

**MINUTES OF THE
LINCOLN COUNTY PLANNING COMMISSION**
August 15, 2016

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

STAFF PRESENT:

Toby Brown and Clarice Paulson - County Planning

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 August 15, 2016 at 6:00 p.m. in the Commission Meeting Room of the Lincoln County Courthouse by Chairman Ron Albers.

2. APPROVAL OF JULY 18, 2016 MINUTES

A motion was made by Derosseau and seconded by Klatt to approve the meeting minutes from July 18, 2016. The motion passed unanimously.

3. APPROVAL OF AGENDA

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

4. CONDITIONAL USE PERMIT 16-CUP-020: To exceed 20,000 sq. ft. of total warehouse building area – requesting 65,675 sq. ft. on the property legally described as Lot 2, Wetland Addition, SE1/4 SW1/4, Section 32-T100N-R50W.

General Information:

Petitioner: Kelly Nielson/K.N. Construction
Property Owner: Same
Location: 47137 Wetland Place - Harrisburg
Present Zoning: I-1 Light Industrial
Existing Land Use: Agriculture
Parcel Size: 3.60 Acres

This would allow 65,675 sq. ft. of total warehouse building area.

Staff Report: Toby Brown

Staff Analysis:

The petitioner is requesting a conditional use permit to exceed 20,000 sq. ft. of warehouse building area. The subject property is located in the Wetland Addition and is to the east of the Harrisburg/Tea exit off Interstate 29. The properties adjacent to this parcel are zoned I-1 Light Industrial. The site plan indicates that there will be three proposed buildings.

- 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 plan indicates the proposed buildings meet all applicable setbacks and the placement of the buildings will not impact the neighboring properties. The construction of these buildings 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.**

This use will not affect the adjacent uses. The proposed buildings should have no impact on further construction or development within the general 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 #16-020 with the following conditions:

1. The total warehouse building square footage shall not exceed 65,675 square feet.
2. That the lot shall adhere to the submitted site plan and application dated May 6, 2016.
3. A building permit is required.

DISCUSSION

A motion was made by Commissioner Klatt and seconded by Commissioner Larson to remove Conditional Use Permit #16-020 from the table. The motion passed unanimously.

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

ACTION

A motion was made by Commissioner Klatt and seconded by Commissioner Sogn to approve Conditional Use Permit #16-020 with recommended conditions. The motion passed unanimously.

Conditional Use Permit #16-020 – Approved

- 5. CONDITIONAL USE PERMIT 16-CUP-025:** To allow motor vehicle sales and service on the property legally described as Vanwoudenberg's Addition, Lot A, Section 16-T98N-R49W.

General Information:

Petitioner: Ward L. Miller
Property Owner: Tom Rutten
Location: 47862 U.S. Highway 18 - Canton
Present Zoning: C Commercial
Existing Land Use: Commercial
Parcel Size: 267,022.80 Square Feet

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 47862 U.S. Highway 18. The property adjacent to the west is zoned A-1 Agricultural and the adjacent properties to the north and east are zoned C Commercial.

The site plan indicates that the business would occupy the outside space in front of the petitioners leased space in a 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 along a major arterial street and on property primarily utilized for warehousing and office. 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 various repair shops and contractor 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 surrounding land uses and future development. Staff recommends **approval** of conditional use permit #16-025 with the following conditions:

1. That the lot shall adhere to the submitted site plan and application dated June 30, 2016.
2. No inoperable vehicles or equipment, parts, scrap or junk material shall be allowed on the property.

DISCUSSION

A motion was made by Commissioner Pashby and seconded by Commissioner Derausseau to remove Conditional Use Permit #16-025 from the table. The motion passed unanimously.

Toby Brown of the County Planning Department stated that Mr. Miller has submitted the paperwork to the South Dakota Department of Transportation for a change of use and that no further study would be required by the South Dakota Department of Transportation.

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

ACTION

A motion was made by Commissioner Derausseau and seconded by Commissioner Larson to approve Conditional Use Permit #16-025 with recommended conditions. The motion passed unanimously.

Conditional Use Permit #16-025 – Approved

- 6. CONDITIONAL USE PERMIT 16-CUP-029:** To exceed 1,500 sq. ft. of total accessory building area – requesting 1,600 sq. ft. additional on the property legally described as Delapre Estates, SW1/4, Tract 8, Section 23-T100N-R51W.

General Information:

Petitioner: LeRoy Becker

Property Owner: Same

Location: 27074 468th Avenue - Tea

Present Zoning: A-1 Agricultural

Existing Land Use: Residential

Parcel Size: 2.12 Acres

This would allow an additional 1,600 sq. ft. of additional accessory building area.

