

CORINNA TOWNSHIP
MINUTES
BOARD OF ADJUSTMENT / PLANNING AND ZONING COMMISSION

December 13, 2011

7:00 PM

1. Call to Order: Chair Charlotte Quiggle called the meeting to order at 7:00 PM.

2. Roll Call: Board of Adjustment/Planning Commission Members Present: Charlotte Quiggle (Chair); Dan Shay (Vice-Chair); Lee Parks; Barry Schultz

Staff: Ben Oleson, Zoning Administrator; Mary Barkley Brown, Township Clerk/Treasurer

Others in Attendance: John Dearing; Richard Naaktgeboren; Melvin Dykhuizen; Roger Dykhuizen; John Bishop; Joshua Mol; Tim Mol; Jason Kolles

3. Additions or Deletions to the Agenda: Mr. Bishop would like to show plans and point out what he plans to do (related to his previously tabled rezoning application), but there will be no discussion about the plans as such discussions need to be at a public hearing.

A motion was made by Shay, second by Schultz, to accept the amended agenda. Motion carried unanimously.

4. Public Hearings

- a. Renewal of Interim Use Permit for the operation of a mining pit involving mining, crushing and screening of sand, gravel and rock.
 - i. Applicant: Jason and Geri Ann Kolles
 - ii. Property address: 10171 Ireland Ave NW
 - iii. Sec/Twp/Range: 10-121-27
 - iv. Parcel number(s): 206000103400

Jason Kolles addressed the Planning Commission.

Oleson: This is a request for renewal of previous his permit – to continue to do mining of gravel and sand. It would be for interim use - good for calendar year 2012. This is a repeat request of previous years. There had been questions about whether asphalt recycling would be a new activity. I talked to Jason and apparently he is not expanding what he is doing. He can explain.

Kolles: We got some asphalt chunks from a job we did - the County Road 40 job – we use it for add rock. We are not going to make recycled asphalt or concrete - it makes good binder. That is what we use it for.

Oleson: The ordinance would require that the bond be renewed.

Kolles: The current bond is good until Feb., 2012 – I will have no problem getting it renewed.

Oleson: We have recommended the bond requirement be a condition of the approval. As long as the bond is in place, he would meet that condition.

Parks: Looks OK to me.

Shay: Was 21 days of crushing and stockpiling adequate last year?

Kolles: We are set up for 21 days for 2012. That should be fine.

Schultz: I am fine with it.

Oleson: Soil and Water repeated their comments from last year.

Quiggle: Any audience member comments?

There were no comments from the audience.

A motion was made by Schultz, seconded by Parks, to approve the request for Interim Use Permit for the operation of a temporary mining pit involving crushing and screening of gravel, for calendar year 2012, with the following conditions:

1. The applicant shall maintain their NPDES permit with the MPCA.
2. Activities shall be limited to screening, crushing and stockpiling. Screening and crushing shall not be conducted on more than 21 days in a calendar year.
3. The applicant shall maintain a minimum separation of five (5) feet to groundwater at all times on this site.
4. Hours of operation for activities on the site shall not be outside of the hours between 7:00 am and 7:00 pm.
5. The contractor shall maintain a bond in sufficient amount to assure reclamation of the site. The bond shall remain in effect until all areas are reclaimed as required by the Ordinance or as specifically required by the Township. The minimum amount of the bond must be \$5,000 or \$1,500 per acre, whichever is more (in this case, the bond must be at least \$7,500 (\$1,500 x 5 acres). As noted before, the applicant will need to renew the previous bond, which was in the amount of \$10,000

and 16 findings of fact. Motion carried unanimously.

- b. Subdivision of two approximate 40 acre parcels into three 20+ acre parcels.
 - i. Applicant(s): Melvin Dykhuizen et. al.
 - ii. Property Address: County Road 7 NW, Annandale
 - iii. Sec/Twp/Range: 1-121-27 and 12-121-27
 - iv. Parcel Number(s): 206000121101 and 206000014400

Melvin and Roger Dykhuizen addressed the Planning Commission. Oleson showed a map of the properties.

Oleson: They had previously come to us for rezoning. They were approved from AG to AG Residential – which requires a minimum of 10 acre lots for subdivision. What they are proposing is three lots. They have about 80 acres now. They will split into 3 lots – each 20+ acres. They are asking to convert from 2 parcels into 3. The request meets the minimum 10 acre size of the AG Residential District. They may want to discuss – as they have had previous discussions about having more in the future. They could do that through more subdivisions. They could ask to split into 10 acre lots again or Rural PUD. With the three lots we are not talking about any new roads. Parcels are all served by existing roads.

