

SHERBURNE COUNTY
PLANNING ADVISORY COMMISSION MEETING
MINUTES
FEBRUARY 21, 2019

The Sherburne County Planning Advisory Commission met in the Jury Assembly Room at the Sherburne County Government Center in Elk River, Minnesota on February 21, 2019 to hold a public hearing for all unincorporated areas of Sherburne County in which the County has zoning and land use authority, along with the Township of Big Lake, the Township of Baldwin and the Township of Livonia, to consider the evening's agenda and other planning and zoning related topics.

Lawrence called the meeting to order and advised that the Planning Advisory Commission is a recommending body to the County Board of Commissioners which will hear the agenda items on March 12, 2019 in the Emergency Operations Room (EOC Room) at 9:30 AM. He also went over the meeting procedures and noted that the hearings are being recorded.

Roll call was taken. The following members were present: Chairperson Bryan Lawrence, Baldwin Township; Roger Nelson, Blue Hill Township; Lila Spencer, Livonia Township; County Board Commissioner Raeanne Danielowski; Bryan Adams, Orrock Township; Vice-Chair Bruce Aubol, Big Lake Township; Terrence Vandereyk, Clear Lake Township; Jeff Schlingmann, Haven Township;

Not present: Stephen Demeules, Palmer Township; David Jehoich, Santiago Township

Staff present: Assistant Zoning Administrator Lynn Waytashek, Planner Marc Schneider, Zoning Specialist Mitch Glines, Secretary Judy Weber.

Adams moved and Aubol seconded to approve the minutes of the January 17, 2019 Public Hearing. The motion carried.

Schlingmann moved and Aubol seconded to approve the agenda for the February 21, 2019 public hearing. The motion carried.

Agenda:

1. **SELG FARM LLC:** Requesting Residential Standard Final Plat approval of "Oak Savanna at SELG Farm" consisting of six (6) lots.
2. **FAMILY ONE HOMES INC:** Request Residential Standard Final Plat approval of "Misty Hollow" consisting of ten (10) lots.
3. **NATHAN C. MUELLER:** Request a Conditional Use Permit (C.U.P.) for Single Family Housing in the Industrial District.
4. **FASTSUN 21 LLC:** (Property owner is Aggregate Industries-North Central) Request for an Interim Use Permit (I.U.P.) to construct and operate a 1 MW Solar Farm.
5. **SHERBURNE COMMUNITY SOLAR 1 LLC:** (Property owner is Aggregate Industries-North Central) Request for an Interim Use Permit (I.U.P.) to construct and operate a 1 MW Solar Farm.

6:00 A meeting was held at the request of **SELG FARM LLC** for Residential Standard Final Plat approval of “Oak Savanna at SELG Farm” consisting of six (6) lots (*no public hearing required*)
PID # 10-311-2300 Legal Description: SW1/4 of NW1/4 & W1/2 of SW1/4 Sec 11, Twp 33, Rge 28 (full legal on file) Big Lake Township 117.96 acres General Rural District and within the Natural Environment Shoreland District of Hidden Lake 710094 and of Bucks Lake 710093

Mitch Glines presented the request to the Planning Commission including the Board Packet Attachments, Comments and Recommended Conditions if approved.

BOARD PACKET ATTACHMENTS:

- A. Final Plat (date stamped Jan 4, 2019)
- B. Final Grading and Drainage Plan (date stamped Jan 4, 2019)

BIG LAKE TOWNSHIP COMMENTS: (received on Jan 28, 2019) Town Board has no additional comments for the Final Plat presented and recommends approval.

Ross Abel (Landform), Big Lake Township Engineer (January 28, 2019) We recommend approval of the Grading & Drainage Plan submitted to the County on January 4, 2019.

OTHER DEPARTMENT/AGENCY COMMENTS:

David Roedel, Deputy County Engineer (January 10, 2019) As discussed, we are good with the previous recommendations and requirements from Planning Commission and Board meeting.

Russ Heiling, County Surveyor (January 8, 2019) – Staff and I do not have any additional comments at this time.

PLANNING & ZONING STAFF COMMENTS:

1. The proposed project consists of 6 new lots. Four five (5) acre lots and two eight (8) acre lots on a 39.4+/- acre parcel.
2. No new roads will be constructed. Two driveways will be taken from County Road 81 and two shared driveways (two driveways for 4 lots) will access from 217th Ave NW (Township Road).
3. There are no existing houses, wells or septic systems on the property.

Brian Adams asked what happened to the recommendation by the County Highway Department to remove the trees from the ROW line on the Preliminary Plat.

Glines reminded that was a condition on the Preliminary Plat where the Planning Commission had asked it to be removed. This Final Plat does not include the condition.

Lawrence recognized the representative of the plat.

Bobbi Hersh expressed her thankfulness to the zoning staff for their help and patience with this project.

Aubol moved and Adams seconded to recommend approval of the request for Residential Standard Final Plat approval of "Oak Savanna at SELG Farm" consisting of six (6) lots and with the following seven (7) conditions:

- 1. Park dedication fees for six (6) lots at \$4,800. Fees are paid to Public Works prior to them signing the final plat mylars.*
- 2. Must obtain driveway access from Sherburne County Public Works prior to driveway construction on the two lots on County Road 81.*
- 3. The portion of PID # 10-311-2300 south of 217th Ave NW will be separated to create a total of 78+/- acres. This must be recorded at the same time as the final plat of "Oak Savanna at Selg Farm."*
- 4. In response to the MN State Historic Preservation Office, at a minimum, the developer should provide all contractors with information on what to look for and requirements if archeological artifacts or human remains are found during the install of driveways, homes or septic system construction. If anyone discovers an ancient cemetery or artifacts, they are required by law to immediately stop work and call local law enforcement first and the state archaeologist second. Information can be found at: <https://mn.gov/admin/archaeologist/thepublic/resources/faqs/>*
- 5. The developer shall elect to bring the field access on Lot 5 up to County standards and obtain an access permit or shall remove the field access prior to submitting mylars for signature by the County Attorney.*
- 6. The developer shall enter into a Developer's Agreement with the County Attorney's Office, if needed.*
- 7. Final plat must be recorded within one (1) year of County Board approval.*

The motion carried unanimously and is recommended to the County Board for approval.

