

MINUTES
Blue Earth County Planning Commission
Regular Meeting
Wednesday February 1, 2012
7:30 p.m.

1. CALL TO ORDER

The meeting was called to order at 7:30 P.M. by Lyle Femrite. Planning Commission members present were Lyle Femrite, Kurt Anderson, Bill Anderson, Kip Bruender, Don Gerrish and Chuck Grams. Planning and Zoning staff present were Sara Isebrand and George Leary.

2. APPROVAL OF MINUTES

Mr. Bill Anderson made a motion to approve the minutes from the October 5, 2011 Regular Planning Commission Meeting. Mr. Kurt Anderson seconded the motion which carried unanimously.

3. AGENDA APPROVAL

Mr. Leary indicated there was no change to the agenda.

4. NEW BUSINESS

PC 02-12

Brad & Karen Chambers and Eric & Elizabeth Bassett, Request of a Conditional Use Permit to allow for a Level II Home Occupation of a Utilities, Plumbing and Heating Business in an Agricultural Zoned District in the SW 1/4 of the NW 1/4 Section 18, Decoria Township.

Ms. Isebrand presented the staff report. The applicants were present.

Fred Bock, a neighboring resident and land owner discussed his views of the proposal. He expressed his concern with the condition of the property as it is maintained by the current owners. He indicated his opinion that vehicles and equipment would be better stored to the east of the storage building.

There was considerable discussion regarding the condition of the existing property and the potential of similar conditions arising from the proposed Level II Home Occupation. The Decoria Township Board has expressed their desire to have all vehicles and equipment stored inside of the building.

The applicants advised the Commission of their awareness of the condition of the existing property and assured the Commission of their intent to keep the property in the best of appearance if they purchase the property and are allowed to proceed with the Level II Home Occupation.

Following the discussion, a motion was made by Mr. Bruender and seconded by Mr. Kurt Anderson to recommend approval of the request to the County Board with an amendment that outside storage be limited to the east side of the building (located on the North side of the property) used for the business and that all equipment or vehicles that are stored outside be properly screened with trees, shrubs, or fencing. The motion carried unanimously.

PC 03-12

Lucas Lindeland, Request to construct two total confinement swine barns creating a new feedlot facility of 2,000 finishing pigs or 800 animal units. The site is located in the Agricultural Zoned District in the NW 1/4 of the NE 1/4 Section 35, Medo Township.

Ms. Isebrand presented the staff report. The applicant was present and had nothing to add. There was no public comment.

Following a brief discussion by the Planning Commission, a motion was made by Mr. Kurt Anderson and seconded by Mr. Bill Anderson to recommend approval of the request to the County Board. The motion carried unanimously.

PC 04-12

Gene Braam, Preliminary and final plat of Mini Ranch. A two lot and two outlot subdivision located in the NW 1/4 of the NE 1/4 and NE 1/4 of the NE 1/4 of Section 9, Decoria Township. The property is zoned Conservation.

Mr. Leary presented the staff report. The applicant was present.

John Kuether, a neighboring resident, read a prepared statement regarding his position on the proposal. Mr. Kuether's statements sounded more on the order of an ongoing personal battle between him and the applicant and did not necessarily pertain to issues specific to the proposed subdivision.

Mr. Braam addressed the Commission with a rebuttal of Mr. Kuether's comments.

During the discussion by the Planning Commission, Mr. Kurt Anderson asked that a stipulation be added to the resolution requiring some sort of legal recording of the applicant's acknowledgment of full responsibility of loss due to future flood events so that future owners of the property are made aware of the flood loss responsibility they acquire with their purchase of the property.

Following the discussion by the Planning Commission, a motion was made by Mr. Kurt Anderson and seconded by Mr. Bill Anderson to recommend approval of the request to the County Board with the stipulation recommended above for recording acknowledgement of future flood damage responsibility. The motion carried unanimously.

PC 05-12

Blue Earth County, Notice of intention to enact amendments to the Blue Earth County Zoning Ordinance also known as Chapter 24. Proposed amendment includes update of definitions including protocol, update of uses, and incorporating state statutes regarding definitions and uses.

