

MINUTES
CLAY COUNTY PLANNING COMMISSION
7:00 TUESDAY, APRIL 21ST, 2020
MEETING ROOM B - THIRD FLOOR COURTHOUSE

Members Present: Bill Davis, Amos Baer, Jenny Mongeau, Mark Klevgaard, Randy Schellack, Curtis Stubstad, Steve Lindaas, Steve Mortensen, Laura Johnson

Members Absent: Tim Brendemuhl, Andrea Koczur

Others Present: Matt Jacobson, Tony Weigel, Emma Notermann, Rita Rueckert, Amy Denz, Angie Keeping, Cindy Cole-Softing, Chad Softing, Cornelius Wipf, Geraldine Helmer, Jodi, KC, Kent Severson, Kevin Martin, Matthew Raisl, Nate Vollmuth, Rebekah Haag, Josh Haag, Rodger Hemphill, Steve Iverson, SW, Tami Norgard of Vogel Law Firm, Paul Strand, 701-306-4694, 701-361-5440, 701-371-4045, 701-361-0770, 218-7900-0287,

ROLL CALL:

Roll call was taken by Chair William Davis and has been recorded. The meeting was called to order at 7:03 PM. Director Matt Jacobson went over the rules and helpful tips for participation in this virtual meeting. Guests joining by telephone were asked to email their name to planning@co.clay.mn.us to accurately record their attendance.

APPROVAL OF AGENDA:

On motion by Steve Lindaas, seconded by Amos Baer, and unanimously carried, the Planning Commission approved the Agenda.

APPROVAL OF MINUTES FROM FEBRUARY 25, 2020 MEETING:

On motion by Amos Baer, seconded by Steve Lindaas, and unanimously carried, the Planning Commission approved the February 25, 2020 Minutes as presented.

CITIZENS TO BE HEARD: There were no citizens present to speak on any matters not on the agenda.

PUBLIC HEARINGS:

BRENT PETERSON – REQUEST FOR INTERIM USE

The applicant is seeking approval of an interim use permit for a temporary use to allow for a recreational vehicle park for a three-month duration in Section 26, Township 139N, Range 48W, parcel 21.026.2104 in Moorhead Township.

On motion by Amos Baer, seconded by Jenny Mongeau, and unanimously carried, the Planning Commission opened the public hearing.

Matt Jacobson, Planning and Zoning Director, read the request stating Applicant is requesting a temporary interim use to allow for a recreational vehicle park for a 3-month duration. This property is bordering the south

city limit of Moorhead, Minnesota and is situated west along Highway 52. It is approximately a 6-acre parcel. This property used to be a mobile home park and was discontinued or shut down due to failing or non-conforming septic systems on the property and those systems have not been up to code. During that time, former owner Patrick Peterson started an RV park/repair/storage business on that property that was not in compliance with the Clay County Land Development Code. The previous Director Tim Magnusson and the previous Environmental Health Director Bruce Jaster worked from 2013-2015 to stop the non-compliant use of the property. These efforts culminated in the owner Patrick Peterson being cited for a misdemeanor which he pled guilty to.

Patrick Peterson has since passed away and his son Brent now lives on the property. Brent has lived there his entire life. Approximately September 2019 the Planning and Zoning office was notified that the property was again operating as a RV park. Director Jacobson sent a cease and desist letter and later went out and spoke with the property owners and advised that the current Ordinance only allows for 2 RVs on the parcel and that is for storage purposes only and not for overnight stays.

As recently as yesterday or today, Brent Peterson has been advised that he can only store up to 2 RV units on his property and nobody can stay overnight unless he is permitted for a temporary Interim Use Permit and that the septic must be brought compliant. His plans are now to not use the onsite septic and that he would hire a 3rd party contractor to handle the septic/sewage waste. His intention is to not have more than 4 units on the property at any time and to for this property use to supplement his income. He was told that he cannot have anyone staying overnight. Applicant continues to have multiple RV units on the property with apparent occupants within those units, and this has been confirmed personally by Director Matt Jacobson.

