

**Minutes of the Dodge County  
PLANNING COMMISSION MEETING  
November 2, 2011**

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The regular meeting of the Planning Commission was called to order by Richard Wolf at 7:05 PM on Wednesday, November 2, 2011. Present were Planning Commission members Harlan Buck, Jon Balzum, Galen Johnson, Walter Wyttenbach, Gene Hallaway and Richard Wolf. Also present were County Commissioner Dave Hanson, Lyle Tjosaas, County Attorney Paul Kiltinen and Zoning Administrator, Melissa DeVetter.

Motion by Harlan Buck, seconded by Walter Wyttenbach, to approve the agenda and the October 2011 minutes. Motion passed unanimously.

**Kennedy/Carstensen – CUP #06-18 (renewal)**

The first public hearing is for a request to renew Conditional Use Permit #06-18 to establish a non-farm dwelling in the Ag District. The property is 8.35 acres located in the E ½ of the NW ¼ of Section 22 of Milton Township. Jacob and Adrienne Carstensen are the applicants and the property owners.

Jacob and Adrienne Carstensen were present to explain this proposal. They would like to reinstate the Conditional Use Permit that they got when they bought the land.

Richard Wolf inquired on how long ago was it.

Jacob Carstensen stated that is was in 2005.

Melissa DeVetter clarified that it was in 2006.

Richard Wolf inquired if this was for a house.

Jacob Carstensen indicated yes.

Walter Wyttenbach, Milton Township had no objections with this request.

Motion by Harlan Buck, seconded by Walter Wyttenbach, to close the public hearing. Motion passed unanimously.

Melissa DeVetter explained the situation with this site. When Mark Kennedy sold this property he had acquired a CUP for this site and than several months later he split off his home building site which in this case both incidence closed the quarter section. So even though the density did not increase the quarter was closed. So when Carstensen CUP expired there was not an opportunity to reapply. Carstensen did write a letter to the County Commissioner and the Commissioners requested that this issue go back to the Planning Commission for their review.

Galen Johnson inquired about the second CUP.

Melissa DeVetter stated that there was no second CUP. Only one CUP was issued but under our terms of the ordinance the density may be taken when a building site is split off from the land and you create a parcel that is less than 53 acres.

Paul Kiltinen stated that the county gave Carstensen the right to build a house and once that was done the assessor office changed the tax value for a buildable site. They did work with the county by putting in a culvert and acquiring a septic permit. The County Board felt that Carstensen had the first right for a building site and it should not be taken away from them by the way the ordinance allows back door split .

Melissa DeVetter stated that this issue could come up in the future.

Galen Johnson inquired if the MCIT attorneys were contacted on how this could be handled.

Melissa DeVetter stated that MCIT attorney said that we could not bring it back as a Conditional Use Permit, because it would be granting a “use” variance. We know that this could happen again and probably will. The way we could look at this in the future is as a variance to the terms of the expiration under the Ordinance.

Galen Johnson inquired on the second split - if it's a buildable site.

Melissa DeVetter stated that there is a dwelling there already; it was just a split of the existing farm site off of the parcel.

Walter Wyttenbach stated because of this issue, we will be looking at changes to the ordinance in the future.

Paul Kiltinen stated that if we adopt the proposal for the survey requirement we could track these split differently. As it is now, if a survey comes into the Recorder's office and it meet their requirement (such as signed, dated, and notarized) it gets recorded. What is happening now is that couples are retiring and wish to move to town but they want to keep the farmland, so they split off the building site and sell it. So we would have to change the ordinance to require a survey on any kind of subdivision.

Galen Johnson inquired if (other than Ms. Carstensen talking to 1 Stop Realty) the culvert installation in 2008 was the last activity until 2010.

Adrienne Carstensen indicated that is correct.

Jacob Carstensen stated that they did bring in fill for the driveway.

