

Approved

## **MOWER COUNTY PLANNING COMMISSION**

### *Minutes of the Mower County Planning Commission, 3/30/2021*

Members Present: Jerry McCarthy, Jim Risius, Taggart Medgaarden, Don Adams, Dan Vermilyea, Jeff Baldus

Members Absent: none

Others Present: Valerie Sheedy – Mower County Environmental Svc. Asst. Supervisor, Angela M. Lipelt, Mower County Environmental Services Supervisor, Stacy Deming (remote), Lance Pogones (remote), Linda Keenan (remote); Larry Keenan (remote); Kristine Allas (remote)

A Quorum was established. Jeff Baldus called the regular meeting to order at 7:00 p.m. on 3/30/2021, in the Board of Commissioners Room at the Mower County Government Center, 201 1st Street NE, Austin, Minnesota.

Motion was made by McCarthy to accept the agenda as amended per Angie's septic ordinance being noted on the agenda being in effect on April 1. Second by Medgaarden. Motion carried unanimously.

Minutes of the 2/23/2021, meeting was approved as mailed on a motion made by Medgaarden and seconded by Risius. Motion carried unanimously.

### **CUP #913: APPLICANT: Lance R. Pogones and Snowell Pogones, landowner(s); make request for additional single family dwelling to be located in a mature wooded area, located in Section 31 of Lansing Township.**

Staff Presentation: Reference was made to the site investigation that was performed by Risius and Medgaarden, 3/24/2021. Visited with Mr. Pogones and his dog. We visited and walked around the site. The site was staked, the septic site was identified; we talked about where the driveway was. A Staff Report was prepared and mailed to the Planning Commission prior to this meeting. A PowerPoint presentation was made on the evening of the public hearing by Valerie Sheedy, and is incorporated as part of the official record.

Background: Applicant is proposing to split property into what is shown on the survey as Parcel D and Parcel C. Parcel C is the CUP request for additional dwelling. Additional single family dwellings are a conditional use in Urban Expansion section 14-61 and 14-18-4d. The proposed dwelling is situated in the NW corner of the new parcel and appears to be outside of Shoreland and Floodplain zones. A preliminary wetland review was conducted by Steve Lawler and the Applicant; no wetland impacts were found within the areas delineated for proposed building, septic, and driveway. E911 addressing was requested on 1/18/2021, assigned 2/8/2021. The property adjustment application (Split) is being processed as subdivision through the City of Austin (within 2 mile radius). A preliminary septic system design with secondary site identified has been submitted; permit has not been issued. A zoning permit will be required prior to construction. Minimum lot size in UE is 1.5 acres, frontage and setbacks must be met to issue ZP; site appears to meet minimum standards. Findings of Fact were submitted by Applicant for your consideration.

A motion was made by McCarthy and seconded by Vermilyea to adopt the Findings of Fact as submitted and recommend approval of CUP #913 in accordance with Section 14-51 of the Mower County Zoning Ordinance. The following 12 conditions are recommended by the Planning Commission to the County Board of Commissioners; motion was unanimous:

1. Applicant shall follow all state and federal and local regulations regarding the proposed use; and

2. An approved ISTS Design for the proposed septic system shall be obtained and submitted prior to construction of the residence and/or any other structure; and
3. A primary and secondary Type I septic system site shall be located for future placement and placed on a map and kept on file in the CUP file and homeowner's records; this area should be preserved and protected from compaction and/or construction or other damages which would render the site unusable and jeopardize the viability of the site for residential purposes; and
4. A Zoning Permit shall be obtained prior to the construction of any and all structures on the property; and
5. Petitioner must sign and notarize the "Rural and Agricultural Home Owners Assumption of Risk Assessment Form and have it recorded at the Mower County Recorder's Office; and
6. 911 addressing is required to be obtained through the Mower County Highway Dept. before construction if the site is not already assigned an E911 location; and
7. Shoreland Overlay and floodplain zones are present on the parcel. Any development in these areas is subject to the standards of those districts or zones; and
8. Wetland Review required: Petitioner has contacted the Mower County SWCD regarding the Wetland Conservation Act shall comply with the recommendations to maintain deminimus impact; and
9. The approval of the conditional use permit shall expire and be considered null and void two (2) years from the date of such approval if no construction has begun or the use has not been established. For the purposes of this provision, construction shall include the installation of footings, slab, foundation, posts, walls or other portions of a building. Site preparation, land clearing or the installation of utilities shall not constitute construction. A conditional use permit shall become void if the use is established then discontinued for a period of one (1) year as stated by Ordinance Section 14-134(g); and
10. If for any reason this parcel is further subdivided, subdivision of the parcel(s) into smaller tracts, parcels, or lots shall comply with City of Austin's subdivision ordinance and any other applicable governmental rules, regulations, and/or procedures in effect at that time; and
11. A violation of any condition set forth in a conditional use permit shall be a violation of this Ordinance and shall automatically terminate the permit (refer Section 14-35 Revocation); and
12. This permit is based upon representation given by the applicant during the hearing process and any misrepresentation presented in this process may be grounds for revoking the permit

