

**MINUTES OF THE JOINT MEETING
MINNEHAHA COUNTY & SIOUX FALLS PLANNING COMMISSIONS
June 25, 2007**

A joint meeting of the County and City Planning Commissions was held on June 25, 2007 at 7:00 p.m. in the Commission Room of the Minnehaha County Administration Building.

COUNTY PLANNING COMMISSION MEMBERS PRESENT: Deb Bunde, Mike Cypher, Susie O'Hara, Mark Rogen, Don South, and Wayne Steinhauer.

CITY PLANNING COMMISSION MEMBERS PRESENT: Ken Dunlap, Meredith Larson, Lynette Olson and David Van Veldhuizen.

STAFF PRESENT: Scott Anderson, Phil Kappen, and Pat Herman – County Planning;
Gordy Swanson – Office of the State's Attorney;
Steve Randall – City Planning

The County Planning Commission was chaired by Don South. City Planning Commission Chair Meredith Larson presided over the meeting.

APPROVAL OF THE CONSENT AGENDA

At the request of the audience, Items 2 & 3 were placed on the regular agenda. A motion was made for the City by Van Veldhuizen and seconded by Olson to approve the consent agenda (Items 2 & 3 removed). The motion passed unanimously. Same motion for the County by Cypher and seconded by O'Hara. The motion passed unanimously.

ITEM 1. MINUTES – Minutes of the May 21, 2007 meeting.

A motion was made for the City by Van Veldhuizen and seconded by Olson to approve the minutes. The motion passed unanimously. Same motion for the County by Cypher and seconded by O'Hara. The motion passed unanimously.

REGULAR AGENDA

A motion was made by Dunlap and seconded by Olson to approve the regular agenda. The motion passed unanimously. Same motion for the County by O'Hara and seconded by Steinhauer. The motion passed unanimously.

ITEM 2. CONDITIONAL USE PERMIT # 07-52 to allow an electrical substation.

Legal Description – S250' N910' E350' W400' NW1/4 SW1/4 of Section 29-T101N-R48W

Location – 2900 S. Six Mile Rd. east edge of Sioux Falls

Petitioner / Owner- East River Electric Power Corp.

General Information

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|---------------------|------------------|
| Present zoning - | A-1 Agricultural |
| Existing Land Use - | Agriculture |
| Parcel Size - | 2.3 acres |

Report by: Scott Anderson

Staff Analysis

The property is zoned A-1 Agricultural District. Article 3.04(V) of the Joint Zoning Ordinance allows a utility substation as a Conditional Use in this zoning district. The applicant is initially constructing a 69 kV substation with the eventual capacity of a 115 kV substation. At full capacity, the substation would be confined to the 150' by 175' fenced-in area.

The surrounding land uses are a mixture of residential and agricultural uses. The property to the north, east and west appears to be used for agricultural purposes. The property to the south consists of residential development.

1) The effect upon the use and enjoyment of other property in the immediate vicinity for the uses already permitted, and upon property values in the immediate vicinity.

Due to the existing residential development pattern and agricultural uses within the area, the proposed utility substation should not have a negative effect upon the normal and orderly development and improvement of these properties for uses predominant in the area. The utility substation will insure adequate electric service to present and future development for the area.

The site plan submitted by the applicant indicates landscaping consisting of pine trees and deciduous trees. It appears that pine trees will be planted along the north east and south sides of the property. The west side situated along Six Mile Road will only have 4 conifer trees and screening fence. Staff is satisfied with the landscaping plan submitted and recommends that East River Electric follow this plan and keep the landscaping in a live state.

2) The effect upon the normal and orderly development and improvement of surrounding vacant property for uses predominant in the area.

Due to the existing agricultural use on properties within the area and the buffer provided by the landscaping and screening fence, the proposed utility substation should not have a negative effect upon the normal and orderly development and improvement of these properties for uses predominant in the area. The applicant has indicated that the proposed substation will insure adequate electric service to present and future development for the area.

3) That utilities, access roads, drainage and/or other necessary facilities are provided.

