

Minutes of Woodbury County Zoning Commission August 28, 2006

The meeting convened on the 28th of August, 2006 at 6:06 PM in the Board of Supervisor's meeting room on the first floor of the court house, Sioux City, Iowa. Present were the following Commission members – Chairman Don Groves, Dwight Rorholm, Arvin Nelson, and Grady Marx; Christine Zellmer Zant was absent; Zoning Staff Present: John Pylelo and Peggy Napier. Present from the public was Riley Simpson, consultant for Flat Earth Planning.

The first agenda item was discussion of how the remaining unsubmitted Zoning Commission minutes should be finished.

Mr. Marx presented Roberts Rules downloaded from the internet to support his opinion and to clarify parliamentary procedure. He suggested the September 11th meeting be cancelled, all minutes be completed and brought to the commission for approval at the September 25th meeting. Marx was very concerned the commission was not following through with issues brought up in previous meetings. Having the opportunity to review the meetings would have acted as a reminder for those issues.

A discussion ensued. The commission decided to ask that four (4) sets of minutes be completed by the September 11th meeting; the most current ones and three (3) other sets beginning with the earliest. The remaining sets would be completed for the September 25th meeting. The minutes will be mailed to the commission members as they are completed. They shall be reviewed before the next meeting and approved at the meeting.

Ms. Napier said she couldn't promise four sets of minutes by the meeting on September 11, but she would make her best effort and was willing to spend time outside of regular working hours to that end.

It was suggested by Mr. Nelson and Mr. Marx the commission skip the September 11th meeting and use the time to finish the minutes.

Mr. Pylelo was not in favor of this because of the timeline he was considering for finishing the rewrite of the zoning ordinances and subdivision regulations. He said it already appeared he would have to delay the town hall meetings.

The commission decided to expect the current minutes and three of the earliest as yet unsubmitted minutes at the next two meetings in September.

Mr. Rorholm made a motion the commission break to review the minutes submitted for this evening's meeting. Mr. Nelson seconded the motion. Mr. Marx opposed the motion. Motion carried.

The commission took a break to review three sets of minutes submitted by Ms. Napier for tonight's meeting: February 6, 2006; July 17, 2006; July 24, 2006

Chairman Groves called the meeting back to order at 7:17 pm.

The commission reviewed minutes from the February 6, 2006 Zoning Commission meeting and noted several minor errors.

On the first paragraph on page 5 Mr. Marx wanted clarification on the sentence that included "primary structure." He thought the comment referred to "accessory structures." Ms. Napier agreed to find the place on the tape, listen to it again and make what adjustments were necessary. (After listening to the tape, it was found the comment did refer to setbacks on primary structures.)

Mr. Rorholm approved the minutes subject to the noted changes and corrections. Mr. Nelson seconded the motion. Motion carried.

The commission reviewed minutes from the July 17, 2006 Zoning Commission meeting and noted several minor errors.

Mr. Rorholm approved the minutes subject to the noted changes and corrections. Mr. Nelson seconded the motion. Motion carried.

The commission reviewed minutes from the July 24, 2006 Zoning Commission meeting and noted several minor errors.

Mr. Nelson approved the minutes subject to the noted changes and corrections. Mr. Marx seconded the motion. Motion carried.

Mr. Pylelo, Mr. Marx, Mr. Rorholm, and Mr. Simpson discussed the issue of paved interior subdivision roads along with comments that were made on same at a meeting held with County Engineer Dick Storm, Mr. Rorholm, Mr. Pylelo, and Mr. Simpson. Mr. Pylelo said he approached Mr. Storm about the possibility of attending a zoning commission meeting at some point before the town hall meetings to answer questions as County Engineer. Mr. Storm agreed to meet with the Zoning Commission.

The second agenda item was the work session and discussions of the new and revised subdivision ordinances.

