

PLANNING ADVISORY COMMISSION
GOODHUE COUNTY, MN
February 9, 2009 MEETING MINUTES

The Goodhue County Planning Advisory Commission was called to order at 6:00 p.m. by Chair B. Overby in the Goodhue County Justice Center located at 454 West Sixth Street in Red Wing, Minnesota.

Present: Bernie Overby Dan Rechtzigel Tom Webster Suzanne Blue
Richard Bauer Howard Stenerson Larry Olson Brandon Schafer Suzanne Blue

Absent: Mike Patterson

B. Overby tabled Jennie-O CUP from Agenda.

ⁱMotioned by S. Blue and seconded by T. Webster to approve the February 9, 2009 agenda. Motion carried 8-0.

ⁱⁱMotioned by R. Bauer and seconded by L. Olson to approve the January 21, 2009 minutes. Motion carried 8-0.

STAFF UPDATES

L. Hanni handed out Ordinance updates and explained housekeeping and PAC member attendance policy.

S. Blue asked who is on steering committee for comprehensive plan review.

L. Hanni explained set-up of reviewal.

M. Wozniak said on comprehensive plan work we will evaluate the plan and if changes are in order we will focus on who will work on that.

B. Overby said nominations for PAC Vice-Chair is open.

L. Olson nominated H. Stenerson. Motion carried 7-0.

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B. Overby said we need nomination for PAC member for BOA.

B. Schafer motioned nominations cease. Motion carried 7-0.

B. Overby re-elected to BOA. Motion carried 7-0.

Old Business:

CONFLICT/DISCLOSURE OF INTEREST – H. Stenerson excused himself for the Taylor and Foster Change of Zone District as neighboring landowner.

B. Schafer said he had Fitzgerald as customer and if he needs to excuse himself he will.

T. Webster said he does business with applicant also and he owes Fitzgerald money and he will excuse himself if he sees the need to later.

B. Overby gave audience walk thru of agenda.

Summary

Scott Miller/ Jennie-O Turkey Store, Inc. (Craig C. Byram-Attorney) is requesting a Conditional Use Permit for the existing Turkey hatchery facility on parcels 45.006.0701 and 45.006.0702 in Section 6 of Warsaw Township to split off turkey operations from the Scott Miller farm residence. The purpose of this Conditional Use Permit is to allow the opportunity to continue operations and have ability to continue feedlot on site in full compliance with current Goodhue County Zoning Ordinances and all relevant state and federal regulations. Jennie-O Turkey Stores have indicated their intent is to continue feedlot operations and Scott Miller has signed an acknowledgement statement.

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Background Jennie-O Turkey Stores, Inc. is managing a feedlot operation on property owned by Scott Miller. The operation includes two 70' X 560' structures resulting in a total flock of 24,000 turkeys (this equates to 432 animal units). This feedlot has been operated since 1989 when the first building was constructed. The second building was added in 1996. Jennie-O Turkey Stores, Inc. financed the construction of the buildings and related improvements under an arrangement that allowed the property owner to gain ownership of the structures over a period of time. The business arrangement apparently did not go as planned and an arbitration order has resulted in a request from Jennie-O to split the turkey barns on 9.09 (see enclosed survey) acres from the balance of the Scott Miller Property. Land Use Management Staff are not able to authorize the proposed property split because variances would have to be granted related to the following zoning ordinance standards:

- Subdividing the turkey barns from the balance of the property including Scott Miller's dwelling would cause the feedlot to be located outside of the farmyard; and
- The feedlot would be located less than 1000' from the dwelling (257'); and
- The turkey barns would not meet the required 100' setback to the new property line (distance on west side would be 75'); and
- The proposed parcel split would leave a 10' wide strip along the east edge of the Miller property (the minimum lot width for a parcel in the A-1 District is 100')

Jennie-O has applied for variance to the above referenced zoning ordinance standards and their variance requests will be considered at the January 2009 Goodhue County Board of Adjustment Meeting.

Because the ownership of the feedlot operation property would change – a Conditional Use Permit must be obtained in order for Jennie-O to be able to continue to run the Turkey Barns. The existing operation was approved by the MPCA before Goodhue County had established current feedlot regulations.

The CUP to allow the Jennie-O Turkey Store, Inc. feedlot facility within an A-1 Zone District is subject to conformance with provision of Section 5 Subdivision 1(d), of Article 13 (Confined Feedlot regulations) of the Goodhue County Zoning Ordinance.

The applicant has included with the CUP application a description of the use of the property that includes maps

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and designated parking and new parcel boundaries.

Given that the Scott Miller/Jennie-O Turkey Stores, Inc. feedlot operations are existing operation there are fewer questions regarding the physical planning of the property or access, which is to 350th Street, than normally would need to be addressed with a proposal involving a new facility.

Findings of Fact

- The proposed Jennie-O Turkey Store, Inc. Turkey Hatchery Facility (feedlot) Conditional Use Permit that proposes a land split from the Miller farm residence would cause the feedlot to be located outside of a farmyard ; and
- The existing Turkey Hatchery Facility land use is consistent with the Goodhue County Comprehensive Plan; and
- The proposed Jennie-O Turkey Store, Inc. CUP would be subject to compliance with provisions of Article 13, Section 5 of the Goodhue County Zoning Ordinance as interpreted by the Goodhue County Zoning Administrator; and
- Warsaw Township has considered the CUP and has expressed support for approval of the Scott Miller/Jennie-O Turkey Store, Inc. CUP;
- Questions and concerns do exist as to whether allowing the Turkey Hatchery Facility to operate on the proposed 9.09 acre parcel outside of the farmyard of the Scott Miller Residence will cause any unacceptable impacts to the current or future owners; and
- That Goodhue County has not received any complaints regarding the existing Turkey Hatchery Facility; and
- That the Goodhue County Feedlot Officer has been made aware of the Conditional Use Permit request and has not identified any concerns or issues related to the current Turkey Hatchery Facility.

