

MINUTES - PLANNING COMMISSION/BOARD OF ADJUSTMENT MEETING

**TUESDAY, AUGUST 10, 2010, 8:01 P.M., CONFERENCE ROOM 4&5, THIRD FLOOR,
LYON COUNTY GOVERNMENT CENTER, MARSHALL, MINNESOTA**

MEMBERS PRESENT: Thooft, Buesing, Nassif, Vroman, Ludeman, Ritter, Nelson, Zimmer and Biren

PLEDGE OF ALLEGIANCE TO THE FLAG

AMEND/APPROVE AGENDA. Discussions - Shoreland Violations. Motion by Vroman, seconded by Nassif to adopt agenda with addition. All voted in favor. Motion carried.

CORRECT/APPROVE MINUTES OF THE JULY 13, 2010 MEETING. Motion by Thooft, seconded by Buesing to approve minutes as mailed. All voted in favor. Motion carried.

BOARD OF ADJUSTMENT:

Continued Public Hearing, Brent Walz for Kenneth Walz, density variance to construct a new home. Density within the agricultural district is 80 acres. The tract of land is approximately 7 acres more or less. The affected property is described as all that part of the Northwest Quarter of the Northwest Quarter (NW1/4 NW1/4), Section 20, Clifton Township. Darrell Hoyle was present on behalf of Walz. Ludeman – request was that they go back and revisit and see if there was an opportunity to get a density from the other parties in that section of land. Hoyle – everyone may have a copy of that. We were turned down on the variance. Nassif – turned down on purchasing a variance. Biren – density request. Our ordinance calls for a density of 1/80 acres. Take the tract of land and divide it by 80 and if you have one or more that is a building eligibility. If you have less as in this case, there are several options. One option is to get a density transfer from another piece of property within the same section that has enough building eligibilities to do that with. Was a property over 500 acres to get that from. We asked Darrell to get in writing the answer whether that would happen or not with that particular property. We have that in front of us. For the board's information, we have a 60 day time limit and that expires on August 22nd need to act on this tonight. We have the Findings that we need to go through. Vroman – offer anything to get a variance? Hoyle – yes, did offer to give compensation and they were not interested at all. Vroman – there is another 60 acre parcel, did you approach them at all? Hoyle – I didn't know that there was one. Vroman – Coudron's own 60 acres. Biren – there is a parcel there, was an 80 at one time minus buildings. Technically that person is not allowed to build on that either. They would need to get a density transfer also. Ludeman – this site already has trees on it, rural water, E911 address, and electricity. Not in agricultural production at the current time. Vroman – some is. Ludeman – land around it. Buesing – who owns the land around it? Hoyle – site is 7 acres, 3 tillable, 4 non-tillable. Mike Guerts to the east, across the road to the west Albee, east of Mike would be Jeff Frahm. Ludeman – any other questions otherwise we will go through the Findings of Fact. Vroman - concerns from the township and myself. The ordinance says to build a house on grade A farm land, that is what they are asking, must have a density transfer unless they have a minimum of 80 acres. This request is for 7 acres, not even 10% of what is required. The ordinance was to preserve prime ag land, homes in that area now and with acres there could easily be two more. Inside that ditch there are two more lots that could be built on. If we grant a variance on this one, we would have no recourse but to grant a variance for the other two. That leaves 7, 80 acre parcels, that would allow a whole city in

