

# MOWER COUNTY

## AUSTIN, MINNESOTA



September 29, 1981

### MINUTES OF THE MOWER COUNTY PLANNING COMMISSION REGULAR MEETING

MEMBERS PRESENT: Ray Capelle, Jen Ulwelling, Roger Peck, Joe Monson,  
Bob Finbraaten, Conrad Stenson

MEMBERS ABSENT: John Hill

OTHERS PRESENT: Dave Olson, Julie Lewon, William Buckley

Chairman Peck called the meeting to order at 8:00 p.m., Tuesday, September 29, 1981 in the Commissioners Room of the Mower County Courthouse. Minutes of the Aug. 25, 1981 meeting were approved as mailed on a motion by Mr. Capelle, seconded by Mr. Monson and passed unanimously.

Sewage Complaint - Donald Tostenson: As Mr. Tostenson was not present, Mr. Buckley read the letters that had been sent to Mr. Tostenson informing him of the hearing and explained the matter to the commission. A complaint has been signed charging Mr. Tostenson with violation of Section 11-4 of the Mower County Code by allowing sewage to stand on his property and creating a public nuisance and endangering a water supply. Mr. Buckley stated that he had spoken to Mr. Tostenson on the phone and had requested that he be present at the hearing. Mr. Kinney, whose property adjoins the Tostenson property, presented pictures of the area where sewage is standing to the commission. Mr. Kinney's well is approximately 75 feet from the wet area and he is concerned about possible contamination of the water table. Mr. Capelle had been on the investigation committee and reported that there was black water oozing from the ground and the area was unable to be mowed. Mr. Buckley suggested that the commission issue an order for Mr. Tostenson to construct a sewage system that would meet county standards. Dave Jackson, Chairman of the Austin Town Board stated that the town board had discussed the problem and felt that it had been going on too long. They were concerned that a bad precedent would be set in the length of time allowed to bring a sewage system up to county standards. A motion was made by Mr. Monson that the necessary steps be taken to enforce the county ordinance and that Mr. Tostenson be given until October 31, 1981 to bring his system up to county standards. The motion was seconded by Mr. Capelle and passed unanimously.

Conditional Use Permit #291 - Auto Salvage Yard - Gerald Crews: A petition from Gerald Crews for a conditional use permit to allow an auto salvage yard to be located in the W $\frac{1}{2}$ , SE $\frac{1}{4}$ , Section 32, Red Rock Township, was read to the planning commission. Mr. William Nierengarten, attorney for Mr. Crews, made the following points, referring to a letter received by the planning commission from Mr. Zillgitt, a neighboring property owner's attorney.

1. Problem with noxious weed seeds: The Zillgitt's property (where hybrid seed is grown) is quite a distance from the property in question, If weeds were going to be a

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problem they would have been on the property when it was a landfill. You would be better off with a salvage yard as weeds are not created by a salvage yard. If noxious weeds were the problem there are laws that would require that the weeds be destroyed.

2. Area would be unsightly and a nuisance. If the salvage yard were a nuisance there are laws abating nuisances. As for being unsightly, the nearest homes are 1375 feet from the site.

3. Environmental concerns and pollution problems: Mr. Landherr of the Minnesota Pollution Control Agency has stated in a letter that the salvage yard proposed would be of minimal concern as a pollution problem.

4. Property values would obviously decrease: This was not obvious to Mr. Nierengarten as there are no "next door" neighbors. The report from the real estate appraiser, Mr. Reinartz, does not indicate lower property values.

5. Vermin Problem: There is no vermin problem now. If there are none with the sanitary landfill why would there be with a salvage yard. Vermin need food, shelter and water. These would not be provided by a salvage yard. Other salvage yards were looked at and none were plagued by vermin.

6. Salvage yards are not allowed as a permitted use and allowing it as a conditional use would destroy peoples' confidence in the law: this was seen as flag waving and was not based on fact. Mr. Nierengarten then pointed out a recent supreme court case in which denial of a special use permit is arbitrary when based on reasons legally sufficient but lacking adequate factual basis. Reasons not related to public health, safety and welfare are not legally sufficient.

Mrs. Betty Rice then presented the following reasons for denying the petitions:

1. Noxious weeds would be a problem because the junk from the landfill was buried and in a salvage yard everything would be on top of the ground.

2. The salvage yard would be unsightly as it is located on property higher than that surrounding it.

3. Noise pollution would be a problem from the crushing of cars. Petroleum products would be spilled and they are not biodegradable.

4. The auto bodies would provide shelter for vermin and would store water after a rain for vermin. The nearby cornfields would provide food.

5. The property values would decrease as no one would want to live near there.

Mrs. Rice also said that she resented tax money being used by HUD to put a salvage yard on the site.

Several other surrounding property owners were present and voiced the following points of opposition .

