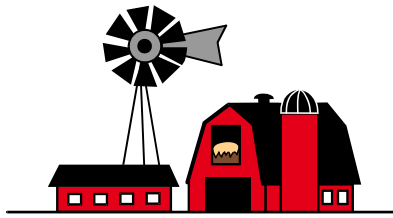


TOWNSHIP COOPERATIVE PLANNING ASSOCIATION

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-- TCPA --

Date: 09/13/2021

To: Kalmar Township Planning Commission

Re: Conditional Use Permit
Kalmar Township – Sections 3

Public Hearing: The Kalmar Township Planning Commission will hold public hearings at the Kalmar Town Hall, 8507 Town Hall Road NW, Byron, MN, on Monday, September 20, 2021, after 6:00 p.m. regarding:

Request: An application to construct private driveway, pond and dwelling. The proposed driveway is located in Section 3 and is an extension off of a private roadway. The proposed driveway will be approximately 1600 feet in length from an in-place private road. The dwelling site and proposed pond are in areas which are currently mapped as containing floodplain soils.

A conditional use permit is required by the Kalmar Township Zoning Ordinance Section 10.24 B for the impounding of waters. The area is zoned A-2 Agricultural Protection District.

A SWPPP and drainage report have been submitted as part of the application.

Owner/Applicant: Justin McNeilus, PO Box 5829, Rochester, MN

Location: The private road extends north and then west of 65th Street NW

Current Zoning: A-2; Agricultural Protection District

Reviewers List: Minnesota Department of Natural Resources Peoples Cooperative Power
Minnesota Pollution Control Agency Olmsted County Public Works
GGG Engineering Olmsted County Public Health
Olmsted County Soil and Water Century Link
Olmsted County Planning

Attachments:

1. Application Submittal Packet
2. Certificate of Survey

Ordinance:

Section 9.00 FLOOD PLAIN DISTRICT DESIGNATION

(Paragraph 4)

The designation of the Flood Plain District (FP) is based on alluvial soils which are water deposited soils representing the areas most often inundated by flood waters. Any land containing the following soils which are subject to flooding shall be deemed to be within the flood plain district.

Section 9.08 FLOOD PLAIN DISTRICT (FP):

The purpose of the flood plain district is to guide development in the flood plain, consistent with the flood threat, in order to minimize loss of life and property, disruption of commerce and governmental services, extraordinary public expenditure for public protection and relief, and interruption of transportation and communications, all of which adversely affect the public health, safety and general welfare; and to assure that Kalmar Township's lands are put to their most appropriate use. Floodplain developments shall not adversely affect the hydraulic capacity of the channel and adjoining flood plain of any tributary watercourse or drainage system where a floodway or other encroachment limit has not been specified on the Official Zoning Map.

- B. Conditional Uses: The following uses, which involve fill or storage of materials or equipment, may be permitted in the flood plain district only after the issuance of a conditional use permit as provided in Section 4.02 of this Zoning Ordinance, which applies to all flood plain conditional uses.
1. Placement of fill, except when fill is used as part of an approved soil conservation service drainage control structure.
- C. General Flood Plain Regulations: No structures (temporary or permanent); fill, including fill for roads and levees; deposit, obstruction, storage of materials or equipment; or other uses shall be allowed as conditional uses which, acting alone or in combination with existing or future uses, unduly affects the capacity of the floodway or unduly increases flood heights. Consideration of the effects of a proposed use shall be based on a reasonable assumption that there will be an equal degree of encroachment extending for a significant reach on both sides of the stream. In addition, all flood plains conditional uses shall be subject to the following regulations:
1. Fill:
 - a) Any fill deposited in the flood plain shall be no more than the minimum amount necessary to conduct a conditional use and shall not in any way obstruct the flow of flood waters.
 - b) Such fill or other materials shall be protected against erosion by rip-rap, vegetative cover or bulk heading.

- c) Spoil from dredging or sand and gravel operations shall not be deposited in the flood plain unless it can be done in accordance with Section 9.08, C., 1., a).