Adrienne Carstensen stated that 1 Stop Realty came in to confirm that it was a buildable site and that is when they found out it was not buildable. Ms Carstensen then called Ms DeVetter and found out that it was a dead-end.

Walter Wyttenbach stated that going back to the time the property was sold there were 4 -5 different parcels. Only one parcel was a building site and not one house was built. The Carstensen's were caught in the time of the boom or bust with the economy and something should be done to protect the buyers. Mr. Wyttenbach agrees that this will probably not be the last one they will see.

Melissa DeVetter stated that there have been a number of CUP's that have expired and this is just the first one to come back in, so we do not know if others are in the same situation.

Galen Johnson stated that maybe it should just stay as a buildable spots, but then on the flip side; if there was a better spot in the section, than nobody could take advantage of it because years ago it was taken.

Melissa DeVetter stated she believes that is why they originally did expiration, so it would not tie the quarter section up. They wanted people who were actually ready to build.

Galen Johnson stated that since there has not been a density increase this is easier to take.

Richard Wolf inquired if the original permit was through Kennedy.

Melissa DeVetter stated yes, we did not do another finding of facts; we just reprocessed the original. They are not asking for a new CUP.

Motion by Galen Johnson, seconded by Harlan Buck, to recommend approval siting the fact that since 2006 the property was taxed and paid as a buildable parcel, the drainage system have been evaluated and designed, the septic system permit had been applied and paid for, address was obtained, the culvert had been delivered in preparation of construction and that in the quarter section the density has not changed and along with the following conditions:

1. The Ag Covenant shall be signed and recorded prior to issuance of zoning permit.
2. Dodge County Zoning Permit shall be obtained before construction.
3. The sewage treatment system must meet the requirements of Dodge County's Subsurface Sewage Treatment Ordinance No. 4.
4. Setback of the well 50' from property line.

The motion was passed unanimously.

### **Zoning Amendment – ZA #11-05**

The second public hearing is to consider an amendment to the Dodge County Zoning Ordinance. The proposal includes new language for Chapter 3 (Land Description and Survey), Section 1627, (Temporary Second Dwelling Units Standards), and Section 1628, (Fairgrounds). Also portions of Chapter 2 (General Provisions), Chapter 4 (Rules and Definitions), Chapter 5 (General Limitations), Chapter 8 (Agricultural District "A"), Chapter 10 (Urban Expansion District "X"), Chapter 11 (Rural Residential District "R"), Chapter 12 (Commercial District "C") and Chapter 13 (Industrial District "I") will be amended.

Melissa DeVetter explained the amendment to Chapter 10, 11, 12, 13 is basically all the same with administrative cleanups.

Motion by Galen Johnson, seconded by Harlan Buck to approve the changes to Chapters 10, 11, 12, and 13 as presented. Motion passed unanimously.

Melissa DeVetter explained the changes to Chapter 5. These changes involve renumbering, but section 503 is already in the Administration section and 502 has been moved into Chapter 2; which will be discussed next.

Motion by Harlan Buck, seconded by Galen Harlan to approve the changes to Chapter 5 as presented. Motion passed unanimously.

Melissa DeVetter explained the changes to Chapter 2: Section 2.4 (Uses Not Listed Are Prohibited) was added; which was previously in Chapter 5, Section 502. Also Section 2.5 came from an issue we had with the fairgrounds. This will allow uses that are not listed in certain district to exist in that district if they were destroyed by tornados or other disasters. Otherwise these uses would be considered nonconforming uses and would be limited by nonconforming regulations. This section addresses what we have now. The new uses would have to comply with what the district allows.

Galen Johnson inquired if the new use would have to comply subject to any performance standards.

Melissa DeVetter stated yes, in Chapter 16 there are performance standard for certain uses. In this packet is the proposed language for performance standards for the fairgrounds addressing issues like outside storage.

Galen Johnson inquired if these performance standards would put an encumbrance on existing fairgrounds as they operate today.

Melissa DeVetter stated no.

