

Minutes - Woodbury County Zoning Commission Meeting September 27, 2010

The meeting convened on the 27th of September, 2010 at 6:00 in the Board of Supervisor's meeting room on the first floor of the Court House, Downtown, Sioux City, Iowa. Present were the following Commission members – Chairman Grady Marx, David McWilliams, Mike Knight, Arvin Nelson, and Christine Zellmer Zant. Zoning Staff Present: John Pylelo and Peggy Napier. Present from the public were Douglas Mordhorst, Dennis and Bonnie Boyle.

The first agenda was approval of August 23, 2010 Commission Minutes.

Mr. Knight made a motion to approve the minutes subject to the following changes/corrections;

- **Attendance appeared incorrect. Ms. Napier agreed to make corrections**

Mr. McWilliams seconded the motion; motion carried 4-0.

The Next agenda item is a public hearing, and recommendation on final platting for Henderson's Addition subdivision – a minor subdivision; GIS Parcel #8843 28 300 001.

The applicants, Sandra Ortner, Trustee of the Survivor's Trust of the Eugene E. and Arlene J Wright Revocable Trust dated August 20, 1992, and Adam E. and Dawn M. Henderson, husband and wife, wish to subdivide a 27.394 acre portion of the NW ¼ of the SW ¼, Section 28, Kedron Township into 2 lots. The creation of a separate lot is due to the financing requirements of a lender.

In August of 2010 a real estate closing occurred between the Trustee of the Wright Trusts and the Hendersons wherein the Hendersons purchased property represented by proposed Lot 1. Lot 1 includes the parcel's existing residence and 10 acres. The sale was necessitated due to the fact the Henderson's mortgage lender would not lend funds on property over 10 acres in size. The real estate closing resulted in a violation of Woodbury County's subdivision ordinances as it creates the third or more parcel within the quarter-quarter section.

The parcel is zoned AP (Agricultural Preservation). The AP zoning district designation limits the density of single family dwellings to two (2) per quarter-quarter section. The AP zoning designation does not allow the potential residential density created by the proposed subdivision should it be approved.

The applicant has been advised a re-zoning petition would be required if additional dwelling construction was anticipated. Further that the zoning office staff's recommendation would be that any subdivision approval recommendation be conditioned upon placement of a dwelling restriction on proposed Lot 2. The dwelling restriction would remain in place until such time as a change in zoning designation occurs to permit increased dwelling density.

The property to be subdivided lies on the west side of Hwy 31 approximately ½ mile north of Rock Branch Rd. Access to proposed Lot 1 will be from the existing drive addressed 2049 Hwy 31. The location does not lie within a drainage district, an existing or a proposed flood hazard area.

The ten (10) property owners within 1000' of the proposed subdivision were notified by letter of the public hearing. Notices were also sent to each of the following Agencies or Institutions with responses noted.

County Engineer:

*From: Mark J. Nahra, County Engineer
Date: September 23, 2010
Subject: Henderson's Addition Subdivision*

The Secondary Road Department has reviewed the final plat for the above referenced subdivision forwarded with your memo dated September 2, 2010.

I am offering the following comments for your consideration.

- We checked the closure on the plat and found it to be in compliance with the requirements for the full subdivision of 1 in 10,000 and 1 in 5000 for each lot as required by Section 355.8 of the Code of Iowa.*
- No entrances to either lot were evaluated. The road borders Iowa Highway 31 and my department does not have jurisdiction on entrances from state highways. The property owners will need to contact the Iowa Department of Transportation for any proposed entrances to the property.*
- I have no other concerns or issues with this subdivision.*

If there are any more questions or issues that arise later, please contact this office.

DNR: *Received standard letter.*

Qwest: No Response Received

MidAmerican Energy Company: *A representative from MidAmerican contacted this office to say REC (Rural Electric Cooperative) is the appropriate provider for this subdivision. Letter and plat sent to REC. REC has no issue.*

Siouxland District Health Department: No Response Received.

County Assessor: No Response Received

Emergency Services: No Response Received

County Recorder: No Response Received

Real Estate Department: The subdivision's proposed name is available and approved for use.

Board of Supervisors: No Response Received

City Clerk of Anthon, Iowa: *City of Anthon will review. Review is a staff recommended condition of approval.*

Mortgage Holder: American Mortgage and Equity Consultants, Inc.: No Response Received.

Iowa Department of Transportation: *IDOT has no issue with new drive.*

Kelly Mulvihill of IDOT: No Response Received

We enclose final platting, topographical platting, aerials, parcel information and on-site pictures recently taken. Should your Commission consider a subdivision approval recommendation it is staff's opinion any final plat approval contain the following conditions:

That the Anthon, Iowa town council's plat approval be placed upon the certification page of the plat.

