

**TOWN of MAY  
WASHINGTON COUNTY  
PLANNING COMMISSION  
January 30, 2014**

The Planning Commission of the Town of May met for their regular meeting on Thursday, January 30, 2014 at 7:00 pm at the May Town Hall. Members in attendance were: Chairman John Arnason, Mark Dupre, Jyneen Thatcher, Chad Nelson, Don Rolf, Steve Magner and Jeff Chase. Absent: Lester Rydeen, alternate William Still. Also present: Nate Sparks, Town Planner; Bill Voedisch, Town Board Chair; Linda Klein, Town Clerk. Chairman Arnason called the meeting to order at 7:00 pm.

**Approval of Minutes** – Arnason moved, seconded by Chase, to approve the minutes of the November 21, 2013, meeting as presented. All approved.

**Public Hearing**

**Lofgren Trust Minor Subdivision**

The Lofgren Trust has made an application to divide an approximately 156 acre property into two parcels. The property is located at 13636 May Avenue near the railroad crossing. The site is zoned and guided for a Rural Residential land use. Associated with the division are several variance requests to accommodate the location of the proposed lot line and the development plan for the new parcel.

The property is currently identified as two parcel ID's in Washington County records but are, in fact, on one deed. Therefore, this is a subdivision of one parcel. The site needs division as described herein to accommodate a sale with a known buyer for the north parcel, which is the purpose of this request. The site is currently occupied by one house and a set of outbuildings, and the land is used for agricultural purposes.

Due to the large size of the parcels being created, and that no development is being done that would encroach on wetlands, the requirements for wetland delineations and the dedication of easements can be waived. This follows existing Township practices.

**PROPOSED SUBDIVISION**

The applicant is requesting to divide the property into two lots, one being about 114 acres (northern – “Parcel A” on the survey) and the other 42 acres (southern “Parcel B” on the survey). The existing house would be located on the southern lot and the northern lot is intended for the future construction of a house. As desired by the seller and buyer, the outbuildings are being divided by a boundary that gives the dairy barn and other buildings to the north parcel, and the house and garage to the south parcel, essentially dividing the farmstead.

May Avenue has been conveyed for public use by a prescriptive easement, meaning that the road was dedicated not by a formal easement but rather by the long-term maintenance and use of the road by the Township. In cases where roads are dedicated in this fashion, disputes over the proper edge of the right-of-way can occur. The planner recommended that a formal easement be granted for the road or that the road be dedicated via platting. The right-of-way width as

depicted on the survey is acceptable for this purpose. Two driveways are proposed from May Avenue, one for the future house site and the second for the existing site. A formal review of the new driveway will be necessary at the time of the building permit being issued for the new house, considering such factors as grade and culvert installation.

Parcel B (the southern parcel) is being proposed as a 42 acre parcel and will be about 730 feet wide by 2500 feet deep. This means that the parcel cannot be split into two parcels fronting on May Avenue in the future, as the depth of the parcels would be more than four times the width of the parcel. Another access off of May could be problematic given the railroad, wetland at the road and other factors, thus future division of B might have to rely on B's existing driveway.

Future division of Parcel A faces the same types of issues and thus, future division of A may require the use of the proposed driveway to A. Future division of either lot would have to meet all of the requirements for a subdivision, and no future division is being considered or approved at this time.

Based on the subdivision taking the number of lots from one to two, the Town requires a park dedication fee in the amount of \$800.

### **VARIANCES REQUESTED**

As background to understand the division of the buildings being requested, the property owner has stated that the purchaser of the Parcel A has expressed an interest in having these buildings on their parcel, which the owner supports. The applicant is requesting the following variances to accommodate this subdivision and development plan:

#### *Accessory Buildings Setback*

Near the existing house is a detached garage, machine shed, milk house, chicken coop, and dairy barn, all constituting a common agricultural farmstead. The proposed property line would bisect the farmstead placing the property line north of the detached garage and south of the remaining agricultural buildings. The proposed lot line would be 3 feet south of the machine shed, 16.2 feet south of the chicken coop, 7.8 feet south of the mil house, 86.8 feet south of the barn, and 19 feet north of the detached garage. The required setback for accessory buildings to a side property line is 20 feet, thus 4 buildings would be in violation of this setback requirement, and thus a variance is being requested for building setbacks.

#### *Proposed House Location On Parcel A*

The "proposed building area" shown on the survey for the northern lot is 180 feet from the May Avenue right-of-way, while the barn on this parcel is located only 80 feet from the right-of-way. The Town Zoning Ordinance requires accessory buildings to be placed no closer to the front lot line than the house, thus a second variance is being asked for.

#### *Accessory Buildings Without A Principal Structure*

The immediate condition upon approval of this subdivision would be to have accessory buildings on a parcel without a primary residence. This is not permitted by Code. Such a condition has been permitted in the past by the Town, provided it is temporary. As part of a

Development Agreement between the parties and the Town, a time certain when a home must be built on Parcel A will be established at two years to be consistent with established policy.

It should also be noted that if the buildings are not currently being used for agricultural purposes, they should be considered a pre-existing, non-conforming use.

### **Control of Utilities**

Since the house resides on Lot B, the existing utilities serving the house need to be preserved in favor of Lot B, and not reside on, or be shared with, Lot A. The well on the property is located on Lot B about 8.5 feet south of the property line, and it is understood that from the well, there is water service to the barn. This water use across the proposed boundary should be eliminated.

Driveways lead from the detached garage area to the agricultural buildings across the proposed boundary. This should be eliminated at least via visual staking/flagging. The septic system is not depicted on the survey but it is understood that it is near the location of the house.

