

***PLANNING AND ZONING COMMISSION REGULAR MEETING
SEPTEMBER 14, 2021***

The Regular Bi-Monthly Meeting of the Andover Planning and Zoning Commission was called to order by Chairperson Bert Koehler IV on September 14, 2021, 7:00 p.m., at the Andover City Hall, 1685 Crosstown Boulevard NW, Andover, Minnesota.

Commissioners present: Karen Godfrey, Mary VanderLaan, Nick Loehlein, and
Wes Volkenant

Commissioners absent: Scott Hudson

Also present: Community Development Director Joe Janish
City Planner Peter Hellegers
Associate Planner Jake Griffiths
Others

PLEDGE OF ALLEGIANCE

APPROVAL OF MINUTES

August 24, 2021 Workshop Meeting

Commissioner Volkenant requested a change on page 2 lines 37-39: “Commissioner Volkenant said there are two portions where parks 2 is ~~proposed~~ listed and portion 2 is wetland. ~~and it appears they are in the wetland.~~ He asked which park is the designated park. Mr. Hellegers said Park 2, in the northwest east corner, consists of wetland and upland.”

Commissioner Volkenant requested a change on page 3, lines 22-24: “Commissioner Volkenant stated that at Fun Fest, there is was a concern from residents ~~about kids getting out and about~~ with trails and sidewalks along busy roads and asked if trails in this development should be constructed sooner than later.”

Motion: Chairperson Koehler assumed a motion to approve the August 24, 2021 Workshop Meeting minutes as amended. Motion carries unanimously.

August 24, 2021 Regular Meeting

Associate Planner Griffiths requested a change on page 5, line 39 “He stated staff does a good job protecting the City' s interest.”

Commissioner VanderLaan requested a change on page 10, lines 15 – 19: “Commissioner VanderLaan stated she served on the ~~Commission~~ City Council with the owner of the Holasek property. She said Mr. Holasek would be pleased with the development. She explained Mr. Holasek served the City, protected his land, and attended many City meetings. Commissioner VanderLaan believes Mr. Holasek would be pleased that 48% of his land is open space, parks, and that 41 acres of previously farmed land is being returned to wetland a natural state.”

Chairperson Koehler requested staff review the meeting video in regard to page 6, line 14 and make appropriate adjustments to his statement regarding PUDs.

Motion: Chairperson Koehler assumed a motion to approve the August 24, 2021 Regular Meeting minutes as amended. Motion carries unanimously.

PUBLIC HEARING: CITY CODE AMENDMENT – TITLE 12: ZONING REGULATIONS, CHAPTER 2: DEFINITIONS AND CHAPTER 12: RESIDENTIAL PERMITTED, PERMITTED ACCESSORY, CONDITIONAL INTERIM AND PROHIBITED USES – ADOPT CITY CODE REQUIREMENTS FOR KEEPING OF ROOSTERS ON RESIDENTIAL PROPERTIES – CITY OF ANDOVER (APPLICANT)

The Planning Commission is asked to hold a public hearing, take public comment, and provide a recommendation on the proposed Code amendment. Associate Planner Griffiths stated the City has seen an increase in complaints about roosters on smaller lots. He explained City Code does not address roosters. Mr. Griffiths provided a map that shows lots smaller than the 2.5-acre standard. He stated staff have been grouping roosters with poultry and applying the Code for poultry. Mr. Griffiths explained the City also has a nuisance ordinance that is primarily written for dogs.

Mr. Griffiths explained that staff surveyed adjacent communities and found that roosters are predominantly prohibited. Mr. Griffiths presented the proposed amendment to the City Code that defines a rooster and where they would be allowed. He noted the only policy change is requiring the lot to be 3 acres or greater. Mr. Griffiths stated the amended City Code would apply to new roosters and existing roosters will be grandfathered in.

Commissioner Godfrey asked Mr. Griffiths why they chose 3 acres when the R-1: Single Family Rural zoning district standard is 2.5 acres. Mr. Griffiths explained that the majority of complaints are coming from properties that are 2.5 acres or smaller.