Staff Report: Toby Brown

Staff Analysis:

The subject property is located at 27074 468th Avenue - Tea. The petitioner’s property is 2.12 acres in size and is located in the A-1 Agricultural District. The properties to the west, north and south are zoned A-1 Agricultural. The property adjacent to the east is within the corporate limits of the City of Tea. The surrounding properties are used as residential. Other large accessory buildings can be found within the general vicinity.

The petitioner would like to construct an additional 1,600 square foot accessory building for personal storage and use. The petitioner has an existing 150 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.**

Given the existence of other larger accessory buildings in the area, the construction of this structure should not impede on the enjoyment or use of the surrounding properties or affect property values. The proposed site for the structure meets all applicable setbacks and the placement of the structure should not negatively impact the neighboring properties.

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

The building can only be used as an accessory structure to the established residential use and no commercial or business activities are allowed. This use will not affect the adjacent residential uses.

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 #16-029 with the following conditions:

1. The total accessory building square footage shall not exceed 1,750 square feet.
2. The building shall be used only for the petitioner's personal residential use.
3. A building permit is required.

PUBLIC COMMENT

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

The petitioner, LeRoy Becker, spoke on behalf of the application.

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 #16-029 with recommended conditions. The motion passed unanimously.

Conditional Use Permit #16-029 – Approved

7. **CONDITIONAL USE PERMIT 16-CUP-030:** To allow retail greenhouse on the property legally described as Knock Tract 1, Except Lot H-1 and H-2 and West 635.18 feet of North 435.66 feet, NW1/4 NW1/4, Section 4-T98N-R51W.

General Information:

Petitioner: Robert and Cameron Kramer
Property Owner: Robert Kramer
Location: 27910 SD Highway 17 - Lennox
Present Zoning: A-1 Agricultural
Existing Land Use: Agriculture/Residential
Parcel Size: 7.56 Acres

This would allow retail greenhouse.

Staff Report: Toby Brown

Staff Analysis:

The petitioner is requesting conditional use permit approval for a greenhouse with retail sales. The petitioner currently operates a retail floral operation within the City of Lennox. There is an existing house, accessory building and greenhouses presently 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 area immediately adjacent is agricultural. The properties to north, south and east are zoned A-1 Agricultural and the properties to the west are within the corporate limits of the City of Lennox and are utilized for industrial uses. The proposed greenhouse with retail sales on the premises is located on property with an existing house. The proposed use should not negatively affect the use, enjoyment or property values of property in the immediate vicinity due to the presence of existing buildings.

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

The majority of the surrounding property in the area is utilized for agricultural purposes. The use of the subject property for an agricultural-type use such as a greenhouse with retail sales on site should likely not cause a significant impact to 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.**

No offensive nuisances shall be permitted at any time during use of the greenhouse with retail component. The site plan shows additional screening for the property.

Recommendation: Staff recommends **approval** of conditional use permit #16-030 with the following conditions:

1. That the property shall adhere to the submitted site plan and application dated July 29, 2016.
2. That all outdoor lighting shall be of a full cutoff and fully-shielded design to prevent direct spillage of light beyond the property boundary.

PUBLIC COMMENT

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

The petitioner, Cameron Kramer, spoke on behalf of the application.

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 Pashby and seconded by Commissioner Klatt to approve Conditional Use Permit #16-030 with recommended conditions. The motion passed unanimously.

Conditional Use Permit #16-030 – Approved

8. **CONDITIONAL USE PERMIT 16-CUP-031:** To allow the land application of nutrients from a concentrated animal feeding operation not permitted by Lincoln County on the property legally described as W1/2 SE1/4, Section 20-T99N-R48W.

General Information:

Petitioner: Herbert Spaans

Property Owner: Ronald Van Beek

Location: Approximately ¼ mile west of intersection of 484th Avenue and 277th Street

Present Zoning: A-1 Agricultural

Existing Land Use: Agriculture

Parcel Size: 80 Acres

This would allow land application of nutrients from a concentrated animal feeding operation not permitted by Lincoln County.

Staff Report: Toby Brown

Staff Analysis:

The subject property is 80 acres in size and is located in the A-1 Agricultural District. The properties to the west, north and south are zoned A-1 Agricultural. There are four dwellings adjacent to the east of the subject 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 uses in the immediate vicinity include row crop farming and low density residential housing. The proposed land application of nutrients is a common agricultural practice.

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

The proposed land application of nutrients will not alter the general character of 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.**

The proposed land application of nutrients should not constitute a nuisance to the neighboring properties if conducted in conformance with Section 12.09, Concentrated Animal Feeding Operations, of the 2009 Revised Lincoln County Zoning Ordinance.

Recommendation: Staff recommends **approval** of conditional use permit #16-031 with the following conditions:

1. Transport of nutrients must be done by a secure method.

2. Adherence to nutrient management plan on file with the Lincoln County Planning and Zoning Office.

PUBLIC COMMENT

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

The petitioner, Herbert Spaans, spoke on behalf of the application.

