

**STORY COUNTY
PLANNING AND DEVELOPMENT
STORY COUNTY ADMINISTRATION
900 6TH STREET
NEVADA, IOWA 50201-2087**



"Commitment, Vision, Balance"

515-382-7245

**MINUTES
STORY COUNTY
BOARD OF ADJUSTMENT**

AN AUDIO RECORDING OF THE FULL MEETING MAY BE FOUND IN THE PLANNING AND DEVELOPMENT DEPARTMENT, OR BY VISITING WWW.STORYCOUNTYIOWA.GOV

DATE: September 16, 2020	Steve McGill, Chair (Zoom)	2022
	Matthew Neubauer, (Zoom)	2021
	Kelli Excell (Zoom)	2023
	Nathan Hovick (Zoom)	2024
	Elara Jondle (Zoom)	2020

CALL TO ORDER: 4:00 PM *Absent
PLACE: Zoom Meeting Originating
From Administration Building

Special Note: Due to recommendations to social distance in order to help slow the spread of the COVID-19 virus, public access to the meeting was provided via conference call to listen and participate in the meeting.

PUBLIC PRESENT BY CONFERENCE CALL: Jane Weingart, Tom Kurt, Bob Ringgenberg, Greg Ervanian, RJ Bower, Brad Perkins, Michael Roth, Chad Schneider, Bill Rosener, Andrew Friend, Doug McCay, Wayne Ruble, N Keller, Ray, Michael Roth, Jordan Cook.

STAFF PRESENT: Jerry Moore, Planning and Development Director (Zoom); Amelia Schoeneman (Zoom); Marcus Amman (Zoom); Stephanie Jones (Zoom), Recording Secretary

ROLL CALL: McGill, Neubauer, Excell, Hovick, Jondle

ABSENT: None

APPROVAL OF AGENDA (MCU)

APPROVAL OF MINUTES

Jerry Moore provided an update about HF 2512 impacting Planning and Zoning Commissions and Board of Adjustments and the need to rehear items from the June 17, 2020 and July 15, 2020 Board of Adjustment meetings.

Motion by Neubauer, Second by Hovick to approve the April 15, 2020, June 17, 2020, and July 15, 2020 minutes. (MCU)

Voting Aye: Neubauer, Hovick, Jondle, Excell, McGill

Voting Nay: None

Vote: (5-0)

APPROVAL OF WRITTEN FINDINGS OF FACT

Moore provided a summary of the staff memo, which explained why action was needed on Written Findings of Fact for CUP08-17 and CUP09-17 and the change to CUP09-17 due to approval of CUP03-19.1.

Motion by Neubauer, Second by Jondle to approve Written Findings of Fact for CUP08-17 Perkins.

Voting Aye: Neubauer, Jondle, McGill, Excell, Hovick

Voting Nay: None

Vote: (5-0)

Motion by Neubauer, Second by Excell to approve Written Findings of Fact for CUP09-17 Perkins.

Voting Aye: Neubauer, Excell, Jondle, Hovick, McGill

Voting Nay: None

Vote: (5-0)

Motion by Neubauer, Second by Jondle to approve Written Findings of Fact for CUP03-20, CUP04-20, and CUP05-20 Story Comm.

Voting Aye: Neubauer, Jondle, Hovick, Excell, McGill

Voting Nay: None

Vote: (5-0)

Motion by Neubauer, Second by Excell to approve Written Findings of Fact for VAR02-20 Balbiani.

Voting Aye: Neubauer, Excell, Jondle, Hovick, McGill

Voting Nay: None

Vote: (5-0)

Motion by Neubauer, Second by Jondle to approve Written Findings of Fact for VAR01-20 Friend.

Voting Aye: Neubauer, Jondle, Hovick, Excell, McGill

Voting Nay: None

Vote: (5-0)

Motion by Neubauer, Second by Excell to approve Written Findings of Fact for CUP02-20 Izaak Walton League.

Voting Aye: Neubauer, Excell, Jondle, Hovick, McGill

Voting Nay: None

Vote: (5-0)

Motion by Neubauer, Second by Hovick to approve Written Findings of Fact for CUP02-90.6 Martin Marietta.

