

**MINUTES OF THE
LINCOLN COUNTY PLANNING COMMISSION**
November 21, 2016

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

STAFF PRESENT: Toby Brown and Joan Doss - County Planning

PUBLIC PRESENT (Sign-In Sheet): Kerwin Muller, Charish Weeldreyer, Joann Muller, Curt Muller, Verlyn Muller, Lee Burggraff, Jolene Kuper, Wade Burggraff, Cindy Thomas, Winnie Peterson, Michael McMahon, Jeff Hurley, Don Klassen, Kris Kuper, Rachel Rasmussen

The meeting was chaired by Ron Albers.

1. CALL TO ORDER AND ROLL CALL

The regular meeting of the Lincoln County Planning Commission was brought to order on November 21, 2016 at 7:00p.m. in the Commission Meeting Room of the Lincoln County Courthouse by Chairman Ron Albers.

2. APPROVAL OF AGENDA

A motion to approve the agenda was made by Sogn and seconded by Klatt. The motion passed unanimously.

3. APPROVAL OF OCTOBER 17, 2016 AND OCTOBER 24, 2016 MINUTES

A motion was made by Derausseau and seconded by Larson to approve the meeting minutes from October 17, 2016 and October 24, 2016. The motion passed unanimously.

4. CONDITIONAL USE PERMIT 16-CUP-042: To allow a public facility owned and operated by a governmental entity on the property legally described as the South 170' of the West 256' of East 1,265' of the SE1/4, Section 16-T99N-R50W.

Petitioner: La Valley Township
Property Owner: Same
Location: Approximately ¼ mile West of the intersection of 473rd Ave. and 276th St.

STAFF ANALYSIS:

The property is located at approximately ¼ mile West of the intersection of 473rd Ave. and 276th St. The petitioner, La Valley Township, is proposing to construct a 48' x 66' (3,168 sq. ft.) storage building for the township's road maintenance equipment along with a stock pile of gravel and crushed concrete. La Valley Township does not have a current facility owned by the township for storage of equipment.

The property is located in the A-1, Agricultural district zone. The A-1 zoning district allows for a "public facility owned and operated by a governmental entity" through a conditional use process.

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 proposal is located in the A-1 Agricultural District. The proposal meets the applicable standards for this zoning district. The proposed building will be 3,168 square feet and will be of

similar size and use to an accessory building. The construction of the proposed building will not substantially impair the appropriate use or development of adjacent properties.

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

There are a number of residences in the nearby vicinity, but overall the general character of the area is agricultural crop production. Due to the proposed size and use of the proposed building, the construction of the proposed building will not substantially affect the general character of adjacent properties.

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 use is compatible with surrounding land uses and will not substantially produce excessive noise, odor, traffic, air and water pollution, or other negative factors. The proposed use will benefit the health and safety of the public by allowing for the construction of a facility that will provide storage for township maintenance equipment.

STAFF RECOMMENDATION

Based upon the information and materials provided by the petitioner, it is the County Planning Staff's opinion that overall the project generally meets the applicable standards and therefore, recommends the Planning Commission approve the request. Therefore, staff recommends approval of Conditional Use Permit 16-CUP-042, with the following conditions:

1. The lot shall adhere to the site plan submitted on November 14, 2016.
2. A building permit from Lincoln County is required prior to construction of the building.

Public Comment:

Toby Brown presented the staff report.

The petitioner, Jeff Hurley – LaValley Township Chairman, commented that the township is wishing to build a storage building for their equipment that is currently being kept outside in the elements. He also noted that they may wish to invert the site plan so that the building is on the east side of the property.

Commissioner Albers asked if there were any questions for the petitioner, none were voiced.

Commissioner Albers asked for additional public comment.

Mike McMahon, City of Harrisburg, noted that the property falls within their platting jurisdiction and that the city is opposed to the conditional use permit due to an invalid legal description. He expanded by stating the state statute 43-21-1 doesn't allow metes and bounds legal descriptions, and that the township had submitted a plat to the township, but when the city requested some changes, including a wide right-of-way, a new plat was never submitted. Commissioner Pashby asked why the deed would be recorded without a valid description, and Mike noted that they have to accept what is submitted. Commissioner Albers asked if the city had any contact with the township about these issues. Mike noted that they had not contacted the township but had discussed with county staff the issues with the application. Commissioner Derousseau asked if they objected to the use, and Mike responded that they don't object to the proposed use, but object to the invalid legal description and lack of a plat.