Jim McMahan, 27659 484th Avenue, stated that he was a neighbor to the east and he wanted to make sure there was no stockpiling.

Tom Kreber, 48382 277th Street, stated that he was a neighbor to the east and that 484th Avenue has a very steep hill and he asked if the haul trucks could go to 483rd Avenue and then down to 277th Street.

Mr. Spans stated that he doesn't have a problem with the trucks going around but asked if they could go on 484th Avenue when empty.

Commissioner Pashby asked Mr. Spaans if he objected to a condition of no stockpiling and Mr. Spaans responded no.

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 Pashby and seconded by Commissioner Derousseau to approve Conditional Use Permit #16-031 with recommended conditions and the addition of 3) Access be gained from the west side of property (483rd Avenue) and empty can go anywhere. and 4) All material be injected. The motion passed unanimously.

Conditional Use Permit #16-031 – Approved

9. **CONDITIONAL USE PERMIT 16-CUP-032:** To allow a Class 1 Major Home Occupation, Contractor Office on the property legally described as Atkins Addition, NW1/4, Lot 1, Block 1, Section 1-T99N-R51W.

General Information:

Petitioner: William Kreider
Property Owner: Same
Location: 27321 Atkins Place - Tea
Present Zoning: A-1 Agricultural
Existing Land Use: Residential
Parcel Size: 1.03 Acres

This would allow a Class 1 Major Home Occupation, Contractor Office.

Staff Report: Toby Brown

Staff Analysis:

The subject property is located at 27321 Atkins Place. The petitioner's property is 1.03 acres in size and located in the A-1 Agricultural Zoning District. Adjacent properties to the west, east, north are zoned A-1 Agricultural and the adjacent property to the south is zoned RR Rural Residential.

The petitioner is requesting a conditional use permit to allow for a Class 1 Major Home Occupation for a contractor office. The proposed home-based occupation would allow the petitioner to store equipment associated with the business in detached accessory building(s). The operation of the business takes place at the customer's property. Employees will only be at the site during times when equipment needs to be loaded and unloaded onto the trailers for a job.

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 proposed home occupation for a contractor office business should have limited effects on the uses already permitted in the area or on property values in the immediate vicinity; the site is only for storage of the commercial equipment and the operation takes place at the customer's property. The petitioner may not change the outside appearance of the residence to indicate any business activity.

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

The proposed use is a common sight in the general area. The conditional use permit process allows the planning commission authority in placing limitations on the proposed use in an effort to minimize the likelihood of any public nuisances arising.

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.

Due to the operation of the business taking place at the customer's property, there should be a minimal impact on surrounding residential properties.

Recommendation: Staff recommends **approval** of conditional use permit #16-032 with the following conditions:

1. That the occupation shall be conducted entirely within a dwelling and/or accessory building and clearly incidental to the use of the structure for residential purposes.
2. That the occupation shall be operated by a member of the family residing in the dwelling.

3. That employees of the occupation shall be limited to residents of the dwelling and up to two (2) non-resident employees, not to exceed four (4) employees on site.
4. That in addition to the dwelling, up to 2000 square feet of accessory building space may be used for the occupation.
5. That the occupation shall not create noise which, when measured off the property, exceeds 60 decibels between the hours of 8:00 a.m. and 6:00 p.m. The occupation shall not create noise which is detectable to the normal sensory perception off the property between the hours of 6:00 p.m. and 8:00 a.m. These off the property noise standards shall not apply to public and railroad rights-of-way.
6. That the occupation shall not create vibration, glare, fumes, odor, or electrical interference detectable to the normal senses off the property.
7. That no outside storage, display of goods or merchandise, or external evidence of the occupation shall occur except as outlined in this section (12.0302 (A)).
8. That a non-illuminated nameplate not exceeding two square feet in area may be placed on the dwelling or accessory building. Additionally, one non-illuminated sign not exceeding four square feet in area may be located along the driveway for the occupation. No off premise signs shall be used.
9. That the occupation shall not generate more than 10 visits per day from clients or customers averaged over a period of seven (7) consecutive days.
10. That there shall be only limited and incidental sale of products conducted on the premise.
11. That the number of deliveries generated by the occupation shall not significantly affect the character of the area. Delivery vehicles shall be limited to auto, pick up, or typical delivery service truck.
12. That all vehicles and equipment associated with the home occupation shall be in compliance with any weight restrictions or regulations of the Road District associated with the Atkin's Addition.
13. That the home occupation shall be limited to the storage of commercial construction equipment. Any expansion beyond this will require the Conditional Use Permit to be reviewed.