Analysis:

The Kalmar Township Board approved several metes and bounds subdivisions for the property owned by Moon Farms. Easements were provided to access those parcels created by the metes and bounds subdivisions. The entire roadway stayed out of the floodplain along with the driveway to this property which is proposed to be on soils which are not floodplain soils. The applicant is proposing to construct a pond and dwelling in areas containing floodplain soils. In order to do this a conditional use permit is required.

When determining floodplain, the ordinance relies on the best data available with soils being the basis for areas where flood elevations are unknown. In this instance the applicant's engineer has provided a flood study to determine the elevation of the 100-year flood which is 1016 feet above sea level. The site plan indicates the lowest floor of the dwelling is at 1018 feet. The ordinance requires that the lowest floor be one foot above the 100-year flood or 1017 feet, and that the ground elevation from the dwelling extending out at least 15 feet be at 1016. Additionally, access and parking must be at or above 1015 feet.

Finding of Facts & Conclusions:

Section 4.02 - CONDITIONAL USE:

The purpose of a conditional use permit is to permit a use that would not be appropriate generally but may be allowed with appropriate restrictions upon a finding that 1) certain conditions as detailed in the zoning ordinance exist, and 2) the use or development conforms to the Comprehensive Plan, and 3) is compatible with the existing area.

A conditional use is allowed only after a petition for a permit has been approved by the Planning Commission, except when there is an appeal to the Commission decision; then, only after the approval of the Township Board.

A. Criteria for Considering a Conditional Use Application: In granting a conditional use, the Kalmar Planning Commission shall consider the effect of the proposed use on the Comprehensive Plan and upon the health, safety and general welfare of occupants of surrounding lands. Among other things, the Commission shall consider the following:

(Staff comments and finding are in italics.)

1. The proposed use will not be injurious to the use and enjoyment of other property in the neighborhood and will not significantly diminish or impair the values of such property;

Provided the proposed grading plan is approved and adhered to as well as the condition of this conditional use permit if approved, the proposed use will not diminish the value of surrounding properties nor be injurious to the use and enjoyment of said properties.

Considering the above, the proposal meets this criterion.

2. The proposed use will not impede the normal and orderly development and improvements of the surrounding property;

The applicant desires to remove soils from one area of the floodplain creating a pond and then place those soils in another area of the floodplain to elevate his home to a flood free status.

Considering the above, the proposal meets this criterion.

3. Adequate utilities, parking, drainage and other necessary facilities will be provided;

Not applicable to this proposal.

4. Adequate ingress and egress will be provided to minimize traffic congestion in the public streets;

Not applicable to this proposal.

5. The traffic generated by the proposed use can be safely accommodated on existing or planned street systems; and the existing public roads providing access to the site will not need to be upgraded or improved by the Township or County in order to handle the additional traffic generated by the use.

Not applicable to this proposal.

6. Adequate measures have been taken or proposed to prevent or control offensive odor, fumes, dust, noise, vibration, or lighting which would otherwise disturb the use of neighboring property.

Not applicable to this proposal.

7. The special criteria or requirements indicated in Article X, General Regulations, are complied with;

Not applicable to this proposal.

8. The water and sanitary systems are or would be adequate to prevent disease, contamination and unsanitary conditions.

Not applicable to this proposal.

Items 9 through 20 are applicable “When deciding on conditional uses to the Floodway, Flood Fringe, (FFA and FFB) and the Flood Plain Districts, the following additional factors should also be considered.”

Flood Soils:

Based on Olmsted County aerial photos there are flood soils through the area where the dwelling and pond are being proposed. The ordinance requires that before we issue a building permit, we must determine that the parcel has flood free access. Flood free access means that during a one-hundred-year flood event the water does not flow over the roadway at a depth of greater than one foot. The driveway is not located in an area which the soils map indicates are flood prone soils. A corner of the dwelling and pond are located on these soil types. Anytime you do work in flood soils the Township Ordinance requires a conditional use permit.

Additionally, the engineer has provided us with a flood study. The study indicates the 100-year flood elevation to be at an elevation of 1016 and the lowest proposed floor elevation is 1018

9. The danger to life and property due to increased flood heights or velocities caused by encroachments.

Staff relies on the qualified engineer that created the grading plan to make sure that the sizing of the culverts and the elevation of the building is sufficient to mitigate the criteria above. In this instance Geoff Griffin from GGG Inc. developed and signed the grading plan.