Matt Jacobson shared a photo taken on this date showing at least 9 recreational vehicles on the property as of today and that there was at least one of them with people residing in it. He again told Applicant that only 2 RV units are allowed on the property and that currently nobody can be staying in them.

There have been concerns from the neighbors regarding the current and future uses of this property. The concerns involve noise, property values, traffic. Moorhead Township has concerns regarding the septic use and non-compliant septic systems. Applicant has been advised that Moorhead Township has their own zoning ordinance so even if the Planning Commission approves the application, Applicant will still need to seek approval from the Township. Director Jacobson feels that an interim permit would allow the Applicant to try out this venture; however, it does appear that Applicant has been trying out this business for several years.

There is another property in the county that is similar that allows temporary RV lots and there was discussion about staying consistent with application.

Mark Klevgaard asked about the current septic system. The understanding is that the only compliant septic system is the septic attached to the house. The pads currently do not have compliant septic. The big difference in something in Parke Township compared to this location in Moorhead Township is that there are different circumstances to take into consideration due to the surrounding land uses.

Jacobson advised that the Township has expressed concern about this request. Mark Klevgaard asked about the Tier 1/Tier 2 and this parcel is in Tier 1. A temporary 3-month permit is allowed in Tier 1 Urban Expansion District. A RV park is acceptable in a Tier 2 Urban Expansion district and if Applicant wished to continue this business, he would need to re-zone to Ag General or Tier 2 Urban Expansion District. Matt Jacobson shared that he has told the Applicant that he needs to bring his property into compliance if he wishes to continue this business. Applicant has been told this information in person, over the phone and by letter.

Steve Lindaas asked about pumping out the non-compliant septic systems. Kent Severson of Clay County Environmental Health stated that it would be acceptable to bring a licensed pumping company onsite to empty the individual RV septic tanks, though it is not encouraged. The septic system currently onsite is not compliant and the pumping would need to be done directly from the RV to the pumper.

The current resolutions would be as follows: 1) deny the request and get the applicant's property in compliance with the code which would be only 2 RV units on property for storage; 2) approve the temporary Interim Use Permit with the conditions as set out in the Staff Report of no more than 2 stored and 4 RVs onsite and contracting with license septic pumping company to pump directly from the onsite RVs; or, 3) to approve the application and leave the site as is with all the RVs he currently has stored out there and also allow up to 4 for overnight onsite stays. The definition of an RV park indicates 5 or more units which would require licensing with the County Environmental Health and also from the State of Minnesota.

Bill Davis asked what the course of action would be if he violated any conditions within the 3-month time period. Matt Jacobson responded that there would probably be a fine. Bill Davis pointed out that Applicant has had time and has not complied or followed the Ordinance as set out.

Mark Klevgaard asked why the mobile home park was discontinued. The septic was not compliant and had to shut down. Also, mobile home parks are not an allowable use in the unincorporated areas of Clay County or within the Tier 1 Urban Expansion District.

Applicant Brent Peterson's uncle Chad Softing spoke on behalf of the Applicant Peterson. He states he is working with Brent to get him compliant so he can secure the small income this business can bring to him. He is aware of the prior issues and actions regarding Patrick Peterson. Jenny Mongeau asked Chad Softing if the Applicant was aware that he was not in compliance. Chad Softing does not believe he understands that and is limited with his medical issues.

Mark Klevgaard asked how the Applicant planned to get in compliance. Chad Softing states that he feels a lot of the units currently there are junk and need to be removed. Matt Jacobson clarified that these would only be recreational vehicles and this site would not be a mobile home park.

Bill Davis asked the Applicant's representative how they would advise the renters regarding the septic system pumping situation. Chad Softing stated that there would need to be a sign posted. Chad Softing also stated that most of the people that utilize the property are workers doing construction in the area and that most of the business is through word of mouth.