Staff Recommendations:

Land Use Management Staff offers the following two options for action for the Planning Advisory

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Commission to consider regarding the Scott Miller/ Jennie-O Turkey Store, Inc. Conditional Use Permit to permit the Jennie-O Turkey Store, Inc. Turkey Hatchery Facility to operate on the proposed 9.09 acre parcel:

Option 1:

The Planning Advisory Commission may wish to table consider of the Jennie-O Turkey Store, Inc. Turkey Hatchery Facility CUP request in order to see if the variances to Goodhue County Zoning Ordinance standards that would be required to allow the facility to operate on the proposed 9.09 acre parcel will be approved by the Goodhue County Board of Adjustment. The Jennie-O Turkey Store, Inc., will have to make a case as to what “hardship” and “practical difficulties” exist that would justify approval of the several variances by the Board of Adjustment.

Option 2:

The Planning Advisory Commission may wish to recommend approval of the Jennie-O Turkey Store, Inc. Turkey Hatchery Facility CUP request to the Goodhue County Board of Commissioners subject to the following conditions:

- The Conditional Use Permit shall authorize continued use of the existing two 70’ x 560’ structures with each permitted to house flock of up to 12,000 Turkeys (total of 24,000 Turkeys); and
- The operation shall be limited to existing facilities as documented in the Condition Use Permit Application and supporting information; and
- the Turkey Hatchery Facility must comply with MPCA Chapter 7020 requirements and all applicable provision of Goodhue County Zoning Ordinance Article 13 (Confined Feedlot Regulations); and
- The Conditional Use Permit shall be subject to approval of all variances to Goodhue County Zoning Ordinance requirements that may be necessary for the Jennie-O Turkey Store, Inc., to operate the Turkey Hatchery Facility on the proposed 9.09 acre parcel; and
- That the Conditional Use Permit shall be granted only for the proposed 9.09 acre parcel; and

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The Staff Report (including Findings of Fact) and all comments that may be received at the public hearing shall be considered part of the record of action regarding the CUP request.

DISCUSSION FOR FEBRUARY 9, 2009 PAC MEETING: Scott Miller/Jennie-O CUP Withdrawn from agenda.

Summary

Paint with Prep Inc, (James Hernke) has applied for a Conditional Use Permit in an A-3 District to allow a Home Occupation Business at their property on parcel 28.020.2801 situated at 31790 County Road 25 Blvd. in Cannon Falls Township. The business includes a office area and painting area. A site visit has confirmed that the business is currently in operation. Article 11, Section 13. Subd. 2., includes provisions that require a conditional use permit for home occupations involving more than (1) non-resident employee and/or being carried out in an accessory building exceeding 2000 square feet. The application submitted by James Hernke indicated 90 percent of the business in being carried out off site and the remaining 10 percent is performed in one half of an accessory building and there have been modifications for an exhaust fan system, a large area

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curtain has been installed, along with an office, storage loft and utility room with toilet and sink.

Background

James Hernke is seeking approval of a Conditional Use Permit to operate a home occupation business on the 11.8 acre property in Section 20, Cannon Falls Township. The business includes a painting area in an existing storage structure. The business is currently in operation without having obtained CUP approval from Goodhue County. A Land Use Permit was issued after 2000. A letter dated November 18, 2008 from the Goodhue County Environmental Health Director and the Goodhue County Land Use Management Director included a cease and desist order to stop business activities in violation of County Ordinances. This letter informed Mr. Hernke that the Land Use Permit to authorize the Home Occupation Business that was approved on 12-19-01 was being revoked. Mr. Hernke is allowed to

The following standards shall apply to conditionally permitted home occupations in the A-1, A-2, and A-3 Districts.

- A. The number of employees employed in conjunction with a conditionally permitted home occupation shall be determined by the Planning Advisory Commission.
- B. The home occupation shall be incidental and subordinate to the use of the premises for farming and related farm activities.
- C. The conduct of a home occupation may be carried on in an accessory building the size of which shall be determined by the Planning Advisory Commission.
- D. No traffic shall be generated by the home occupation beyond that which is reasonable and normal for the area in which it is located.
- E. Only one non-illuminated sign not to exceed sixteen (16) square feet in area shall be allowed in conjunction with the home occupation.
- F. No equipment or process shall be used in such home occupation to create noise, vibration, glare, fumes,

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odors, or electrical interferences detectable off the premises.

Issues:

The business being conducted by James Hernke (Paint with Prep) does not appear to be incidental and subordinate to the use of the premises for farming and related farm activities. A site visit by LUM Staff member Kelly Moriarty indicated a small business operation on the 11.8 acre site which has a residence but does not meet the County's definition of a "farm" and is not large enough to conduct agriculture.

Home Occupations may be permitted in accessory buildings, but, there may not be external evidence of the business. **Staff is concerned that this business could involve outdoor parking/storage of vehicles and possible soils contamination from chemical uses and run-off concerns.**

Staff will present a variety of photographs of the property at the PAC Meeting to offer evidence of the nature and appearance of the proposed home occupation.

Other than businesses that may qualify as a home occupation, agriculture related businesses may be permitted by conditional use permit. It does not appear that the Paint with Prep business operations would qualify as "agriculture related businesses".

The Goodhue County Zoning Ordinance provisions which govern Home Occupations are included below:

Goodhue County Zoning Ordinance Article 11 (Performance Standards)

SECTION 13. HOME OCCUPATIONS

Home occupations may be allowed either as permitted accessory uses or as conditionally permitted accessory uses in any agricultural district or in any of the classes of residential districts.

Subd. 1. Permitted Home Occupations in the A-1, A-2, and A-3 Districts. The following standards shall apply to permitted home occupations in any agricultural district:

- A No more than one (1) person other than the members of the family occupying the

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- premises shall be employed in conjunction with a permitted home occupation.
- B. The home occupation shall be incidental and subordinate to the use of the premises for farming and residential purposes.
 - C. The conduct of a home occupation may be carried on in accessory buildings not to exceed a total of two thousand (2,000) square feet in gross floor area.
 - D. No traffic shall be generated by the home occupation beyond that which is reasonable and normal for the area in which it is located.
 - E. Only one non-illuminated sign not to exceed sixteen (16) square feet in area shall be allowed in conjunction with the home occupation.
 - F. No equipment or process shall be used in such home occupation which creates noise, vibration, glare, fumes, odors, or electrical interference detectable off the premises.

Subd. 2. Conditionally Permitted Home Occupations in the A-1, A-2, and A-3 Districts. The following home occupations shall require a conditional use permit when operated in any agricultural district.