the corner of our township. The township does not want to lose good ag land for residence. If every family in Lyon County (this is from the study that we went through to write these ordinances), wanted to build in the country it would take approximately 30% of our tillable acres. The time to stop this is now, not 30-50 years from now. This is prime ag land, Clifton Township has some of the best land in the world. Clifton Township also has one little city, Dudley. We spend thousand of dollars on it a year for snow removal. We think get everyone by the highway, but you get that many places there, they are going to decide that they need a service road or something and that will be for us to maintain. The other problem is in what one other town board member pointed out very plainly, there has been cases in the past in our township that have been denied a building permit because did not have the density transfer. We feel that everyone should be treated the same. Ludeman – questions or response to Dick’s comments? Nassif – let’s go over the Findings of Fact. Ludeman – in a way I kind of agree with Dick, but when I look at it, to look at it visually, it already is a building site. Not like we are taking corn and soybeans out of production. I understand your concern and share that concern but in this case I think there is some merit in granting the variance. Vroman – if we do that, there are two more in that corner and from then on we won’t be able to stop it. Ludeman – those would be different, taking ag land out of production. This one as I understand is building on an existing site. Hoyle – non-tillable where he is building. Ludeman – not taking tillable land out of production. So those would be a little bit different. Nassif – is that an old building site? Hoyle – not to my knowledge. Nassif – I see services are already there. Hoyle – he purchased the land about 20-22 years ago and at the time that he purchased it he got a permit to build a house. Verbally confirmed when rural water went by. Otherwise, I am sure he would not have purchased the water. Ludeman – go through the Findings of Facts. 1. Vroman – don’t know how you cannot say that 7 acres isn’t a substantial variance. Ludeman – I would say no, I understand it is 7 acres but building on less than .5 acre. Nassif – torn. I understand Dick’s concern but on the other hand this land is not being used for any agricultural purpose. Vroman – most of it is. It is in soybeans. Nassif – 3 acres non-tillable. Thooft – would like a clarification of land owned by Walz, goes to ditch to the road. Biren – yes. Nassif – I would have to answer no. Thooft – I was one of those that asked Darrell to double check on the density, which he did and I thank you very much for bringing that Darrell. My thought is I am very concerned like Dick is about the ag land but the more I think about this situation and case, there is already everything there, basically other than a house, there is a grove (trees), rural water, building site basically without a house. Darrell got the information that they are not willing to give a density so I am going to answer that question, no. Buesing – I have been thinking about this ever since the last meeting. Drove by there twice. I agree with Deb it is a building site. Would cost a substantial amount of money to destroy everything there and make it into farm land. Which would not make any sense to me. No. Ludeman – mark it No, 4:1 vote. Existing grove, water, power, other buildings. 2. No. 911 address. 3. No. 4. No. Tried for the density request. 5. Nassif – purchased 22 years ago, had a building permit then, intent to build someday. Biren – to clarify that, I understand what you are saying Mike but I think the right word would be he was granted a variance in 1988 to build a house. That was also noted in the last minutes. No. 6. No. 7. Ludeman – not agricultural production, No. Ludeman – no reasons to deny the variance. I would entertain a motion. Biren – there have been concerns raised in terms of agricultural uses and another faction of that is in the agricultural district we have noise and dust and different things that are going on. Snow isn’t always removed at 5:00 a.m. We can place conditions on that, not knowing which way any of those actions go, there is sample language there for that. Look at that, address some of those concerns or protect agricultural uses. #5 stipulation. Ludeman – my understanding, just building a house on that property. Hoyle – crop land is rented out. Ludeman – intent is to build a house, is not going to change that.

Nassif moved, seconded by Ludeman to grant Kenneth Walz a density variance to construct a new home. Density within the agricultural district is 80 acres. The tract of land is approximately 7 acres more or less. The affected property is described as all that part of the Northwest Quarter of the Northwest Quarter (NW1/4 NW1/4), Section Twenty (20), Clifton Township. With the following stipulations:

1. That if any of the work performed as allowed by the granting of this variance is ever impacted or required to be removed, the cost of such impact shall be borne by the landowner, including removal and/or relocation of property and facilities.
2. Must obtain a building permit prior to construction.
3. Must apply for a septic system permit. Septic system to be designed and installed by a licensed contractor.
4. The purpose of which the variance was granted shall be undertaken by the applicant within 18 months of the granting of the variance. For good cause, the Zoning Administrator may grant an administrative extension of up to 12 months. Said extension shall be in writing. If the applicant fails to establish use of the variance within said time limits, the variance shall expire.
5. This Variance is in the agricultural district. Existing and future agricultural uses found in the Lyon County Zoning Ordinance shall be tolerated. These uses may generate noise, dust, vibration, or other nuisances typical of uses allowed in the agricultural district
6. Adopt Findings of Fact as part of this Motion.
7. A copy of this Motion shall be filed with the County Recorder's Office along with the legal description of the property. Additional fees to be paid by the applicant for the actual costs incurred by the county for the recording fees.

