide us with the test results, but the owners declined. Based on informal conversations with geotechnical experts, however, we understand that significant additional testing will be required in order for the site to be adequately evaluated in order to comply with the Mandatory Design Standards for Irvine Avenue. We have asked the owners to work together with us so we can jointly consult with Braun to determine what additional testing needs to be done in order to meet the Development Plan's mandatory requirements. The owners declined, and instead referred our request to their lawyer, who has advised us that petitioners are not interested in any further testing or investigation.

While we are sympathetic to petitioner's desire to recover their investment, under the circumstances we must respectfully oppose the petition for several fundamental reasons:

1. The petitioner has not complied with the most basic mandatory elements of the Irvine Avenue Development Plan, or the City's requirements for Residential development on steep slopes, Sec. 63.111.
2. Until the required engineering report can provide a full analysis of slope stability, ground water and surface water, there is no basis for the City to reach any decision as to whether the site can even be developed, much less subdivided in a way that allows multifamily housing.
3. On May 2, 2016, almost three (3) years ago, the City in a communication by Todd Sutter to petitioner's contractor, specifically noted that the owners "still need to stabilize slope" after the prior excavation was abandoned. Petitioner has declined our requests to work together to do so. Several vertical pitches created by the initial excavation, which now has been abandoned, have not been stabilized.

4. Contrary to the representation in the petition, the prior excavation created significant instability on our adjacent lot at 322-324 Summit. After the excavation started, we saw seeps appearing on the property below us. Apparently only after the excavation uncovered site problems did petitioner retain Braun to conduct a soil test. For several days, the pile-driving boring equipment vibrated across the destabilized soil. The wall on the west side of our driveway, which separates our lot from 332 Summit, began to lean - slightly at first, but as time went by even more significantly. Ultimately the wall collapsed completely on March 20, 2017. A picture of the collapsed wall is enclosed. We provided this picture to Ms. Shad-Lilly on August 1, 2018 via email. It is unclear why this was not mentioned in that portion of the petition that represented that "the slope currently appears to be quite stable".
5. Our concern about slope instability is not speculative. In the very recent past, the hillside slope of the lot immediately adjacent to 321 Irvine collapsed catastrophically after having been compromised in order to construct the structure on that lot. Even a simple visual inspection of that property from the street shows the substantial work that had to be done to stabilize the slope, and the seriousness of the slope stability problem on this section of Irvine.

Based on all of these circumstances, naturally we are concerned about the future of this property. We also want to make clear that at no time have any of the current owners at 322/324 Summit ever deposited any material on 321 Irvine. We cannot comment about the speculation in the petition about what may, or may not, have happened during the renovation by the prior owner of what was at the time a single, undivided property that was later subdivided into 322/324 Summit above, and 321 Irvine below, other than to note that the owner obviously was entitled to work on his own property in the way he believed made the most sense. At the time we purchased 322/324 Summit over 6 years ago, the property below at 321 Irvine appeared to have been adequately stabilized with vegetation and modest tree cover, as well as what we now understand was a below-ground stabilizing plastic membrane. It was our understanding that 321 Irvine was not suitable for development because there were underground springs and stability concerns. We have no information about what due diligence, if any, petitioner performed before purchasing the lot and designing a structure to build on it. While we understand that petitioner no longer wishes to build on the site, unfortunately the stability that previously existed was destroyed by petitioner's excavation on 321 Irvine, which removed most of the vegetation and trees, destroyed the below-ground membrane, and violated the mandatory pre-excavation testing and reports required by the Irvine Avenue Development Plan.

While we have serious concerns about the petitioner's failure to stabilize the slope after being told to do so by the City, we want to emphasize that we are not opposed to reasonable efforts by the petitioner to recover some part of their investment in the lot. In fact, we have

been trying for months to engage with the petitioner to discuss the problem of slope instability created by the abandoned excavation, and to attempt to find some mutually agreeable solution before further problems developed. After some informal discussions with experts on soil stability, on August 27 of 2018, Mr. Cattnach sent an email to Ms. Shad-Lilly suggesting we meet on site to address how the slope could be stabilized, and requesting copies of any test results:

I would like to schedule a site inspection, both from the Summit side and the Irvine side, sometime in September. Prior to doing that, we would appreciate receiving whatever test data your contractors/consultants generated prior to and as part of the initial site preparation process.

