

**MINUTES OF THE JOINT MEETING
MINNEHAHA COUNTY & SIOUX FALLS PLANNING COMMISSIONS
March 22, 2010**

A joint meeting of the County and City Planning Commissions was held on March 22, 2010 at 7:00 p.m. in the Commission Room of the Minnehaha County Administration Building.

COUNTY PLANNING COMMISSION MEMBERS PRESENT: Susie O'Hara, Mike Cypher, Don South, Wayne Steinhauer, Becky Randall, Mark Rogen and Dick Kelly.

CITY PLANNING COMMISSION MEMBERS PRESENT: Mike Roth, Steve Gaspar, Lynnette Olson, Ken Dunlop, and Jessie Schmidt.

STAFF PRESENT:

Scott Anderson, Pat Herman, Phil Kappen, and Ryan Streff - County Planning
Dustin DeBoer – Office of the State's Attorney
Dave Loveland – City Planning

The City Planning Commission chair Jessie Schmidt presided over the meeting. The County Planning Commission was chaired by Chair Susie O'Hara.

CONSENT AGENDA

There were no items on the consent agenda.

REGULAR AGENDA

A motion was made for the City by Roth and seconded by Olson to approve the regular agenda. The motion passed unanimously. Same motion for the County by Steinhauer and seconded by Randall. The motion passed unanimously.

Item 1. Minutes – February 22, 2010

A motion was made for the City by Gaspar and seconded by Roth to **approve** the meeting minutes from the February 22, 2010 meeting. The motion passed unanimously. Same motion for the County by Randall and seconded by South. The motion passed unanimously.

Item 2. Conditional Use Permit #10-14 to allow a tree farm

Petitioner: Stan Mellegard

Location: 1801 W. 70th St. N. 1 mile north of Sioux Falls

General Information:

Legal Description - Lot C (EX H-1) Erickson Trs. W1/2 NW1/4 in Section 29-T102N-R49W

Existing Land Use - Agriculture

Current Zoning - RC Recreation Conservation

Parcel Size – 17.14 Acres

Staff Report: Phil Kappen

Staff Analysis:

The subject property is located on the north edge of Sioux Falls immediately north of Interstate 90. To the east is the Big Sioux River and to the south, across the interstate, is

agricultural land. To the west is a rural cemetery. A residential subdivision, Swanson Tracts, lies to the north, northwest and west of the site.

The petitioner currently operates a wholesale tree farm at the site and has a state nursery license. The growing of trees or shrubs, although it is a commercially-related use, is also considered an agricultural crop and is allowed as a permitted special use in the Recreation/Conservation District. The ordinance formerly contained a stipulation that such a use was a permitted special use only if there were no retail sales and if no buildings were located within the 100-year flood plain. The existing buildings were located beyond the flood plain area. Sioux Falls and Minnehaha County amended the ordinance in 2002 to say that such use was a permitted special use only if there were no retail sales on the premises and no structures exceeded 500 square feet in size. As there are existing buildings in excess of the 500 square-foot size, the existing use now constitutes a non-conforming use. Last month the petitioner had applied for a conditional use permit for a larger building, but, since the use was a nonconforming use, no application to expand such the use could be approved and the item was deferred. Owners of permitted special uses that do not meet the requirements listed in the 2002 Revised Joint Zoning Ordinance for Minnehaha County and the City of Sioux Falls are allowed to apply for conditional use approval. The petitioner has now applied for the conditional use permit to bring the nursery into conformance with the current ordinance.

The nursery's hours of operation are from 7 am to 9:30 pm Monday through Saturday. The typical season extends from the beginning of April to the end of November.

The planning staffs of Minnehaha County and Sioux Falls reviewed this item on March 11, 2010 and jointly decided to recommend approval of the conditional use permit.

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.