Voting Aye: Neubauer, Hovick, Jondle, Excell, McGill

Voting Nay: None

Vote: (5-0)

PUBLIC COMMENTS:

Greg Ervanian asked if public comment is allowed pertaining to the vote taken on the Findings of Fact. Ervanian asked if every member of the board received a copy of the letter from his law firm pertaining to CUP09-18 and CUP08-17, the Raspberry Hill CUPs. Moore stated that staff communicated with the County Attorney's office in regard to the letter and was told that it was not something that staff was mandated to provide. The Written Findings of Fact were before the Board of Adjustment because the decision was remanded by court. There were previously not written findings of fact prepared and acted on for the cases. The court ruled that the findings of fact be prepared and the Board of Adjustment take action on them for both cases.

Ervanian stated that he understands Moore was instructed by his council, but feels that his characterization of the district court's order is incorrect. Ervanian stated that the district court annulled and vacated the CUPs and the CUPs acted on today do not exist. The CUPs the district court ordered on were appealed to the Iowa Court of Appeals and affirmed. Ervanian stated that he feels the language from the Iowa Court of Appeals makes it explicitly clear that the district court was correct, that the district court no longer retains jurisdiction over the matter, and that the CUPs are annulled and vacated. Ervanian felt that if the inclusion of the letter had been allowed, the board would have been more informed about the vote that was taken today.

HEARINGS:

CUP03-20, CUP04-20, CUP05-20 StoryComm

Amelia Schoeneman presented a summary of the Staff Report. StoryComm is proposing to erect three communications lattice towers to provide two-way radio communications for Story County emergency services and public works agencies, including Story County, municipalities in Story County and Iowa State University. The proposed towers are as follows:

CUP03-20: A 255-foot lattice communications tower to be located in the southwestern portion of parcel 05-01-100-100 in Franklin Township. The parcel is located at the southeast corner of 550th Avenue and 160th Street. The communications tower will be 400 feet from the right-of-way of 550th Avenue and approximately 474 feet from the south property line.

CUP04-20: A 285-foot lattice communications tower to be located in the southwestern portion of parcel 15-18-100-300 in Indian Creek Township. The parcel is located at the northeast corner of 620th Avenue and 305th Street. The communications tower will be 428 feet from the right-of-way of both 620th Avenue and 305th Street.

CUP05-20: A 265-foot lattice communications tower to be located in the southeastern portion of parcel 03-25-300-200 in Warren Township. The parcel is located on 150th Street. The communications tower will be 398 feet from the right-of-way of 150th Street and 133 feet from the east property line.

Schoeneman stated at the June 17, 2020 meeting these were approved. Additional comments received since the last meeting were from the landowner of CUP03-20 being open to other locations for the tower CUP03-20 and that the proposed location for the tower is best for StoryComm.

Neubauer asked for clarification on the process with readdressing the cases and how the process works. Schoeneman stated that essentially the board is rehearing the cases since there was not a quorum at the June meeting. The public hearing will need to be re-opened and action taken, with the recommendation from staff for the same action.

Andrew Friend stated that since the last meeting, he has become acquainted with the landowner and the landowner is ok with the tower being moved to the southwest corner of the field. Friend shared a proposed site plan for the tower to be moved to. Friend asked that CUP03-20 have a condition to that the tower to be moved to the location to the south that is most favorable by the landowner and both neighbors. Friend offered suggestions for amending the findings in order to approve conditions. Friend clarified that he is not asking StoryComm to move the tower very far and he understands that the timeline will be lengthened and would like the Board of Adjustment to consider the long-term tower location. The timeline and budget concerns are understandable, but short term.

Rob Bowers stated that the landowner did provide a comment about moving the tower location if it is in the best interest of everyone involved. Bowers stated that it is not in the best interest of

StoryComm, or the citizens of Story County. Bower clarified that the tower location was not originally moved in order to change the aesthetics for the other property owner, but it was actually moved because of a water way and being as close to the terraces as possible created the best use of the land. Bowers stated that moving the location would cause potentially a 4-month delay and up to \$25,000 in additional costs to the citizens of Story County.

Schoeneman stated that there would be grass landscaping around the site and there is a fence with vinyl slats for screening, which would be 6' tall. McGill asked Bower if moving the tower would affect the communications aspect of the tower. Bower stated it is not anticipated that communications would be affected, but another study would be required to ensure that it would not.

