

Minutes - Woodbury County Board of Adjustment Meeting May 12, 2014

The meeting convened on the 12th of May, 2014 at 6:02 PM in the Board of Supervisors Meeting Room in the Court House, Sioux City, Iowa. Present were the following Board members: Robert Brouillette, Brian Crichton, Corey Meister and Katie Colling. JoAnne Sadler had a previous commitment. Zoning staff John Pylelo and Peggy Napier was also in attendance. Also present were Rick and Patti Law and Todd Shumansky.

The next agenda item was approval of minutes of February 17th, 2014 meeting.

Mrs. Colling made a motion the minutes be approved as read.
Mr. Brouillette seconded the motion; motion carried 4-0.

The next agenda item was a Public Hearing and Consideration of a Conditional Use Permit application from property owners Todd W. and Tara M. Shumansky associated with the business operation known as Scarecrow Farm.

John Pylelo read into the record the following:

On April 26, 2011 the applicants purchased lots 5 and 6 within Kuhlmann's Second Addition subdivision. Lots 5 and 6 were established in 2010 by former property owner Theresa Kuhlmann as part of a six lot residential and commercial subdivision.

On June 14, 2011 a CUP application was received from the Shumansky's for the proposed operation of a seasonal Halloween entertainment venue to be located on the two lots.

At your meetings of July 5 and August 1, 2011 your Board heard and voted to approve a conditional use permit for the initial phase of the applicant's seasonal, Halloween themed, entertainment venue known as *Scarecrow Farm*. The applicant now wishes to expand the business operation and has filed a conditional use application for the proposed expansion.

This entertainment venue was originally permitted in 2011 to allow the following areas and activities: corn maze, hayrack rides, haunted forest, farm and fall activities area, a retail sales area/structure, pumpkin field, a primary parking lot, overflow parking lot; a fruit tree area and various fall seasonal children activities. Additional venues or structures were added over the years all within the scope of the 2011 CUP permit.

The proposed expansion is determined to substantive enough to require another CUP permit being required. This CUP application includes adding structures and activities not only designed and operated to enhance or enlarge the original conditionally permitted

use; but extend beyond the originally conditionally permitted use as a seasonal Halloween themed entertainment venue.

STRUCTURE AND ACTIVITY IMPROVEMENTS REQUESTED

Specifically the proposed additions within this application include adding the following structures and activities for the 2014 season:

- a rope activity area;
- an open end barn with stage for musical and stage entertainment;
- a zip line ride with departure and arrival platforms;
- an aerial ropes course;
- a large park shelter;
- a small park shelter;
- a north parking area expansion surfaced with crushed aggregate surfacing;
- lighting fixtures to field and parking areas.
- Also currently applied for are *U-Pick* fruit areas (likely not fully operational until after the 2014 season).

BUSINESS OPERATION ADJUSTMENTS REQUESTED

Beginning in the 2014 season the applicants request an extension of the season of operation and the time of closing daily business operations. These proposed changes in business operations are as follows:

- Extend the days of operation to May 20th through Nov 2nd
- Extend daily closing from current 6:30PM until 8:00PM

Note: Not all operations will be functional every day during the extended hours. Seasonal growing periods and the scheduling of private parties or special functions will dictate those activities or venues in operation during extended hours.

The location of the requested conditional use is bordered by Correctionville Rd. on the North, US Highway 20 on the South, Charles Ave. on the West and Big Whiskey Creek on the East. The combined area represented by the two lots is 17.34 acres. Significant portions of both lots lie within a flood hazard area.

The nineteen (19) property owners within 500' of the parcel were notified by mail of the public hearing. As of May 8, 2014 the Zoning Office received the following comments:

On April 28, 2014 a call was received from Ashley Ellensohn stating her position against entertainment and parking within the application. Ashley and Andrew Ellersohn reside at 7586 Correctionville Rd. on a three acre parcel located 550' west of the applicant's closest parcel.

The Zoning Office also mailed notifications to the following departments or agencies requesting comment:

Woodbury County Engineer:

County Engineer, Mark Nahra, has informed the Zoning Office he has no objection to the application providing: 1.) The required driveway permit application be approved for a proposed new drive on the east side of Charles Ave. 2.) That parking lot surfacing meet standards acceptable to the County Engineer and 3.) That the facility's lighting plan be designed and include measures to reduce light pollution outside the parcels perimeters to an acceptable and agreed upon level.

The County engineer has agreed to assess and, if necessary, seek approval from the Board of Supervisors for the posting of "no parking" signs within nearby County right-of-way.