Discussion: Ludeman – is there any way we can limit the future use of the remaining land, to address some of Dick's concerns that there is 4 acres of tillable land. Any way we can stipulation that? Vroman – don't mean the rest of that land. Ludeman – concern that there might be a couple more built right there. What I am asking is there any way we are allowing Mr. Walz to build on this existing site, any way we can restrict from not being able to sell it off and let someone else build next door? Biren – ordinance kind of does that now. 5 acres requirement, if they would split some land off, they wouldn't have enough land, would have to go through a subdivision process. It would be fine if you wanted to add another condition stating that only one house on this existing tract is allowed. That would be justified by this board. Ludeman – acceptable? Vroman – don't think it makes any difference. Ludeman - would address your concern. Vroman – the other 2 properties would need a variance for two house less than 7 acres. Ludeman – make it stronger or not. Vroman – these uses may generate noise, dust, vibration, I think those are for the farmers. Nassif – that is what the farmers will do. Buesing – that is why this is in there. Ludeman – he is building there, he has to understand that. Buesing – he has to put up with it. Thooft – isn't there not an up to date septic system now? Biren – there is not a septic system on site, just rural water. To my knowledge there is not a bathroom facility out there. Guess I wasn't inside the machine shed. Hoyle – none. Biren – before you act on this, Mike Geurts has a comment. Geurts – I live adjacent, east side of this property, wanted to bring up one thing for your guys attention. My wife and I raise Labrador dogs, if someone can or would build a home here, I don't want that affecting us, it is the country. Nassif – it does state noise. Geurts – that is a concern of ours. That is why I am here. Thooft – that would fall under the noise, agricultural. Biren – it would if you wanted to state neighbor has a problem. I think it covers it now. Reinforce it. Vroman – question would be is raising dogs agricultural? Biren – allowed use in the agricultural district, yes. Buesing – do we need any different language in there Tricia? Zimmer – it is different than a feedlot. You raise them,

don't kennel other dogs? Geurts – no. Zimmer - not like a feedlot where adding a house would prohibit your future expansion. You are mainly here wanting to make it known that you do this and you don't want to have any complaints. Geurts – whoever would build a home here, don't want our dogs to become a problem to them. Zimmer – you cannot make any promises as far as no one will ever be upset by your dogs but it will be reflected in the minutes that you have your concerns and hopefully whoever lives there will be a good neighbor to you as you are to them. Geurts – also, we moved there two years ago. Doing a little investigating the house density rules have doubled. 1/40 now 1/80. Right now I have Mr. Albee on the far side, ourselves and Jeff Frahm. Mr. Walz had a permit 20 years ago to build a house and he didn't. Rules have changed from what I am gathering tonight. Nassif – quite a while ago. Geurts – just letting you know I am concerned about it. Ritter – has 18 months, has an option to extend it another 12 months then after that it is done. Biren – right. Ludeman – motion on the floor any other discussion? No proposed language change. Call for a vote.

VOTING FOR: Nassif, Ludeman, Thooft, Buesing

OPPOSED: Vroman

ABSTAINED: None

ABSENT: None

DATED: August 10, 2010

Motion carried.

Public Hearing, Steven Vandendriessche, road right-of-way variance request to construct a grain bin 105' from the center of 240th Street (township road). This is a 28' variance request. The affected property is described as the NW1/4 NW1/4, Section 29, Clifton Township. Mr. Vandendriessche was present. Biren – existing grain bin site owned by Steven Vandendriessche. He would like to add another bin. I will let him explain as far as the location and why it needs to be there. Center holes line up with the existing bins and to do that too close to 240th Street by 28'. I will let Steve take it from there. Vandendriessche – the bin we are going to be placing is going to be adjacent to the 36' bin that was varianced back in 2001. Adjacent to the west. For that purpose it is aligning with our auger system that comes out of the dryer. We have an automated system that transfer from bin to bin. The reason we have to keep it in line again with this bin is because there is a high voltage power line that comes in from Otter Tail. They request that we stay so far away from their high voltage line also. If we did move it any closer, we would get too close to the power line and it would also stop access to our other bins that we have because there is a machine shed just adjacent to the south also. Nassif – where is the power line Steve? Vandendriessche – if you can see the last tree line there which comes off County Road 9, it comes in along that driveway and then the little circle where there is some grass right above my name Steven on the diagram, it is right in that area there. That is where the powerline ends and they go underground from there. Nassif – could you go to the east of those bins? Vandendriessche – I cannot go to the east any more because we don't have any augers going to the east. The last two bins used there are for soybeans, don't have a transfer system going that way. If I did, there is a machine shed there also to the east, it would still have to be a variance permit if I went to the east because the machine shed is there. Would have to be closer to the road than going to the west. Nelson – shivered system? Vandendriessche – right. Nelson – need to be in line? Vandendriessche – yes. Ludeman – any questions of Steve before we go through the Findings of Fact? Oakland – I have a comment. Did the township okay that, I never got their form back. Vroman – they don't care to do that any more. They feel that you didn't answer our concerns here. Ludeman - so won't make comment. So we won't have a say from the town board. Findings of Fact. 1. Vroman – minimum maintenance road. Ludeman - 28' request. No. 2. no.

