

Planning Commission MINUTES August 11th, 2022

PRESENT: Gerry Feld, Chris Vannurden, Art Buhs, Scott Johnson, Jerry Lang, Warren Peschl

Staff: Roxanne Achman, Karen Loehrer

- 1) Scott called the meeting to order followed by the Pledge of Allegiance.
- 2) Warren moved to approve the agenda. Jerry seconded and the motion carried.
- 3) Art moved to approve the minutes from the June 23rd meeting. Gerry seconded and the motion carried.
- 4) Request for conditional use permit extension by Chaz and Kristina Obrycki.

Roxanne stated that the Obrycki's are requesting a one-year extension of their conditional use permit to transfer a density right due to the cost of materials.

Art moved to grant this one-year extension. Jerry seconded and the motion carried.

- 5) File #22-231, Tim and Gloria Rajkowski requesting a conditional use permit to operate a contractor shop in the Agricultural District. Pursuant to Sections 7.2.4(N), 9.9 and 11.6.1. The affected property is described as follows: Lot 2, Block 1, Cornerstone Acres, Section 35, Watab Township.

Roxanne showed an aerial photo of the site. She stated that in 1988 a CUP was granted for a tower contractor and warehouse for tower equipment. In 2020 a CUP was granted for mini storage on the west part of the parcel. In 2021 the property was platted to separate the mini-storage from the tower warehouse contractor. The owners rent this space out. The applicants are requesting a CUP for a contractor shop to accommodate the renter. There is an office on site. There are no plans to expand any of the buildings. There is an existing access

and parking areas. This site is significantly screened from the road. There is wetland to the south. There is a vacant platted lot to the east. Property to the north is zoned commercial. The site is within the Highway 10 Commercial Corridor.

Tim and Gloria Rajkowski were present on-line.

Ben Copperthite, 6963 125th St NW, Annandale, MN, was present representing the property owners. He stated that they are requesting a conditional use permit to operate a contractor shop. The business that would be using this site would be relocating from St. Joseph. There would be 20-30 employees.

No one spoke in favor, opposition or with general comments. Gerry moved to close the public hearing. Art seconded and the motion carried.

Gerry moved that the request meets Section 7.2.4(N) pages 4-5, Section 9.9 pages 25-26 and 11.6 pages 9-12. Chris seconded and the motion carried.

In reviewing Section 11.6 the vote was as follows

1. Warren stated that the lot will not be changing, and the use is similar to what was there. The vote was unanimous that the use will not create an excessive burden on existing parks, schools, streets and other public facilities and utilities which serve or are proposed to serve the area.
2. Jerry stated that the site is heavily screened to the north and east. There is a wetland to the south. Any outdoor storage would need to follow Sections 9.9.2 and 8.6.1. Scott stated that the property to the north is zoned commercial. This site is in the Hwy 10 Corridor. The site is 400ft from the nearest residence. The vote was unanimous that the use is sufficiently compatible or separated by distance or screening from adjacent agricultural or residentially zoned or used land so that existing homes will not be depreciated in value and there will be no deterrence to development of vacant land.
3. Art stated that the use will not have an adverse effect. The building and site have a professional appearance to them. The vote was unanimous that the structure and site will have an appearance that will not have an adverse effect upon adjacent properties.
4. Warren stated that a contractor's shop is allowed by conditional use in accordance with Sections 9.9 and 11.6. The site is currently being used for a different contractor service. The vote was unanimous that the use, in the opinion of the Planning Commission, is reasonably related to the existing land use.
5. Art stated that the request meets (B), (C) and (E) under Section 2.1.1. He moved to add the development conditions to File #22-231. Gerry seconded. Scott asked the applicant if they were in agreement with the conditions. Ben read through the conditions and agreed with them. The vote was unanimous that the use is consistent with the purposes of the Development Code and the purposes of the zoning district in which the applicant intends to locate the proposed use.

