

NOTICE TO THE AUDIENCE: Please remember that if you are interested in matters on the agenda that will have subsequent meetings, it is your responsibility to note their dates, times, and places. No further letters or reminders will be sent. Of course, if you have any questions about any given matter, do not hesitate to contact the Planning Department in the City Hall Annex, 4403 Devils Glen Road, Bettendorf, Iowa 52722 or phone (563) 344-4071.

**MINUTES
PLANNING AND ZONING COMMISSION
JULY 20, 2022
5:30 P.M.**

The Planning and Zoning Commission meeting of July 20, 2022 was called to order by Wennlund at 5:30 p.m. in the City Hall Council Chambers, 1609 State Street.

1. Roll Call

MEMBERS PRESENT: Adam, Gibson, Ormsby, Stoltenberg, Wennlund

MEMBERS ABSENT: Gannaway, Kappeler

STAFF PRESENT: Greg Beck, City Planner; Mark Hunt, Community Development Director; Brent Morlok, City Engineer; Troy Said, Assistant Fire Chief; Lisa Fuhrman, Community Development Secretary

2. Approval of the minutes of the meeting of June 15, 2022.

On motion by Adam, seconded by Stoltenberg, that the minutes of the meeting of June 15, 2022 be approved as submitted.

ALL AYES

Motion carried.

3. Review of Commission procedures.

Rezoning

4. Case 22-047; Southwest corner of Hopewell Avenue and Criswell Street, A-1 Agricultural/Urban Reserve District to R-3 Mixed Residential District, submitted by Youssi Investments of Iowa, LLC.

Beck reviewed the staff report. Hunt stated that the Forest Green project to the north is very similar to this one, adding that the rezoning of that property was conditional. He commented that a similar approach might be worth discussing with regard to this case.

Wennlund asked what the plans are for the reconstruction of Criswell Street. Morlok explained that a full-depth reclamation project is scheduled for 2024, adding that the construction will have to be coordinated with Scott County as half of the street is located in their jurisdiction.

On motion by Stoltenberg, seconded by Adam, that the rezoning of property located southwest of the intersection of Hopewell Avenue and Criswell Street, A-1 to R-3, be recommended for approval subject to staff recommendations.

Wennlund suggested that the motion be modified to include a condition that any site development plan that is required be materially the same as the concept plan submitted. Stoltenberg agreed.

On motion by Wennlund, seconded by Ormsby, that the motion be amended to add the condition that the development of the property being rezoned is required to be materially the same as the concept plan that was submitted.

ALL AYES

Motion carried.

5. Case 22-041; East of Crestview Heights Subdivision, A-1 Agricultural/Urban Reserve District to A-2 Rural Residence District, submitted by Bill Pender.

Beswick reviewed the staff report.

Adam asked if there is any assurance that arrangements can be made to provide access for the lot. Hunt stated that there is a recorded agreement, adding that any land dispute would have to be handled through the court system since all of the property involved is privately-owned. Beswick added that there is a power line running through the property that would likely restrict building under it and there are two small areas of designated flood plain on the north and south sides of the property. He explained that at such time as a single-family house were to be built, all setback requirements would have to be observed.

Wennlund stated that it appears as though the private street does not extend to the applicant's property. Beswick confirmed this, adding that the applicant would likely build a private driveway as the construction of one single-family home would not merit the extension of the street. Morlok commented that the city has no jurisdiction as Crestview Heights Drive is a private roadway that the city does not maintain.

Mindy Williams, 2975 Elk Drive, expressed concern that a new subdivision would be built and questioned why she had not received a notice by mail or seen a notification sign until last night. Wennlund stated that letters are typically mailed to residents within 200 feet of the property in question. Beswick explained that he had verified that the sign was posted on the property and that the boundary for mailing notices had been extended because of the uniqueness of the location of the lot. Morlok commented that the need for a bridge to be built over Crow Creek would preclude a developer's building a subdivision in that area. Hunt stated that the A-2 district would only allow a rural home and that a subdivision would not be allowed.

