

**CHISAGO COUNTY  
PLANNING COMMISSION  
OFFICIAL PROCEEDINGS**

**August 1, 2019**

The Chisago County Planning Commission met in regular session at 7:00 p.m. on Thursday, August 1, 2019 in Meeting Room 150B of the Government Center.

Staff Present: Jessica Jagoe; Land Services Coordinator, Diane Sander; Land Services & Parks Specialist, and Kurt Schneider; Environmental Services Director.

The Chair called the meeting to order and led the assembly in the Pledge of Allegiance. A roll call of Board members was taken. Commission members present: Chair Frank Storm, Dave Whitney, Jim Froberg, and Charles Yeager. Ex Officio: County Commissioner Chris DuBose. Absent: John Sutcliffe (excused), Shellene Johnson (excused), Jim McCarthy (excused). A quorum established with members present.

**APPROVAL OF AGENDA** - Motion by Jim Froberg and second by Dave Whitney, for the amended meeting agenda with the addition of Additional Material Items was approved.

**APPROVAL OF MINUTES** - Motion by Charles Yeager and second by Dave Whitney, the minutes of the July 11, 2019 meeting were approved as presented.

**ADOPTION OF MATERIALS AND SUBMITTALS INTO THE RECORD** - Motion by Dave Whitney and second by Charles Yeager that all applications, submittals, reports, and other materials were adopted into the record by reference. Staff Reports had been distributed in advance to the Planning Commission and the applicants, for their review. Also distributed in advance included: Public Hearing Staff Reports with Applicant Materials, Home Occupation Staff Report including spreadsheet, Home Occupation Discussion Items from Dave Whitney & Jim Froberg, and Home Occupation Ordinance. Additional material items distributed at meeting: Jay Flodquist Discussion Items from Jim McCarthy. Copies of all applications, correspondence, and staff reports were made available on a table at the entrance to the hearing room.

**NEW PUBLIC HEARINGS:**

**Michael and Jessica Shepperd** – Mr. and Mrs. Shepperd were present at the meeting to request a vacation of easement of an existing drainage and utility easement that was previously dedicated between two parcels which the property owner has combined for construction of a new home (PID #02.00388.08 and #02.00388.09) off of 352<sup>nd</sup> Street in Chisago Lake Township. Coordinator Jagoe presented background information on the Shepperd's vacation of easement. The perimeter around the property will be maintained and only the existing utility and drainage easement between the two lots will be vacated. County Engineer identified no concerns with proposal. Chisago Lake Township recommended approval. Staff recommended approval of the application.

Mr. Shepperd indicated it made sense to put the easement in the middle for the two lots, but they own both lots. Charles Yeager asked if the perimeter lines will remain the same. Mr. Shepperd said nothing will change except the center line. No additional person wishing to speak, at the request of the Chair, the public hearing was closed. **Motion** by Jim Froberg to accept vacation of easement. Second by Charles Yeager. Motion carried unanimously. Chair Frank Storm indicated the request will be reviewed at the August 21, 2019 County Board meeting.

**Jay Flodquist** - Jay Flodquist and Jacob Flodquist were present at the meeting to request a conditional use permit (CUP) to allow helicopter rides on their property during the weekend following Labor Day weekend,

during the Sno-Barons Hay Days event (PID #09.00275.00) on Nelson Avenue in Sunrise Township. Coordinator Jagoe presented background information on Flodquist property and CUP request for commercial recreation. Proposed details include: two helicopters providing an estimated 50 flights per day on Friday from 4 pm – 9pm, Saturday from 9 am – 9 pm, and Sunday from 9 am – 9 pm during Hay Days. A 200 x 200 ft landing zone will be located on the north end of the property. Coordinator Jagoe reviewed Lake Superior Helicopters, the company hired to do the event. Company information, safety operations, other aerial tour events, and tentative flight plan were reviewed. Coordinator Jagoe indicated Lake Superior Helicopters will need to clarify if the estimated 50 flights was per day or per helicopter. Aerial photo provided location of the landing zone and sales booth in relation to the Hay Days property. Remaining parcel will be used for Hay Days event parking. Coordinator Jagoe provided information on noise limits and Minnesota Pollution Control Agency's scale of decibel levels and noise source chart. It was noted the helicopter will conduct a rapid climb to 1,000 ft and tour the St. Croix River area at 2,000 ft, creating a lower decibel level. As referenced, an average medical helicopter flies at approximately 500 ft. Coordinator Jagoe reported Sunrise Township recommended approval at their July 18, 2019 meeting.

