

MINUTES OF THE LINCOLN COUNTY PLANNING COMMISSION

September 18, 2017

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

STAFF PRESENT: Toby Brown and Joan Doss - County Planning

PUBLIC PRESENT (sign in sheet): Todd Bernard, Russ Swanson, Jennifer Larson, Ron Golden, Don Klassen, Lonnie Heibult, Sam Johnson

1. CALL TO ORDER AND ROLL CALL

The regular meeting was brought to order on August 21, 2017 at 7:00pm in the Commission Meeting Room of the Lincoln County Courthouse by Chairman Derausseau.

2. APPROVAL OF AUGUST 21, 2017 & SEPTEMBER 12, 2017 MINUTES

A motion to approve the minutes from August 21, 2017 was made by Sogn and seconded by Albers. The motion passed unanimously. The September 12, 2017 meeting minutes were not acted upon.

3. APPROVAL OF AGENDA

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

4. CONDITIONAL USE PERMIT 17-CUP-027: Request for review and approval of a Conditional Use Permit to transfer one building eligibility from the Southwest quarter (SW1/4) of the Southwest quarter (SW1/4) to the Southeast quarter (SE1/4) of the Southwest quarter (SW1/4) of Section 12, Township 99 North, Range 49 West of the 5th Principal Meridian, Lincoln County, South Dakota.

Petitioner/Owner: R&P Swanson Irrevocable Trust

Location: Approximately 1/4 mile east of the intersection of 481st Ave. & 275th St, - Canton

Staff Analysis:

The petitioner is proposing transferring one (1) building eligibility from the Southwest quarter (SW1/4) of the Southwest quarter (SW1/4) to the Southeast quarter (SE1/4) of the Southwest quarter (SW1/4).

Staff Recommendation: Based upon the information in the staff report, the testimony and evidence provided at the public hearing, the Planning Commission must determine if the proposal meets the standards for granting the CUP as established in the 2009 Revised Zoning Ordinance for Lincoln County. Staff recommends **APPROVAL** of the CUP contingent upon the following conditions:

1. Any required platting shall be finalized prior to building permit approval.
2. A building permit from Lincoln County is required prior to any construction.
3. A right-to-farm notice covenant shall be placed on the deed prior to the issuance of a building permit for the single family dwelling.

Public Comment & Discussion:

Toby Brown presented the staff report. Russ Swanson noted his nephew is buying some land to build a house.

Derausseau asked for public comment, hearing none, he closed the floor.

Action:

A motion was made by Pashby, and seconded by Larson to approve 17-CUP-027 with the recommended conditions. The motion passed unanimously.

Conditional Use 17-CUP-027 – Approved

5. CONDITIONAL USE PERMIT 17-CUP-030: Request for review and approval of a Conditional Use Permit to operate a light manufacturing/recycling facility for antifreeze production. The property is legally described as Lot 11 in Block 1 of the Hagedorn Industrial Park in Section 25, Township 100 North, Range 51 West of the 5th Principal Meridian, Lincoln County, South Dakota.

Petitioner: GlyEco Acquisition Corp #6

Owner: Kiropa Properties LLC

Location: 46958 Mindy St - Tea

Staff Analysis:

The petitioner is proposing moving an existing business from 46991 Mindy Street to 46958 Mindy Street. The business recycles and distributes antifreeze/coolants.

The business was granted a conditional use permit in 1999 within the C-Commercial zoning district (99-CUP-028). The original conditional use permit instituted pollution prevention measures. Staff finds that the petitioner's proposal is reasonable.

Staff Recommendation: Based upon the information in the staff report, the testimony and evidence provided at the public hearing, the Planning Commission must determine if the proposal meets the standards for granting the CUP as established in the 2009 Revised Zoning Ordinance for Lincoln County. Staff recommends **APPROVAL** of the CUP contingent upon the following conditions:

1. Any outdoor storage shall be kept within a fenced in area, and shall be kept in an orderly fashion.
2. All operations shall remain in compliance with pertinent state and federal regulations.
3. The applicant shall not deposit any snow or improperly direct water onto neighboring properties so as to not constitute a nuisance.
4. That the Planning Department reserves the right to enter and inspect the property at any time, after proper notice to the owner, to ensure that the property is in full compliance with the conditional use permit conditions of approval and the Lincoln County Zoning Ordinance
5. If at any time the use ceases to exist, or changes ownership, the owner shall notify Lincoln County Planning and Zoning.

