

Approved 6.29.21

**MOWER COUNTY PLANNING COMMISSION**

*Minutes of the Mower County Planning Commission, 5/25/2021*

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, Stacy Deming (remote),

A Quorum was established. Jeff Baldus called the regular meeting to order at 7:00 p.m. on 5/25/2021, in the Board of Commissioners Room at the Mower County Government Center, 201 1st Street NE, Austin, Minnesota.

Motion was made by by Medgaarden and seconded by McCarthy to approve the Agenda as printed. Motion carried unanimously.

Minutes of the 3/30/2021, meeting was approved as mailed on a motion made by Vermilyea and seconded by Adams. Motion carried unanimously.

**CUP #914: APPLICANT: Gary Jacobson and Paulette Huntley, landowner(s); make request for additional dwelling to be located in a mature wooded area, located in Section 35 of Red Rock Township.**

Staff Presentation: Reference was made to the site investigation that was performed by Risius and Medgaarden, 5/19/2021. View to the South of driveway. You can see where it is open in the center to the East.

Background: The site appears to have previously been a building site; currently no residence on the property. The site was issued CUP #862 for the same request in 2018 under prior ownership, and that CUP is now expired. Applicant will need to obtain and submit ISTS Design for Septic Permit, including primary and secondary sites, which have already been identified by Bustad, prior to obtaining the zoning permit for construction. Access to the site will be via 230<sup>th</sup> Street; this is Township Road. Red Rock Township has zoning authority. Any land uses or access also need permitting from Red Rock Township. Preliminary wetland review from Mower SWCD has indicated there are no hydric soils on the site; no wetland impacts are expected. Findings of Fact were submitted by Applicant for your consideration.

Adams: #6, why do they need the access approved by the Township if they already have the site, driveway, etc?

Sheedy: I just want them to check in with Red Rock Township for the use of the site; Red Rock has zoning authority and there might be permits needed from the Township.

Risius: They got to check in with Red Rock, a lot of these people come in and don't know that the towns have their own ordinances. Red Rock might get upset

Adams: So just to let them know that they're going to build a house there?

Sheedy: Yes, you could strike #6 and amend #10 instead to include Red Rock Township specifically with local regulations. That would achieve the same goal.

McCarthy: we could just leave it too

Sheedy: that's fine – whatever you're comfortable with.

Vermilyea: and the Township was notified in the process?

Sheedy: they received a copy of the notice via email, and I sent Sharri a link to the dropbox project documents.

**Applicants Presentation:** none.

**Public Comments Supporting:** none.

**Public Comments Against:** none.

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

**Board Discussion:**

A motion was made by Medgaarden and seconded by Risius to adopt the Findings of Fact as submitted and recommend approval of CUP #914

Vermilyea: Before we take that motion, I have a question of Staff: being this was previously a building site, is there a well on the property and should it be sealed?

Baldus: Are they able to use that well?

Vermilyea: Do they know where it's at?

Sheedy: I think that is up to them, if the well is viable.

Adams: If they put it use, they don't have to seal it.

Baldus: They could have put in their own sandpoint well, but I thought the State required they go so far down

Sheedy: This is the sketch we took from Bustad septic map, there is a well with "?" indicated, so I don't know if that means that that's a proposed future well or an old well they may or may not use. I would say it is fair that if there is a well that on the property but not in use, then it should be properly abandoned.

Vermilyea: yes, I would agree with that - can we make that part of the conditions?

Sheedy: Yes we can make that condition #13

Vermilyea: Taggert, would you make that to amend the motion?

Medgaarden: Yes, I will amend my motion to approve with the Findings of Fact, staff's recommended conditions, and adding #13 for the well

Sheedy: #13 will say - If there is a well located on the property that is not in use; it shall be properly abandoned

Medgaarden: yes

Risius: I'll second that

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 will be building a single family home with an attached garage. We also plan on building a stand alone unattached two stall garage.**

- 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:**

**We will not be engaged in any agriculture activities other than a family garden.**

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

**At this time there are no utilities on the property. We have had Bustad Excavating do a feasibility study for a septic system. We have contacted Freeborn Mower Coop regarding bring power to the property and we'll also be putting in a well once construction begins.**

- 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:**

**This property will be used as a single family home**

- 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:**

A motion was made by Medgaarden and seconded by Risius to adopt the Findings of Fact as submitted and recommend approval of CUP #914 in accordance with Section 14-51 of the Mower County Zoning Ordinance. The following 13 conditions are recommended by the Planning Commission to the County Board of Commissioners; motion was unanimous:

1. A Zoning Permit shall be obtained prior to any construction of any structure on the property; and
2. An approved ISTS Design for the proposed septic system obtained and submitted prior to construction of the residence and/or any other structure; and
3. A secondary Type I 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. The area should be preserved and protected from compaction and/or construction or other damages. If a Type I septic system primary and secondary site(s) cannot be located on the proposed parcel, a variance is required before a zoning permit can be issued, or the site is not developable for residential purposes; and
4. 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
5. 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
6. Access to the site via 230<sup>th</sup> Street must be approved by Red Rock Township;
7. Wetland Review required: Petitioner must contact the Mower County SWCD regarding the Wetland Conservation Act and provide the County a copy of one of the following:
  - a) A "No Loss Determination" (no wetlands on site).
  - b) A "Wetland Exemption" (the act does not apply).
  - c) A "Wetland Replacement Plan" approval.
8. The conditional use permit shall become void if the use is established, but then discontinued for a period of one (1) year. (Refer Section 14-36 Discontinuance). A conditional use permit shall become void two (2) years from the date of approval by the County Board 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; and

9. If for any reason this parcel is subdivided; subdivision of the parcel(s) into smaller tracts, parcels, or lots shall comply with Mower County's subdivision ordinance and any other applicable governmental rules, regulations, and/or procedures in effect at that time.; and
10. Applicant shall follow all state and federal and local regulations regarding the proposed use; 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.
13. If there is a well located on the property that is not in use; it shall be properly abandoned.

Risius: is there something at the county, for a record on the well?

Vermilyea: they have some records

Sheedy: There is a state county well index (pulls up MDH website for PC to view). There is not a well that is identified on the States Department of Health well record; here is one on a neighboring property for example. When a well is drilled by a formal driller, the property of the record goes to the MDH. There may also be a threshold for what years are available in the MDH database; the well could predate the record. We can look though in the County's records to see if there has ever been any testing done and figure out where the old building site was.

McCarthy: That's for them

**Further Business:**

Vermilyea: I do have one question for staff, there was a property that sold in Nevada Township Saturday, the septic was not in compliance, how does that work for the County's septic ordinance?

Sheedy: It may or may not be the same sale that Angie caught recently. There was recently a sale which was listed "As-Is"; she contacted the auctioneer and let them know they can't sell "As-Is", a compliance inspection or escrow account must be done at the time of transfer.

Vermilyea: I've had several people ask me how can they sell a piece of property, in the documentation in there the buyer was responsible and I talked to the auctioneer on Saturday asked who he said the buyer was actually responsible for the septic upgrade.

Sheedy: Yes, they can pass that responsibility to the buyer during the sale, however the escrow account doesn't go away; who funds the escrow account is something they can negotiate.

Vermilyea: It clearly states in there the buyer is responsible for upgrade of the septic system. I've had several people ask me – how can they sell a property with a non compliant septic system?

Sheedy: They would be responsible for establishing the \$30,000 escrow, or funds based on estimate.

Adams: Until that buyer puts that system in, he can't live there.

Vermilyea: Well I guess my question, we can have that discussion, what if they go record the document whether there's been a compliance inspection or not, I was confused how that works.

Sheedy: Once the system is labeled as non-compliant, in lieu of an inspection, we consider it an imminent public health threat and the 10 month clock starts, we consider it a worst case scenario with no inspection, and it will be up to them to get that system in within 10 months.

Vermilyea: I thought we were trying to get ahead of people selling property with non compliant systems, and I've had a half dozen people ask me how this can happen?

Sheedy: refer those people back to our office. As Angie presented last time, we did virtual meetings for outreach and published information multiple times; if we see these things or if someone reports these things, Angie calls the realtor or Auctioneer and informs them of policy and provides the documents.

Vermilyea: Escrow money goes to, refresh my memory where the money goes.

Sheedy: It is held in a an escrow account with the Mower County as the responsible for releasing the escow, until the system is put into service

Vermilyea: In this case, if Mower County had no involvement with the sale, are there escrow dollars put aside or what if they transfer the property anyway?

Sheedy: In a situation like that, where they were informed them and they went ahead and transferred anyways, that is a misdemeanor; a clear violation of ordinance.

Vermilyea: well I've just had a lot of people ask me

Sheedy: We have had a lot of people request the information, generally the response has been really positive. Landowners are maybe not particulary happy about it, but it seems like they are aware of it.

Medgaarden: In my situation, I asked, they didn't know, but we got the paperwork

Vermilyea: Is the escrow account held by the county?

Sheedy: No, the title company or attorney or whoever holds the dollars. The county is respoinsible for disbursing them.

### **Adjourn**

There being no further comments or business, motion by Medgaarden to adjourn the meeting, second by Risius. Motion carried. Meeting adjourned 7:30 p.m.

Respectfully submitted,

Stacy Deming  
Administrative Assistant, Mower County Environmental Services