

**MINUTES OF THE BLACK HAWK COUNTY PLANNING AND ZONING
COMMISSION MEETING**

Harold E. Getty Council Chambers - Waterloo City Hall

Wednesday, April 19, 2022, 6:00 p.m.

Meeting was also conducted via Zoom

Hyberger called the regular monthly meeting of the Black Hawk County Planning and Zoning Commission to order at 6:00 pm, Wednesday, April 19, 2022, at the Harold E. Getty Council Chambers - Waterloo City Hall.

I. Call to order and roll call

Members present: Sage, Agee, and Schaefer participated via Zoom. Bosier and Agee participated in person.

Members absent: Schares

Also present: Black Hawk County Planning Staff –Seth Hyberger and Lexi Blank participated in person and 35 members of the public participated at the meeting.

Approval of the Agenda

It was moved by Agee and seconded by Bosier to approve the agenda for April 19, 2022. Motion to approve the agenda carried unanimously.

II. Approval of the minutes for the March 15, 2022 regular meeting.

It was moved by Agee and seconded by Schaefer to approve the minutes. Motion to approve the minutes carried unanimously.

III. New Business

1. 440 Main Street Voorhies Heartland CO-OP Rezone

Request to rezone 0.2 acres from “A-L” Agricultural-Limited District to “C” Commercial District in order to allow for a commercial building with a primary grain office/scale use and employee housing for up to eight (H-2A) migrant workers as a secondary use.

Hyberger gave the staff report. The Planning and Zoning Commission did not have any initial questions for staff. Terry Frahm, Heartland CO-OP, 2829 Westown Parkway Ste. 350, West Des Moines, stated the 30,000 lbs. anhydrous ammonia tank setback rules do not have a distance where an assembly can be placed. A home can be placed right next to an anhydrous ammonia tank or across the street from one according to the administration code. In addition an anhydrous ammonia plant can be expanded upon even when that plant is adjacent to existing housing and new buildings on an existing site with an anhydrous ammonia tank do not need to meet the anhydrous ammonia setback administration code requirements.

Frahm also noted that the interior remodel will require a building permit in compliance with the international building code. Frahm indicated he has been in contact with Greg Ahlhelm with building inspection and he conducts the plan review for all commercial structures in Black Hawk County. Heartland CO-OP has also been working with an architecture firm to design the interior

remodel. Frahm has put the design work on hold until the rezone is approved by Black Hawk County. Hyberger noted that Heartland CO-OP will not receive a certificate of occupancy until all building code requirements have been met, such as egress windows, other safety requirements, and etc. Frahm also noted that he has had H-2A workers in the past and has worked with the Federal Department of Labor and Iowa Workforce Development to get H-2A a migrant worker housing Certificate of Occupancy. The Iowa Workforce Development can inspect the residential quarters at any time and they will make sure the housing is safe for all H-2A migrant workers. Frahm noted the petition signed by the residents of Voorhies and surrounding area indicated that their quality of life could be impacted if the rezone request is approved. The petition stated, "This small unincorporated town is not equipped to support migrant H-2A workers because there is not grocery store, restaurant, gas station, medical services, taxi, bus services, or entertainment in town." Frahm noted that none of these services are available for anyone that lives in Voorhies, not just H-2A migrant workers. There are required services before a community is considered fit to live in. Frahm stated that there are 437 unincorporated communities and 1,200 cities with a population of less than 500 in Iowa. Most of these communities lack services and the people of Voorhies live there without these services in their community as well. The next part of the petition stated, "These employees cannot legally drive, and will not be able to walk anywhere to even get the most basic needs or services they require." Frahm noted H-2A workers are allowed to apply for a driver's license and Heartland CO-OP will provide transportation services for these workers and these transportation services will be made available at anytime to nearby communities to address the needs of its workers. H-2A workers are paid weekly and Heartland makes sure these migrant workers are given rides to the bank, so they can cash their checks and give them rides to other areas to address their needs. Workers are also given the opportunity to get a chauffeur's license to drive semi trucks.

Frahm discussed a letter from Attorney Eashaan Vajpeyi. The letter stated the people of Voorhies had concerns regarding the health and safety and wellbeing of the workers. Frahm noted that there is little difference between the lack of services for those living in Voorhies than the proposed housing for the H-2A migrant workers. Black Hawk County Building Inspection will ensure all building codes are met and the State of Iowa Workforce will ensure that all H-2A migrant worker housing requirements are met. Frahm indicated that the site plan met the requirements of Black Hawk County and noted that a building permit is required to construct the residential quarters in the basement. In addition Frahm noted that the main use for the facility is a scale and office for the CO-OP and housing would be a secondary use for the building. Frahm also indicated that since the housing is built on their property the 300 feet setback from the anhydrous ammonia tank does not apply.