- A. Home occupations employing more than one (1) non-resident employee on the premises.
- B. Home occupations carried on in an accessory building greater than two thousand (2,000) square feet of gross floor area.

Subd. 3. Standards for Conditionally Permitted Home Occupations. The following standards shall apply to conditionally permitted home occupations in the A-1, A-2, and A-3 Districts.

- A. The number of employees employed in conjunction with a conditionally permitted home occupation shall be determined by the Planning Advisory Commission.
- B. The home occupation shall be incidental and subordinate to the use of the premises for farming and related farm activities.
- C. The conduct of a home occupation may be carried on in an accessory building the size of which shall be determined by the Planning Advisory Commission.
- D. No traffic shall be generated by the home occupation beyond that which is reasonable and normal for the area in which it is located.

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- E. Only one non-illuminated sign not to exceed sixteen (16) square feet in area shall be allowed in conjunction with the home occupation.
- F. No equipment or process shall be used in such home occupation to create noise, vibration, glare, fumes, odors, or electrical interferences detectable off the premises.

Findings of Fact

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- Subd. 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, not substantially diminish and impair property values within the immediate vicinity. **The proposed home occupation business includes a structure existing as an accessory building. External evidence of the business is clearly viewable by property owners in the vicinity.**
- Subd. 2. That the establishment of the conditional use will not impede the normal and orderly development and improvement of surrounding vacant property for uses predominant to the area. **The nature of the business could impact the desirability of surrounding property for future residential use.**
- Subd. 3. That adequate utilities, access roads, drainage, and other necessary facilities have been or are being provided. **The existing driveway situated off of County 25 Blvd. does not appear to be in a prime location to handle business related traffic generated by the proposed business.**
- Subd. 4. That adequate measures have been or will be taken to provide sufficient off-street parking and loading space to serve the proposed use. **It appears that adequate off-street parking and loading space have been provided on the site.**
- Subd. 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. **The facility may create noise and traffic beyond what is customary for an agricultural property.**

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Staff Recommendation

LUM Staff recommends that the Planning Advisory Commission recommends approval of the Paint with Prep (James Hernke) Condition Use Permit to allow a Home Occupation Business at 31790 County Road 25 Blvd. in Cannon Falls Township subject to the following conditions:

1. Compliance with provisions of Article 11, Section 13 (Home Occupations) of the Goodhue County Zoning Ordinance.
2. Subject to employment on the premises of not more than ____ employees.
3. The proposed Home Occupation shall be limited to the Accessory Building currently existing on the property.
4. Applicant gains compliance with all local and state (MPCA) statutes, ordinances, inspections, and licensing prior to business regaining operational status.

Discussion:

M. Wozniak read report. He highlighted findings of fact. Mentioned general issue of PAC needing to re-visit boundaries of what is acceptable as "Home Occupation Use" in Agricultural zones as "incidental use" and/or related to farming activities in consideration. He stressed environmental concerns addressed by MPCA and Goodhue County Environmental Health Department. He noted staff recommendations and options.

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B. Overby asked about issue of building being bigger than 2,000 square feet.

M. Wozniak stated reason for CUP if over 2,000 square feet and also when employees are involved.

H. Stenerson asked with the MPCA situation outstanding can PAC grant a CUP.

M. Wozniak mentioned all approvals are still subject to meeting all State requirements.

H. Stenerson asked James Hernke if the Minnesota Pollution Control Agency (MPCA) issue was new or a long term ongoing item of concern.

James Hernke, seated with wife Lavaughn, said new, with search warrant by MPCA 1st day and cease and desist by County. Going on 2 months now. Soil samples taken from brush pile, yet not enough for sample. MPCA not back yet onsite. They got together 2 weeks ago with the Air Quality and Hazardous waste staff and they are not here and have not presented a letter yet.

H. Stenerson asked M. Wozniak what is the status.

M. Wozniak said he talked with Jason Peterson, County Environmental Health Dept. Director, who mentioned he had talked with Corey Boeck, MPCA in Rochester, who told Mr. Hernke to have a consultant evaluate the site for potential water quality concerns.

H. Stenerson asked if this item is tabled would more information be presented later as this situation developed.

M. Wozniak said there could be more information, but staff has no control over MPCA timetables. County intent continues to be to get Home Occupation Uses that are compliant.

B. Overby asked what does J. Hernke have to say.

J. Hernke said false complaint started this. He said his compliance problem is a marginal issue. He had Ag related variance given in 2001 and he works on agricultural related equipment. He noted it was a false complaint of burning solvents and propane on his property. He mentioned the waterway turns agnoscious when

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it rains normally. As far as incinerated waste materials complaint, he said he just burns wood in a woodburner everyday. The complaint that loud motors run all night until 5 a.m. is false as he does not sand blast after dark. He feels these are all false alligations.

B. Overby asked J. Hernke if MPCA letter dated December 12, 2008 is not true.

L. Hernke said they had responded to the MPCA in a letter and provided copies for PAC Commissioners.

D. Rechtzigel left the meeting.

J. Hernke sdaid he does no lead paint work and has no lead abatement permit.

T. Webster asked J. Hernke to explain his business in more detail.

J. Hernke gave past locations of business and said he moved it back in 2002. They perform industrial sandblasting, now waterjetting, cutting, hydro demolition, and over 90 percent of work off-site.

T. Webster asked if the semi in the pictures in the report was a sandblasting piece of equipment.

J. Hernke said yes, drive that off-site to work sites, depending on time of the year.

T. Webster asked if the business was seasonal.

J. Hernke said yes, and they turned down jobs in the last 2 months, but mostly in summer with some off-site jobs coming up.

C/B. Overby opened the public hearing.

H. Stenerson said he has to leave for other commitment.

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L. Hanni apologized to public and gave additional explanation that Richard Bauer has to also leave soon ,so loss of effective quorem now.

M. Patterson asked what additional information do PAC Commissioners need from County Environmental Health or MPCA before the next meeting.

L. Hanni said table is an option, and asked public audience if here for this item.

Members of public audience numbering about 8-10 said yes.

L. Hanni went into crowd to get contact information from them.

H. Stenerson said he only has 3 minutes, stayed late already, would like Environmental Health statement and input also.

ⁱⁱⁱMotion by H. Stenerson, seconded by M. Patterson, to table the Conditional Use Permit request of Paint with Prep (James Hernke) until the February 9, 2009 PAC meeting. Motion carried 6-0.