Access to the proposed utility substation will be provided by Six Mile Road, which is a County maintained Road. It appears that the site utilizes natural drainage. The proposed substation will not use any water or produce any wastewater.

4) That the off-street parking and loading requirements are met.

The applicant has not indicated any off-street parking on the site plan submitted with the Conditional Use application. Article 15 of the Zoning Ordinance does not specifically identify the parking requirements for a utility substation. Staff recommends that two (2) off-street parking spaces be provided. A utility substation typically does not generate any significant amounts of traffic. Each parking space should measure a minimum of nine feet by 18 feet and be continually maintained in such a manner that no dust will result from continuous use.

5) That measures are taken to control offensive odor, fumes, dust, noise, vibration, and lighting (inclusive of lighted signs), so that none of these will constitute a nuisance.

The proposed Conditional Use Permit may generate limited fumes, dust and noise. The applicant has indicated that the proposed substation will have lights for monitoring and maintaining the facility; however, the substation will not be continually lighted. The property's terrain and the surrounding agricultural uses limit the impact the proposed substation may have on surrounding properties.

The utility substation will be providing a benefit to the community. With appropriate conditions of approval, any concerns can be mitigated. Staff's review indicates that the proposed Conditional Use is a use which is appropriate for this site. Staff recommends approval of Conditional Use Permit #07-52 to be established and conducted in conformity with the Zoning Ordinance and the recommended conditions of approval.

Recommendation

The Joint Planning Staff recommended approval of Conditional Use Permit #07-52 to allow a utility substation up to 115 kV in the Agricultural District with the following conditions:

- 1) That the substation be entirely enclosed in a minimum eight (8) foot high fence, gated and locked.
- 2) That a minimum of two (2) off-street parking spaces be provided and that each parking

space shall not be less than one hundred sixty two square feet, or nine feet by eighteen feet, surfaced with gravel, concrete or asphalt and maintained in such a manner that no dust will result from continuous use.

- 3) That all existing drainage ways be maintained and that erosion control measures be implemented on all disturbed areas so as not to allow any sedimentation of existing drainage ways or bodies of water.
- 4) That the applicant follows the proposed landscaping shown on the vegetation plan and that the all landscaping be maintained in a live state. The applicant shall also control all noxious weeds on the site.
- 5) That the applicant obtains a building permit prior to any construction commencing on the site.
- 6) That the applicant obtain and keep current any required S.D. Public Utilities permits and meet all noise standards set by the Public Utilities Commission.

Public Testimony

Commissioner Steinhauer inquired about hard surfacing. Mr. Anderson stated that this site would need to be hard surfaced because access is from a hard surfaced road (Six Mile Rd.). The petitioner, Ken Wahl with East River Electric Power Corp., stated that Kurt Donalan with East River Electric, Ted Smith with Sioux Valley Energy, and Jim Zweep, contracted to East River Electric, were also present. Mr. Wahl presented a power point presentation. One slide showed the islands of service areas on the east side of Sioux Falls. There is an existing substation (Split Rock), near Willow Run golf course on the north side of Hwy 42, and a second substation down in Lincoln County. The Split Rock substation is centrally located and the site is big enough that that station can be expanded if needed. On the east side, four new developments - Dawly Farm, Galleria, Arbor's Edge and Busker's, are being constructed and need electrical service. Split Rock substation has a transformation of 10MW which can be doubled to 20MW. The four new developments are going to need 26MW, 6 MW short of what the Split Rock substation can provide. Mr. Wahl stated that they talked to a number of people about placing this substation but they need to by existing transmission lines. The Dawly property was ruled out because of the logistics of new transmission lines. The Manifold family agreed to sell land for this substation, north of Pine Hill subdivision.

