

Minutes - Woodbury County Zoning Commission Meeting

June 22, 2009

The meeting convened on the 22nd of June, 2009 at 6:00 PM in the Board of Supervisor meeting room in the Woodbury County Court House, downtown, Sioux City, Iowa. Present were the following Commission members – Chairman Grady Marx, David McWilliams, Arvin Nelson, Christine Zellmer Zant and Michael Knight: Staff members present were Director John Pylelo and Clerk Peggy Napier. Present from the public were George and Mary Seubert, Director of Rural Economic Development Rob Marqusee, Amy Fixsel, Don Klingensmith, Don Hennings, Carole Hennings, Scott Hennings, Eric Hennings, Rochelle Lundy, Dave Amick, Jeff Poulson, and Kevin Alexander.

The first agenda item was approval of meeting minutes from May 18, 2009.

Commissioner Nelson made the motion to approve the May 18, 2009 minutes; the motion was seconded by Commissioner Knight; motion carried 4-0.

The second agenda item was a public hearing and Re-consideration/Re-recommendation to Supervisors of Re-Zoning Petition for Property Owner – K & L Properties, LLC; Developer – Hennings Properties.

At the May 18, 2009 meeting the Commission considered the re-zoning request within this agenda item and voted to recommend denial of the petitioner's re-zoning request of AP to GC designation. At their June 9, 2009 meeting the Board of Supervisors held a public hearing on the Re-zoning Petition. The Board then considered the re-zoning petition including the Commission's recommendation of denial. The Board then voted 4-0 to defer the matter, refer the matter to your Commission for reconsideration and further recommendation along with the following request.

The Supervisors ask you reconsider the application in light of additional public testimony obtained in their hearing. Included therein was testimony from the town of Bronson and a nearby property owner. The Board requests your additional assessment to determine if the petitioned change in zoning can be accomplished within restrictions recommended by the Commission. The Board's desire is to allow a change in zoning which would allow the requested use without allowing overly intrusive uses on the parcel. The Board hopes this could be accomplished within a PD (Planned Development) designation assigned to the requested GC (General Commercial) zoning designation.

Below we provide all staff report narrative considered at your May 18, 2009 meeting along with the following additional information:

- A.) Correspondence dated June 4, 2009 from Mr. and Mrs. George Seubert of 2087 210th St. Bronson

- B.) Resolution #7-2009 dated June 3, 2009 from the City of Bronson Council.
- C.) Should it be available a copy of draft minutes of the June 9, 2009 Board of Supervisor's meeting. If provided be advised the Board's minutes will not likely be approved until their June 16, 2009 meeting. Citizens providing testimony at the Board's hearing in support of the petitioner included:
- Mr. George Seubert – a property owner to the north at 2087 210th St.
 - Don Ronfeldt, Mayor of Bronson – representing the Bronson town council
 - Rick Aadland of Pioneer Realty – listing agency for the Petitioner
 - Rochelle Lundy – realtor for the applicant
 - Jeff Poulson – legal counsel for the applicant
 - Eric Hennings – representing the applicant
 - Kevin Alexander – representing the petitioner/landowner

Note: No citizen testimony was offered supporting denial of the petitioner's request.

- D.) Emails of June 10-11, 2009 from the Planning and Zoning Office to applicant, Hennings Properties. Also provided is a copy of Section 3.01 *Zoning District Allowed Use Provisions* which includes the *Land Use Table*. Mr. Hennings has placed an asterisk (*) next to those uses he requests be discussed as possible permitted uses under any planned development zoning district designation which might be recommended by the Commission. Review of those uses prior to the meeting may be valuable in re-analysis of this re-zoning petition application.

We would also refer you to the enclosed draft minutes of the Commission's May 18th meeting.

(Copy of case statement for K&L Properties / Hennings Properties agenda item originally provided for the May 18, 2009 Zoning Commission meeting)

The Woodbury County Office of Planning and Zoning has received a petition for re-zoning from the property's owner, K & L Properties (Kevin Alexander); Applicant – Hennings Properties (Dan & Eric Hennings). The Board of Supervisors at their May 12, 2009 meeting considered the re-zoning petition and forwards to your Commission for public hearing and recommendation.

