

Minutes of the Dodge County
PLANNING COMMISSION MEETING
May 6, 2009

The regular meeting of the Planning Commission was called to order by John Allen at 7:00 PM on Wednesday, May 6, 2009. Present were Planning Commission members Galen Johnson, Harlan Buck, Jon Balzum, John Allen, Larry Schmeling, Walt Wyttenbach, and Richard Wolf. Also present were County Commissioner Dave Erickson, Don Gray, Lyle Tjosaas, Dave Hanson, Planning Director Duane Johnson and Compliance Officer Melissa DeVetter, and County Feedlot Officer Ken Folie.

Motion by Harlan Buck, seconded by Richard Wolf, to approve the agenda and the April 2009 minutes. Motion passed unanimously.

Other Business

Jeff Martin CUP #08-19 extension

Jeff Martin was present to explain his reasons for an extension. He and his wife Cindy are planning to move down here from the cities and have gotten a Conditional Use Permit about a year ago. They still need to sell his current home in the cities and have not been able to do that yet. So they need an extension on their Conditional Use Permit.

Motion by Harlan Buck seconded by Larry Schmeling, to close the public hearing. Motion passed unanimously. Motion by Galen Johnson, seconded by Harlan Buck, to approval for an extension of CUP #08-19 for 1 (one) year based on reasons stated in the letter from owner, Jeff and Cindy Martin dated March 3, 2009. C.U.P. #08-19 would be extended from July 8, 2009 to July 8, 2010 with the following conditions:

1. Dodge County Zoning Permit be obtained before construction.
2. The Agricultural Covenant shall be signed and recorded.
3. The septic system must meet the Dodge County's septic ordinance.

The motion was passed unanimously.

Jaguar Communications – CUP #09-05

The first public hearing is to consider an application for a Conditional Use Permit for the installation of major essential service. The planned route is located within the Right of Way starting at 600th Ave at the Mower-Dodge County line running east on the north side of the centerline to 197th Ave. turning north, and remaining west of the centerline to CR-M within the Section 34, Hayfield Township. At CR-M the line runs north of the centerline east to CR-T (200th Ave) diverting north on the west side of the centerline to State Hwy 30 in Section 27, Hayfield Township. At State

Hwy 30 in Section 14 and 13 the line runs north of the centerline east to CSAH 9 (220th Ave) south on the east side of the centerline to 750th Ave crossing section 19 and 30, Vernon Township. North of the centerline heading east on 750th St to 260th Ave the line crosses Section 30, 29, 28, and 27, Vernon Township. The fiber optic cable then heads south on 260th Ave to 755th St east of the centerline in Section 35, Vernon Township. Lastly on the 755th St the line parallels north of the centerline heading east to the Dodge/Olmsted County line crossing Section 35 and 36, Vernon Township. Jaguar Communications, Inc is the applicant.

Steve Seifert and Robert Fenlason from Jaguar Communication were present to explain this proposal. Steve Seifert explained the proposed route for the fiber optic cable. They have filed for the DNR permit to cross the waterways.

Ronald Behounek, representing Hayfield Township and himself; had a concern about two main tile lines that have been cross with telephone lines and are having problems with. Also wondering why they need to plow in more lines; is this for future use?

Robert Fenlason addressed these issues. As far as the tiles they do have copies of letter that was submitted to the land owners in which they indicating tile locations. If a tile is cut it will be corrected at that time. The fiber optic cable will allow them to have a ring structure so that with the network running between Owatonna, Claremont, to Rochester through Byron back down to Stewartville to Blooming Prairie and back to Owatonna; that at any point in time if the cable were to be cut they would be able to pass traffic in any direction. So the people will have service at all times. The fiber optic biggest advantage is the data transport capacity that goes though the cable. This gives the people along the route the ability to have fiber optics at their location. People are demanding more and more. Fiber optic is the future that is out there.

Glen Hahn, Vernon Township had a concern that the applicant didn't come to the township first. Approximately seven to ten years ago another fiber optic company came though and stuck signs up anywhere and left debris in the ditch. They damaged a tile lines and you would call them, but the company never did anything about it.

Steve Seifert stated he was not aware that he needed to go to the township prior to this meeting. Did talk to Steve Becvar from Vernon Township and is willing to come to the township meeting on May 18 to discuss any issues they may have.