6:05 PM A meeting was held at the request of **FAMILY ONE HOMES INC** for Residential Standard Final Plat approval of "Misty Hollow" consisting of ten (10) lots (*no public hearing required*) PID # 01-032-2200 Legal Description: NW1/4 of NW1/4 Sec 32, Twp 35, Rge 26 (full legal on file) Baldwin Township 41.96 acres General Rural District and within the Natural Environment Shoreland District of Goose Lake

Marc Schneider presented the request to the Commissioners including the Board Packet Attachments, Comments and Recommended Conditions.

BOARD PACKET ATTACHMENTS:

- A. Final Plat (date stamped 01/09/2019)
- B. Final Grading & Drainage Plan (dated stamped 12/13/2018, Plan Revision date 12/05/2018)

BALDWIN TOWNSHIP COMMENTS: (received 02/07/2019) Approved contingent upon entering into Developer's Agreement with Township.

Nicholas A. Anderson, Township Engineer (received 01/30/2019)

OTHER DEPARTMENT/AGENCY COMMENTS:

Russ Heiling, County Surveyor (12/19/2018):

We do not have any additional concerns at this time. As always, we will require a final plat review and a final plat payment along with any additional fees before approval for recording.

Deputy County Engineer, David Roedel (12/20/2018)

Comments do not change from the original preliminary plat. (*Comments provided below from Aug 23, 2018*)

1. As required, Right of Way is identified at 50' on the Preliminary Plat. Coordinate with Sherburne County Public Works Survey department regarding their comments related to the Centerline alignment.
2. Access location has been previously coordinated with County and developer and is acceptable.
3. Trees shall be cleared to the Right of Way line.
4. Fencing and other obstacles, including culverts, existing driveways and field approaches shall be removed from the Right of Way.

PLANNING & ZONING STAFF COMMENTS:

County is ready to issue the Stormwater and Erosion Control Permit once final plat is approved.

Schneider added that all the Township comments were not listed however, Baldwin Township did recommend approval with the condition that the developer enter into a Township Developer's Agreement.

Greg Wersal, Family One Homes, came forward to acknowledge that he is fully aware of all the requirements and recommended conditions, including the Township Developers Agreement.

Aubol moved and Spencer seconded to recommend approval of the request for Residential Standard Final Plat approval of "Misty Hollow" consisting of ten (10) lots and with the following six (6) recommended conditions:

- 1. Park dedication fees in the amount of \$8,000 will be paid to the Public Works Department when the final plat is signed.*
- 2. Developer's Agreement must be signed with the County Attorney's Office, if needed.*
- 3. The plat shall be recorded in the Office of the County Recorder/Register of Titles, subject to recording fees, within one year of County Board approval of Final Plat.*
- 4. An NPDES permit must be submitted to the Zoning Department prior to being scheduled for final plat approval. (Completed)*
- 5. A Stormwater and Erosion Control Permit application is required to be submitted to the Zoning Department prior to being scheduled for final plat approval. No construction can be started prior to final plat approval. (Completed)*
- 6. Developer has one (1) year to record the plat per Section 4, Subd. 3 of the Subdivision Ordinance.*

The motion carried unanimously and is recommended to the County Board for approval.

6:10 PM A public hearing was held at the request of **NATHAN C. MUELLER** for a Conditional Use Permit (C.U.P.) for Single Family Housing in the Industrial District and Revocation of the existing C.U.P. for Single Family Housing in the Industrial District (# 56930 Doc # 843872). PID# 25-016-2000 Property address: 3866 31st St SE, St. Cloud, Mn Legal Description: Th part of the NW1/4 of Sec 16, Twp 35, Rge 30 (full legal on file) Haven Township 15.5 acres Industrial District

Glines presented the request to the Commissioners including the Board Packet Attachments, comments and recommended conditions if approved.

BOARD PACKET ATTACHMENTS:

- A. Aerial Photo
- B. Applicants Explanation of Request
- C. Applicants Intended use of Historic House
- D. Building Layout (1-2)
- E. Site Photos (1-2)

HAVEN TOWNSHIP COMMENTS: The Haven Township Board made a motion to give a positive comment for the request of a CUP for single family housing in the Industrial District with a condition that the existing CUP (yellow house) for single family housing in the Industrial District is revoked. No two residences on the property. To stick with a 6 month timeline to either upgrade the yellow house or remove is completely.

OTHER DEPARTMENT/AGENCY COMMENTS:

David Roedel, Deputy County Engineer: Access to CSAH 3 would remain off of 31st Street SE.

Sauk Rapids Fire Chief: No comments received.

County Attorney Office: No comments received.

City of St. Cloud: No comments received.

St. Cloud Airport: No comments received.

PLANNING & ZONING STAFF COMMENTS:

1. In 2017, the applicant received a CUP for Single Family Housing in an Industrial District at this property. There is an existing historic house on the property (built around 1900). It was to be remodeled and used as the main residence. The historic house required more work than the applicant anticipated and the applicant started construction in the new commercial pole building to use as living area. A portion of the roof is missing on the historic house and may be considered a hazardous building. The applicant is now requesting for the current CUP on the historic house to be revoked and a new CUP be approved to allow living area in a portion of the existing 60' x 99' commercial pole building (5,940 sq. ft.) as a single family residence.
2. The applicant has stated that he would like to use the historic house on the property for business purposes. If so, the historic house must comply with applicable commercial building code.
3. The historic house will have to have the roof fixed or the house razed from the property within six (6) months of the CUP approval to allow the residence in the commercial pole building.
4. A septic compliance was done on the historic house in 2016 and the septic was deemed compliant.