Public Comment & Discussion:

Toby Brown presented the staff report, and noted there have not been any issues with the business at its current location. Jennifer Larson was present for questions, but there were none from the board.

Pashby noted that condition #3 had a double negative, and the second 'not' needed to be removed.

Derousseau asked for public comment, hearing none, he closed the floor.

Action:

A motion was made by Klatt, and seconded by Sogn to approve 17-CUP-030 with the amended recommended conditions. The motion passed unanimously.

Conditional Use 17-CUP-030 – Approved

6. CONDITIONAL USE PERMIT 17-CUP-031: Request for review and approval of a Conditional Use Permit to operate a contractor's shop. The property is legally described as Smith's Addition Tract 2 except Lot H-1 & N 292.34' in the Southeast quarter (SE1/4) of Section 31, Township 100 North, Range 50 West of the 5th Principal Meridian, Lincoln County, South Dakota.

Petitioner/Owner: Heibult Investments LLC, Lonnie Heibult

Location: 27296 Ironworks Ave – Harrisburg

Staff Analysis:

The petitioner is proposing to remodel the existing building into a 3-unit contractor's shop. One unit will be occupied by a previously permitted fireworks business. The lot is located within the commercial zoning district, and is within the Smith's Addition.

The property has been previously granted numerous conditional use permits including: auto body repair, car sales, and general warehousing. Staff finds that the petitioner's proposal is reasonable.

Staff Recommendation: Based upon the information in the staff report, the testimony and evidence provided at the public hearing, the Planning Commission must determine if the proposal meets the standards for granting the CUP as established in the 2009 Revised Zoning Ordinance for Lincoln County. Staff recommends **APPROVAL** of the CUP contingent upon the following conditions:

1. Any outdoor storage shall be kept within a fenced in area, and shall be kept in an orderly fashion.
2. Landscaping shall be maintained so as to not constitute a nuisance.
3. The applicant shall not deposit any snow or improperly direct water onto neighboring properties so as to constitute a nuisance.

4. That the Planning Department reserves the right to enter and inspect the property at any time, after proper notice to the owner, to ensure that the property is in full compliance with the conditional use permit conditions of approval and the Lincoln County Zoning Ordinance.
5. If at any time the use ceases to exist, or changes ownership, the owner shall notify Lincoln County Planning and Zoning.

Public Comment & Discussion:

Toby Brown presented the staff report. Lonnie Heibult noted he would like the building to be more useable.

Derousseau asked for public comment, hearing none, he closed the floor.

Action:

A motion was made by Pashby and seconded by Albers to approve 17-CUP-031 with the recommended conditions. The motion passed unanimously.

Conditional Use 17-CUP-031 – Approved

7. **CONDITIONAL USE PERMIT 17-CUP-032.** Request for review and approval of a Conditional Use Permit to transfer two building eligibilities from the Southwest quarter (SW1/4) to the South half (S1/2) of the Southeast quarter (SE1/4) except Frankman Tract 1, all in Section 8, Township 99 North, Range 50 West of the 5th Principal Meridian, Lincoln County, South Dakota

Petitioner/Owner: Pederson Ag, LLC

Location: Intersection of 275th Street and 472nd Avenue - Harrisburg

Staff Analysis:

The petitioner is proposing transferring two (2) building eligibilities from the Southwest quarter (SW1/4) of the Southwest quarter (SW1/4) to the Southeast quarter (SE1/4) of the Southwest quarter (SW1/4).

Staff Recommendation: Based upon the information in the staff report, the testimony and evidence provided at the public hearing, the Planning Commission must determine if the proposal meets the standards for granting the CUP as established in the 2009 Revised Zoning Ordinance for Lincoln County. Staff recommends **APPROVAL** of the CUP contingent upon the following conditions:

1. Any required platting shall be finalized prior to building permit approval.
2. Building eligibilities may be utilized at any two of the three proposed sites.
3. A building permit from Lincoln County is required prior to any construction.
4. A right-to-farm notice covenant shall be placed on the deed prior to the issuance of a building permit for the single family dwelling.

Public Comment & Discussion:

Toby Brown presented the staff report, and noted the petitioner just submitted a new site plan which would place both eligibilities near the original “2A”. Bret Merkle, the petitioner, noted the change came after talking with Jon Peters about the new floodplain areas. Albers asked how big the lots would be, and Bret responded with 5 to 6 acres, but are flexible on the size.