Mr. Simpson distributed new revised copies of the subdivision ordinances with the intentions of getting an overview of what had been discussed and accomplished to this point before

getting into the details of the ordinances. He said his and Mr. Pylelo's hopes were that there would be a set of ordinances to recommend to the Board of Supervisors in time for them to be adopted and effective by the end of the year – the first of next year. The only way this could happen would be to have the town hall meetings by the first half of November, 2006. That means the rest of the subdivision ordinances and all the present issues for zoning and for subdivisions would have to be resolved in September and October. The other necessary item to have ready is the map.

Mr. Rorholm noted there would only be 4 meetings to finish everything before a recommendation.

Mr. Simpson agreed.

Mr. Pylelo said, rather than compound the problem with the minutes by having (longer) meetings once a week, he would prefer extending the finish date to early spring, possibly as late as March. Mr. Nelson noted at this point, harvest would be interfering with presence at early fall meetings. We will be having absences and possibly lack of quorums.

Few felt it was practical to meet every week. Even though Chairman Groves wished to see the process through since it began during his last term, he did not see an advantage to rushing the process.

Mr. Simpson suggested it was possible to adopt the Zoning and ordinances and have the effective date at some point in the future, whenever the map is adopted.

Mr. Simpson and Mr. Rorholm agreed generally the public would be more interested in how the zoning and ordinances would affect them regardless of what the wording was because of the reaction to the last development plan that was ultimately thrown out.

Mr. Pylelo said he would rather tell the board the plan would be ready for adoption in 90 days and then have it ready in 60 than to not allow themselves enough time to finish it right.

Mr. Marx had a question about AG exempt area outside of city limits and within 2 mile radius. He wondered if there shouldn't be two (2) designated zoning areas for subdivisions within the 2 mile limit and those outside of the 2 mile limit.

Mr. Pylelo asked if he wanted the zoning to be more strict within the 2 mile limit.

Mr. Simpson said the city will have already have imposed a certain burden within that 2 mile limit.

Mr. Rorholm said it can't be assumed that it has to be a certain way. He said the commission is going to have to set it up to reflect what is out there now and some of it might be the type of subdivisions that are in those particular areas. He said the watertowers and the water systems out there skew things in his mind. There are some areas in the country that are only missing the streetlights to look like they are in the city already.

Mr. Simpson said it might be better to discuss these things in more depth later.

Mr. Nelson asked if a building permit was required from the Planning and Zoning office for every kind of structure built in the county.

Mr. Pylelo acknowledged this was true whether they were AG exempt or not. He gave a few examples of ways some landowners have tried to get around this fact and why they were not successful. He also acknowledged others have gotten away with building additions and such without getting permits and without the office knowing about it.

Mr. Simpson brought up other information regarding the meeting with County Engineer Richard Storm. He said Mr. Storm was positive about the idea of having private roads as long as there was the potential for developing them so they met what would be the County Standards some day. He entertained the idea that he might go to the Board of Supervisors with Mr. Pylelo and Mr. Simpson to support the commissions decisions about county roads. He expressed some frustration about posing a standard all the time that doesn't necessarily make sense for county roads. It looks like they (county engineers) have no flexibility.

Mr. Pylelo asked if Mr. Simpson heard Mr. Storm say he would consider any other kind of interior roadway surfacing other than Portland cement.

Mr. Simpson said he remembered Mr. Storm saying if it was a private road and it was going to be brought in as a county road it had to be brought up to whatever the standard was for the county. Mr. Simpson remember Mr. Storm as being open to the idea of how ever many inches of Portland cement concrete or whatever...

Mr. Rorholm listed a number of types of surfacing material and then said he thought whatever kind of material was used was up to the developer. He did say the developer needed to have the correct width and geometrical shapes and drainage provisions. Rorholm was sure Mr. Storm would take a look at the SUDS (Statewide Urban Development [something – Mr. Simpson wasn't sure]). These standards give the specifications for utility work and things that need to be used by all municipalities. The next step is they will only be used by counties for their guide standards although he thought the standards were more urban than rural right now.

Mr. Simpson discussed how the new map would appear. He talked about areas, for example on the south side of Hwy 20 that might be rezoned for commercial use. He said it would make sense to parcel off a number of acres along the highway being used for commercial purposes by major or minor subdivision rather than rezone the entire 40-50 acres.

