

DICKINSON COUNTY PLANNING AND ZONING COMMISSION

Monday July 20, 2020

1:00 P.M.

The Dickinson County Planning and Zoning Commission met Monday July 20, 2020 at 1:00 P.M. in the community room at the Dickinson County Courthouse and via zoom.

Members present were Vickie Godfredsen, Jon Gunderson, Tony Weber, Carol Pierce, Erica Schultes, James Blum, and Curt Smith.

Also present was David Kohlhaase, Dickinson County Zoning Administrator, Lonnie Saunders, Assistant Dickinson County Attorney, and Megan Kardell Dickinson County Zoning Assistant.

Tony Weber-Chairman called the meeting to order at 1:00 p.m.

First item on the agenda was approval of the minutes from June 15, 2020. Pierce motioned to approve. Gunderson seconded the motion. All in favor.

Second item on the agenda was Continuation recommendation to the Board of Supervisors for an amendment to the Dickinson County Comprehensive Present and Future Land Use map from Agricultural to Commercial for the following described property: Planned Parcel "T" being part of the Northeast Quarter of Section 1, Township 99 N, Range 37W. (See Public Notice for full legal description).

Third item on the agenda was Continuation recommendation to the Board of Supervisors for a rezoning from A-1 Agricultural to HC Highway Commercial for Indian Hills Properties LLC c/o Chris Parriott on the following described property: Planned Parcel "T" being part of the Northeast Quarter of Section 1, Township 99 N, Range 37W. (See Public Notice for full legal description)

David Kohlhaase gave the staff report. I have received an application for a change in Dickinson County Zoning Ordinance 102 by Indian Hills c/o Chris Parriott for part of the land otherwise known as Indian Hills Golf Course. Additional Information has been provided to you in your packets.

The land is presently zoned A-1 Agricultural and the requested zoning is HC Highway Commercial. The proposed change in zoning is presently not consistent with Dickinson County Comprehensive Land Use Plan. The future land use map shows the area as future A-1 Agricultural. This is mostly due to the existing golf course use. Action to amend the future land use map would need to be done prior to action on the zoning change request.

The applicant's reason for this is because they needed a larger shop building to serve the golf course. On the present golf course property the planned shop building would be an accessory building and per Zoning Ordinance 102, an accessory building cannot go in the limits of the front yard. The home office building is the principal building so everything from the home office building to Hwy 9/71 is the front yard. A way to achieve building the shop structure was to make the property being requested for a zoning change on a separate lot that would allow the structure under the commercial definition of Building Maintenance Services. This is the location on the golf course property that works for this building.

Conditions can be attached to zoning changes limiting the use types allowed. Action to approve should be contingent to the comprehensive land use plan- future land use map being consistent with this request.

Chris Parriott introduced himself to the board. What they are proposing is to build a new maintenance building in the northwest corner of the existing property. They plan to tear down an existing building that is too small and too old to repair, then rebuild new to handle all of their equipment. They require additional square footage for proper storage of said equipment and a safe work environment of their employees. Due to the current set up of the golf course, there is no other options to build a new facility in another location on their property. Under existing zoning laws they are required to split off a piece of land and request that it to be rezoned to Highway Commercial.

Blum asked if the gas barrels that are sitting there will be moved.

Parriott said he does not know the required distances for the gas barrels. He's not sure if they need to be moved.

Blum said he believes there is a minimum distance in respect to the Fire Marshall. Are water and/or electric going to be run to the building?

Parriot said that the building will only have electric, it will not have water or sewer.

Blum said that if this is rezoned to Highway Commercial, he would suspect that Highway 9 would have limited access to that area. There may have to be a frontage road there.

Parriott said they have a road that they enter through the golf course entrance, there is a side road. He is not asking to come off Highway 9.

Blum said he understands that but if the use changes in the future it is something that should be thought about.

Kohlhaase said we just have to make sure the building is not in any easement area. The setback for the building is from the right of way line.

Blum said that where the new building is proposed at is in a great location. It is kind of hidden out there, have you thought about any green screening.

Parriott said the new building will not be much higher than the existing, some of the equipment has roll bars, and he would like a 10' foot garage door. The proposed building would not be anything like the big RV storage units down the road.

Blum asked if there is any chemical or fertilizer stored on site.

Parriott said yes, it is in a separate building.

Schultes asked if the existing building is red barn building.

Parriott said it is brown, it might look red from weathering.