Jeff Hurley spoke once more and noted that the township attorney, Brett Merkle, had challenged the city on the size of the platting jurisdiction, and once they were challenged they had no further contact. Toby Brown noted that the filed deed provides the legal description for the permit and that the county doesn't enforce platting jurisdiction, but also doesn't think we can force them to get the parcel platted. He also

noted that he was leery of approving an application with the possibility of a changing legal description and that it would be best to table the application to sort things through.

Seeing no other public comments, Commissioner Albers closed the floor to public testimony.

Discussion:

None

Action:

A motion was made by Pashby and seconded by Larson to table Conditional Use Permit #16-042 to address the property's legal description and site plan issues. The motion passed unanimously.

Conditional Use Permit #16-042 – Tabled

5. **CONDITIONAL USE PERMIT 16-CUP-043:** To allow a contractor's shop and storage yard on the property legally described as Hagedorn Industrial Park Addition, Lot 9, Block 4 in the SE1/4 of Section 25-T100N-R51W.

Petitioner: Michael Terveen
Property Owner: Same
Location: 27171 Linda Ave. – Tea

STAFF ANALYSIS:

The property is located at 27171 Linda Avenue and is within the Hagedorn Industrial subdivision. The petitioner would like to construct a 65' x 165' (10,725 sq. ft.) building.

The property is located in the I-1, Light Industrial district zone. The I-1 zoning district allows for a "contractor's shop and storage yard" through a conditional use process.

- 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 construction of the proposed building will not substantially impair the appropriate use or development of adjacent property. Nearby properties have similar uses or are currently vacant. The site is located in a developing industrial park to the east of Tea. The land use of contractor's shop and storage yard 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.**

The structure may only be used for contractor's shop and storage yard. The proposed structure is compatible to the area that is composed I-1 Light Industrial zoning district.

- 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 contractor's shop and storage yard. The proposed building will not substantially produce excessive noise, odor, traffic, air and water pollution, or other negative factors.

STAFF RECOMMENDATION

Based upon the information and materials provided by the petitioner, it is the County Planning Staff's opinion that overall the project generally meets the applicable standards and therefore, recommends the Planning Commission approve the request. Therefore, staff recommends approval of Conditional Use Permit 16-CUP-043, with the following conditions:

1. The lot shall adhere to the site plan submitted on November 4, 2016 and shall be submitted to and approved by the City of Tea.
2. The building shall only be used for a contractor's shop and storage yard.
3. A building permit from Lincoln County is required prior to construction of the building.

Public Comment:

Toby Brown presented the staff report. Commissioner Pashby asked if the landscaping was a definite plan. Toby responded by saying that the county doesn't require any landscaping, but the City of Tea has regulations that they would need to follow.

The petitioner, Michael Terveen, was not present at the meeting

Discussion:

None

Action:

A motion was made by Pashby and seconded by King to table Conditional Use Permit #16-043 due to the applicant not being present for questions. The motion passed unanimously.

Conditional Use Permit #16-043 – Tabled

- 6. CONDITIONAL USE PERMIT 16-CUP-044:** To extend or enlarge a non-conforming use originally authorized by Conditional Use Permit 02-026 on the property legally described as Mueller's Tract 3 of the S1/2 of the SW1/4 in Section 24-T99N-R51W.

Petitioner: Jolene Kuper
Property Owner: Same
Location: 27682 469th Ave - Lennox

STAFF ANALYSIS:

The property is located at 27682 469th Ave. The dwelling was originally authorized as a second dwelling on the Farmstead by Conditional Use Permit 02-026. The Conditional Use Permit was approved at that time with the stipulation that the residence was for the daughter of the property owners. The dwelling, and surrounding 1.3 acres of land, was then subdivided by plat on December 6, 2005. The property with the dwelling was transferred to the petitioner on May 24, 2006.