The applicant has a purchase offer pending with the property owner conditioned upon re-zoning approval. Should Woodbury County re-zone the parcel Hennings Properties will purchase the approximate 5 acre irregular shaped parcel located in the NE ¼ of the NE ¼ in Section 33, T88N of the 5th P.M. (Floyd Township). The parcel lies approximately 2000' southeast of Bronson at the southeast corner of the intersection of 210th St. and Eastland Avenue. The parcel is addressed 2086 210th St., and is known as GIS Parcel # 8846 33 200 007. The parcel's only structure is a 128' by 48' steel utility building with well and septic systems connected. Driveway access is from the south side of 210th St.

The parcel is currently zoned AP (Agricultural Preservation). The applicant's proposed commercial use is for office space and the warehousing/storage of vehicles, inventory, products and equipment for the applicant's company *Campus Lofts*. *Campus Lofts* is a Woodbury County headquartered business which works with colleges and universities to supply lofts (bed bunks) and other products to students who live in college residence halls.

This proposed use is not permitted within the currently existing AP zoning district. Thus, the petitioners have applied to change the zoning designation to GC (General Commercial). The GC zoning designation permits the type of office and storage use the petitioners propose.

Woodbury County's future Land Use Mapping designates the area as Rural Residential and Agricultural. The parcel in Future Land Use Mapping designation is Rural Residential. The parcel does not lie within any drainage district or within a flood hazard area.

The nine (9) property owners within 1000' of the parcel have been advised of the public hearing. To date no comments have been received by the Office of Planning and Zoning. The weighted average CSR on the parcel is 57.55.

A historical recap of the parcels ownership and construction activity is as follows:

- **1990's** - Mr. Jim Young purchases the original 40 acre parcel which includes the existing 5 acre parcel.
- **November 17, 1999** – Mr. Young, who was determined agriculturally exempt and thus exempt from County zoning ordinances, is issued a building permit for the construction of a 48' by 128' accessory structure (a Morton pole building) on the then 40 acre parcel.
- **November 29, 2004** – Mr. Young sells an approximate 5 acre portion of the parcel which the 48' by 128' accessory structure lays to Casey Fenton Custom Homes, LLC.
- **January 2005** – Casey Fenton Custom Homes constructs a 48' by 38' addition to the south side of the accessory structure. No building permit is applied for. Casey Fenton Custom Homes, LLC is not agriculturally exempt from County zoning ordinances.
- **January 2005** – Mark Elgert of Tri State Plumbing installs a septic system and

drain field on the parcel. No Siouxland District Health permitting is obtained.

- **January 2005** – Marty Soole installs a well on the parcel. No Siouxland District Health permitting is obtained.
- **March-April 2006** – Casey Fenton Custom Homes constructs a 48' by 38' addition to the north side of the accessory structure. No building permit is applied for. Casey Fenton Custom Homes, LLC is not agriculturally exempt from County zoning ordinances.
- **April 2006** – Woodbury County Planning and Zoning becomes involved in past activity on the parcel and begins investigation.
- **April 26, 2006** – Planning and Zoning issues a stop work order on construction activity due to lack of the required permitting.
- **May 1, 2006** – Upon the filing of two delinquent building permit applications and payment of filing fees and penalties a conditional work completion order is issued allowing restricted construction activity to commence until conclusion. The additional construction is allowed prior to a scheduled variance hearing due to safety and property risk issues related to the partial and uncompleted construction. The applicant is told and understands removal of a portion or all the north addition is a possibility. It is noted the south addition building permit application includes conversion of this portion of the structure to a single family dwelling.
- **May 12, 2006** – Siouxland District Health issues well and septic system permits for the previously installed well and septic systems.
- **May 15, 2006** – An onsite visit determines additional construction activity in violation of the conditional work completion order has occurred. The unauthorized construction includes grading, landscaping and the installation of utility lines.
- **December 15, 2006** – Casey Fenton Custom Homes, LLC sells the parcel to K & L Properties, LLC (Kevin Alexander). Mr. Alexander informs the Planning and Zoning Office that Mr. Fenton did not disclose the setback violation issue at the time of sale.
- **January 2007 to May 2009** – Mr. Fenton does not respond to Woodbury County's repeated attempts to communicate with him and how he intends to resolve the setback violation. Over this period numerous parties have expressed interest in purchasing the parcel. The Planning and Zoning Office discloses to each interested party the history of the parcel. Mr. Alexander is made aware of his options but does not file a variance application. At some point Mr. Alexander retains Pioneer Realty in his attempt to sell the parcel. The Planning and Zoning Office informs the realty company of the parcel's history and asks they disclose parcel history to all potential buyers.