Mr. Leary presented the staff report. Mr. Leary also provided the Commission with a summary of the events that had taken place since the December 7th 2011 Draft was released for review. This summary included change made to the proposed amendment at the January 4th 2012 work session with staff, Planning Commission and the County Board. Said summary included the following:

A copy of the Chapter 24 draft amendment effective December 7th, 2011 was provided to the Mankato and Mapleton libraries, and emailed to numerous county staff, City of Mankato Planning & Zoning, Minnesota Department of Natural Resources, and others. Since the December 7th draft, one final work session was held on January 4th, 2012. At the January 4th work session, the following changes were made to the proposed amendment:

1. Rural Residential and Rural Townsite Zoned Districts – Removing or filling over 500 cubic yards of fill that is not in conjunction with another permitted or conditional use. It was decided to change this back to 50 cubic yards as it is in the existing code.
2. Rural Residential and Rural Townsite Zoned Districts – Public and private schools were placed back in as permitted uses.
3. General Business Zoned District – Restaurants, cafés, and taverns were placed back in as permitted uses.
4. Light Industrial Zoned District – Wholesale business facilities were placed back in as a permitted uses.

Since the January 4th work session, staff has formed the following recommendations:

1. From the works sessions, it had been decided to replace Multiple Family Dwellings with Triplex Dwellings. Said Triplex Dwellings were limited to a maximum of three bedrooms. Staff is recommending that Multiple Family Dwellings be added back in and that Triplex Dwellings be removed as they would be included with Multiple Family Dwellings. No bedroom limit is proposed as the development would be limited by suitable area to accommodate primary and secondary septic system drainfield locations.
2. Article III Division 5 Rural Townsite District – The permitted uses of hospitals, convalescent or nursing homes have been removed. This action will make an existing nursing home facility nonconforming. Therefore, staff recommends that *nursing homes* be added back in as a permitted use.
3. Article III Division 6 General Business District – Restaurants, cafés, or taverns have been removed from permitted uses. Bars had been left as permitted uses. As indicated in the noted changes from the January 4th work session, all of these uses were to be added back as permitted uses. After consulting with Blue Earth County Environmental Health Staff, staff is recommending that these establishments be listed as conditional uses due to the review that is required for such uses.
4. Article III Division 7 Highway Business District – Staff recommends adding *any conditional use in the General Business District*. This action will mirror the same format between the Light Industrial and Heavy Industrial Districts.
5. Article IV Division II Performance Standards – The performance standards of Bed & Breakfast/Inns, Organized Group Camps, and Reception/Banquet/Meeting Halls/Retreat Centers or Facilities states that *the applicant is responsible for the cost of the following inspections: ADA, Building Code, Electrical Code, Plumbing Code and Fire Code*. The accessibility section of the State Building Code actually applies to all commercial use, not just those that are referenced above. The county does not have or enforce State Building Code and

does not have sufficiently trained staff in this area of inspection. Staff is recommending this requirement be removed. The cost of these inspections will be listed as a condition of a conditional use permit and/or construction permit.

6. Article IV Division II Performance Standards – The performance standards of Elder Care/Dependent Care Units states that *detached elder care/dependent care units shall be situated in such a way as to minimize its visibility from adjacent streets and properties* **and all related aesthetic matters including architecture and landscaping shall be subject to review by the Planning Agency.** This use was copied from another county. The standards in question are not required of other uses and can be subjective. Therefore staff is recommending this requirement be removed.

Mr. Leary provided the Commission with a copy of an email he received from Karl Friedrichs. Mr. Leary addressed most, but not all of the comments in Mr. Friedrich's email. The entire text of that email has been copied and included below. Mr. Leary's response follows the questions of the email that were addressed at the Planning Commission meeting.

Beginning of Mr. Friedrichs' email:

(These comments are incomplete as Feb. 1, 2012. I have not had an opportunity to review all of the proposed changes in detail, and compare them to the purposes of the Land Use Plan, Ordinance language, and plain old common sense. I expect I will have a significant number of additional comments to be presented to the County Board at the Public Hearing to be held later. I would suggest that the Planning Commission and/or County Board request the participation of others (beyond County Board, Planning Commission and Staff) as noted below to obtain their input and review of the proposed changes before adoption. I would expect that there are supporting facts and clearly articulated needs which will be presented at the Public Hearing to fully justify each of the major proposed changes.)