^{iv}Moved by M. Patterson and seconded by L. Olson to adjourn the January 21, 2008 Planning Advisory Commission meeting at 6:29 p.m. Motion carried 6-0.

DISCUSSION FOR FEBRUARY 9, 2009 PAC MEETING:

M. Woznaik gave report summary and updates (MPCA letter that was handed out to PAC Members).

H. Stenerson asked why we couldn't consider an option like 1 with added conditions or is it absolutely necessary for a new application.

M. Wozniak said MPCA has its own timeline and outstanding issue, separate jurisdictions.

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H. Stenerson asked so if we do anything tonight it doesn't make a difference until MPCA is done.

M. Wozniak said not necessarily, County has concerns as well about hazardous materials, solid, or hazardous waste following rules etc to get approved as home occupation business.

L. Hanni said a condition is added to always get proper permits from all agencies, do you want that done first is decision tonight.

H. Stenerson re-stated that point.

L. Hanni said after the fact CUP's always have issues and business investments already made. PAC has to make decision.

M. Wozniak said have to decide first are you comfortable with this in the A-3 district then issues.

B. Overby asked who enforces MPCA concerns.

M. Wozniak said MPCA.

B. Overby asked J. Hernke to talk.

Matt Gikas, Omni Environmental, represents Hernke and said he has rebuttal letter he had for Jason Petersen to pass out that was done today. He gave opinion that most violations from MPCA easily fixable.

D. Rehtzigel asked M. Gikas to explain his company.

M. Gikas explained his company and experience since 1988. Said only couple major issues. Will dig up burn pile in next 40 days and comply with ash and blasting sand. No hazmat in sand. Doesn't know what MPCA is worried about, no potential to omit. He explained usage versus BOC emissions. Sounds like he has to do his sandblasting inside, prohibited outside by state of MN. He said MPCA over-exaggerated issue of 6 drums outside. They have submitted a hazmat waste generator permit. Just to be here in good faith and will take care

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of it in the next 35 days and he feels it is minor and supports CUP and will submit timeline to MPCA in 3 days. M. Wozniak explained most recent staff update and staff would like to go thru potential conditions after given direction.

C/ B. Overby opened to public comment.

Gary Hovel, Neighbor, had Henke paint farm equipment, no intentional things done wrong, nothing different than anyone else. Cease and desist is B.S. and over-reacted by Goodhue and MPCA. Hernke works offsite and this winter he hasn't be able to work. Thank you.

L. Hanni stated statements from last meeting from other residents of Township (letter added to file).

B. Overby asked anyone else.

Motion by H. Stenerson , 2nd by T. Webster closed public hearing. Motion carried 7-0.

D. Rechtzigel said going thru report on far back page number 16 asked is that thru MPCA.

M. Gikas said if MPCA requires one (SWPP).

D. Rechtzigel asked about number 10.

M. Gikas said that is submitted and MPCA will send application every year with a bill and if over 200 lbs then a haz waste permit scenario, but not here. Might be 5 gallons every 5 years here, and solvents recycled and recaptured.

D. Rechtzigel asked is this a MPCA concern from before.

M. Gikas said yes, from before.

D. Rechtzigel asked for clarification.

M. Gikas said redundant violation for paint equipment also.

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D. Rehtzigel asked about going to an all business inside situation, can Henrke do that.

J. Hernke said yes.

M. Wozniak explained Building code official stance with Mn. Licensed architect required because of change of building use.

D. Rehtzigel said like car repair center in Holden.

M. Gikas argued about not needing Building Code.

M. Wozniak explained need for Building Code.

L. Hanni said structure could be considered good but review is necessary.

H. Stenerson said bigger things could be tented.

M. Gikas asked about talking to labs so he could continue outside but not worked out yet, so nothing until approval from MPCA.

H. Stenerson asked what is your estimated time to fix.

M. Gikas said 45 days.

H. Stenerson said they (MPCA) have there own timeline too.

M. Gikas said yes , it could be 90 days or up to 120 days delay.

L. Hanni said we want to see working with MPCA and progress.

B. Overby asked how many employees if this CUP approved.

J. Henrke said has 1 and not sure allowed more than one by home occupation use.

M. Wozniak explained CUP.

B. Overby asked could business work as is with existing buildings.

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J. Hernke said MM-MM.

H. Stenerson asked about building use and code complainece.

M. Wozniak said ultimately its on the building official and how the building is used. Business use evaluated.

H. Stenerson said that issue needs resolved even if CUP to use.

J. Henrke said why discussing the building now.

M. Wozniak said no decisions made yet, options in the recommendation, you can set timetable for the building inspection code review done, does not need to prevent this now.

B. Overby asked what exactly do you want to do.

J. Hernke said sandblasting, water-jet and painting.

L. Olson asked how do you get by off-site.

J. Hernke said good question, first one looked at.

L. Olson asked about building.

L. Hanni said use changed from agricultural building permit, this is a problematic trend in county.

L. Olson asked it may not be a problem if it was a commercial building moved onsite.

M. Wozniak said also over 2,000 square feet in home occupancy, then it triggers a CUP.

L. Olson said not to drag out any longer and may get MPCA approval in 30 days.

H. Stenerson asked about business hours.

J. Henrke said 7am-5pm occasional Saturdays.

B. Overby asked if anymore questions or comments.

Motion by D. Rechtzigel and seconded by T. Webster, to approve option A, with change to condition 6.

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M. Wozniak re-read new option.

J. Hernke said J. Petersen over-exaggerated site inspection in November of part of second building.

M. Wozniak continued re-reading condition change.

M. Gikas showed structural design plans.

L. Hanni said show it to the Building official.

M. Wozniak continued. He noted findings of fact.

D. Rectzigel re-stated number 6.

B. Overby asked option A open for storage and administrative work but no paint work or anything else for now.

H. Stenerson asked 2 questions; blanket number 9 about all necessary.

M. Wozniak said number 5.

H. Stenerson asked about consideration about change to number 1 about no paint activity until MPCA concerns addressed, or to the satisfaction of the land use staff.

B. Overby asked applicant if acceptable.

J. Hernke said he would follow thru with whatever. He commented rebuttal about M. Wozniak comment, back in 2002 he told Board of Adjustment that building use was work related to agriculture and they gave him a variance. No nearby neighbors.