The parcel's current AP (Agricultural Preservation) zoning designation requires the principal structure be set back 100' from the 210th St. and 50' from the Eastland Ave. roadway right-of-way. The applicant has met the roadway right-of-way setback to the west along Eastland Avenue. However measurements taken by representatives of the office of Planning and Zoning and the County Engineer's Office confirm the following:

1. The width of the County road right-of-way to the south of 210th St. at this location is 40';
2. The closest point of the existing north wall of the north addition is 124' from roadway centerline and 84' from county roadway right-of-way along 210th St.,
3. Thus 16' of the far northern portion of the structure violates the 210th St. front yard ROW setback.

Be advised that should the re-zoning petition be approved as applied for, changing the designation from Agricultural Preservation to General Commercial, the minimum required front yard setback along 210th St. would be reduced from 100' to 50'; the corner side yard setback along Eastland Ave. would be reduced from 50' to 25'. Thus the requested zoning would resolve the existing 16' front yard setback violation along 210th St.

We have contacted the Woodbury County Engineer's office for comment and anticipate response prior to the public hearing.

Discussion:

Chairman Marx instructed your Commission would hear thirty minutes (30 minutes) of opposing comments from the public followed by thirty minutes (30 minutes) of supporting comments.

No opposing comments were brought forward.

Director of Rural Economic Development Rob Marqusee approached the commission first. Mr. Marqusee explained he had acted as counsel to Mr. Hennings in support of Hennings' plans, but from his position in the county felt each department had done its job, yet remained in conflict. Marqusee considered Hennings' proposed business "gold" in the county and hoped your Commission could find a viable compromise.

Mr. Kevin Alexander wants to market the property and has a buyer available. If there is a way for the property to be used without negatively impacting the neighbors he is willing to work with everyone to "make rational sense of it."

Mr. Dave Amick spoke supporting Bronson City Counsel's resolution to support Eric Hennings' business proposition and Mr. Marqusee's efforts toward economic development.

Mr. Eric Hennings came forward to review potential businesses from the *Land Use Summary Table* he and Mr. Pylelo had discussed should a PD (Planned Development) designation be added to the GC re-zoning. Your Commission was provided the list; however Hennings included additional businesses prior to the meeting. Mr. Hennings discussed his list with neighbors and Bronson City Counsel prior to this public hearing.

Attorney Jeff Poulson, representing Mr. Hennings, commented there is no *transitional zoning* around Bronson on the Future Land Use map. He added the Board of Supervisors acknowledged a future land use map should change and grow.

Mr. Pylelo explained there is *transitional zoning* around Bronson; however, it provides for residential growth, not commercial.

Ms. Rochelle Lundy, realtor representing Mr. Hennings, did not want any restrictions (with a PD designation) placed on the Alexander property to prohibit future sales of the property.

Ms. Mary J. Seubert, who lives across the road from Alexander's property, said she supported Mr. Hennings' plans and any "young people" who wanted to start a business in the county.

Mr. Nelson made a motion to close the public hearing. Mr. Knight seconded the motion; motion passed 4-0.

Discussion:

Commissioner McWilliams asked Mr. Marqusee if there were any other places in Woodbury County for Hennings' business to locate.

Mr. Marqusee explained there are no opportunities for businesses in Lawton. The small towns need to be developed; diversification is important. The populations are mostly elderly and focus should be placed on retaining young people. New businesses will revitalize the small towns.

Mr. McWilliams asked about the potential growth of Hennings' business.