The electrical service crosses the proposed lot line underground from the pole, and terminates at the chicken coop, with the termination panel and meter on that building, located on Lot A. The electrical service should be moved so that it stays totally on, and terminates on, Lot B, and that no electrical service be provided from Lot B to Lot A.

The provision of driveway access, water, and electric to the accessory buildings on Lot A needs to be provided by Lot A. Thus a driveway and utility trench is envisioned from the new home site area on Lot A to the accessory buildings on lot A.

### **Summary of Report**

The buyer and the current property owner are seeking a division and variance to allow for an arrangement where the farm buildings are to be conveyed to Parcel A. The proposed lot line is extremely close to several of the buildings (as little as 3 feet in one case). Further, the buildings on Parcel A have water, electric, and driveway access from Parcel B, and this should be remedied as described herein. Given these circumstances, the planner recommended approval with conditions that will mitigate against these issues.

### **PLANNING COMMISSION DISCUSSION**

Planner Nate Sparks provided an overview of the details in his report. Thatcher asked if the farm is a historic farm site, and Board Chairman Bill Voedisch said no. Rolf asked about other options other than moving the property line to the north in order to avoid the variances. Magner asked about the prescriptive easement for May Avenue. Sparks reiterated the need for this easement to be dedicated in the Development Agreement.

Arnason moved, seconded by Rolf, to open the public hearing. All approved.

Dupre asked about access to the buildings. The buyer proposes a dirt road from the site where the home will be built down to the buildings. The proposed buyer noted that the parcels were reversed between the survey and the planner's report (Parcel A and Parcel B). A newer survey

was used to write the report. They also asked about the condition regarding costs incurred by the Town. Voedisch stated that the escrow that has been posted is being used to cover costs, and any further costs incurred would be billed to the applicant.

They were advised that dedication of the roadway can probably be done with the plat. Renee Gohl asked how many potential lots are possible, and Voedisch advised her that 11 lots may be possible on the larger parcel, but a yield plan would have to be done to account for wetlands, steep slopes, etc., so the total could be less than 11 lots. Chase asked the buyers the reason why the buildings are going with the northern parcel, and why the property line is drawn where it is. The listing agent explained the practical difficulty is that 40 feet does not exist that would enable the splitting of the land without the variances. Voedisch pointed out that one of the variance criteria is "is the proposed use reasonable?" Thatcher asked about possibly removing the buildings, or if they fall down, they cannot be rebuilt. The buyer stated that the machine shed is the most important building to them in terms of usefulness, and the barn important due to its historic value.

Voedisch stated that soil borings will be needed for where the house will be located. Dupre asked about a grading permit. Several commission members voiced disapproval of the setback variances required due to placement of the property line between the buildings. They suggested it would make more sense to move the property line north so the application can comply with ordinances. Voedisch stated that the placement of this lot line will not change the look of the neighborhood. The basic argument of the commission members who disagreed with the setback variances is that just because a buyer and a seller want it to go their way (property line splitting the buildings), this is not a practical difficulty. Don Westerheim asked about drawing the line in a zig zag manner to meet all the setbacks and if that would bring up difficult issues in the future. The prospective buyer of the property disagreed with the zig zag lot line and requested that this not be a consideration.

Arnason moved, seconded by Nelson, to close the public hearing. All approved.

Dupre stated that for all practical purposes, there is no change in the drive-by look of the property, and this is a unique issue that has not been clearly identified by in the ordinances and thus makes is a difficult decision.

Dupre moved, seconded by Thatcher, to recommend to the Town Board that they approve the request for minor subdivision with the variances described in the Planner report with the following recommended conditions, given that the practical difficulties are that the farmstead was laid out more than 60 years ago, and ordinance for farmstead preservation does not necessarily cover an instance where a willing buyer and seller are interested in dividing up the original buildings on the property. Thatcher offered a friendly amendment, accepted by Dupre, that if any of the structures deteriorate they may not be replaced in a nonconforming arrangement. Other conditions include:

1. The Applicant and Buyer of Parcel A shall enter into a Development Agreement with the Town, which shall include the conditions described below as well as any other requirements of the Town Code or policy.
2. The subdivision will be created and recorded as a Plat.

3. The Buyer shall construct a residence on Parcel A within two years from the date of this approval.
4. Soil reports and boring locations shall be provided so the Town can establish the low floor elevation for the house on Parcel A. No building permit shall be issued for Parcel A until a Septic Permit is issued by the County.
5. At a minimum, sufficient visual demarcations shall be placed on the property line so as to discourage either owner from intruding on the other parcel.
6. Any water service that extends to Parcel A from the well on Parcel B shall be terminated.
7. The existing electrical service shall be relocated to Parcel B and no electrical service shall extend from Parcel B to Parcel A.
8. A driveway and underground utilities for the accessory building on Parcel A shall be provided from parcel A
9. The driveway on Parcel A shall be reviewed and approved by the Town Engineer prior to construction, with the Engineer's conditions being followed during driveway construction.
10. The applicant shall reimburse the Town for the cost of ensuring these conditions are met.
11. A park dedication fee of \$800 shall be paid.
12. An easement or dedication via plat of the right-of-way for May Avenue shall be provided in favor of the Town.
13. New deeds for the two parcels shall be provided to the Town Attorney for review and approval prior to recording.

The Planning Commission vote was split. Those voting in favor of the motion: Thatcher, Magner, Rolf, Dupre. Those voting against the motion: Arnason, Chase, Nelson.

Hearing no further business, Arnason moved, seconded by Chase, to adjourn. All approved.

Respectfully submitted,

Linda L.Klein  
Town Clerk