Commissioner Loehlein stated the core issue is the noise. He asked why the Commission is being asked to change the code to regulate the rooster instead of changing the noise ordinance to prohibit that kind of noise. Mr. Griffiths stated when they surveyed adjacent communities, they addressed the rooster. Mr. Griffiths said the Commission could address the noise ordinance but addressing land use seemed the most effective way to address the issue.

Commissioner Loehlein asked if a property owner has a rooster and it passes on, can they continue to have a rooster. Mr. Griffiths stated if the rooster exists today, they can continue to have a rooster if the ordinance is changed. He explained he consulted with the City Attorney, and if the rooster passes, per state statute they can get another rooster within 1 year. They will lose grandfather status if they don't replace the rooster within 1 year.

Commissioner Volkenant said there are complaints from certain locations where neighbors are being disturbed by roosters, but under the grandfather clause, those locations will continue to operate with the same number of roosters. He stated the problem is not going away because there will continue to be a noise problem. Mr. Griffiths stated he was correct, and after code changes there are legal non-conformities due to State Law. He explained it is a property right permitted by State Statute.

Commissioner Volkenant asked if there are properties within the MUSA that are greater than 3 acres. Mr. Griffiths displayed a map of properties under 3 acres. He said there are properties within the MUSA that qualify to have chickens, but they would no longer qualify with this amendment. Commissioner Volkenant said there are some locations in gold that do have chickens, others that do not, and if the code amendment is passed, they would not be able to add chickens even if there is a home a few doors down that has them. Commissioner Volkenant said that roosters are the key part. Mr. Griffiths clarified that the Code Amendment is addressing roosters, and not all chickens.

Commissioner Godfrey asked Mr. Griffiths if the legal nonconforming standard applies to the property, the property owner, or the roosters. Mr. Griffiths stated legal nonconformities transfer with the property. He explained State Statute says if the property discontinues its use for a year, they lose the legal nonconforming right. Commissioner Godfrey stated it stays with the property and a new property owner could continue to have roosters provided it has not been one year since the property has been rooster-less.

Commissioner VanderLaan asked for clarification on Commissioner Volkenant's comment about the parcels in gold having roosters. She stated that not all of those parcels have roosters, it displays the properties that cannot have roosters due to the size of the lot. Mr. Griffiths explained the map in front of the Commission does not show every property that has a rooster, it shows every property under 3 acres in size.

Commissioner Volkenant asked if the code change is passed, would there need to be a rooster map that identifies the properties and how many roosters they have. He asked if Code Enforcement would be responsible to carry out enforcement. Mr. Griffiths stated the City will not make a map. He explained the City is reactionary for code compliance. When residents call with a complaint, staff looks into the property and responds.

Chairperson Koehler asked if there was a limit on the number of roosters a property can have. Mr. Griffiths stated there are no limits on the number of poultry and they aren't proposing any limits on the number of roosters with the new amendment.

Chairperson Koehler stated the amendment does not require residents to get a license to have a rooster. Mr. Griffiths stated that is correct, the rooster amendment is similar to the poultry ordinance which does not require a license. Chairperson Koehler stated the City would have no idea if someone got a rooster as long as the City didn't receive any complaints.

Motion: Chairperson Koehler assumed a motion to open the Public Hearing at 7:25 p.m. Motion carries by unanimous consent.

Richard Jacobs, 16530 Yakima Street, came forward and stated he lives directly across the street from a resident who owns roosters. He said the rooster is a constant nuisance and is the first noise they hear in the morning and the last thing they hear at night. He explained they hear the rooster from 5:30 a.m. until dark, around 200 times a day. Mr. Jacobs stated there are days the rooster crows all day long and he has called the Sheriff 9 times. Mr. Jacobs stated he cannot have the windows open because the rooster will wake them up. He wonders how it will impact him selling his house. Mr. Jacobs has asked for the City's help, and he stated the proposed ordinance doesn't change a thing. He said the City needs to recognize that roosters are a nuisance. He can't sit outside on a Saturday morning and have a quiet cup of coffee. He said the neighborhood was quiet before March, when the neighbor got the rooster. Mr. Jacobs said he doesn't understand why the City isn't enforcing the nuisance ordinance. He said if it was a dog, it would have been taken care of. Mr. Jacobs is asking for help from the City to adopt an ordinance to prohibit them from having a rooster on less than 3 acres. He doesn't believe grandfathering in existing roosters and allowing people to have more will resolve the problem.