Iowa Department of Transportation: No response received to date

Fire Chief Lawton Fire Department: No response received to date

Gary Brown: Woodbury County Emergency Services:

Mr. Brown states he and Lawton Fire Chief, John Eblen, intend to schedule an onsite visit for an update on fire and emergency services procedures.

STAFF RECOMMENDATION

A seasonal entertainment venue is not specifically listed as a use in the *Outdoor recreation enterprises* section of Woodbury County's Land Use Summary Table. The mixed use activities applied for have components potentially agriculturally exempt; i.e. growing fruit or vegetables is an agriculturally exempt activity and not subject to local zoning ordinances. However, the retail sale of fruit or vegetables is not agriculturally exempt.

Some of the entertainment uses could be interpreted as allowed on the southern lot under its general commercial zoning designation. At the same time the general commercial zoning may not permit some of the Lot 6 agricultural uses should they be categorized as

not agricultural exempt. It is the staff's opinion that the proposed mixed use requested in the application requires a conditional use permit for the total facility; i.e both Lots 5 and 6.

Staff does note there have been very minimal negative comments or complaints received on the *Scarecrow Farm* business operation. We believe this to be in no small part due to the stewardship of the parcel by the property owner and employees of the business.

As such Staff is of the opinion the below conditional use standards within Section 2.02(9) of the ordinances can be met and recommends approval of the conditional use permit application providing the following occurs:

1. The recommendations of the County Engineer are conditions of permit approval; and
2. As the application requests an expansion of parking facilities northerly; and thus closer in proximity to existing and future residential lots; staff would recommend your Board consider some form of vegetative, visual buffer along this parking lot's western and northern perimeter as a condition of permit approval. Doing so could help abate potential nuisances to the west and north.

Your Board is reminded you have authority to place those conditions you feel reasonable on any permit approval in an effort mitigating any undue adverse impact to neighborhood property owners.

Section

2.02(9) of the County's zoning ordinances (copied below) govern conditional uses. This ordinance language includes requirements be met to grant any conditional use. The impact of the length of seasonal operations and hours of operation, security, right-of-way infringement, noise, lighting, and other potential nuisances should be considered along with any other issues raised within the public hearing.

To assist your review find attached the following documentation:

- Location information
- Assessor parcel information
- An Aerial photo showing location of improvements and activities requested within the application
- Narrative from the applicant detailing the improvements and activities requested
- Pictures and drawings of the requested improvements are provided in your packets.
- Recent on site photos

Your on-site visit is encouraged.

Your Board is asked to hold the required public hearing and then take under consideration the proposed conditional use permit application placing any conditions your Board warrants on any approved permit.

Excerpt from Woodbury County zoning ordinances pages 22 and 23:

F. Requirements for conditional uses.

- (1) *Standards. In order to grant a conditional use, the Board of Adjustment must determine that:*
 - (a) *The conditional use requested is authorized as a conditional use in the zoning district within which the property is located and that any specific conditions or standards described as part of that authorization have been or will be satisfied.*
 - (b) *The proposed use and development will be in harmony with the general purpose and intent of this ordinance and the goals, objectives and standards of the general plan.*
 - (c) *The proposed use and development will not have a substantial or undue adverse effect upon adjacent property, the character of the neighborhood, traffic conditions, parking, utility facilities, and other factors affecting the public health, safety and general welfare.*
 - (d) *The proposed use and development will be located, designed, constructed and operated in such a manner that it will be compatible with the immediate neighborhood and will not interfere with the orderly use, development and improvement of surrounding property.*
 - (e) *Essential public facilities and services will adequately serve the proposed use or development.*
 - (f) *The proposed use or development will not result in unnecessary adverse effects upon any significant natural, scenic or historic features of the subject property or adjacent properties.*
- (2) *Other considerations. In its review of conditional use requests, the Board of Adjustment shall consider whether, and to what extent:*
 - (a) *The proposed use or development, at the particular location is necessary or desirable to provide a service or facility that is in the public interest or will contribute to the general welfare of the neighborhood or community.*
 - (b) *All possible efforts, including building and site design, landscaping and screening have been undertaken to minimize any adverse effects of the proposed use or development.*

G. Limitations.

- (3) *The Board of Adjustment may set a time limit for establishment of the use authorized by a conditional use permit as a condition for approval. If the use has not been established within that time, the Board of Adjustment may consider revocation of the conditional use permit.*
- (4) *If the use or development for which the conditional use permit was granted ceases to exist for a period of ninety days, the certificate of*

occupancy shall be terminated. The use or development shall not be reinstated unless the Board of Adjustment issues another conditional use permit.