STAFF's provided **BACKGROUND INFORMATION:** A series of six (6) workshops were held with Planning Commission, County Board, and Staff, after George and Sarah worked on some proposals.

QUESTION: Why not involve representatives from the townships, surveyors, attorneys, real estate agents, developers, and farmers?

Mr. Leary stated that the inclusion of these suggested groups is normally done when reviewing the Land Use Plan.

QUESTION: Why did George and Sarah choose the parts of the Ordinance that they chose to work on? Was there direction from the County Board on what to address? What about addressing "flag lots", subdividing rules, and other issues that have been pointed out to the zoning staff by surveyors, attorneys, townships, real estate agents, farmers and others?

Mr. Leary stated that many of the items addressed have needed review for a number of years. Others needed clarification. And others were reviewed due to reasonable requests by public citizens. Mr. Leary added that the subdivision ordinance is a different chapter of the code. It will need to be amended at a later date. Exactly when, has yet to be determined.

Staff claims the **PROCESS PROMPTED BY:**

1. The County Comprehensive Land Use Plan was updated in 1998. The Land Use Plan is a guiding document for the County Code of Ordinances and includes a number of goals and policies for the county. The proposed amendments have addressed these goals and policies wherever possible.

QUESTION: What goals and policies in the LUP are addressed by which of these proposed amendments?

Mr. Leary indicated that Transferring of Development Rights and urban uses in the Agricultural District were reviewed. Definitions for agriculture/agricultural use and urban use were added.

2. The format of many segments of the chapter has been amended for continuity.

3. Changes to the definitions section have been made to add clarity. Some definitions have been added.

QUESTION: Do the definitions only clarify, or do they change intent?

Mr. Leary stated they were intended to clarify.

QUESTION: Are the proposed definitions themselves clear? Do they cause or create the desired result? (See below for numerous questions regarding clarity.)

Mr. Leary indicated that considerable thought went into the amended and added definitions. This included research of other counties and using definitions found in a book of development definitions.

4. Amendments have been made to conform to state statutes.

QUESTION: What amendments conform to what state statutes? Presumably only the "variance" statute was changed, and that section reads as follows:

Mr. Leary said that variances had been reviewed.

Variances shall only be permitted when they are in harmony with the general purposes and intent of the official control and when the variances are consistent with the comprehensive plan. Variances may be granted when the applicant for the variance establishes that there are practical difficulties in complying with the official control. "Practical difficulties," as used in connection with the granting of a variance, means that the property owner proposes to use the property in a reasonable manner not permitted by an official control; the plight of the landowner is due to circumstances unique to the property not created by the landowner; and the variance, if granted, will not alter the essential character of the locality. Economic considerations alone do not constitute practical difficulties. Practical difficulties include, but are not limited to, inadequate access to direct sunlight for solar energy systems. Variances shall be granted for earth sheltered construction as defined in section 216C.06, subdivision 14, when in harmony with the official controls. No variance may be granted that would allow any use that is not allowed in the zoning district in which the subject property is located. The board of adjustment may impose conditions in the granting of variances. A condition must be directly related to and must bear a rough proportionality to the impact created by the variance.

5. Unintended omissions from the codification process have been included with the proposed amendments.

QUESTION: What are these?

Mr. Leary indicated that the Farm Winery Ordinance had been omitted during the codification process.

6. Permitted and conditional uses within the districts have been added, changed, or deleted to comply with the Land Use Plan and the Subsurface Sewage Treatment Systems (SSTS) Ordinance. Said uses have also been added to, changed, or deleted based upon the discussions at the Planning Commission/County Board workshops.

QUESTIONS: What factual basis showing the need for these changes? Do they really help Ag Uses and protect the environment in Conservation Zones?

Mr. Leary said define "factual." He added that changes were made based upon through review at the work sessions held with the Planning Commission, County Board, Environmental Health staff, and Planning & Zoning staff. Mr. Leary also indicated his opinion that in most instances the proposed changes do help agricultural uses and still protect the environment in Conservation Zones.

7. The performance standards have been amended to include Bed & Breakfast/Inns Campgrounds, Elder Care & Dependent Care, Kennels, Organized Group Camps, Reception/Banquet/Meeting Halls/Retreat Centers or Facilities, and Seasonal Produce Stands.

Mr. Leary indicated this was correct.

