

**MINUTES OF THE
LINCOLN COUNTY PLANNING COMMISSION**
September 19, 2016

COUNTY PLANNING COMMISSION MEMBERS PRESENT: Ron Albers, Monty Derausseau, Ron Larson, Dan King, Tyler Klatt and Darrel Sogn.

STAFF PRESENT:

Toby Brown and Joan Doss - County Planning

PUBLIC PRESENT (Sign-In Sheet): Lon Bratland, Max Fodness, Todd Gannon, Brad VanVoorst, Camille VanVoorst, Robert Lynde, Dorothy Lynde, Rob Johnson, John Bovill, David Brouwer, Michael Pederson, Winnie Peterson, Cindy Thomas and Kevin Johnson.

The meeting was chaired by Ron Albers.

1. CALL TO ORDER

The regular meeting of the Lincoln County Planning Commission was brought to order on September 19, 2016 at 7:00p.m. in the Commission Meeting Room of the Lincoln County Courthouse by Chairman Ron Albers.

2. APPROVAL OF AUGUST 15, 2016 MINUTES

A motion was made by Larson and seconded by Derausseau to approve the meeting minutes from August 15, 2016. The motion passed unanimously.

3. APPROVAL OF AGENDA

Mr. Brown noted a change to the agenda to strike Item 4 until next month due to an issue with proper notification by the applicant. A motion to approve the modified agenda was made by Derausseau and seconded by Sogn. The motion passed unanimously.

4. REZONING 16-REZ-006 – Tabled until October 17, 2016 meeting.

5. CONDITIONAL USE PERMIT 16-CUP-033: To transfer one building eligibility from the E1/2 SE1/4 to W1/2 SE1/4 (Ex. W 250' E 1673' S 237'); all in Section 25-T98N- R51W.

General information:

Petitioner: Mackenzie Fodness

Property Owner: Geneva Medema

Location: Approximately ¼ mile west of intersection of 470th Avenue and 284th Street

Present Zoning: A-1 Agriculture

Existing Land Use: Agricultural

Parcel Size: 78.64 acres

This would allow the transfer of one building eligibility.

Staff Report: Toby Brown

Staff Analysis:

The applicant is proposing to transfer one building eligibility the from E1/2 SE1/4 to the W1/2 SE1/4 (Ex. W 250' E 1673' S 237' of Section 25 of Grant Township.

The applicant is moving the eligibility from one parcel to the adjoining parcel to cluster with an existing farmstead and a second residence on the parcel. The existing farmstead is owned by the applicant and the other existing residence on the parcel is owned by applicant's father. The transferred eligibility will be utilized by the applicant's grandson who is engaged with his father in farming operations.

A. The impact of the proposed use on adjacent properties shall be a major consideration. The proposed use should be generally compatible with adjacent properties and other properties in the district.

A right to farm notice covenant is required for new residential dwellings to notify inhabitants to the realities of locating in an agricultural area.

B. Measures shall be taken to ensure that the proposed use does not alter the general character of the area or neighborhood.

The transfer of a building eligibility does not increase the number of dwelling units allowed in this area. The intent of the Comprehensive Plan will be met, as density zoning will be followed.

C. The effects of noise, odor, traffic, air and water pollution, and other negative factors shall be eliminated or controlled through the use of screening, setbacks, and orientation.

The proposed conditional use will not cause noise, odor, traffic, air and water pollution in any amounts that would constitute a nuisance.

Recommendation: Staff finds this conditional use permit request to be consistent with density zoning and recommends **approval** of conditional use permit #16-033 with the following conditions:

1. A right to farm notice covenant shall be placed on the deed prior to the issuance of a building permit.

PUBLIC COMMENT:

Toby Brown of the County Planning Department presented the staff report.

The petitioner, Mackenzie Fodness, spoke on behalf of the application. Mr. Fodness noted that he would like to move the building eligibility due to the flooding potential on the east side of the property.

Commissioner Albers asked if there were any questions for the petitioner or if the petitioner had any questions, but no one answered.

Commissioner Albers asked for additional public comment, but no one answered.

Commissioner Albers closed the floor to public testimony.

DISCUSSION:

None.

ACTION:

A motion was made by Commissioner Larson and seconded by Commissioner Klatt to approve Conditional Use Permit #16-033 with the recommended conditions. The motion passed unanimously.

Conditional Use Permit #16-033 – Approved

6. **CONDITIONAL USE PERMIT 16-CUP-034:** To allow motor vehicle sales and service on the property legally described as VanWoudenberg’s Addition, Tract 1, Lot B, Section 16-T98N-R49W.