PUBLIC COMMENT

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

The petitioner, William Kreider, spoke on behalf of the application. Mr. Kreider stated that he was putting the property up for sale. He further stated that he had read the HOA agreement and looked at surrounding property and thought that his plans would fit the development but he has felt harassed.

Commissioner Pashby asked about harassment and Mr. Kreider responded that his neighbor placed a deer cam to watch his property, his wife was almost run over and was flipped off and the road district blocked him putting in dirt and accessory building.

Commissioner Pashby asked if existing outbuildings were placed by him and Mr. Kreider responded no.

Ross Wright, Lynn Jackson Law Firm, stated that he represented Mr. Kreider. Mr. Wright showed picture of the property and equipment and stated his client meets the criteria. He further stated that the

truck deliveries are mostly for Mr. Krieders wife and that she has an Amazon Prime membership and the workers are onsite to load/unload trailers for job sites.

Commissioner Pashby asked Mr. Wright if his client wants to stay or go and Mr. Wright responded that his client wants to do what is right.

Joe Newell, 27321 Adriana Place, stated that there are multiple properties in the subdivision that bring equipment home and other properties have hauled dirt and have large buildings. Mr. Newell also stated that the county needs to enforce rules for everyone and if traffic safety is such an issue why don't enforce on everyone. Mr. Newell further stated that he wished to disclose that Mr. Kreider purchased the property from him and his wife.

Ruth Scherschligt, 46922 Frontier Drive, stated that she was a mom and she is concerned with kids riding bikes in the neighborhood. She also stated that she is concerned with equipment and has had to stop multiple times while Mr. Kreider was loading equipment. She further stated that she is concerned with the safety of children and does follow through with contacting Lincoln County Sherriff.

Commissioner Albers commented that he wouldn't be loading equipment on road if building would have been built.

Mark Wudel, 27322 Atkins Place, stated that accessory buildings were there when he bought building and would exceed ordinance requirements. Mr. Wudel stated that the first page of the zoning ordinance states protection of properties and that he has a problem with a construction company in a residential neighborhood. Mr. Wudel stated that the building conditional use permit would have been approved with stipulation that no business was allowed and the integrity of the neighborhood needs to be protected and if allowed for commercial use the flood gates will be opened. Mr. Wudel stated conditional use permit regulations are to protect the health, safety and welfare and guys are on call but no people running a major construction company.

Commissioner Pashby asked Mr. Wudel if he was aware of businesses being run in area and Mr. Wudel stated that he was not aware.

Mr. Wudel stated that this is not a low density area.

Greg Umbreit, 27328 Atkins Place, stated that he was on the road district and that he was concerned with wear and tear on roads and further stated it was not responsibility of others.

Commissioner Derousseau asked Mr. Umbreit if the road district was opposed and Mr. Umbreit said yes to commercial business.

Linda Goulet, 27332 Atkins Place, stated that she is retired and is home all day long and she doesn't see other construction businesses. She further stated that Mr. Kreider had eleven loads of clay dumped in drain field and water drainage area.

Commissioner Klatt asked what the load limit was for the road and six-ton axle was voiced form the audience.

Kyle Reedy, 27327 Atkins Place, commented why spinning wheels when denied for business asked if it made a difference if sold. Mr. Reedy further stated that the fill on the property looks like a mess and he is not in favor of request.

Gayle Brown, 27317 Atkins Place, stated that she doesn't understand how laborers can be considered occupation or office and that most of opposition is to employees coming and going.

Mark Wudel stated that it may be appropriate in low density setting.

Mr. Wright stated that there is nothing deceitful and that Mr. Kreider would like to go to step two and build the accessory building but the neighbors are opposed. Mr. Wright stated that Mr. Wudel's motorhome exceeds the weight limit.

Commissioner Pashby asked if the equipment goes off site and the response was yes. Commissioner Pashby stated why we are here if petitioner is selling property.

Mr. Kreider stated his goal is to avoid problems until the house is sold.

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 Klatt to approve Conditional Use Permit 16-032, but the motion fails for a lack of a second.

A motion was made by Commissioner Pashby and seconded by Commissioner Derausseau to deny Conditional Use Permit #16-032. The motion passed unanimously.

Conditional Use Permit #16-032 – Denied

10. OTHER BUSINESS: Planning Commission Workshop (6:00 p.m. - 7:00 p.m.) - Text amendments to the 2009 Revised Lincoln County Zoning Ordinance - Discussion Item Only.

Patrick Andrews of the South Eastern Council of Governments presented the updated matrix of wind energy conversion system regulations for adjacent and surrounding counties.

Toby Brown of the County Planning Department presented a summary of the redlined changes from the 2015 Zoning Ordinance Revision and the possible draft amendments.

There was much discussion amongst the Planning Commission and staff in regards to proceeding with text amendments to the 2009 Revised Lincoln County Zoning Ordinance.

11. ADJOURN

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