Schoeneman went through the standards of approval for a conditional use permit and staff's findings. The towers exceed the required setbacks. The FAA requires lighting for safety.

Schoeneman reminded the board that the towers are for emergency services and all three towers are important because they form a ring to work with each other to provide the radio operability that first responders need.

Neubauer asked about Mr. Friend's concern with the unsightliness of the tower and asked why that was not in the staff report. Schoeneman stated that the compatibility standard focuses on odor or noise, which could be considered offensive and interfere with the use of adjoining property. The lighting is required for safety by the FAA and does not impact staff's compatibility findings.

Excell asked if the board could ask the applicant to consider alternative lighting and if all three towers had to be approved together. Schoeneman stated that the Board could amend staff's findings.

McGill asked if Friend and Bowers have had communication since the last meeting. Bowers stated that the Board of Directors did receive an email from the Friends after the last meeting and prior to the notification of the June meeting being vacated and were under the assumption the process was done since there had been a previous vote.

Excell asked if all three towers have to be approved as a whole or if two can be approved and the second be worked out and brought back. Schoeneman stated separate action could be taken, but in terms of feasibility that would be a question for Mr. Bowers. Bowers stated that part of the estimated cost moving forward would be to do a study to determine the impact of moving the tower location and then a four-month delay for the regulatory process, which could be a potential problem for emergency responders.

McGill stated that the tower has met all of the requirements according to the law and asked the board what they would like to do.

Excell stated that if there is an option to move the tower that would preserve the value of the Friends property and the long-term financial effect for the Friends that should be considered. Hovick asked if there has been any research done as to the effect on property values. Schoeneman stated that the Assessor did not raise any. Excell asked if departments knew about the height and lighting. Schoeneman clarified that the information is routed to all county departments so they would have known the information on the height and lighting.

McGill stated it would need to be approved as presented or table the item allowing additional time for the applicant and Mr. Friend to come to an agreement.

MOTION: The Story County Board of Adjustment approves the Conditional Use Permit for the StoryComm Communications Tower as put forth in case CUP03-20, as submitted.

Motion by Hovick, Second by Neubauer

Voting Aye: Hovick, Neubauer, McGill Jondle
Voting Nay: Excell
Vote: (4-1)

MOTION: The Story County Board of Adjustment approves the Conditional Use Permit for the StoryComm Communications Tower as put forth in case CUP04-20, as submitted.

Motion by Excell, Second by Neubauer
Voting Aye: Excell, Neubauer, Jondle, Hovick, McGill
Voting Nay: None
Vote: (5-0)

MOTION: The Story County Board of Adjustment approves the Conditional Use Permit for the StoryComm Communications Tower as put forth in case CUP05-20, as submitted.

Motion by Hovick, Second by Excell
Voting Aye: Hovick, Excell, McGill, Neubauer, Jondle
Voting Nay: None
Vote (5-0)

VAR02-20 Balbiani

Schoeneman provided a brief summary. The request is for a variance to the minimum front setback for an attached garage at 27922 Timber Road. The zoning of the subject property is R-1 Transitional Residential, which establishes a minimum front setback of 40 feet. The variance request for an attached garage is proposed to encroach on the front setback, requiring a variance of 7 feet. The attached garage is proposed to have a setback of 33 feet, be 39-feet-by-26 feet, and be located on the west side of the existing dwelling. The purpose of the variance is to preserve two trees on the site. A larger garage that encroaches on the setback would allow for the overhead garage door and driveway to be located further west, away from the trees. Planning and Development staff recommend denial of the variance. Schoeneman stated the Board of Adjustment previously approved a 3' variance.

Motion by Neubauer, Second by Excell to approve the variance for 3 feet to the 40-foot setback.

Voting Aye: Neubauer, Excell, Jondle, Hovick, McGill
Voting Nay: None
Vote: (5-0)

VAR01-20 Friend

Marcus Amman provided a brief summary and stated that the request is for a variance to the minimum front setback for a nonconforming dwelling located in the A-1 District, which establishes a minimum front set back of 50 feet. The variance request is to permit the construction of an attached garage to the single-family dwelling that would encroach on the front setback requiring a variance of 20 feet from 50 feet to 30 feet. The property is located in Section 2 of Franklin Township parcel number 05-02-200-230. Planning and Development Staff is recommending approval of the variance. Due to how the home was originally built, this is the only location that would accommodate the garage.