Receiving no response, he emailed again on September 30, 2018:

Paula & Bruce -

We would really like to make some progress on this. I have been reminded by our technical expert that this problem is only going to get worse if it is not addressed, and whatever the cost of stabilization may be at this time, it is a fraction of what it will cost if, or according to the experts almost certainly when, the hillside starts to slide similar to what happened to the lot east of yours. *** Please let us know at your earliest convenience, hopefully sometime yet this coming week, whether you are willing to share the existing soil testing data so that our engineer can help us develop a plan for moving forward. Thanks. Bob

Petitions did not respond directly, but on October 3, 2018, had their lawyer send the following, which we've emphasized:

I represent Paula Schad and Bruce Lilly in connection with this matter. Please direct all future correspondence to me. My clients have no objection to you conducting whatever investigation you deem necessary on *your property*. Until such time, however, as we make decisions about the future of the Schad/Lilly property, we *see no reason to engage in further investigations*. Please do not *trespass or permit your contractors or consultants to trespass* on the Schad/Lilly property.

All subsequent efforts at informal discussions by other owners of 322/324 were unsuccessful.

While we are naturally disappointed in the petitioner's refusal to conduct any investigation into what would be required to stabilize the slope, we are encouraged by their contractor's recent acknowledgement in the petition for rezoning that further investigative steps are necessary in order to "determine the buildability of the 321 parcel." But requesting that the parcel be rezoned without knowing what actions are necessary to address stabilization

and ground water issues puts the cart before the horse. Prior to any consideration of a rezoning request, the petitioner should be required to comply with the City's request of May 2, 2016 to stabilize the slope, as well as comply with the mandatory design standards by submitting the required engineering report that evaluates "existing conditions including slope stability, ground water, and surface water." In doing so, petitioner should use testing "techniques that minimize disturbance to existing slopes and vegetation (for example, drilling cores for soil samples rather than digging with a back hoe.)" We have been advised informally by a licensed geotechnical engineer that this will require several additional site borings beyond the minimal test boring that has been done thus far.

We appreciate the petitioner's interesting in selling the property so that at least some of their investment, and the costs of this investigation and subsequent stabilization, can be recovered. But the possibility that more of those costs can be recovered if the property is allowed to be rezoned would appear to be a dilemma of the petitioner's own making. If the petitioner had conducted adequate testing before purchasing the property, which apparently was not done, they may or may not have gone through with the purchase, or perhaps paid a price that was adjusted for the challenges of dealing with slope instability and water issues. That history is what it is, but it cannot change the fact that a proper evaluation of the slope stability and ground and surface water is required regardless of whether they end up developing the property. For almost three years, they have ignored the City's instruction to stabilize the slope; other than some superficial seeding of the flatter portion of the lot, petitioner still has not done anything to stabilize the vertical cuts in the slope.

Given the current circumstances, we suggest that:

1. Prior to any action on the rezoning petition, the petitioner should be required to comply with the Mandatory Design Standards contained in the Irvine Avenue Development Plan, and as set forth in the City's requirements for Residential development on steep slopes, Sec. 63.111. Specifically:
 - a. Petitioner should identify to the City whichever registered hydrological, geotechnical or soils engineer they intend to use by [Placeholder: May 1, 2019?].
 - b. Petitioner's expert should evaluate the site and determine the additional required soil testing by [June 1, 2019?], and provide the City with the test plan by [July 1, 2019], with a copy to all adjacent property owners.
 - c. Petitioner should provide the report required by the Mandatory Design Standards to the City for review and approval by [September 1, 2019].
 - d. Petitioner should provide the owners of all adjacent properties with the proposed plan to stabilize the slope by [October 1, 2019], consider all reasonable comments received by [November 1, 2019], and submit the final proposed stabilization plan to the City for approval by [December 1, 2019].
2. No action should be taken on the petition for rezoning until the petitioner completes the above actions and complies the Mandatory Design Standards.

3. If the petitioner withdraws the petition, petitioner must nevertheless provide the owners of all adjacent properties with the proposed plan to stabilize the slope by October 1, 2019.

322 Summit Avenue
Robert & Allyson Cattanach
324 Summit Avenue
Wayne & Sarah Criger
Tom Charpentier