

Minutes - Woodbury County Zoning Commission Meeting

May 18, 2009

The meeting convened on the 18th of May, 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 Beth McGrath, Don Klingensmith, Don Hennings, Carole Hennings, Eric Hennings, Rochelle Lundy, and Kevin Alexander.

The first agenda item was approval of meeting minutes from April 27, 2009.

Commissioner Zellmer Zant made the motion to approve the April 27, 2009 minutes; the motion was seconded by Commissioner McWilliams; motion carried 4-0.

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

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 disclosed 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 a 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.

Engineer Nahra's letter follows:

I have no objection to the proposed change in zoning classification of this parcel from AP to GC as proposed by the petitioner. I would like to see as part of that rezoning, however, an agreement that the setback distances are maintained according to the AP standards for the front yard and corner yard standards, rather than the GC setbacks. While 210th Street is improved, the presence of a business along Eastland Avenue may call for eventual improvement of the road at which time the county may need additional right of way. I would like to see the wider AP setbacks retained to protect potentially needed road right of way and working area along the west side of this lot.

If you have any questions, please feel free to contact me.

Discussion:

Mr. Eric Hennings approached the commission to describe how the location and size of the building on 210th St. fit into his business plan.

- His company intended to improve the landscaping and appearance of the property.
- The business started in his father's home and is currently in his grandmother's house operating as a "*Home Occupation*" with no complaint history.
- The company is an internet-based business and currently has two (2) employees (his brother +1).
- The building would be used primarily for office space with operating hours of 8 PM to 5 PM.
- The building would be modified internally only.
- The purchase agreement is without the brush pile.
- They don't anticipate any lighting requirements.

Ms. Zellmer Zant inquired about parking requirements. Hennings said all vehicles would be parked either in the building or on the south side of the building.

In answer to a question from Mr. Pylelo about security, Hennings said although he didn't see security as a big issue, he planned to install a system.

Ms. Zellmer Zant asked about a Paving Agreement; Mr. Pylelo said existing surfaced area was adequate.

Ms. Beth McGrath who lives to the east of the building in question wished to express to the commission her positive opinion regarding the Hennings' plan. McGrath saw it as "...an improvement to the neighborhood."

Mr. Pylelo explained how re-zoning the property to GC (General Commercial) would potentially allow for a long list of possible businesses including a gas station.

Commissioner Nelson asked if restrictions could be put on the zoning. Pylelo said it could be made GC-PD (Planned Development) but that would create problems marketing the property for future owners.

Mr. Nelson asked the current owner, Mr. Alexander, why he did not get a variance. Mr. Alexander explained he was a "victim of circumstances," he didn't know Mr. Fenton had applied for the variance, and Alexander was himself taking Mr. Fenton to court over financial issues.

Mr. Pylelo informed Mr. Alexander the brush pile issue needed to be resolved regardless of the purchase agreement.

Mr. Nelson made a motion to close the public hearing for the K & L Properties, LLC re-zoning. Mr. McWilliams seconded the motion; motion carried 4-0.

Discussion:

Mr. Nelson wanted to know how Mr. Fenton avoided so many permit requirements.

Mr. Pylelo discussed history of property issues.

Mr. Nelson remarked this situation (farmers selling non-complying buildings to non-farmers) could set precedence for future situations. Nelson could see this happening many more times and did not believe it was the Zoning Commission's job to fix it.

Mr. Marx asked if it couldn't be left AP but assign it CU (Conditional Use).

Mr. Pylelo pointed out that was up to the BA (Board of Adjustment) who probably wouldn't be interested because of all the previous issues with the property.

Ms. Zellmer Zant agreed and compared it to finding ways to get around the ordinances.

Mr. Pylelo reminded the commission the area including this parcel was designated *Transitional Agricultural* (subsequent research shows Mr. Pylelo misspoke. Parcel is

actually *Rural Residential*).

Ms. Zellmer Zant remarked the GC re-zoning request just does not fit (with the future land use map). She would prefer seeing a primary structure on the parcel which would allow for a home occupation. Mr. Nelson said even though *Home Occupations* were allowed he did not think they should be encouraged.

Mr. Alexander pointed out if the parcel was being used for agricultural purposes there would not be a problem at all because of farm exemption. Mr. Pylelo stated he was not sure Mr. Alexander's K & L Properties use or the property qualified as AG exempt.

Mr. McWilliams made a motion to deny K & L Properties, LLC a re-zoning from AP (Agricultural Preservation) to GC (General Commercial). Ms. Zellmer Zant seconded the motion; motion passed 3-2 with Mr. Marx and Mr. Knight being the dissenting voters.

Mr. Knight continued with an observation of the "*Big picture*" referring to the potential for change at some point in the future. He would have preferred allowing the re-zone.

Mr. Eric Hennings felt he was being penalized for mistakes others had made prior to his interest in the parcel.

Commissioner Nelson assured him the original issues were kept separate from the commission's decision to deny the re-zone.

Ms. Rochelle Lundy, realtor for the Hennings family, noted her hands were also being tied as a realtor by the commission's decision.

Mr. Nelson said all the neighbors probably have differing views about what they would or would not like to occur on this property.

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

Citizens attending had already been heard.

Ordinance Discussion:

Chairman Marx asked to table discussion until future meeting.

Ms. Zellmer Zant asked the agenda be put on the top of the packet mailed to the

commissioners. Mr. Pylelo agreed to change.

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

Meeting adjourned at 7:30 PM.

Next meeting scheduled for Monday, June 22, 2009