Charlene Merritt, 5505 Crestview Heights Drive, stated that she moved the notification sign to the location where she believed it would be more visible. She stated that the access easement referenced is not shown on her warranty deed and expressed concern about the environment, possible flooding, the collection of a prorated fee from the applicant for the road's maintenance, and the disruption of the natural habitat. Wennlund reiterated that because the street is private, the city has no control over it.

Ken Burke, 5020 Crestview Heights Drive, commented that any new homeowner would be required to join the homeowner's association and recommended that the rezoning be approved based on the easement's holding up in court. Wennlund explained that the city cannot take on the role of adjudicator and cannot for good cause pause because it's not relevant to their discussion and the Commission has been provided proof of access. He stated that the concerns that have been expressed with regard to the street are the burden of the HOA to resolve.

Dale Ruplinger, 5345 Crestview Heights Drive stated that the runoff from heavy rains and snow melt created a gully at the end of the street that could be unsafe for children. He commented that the runoff flows toward the property in question and in his opinion should be a designated wetland. He expressed concern about heavy construction equipment damaging the street that the association has just finished repairing.

Wennlund asked how the city would be involved during the building permit process with regard to the concerns that have been expressed. Morlok explained that a builder would be required to comply with the city’s erosion control ordinance and provide a basic grading plan. He added that no storm water detention would be required unless more than one acre of ground is disturbed. Ormsby commented that any construction on the property in question would likely not impact any of the neighbors.

Hunt stated that the property is currently zoned A-1 and is developable right now, reiterating that any discussions with regard to road construction, property rights, etc. are to be between the private property owners. He commented that a conforming use in the A-1 district could be built without rezoning the property, adding that the question of access would have to be worked out privately.

Bill Pender, the applicant, stated that he is planning to rezone and sell the lot, adding that he wants to protect the access easement for a future owner. He commented that he realizes there are some issues to be worked out with the homeowner’s association. He stated that in 2007 the Merritts asked permission to encroach into the easement for an addition to their home and were denied as the city recognized the easement as being necessary to provide future access.

On motion by Stoltenberg, seconded by Adam, that the request to rezone property generally located east of Crestview Heights Subdivision, A-1 to A-2, be recommended for approval subject to staff recommendations.

ALL AYES

Motion carried.

Rezoning/Final Plat

- 6. Case 22-048; Northwest corner of Hopewell Avenue and Criswell Street, A-1 Agricultural/Urban Reserve District to R-2 Single-Family Residence District, submitted by Our Lady of Lourdes Church and St. John Vianney Church.

Beswick reviewed the staff report.

Paul Ven Horst, 18921 Criswell Street, asked if there would be a retention pond on the property. Wennlund stated that it would be located on the southwest corner of the lot. Beswick added that the plan shown is a concept only and that a site development plan will be required which will include engineering plans and storm water calculations and will show the final locations of the buildings, parking lots, and detention basin locations based on the topography of the site. He stated that sanitary sewer would be installed running north-south on the west side of Lot 1. Ven Horst asked if the previous plan to extend the sewer along Hopewell Avenue to Criswell Street and then run it north had changed. Beswick confirmed this.

On motion by Ormsby, seconded by Gibson, that the request to rezone property located northwest of the corner of Hopewell Avenue and Criswell Street, A-1 to R-2, be recommended for approval subject to staff recommendations.

ROLL CALL ON MOTION

AYE: Gibson, Ormsby, Stoltenberg, Wennlund
NAY: None
ABSTAIN: Adam

Motion carried.

7. Case 22-049; Our Lady of Lourdes-St. John Vianney Addition, submitted by Our Lady of Lourdes Church and St. John Vianney Church.

Beswick reviewed the staff report.

