

**BENTON COUNTY BOARD OF COMMISSIONERS
REGULAR MEETING MINUTES
JULY 17, 2018**

The Benton County Board of Commissioners met in regular session on July 17, 2018 in the Benton County Board Room in Foley, MN with Commissioners Warren Peschl, Jake Bauerly, Jim McMahon, Spencer Buerkle and Ed Popp present. Call to order by Chair Popp was at 9:00 AM followed by the Pledge of Allegiance to the flag.

Peschl/Bauerly unanimous to approve the amended agenda: add items—Local Assessment Contract with the City of Gilman; resolution delegating authority to make electronic funds transfer payments; Application for Exempt Permit for Backing the Blue Line; and update on upcoming employee recognition event.

Brad McIntosh (7811 NE River Road, Rice) appeared under Open Forum, stating that he lives in the first house north of the bridge on the River Road; he asked that the county consider installing radar speed signs when overlaying that road.

Consent Agenda item #1 was “pulled” for further discussion. Peschl/McMahon unanimous to approve the remaining Consent Agenda items: 2) approve Professional Services Contract with Swede Bro for floor resurfacing in the county maintenance garage, and authorize the Chair to sign; 3) approve Local Assessing Contract for the City of Gilman with Tim Jacobs for assessment years 2019-2021, and authorize the Chair to sign; 4) adopt Resolution 2018-#24, delegating the authority to make electronic funds transfer payments for 2018, and authorize the Chair to sign; and 5) approve Application for MN Lawful Gambling Exempt Permit for Backing the Blue Line to hold a raffle at Wapicada Golf Club, 4498 – 15th Street NE, Sauk Rapids, on August 26, 2018. Referencing Consent Agenda item #1, Peschl inquired of the status of the concern expressed by Henry Oehrlein at the July 3rd Board meeting. Monty Headley, County Administrator, noted that the Land Services Director will be present at a future Board meeting to address this item. Peschl/Buerkle unanimous to approve the Regular Meeting Minutes of July 3, 2018 as written (Consent Agenda item #1).

A public hearing to consider Ordinance #466 amending the 2006 Comprehensive Plan Land Use Map (Request by Prairie Farm Company Inc. to amend the Comprehensive Plan Land Use Map from Rural Residential to Agricultural) and Ordinance #467 amending the Benton County Zoning Map (Request by Prairie Farm Company Inc. to rezone 302 acres in Watab Township from R-1 Single Family Residential to Agricultural), was opened at 9:05 AM. Roxanne Achman, Department of Development Director, explained that back in the late 60’s/early 70’s, this area was being farmed; based on research by a consultant at that time and multiple conversations with townships and cities, it was determined to rezone this area as residential with the adoption of Benton County’s first Land Use Plan and Zoning Map. She noted that the decision appears to be based on the anticipated growth of the cities on their northern boundaries and the fact that the Benton County Soil Survey indicated poor agricultural soils. Achman noted that Watab Township is an “urban township”; this area of the county is more likely to experience residential uses. She stated that Prairie Farm Company would like to have their property rezoned in order to continue using their property for farming operations and to allow for a future Community Solar Garden, which is permitted with an Interim Use Permit only in the Agricultural District.

Achman pointed out that while the comprehensive plan states that farmers need to have the right to farm and there is desire to preserve agricultural areas, rural residential areas is applied only to those portions of Watab Township that were zoned R-1, R-2 or R-3 at the time of adoption of this plan and that “those zoning districts should be continued unchanged in the rural residential area”. She referenced several “guiding documents” as provided by the Assistant County Attorney when considering this request—1) the rezoning does need to be consistent with the comprehensive plan; and 2) when considering a rezoning, the surrounding uses must be considered (currently rural residential development). Achman reported on her conversation with the DNR with regard to testing wells in the area; the DNR has not noticed any fluctuation in the amount of water because of the irrigation, nor has their testing shown a rise in the nitrate level due to this farming operation. Jocelyn Schlichting (3001 – 145th Street NW, Rice) stated their request to amend the comprehensive plan land use map and zoning map to align with the current and projected future use of this property. She noted that the comprehensive plan map has not been reviewed since the late 60’s; further, that in the late 60’s, “this situation was pretty significantly different”. Schlichting pointed out that, at that time, this parcel wasn’t irrigated and development was expected to take a different turn. She stated that, today, they have invested in irrigation of this property which qualifies it as “specialty soil” and specifically protected in the written language of the comprehensive plan. Schlichting commented “...we can see that development didn’t go into Watab Township as aggressively as we predicted it would in the 70’s...” She stated her belief that the comprehensive plan map is out of line with the existing use, adding “...we will own this farm for the next 50 years as long as we don’t die untimely...this is one of our most productive fields and we have every intention of keeping ownership and continuing to farm this land”. Bauerly inquired about yields from this farm land in the 60’s/70’s as compared with today’s yields. Schlichting pointed out that irrigation increased their productivity “ten-fold” and allows them to plant specialty crops. Bauerly stated “...the premise for zoning this residential was it was non-productive farmland, and that premise is no longer true”. Schlichting stated that some of the community concerns “simply are not relevant to this request”, i.e. nitrates (this land is going to be farmed regardless). She stated her belief that the main concern of the residents is the opportunity for a feedlot on this property, stating “...the setback for a feedlot is 600 feet...it puts it firmly within the irrigated land...you would have to disrupt the pivot...it would never make sense for anybody...to pay irrigated land prices and then disrupt the flow of your pivot for a feedlot...I don’t know why anybody would want to put a feedlot so close to so many residences anyway...it’s certainly not our intention...” Schlichting addressed their desire to establish a solar garden on 15 acres on the far south side of the property which is not irrigated and is in “Xcel Energy territory”; this idea came about when attempting to find a more productive use of this property. She referenced other avenues they explored in order to install a solar garden, i.e. rezoning with a feedlot restriction, rezoning a small parcel, a variance without changing the zoning, but these options are not allowed. At this time, Achman read the following public comments received into the record:

- Karsten Braaten (7829 River Road NE, Rice), had some questions and wanted to better understand the requests and processes; wasn’t fond of the manure smell that sometimes comes from the fields and doesn’t care for the planes flying over and spraying the crops; had questions on the irrigation monitoring and nitrate levels in the local aquifer
- Steve Peka (8955 – 15th Avenue NW, Rice), concerns with dusting and spraying of the crops—concerns about it causing cancer and that it’s killing birds as he has found a dead bird in his yard; he would like to see no change to the Comprehensive Plan or zoning of the land; states that this is a residential area; states that nitrates have been found in his well; he’s lived there over 40 years; farming has gotten more intense over the years
- Kevin O’Brien (7970 River Road NE, Rice), the comprehensive plan amendment and rezoning would open the door for more intense farming
- Susan and Todd Nachbar (9155 Lakewood Shores Road NW, Rice), have lived, along with their three daughters, at this address for the past 17 years; we strongly disagree with this request; please submit our written disapproval
- Brad McIntosh (7811 River Road NE, Rice), passed along a flyer that has been sent out to Watab Township residents; wanted to know how the county could move forward with allowing the solar garden without allowing the Ag uses that would be permitted if rezoned; supports the solar garden; opposed to a rezoning and comprehensive plan amendment; asked about allowing a variance to allow solar gardens; asked if a solar garden could be allowed as an experiment

Achman referenced the flyer sent by Prairie Farm Company to Watab residents on July 11, 2018. She also referenced the “Opposition Summary and Reasoning” as distributed by Kevin O’Brien at the July 12th Planning Commission meeting and a petition signed by 175 individuals. Achman reported that the Planning Commission has recommended denial of both the Comprehensive Plan amendment request and the rezoning request. She read the following Planning Commission Record of Findings and Decision into the record:

- Request to Amend a Portion of the Comprehensive Plan Land Use Map from Rural Residential to Agricultural—Findings:
 - 1) Amending the subject area to Agricultural is inconsistent with the surrounding residential uses.
 - 2) Long term planning indicates the subject property is most suitable for future residential uses.
 - 3) Community Solar Gardens are not suitable for residential areas.
 - 4) Public testimony as detailed in the minutes from the July 12, 2018 Benton County Planning Commission meeting.

Request to Rezone 302 acres in Watab Township from R-1 Single Family Residential to Agricultural—Findings:

- 1) The rezoning request doesn’t fit the growth of the county as described in the Benton County Comprehensive Plan.
- 2) A change in the zoning would affect surrounding property values.
- 3) The request isn’t consistent with the long term planning of the County.

4) Public testimony as detailed in the minutes from the July 12, 2018 Benton County Planning Commission meeting.