Krystin Nergard, 16531 Zuni Street NW, came forward and stated she lives behind the Jacobs. She said once you hear the rooster, you cannot unhear the rooster. She said it goes off all the time. Ms. Nergard said she has lots of neighbors with chickens and one with a rooster. She loves to have her windows open, and the rooster ruins it. Ms. Nergard stated the neighborhood will continue to call on noise complaints. She stated she would prefer to get rid of the rooster, but if they can't, she recommended educating and preparing the Sheriff to respond to noise complaints.

Motion: Chairperson Koehler assumed a motion to close the Public Hearing at 7:31 p.m. Motion carries by unanimous consent.

Commissioner Volkenant asked staff if there is an ordinance that prohibited roosters, the existing roosters would remain because they would be grandfathered in. Mr. Griffiths responded that under State Law, if the City changes its code, anything that was previously permitted is allowed to continue.

Commissioner Volkenant asked if the residents who spoke tonight can speak at the City Council meeting where this topic is discussed. He stated the way the residents have described the crowing is violating the nuisance ordinance and asked if the residents can ask the City Council for help. Chairperson Koehler stated the question is out of order. Chairperson Koehler encouraged residents to call and ask the question of City Hall.

Commissioner VanderLaan has a history of having helped in forming the ordinances for control of horses, dogs, cats, and wild birds. She asked if there is a mechanism in place that after a number of complaints, or violations of a noise ordinance, similar to complaints about dogs, to work something in the ordinance about roosters. Community Development Director Janish said there are two issues: stopping the number of roosters coming into the City, which is what the ordinance amendment will do, and how does the City address existing roosters and noise complaints. Mr. Janish stated staff can research how to address the crowing. He said the ordinance presented tonight will stop the addition of more roosters. Mr. Janish stated staff can look at adding roosters to the noise ordinance. He said the Sheriff is analyzing the crowing and it is not meeting the same intent as the barking.

Chairperson Koehler noted the Commission wants to address the noise issue in the future, however, it is not on the agenda tonight. Chairperson Koehler stated staff is hearing loud and clear that there is another issue that needs to be addressed at another time.

Commissioner Godfrey said the core issue is the noise from the current rooster. She said the Commission is not addressing it with a change to the noise ordinance. She said they have a challenge in ensuring that property owners have the freedom to use their property as they choose provided they don't create undue annoyance to their neighbors. Commissioner Godfrey explained the City needs to stay within State Law and within the Comprehensive Plan, but they have not directly addressed the noise issue which appears to be the core issue. She recommends they vote against the current band aid approach and dig deeper into a real solution.

Chairperson Koehler stated roosters should be farm animals and not on a residential property. He doesn't believe having a rooster on a small piece of land is a good idea. Chairperson Koehler believes the Commission should think of roosters differently than they think of chickens. He doesn't think 3 acres is enough. He explained the Commission is asking for a different topic to be brought to them to deal with the noise ordinance.

Commissioner VanderLaan asked Chairperson Koehler for his guidance in procedure. She understands one mechanism is to vote against the adoption of the amendment and refer it back to staff to address the noise issue. She stated this would be bringing more attention to the problem. Commissioner VanderLaan stated the Commission could adopt the ordinance amendment and direct staff to go further. She asked what the best procedure would be. Mr. Janish stated if the City were to address the noise portion, it falls under the Police Chapter which is not the Zoning Code and will not come before the Planning and Zoning Commission. Mr. Janish reminded the Commission that several of the neighboring communities have prohibited roosters in the community. Mr. Janish stated staff can research how to handle the noise issue and they can regulate the crowing. Mr. Janish stated the noise ordinance does not require a public hearing before the Planning and Zoning Commission. Chairperson Koehler stated he supports staff addressing the noise issue without coming to the Planning and Zoning Commission.

