

**MINUTES**  
**CLAY COUNTY PLANNING COMMISSION**  
**7:00 P.M., TUESDAY, SEPTEMBER 20, 2016**  
**MEETING ROOM B - THIRD FLOOR COURTHOUSE**

**Members Present:** Mark Klevgaard, Amos Baer, Dan Langseth, Mike Hulett, Randy Schellack, Bill Davis, Wayne Ingersall, Curt Stubstad.

**Members Absent:** Jenny Mongeau, Andrea Koczur, Tim Brendemuhl, Tom Jenson.

**Others Present:** Tim Magnusson, Lynne Spaeth, Colleen Eck, Jenny Samarzja, Joanne Bekkerus, Ron Bekkerus, Steve Ackerman, Ralph Schellack, Ann Schellack, Lee Alm, Shelley Steichen, Archie Tanner, Tegen Wakefield, Heather Engen, Keith McGough, Jodi Seckerson, Jay Jackson, Jarred Johnson, Rodger Pape.

**APPROVAL OF AGENDA**

**On motion by Mike Hulett seconded by Randy Schellack, and unanimously carried, the Commission approved the Agenda.**

**APPROVAL OF MINUTES**

**On motion by Mike Hulett, seconded by Bill Davis, and unanimously carried, the Commission approved the August 16, 2016 and August 23, 2016 Minutes as presented.**

**CITIZENS TO BE HEARD**

There were no citizens to be heard on matters not on the Agenda.

**HERSHEY FAMILY LIMITED PARTNERSHIP – CONDITIONAL USE PERMIT AND REQUEST FOR PRELIMINARY PLAT APPROVAL**

The applicant is seeking approval of a Conditional Use Permit (CUP) to allow the development of a three (3) lot, platted subdivision. The lots would be approximately 3.5 acres each in size and would front on CSAH 12 (50<sup>th</sup> Ave S). Said subdivision would be located in NE Quarter NE Quarter, Section 31, T139N, R46W (Riverton Twp.). The property is zoned Agricultural General (AG).

**On motion by Mike Hulett, seconded by Randy Schellack, and unanimously carried, the Planning Commission approved opening the public hearing.**

Tim Magnusson, Planning Director, displayed the site on an aerial photograph and the preliminary Plat submitted by the Applicant, and noted that the platted subdivisions that are proposed are properties located in agricultural land that is not considered marginal or on land that doesn't have mature trees. This proposal requires that it be a CUP before final Plat approval. There will need to be two separate actions addressed by the Planning Commission.

The subject property is located in Section 31, Riverton Township, owned by the Hershey Family Limited Partnership (“Hershey”) and totals approximately 185.99 acres. The Plat calls for three (3) lots for residential development to be located on an existing residential site. Currently there is a residential site adjacent to the east side, another one 700 feet north and a third, a 1/4 mile west. This does not exceed the density regulation of more than four (4) per quarter. The lots will be approximately 3.5 acres in size, more than meeting the 1.5 acre minimum lot size required in the AG zoning district. All proposed lots are large enough to allow all applicable setbacks to be met when structures are constructed on them. They also appear to be large enough to support the two on-site sewage treatment system sites required by Minnesota Statute.

The property is currently used for cultivated agriculture and there are no structures located on the site. The lots will all front County Road 12 and a new roadway will not need to be created. The County Highway Engineer reviewed the proposed Plat and stated that it will meet the required access spacing on a county road. All information complies with the County Ordinance for Lots.

The chair asked if there were any questions from the Committee members. Discussion was held as to the limitations of the 16 Lots, which are the maximum number of lots for any one subdivision in the agricultural district. Magnusson informed the committee that there is a 1.5 acre minimum lot size in the agricultural district. There could possibly be sixteen (16) 1.5 acre lots but would have to be located on a controlled roadway and the Township would have to accept any new roadway.

Rodger Pape, Berkshire & Hathaway, addressed the Committee stating that he is a real estate agent and he represents Hershey and informed the committee that Hershey was putting the remainder of the land up for sale.

Steve Ackerman, of Ackerman Land Surveying in Wahpeton, ND, introduced himself initiating a discussion on the drainage on the property. Ackerman indicated the land slopes to the south and there were drainage and utility easements created along each of the property lines so if the houses are built on a mound there, they would be 2 or 3 feet above the original grade.

Magnusson stated that the County Recorder has reviewed a copy of the preliminary Plat.