Wennlund asked why the sanitary sewer easement does not run along the lot line between Lots 1 and 2. Morlok explained that it follows the natural grade of the property.

On motion by Stoltenberg, seconded by Gibson, that the final plat of Our Lady of Lourdes-St. John Vianney Addition be recommended for approval subject to staff recommendations.

ROLL CALL ON MOTION

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| AYE: | Gibson, Ormsby, Stoltenberg, Wennlund |
| NAY: | None |
| ABSTAIN: | Adam |

Motion carried.

Final Plat

8. Case 22-045; Forest Green, submitted by Chris McNamara/McNamara Construction.

Beswick reviewed the staff report.

Adam asked if the intention is to build a roundabout at the intersection of Forest Grove Drive and Criswell Street. Morlok stated that it is still to be determined but that there will be additional traffic control there given the growth that is occurring in the area.

Stoltenberg asked how Pelican Street would line up with the church and school development to the south. Morlok explained that while it will likely be unneeded, the city would like to preserve the possibility of a connection through the property. Hunt added that in case there is a change in the way the church decides to use and develop the site or if it is sold at some point in the future, the connection would be available.

On motion by Adam, seconded by Ormsby, that the final plat of Forest Green be recommended for approval subject to staff recommendations.

ALL AYES

Motion carried.

9. Case 22-046; Forest Grove Crossing Sixth Addition, submitted by Youssi Investments of Iowa, LLC.

Beck reviewed the staff report. Hunt commented that staff had worked with the applicant to ensure that the pattern of development is consistent with the other subdivisions in the area that were included in this preliminary plat.

Wennlund asked if a buffer is required between the single-family lots and the north side of the commercial lot. Beck stated that once a use is identified, he will match it to a traditional zoning district to determine the required buffer. Hunt added that it was logical to combine the two commercial lots as shown on the preliminary plat into one larger lot to provide enough space for the required buffer.

Ormsby asked what type of business would be allowed to be located on Lot 34. Beck explained that there is a permitted use table for the UMI district in the ordinance. Hunt commented that a site development plan will be required regardless of the future use.

On motion by Ormsby, seconded by Adam, that the final plat of Forest Grove Crossing Sixth Addition be recommended for approval subject to staff recommendations.

ALL AYES

Motion carried.

Rezoning

10. Case 22-050; 3618 Middle Road, A-1 Agricultural/Urban Reserve District to C-2 Community Commercial District, submitted by Emery Construction Group, Inc./Jack Laud.

Beck reviewed the staff report.

Ormsby asked for clarification of the changes that would be made to the entrance on Middle Road. Beck explained that the resolution approving the site development plan for Dunkin' located to the west of this lot included a condition that the right-in/right-out island would be removed at such time as access was granted to Lot 5. He added that the entrance will be shared between the two lots and would provide full access. Morlok explained that because of the narrowness of the lots, there was not enough space for a full access entrance for Lot 4 at the time it was developed.

On motion by Adam, seconded by Stoltenberg, that the request to rezone 3618 Middle Road, A-1 to C-2, be recommended for approval subject to staff recommendations.

ALL AYES

Motion carried.

Site Development Plan

11. Case 22-051; 1801 Kimberly Road, submitted by Emery Construction Group, Inc./Jack Laud.

Beck reviewed the staff report.

Wennlund asked if the business would include washing machines and dryers or if it would be for laundry drop-off only. Jack Laud, the applicant, explained that there would be approximately 17 washing machines and 20 dryers in addition to a drop-off facility and will be managed by an attendant.

A brief discussion was held regarding the materials that will be used for exterior of the building.

On motion by Ormsby, seconded by Stoltenberg, that a site development plan for 1801 Kimberly Road be recommended for approval subject to staff recommendations.

ALL AYES

Motion carried.