3. no. 4. no, he explained why needed (set up of existing site with bins, machine shed and high voltage power line on property). 5. no. 6. no. Findings of Fact all no.

 Thooft moved, seconded by Ludeman to grant a variance to Steven Vandendriessche to construct a grain bin one hundred five (105) feet from the center of 240th Street. This is a twenty-eight (28) foot variance request. The area representing the request is zoned agricultural. The property is described as the Northwest Quarter of the Northwest Quarter (NW1/4 NW1/4) of Section 29, Clifton Township. With the following stipulations:

1. That if any of the work performed as allowed by the granting of this variance is ever impacted or required to be removed, the cost of such impact shall be borne by the landowner, including removal and/or relocation of property and facilities.
2. Must obtain a building permit prior to construction.
3. The purpose of which the variance was granted shall be undertaken by the applicant within 18 months of the granting of the variance. For good cause, the Zoning Administrator may grant an administrative extension of up to 12 months. Said extension shall be in writing. If the applicant fails to establish use of the variance within said time limits, the variance shall expire.
4. Adopt Findings of Fact as part of Motion.
5. A copy of this Motion shall be filed with the County Recorder's Office along with the legal description of the property. Additional fees to be paid by the applicant for the actual costs incurred by the county for the recording fees.

VOTING FOR: Thooft, Ludeman, Buesing, Vroman, Nassif

OPPOSED: None

ABSTAINED: None

ABSENT: None

Motion carried.

PLANNING COMMISSION:

CONDITIONAL USE PERMIT/PUBLIC HEARING – MINNESOTA SESSION LAW 2000 – MINN. STAT. §116.07, SUBD. 7(I), FEEDLOT: None

RENEWAL - CONDITIONAL USE PERMITS – AUGUST:

Alvin Guza, Salvage Yard, SE1/4, Section 19, Nordland Township. Issued: August 2007, review annually. Recorded. Biren – annual review. Operating very lightly, less than 20 cars. Not a lot of business, in compliance. Update just for your information. Ritter – fence up? Biren – yes, off the road quite aways besides.

Randy Runia, Mobile Home, NW1/4, Section 21, Stanley Township.. Issued: August 1992 (3 years), renewed every three years. Not recorded. (Will need a motion to renew.) Biren – just off County Road 9. Good looking place. Motion by Nassif, seconded by Buesing to renew for 3 three years. All voted in favor. Motion carried.

Philip Regnier – Daniel Stevens, Mobile Home, N1/2NE1/4, Section 20, Grandview Township. Issued August 1994 (3 years), renewed every 3 years. 2003 estate, extended yearly since then, mobile home to be removed from property. Status. Biren – Original use no longer being served,

dilapidated. I have spoke with the current owner of mobile home, they are aware that they need to get rid of it. I need to get tougher with them. Will probably send a certified letter, 30 days to remove. Talking with our solid waste person \$1000.00 to have it taken to the landfill and demolished. If do it themselves, bring demolition down there, bring the iron to Beckers, not to bad for cost.

DISCUSSION:

Follow up on the Coon Creek Township Board correspondence – letter send to Contractor/property owner. Biren – talked with Rogge. He still will be crushing concrete. Have requested a letter from him, something for our records. Ludeman – from last meeting, township concerned with concrete.