**Applicants Presentation:** Lance Pogones: I am here to answer any questions if anyone has any of me.

**Public Comments –Supporting:** Linda Keenan: We support it, we live out here as well.

**Public Comments Against:** none.

Vermilyea: Do we want to modify the conditions, take out the Homeowners Assumption of Risk? Do we want to modify the conditions to take out the assumption of risk or leave it in there?

Sheedy: It is meant to inform landowners that Mower County has prioritized agricultural land use over residential development. There will be noise, dust, harvesting, etc. This is not agricultural zoning, but is adjacent to agricultural. That acknowledgment is recorded to the parcel so if it is acknowledged that the residence might be impacted by farming.

Vermilyea: Does the document do any more than that, does it create issues as far as not allowing that individual to bring complaint against?

Sheedy: No, it does not bring complaint, it does not prohibit but you are passively agreeing to tolerate nuisance situation.

Baldus: I think it needs to stay in there, it is agricultural.

McCarthy: You got some north and west of it, you're going to have dust, and he goes to sell it to somebody that is out of the area.

Lipelt: It also talks about extended hours during harvest or planting they may here. Tractors, grain bins, dryers. Things that are being heard beyond business hours in the rural area. When anyone is building a residence in Mower County, they have to have it signed, notarized and recorded on the land.

Vermilyea: This is a pretty standard document involving Ag zoned areas in the county?

Lipelt: Correct. When anyone is building a residence in Mower County, whether it is a CUP or just a permitted use, they have to have it signed, notarized and recorded against the property title. So that it is bearing on the current owner and future landowners.

Vermilyea: Let me play the devil's advocate and somebody builds in a rural residential area and we don't require it by them?

Lipelt: When we have a subdivision in a zoned area, they are surrounded by agricultural, they are still required to sign the document. It is in close proximity of agricultural, I have had complaints of landowners that have heard dryers several miles away.

Vermilyea: Are we setting precedence of putting this in?

Pogones: I appreciate the discussion, I am in favor of having it in there, it helps protect me later when it comes time to sell my house, I'll know that this person can't come back to me later to say I know there are tractors that go by and the noise and the smell.

Adams: I am guessing those were Ag zoned areas, I'm guessing these aren't Ag zoned areas?

McCarthy: Would this encumber the property if it were annexed in?

Lipelt: It will stay with the title, there could be an application in the agricultural zoning district. We have pulled it out and showed people like in feedlots saying you signed this document you came into the Ag district knowing.

Sheedy: It doesn't prohibit anyone from objecting it's just an acknowledgment.

Lipelt: I am making some adjustments to the zoning ordinance and the shoreland. We can all include that in there.

McCarthy: Take a look at it and properties that are in the proximity. Maybe the warning has to change a little bit.

Adams: I look at it that if you're not annexed in the city, you're near Ag area.

McCarthy: If you sign that document what does it do to that deed 20 years down the road that is good question for a land use attorney?

A motion was made by McCarthy and seconded by Vermilyea to recommend approval of CUP #913 in accordance with Section 14-38 of the Mower County Zoning Regulations.

After discussion, the Planning Commission reviewed the ordinance criteria and adopted the applicants Findings of Facts.

