

**MINUTES**  
**Blue Earth County Planning Commission**  
**Regular Meeting**  
**Wednesday October 4, 2017**  
**7:30 p.m.**

**1. CALL TO ORDER**

The meeting was called to order at 8:25 p.m. by Chairman Lyle Femrite. Planning Commission members present were Bill Anderson, Kurt Anderson, Kip Bruender, Lyle Femrite, Barry Jacques, Michael Riley, and Joe Smentek. County staff members Garrett Rohlfing, Aaron Stubbs and George Leary were also present.

**2. APPROVAL OF MINUTES**

Mr. Smentek made a motion to approve the minutes from the September 6, 2017 Regular Planning Commission Meeting. Mr. Bruender seconded the motion which carried unanimously.

**3. AGENDA APPROVAL**

Mr. indicated there was no change to the agenda.

**4. NEW BUSINESS**

**PC 04-17**

**Larry McMullen** – Petition to vacate a portion of the unimproved platted right-of-way of Jessica Drive, unused utility easements and pedestrian walkway located within Lots 1 through 6 of Block 1 of Williwaw Knolls Subdivision. The property is zoned rural residence and is located in part of the Northwest Quarter of the Northeast Quarter of Section 19, Jamestown Township.

Mr. Leary presented the staff report.

Mr. Femrite asked if a turnaround area would be provided if the township ever did take over maintenance of the road.

Mr. Leary stated the road already serves as access to developed properties and delivery vehicles and other maintenance vehicles are able to turn around.

The applicant and his attorney were present and had no initial comment.

Aaron Glade was present and spoke on behalf of Steve Heidecker, owner of Lot 6, Block 1 of Williwaw Knolls Subdivision. Mr. Glade indicated Mr. McMullen has started a lawsuit that involves boundary rights and ownership of the walking path and the litigation is ongoing. He advised the Commission that he had spoken with Mr. McMullen's attorney and thought there had been a resolution, but that is apparently no longer correct. Mr. Glade opined that the litigation should be allowed to run its course prior to any action being taken on the vacation request. Mr. Glade indicated that only that portion of the walking path lying between lots 3 and 4 is included in the vacation petition, but the path, as shown on the plat, continues all the way to the lake and provides lake access to other residents in the area. Mr. Glade added that Mr. McMullen is claiming ownership of the walkway, but as shown on the plat, the pathway was intended for the benefit of the public. He concluded by stating there are some issues that need to be resolved through litigation before any action can be taken on the petition.

Mr. Kurt Anderson asked about the 60-day rule.

Mr. Leary said the Planning Commission could take advantage of the 60-day rule extension. He added that this item has been discussed with the county attorney's office and they are aware that this item is still moving forward.

Mr. Femrite opined that if there are matters that are being litigated, at what point is the Commission to take action?

Mr. Leary suggested that the Planning Commission could proceed with a recommendation to the County Board. When the County Board meets to review the request, the County Attorney could provide comment on the 60-day extension and if needed, the request could be sent back to the Planning Commission.

There was further discussion on the lawsuit.

Mr. Glade stated the claim was initiated by Mr. McMullen claiming he owned the walkway, but the plat clearly shows what was dedicated as part of the public areas of the subdivision.

Mr. Smentek asked if they were contesting the fact that Mr. McMullen can't buy something that has been dedicated.

Mr. Glade said that would-be part of it.

Mr. Femrite added that it would also deprive someone from access.

Mr. Smentek stated that what was shown to the Commission as the ownership documentation has a question of authenticity and therefore the access to Lake George.

Chuck Peterson, the attorney representing Mr. McMullen acknowledged that a lawsuit had been started but was stopped when they found on the plat that the walkway had not been dedicated. Mr. Peterson read the dedication instrument of the plat to the Commission and advised them that there was no mention of the walkway in the dedication. He added they reopened the Guillemette estate to deed the walkway to Mr. McMullen. He further added that the owner of Lot 7 did the same thing and obtained a deed from the Guillemette's. He claimed they have no intention of pursuing the lawsuit unless the county does not allow Mr. McMullen to proceed with the vacation. Mr. Peterson said Roland Guillemette was still alive when the walkway adjacent to Lot 7 was deeded over to the owners of Lot 7 and it is now shown by the tax records as being owned by Lot 7.

Mr. Femrite asked if the plat was left as-is, who can use the trail?