Mr. Wahl addressed concerns that are typically raised by neighbors. He stated the site is over 500' away from the nearest house. The proposal is to have an opaque fence, such as is required inside the City limits and was done at the Maple Street site. 8 inch trees will be planted around the perimeter. The PUC has designated a maximum of 60 db for daytime, 55 db nighttime, as measured at the nearest residence. This substation will meet those requirements. 55 db is equivalent to normal conversation or quiet office. There is a hum that is put off by the substation. If a house is built closer and the 55 db is exceeded, East River Electric is obligated to mitigate the noise issue. There is no odor or dust from this use. An 8 foot fence with 2 barbs on top is required by the national electrical code. Electromagnetic fields are typically where the transmission lines are. The lines exist in this area already, so no new lines will need to be constructed. There are 7 governmental agencies that must give approval before construction can began. Mr. Wahl stated that depreciation of property values is always raised as a concern. In this case, the Manifold family owns the land around this site and will develop it. This is an indication that there is no anticipation that the property values will decrease.

Commissioner Dunlap asked if there was room to expand at this site. Mr. Wahl stated that there will be a 10MW transformer at this site. In the future, as growth occurs, a second 10MW transformer will be added here. When combined with the potential of the Split Rock substation, there should not be a need for another substation in this area.

Jason Schmidt, 3204 S. Tim Trail, raised the issue of the impact this substation could have on property values. Can they substantiate that values will not be impacted? Is 20MW the limit on

the expansion, or do they plan to purchase more land. What are the alternatives if this CUP doesn't pass.

Jim Hutchinson, 2817 E. McIntosh St., owns 130 acres to the north and west which he plans to develop. This substation is needed, but they are ugly. Why couldn't there be a better way to hide the front of the substation? There are ways to do this.

Gene Wubben, 8704 E. 38th St., would like to see front landscaping, like a brick wall, along Six Mile Road. Is there a better location than this site? This doesn't seem to be an equal spread between the two existing substations. Will there be more overhead wires into this site?

Mr. Wahl addressed the questions raised. He noted that there is no proof either way that property values are affected. They are building here because the Manifold family was willing to sell the land. There were not other opportunities along Six Mile Road. They could take land through condemnation, but would rather not use that method. Mr. Wahl explained that Southeast Electric serves Lincoln County while Minnehaha County is serviced by Sioux Valley Electric. East River Electric brings the high voltage in to the substation, which they own, and they transform it down to the distribution voltage. Then Sioux Valley distributes it to the businesses and houses. There is an existing transmission line. The east side lines have been going through an upgrade, increasing the voltage. The line in this area is operated at 69,000 volts but will eventually operate at 115,000 volts with the anticipated growth. No additional land will be needed at this site. Mr. Wahl stated that he is open to whatever landscape and design options the Planning Commissions think would be appropriate.

At Mr. Dunlap's request, Steve Randall stated that the City Planning Department agreed with the staff report.

No one else wished to speak to the item and the floor was closed to public testimony.

Commissioner Cypher stated that he felt the proposed conditions addressed the concerns raised by the neighborhood.

Based on the staff report and public testimony, a motion was made for the City by Van Veldhuizen and seconded by Olson to approve Conditional Use Permit #07-52 with the conditions as stated. The motion passed unanimously. Same motion for the County by Cypher and seconded by Bunde. The motion passed (Rogen abstained).

ITEM 3. CONDITIONAL USE PERMIT # 07-54 to allow a group day care.

Legal Description – Lot 10 Block 2 Evergreen Acres Addn. SW1/4 of Section 22-T102N-R49W

Location – 6621 Alicia Ave. ¼ mile north of Sioux Falls

Petitioner / Owner- Terri Olson

General Information

Present zoning - RS-2 Residential
Existing Land Use - Residential
Parcel Size - 0.30 Acres

Report by: Phil Kappen

Staff Analysis

The subject property is located in Evergreen Acres, a residential subdivision just north of Sioux Falls. All surrounding properties are in residential uses. The petitioner has applied for a conditional use permit to operate a group day care. A group day care can have up to twelve children.

1) The effect upon the use and enjoyment of other property in the immediate vicinity for the

uses already permitted, and upon property values in the immediate vicinity.

Day cares typically have outdoor play areas for the children. Any outdoor play areas should be fenced to ensure that children do not run out into traffic and do not enter any other person's property.

2) The effect upon the normal and orderly development and improvement of surrounding vacant property for uses predominant in the area.

The location of a group day care at this site should have no negative impact the residential development of any lots remaining in the subdivision.

