

## **Minutes - Woodbury County Board of Adjustment Meeting November 7, 2016**

The meeting convened on the 7<sup>th</sup> of November, 2016 at 6:00 PM in the Board of Supervisors Meeting Room in the Court House, Sioux City, Iowa. Present were the following Board members: Robert Brouillette, JoAnn Sadler, Katie Colling, and Dwight Rorholm. Staff members John Pylelo and Peggy Napier were also in attendance. Present from the public were: Cody McCullough, Mark Godfredson, and Mark Thompson.

**The first agenda item was Any Citizen Wishing to be Heard on Non-Agenda Items.**  
No citizen made comment pertaining to this agenda item.

**The next agenda item was approval of minutes of September 12, 2016 meeting.**  
**Mrs. Colling made a motion to approve the minutes subject to the below change.**

- **Change “6<sup>th</sup> of June” to “11<sup>th</sup> of July.”**

**Mrs. Sadler seconded the motion; motion carried 5-0.**

**The next agenda item was to Reconvene Public Hearing for Consideration of Conditional Use Permit Application by Applicant and Property Owner Larry Eisenhauer Re: Conditional Use Permit for the Staging and Operation of Waste Processing and Transfer – recycling Operations for Vegetative Material; GIS Parcel #874719200009.**

On September 12, 2016 your board voted to continue this application’s public hearing to this evening’s meeting so to allow the applicant time to respond to your request for additional site plan and marketing details. As of November 3<sup>rd</sup> the applicant has not provided the Planning and Zoning Office with the requested information; either in part or whole.

Copies of the following were provided the board;

A reproduction of the information provided within your September 12<sup>th</sup> meeting packet for this agenda item, including the original Sept 12<sup>th</sup> staff narrative.

An email stream from the applicant’s legal counsel relative to his client’s response to your request for additional information and a request of action your Board consider.

**Your board is tasked with:**

**Reconvening the public hearing on this matter and accepting any additional public testimony.**

- **To then close the public hearing.**
- **To then consider the applicant's requests to either:**
  - **Withdraw the application; or**
  - **Table deliberation on the matter.**

**Your Board can also consider the following:**

- **Continuing the public hearing to some later date (preferably a fixed date);  
or**
- **Deliberate and approve the application, with or without conditions, based upon applicant, staff and public testimony provided to date; or**
- **Deliberate and deny the application based upon applicant, staff and public testimony provided to date.**

**Mrs. Sadler made a motion to close the public hearing. Mrs. Colling seconded the motion; motion carried 4-0.**

Discussion:

This meeting was to resolve the issue of Mr. Eisenhower's property. The board expressed disappointment he hadn't followed through. Use of the property as laid out by Eisenhower would be prohibited until more information is received.

Mr. Pylelo said the emails asked the possibility of a continuance. A continuance can be either accepted or denied in this meeting. An error in this decision can be reviewed in a year. Planning and Zoning could accept certain provisions.

The staff favored withdrawing the item. When and if the applicant is ready or has additional information, he can start over from the beginning.

Mr. Brouillette said he would like to see something done with the parcel.

Mr. Pylelo noted the applicant could apply again in a year only if the board *denied* the Conditional Use Permit.

If the application is withdrawn, they could reapply the next day.

Mr. Rorholm said there was an attempt to lay out a plan for something. He needs to meet with the Board of Adjustment and let us know what he wants us to do. Areas that need protection need to be identified.

Mr. Pylelo pointed out an new tree chopping service in South Sioux City could work with him. They would be helping both businesses to be successful.

Mrs. Sadler stated the board should just deny the permit since we have heard nothing from them.

Mr. Rorholm said it was disappointing to see a business man just walk away from what could be a good opportunity. That is not good business. It makes Rorholm not trust him.

Mrs. Colling said the additional information the board requested of him appeared to “knock the wind out of him.” She didn’t think he was expecting to be questioned like that.

Mr. Pylelo said if would be reasonable for the board to deny the application. Eisenhower could get the necessary information together and in a year or more he could apply again.

Mr. Brouillette brought the board back to the point they were deciding to withdraw or deny the application.

Mrs. Colling said after reviewing everything she was more inclined to deny for lack of the requested information.

**Mr. Rorholm made a motion to deny the application due to a failure to provide adequate requested information in the timeline given. The motion was seconded by Mrs. Sadler; motion carried 4-0.**

**The next agenda item is a Public Hearing for Mark S. Godfredson Re: The approval of a Front Right of Way Set back Variance; GIS Parcel #874709100003.**

In March of 2016 the Planning and Zoning office was made aware an excavation had occurred on the referenced parcel addressed 1456 230<sup>th</sup> St. Review of county permitting records showed a county floodplain development permit had not been issued for the parcel. A subsequent on site visit determined excavation of a 35’ by 62’ area within the flood plain had occurred. The excavation appeared to be related to a dwelling basement excavation. A stop work order was placed on the parcel pending review and any permit approvals.