Mr. Peterson stated the current owner is Mr. McMullen and that it had been the Guillemette estate. He advised the Commission that Mr. Guillemette owned property with an older home to the north and he developed the subdivision and wanted to reserve a walkway for himself for access to the lake running between lots 3 and 4 and continuing to the lake.

Mr. Smentek ask if there is an ongoing lawsuit.

Mr. Peterson stated he had served the complaint which was followed by a request for an extension of time to answer by Mr. Glade. Mr. Peterson added that he had not received an answer because he gave Mr. Glade the extension of time and quit pursuing it. He stated there has not been any motion to dismiss it.

Mr. Smentek asked Mr. Peterson if he intended to dismiss it.

Mr. Peterson responded only if the petition is denied, and if denied, he did not feel he would have any alternative. He added they did not want to proceed with the lawsuit because it is an expensive process.

Mr. Femrite acknowledged that it needs to be resolved. He added there is some difference in opinion as to who has the rights.

Mr. Peterson pointed out the walkway was not part of the plat. He added that the County Attorney's office did not recommend they proceed until they had a meeting with them. He said he thought the County Attorney's office was convinced with his claim and therefore they were allowed to proceed with this hearing.

Mr. Smentek asked Mr. Peterson if it is his contention that it is not an easement and was never dedicated.

Mr. Peterson said yes, it was never dedicated and remains in private ownership.

Mr. Smentek asked if something that was never dedicated can be vacated.

Mr. Peterson said you can't, but said it has become an issue and something needs to be done. He compared the matter to another situation with title matters of an old plat with a road that goes through a building and years later there was a problem because a title insurance company won't insure it unless the road is vacated, but the road was never accepted and was never made a road. In that situation, they adopted a hybrid resolution that said vacated or extinguished.

Mr. Smentek continued with his concern that if something was never dedicated, that it could therefore not be vacated.

Mr. Peterson stated the walkway was never accepted and the roadway was never accepted, therefore none of it should be vacated.

Mr. Femrite asked who owns it.

Mr. Peterson responded that Mr. McMullen owns it. He added that the roadway was never accepted so it can't be vacated either.

Mr. Smentek opined that it can be vacated because it was platted and the language exists on the plat.

Mr. Peterson stated the town has to accept it and establish it as a road.

Mr. Smentek stated if Township said they wanted to construct homes on the lots, the County could vacate everything that was dedicated. But the private walkway owned by Mr. McMullen was never dedicated in the plat.

Mr. Peterson said the walkway is drawn on the plat even though it was never dedicated, so it is an issue.

Mr. Femrite stated the Commission could not determine the legality and there are some uncertainties.

There was no further public comment.

Mr. Smentek stated the plat clearly stated what is and is not dedicated. He added that the easements and road were dedicated and there was no mention of a 10-foot private pedestrian walkway being dedicated and the plat listed it as a 10-foot private pedestrian walkway. Without it being dedicated, he questioned if it can be legally vacated.

The possibility of removing the walkway vacation component of the recommendation was discussed.

Mr. Leary asked if the County Board chooses to take action of the walkway, will the petition not have to come back to the Planning Commission.

Mr. Smentek opined that if the County Attorney determines that the walkway does not need to be vacated, it could be acted on by the County Board. Likewise, if it is determined that the walkway vacation does need to be acted on, the County Board could send it back to the Planning Commission.

Mr. Leary indicated that from previous planning & zoning workshops, we have learned that when a County Board looks at a request differently than the Planning Commission, it should often times be sent back to the Planning Commission for further review.

Mr. Smentek stated that if the County Attorney makes the legal determination that it needs to be acted on, he had no issue with the County Board doing so. Other Commission members agreed.

Mr. Smentek made a motion to recommend approval of the vacation to the County Board of all the items requested with the exception of the 10-foot private walkway.

Mr. Kurt Anderson seconded the motion which carried unanimously.

## PC 16-17

**Jim Gross** - Request for review and approval of an After-the-Fact Conditional Use Permit for the movement and placement of fill within the Bluff Impact Zone for the purpose of bringing an existing lake access path into compliance with County Zoning regulations. The property is zoned Rural Residence, and is also within the Shoreland Overlay District of Lake Washington. The property is described as Lot 6, Block 1 of the Gurni Subdivision, and the portion of the now vacated CSAH 2 adjacent to the property. All located in part of the Northwest Quarter of the Northwest Quarter of Section 20, Jamestown Township.