- 1) That the conditional use will not be injurious to the use and enjoyment of other property in the immediate vicinity for the purposes already permitted, nor substantially diminish and impair property values within the immediate vicinity **BECAUSE:**

**We currently own most of the property surrounding the new lot and our current neighbors are fine with the new home location. It is mostly out of sight of neighboring homes and will have new trees added between the home we live in now and the new home we are hoping to build.**

- 2) That the establishment of the conditional use will not impede the normal and orderly development and improvement of surrounding vacant properties for uses predominant in the area **BECAUSE:**

**The new home will continue the orderly development of this 36 acres expanding it from 3 homes to 4. It will be in line with what is happening in Turtle Creek Estates and surrounding developments southeast of Valley View Acres.**

- 3) That adequate utilities, access roads, drainage, and other necessary facilities have been or are being provided **BECAUSE:**

**All utilities will be on site, a new culvert will be added along 12<sup>th</sup> Avenue NW and there shouldn't be any issues. Freeborn Mower provides power, propane is in an underground tank, water is from an existing well that will be upgraded and shared with our current home and a new septic has already been approved- along with an alternate site.**

- 4) That adequate measures have been or will be taken to provide sufficient off-street parking and loading spaces to serve the proposed use **BECAUSE:**

**The new home will have a three car garage and apron around the home and will not need any parking outside of that.**

- 5) That adequate measures have been or will be taken to prevent or control offensive odor, fumes, dust, noise, and vibration, so that none of these will constitute a nuisance, and to control lighted signs and other lights in such a manner that no disturbance to neighboring properties will result **BECAUSE:**

**There will be nothing other than a 3 bedroom home there with a garage. No business type operations of any type. The home will blend in with the neighboring homes as far as distance from the road, screened from the road, etc.**

**Further Business: Lipelt:** The County's new septic ordinance will go into effect April 1. We have had handouts and classes for Realtors/Lenders. The reason the septic ordinance was changed to protect our water in Mower County. We ranked 58 out of 87. The county thought we could do better than that. We are sending out postcards to everyone in the county to let them know. The ones with circles are ones we have had in the past. The ones with the diamonds are new items. When a property is transferred, if there is not a compliance on file with the county, a compliance inspection will need to be done.

Adams: Who pays for the compliance inspection, the homeowner?

Lipelt: The homeowner can choose from a list we provide, it also has a link to the MPCA's website for all licensed inspectors.

McCarthy: If I am the homeowner, I would want to know this, if I am the buyer, say out of the county, how would I know?

Lipelt: The seller is the responsible party. We are sending out postcards to everyone in the county and in the process of having them professionally printed.

Sheedy: There are about 3300 properties but they are owned by same people with about 1600 landowners.

Lipelt: We had emailed realtors and we have worked with the Southeastern MN Realtors Association, we put in their letters for learning opportunities.

Baldus: Did you have a good turnout?

Sheedy: About 2-5 at each meeting, we did contact a lot of agencies.

McCarthy: Did you let the lenders know?

Adams: The realtors knows before the land is sold, it needs to be inspected?

Lipelt: Correct.

McCarthy: I wonder if there is a way at some point in time to catch the transaction that the homeowner fails or ignores the inspection.

Lipelt: We go through the recorders documents and we look for deeds and comb through them. Catch when the transactions are being done, we didn't have forwarding addresses for the sellers.

Adams: Does it go back on the seller?

Lipelt: The seller is responsible for opening the escrow.

Baldus: If it does not happen when an escrow gets put into place?

Medgaarden: What do you think the biggest challenge, the hardest deed is going to be?

Lipelt: The death deed, the grantor would not be available, one of the words we are trying to get out in estate planning "plan ahead."

Sheedy: Think ahead. A Certificate of Compliance will give you 3 years in that inspection.

Lipelt: You're putting aside \$30,000 in an escrow until the septic system is replaced. The average cost in Mower County is \$20,000. I've heard from contractors that prices may increase. The amount was based on last year's construction. 70% are mounds with 30% being trench. The reason we have a lot of mound systems, we have a higher periodic water table. We do not choose the type of system. It is the type of soils and the redox at the location of your property.

Medgaarden: What is it roughly the cost to get a compliance inspection?

Lipelt: Last year we saw prices of \$500-600.