The greatest potential for impact from the nursery use is to residents of Swanson Tracts, through which any commercial traffic from the subject property must pass. The first portion of the subdivision was platted in 1973 and the platted subdivision was expanded in 1976. The first residences in Swanson Tracts were constructed in 1978.

Staff has had contact from some neighbors stating that they do not oppose the nursery provided that there are no retail sales at the site. Retail uses at the site are not allowed. The petitioner has indicated that he conducts no retail sales and has no plans for retail sales at the site. He also has not applied for approval to allow retail sales.

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

Two undeveloped lots remain in the subdivision, one in the northern portion of the development along 72nd Street North and one immediately north of the subject property. There is potential for homes to be constructed on those sites. There should be little other urban development in this locale as the area is not proposed for future development in the Sioux Falls 2035 plan. In addition, the eastern portion of the subject property and the property to the east are located within the base flood area and are not appropriate for urban style development.

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

provided.

Access to the property is via 70th Street North which is maintained by Mapleton Township. The township, at their February 10, 2010 meeting, approved the petitioner's building as it relates to their responsibilities for the road. No parking should be allowed along this street as the rural-type road is not designed with adequate width to allow on-street parking.

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

The petitioner has indicated that he will have no full-time employees other than himself and that 1 or 2 seasonal employees will be hired in the spring and fall. The site plan shows 3 or 4 parking spaces adjacent to the petitioner's existing building. This is adequate parking area for the indicated number of employees. Section 16.02 (o) of the Joint Zoning Ordinance requires at least 2 parking spaces for each three employees on the maximum shift for warehouse uses.

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 petitioner has indicated that he will have security lights near his buildings. Full-cutoff and fully shielded lights should be used to prevent impacts to adjoining homes or to traffic on I-90.

Other uses of this type in the county have been authorized to have one 32 square-foot unlighted sign. A similar allowance should be granted in this instance. The petitioner currently has two signs that were erected without first obtaining a building permit.

Recommendation:

Staff finds that the proposed use is consistent with the types of agricultural uses that are allowed in the Recreation/Conservation zoning district. Staff, therefore, recommended approval of conditional use permit #10-14 with the following conditions:

1. The property is authorized for the growing and wholesale sales of nursery stock.
2. The use of the property for wholesale nursery stock sales shall be contingent upon the continued use of the property for growing nursery stock. If at such time the active production of nursery stock ceases, the wholesale sales shall also cease.
3. The petitioner shall maintain a state nursery license for the site and shall maintain any required tax licenses from the state.
4. The hours of operation shall be limited to 7 am to 9:30 pm Monday through Saturday.
5. Four off-street parking spaces for employees or wholesale customers shall be provided on the site.
6. No parking of vehicles or equipment shall be allowed on any road right-of-way.
7. Any new exterior lighting on the site shall be of full-cutoff and fully shielded design to prevent direct spillage of light beyond the property boundaries.
8. One unlighted on-premise sign, no larger than 32 square feet in size, shall be allowed on the site. The petitioner shall obtain a building permit for the sign and pay any penalty fee for erecting the sign prior to obtaining the permit.

Public Testimony

Commissioner Dunlap questioned if the buildings on the property are inside or outside of the floodplain. Phil Kappen stated the building were just outside of the floodplain.

Commissioner Dunlap asked if commercial sales were going to be conducted on the site. Mr. Kappen informed the commissioners that no commercial sales were going to be allowed at the site.

Commissioner Schmidt stated that staff should not be enforcing a condition that states that the petitioner is required to maintain a sales tax license from the state. She continued to inform staff and other commissioner that this is a land-use governing body and that a sales tax license is not a land-use issue. She stated that this condition should be removed from the list of conditions. Scott Anderson informed the commission that this condition has been added to staff reports to benefit the applicant and to make the petitioner aware of state laws.

Stan Mellegard (1801 W. 70th St. N.) stated that he has no objection to the conditions that have stated in the report. He stated that he will work with Mapleton Township to control and prevent dust on the roadway that accesses the property.