H. Appeal of the actions of the Board of Adjustment. Any interested party may appeal a decision of the Board of Adjustment as provided by the Code of Iowa. Such an appeal suspends the effect of the action of the Board of Adjustment until the appeal has been resolved.

Mr. Todd Shumansky introduced himself and described his intentions for his entertainment venue known as Scarecrow Farm.

Shumansky described issues in previous seasons with overflow customers parking along Charles Ave. County Engineer Mark Nahra was willing to work with Shumansky to place “No parking” signs in the county right-of-way, but Mr. Shumansky decided to develop overflow parking onsite instead.

Mrs. Colling asked Shumansky exactly where the additional parking would be.

Shumansky explained it would be 450’ X 200’ midway and north along the western edge of the parcel.

A discussion ensued regarding other options for additional parking to avoid headlights shining into the windows of resident’s houses.

Mr. Shumansky explained the parking lot road would be an extension of the current access road that was already below the roadway and shining headlights should not be a problem; however, he was agreeable with the board to placing the overflow parking along the length of the grove of trees and not extending it more than 200’ north. The additional parking would accommodate approximately 200 cars. He was further agreeable to placing some kind of vegetation along the western side of Lots 1 and 2 as a “good neighbor” consideration. Overflow parking will most likely happen more on the weekends than during the week.

In the initial CUP hearing Mr. Shumansky had requested his time of operation be until 11 pm specifically for the haunted forest. His other entertainment would close at 6:30 pm. He is now considering eliminating the haunted forest and is asking to extend the rest of his entertainment to 8 pm instead of the current 6:30 pm. He would like to make the facility available to adults and their children who finish work later. Standard season would be after school lets out for the summer, seven (7) days/week, and zip lines only on weekends 50 persons per/hr capabilities.

The haunted forest is unknown right now. It has potential, but Scarecrow Farm’s busiest time is 10 AM through 6:30 PM. The latest hour agreed to in the original CUP was 11 PM. They would like to maintain that in case they use the haunted forest more than they do now.

Mr. Brouillette suggested they ask the County Engineer about night lighting bulbs and lamp designs.

Mr. Pylelo asked if licensing was required for the zip line. Mr. Shumansky said it does require state inspection and possibly licensing as well.

Ms. Colling asked if there were any storm shelters. Shumansky said no other than the structures that exist now.

Pylelo commented Gary Brown will recommend having a weather radio on site.

Mr. Crichton asked Mr. Shumansky for more information about the open-ended entertainment barn.

Shumansky explained there would be no alcohol served anywhere on the premises. The barn is very small with the stage 12' X 16' and not large enough to hold a regular sized band. It could possibly accommodate a single musician or a duet; not much more.

When asked if the barn would be rented out for parties or events, he said they intended to use park shelters for that purpose. They could provide a tent for larger parties. They will not close the facility to the public for private parties.

Weather will affect when Scarecrow Farm's season begins and when it ends, but he would like to open sometime in May and end the season in October or November.

Rick and Patti Law were present in the audience. When asked if they had any comments, they replied Scarecrow Farm was a good idea and they were there to support and encourage it's presence.

Mr. Meister made a motion to close the public meeting; Mrs. Colling seconded the motion. Motion carried 4-0.

Discussion:

Mr. Crichton suggested some kind of vegetative border along the west fence would be a good neighborly gesture. He thought the County Engineer could weigh in on this.

Mr. Pylelo said it would be visual help as well as a light and sound barrier.

Mr. Meister made a motion to approve the conditional use permit subject to the following conditions:

- **That the dimensions and location of the proposed parking lot expansion within item 7 be changed. The lot is to be moved southerly to locate a rectangular lot with 133' frontage along Charles Ave. ROW and a depth of up to 500' to the east. The parking lot's southern perimeter is to abut the currently existing tree line within Lot 6.**

- **Driveway improvements are to be approved and permitted by the Woodbury County Engineer.**
- **Parking lot surfacing is to meet standards acceptable to the Woodbury County Engineer.**
- **The facility's lighting plan be designed to include measures to reduce light pollution outside the parcels' perimeters to an acceptable and agreed upon level.**
- **The facility submits to a Woodbury County Emergency Services review and implement recommendations.**
- **No vegetation barriers are currently required. However the applicant may be asked at a future date to include based upon neighborhood complaints.**

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

The next agenda item shall be any Citizen wishing to be heard before the Board.

No one present wished to be heard.

Mr. Meister made a motion to adjourn the meeting. Mr. Brouillette seconded the motion; motion carried 4-0.

Meeting was adjourned at 7:10 PM.

Next meeting will be 6:00, June 2, 2014.