He discussed creating new areas on the zoning map that aren't just parcels. From a policy standpoint the requirements for any future rezoning, such as if someone comes in and wants to rezone the front 400' along the highway for commercial use, it will probably be discussed with the commission first. The interested party would be required to subdivide with either a subdivision or simple division and in the future work toward getting all the zoning on unique parcels within the GIS system. The commission might find themselves leveraging people toward creating new parcels as part of a rezoning process. That's a policy issue that the commission would have to be behind and there would have to be something in the ordinances for that site also.

Mr. Rorholm wasn't clear about what Mr. Simpson was referring to. Simpson said he was referring to existing tracts, quarter or quarter-quarter sections that could be divided for commercial developments resulting in a plat for the zoning commission to review, surveying, filing the deed.

Mr. Simpson went on to discuss other issues discussed with the County Assessor, Kathy Sands, also at the meeting with the County Engineer. Some of the details of how the certificates should be described that have to be on the final plats were discussed; whether they have to be on the Mylar plats or be added as attachments. It was decided everything would be on the Mylar plat except for any written agreements such as paving agreements or use restrictions.

Mr. Pylelo added it was an interdepartmental cooperation issue.

Mr. Simpson said Diane Swobota Peterson confirmed something Pylelo was already proceeding to do, and that is contact the local Bar to see if they had any issues with the subdivision regulations since a legal opinion is the last thing that happens on the final plat. A real estate attorney has to sign off on it stating everything is right, acceptable and correct.

Mr. Pylelo said county subdivision regulations will most likely be given to attorney's for a legal opinion just before Planning & Zoning begins the town hall meetings.

Mr. Simpson said lawyers reviewed the city subdivision regulations at this same stage of development as the county regulations and the processes for the county ordinances are essentially the same as Sioux City has in theirs. What they are going to be concerned with is that all the right certifications are being made when they sign it. It should be as right as "the book they've already written."

The Big One:

Mr. Simpson brought up an issue he called "**The Big One.**" He said there was reference made earlier in the evening about legal descriptions that were requested. He said we do, in fact, have a result back from the primary one on the AG exemption issue, whether or not the commission can ask people to waive their AG exemption. The result of it is; we got a green light on requiring, as part of subdivision approval, someone provide a use restriction in the form of an agreement, a covenant, or something of the sort, where they would say, "In order to fulfill the County's Comprehensive Plan and to protect health, safety, welfare, and all the good things that we're here for – that as part of the approval of the subdivision you can require them to sign an agreement saying they will limit the uses of the land in whatever fashion is appropriate for that subdivision. That accomplishes everything in accordance with (illegible).

The answer with regard to the waiver of the AG exemption was not as close to what Mr. Simpson and in general the commission thought it might be. The conclusion the County Attorney's Office reached said State Law prohibits the county from imposing zoning restrictions on agriculture. Simpson stated further he and the commission in general had gotten onto the track where they were thinking that people had a right to an AG exemption. It's not a right that people have; it's the lack of a right that the county has to control it. The

commission could ask them to waive their AG exemption, but it would be more or less meaningless because the commission is still powerless under zoning to regulate agriculture. The zoning commission just does not have the power to do it. But if they use the use restriction agreement as part of the subdivision, and as a part of a rezoning from the AP zone to any other zoning district, and if we require them to subdivide that land as part of the rezoning, if you don't need a subdivision – if it was the first split in the 40 acre tract - you can leave it AP. If you wanted to go to a smaller tract or more tracts in that 40, you would be required to subdivide it and as part of the subdividing, a rezoning may or may not be required, but as part of the subdivision, it would be part of the discussion you would have with them as to what the intent of the use of that land would be, whether it's tied to a rezoning or not so an appropriate agreement can be written to restrict the use voluntarily for that subdivision.

Mr. Rorholm thought this process fit and made sense.