3) That utilities, access roads, drainage and/or other necessary facilities are provided.

Access to the property is from N. Alicia Avenue.

4) That the off-street parking and loading requirements are met.

The petitioner has a wide driveway which can be used for day care customer's parking. No parking should be allowed on the public right-of-way.

5) That measures are taken to control offensive odor, fumes, dust, noise, vibration, and lighting (inclusive of lighted signs), so that none of these will constitute a nuisance.

A day care should not generate odor, fumes, dust, noise, vibration, and lighting that will constitute a nuisance.

Recommendation

The Joint Planning Staff found the proposed group day care can be operated with a minimal impact on neighboring properties. Staffs recommended approval of conditional use permit #07-54 to operate a group day care with the following conditions:

1. The use shall be limited to a group day care with no more than 12 children under the age of fourteen including the petitioner's own children under the age of six.
2. A fenced outdoor play area shall be provided for the children to prevent the children from accessing the street.
3. The petitioner shall be allowed to place one sign, up to 2 square feet, on her home.
4. The petitioner shall register as a day care provider with the state of South Dakota.

Public Testimony

Mr. Kappen explained that 12 children is the maximum that can be cared for by one person. Due to building code restrictions, the daycare at this site cannot exceed 12 children.

The petitioner, Terri Olson, stated that she was comfortable with the conditions.

David Schoenrogge, 1401 E. Old Hickory St., lives in the house immediately to the west. He is most concerned about the safety of the children as he has a retaining wall which the children could fall over. He is relieved to here that a fence will be constructed. Mr. Schoenrogge wondered if the street was wide enough to handle traffic and parking. He is also concerned about noise and wonders if his property values will go down. Will this area remain residential or change to businesses?

Mr. Kappen explained that the area was to remain residential and that a daycare is like a home occupation. It is a use allowed in residential areas with a conditional use permit. The streets in this development were built to the requirements of the City's subdivision ordinance. The fence will need to be put up before the daycare opens.

Commissioner Steinhauer commented that there was no answer to the affect on property values. Someone with six children might think it was wonderful, another person might not.

REGULAR AGENDA

A motion was made for the City by Olson and seconded by Van Veldhuizen to approve the

regular agenda. The motion passed unanimously. Same motion for the County by O'Hara and seconded by Bunde. The motion passed unanimously.

ITEM 4. TEXT AMENDMENT # 07-02 pertaining to Additional Use Regulations, Penalties, Definitions, And Conditional Use Permits.

Report by: Scott Anderson

Staff Analysis

Staff is proposing an ordinance amendment that would create Section 15.10, providing a new definition for visibility triangle, and an amendment to further clarify Section 19.02 requiring the property owner to sign any conditional use permit application.

The proposed ordinance amendment dealing with traffic visibility came from comments from the public. Staff was receiving complaints that items such as large, round hay bales were being stacked at or near the intersection and blocking the view of traffic and causing snow to drift. When staff began to analyze the sight triangle at intersections other items also came to mind that could block the view of on-coming traffic, such as vehicles, farm equipment and structures. Staff research found that concerns over bales of hay, and equipment could not be adequately addressed with the current wording of the Zoning Ordinance. Staff is addressing these concerns and safety issues with the proposed ordinance amendment, which include Section 15.10 and a new definition for "visibility triangle".

The other area of the Zoning Ordinance that staff feels needs to be addressed is Section 19 "Conditional Use Regulations". Currently the Zoning Ordinance only requires the name, address and phone number of the property owner. Staff believes that it was an oversight of the Zoning Ordinance not to require the property owner's signature. Otherwise, anyone could apply for a conditional use on someone's property without their knowledge.

A copy of the proposed Ordinance is attached for review. It provides the new definition for "visibility triangle", the new Section 15.10, and wording requiring the property owner's signature on conditional use applications.

Recommendation

The Joint Planning Staff recommended approval of Joint Zoning Text Amendment #07-02 to create Section 15.10 "Traffic Visibility", amending Section 19.02 requiring the property owner's signature on a conditional use application, and adding "733. Visibility Triangle" to Section 24.02 Definitions.

