

# **Planning Commission MINUTES October 10<sup>th</sup>, 2019**

PRESENT: Art Buhs, Gerry Feld, Dan Gotwalt, Mitch Czech, Scott Johnson, Warren Peschl, Mary Jo Holewa, Jerry Lang

Staff: Sean Moe, Michelle Meyer, Karen Loehrer

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. Art moved to approve the minutes from the September 12<sup>th</sup> and September 26<sup>th</sup>, 2019, meetings. Dan seconded and the motion carried.
4. File #19-463, Russell and Wendy Pikus requesting approval of a two lot minor preliminary plat entitled “Ren-Kus Calm Waters” in the R-3 Residential District. Pursuant to Section 10.7. The affected property is described as follows: Lots 11, 12 & 13, Stanley’s Addition, Section 33, Watab Township.

Sean stated that this is a preliminary plat of three platted lots converting them into two platted lots.

Dan Kron, 26183 133<sup>rd</sup> Ave Cold Spring, stated that they are requesting preliminary plat approval to re-plat three existing lots along the river and converting them into two lots. He stated that the plat meets all criteria.

Jim O’Keefe, 5630 NE River Rd, asked why the lots were being platted. Dan stated that the lots are being re-platted to create two buildable lots. Lot 13 needs to be widened to meet the lot width standards. This will be done by attaching part of lot 12 to Lots 13 and 11.

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

Gerry moved to approve this preliminary plat. Art seconded and the motion carried.

5. File #19-367, Svihel Children's Trust, landowner and Svihel Community Solar, LLC, applicant, requesting an interim use permit to construct a community solar energy system in the Agricultural District. Pursuant to Sections 7.1.24C, 9.20 and 11.6.3. The affected property is described as follows: SW1/4 SW1/4, Section 23, Gilmanton Township. This was continued from the September 12<sup>th</sup> meeting.

Sean showed the aerial of the site. Michelle referenced a memo from Joe Janish dated July 28, 2016.

Evan Carlson, IPS Solar, 2670 Patton Rd, Roseville, stated that IPS is the developer of this project. He stated that the Svihels are selling the property. IPS is not in the business of owning the land. He has a purchase option on the land and plans on leasing it to IPS. Evan stated that he has spoken to the city and agreed to put trees along the south line and preserving the area near Hwy 23 for a building site. There is an 80 acre parcel south of this location for city development. He stated that his plan is to lease the northern part of the property to another solar company. Xcel has a set of rules that no one developer can be within a certain distance of their own project. Scott stated that this request was tabled at the previous meeting for consideration of the project being on the north part of the parcel. Evan stated that the north part of the property is being considered by a different solar company which he is only the landowner of the property. He stated that this was unknown to the representative at the previous meeting. Warren asked about the 35 year time frame. He stated that other solar gardens have been set at 27 years. Evan stated that he is in agreement with a 27 year term. There was a discussion on vegetation and screening plan. Evan stated that they would use a green vinyl coated 7ft fence with no barb wire on top and dogwood shrubs set 16ft on center. He stated that these are already part of their landscape plan and would be in agreement with these being conditions.

Sarah Brunn, 251 4<sup>th</sup> Ave N, Foley City Administrator and Jeff Gondeck, 55 Carpenter St, Foley City Council and Planning Commission were present. Sarah stated the city's concern with buffering and preserving the area along the highway for commercial. She stated that one concern is with utilities serving the area and running the services to surrounding property. The city asks for a 27 year term with an extension. The city will address access after the action tonight. Jeff stated that this site is near the school where urban development should happen. Scott stated that the applicant would need to re-apply at the end of the term.

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

Mitch moved that the request meets Section 7.1.24C, page 6, Section 9.20, page 79 and Section 11.6.3 pages 10&11. Dan seconded and the motion carried.

In reviewing Section 11.6.3 the vote was as follows:

- 1) Mitch stated that there are 4 pages of rules and regulations that the project must meet. Scott stated that this area is designated Urban Growth in the Comprehensive Plan and the city has no definitive plans for 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) Warren stated that the public will benefit by increased tax classification. A decommissioning plan has been submitted. 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) Mitch 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 city has no plans. There is a separate application on the north part of the property. 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) Gerry stated that although there are no plans from the city on this property the use will impede orderly development. Warren stated that he has seen solar gardens abutting schools which haven't impeded development. The vote was 6 in favor with 2 in opposition that the interim use will not impede the normal and orderly development and/or improvement of surrounding vacant property.
- 5) Dan stated that there is a good screening plan. There is no evidence that solar gardens decrease property values. 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) Jerry moved to include Sections 2.1.3 and 2.1.12. There was a discussion on amending the development conditions to set the term to 27 years, include a 7ft vinyl coated fence with no top and accept the landscaping plan submitted with the application. Jerry added the amended development conditions to his motion. Warren seconded. Scott asked the applicant if they were in agreement with the amended development conditions. Evan stated that they were. 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) Mitch cited Land Use Goal #3: Commercial and Industrial Development. Policy #2 to require adequate buffering, landscaping and end use plans.