Derousseau asked for public comments.

Don Klassen noted he is the owner of the existing acreage, and that he has no issues with this request.

Hearing no further comments, Derousseau closed the floor to the public.

Action:

A motion was made by Larson seconded by Sogn to approve 17-CUP-032 with the recommended conditions. The motion passed unanimously.

Conditional Use 17-CUP-032 - Approved

8. **CONDITIONAL USE PERMIT 17-CUP-033:** Request for review and approval of a Conditional Use Permit to allow warehousing to exceed 10,000 square feet. The property is legally described as Lot 1 in Block 2 of the Kerslake 2nd Addition in the South half (S1/2) of Section 24, Township 100 North, Range 51 West of the 5th Principal Meridian, Lincoln County, South Dakota.

Petitioner/Owner: Sorlien Properties, Tor Sorlien

Location: 46946 100th St –Tea

Staff Analysis:

The petitioner is proposing to expand existing warehousing for Sorlien Electric. The proposal will be adding 7,200 square feet. The building will have a total of 25,400 square feet.

The property was granted a previous conditional use permit, 03-CUP-001, for cold storage in the main 11,000 square feet of the building. Staff finds the petitioner’s proposal reasonable.

Staff Recommendation: Based upon the information in the staff report, the testimony and evidence provided at the public hearing, the Planning Commission must determine if the proposal meets the standards for granting the CUP as established in the 2009 Revised Zoning Ordinance for Lincoln County. Staff recommends **APPROVAL** of the CUP contingent upon the following conditions:

1. That 17-CUP-033 shall allow total warehousing area to exceed 10,000 square feet, not to exceed 25,400 square feet.
2. The property shall adhere to the submitted site plan dated August 22, 2017.
3. The applicant shall not deposit any snow or improperly direct water onto neighboring properties so as to constitute a nuisance.
4. That the Planning Department reserves the right to enter and inspect the property at any time, after proper notice to the owner, to ensure that the property is in full compliance with the conditional use permit conditions of approval and the Lincoln County Zoning Ordinance.
5. If at any time the use ceases to exist, or changes ownership, the owner shall notify Lincoln County Planning and Zoning.

Public Comment & Discussion:

Toby Brown presented the staff report, and noted the permit would nullify the permit granted in 2003. Tor Sorlien, the petitioner, noted the additional space would allow for inside storage of more vehicles and equipment.

Derousseau asked for public comment, hearing none, he closed the floor.

Action:

A motion was made by Sogn and seconded by Klatt to approve 17-CUP-033 with the recommended conditions. The motion passed unanimously.

Conditional Use Permit 17-CUP-033 - Approved

9. CONDITIONAL USE PERMIT 17-CUP-034: Request for review and approval of a Conditional Use Permit to construct and operate an electrical substation. The property is legally described as Tract 1 of Worthing Substation Addition in the Southeast quarter (SE1/4) of Section 11, Township 98 North, Range 50 West of the 5th Principal Meridian, Lincoln County, South Dakota.

Petitioner/Owner: East River Electric Power Coop

Location: Approximately ½ mile west of intersection of SD Hwy 115 and 281st St - Canton

Staff Analysis:

The petitioner is proposing to construct and operate an electrical substation for the East River Electrical Power Coop.

Staff Recommendation: Based upon the information in the staff report, the testimony and evidence provided at the public hearing, the Planning Commission must determine if the proposal meets the standards for granting the CUP as established in the 2009 Revised Zoning Ordinance for Lincoln County. Staff recommends **APPROVAL** of the CUP contingent upon the following conditions:

1. The property shall adhere to the submitted site plan dated August 25, 2017.
2. A set of plans, certified by a registered professional engineer, shall be submitted for review and approval prior to the building permit(s) being issued.
3. All outdoor lighting shall be of a full cutoff and fully-shielded design to prevent direct spillage of light beyond the property boundary.
4. The applicant shall not deposit any snow or improperly direct water onto neighboring properties so as to not constitute a nuisance.

5. That the Planning Department reserves the right to enter and inspect the property at any time, after proper notice to the owner, to ensure that the property is in full compliance with the conditional use permit conditions of approval and the Lincoln County Zoning Ordinance.