General Information:

Petitioner: Brad & Camille VanVoorst
Property Owner: Same
Location: 47874 US Hwy 18 – Canton
Present Zoning: C Commercial
Existing Land Use: Commercial
Parcel Size: 2 acres

This would allow motor vehicle sales and service.

Staff Report: Toby Brown

Staff Analysis:

The petitioner is requesting a conditional use permit to operate a vehicle sales and service lot at 47874 U.S. Highway 18. The property adjacent to the west, east, north and south is zoned C Commercial. There are no residences in the immediate vicinity.

The site plan indicates that the business would occupy the inside of an existing building on the property.

- A. **The impact of the proposed use on adjacent properties shall be a major consideration. The proposed use should be generally compatible with adjacent properties and other properties in the district.**
The site is located in an established commercial area which is accessed from a major arterial street. The land use of vehicle sales and service has little to no adverse effects on the use and development of nearby properties.

- B. **Measures shall be taken to ensure that the proposed use does not alter the general character of the area or neighborhood.**
There is little conflict between the use of the property for motor vehicle sales and service with the surrounding uses. Neighboring uses include warehousing and contractor shops/yards.

- C. **The effects of noise, odor, traffic, air and water pollution, and other negative factors shall be eliminated or controlled through the use of screening, setbacks, and orientation.**
No offensive nuisances shall be permitted at any time during operation of vehicle sales and service.

Recommendation: Staff found that the proposed vehicle sales and service conforms to the existing surrounding land uses and anticipated future development. Staff recommends **approval** of conditional use permit #16-034 with the following conditions:

1. That the lot shall adhere to the submitted site plan and application dated August 24, 2016.
2. No inoperable vehicles or equipment, parts, scrap or junk material shall be allowed on the property.

PUBLIC COMMENT:

Toby Brown of the County Planning Department presented the staff report.

The petitioner, Brad VanVoorst, spoke on behalf of the application. Mr. VanVoorst noted that there would be four to ten classic automobiles inside at a time. He also noted that only minor modification to the cars would be completed on site whereas major work would be done off site at a different repair shop.

Commissioner Albers asked if there were any questions for the petitioner or if the petitioner had any questions, but no one answered.

Commissioner Albers asked for additional public comment, but no one answered.

Commissioner Albers closed the floor to public testimony.

DISCUSSION:

None.

ACTION:

A motion was made by Commissioner Derausseau and seconded by Commissioner Sogn to approve Conditional Use Permit #16-034 with the recommended conditions. The motion passed unanimously.

Conditional Use Permit #16-034 – Approved

7. **CONDITIONAL USE PERMIT 16-CUP-035:** To allow private outdoor recreation facility in conjunction with existing Christmas Tree Farm on the property legally described as Government Lot 3, Section 29-T99N-R48W.

General Information:

Petitioner: Todd Gannon

Property Owner: Same

Location: 48392 278th St. – Canton

Present Zoning: RC Recreation/Conservation

Existing Land Use: Agriculture

Parcel Size: 33.6 acres

This would allow private outdoor recreation facility.

Staff Report: Toby Brown

Staff Analysis:

The petitioner is requesting a conditional use permit to allow private outdoor facility on Government Lot 3, Section 29-T99N-R48W. Riverview Christmas Tree Farm and pumpkin farm has been in existence for almost 30 years. The property has recently changed ownership and no Conditional Use Permits exist on the property. The current owner intends to utilize green space for special events such as graduations, weddings, church retreats etc. These activities would be in addition to existing annual Christmas and fall festival events.

A. The impact of the proposed use on adjacent properties shall be a major consideration. The proposed use should be generally compatible with adjacent properties and other properties in the district.

Given that a majority of the surrounding vacant property in the area is primarily agriculture, the use of the subject property for a private outdoor recreational facility would likely not cause a significant impact to the normal and orderly development. The future growth of the area will be entirely dependent on the number of available building eligibilities.

B. Measures shall be taken to ensure that the proposed use does not alter the general character of the area or neighborhood.

The area is primarily agricultural with a few residential acreages within the immediate vicinity just off 484th Avenue. There is already an existing building on the lot; therefore, there is no plan or need for additional buildings on the subject property. As a result of the proposed land use approval for private outdoor recreation facility, no significant changes to property values or hindrance to the use and enjoyment of properties within the immediate vicinity should be expected.

C. The effects of noise, odor, traffic, air and water pollution, and other negative factors shall be eliminated or controlled through the use of screening, setbacks, and orientation.