Schultes said that when she comes into the property and goes to the right, it looks like an old barn with gravel piles.

Parriott said that it's just past the sign, it's a little two car garage with a lean to on it.

Webers said in regards to other HC Highway Commercial districts in the area, there is a welding shop across the street, and down the road to the west is North 40 storage buildings. So we already have HC Highway commercial in the area. It is not necessarily spot zoning.

Weber opened up the meeting to the public. There was none.

No correspondence in the file.

Gunderson motioned to make a recommendation to the Board of Supervisors for an amendment to the Dickinson County Comprehensive Present and Future Land Use Map from Agricultural to Commercial for Planned Parcel "T", Indian Hills Golf Course. Pierce seconded the motion.

Verbal vote: All were in favor.

Weber asked if there were any additional comments regarding the recommendation to the Board of Supervisors for a rezoning from A-1 Agricultural to HC Highway Commercial for Indian Hills Properties LLC c/o Chris Parriott on the following described property: Planned Parcel "T" being part of the Northeast Quarter of Section 1, Township 99 N, Range 37W. (See Public Notice for full legal description)

Blum asked if the far south building is your office and home and if there is possibility that it would ever be separated off.

Parriott said he does not have any plans for that.

Blum said he believes there should be an access easement across planned parcel “T” to the home.

Parriott said okay.

Blum motioned to make a recommendation to change the zoning from A-1 Agricultural to HC Highway Commercial with the condition that there is an easement for access to the house and office space across Planned Parcel “T”. Smith second the motion.

Vote recorded as 7-0. Blum, Smith, Weber, Gunderson, Godfredson, Schultes, Pierce approve.

Fourth item on the agenda Continuation Recommendation to the Board of Supervisors for an amendment to the Dickinson County Comprehensive Present and Future Land Use Map from Agricultural/Residential to Commercial for the following described property: Tract 1, Faye Meadows Subdivision.

Fifth item on the agenda Continuation recommendation to the Board of Supervisors for a rezoning from A-1 Agricultural to GC General Commercial for Rachel Faye Family LLLP c/o Ken Ferguson on the following described property: Tract 1, Faye Meadows Subdivision.

Kohlhaase gave a staff report. He received an application for change in Dickinson County Zoning Ordinance 102 by Rachel Faye Meadows LLLP c/o Ken Ferguson for land otherwise known as Tract 1, Rachel Faye Meadows Subdivision. Additional information has been provided to you in your packet.

The current zoning district is A-1 Agricultural. The request is to rezone Tract 1 to GC General Commercial. The Comprehensive Land Use Plan shows this property as future residential. The proposed change in zoning is not consistent with the Dickinson County Comprehensive Plan. Discussion/Action amending the Dickinson County Comprehensive Plan making the proposed zoning change in compliance with the comprehensive plan will be reviewed by you.

The Ferguson Family is attempting to bring this property into compliance with Dickinson County Zoning and they would like to be able to sell off units that will be used for storage.

Please read and review both Ferguson’s statement provided with their application and the agreement between Ken Ferguson and Dickinson County dated August 17, 2016.

Conditions can be attached to zoning changes limiting the use types allowed. Action to approve should be contingent to the comprehensive land use plan and future land use map being consistent with this request.

Dalton Kidd, representative for Mr. Ferguson introduced himself to the commission. He gave a history of the property. Ferguson has owned this property since the early/mid 80’s and was used as a part of the landscape business. In 2007 they filed a plat, Faye Meadows and in 2008 filed a horizontal property regime, also known as Rachael Faye Condos. It created several different units on the lot, it is more for storage buildings that he was looking to rent and sell. In May 2011, Ferguson applied to have this area rezoned from Agricultural to Commercial, it was recommended for approval by the planning and zoning commission, but due to other circumstances, it did not go to the Board of Supervisors for final approval. In November 2013 they amended the horizontal property regime/condo association to reflect some changes to have several different units within a building. In August 2016, there were more conversations with the County about the uses of the property. Ferguson agreed not to sell or have any more rental, he also agreed to plant a living fence. If you went by the property one would see the trees. He agreed to not expand the uses and structures that are already there. The letter also states that if he wanted to do anything different he would have to look into having the area rezoned to General Commercial. That brings us here today and what we are requesting. The property has been taxed commercial for some time, most of the units are just used for storage. Mr. Ferguson still owns some of the units. They talked to a lot of the unit owners about this process and at this point no one has complained, they are actually for it.