Robert Fenlason addressed what this fiber optic cable is going to be used for. This fiber optic cable is not just running to be a transport from point A to B but would have strands to run drop to individual customer along that way.

Gary Gray, Claremont Township stated Jaguar have done a good job along County Road 3. But he doesn't understand why there is a fee to build an outhouse but there is no fee to buried cable and these people will make millions on it.

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

Harlan Buck had a concern on how deep the cable will be buried.

Robert Fenlason indicated the cable on the main line by state law it will be 36" to 48" deep, but they will go deeper if there is a requirement needed. When they come to a field drive they can set the plow deeper at that time. Generally the fiber plows that are used to install this can go as deep as 5 to 5 ½ feet. When they come to a road cross they can go between 5 to 6 feet placing it in 1 ¼ conduit.

Harlan Buck had a concern about tile line being cut on how they repair the tile.

Robert Fenlason stated this depends on the type of tile and they have hired people around the area to repair the tiles.

Walter Wyttenbach had a concern that the applicant didn't meet with Vernon Township before coming to this meeting.

Robert Fenlason stated that they initial plans was to have construction take place in the 2nd half of June and that would give them time to come back and address any issues there might be.

Melissa DeVetter stated a correction needs to be made to condition number 4; there needs to be a period after DNR protected watercourses and strike the rest.

Galen Johnson inquired if there was any unresolved complaint with this company in our county in the pass years.

Melissa DeVetter stated the only one she was familiar with was the one where they went up County Road 3; which they started without satisfying the conditions of the permit. We did stop them and they could not continue until the conditions of their permit were satisfied. The county hasn't received any complaints on broken tile. For this request the applicant send out form letter to the property owners and the county has received a lot of them with comments from the landowner on where the tile line are located. That was a main concern that was brought up in the past.

Galen Johnson inquired if the applicant met with Hayfield Township.

Steve Seifert indicated that they did meet with Hayfield Township.

Melissa DeVetter clarify that staff informs all applicants for Conditional Use Permits that they need to meet with the township and if they don't there is a chance that their request could be tabled or denied. Also this company has had Conditional Use Permits before so they should be aware of this.

Galen Johnson inquired if they were boring under private driveway.

Robert Fenlason stated if it cement or black top absolutely. If it's gravel the contactor will get a hold of the property owner and see if there is an issue or where the culvert might be or a running line.

Melissa DeVetter state that condition #10 requires Fiber optic cable shall be bored under all public and private roads (including driveways) unless the County Board approves an alternate process. This is under essential services in the Dodge County Zoning Ordinance.

Robert Fenlason indicated he will let the contractor know.

Richard Wolf inquired why the route isn't straight instead of jogging all over.

Robert Fenlason stated the majority of the people are in the city of Hayfield so that's why they are going that way. Also there is one other utilities service provider in the Kasson - Mantorville area and Jaguar is trying to go below their exchange area so they are not competing with someone who also has fiber optics in Dodge County. It's important to get service to people who might not have it otherwise verse someone who already has the service.

Richard Wolf inquired if the fiber optic cable will be on the same side as other utilities.

Robert Fenlason stated he is not sure without looking at the route. As a rule they like to have them on the same side as the power line poles are.

Duane Johnson stated the County Engineer talked to him this afternoon; they also issue permit to the applicant and as of today they have some clean up that needs to be done yet.

Robert Fenlason stated he did talk to Guy this morning also and they will be cleaning up the ditches. The project was started late in the year and they couldn't get the clean up done last year. But will do it before they start this project.

Motion by Galen Johnson, seconded by Walter Wyttenbach, to recommend tabling this request until June 3, 2009 to allow Jaguar Communication to meet with the Vernon Township.

The motion was passed unanimously.

Julianna Burzynski – CUP# 09-06

The second public hearing is to consider an application for a Conditional Use Permit to establish a non farm dwelling in the Agricultural District. The property is 37.58 acres located in the NE 1/4 of SE 1/4, of Section 23, Milton Township. Julianna Burzynski is the applicant and Brian Green is the property owner.

Julianna Burzynski was present to explain her proposal. This property had a permit before but since has expired.

Motion by Jon Balzum, seconded by Harlan Buck, to close the public hearing. Motion passed unanimously.