Eric Monson, Lake Superior Helicopters at 4525 Airport Approach Road, Duluth, MN - was present to address questions and concerns from the Planning Commission.

Jim Froberg asked who will be the pilots and is there a special license for events? Mr. Monson reported he is a pilot, but may not be flying for this event. Lake Superior Helicopter pilots are licensed through the Federal Aviation Administration (FAA) and registered with State of Minnesota. The FAA is the governmental body that regulates all aspects of civil aviation. What type of fuel is used? Mr. Monson commented it was a grade of aviation gasoline.

Dave Whitney had questions that focused on two areas: safety and noise. Do you refuel during the day or can they run on one tank? Mr. Monson indicated the helicopter would need refueling and uses a 110 gallon fuel trailer. Only qualified staff can refuel the helicopter in the landing zone. Do you check for firearms and explosives? Mr. Monson indicated there is an established procedure and requirements for passengers to remove items and belongings. Due to limited seating in the helicopter, passengers cannot have anything in their pockets and phone/camera must be secured by the passenger's hand. Staff has been trained to go through a detailed safety briefing, assessing passenger behavior and intoxication. If a passenger is intoxicated or not acting appropriately, they will be denied. Is there an emergency plan for this site? Mr. Monson indicated Lake Superior Helicopters has contracts with Minnesota Department of Natural Resources (DNR) and United States Forest Service and often work in remote areas. An emergency binder will be on hand with a detailed plan in addition to procedures in place. Would you submit the emergency plan to staff? Mr. Monson indicated he could provide it. Discussion followed about traffic on HWY 95 and County Road 9 access to the Flodquist parking area. Sno-Barons has used an airplane with a banner behind it circulating around the property. With banner in the air, two helicopters landing and taking off, and 20,000 Hay Day visitors across the fence, there is a lot of activity on the ground and in the air. How do you communicate with other aircrafts and what measure does your company take to make a person feel safe? Mr. Monson reported his company mediate the problems by implementing multiple safety measures: helicopters equipped with instruments and warning gauges, pilots are trained to scan for other items and aircrafts, and maintain same frequency with other aircrafts. How far out does everything need to clear out for safe landing? Mr. Monson indicated the landing area is big enough to accommodate landing and takeoffs. Pilots have conducted medical flights at night and firefighting flights, the landing area has plenty of space, and smaller helicopters are being used for event. Does your company have a policy on no use of alcohol or mind altering drugs? Mr. Monson reviewed FAA regulations, Lake Super Helicopters polices, and random pool drug/alcohol testing and process of getting pilot license back upon a failed test. The company has built high standards and expectations to help ensure safety. Noise chart is confusing, does the helicopters meet standards? Mr. Monson indicated he was not an expert, but at 1,000 ft it would be under the decibels. Mr. Monson noted the Temple University Noise Study from James McCarthy's correspondence is a jet aircraft and helicopter from the 1970's. New designs in helicopters have dropped the decibel levels. The helicopters used for this event are made in California which has strict noise standards.

How can ropes and cones around the landing area provide enough safety? Mr. Monson indicated the cones are vertical with loop to hold a parachute rope. The company has tried different variations of fencing, cone heights, and ropes for the past ten years. Snow fencing is not used because it can fly up unexpected and do more harm than good. The vertical loop cones with parachute rope at knee height, along with ground crew watching the landing area, and escorting passengers to helicopter all help to ensure safety for everyone. Ground crew monitor the perimeter and intercept anyone moving too close to the landing area that does not have permission. How close are the parked cars from the landing area and how can a four year old be stopped by a rope? Mr. Monson reported the safety measures put in place with the landing zone size, and rope placed at knee level, it has ensured safety of parked vehicles and children from running into the area.

Charles Yeager asked how many passengers the helicopter can carry. Mr. Monson reported three passengers is maximum that will be used during the event. If a potential passenger is intoxicated, where do you stop them? Mr. Monson indicated the first interaction with passengers is at the ticket booth and is told the rides are full. If a passenger makes it through the ticket booth check, the escort across the landing zone and pilot will also assess the passenger and determine if passenger is denied a flight. Cross checks are in place with ground crew employees and pilot for each passenger. Will takeoff be vertical or at a slant? Mr. Monson reported takeoff will be vertical and pilots prefer that for safety reasons. If for some reason an engine fails, the helicopter falls and sets down safely from a vertical position.