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Mrs. Alvin Thompson - Mrs. Thompson lives to the west of the site and is currently selling her home. All agents talked to have said she must come down \$10,000 if the salvage yard is on the site before the house is sold.

Larry Hanse - Mr Hansen lives to the west and can see the site from his front yard. He had visited Crews current site and saw many weeds. He also felt property values would decrease and the creek running at the back of the property would be polluted.

Carol Rice - Miss Rice gave a demonstration with a saturated sponge showing how the landfill saturated soil would not soak up any oil or gas that was spilled and these products would drain down to the creek and pollute the water.

Carol Clark - Mrs. Clark stated that her family had picked the area because it was a lovely place to live and they did not want an unsightly salvage yard in the area.

Reggie Peterson - Mr. Peterson farms the land to the immediate west of the proposed site. He felt that a problem already existed as no one knows what pollutants are on the site now from the landfill. Mr. Peterson felt that something was seeping from the landfill into his field that would allow seeds to germinate. He didn't want the salvage yard at the site as it would compound the problem.

Gary Hackbarth, Clarence Enright, John Clark and Maxine Long also spoke against the proposal, voicing the same complaints as those above.

Mr Nierengarten made a rebuttal, asking what could be seen from surrounding areas. He stated that approximately 200 trees would be planted along the west property line which would block the view. Regarding the pollution concern, Mr. Nierengarten again pointed to the report from the Minnesota Pollution Control Agency. He then reminded the commission of the supreme court case and the ruling that all decisions must have a factual basis and be legally sufficient.

Mrs. Ulwelling was on the investigation committee and gave her report. She stated that if the field was not planted in corn the houses to the west would be able to see the site. Regarding the trees that would be moved to the west property line, Mrs. Ulwelling commented on the practicability and cost of moving 200 trees and whether they would grow since garbage is sticking above the ground. Mr. Buckley said soil would be taken from near the creek and used to better cover the area.

Following further discussion on the trees and the possibility of a pollution problem a motion was made by Mr. Capelle to deny the petition for a conditional use permit as there are too many close residences and it would affect their community. Mr. Monson seconded the motion and commented that he felt the salvage yard was incompatible with the area. The motion passed unanimously.

Petition for Rezoning - Rural to Commercial - Ernie Durst: A petition from Ernie Durst requesting a rezoning from Rural to Commercial to allow the sale of mobile homes and overnight camping on the W $\frac{1}{2}$ , NW $\frac{1}{2}$ , Section 4, Windom Township was read to the planning commission.

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Mrs. Ulwelling was on the investigation committee and gave her report. She felt approving this petition would be spot zoning and would allow many unsavory types of operations. Mr. Durst asked what activities would be allowed in a commercial zone and Mr. Peck read the list of permitted uses. Mr. Peck said that even if the petitioner's proposed use would be suitable for the area, if the property were sold any of the permitted uses could be located there. Discussion followed on what would be allowed and what exactly the petitioner was proposing to do. Mr. Durst stated that he would like to sell cars and trucks in addition to mobile homes as the market for mobile homes is failing. He also explained that the overnight camping would involve only self-contained units and no water or sewer would be put in. Mr. Capelle was opposed to spot zoning and felt that control would be lost down the road as the next owner could do anything. Mr. Peck asked that the staff check to see if the sale of incidental automobiles gotten through tradecould be a condition on Mr. Dust's permit to sell mobile homes. Mr. Durst asked what would be needed to allow the sale of farm equipment on his property. It was determined that the sale of farm equipment would require a conditional use permit to operate in a Rural Zone. After further discussion a motion was made by Mrs. Ulwelling to deny the petition. Her reasons were that it would be a spot zone and open to all businesses allowed in Commercial zones, and that the area is primarily residential. The motion was seconded by Mr. Capelle and passed unanimously.

Miss Lewon told the commission about the Community Energy Planning workshops that would be held in Mankato on October 20 and 21, 1981. She asked that any person interested should contact the planning office for more information.

There was some discussion on the ability of the planning commission to start rezoning action on a piece of property, the land east of the Terrace Park Mobile Home being the property in question. Mr. Monson made a motion to have the staff check into rezoning the property from Rural to Commercial. The motion was seconded by Mrs. Ulwelling and passed unanimously.

Mrs. Grace Dooley told the commission of the land use planning workshops that would be held in Rochester on November 12, 1981 and in Mankato on November 13, 1981. The morning session would cover different aspects of planning and the afternoon session would cover water resource management. The cost is \$17.00/person.

A motion to adjourn was made by Mrs. Ulwelling, seconded by Mr. Monson and passed unanimously. The meeting adjourned at 10:35 p.m.

Respectfully submitted,

*Julie Lewon*

Julie Lewon, Secretary  
Mower County Planning Commission