Ferguson said he explained some restrictions to the unit owners and no one is against the rezoning.

Kidd said he understands the concerns about rezoning to General Commercial without any restrictions in place. They are open to putting restrictions on the uses. Some of those uses, would be for a hobby use, or limited personal use related to commercial, but keep it where there is not a

lot of traffic, non-employee/non-customer type businesses. As Mr. Ferguson's son noted in his letter, he has his house out there, and they want to limit the amount of traffic going in and out of the area. They would also like the area of Unit 12, located on the south side of the pond/water way, to remain agricultural. Even though Unit 12 is a part of Tract 1, it is more consistent with Tract 3 to the south. They understand the future comprehensive land use plan, designates this entire area as future residential. However if one looks at Unit 12, and the tracts to the south they are being uses as agricultural and will be for the foreseeable future. It does not seem likely that the area in Tract 1 with the buildings on it will be residential either. The request is rezone Tract 1 to GC General Commercial. They are very open to questions and concerns and want to limit the scope of the GC General Commercial uses. Ferguson wants to simplify his assets, and even though he did have that agreement back in 2016 with the County, at some point these properties in general are going to have to be transferred or sold. Mr. Ferguson has the authority and control to be able to do this for this tract which makes it a good time to make the change.

Weber asked for a clarification about the location of Unit 12. The buildings are not indicated on any of their maps.

Kidd & Kohlhaase explained where it is located on the aerials. It is just north of Tract 3.

Weber said that there is a building that is sitting on both Tracts 1 and 2. So that is a concern if the rezoning is only for Tract 1. He thinks technically that is going to have to be cleaned up before they can make any changes. He is not sure what Unit 12 is.

Ferguson said that there is not a building on Unit 12.

Kidd said it is the furthest area southwest of the pond. Due to its location if anything is ever done with it, it would be the same as Tract 3 because there is not access to that area from Tract 1.

Blum said to echo what Weber was saying there is a building on both Tracts 1, 2, and 3. He does not think that it would be proper to change the zoning with the placement of that building. Blum asked if there were some dedication documents for the Rachel Faye Condos.

Kidd said yes.

Blum asked to see them. There may be something in the condo documents that may or may not affect their decision, the application is incomplete. He would like to see what each one of those condo units are being used for, or at least a list of the uses. Since this 2016 agreement, he believes there have been at least 2 more buildings built out there.

Ferguson said that no buildings have been built since 2016.

Blum said there is one building out there right now that does not have doors on it and it looks like it is under construction.

Ferguson said it is a dirt shed and they didn't want doors. They store black dirt in there to keep it dry.

Kidd said that regarding the horizontal property regime documents, those rules can be voted on by the unit owners, to be amended or changed, but with this rezoning it would be more an agreement with the County as to what is permitted and enforced in that areas. At this point even if the HPR said yes you can do this, they are still going to be restricted by the County. He feels it would be stronger restrictions/enforcement through the County. Mr. Ferguson would be open to amending HPR if that would make the commission feel better.

Blum said one can file the HPR without getting County zoning approval. Blum said that we are here now, to try to correct something that was an over use of the property in the past if he is understanding this correctly. They have uses out there now that are not approved in the agricultural district, which has brought us to this point.

Kohlhaase said that the concern for Mr. Ferguson is knowing that he cannot sell any more units due to his 2016 agreement. Previously the buildings that were built were done by agricultural exemptions. What they want to do in the future is to sell the 4 remaining units and also try to clean up the situation that is out there.

Ferguson said that there are 18 units out there that he does not own and those units do not have any restrictions. For example last summer they rented a space to Don's Pest Control, he told Ferguson he had 5 employees, but really he had 15. Ferguson had no control, they do not want that to happen again to any of the other units. Ferguson has 7 units left, the vulnerability is out there, so it would be best to get these restrictions in place.

Blum asked if some of the uses are considered agriculturally approved.

Kohlhaase said some of them in the past.

Ferguson said in the past when he grew sod and tress, they were agricultural uses. He is now retired. His son has the landscape business, which is about ¼ the size from when Ferguson ran it, so there is a lot less traffic for the landscape business. They want to make sure that none of the owners have employees, or heavy traffic. Most of the units are used for cold storage for boats and toys. There are probably 5 units that have hobby shops, one person comes and goes, and they don't have employees or multiple people using the unit. They want to make sure that continues.

