

MINUTES
Blue Earth County Planning Commission
Regular Meeting
Wednesday, June 7, 2023
6:30 p.m.

1. CALL TO ORDER

The meeting was called to order at 6:30 p.m. by Chairman Joe Smentek. Planning Commission members participating in the meeting included Bill Anderson, Kurt Anderson, Commissioner Bruender, Dusty Riley, Dan Roberts, Taryn Surdy, and Chairman Smentek. Staff members George Leary, John Considine, Scott Salsbury, Mark Manderfeld, Garrett Rohlring, Michael Stalberger, Molly Kjellesvig, Dane Lynch Robert Meyer and Megan Gaudette Coryell were present.

2. APPROVAL OF MINUTES

Mr. Kurt Anderson made a motion to approve the minutes of the Wednesday, May 3, 2023, Planning Commission meeting. Ms. Surdy seconded the motion which was carried unanimously.

3. APPROVAL OF AGENDA

Mr. Leary stated there were no changes to the agenda.

4. NEW BUSINESS

PC 08-23

Marks Farms, Inc. - Request for review and approval of a Conditional use permit to expand an existing feedlot owned by Marks Farms, Inc. The expansion will include the construction of additional total confinement poultry barn and a shed for storing solid manure. The new barn will house 200,000 laying hens under 5 pounds which is the equivalent of 600 animal units. The expansion will increase the permitted capacity total from 145,000 laying hens (435 animal units) to 315,000 laying hens (935 animal units). The property is in Blue Earth County, is zoned agricultural, and is in part of the Northwest Quarter of the southeast Quarter of Section 15, Mapleton Township. The site address is 58721 119th Street, Mapleton, MN.

Mr. Rohlring presented the staff report.

The applicant was present and available for questions.

There was no further discussion.

Mr. Riley made a motion for recommendation of approval based on the findings prepared by staff and with the conditions recommended by staff.

Mr. Roberts seconded the motion, which passed unanimously by a roll call vote.

PC 12-23

Kristen and Joseph Friedrichs - Request for review and approval of a preliminary plat of Friedrichs Farms, a replat of Auditors Plat No. 17. The replat will split the property into one Outlot and one Lot for a future land exchange. The property is in the Southeast Quarter of the Southeast Quarter of Section 27, Vernon Center Township. The location address is 13805 US Hwy 169 Vernon Center, MN.

Mr. Leary presented the staff report.

The applicant was not present.

There was no further discussion.

Mr. Bill Anderson made a motion for recommendation of approval based on the findings prepared by staff and with the conditions recommended by staff.

Mr. Kurt Anderson seconded the motion which passed unanimously by a roll call vote.

PC 17-23

Lee and Kristine Bohrer & Terrace View West Co-op Association - Request for review and approval of the preliminary plat of Terrace View Subdivision No. 2. The request is a replat of Lots 12 through 15 of Terrace View Subdivision. The plat will change Lots 12 through 15 into two Lots and one Outlot. The properties are zoned Rural Townsite and located within the Urban Fringe Overlay District of the City of Mankato. The properties are in the southwest quarter of the northwest quarter of Section 4, Decoria Township.

Mr. Leary presented the staff report.

Nate Myhra represented the applicant, was present and available for questions.

There was no further discussion.

Mr. Bill Anderson made a motion for recommendation of approval based on the findings prepared by staff and with the conditions recommended by staff.

Ms. Surdy seconded the motion which passed unanimously by a roll call vote.

PC 19-23

Paradise Valley Trust and Lorentz Construction – Request for review and approval Interim Use Permit for an aggregate mine and accessory uses in the Southeast Quarter of Section 6, Rapidan Township. Access to the gravel mine is proposed From County Road 9 in Section 7, Rapidan Township.

Mr. Salsbury presented the staff report.

Nick Lorentz was present. He stated they had presented design plans and a noise study and would be available for questions.

The following individuals provided comments opposing the request: Tammy Massa, Brian Tryhus, Cassandra Peterson, Jean Fortune, David Birr, Jeff Hickock, John Massa, and Lisa Birr. Their comments included the following concerns/comments:

1. The potential for water contamination.
2. The potential for well water contamination.
3. Impacts on wildlife.
4. Increased truck traffic and associated noise.
5. The fear that operators will be using explosives.
6. Hours of operation should end no later than 5:00 p.m.
7. Negative impact on the county park.
8. Tracking of gravel and dust onto CSAH Road 9.

9. The fear that reclamation area will create the potential for increases in mosquitos.
10. Suggestion that the reclaimed pit be brought up to the existing ground level.
11. Impacts on those that work at night and who are trying to sleep during the day.
12. Impact on those using the bike trail.
13. Inability to walk on the road during hauling hours.
14. The current speed limit on CSAH 9 is not observed already.
15. Potential for impact on property values.
16. Groundwater contamination due to fueling and fuel leaks.

David Birr also stated that the tree removal agreement was not to cut them back four or five feet.

Lisa Birr also stated they had not agreed to 10 to 15 feet of tree removal.

Brian Petzel from ISG stated the bottom of the pit elevation will be at approximately 820 feet and the top areas form 854 feet to 872.