The vote was unanimous that the interim use is consistent with the Comprehensive Plan of the County.

- 8) Gerry stated that access will be from 75<sup>th</sup> St NE, a city street. They will need to obtain approval from the city. 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) Art stated that the applicant will be converting tillable land and pasture land to a solar garden. As part of the solar garden the applicant will plant low growing grasses and pollinator friendly forbs. Overall, there will be less dust and noise from this activity than traditional farming activities. The anticipated effect is to have additional infiltration and a decrease in runoff and erosion from the site. A wetland delineation report has been submitted and reviewed by staff. The vote was 7 in favor and 1 opposed 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.

Sean 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?

- (1) **Foundations.** A professional licensed engineer in the state of Minnesota shall certify that the foundation and design of the solar panels is within accepted professional standards, given local soil and climate conditions.

*The applicant shall provide a professional licensed engineer in the State of Minnesota that has certified that the foundation and design of the solar panels is within accepted professional standards, given local soil and climate conditions after the project is complete*

- (2) **Other standards and codes.** All solar farms 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.

*It is the applicant's responsibility to be certain that the solar farms 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.*

- (3) **Power and communication lines.** 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.

*The power and communication lines running between banks of solar panels and to electric substations or interconnections with buildings shall be buried underground.*

- (4) **Setbacks.** Solar farms must meet the minimum principal building setback (same as residential structures) for the zoning district and be located a minimum of one hundred (100) feet from a residential dwelling unit not located on the property.

*The sketch shows that the solar collection devices meet the property line setbacks and is greater than 100 feet from any residential dwelling unit not located on the property. The setbacks from the roadways shall be complied with for solar related infrastructure.*

- (5) **Application Requirements.** The following information shall be provided to the Department as part of the CUP or IUP permit:

- (1) A site plan of existing conditions showing the following:

- (a) Existing property lines and property lines extending one hundred (100) feet from the exterior boundaries, including the names of the adjacent property owners and current use of those properties.

*This has been submitted*

- (b) Existing public and private roads, showing widths of the roads and any associated easements.

*This has been submitted*

- (c) Location and size of any existing or abandoned wells, and sewage treatment systems

*There are no abandoned wells or ssts within the project boundaries.*

- (d) Existing buildings and any impervious surface.

*Not applicable.*

- (e) Topography at two (2) foot intervals and source of contour interval, a contour map of surrounding properties may also be required.

*This has been submitted.*

(f) Existing vegetation (list type and percent of coverage; i.e. grassland, pasture, plowed field, wooded areas, etc.)

*This has been submitted.*

(g) Waterways, watercourses, lakes and public water wetlands

*This has been submitted. A wetland delineation report has been reviewed by the county. There are no wetlands within the project boundary.*

(h) Delineated wetland boundaries

*This has been submitted.*

(i) The one Hundred (100) - year flood elevation and Regulatory Flood Protection Elevation, if applicable

*The property is not within the flood plain.*

(j) Floodway, flood fringe and/or general flood plain district boundary, if applicable

*This is not applicable.*

(k) The shoreland district boundary, if any portion of the project is located within a shoreland overlay district

*This property is not within shoreland.*

(l) In the shoreland overlay district, the toe and top of any bluffs within the project boundaries

*This is not applicable.*

(m) Surface water drainage patterns

*This is shown on the submitted plans.*

(2) Site Plan of Proposed Conditions:

(a) Location and spacing of solar panels

*This has been submitted.*

(b) Location of access roads

*This has been submitted.*

(c) Planned location of underground or overhead electric lines connecting the solar farm to the building, substation or other electric load.

*This has been submitted.*

(d) New electrical equipment other than at the existing building or substation that is the connection point for the solar farm

*This has been submitted.*

- (e) Sketch elevation of the premises accurately depicting the proposed solar energy conversion system and its relationship to structures on adjacent lots (if any);

*This has been submitted.*

- (3) Manufacturer's specifications and recommended installation methods for all major equipment, including solar panels, mounting systems and foundations for poles or racks;

*This has been submitted.*

- (4) The number of panels to be installed;

*Approximately 7,000 solar panels are expected to be installed.*

- (5) A description of the method of connecting the array to a building or substation;

*The array will connect into Xcel Energy's existing distribution infrastructure.*

- (6) A copy of the interconnection agreement with the local electric utility or a written explanation outlining why an interconnection agreement is not necessary;

*A signed interconnection agreement has been submitted.*

- (7) A decommissioning plan shall be required to ensure that facilities are properly removed after their useful life. Decommissioning of solar panels must occur in the event they are not in use for twelve (12) consecutive months. The plan shall include provisions for removal of all structures and foundations, restoration of soil and vegetation and a plan ensuring financial resources will be available to fully decommission the site. Disposal of structures and/or foundations shall meet all applicable rules and regulations to proper disposal. The Board may require the posting of a bond, letter of credit or the establishment of an escrow account to ensure proper decommissioning.

