

Planning Commission

MINUTES

August 13th, 2020

PRESENT: Gerry Feld, Al Brenny, Art Buhs, Mary Jo Holewa, Scott Johnson, Jerry Lang, Dan Gottwalt, Warren Peschl

Staff: Roxanne Achman

- 1) Scott called the meeting to order followed by the Pledge of Allegiance.
- 2) Warren moved to approve the agenda. Jerry seconded and the motion carried.
- 3) Warren moved to approve the minutes from the July 9th, 2020 meeting. Dan seconded and the motion carried.
- 4) File #20-243, Molly and Lucas Anderson requesting a conditional use permit to use an alternative flood proofing elevation method in the R-2 Residential District. Pursuant to Sections 5.2, 5.3 and 5.4 of the Flood Plain Management Ordinance and Section 11.6 of the Development Code. The affected property is described as follows: Lot 5, Sunset Beach, Section 2, Watab Township.

Roxanne stated that the request is to use an alternative flooding proofing method to construct an addition onto an existing house. The house was built in the 1930's. In 2001 a variance was granted for a deck 58ft from the OHW (100ft required). At that time the owners raised the house on blocks with flood vents to bring the home into compliance with flood proofing requirements. In 2003, a variance was granted for an addition to a nonconforming house with a tuck under garage and a conditional use permit to use alternative flood elevation method for the addition. The request tonight is to construct an addition using alternative flood elevation methods. The proposed addition will meet all setbacks.

Molly and Lucas Anderson were present remotely, 11260 West Lake Rd, stated that they are requesting a conditional use permit to use an alternation flood proofing method.

No one spoke in favor, opposition or with general comments.

Gerry moved to close the public hearing. Jerry seconded and the motion carried.

Gerry moved that the requests meets Section 11.6, conditional use permit pages 9-12 and Ord. 196, Sections 5.2, 5.3 and 5.4. Warren seconded and the motion carried.

In reviewing Section 11.6 the vote was as follows.

1. Warren stated that the home has been flood proofed in the past and will not create any additional burden to the area. The vote was unanimous that the use will not create an excessive burden on existing parks, schools, streets and other public facilities and utilities which serve or are proposed to serve the area.
2. Jerry stated that the use of the property will not be changing. Flood proofing of structures within the flood plain is required and helps to prevent future damage to the area in the event of a flood. The vote was unanimous that the use is sufficiently compatible or separated by distance or screening from adjacent agricultural or residentially zoned or used land so that existing homes will not be depreciated in value and there will be no deterrence to development of vacant land.
3. Al stated that the structure will be similar to others in the neighborhood and meets the setback and height requirements. The vote was unanimous that the structure and site will have an appearance that will not have an adverse effect upon adjacent properties.
4. Mary Jo stated that the primary use of the site has been and will remain residential. The vote was unanimous that the use, in the opinion of the Planning Commission, is reasonably related to the existing land use.
5. Art cited Section 2.1.1 D and H and moved to include the development conditions to File #20-243. Mary Jo seconded. Scott asked the applicant if they are in agreement with the development conditions. Lucas stated that they were in agreement with them. The vote was unanimous that the use is consistent with the purposes of the Development Code and the purposes of the zoning district in which the applicant intends to locate the proposed use.
6. Jerry stated that the use is in accordance with the 2040 comprehensive plan. He cited Environment & Natural Resources Goal #1: Stewardship. Policy #2: Development Review and Quality of Life Goal #2, Housing

Stock. Policy #2: Life Cycle Housing. The vote was unanimous that the use is not in conflict with the Land Use Plan of the county.

7. Warren stated that there will be no extra traffic. The vote was unanimous that the use will not cause traffic hazards or congestion.
8. Dan stated that this addition will have no impact wetlands. The vote was unanimous that the use will not violate the wetland provisions of MN Statutes Chapter 103G.

Roxanne read the findings and conditions.

Findings

- (1) Will the use create an excessive burden on existing parks, schools, streets and other public facilities and utilities which serve or are proposed to serve the area?

The home had been flood proofed in the past and will not create any additional burden to the area.

- (2) Is the use sufficiently compatible or separated by distance or screening from adjacent agricultural or residentially zoned or used land so that existing homes will not be depreciated in value and there will be no deterrence to development of vacant land?

The use of the property will not be changing. Flood proofing of structures within the flood plain is required and helps to prevent future damage to the area in the event of a flood.

- (3) Does the structure and site have an appearance that will not have an adverse effect upon adjacent properties?