M. Wozniak stated A-3 zone district is a concern.

L. Olson asked about interim use as option.

M. Wozniak said up to PAC.

L. Olson said if not it lasts on property forever.

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L.Hanni said PAC can add condition about change of ownership.

M. Wozniak explained interim use permit with time tables.

S. Blue noted CUP's often are limited to personal owners before.

L. Hanni said typically with the land and gave examples.

S. blue re-stated her point about CUP's tied to current landowners.

L. Hanni described differences and options.

D. Rehtzigel has concern about infill later with interim use permit and future land disputes. Won't vote for Interim Use Permit.

B. Overby asked if friendly amendment.

D. Rehtzigel added amendment to number 1.

M. Gikas asked does that mean item is waiting on MPCA in writing or memo or printout summary.

L. Hanni said staff needs MPCA feedback.

D. Rehtzigel said number 1 would continue, number 7 crossed out.

H. Stenerson asked about hours of operation as a condition.

B. Overby said re-instate number 7 and add hours.

H. Stenerson said 7 am to 8 pm.

B. Schafer asked is this workable to J. Henrke.

J, Hernke said no, county and MPCA taking too long. He wants to go by his Omni reps word.

B. Overby said any hazardous waste not is not exceptable, do you agree.

J. Hernke said yes, all started by 4 false issues.

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B. Overby said 4 alleged issues and we have to look at that.

M. Wozniak said some things don't fit the ways the rules work even if not illegal so things operate appropriately. Burying must be corrected.

J. Hernke said what other than.

M. Wozniak said fairgrounds, ash piles, etc.

M. Gikas said separate issues.

D. Rehtzigel asked can he start when Omni says, we can't go over MPCA or state.

B. Overby said it boils down to the state.

M. Wozniak said county does that so it can revoke if not compliant in the future.

M. Gikas said he must get approvals because MPCA fines are too big. He should start painting again.

L. Hanni said this goes to County Board on Feb 17th.

M. Gikas said he would try to get Cory Boeck to write MPCA letter by then.

D. Rehtzigel re-stated number 1, number 6, old 7 scratched, new hours added.

B. Overby had 2nd by L. Olson for friendly amendment.

H. Stenerson said issue resolved, not a certain type of document, LUM just wants this taken care of.

B. Overby said big discussion tonight, trying to get it all upfront, PAC trying to follow rules best they can. Read motions, any further discussion.

B. Schafer asked about hours again, so just about traffic or noise creation, how much?

J. Hernke said very little noise.

B. Schafer referenced past importance, since vineyard issue.

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J. Hernke said 8 neighbors signed off as ok.

B. Overby called for a vote on D. Rehtzigel motion with L. Olson second. Motion carried 8-0.

Tabled item from January 21, 2009:

Summary

Jason Fitzgerald has applied for a Conditional Use Permit in an A-3 District to allow a Home Occupation Business on parcels 33.028.0600 and 33.028.0602 at the property situated at 20865 390th Street in Goodhue Township. The business includes a proposed 70' by 104' building. Multiple County site inspections have confirmed that the business is currently in operation. Article 3, Section 13. Subd. 2., includes provisions that require a conditional use permit for home occupations involving more than (1) non-resident employee and/or being carried out in an accessory building exceeding 2000 square feet.

Background

Jason Fitzgerald is seeking approval of a Conditional Use Permit to operate a home occupation business on the property in Section 28, Goodhue Township. The business includes multiple structures. The business is currently in operation without having obtained necessary approval from Goodhue County. The business is also under investigation by local and state authorities.

The following standards shall apply to conditionally permitted home occupations in the A-1, A-2, and A-3 Districts.

A. The number of employees employed in conjunction with a conditionally permitted home occupation shall be

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determined by the Planning Advisory Commission.

B. The home occupation shall be incidental and subordinate to the use of the premises for farming and related farm activities.

C. The conduct of a home occupation may be carried on in an accessory building the size of which shall be determined by the Planning Advisory Commission.

D. No traffic shall be generated by the home occupation beyond that which is reasonable and normal for the area in which it is located.

E. Only one non-illuminated sign not to exceed sixteen (16) square feet in area shall be allowed in conjunction with the home occupation.

F. No equipment or process shall be used in such home occupation to create noise, vibration, glare, fumes, odors, or electrical interferences detectable off the premises.

Issues:

The business being conducted by Jason Fitzgerald (Fitzgerald Excavating) may not be interpreted to be incidental and subordinate to the use of the premises for farming and related farm activities. A site visit by county staff indicated a significant business operation on the site. The property has a residence but does not meet the County's definition of a "farm" and is not large enough to conduct agriculture.

The Minnesota Pollution Control Agency in a letter dated November 26, 2008 (attached), has indicated that activities involving the storage and handling of solid waste at Mr. Fitzgerald's property are in violation of the MPCA Rules.

In a letter dated December 12, 2008 (attached), Goodhue County Waste Management Staff informed Mr. Fitzgerald that his applications to the MPCA for Solid Waster Transfer (Permit by Rule) and Solid

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Waste Recycling (Permit By Rule) Permits represent activities that are not permissible uses under current County Zoning Ordinance requirements (A-3 Zone District).

An incident report (attached) filed by Goodhue County Deputy Sheriff Rodney David Roberts on December 13, 2008, documents that Mr. Fitzgerald was illegally burning various materials (construction debris) at the subject property. A citation was issued with a pending court date on 1-22-2009.

Home Occupations may be permitted in accessory buildings, but, there may not be external evidence of the business.

Staff will present a variety of photographs of the property at the PAC Meeting to offer evidence of the nature and appearance of the proposed home occupation.

Goodhue Township has been made aware of the request and staff has updated them as to incomplete information in the application submittal.

Mr. Fitzgerald was informed in a letter dated December 11, 2008, that his application had not provided all of the information required to be considered complete and that failure to provide the below referenced information may lead to denial of his request:

“Township Information is missing from Goodhue Township and is required on page two of the application. The drawn site plan in the application notes 2 parcels; 33.028.0600 and 33.028.0602, yet permit application also suggests parcel 33.010.0201. Any proposal for business activities Parcel #33.010.0201 (the old clay pit) will have to be considered separately from your parcels in Section 28 and will require separate permits or approvals.