Mr. Stubbs presented the staff report.

Mr. Gross indicated he understood what Mr. Stubbs was talking about. He expressed his concerns with the compliance dates. He provided the Commission with some additional photos. He also asked that the stairs be allowed to remain. He also suggested that it might be difficult to find a contractor available to do the work under the timeline laid out. He said it is not that he is not willing to do it, but rather working with the timeline that will be difficult. He also asked if the rock of the path could be covered and convert the area back to vegetation. He thought this would be easier than all the other work required.

The path was discussed by the Commission. Mr. Femrite went over some of the detail of the existing path and indicated walking on the path is difficult and thought that it may be an option to leave the stairs in place. Mr. Femrite commented on Mr. Gross' consideration of covering the rock path with soil and reestablishing vegetation. Mr. Femrite stated that Mr. Gross would need to decide on that and present a plan to the Planning & Zoning for consideration.

Mr. Smentek agreed. He added that, in part, the Planning Commission is at this date, due to actions taken by the property owner earlier, without coming forward earlier to ask for this, and before moving forward with the construction of the path, the large beach and the parking area. Mr. Smentek recalled other properties with projects that included a gentle sloped and vegetated path which were constructed to county standards, that included abandonment of stairs. He did not recall a situation where both an access path and stairs were allowed.

Mr. Femrite asked staff if the rock could be removed and revegetated.

Mr. Stubbs responded that the rock may be removed, but could not be covered up with soil. Mr. Stubbs advised the Commission that the compliance dates were established earlier in anticipation of this item being presented in September. He added the compliance dates may be changed.

Mr. Smentek provided his concern with allowing the applicant to choose the surface of the path that is difficult to walk on and to allow the stairs to remain.

Mr. Femrite stated there are many options for the type of surface of the path and the Commission is not in a position to dictate what type of surface to use.

Mr. Smentek said the Commission is on a position to dictate the amount of allowed impervious surface area. If the applicant is going to add the walkway with a surface that the DNR considers

impervious surface, the Commission can ask that other impervious surface be removed to accommodate that. The selection of the rock material that is difficult to walk on was the applicant's choice.

Mr. Jacques stated that while on site, he used the stairs. The path was added for the accessibility needs and the path is not walkable.

Mr. Kurt Anderson stated the applicant needs to work with staff to come back into compliance. This includes revegetation, erosion control and the width of the path. He opined that the stairway was pre-existing. The property was not in compliance when the applicant purchased it with the impervious surface requirements. He added that the Commission is not suggesting that actions of the previous owners be corrected, but rather remedying work completed by the applicant. Mr. Anderson said he could not support removal of the stairway.

Mr. Femrite asked if the applicant could work with staff on compliance dates.

Mr. Leary requested that adequate erosion control be addressed, especially considering we are heading into winter and the spring snow melt that follows. Adequate erosion control needs to be added now and if needed, areas could be revegetated next spring.

The recommended conditions were reviewed.

*Condition number 1 – that all impacted areas shall be re-vegetated prior to November 1, 2017.*

Mr. Leary suggested that the Commission consider requiring adequate erosion control prior to November 1<sup>st</sup> and that revegetation be established by July 1, 2018.

Mr. Gross stated he did not think he could ever get the path to a 3 to 1 slope. He added he is willing to fill the path back in. He opined that it would be best to just cover the rock.

Mr. Leary provided some clarification on the requested conditional use permit which is for the cutting of the access path and the placement of the fill at the top. He added the four-foot access path with the two to four-inch rock covering may remain as-is. It must be reduced from the current eight to twelve-foot width to four feet which is allowed by the ordinance.

Mr. Femrite asked if the trail is abandoned and filled back in, does the rock need to be removed? He added without removing the rock, it may be difficult to get anything to grow.

Mr. Gross said the roots of the tree are already there and with the shaded area, it is difficult to get anything to grow.

The Commission stated erosion control must be established by November 1<sup>st</sup>.

Condition number 8 involving the removal of the stairs was discussed.

Mr. Kurt Anderson stated he was aware of other properties that have obtained approval to install compliant access paths and were allowed to keep stairways.

Mr. Femrite acknowledged the Commission was dealing with an impervious surface issue of the entire property. He suggested that the stairs be allowed to remain.