Weber asked Ferguson if he owned the building that sits diagonal.

Ferguson said he does.

Weber said he still thinks they have a real problem with the building placement.

Ferguson said that someday he will sell the 10 acres, and the new lot line will be right down the middle of the water way. That building will be owned by Ryan Ferguson, his son. He does not think he knew when they built that building that they were over the lot line. Those water ways did not exist 10 years ago, they dug the ponds and made the water drainage much better.

Weber asked if there was an outlet for those ponds.

Ferguson said they outlet into Center Lake.

Blum said first the application started out for a rezoning of Tract 1, and now it is Tract 1 except Unit 12, and now you said you were going to change the ownership down the waterway, Blum is not sure if they are at the right procedure with the zoning change.

Kohlhaase said for clarification, from what he understands, regarding the area that sits to the southwest of Tract 1, Mr. Ferguson is not planning on building any buildings on that location and will leave it natural, so it does not need to be rezoned.

Blum said that he thinks the commission should have the horizontal property regime that shows the 12 units within Tract 1, and to look at the restrictions and to see where the units are located. He also does not believe they have a correct legal description for the rezoning, especially with the building encroaching on Tracts 2 and 3.

Kohlhaase said Ferguson is saying that if the commission chooses, they can choose not to rezone Unit 12, because they have no intent to use it in that manner. In reference to the building, he would have to see a survey, and not just an aerial for accuracy.

Weber said it appears in order to clean up the diagonal building that is encroaching, the legal description should be changed so that the building is all within Tract 1.

Ferguson said he can do that.

Weber said that cleans it up for you but also before they make the recommendation to make a change, they should clean up the legal side and the legal descriptions to make sure what we are doing is consistent.

Blum said there is a new house on Tract 2.

Ferguson said it is Ryan Ferguson's house. The house sits on 10 acres on Tract 2 and that is an agricultural right to build a house on that tract.

Blum asked if he were to sell the house, what access rights might the new owners have.

Ferguson said that he would not be able to sell the house until there is deeded access to Tract 2.

Kohlhaase said that since Ryan Ferguson owns property in Tract 1, it gives him the right to use that as an access to Tract 2.

Ferguson said Ferguson will purchase property in the future for a dedicated access to Tract 2.

Kohlhaase said that any conditions that you attach to this rezoning will be more stringent than a HPR, Saunders agreed that would be the case.

Saunders said that the restrictions you put on this rezoning will supersede the restrictions in the horizontal property regime. The HPR is a matter of public record, he understands the questions from Blum, and it is an easy fix to get the commission a copy of it but regardless of what those say, the restrictions from the commission on the rezoning do not have to be approved by the other members of the HPR as long as they're more restrictive than the HPR. In regards to the easement, Ferguson cannot sell land locked land, so if Ryan Ferguson was going to sell it, somehow he would have to make assurances to get access to it.

Kidd said that was his point, the commission's restrictions will supersede what is in the HPR, which is why we would rather have the restrictions come from the County versus the HPR.

Blum asked if they had a suggested list of restrictions from the General Commercial district.

Kidd said he listed them generally so they could have more of discussion as the commission sees fit. Any commercial use is going to include no employees, and no customer contact. The goal is to have it used as mostly cold storage for boats and toys.

Pierce said just for clarification the people from the Life Skills building said that they have 4 residences that live there full time, is that use intended to still be there.

Kidd said that Ferguson is renting that out to them.

Ferguson said they have patients there, there is a turnover of patients, he does not know how many are there, apparently 4, they are treating for PTSD. It is like a clinic, he sees that as a commercial use type property. It is not their home, they're patients.

Weber said is that the first building on the right side.

Ferguson said that is correct.

Kohlhaase said the one use that they would look at is convenience storage, which is a permitted principal use. The definition of convenience storage is storage services primarily for personal effects and household goods within enclosed storage areas having individual access, but excluding use as workshops, hobby shops, manufacturing, or commercial activity. Typical uses include mini warehousing. But due to the existing situations and uses out there one may want to discuss uses that include the landscaping business, the Life Skills building, and the unit where gentleman is staying at. This rezoning is different because we're not starting with a blank slate, we have an existing situation and basically what can we do to find a way to try to come up with something that is going to work for the applicant, the people who already own property there, future owners, and the neighborhood.

Smith asked Ferguson whether or not you will hook up to the sanitary sewer district when it becomes available on that road.

