

MINUTES
HARVEY COUNTY REGIONAL PLANNING COMMISSION
HARVEY COUNTY BOARD OF ZONING APPEALS
Harvey County Courthouse
Community Room
July 7th, 2009
7:00 PM

Members Present: Larry Goering, Sam Griffin, Robert TenEyck, Clifford Kirk, Dorothy Thiessen, Larry Emmel, Harlan Foraker, Bonnie Wendling, Alan Beam, Chad Fuqua, Carroll Harder & Jack Bender

Members Absent: Ron Peters

Staff Present: Scott Davies, Planning & Zoning Administrator,

Others Present: Tera & Ken Benefiel, Don Yost, Roderick Mayeske, Linford Holdeman, Kenneth Holdeman

At 7:00 pm Chairman Emmel called the meeting to order. Mr. Emmel welcomed Jack Bender III to the planning commission.

1. Chairman Emmel presented Evan Johnson former planning commissioner from Walton a plaque in appreciation of his service on the planning commission.
2. Mr. Griffin moved and Mr. Foraker seconded to approve the May minutes, motion carried 11-0.
3. Staff Report: Seven permits were issued during June for a total construction cost estimate of \$915,500.
4. **CUP 28-23-3W Request** from Tera and Ken Benefiel for a conditional use permit to construct two residential wind turbines in the A-1 Agricultural zoning district. Staff presented report concerning the request. Mr. Bender asked about easements on the property, staff said if there were, it would be the landowners responsibility to locate and not build on them. Mr. Benefiel said there were none. Mr. Foraker asked if there were special criteria for wind turbines such as for cell towers. Staff said that there are currently no special regulations for wind turbines, but we are in the process of developing special regulations for wind turbines.

Mr. Benefiel presented information about their request. They are requesting to construct two wind turbines reduce the cost to provide electricity to their home. What energy is not used by them goes back into the grid. Mr. Benefiel explained the location on the property.

Mr. Bender asked if they are quiet. Mr. Benefiel said yes, you cannot hear them operating. Mr. Foraker asked if they were on a freestanding pole and no guy lines. Mr. Benefiel said yes, there will be no guy lines. Mr. Benefiel said that the turbines have an automatic shutdown/braking system at 40 mph.

At this time the chairman closed the public hearing portion of the case. Mr. Emmel asked staff about recommendation to set back the towers from the property lines. Staff recommended a setback at least the height of the tower or 45 feet. Staff said the Benefiels plan to set back the turbines much further than that.

Mr. Foraker asked if there had been any comment from neighbors, staff said there had been no written or verbal comment from anyone. Mr. Foraker asked Mr. Benefiel if he had talked with his neighbors about it. Mr. Benefiel said that he had and no one had a problem with them.

Mr. Griffin moved to approve the request for two towers with the recommendation from staff to require a setback of at least 45 feet from any property line, Mr. TenEyck also said the zoning district should be corrected from agricultural to residential, Mr. Goering seconded the motion. The Chairman asked for further discussion, there was none, the Chairman called for a vote, the vote was eleven for and none opposed, motion carried.

5. **SPLIT OFF 15-23-2W.** Request from Roderick Mayeske to split off a tract of land of less than 40 acres for a permit to make an addition to a single family residence. Staff presented report. There was discussion by the commission about the parcel being an illegal nonconforming property. Staff said that the original permit for the house was issued on a 306 acre tract which was in conformance with county zoning regulations. Staff said that soon after that, the house with a three acre tract was split from the larger 306 acre tract. The Mayeskes came into the planning and zoning office requesting a building permit to add onto the house, staff denied the request because of the illegal split.

Mr. Foraker asked for clarification on the split off for unproductive land. Staff said that the regulations allows for a one time split off based on unproductive land, land that cannot be farmed due to steep topography, waterways, trees, etc. Mr. Foraker asked if this included floodplains, staff said that was up to the planning commission. Mr. Mayeske said that when they built the house they had it surveyed to make sure that it was built above the floodplain.

The Chairman opened it up to public comment. Linford Holdeman, adjacent landowner said his house was built in the 1800's just to the south of Mr. Mayeskes. Mr. Holdeman had no objection to the request for a split off. Don Yost spoke next, he is an adjacent landowner to the east and he said that the Mayeskes were a valuable asset to the area because of the fertilizer operation they operate on their land. He recommended that the request be approved.

The Chairman closed the public hearing. Mr. Emmel asked staff about when permits were issued for the shop and the fertilizer sales building. Staff said he had not checked to see when those were issued. Staff said the house permit was issued in July of 2001.

Mr. Griffin asked for clarification that the planning commission was bringing the parcel into legality so a permit could be issued to add onto the house, staff said yes.

Mr. TenEyck asked if staff knew when the second building was constructed. Staff said no. Staff asked Mr. Mayeske if he knew when the shop permit was issued, Mr. Mayeske said July of 2002. Mr. Emmel asked for clarification on the 5 acre split off. Staff said that the regulations allow for a one time split off for two reasons; one is for poor soils, and the other for unproductive land. The first is made by the planning and zoning director, the second is made by the county commission following a recommendation from the planning and zoning commission.

There was discussion about the location of the floodplain. Staff said the floodplain covered all of Mr. Mayeske's property. Mr. Bender said that permits have already been issued and does not see that the permit will change anything. The two other permits were issued as agricultural use buildings and they are exempt from the 40 acre requirement. Mrs. Thiessen said that the 40 acre requirement has been known for many years, she was not aware of the 5 acre split off allowance.

Mr. Griffin said that each case must be evaluated on its own merits, because this case is approved does not mean another one has to be approved, they each have to be evaluated on their own merits.

Mr. Harder moved that the split off be approved, Mr. Griffin seconded. The Chairman asked for discussion, Mr. Bender said he was inclined to approve it because of the existing buildings and roads. Mr. Kirk called for a question. Mr. Emmel reviewed the motion. He then called for a vote. Those in favor were six (6) those opposed were (5). This goes as a recommendation to the county commission.

Old Business. Staff reported on the gun range, a suit has been filed in district court against the county commission. Mr. Camacho has filed the suit.

Mr. Griffin moved and Mr. TenEyck second, motion carried. Meeting adjourned at 8:25 pm.