Steve Lindaas noted that he just did a website search and located a current advertisement for business at this property and the phone number on the advertisement is the same as the phone number listed on the Application. Chad Softing states he is unsure of the number provided.

Jodi Larson, a resident to the north of the property in the Americana Estates, spoke of her concerns of the length of time this property has been non-compliant and their obvious disregard and defiance of the law. She has lived at her property for 12 years and shares a property line with the property in question. She states that there are photos on Facebook blatantly showing their defiance. She wonders why this Applicant will adhere to laws going forward when there has been no respect for the laws in the past. She feels the family circumstances are unfortunate but feels that the Applicant cannot claim ignorance and run a business.

Kevin Martin, Moorhead Township Chairman, advised that Moorhead Township is not in favor of this request. Applicant has shown disregard for compliance with the ordinances that are recorded, and they are concerned for the current state of the septic system. Amos Baer asked if the Township has been approached by the Applicant and Mr. Martin stated that there has been no contact and no request has been made to Moorhead Township. Bill Davis asked if Mr. Softing's request and involvement would have any impact on the current stand of the Moorhead Township. Mr. Martin states that there are many factors that would need to be addressed before they would be in favor of this request.

On motion by Steve Lindaas, seconded by Steve Mortensen, and unanimously carried, the Planning Commission closed the public hearing.

Matt Jacobson advised that he had just received information that Patrick Peterson passed away in the fall of 2018. Patrick Peterson was the one in charge of the property up until the time of his death and all violations and non-conforming activity to that time was because of Patrick's actions. Any actions since that date would be under the direction and control of Brent Peterson.

Jenny Mongeau pointed out that there is a Facebook advertisement for this property RV park from November 2019 and asked if the matter should be considered as an after-the-fact use. Matt Jacobson advised that he does not believe this would be an after-the-fact situation.

The Findings of Fact and Order were addressed by the Planning Commissioners as they pertain to the requested permit.

Findings discussion also involved Highway Department concerns for access, as well as future highway improvement projects.

Amos Baer felt that the Applicant should be given the opportunity to operate for 3 months to prove he will follow the rules. Curtis Stubstad stated that he goes by this property daily and it has been a mess but; now that the Applicant has someone to help him, he should be given a chance. Steve Lindaas stated that although he can sympathize with the Applicant's current situation, there is a long history of non-compliance and nothing brought to the Township within that time period. Matt Jacobson stated that the first encounter he had with Brent Peterson regarding non-compliance was approximately September 2019 and ventured perhaps Brent Peterson felt that he was not really doing anything wrong. Brent Peterson and his aunt and uncle Chad Softing and Cindy Cole-Softing have all been advised of the rules and the regulations per the Development Code.

Randy Schellack felt the Applicant may not have been given ample opportunity to turn this situation around. Jenny Mongeau asked the County Attorney Tony Weigel as to his opinion on this matter. Weigel states that he and Director Matt Jacobson have had several conversations about this. Jenny Mongeau asked when the 3-month period would start, since he has already been operating and he has been advertising for year-round storage since last fall. Matt Jacobson felt that once he cleans up the property and removes the excess units, then at that time he may possibly be able to have overnight guests and start the 3-months at that time. Jacobson stated that he would need to do a site inspection to determine when the Applicant could be given the go-ahead. Jacobson acknowledged that there are more units on the property now than when he was there in October meeting with the Applicant and his aunt and uncle.

Tony Weigel clarified RV park vs. mobile home park, in that RVs are relatively easy to move. Any 3-month period would be between Brent Peterson and his potential renters. Although he would be able to advertise year-round, he would only be able to accept units for 3 months of the year.

Steve Mortensen stated that based on the photo taken this morning it appears that the situation has changed for the worse, not the better, since the conversation Matt Jacobson had last fall onsite with the Applicant and his relatives.