Ferguson said that he thinks the first building is 300 to 400 feet from the road. He has no intentions for hooking up to the sanitary sewer. The septic system for that first building works very well. The sanitary district is doing this because the Pruss subdivision to the west has septic systems and every year they flood.

Kohlhaase said for clarification, the sewer project underway in the South Center Lake area. The issue is that the sanitary sewer district says this area is not in the district, so right now if you ask the sanitary sewer folks if those people would be required to hook on to it, they are not, because they are not in the district. Being in the district requires an agreement and a signature, but in reference to our code to be available the sewer must be within 200' feet of the building you are

servicing. In addition and not speaking on behalf of the sanitary district, if you are in the district sewer has to be within 150' feet to the property line. In this particular case, they are not in the district, now can they involuntarily require people to hook up, Steve Anderson, Superintendent of the Sanitary District has said their board of trustees do not want to go that direction. The system Ferguson is talking about was an approved system approximately 15 years ago.

Ferguson said the first building was used for the landscape foreman to have an office. It was a very busy area, it has a lot less traffic now.

Kohlhaase said this gives the County an opportunity to at least visit about what uses are taking place in the area.

Ferguson said he has 4 units he would like to sell, they are renters whom would like to own them.

Schultes asked about a pervious comment about selling 10 acres, was that referring to Ryan's house or was referring to a different 10 acres.

Ferguson said there are two 10 acres lots out there. One he sold to Ryan on contract and the other is Tract 3. There were was two tracts to the south which were sold.

Schultes asked how many acres is Tract 3.

Ferguson said 10.

Kohlhaase said the reason for the 10 acres is because when Ferguson did that plat, the agricultural district calls for 10 acre lot minimums.

Schultes said that Unit 12 is in Tract 1, and if you are going to sell Tract 3, what is to happen to Unit 12.

Ferguson said Unit 12 will eventually be sold with Tract 3, they will be taking a little bit of land out of Tract 3 because of the diagonal building, and putting some land back into Tract 3 by combining it with Unit 12. He understand there is some clean up to do with legal descriptions, the thing that changed this is when we made our waterway a pond. You used to be able to access Unit 12 from Tract 1, it was a low area and you could drive through it. Now you cannot it is just water.

Kohlhaase said a quick comment to the public on the zoom meeting. They will have a chance to make comment, once the board is finished.

Blum said he has a couple quick comments, he believes the legal needs to be cleaned up before they get into a rezoning. Also after listening to the presentation the only uses that are approved in the General Commercial convenience storage and recreational storage, is there anything else they would like to include, otherwise the commission could exclude all other uses.

Ferguson said if that includes a hobby shop, because there are those out there.

Kohlhaase said that would be something for discussion, what more if anything would you need to satisfy your people that are there and those in the future.

Pierce said that is her question is again about the Life Skills issue, it doesn't quite fit with the general commercial uses that you have said. She believes they need to clarify that as well, yes it may be commercial use, but there are people living there and doesn't quite fit with the general commercial concept and needs to be addressed.

Kohlhaase said there is the office/building housing the Life Skills people, and there is one unit where a gentleman stays in, this is a little bit of a mess, but what can be done to clean it up.

Weber opened up the meeting to the public.

Clay Norris 2281 165<sup>th</sup> St, his property is immediately to the west of this, he adjoins properties, it's a beautiful peaceful place. He is very pleased to hear Unit 12 is not planned to be developed because they have a gorgeous view to the south to the nature center. The Ferguson's have been

good neighbors so far. They are concerned about people who might stay there, it seemed to be a revolving door, and they thought Ferguson was doing a rental thing. They didn't even know they were doing storage buildings.

Weber said there have been a few comments via zoom, and some of them have been answered. Yvonne Taylor commented that there are businesses in the area, which we've acknowledged there are. Sonya Johnson commented trying to change it because it is against the current land use, which is correct. Yvonne Taylor commented about a fence on the adjoining property, and then had a question about if the driveway was legally put in on the property, Weber said that at the time its zoned agricultural and it would have been legal.

Ferguson said that he had a deal with the DNR, they dug a pond and swapped to be able to put the driveway in, it is documented and was done about 25 years ago or so.

