

DICKINSON COUNTY PLANNING AND ZONING COMMISSION

Monday, June 16, 2008

1:00 P.M.

The Dickinson County Planning and Zoning Commission met Monday, June 16, 2008 at 1:00 p.m. in the community room of the courthouse.

Members present were Sally Nielsen, Duane Moser, Mike Roach, Tony Weber, Tim Fairchild, and Bob Chaffin. Absent was Jon Gunderson.

First on the agenda was approval of the April 21, 2008 minutes and May 19, 2008 minutes. Moser moved to approve the minutes as written. Weber seconded. All were in favor.

Second on the agenda was an amendment to Zoning Ordinance 102, to add Article #34, West Okoboji Harbor First, Second and Third Additions, Overlay District, recommendation to the Board of Supervisors.

Brad Howe, Attorney, was representing the Harbor lot owner's association. The purpose of the overlay district is to take a portion of the R-4 district and overlay more regulations. The West Okoboji Harbor plats were done in 1970, 1977, and 1980. All had identical plat documents including restrictive covenants. The covenants expired by operational law. In 1990, the Harbor association took steps to renew the covenants and filed such documents. Renewal requires that it must take place within 21 years of the plat's recording. The renewal was not put in the claimant's record book, so the renewal didn't get done.

Howe said this is clearly a planned development. A design committee and lot owners association was set up. The property owners own all utilities. The Harbor is unique in that the utilities are privately owned; the walls along the waterways and the boardwalk are privately owned and maintained. He mentioned design of homes, landscaping is orderly, compatible architecture, lay of the land, unobstructed front yards. The vast majority of lot owners want it kept that way. The nine lakeshore lots would be kept out of the overlay. R-4 zoning controls the lakeshore lots.

This is the third meeting for this proposal. Notices of all three meetings have been sent out by Colleen Barker, Harbor Association Secretary. All property owners have received a copy of the proposed wording.

In past meetings, concerns were expressed of any county boards having to enforce this overlay district. There is a provision in the proposal that the West Okoboji Harbor lot owner's association must exhaust all remedies before coming to the county government for enforcement.

In closing, Howe urged the Planning and Zoning Commission to approve their request.

Tony Weber asked regarding Section 16, Enforcement, why is that wording necessary.

Lonnie Saunders, Assistant County Attorney, said he and Mr. Howe agreed that it would be better to add more language to make it as clear as possible that the county is the last resort for enforcement.

Duane Moser asked if there were any new articles in the proposal that weren't in the original covenants.

Howe said yes, rules that address permanent clotheslines, land attachment, and fences. All changes go to the design committee.

Tim Fairchild asked if there were any Harbor residents against the proposed overlay.

Kenda Templeton, Harbor resident, said she is concerned with the wording of no dog kennels allowed. She is a dog owner. If there are no covenants, there is no authority for a design committee. They bought their property assuming there were no covenants. She urged the board to deny the request.

Howe said at the January meeting he requested a copy of the title opinion from Templeton. To date that has not been received.

Templeton said she has not received a copy of the title opinion either.

Larry Stoller spoke as the attorney representing Chuck and Patricia Condon, residents of the Harbor. In his title opinions for Harbor properties, he says by operation of law the restrictive covenants have expired. Developments of this quality should have some design regulations, but in the past, decisions have been left to the whim of the design board. He knows of three cases in the Harbor where the residents had trouble getting through the design committee. Condon's preference is to reinstate the wording of the old covenants, remove the design committee, and if expired, use the zoning that is in place to regulate the Harbor.

David Stein Jr., attorney for John and Shavaun Daugherty, said he was asked to make a statement on record that his clients are excluded from the overlay district.

Howe said yes, all lakeshore lots are out. He said also that the design committee is in place by by-laws, not through restrictive covenants.

Walt Homan, West Okoboji Harbor Association president, said there is only one bare lot left.

Jeanne Bernhardt said she is fairly new to the area. She would like to see some protection in there. She has always been impressed with maintaining the beautiful area.

Jack Harms said in 1990 they had an annual meeting where they took a poll of the residents in favor of the covenants and by-laws. No one objected to them.

Pam DenHerder said all people need rules and regulations. She said she hopes they can have some covenants to keep this a unique area.

Stoller asked if any existing non-conforming structures would be grandfathered.

Howe and Kohlhaase both said yes.

Tom Shepherd asked without the overlay in place, could he add on to his house and do anything he wants?

Howe said, no, he would have to follow the rules of the zoning office.

Dan Berg presented a letter from Karen and Shane Foster. Nielsen read the letter which said they were strongly opposed to reinstating the Harbor's overlay. As lakefront owners, they do not want restrictions other than the Dickinson County zoning regulation.

Howe said they would not be included in the overlay district.

There being no other questions or comments, Weber moved to recommend to the Board of Supervisors to accept the West Okoboji Harbor Overlay District as written. Fairchild seconded. The vote was Nielsen, Weber, Fairchild, Moser, Chaffin – aye, Roach – nay.

Third item on the agenda was Maverick MX, LLC, Final Plat of Horse Creek Park Subdivision. This was tabled, as no final plat has been presented.

Fourth item on the agenda was Bekins Investment, preapplication discussion. This was tabled as there was no one present to explain the plan.

Fifth item on the agenda was Jim Poyzer, representing Golden Triangle Farms Corp., preapplication discussion. Mr. Poyzer said he wanted to discuss ideas of dividing their farm. He explained drawings of their property and which splits had already been made. Elwin Tritle would like to expand his property by buying additional adjacent land. One possible plan would involve subdividing lots for general commercial use.

Engineer Brad Beck addressed water retention on Parcel G, and a possible frontage road that may be required for Parcel J and K. Beck explained utilities available, size of lots, and the need for Orleans approval.

Discussion followed of surrounding zoning and land uses.

The Planning and Zoning board saw no problem with commercial lots.

Kohlhaase said Poyzer could sell 10 acres in the SW ¼, but anything more sold off would require subdivision.

The board agreed they don't want to spot rezone, so would prefer to rezone a strip along 255th Avenue.

Poyzer will work with Brad Beck on his plan and come back to the Planning and Zoning board in the future.

Sixth on the agenda was discussion of adult oriented establishments. The P & Z board was given a draft copy of an article to amend Zoning Ordinance 102 to add adult oriented regulations.

Kohlhaase said this would be a separate article in Zoning Ordinance 102, not its own ordinance.

It was mentioned that Orleans and Milford have similar ordinances.

Fairchild said his past concern was how we do this, but doing it ahead of time helps to control rather than after the fact.

Saunders said the proposed article would pass muster with the Supreme Court.

The Planning and Zoning Board agreed to move forward to a public hearing to recommend the amendment.

Seventh on the agenda was old or unknown business. The Bekins proposed subdivision is going to be commercial. It will be on the July meeting agenda.

Weber moved to adjourn. Fairchild seconded. The meeting adjourned at 2:30 p.m.

Filed By: **Barbara Woodley** Date: **June 24, 2008**