Steve Lindaas pointed out that the Township is not in favor of this request and that it doesn't appear they will be approving the request, so it doesn't seem that the Planning Commission approving the application would be beneficial. He pointed out that he does not feel that there has been a good faith effort made on the part of the Applicant in cleaning up the property and following the rules he has been given.

Jenny Mongeau asked if this request could be tabled until after the Township's decision. Matt Jacobson indicated that the request could be tabled for 120 days. It was clarified that there is currently an extension on the 120-day order due to the current Covid-19 pandemic. Jenny Mongeau pointed out that if there is a decision made at this time and the Applicant's request is denied, he must wait one year to re-apply. If the matter is tabled until after the Township decision, it will give the Applicant time to conform and the Planning Commission will have more information to form a decision. Any time there is a hearing that introduces new testimony, the hearing will need to be noticed to the public and re-heard. Amos Baer felt that if the hearing is tabled, it stays open and does not have to be noticed. Amos Baer states if it is tabled for 30-45 day period and there is progress on the cleaning up of the property, then it would assist in making the best decision. Amos Baer feels that tabling the decision would give the Applicant an incentive to start cleaning up the property. Mark Klevgaard agreed with this approach, especially given that RV peak time is the months of June, July and August.

Steve Lindaas asked if they can choose which 3 months they want for their permit. Matt Jacobson advised that the Planning Commission may choose the months, or the Applicant can state which 3-months they wish to operate. Lindaas shared his desire to table this hearing to allow time for the Township to weigh in and also give the Applicant time to clean up. Curt Stubstad agreed and felt that it could help get the neighbors more in agreement. Laura Johnson agreed that the best route would be to give them time to clean up the property and get the Township approval. It was noted that the next Township meeting is May 18, 2020 at 7:00 pm.

Jenny Mongeau indicated that tabling the matter would give the Applicant time for improving current conditions on the property and this might work in Applicant's favor by changing the current stance of the Moorhead Township Board.

On motion by Steve Lindaas, seconded by Jenny Mongeau, the Planning Commission voted to table the motion, with Amos Baer, Randy Schellack and Mark Klevgaard voting against tabling the motion until after the May 18th, 2020 Moorhead Township meeting.

SPRING PRAIRIE HUTTERIAN BRETHERN, INC. – PETITION FOR TEXT AMENDMENT TO THE CLAY COUNTY LAND DEVELOPMENT CODE

The applicant is petitioning to amend text of the Clay County Land Development Code to create a new commercial and industrial use in Chapter 5, Table 5-1 for the manufacture of cast concrete in the Agricultural General, Agricultural Service Center, and Highway Commercial Zoning Districts.

On motion by Amos Baer, seconded by Randy Schellack, and unanimously carried, the Planning Commission opened the public hearing.

Matt Jacobson, Planning and Zoning Director, went over the different zoning districts and how they interact with the development plan, specifically the Agricultural General zoning district, which is approximately 90% of the county, Agricultural Service Center district and the Limited Highway Commercial district. Because this is a text amendment request, it is not specific to the Applicant's property but would affect the entire county. The 2002 Comprehensive Plan has a focus of long-term protection of agriculture within the county within the Agricultural General Zoning District. Agricultural Service Center are unincorporated communities within the county. Examples are: Baker, Downer, Rollag, Rustad, Kragnes. Highway Commercial districts are to plan for the orderly and efficient growth of residential, commercial and industrial development in the County and to encourage new commercial and industrial developments that do not require public sewer and water to locate

within the Planned Urban Growth Areas in locations with adequate road service.

Spring Prairie through their attorney Tammy Norgard submitted an application to allow cast concrete. They currently have a cast concrete plant on their property which is not compliant in their zoning district. In 2005 an application was approved for an agricultural shop constructed sometime between 2006 and 2007. In 2016 a building permit was obtained for an expansion to that facility, completed in 2017. The Planning and Zoning office at that time realized the addition was to a pre-cast concrete plant. The Applicant recently submitted a building permit for an addition on this building. However, since the building is not compliant, they were encouraged to go through these steps to become compliant.