Final Plat/Site Development Plan

12. Case 22-014; Devil's Bluff, submitted by David Kempen.

Beswick reviewed the staff report. Hunt added that the city-owned property that provided access to a lift station that no longer exists has been vacated and conveyed to the owner of Lot 1 of Devil's Bluff subdivision. He added that all of the necessary easements will be preserved.

Adam asked if the traffic study had recommended a turn lane into the property for northbound traffic. Morlok explained that because there are good sight lines from the south and that there would be plenty of time for a driver to maneuver around a left-turning vehicle, a turn lane from the south would not be necessary.

Patrick Leen, 1497 Berryfield Court, stated that he believes that there will be a turning problem given the increase in traffic.

Rob Pearson, 3405 Oakory Lane, expressed concern about traffic safety along the Devils Glen Road corridor once the development is complete.

Rick Kuebler, 1304 Devils Glen Road, stated that he believes that the development is too dense for the property and that it will be detrimental to the environment. He suggested that the city reassess how much of the property is actually developable.

Julie Pearson, 3405 Oakory Lane, expressed concern for the safety of pedestrians who will be accessing the bike path and park entrance from several different directions, adding that there is the potential for serious accidents. She stated that she believes that the construction will have a negative impact on the wildlife in the area.

On motion by Adam, seconded by Stoltenberg, that the final plat of Devil's Bluff be recommended for approval subject to staff recommendations.

ALL AYES

Motion carried.

13. Case 22-029 1200 Devils Glen Road, submitted by David Kempen.

Beswick reviewed the staff report. He added that the building separation between the townhome structures and the two easternmost apartment buildings will need to be revised to show a 15-foot and 30-foot separation, respectively. He stated that given the sight lines and topography of the site, staff would recommend that any berm that might be included be very minimal in size. Beswick commented that 8 additional parking spaces are required to be added. Hunt reviewed the ordinance which details the berm requirements for collector and arterial streets. He added that because the applicant is being required to orient the 'front' of the townhome buildings toward Devils Glen Road, it does not seem logical to cover it with a berm. He stated that given the size of the site, he believes that applicant will be able to add the additional parking spaces with no problems.

Hunt stated that he had received some comments, questions, and correspondence from Rich Pribyl (1460 Plum Tree Road) and Rick and Janene Murphy (3892 Deertrail Road) who were unable to be in attendance. Beswick reviewed and addressed their correspondence and entered it into the record.

Pribyl expressed concern about the density of the project, the proposed 35-foot setback for the townhome buildings with no berm, the proposed size of the ADA parking spaces, possible access issues in the first apartment building, the plan to manage storm water runoff on the site, and the means of egress from the basement units. Said explained that once the life safety plan is submitted it will be reviewed taking into consideration various exceptions such as the sprinkler system.

A brief discussion was held regarding requirements for ADA parking spaces. Hunt explained that a site development plan is not the final document reviewed by staff, adding that the developer will submit construction plans and building plans that will then be reviewed for compliance with building and fire codes.

Wennlund asked for clarification of the method by which the height of the structures is measured. Beswick explained that the R-4 district allows 3-story structures measured from grade at the front of the building in the same way that the height of single-family homes is not measured from the back yard when there is a walkout basement. He commented that typically staff uses the number of stories rather than the allowable height when measuring buildings.

Wennlund commented that given the proximity of the site to the creek, it would likely be best to allow the runoff to flow into the creek. Morlok confirmed this, adding that the water quality component that is required includes a mix of biocells and a hydrodynamic separator manhole. He explained that given that the Duck Creek watershed is approximately 41,000 acres in size and that the site is a mile from the downstream end, the proposed 3 acres of hard surface is immaterial.

Steve Tometich, 1222 Devils Glen Road, asked if the allowable density of a project is calculated using the 10-acre size of the property or the buildable area. Hunt reminded the Commissioners that in order to secure the bike path access easement that created the trail, the owner of the property agreed to allow permanent access in return for the city's allowing the entirety of the 10-acre parcel to be used when calculating allowable density for any future development. Tometich commented that the property in question would never have been allowed to be built upon because it is located in the flood plain. Hunt explained that construction is allowed in a flood plain if the building is elevated 2 feet above the flood plain level.