Melvin Dykhuizen: My question through this whole process has been - with the approval of the county commissioners we were one per 10 or we had eight entitlements. My question is – where did the eight go - do we have zero entitlements now after the split?

Oleson: Once you are rezoned out of AG – then the phrase entitlement really has no meaning – entitlements only apply if you are zoned AG. With AG zoning you have one entitlement per 40 acres.

Once you get rezoned to AG Residential – you can try to fit as many 10 acres lots in here as you can. Or your second choice is a PUD style development. We can't record that you have eight entitlements because that is not how the ordinance works. If you want to make certain you have 8 lots for 8 homes – you would have to have to actually subdivide out eight lots. Right now you are proposing three lots.

Melvin Dykhuizen: What if we did not split them – now we have two parcels that are AR? So we automatically lost our entitlements?

Oleson: By rezoning – you can have as many 10 acre lots as you want. Right now you have two lots. Because you had it rezoned to AG Residential - now you can have two homes.

Melvin Dykhuizen: Why would the county tell me we have 8? They told me that.

Oleson: When you get rezoned to AG Residential – to get more lots in there you have to split off into at least 10 acres each. You go through this process to split them up. If you are going to do three lots now – you can come back later – and split up further. If you split into three – it accomplishes three ownerships – but it will limit somewhat what you can do in the future. They can always be brought back together later in order to make a subdivision. You would deal with the township – but Sean Riley said he wanted you to make sure you were aware that there are steps to go through with a subdivision – there are some procedural steps that you have to go through with the county- like going through their board for final plat approval – so their surveyor and others will look at it. Park dedication fee might apply. You have to talk to Wright County about this.

Schultz: Be aware that the rules might change later.

Oleson: If you want to protect yourself in case the rules change – the way to do that is you should split off lots now or soon. You can change those lot lines later – there are procedures you can go through. It depends on how many times you want to go through all this. If you are comfortable splitting into three lots – so the ownership issue settled at least for now, then the option is for each owner to come in on their own or to come in all together to do further splits. That is what you applied for – three lots. If recommended tonight – it goes to the town board for approval.

Melvin Dykhuizen: After you are rezoned there are no entitlements? We will have one building site on each parcel?

Oleson: You have the right to have a home on each parcel, so you will have three building sites under your current application. You have to show you can get a sewer on them and things like that. Otherwise – yes.

Parks: OK.

Shay: There are over 20 acres per lot – I have no problem at all.

Schultz: I am good.

Quiggle: Audience?

There were no comments from the audience.

A motion was made by Parks, seconded by Shay to approve the subdivision of two approximate 40 acre parcels into three 20+ acre parcels, based on the Staff's ten findings of fact and the approval of the conditional use permit based on the Staff's seven findings of fact.

Motion carried unanimously.

Quiggle: We will make this recommendation to the town board.

Oleson: This is the preliminary plat approval. You will come in for final plat approval. You have to show that you meet the conditions – which a lot of times include building roads, but not in this case. You and I might want to talk to Sean Riley about park dedication fees, etc. The final plat approval is when you basically get it ready to be recorded. You will have to meet several requirements. You will have to have

the survey looked at, etc. Otto will finalize this and put it on the correct paper. Then we have to make sure it meets all the statutory requirements for the final plat.

Melvin Dykhuizen: Then we have to come back here?

Oleson: You just have to come back to the town board, I believe. You and I can talk tomorrow and make sure after reviewing the ordinance.

Melvin Dykhuizen: Do you mean that I will have to pay county park fees on this?

Oleson: We will have to talk to the county about that.

John Bishop addressed the Planning Commission. Ben and I had a miscommunication – I thought I would be on this agenda. This is the concept plan (Bishop showed a plan). We did a wetlands delineation – we did an overlay with a topographical. I had a long conversation with Wright Soil and Water. They have no issues and will send a letter. Sean Riley has no issues other than the road. I told them we had talked to the township about the road already. The county said they would work through their checklist. I will be coming in January and asking for preliminary approval. I won't probably do the perc test until spring. In January will be proceeding to the next step. It is no longer just a drawing on a piece of paper. Soil and water had been concerned with the swale. They want the swale there. It is not a wetland. They talked about a culvert so it would go back into a delineated wetland. I sort of wanted to present it that it to show that there is some thought behind it. I have consulted with other folk.

Oleson: We will put this on the agenda for January. There are two stages: preliminary plat approval and then final plat approval. All you are applying for at this point is re-zoning.