Weber said another zoom comment was that they're against it becoming anything commercial, that area is a sensitive area and in the middle of residential, it does not fit within the current surrounding land use, however the use is already existing, they're not trying to change but are trying to clarify it. Another comment from Sonya Johnson regarding the ecological effects in the area, Weber's guess is the ponds have done a tremendous amount to help runoff and collect the water before it gets into Center Lake.

Ferguson said he used to have corn and beans there as a row crop but he no longer has that, his son has 10 acres of grass and a pond, and he has hay on his property, so there is zero run off of contaminated stuff. He has a holding pond that catches the runoff from the commercially used property, it slows the water before it gets to the ponds that he dug and eventually it gets to Center Lake. He is sure the water is clean by the time it gets to Center Lake.

Weber said there was a zoom comment about people living in the front building, which we've already acknowledged there are.

Ferguson said that supposedly they do not live there, they are being treated. There is some turnover, he knows the same people are not there forever.

Weber clarified that Ferguson is only renting to them.

Ferguson said that is correct.

Clay Norris said that another concern about it rezoning commercial is not necessarily while the Ferguson Family owns it, but what happens when they sell it. He would hate to see a convenience store or shopping center or something like on that property. He does not know if the restrictions would take care of that or not.

Weber said if they put restrictions on it, it will stipulate what the area can and cannot be used for, because you are correct General Commercial is pretty wide ranged.

Ferguson said he feels the restrictions would be good for the neighborhood.

Pierce said just to clarify, are there people living in the storage units or is it a combination between storage and living quarters, there was a zoom question is about bathroom facilities.

Ferguson said there is one unit where the watchman lives, Unit 8 has a septic system, so each storage unit will have a bathroom. Currently 2 units have bathrooms, they may never all have facilities, but it is available.

Weber asked which building is Unit 8.

Ferguson said it is to the East of the angled building.

Blum asked where the drainfield is located. Blum asked if the drainfield is on Tract 1 or 2.

Ferguson said it is parallel to the building.

Correspondence was read.

Weber said another zoom question was how many buildings have sewer/water.



Ferguson said building 10 has a system and Unit 1.

Weber said the septic permits need to be permitted by the County. Another zoom comment asked the commission to review the talking point from the people from South Center Lake from the last meeting.

Kardell said the document was removed from the zoom meeting before she could access it, so it was not forwarded on to the Planning & Zoning Commission.

Pierce was able to access the document before it was removed and provided a copy to Kardell for the file and will distribute to the commission members.

Additional correspondence letter was read.

Weber said that there are a few issues as to legal descriptions, the talking points, and he would also like to see a proposal on the recommended a list of uses/restrictions that fit the property, so we are not just having a general discussion. We need to make sure those restrictions fit the future use, but also those uses that are being used today. If people own some property, and are using it, they cannot restrict them from something they are already doing. So we need to make sure what they are doing falls within the restrictions. We need to make the restrictions meet what the current owners have and what you want the future owners to have. He thinks it would be better to table this issue, and he believes it is important to get this cleaned up. It would be much better if we have a proper legal description, and how to go forward on what types of restrictions we are going to put on the property.

Kohlhaase said some things he has summarized from the discussion are having the existing units that are sold to have the current uses listed, and saying more what you would like the uses to be out there. It would be good to get the "talking points" to the applicant, since this is from the neighborhood, it would help with the determination. In reference to any application, you cannot go more, but you can go less. The other issue would be how far that diagonal building projects into the other tracts. Kohlhaase's concern is that the tracts must remain 10 acres, which the agricultural district calls for. If one is going to be taking away from one tract then we need to be adding back to the other tracts. An easement could also be used for access to that building, but then he does not know if the easement would fall under the zoning change. It seems the easement areas located on the other tracts will only be able to be used for agricultural uses or storage. Is it Mr. Ferguson's building that extends into the other tracts or is to be sold.

Ferguson said that he still owns the building and Ryan built the building. Evidently it is on Tracts 1, 2, and 3. The area was all divided by waterway which makes it the ideal property line now.

Kohlhaase said we just need to make sure that Ryan's house does not become a non-confirming tract.

Ferguson said since he plans to sell tract 3 someday, he should just get a new legal description, and it will be very easy to keep it 10 acres because he will take Unit 12 out of Tract 1 and make it part of Tract 3.

Schultes asked if Tract 3 is land locked to the south.

Ferguson said yes.

Schultes asked if there will need to be an easement to get to it once you sell it.

Ferguson said yes, which will require purchasing some property to give a deeded easement to Tract 2 and it would go all the way through to Tract 3. Without that easement Tract 3 cannot be sold.