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

Action

A motion was made for the City by Roth and seconded by Olson to **approve** Conditional Use Permit #10-14 with the conditions as stated. The motion passed unanimously. Same motion for the County by Steinhauer and seconded by Rogen. The motion passed unanimously.

Conditional Use Permit #10-14 – Approved

Item 3 was deferred from the February 22nd meeting.

Item 3. Conditional Use Permit #10-07 to exceed 1200 sq. ft. of accessory building area. 7280 sq. ft. total is requested.

Petitioner: Stan Mellegard

Location: 1801 W. 70th St. N. 1 mile north of Sioux Falls

General Information

Legal Description - Lot C (EX H-1) Erickson Trs W1/2 NW1/4 in Section 29-T102N-R49W

Existing Land Use -

Current Zoning - RC Recreation Conservation

Parcel Size – 17.14 Acres

Staff Report: Phil Kappen

Staff Analysis

The subject property is the same as the previous item. To the east is the Big Sioux River and to the south, across the interstate, is agricultural land. To the west is a rural cemetery. A residential subdivision, Swanson Tracts, lies to the north, northwest and west of the site.

The petitioner proposes an additional 2240 square-foot building at his tree farm site to store added nursery stock. The property is part of a platted subdivision and any accessory buildings totaling more than 1200 square feet require a conditional use permit. This requirement, found in Section 15.07 (d) of the Revised Joint Zoning Ordinance for Minnehaha County and the City of Sioux Falls, has been in effect since 2001. The subject property currently has two accessory buildings, a 720 square-foot garage and a 4320 square-foot steel building, for a total of 5040 square feet of building area. With the addition of the proposed building, there would be a total of 7280 square feet of accessory buildings on the property. The proposed building is of a commercial type, but would be used for a pre-existing agriculturally-related use. Agriculture is the predominant use in the Recreation/Conservation District.

The building would be used for the storage of both potted and bare-root nursery stock from this site and from two other tree farm sites. The construction of the additional building would allow for the expansion of the nursery use by creating storage space for additional stock from various sites. He has noted that a large portion of the subject property is wet in the spring due to its location in the flood plain. His other sites are more conducive to early spring harvest and he needs storage space at this site for that stock.

As was indicated in the previous item, the petitioner proposes hours of operation from 7 am to 9:30 pm Monday through Saturday. The nursery season typically extends from the beginning of April to the end of November.

The planning staffs of Minnehaha County and Sioux Falls reviewed this item on March 11, 2010 and jointly decided to recommend approval of the conditional use permit.

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.

Only five other properties in the area of the subdivision have more than 1200 square feet of accessory buildings. These properties are shown on the accompanying map and

include a 1600 square-foot residential accessory building at 6205 N. Hummingbird Avenue, 1380 square feet of residential accessory buildings at 6104 N. Western Avenue, and a 1488 square-foot residential accessory building at 1901 W. 70th Street North. The largest building in the subdivision, a 4704 square-foot residential accessory building, is found at 2204 W. 70th Street North. Just north of the subdivision, at 6501 N. Western Avenue, there are a total of 5392 square feet of agricultural accessory buildings in a farmstead.

The total size of the existing and proposed accessory buildings on the site would constitute the largest total of accessory buildings in the subdivision. The proposed use, however, that of an agriculturally-related use, must also be considered since forms of agriculture uses are allowed in the Recreation/Conservation District.

There are a total of 10,300 square feet of agricultural accessory buildings one-quarter mile to the south of the subject property at 1704 W. 60th Street North. This is an active farmstead, however, it cannot be considered as a part of the Swanson Tracts as it is both physically separated from the subject property by Interstate 90 and the site is accessed from 60th Street North rather than through Swanson Tracts.