Bishop: How much will you need to be satisfied that this is OK for re-zoning? I would like to take baby steps so that when I apply to have it rezoned I have some assurance that you folks are comfortable with it. The county said there is a checklist I have to go through. They did not see any potential problems. They will not proceed with that until it is rezoned. The only disappointment is that if there are questions – I will be gone from Jan. 24 to the first of April. I hope the continuity doesn't get lost.

Quiggle: This will be available and up on the website so that we and any interested parties can study it. Anyone with comments or questions can address them in January. With the topographical map – you have done some of what we requested.

Oleson: They talked about sewer, driveway locations, etc.

Bishop: I will try to do whatever you tell me to do.

Quiggle: Can you look at driveways with Otto between now and the January meeting? It is difficult for us to comment at this point.

Bishop: If you think it is beneficial to have driveway delineations – I will do it.

Quiggle: Otto knows the land really well.

Parks: The sewer seems like a bigger concern than the driveways.

Quiggle: Please put this concept plan on the website right away.

- c. Zoning Ordinance amendment to Appendix A, Section 502.3-502.6 (Appeals and Board of Adjustment)
 - i. Applicant: Corinna Township
 - ii. Purpose: To adopt regulations affecting variance criteria and other duties of the Board of Adjustment as required by the State of Minnesota and Wright County. The amended regulations would be the same as those adopted by Wright County in November 2011.

Oleson: The section relating to variances, the county amended due to changes in state law this past session. Technically, because we are adopting them by reference, we would not need to change anything in our ordinance in order to adopt these, unless there is something that we want to be more

restrictive on. In the 502.1 and 502.2 they have been struck from the record for Corinna as they do not pertain to the township. State statutes that apply to county board of adjustments are different than for townships, so we should continue to strike those sections from our records. Some examples don't make sense for us. 502.3 – variance authority – most of that is just getting things in line with the state statutes where it talks about practical difficulties instead of hardships – those things apply to us now. 502.4 – go through findings and there are a few things they have added beyond what the state statutes have. 502.4 – subsection 1 – a through f - I believe e and f are both things Wright County has added or kept from their previous ordinances. Practical difficulty – to be as restrictive – we would also add those things. Sub-section 2 – in bad faith – is something that they have added. That is something that related to a previous Supreme Court decision. 502.5 – they clarified and assembled things – all the things the board of adjustment can deal with. Before, some of this was scattered throughout different parts of the ordinance. The one thing we wanted to also discuss in relation to this since we put this notice in the newspaper – when we went to the county to have resolution passed to give shore land control to us – which is something they had indicated to us in a past Committee Meeting of the Whole meeting that they would do - it came up that they would like to see us make the board of adjustment make the final recommendations, rather than making recommendations to the town board. Rose Thelen wanted the process to be consistent with the way Wright County does it, in that regard. It comes down to a matter of philosophy – whether it is better to do it that way or worse. I think the pros of it are, at least the positions of the people advocating for it – the elected officials are under more political pressure to make their decisions in a certain way. The Board of Adjustment would not have that same pressure. The flip side of that is that town board members, as elected officials, should be responsible for the final decisions – I think, particularly in this case, when state and county are holding town board responsible for being as restrictive. If you make a decision that the town board disagrees with, – and they know they will be in trouble for it because it is not as restrictive – they really can't do anything about it – except to come and comment at the Board of Adjustment Meeting - yet they would be held responsible for that decision. Those are two of the competing arguments on that issue. The way the county boards are set up – in statutes - the county board of adjustment has to be the final decision maker. The state has decided that for the counties. They have given cities and townships more flexibility. I think the argument from Wright County is that if you have to be as restrictive as us, then your processes should be the same as ours. If we are going to make that change – and I originally thought we could do it tonight since we had noticed that we were making changes to Section 502 of Appendix A – but as I looked at it more it would actually require changes to Section VII, which was not noticed – we should notice this for January in order to make this change. The County Board – at least at the end of the meeting said that even if we make this change – there is no guarantee that they will give us shore land authority anyway.

Oleson: 502.1 and 502.2 are deleted from our ordinance.

A motion was made by Shay, seconded by Schultz to recommend that the Township not make any additional, more restrictive, changes to its ordinance beyond what Wright County made in its ordinance amendment.

Motion carried unanimously.

- d. Zoning Ordinance amendment to Appendix A, Section 604.6 (5) (Entitlement Transfers)
 - i. Applicant: Corinna Township
 - ii. Purpose: To adopt regulations passed by Wright County in November 2011 regarding entitlement transfers in the General Agriculture (AG) district so as to

comply with the requirement in state law to be at least as restrictive as Wright County.