5. In 2017, the applicant received an Interim Use Permit (IUP) for an Automobile Mechanical and/or Body Repair Shop. The applicant owns SWATMOD that specializes in custom vehicle modifications and upgrades primarily on police and SWAT vehicles.
6. In 2017, Sherburne County received a building permit to construct the new commercial pole building for the business. At that time, the building did not show any rooms in the building and was proposed as a shell only. The applicant was to submit building plans at a later date to do improvements to the interior of the building. The County never received an application for the interior improvements to the building.
7. In 2018, Sherburne County Zoning received a call that the property owner was constructing "living space" in the new pole building without any permits. Upon inspection of the building it was confirmed that what seemed to be living area was being constructed in the building and the entire interior had been completed or was under construction without any proper permits.
8. The living area is proposed to be on the first and second level of the pole building with dimensions of 24' x 60' per level.
9. A new holding tank was installed in 2017 to service the existing commercial pole building. The holding tank was upgraded in 2018 to include a drainfield. The septic system for the commercial pole building was approved by Sherburne County Zoning Department.
10. Chuck Prom, a certified septic designer, confirmed on 1-28-2019 that the existing septic system servicing the commercial pole building will support at least a two bedroom living area (proposed layout shows 1 bedroom) and a bathroom in the shop area.
11. The County received letters of support from Ron Nierenhausen, Elk River Chief of Police, and Martin Sayre, St. Cloud SWAT Executive Officer. Copies of letters are available upon request.
12. Applicant has provided the County copies of petitions signed by sixteen (16) neighbors that are in support of the proposed CUP. Copies of signed petitions are available upon request.

Lawrence said as he reviewed this application, there was a condition that the older house was to be torn down if it were not restored within six months.

Glines said that condition was recommended by Haven Township.

Waytashek added that if it were repaired, it could not be used for living quarters because he cannot have two residences on one property. She said the applicant had mentioned that he may want to use it for business purposes in the future. Waytashek suggested that the applicant may want to clarify that.

Schlingmann said he was not aware that this is an actual designated historic house.

Glines said that was correct, they were simply trying to differentiate between the house and the newer building and going forward it can be called the old yellow house.

Lawrence called the applicant to come forward.

Nathan Mueller, 3866 31st St SE, St. Cloud, Mn came forward to address the Board. He said he will answer any questions.

Schlingmann asked if this C.U.P. is granted, and you improve the old yellow house, what type of business were you thinking of bringing in.

Mueller answered that he really has not had time to put much thought into it because he just trying to focus on his current new building and business. He said when he bought the property, he liked the looks of the old house, but he hasn't settled on an idea of what exactly to use if for. Mueller said he would like to fix the damaged roof structure and close it up for now. He said he absolutely does not have any intentions to live in it or to rent it out and said he would just like to preserve it so it is not a hazardous situation.

Schlingmann said the recommendation was either to have a business in there within six months or tear it down.

Mueller answered that he understood after working with the zoning staff, he needs to make it so it is not a hazardous site for now, and if he chose to do something with it in the future he would come forward with a new business request to see what type of permit he would need.

Glines said that was correct. It would involve checking on what was allowed in the Industrial District and the old house would have to be brought up to the commercial building code.

Aubol added, but it cannot be used for residential purposes.

Glines said that is correct.

Lawrence asked if in a year from now, what would happen if Mueller wanted to switch his residence back to the old yellow house.

Glines replied he would have to repeat this process again by revoking this permit and then removing any livable area from the new building.

Lawrence opened the public hearing.

Martin Sayre, 5707 16th Ave SE, St. Cloud came forward. He said he is a resident of Haven Township, and he is also the executive officer for a SWAT Team in St. Cloud. He said he is not concerned about the old house on the property, but he is concerned with the value that this business brings for local, regional, state-wide and now national law enforcement agencies. He said it is critical to have the security of someone living on the property, especially inside the building. Sayre reiterated what a viable business this has become for law enforcement.

There were no more comments.

Schlingmann moved and Adams seconded to close the public hearing. The public hearing was closed.

Schlingmann asked staff, if Mr. Mueller is granted this CUP and fixes the house up, can he sublet that to another type of business that is permitted within the Industrial District?

Waytashek answered that yes, he could, if it is not used for residential quarters.

Schlingmann moved and Adams seconded to recommend approval of the request for a Conditional Use Permit (C.U.P.) for Single Family Housing in the Industrial District (new building) and Revocation of the existing C.U.P. for Single Family Housing in the Industrial District (Old house # 56930 Doc # 843872) with the following five (5) recommended conditions and with the following findings of fact:

Conditions:

- 1. New CUP (new building) will replace the existing CUP (old house). The existing CUP for a Single Family House in the Industrial District (# 56930 Doc # 843872) will be revoked when the new CUP is recorded.*
- 2. Must apply for an after- the-fact building permit for the construction done in the pole building without a permit.*
- 3. The existing old house on the property must have the roof repaired or the house must be razed from the property within six (6) months from the approval of this CUP request. If removed, applicant must obtain a razing permit from the Zoning Office and provide the County with receipts of proper disposal of the structure, abandon the septic per MPCA guidelines and seal the well per the MN Department of Health guidelines. If repaired, the applicant must submit structural plans with the building permit application to repair the roof. If the old house is to be used for business purposes, then building plans must be prepared by an architect or engineer to certify the structure complies with MN Commercial Building Code and the MN Accessibility Code.*
- 4. Before the old house can be used for business purposes, the applicant must receive a certificate of occupancy from the Sherburne County Building Official and Local Fire Warden.*
- 5. Existing old house cannot be used as a single-family residence. It may not have living quarters in it.*

Findings of Fact:

No Conditional Use Permit shall be approved or recommended for approval by the County Planning Commission unless said Commission shall find (Schlingmann made the following findings):

- 1. That the Conditional Use will not be injurious to the use and enjoyment of other property in the immediate vicinity for the purposes already permitted, nor substantially diminish and impair property values within the immediate vicinity.
The areas around this property are primarily industrial. The requested use is within an industrial building and will be hidden from adjacent properties.*
- 2. That the establishment of the Conditional Use will not impede the normal and orderly development and improvement of surrounding vacant property for uses predominant in the area.
Due to the nature of the business and the requirement for security, it meets the requirements of that particular industry within the Industrial District.*
- 3. That adequate utilities, access roads, drainage and other necessary facilities have been or are being provided.*

The facility as it stands now can be handled with a septic system and well. It does have adequate access to a 10-ton township road.