The structure will be similar to others in the neighborhood and meets the setback and height requirements.

- (4) Is the use, in the opinion of the Planning Commission, reasonably related to the existing land use?

The primary use of the site has been and will remain as a residential lot.

- (5) Is the use consistent with the purposes of the Development Code and the purposes of the zoning district in which the applicant intends to locate the proposed use?

In accordance with the following items in Section 2.1.1:

- (D) To provide for adequate light, air and convenience of access to property by regulating the use of land, buildings and the bulk of structure.
- (H) To provide for the gradual elimination of those uses of land, buildings and structures, which do not conform to the standards of the district in which they are located.

The development conditions for file no. 20-243 are adopted.

- (6) Is the use in conflict with the Land Use Plan of the county?

In accordance with the 2040 Comprehensive Plan the site is planned Rural Residential.

Environment & Natural Resources

Goal #1: Stewardship

Policy #2: Development Review: Protect the integrity of major natural resources through development review and regulation.

Quality of Life

Goal #2: Housing Stock

Policy #2: Life Cycle Housing: Promote the improvement and maintenance of the existing housing stock to provide sanitary living conditions and ensure that an adequate amount of housing is maintained, including retrofitting existing homes to better serve families in need of affordable housing.

- (7) Will the use cause traffic hazards or congestion?

There will be no extra traffic.

- (8) Will the use violate the wetland provisions of Minnesota Statutes Chapter 103G?

Constructing this addition will not impact wetlands.

Conditions:

1. This Conditional Use Permit is granted for and runs with the land indicated in this application and is not transferable to other land.
2. This Conditional Use Permit is granted only for the purpose(s), structure(s) and/or use(s) indicated on the parcel approved with the application, as qualified by these development conditions. The applicant shall undertake the project according to the plans and specifications submitted to the County with the application.
3. A Land Use and Building Permit shall be obtained prior to any construction and shall be consistent with the plans and specifications submitted with the

conditional use permit application. The building permit is to be obtained through Watab Township.

4. **Upon completion of the addition**, pursuant to Flood Plain Ordinance No. 196, Section 10.2.6, the property owner shall be **required to submit certification** by a registered professional engineer, registered architect, or registered land surveyor that the **finished fill and building elevations were accomplished in compliance** with the provisions of this ordinance to the Benton County Department of Development. Flood-proofing measures shall be certified by a registered professional engineer or registered architect.
5. Pursuant to Section 11.6.3(J) of the Development Code, this conditional use permit shall automatically expire, without notice, within one year after the date of approval unless the applicant has substantially proceeded on the work as defined in Section 11.6 of the Development Code. The Planning Commission may grant an extension of one year to complete the project if a written request for additional time is filed with the Planning Commission prior to the date of expiration of the conditional use permit. The request must specify the amount of additional time requested, the basis for the amount of time requested and an explanation of why additional time is required.
6. The applicant shall permit reasonable access for the County to periodically inspect the site at reasonable times and in a reasonable manner to ensure that the permit holder is in compliance with the conditions of approval and all other applicable statues, rules and ordinances.
7. Submittal of a design certified by a registered professional engineer or architect as being in compliance with the general design standards of the Corps of Engineers Flood-Proofing Regulations and, specifically that all electrical, heating, ventilation, plumbing and air conditioning equipment and other service facilities are at or above the Regulatory Flood Protection Elevation or be designed to prevent flood water from entering or accumulation within these components during times of flooding.
8. Within one month of completion an as-built condition shall be submitted to the County and Certified by a registered professional engineer or architect as being in compliance with the general design standards of the Corps of Engineers Flood-Proofing Regulations and, specifically, that all electrical, heating, ventilation, plumbing and air conditioning equipment and other service facilities are at or above the Regulatory Flood Protection Elevation or be designed to prevent flood water from entering or accumulating within these components during times of flooding.
9. Applicant utilizes appropriate erosion control devices to minimize risks of erosion entering the waterways or leaving the site.

Art moved to accept the findings and conditions and grant File #20-243. Jerry seconded and the motion carried.

- 5) File #20-398, David Novak, landowner and Novel Novak Solar, application requesting an interim use permit to construct a community solar energy system in the Agricultural District. Pursuant to Sections 7.2.5, 9.19 and 11.7. The affected property is described as follows: Part of NW1/4 NE1/4, south of Truck Highway 23, Section 34, Gilmanton Township.