6. Gerry stated that the site is planned Highway Commercial uses, even though it is currently zoned Agricultural. The proposed use of a contractor's shop is allowed in the agricultural district with a conditional use permit. He cited Land Use Goal #2 Rural Land Use Policy #1: Rural Land Use and Policy #9: Highway 10 Corridor and Economic Development Goal #1 Resources Policy #2: Business Retention. The vote was unanimous that the use is not in conflict with the Land Use Plan of the county.
7. Jerry stated that the business is not anticipated to cause traffic hazards. Vehicle traffic should be similar to the amount of traffic currently there. The vote was unanimous that the use will not cause traffic hazards or congestion.
8. Art stated that wetland delineation was completed when this property was platted. There were no violations at that time. Given that there are no planned expansions to the site, the wetland provisions of MN Statute Chapter 103G will not be violated. The vote was unanimous that the use will not violate the wetland provisions of Minnesota Statutes Chapter 103G.

Roxanne read the findings and conditions.

Findings

- (1) Will the use create an excessive burden on existing parks, schools, streets and other public facilities and utilities which serve or are proposed to serve the area?

It will not. The use was there before. The use of this lot will not be changing.

- (2) Is the use sufficiently compatible or separated by distance or screening from adjacent agricultural or residentially zoned or used land so that existing homes will not be depreciated in value and there will be no deterrence to development of vacant land?

It is heavily screened to the north and east. Should the contractor have outdoor storage, it is to follow the provisions of Section 9.9.2 and 8.6.1 as amended from time to time. No other issues exist with the site. It is planned commercial to the north and it's proposed highway commercial in this area according to the Comprehensive Plan.

- (3) Does the structure and site have an appearance that will not have an adverse effect upon adjacent properties?

It will not have an adverse effect. The building and site have a professional appearance to them.

- (4) Is the use, in the opinion of the Planning Commission, reasonably related to the existing land use?

A contractor's shop is allowed by conditional use in accordance with Sections 9.9 and 11.6. The site is currently being used for a different contractor service.

- (5) Is the use consistent with the purposes of the Development Code and the purposes of the zoning district in which the applicant intends to locate the proposed use?

In accordance with the following Sections:

(B) To divide the unincorporated areas of the county into zones and districts restricting and regulating therein the location, construction, reconstruction, alteration, and the use of structures and land.

(C) To promote the orderly development of residential, business, industrial, recreational and public areas.

(E) To prohibit uses, buildings or structures which are incompatible with the character of development or the permitted uses within specified zoning districts.

The development conditions for file no. 22-231 are adopted.

- (6) Is the use in conflict with the Land Use Plan of the county?

The site is planned Highway Commercial uses, even though it is currently zoned Agricultural. The proposed use of a contractor's shop is allowed in the agricultural district with a conditional use permit.

Land Use

Goal #2 Rural Land Use

Policy #1: Rural Land Use: Plan land use and provide roads and other public services so as to sustain most of the County as a low-density, rural and generally agricultural environment.

Policy #9: Highway 10 Corridor: Support various developments along the Highway 10 corridor that apply innovative design solutions to minimize impacts to the environment and transportation system.

Economic Development

Goal #1 Resources

Policy #2: Business Retention: Continue to support efforts to retain and expand existing businesses.

- (7) Will the use cause traffic hazards or congestion?

The business is not anticipated to cause traffic hazards. Vehicle traffic should be similar to the amount of traffic currently there.

- (8) Will the use violate the wetland provisions of Minnesota Statutes Chapter 103G?

A wetland delineation was completed when this property was platted. There were no violations at that time. Given that there are not planned expansions to the site, the wetland provisions of MN Statute Chapter 103G will not be violated.

Conditions:

1. This Conditional Use Permit is granted for and runs with the land indicated in this application and is not transferable to other land.
2. This Conditional Use Permit is granted only for the purpose(s), structure(s) and/or use(s) indicated on the parcel approved with the application, as qualified by these development conditions. The applicant shall undertake the project according to the plans and specifications submitted to the County with the application.
3. Pursuant to Section 11.6.1 of the Development Code, this conditional use permit shall automatically expire, without notice, within one year after the date of approval unless the applicant has substantially proceeded on the work. To proceed substantially means to make visible improvements to the property and to have had applied to the property at least 40% of the man hours which it is reasonably estimated will be necessary for completion of the project. The Planning Commission may grant an extension of one year to complete the project if a written request for additional time is filed with the Planning Commission prior to the date of expiration of the conditional use permit. The request must specify the amount of additional time requested, the basis for the amount of time requested and an explanation of why additional time is required.
4. The applicant shall permit reasonable access for the County to periodically inspect the site at reasonable times and in a reasonable manner to ensure that the permit holder is in compliance with the conditions of approval and all other applicable statutes, rules and ordinances.
5. The applicant shall obtain proper permits necessary to operate said business at the property including but not limited to a Land Use Permit from the County and a Building Permit from Watab Township.
6. Any repair or maintenance of equipment or vehicles incidental to the business shall only be allowed if such activities are conducted completely indoors and by-products of such activities, such as used motor oil, are disposed of in

accordance with County standards.