8. The Mineral Extraction section has been amended to include the storage and processing of recycled bituminous asphalt and concrete products and to include the operation of hot mix asphalt and concrete plants.

QUESTION: How does the permission of recycling bituminous asphalt and concrete products and to include the operation of hot mix asphalt and concrete plants in Conservation Zones meet the goal of Conservation Zone which is:

Section 24-136. The purpose of the C conservation district is to provide a district, based on topographic, physiographic and soil conditions that will provide:

(a) Protection of environmentally sensitive areas. It is the intent of this C district to protect the environmentally sensitive areas in the county.

(b) Preservation of natural ground cover. It is the intent of this C district to preserve major areas of natural ground cover of this county for conservation purposes.

(c) Conservation of natural resources. It is the intent of this C district to deter abuse of water resources and conserve other natural resources of the county.

Mr. Leary responded that unfortunately we did not have a say in where the aggregate resources would be placed. As a result, much of the aggregate is in conservation and shoreland areas from many years ago. Historically, storing, crushing, and recycling of used asphalt and concrete products has been allowed with approval of a conditional use permit. Because of this and because the source of aggregate is one of the primary components of new hot mix asphalt and concrete products, it makes sense to allow for the recycled material to be processed on site

and included in new product for roads and bridges. The alternative is to transport the aggregate all over the county to temporary sites and process it there. This takes away from the efficiency and in the opinion of some, adds to the wear and tear of our roads.

PREMISE: It is in the best interest of the County to maintain agricultural areas through limiting intrusion of urban uses, and thereby limiting the cost of public services. The Right to farm is an important component of the land use plan.

QUESTION: So why is the County forcing housing onto “one per forty (40) acres” locations throughout the County, instead of allowing it to develop reasonably within areas closer the cities and along “sites with a view”?

Mr. Leary stated that no change is proposed to this requirement and that it is an item better addressed with a review of the Land Use Plan.

-There are presently some township where it is nearly impossible to locate a feedlot, due to residences having to be placed on separate forty (40) acre parcels.

-Forcing “one per forty (40) acres” requires those that want to move to the country to use otherwise quality farmland for the construction of a home, which results in breaking up of straighter fields.

-The Urban Fringe Overlay Districts have forced those wanting to live in the country to move farther from the cities, which may eventually make it more difficult to provide services. You are not going to stop people from moving to the country if they want that lifestyle and space for rural type uses.

PREMISE: There are lots of stories in the news about land use issues across the State.

QUESTION: What stories? What issues? Are those issues actually or potentially here in Blue Earth County? Are those commercial use issues?

Mr. Leary indicated he was not clear on the question.

PROPOSED CHANGE: Septage Storage - adopt language allowing in the Ag District, in case the MPCA allows it.

QUESTION: Why propose to allow before MPCA has given approval? Why need to do this? Is there demand?

Mr. Leary stated that all indications received to date indicate this will be approved by the MPCA. He added that by being proactive we have this covered. He also stated that proper storage is better than improper land application and that there is a demand for this use.

PROPOSED CHANGE: Transfer of Development Rights only if own the entire forty (40) acre parcel and it is touching the parcel to which it will be sent.

QUESTION: Why require ownership of the entire forty (40) acre parcel? Isn't it enough to own an otherwise buildable lot, and transfer from there?

Mr. Leary stated that ownership of either quarter-quarter section is not a requirement. The sending and receiving quarter-quarters must be adjacent to one another, this included the corner points. The development right being sent does not originate from a buildable lot. It originates from an undeveloped quarter-quarter section of land.

Why limit to transferring only to adjoining section? If the adjoining section is good quality crop land, wouldn't it benefit the “Ag is important” goal of the Land Use Plan to transfer the rights to poorer ag

land, or smaller tillable acres to keep larger farm tracts? Example: small fields on west side of Duck Lake, around ravines in the County, or fields with significant slopes.

PROPOSED CHANGE: Allow concrete and bituminous recycling in areas where mining aggregates, even if in a Conservation Zone.

QUESTION: Isn't Conservation Zone for purpose other than industrial type use?

How does the stockpiling or processing of concrete and bituminous materials protect the environment? Noise? Dust? Vehicles?