Chairperson Koehler stated his opinion is if they are against allowing roosters on properties on three acres or more, then they should deny the amendment. If the Commission thinks three acres is sufficient, then they should approve the amendment.

Motion: Motion by VanderLaan, second by Volkenant, to recommend approval of the amended ordinance to allow roosters on lots with 3 or more acres and trusting City Council will be aware and address the issue of the noise created by the existence of the roosters.

Discussion:

Commissioner Loehlein stated he would like to see the noise issue resolved. He does not support passing this code change because it does not address the noise issue and the neighbor with the rooster was not present to speak for themselves. Commissioner Loehlein said the sound is the core issue for him, not the owning of a rooster and he will be voting against the motion.

Commissioner Godfrey stated she will vote against the motion because it is mischaracterized that if the Commission were to approve it, it would mean roosters would be prohibited. She doesn't believe roosters are the issue, it is the noise. She stated the Commission shall not do harm by limiting the freedom to use one's property without solving the actual problem. Commissioner Godfrey thinks the Commission should look at solving the whole problem and not just one piece of it.

Commissioner Volkenant agrees the noise issue is at the heart of it and he has concern that even if something is done in this manner it is not going to resolve the problem. He does think that roosters are a key part of many farms, and the rural component of Andover is part of their daily life. He does not believe the 3-acre limit is appropriate. He believes it should be a much larger acreage.

Amendment to the Motion, Commissioner Volkenant proposed an amendment to the motion to change 3 acres to 10 acres or greater. The amendment failed due to lack of a second.

Chairperson Koehler called for a roll call vote on the motion:

Godfrey - nay

VanderLaan – aye

Koehler - nay

Loehlein – nay

Volkenant - nay

Hudson – absent

The motion failed 1 aye and 4 nays.

Mr. Griffiths stated the Commission does not need to provide reasons for denial since the City is the applicant.

Motion: Motion by Loehlein, second by Godfrey, to recommend denial of the proposed Code amendment.

Discussion:

Commissioner Loehlein stated he is recommending denial because the amendment does not address the noise issue and it would infringe on the rights of folks to do what they wish with their property.

Chairperson Koehler called for a roll call vote:

Godfrey - aye

VanderLaan - aye

Koehler - aye

Loehlein - aye

Volkenant - aye

Hudson - absent

Motion passed unanimously.

Chairperson Koehler stated the City Council will hear the Commission doesn't think the amendment is a good idea. The City Council will make a final determination on September 21, 2021. He recommended residents attend the Council meeting and call City Hall to talk about the noise issue. Chairperson Koehler commended the Commission for their work at the meeting and he is proud of them.

Commissioner Volkenant asked if the existing language will still group roosters with poultry. Mr. Griffiths stated nothing is changed until the City Council adopts an amendment if they choose to. Commissioner Volkenant commented that the Commission did not put anything in motion. Chairperson Koehler explained the Commission did put

the issue in motion. He stated the Commission does not have decision making capability, but they do have influence.

OTHER BUSINESS

Mr. Janish updated the Commission on projects they have reviewed and the final decisions of the City Council.

Chairperson Koehler asked if staff were planning a second meeting in September. Mr. Janish stated at this time, they are not anticipating a second meeting.

Commissioner Godfrey asked how the City is progressing on filling the Commission's vacancy. Mr. Janish stated the City Council will be conducting interviews on September 21, 2021. The City received 5 applications.

ADJOURNMENT

Motion: Chairperson Koehler assumed a motion to adjourn the meeting at 8:00 p.m. Motion carries by unanimous consent.

Respectfully Submitted,

Shari Kunza, Recording Secretary
TimeSaver Off Site Secretarial, Inc.