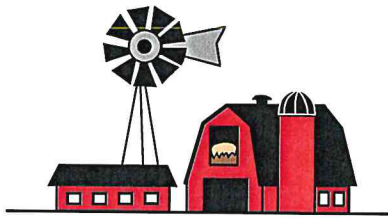


# TOWNSHIP COOPERATIVE PLANNING ASSOCIATION

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-- TCPA --

Date: 11/24/2021

To: Elmira Town Board  
Matt & Brieahna Kimm

Re: Conditional Use Permit  
Elmira Township – Section 11

Public Hearing: On Tuesday, December 7<sup>th</sup>, 2021, after 7:30 pm, the Elmira Township Board will hold a public hearing at the Elmira Town Hall, 27 Winona Street, Chatfield, MN, 55923 regarding:

Request: An application for a conditional use permit to allow for the construction of a driveway across floodplain soils. Section 9.02 of the Elmira Township Zoning Ordinance allows the placement of fill within the floodplain only after the receipt of a conditional use permit.

Owner/Applicant: Matt & Brieahan Kimm - 3730 Fernwood Lane SW – Rochester, MN 55902

Location: A recently subdivided five-acre parcel that is part of tax parcel #: 51.11.12.079907 SECT-11 TWP-105 RANGE-011 60.00 AC NW1/4 NE1/4 & NE1/4 NW1/4 LESS W670FT N495.80FT NE1/4 NW1/4 ALSO LESS W660.94FT S816.59FT NE1/4 NW1/4 SEC 11 105-11. Located on the east side of 180th Avenue SE, one mile south of 60th Street SE.

Current Zoning: A-1; 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. Location Map
3. Aerial Photo Map

#### 4. Zoning Map

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 Elmira 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 Elmira Township Board approved a metes and bounds subdivision for the property owned by Barbara Dolan at their November 2, 2021 regular meeting. Easements through both James Dolan Jr's property and Barbara Dolan's property are proposed to provide access to the parcel. The easement will cross an intermittent stream which is a part of the Root River Watershed. The applicant has provided an engineered grading plan which includes calculations for crossing the stream as part of their submittal package. The stream crossing proposal is to use two 84-inch (7 foot) culverts sixty (60) feet long to provide flood free access to the proposed building site.

The total length of the proposed driveway according the SWPPP plan is 2525 linear feet of which approximately 210 lineal feet crosses through floodplain mapped soils.

Decorah Soils exist on the site and according to the Olmsted County GIS map the driveway is proposed to go through these soils.

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 Elmira 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's driveway crossing an area of flood soils will not in any way impede the normal and orderly development or improvement of the surrounding properties. The conditional use permit is to assure surrounding property owners that areas of flooding will not change or increase on their properties.*

*Considering the above, the proposal meets this criterion.*

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

*Yes, with approval of the grading plan and conditional use permit. The applicant will need to make improvements to the site in the form of a septic system and well along with propane gas and/or electricity. All these utilities or the extensions thereof will be at the burden of the property owner.*

*Considering the above, the proposal meets this criterion.*

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

*The proposed private drive will tie into a named private drive (Dolan Lane) which intersects with 180 Ave SE a Township Road. The additional traffic generated by one additional house on average adds about 10 more trips on the roadway per day. Yes, with approval of grading plan and conditional use permit adequate ingress and egress is provided.*

*Considering the above, the proposal meets this criterion.*

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.

*On a private roadway system which connects to a township road. See number 4 above.*

*This criterion is met.*

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.

*Noise and dust during the construction of the dwelling, building site and roadway may be inconvenient for the neighboring property owners, of which most have approved of this idea by providing easements for access to the property. Other neighbors are buffered by the topography and natural wooded area.*

*This criterion is met*

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

*Section 10.20 covering soil erosion will need to be adhered to during construction. An engineered grading plan and stormwater pollution prevention plan (SWPPP) and grading permit application has been submitted with the conditional use permit application. If the plan is followed the criterion in this section of the ordinance would be met.*

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

*A safe drinking water in the form of a new well in this proposal and septic system will be a requirement of the building permit.*

*This criterion is met.*

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 private driveway is being developed. 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 subsequent grading plan illustrated that the majority of the private road/driveway was able to be constructed on soils that were not within the flood soils on the property. However, a portion of the private driveway will be crossing through the flood soils. Anytime you do work in flood soils the Township Ordinance requires a conditional use permit. This proposal indicates the drive would go through approximately 210 feet of flood prone soils.*

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 height of the roadway 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 crossing an area which is floodplain by soil type. The roadway is necessary to get to the homeowners preferred area for development which meets the density standards of the Elmira Township Zoning Ordinance. The plan calls for the installation of two 84-inch culverts, each 60-feet long. The elevation at the crossing is proposed to be 1132.92 feet above sea level. According to the plan the 100 year flood event would overtop the roadway by .99 feet. The ordinance defines flood free access at no more than 2-feet during a 100-year event, thus the driveway will meet the standard for flood free access. The dwelling site is at 1167 feet above sea level, well above the 100-year event.*

*This criterion is met*

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. Unadopted maps have been prepared for the area and have been used in some of the determination.*

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

*The engineer has modeled the floodplain indicating the flood elevation of a 100-year event to be 1133.89 with the roadway elevation at 1132.92 thus flood free access is being provided.*

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.

*For the applicant to locate their house in their desired location and meet the township density requirements the area of flood soils must be crossed to provide driveway access.*

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.

*According to the applicant’s engineer, approximately 2.4 acres of cropland at the building site will be removed from production. The driveway will go through soils with CER ratings from 30 to 95. According to the plan the 2,525-foot driveway will impact about 3.9 acres most of which has a CER rating over 60.*

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;

*The grading and erosion control plan depicts erosion control measures that when installed and maintained, will prevent sediment from leaving the site. Proper seeding and permanent vegetation establishment will provide long term erosion protection and prevention.*

*Because of topography the visibility of structures and other facilities is minimal.*

Conclusion: Staff has reviewed this request in accordance with the applicable standards and provisions, as included in this report. Based upon review and analysis included above Staff recommends approval with the following conditions.

Conditions: The Planning Commission may want to consider the following 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.*

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.
4. Before the driveway construction begins, a Decorah edge analysis must be completed showing that the driveway does not impact Decorah features. A grading permit shall not be issued until this review is complete.