There was no further public comment.

Scott Salsbury stated the letter received from the public was from Kyle Mullen and Dr. Brittany Smith. In their letter, they expressed several concerns that had already been shared. Their concerns also included impacts on the natural environment and surrounding area and serious risks to the safety of the surrounding community.

Mr. Kurt Anderson stated the criteria of the proposal is laid out in law and the Planning Commission has to make some unpopular decisions. He added that it appears the applicants have met the criteria.

Commissioner Bruender stated the proposal is unique with the nearby campground. He questioned the truck counts.

Mr. Salsbury stated the peak truck count is 50 per day or 100 trips. In addition, there will be three employees which would likely add another 6 trips for a total of 106 trips.

Mr. Bill Anderson stated he lives approximately one mile from the site. He added that based on the public comments, he is hesitant to vote for approval. He opined that additional study was needed.

Mr. Riley asked if the truck traffic will vary.

Mr. Salsbury stated the peak truck count was listed.

Mr. Riley continued and stated that there will be times when there is little or no activity. He stated his concern with the 7:00 p.m. daily end of operations.

Mr. Roberts stated his concerns with safety. He added that he can't dismiss all the work that has been done.

Ms. Surdy said the proposal will take land out of agricultural production. She expressed concern with the impact on the park and the enjoyment of the land.

Mr. Smentek referenced the conditions of the resolution. He stated the permit could be considered for revocation if the conditions are not followed.

Ms. Surdy made a motion recommending denial of the request to the County Board based on non-compliance with the Land Use Plan. Mr. Bill Anderson seconded the motion. The motion failed by a roll call vote of three in favor to four opposed. Commission members voting (yes) in favor of the motion included Mr. Bill Anderson, Ms. Surdy and Mr. Smentek. Commission members voting (no) against the motion included Mr. Kurt Anderson, Mr. Riley, Mr. Roberts, and Commissioner Bruender.

Mr. Kurt Anderson followed with a motion to recommend approval of the request to the County Board adopting the findings and conditions listed in the staff report. Commissioner Bruender seconded the motion. The motion carried by a roll call vote of four in favor to three opposed. Commission members voting (yes) in favor of the motion included Mr. Kurt Anderson, commissioner Bruender, Mr. Riley, and Mr. Roberts. Commission members voting (no) against the motion included Mr. Bill Anderson, Ms. Surdy, and Mr. Smentek.

PC 18-23

William Bielen - Request for an After-the-Fact Interim Use Permit to allow for the cutting and filling on a bluff for the construction of a shoreland access path. The site is in the Shoreland of Ballantyne Lake, a Recreational Development Lake as classified by the MN Department of Natural Resources and includes Lot 3 Block 1 of Hager's Lake Ballantyne Subdivision. The property is zoned Rural Townsite. The project address is 112 Jack Drive, Madison Lake, MN.

Mr. Lynch presented the staff report.

The applicant was present and available for questions.

There was no public comment.

Mr. Kurt Anderson stated he had concerns with After the Fact applications and that the property owners bear the responsibility for their actions.

Commissioner Bruender stated he appreciated the engineered report and as-builts provided.

Mr. Bill Anderson stated he had some concerns about erosion but stated that had been addressed.

Mr. Smentek stated that he agreed with Mr. Kurt Anderson and that future After the Fact applications on this property will not be looked upon favorably.

There was no further discussion.

Mr. Kurt Anderson made a motion for recommendation of approval based on the findings prepared by staff and with the conditions and the amended condition recommended by staff.

Ms. Surdy seconded the motion which passed unanimously by a roll call vote.

PC 13-23

Blue Earth County and John F. Just Sr. Family Cabin Trust - Request for review and approval of a vacation of public right-of-way described as the 14-foot-wide right-of-way lying adjacent to

Lot 1 in the Plat of Hillside Lake Washington, which lies southerly of the easterly extension of the North line of Lot 1 as shown in the Plat of Hillside Lake Washington.

Mr. Considine presented the staff report.

The applicant was present and available for questions.

There was no further discussion.

Mr. Kurt Anderson made a motion for recommendation of approval based on the findings prepared by staff and with the conditions recommended by staff.

Mr. Roberts seconded the motion which passed unanimously by a roll call vote.

PC 16-23

Blue Earth County - Request for the review and revocation of Conditional Use Permit PC 35-21 to operate a source-separated organic material compost facility due to noncompliance with the findings and conditions of approval. The property is zoned Agricultural and is in the Southwest Quarter of the Northwest Quarter of Section 1, Lyra Township. The site address is 16225 563rd Ave, Good Thunder, MN.

Mr. Considine presented the staff report.

Tim Kelly (the applicant's attorney) stated that he and owner Bob Weerts were in attendance.