Mr. Smentek stated the stairs were there before. Compliance was an issue before. There are other areas of rock on the side of the house. Mr. Smentek expressed his concern with allowing someone to construct a path that is not navigable and increase impervious surface area without addressing some other way. He stated the applicant could remove the rock landscaping. He appreciated the work of the county to try to bring the property into compliance. He understood the need for the stairs and suggested the applicant look at the path material and consider making it more walkable and useable by everyone and try to reduce the impervious surface.

Mr. Kurt Anderson commented that the impervious surface issue was dealt with by the Board of Adjustment. The Planning Commission is dealing with the cutting and filling in the bluff impact zone.

Mr. Smentek responded indicating the Commission is taking into consideration some of the impervious surface concerns with some of the conditions and protections included in the ordinance. He urged Mr. Gross to take a look at some of the areas where impervious surface could be reduced.

Mr. Femrite asked for a motion to delete the removal of the stairs and leaving the compliance dates as presented and for the applicant to work with the county staff. Mr. Bruender moved the motion. Mr. Jacques seconded the motion and the motion carried unanimously.

#### **PC 18-17**

**Samuelson Hardwoods, Inc.** – Request for review and approval of Landyn Woods, a subdivision plat consisting of one lot. The property is zoned Light Industrial and is also located within the Urban Fringe Overlay District of the City of Mankato. The property is located in part of the Northwest Quarter of the Southwest Quarter of Section 23, South Bend Township.

Mr. Leary presented the report.

Don Zerneckal was present on behalf of the applicants.

There was no public comment.

Mr. Kurt Anderson stated the request was fairly straight forward and proceeded with a motion to forward a recommendation of approval of the request to the County Board as recommended by staff.

Mr. Smentek seconded the motion which carried unanimously.

#### **PC 19-17**

**Brude Family Trust & USS Brude Solar, LLC** – Request for review and approval of a Conditional Use Permit to construct and operate a Large Solar Energy System. The proposed project will span approximately 8.7 acres and will have a power capacity of up to 1 Megawatt

(MW), which by Blue Earth County standards, is classified as a Large Energy System. The property is zoned Agricultural and is located in part of the Eastern Half of the Southeast Quarter of Section 3, Rapidan Township.

Mr. Stubbs presented the staff report.

Lori Ganske representing the Brude Family and David Watts from the solar company were present. Mr. Watts stated the request is similar to a recent project and that school districts and residents can benefit from the project. He stated this site is adjacent to a Township road. He added the project meets or exceeds all requirements and the panels will have a maximum height of 10 feet. Native grasses and a pollinator friendly mix will be planted.

Mr. Femrite asked if the panels are flammable.

Mr. Watts said no and that the panels meet fire safety codes.

The Township was present and had no comment.

Lori Ganske stated the family does acknowledge the project will be on their land.

There was some discussion by the Commission regarding the setback requirement of the fence to the road and ROW.

There was also some discussion on the setback requirement of the project to a neighboring home. Mr. Stubbs responded that the property line setback requirement is 50 feet.

There was no further discussion.

Mr. Smentek made a motion to forward a recommendation of approval to the County Board as recommend by county staff.

Mr. Jacques seconded the motion which carried unanimously.

#### **PC 20-17**

**Jeffrey & Debra Henry** - Request for review and approval of a conditional use permit to allow for a second residential dwelling to be utilized as an elder care dwelling. The property is zoned agricultural and is located in part of the Southwest Quarter of the Southwest Quarter of Section 20, Decoria Township.

Mr. Rohlfing presented the staff report.

The applicant was present and had no comment.

There was no public comment.

Mr. Smentek asked if the documentation regarding the variance application involving this property was sent out and if the variance application was approved.

Mr. Stubbs said yes.

There was no further discussion.

Mr. Kurt Anderson made a motion to forward a recommendation of approval to the County Board as recommend by county staff.

Mr. Bill Anderson seconded the motion which carried unanimously.

**5. OTHER BUSINESS**

Mr. Leary introduced Jaclyn Essandoh as the new Planning and Zoning Intern.

Mr. Leary advised the Commission of a Floodplain training opportunity in Blue Earth on October 6<sup>th</sup>.

**6. ADJOURNMENT**

Mr. Jacques made a motion to adjourn the meeting which was seconded by Mr. Smentek and the meeting was adjourned at 10:40 p.m.

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Planning Commission Chair

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Date

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Planning Commission Secretary

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Date