Public Comment & Discussion:

Toby Brown presented the staff report. Ron Golden noted the substation is needed to relieve the load of current substations. He also noted that the north section of the lot would not be used for the substation, and would not be used for any storage. He also noted that the lot would be enclosed with a 7-foot security fence.

Derousseau asked for public comment, hearing none, he closed the floor.

Action:

A motion was made by Pashby and seconded by Larson to approve 17-CUP-034 with the recommended conditions. The motion passed unanimously.

Conditional Use Permit 17-CUP-034 - Approved

10. CONDITIONAL USE PERMIT 17-CUP-035: Request for review and approval of a Conditional Use Permit to operate a contractor's shop. The property is described as Lot 4 in Block 4 of the LaValley Business Park in the Northwest quarter (NW1/4) of Section 5, Township 99 North, Range 50 West of the 5th Principal Meridian, Lincoln County, South Dakota.

Petitioner: Matt Bertsch Owner: Buzzhawk Holdings LLC

Location: 27313 LaValley Place – Harrisburg

Staff Analysis:

The petitioner is proposing to utilize an existing building on the property as contractor's shop, in which the petitioner will occupy a unit. The lot is located within the commercial zoning district, and is within the LaValley Business Park subdivision.

The lot was previously granted a conditional use permit for an Events Center (07-CUP-035). Staff finds that the petitioner's proposal is reasonable.

Staff Recommendation: Based upon the information in the staff report, the testimony and evidence provided at the public hearing, the Planning Commission must determine if the proposal meets the standards for granting the CUP as established in the 2009 Revised Zoning Ordinance for Lincoln County. Staff recommends **APPROVAL** of the CUP contingent upon the following conditions:

1. Any outdoor storage shall be kept within a fenced in area, and shall be kept in an orderly fashion.
2. Landscaping shall be maintained as to not constitute a nuisance.
3. A building permit from Lincoln County is required prior to construction.
4. The applicant shall not deposit any snow or improperly direct water onto neighboring properties so as to constitute a nuisance.
5. That the Planning Department reserves the right to enter and inspect the property at any time, after proper notice to the owner, to ensure that the property is in full compliance with the conditional use permit conditions of approval and the Lincoln County Zoning Ordinance.
6. If at any time the use ceases to exist, or changes ownership, the owner shall notify Lincoln County Planning and Zoning

Public Comment & Discussion:

Toby Brown presented the staff report. Matt Bertsch noted a future office space addition would be tied into one of the existing bays.

Derousseau asked for public comment, hearing none, he closed the floor.

Action:

A motion was made by Klatt and seconded by Albers to approve 17-CUP-035 with the recommended conditions. The motion passed unanimously.

Conditional Use Permit 17-CUP-035 - Approved

11. PROPOSED ZONING ORDINANCE AMENDMENT: Amending the setback chart in Section 19.09(F) – Concentrated Animal Feeding Operations: Minimum Separation Distances.

Section 1. That the following category “Dwellings (other than owner’s or operator’s)” in the chart in Section 12.09(F)), of the 2009 Revised Zoning Ordinance for Lincoln County, SD, is hereby amended to read as follows:

Dwellings (other than owner’s or operator’s), Churches, Schools and Businesses	3,564 feet	2,376 feet	1,188 feet	1,188 feet
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Section 2. That the following category “Churches, Schools, Businesses and Designated County or State Parks” in the chart in Section 12.09(F)), of the 2009 Revised Zoning Ordinance for Lincoln County, SD, is hereby amended to read as follows:

Churches, Schools and Businesses Designated County or State Parks	1.5 miles	1 mile	1 mile	.5 mile
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Staff Analysis: Toby noted that this amendment would relieve confusion of what a business is when permitting CAFOs, and the setbacks would be easier to flag issues if the main point would be to look out for any structure within the setback.

Public Comment & Discussion:

Pashby asked if other jurisdictions treated churches and schools that same as dwellings and businesses. Toby noted most jurisdictions lump them together and keep parks separate. Pashby also asked why keep parks separate. Joan noted that other jurisdictions most likely keep them separate with a stricter setback for the general enjoyment of public green space.

Derousseau asked for public comments on the application.

Peter B. noted that he believes CAFOs are a nuisance and that this would be a step in the right direction but the setbacks need to be higher.

Winnie Peterson noted she felt there should be a waiver provision for neighbors that are ok with the setbacks.