Tometich asked if a retaining wall will be built next to his property that will create a lake in his yard. Chris Townsend, the applicant's engineer, explained that the developer is not allowed to impede the flow of water from an adjacent site. Morlok commented that there is a small retaining wall at the edge of the parking drive which will not impede any water.

Mike Galvin, 4032 Creek Hill Drive, expressed concern about the trash that he believes will be deposited on the property by renters who have no incentive to take care of things and that will destroy the whole area. Wennlund commented that the property has been used over the years as a junk yard and that there is now an opportunity for improvement.

Leen expressed concern that the Commissioners voted unanimously to recommend approval of the rezoning of the property. He stated that the development will increase surface flow of water. Morlok stated again that the site has an internal storm water system that includes biocells and a hydrodynamic separator. Leen expressed concern that no fence is proposed on the south side of the apartment buildings.

DeeDee Fowler, 3375 Oakory Lane, stated that anyone who uses the bike path will be affected by this development. She requested that the case be deferred until such time as more people can be notified of it. She expressed concern about noise from the dog park, traffic safety issues, increased crime, the environmental impact, litter, and loss of tranquility. Fowler stated that she would not be opposed to the original 1970s plan for 24 townhouse units and that she would prefer that the units be owned, not rented.

A brief discussion was held regarding the traffic study that was completed by the Iowa Department of Transportation.

Stoltenberg asked for clarification of the setbacks on the north side of the property. Beswick explained that the required side yard setback based on the height of the townhome building is 20 feet, adding that the townhome buildings will be much lower than the single-family house to the north. Wennlund asked if the apartment buildings have the same set back requirement. Beswick confirmed this.

A discussion was held regarding the ordinance related to required setbacks for multi-family developments. Stoltenberg asked why the townhome buildings are not required to be set back 50 feet given staff's recommendation that a berm not be required. Beswick explained that there are no specific design standards for multi-family developments in the ordinance. Hunt added that the ordinance does not require an either/or choice between a 50-foot setback or a 35-foot setback with a berm but rather a berm of any height that is acceptable to the Commissioners. He reiterated that staff feels that a berm could cause safety issues for motorists turning left from the development.

Gibson asked for a review of the items that need to be addressed on the site plan. Beswick explained that 8 additional parking spaces need to be provided and the distance between the townhome buildings and the apartment buildings needs to be increased, adding that whether or not a berm is required is at the Commission's discretion. Gibson commented that she believes that there are too many outstanding issues remaining and suggested that the case be deferred until the revisions can be made. Hunt stated that the Commission could postpone the case, recommend approval with conditions, or recommend denial. He commented that once a project reaches the permit review stage, nearly every site plan must be revised in some way because the level of detail is different. He explained that the commissioners and council members had indicated that they wanted a front yard aesthetic from the Devils Glen Road frontage and that as a part of those discussions the developer had requested that the townhome buildings be allowed to have a 35-foot setback with no berm. Adam commented that he does not see any impediments to proceeding to make a recommendation to the City Council now.

Dave Kempen, the applicant, explained that delaying a decision could have an effect on his financing for the project and could possibly make the project unviable.

Ormsby commented that she feels that the development is too dense for the area and does not benefit the neighborhood. Gibson stated that the property is already zoned R-4 but that many of the items that may improve the site plan have not been shown. Adam stated that the development meets the density requirements but that the issue relates to what the setback should be. He asked what the setback is for the townhouses on Devils Glen Road near 53rd Avenue. Morlok stated that it is 25 feet, adding that the requirement for a 50-foot setback with no berm or a 35-foot setback with a berm was rather an arbitrary decision based on one particular development. He added that since that ordinance was passed, negative impacts of berms have been seen.