7. No operation or activity shall emit any hazardous substances in such quantity, concentration, or duration as to be injurious to human health or property. If hazardous materials are stored and used on the property, a materials management plan shall be submitted to address storage, handling, use, disposal, and potential hazards.
8. All motorized vehicles, including trucks and trailers, and machinery stored in the outside storage area shall be licensed and in operable condition.
9. The existing vegetation screening along 60th St NW (County Road 33) shall remain in place for the duration of the business. If it is ever removed, the majority of materials and equipment stored outside shall be screened by a fence, plantings or other screening elements from residential homes within 500ft and from public roadways in accordance with Section 8.6.1 and approved by the Planning Commission.

Warren moved to accept the findings and conditions and grant File #22-231. Gerry seconded and the motion carried. The applicants representative was given a copy of the findings, conditions and decision.

- 6) File #22-163, Eugene and Shirley Rudolph, landowner and MNCSG 2019 – 32/IPA Solar applicant, requesting an interim use permit to construct a community solar energy system in the Agricultural District. Pursuant to Section 7.2.5(G), 9.20 and 11.7. The affected property is described as follows: Part of N1/2 SE1/4, Section 35, Mayhew Lake Township.

Roxanne showed an aerial photo of the site. IPS is requesting a 1-megawatt solar garden to be co-located on a site that currently has a solar project on it. The property is owned by Eugene and Shirley Rudolph. She showed the layout of the proposed project on approximately 5.5 acres. They will be staggering two rows of Black Hills spruce along the property lines where there are residential structures. She pointed out the 3 homes in the area. The site will include an 8ft “deer style” fence. Access will be from 60th St NE, a township road. A \$25,000 financial surety will be posted for decommissioning. The request is for a 35 year IUP. There was consensus on the 35 year time frame.

Shirley Rudolph, 8469 Hwy 23 NE, stated that they are requesting a interim use permit for a solar garden. Jerry asked about the house they own on the lot to the east, do the renters know about this request. Shirley stated that the renters do know about the request.

Diane Fromelt, 6633 Golden Spike Rd, neighbor to the north asked about the screening plan. Roxanne showed the proposed screening plan of Black Spruce and 8ft fencing.

Art moved to close the public hearing. Jerry seconded and the motion carried.

Gerry moved that this request meets Section 9.2.5(G), Section 9.20 pages 57-65 and Section 11.7 page 12-17. Warren seconded and the motion carried.

In reviewing Section 11.7 the vote was as follows

1. Gerry stated that the 9 points have been addressed in the staff report. The vote was unanimous that the interim use conforms to the zoning regulations of the County.
2. Warren stated that the applicant has provided a decommissioning plan and a \$25,000 financial surety will be provided should the County need to get involved with the removal of the solar project. The vote was unanimous that there will be no additional cost imposed on the public if the interim use is approved if it is necessary for the public to take the property in the future.
3. Jerry stated that the use will not create a burden. The project itself does not increase the population of the area. The vote was unanimous that the interim use will not create an excessive burden on existing parks, schools, streets and other public facilities and utilities which serve or are proposed to serve the area.
4. Art stated that the proposed project will occupy a portion of the property for the one-megawatt solar garden. The proposed project will not require city services. Surrounding properties will still be able to be developed per current county requirements. Surrounding areas are currently agricultural in all directions. The vote was unanimous that the interim use will not impede the normal and orderly development and/or improvement of surrounding vacant property.
5. Gerry stated that the proposed project meets setbacks and has proposed security fencing. There will be screening on the southeast and north sides of the project. Studies have not shown any negative impact on neighboring property values from development of solar PV arrays. The vote was unanimous that the interim use, including any structures utilized for the use, are sufficiently compatible or separated by distance and/or screening from adjacent land so that existing homes will not be depreciated in value and there will be no deterrence to development of vacant land.
6. Art cited (B), (C), (E) and (L) under Section 2.1.1. He moved to include the development conditions to File #22-163. Warren seconded. Scott asked the applicant if they agreed with the development conditions. The Rudolfs stated that they were. The vote was unanimous that the interim use is consistent with the purpose and intent of the Development Code and purposes of the zoning district.
7. Jerry stated that the use is not in conflict with the Comprehensive Plan of the County. He cited Environment and Natural Resources Goal #1: Stewardship Policy #2: Development Review and Goal #4: Energy. The vote was unanimous that the interim use is consistent with the Comprehensive Plan of the County.