Walter Wyttenbach, Milton Township had no objection to this proposal. Mr. Wyttenbach suggested that Julianna might want to explain about the restriction of the building site.

Julianna Burzynski stated there is a feedlot restriction from the southeast corner of the property. It cuts off about half of the property from that side. The building site will be about half way back on the edge of the hill.

Galen Johnson inquired if there was restriction on the placement of the well on the first permit.

Melissa DeVetter stated she was not at the first meeting but there is steep slope on site but doesn't recall anything on a well.

Walter Wyttenbach stated there was not an issue on the well, but there was an issue on a sinkhole that turned out to be just a pit that someone dug out.

Galen Johnson inquired if there was a condition on the first permit on the placement of the well in as how far it could be from the property line.

Julianna Burzynski stated she didn't see any condition about a well.

Galen Johnson inquired if there is cropland adjacent to this property.

Julianna Burzynski state most of what you can see now is corn field and a very slight tree line around the back and on the left hand side.

Walter Wyttenbach commented south is all farmland and most of the property is tillable.

Galen Johnson commented he didn't see a condition for 50 foot setback on a well.

Melissa DeVetter stated that might have been about the time when Minnesota Department of Health (MDH) informed the County that we didn't have the authority on wells.

Galen Johnson stated that the MPCA has 7020 rules that require a well to be setback 50 foot from fertilized ground. This is Ag district and he would go with the 7020 rules and require a 50 foot setback.

Julianna Burzynski asked for clarification on the well location.

Galen Johnson stated as long as its 50 foot from a property line.

Julianna Burzynski indicated she would be fine with that.

Jon Balzum inquired the location of the house.

Motion by Walter Wyttenbach, seconded by Galen Johnson, to recommend approval of the Findings of Facts and Recommendations of the agenda report 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 septic system must meet the County's septic ordinance.
4. Driveway access permits shall be obtained. Access shall comply with Section 1604 of the Dodge County Zoning Ordinance
5. Submit an Erosion Control Plan per Dodge County Ordinance Section 1617, prior to driveway and dwelling construction.
6. The well must be 50 feet from property line.

The motion was passed unanimously.

Amending Dodge County Zoning Ordinance; Section 1619 Animal Feedlot Part 4, Setback for feedlots

A third public hearing is to consider amending the Dodge County Ordinance; Section 1619: Animal Feedlots, Part 4, Setbacks for feedlots.

Duane Johnson gave the history on the proposed amendment for Section 1619 Animal Feedlot; Part 4 Setback for feedlots. The State of Minnesota has enacted a state law that if you have a setback to feedlots in your county ordinance you also need to have a like kind or what they call reciprocal for homes or dwellings. The staff proposed an amendment in 2004 and it hit a wall at that time. The staff was now asked to look into this again. Whether it is in town or residential district or any township our current ordinance states; a new feedlot must maintain a minimum of 500 feet from any dwelling. Any new dwelling for a working farm there is no setback requirement. A new non-farm dwelling must be a quarter of a mile setback from an existing feedlot. What is now being proposed is a setback from a register feedlot of 30 animal units or more is 1000 feet from any dwelling. Any feedlot with less than 30 animal units there is no setback. The staff went though three meeting with the Land Use Task Force (LUTF) looking at more than one setback. The three tier setback ranged from ¼ of a mile, 750 feet and 500 feet. After the LUTF finished work on the reciprocal setbacks a committee of the Planning Commission met and reviewed what the LUTF had recommended. After a length discussion the outcome was to have a 1000 foot setback from a registered feedlot of 30 animal units or

more and no setback for less than 30 animal units. The 1000 foot setback would be for a new dwelling to an existing feedlot other than owner / operator dwelling. And a new registered feedlot of 30 animal units or more would also be 1000 foot setback from an exiting dwelling other than owner / operators.

An expansion of an existing feedlot that is within the 1000 foot setback may expand, but must meet an additional requirement. The requirement is based on a measure of odors calculations called OFFSET developed by The University of Minnesota. If you are within the 1000 foot setback you would need to meet a 93% OFFSET calculation or your feedlot may not be permitted.

Another aspect of this amendment would be to adopt the MN Rules 7020 Definitions. This would change the animal units for swine of 55 - 300 pounds from a .4 to a .3. The .3 is what the state uses to measure animal units in the 7020 rules.