Oleson: We do not have to change the text of our ordinance. They're trying to make it more flexible – does not have to be contiguous. Unless we want to be more restrictive - otherwise we can change it to make it more restrictive.

Quiggle and Shay: Flexibility is good.

A motion was made by Shay, seconded by Parks, to recommend that the Township not make any additional, more restrictive, changes to its ordinance beyond what Wright County made in its ordinance amendment.

The motion carried unanimously.

5. Approve Previous Meeting Minutes
e. November 9, 2011

A motion was made by Schultz, seconded by Parks, to approve the meeting minutes. Motion carried unanimously.

6. Zoning Administrator's Report
a. Permits
b. Correspondence
c. Enforcement Actions

Oleson: Pending applications in terms of public hearings are the things we are already dealing with. Enforcement issues – there are a few – related to car sales on Pleasant Lake. It is not real clear in the ordinance. We also have some impervious questions. The big thing is to let you know that a lawsuit has been filed against the Cedar Acres decision. It was filed against Corinna Township and the Cedar Acres Association. I can't say much more than that.

7. New Business

a. Discuss end of year ordinance amendments to clarify ordinances which are unclear.

Oleson: Are there general questions about anything we need to change about our ordinance – anything we want to make more restrictive than the county?

Quiggle: Do you have a list of things where the county ordinance was vague or ambiguous? Is there any place that we can tighten up the language where they have told you what they actually have done in practice?

Oleson: I try to do this by Email – they tell me their past interpretations. Then it is clearer to us.

Quiggle: Can we clarify the language and pass it by Sean Riley – make sure at least as restrictive?

Oleson: There is the potential that they will say we can't do that because our language is different than their language.

Schultz: Do we have a checklist of what people need to provide for hearings?

Oleson: Yes. We can review this to make sure it is accurate and clear and complete.

Oleson: Do you want me to come back next time with a list of ordinance items that could be clarified?

The Commission directed Staff to come back in January with a list of possible ordinance amendments. The amendments would be focused on clarifying interpretations of certain ordinances based on Staff's consultations with County staff over the preceding year.

Old Business

- a. Discuss interpretation of "expansion" when applying MN Statutes 394.36, Subd. 4 and 462.357, Subd. 1e (Nonconformity statutes)

The Commission had a brief discussion about how the Township can continue moving toward a clearer definition of "expansion" when dealing with nonconforming structures.

Oleson: There is one thing I want to ask you about. We have talked about how we determine what expansions are. For example - a slight change in the shape of the building – but no change in the foot print. Do you want us to itemize things that can be expansions?

Shay: Unfortunately the county has not decided. They need to come up with something so we know if we are being more or less restrictive.

Shay: Itemized is probably the best route – whether it keeps us as restrictive is hard to say.

Parks: The whole government is muddled in gray areas.

Oleson: If you make changes in your ordinance – the county would get their chance at the public hearing to say that this is less restrictive – you would think that having the chance to comment. The idea is to clarify things – make them clearer.

Parks: If what we are discussing is clarifying – what constitutes a variance and what doesn't - the rest – it gets pretty hard to nail down – there are a thousand variables. Every property is different.

Oleson: I will come back with a list of possible ordinance amendments relating to "expansion".

- b. Update on status of Corinna Township request for recognition as shore land and floodplain zoning authority.

The Board of Adjustment/Planning Commission heard an update from Staff on the results of the County Board meeting regarding transferring shore land zoning authority to Corinna Township. It was noted that the decision was tabled.

Oleson: We have gone over this topic. The county tabled it so we can consider that change regarding who makes final decisions on variance requests. I am not sure if we are supposed to go back to say we will have that hearing. Quiggle and Shay say they would be comfortable with permanent change – even though the county might decide to still not give shoreland authority to us – even if we change it.

Quiggle: I say we stick with it for at least a year. The town board may find that they like not dealing with this. It may speed up their meetings, etc.

Shay: If they don't get something official by the first of the year – do they no longer have a contract for permitting? Maybe we extend this for a month or two?

Oleson: Building and sewer have been taken care of. Variance in shore land is not taken care of.

Quiggle: Two options – turn over to us or extend joint powers for a month or two or longer.

Meeting dates for 2012: Change March 13 to 14th, due to annual township meeting, with deadlines to stay the same. Ben will post this and it will be our schedule.

9. Adjournment

A motion was made by Parks, seconded by Schultz, to adjourn the meeting. Motion carried unanimously. The meeting adjourned at 8:31 p.m.

Minutes respectfully submitted by Mary Barkley Brown