Adams: Do you need a compliance inspection if you know it is bad?

Lipelt: No, if you know it is bad, you can fix it without paying the cost to have it inspected.

Sheedy: The other link I am showing you is from the MPCA of what can you expect. If you have questions that the website does not answer, let me know.

Adams: Do you have a pretty good explanation of the compliance process.

McCarthy: That is based on bedrooms not bathrooms. If I put an addition on and it was just a master bath, it would not necessarily trigger to upgrade.

Lipelt: No it is based on bedrooms or increased water usage. In MN statue it says that whenever there is municipal sewer and if their septic is not compliant and they have the option of connecting, they must connect to municipal sewer. We are in the process of sending out about 60 letters to areas they have the options to connect.

McCarthy: What about the area out past the wheel estates?

Lipelt: We will be working on those, right now we are working on 10<sup>th</sup> Dr SE by Trimbles, 4<sup>th</sup> DR SW, Lansing and Turtle Creek 1. We are getting letters out. Other establishments lists are usually businesses and subject to more premature failure. They have to do a compliance inspection every 5 years

McCarthy: Is that going to affect our winery?

Lipelt: Yes it will affect our winery

Adams: So if they hook up to the municipal, doesn't it affect the municipal as far as deteriorating?

Lipelt: No they have chemicals treatment ponds, they have the capacity that is reserved for this.

McCarthy: That waste is treated differently.

Adams: You know it's failing, you know you're going to put a new system in, you still have to have an escrow?

Lipelt: If you are planning ahead and know it's failing than you can just put money into the escrow account for the septic. This is when you transfer the property.

Sheedy: The escrow account, the county needs to have authority to release the escrow once the septic has been put in and we know that it has been put in. the numbers of 125%, I got the inspection done, I know I need a new one otherwise you know nothing about it, 150% needs to be put into escrow.

Vermilyea: Who is holding the money?

Lipelt: A title company, a lender or an attorney's office. Signatures and date and submit to us.

McCarthy: Is there an option to do this online?

Lipelt: We do, it can also be printed out.

Vermilyea: How is the county office involved?

Lipelt: When we split a property, it is recorded with the recorder's office. We have access to all the documents from the recorder's office.

Vermilyea: Potentially someone can sell the property and not have a compliance, is there a system set in place so that the recorder doesn't change the ownership of that property?

Lipelt: By law the recorder can't prohibit it, they have to take and record the document.

Sheedy: We get a list of deeds that have been recorded each week?

Vermilyea: What systems do we have in place to eliminate that potential of selling and leaving?

Lipelt: We are sending notices out to landowners to notify them.

Risius: When you take that to the recorder's office, they get a letter back to make sure you went by the setbacks. You can't sell your property 5 ft.

Vermilyea: What is set in place legally? The recorder has to record that document, you can't protect.

Lipelt: If it is presented in a recordable form, it has to be recorded.

McCarthy: What if you sold your house for contract for deed and the septic is bad.

Lipelt: We are working on a project out there which will be better if they do annex, but we can't force them to annex in. Dan just to say it's no different than someone who doesn't want to follow the zoning ordinance.

Vermilyea: The only reason I ask it is I saw it first hand in Steele County. It sounds like you are communicating like you should.

Lipelt: We also created a document for realtors they can address to homeowners.

McCarthy: Does that address setbacks as well?

Lipelt: No that is different with the zoning ordinance. I am working better communication. The county board members wanted us to get out more information. I have a draft newsletter to go out to the township officials. We are permitting everything online now. Val is working on the septic permits that will be done online. Eventually we are going one on one. We are boosting more on the website. The PW has Facebook page. Our solid waste office Jeff Weaver is retiring as of tomorrow. Marcus Thompson has been training with him. Do you have any more questions? On our PW website, we have a reported issue, if you see something going on in the county, there is a link on the PW tab to report issues.

**Conclude the Public Hearing:** There being no further questions or comments, Chairman Baldus concluded the public hearing.

### **Adjourn**

There being no further comments or business, motion by Risius to adjourn the meeting, second by McCarthy. Motion carried. Meeting adjourned 8:05 p.m.

Respectfully submitted,

Stacy Deming  
Administrative Assistant, Mower County Environmental Services