4. That adequate measures have been or will be taken to provide sufficient off-street parking and loading space to serve the proposed use.

The applicant has fifteen acres that is sufficient for parking space to accommodate the proposed residential use.

5. That adequate measures have been or will be taken to prevent or control offensive odor, fumes, dust, noise and vibration, so that none of these will constitute a nuisance, and to control lighted signs and other lights in such a manner that no disturbance to neighboring properties will result.

All the fabrication is done within the building and is consistent with industrial like uses. The residential use will not cause any more disturbance to the neighboring properties.

The motion carried unanimously and is recommended to the County Board for approval.

6:25 PM A public hearing was held at the request of **FASTSUN 21 LLC** (Property owner is Aggregate Industries-North Central) for an Interim Use Permit (I.U.P.) to construct and operate a 1 MW Solar Farm PID # 25-029-2100 Legal Description: NW1/4 of NW1/4 Sec 29, Twp 35, Rge 30 (full legal on file) Haven Township 40 acres Agricultural District

Lynn Waytashek presented the request to the Planning Commission including the Board Packet Attachments, Comments and Recommended Conditions.

BOARD'S PACKET ATTACHMENTS:

- A. Aerial Photo
- B. Site Layout (date stamped 2-21-2019)
- C. Project Description Plan (date stamped 9-17-2018)
- D. Decommissioning Plan (date stamped 9-17-2018)

HAVEN TOWNSHIP COMMENTS: Positive comment.

OTHER DEPARTMENT/AGENCY COMMENTS:

David Roedel, Deputy County Engineer (Oct 16, 2018): Access to the proposed solar farm shall be via the existing right turn lane located on CSAH 8 and 49th St SE. An Access Permit is required from the Public Works Dept to ensure compliance with County Standards.

PLANNING & ZONING STAFF COMMENTS:

1. There is an existing 5 MW solar farm on this property. Fastsun 21 LLC is proposing to place a 1 MW solar farm east of the existing solar farm.
2. The next agenda item tonight is another 1MW solar farm is being proposed on this same property north of this proposed solar farm.
3. There are 15 existing utility poles for the existing 5MW solar farm. They are proposing to add 3 additional poles for this solar farm.
4. The access road location will require the applicant to relocate the existing fence for the 5MW solar farm to the west, north closer to the existing garden. Their stated that they do not intend to remove any existing trees.
5. They are going to be using the same access point. They have provided the Zoning Department with "Assignment, Assumption and First Amendment or Land Lease Option Agreement (Solar Farm) and Estoppel." The driveway easement doesn't go into effect until they exercise the option to pick up the lease. Zoning will require that they establish proof of access before any building permit is issued or ground disturbing activities are undertaken.

Waytashek described the locations of the two solar farms being presented his evening. She pointed out that this Fatsun 21 LLC site is south of the Sherburne Community Solar 1 LLC site, but they are located on the same parcel. They will have a total 2 MW, but under two separate company names. She said she received new drawings yesterday and new drawings again today for the proposals and noted that Staff has a couple of concerns. Waytashek said the applicant notified her yesterday that

they may want to top off 10' to 20' from the existing trees along the southern line because of shadows from the sun. She said she didn't believe she had ever received a request like that before.

Waytashek also noted that because there is an existing solar farm to the west, Staff did not feel they need a tree buffer along the west line between the two solar farms. Along the east property line, the applicant shall have two rows of 6' tall trees, 16' staggered spacing.

Waytashek noted on the overhead projector screen, the south side of the proposed solar farm. She pointed out along the southeast portion of the property there are some big gaps between the existing trees and she said at a minimum, new trees will need to be planted there. On the revised drawing, notes were added that stated "No proposed changes to the trees on the south side except such changes required to avoid shading. If necessary removed trees will be replaced with the new trees for screening." Waytashek said she would like the Planning Commission to discuss whether they wanted those existing trees removed or whether they can top them off. If they are allowed to remove them, would they be required to replace the entire southern line. She said she felt there are not enough trees especially on the southeastern portion.

Lawrence asked if any of the trees on the solar farm to the west were topped off.

Waytashek said she did not believe they were, and she doesn't recall that it was ever brought up.

Adams asked what types of trees they are.

Waytashek said she thought they were Elm Trees and suggested asking the applicant that question.

Waytashek also stated that they will utilize the existing access that was built with the turn lane for accessing the first solar farm. Both proposed solar farms will utilize this same access.

Schlingmann noted that the two proposed farms have fixed panels oriented to the south. He said with the larger 5 MW solar farm, the panels are oriented to the west and they also tilt and follow the sun, so there really isn't an issue with tree shadowing. Schlingmann said it is hard to compare a 1 MW with a 5 MW because they are two different layouts of the panels.

Lawrence invited the applicant to come forward to address some of the questions being raised.

Joe Tierney, 315 Manitoba Ave So, Wayzata, Mn came forward. He said topping of the trees was only one of their recommendations, and they would prefer to remove the trees and replace them with new, but they didn't know if the Board thought that would be too invasive. Tierney explained the site to the west is a single axis tracking system, but more importantly, the panels are set back 150' from that tree line so the shadowing is not a problem. Since this site is more constrained for space, they had to nestle their system further to the south. Tierney said the trees are Elm and some are between 19' and 30' tall.

Waytashek pointed out that many of those trees, especially on the western side, are on the neighbor's property.