10. The danger that materials may be swept onto other lands or downstream to the injury of others.

See 9 above

11. The susceptibility of the proposed facility and its contents to flood damage and the effect of such damage on the individual owner.

In this instance the applicant is working in an area which is floodplain by soil type. Floodplain requirements require that the landscaping 15 feet out from the rear of the dwelling must be at an elevation of at least 1017.

12. The relationship of the proposed use to the flood plain management program for the area.

A grading plan and the conditional use process are the only flood management plans for this area. The plan was created by a licensed engineer who address the flood issues within the plan. New floodplain maps have been created but are not yet adopted.

13. The safety of access to the property in times of flood for ordinary and emergency vehicles.

See 9 above

14. The expected heights, velocity, duration, rate of rise and sediment transport of the flood waters expected at the site.

A Storm-water Pollution Prevention Plan and Drainage Report (SWPPP) was a part of the grading permit application. The applicant is required to comply and follow the detail of this plan during driveway construction. Also see 9 above.

15. The proposed water supply and sanitation systems and the ability of these systems to prevent disease, contamination, and unsanitary conditions.

Not applicable to this proposal.

16. The importance of the services provided by the proposed facility to the community.

No applicable to this proposal.

17. The requirements of the facility for a waterfront location.

N/A – It's not a waterfront location.

18. The availability of alternative locations not subject to flooding for the proposed use.

The applicant desire to construct his dwelling in areas of floodplain. Elevation of the dwelling site must be accomplished.

19. The compatibility of the proposed use with existing development and development anticipated in the foreseeable future

Not applicable to this proposal.

20. Based upon technical evaluation of the designated engineer or expert, the Planning Commission shall determine the specific flood hazard at the site and evaluate the suitability of the proposed use in relation to the flood hazard.

The applicant could provide an engineering/flood study to prove that the proposed driveway will not impede the flow of nor increase the height of flood waters in the area. In lieu of said engineering report the Planning Commission can include the following condition as part of this conditional use permit.

“No fill may be brought into the flood plain unless an engineering report is submitted and approved by the Township Engineer regarding impact to the flood plain. An alternative to an engineer’s report would be to remove an equal amount of fill from the flood area as is placed within the flood area. If using the alternate method, only enough fill may be moved within the flood area as is required to construct the buildings, impervious parking areas and potential improvements to the existing driveway within the flood plain.”

When deciding on a conditional use to the A-1 and A-2 Agricultural Districts, the following additional factors shall be considered.

21. The amount of prime agricultural land with a crop equivalency rating of 60 or above that would be taken out of production as a result of the use.

The majority of soils within the area of the proposed driveway has soil CER's of 40 to 55.

22. The need for new public roads or the need for improvement to existing public roads is minimal.

Not applicable to this proposal.

23. A thorough evaluation of the waterbody and topographic, vegetation, and soils conditions on the site must be made to insure;

N/A as the proposed use is not on a body of water.

Conclusion: Staff has reviewed this request in accordance with the applicable standards and provisions, as included in this report. Staff withholds recommendation until we receive comments back from the Minnesota DNR and Olmsted County Planning.

Conditions: The Planning Commission may want to consider the following three recommended conditions if they decide to issue this conditional use permit. *These conditions may be changed, deleted, or amended at the discretion of the Commission or added to depending on comments from the reviewing agencies.*

1. No fill may be brought into the flood plain unless an engineering report is submitted and approved by the Township Engineer regarding impact to the flood plain. An alternative to an engineer's report would be to remove an equal amount of fill from the flood area as is placed within the flood area. If using the alternate method, only enough fill may be moved within the flood area as is required to construct the buildings, impervious parking areas and potential improvements to the existing driveway within the flood plain.
2. The applicant must obtain and maintain all applicable permits, insurance and licenses that are required by federal, state, and local agencies.
3. Before any construction begins the applicant must obtain all required building, septic, well and grading permits.