That a dwelling construction restriction notation be placed upon the final platting within the boundaries of Lot 2 and within the *Notes* section of the platting.

Mr. and Mrs. Boyle from 3079 Safford Ave., Danville, IA 51019 addressed the commission and commented on their concerns of increased density in the area of the subdivision. They were assured by the commission no others homes would be constructed specifically due to the "*...dwelling construction restriction notation being placed upon the final platting within the boundaries of Lot 2 and within the "Notes" section of the platting.*"

Mr. Mordhorst, surveyor for the Hendersons, explained REC had no issue with providing electricity in lieu of MidAmerican Energy.

Mr. Marx expressed his concern the boundaries be clearly defined in case neighboring Mr. Randy Wolfe has been tending a portion of the land and has mistaken it as his own.

Mr. Mordhorst assured Mr. Marx the property lines show the piece of land in question as belonging to Hendersons but said he would discuss the issue with Mr. Jack Seuntjens.

Mr. Marx asked if there were any suggestions or motions.

Ms. Zellmer Zant made a motion to approve the subdivision subject to the following conditions;

- **Anthon exercises its right to extraterritorial review.**
- **Construction of single family dwelling restricted on Lot 2**

Mr. Marx took exception to the second condition saying the remaining seventeen (17) acres were enough to build (another house) on.

Mr. Pylelo explained it could not be built on unless it was rezoned first.

Marx objected, but asked if there was a second to the original motion with conditions. Mr. Knight seconded the motion with the original two (2) conditions.

Mr. Pylelo explained again in more detail what the situation was, why he had recommended putting a restriction on Lot 2, and how it affected the density of that section.

Mr. Marx said Hendersons should have been notified regarding the possibility of using Lot 2 for agricultural land.

Mr. Mordhorst explained Hendersons were informed they couldn't buy the whole 27 acres because the bank would only finance the piece the house was on. Hendersons were forced to cut out 10 acres with the house on it for the bank to finance and purchase the remaining 17 acres in a separate real estate transaction. They intend to use the entire 27 acres for themselves.

Mr. Marx made a motion to amend the previous motion to include a third condition;

- **Should the remaining seventeen (17) acres be used for agricultural purposes, the current owners may build a farm house**

Mr. Pylelo attempted to present an alternate to Mr. Marx's condition.

Marx said *"The first time (the Hendersons) were here (Mr. Pylelo) controlled what he wanted (the Hendersons) to see."*

Pylelo objected, to which Marx replied *"You cannot put an encumbrance on future sales."*

Mr. Pylelo said if one was going to adopt an amended condition he would recommend it say, *"Should he want the building restriction removed he is allowed to come (to the Planning and Zoning Office) and rezone the parcel to create a zoning district that would allow for the density it creates."* This allows the neighbors to come in and see the 17 acres can potentially be divided into 8 lots.

Mr. Marx replied the lots would then not be Ag Exempt and he preferred staying with his original amendment.

Mr. Nelson said to Mr. Marx, *"It is not (the Commission's) job to be telling other people what they should be doing with their land."* He said he would not vote for Mr. Marx's amendment.

Mr. Knight correctly iterated the situation for his own clarity and asked what Mr. Pylelo would say should the 17 acres be restricted and someone wanted it reversed.

Mr. Pylelo summed up the steps for rezoning which include;

- Application
- Notify public by letters and legal publication
- Public Hearing before Zoning Commission
- Recommendation to Board of Supervisors
- Second Notification of public by letters and legal publication
- Public Hearing with Board of Supervisors who have final approval on rezoned parcel

Mr. Knight said as long as there was a process to reverse the restriction he did not have a problem with it. Knight said he would not vote for the proposed amendment.

Mr. Marx asked for a second to his amended condition to Ms. Zellmer Zant's motion. The motion made by Mr. Marx died for lack of a second to his motion and the Commission deferred to the original motion made by Ms. Zellmer Zant subject to the following conditions:

- **Anthon exercises its right to extraterritorial review.**
- **Construction of single family dwelling restricted on Lot 2**

Motion was seconded by Mr. Knight; carried 4-1; Mr. Marx voting against the motion.

The third agenda item was any citizen wanting to be heard.
No citizens present.

The fourth agenda item was a Study Session: Low Impact Development (LID) ordinances.

The Commission had received the most recent version of the LID ordinance from Mr. Pylelo in their packets.

Ms. Zellmer Zant made a motion to approve the newest version of the Low Impact Development ordinance and present it to the Board of Supervisors.

Mr. Knight seconded the motion; motion carried 4-0.

Mr. McWilliams made a motion to adjourn. Mr. Knight seconded the motion; motion carried 4-0.

Meeting adjourned at 7:12 PM. Next meeting will be on October 25th at 6 PM.