Attorney Eashaan Vajpeyi, 3324 Kimball Avenue, indicated that he is the person that drafted the letter. Vajpeyi noted that the majority of the citizens of Voorhies and surrounding area are against the project for humanitarian reasons and noted the H2-A migrant housing or building requirements are not within the purview of Planning and Zoning Commission. Vajpeyi indicated that the applicant is not rezoning the entire site to commercial and it is obvious why Heartland CO-OP is only requesting to rezone a small piece of the property to warehouse its workers. Vajpeyi noted that it should not matter that the scale/office is an integral part of the CO-OP facility. The consideration is whether that building's primary use changes when workers are housed there. Vajpeyi indicated the office/ scale is mostly closed and no one is there. Therefore housing would become the primary use for the facility if the rezone is approved and this use would not be compatible with the zoning ordinance. Vajpeyi noted the site is also subject to site plan review and questioned why a set of plans has not been provided for the internal housing remodel. Vajpeyi also noted that the fact anhydrous ammonia is considered grandfathered because it is on Heartland

Property should not be considered. The housing still does not meet the 300 feet siting or setback as required by the Agriculture and Land Stewardship Department for the State of Iowa.

David Henke, 6426 Voorhies Road, indicated that he lives right across the street from Heartland CO-OP and noted the office has sat dormant since the harvest season last fall. The office sat empty and the roads would not get plowed for days or weeks. Henke stated that just because an anhydrous ammonia tank is allowed to be within 300 feet of a residential structure, does not make it a good idea.

Robby Roads, 425 Main Street, indicated that no one in Voorheis supports the request to have residential housing at Heartland CO-OP. Roads noted there is 27 people in the Town of Voorheis and there is 38 persons at this public hearing that are against the request. Roads noted he does not lock his doors and does not want to have a group of outsiders in his community. In addition he does not understand why anyone would request to have housing in a CO-OP, that is literally in a basement.

Deb Mumm, 11400 Lincoln Road, asked Frahm why they chose Voorheis for the H2-A migrant housing. Frahm indicated that he thought it was a suitable location. Mum noted those workers could be housed in Reinbeck or Traer and questioned why his workers are being placed in a basement that close to an anhydrous ammonia tank, when there are multiple locations that have services available in walking distance.

Greg Cory, 11528 Beck Road, noted he is against the CO-OP turning the office building into an apartment complex. It is not the right place for it.

Curt Wilkes, 312 Brice Street, indicated if the rezone request is approved, what stops them from building additional housing. Wilkes also asked if they are allowed to have children and families there. Hyberger noted that if they would have to come before the Planning and Zoning Commission for a site plan review to expand the building. Wilkes asked if families would be allowed to stay there. Hyberger asked Frahm if families would be allowed to stay there. Frahm noted there would be no families living there. Frahm noted that Iowa Workforce Development would not allow for families to live there. The type of housing that is being provided is for single migrant workers and the type of housing being provided would not meet the housing requirements for a family. Hyberger indicated that the Iowa Workforce Development can send over inspectors at any time and they want to make sure families are not living there.

Kathy Henke, 6426 Voorhies Road, noted that since Heartland CO-OP purchased the facility, it has been considered a ghost town. They use it during harvest season to load a few trucks of grain and fill anhydrous ammonia tanks in the spring. There is no one in that office on a daily 8-hour basis, 5 days a week. Once the housing is added, the facility should be considered primarily a housing use and the office/scale use should be considered a secondary use.

Ken Frost, 12805 Lincoln Road, noted that if the housing is approved there will be 8 persons outside grilling and consuming alcohol all night long. Allowing housing there is not good or healthy for the community.

Angie Wilson, 408 Brice Street, noted that is a part-time worker at the Voorhies elevator. Wilson noted that Heartland CO-OP does not properly maintain the site and does not even remove snow in the winter. Wilson indicated that there is no one at the site on a daily basis and the place is only open part-time during the spring and summer months. Wilson stated the neighborhood does not

support the housing there and they are concerned about the safety of their neighborhood if this request is approved.

Brenda Allen, 6915 W Reinbeck Road, indicated the Zoning Ordinance states, "Make careful and comprehensive studies of present conditions and future growth of the County with due regard to its relation to neighboring territory. The plan shall be made with the general purpose of guiding and accomplishing a coordinated, adjusted and harmonious development of the County and its environment which will promote health, safety, morals, order, convenience, prosperity, and general welfare, as well as efficiency and economy in the process of development." Brenda noted how does rezoning this small piece of property in the middle of a grain elevator benefit the Town. The rezoning of this property will not promote the growth of Voorhies, it is simply an influx of people on a seasonal basis with no connection to the community. The approving of this rezone request will only benefit Heartland CO-OP, it will not benefit the community of Voorhies.

Russel Vandaele, 6425 W Eagle Road, noted he lives straight north of the elevator. Vandaele indicated just because something is legal to do does not make it right and noted no one in this community or region supports this rezone request.