Tierney replied that they have a relationship with their neighbors, but obviously they cannot do anything without their consent.

Lawrence asked if they are using fixed panels and if so, why not use rotating.

Tierney replied they are fixed panels because you can fit into a small confined space with them. He also noted that they ran into an irrigation pivot in the area which caused even more constrictions. Because they will have a total of 2 megawatts, there is just not enough space to accommodate a tracker because they are about 30% larger.

Lawrence said he recalled something in the past that limited the number of megawatts a company can have.

Tierney explained it is the common ownership rule or co-location, within the tariff. He said they do not have any affiliation with the owner of the existing 5 MW project.

Lawrence asked if they get a benefit from using the same transition lines coming off the site.

Tierney said they are using the same Excel-owned feeder.

Tierney explained they are also proposing to use a different species of trees for the screening. He said their landscaping company recommended using the Eastern Red Cedar tree and it was referenced in the site plan that was dated in January. He displayed a picture of the tree.

Waytashek stated that the ordinance only requires that an evergreen be used.

Adams noted at one of their Township meetings, the SWCD had recommended they try to avoid the spruce trees due to climate change issues.

Tierney said he wanted to bring up two other issues that he would like the Board to consider. He walked up to the site plan and pointed out where they would like to have a temporary construction access that could go right to the site. This would eliminate the two big turns where the permanent access comes in.

Tierney said the second issue has to do with the way the sites are broken down right now. They are two 1MW facilities owned by independent companies/operators. He said the real-estate is structured where the first investor may choose to buy or operate a certain side of the property, but from a permitting perspective, they are boxing themselves in to a certain location. He asked if the Planning Commission would care if they switched projects. For instance, if an investor was the first one in and

wanted to do the southern project, could they do the Fastsun project on the north parcel instead. He said he hadn't brought this up to staff yet, and it seemed like it would be non-controversial.

Tierney also explained they will have two separate leases. It will be set up where one lease will start and then it will be broken up into two, which is what they are in the process of doing while going through this permitting stage. He said applying for two independent applications has boxed them in.

Aubol expressed concern with the easement where one solar farm will have to cross in front of the other one.

Tierney pointed out on the map, the full space that is a non-exclusive easement. He said both companies are going to have an identical non-exclusive easement to access this area.

Aubol said they are separate companies, and hopefully they are good neighbors who can decide who will maintain the road, split the costs, etc.

Tierney explained that these easements will have rules.

Aubol said, then it will be between the landowners, and will not be the County's problem.

Tierney said that is correct.

Schlingmann asked why we care whether the south or the north project is sold or started at a certain time or called by a certain name. The property is still owned by Aggregate Industry, a 40-acre property that is split up by two private leases.

Lawrence said they are two different projects, so there must be a difference between them.

Waytashek responded that the solar farm plans are site specific to a specific company name. She said it has really been a challenge because they are constantly being sold, and the new owners do not know what the rules or the conditions of the project are. She said they have been having a difficult time keeping track of them and they cannot just be flipped around and because the Attorney's Office has all the legal contracts that are very specific to the name, the site and what the project conditions are.

Lawrence said he didn't know why it would matter to us which one you develop first or lease first or sell first, other than that they have access and they are kept separate.

Tierney asked if the Planning and Zoning would have the administrative authority to allow him to switch them around.

Waytashek said the answer to that is “no”. FastSun LLC 21 has to be the one located on the south and Sherburne Solar One has to be the one located on the north, just the way the applications came in, unless you wanted to come back to re-apply and start the process over again.

Tierney acknowledged he understood.

Tierney said the two critical issues are being able to use the Eastern Red Cedar verses the Blue Spruce and the ability to make sure that the tree line does not cause shading. He added they would replace any trees they had to take down or they would be willing to top the tall existing trees.

Tierney said he would still like to discuss further the temporary access.

VanderEyke suggested that the Highway Department may want to speak to the temporary construction access.

Lawrence asked if they used the proposed temporary access for the first phase.

Tierney replied no, they used the current access, but they did not have this road that wound its way to the south.

Lawrence said he didn’t think they had the authority to grant the temporary access.

Tierney asked if they could add in the conditions that he be allowed to get the proper authority from the Highway Department.

Waytashek pointed out that David Roedel, the Assistant County Engineer, is in the audience.

Lawrence asked if Dave would come up and make a comment on this issue.

David Roedel, Assistant County Engineer, came forward. He said he knows there is a history on this project and believed at one time there was a discussion about the access being at the location that the applicant is requesting, but it was relocated further north on CSAH 8. He said he is most comfortable leaving it as, due to the spacing of the two entrances, and the fact that there is a lot of traffic moving at high speeds along this corridor. He said, just as stated in his comments, they would like the applicant to use the existing central access point, not the southerly access point. Roedel explained that there is an existing turn lane and trucks would be able to get out of the traffic and utilize that lane. He understood the request to go straight out, but he is not comfortable with the fact that there could be a conflict with other vehicles using CSAH 8 and the impact of the construction vehicles.

Watashek said she looked it up and she verified that the Eastern Red Cedar is considered a coniferous evergreen tree.

Tierney stated that he felt this entire dialog could be for both projects.

Lawrence opened the public hearing.

There was no one wishing to come forward.

Schlingmann moved and Vandereyke seconded to close the public hearing. The motion carried, and the public hearing was closed.

Commissioner Danielowski stated she agreed with Waytashek's comments regarding the change in ownership. She said they had the same problems with solar gardens in the City of Big Lake.

Lawrence reminded that this Board has seen applications that changed their names and were required to go thru the entire application and public process a second time.

Waytashek stated that the application is written so that they cannot change the name of the company. She said she would also like some clarification on what the Board thinks about topping off the trees verses removing trees. She also noted that they need to fill in the eastern portion of the southern line with 6' tall coniferous trees because there are too many gaps.

Commissioner Danielowski commented that she felt that topping off trees never look good for the amount that would have to be topped off.