Commissioner Chris DuBose asked if the helicopter used a Traffic Collision Avoidance System (TCAS)? Mr. Monson reported the helicopter had a scaled down version of the TCAS. Pilots will use a common traffic advisory frequency (CTAF) to transport communications of arrivals, departures, locations with each other and the airplane with banner used by the Sno-Barons.

Chair Frank Storm had questions and concerns on weather and flight paths. Mr. Monson indicated pilots will monitor wind and weather conditions. Helicopters will be repositioned and placed in area hanger overnight. Hangers have not been identified, but Rush City and Lake Elmo were mentioned. How many flights did you make at Lumberjack Days in Stillwater? Mr. Monson estimated 150 passengers in two days over a residential area. The company has received four complaints. Two noise complaints were from a special photography/video shoot. The helicopter was hovering at 150 ft for twenty minutes while photos and video taping was taking place. After the flight, the company had turned down additional requests for similar flights due to the complaints. What is the experience of the pilots? Mr. Monson reported each pilot has all the required certifications and registrations, in addition to over two year of experience. For clarification, how many flights are you anticipating? Mr. Monson reported weather and passengers will be the determining factor. If there is lack of interest, only one helicopter will be used. Most likely, 50 flights a day will be conducted.

Jeske Noordergraaf – 39750 Poor Farm Road, I am a resident in Sunrise Township and on the Sunrise Township Board which I voted against the request. I requested staff to include the Township form and it appears it was not distributed. I conducted some independent research and found 85 to 90 decibels. I have concerns of noise being right under the anticipated flight path and affects of noise on animals. It would be nice to have neighbors notified if they are in the anticipated flight path. Ms. Noordergraaf noted on a previous event, neighbors could read letters/numbers on the helicopter because it was too close. Timeline for the flights is too long and this will have an impact on the community.

No additional person wishing to speak, at the request of the Chair, the public hearing was closed.

Jim Froberg commented the request is for three days and not the entire year. Planning Commission reviewed Jim McCarthy's correspondence letter. Chair Frank Storm reported that a citizen commented the notice went to neighbors of Jay Flodquist, such as Sno-Barons, supporter of Hay Days. Dave Whitney suggested three additional conditions. First, passengers need to be screened for firearms and explosives. Second, copy of the emergency plan needs to be provided to county staff for review. Finally the Planning Commission needs to

discuss noise issue and need to get a reading on the decibel levels. If the CUP is approved, helicopters may change and get bigger and louder, the Planning Commission should plan and discuss possible changes. Dave Whitney suggested an independent tester on site to record the decibel levels of each helicopter, that way everyone will know what the actual decibel level is instead of referring to studies. It could be considered a certification for meeting standards. If there is a different model helicopter in the future, it will need to meet the same standards or it will not be allowed. Charles Yeager questioned if the Planning Commission has the authority to authorize such testing? Director Schneider reported the Planning Commission reviews permits for land use on land, but once the helicopter is in the air, regulations by FAA take over. Director Schneider requested legal opinion on air regulations and the county has no way to enforce noise violation in the air. It would be handled by FAA complaint process. Mr. Monson responded the Planning Commission could limit passenger size, which would limit bigger helicopters. Jim Froberg commented hot air balloons went over his farm and the cattle went wild, noise is different for animals. Commissioner Chris DuBose commented the Planning Commission could identify a type of helicopter or certain models at or below a certain decibel level. Every helicopter and plane has records of decibel levels. Dave Whitney commented after hearing discussion the third condition is a ground measurement of decibel levels that need to be recorded as the helicopter takes off. Chair Frank Storm commented the helicopters will not be stored outdoor and to notify county staff of offsite storage location. **Motion** by Jim Froberg to accept the CUP with the seven staff recommendations and additional three that were disused. Second by Charles Yeager. Motion passed.

### **Staff Findings**

In staff's review, we are cognizant that we are not the regulating authority on whether or not helicopters are allowed to fly over a property. Rather, those regulations are the Federal Aviation Association. The Applicant has contracted with a provider that has the necessary certifications and it would be a suggested condition of approval that whomever provides the helicopter services be a licensed and insured company.