Subsequent investigation resulted in the following information:

1. Assessor's records reflect that in May of 2010 Mr. Godfredson purchased the parcel from the Wendell Hubert family.
2. The rectangular shaped parcel is 561' in width and 198' in depth comprises 2.87 acres. The parcel is zoned AP (Agricultural Preservation).
3. Review of historical aerial photos of the parcel verify sometime prior to 2007 the former single family dwelling was destroyed by fire and removed from the parcel.
4. The excavation occurred to move an existing 58' by 32' Merville area dwelling to the parcel.
5. Mr. Godfredson hired Teton Enterprises, LTD to excavate and to place footings and foundation construction for the dwelling.
6. The parcel currently has five (5) accessory structures of various sizes which appear to have been placed on the parcel prior to the 1960's.
7. The county's floodplain map panel No. 19193C0400D dated September 29, 2011 shows the parcel, in its entirety, to be located within a *Zone A Special Flood Hazard Area (SFHA)* commonly referred to as the 100 year flood plain. That on August 18, 2016 FEMA issued a Letter of Map Amendment Determination Document (LOMA) for Case No.: 16-07-1827A removing a portion of the property from the Zone A SFHA. The applicant has represented the area FEMA removed from the flood plain includes all the excavated area. Al Fagan Land Surveying P.C. Plat of Survey dated July 7, 2016 supports said flood plain mapping removal and the fact the excavated area lies within the ground removed from the flood plain.
8. Letters dated March 18 and April 6, 2016 were mailed to Mr. Godfredson advising him that floodplain, variance and building permit issues must be favorably resolved prior to the placement of the dwelling. Further, that no further construction activity was to occur prior to issuance of the building permit. NOTE: The Planning and Zoning Office did give Mr. Godfredson permission to move the new dwelling structure onto a western portion of the parcel as a temporary storage location pending the outcome of the permitting process.
9. The excavated area indicates the new dwelling placement to be up to within 65' of 230<sup>th</sup> Street roadway ROW.
10. The front set back from ROW for a dwelling in the AP zoning district is 100'. Accordingly up to a 35' (100' less 65') front set back variance is required to place the dwelling onto a foundation placed within the excavated area.
11. Mr. Godfredson also owns the adjacent parcel to the west, south and east.

We provide the following documentation for your Bjoard's review and consideration:

1. A copy of the Fagan Survey dated July 7, 2016
2. A site plan prepared from an enlarged portion of the Fagan survey
3. A copy of the variance application dated September 13, 2016 and filed with the county on October 3, 2016. Included, as part of the application, are the applicant's responses to the Section 2.02:8F(1)(a) standards related to variance approval.
4. Copies of the dimensional standards and variance ordinances.
5. FEMA's Map amendment determination document dated August 18, 2016.
6. Parcel information
7. Aerials of the parcel
8. Onsite photographs
9. As this front set back variance request with potential impact to county roadway right-of-way a request for comment was made to our Secondary Roads Department. Attached find an e-mail dated October 11, 2016, from the Woodbury County Engineer.

The four (4) adjacent property owners have been notified in writing of the public hearing. To date there have been no responses. Currently it is unknown if any of these property owners will attend the hearing.

**You are asked to hold a public hearing; then deliberate on the approval of up to a 35' front set back variance for the placement of a single family dwelling.**

Comments:

Mr. Godfredson explained his house had burned down (sometime in the mid-1990s) exactly where the new foundation is dug and the house is ready to be placed.

Mr. Brouillette asked why he hadn't had more land taken out of the flood zone when he did the LOMA.

Mr. Pylelo commented if he isn't granted a variance he may have to contact FEMA to have more taken out of the floodplain. Pylelo explained there were other placement options he could consider.

Mr. Godfredson stated if he had to move the house he would have to remove the two (2) large trees in front of the house.

Mr. Brouillette said (County Engineer) Mr. Mark Nahra puts a lot of weight in not following the setback ordinances.

Mr. Rorholm said if the house was destroyed or torn down, any new structure would have to meet current setbacks.

Mr. Pylelo suggested he consider other reasonable options that could work. He explained Mr. Nahra was concerned with potentially having to buy more ROW and/or houses to provide ROW. He acknowledged 35' was not as bad as 65'.

Mrs. Sadler noted granting this variance would set a precedence that could cause more problems in the future.

Mr. Mark Thompson (who Godfredson bought the house from) said his house in 1990 was about 35' from the road.

Mr. Pylelo distributed handouts of requirements for a variance. Most issues are not hardships by definition.

Discussion:

Mr. Godfredson stated if he can't have the variance he will burn the house. He won't move it anywhere else.

Mrs. Sadler said it was clear to her proof of hardship was not met in this case. There was no reason why a variance should be granted.

Ms. Napier suggested combining parcels to make his parcel larger. Mr. Pylelo showed how that would create other problems in the future.

**Mr. Rorholm made a motion to deny the variance for the following reasons:**

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**Mrs. Colling seconded the motion; motion carried 4-0.**

**The last agenda item was Any Citizen Wishing to be Heard on Non-Agenda Items.**  
No citizen made comment pertaining to this agenda item.

**Mrs. Sadler made a motion to adjourn. Mr. Rorholm seconded the motion; motion carried 4-0. Meeting adjourned at 8:00 pm.**

Next meeting is scheduled for Monday, December 7 at 6 PM.