The Board agreed.

Adams referred to condition # 12 regarding the trees. He asked if we can require them to cut the trees down if they are not on their property. He said the only thing we can do is require them to add trees on the south side.

Lawrence added, or if the neighbor would allow them to take out trees and replace them with coniferous. He suggested this condition will need to be clarified.

Commissioner Danielowski reminded that the applicant indicated he had a relationship with the neighbor so maybe they could work something out.

Lawrence said, either way, it would require us to make a motion that tree screening would be continuous on the southern border.

Waytashek read condition # 12:

12. Must install 6-foot-tall coniferous trees along the eastern parcel line. The trees must be planted staggered in two (2) rows, in each row the trees may be planted no more than 16 feet apart. On

the west and south property lines, property owner may be permitted (at the discretion of the Planning Commission) to utilize the existing tree line. All trees along the border of the property, including the existing trees along the south border must be maintained and watered as necessary for the duration of the permit. Any dead trees must be replaced on a yearly basis.

Waytashek noted on the third sentence, “on the west and south property lines, property owner may be permitted at the discretion of the Planning Commission, to utilize the existing tree line.” She thought they could remove the word “west” because that line is between two solar farms. Waytashek said it should just be the south line and she didn’t believe there is an issue with the east side.

Adams stated they also need to decide on either cutting the trees down on his property on the south side and planting two rows of coniferous trees, or do we allow him to keep what he was there without trimming them.

Waytashek reminded, except on that eastern portion of the southern line, it is very thin with very few trees. She suggested trees would have to be planted there also. Waytashek said the conditions must be specific because it becomes difficult if there is a disagreement when you are at the actual construction stage.

Lawrence suggested we allow some latitude on # 12. If they chose to remove the trees they must meet the spacing and number of trees on the southern border and if they chose not to remove them, they must fill in, because the Board is not open to topping them off, they would rather see them removed.

Lawrence suggested adding the following to # 12 that will allow the applicant to choose to either fill in the gaps of the tree line spaces as required by the Ordinance with the Eastern Red Cedar Trees or to eliminate all trees on their property, and re-plant with Red Cedar Trees to meet the Ordinance requirements. The Board is not open to topping them off. Also, eliminate the tree requirement on the west side.

Tierney asked if he needed to remove all the trees, or can he just remove the tall ones and fill in those gaps.

Lawrence said he was okay with filling in the gaps.

Waytashek asked that they add “This shall all be done at the discretion of the Planning and Zoning Staff.”

Commissioner Danielowski asked if the applicant should have an agreement with the neighbor to maintain the trees.

Lawrence commented that even if the neighbor decided to cut down all their trees, the applicant would be responsible for filling in those gaps.

Waytashek said that was correct.

Adams moved and Schlingmann seconded to recommend approval of the request for an Interim Use Permit (I.U.P.) issued to FastSun LLC 21 to construct and operate a 1 MW Solar Farm PID # 25-029-2100 Legal Description: NW1/4 of NW1/4 Sec 29, Twp 35, Rge 30 (full legal on file) Haven Township 40 acres Agricultural District with the following eighteen (18) conditions and with the amended wording to condition # 12 and with the following findings of fact:

Conditions:

- 1. Building permit required for on-site supply structure if over 200 sq ft in size.*
- 2. Building permit required for installation of solar panels with engineered plans submitted.*
- 3. If the required privacy fence around the perimeter of the facility exceeds 7 ft in height it will require a building permit with engineered plans.*
- 4. A Stormwater Erosion Control permit will be required from the County Zoning Dept prior to any grading on the property and prior to a building permit being issued.*
- 5. Must obtain an NPDES permit from the MPCA and provide a copy to the County Zoning Dept prior to commencing construction.*
- 6. Property owner shall ensure that MPCA day & night time noise standards are not exceeded at any time.*
- 7. Operational hours allowed during construction of the facility are Monday through Friday 7AM - 7PM.*
- 8. Decommissioning of solar panels and related facilities must occur in the event the IUP expires or is terminated, and/or the solar panels are not in use for twelve (12) consecutive months. Must follow the Decommissioning & Reclamation plan date stamped September 17, 2018.*
- 9. Prior to issuance of a building permit for the project, the applicant shall provide financial security in the amount of \$25,000 per MW, in favor of Sherburne County, to guarantee compliance with the decommissioning plan, site restoration and other terms of this Permit upon project termination or termination of this Permit. The financial security shall be in a form acceptable to the County and, at a minimum, shall consist of a cash escrow to be deposited with the County in an amount no less than 50% of the total required financial security, with an initial deposit of 25% of the total amount deposited prior to issuance of the building permit and eight and one-third percent (81/3%) of the total amount deposited annually for three years on or before the anniversary of the issuance of the building permit. The remaining amount of the total financial security shall be provided by way of an irrevocable letter of credit, which shall be in a form acceptable to the County Attorney's Office and provided prior to the issuance of a building permit, and shall meet the following minimum standards (additional standards may be required): the irrevocable letter of credit shall be issued by a federally chartered or State of Minnesota chartered banking institution with an branch office located within Sherburne County; shall be issued in the name of the County of Sherburne; shall be issued in an initial amount no*

less than 75% of the total financial security required by this Permit; shall permit the County to draw on the funds upon demand based on the County's determination of non-compliance with the terms of this Permit; shall be for an initial term to be established and shall automatically renew for additional terms unless the bank gives the County at least 60 day written notice of an intent to terminate the credit at the end of a term; shall permit the County to draw upon the letter of credit for the full amount in the event a replacement letter of credit acceptable to the County is not issued at least 30 days prior to the expiration of the existing letter of credit; and shall provide that the letter of credit may not be amended without the written permission of the County.