The Chairman asked if there was anyone else present who wished to speak for or against the request.

Ralph Schellack, 13227 50<sup>th</sup> Ave., Glyndon, MN, stated he thought Hershey should have been at the hearing and represented himself. Schellack said Hershey bought the property when the land prices were high and by purchasing the land at the higher price, it raised the value of all the surrounding land and now he and others pay higher taxes because of it. He believes if there are going to be new lots at a higher price, then that too will raise the taxes even more. Schellack suggests Hershey rent out the land or farm it themselves to make money that way. Schellack feels that it should remain agricultural land and said the land was up for sale last fall, and there was a bidding on it, but Hershey did not accept it so Schellack does not believe Hershey will accept anything.

Jarred Johnson, 12744 50<sup>th</sup> Ave., Glyndon, MN, introduced himself and stated his concern is that

he has never met Hershey, nor have they ever talked to him and Johnson does not want neighbors. Johnson and his family have been farming that section for nearly 5 generations. He is a farmer and an advocate of property rights and believes the laws in place are to protect from this very thing. Johnson stressed his opposition to the request.

Jay Jackson, who lives east of the proposed lots stated he is against the request. He and his family searched for a home for his family of 5 in a location without neighbors or a view of the urban area. There was discussion on how many lots that would total and the statute that governs that amount. Magnusson clarified the request is for 3 lots, that there is another lot and a home that is split by the line. Mr. Jackson informed that he is not a farmer, but knows he is not the only one against the request. He feels that it will not be beneficial for anyone to take away the farmland.

Ronald Bekkerus who lives at 13561 50 Ave., Glyndon, MN, agrees with a lot of what the people have said. His concern is it is an open door, and will even go further if the request is approved. He fears it could happen on his land.

Keith McGough, who lives 1 ½ miles from the subject property is against the request. Mr. McGough said he used to deer hunt in that area. He took a few years off and went back to the area three (3) years later. He saw many houses where he used to hunt. McGough is tired of the growth and is worried about his taxes going up. He does not agree with the request.

Rodger Pape, assured the Committee that Hershey is very easy to work with and never wants to do anything on the minimum standards. He reminded the committee that Hershey did not want a variance, that he made the lots twice as big as required, but not overwhelming and that he doesn't want to make waves in the community. Hershey talked to the County, the Township, and Steve Ackermann, the surveyor. Hershey also had his attorney, Ben Williams look at the request to affirm they were not doing anything wrong. Hershey has no plans to do anything else with the property. People had approached him asking him to do this. Discussion was held on the reason Hershey purchased the land. Baker stated that Hershey has been renting out the land and now there is a great demand for lots like these and many people are looking for them. Baker assured there will be stipulations and covenants so that nice homes will be built.

Archie Tanner, Riverton Township Supervisor, stated the Township would have no problem with 2 homes. Tanner added that it is Ag land and that is what Hershey bought it for. He informed that there is a water issue and no one has talked to the Watership Board. He advised that the ditch should be cleaned and that cleaning is the land owners' responsibility. Tanner spoke with Bruce Jaster of Environmental Services, and Jaster drove out and looked at the property. There is a dike on the south side of road. Tanner's concern is if they let people buy the lots, they have to deal with it and get flooded out. He feels it would be better if the lots were spread out instead of in a cluster. Tanner stated that Riverton Township does have zoning. Further discussion was held on the amount of acreage and whether there are 4 or 5 lots and if the split lot is counted in the quarter. They discussed the proposal for the ditch to head to the west then up to main road and where to build homes.

Magnusson said the recommendation given out of the Planning Office is that the safest thing to do is to build your house so that the main floor at least is at the elevation of the road in front of your house.

Heather Engen, Riverton Township Chair, voiced that the concerns at the hearing are the same concerns their Township has been hearing about during their meetings.

Lee Alm, Riverton Township Supervisor, stated he has been hearing the same concerns from Township members. There is an ordinance that states a minimum of 2 acre lots, and the requested lots of 3.5 acres exceed that. Township board voted at their last meeting and their position is to oppose it. Alm did say that if the request met the ordinance, that they could not stop the permit.

Jenny Samarzja advised the committee that as far as the CUP, the conditions are governed by the Findings of Fact and they should go through the 13 criteria as a board and that would then dictate their decision. A CUP is granted when the use is not a use spelled out in the Code. Samarzja clarified, that unlike the CUP, the Plat, regardless of the committee approval, will go to the County Board.