A discussion was held regarding whether the case should be postponed until the necessary revisions have been made or if a recommendation should be made at this point. Stoltenberg commented that many times the Commission has made a recommendation with regard to a site development plan subject to conditions listed in the staff report.

Stoltenberg asked if the developer would prefer that the case be postponed or if he would like the commission to make a recommendation at this meeting with the possibility that it may be negative. He added that the City Council will make the final decision regarding the development. Kempen stated that he believes the issues that have been raised are minor, adding that had he been aware of them the site plan could have been updated. He added that the concept plan that was approved as part of the rezoning was based on a 35-foot setback. Wennlund commented that he had assumed at that time that there would be a tangible berm. He added that the other items are more procedural and that he has confidence that they can be addressed by staff and the engineer. He stated that he is generally in favor of the property's being developed and does not believe that it will have a significant impact on the quality of the bike path. He explained that a balance must be found between the developer's property rights and the ordinance requirements. Ormsby stated that there are several areas where it seems as though there is not quite enough space for the plan as designed, adding that it may need to be changed.

Chris Townsend, the applicant's engineer, stated that the site plan can be revised to show a 35-foot setback with a berm but that it would have to have breaks in it given the city's requirement that the front doors face Devils

Glen Road. He added that the parking spaces shown are larger than are required, adding that the 8 additional spaces can easily be added by reducing the width of the spaces. He explained that the building separation issue may be more difficult but that he is confident that it can be resolved.

Adam stated that he does not believe that any of the issues yet to be resolved are out of the ordinary course of site plan review. Morlok added that staff would require that all of these issues must be resolved prior to submittal to the City Council for their approval.

On motion by Stoltenberg, seconded by Adam, that a site development plan for 1200 Devils Glen Road be recommended for approval subject to staff recommendations and the requirement that the townhome and apartment buildings be separated properly and that 8 additional parking spaces be added.

Stoltenberg stated that oftentimes a development seems as though it is too dense but after construction looks nice. He commented that he shares the concerns expressed regarding traffic safety but indicated that at some point motorists need to take responsibility for the way they drive. He added that his recollection is that the City Council made the suggestions for the newer requirement for berms or larger setbacks. Stoltenberg stated that he believes that a 35-foot setback with front doors facing Devils Glen Road would be more aesthetically-pleasing than having a berm.

Ormsby stated that she would prefer that the case be deferred until the issues can be resolved. Gibson concurred. Adam commented that staff has indicated that it isn't out of the ordinary for there to be this number of unresolved issues.

Wennlund asked if a vote is taken on the motion on the table and it fails it would mean that the opportunity to postpone the case is lost. Hunt stated that he believes that is the case but that the motion could be rescinded.

Wennlund commented that he would appreciate the opportunity for the members to look at the site plan one more time after the revisions are made. He added that given the shortage of multi-family housing in this market, the proposed product fits that need. Wennlund stated that he is offended at the concept that a renter is more likely to be a criminal or that he or she would throw their trash on the property. He added that he is inclined to vote against the current motion but that he would not say that his vote would be the same once the revisions are made.

Hunt stated that if the motion on the table is rescinded, the Commission would have the option of scheduling a special meeting which would lessen the delay for the developer. Kempen asked if this would change the date of the council meeting. Hunt explained that the site plan would be presented at the August 16 council meeting rather than waiting for the September meeting. He added that the remainder of the cases on the agenda would be presented to council at their August 2 meeting.

Stoltenberg rescinded the motion on the table. Adam concurred.

On motion by Stoltenberg, seconded by Ormsby, that a site development plan for 1200 Devils Glen Road be postponed and that an interim meeting be scheduled.

ALL AYES

Motion carried.

Other

14. Commission Update.

There being no further business, the meeting adjourned at approximately 9:35 p.m.

These minutes approved

Taylor Beswick, City Planner

Greg Beck, City Planner