Your Conditional Use Permit application is lacking an adequate description of the business activities that you may be proposing to conduct on the property. If the activity will be limited to your business office and parking/storage of equipment, then, you need to specify that in writing or stipulate any other business activities you may be proposing to conduct on the parcels included in your application.

The Conditional Use Permit application has missing data from page three that requires a written justification for the request, to include discussion of how any potential conflicts with nearby land uses will be

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minimized. We need to hear from you why your Home Occupation Business request is appropriate for the proposed site and why it will not be detrimental to neighboring properties.”

Findings of Fact

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- Subd. 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, not substantially diminish and impair property values within the immediate vicinity. **The proposed home occupation business includes structures and proposed additional 70' by 104' accessory building. External evidence of the business is clearly viewable by property owners in the vicinity.**
- Subd. 2. That the establishment of the conditional use will not impede the normal and orderly development and improvement of surrounding vacant property for uses predominant to the area. **The nature of the business could negatively impact the desirability of surrounding property for future residential use. This is in the A-3 Urban Fringe Zone District of the city of Goodhue and may not be interpreted as a permitted use.**
- Subd. 3. That adequate utilities, access roads, drainage, and other necessary facilities have been or are being provided. **The existing Highway 58 Blvd. adjacent of the property on 390th Street, does appear to be in adequate conditions to handle heavy truck traffic if generated by the proposed business.**
- Subd. 4. That adequate measures have been or will be taken to provide sufficient off-street parking and loading space to serve the proposed use. **It appears that adequate off-street parking and loading space have been provided on the site.**
- Subd. 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. **The equipment parking/storage operation may include lighting that is customary for an agricultural property. Odors, fumes, and noise have not been addressed in the application submittal.**

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Staff Recommendation:

Based upon a lack of response from Mr. Fitzgerald in providing the additional information requested by Land Use Management Staff and the various concerns referenced in this staff report it is recommended that the Planning Advisory Commission recommends denial of the **Jason Fitzgerald/Conditional Use Permit Application for a Home Occupation Excavating and Trucking Business –Twp-111N Range-015W, Part of SE ¼, SE ¼, Section 28– Goodhue Township. The Planning Advisory Commission action should specifically include information in this staff report (including issues/findings of fact), attached documents including letters from the Minnesota Pollution Control Agency, Goodhue County Land Use Management Department, and Goodhue County Public Works Department (Waste Management Staff. In addition any relevant comments heard during the Public Hearing should be considered as part of this action.**

DISCUSSION FOR FEBRUARY 9, 2009 PAC MEETING;

M. Wozniak explained report. He noted findings of fact and issues of concern. A-3 Zone addressed. He noted draft findings and options. One is staff recommendation for denial. Also, he identified questions that need to be resolved. Also, option if PAC wants approval. Looking at this from both sides and a list of 6 conditions with

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one option. Mr. Fitzgerald can represent himself and answer questions.

B. Overby gave Fitzgerald the floor.

Jason Fitzgerald said he employs 10 people for trucking and excavating business, 10 dump trucks and semi's and a storage building. Trucks usually there every night, but equipment offsite usually and in summer almost never there.

M. Wozniak asked about outdoor storage in spring and fall and indoor in winter is that the case.

J. Fitzgerald said that's the case.

B. Overby asked if any other hazardous material on property, or just storage facility.

J. Fitzgerald said dozers, roller, packers, pipe, piles of lime, sand, etc on hand for each.

L. Hanni said one issue demo debris there. He tried to apply for waste handlers permit by rule permit, not allowable in A-3. No garbage or waste allowable and not a salvage or transfer station.

J. Fitzgerald said part of business also demo and they scraped out dumpsters on yard and those loads along with metal hauled onsite that may have been issues with MPCA.

T. Webster asked how long onsite business.

J, Fitzgerald said 8 years.

T. Webster asked any past issues on this parcel.

J. Fitzgerald said no.

H. Stenerson asked about re-zone commercial for transfer station.

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L. Hanni said no.

M. Wozniak said it would have to be a change to a Industrial district, and does county want to see that.

H. Stenerson asked does leaving dumpsters overnight does it become transfer station.

L. Hanni said technically yes. County staff not big enough to constantly monitor, when does home occupation trigger re-zone.

B. Overby asked about transfer station, why not take it directly.

J. Fitzgerald said Rosemount closes at 4, closest site, asked what to do in situations.

L. Hanni said others do it also.

T. Webster asked not looking for permit to transfer waste, just trucking and excavating. He asked that PAC sticks to what he's asking for. Add condition instead.

B. Overby asked about building over 2,000 square feet would it go to the BOA?

M. Wozniak said no, part of CUP, then Building permit review.

H. Stenerson trying to nail down about demo and dumping onsite without transfer permits, where draw the line.

M. Wozniak said any transfer of material would be considered transfer station, up to county if waste brought to the site for any period of time.

B. Overby said that could be amended.

L. Hanni said because of past adding condition.

H. Stenerson said other people do that, just not caught. This needs to be addressed. Becoming a logistics issue.

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L. Hanni said this is under MPCA spotlight.

S. Blue asked in A-3 at what point does a business outgrow a Home occupation and should we nudge it somewhere else.

M. Wozniak explained separation even in industrial zone.

S. Blue gave opinion about re-locating in city.

B. Overby opened to public.

Dale Dicke, Goodhue Twp, twp approved bldg for equipment, nothing to do with demo.

B. Overby asked what is twp opinion.

D. Dicke said his opinion is construct a bunker for short time, a few days to store.

D. Rehtzigel asked J. Fitzgerald if he accesses highway or twp road, whats twp concern with that.

D. Dicke said prefer 10 ton road or higher.

Roy Merkens, neighbor across road from Fitzgerald, concerned about what he would use storage shed for and family concerned about hazmat waste affecting groundwater, they own 160 south of J. Fitzgerald also. Thanks.

B. Overby asked if any more public comments. None.

Motion to close public comments by B. Schafer, 2nd by T. Webster. Motion carried 8-0.

L. Hanni asked J. Fitzgerald about employees are they onsite all day.

J. Fitzgerald said no.

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M. Wozniak introduced J. Petersen.