Lyle Tjosaas inquired if parking school buses on the fairgrounds would be an issue.

Melissa DeVetter explained what is being proposed. It's not something that would go through us. They would go through the County Board or the Fair board.

Galen Johnson had a concern that the language could cause a problem for washing animals at the time of the fair.

Melissa DeVetter stated that just because it states the “use” has to comply with all applicable Federal, State and County laws, doesn’t mean the county would be responsible for enforcing State and Federal laws.

Paul Kiltinen proposed a minor language change to Section 1628 to allow the storage of the buses as inside storage.

Galen Johnson clarified the change to the language; striking the word “seasonal” in 1628.3 and adding the word “seasonal” to 1628.3a between “All” and “boats” also adding 1628.3e “Inside storage may be allowed if a site plan is reviewed and approved by the Dodge County Board of Commissioners”.

Galen Johnson inquired about the language in #2 regarding signs.

Melissa DeVetter stated this was reviewed and approved by Sue Alberts, Fair Board. They can not put up billboard along Hwy 57 because MnDot regulates that area. The purpose was to be able to identify fair sponsors, but not allow anything that would be viewed as advertising.

Motion by Galen Johnson, seconded by Walter Wyttenbach to approve the changes to Chapter 2 as presented and Section 1628 with minor language change as discussed above. Motion passed unanimously.

Melissa DeVetter stated that Chapter 3 was a group effect from the offices of Assessor, Recorder, Highway Dept, Finance and the Zoning Dept. From the zoning prospective, we would like the ability to review the survey to make sure that the lot is the correct size, the buildings conform to the setback, etc. This is very important because this could mean a structure is or is not nonconforming, which devalues property and creates an ordinance violation.

Lisa Hanni, Goodhue and Dodge County surveyor and Wendell Engelstad were present to explain the proposals for Chapter 3. Ms. Hanni explained the required information needed on a survey. With a correction on Item XIII Distance and direction reference ties from the boundary of the proposed plat to a minimum of two (2) Public Land Survey corner monuments to remove the words; proposed plat.

Also a correction to B If Applicable II Ponds, lakes, rivers, streams, creeks, or other waterway which are part of the boundary of the property. Elevations shall be referenced to an established bench mark with a mean sea level elevation and noted on the survey. Remove the words with a mean sea level elevation that language is from the state statute for platting.

Dan Rabe inquired if this would apply to the small villages within Dodge County.

Melissa DeVetter stated yes, that the parcel map is under review right now and any errors with them will come out. This requirement will not make them worse.

Wendell Engelstad stated that we are also reviewing any surveys that come in at the time of the sale.

Lisa Hanni stated that when you are asking for a variance to a property line and you don't know where the line is; it creates issues and potential liability. Requiring a survey would remedy this.

Melissa DeVetter stated that you only own the land that is on your legal description regardless of what the lines are on a map.

Lisa Hanni stated that there are legal methods to straighten out the property line issues. Ms. Hanni explained when a survey is required and when it is exempt.

Wendell Engelstad explained the time frame of how the recording is done for a survey. Once it is received by the County Recorder we only have 10 day to complete the review before it's recorded, if presented in recordable form.

Galen Johnson inquired if people have circumvented the ordinance by not having a survey. Like stating that they have 5 acres instead they only have 4.

Melissa DeVetter stated yes that violations of the ordinance have occurred. They build a structure on what they thought was their property, but it was actually on or too close to someone else land; which means that they have to ask for a variance or buy more land. By having a survey done we can let the assessor office know of there are any issue that we may have like setbacks, lot size before it is recorded.

Lisa Hanni reiterated that you only own what is on your legal description. You might have rights to other things that you are occupying. That can be correct by legal means.

Melissa DeVetter stated that if we make bad decisions we are stuck with them. We can not undo them so why continue to make them. We just accumulate liability.

Galen Johnson had a concern that this will have an extra cost to the land owners.