Mr. Pylelo wanted to go through that process with an example;

If someone came into the office with a preliminary plat, it's a minor plat that is going right to final and this group is going to make a recommendation based on the factual circumstances of that particular subdivision. You (the commission) are going to require the condition of making the recommendation. You will say to the Board of Supervisors you (recommend they approve it) but you want the subdividers to sign a document saying they will agree to rezone it, to limit the uses, or whatever it might be.

Mr. Simpson stated he had already put together a draft of what the agreement language might look like. The key thing was they would agree to restrict the uses to either the uses and some underlying zoning district, or some other defined set of uses. If they were rezoning the property from AP to AR, the use list in AR would be the use list they would be referring to. You would not be controlling it through zoning but through a voluntary agreement they signed where they say this is the list of uses that would be allowed here. When it comes time to actually enforce those, this would be something other people in the subdivision could enforce in the same way they enforce other covenants. Since the county is a party to that agreement also, the county would have status to enforce it on that one as well.

Mr. Marx asked, for example, if Mr. Rorholm wants to develop his ground and turn it into a golf course. Mr. Marx wants to develop his ground and turn it into a horse ranch. Can he describe in the subdivision that he wants it to be a horseranch and then that property will have to remain a horseranch as always and his will have to remain a golf course as always?

Mr. Rorholm suggested he would always have the opportunity to rezone his land.

Mr. Simpson said zoning taken through the Board of Supervisor process can always change the zoning and adjust the range of uses.

Mr. Pylelo said basically the zoning office takes each individual agreement, interprets it, and enforces it – or at least you are having some responsibility to do that.

Mr. Simpson added it would become an agreement that would be recorded and become part of every abstract.

Mr. Marx said this sounded like Planned Development. That's what the commission had talked about earlier on – doing this by Planned Development.

Mr. Simpson said, Planned Development is a zoning technique and you can't control agricultural zoning.

Mr. Marx said we aren't trying to control agriculture on everybody; just those who want it.

Mr. Simpson said it isn't as if it is only agriculture that would be limited in those agreements. By saying that only the uses that are allowed in a particular zoning district are going to be allowed, you are also excluding the industrial, commercial, and all that sort of thing.

Mr. Pylelo said the commission has the option of making it tighter towards specific things you don't want even though it may be along that zoning district.

Mr. Rorholm said actually it would be the developers and maybe even the builders who would be making that call.

Mr. Pylelo acknowledged they would be making that call, but the commission would be driving them down the path you think is prudent for that particular subdivision, for its needs, etc.

Mr. Marx said he thought that was some of the arrogance he had been fighting all along and this is perfect. It makes sense.

Mr. Nelson commented subdivisions should be approved that fit for that area. If you want to do a horse thing and it doesn't fit in that area, you can't do it.

Mr. Marx said if the area is zoned right now AG, he can do his horses, and if he wants to subdivide to AR he can still do his horses. Everybody wins.

Mr. Nelson said, "If you're too close to the city..."

Mr. Pylelo added, "...add an outcry from the neighborhood saying they don't want horses; or an ethanol plant or...you name it." He said it allows the commission) to say horses might work down the road or an ethanol plant might work over here, but we don't think it works on your ground, and here's why.

Mr. Marx said you could then go to the appellate process and fight that if you want to.

Mr. Nelson noted that the office of Planning and Zoning is there to protect other homeowners from having to live next to someone who has a mess in his yard or is doing something he objects to. So everyone in a particular area can't do everything they think they want to do.

Mr. Rorholm agreed Planning and Zoning helps people in the county to protect their investments.

Mr. Pylelo said the commission may allow the horse deal, but they might put into the agreement they restrict it to a certain number.

Mr. Marx disagreed saying it was his development decision, not Woodbury County (illegal) and Zoning Boards Commissions.

Mr. Pylelo said in the right circumstances they may want to address those things the Zoning Commission wants.

Mr. Simpson said for instance they won't approve your plat unless you agree to the range of uses we think are appropriate based upon the facts of this matter and public testimony and whatever. The process is there to help you decide what you can use the land for.

Mr. Marx countered this person could have 100 horses on this one acre lot because they do this, this, this, this and this.