The following individuals provided comments supporting the recommendation for revocation. Dan Fitzsimmons, Dr. Theodore Surdy, Brian Severns, James Pestka, Doug Hager, John Brindley, Vicky Hollerich, Cameron Rather, Curtis Speck, Lonny Schwantes, Kristen Lawson, Jason Anderson, Sam Sombke, and Kelly Halvorson. Their comments included the following statements:

1. The facility is out of compliance with the conditions of the permit.
2. Trash and plastic from the site blow out onto neighboring farm fields.
3. The number of flies has exploded.
4. A wide range of odor descriptions were noted. All of which indicated the odors are extremely unpleasant. It was noted that the odors permeate into homes, vehicles, and clothing. One individual stated the odors are traumatizing. Another individual said at times the odors can nearly be tasted.
5. People are getting physically sick from the odors.
6. The odors are impacting the residents of the City of Good Thunder.
7. The odors impact gatherings at neighboring properties.
8. Property values will decrease.
9. Dust from the gravel haul route settles onto nearby building sites.
10. Do not table this item to a later date. Action needs to be taken now.

Mr. Rather also questions the calibration of the testing equipment.

Members of the Planning Commission expressed their concern with the comments provided by the public. Ms. Surdy disclosed that her parents live near the facility and stated the smell is horrible. Members also referenced the need to allow for due process to take place.

Following the discussion, Commissioner Bruender made a motion to table the item to June 28th. The motion died due to lack of a second.

The legal representative of facility was then allowed to comment.

Tim Kelly of Stinson LLP and representing the owners of the facility provided comments to the Commission.

Mr. Kelly stated he understands the motion failed. Staff made that recommendation in part because a conditional use permit is a protected property right which means you can't take it away or revoke it without due process. Due process requires adequate notice and an opportunity to be heard. He added that due process is lacking because the staff report recommends revocation, and this wasn't shared until late. Based on evidence that the property owner hasn't had adequate time to review he submitted to the public record a packet that the PC will have little time to review. The law is clear that you can't revoke without material evidence of non-compliance. The findings are not a legal course for revocation. Staff identified one condition as the bases for revocation, condition 14, which states...operating procedures...does not constitute a nuisance. Permit and license compliance is the only way to revoke, and the staff report doesn't address this. There is no basis for revocation. Condition 14 remains an inadequate basis for revocation. The staff report relies on their definition of nuisance, and this isn't addressed in the permit. Staff has developed a smell rating category with a staff standard that has to be met. County is trying to revoke a permit that is not in the CUP. He asked how can it be expected for someone to meet a criteria they're unfamiliar with. It is arbitrary and capricious. The staff standard does not establish a nuisance. Any nuisance analysis for this facility standard must begin with the location and surrounding uses. It's in the Ag zone. People living in the ag zone have to deal with odor. A compost facility has normally occurring odor as was understood from the beginning. Staff questioned Foth's methods. There are four feedlots in the vicinity and there is smell in this area. New categories to describe smell, surrounding ag areas have smells. There is nothing in the staff report that describes staff qualifications. The facility owner consistently worked with staff regarding odor, May 2022 in compliance, and continue to make improvements. Best practices and improvements include adding an aerator, mixing within the building, windrows are turned 2-3 times a week, staff has been replaced, testing a new product that treats windrows. The facility hears complaints and tries to act on it. The 60-day compliance time period was not a fair opportunity. Improvements cannot be made during that time period due to winter and rain. It was next to impossible to improve during that time. Mr. Kelly requested that revocation is not pursued and asked to extend 120 days.

The Planning Commission resumed their discussion.

Members expressed their concern with being able to process the new information quickly.

Mr. Kurt Anderson stated his concern for the public and the applicant. He added the Commission is walking a fine line due process is not provided to the applicant, and the Commission acts hastily and the potential consequences of doing so.

Mr. Bill Anderson concurred with Mr. Kurt Anderson. He added we may be faced with a lawsuit due to a violation of procedure. He added the between a lawsuit and appeal, this process could last a long time.

Mr. Smentek stated he understands the concerns expressed and the position of the county and due process. Regarding Mr. Kelley's comments, we are in the middle of due process. They have been notified and we are in the process of the hearing. He added that there are no substantiative property rights being decided tonight. The Planning Commission makes a recommendation to the County Board. The Board can listen or may not listen. The public and Mr. Kelly can speak at the June 20th meeting. The commissioners may decide to table at their meeting.

There was no further discussion.

Ms. Surdy made a motion to support staff's finding of revocation and proceed with the recommendation of revocation of the permit to the County Board based on the findings and conditions prepared by staff. The motion was seconded by Mr. Bill Anderson. The motion carried by a roll call vote of four in favor to three opposed. Commission members voting (yes) in favor of the motion included Mr. Bill Anderson, Mr. Roberts, Ms. Surdy and Mr. Smentek. Commission members voting (no) against the motion included Mr. Kurt Anderson, Mr. Riley and Commissioner Bruender.

5. OTHER BUSINESS

- A. County Board action on items from the previous Planning Commission meeting:
 - Victor & Kathleen Barke and Jason Wannarka – Preliminary and Final Plat. (approved)

7. ADJOURNMENT

Ms. Surdy made a motion to adjourn the meeting. Commissioner Bruender seconded the motion, and the meeting was adjourned at 10:05 p.m.

Planning Commission Chair

Date

Planning Commission Secretary

Date