The presence of a private outdoor recreation facility use, such as green space events will likely not constitute these types of nuisances.

Recommendation: Staff recommends **approval** of conditional use permit #16-035 with the following conditions:

1. The private outdoor recreation facility shall be secondary to the principle use of the property as a site for agricultural production of trees and pumpkins. If the agricultural production of trees and pumpkins ceases, the private outdoor recreation facility shall cease.
2. Food concessions shall be accessory to the use of the site for agricultural production.

PUBLIC COMMENT:

Toby Brown of the County Planning Department presented the staff report.

The petitioner, Todd Gannon, spoke on behalf of the application. Mr. Gannon noted that the property had held events in the past, but after talking with the Planning and Zoning office it was realized a conditional use permit was never filed for that type of use on the property, and he wanted to make sure to have everything in order before a family wedding would be held on the property. He also noted he had no desire to make it a business like The Canton Barn, but just wants the option to offer the use of green space if people are interested.

Commissioner Larson asked if hosting weddings would be actively advertised. Mr. Gannon noted they may place some information on the farm's website, but would not be the main focus in any advertising of the business.

Commissioner Albers asked if they would need a permit to put up a tent. Mr. Brown said that without the conditional use permit they would need to apply for a temporary use permit whenever they would like to host an event, but the conditional use permit would cover these uses.

Commissioner Albers asked if there were any comments from the public.

Robert Lynde, 27802 484th Ave, Canton, rose concerns about noise since they are able to hear music during the fall festivals and Christmas tree sales. He also was concerned that noise would be an issue since they now have a Malt Beverage and South Dakota Wine license. Mr. Gannon noted that they would not be selling alcohol during a wedding and that the license was only for sale of beer and wine.

Dorothy Lynde, 27802 484th Ave, Canton, also noted concerns about the road, since the increased traffic during the tree sales degrades the road. She also seconded the concerns about the noise, and asked about a curfew for the noise.

Kevin Jensen, 27808 484th Ave, Canton, noted that although he has a vested interest in the permit approval, since he would be operating the house on site as a retreat type rental, the past property owners trusted Todd to carry on the business and that they will all try their best to be good neighbors.

Mr. Brown noted that the commission could implement hours of operation to mitigate issues about noise. Commissioner Albers was unsure if setting time limits would be the right route to go, and hoped that they would discuss with each other right away if issues arose.

Commissioner King asked how noise complaints are enforced. Mr. Brown said that law enforcement would investigate the complaint, but that there are no rules and regulations from the planning and zoning office for noise levels.

Commissioner Albers asked if there were any further questions for the petitioner or if there were any further comments, but no one answered.

Commissioner Albers closed the floor to public testimony.

DISCUSSION:

None.

ACTION:

A motion was made by Commissioner Klatt and seconded by Commissioner Larson to approve Conditional Use Permit #16-035 with the recommended conditions. The motion passed unanimously.

Conditional Use Permit #16-035 – Approved

8. **CONDITIONAL USE PERMIT 16-CUP-036:** To exceed 1,500 sq. ft. of total accessory building area – requesting an additional 1,200 sq. ft. for a total of 3,840 sq. ft. on the property legally described as Ash Acres, NE1/4, E 209.27', Tract 2, Section 28-T100N-R51W.

General Information:

Petitioner: Lon Bratland
Property Owner: Same
Location: 27103 Ash Ct. – Tea
Present Zoning: A-1 Agricultural
Existing Land Use: Residential
Parcel Size: 1.62 acres

This would allow an additional 1,200 sq. ft. of accessory building area.

Staff Report: Toby Brown

Staff Analysis:

The subject property is located at 27103 Ash Ct. - Tea. The petitioner's property is 1.62 acres in size and is located in the A-1 Agricultural District. The properties to the east, west, north and south are zoned A-1 Agricultural. The adjacent properties east, west, north and south are used as residential. Other large accessory buildings can be found within the general vicinity.

The petitioner would like to construct an additional 1,200 square foot accessory building for personal storage and use. The petitioner has an existing 2,640 square foot accessory building on the property.

A conditional use permit application is required by Section 12.06 (D) of the Lincoln County Zoning Ordinance which states:

In the A-1 and RC Districts, the total area of accessory buildings shall not exceed 1500 square feet when such buildings are located in a subdivision of more than four (4) lots unless a conditional use has been approved.

A. The impact of the proposed use on adjacent properties shall be a major consideration. The proposed use should be generally compatible with adjacent properties and other properties in the district.