The 1995 Revised Zoning Ordinance of Lincoln County allowed for "additional dwellings (more than 1 additional) for immediate family members, through Conditional Use Permit, may be permitted on the Farmstead". The 2009 Revised Zoning Ordinance for Lincoln County has no such use.

The petitioner is proposing to extend the nonconforming use by allowing non-family members to reside at the existing dwelling.

A. Effect on surrounding property values.

There will not be any significant negative impact on property values since the dwelling has been in existence, and in use, since 2002.

B. The density of land use zoning for the subject and adjacent properties.

Including the non-conforming use, there are six (6) dwellings within the quarter-quarter section. The quarter section had six (6) total building eligibilities. Four (4) of the dwellings are placed on Lots of Record and one (1) dwelling is placed on a parcel that was originally part of a lot of record.

There is one (1) building eligibility that remains on the parcel described as S1/2 of the SW1/4 *ex Mueller Tracts*.

C. The degree of hardship upon the applicant which would be caused by failure to grant the permit.

The petitioner would experience hardship due to the restriction of who may reside at the premise. Therefore, the petitioner would not be able to sell or rent the property.

D. It can be demonstrated that it was the owner's intent to use the entire premises for said use prior to the adoption, revision or amendment of this ordinance.

The residence was originally authorized by Conditional Use Permit 02-026. The dwelling, and surrounding 1.3 acres of land, was then subdivided via plat, on December 6, 2005. Once the Zoning Ordinance was revised in 2009, the dwelling became a nonconforming use.

STAFF RECOMMENDATION

Based upon the information and materials provided by the petitioner, it is the County Planning Staff's opinion that overall the petition generally meets the applicable standards and therefore, recommends the Planning Commission approve the request. Therefore, staff recommends approval of Conditional Use Permit 16-CUP-043, with the following conditions:

1. The current manufactured home may be occupied by someone other than an immediate family member.
2. The current manufactured home cannot be replaced.
3. No additional dwelling shall be constructed or placed on the property.
4. If the nonconforming use is discontinued for more than one (1) year, any future use shall be in conformity with the regulations of the A-1 Agricultural zoning district.

Public Comment:

Toby Brown presented the staff report. Toby also noted that it was just brought to his attention that there is an issue with the deed transfer since the property was transferred by her parents but should have transferred by the trust.

The petitioner, Jolene Kuper, noted that she would like the ability to sell the property. Lee Burgsraff, Jolene's real estate agent noted that she had no knowledge that there wouldn't be the chance to sell. He also noted that in 2002 the permit was approved without stipulations. Pashby asked Lee what the commission should do. Lee noted that with the stipulations they are proposing would decrease the property value due to stipulation #2, #3, and #4. Commissioner Albers asked who paid for the house. Jolene commented that she has paid for the house and taxes.

Commissioner Albers asked for additional public comments.

Rachel Rasmussen, an attorney on behalf of the Muller's asked that the commission to not get involved in a current legal dispute. She continued by saying the trustee deed was never completed, so the deed is not legal. She also noted they having been going back and forth since summer with Ms. Kuper's attorney to

resolve the issue. Commissioner Pashby asked how long until the issues would be resolved. Ms. Rassmussen noted that hopefully it would be resolved within a couple months.

Seeing no other public comments, Commissioner Albers closed the floor to public testimony.

Discussion:

None

Action:

A motion was made by Pashby and seconded by Derousseau to table Conditional Use Permit #16-044 until the January meeting or until the legal issues are resolved. The motion passed unanimously.

Conditional Use Permit #16-044 – Tabled

7. OTHER BUSINESS:

Toby Brown reminded the commission members of the County Board's public hearing to discuss the ordinance amendments on November 22, 2016 at 7:00pm.

Toby Brown also mentioned there would be a Joint Jurisdiction meeting on December 14th and the regular meeting on December 19th.

8. ADJOURN

A motion was made by Larson and seconded by Sogn to adjourn the meeting at 8:25pm. The motion passed unanimously.