Revisions to Floodplain Ordinance. Biren – within our floodplain ordinance, impacts several other things within our ordinance. CUPs, non-conforming structures, Board of Adjustments – variances, rezoning, etc. several other articles than just the floodplain. Have had several staff meetings and meetings with the DNR. Ordinance effective date November 26, 2010. August 26th copy of draft ordinance to DNR for their approval. Don't know how much we want to go through of this. I did include with this, one of the toughest questions we are going to have when it comes time to our hearing is the flood control structure on Hwy 23, water that comes from the Redwood River to the Cottonwood River. Look at the floodplain maps in that area, the area in the Cottonwood River has increased floodplain versus the old maps. I included the flow agreement language that was signed by the County Board, Corps of Engineers, City of Marshall. Distribution agreement on flood waters from the Redwood to the Cottonwood when it gets to a certain level. I asked Lucas to help us answer those questions. Tell you what happened there. What that structure was suppose to do was to mimic the actual conditions. What actually happens out there when the water gets that high. Thooft – location? Biren – Wayside Rest, Hwy 23, Redwood River gets real close to Hwy 23 there. Fixed crest weir, flat concrete wall, water in the Redwood River gets high enough it will go over that wall, go underneath Hwy 23 in some box culverts into Meadow Creek. (Through the Klein Addition). Texas crossing. What this agreement did, subject to change in modeling, intended to mimic what was actually happening out there historically with the old flow. Floodplain maps (old ones of that area) the answers why that area wasn't in the floodplain before – those maps were done years back, agricultural area and it mattered to the farmers but not to FEMA because there was no structures to speak of out there. They didn't model that area. That is why it wasn't there before. That is not going to pacify some of the people during the public hearing but that is the answer we have been given. Lucas from the DNR will help us through those meetings. Nelson – long time argument on the Cottonwood River, down stream people, County Ditch 70. Buesing – what is the argument here, said and done. Not any explanation to change anything now. Vroman – taking a lot of value away from property. Buesing – agree there. Vroman – and not getting anything for it. Buesing – don't know what we can say to make them any happier. Nelson – to my knowledge, never gone over yet, came pretty close. Ludeman – not going to get the Army Corps of Engineers or DNR to change anything, just a matter of explaining. Oakland - have to do a map amendment on their own. Biren – they have to prove that they are not within the floodplain, and they won't be able to do that. Maybe there is some damages caused there. That is a Corps of Engineers structure. Not our deal. Nassif – draft, as soon as the DNR approves it, that is it. Biren – yes. Other goal as Planning and Zoning, we are issuing building permits and we are allowing land uses to happen, we want to protect people from those areas. Want to make sure people know that it is in a floodplain. Ludeman – think one public meeting is enough? Biren – have scheduled right now, two public

hearings, one held by this entity and one by the County Board. Hearing set for the evenings of October 12th and 19th. During our regular meetings. Oakland – County Board meeting will also be a night meeting. Biren – may want to have one of them during the day. Something we can talk to Loren and the County Board about. Thought was to have one at night and one during the day so with people working they can get to one or the other. Nelson – Area II's retention dams has helped the Cottonwood River. There needs to be more done on Meadow Creek. That seems to flood easier now than the Cottonwood River. Those type of structures holding water back for some time really helps. Biren – with our new maps, we have many areas that have a detailed study, where we have a base flood elevation and that has been studied well enough that it can be modeled with Area II projects. Show impacts down stream whereas before it was just a blab on the map saying this is a probable area. Not accurate enough to model what Area II did to have an impact on that floodplain. But now many areas around Marshall and through Meadow Creek. Buesing – money for retentions? Nelson – problem now, hope legislative recognize this is a good project, keep funding them. Biren – box of maps, each map represents a small part of the county. Language tonight, not going to go through it, just to let you know FEMA tells the State (DNR) what the minimum requirements are, the State (DNR) tells the county's what the minimum requirements are. We can be more restrictive than the state, we are not. Ludeman – as a board it would be for us to go through and look at this, changes are highlighted. Oakland – we did try to changes some things and the DNR wouldn't let us, pretty much what is in here is what we got. Biren – many of the changes you are going to see are making it fit within our ordinance, section numbers and one percent annual change of flood (100 year flood). Think of it annually, chance of happening. Otherwise, think we shouldn't have another one for 100 years. Not the way it works. A lot of the language is real similar to what we have now. Biren – a lot better information for the people. Safer for building. Buesing – display maps for the public to see during the hearing? Biren – haven't got that far yet. Did that before with the townships. Maps are available on the website now, ours and the DNRs. Ludeman – do public announcement. Biren – did receive quite a few phone calls when presentation was done for the county board. Will work with our newspapers and get some pr going on it. Maps are done, not changing them. Just getting them adopted. Ludeman – November 26th goal. Biren – have to have it done by them. Otherwise kicked out of the program. Buesing - meeting times? Oakland – P&Z 7 p.m. Biren – Steve what are your thoughts? October 19th is an evening meeting. Two evenings for people to come. Nassif – how many people do you expect to come? Biren – 15 or so. Leave hearing times alone. Vroman – October prime farming time. Oakland – cannot move it to September because need DNR approval and cannot wait until November. DNR has looked at the rough draft and has given us some ideas. DNR has to approve it before hearing. Biren – deadline for DNR submittal is August 26th. Ludeman – dates are probably not ideal but don't know what will be ideal from September on. Biren – two meetings in October. Ritter – cannot make one, make the other. Biren – in the press releases I will make sure people know they can come talk to our office, doesn't have to be at the public hearing. Thooft – do you do any radio ads? Biren – have not done a lot with the radio. Thooft – some people don't get the paper, may be an option. Nelson – vested interest, they will be there. Ritter – word is out. Ludeman – our job to look through it, become somewhat familiar with it.