MOTION: The Story County Board of Adjustment approves the Friend Setback variance request, as requested by the applicant and put forth in case VAR01-20, for a variance to allow the proposed attached garage to have a front setback of 30 feet in the A-1 District.

Motion by Neubauer, Second by Hovick
Voting Aye: Neubauer, Hovick, Jondle, Excell, McGill
Voting Nay: None
Vote: (5-0)

5:10 PM McGill called a five-minute break.
Resumed meeting at 5:15 PM

CUP02-90.8 Martin Marietta

Amman presented the staff report and stated that this request is for a conditional use permit minor modification for a proposed wheel wash located at 831 East Riverside Road, Parcels 06-23-400-255 and 05-24-300-105 (now combined to parcel 05-24-300-110). The existing wheel wash system is no longer sufficient to handle the present volume of customer traffic, and an improved means of addressing track-out is desired. The existing wheel wash was installed in 2004 and is 61 feet long and 12 feet, 8 inches wide. The water and rock material from the existing system is deposited in a nearby "clean-out bunker". The proposed wheel wash is 52 feet long and 14 feet wide. The proposed system will have its water and rock material deposited into a 40,000 gallon recovery tank. The rock material that is recovered from both of these tanks will be used on internal roads or returned to the mine. There is no proposed increase to traffic in the area. The water used in the process is a completely closed loop system meaning no water is being discharged.

Don Maroney was on the call representing Martin Marietta.

Doug Kurt expressed concerns about track out and dust in the area and he has lived in the area for 25 years. Kurt asked if the current wheel wash station would stay in operation while the new one is built. Maroney explained that the existing would stay in operation while the proposed is being built, and after both will be in operation. Kurt asked if both would be in operation 12 months out of the year. Maroney explained that they will be weather permitting (temperature), and that in the winter months when the ground is hard the track out is far less. Kurt stated that it seemed like more track out happens in the winter. Maroney stated that if they need to sweep East Riverside Road they would still have that ability.

Hovick in response to Kurt's response stated that since Martin Marietta was adding additional track out prevention that the discussion was not relevant. McGill agreed.

Moore stated that Martin Marietta applied for an insignificant modification to pave shoulders on their access drive. This is another measure that they are taking to control dust and track out in the area.

Amelia Schoeneman stated that the dust control in road is part of the State of Iowa permit. Maloney stated he is not aware of that.

MOTION: The Story County Board of Adjustment approves the Conditional Use Permit for the addition of a new wheel wash station in addition to the existing wheel wash at the Martin Marietta Ames Mine as put forth in case CUP02-90.8, as submitted, with conditions.

- 1. Conditions 1-4 of the approved Conditional Use Permit Case No. CUP02-90 are maintained.**
- 2. The applicant shall provide the sound level reading from the property boundary of the closest dwelling on the south side of Riverside Road as well as the property boundary for the dwelling to the west owned by Plowback LLC for a base line reading when the new wheel wash is constructed and operational.**

Motion by Neubauer, Second by Hovick as submitted
Voting Aye: Neubauer, Hovick, Jondle, Excell, McGill

Voting Nay: None

Vote: (5-0)

CUP06-20 Nevada Wastewater Facility

Schoeneman presented the staff report and stated that the Wastewater Treatment Facility is for the City of Nevada and is proposed to be located on parcel 11-31-200-305, on the south side of 270th Street and west of West Indian Creek. The new facility will replace the existing facility, located at 457 S 6th Street, Nevada. The existing waste water treatment facility is approximately 60 years old. It does not have the capacity to support the population growth of the City of Nevada, the expansion of Burke Corporation or Iowa Department of Natural Resource Requirements. The applicant stated that the facility is "not readily amenable to be modified to provide additional effluent disinfection and nutrient removal requirements" and could not meet separation requirements from inhabitable buildings. The proposed facility will provide a higher level of treatment than the existing wastewater treatment facility. An interceptor sewer is proposed between the existing Wastewater Treatment Facility and the new location—a lift station and force main are proposed to pump effluent from the existing wastewater treatment facility to the proposed wastewater treatment facility, generally along Country Road S-14 (620th Avenue). The project will be completed in multiple phases with completion by November 2023. At their September 2, 2020, meeting, the Planning and Zoning Commission recommend approval of the conditional use permit with conditions.