D. Rechtzigel asked J.Petersen about past hauled septic tanks and gas station fuel tanks, is that tied to this.

J. Petersen said tied to business.

D. Rechtzigel asked if any septic issues in this properties operation.

J. Petersen said 4 in past year, 3 corrected, one working on now.

B. Schafer said not onsite.

J. Petersen said not onsite directly.

D. Rechtzigel asked about tanks.

J. Petersen said dumped in clay banks Fitzgerald property.

D. Rechtzigel asked who is investigating.

J. Petersen said MPCA and County.

D. Rechtzigel said not needing condition already addressing, any pollution issue with bldg site.

J. Petersen said was MPCA property of concern and not addresses yet by MPCA to investigate yet. MPCA has different rules and timelines. County doesn't allow and MPCA just has requirements to meet.

B. Overby asked if approved would new bldg need check out of land before, how does that work.

M. Wozniak said addressed when bldg permit is made. Is there reason to believe that there is a health or safety concern.

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D. Rehtzigel said pictures cause concern.

M. Wozniak said that's why staff took denial option, remedy responsibility falls on J. Fitzgerald to prove things are ok.

D. Rehtzigel asked who will say when its ok.

L. Hanni said conditions and deadline of march 30th on point 2.

J. Petersen said no detail, added to clay banks property in complaint by MPCA with more items plus the fertilizer.

L. Hanni asked what condition added would address that.

M. Wozniak said soil testing could be added to CUP.

H. Stenerson asked how do we make everybody happy, timelines may apply also.

B. Overby said issue is waste that's brought in or current possibility of what is in the ground, we have to deal with.

H. Stenerson said trigger of home occupancy like Sue said wondering about change of zone and suggests a talk with city of Goodhue and interim thing. Then PAC looks at it.

B. Overby said what about waste.

H. Stenerson said MPCA thing that will happen anyway.

L. Hanni said re-zone opens to other businesses. And if his home is on it if it burns down he cannot rebuild it.

M. Wozniak said that's what staff deals with about rural businesses growing. Commission has to re-examine outside of PAC items.

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D. Rehtzigel asked about what if in city of Goodhue.

B. Overby asked how far to city.

J. Fitzgerald gave distance estimate.

D. Rehtzigel asked J. Fitzgerald why not in town.

J. Fitzgerald said near Highway 58 on property now and homes don't want to hear him leaving at 2-3 am in the morning.

T. Webster said only one comment in public hearing and we didn't hear that from others. Problems appear to be housekeeping items and hope we can address those between CUP and MPCA to keep him there, maybe not expand. Keep him operating.

B. Overby asked J. Fitzgerald if he is comfortable with 7 conditions if approval granted. What are your thoughts.

J. Fitzgerald said not asking for dumpster permit, set off not to dump, only scrap metal on ground, field barrels not an issue, they spend 3,000 cleaning them out, nothing hazardous about them.

B. Overby asked comments, questions.

L. Hanni stated past issues and staff does not want that property to be a transfer station. She explained staff conditions.

D. Rehtzigel asked about number 2. Is Environmental Health added also. Would like local staff added in that also.

M. Wozniak said waste management in Public Works involved in oversight also.

D. Rehtzigel asked if J. Petersen finds something he can test or authorize a test.

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J. Petersen said landowner would have to hire someone to test.

D. Rehtzigel asked if authorized.

J. Petersen said staff would need reasons to start process.

H. Stenerson asked about roads.

L. Hanni said trying to keep primary route on Highway 58.

H. Stenerson asked does he need right of way to Highway 58.

L. Hanni said not staff intention. Just not over use twp roads.

B. Overby asked for motions, questions.

B. Schafer asked about timeline of future bldg construction.

J. Fitzgerald said within next year.

H. Stenerson said page 6 about 10 employees working onsite or parking, what is staff asking for here.

M. Wozniak said typically concerned of coming and going from site.

L. Hanni explained situation around county.

M. Wozniak asked for number to identify.

H. Stenerson asked if 10 again.

J. Fitzgerald said 10 on payroll.

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L. Olson asked if comfortable with 2-3 more than that to not come back.

L. Hanni explained incidental home occupation affects number of employees.

L. Olson asked would he look of new dumpsite.

J. Fitzgerald said don't know, like having 2 farms.

B. Overby asked about dumping.

L. Hanni answered about solid waste ordinance, and pictures, and past issues.

H. Stenerson asked if choice of home there or business there what is priority? Could he apply for industrial. Suggesting J. Fitzgerald think about change of zone.

B. Overby said PAC has to consider staff recommendation and ordinance. Have to consider.

T. Webster asked J. Fitzgerald are you willing to trade demo waste opportunity to have chance to operate trucking. Hinging of waste/demo debris, if we go with staff you cannot bring it onsite. Can you live with that and continue business, or if we adopt this line of conditions is there a trade off or which is more important.

J. Fitzgerald said not interested in dumping. What is in trucks on property is same as others, if its on the ground or throwing in one dumpster from another that's transfer.

M. Wozniak said that's not how we wrote this.

B. Schafer asked could he re-gas on his sight if needed.

M. Wozniak said always interpretation and we wouldn't be out there to enforce it.

L. Olson, H. Stenerson, B. Overby talked at the same time about interpretation of fixing trucks, etc if need be.

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L. Hanni said staff has to make bright line of what you can or cannot do, and talk to solid waste guys about demo debris in trucks.

B. Schafer said thinking thru logically he would presume if after 5 p.m. and raining outside would seepage become issue.

J. Petersen explained situationally dependent about debris, should be lined and covered.

J. Fitzgerald said not true, gave Red Wing City incineration example.

S. Blue said not that's not in agriculture.

B. Schafer said for discussion what about storage in the new proposed shed.

R. Bauer asked if roll off could be left at site.

J. Fitzgerald said what is difference where if it rains.

R. Bauer gave example.

M. Wozniak said once on demo site is different versus constant use on this property.

D. Rehtzigel said in past sounds like from legal some things made it to the site that didn't leave. Concern about waste materials getting burned in backyard.

H. Stenerson said he understand where staff is coming from. What form of language would allow for protection of land and storage in buildings. Big bldg going to be build, or trucking issues happen its under roof. He can't think of appropriate language.

L. Hanni said add to number 2 to consult with solid waste.

M. Wozniak said solid waste but also beyond that he asked PAC what you are comfortable with for home

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occupation. Afraid of slippery slope.