The following individuals were present to speak to the requests, commenting (in part):

- Kevin O’Brien (7970 River Road NE, Rice), is speaking on behalf of quite a few people; have a petition in opposition with 175 signatures from many of the residents; we’ve only known about this for about three weeks—it seems awfully quick when you’ve had a comprehensive plan that’s been in place for 40-50 years; feel the livability in that area would be affected greatly if it changed from R-1 to Agriculture; almost every resident that we contacted was opposed; we 100% support the farmer’s right to farm this land as allowed under the current R-1 zoning; Watab Township population continues to increase after a slowdown in 2008; many Agricultural uses permitted under an Agricultural zoning designation (i.e. feedlots, solid waste management facilities) would adversely affect the surrounding area/reduce property values and end up costing all of the remaining county taxpayers more money to receive the same services; all of these activities are in direct conflict with the stated goal (maintain a high quality living environment in all residential neighborhoods and upgrade those in need of improvement); if they “sell it out” and it’s Agricultural, a future owner could change plans; the people who built or bought out here 20-50 years ago all expected their land to, at least, maintain their value or increase a bit to keep up with inflation; large scale farms could increase truck traffic in currently zoned residential areas, requiring roads to be repaired/updated more often; Ag zoning could result in increased activity and practices detrimental to the environment; I like solar power, but I haven’t done enough research on it—that’s something that we could talk about in the future...I don’t think solar power is as much of a concern
 - Pat Spence (8900 Lakewood Shores Road, Rice), is opposed to the rezoning and a change to the comprehensive plan land use map for the same reasons that Kevin cited; spoke to the urban nature of Watab Township; three sides of the property are surrounded by dense housing; we continue to see a huge amount of residential growth—it is the “lion’s share” of our tax base; the growth is because it’s a very desirable place to live—we don’t want that to change; the impact of potential uses for that property could change drastically—things happen and they won’t need to come to you for permission once you grant that rezoning change; the economic impact of residential growth in Watab Township is very important to Benton County
 - Craig Gondeck (9575 Sucker Creek Road, Rice), Vice-Chair of Watab Township, I’ve gotten many phone calls, but not one call in favor of this; I concur with Mrs. Spence about our growth—to allow this to go back to Agriculture would probably stop that growth; the Planning Commission heard many hours of testimony and made the right decision—I’m asking you people today to support the decision of the Planning Commission and support all the people in Watab Township that I am here speaking for; we are totally opposed to this
 - Deborah O’Keefe (850 – 81st Street NW, Rice), “...I have a concern...the last meeting on Thursday...it was more or less said that a farmer should stick with a farmer and vote for the farmer no matter what...I believe that’s not right...you should be listening to what the residents are saying and not voting just because you are a farmer and this is a farmer...I don’t think you should be voting if you are a friend of the farmer or the people who are bringing this forward...I feel that you aren’t listening...you have the petitions that went around...you aren’t taking anything away from them by all means...they can keep farming there...”
 - Mike Schoenecker (340 South Highway 10, St. Cloud), spoke in support of the project; thinks the “gloom and doom” has more concern about a feedlot coming into the site—the Schlichting’s own other land that could support a feedlot a lot better than that location; stated that solar is not going to go away—he is a solar developer and a builder of solar; would like to address a way to get solar on that site without rezoning to Agriculture; solar is not going to impact the neighborhood any one bit at all
 - Steve Peka (8955 – 15th Avenue NW, Rice), sees solar gardens out amongst the rural areas in the state—does not see these anywhere near residences—they are not very attractive; the proposed area is houses within a couple hundred feet; all the residents of this area are asking you not to change this
 - Terri Hansen (1085 Lakewood Shores Road NW, Rice), have lived there more than 30 years—love the area; there’s always the possibility of a change in the plan where other things can happen in the future—we would have no control over that; these are our “forever” homes; we are fine with the farming—we just don’t want to see any change; she referenced the county vision/mission statement—“...strives to be a key partner in creating an inviting environment in which people can work, live and grow”; when we bought/built houses in this area, it’s zoned residential—to change it to Agriculture, I think would probably change the whole area in a way that people might question whether they want to build and move out there; the comprehensive plan states “...the desires and needs of the county clients or citizens should be paid attention to...”; she added “rumor has it that the decision has already been made...I’m not saying you have...I’m just saying it’s a rumor...I’m going under the assumption that that is not true and that we have a chance to make a difference with the way we feel...”
 - Achman read two more emails into the record:
 - Paul Helgeson (7847 NE River Road, Rice), “...I wanted to request that as a condition of Prairie Farms Company LLC request to rezone 302 acres to agricultural land, that the rezoned land be managed in a manner that minimizes environmental impacts...the MN Department of Agriculture has developed the MN Ag Water Quality Certification...provides a minimum performance thresholds for in-field best management practices...please make certification in the MN Ag Water Quality program a condition as part of the rezoning for the Prairie Farms parcel”
 - Nathan Gohl (8478 Iten Ct NW, Rice), “My wife, Stacey, and I are strongly against changing the zone from residential to agricultural...we are concerned that if the area is rezoned, then it could be turned into a livestock farming operation...even if that is not the intended initial use, the land could be sold soon after...we fear that the heavy winds in the large open farm land can cause strong smells and noise...both the smells and noise would affect our quality of life and enjoyment of the area...it is likely that our property will be less desirable when we decide to sell...my real estate agent...said that being as close as we are to a possible livestock operation, he would expect that our home would be at least \$10,000 or more less in value...please vote to keep the property Rural Residential and not Agricultural”
- The public hearing continued with additional testimony:
- Dave Sweeney (8670 Lakewood Shores Road NW, Rice), speaking from a public health standpoint, nobody likes the crop-dusting plane that flies back on a regular basis; over 30% of the people in his area have cancer (Chair Popp noted that this comment does not have a bearing on the rezoning request.)
 - Lee Hanson (548 – 115th Street NE, Rice), family has lived in the area for over 47 years and have their own residential development in Watab Township; he is in favor of allowing the solar garden—that’s a very passive, least-intrusive industry—there would be no need for any additional services—there would be no additional traffic; he would not want a feedlot in his area either, but asked the Board to figure out some way to have solar without the potential for these increased intensive agricultural services through rezoning—he would be happy to be a part of any study group to make this work
- Achman clarified that solar accessory uses are allowed in residential districts (solely used for the home or business); commercial-use community solar gardens are limited to agricultural districts.
- The public hearing continued with additional testimony:
- Jocelyn Schlichting (3001 – 145th Street NW, Rice), feels the petition was a pretty “one-sided presentation”; a feedlot on that site is not practical or financially feasible; several of these community members live in residential developments 1½-2 miles away from the proposed solar site; solar site would not be visible from the road or from most of the residences; rural housing is more expensive for the county to maintain than agricultural uses; crop-dusting concern is not relevant to this request; a solar farm would likely be taxed as commercial, increasing tax revenue; 13% tax revenue from agriculture in the area is not insignificant; the field was here first—the residents moved here after; there are two solar gardens in Sartell that are clearly visible from the road and near residences; they follow all best management practices and are clean-water certified
 - Steve Peka (8955 – 15th Avenue NW, Rice), all who signed the petition purchased knowing this was residential; changing this would be an “injustice”
- Peschl/Bauerly unanimous to close the public hearing at 10:05 AM.