### **Actions to Consider**

Recommend **Approval** of a Conditional Use Permit for Commercial Recreation as request by Jay Floquist at 38075 Nelson Avenue based on the narrative and site plan on record as provided by Applicant (or as modified at tonight's hearing) and based on the Findings of Fact as presented in Staff's report and the following conditions –

- 1) This CUP allows helicopter rides to occur at the subject property on the weekend following Labor Day on Friday from 4 PM to 9 PM, Saturday from 9 AM to 9 PM, and Sunday from 9 AM to 9 PM.
- 2) The maximum number of helicopters allowed is two.
- 3) No overnight outdoor storage of helicopters onsite is allowed.
- 4) The contracted helicopter Company selected by landowner must be licensed and insured as required by the State of Minnesota and Federal Aviation Administration.
- 5) The helicopter company is required to takeoff and land in a vertical flight pattern to reduce noise impacts to adjacent parcels.
- 6) The property shall be made open and available for regular inspection at any time during reasonable hours by the Chisago County Department of Environmental Services and/or any duly authorized law enforcement agency to verify compliance with CUP.
- 7) The permit holder must notify the County annually that the activity permitted by CUP is ongoing, and the activities being conducted continue to adhere to the conditions of approval.
- 8) Passengers need to be screened for firearms and explosives.
- 9) Copy of the emergency plan needs to be provided to county staff.
- 10) R44 helicopter or comparable model falls within similar decibels levels compliant with noise standards.

Chair Frank Storm indicated the request will be reviewed at the August 21, 2019 County Board meeting.

### **DISCUSSION ITEMS:**

## **Home Occupation Ordinance –**

Director Schneider reported memos and table of home occupation had been provided. Jim Froberg commented Shellene Johnson was going to provide some thoughts. Coordinator Jagoe indicated she has not received anything to date. Chair Frank Storm indicated if home occupation was going to be updated, so would the comprehensive plan, zoning ordinance, and permits. He felt our current zoning ordinance needs to be stricter in home occupations and that industry/businesses seems sufficient. To do these updates, the Planning Commission will have to have additional discussion and public meetings. Home occupation needs to be defined better, allow additions into the Agricultural zoning district, and clearly define the difference of industry.

Reviewing other counties home occupations could provide an outline of what the Planning Commission could allow but currently do not in each zoning district. It was noted that Anoka and Washington Counties were more restrictive in home occupations and Pine County was currently adopting additional restrictions. Dave Whitney commented he would like to keep home occupation as a group and develop performance standards. If you want a certain number of employees for a home occupation it would either be considered under a home occupation or under a CUP. The Planning Commission will need to make some changes. Jim Froberg agreed on reviewing and updating. Charles Yeager was impressed with Dave Whitney's list and agreed on updating home occupations.

Director Schneider indicated the Planning Commission and staff could work through this in an orderly and efficient process. Multiple sections impact and interplay with each other. An orderly review, discussion, and update process can help the Planning Commission review each section and impacts. We know certain sections need to be discussed, such as home occupation, solar, and what is allowable in zoning districts. We will not have the solutions on the first review but will list items for further discussion with staff suggestions. Staff suggestions will be based on general direction from the Planning Commission with a cohesive flow from chapter to chapter. If definitions do not work, staff will provide variations for discussion that would work in the ordinance and the overall comprehensive plan interplay. This process will take extra meetings and a concentrated effort by the Planning Commission. Staff will provide three ring binders with the inserted amended ordinance. Commissioner Chris DuBose asked when the Planning Commission will start and how long of a process. Director Schneider indicated the start will be with the three ring binders for review. A special meeting with the County Board will be scheduled to gather input on issues and gather consensus to move forward with review. Updates will be conducted in an efficient and concise process. Chair Frank Storm indicated it would be helpful to know meeting dates in advance. The update sounded beneficial but he still had concerns on the home occupations. Director Schneider indicated staff could develop a draft performance standard for home occupations and if an application falls outside of the performance standards, then the application will go into the CUP process. If two applications are reviewed at the same time with similar situations, previous approvals will be considered, and detailed conditions outlined for each application. Dave Whitney commented the Planning Commission and County Board need to discuss what the consensus is on development. Do we support development in the agricultural zoning district or not? Charles Yeager interjected that Dave Whitney might receive five different opinions on the matter. Director Schneider indicated both the Planning Commission and County Board have supported preserving our rural character. The Comprehensive Plan can help direct ordinance revision. Director Schneider indicated staff will provide a draft policy statement for performance standards for solar developers.

**ADJOURNMENT:** There being no further business, motion by Jim Froberg and second by Charles Yeager, the meeting was adjourned at 9:05 p.m.