Frahm, noted the primary use for the facility is an office/scale and stated the basement has egress windows and several homes have finished basements. Having the housing in a basement is not a bad thing and the site plan noted no changes to the footprint or exterior. Hyberger stated that interior building plans will have to be approved by the Black Hawk County Building Inspection Department before they can begin construction and a certificate of occupancy will not be issued until all building and fire code requirements are met. The State of Iowa Workforce Development will also have to inspect the site and issue a certificate of occupancy as well. Frahm stated that both entities will have to certify that the housing meets all local, state, and federal requirements. In addition Frahm noted the agricultural exception listed in the zoning ordinance. The elevator, scale, and H-2A housing all support agricultural activities.

Bosier asked Frahm how long will H-2A workers be staying there on a seasonal basis. Frahm noted usually 6 months. Nagle noted that Frahm indicated the building has an office/scale use. Nagle asked how many people work in the office and how many hours do they work a week. Frahm indicated the max number of employees in the office will be two persons and the hours will vary depending on the time of the year and when it is harvest season. Wilson noted that the Heartland CO-OP Voorhies is only open 2 to 3 days a week during the harvest season and would generally only have one person working there and no more than 2.

Wilson, indicated the housing will be located in the basement and cutting the main office from the basement will only leave one bathroom available for the workers.

Vajpeyi, wanted to note a document from the Department of Labor concerning H2-A workers for Heartland CO-OP at one of their sites. The document notes Heartland CO-OP will have seasonal workers/housing for eight months and not six months. Vajpeyi indicated that rezoning also requires site plan review per the Zoning Ordinance and noted the site plan review was missing. Hyberger indicated that a site plan was provided in the meeting packet and indicated that Heartland CO-OP is not changing anything regarding the building footprint. Hyberger stated building Inspection are the ones that review the interior of the building, not the Planning and Zoning Department or the Planning and Zoning Commission. Vajpeyi stated that a grain elevator should be considered an industrial use and that Heartland CO-OP is only rezoning a small area of the lot to avoid having to pay commercial taxes for the entire site. This is all being done to cheaply warehouse workers. Vajpeyi noted that the office/scale is rarely used and should not be considered

a primary use when it is rarely maned. If the housing is built, that should be considered the primary use and the office/scale use would be considered secondary. In addition having 8 H-2A workers living in a basement 8 months out of the year is not an ideal situation and it has nothing to do with improving the quality of life for the citizens of Voorhies.

Brian Minard, 11926 Holmes Road, noted why these workers could not be placed at an extended stay hotel in Cedar Falls. There are plenty of other places where these workers can be housed, especially when the citizens of Voorhies and the region do not want them there.

Schaefer asked Frahm if they have considered other places to house their workers due to all the opposition in Voorhies. Frahm noted this is a facility that they purchased and they are not fully using the facility and is centrally located. That is why they are requesting the housing use.

It was moved by Schaefer and seconded by Nagle to deny the request by Heartland CO-OP to rezone 0.2 acres from "A-L" Agricultural-Limited District to "C" Commercial District in order to allow for a commercial building with a primary grain office/scale use and employee housing for up to eight (H-2A) migrant workers as a secondary use. The request to deny was unanimously approved.

IV. Discussion

1. Discuss updating Wind Energy Facilities Ordinance.

Hyberger indicated that the Black Hawk County Wind Energy Facilities Ordinance did not have a minimum distance from a home. Hyberger noted that the minimum should be at least 1,000 feet, but it could be more. Hyberger also suggested changing the timeline to start a wind project from 12 months to 24 months and increasing the setback from 1.5 times the wind turbines total height to possibly 2 times or more. In addition setbacks should be considered from the property line for wind turbines and not to the center of the road.

Wayne McGarvey, 2814 W Eagle Road, suggested that the setback from wind turbines to homes should at least be at least be 2,500 feet and the noise level should be reduced to a maximum of 40 decibels. McGarvey discussed various court actions occurring in Iowa between counties and Mid-Americian Energy. In addition McGarvey indicated that the Wind Turbine Ordinance could be improved upon to better protect land and home owners.

2. To have an open meeting in person prior to next Planning and Zoning Commission meeting to have a general discussion. Hyberger noted that he and Bosier had a meeting with Supervisor, Linda Laylin. Various issues were discussed such as when to recognize Not In My Back Yard (NIMBY). Some persons will be against a project because they do not want it there without a valid reason. Those against the 440 Main Street Voorhies Heartland CO-OP rezone project noted several valid reasons why the project should not be approved.

Adjournment

It was moved by Sage and seconded by Nagle to adjourn the meeting at 7:30 p.m. Motion to approve carried unanimously.

Respectfully submitted,

A handwritten signature in blue ink, appearing to read "Seth Hyberger", with a large, sweeping flourish at the end.

Seth Hyberger,
Black Hawk County Zoning Administrator