Roxanne stated that the landowner is David and Marilyn Novak and the applicant is Novel Energy Solutions and they are proposing a 1-mega watt solar project. The parcel is 8.6 acres. The project will use 5.2 acres. The request is for 30 years with a \$30,000 surety. The project will be fenced in with a 6ft chain linked fence with 3 strands of bared wire on top. The site will be seeded with pollinator native wet prairie mix. She stated that this project is in the urban growth boundary of Foley and is being looked at for orderly annexation. The applicants will be required to apply for a Wetland Conservation Act no-loss or exemption for the placement of the panel posts within a wetland. She showed a map that showed the urban growth area surrounding Foley and highlighted the proposed orderly annexation area with Gilmanton Township. This site abuts the city limits and is in the proposed orderly annexation area. There are other solar projects in the area. There is a significant amount of wetlands on this property. A temporary access will be allowed during construction. The permanent access will be from the shared driveway with the Novaks. Screening will be from the road and the house. She pointed out the screening location. Landscaping and screening will need to be appropriate for the wet soils. This project has been discussed with Sarah Brunn, Foley City Administrator. After review of the plans and site a building would not be allowed on the site making solar the best use for the site. No one from the city was present.

David Novak, 11190 Glen St NE, stated he is requesting an interim use permit for a solar farm.

Paula Fitzgerald, Novel Energy, 2303 Wycliff St Suite 300, St Paul, stated that the tamerack trees would be 6ft high, with 20ft spacing. The connection will be under ground. They are willing to place screening in the southwest corner. Pole lengths are based on soils for placement in the wetland.

Jerry moved to close the public hearing. Gerry seconded and the motion carried.

Gerry moved that the request meets Section 7.2.5(G), page 7-8, Section 9.20, page 56-64 and Section 11.7, pages 12-16. Art seconded and the motion carried.

In reviewing Section 11.7 the vote was as follows:

- 1) Gerry stated that there are 9 criteria that proves it meets the counties requirements that are outlined in the staff report. The vote was unanimous that the use will not create an excessive burden on existing parks, schools, streets and other public facilities and utilities which serve or are proposed to serve the area.
- 2) Dan stated that the applicant has provided a decommissioning plan with the application that includes removal and recycling of materials. In addition to the requirement to provide a decommissioning bond, a \$30,000 financial surety will be provided should the County need to get involved with the removal of the solar project. The vote was unanimous that there will be no additional cost imposed on the public if the interim use is approved if it is necessary for the public to take the property in the future.
- 3) Mary Jo stated that the use is not expected to create an excessive burden on existing parks, schools, or streets which are expected to serve the area and public facilities. The project itself does not increase the population of the county and the traffic is expected to be minimal with infrequent visits to the site during the operational phase. This particular land use does not require public utilities such as water and sewer. The passive nature of electric generation prevents the need for additional or increased services. Scott stated that even though the site is within the County's Urban Growth Boundary and a potential Orderly Annexation Area, the project is in a good location due to the wetlands and is not expected to see development. The vote was unanimous that the interim use will not create an excessive burden on existing parks, schools, streets and other public facilities and utilities which serve or are proposed to serve the area.
- 4) Art stated that the proposed project will occupy a portion of the property for the one-megawatt solar garden. The proposed project will not require city services. Surrounding properties will still be able to be developed per current county requirements. Surrounding areas are currently agriculturally zoned to the south and west. The property to the east is within the city limits of Foley, zoned for commercial and industrial uses. Highway 23 is to the north. The City of Foley and Gilmanton Township are currently discussing an Orderly Annexation Agreement that would include this area. Should this occur, land use would be controlled by the city and township. The project has been discussed between the Department of Development and the City of Foley. There do not seem to be concerns due to the wetlands impacting the property. The vote was unanimous that the interim use will not impede the normal and orderly development and/or improvement of surrounding vacant property.
- 5) Warren stated that the project meets all the setbacks and there is sufficient screening. There will be no devaluation of neighboring land. The vote was unanimous that the interim use, including any structures utilized for the use, are sufficiently compatible or separated by distance and/or screening from