The last aspect would deal with the role of the Feedlot Advisory Board (FAB). This would expand their role in allowing them to use OFFSET measures. The FAB would help the feedlot owner in determining how they would meet the 93% OFFSET measure.

There was a lengthy discussion on how the setback would affect existing feedlots and new dwellings.

Ken Folie presented a power point on OFFSET. (See file)

Mark Moenning stated he supports the 1000 foot setback, but has a concern about 30 animal units being too small of a number. You will probably run into problems with smaller producer wanting to expand in the future. Also the language for expanding of an existing feedlot could be problematic. He believes the 93% is a doable number if used in the appropriate way. He is also concerned about the practicality of retrofitting existing building. He proposed to add some of the language that Nicollet County uses in their feedlot ordinance to this amendment.

The language from Nicollet County: As the county adopted these standards, it was important that we did not develop something that would cause our existing farms to become non-conforming, preventing them from expanding their operations should they choose to. At the same time we wanted to provide guidance to our produces as to appropriate sites for new construction that would minimize odors for their neighbors. The location restrictions apply to new feedlots. The odor rating applies to any new construction on any feedlot, existing or new.

Mark Moenning also wanted it noted that Nicollet County has an odor complaint procedure in their ordinance.

Duane Johnson inquired what number Mark Moenning would feel for animal units if 30 weren't the number he would want to see used.

Mark Moenning would like to see 300 animal units, but know that's not going to be the number.

Ron Behounek has a concern about changing setback. He has part of his three phases of his dairy started. He will not meet the 1000 foot from non-farm dwelling with the last two phases.

Galen Johnson inquired on how many animal units will phase 2 & 3 hold.

Ron Behounek stated the existing barn holds 250 cows' (not animal units) and phase 2 & 3 will also hold 250 cows each. It would be 750 cows there or just under a 1000 animal units.

John Allen inquired if there could be possibly a variance granted.

Duane Johnson stated Mr. Behounek did call him yesterday and he has a legitimate concern which needs to be addressed.

Mark Moenning readdress that he is less concern with 30 animal units than how an existing feedlot expansion. He felt that the OFFSET calculation numbers should be runed for Mr. Behounek feedlot.

Kevin Hoebring had a concern that he has sons that could run his existing feedlot and if he sells the feedlot to his son would they have a problem to expand if he still owns the existing house.

John Allen stated it an existing house would be allowed; it's someone new who couldn't build a house.

Kevin Hoebring inquired if the house would become a non-farm dwelling.

Duane Johnson stated it could.

Galen Johnson stated he could also have the same situation with his site.

Duane Johnson commented the state also suggest the use of a variance. The Planning Commission stipulated in this section that a variance may be granted.

Jim Checkel, Ashland Township inquired if the county granted a variance does the township has the right to deny a variance.

Duane Johnson stated yes, but the township will need to adopt this amendment and they can be more restrictive then the county ordinance.

Motion by Galen Johnson, seconded by Larry Schmeling, to close the public hearing. Motion passed unanimously.

Galen Johnson stated since we are not under the 60 day rule and he see no major issues; that it could be tabled for more discussion.

Harlan Buck commented that they need to revisit some of the topic that was brought up tonight.

Duane Johnson commented we could take some time and run some OFFSET exercises on Ron feedlot. We could look at the 30 animal units also if they wish.

John Allen stated he had no problem with the 30 animal units.

Walter Wyttenbach stated he also didn't have a problem with the 30 animal units.

John Allen commented that he didn't see a ton of issues here to be addressed and with more discussion this could be done.

Walter Wyttenbach stated that he wouldn't mind changing a few word, but we have too much time put into this language already. In Ron's case it could be address though a variance. But we can't sit here and make laws on what could be. We need to take responsibility for what our actions are today and go forward. He is fine with tabling it, but don't want to see it torn down to nothing.

Motion by Harlan Buck, seconded by Richard Wolf, to recommend tabling this item to the June 3, 2009 meeting. Motion passed unanimously.

The Planning Commission reviewed with the Mantorville Township the variance that was granted by the Board of Adjustment for Curtis Harris. They had a brief discussion on the type of build and the setback distance from the neighboring property line.

Adjourn

Motion by Larry Schmeling, seconded by Galen Johnson, to adjourn. Motion passed unanimously. The meeting was adjourned at 9:10 P.M.