If the Application is approved tonight by the Planning Commission, it will then be recommended to the Board of Commissioners to have the text amendment approved. The application request does not seem to be in agreement with the comprehensive plan; however, it is already operational. Matt Jacobson's staff recommendation is to include this use within the referenced Land Uses and then address the standards (such as land use issues, noise, lighting, water, dust control, traffic, etc as well as locating close to areas with supporting infrastructure) to provide controls in places that are favorable to handle that type of development. Matt Jacobson showed progression photos of the property showing the buildings/uses and the changes of those over the past 14 years. Since 2017 it appears there is a large area developed for lay-down sites as well as an additional site across the road.

Steve Lindaas asked about a facility coming up on the internet as Tera-Con. There is another location on the property that has cow barns. He asked if the Applicant has worked with the Director, Department or Township to coordinate planning. Matt Jacobson indicated that he has seen an increase in willingness for the Applicant to work with the county on development. There have been after-the-fact building permits issued. Steve Lindaas also asked about the storm water management plan for this property. Matt Jacobson has talked to David Overbo regarding this. There are items for storm water management that they would need based on the MN Pollution Control. A site of this size would require a Stormwater Pollution Prevention plan – it is unknown if they currently have one. Matt Jacobson feels that conditions can be placed that any future development to require storm water management. He encouraged the Planning Commission to look at this request broadly across the County as it is a new use and not just specific to this site.

Mark Klevgaard asked about the criteria for defining this property as a city. There is a significant amount of businesses, as well as a significant amount of people who reside at this location. The other unincorporated areas that resemble this property still fall under the jurisdiction of the Clay County Development Code.

Tammy Norgard, an attorney with the Vogel Law Firm, represented Spring Prairie Hutterian & Brethren. The current plan is that Spring Prairie would like to extend the facility. The work they are currently doing has grown because they developed a successful commercial operation, but it does not currently fit into any of the classifications allowed. She does not feel that this precast concrete plant is not much different than the redi-mix plants and asphalt plants that are already allowed. Tammy Norgard pointed out that any facility like this wanting to be built under any changes in the text amendment would still need to come in front of this Board for approval. They have talked with the EDC and are exploring an even bigger facility in another location of the county. A text amendment change would give them the opportunity to then submit a request for a Conditional Use Permit. Norgard feels that they are good neighbors and have had discussions with their neighbors. She also pointed out that there weren't years of non-compliance but rather this is a business that simply outgrew its intended use and grew into another direction that they now want to get in compliance and expand.

Matt Jacobson responded to Ms. Norgard's comments. He states that last spring the majority of complaints heard within the county were from this area. He has worked closely with the Applicant, with the neighbors, and with the Spring Prairie Township board, and although there are still bumps in the road, there has been much less level of complaints and concerns. The current facility is something at the time that would have required extensive environmental review but because of the time passed, he feels that ship has sailed. He does however feel that there are issues like storm water management that need to be considered and to work with

the Applicants. Jacobson solicited insights or issues from David Overbo regarding the traffic situation in that area, with heavy trucks on gravel roads with increasing frequency.

David Overbo states that the Highway Department gets a lot of calls, especially in the springtime, regarding the condition of the roads in this area. The restriction periods seem to bring the most calls. He feels it is problematic trying to get the heavy loads in and out of this property. He is not sure on the current situation of the storm water management but would like to see something in place and followed.

Matt Jacobson states his research was limited regarding ground water management, sewer systems, storm water management or other types of management. They do have a water appropriation permit from the MN DNR for ground water use. Things like retaining ponds and other such management are generally required by the State. Since this hearing is a text amendment request, the focus of this meeting is not for these water issues. However, concerns like the road situation would be items to be addressed with this hearing. Matt Jacobson indicated the Applicant has provided some suggested standards in their draft ordinance that could be included.