*The applicant discusses the decommissioning plan in the application. The applicant states the improvements will be removed, recycled and disposed of according to regulations at that time. The applicant indicates that any holes will be filled as part of the decommissioning process decommissioning will include the removal of all of the solar arrays, cables, electrical components, accessory structures, fencing, roads and other ancillary facilities owned by the solar garden. The application states that there will likely be a greater salvage value in the panels and equipment than the costs associated with removing the system. The application notes that a \$50,000 decommissioning fund will be created naming the County as the designated beneficiary.*

- (8) Aviation Analysis. If the project is within two miles of an airport, the applicant must complete and provide the results of the Solar Glare Hazard Analysis Tool (SGHAT) for the Airport Traffic Control Tower cab and final approach paths, consistent with the Interim Policy, FAA Review of Solar Energy Projects on Federally Obligated Airports, or successor policy. The applicant must also complete the Air Space Case Analysis (Form 7460) and provide the results.

*The proposed project is not within two miles of an airport.*

- (9) Visual Impact Analysis. An analysis of the potential visual impacts from the project including solar panels, roads and fencing along with measures to avoid, minimize or mitigate the visual effects shall be required. A plan may be required showing vegetative screening or buffering of the system from those items to mitigate for visual impacts.

*Landscaping is proposed for the south side of this project. One row of dogwood shrubs are to be placed 16ft on the south side of the project.*

*Staff (Planning commission members) reviewed and approved all items within findings (1)*

**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 public will benefit by increased tax classification, and production tax payment as required by MN law. The proposed project will meet the current setbacks as established in Benton County Development Code Section 7.1.30. It is not expected that additional right-of-way would be required.*

*The applicant has provided a decommissioning plan with the application that includes: removal and recycling of materials.*

**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.*

**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 at county requirements. Surrounding*

*areas are agriculturally zoned with several residential homes on adjacent properties. The property to the south is annexed into the City of Foley and may have potential for future residential growth. The City of Foley was approach by the applicants.*

**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 and has proposed security fencing. There will be screening on the south side of the project. Studies have not shown any negative impact on neighboring property values from development of solar PV arrays.*

*According to the Benton County Assessor for past solar projects within the County:*

*We have no market evidence indicating that solar gardens affect nearby values. For the concern of taxpayers- We currently make no adjustments positive or negative for properties near solar gardens.*

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

*The proposed solar energy system will allow for the tillable land to “rest” from row cropping and can be returned to row cropping after the decommissioning of the site or redeveloped according to Comprehensive Plans and regulations at that time.*

In accordance with:

Section 2.1.3 states the purpose and intent is to promote the orderly development of residential, business, industrial, recreational and public areas.

Section 2.1.12 states the purpose is to further the appropriate use of land, and conserve and protect the natural resources of the county for present and future generations.

The amended development conditions were adopted here.

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

### **Land Use**

Goal #3: Commercial and Industrial Development

**Policy #2: Aggregate Resources:** Allow a very low density of rural, non-farm housing development in areas of mapped sand and gravel (aggregate) resources. Require adequate buffering, landscaping, and end use plans.

**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 have indicated that road access will be off 75th St NE, which is a city road. They will need to obtain approval from the City of Foley.*

**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.

*The applicant will be converting tillable land and pasture land to a solar garden. As part of the solar garden the applicant will plant low growing grasses and pollinator friendly forbs. Overall, there will be less dust and noise from this activity than traditional farming activities. The anticipated effect is to have additional infiltration and a decrease in runoff and erosion from the site. A wetland delineation report has been submitted and reviewed by staff.*

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 27 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 11.6.2 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 insure 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. All electric within the solar array compound is required to be underground.
  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 one hundred (100) 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 \$50,000 per megawatt. 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. The City of Foley is the road authority for 75<sup>th</sup> St NE. The applicant will need to work with the City to obtain the proper access permit.
  14. A 7' chain link fence with green vinyl coating with no barb wire on top will

surround the project area.

15. Landscaping of dogwood type vegetation is required on south side of project area per spacing specifications

Dan moved to accept the findings and conditions and grant File #19-367. Jerry seconded. The vote was 6 in favor and 2 opposed. The motion carried. The applicant was given a copy of the findings, conditions and decision.

6. Jerry moved to close the public hearing at 8:10 p.m. Gerry seconded and the motion carried.

Respectfully submitted,

Karen E Loehrer  
Administrative Secretary