Robert Lynd noted that a site near Worthing is too close to its neighbors.

Hearing no further comments, he closed the floor to public comment.

Derousseau noted that he feels this would allow easier administration of the ordinance and reminded everyone that the setbacks in this section are the minimum setbacks.

Albers asked the commission members if they felt that parks should be lumped together with the other category. Toby noted that their recommendation should be only for the categorization, and should take out the setback distances.

Sogn asked when they would discuss the setback distances. Toby noted this is the first step to address current issues. He also noted that if they lower the setbacks for parks it might reduce the popularity for traveling visitors.

Action:

A motion was made by Klatt and seconded by Albers to recommend approval of the amendment as drafted, without the setback distances. The motion passed 5-0-1, with Pashby abstaining.

Section 19.09 Amendment – Recommend Approval

12. PROPOSED ZONING ORDINANCE AMENDMENT: Amending the text in Section 12.02(C)(3)(a) – Commercial WECS Illumination and Section 26.06 – Definitions.

Section 1. That Section 12.02(C)(3)(a)), of the 2009 Revised Zoning Ordinance for Lincoln County, SD, is hereby amended to read as follows:

- a. ~~Illumination and markings~~ Lighting shall be limited to the minimum requirements of the Federal Aviation Administration (FAA). There shall be no lights on the tower other than what is required by the FAA. ~~FAA approved red lights shall be used from dusk till dawn. This restriction shall not apply to infrared heating devices used to protect the monitoring equipment. The use of Automatic Obstruction Lighting Systems is mandatory for a Commercial WECS with FAA lighting. If more than one lighting alternative is available, the alternative that causes the least visual disturbance must be used.~~

Section 2. That Section 26.02, of the 2009 Revised Zoning Ordinance for Lincoln County, SD, is hereby amended with the following definition to read as follows:

Automatic Obstruction Lighting System. A lighting system that provides continuous 360-degree surveillance of the airspace around a wind farm from the ground level to above aircraft flight altitudes, automatically activating obstruction lighting when aircraft are detected at a defined outer perimeter and course of travel.

Staff Analysis: Toby noted that it was originally assumed that automatic lighting would be addressed at the conditional use level, but the public seems to want a formal amendment on the issue. Staff is wary because most jurisdictions do not address lighting standards and the commission would need to figure out the balance between pilot safety and neighbor nuisance from the flashing lights.

Public Comment & Discussion:

Pashby asked where the language came from. Toby noted it was a variety of ordinances from North Dakota, Iowa, and Connecticut.

Derausseau asked for public comments on the application.

Winnie Peterson noted that the FAA continues to update their regulations and agrees lighting should be kept to the minimum requirements.

Don Klassen voiced concern that the lights would not come on fast enough, and would like the FAA regulations spelled out in the ordinance.

Hearing no further comments, he closed the floor to public comment.

Pashby was concerned with the last sentence wording that the least disturbance would not necessarily be the safest for pilots.

Derausseau noted that the FAA minimums would still need to be instituted.

Klatt was concerned that we would be giving the county's authority over to the FAA.

Action:

A motion was made by Pashby and seconded by Klatt to add the word "reasonably" before "available" in the last sentence of the amendment. The motion passed unanimously.

Action:

A motion was made by Pashby and seconded by Albers to recommend approval of the amendment as revised. The motion passed unanimously.

Section 12.02(C)(3)(a) & 26.06 Amendments – Recommend Approval

13. OTHER MATTERS TO BE REVIEWED BY THE PLANNING COMMISSION - None

14. OLD BUSINESS – None

15. OPEN DISCUSSION FOR ISSUES NOT ON THE AGENDA

- a. Correspondence received – Toby passed out research compiled by SECOG on decommissioning regulations, and noted this would be discussed at a later date.
- b. Comments from Planning Commission members - None
- c. Comments from the audience:
Don Klassen noted he feels that when WECs are constructed the land should no longer be used for agriculture and should be automatically rezoned. He also noted concern for migrating birds and lack of decommissioning.

16. REPORT OF LINCOLN COUNTY BOARD OF COMMISSIONERS' - None

17. NEW BUSINESS – None

18. ADJOURNMENT

Motion to adjourn at 8:55pm was made by Albers and seconded by Larson. The motion passed unanimously.

Respectfully submitted,
Joan Doss
Planner