On motion by Steve Lindaas, seconded by Curtis Stubstad, and unanimously carried, the Planning Commission closed the public hearing.

The Findings of Fact and Order were addressed by the Planning Commissioners as they pertain to the requested permit. The items to be discussed are: Criteria and General Review Standards for Granting Zone District Amendments:

1. Effect of Proposed Use;
2. Additional Findings:
 - a. Burden on Public Utilities;
 - b. Related to Overall Needs;
 - c. Consistency with Ordinance;
 - d. Conflict with Comprehensive Plan;
 - e. Prematurely Stimulate Public Investment in Utilities.

County Attorney Tony Weigel was asked that if the amendment was changed, would that force the Township and County to upgrade the road, or would it mandate the traffic to lighten their load to comply to existing restrictions and conditions. Attorney Weigel was not sure it would mandate that change. Amos Baer stated he believes the location of this site is good for the proposed business and it will bring good economic development and industry to the area. Steve Lindaas asked what the implications of approving this request would be to Planning & Zoning and what unintended consequences it might have. Matt Jacobson states that the request is a good use within the Highway Commercial Zoning District and also the Agricultural Service District, although he does feel that there needs to be additional standards in place with increasing the setbacks. Other things to be considered would be direct access to a 10-ton asphalt haul road, or 9-ton gravel road in the summer, dust control, etc. He feels additional standards could be helpful in better service to the County and the residents of County for future development and economic growth without changing existing communities or impacting sensitive resources.

David Overbo states that several years ago the State required all paved county roads were supposed to be 10 ton automatically. If the road was not strong enough to handle 10-tons loads, they would need to be posted.

Steve Lindaas expressed concern about making large changes to a comprehensive plan without the time to study the impact of those changes and to include county residents' input. Chair Bill Davis felt that the only way to get this Applicant in compliance is to make the text amendment changes to allow them to become compliant. Steve Lindaas was concerned that this could set a precedent for others to perform whatever activities they

desire, and then to just proceed to request the County to make appropriate changes for them to be compliant. Amos Baer asked if there was a concrete plant about a mile north of Highway 10 that produces blocks. Matt Jacobson provided an aerial showing the property that was being questioned. It is owned by Structural Properties, rezoned to Highway Commercial and nothing was ever constructed. Matt Jacobson did not believe that there are currently any Highway Commercial zoning districts located on gravel roads. He feels that the Planning Commission and the County Board could come up with the standards for this rezoning. He feels that coming up with additional standards to guide development of pre-cast concrete plants would be the best solution.

On motion by Amos Baer, seconded by Mark Klevgaard, the Planning Commission approved a motion for recommendation to the County Board for text amendment for the following 3 zoning districts: Agricultural General, Agricultural Service Center, and Highway Commercial. The vote was 6 in favor, 1 abstained (Jenny Mongeau) and 1 no vote (Steve Lindaas). Steve Lindaas stated he was not in favor of including the Ag General zoning district in the text amendment.

Several individuals expressed their gratitude of Spring Prairie Hutterian & Brethren colony recent efforts in securing appropriate permits and exercising a good effort to bring their activities into compliance.

Matt Jacobson advised that he get this recommendation on the County Board of Commissioners Agenda at the first earliest opportunity since the Applicant wants this matter expedited. Jenny Mongeau advised that this was a good platform for conducting virtual meetings to allow for public input and asked about using the method to deliver the hearing for the Board of Commissioners meeting where this will be heard.

UNFINISHED BUSINESS:

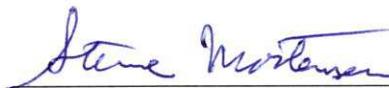
There was no unfinished business.

NEW BUSINESS:

No new business.

ADJOURNMENT;

On motion by Steve Lindaas, seconded by Amos Baer, and unanimously approved, the meeting adjourned at 9:47 PM.



Steve Mortensen, Planning Commission Secretary