Blum said he liked what Weber said. They have an incomplete presentation and need more information. We need the horizontal property regime and a drawing to identify the buildings, they need the dedication/restrictions that went with HRP, and a list of your suggestions that you would like left in the commercial district for the rezoning. If you look at the General Commercial district, there are no residential uses allowed. If they change it, those people are not in compliance, they would be grandfathered in until the use ceases.

Ferguson said that he has to have a statement about what Ryan can do in regards to running the landscape business.

Kohlhaase said that is what is important to find out are the present uses for all of the units and then narrow it down. After knowing that, what additional uses or exclusions would you like to see, then you will have a bases to work with, because General Commercial allows for 30 to 40 things, and what you are trying to do is narrow it down to a couple plus allowing a few additional things in that area.

Blum said that if you have a use out there now, and we change it to General Commercial and once that use ceases being use that way, for example the landscaping business, they couldn't sell it to another landscaping business to another person.

Kohlhaase said there are two options, you could spell that out in your conditions that you agree upon or the ordinance says if a non-conforming use ceases for a period of 12 months it goes away, the business can be sold as long as the use does not cease, the use can continue on. What you're going to do is attach conditions that will be legally binding that will be able to be enforced in the future.

Weber said he would like to table the issue going forward with the condition to clean up the legal descriptions of the property and come back with the use restrictions and give us the HPR. This way the commission has all the necessary information to make a decision that works for the Ferguson Family as well as the neighbors.

Kohlhaase said the application shows Tract 1, so as long as we do not go any more than that can use the same application.

Weber said if the applicant took out Unit 12 out of Tract 1, would that be okay.

Kohlhaase said yes. The only other thing to consider would be the moving around of property lines and easements to get that building on Tract 1.

Ferguson said that he doesn't want to do an easement he would like to move the property lines. He feels that would be the easiest.

Kohlhaase said once we change that legal description from Tract 1, if it does change, we would be looking at a new application, because there is a legal process we have to follow with the legal description. If property lines are going to be changed, we need to make sure we maintain the 10 acres.

Ferguson said if he changes the property lines so that Tracts 2 and 3 are not encroaching on the building, and the building is all on Tract 1, then is the application is okay?

Kohlhaase said that we would need a new application because we are adding additional land to Tract 1.

Ferguson said we are subtracting two acres, and adding less than one.

Kohlhaase said that is fine, but this is all based upon legal descriptions, the thing is we need to keep in mind to make sure all of the tracts have the minimum lot size required by their district. You may need to consider an easement.

Ferguson did not think so because of the two acres in Unit 12.

Kidd said if you did not want to do a new application, you could do easements.

Kohlhaase said the ultimate goal is to work on the building that goes over the property line, and how can you address that whether it is through easements or changes in lot lines. A lot size change in Tract 1 would require a new application.

Ferguson said the easement may be the easiest then.

Kohlhaase said you have two options, either by easement or change the property lines.

Saunders said the change in the lot lines is problematic because it requires a new application, Saunders proposed that he and Kidd work together on some of the issues, and talk to the surveyor about how to get it figured out.

Kohlhaase said in summary the building, the legal description, the uses of the units now and the uses in the future, and basically a proposal that can be negotiated with the commission.

Schultes said she would like to see the septic permits on Tract 1.

Kohlhaase said that in reference to those use types, that have any type of residential or bathrooms we can show what we have, and then Ferguson can show more if he has that.

Weber said a zoom comment from Sonya Johnson asked about the septic systems, septic systems are required to be approved by Dickinson County, so they have records of what was approved they have to have lateral lines and do not just feed into the pond.

Kohlhaase said what Weber is saying is true today, just remember there are a lot of systems that were put in before those standards were in place. Also if any property out there sold with a septic, there is a new Time of Transfer Law where an inspection or new system would be required.

Schultes read the zoom meeting question from someone labeled Steve's iPhone, it states that the County Beacon site shows the last building there was built in 2017, he thinks the County need to look into verifying this information.

Weber said since it is zoned agricultural, building permits are not needed, so that building could have been built without a permit. The County wouldn't have had any record or input on that.

Kohlhaase said that is a possibility, which has been kind of Ferguson's assumption since 1980 when all of this started.

Ferguson said the last building was 2016 or 2017, it would be the building with no doors. They haven't had it very long.