Public Testimony

In response to Commissioner Steinhauer, Mr. Anderson explained that the restrictive setbacks being established under traffic visibility would prohibit obstructions within 50 feet of the right-of-way, meaning 50 feet from the property line. He noted that this did not apply to farm equipment while it was in use on the property. Commissioner Olson asked how the penalties had been changed. Mr. Anderson stated that a Class 2 misdemeanor was punishable with thirty days imprisonment in a county jail or five hundred dollars fine, or both.

No one in the audience wished to speak to the item and the floor was closed to public testimony.

Based on the staff report and public testimony, a motion was made for the City by Van Veldhuizen and seconded by Dunlap to recommend approval of Joint Text Amendment #07-02. The motion passed unanimously. Same motion for the County by O'Hara and seconded by Bunde. The motion passed unanimously.

ORDINANCE MC

AN ORDINANCE AMENDING THE 2002 REVISED ZONING ORDINANCE FOR MINNEHAHA COUNTY AND THE CITY OF SIOUX FALLS BY REVISING THE TEXT PERTAINING TO ADDITIONAL USE REGULATIONS, DEFINITIONS, AND CONDITIONAL USE PERMITS.

BE IT ORDAINED BY MINNEHAHA COUNTY, SOUTH DAKOTA:

That Ordinance MC30-02, the 2002 Revised Zoning Ordinance for Minnehaha County and the City of Sioux Falls is hereby amended as follows:

Section 1: That Section 15.10 is hereby amended as follows:

15.10 TRAFFIC VISIBILITY

(A). There shall be no obstructions, such as buildings structures, grain bins, baled agricultural products, farm machinery, vehicles or other objects, not including vegetation, within fifty (50) feet from a State, County, or section line highway right-of-way or thirty (30) feet from a platted right-of-way.

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(B). Traffic Visibility Triangle Requirements

1) At every intersection of two roads or a road and a railroad right-of-way, there shall be a traffic visibility triangle. Within the triangle, no obstructions such as structures, parking or vegetation shall be allowed between two and one half (2.5) feet and ten (10) feet above the elevation of the roadway. Agricultural crops, such as corn, are exempt from this regulation. Fences shall conform to Section 12.01 of this ordinance.

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2) Such traffic visibility triangles shall be formed by the intersection centerlines and a line connecting points on the centerlines of the intersection roads or railroad right-of-way one hundred (100) feet distant from the intersecting centerlines.

Section 2: That Section 19.02 (B) is hereby amended as follows:

(B). Name, address, phone number, and signature of the owner of the property which is the subject of such application.

Section 3: That Section 23.05 is hereby amended as follows:

23.05 VIOLATION AND PENALTY. Violations shall be treated in the manner specified below:

(a) The owner or agent of a building or premises in or upon which a violation of any provision of these regulations has been committed or shall exist; or the lessee or tenant of an entire building or entire premises in or upon which violation has been committed or shall exist, or the agent, architect, building contractor or any other person who commits, takes part or assists in any violation or who maintains any building or premises in or upon which such violation shall exist, shall be guilty of a misdemeanor

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and shall be punished pursuant to SDCL 7-18A-2. Each and every day that such violation continues may constitute a separate offense.

In case any building or structure is erected, constructed, reconstructed, altered, repaired, converted or maintained, or any building, structure or land is used in violation of these regulations, the appropriate authorities of Minnehaha County, in addition to other remedies, may institute injunction, mandamus or other appropriate action or proceeding to prevent such unlawful erection, construction, reconstruction, alteration, conversion, maintenance or use, or to correct or abate such violation, or to prevent the occupancy of said building, structure or land.

Section 4: That Section 24.02 is hereby amended as follows:

733. VISIBILITY TRIANGLE. A triangular area on corner properties within which the placement of certain structures, materials and the like are imposed under the provisions of this ordinance.

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| 1 st Reading | July 3, 2007 |
| Legal Ad. – Argus Leader | July 6, 2007 |
| Public Hearing | July 16, 2007 |
| Fact of Adoption – Argus Leader | July 23 & 30, 2007 |
| Effective Date | August 19, 2007 |