Wayne Ingersall commented he felt the people had good points during the hearing, but if nothing was going against the criteria, it would be hard to vote against the request.

Ron Beckkerus stated that on the property on the south side and going north, the water level was higher in the ditch than in the field.

**On Motion by Randy Schelleck, seconded by Mark Klevgaard, and unanimously carried, the Planning Commission closed the hearing.**

The Findings of Fact and Order were addressed by the Planning Commissioners as they pertain to the request. Items #1, #2, #3 and #5 were discussed and measures have been taken or will be taken for drainage (#5). The Commissioners discussed the Effect of Use, Use and Enjoyment of Other Property, drainage and burden on Public Services. All items can be addressed with conditions and no others were found to warrant further discussions.

**On Motion by Randy Schellack, and seconded by Mark Klevgaard, with 4 votes in favor and 2 votes against (Bill Davis and Mike Hulett), the Planning Commission approved the application for CUP to allow the development of a three (3) lot (each 3.5 acres in size), platted subdivision fronting CSAH 12 (50<sup>th</sup> Ave S) and located in NE Quarter NE Quarter, Section 31, T139N, R46W (Riverton Twp.), with the following four conditions at minimum:**

- 1. Have Clay SWCD do wetland evaluation of site and provide results to Planning Office**
- 2. Apply to MPCA for storm water management plan, as necessary. Provide documentation to Planning Office.**
- 3. Meet all County permitting requirements for access, building and septic system.**
- 4. Receive final plat approval from Clay County Board of Commissioners**

**On Motion by Mark Klevgaard, and seconded by Randy Schellack, with 4 votes in favor and 2 votes against (Bill Davis and Mike Hulett), the Planning Commission recommended approval of preliminary plat with the following condition:**

- 1. Fulfillment of all conditions drafted in the Conditional Use Permit issued for this subdivision.**

**Forward recommendation to the Clay County Board of Commissioners for final action.**

**OTHER BUSINESS:**

**Recommendation from County Administrator to Assign Times to Public Hearings.**

County Commissioner, Brian Berg approached Tim Magnusson about assigning specific times to the public hearings. Magnusson states the problem with assigned times, is you cannot start the next hearing early, or if one item drops from the Agenda, then you have a gap in time before the next hearing can begin. If no specific times are set, there is not an issue. Non-specific time will also leave the ability to rearrange agenda if necessary.

Mike Hulett stated that he likes the current structure of the meetings. He does not like time assignments so the committee can start with the public hearings so that the people can leave.

Wayne Ingersall commented that he agrees with Hulett. The committee could advertise with specific hearing times lest it be needed on occasion. Magnusson agreed.

Magnusson will report back to Administrator Berg that the Committee discussed assigning specific times to public hearings but felt the structure of the meetings should remain the same unless of a special circumstance where a specific time would then be noticed.

**Discussion on Urban Expansion District (UED) Proposal from City of Moorhead.**

Tim Magnusson informed the commission that the two proposals received have prompted the County and the City to discuss and review the Urban Expansion District. Discussion included whether it needs to be as big as it is and are the uses appropriate uses. The City laid out a timeline and the first part of it was to look at our growth areas verses the UED and come up with what is the most important area of the UED

Moorhead has proposed a multi-tier UED with some areas having more regulatory protection than others.

As was presented on the map provided to the commission, Magnusson explained the areas (in green) that the City would consider the Tier 1 areas, which are of the most concern for the City and would be afforded some higher level of protection and regulatory control. They happen to coincide with the growth area plans that have been done since about 2009. He informs that there are citizen groups working on specific planning for those areas.

Magnusson informed the Committee that he will be meeting with Kristie Leshovsky, Moorhead City Planner, next week to discuss the map, the kind of uses to see there and

regulations. He will also meet with the City of Dilworth Planner to find out if they have new areas for UED and how they want to participate in this.

Discussion was held on the green areas and maintaining the same regulations that are in place now and the areas further out with less restrictions.

Magnusson also made the Commission aware that we are moving forward on this review and hope to have any changes ready to present to the Planning Commission in November and County Board in late December of this year.

**Adjourn:**

**On motion by Mike Hulett, and seconded by Mark Klevgaard, the meeting adjourned at 8:20 p.m.**

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Thomas Jensen, Planning Commission Secretary