There are larger accessory building areas in the general vicinity of this property. The proposed site for the structure meets all applicable setbacks and the placement of the structure will not impact the neighboring properties. The construction of this accessory building should not impede on the enjoyment or use of the surrounding properties or affect property values.

B. Measures shall be taken to ensure that the proposed use does not alter the general character of the area or neighborhood.

The construction of the proposed accessory building should have no impact on further construction or development within the general area. The building will only be used for the owner's personal storage, residential related items, and no commercial or business activities will be allowed. This use will not affect the residential uses or agricultural land in the area.

C. The effects of noise, odor, traffic, air and water pollution, and other negative factors shall be eliminated or controlled through the use of screening, setbacks, and orientation.

There should be no uses in the building which would constitute these types of nuisances.

Recommendation: Staff recommends **approval** of conditional use permit #16-036 with the following conditions:

1. The total accessory building square footage shall not exceed 3,840 square feet.
2. That the property shall adhere to the submitted site plan and application dated August 29, 2016.
3. The building shall be used only for the petitioner's personal residential use.
4. A building permit is required.

PUBLIC COMMENT:

Toby Brown of the County Planning Department presented the staff report.

The petitioner, Lon Bratland, spoke on behalf of the application. Mr. Bratland noted that there is currently a 12x16 shed that will be removed for the new garage to take its place.

Commissioner Albers asked if there were any questions for the petitioner or if the petitioner had any questions, but no one answered.

Commissioner Albers asked for additional public comment, but no one answered.

Commissioner Albers closed the floor to public testimony.

DISCUSSION:

None.

ACTION:

A motion was made by Commissioner Derausseau and seconded by Commissioner Sogn to approve Conditional Use Permit #16-036 with the recommended conditions. The motion passed unanimously.

Conditional Use Permit #16-036 – Approved

9. OTHER BUSINESS: Text amendments to the 2009 Revised Lincoln County Zoning Ordinance - Discussion Item Only.

Mr. Brown noted that at the workshop meeting on the September 12th, it was brought up to have the public hearing about the ordinance amendments at the high school to allow for a larger audience. Commissioner Klatt raised concerns about microphone availability and that it might be difficult to hear commission members or the audience comments. Winnie Peterson noted that they have held multiple meetings in the high school and that it would suffice since it accommodates up to 300 people and that there are multiple microphones available for use. Commissioner Derausseau noted that if there are audio/visual capabilities to set up in hall, the meeting should be held here. Commissioner Albers said it would be best to stay here since we know how to operate the equipment, instead of having the possibility of equipment failure at the school. Consensus was reached to hold the public in the Commissioner's Meeting room on October 24th, at 7:00pm

Mr. Brown provided updated revisions after the comments from the workshop, and suggested only discussing the WECS and Commercial District amendment at the October public hearing. Commissioner Derausseau commented that there should be waiver language similar to the CAFO waiver for the setbacks. Commissioner Larson noted that he was concerned they may be going overboard by setting the safety setback at 5 times the height of the tower. Consensus was reached to keep the proposed revisions to the setbacks while adding waiver language. Consensus was also reached about the additional noise regulation recommendations and shadow flicker recommendations.

Commissioner Albers asked if there was public comment.

Rob Johnson, 314 111th Ave, Aberdeen, noted that the setback of 5 times the height doesn't make sense, and the 40dBA nighttime regulation over reaches current technology. He concluded that the revisions as they stand would prevent the project from going any further, and that he would hope we would all work together to come to a reasonable outcome since he feels the discussion has been mostly one-sided.

Brad VanVoost noted that he hopes the commission is in agreement about allowing warehousing in the commercial district again since he was hoping to conduct storage on his property when he bought the land, but was unaware that it was not a permissible use at this time.

Winnie Peterson, noted that she doesn't believe the regulations are strict enough to provide for the safety and wellbeing of the community. She also noted that the 1,000-foot minimum setback is baseless and doesn't correspond to industry safety standards. She went on to say she continues to take issue with the noise regulations, and would like the commission to also look at requiring OCAS technology for the lighting on the towers.

David Brouwer, Beresford, noted that the ordinance is to protect those in Lincoln County, not to permit WECS. He also noted that financial decommissioning plan is necessary, and that the timeframe for the nighttime decibel level is too late at night. He closed by saying that WECS are an industrial use not an agricultural use.

Cindy Thomas, Canton, noted that infrasound, although a complex subject needs to be considered due to the health effects from the sound and that the ordinance needs to protect the community and err on the side of caution if the concrete evidence isn't available.

10. ADJOURN

A motion was made by Commissioner Larson and seconded by Commissioner Sogn to adjourn the meeting. The motion passed unanimously.