Dave Hanson stated that he thought that there should be more discussion on when a survey is required. Mr. Hanson suggested that this Chapter could be tabled.

Motion by Galen Johnson, seconded by Harlan Buck to close the public hearing. Motion passed unanimously.

Motion by Galen Johnson, seconded by Harlan Buck to table Chapter 3 for clarification on the when a survey will be required. Motion passed unanimously.

Melissa DeVetter explained Chapter 8 and Section 1627. There was a discussion with the county board about all of the splits that are occurring and how the landowner are getting around the density intent of the ordinance. The board felt that the county should get back to what the intent was as far as the density is. The language for "farm dwelling" and "non farm dwellings" is basically the same we just remove the word farm and classify them as either permitted or Interim Use. We do not want to get into the farmers business of what their income is to determine whether they are farms. A permitted use would be one dwelling on 53 acres or more and an Interim Use Permit would be for one dwelling on less than 53 acres.

Township halls are now listed as a permitted use this will allow them to be rebuilt in the Ag District if they were destroyed. Under Conditional Use Permits local government maintenance facilities and fairgrounds are added in case they would want to relocate in the Ag District.

Section 8.5 Interim Uses was renumbered and reworded for "dwelling on less than 53 acres". Second farm and non-farm dwellings were reworded to read "temporary second dwelling" for a period of no more than 5 years and performance standards were created. These performances standards are in Section 1627.

Access Drive Regulations is already in Chapter 16 and General Requirements was missed with the cleaning up of Variance language that was adopted previously.

Harlan Buck had a concern about Section 8.5.2.

Melissa DeVetter stated that we have this now already and that the second farm dwelling is only for farming purposes. The second "non farm dwelling" is only if there is a need; if there is an elder person that needs help this dwelling would have a sunset clause stating that the dwelling has to be removed once it is no longer used by that person. It is really hard to tell them that the house has to go away if they built a mansion.

Richard Wolf had a concern that then this would make the landowner to make it a permanent dwelling.

Melissa DeVetter stated we already have sunset prevision that states the dwelling must be removed.

Jon Balzum inquired if they do remove them now.

Melissa DeVetter indicated yes.

Galen Johnson inquired if they were talking about second farm dwellings or temporary dwelling because these are two separate things with our ordinance.

Richard Wolf had a concern that the 5 years might not be long enough and could they extend it.

Melissa DeVetter stated that the 5 years could be extended for another 5 with a review if they need it after that. Five years is just a number it could be any number that the Planning Commission chooses.

Galen Johnson stated that the temporary dwelling language is just reworded. The second farm dwelling is the bigger issue here. The only way a second dwelling for farming practices would be allowed is to split off land and build.

Melissa DeVetter stated one of the biggest problems is that people don't live forever and all of a sudden you have a rental unit out there that has nothing to do with farming or the dwelling is split off creating a new building site, which is sold. The idea was that sometime down the road the father would move to town and the son or daughter would take over the farm and the second dwelling would then go away.

Motion by Jon Balzum, seconded by Gene Hallaway, to recommend approval of the amendment for Chapter 8 and Section 1627 as presented. Motion passed 5 – 1 (5 ayes, Walter Wyttenbach, Richard Wolf, Galen Johnson, Jon Balzum and Gene Hallaway and 1 nay Harlan Buck).

Melissa DeVetter stated that Chapter 4 Definition is part of this amendment that also needs to be reviewed. Also part of these definition involves the definitions for the language for surveys.

Motion by Galen Johnson, seconded by Walter Wyttenbach, to recommend approval of the Chapter 4 definition excluded the ones pertaining to survey language. Motion passed unanimously.

Motion by Galen Johnson, seconded by Walter Wyttenbach, to close the public hearing. Motion passed unanimously.

### **Adjourn**

Motion by Walter Wyttenbach, seconded by Harlan Buck, to adjourn. Motion passed unanimously. The meeting was adjourned at 10:25 P.M.