Weber said that is another reason to clean it up, since agricultural is exempt from zoning. By cleaning this area up and rezoning it, anything that goes in there will require approved permits.

Weber said he will accept a motion to table items four and five regarding the rezoning and comprehensive plan until we have more information and until the legal is clean up.

Pierce motioned, Blum seconded the motion. All were in favor.

#### Sixth item on the agenda Old Town Estates Subdivision.

Kohlhaase said if you remember in the past you had a pre application conference for Old Town Estates Subdivision, it is a proposed development that is south and east of Milford. The only thing that has happened is there has been a change in the sketch from the pre application conference. He recommended Scholerman come and explain those changes to you before moving on with the preliminary plat.

Jake Scholerman said since the last meeting they hired an engineering firm, to help them with the preliminary plat, and they used LIDAR to shoot some topo on it. One of the changes to the plat is the road design, originally it was going to be a loop. After looking at the topo, cost, and design, they decided to continue the road through and then back out. It gave them a bit more room for a few more lots. They went from 26 lots to 32 lots. All sizes still fit the R-1 Suburban Residential District. They changed the drainage plan just slightly, and added another outlot to the northeast corner to handle the run off from that side of the property. Kohlhaase said he updated the BOH regarding the private sewers about the changes from 26 lots to 32, they did not seem to have any issues with it.

Kohlhaase said that a pre application conference is an informal sketch of the layout of the subdivision. Ultimately the developer is trying to get an approval or not to move to the expense of an engineer for a preliminary plat. Scholerman just wanted to update the board on the changes, and as Scholerman indicated, the Board of Health was also updated about the changes taking

place, they approved of the subdivision and had no issues. It has rural water, private sewer systems, and is zoned R-1 with minimum of 1 acre lot sizes, 150' feet of width. Probably the biggest changes are the 7 additional lots and the road. Instead of the road having a loop it will now have two different access points.

Weber asked if the east line is where the electrical lines will go.

Scholerman said yes.

Blum asked about upgrades to County Road 235<sup>th</sup> on the south side of the development.

Scholerman said that is a part of the discussion. He has talked with Dan Eckert the County Engineer about it. They will put a proposal together and when they reach a certain percentages the road will be paved.

Weber asked if they will turn the subdivision roads over to the County.

Scholerman said yes

Kohlhaase said this is the first subdivision the where from start to finish, following the intent of the Subdivision Ordinance 103, where it is built to County standards and the improvements taken over by the County.

Scholerman said that Eckert has looked at this and gave some comments, he likes the extra right of way.

Blum asked if they approached the sanitary district about coming out that far.

Scholerman said they talked to the sanitary district and they had no interest in it.

Kohlhaase said that Old Town is not on public sewer.

Schultes asked if the lots have been checked against the proposed FEMA flood maps.

Scholerman said that yes they have, the lots are out of the flood plain. All of the land is CRP, just a few lots had to be bought out.

Weber said lots 19 thru 32 which are on the south side of the road way appear to flat, how are you going to handle drainage off of those and get it over to the outlot's.

Scholerman said in the back portions of the lots they're going to create a swale between the lots. The back side of lot 22 is the lowest area in the subdivision and will have a surface intake.

Weber asked if it will run out to outlot A.

Scholerman said that is correct.

Kohlhaase asked if it will see the preliminary plat next month.

Scholerman said hopefully it would be ideal, or possibly after that.

Kohlhaase asked Saunders if improvements to 235<sup>th</sup> street would be strictly negotiations with Dan Eckert and the Board of Supervisors.

Saunders said it would.

Kohlhaase said that the Planning and Zoning Commission could make a recommendation, but ultimately it would be up to the Supervisors.

Saunders said that is correct.

Blum asked Saunders if the County could/would special assess that road for 10 or 20 years.

Saunders said there is a way to do that but it would be up to the Supervisors.

Permission to move forward granted by the Commission.

Seventh item on the agenda was Old, Unknown, or other business to be discussed. Kohlhaase said we will wait to see what more happens with Ferguson's and keep you in the loop. In reference to the setup today, we did have additional space across the street should it have been needed for more public attendance.

Kim Wermersen, County Supervisor, thanked the commission for serving. What they witnessed today was awesome. Thank you.

Eighth item on the agenda was Adjournment. Pierce motioned to adjourn. Schultes seconded.

All in were in favor.

(For more information see recording P&Z 07 20 20)