Excell asked about the effluent being discharged in the floodplain. Hovick stated that the pipe discharges into a creek, which is in the floodplain. Moore stated that a floodplain permit would be needed for the discharge pipe. The DNR will also review. Hovick stated if the DNR or Army Corps denied that the plans would have to be changed. Moore stated that the CUP process is required first before being able to apply for a floodplain permit. Schoeneman stated that if the floodplain permitting resulted in changes in the plan that they would come back to the Board of Adjustment. McGill asked if the route of the sewer, instead of cutting across private property, could be continued in the right-of-way. Schoeneman stated that gravity is needed for the sewer and the grade at the intersection of 270th would require the pipe to be so deep that it would create maintenance issues.

Mike Roth stated that the issue identified is that at the 270th intersection, the topography begins to incline and the current depth of the pipe would get to a 40' depth, which would create challenges for long term maintenance, as well as excavation for construction. The proposed alignment was proposed going across the property with an attempt to obtain permanent easements.

Michael Crow owns property to the east of the proposed facility stated that due to heavy vehicles being on the road that he would like consideration given to paving from the facility west to S-14. Crow felt holding effluent discharge during flooding to avoid flooding properties downstream would also be a good consideration. Roth stated that paving 270th street has not been a consideration as part of this project. Discussions with the county engineer indicated that paving is not required. In regard to floodplain, there has been no consideration given to retaining effluent during a flood. The facility will still function properly during a 100-year flood event. Roth stated that discharging treated effluent into a stream or river is the only approved discharge method in the state and that an effluent discharge would not create flooding. Schoeneman stated that the Iowa DNR has certain permitting requirements based on the use classification of the stream. Roth stated that the DNR has gone through the entire state and classified every receiving stream or water body, which identifies the characteristics and usage. The city would receive a permit for discharge limits from the DNR.

Ray Ringgenberg owns the property north of the proposed facility and had several concerns consisting of: confusion with the notice received prior to the Planning and Zoning Commission meeting; the sewer pipe going across his property and the quality of his farm ground; and manhole placement every 400 feet, which will create obstacles to work around during planting and harvesting. Surveyors were also on his property.

Roth stated that he is unaware of any individuals on Mr. Ringgenberg's property and the property was not surveyed by HR Green. Roth stated that the sewer line can be routed down S-14, but it is not feasible due to the depth of the line. The alignment along S-14 is still under final design and the preliminary alignment is based on the avoidance of obstructions within the right-of-way but also maintaining required separation between existing utilities. Rural water does jog back and forth on both sides of the road and the DNR requires a separation between sewer lines and potable water. McGill asked for clarification if a study is still being done on where the sewer will be placed. Roth stated that yes, it is still being studied. Schoeneman stated that if there were large deviations they would need to come back to the Board of Adjustment. Moore stated switching from the east side to west side that would be insignificant, but changing the location of the sewer on private property would come back to the Board of Adjustment. Roth stated the DNR allows a maximum distance of 800' spacing between manholes.

Schoeneman stated that this is the preliminary alignment and easement acquisitions will be done separately. In 2021, they will be working with property owners to obtain easements.

McGill stated that he has seen the damage pipeline can do to land, and the value of the property could be impacted and granting a permit with preliminary alignment might not be enough to grant the CUP. Schoeneman stated that one option would be to place a condition to come back to the Board of Adjustment after easements are finalized.

Mike Roth stated that multiple alignment options were considered during the facility planning stage. The preferred route was actually to follow West Indian Creek down from the existing plant to the proposed treatment plant. After evaluation, it was not recommended due to a significant impact to environment and private property, maintenance issues, and costs compared to other options. The option presented tonight was the second option, which reduces these impacts. There was no feasible third option in terms of routing the pipe.

McGill stated that when the plan was originally put together it was supposed to go down S-14. He is concerned about the impact of property values. McGill felt that tabling the item for additional discussions with landowners would be appropriate.