H. Stenerson asked about solid waste ordinance.

L. Hanni said violation of solid waste ordinance.

M. Wozniak said only allowable in Industrial district.

H. Stenerson said leave in cleanup of existing garbage and add solid waste reference.

L. Hanni said in the Ordinance it speaks to this already.

H. Stenerson asked about time limit if waste or demolition debris in truck on property, or not.

L. Hanni read ordinance.

J. Fitzgerald disagreed with ordinance.

M. Wozniak also read ordinance in agreement with L. Hanni. He said PAC can make the choice if demo in truck constitutes demo storage in this CUP.

H. Stenerson said concerns about his question.

L. Hanni said ordinance, and mentioned he brings it in from other places.

H. Stenerson said others do it to.

M. Wozniak said others not in the hauling business, so amounts different.

B. Overby asked J. Fitzgerald what percent of his business is demolition work.

J. Fitzgerald said 25 percent.

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T. Webster motioned for 12 employees with number 2 as is, with 2nd by L. Olson. Read by B. Overby.....

B, Schafer said friendly amendment to strike number 2, then replace to say “upon completion of resolving all prior solid waste problem by March 30th 2009 and any further violation on this property would revoke this CUP.

L. Hanni re-read ordinance due to rebuttal from B. Schafer and J. Fitzgerald.

M. Wozniak said ordinance is from Section 9 of Article 11.

B. Overby re-stated motion, with potential friendly amendment by B. Schafer.

T. Webster said not in favor of friendly amendment to number 2.

L. Olson called vote to question. Motion carried 6-2, H. Stenerson and S. Blue dissenting.

NEW BUSINESS:

SUMMARY:

George and Angie Taylor, and Julie Foster are requesting a Zoning District Change for their parcels in Section 35 of Wacouta Township. Parcels 43.135.0250 and 43.135.0251 within Section 35 Florence Township are currently in the A-2 Zone District and the applicants request to be re-zoned as R-1 Residential. The purpose of this Zoning District Change is to be allowed the opportunity to match nearby residential land uses and later potentially build a dwelling on parcel 43.135.0251.

Background George and Angie Taylor currently own parcel 43.135.0251 involved in the Zoning District Change request. The parcel next to it 43.135.0250 is owned by Julie Foster. Parcel 43.135.0251 was once a part of 43.135.0250 and has over 2 acres currently without a dwelling.

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The existing driveway on parcel 43.135.0250 would continue to be partially utilized as access to the overall properties. This exits to a frontage road off of Highway 61.

Included with this staff report is a Zoning Map that illustrates the zoning of Wacouta Township in the vicinity of the Angie Taylor Zone Change Request. The area includes a mix of business, industrial, residential and agricultural zoning. In addition to the two parcels included in the change of zone request there numerous other dwelling sites in the vicinity which are not being used for agricultural purposes and might well better fit in R-1 zone district. However, the request being presented is limited to just the two parcels

Wacouta Township has had opportunity to review and discuss this proposal and supports the request.

Findings of Fact

- The proposed George and Angie Taylor, and Julie Foster Zoning District Change that proposes a change from A-2 to R-1 is consistent with the Goodhue County Comprehensive Plan; and
- The Taylors and the Foster parcels exceed the minimum lot area requirement of 2 acres and includes over the 100 feet of width from the road right-of-way back to the that are requirements of the A-2 Zone District; and
- The application submitted by George and Angie Taylor and Julie Foster meets submittal requirements as expressed in the Goodhue County Zoning Ordinance and interpreted by the Goodhue County Zoning Administrator; and
- Wacouta Township has considered the proposed Zoning District Change and has raised not objections.

Staff Recommendations:

Land Use Management Staff recommends that the Planning Advisory Commission recommends

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approval of the request of George and Angie Taylor, and Julie Foster to Change the Zone District of Parcels 43.135.0250 and 43.135.0251, in Section 35 of Wacouta Township from the A-2 (Agriculture) to the R-1 (Suburban Residential District). This approval shall recognize the Staff Report including Findings of Fact and any comments received during the public hearing.

Discussion:

M. Wozniak explained report. Good use for property and minimal impact.

H. Stenerson excused himself.

D. Rectzigel asked staff about twp support.

M. Wozniak said the township also took action to support it.

R. Bauer asked if more areas could have been involved so as not to spot zone.

M. Wozniak said survey involved to Change Zone in current methods so that cannot be forced upon landowners and in the long run it may make sense for area re-zone along highway for residences. Fair question.

B. Overby asked any more questions. Opened to public. None.

Motioned by D. Rectzigel and seconded by B. Schafer to close the public hearing. Motion carried 7-0.

Motioned by S. Blue to approve Taylor, Foster Change of Zone request, adding that township review was thorough, seconded by D. Rectzigel. Motion carried 7-0.

Motion by L. Olson, seconded by T. Webster to adjourn. Motion Carried 8-0.

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Respectfully Submitted,

Kelly Moriarty

Recording Secretary

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MOTIONS

i 1 APPROVE February 9, 2009 agenda.. Motion carried 8-0.

2 APPROVE Janaury 21, 2009 minutes. Motion carried 8-0.

3 TABLE Conditional Use Permit for Scott Miller/Jennie-O Turkey Stores, Inc. (C. Byram –Attorney) to split a feedlot from a farmyard property and continue operations on current parcel 45.006.0701 and 45.006.0702 in Section 6 , Warsaw Township. Motion carried 8-0.

4 APPROVE Conditional Use Permit for Paint with Prep, Inc. (James Hernke) to continue operations and gain compliance with current requirements on parcel 28.020.2801 in Section 20, Cannon Falls Township. Motion carried 8-0.

5 APPROVE Conditional Use Permit for Fitzgerald Excavating, Inc. (Jason Fitzgerald) to continue operations and for expansion of 70' by 104' building structure and gain compliance with all current regulations on parcels 33.028.0600 and 33. 028. 0602 in Section 28 Goodhue Township. Motion carried 6-2 H. Stenerson and S. Blue dissenting.

6 APPROVE George and Angie Taylor and Julie Foster Change of Zone District request in Section 35, Wacouta Township. Motion carried 7-0. H. Stenerson excused.

7 ADJOURN February 9, 2009 minutes. Motion carried 8-0.