Mr. Hennings explained the business is primarily web-based and they expect the office space to expand to seven (7), possibly nine (9) people. The Alexander property would provide him and his family the opportunity to stay within the area they currently live. Hennings could feasibly build on property they are currently using but they prefer placing their business on a black top road and staying near a small community. He believes this

location could help the entire community to grow. He has no current plans to enlarge the proposed building. The building and shipping of the campus lofts will continue to occur elsewhere.

Mr. Nelson said from his position as Zoning Commissioner he needs to consider the GC (General Commercial) zoning designation would open the possibility of anything going onto that location. There is no guarantee the proposed business will stay there and another undesirable business could come in. The community needs to be aware of this and prepare itself in the event *Campus Lofts* leaves. A PD (Planned Development) overlay would protect the rural community.

Mr. Hennings repeated he did not wish to leave the small community setting. He said small town areas need to be zoned so new businesses can be established and the towns can grow.

Mr. Marx said the “grocery list” of businesses Mr. Hennings presented was “too much.” Marx suggested putting only Hennings’ business as the PD overlay.

Ms. Zellmer Zant asked Mr. Hennings how many other places he looked at.

Mr. Hennings said realtors either show them locations in South Dakota or locations that aren’t suitable.

Zellmer Zant suggested possible sites along the Hwy 20 corridor and on Hwy 141, noting individuals don’t usually get the location they want without considering several others along the way. She looked at the Future Land Use Map and pointed out reasons for the eventual zoning such as controlling urban sprawl; controlling where residential areas should grow and where businesses should locate.

Mr. Nelson agreed saying it was the Zoning Commissions purpose to consider what should be avoided as well as what should be allowed.

Zellmer Zant pointed out Beth (McGrath) reconsidered her support of the proposed re-zone when she heard some of the less-desirable businesses that could occupy the location should Hennings leave.

Mr. Marqusee said urban sprawl offenders are usually residential and there should be a way the commission could compromise so urban sprawl could be controlled while allowing businesses to develop.

Mr. Marx made a motion to approve the petitioner's request for rezoning to a GC (General Commercial) zoning designation subject to each of the following conditions:

- 1. A PD (Planned Development) overly be added as part of the re-zoning to limit the permitted use of the parcel as general warehouse, office space and service center for the business of *Campus Lofts* and their business activity of sale and service of dormitory room furnishings .**
- 2. Additional structures be limited to the needs of *Campus Lofts* and their business activity of sale and service of dormitory room furnishings.**
- 3. That parking be limited to the number of spaces required for employees of *Campus Lofts* and their business activity of sale and service of dormitory room furnishings.**
- 4. That any on premise signage be allowed only for identification of *Campus Lofts* and their business activity of sale and service of dormitory room furnishings. That no large billboard signage be allowed.**
- 5. That the outdoor storage of vehicles, inventory and equipment owned or under the control of *Campus Lofts* not be allowed.**
- 6. That any new structure or improvement to the existing structure be located no closer than 100' from 210th St. and Eastland Ave. roadway right-of-ways.**
- 7. That any approved zoning designation change and conditions thereon be recorded as part of Woodbury County real estate records.**
- 8. That the existing violation of off-premise vegetation being stored on the parcel be legally remedied.**

Mr. Knight seconded the motion; motion carried 5-0.

Mr. McWilliams asked the letter from the County Engineer regarding the 100 foot setback off of Eastland Ave. be included in the considerations.

Mr. Nelson asked the removal of the debris on the property be added to the abstract or title.

Mr. Pylelo said a recommendation would be added to the resolution.

Mr. Alexander assured them the trees would be dealt with prior to the transfer of title.

Attorney Poulson asked what constituted "*reasonable uses*" in considering future purchasers.

Mr. Marx assured Poulson they could come back to the commission to “*rehash any changes.*”

Mr. Pylelo announced there would be another public hearing at the Board of Supervisors meeting on Tuesday, July 7th, 2009. Notices will be sent out to present public and other parties of interest.

The next agenda item was Any Citizen Wishing to be Heard.

Citizens attending had already been heard.

Ordinance Discussion:

Discussion was tabled until future meeting.

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

Meeting adjourned at 7:20 PM.

Next meeting scheduled for Monday, July 27, 2009