- 10. No activities may occur onsite until applicant submits a signed an interconnection agreement as required in Section 17, Subd 17 (1A) of the ordinance and proof that the scope of the project is permitted by the Minnesota Public Utilities Commission.*
- 11. The site will be revegetated after construction with a low growth and low maintenance native seed mix not exceeding 18 inches in height. The property will be treated and maintained as needed during the spring and summer months to manage vegetation growth. Property owner will responsible for vegetation control and weed management during the projects operating life.*
- 12. Must install 6-foot-tall coniferous trees along the eastern parcel line. The trees must be planted staggered in two (2) rows, in each row the trees may be planted no more than 16 feet apart. On the ~~west and~~ south property lines, property owner may be permitted to utilize the existing tree line. All trees along the border of the property, including the existing trees along the south border must be maintained and watered as necessary for the duration of the permit. Any dead trees must be replaced on a yearly basis.
The applicant can choose to either fill in the gaps to the property tree line spaces as required by the Ordinance with the Eastern Red Cedar Trees or if they chose, to eliminate all trees on their property, they must re-plant Red Cedar Trees to meet the Ordinance requirements. This shall all be done at the discretion of the Planning and Zoning Staff.*
- 13. This IUP is to be valid for 30 years until December 31, 2049. This IUP is valid for Fastsun 21 LLC and Aggregate Industries – Central Division.*
- 14. Must establish proof of access before any building permit is issued or ground disturbing activities are undertaken.*
- 15. Decommissioning of project shall involve removal of the projects components, including without limitation, solar panels, panel trackers, anchors, supports, mounts, inverters, underground electrical components and all underground footings and posts.*
- 16. Signage and emergency contact numbers must be posted at the access driveway to property.*
- 17. The applicant shall comply with all federal, state, and local laws and regulations.*
- 18. Applicant shall allow the County to inspect the property during normal business hours.*

Findings of Fact:

No Interim Use Permit shall be approved or recommended for approval by the County Planning Commission unless said Commission shall find (Adams made the following findings of Fact)

1. Is the Interim Use injurious to the use and enjoyment of other property in the immediate vicinity for the purposes already permitted, or will it substantially diminish and impair property values within the immediate vicinity?

It will not be injurious because the current location is adjacent to an existing solar farm and it is in an Agricultural area.

2. Will the establishment of the Interim Use impede normal, orderly development and improvement of surrounding vacant property for uses predominant in the area?

The IUP will be valid for 30 years. If the property owner no longer wants solar panels the infrastructure can be removed, and the site can either go back to farming or be utilized for a new use.

3. Have adequate utilities, access roads, drainage and other necessary facilities been or are being provided?

A turn lane has been constructed for access to the property from CSAH 8. Utility lines necessary to transfer the electricity exist adjacent to the property.

4. Have adequate measures been or will be taken to provide sufficient off-street parking and loading space to serve the proposed use?

There is plenty of parking available on this property needed for construction and operations.

5. Have adequate measures been or will be taken to prevent or control offensive odor, fumes, dust, noise and vibration, so that none of these will constitute a nuisance, and to control lighted signs and other lights in such a manner that no disturbance to neighboring properties will result?

There is a home to the southwest of the proposed solar farm site. Construction of the site will cause noise and additional traffic. This will be temporary. Once the solar farm construction is complete traffic will be minimal and consist of company vehicles inspecting the panels on a weekly/monthly basis.

The motion carried unanimously and is recommended to the County Board for approval.

6:55 PM A public hearing was held at the request of **SHERBURNE COMMUNITY SOLAR 1 LLC:** (Property owner is Aggregate Industries-North Central) Request for an Interim Use Permit (I.U.P.) to construct and operate a 1 MW Solar Farm PID # 25-029-2100 Legal Description: NW1/4 of NW1/4 Sec 29, Twp 35, Rge 30 (full legal on file) Haven Township 40 acres Agricultural District

Waytashek presented the request to the Planning Commissioners including the Board Packet Attachments, Comments and Recommended Conditions if approved.

BOARD'S PACKET ATTACHMENTS:

- A. Aerial Photo
- B. Site Photos (1-2)

HAVEN TOWNSHIP COMMENTS: Positive comment.

OTHER DEPARTMENT/AGENCY COMMENTS:

David Roedel, Deputy County Engineer (Oct 16, 2018): Access to the proposed solar farm shall be via the existing right turn lane located on CSAH 8 and 49th St SE. An Access Permit is required from the Public Works Dept to ensure compliance with County Standards.

PLANNING & ZONING STAFF COMMENTS:

1. There is an existing 5 MW solar farm on this property. Sherburne Community Solar 1 LLC is proposing to place a 1 MW solar farm east of the existing solar farm.
2. The previous agenda item tonight was for a 1MW solar farm is being proposed on this same property south of this proposed solar farm.
3. There are 15 existing utility poles for the existing 5MW solar farm. They are proposing to add 3 additional poles for this solar farm.
4. The access road location will require the applicant to relocate the existing fence for the 5MW solar farm to the west, north closer to the existing garden. Their stated that they do not intend to remove any existing trees.
5. They are going to be using the same access point. They have provided the Zoning Department with "Assignment, Assumption and First Amendment or Land Lease Option Agreement (Solar Farm) and Estoppel." The driveway easement doesn't go into effect until they exercise the option to pick up the lease. Zoning will require that they establish proof of access before any building permit is issued or ground disturbing activities are undertaken.

Lawrence asked if the applicant had anything to add.

Joe Tierney said he did not since this was all covered at the previous hearing.

Lawrence opened the public hearing.

There were no comments. Schlingmann moved and Spencer seconded to close the public hearing. The motion carried, and the public hearing was closed.