Neubauer stated that he understands the challenges and asked how a motion would need to be structured.

Schoeneman stated there is existing case law that states a public improvement can be reviewed but should not be denied. Moore stated the Board could take action to approve with a condition that the location of the sewer be worked out with the property owner and come back to the board.

Jondle stated that she does see the concern with the trunk line sewer layout with the hill.

Excell stated that an extra month of the applicant and property owner taking some extra time for discussions that would be worth it to try to come to an agreement.

McGill stated that he would be in favor of tabling for a more definite route for the sewer, as well as agreements with the private property owner.

Moore asked if the focus for the applicant should be on the use of the right-of-way. McGill stated that discussions with the private property owner in the interim would be appropriate.

MOTION: The Story County Board of Adjustment remands the Conditional Use Permit for the City of Nevada Wastewater Treatment Facility as put forth in case CUP06-2018, back to the applicant for further review and discussion with private property owners for a sewer plan that is mutually satisfying, and directs staff to place this item on the October 21, 2020, Story County Board of Adjustment agenda.

Motion by Neubauer, Second by Excell
Voting Aye: Neubauer, Excell, Jondle, McGill,
Voting Nay: None
Absent: Hovick (Left meeting at 5:57 PM)
Vote: (4-0)

CUP07-18.1 Inroads, LLC; Mineral Extraction

Schoeneman stated the request is for a minor modification to an existing conditional use permit (07-18) for the extraction of sand and gravel. The subject property is located at 3034 560th Avenue. The mining cell is located in the southwestern 4.6 acres of the 47.24 net-acre parcel. The conditional use permit was originally approved on November 28, 2018, with conditions, including that "landscaping shall be installed by June 1, 2020, in accordance with the submitted restoration plan. Berming and landscaping shall also be completed on the east side of the site matching the extent of extraction by June 1, 2020. Once landscaping is completed, the site shall be inspected by Planning and Development staff for conformance with the submitted restoration plan and prior to releasing bond security." The applicant is requesting a modification to the condition to allow the berm to be located east of the existing mining cell and to not be permanently landscaped pending approval of a future conditional use permit for the second phase of extraction, including the area east of the existing mining cell. If the second phase of extraction is not approved the berm is proposed to be permanently landscaped with nursery stock trees in the location adjacent to the mining cell. If the second phase is approved, the berm will be moved to the eastern side of the site and permanently landscaped. The applicant will increase the amount of the restoration bond until the berm is permanently landscaped. Staff recommends approval of the conditional use permit with conditions.

MOTION: The Story County Board of Adjustment approves the minor modification to the Conditional Use Permit for Mineral Extraction as put forth in case CUP07-18.1 to allow the eastern berm to remain located east of and abutting the mining cell, with the following conditions:

- 1. The east berm shall be seeded with temporary seeding meeting Iowa Statewide Urban Design and Specifications (SUDAS) Design Manual and Standards Manual or other professionally accepted design criteria.**
- 2. If phase two of extraction is approved, the east berm shall be moved to the east property line prior to the excavation of materials from the ground as part of the second phase of extraction and the berm shall be landscaped within one year of the berm's construction.**
- 3. If the conditional use permit for phase two of extraction is not approved, the east berm shall be permanently landscaped with nursery stock trees in the requested location adjacent to the mining cell.**
- 4. The applicant shall increase the amount of the restoration bond until the berm is permanently landscaped from \$10,000 to \$30,000.**

Motion by Jondle, Second by Neubauer
Voting Aye: Jondle, Neubauer, Excell, McGill
Voting Nay: None
Absent: Hovick (Left meeting at 5:57 PM)
Vote: (5-0)

BOARD/STAFF COMMENTS:

Staff: Moore thanked the new members for their effort in absorbing the great deal of information that was presented. Moore plans to present an orientation for new members before the November 18, 2020 meeting. Ethan Anderson will provide training on how the Board of Adjustment is covered for liability while serving as a board member, as well as conflict of

interest information. Examples of various times where staff would need to reach out to the County Attorney for legal assistance on civil matters will also be shared.

Board: Each of the board members provided their background information for introductions.

ADJOURNMENT: 6:53 PM


Approval of Minutes

Chairman 10/21/2020
Title and Date