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

There are only two vacant properties within the subdivision and it is likely that these sites will be developed with single-family residences. There is only one access road into the area and it passes through the residential subdivision. Any increase in commercial traffic along this road will impact the residential properties through increased dust and wear on the roadway, and through increased traffic hazards by mixing commercial traffic with the residential and pedestrian traffic of the neighborhood. The land to the east is floodplain and is limited for future urban development. There have been proposals for added residential development in the vicinity, however, those proposals were denied by the Sioux Falls City Council and the Minnehaha County Commission due to road access concerns and the lack of sewer availability. The Sioux Falls 2035 Development Plan does not call for any additional development in this area.

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

The residential subdivision and the subject property are connected to North Kiwanis Avenue by a single access road, 70th Street North. The street is a gravel road that is maintained by Mapleton Township. Due to the existing volume of traffic, there have already been maintenance problems along the roadway. As was previously noted, any increase in traffic, particularly commercial traffic, will have added impacts on the road.

The township, at their February 10, 2010 meeting, approved the petitioner's application for the larger building as it relates to their responsibilities for the roadway. Staff also spoke with Mapleton Township chairman, Lloyd Siemonsma on February 2nd. Mr. Siemonsma noted that the township had experienced some problems with the road due to existing commercial traffic. Staff is aware that the Swanson Tracts residents have also spoken with the township and the state DOT about the potential for hard-surfacing the roadways in the neighborhood.

The proposed building will make possible an expansion of the existing use at the site. An expansion in the existing will require that added dust control be employed along 70th Street North. A precedent for this requirement was set when Catfish Bay in Sioux Falls proposed an expansion. The city added a requirement for dust control along rural access

roads to Catfish Bay's permit in order to mitigate impacts on neighboring residences.

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

The proposed building would be used as a warehouse. As was noted in the previous item, the petitioner has indicated that only 1 or 2 seasonal employees will be hired in the spring and fall. The 3-4 proposed parking spaces will be adequate for that number of employees as Section 16.02 (o) of the Joint Zoning Ordinance requires at least 2 parking spaces for each three employees on the maximum shift for warehouse uses. No parking of vehicles or equipment should be allowed on any of the public right-of-ways in the neighborhood as the existing rural-type roadways are not constructed with sufficient width to allow on-road parking.

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.

Any increase, expansion or change in the present use will require that dust control be applied along the 70th Street North access route in the vicinity of existing residences to prevent added impacts. Any outdoor lighting should be of a full cutoff and fully-shielded design to prevent spillage of direct light beyond the boundaries of the property.

Recommendation

Staff finds that the proposed use of the building is related to a form of agricultural production that may be allowed in the Recreation/Conservation Zoning District and recommended approval of conditional use permit #10-07 with the following conditions:

1. The total area of all accessory buildings on the property shall not exceed 7280 square feet.
2. The petitioner shall provide annual dust control along 70th Street north extending from his property to the west property line of the parcel located at 2204 W. 70th Street North.
3. A building inspection is required to ensure that the building does not exceed 2240 square feet as measured from the exterior walls of the structure.

Public Testimony

Commissioner Steinhauer questioned why staff added the word "annual" in condition number one. He continued to question if applying a dust control application once a year would be sufficient. He concluded that we might just need to make the petitioner aware of the dust issue and have work with the governing township to make sure the dust is controlled. Commissioner Rogen agreed with Commissioner Steinhauer and stated that the petitioner should work with the township to provide dust control on the roadways that provide access to his property.

Stan Mellegard (1801 W. 70th St. N) informed the commissioners that he has a 1,000 gallon water tank that he can use to provide dust control in the subdivision. He stated that many of the dust suppressant applications like the use of magnesium chloride are destroyed once the road is graded. He continued to state that he will work with the township to provide dust control in this area.

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

Action

A motion was made for the City by Gaspar and seconded by Roth to **approve** Conditional Use Permit #10-07 with the conditions as stated. The motion passed

unanimously. Same motion for the County by South and seconded by Cypher. The motion passed unanimously.

Conditional Use Permit #10-07 – Approved