8. Chris stated that access to the site will be from 60th St NW, a Mayhew Lake Township Road. The vote was unanimous that the interim use will provide adequate access to a public road to not cause traffic hazards or congestion on the adjacent public roads and that there are sufficient off-street parking and loading space to serve the proposed use.
9. Warren stated that wetland delineation has been submitted and revealed that a small portion of the project is within an identified wetland. However, the area impacted will meet the de minimus exemption. The vote was unanimous that the interim use will not create a negative environmental impact, including but not limited to impacts on wetlands and water bodies. Including, that adequate measures have been or will be taken to prevent or control offensive odor, fumes, dust, noise and vibration, so that none of these will constitute a nuisance.

Roxanne read the findings and conditions.

Findings

Criteria 1: The interim use conforms to the zoning regulations of the County.

The use meets the requirements outlined in section 9.20 for community solar energy systems.

Criteria 2: There will be no additional cost imposed on the public if the interim use is approved if it is necessary for the public to take the property in the future.

The applicant has provided a decommissioning plan and a \$25,000 financial surety will be provided should the County need to get involved with the removal of the solar project.

Criteria 3: The interim use will not create an excessive burden on existing parks, schools, streets and other public facilities and utilities which serve or are proposed to serve the area.

The use is not expected to create an excessive burden on existing parks, schools, or streets which are expected to serve the area and public facilities. The project itself does not increase the population of the area.

Criteria 4: The interim use will not impede the normal and orderly development and/or improvement of surrounding vacant property.

The proposed project will occupy a portion of the property for the one-megawatt solar garden. The proposed project will not require city services. Surrounding properties will still be able to be developed per current county requirements. Surrounding areas are currently agricultural in all directions.

Criteria 5: The interim use, including any structures utilized for the use, are sufficiently compatible or separated by distance and/or screening from adjacent land so that existing homes will not be depreciated in value and there will be no deterrence to development of vacant land.

The proposed project meets setbacks and has proposed security fencing. There will be screening on the southeast and north sides of the project. Studies have not shown any negative impact on neighboring property values from development of solar PV arrays.

Criteria 6: The interim use is consistent with the purpose and intent of the Development Code and purposes of the zoning district.

In accordance with the following items in Section 2.1.1:

(B) To divide the unincorporated areas of the county into zones and districts restricting and regulating therein the location, construction, reconstruction, alteration, and the use of structures and land.

(C) To promote the orderly development of residential, business, industrial, recreational and public areas.

(E) To prohibit uses, buildings or structures which are incompatible with the character of development or the permitted uses within specified zoning districts.

(L) To further the appropriate use of land, and conserve and protect the natural resources of the county for present and future generations.

The Development Conditions for File No. 22-163 are adopted.

Criteria 7: The interim use is consistent with the Comprehensive Plan of the County.

It is not in conflict with the Comprehensive Plan of the County

Environment and Natural Resources

Goal #1: Stewardship

Policy #2: Development Review: Protect the integrity of major natural resources through development review and regulation.

Goal #4: Energy – Explore new opportunities for clean, affordable and sustainable energy throughout the County.

Criteria 8: The interim use will provide adequate access to a public road to not cause traffic hazards or congestion on the adjacent public roads and that there are sufficient off-street parking and loading space to serve the proposed use.

The applicants will access the site from 60th St NW, a Mayhew Lake Township road.

Criteria 9: The interim use will not create a negative environmental impact, including but not limited to impacts on wetlands and water bodies. Including that adequate measures have been or will be taken to prevent or control offensive odor, fumes, dust, noise and vibration, so that none of these will constitute a nuisance.

A wetland delineation has been submitted and revealed that a small portion of the project is within an identified wetland. However, the area impacted will meet the de minimus exemption.