- adjacent land so that existing homes will not be depreciated in value and there will be no deterrence to development of vacant land.
- 6) Art stated that the use is in accordance Section 2.1.1 B & C. The vote was unanimous that the interim use is consistent with the purpose and intent of the Development Code and purposes of the zoning district. He amended condition #16 to read: *A native wet prairie mix is to be planted under the solar arrays and American Larch are to be planted as shown on the approved site plan and along 25% of the southwest corner (outside of the wetland area). Trees are to be 6ft in height when planted and spaced 20ft apart.* Jerry seconded. The vote was unanimous that the interim use is consistent with the purpose and intent of the Development Code and purposes of the zoning district.
 - 7) Gerry cited Land Use Goal #1: Planning for Growth Policy #3: Urban Growth Areas and Policy #6: Orderly Annexation. The vote was unanimous that the interim use is consistent with the Comprehensive Plan of the County.
 - 8) Al stated that the applicants must work with the Benton County Highway Department for proper access to the site. The access as shown on the site plan will be temporary for the duration of the construction project. Final site access will be shared with the dwelling. The vote was unanimous that the interim use will provide adequate access to a public road to not cause traffic hazards or congestion on the adjacent public roads and that there are sufficient off-street parking and loading space to serve the proposed use.
 - 9) Mary Jo stated that a wetland delineation revealed that a large portion of the project is within an identified wetland. The applicants will be required to submit a wetland exemption or no-loss application for the construction of a solar project within a wetland. The application must be approved by the Technical Evaluation Panel prior to work being started within the identified wetland. The vote was unanimous that the interim use will not create a negative environmental impact, including but not limited to impacts on wetlands and water bodies. Including 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.

Roxanne read the findings and conditions.

Findings.

Criteria 1: Will the use create an excessive burden on existing parks, schools, streets and other public facilities and utilities which serve or are proposed to serve the area?

There are 9 criteria that proves it meets the counties requirements that are outlined in the staff report.

Criteria 2: There will be no additional cost imposed on the public if the interim use is approved if it is necessary for the public to take the property in the future.

The applicant has provided a decommissioning plan with the application that includes removal and recycling of materials. In addition to the requirement to provide a decommissioning bond, a \$30,000 financial surety will be provided should the County need to get involved with the removal of the solar project.

Criteria 3: The interim use will not create an excessive burden on existing parks, schools, streets and other public facilities and utilities which serve or are proposed to serve the area.

The use is not expected to create an excessive burden on existing parks, schools, or streets which are expected to serve the area and public facilities. The project itself does not increase the population of the county and the traffic is expected to be minimal with infrequent visits to the site during the operational phase. This particular land use does not require public utilities such as water and sewer. The passive nature of electric generation prevents the need for additional or increased services.

Even though the site is within the County's Urban Growth Boundary and a potential Orderly Annexation Area, the project is in a good location due to the wetlands and is not expected to see development.

Criteria 4: The interim use will not impede the normal and orderly development and/or improvement of surrounding vacant property.

The proposed project will occupy a portion of the property for the one-megawatt solar garden. The proposed project will not require city services. Surrounding properties will still be able to be developed per current county requirements. Surrounding areas are currently agriculturally zoned to the south and west. The property to the east is within the city limits of Foley, zoned for commercial and industrial uses. Highway 23 is to the north. The City of Foley and Gilmanton Township are currently discussing an Orderly Annexation Agreement that would include this area. Should this occur, land use would be controlled by the city and township. The project has been discussed between the Department of Development and the City of Foley. There do not seem to be concerns due to the wetlands impacting the property.

Criteria 5: The interim use, including any structures utilized for the use, are sufficiently compatible or separated by distance and/or screening from adjacent land so that existing homes will not be depreciated in value and there will be no deterrence to development of vacant land.

The proposed project will need to meet setbacks. There will be screening on the north, east and west sides of the project. Studies have not shown any negative impact on neighboring property values from development of solar PV arrays.

Criteria 6: The interim use is consistent with the purpose and intent of the Development Code and purposes of the zoning district.

In accordance with the following items in Section 2.1.1:

(B) To divide the unincorporated areas of the county into zones and districts restricting and regulating therein the location, construction, reconstruction, alteration, and the use of structures and land.

(C) To promote the orderly development of residential, business, industrial, recreational and public areas.

The amended development conditions for file no. 20-398 are adopted. Item 16 is amended to state:

Amended #16: A native wet prairie mix is to be planted under the solar arrays and American Larch are to be planted as shown on the approved site plan and along 25% of the southwest corner (outside of the wetland area). Trees are to be 6ft in height when planted and spaced 20ft apart.

Criteria 7: The interim use is consistent with the Comprehensive Plan of the County.

Land Use

Goal #1: Planning for Growth

Policy #3: Urban Growth Areas: Maintain the urban growth areas as an effective tool to guide planning and growth management decisions. Collaborate with the cities and townships to monitor growth and adjust the urban growth areas when necessary.