Mr. Simpson said if his one acre lot had a barn and stables that can handle 100 horses without creating a nuisance, perfect.

Mr. Rorholm said you still can't do whatever you want to do.

Mr. Marx answered you can't shove AG exemption from an AG zoned property. We can't make them sign that.

Mr. Pylelo said the problem it creates with Marx's group, as he sees it is, you won't be able to okay the ordinance and say yes, you can't do it. Marx is going to have to be judge and jury; weigh the evidence, make a recommendation...

Mr. Simpson added ...in that way it is very much like a Planned Development process because you are going to be involved in the decision making process with them.

Mr. Rorholm said he thought that was super.

Mr. Nelson described what kind of input the neighbors had with the ordinances in Merville.

Mr. Marx agreed negotiating with all those involved was a good thing. He also thought as it related to recommendations coming from the zoning commission it was fine. He liked it.

Mr. Simpson said we had a consensus. He did have a question regarding the range of uses allowed on a given subdivision. If they will be established in the signed agreements rather than by zoning at least with respect to agriculture, do we need to have an AR and an NR zone.

Mr. Rorholm replied they are needed because they present guidelines as something to make reference to in the agreements.

Mr. Simpson said it has to be rezoned also and then refer to the underlying zone; otherwise you would be creating a covenant that would go with the land that's virtually impossible to change at some point in the future when it really ought to be changed.

Mr. Pylelo agreed.

Mr. Simpson gave an example of setting up a horse complex and 100 years from now the only thing that can be on it is this horse complex and maybe it's time for it to become, maybe, an airport. You need to have some way of amending those things. We also probably need to figure out what the process is actually going to be so rezoning the subdivision dovetails and there should probably be some attention given to what the (?) structure is so they kind of meld together with the (?) you'll be having. Public hearings and notifications on related actions for the same meetings.

Mr. Rorholm suggested flowcharts for each of the different uses would be helpful. Reading the text for them is mindboggling.

Mr. Marx, going back to Simpson's example: the change from a horse farm to the airport; Why would that be an issue because it would have to be totally rezoned anyway from AG to Industrial.

Mr. Simpson said as long as the agreement that limits the uses refers to the underlying zoning district, that's fine, but if it were written to just say the range of uses is some number of horses per acre and that was it, then in the future you'd have difficulty changing that as something that...if you have multiple owners and they all have to agree to change something, it gets very difficult to amend it.

Mr. Simpson said a better example would be if you developed a heavily traveled intersection and it makes perfectly good sense to have a convenience store on a corner. The only uses that are allowed do not allow for convenience stores. This agreement stands free of the other covenants that the developer might want to have.

Mr. Pylelo said if somebody said he wanted to put this restriction on it. He could write his boilerplate covenants that would be specific only to his piece of land.

Mr. Marx said he didn't feel it was the zoning commission's job to tell him how many horses he could have on his parcel, 1 or 10. It should be the developer's job to determine how many horses his piece of land can accommodate.

Mr. Simpson stated the intensity of that use might be his job.

Mr. Pylelo thought his decision might be in the parameter of 1-10 horses, but not 10 vs 100.

Mr. Marx said he had 20 head on 20 acres because he manages it probably. Since Mr. Pylelo did not have horses, how could he tell him 20 horses were too many?

Mr. Simpson said Marx used the critical word – manage. He managed his horses properly.

Mr. Rorholm said Marx would have a development so he could make his own decisions about his horses, but because he is using 20 acres for his 20 horses, he won't be able to sell any of his other lots so he won't make any money off of them. Maybe he has allowed for his horses, but not for what the people who might buy his lots want to live next to. Rorholm said that is not protecting his (Marx's) investment.

Mr. Simpson wondered what the point would be for subdividing his land in the first place if this was his intention for its use.

There was further similar discussion with nothing in particular being decided upon.

Mr. Rorholm suggested since there was nothing else the commission planned to discuss, maybe the commission should adjourn.

Mr. Rorholm made a motion to adjourn; Mr. Marx seconded; motion carried.

Meeting adjourned 8:56 P M