Conditions:

1. This Interim Use Permit is granted for the land indicated in this application and is not transferable to other land.
2. This Interim Use Permit shall expire 35 years after approval.
3. This Interim Use Permit is granted only for the purpose(s), structure(s) and/or use(s) indicated on the parcel approved with the application, as qualified by these development conditions. The applicant shall undertake the project according to the plans and specifications submitted to the County with the application.
4. Pursuant to Section 11.7.3 of the Development Code, this interim use permit shall automatically expire, without notice, within one year after the date of approval unless the applicant has substantially proceeded on the work. To proceed substantially means to make visible improvements to the property and to have had applied to the property at least 40% of the man hours which it is reasonably estimated will be necessary for completion of the project. The Planning Commission may grant an extension of one year to complete the project if a written request for additional time is filed with the Planning Commission prior to the date of expiration of the interim use permit. The request must specify the amount of additional time requested, the basis for the amount of time requested and an explanation of why additional time is required.
5. The applicant shall permit reasonable access for the County to periodically inspect the site at reasonable times and in a reasonable manner to ensure that the permit holder is in compliance with the conditions of approval and all other applicable statutes, rules and ordinances.
6. Applicant shall comply with all requirements of Benton County Development Code Section 9.20 or successor ordinance.
7. Appropriate erosion control devices shall be utilized during construction of the project.

8. Applicant shall submit certification by a professional licensed engineer in the state of Minnesota that the foundation and design of the solar panels is within accepted professional standards, given local soil and climate conditions.
9. The solar garden shall comply with any applicable local, state and federal regulatory standards, including the State of Minnesota Uniform Building Code, as amended, the National Electric Code, as amended and shall be in compliance with all applicable federal, state and local wetland laws, rules and regulations, as amended.
10. Power and communication lines running between banks of solar panels and to electric substations or interconnections with buildings shall be buried underground. Exemptions may be granted by the planning commission in instances where shallow bedrock, water courses, or other elements of the natural landscape interfere with the ability to bury lines.
11. The solar garden shall meet the minimum principal building setback (same as a residential structure) for the zoning district and be located a minimum of 300 feet from a residential dwelling unit not located on the property.
12. The solar developer and or applicant shall provide a financial security in the amount of \$25,000. This shall be held by the county for decommissioning if the developer or property owner fails to comply with the decommissioning plan. The financial security will be required until decommissioning of the solar garden is complete as determined by the County.
13. The applicant will need to obtain an access permit from the township.
14. Security fences that are in disrepair shall be repaired. Planting screens shall be maintained in a neat and healthy condition with plantings that have died being replaced within the current or next growing season.
15. The Solar panels must be removed and properly disposed of if they are out of production for more than 1 year unless the Planning Commission grants an extension of time for their removal.

Art moved to accept the findings and conditions and grant File #22-163. Chris seconded and the motion carried. The applicants were given a copy of the findings, conditions and decision.

- 7) Discussion on proposed ordinance amendment to Section 7.14.5 (C)(1) to remove reference to sewer structures.

Roxanne stated that there has been confusion with sewer and unsewer setbacks in the shoreland district. She contacted the DNR and MPCA for clarification. The intent is “unsewered” means you have a septic system, “sewered”

means you are on a sewer system (municipal system). She stated that there are no structures in the county connected to a public sewer system. This came up when a resident wanted to connect to a community system as a public system with a lesser setback to the OHW. After discussion with the DNR, MPCA and County Attorney, it was clear to them that a sewer system doesn't mean community system it means a public system. She stated that she submitted this proposed amendment to the DNR for their okay. The amendment removes the reference to sewer or unsewered regarding setbacks of structures in the shoreland and just references setbacks to all structures.

- 8) Jerry asked about the 35 year IUP for Solar. Roxanne stated that the time frame was set at 25 years and was amended to a minimum of 25 years. The Planning Commission can set the years with each application.
- 9) Roxanne stated that there is a SWCD & NRCS Tour scheduled for September 13th and a workshop, Navigating Key Land Use Issues on September 14. If anyone would like to attend either one of these please contact the Planning & Zoning Department office.
- 10) Art moved to adjourn at 7:55 p.m. Jerry seconded and the motion carried.

Respectfully submitted,

Karen E Loehrer
Administrative Assistant