Policy #6: Orderly Annexation: Work with cities in Benton County and their adjacent townships to plan for orderly growth outside of their corporate limits. Pursue Orderly Annexation Agreements with townships surrounding the cities of Royalton, Rice, Gilman, and Foley.

Criteria 8: The interim use will provide adequate access to a public road to not cause traffic hazards or congestion on the adjacent public roads and that there are sufficient off-street parking and loading space to serve the proposed use.

The applicants must work with the Benton County Highway Department for proper access to the site. The access as shown on the site plan will be temporary for the duration of the construction project. Final site access will be shared with the dwelling.

Criteria 9: The interim use will not create a negative environmental impact, including but not limited to impacts on wetlands and water bodies. Including 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.

A wetland delineation revealed that a large portion of the project is within an identified wetland. The applicants will be required to submit a wetland exemption or no-loss application for the construction of a solar project within a wetland. The application must be approved by the Technical Evaluation Panel prior to work being started within the identified wetland.

Conditions:

1. This Interim Use Permit is granted for the land indicated in this application and is not transferable to other land.
2. This Interim Use Permit shall expire 30 years after approval.
3. This Interim Use Permit is granted only for the purpose(s), structure(s) and/or use(s) indicated on the parcel approved with the application, as qualified by these development conditions. The applicant shall undertake the project according to the plans and specifications submitted to the County with the application.
4. Pursuant to Section 11.7.3 of the Development Code, this interim use permit shall automatically expire, without notice, within one year after the date of approval unless the applicant has substantially proceeded on the work. To proceed substantially means to make visible improvements to the property and to have had applied to the property at least 40% of the man hours which it is reasonably estimated will be necessary for completion of the project. The Planning Commission may grant an extension of one year to complete the project if a written request for additional time is filed with the Planning Commission prior to the date of expiration of the interim use permit. The request must specify the amount of additional time requested, the basis for the amount of time requested and an explanation of why additional time is required.
5. The applicant shall permit reasonable access for the County to periodically inspect the site at reasonable times and in a reasonable manner to ensure that the permit holder is in compliance with the conditions of approval and all other applicable statutes, rules and ordinances.

6. Applicant shall comply with all requirements of Benton County Development Code Section 9.20 or successor ordinance.
7. Appropriate erosion control devices shall be utilized during construction of the project.
8. Applicant shall submit certification by a professional licensed engineer in the state of Minnesota that the foundation and design of the solar panels is within accepted professional standards, given local soil and climate conditions.
9. The solar garden shall comply with any applicable local, state and federal regulatory standards, including the State of Minnesota Uniform Building Code, as amended, the National Electric Code, as amended and shall be in compliance with all applicable federal, state and local wetland laws, rules and regulations, as amended.
10. Power and communication lines running between banks of solar panels and to electric substations or interconnections with buildings shall be buried underground. Exemptions may be granted by the planning commission in instances where shallow bedrock, water courses, or other elements of the natural landscape interfere with the ability to bury lines.
11. The solar garden shall meet the minimum principal building setback (same as a residential structure) for the zoning district and be located a minimum of 300 feet from a residential dwelling unit not located on the property.
12. The solar developer and or applicant shall provide a financial security in the amount of \$30,000. This shall be held by the county for decommissioning if the developer or property owner fails to comply with the decommissioning plan. The financial security will be required until decommissioning of the solar garden is complete as determined by the County.
13. A signed copy of the interconnection agreement with Xcel Energy shall be provided prior to the issuance of any permits.
14. The applicant will need to work with the Benton County Highway Department to obtain the proper access permit.
15. Applicant must apply for and be approved of a wetland exemption or no-loss for installation within a wetland.
16. A native wet prairie mix is to be planted under the solar arrays and American Larch are to be planted as shown on the approved site plan and along 25% of the southwest corner (outside of the wetland area). Trees are to be 6ft in height when planted and spaced 20ft apart.

Warren moved to accept the findings and conditions and grant File #20-398. Dan seconded and the motion carried. The applicant was given a copy of the findings and decision.

6) Roxanne gave a brief update on the orderly annexation between Foley and Gilmanton Township. Scott suggested having a joint meeting with the city, county and township. Roxanne stated she would contact them.

7) Jerry moved to adjourn at 8:00 p.m. Gerry seconded and the motion carried.

Respectfully submitted,

Karen E Loehrer
Administrative Secretary
(prepared from audio)