Discussion: Shoreland Violations. Jon Knochamus, Lake Yankton, DNR taking care of this one. Placement of rock riprap along lake shore, no permit. Everything above the ordinary high water mark is address county jurisdiction. Below is the states. Above that was some vegetation removal. Not a huge infraction of our ordinance, we don't issue permits for that. Clear cutting of vegetation within the shoreland impact zone, which would be 35' in this case should not be allowed. He

removed that vegetation. We do have a vegetative management plan being written. Reestablish the grass, plant historic trees out there and I think it will actually be a better site than it was before. That will take care of our needs. Handled through court system. DNR will determine what has to be done. Citation issued, court appearance. Example of how lake shore development should happen when said and done and how it should look.

Rock Lake – Axel Hansen, we got a letter from the DNR and a concerned neighbor. Several ideas how to resolve. Photos were included in packet. Would like the board members to see site before determine how to handle. Wrong, needs to be corrected. Property owner drives truck over the road, gets back usually on Thursday. Don't believe he has to be there when we are out there. Can visit individually or as a board. We need to be careful with the open meeting law, two can go at a time or continue meeting to site go as a board. No decision tonight, look at, discuss at our September meeting. Nelson – northwest side of lake? Buesing – old Ed Taveirne building site? Biren – yes. Existing garage and lean on garage removed and built this structure. Mobile home on property which is non-conforming. Buesing – that has been there for 35-40 years. Ludeman – how does the board want to view this property? Vroman – individually. Biren – property has an easement through Greg Tavierne's land. Property owner has no problem with us visiting site. Vroman – DNR requesting Planning and Zoning open an investigation, why don't they? Biren – DNR starting to focus their attention, outstate more on issues like this, making examples of it. A Township is being sued by DNR for turning a blind eye for something like this. Ludeman – laxed. Buesing – no septic permit yet or building permit? Biren – no permits, had spoken with individual many times. Met with two different hydrologist on site. He has had millions of ideas, what ifs/dreams. Told him to drawn up plan and give it to me and I will tell you what you need. Have given him a copy of the Ordinance. Had that early on. Everything from a boat ramp to a new house, leaving one board on the trailer house/new structure. Talked about this garage a couple of different times. Garage is no longer on this location. Half garage out there, other part probably burned. Buesing - structure on slab, no basement? Biren – slab, no poles in the ground. Nassif – go individually. Ludeman – individually or a couple at a time. Give John or Todd a call. Biren - no water or electricity now. OHWM 150', structure is 20' from OHWM. Has room to relocate structure on property and met setbacks, issues with existing mobile home and trees.

Next meeting Tuesday, September 14th at 7:00 p.m.

Meeting adjourned at 9:17 p.m.

Respectfully submitted,

Sander Ludeman, Chairman
Planning Commission/Board of Adjustments

Carol Oakland, Secretary
Planning Commission/Board of Adjustments