Mr. Leary indicated as above that unfortunately we did not have a say in where the aggregate resources would be placed. As a result, much of the aggregate is in conservation and shoreland areas from many years ago. Historically, storing, crushing, and recycling of used asphalt and concrete products has been allowed with approval of a conditional use permit. Because of this and because the source of aggregate is one of the primary components of new hot mix asphalt and concrete products, it makes sense to allow for the recycled material to be processed on site and included in new product for roads and bridges. The alternative is to transport the aggregate all over the county to temporary sites and process it there. This takes away from the efficiency and in the opinion of some, adds to the wear and tear of our roads.

PROPOSED CHANGE: Definition of Bed & Breakfast:

Bed and Breakfast Inn means an owner-occupied single family dwelling unit in which not more than four (4) rooms are rented on a nightly basis for a period of seven (7) or fewer consecutive days. Food service shall be limited to breakfast.

QUESTION: Seven (7) or fewer consecutive days in a year? In a month? Or to one set of people for those days? Can the Bed and Breakfast rent the same room for fourteen (14) consecutive days, but to three or four different groups of people? Is it one room rented for the seven (7) consecutive days, or any of the four (4) rooms rented, for a total of seven (7) consecutive days? Or does it mean if you rent one room for fourteen (14) consecutive days to one group of people, but did not rent the other three rooms for more than three (3) consecutive days during the same time period, is it OK?

Mr. Leary indicated the intent is not to allow these properties to turn into permanent apartments. He added that no matter how one does the math, seven days is seven days.

PROPOSED CHANGE: Bluff - All of the following criteria.

QUESTION: What if this is in an area that has been tillable acres for many years? Is it still a "bluff"? Apparently this has been an issue on some occasions.

Mr. Leary indicated he was not clear on this question.

PROPOSED CHANGE: Definition of Building:

Building means anything constructed or erected, which requires permanent or temporary location on the ground, for the shelter, support or enclosure of persons, animals, chattel or property of any kind. (Essentially removed the word "structure" and replaced it with anything constructed or erected.)

QUESTION: What is the relevance of the definition of Building? What sections of the zoning ordinance rely on this definition and why?

How does this apply to ice houses? Maybe not, because they are generally not constructed or erected on site. What about tents? Probably applies, since you erect a tent. How affect Agricultural use equipment such as grain legs, bins, or fences?

Mr. Leary stated that tents, fish houses, and fences are NOT considered buildings. Grain legs and grain bins are considered structures and do require a permit and must meet the setback requirements. Building is important because of the setback implications.

PROPOSED CHANGE: Add Campground Definition:

Campground means any area, whether privately or publicly owned, used on a daily, nightly, or longer basis for the accommodation of three (3) or more camping units.

QUESTION: What is an “accommodation” of three (3) or more “camping units”?

Mr. Leary stated that one or two did not seem practical.

Would this include Keepers RV, which is accommodating way more than three camping units on its property? What about a “sleep-over” for a boy scout troop at a friend’s house for the weekend? Or a weekend at the cabin where family brings in more than three tents or campers because the cabin only has two bedrooms and there are 25 family members when the children and grandchildren all show up?

Mr. Leary indicated that because of its location, the question regarding Keepers RV business would need to be asked of Mankato Township, but in his opinion it would not make sense to classify the Keepers RV business a campground. He also commented that the boy scout troop and weekend at the cabin question would not be considered a campground. He added that these are common sense questions and that there are way too many other things to be concerned about.

PROPOSED ORDINANCE: Add Cemetery Definition:

Cemetery means a discrete location that is known to contain or intended to be used for the interment of human remains pursuant to Minn. Stats. §307.

QUESTION: How many cemeteries are really in “discrete” locations? Aren’t most of them fairly visible, near churches, or along roads? If so, does this definition not apply to them because they are not “discrete” due to their location and large gate or sign?

Mr. Leary indicated he was aware of at least four cemeteries located in discrete locations.

PROPOSED CHANGE: Create a Certificate of Zoning Compliance

QUESTION: To what sections of the Ordinance would this be relevant? If someone were to bring under 50 yards of fill into their yard, could they request County Staff to come out to their site to issue a Certificate of Zoning Compliance before selling the property, so the next owner does not have to be concerned about the fill?

Mr. Leary commented that this has not been a problem in the past and that he does not anticipate it becoming a problem. He added that new issues do come up every day.