Schlingmann moved and Adams seconded to approve the request for an Interim Use Permit (I.U.P.) issued to Sherburne Community Solar 1 LLC, to construct and operate a 1 MW Solar Farm PID # 25-029-2100 Legal Description: NW1/4 of NW1/4 Sec 29, Twp 35, Rge 30 (full legal on file) Haven Township 40 acres Agricultural District with the following eighteen (18) conditions with a change to # 12, that we strike "western" and add "northern" because the western line borders another solar farm and does not need trees, and with the following Findings of Fact:

Conditions:

- 1. Building permit required for on-site supply structure if over 200 sq ft in size.*
- 2. Building permit required for installation of solar panels with engineered plans submitted.*
- 3. If the required privacy fence around the perimeter of the facility exceeds 7 ft in height it will require a building permit with engineered plans.*
- 4. A Stormwater Erosion Control permit will be required from the County Zoning Dept prior to any grading on the property and prior to a building permit being issued.*
- 5. Must obtain an NPDES permit from the MPCA and provide a copy to the County Zoning Dept prior to commencing construction.*
- 6. Property owner shall ensure that MPCA day & night time noise standards are not exceeded at any time.*
- 7. Operational hours allowed during construction of the facility are Monday through Friday 7AM – 7PM.*
- 8. Decommissioning of solar panels and related facilities must occur in the event the IUP expires or is terminated, and/or the solar panels are not in use for twelve (12) consecutive months. Must follow the Decommissioning & Reclamation plan date stamped September 17, 2018.*
- 9. Prior to issuance of a building permit for the project, the applicant shall provide financial security in the amount of \$25,000 per MW, in favor of Sherburne County, to guarantee compliance with the decommissioning plan, site restoration and other terms of this Permit upon project termination or termination of this Permit. The financial security shall be in a form acceptable to the County and, at a minimum, shall consist of a cash escrow to be deposited with the County in an amount no less than 50% of the total required financial security, with an initial deposit of 25% of the total amount deposited prior to issuance of the building permit and eight and one-third percent (81/3%) of the total amount deposited annually for three years on or before the anniversary of the issuance of the building permit. The remaining amount of the total financial security shall be provided by way of an irrevocable letter of credit, which shall be in a form acceptable to the County Attorney's Office and provided prior to the issuance of a building permit, and shall meet the following minimum standards (additional standards may be required): the irrevocable letter of credit shall be issued by a federally chartered or State of Minnesota chartered banking institution with an branch office located within Sherburne County; shall be issued in the name of the County of Sherburne; shall be issued in an initial amount no less than 75% of the total financial security required by this Permit; shall permit the County to draw on the funds upon demand based on the County's determination of non-compliance with*

the terms of this Permit; shall be for an initial term to be established and shall automatically renew for additional terms unless the bank gives the County at least 60 day written notice of an intent to terminate the credit at the end of a term; shall permit the County to draw upon the letter of credit for the full amount in the event a replacement letter of credit acceptable to the County is not issued at least 30 days prior to the expiration of the existing letter of credit; and shall provide that the letter of credit may not be amended without the written permission of the County.

- 10. No activities may occur onsite until applicant submits a signed an interconnection agreement as required in Section 17, Subd 17 (1A) of the ordinance and proof that the scope of the project is permitted by the Minnesota Public Utilities Commission.*
- 11. The site will be revegetated after construction with a low growth and low maintenance native seed mix not exceeding 18 inches in height. The property will be treated and maintained as needed during the spring and summer months to manage vegetation growth. Property owner will responsible for vegetation control and weed management during the projects operating life.*
- 12. Must install 6 foot tall coniferous trees along the ~~western~~ northern and eastern boundaries of the solar farm. The trees must be planted staggered in two (2) rows, in each row the trees may be planted no more than 16 feet apart. All trees along the border of the solar farm, must be maintained and watered as necessary for the duration of the permit. Any dead trees must be replaced on a yearly basis.*
- 13. This IUP is to be valid for 30 years until December 31, 2049. This IUP is valid for Sherburne Community Solar 1, LLC and Aggregate Industries – Central Division. Must obtain an access permit from the Sherburne Co Public Works Dept prior to any activity on site.*
- 14. Decommissioning of project shall involve removal of the projects components, including without limitation, solar panels, panel trackers, anchors, supports, mounts, inverters, underground electrical components and all underground footings and posts.*
- 15. Signage and emergency contact numbers must be posted at the access driveway to property.*
- 16. The applicant shall comply with all federal, state, and local laws and regulations.*
- 17. Applicant shall allow the County to inspect the property during normal business hours.*

Findings of Fact:

No Interim Use Permit shall be approved or recommended for approval by the County Planning Commission unless said Commission shall find (Adams made the following findings of Fact)

- 1. Is the Interim Use injurious to the use and enjoyment of other property in the immediate vicinity for the purposes already permitted, or will it substantially diminish and impair property values within the immediate vicinity?*

It will not be injurious because the current location is adjacent to an existing solar farm and it is in an Agricultural area.

- 2. Will the establishment of the Interim Use impede normal, orderly development and improvement of surrounding vacant property for uses predominant in the area?*

The IUP will be valid for 30 years. If the property owner no longer wants solar panels the infrastructure can be removed, and the site can either go back to farming or be utilized for a new use.

3. Have adequate utilities, access roads, drainage and other necessary facilities been or are being provided?

A turn lane has been constructed for access to the property from CSAH 8. Utility lines necessary to transfer the electricity, exist adjacent to the property.

4. Have adequate measures been or will be taken to provide sufficient off-street parking and loading space to serve the proposed use?

There is plenty of parking available on this property needed for construction and operations.

5. Have adequate measures been or will be taken to prevent or control offensive odor, fumes, dust, noise and vibration, so that none of these will constitute a nuisance, and to control lighted signs and other lights in such a manner that no disturbance to neighboring properties will result?

There is a home to the southwest of the proposed solar farm site. Construction of the site will cause noise and additional traffic. This will be temporary. Once the solar farm construction is complete traffic will be minimal and consist of company vehicles inspecting the panels on a weekly/monthly basis.

The motion carried unanimously and is recommended to the County Board for approval.

Nelson moved and Aubol seconded to Adjourn. Motion carried.

7:02 PM Meeting Adjourned.

Respectfully Submitted by:

Judy Weber, Secretary