End of Mr. Friedrichs’ email and Mr. Leary’s response.

Mr. Femrite stated that a lot of Mr. Friedrichs’ comments and questions were reviewed during the work sessions.

Mr. Gerrish added that the Free Press was present at one of the earlier work sessions. He also agreed with Mr. Femrite’s statements that most of Mr. Friedrichs’ questions were discussed at the work sessions and the amendments proposed are not just at the discretion of staff. He added that there was a

great deal of opportunity for someone to give input and that all of these questions had been addressed in some detail.

Mr. Kurt Anderson stated his respect for Mr. Friedrich's comments and that due diligence has been provided by addressing his comments. He added that he was confident that the questions raised had been answered.

Warren Smith commented that he had not been aware of the process, but that it is apparent that Mr. Friedrich's comments had been discussed. He added that the review process should not wait another 14 years again, it is a living document and should be reviewed when changes are necessary. He also agreed that some of Mr. Friedrich's comments had more to do with subdivisions rather than the zoning chapter.

Doug Schaller was present on behalf of South Bend Township. He indicated he had asked Mr. Leary for a workshop with the Townships as he thought the Township officials should be part of the process. He added that the first notice to the Townships was at their December quarterly meeting. He added that the South Bend Township Board did not have any recommendations. He did ask about Bonus Lots.

The new criteria for granting a Bonus Lot was reviewed. The proposed amendment requires the bonus lot area to be untilled for a period of 10 years and that with the exception of access route, all buildings and supporting infrastructure must be located in the untilled area.

Mr. Schaller continued. He stated that the Townships have an issue with their inability to expand their tax base. He added that South Bend Township is a smaller township with a fair amount of state park land. He mentioned the imposed feedlot setback line to the City of Mankato and that there should be some tradeoffs for added development.

Mr. Kurt Anderson stated that bonus lots had been discussed at great length. He stated that the change from five to 10 years was a compromise. He added that the concern was with the development in sensitive areas. He also stated that residential development rights in the agricultural areas are a finite commodity. In some areas they are used up. For that reason he felt compelled to maintain the bonus lot provision.

Mr. Schaller asked if it is ok if the City of Mankato takes in 50 acres of agricultural land.

Mr. Femrite stated it is not ok to gobble up farm land because you cannot get it back.

Mr. Schaller then spoke on his own behalf. He said he appreciated the consideration staff had given to his comments on mining and crushing and grinding in the conservation district. He agreed with the need for aggregate mining in the conservation districts, but not with the need to truck other materials on to the site. He said the county had recently reviewed the permit for the Forrey mining operation. He said this site is located near Minneopa State Park in a Heavy Industrial Zoned District. He said the new location does have a lot of trees for screening, but this is not always the case with conservation districts.

Mr. Femrite stated that crushing and grinding is taking place in conservations districts throughout the state. He added that the equipment is already at these locations.

Mr. Schaller brought up Mr. Friedrichs' question regarding bluffs. He indicated that some farmland is bought for development, but the slopes exceed 18%. He said agricultural practices take place on these slopes, but they can't be built on. He questioned the difference.

Mr. Schaller also discussed Transfer of Development Rights. He said he understood the logic, but questioned why the development rights could not be transferred from a lot that cannot be built on.

Mr. Schaller discussed the definition of logging adding that it did not seem to pertain to anything in the code.

There was some discussion regarding logging and it was the general consensus that it is an agricultural practice.

Mr. Kurt Anderson stated that the current County Board has shown a willingness to work with the Planning Commission. He added that this is a living document that will need to be amended as needed. He also stated that the county does value township input and will note their inclusion in future sessions.

Mr. Leary stated that although not listed in the changes since the December 7th draft, it was decided at the January 4th work session to leave Transfer of Development Rights as a conditional use in the Agricultural and Conservation Zoned Districts.

There was no further discussion.

Mr. Kurt Anderson made a motion recommending approval of the proposed amendment to the County Board, including the changes recommended by staff since the December 7th draft. Mr. Grams seconded the motions which passed unanimously.

5. AJOURNMENT

Mr. Grams made a motion to adjourn the meeting which was seconded by Mr. Bill Anderson and unanimously passed. The meeting was adjourned at 9:51 p.m.

Planning Commission Chair

Date

Planning Commission Secretary

Date