Assistant County Attorney, Michelle Meyer, clarified that, cur-

rently, solar farms are limited to agricultural districts; to allow solar farms in other districts would be an amendment to the districts. She stated that because this is zoned residential, and it’s not a use that’s allowed, a variance is not applicable. Meyer explained that, if this property were rezoned to agricultural, all uses must be similar to all agricultural districts throughout the county (can’t make this a special district). When considering comprehensive plan amendments, Meyer recommended looking at the policies, goals, current uses and long-term development goals; when considering a rezoning request, look at current uses, uses that could be—if they are compatible to the environment, etc.

- Board member comments:
- McMahon commented “...once you open that door and were to rezone it, the negatives far outweigh the positives...the only positive I hear so far has been for a solar garden...I like solar gardens...they work well...we maintain our zoning for our tax base too...that’s been residential forever...I think it’s important that we maintain that and not change it at this time...it can still be farmed regardless...we are not taking away that right...solar farms could be in the comprehensive plan update discussion (to allow commercial solar farms within the R-1 District)...the Planning Commission heavily denied...we must continue to place great weight on those individuals we have sitting on that Commission to make intelligent and thoughtful decisions and recommendations...I strongly urge that we do not change these two ordinances...” Popp commented “...I’m your Commissioner up in that district...I agree that the timeline was too short...I don’t think anybody’s opposed to the solar part...solar is good...Watab is an urban township...residential pays a lot of taxes as do Prairie Farms...the person that said that they thought our minds are made up...that is not the case...I have struggled with this since last Thursday...Prairie Farms operates a very good operation...they are very good to the economy...I agree with the people that say there’s that opportunity...life-changing things that happen that you have no control over that could make this different...” Peschl commented “...I don’t like the comment from the lady who said that farmers have their minds made up...that is not true...I question the comment that most people know that’s residential...I live right next to a Tier 3...there’s 15-20 houses within a mile of a Tier 3 farm lot...I think people know before they move there if that’s going to affect their lives...sometimes I think people don’t want their lives to change...there’s always changes in life and we need to get along with people...it’s working now...to get it changed back to agriculture, I don’t think it would be a big deal...I did do my homework...” Bauerly commented “...in my life, I’ve always tried to find win-win solutions...our systems are causing this conflict...have we exhausted every technique to find a win-win in this...I sense a lot of fear in the audience...nobody wants change in their backyard...this is their property and they have a right to make a living...solar can only go in certain areas...the premise from which this became residential in the first place is no longer true...with the technology of irrigation, this is one of the most productive lands in the state...I wonder if we don’t need to change it back to agricultural to protect their right to farm...I’ve heard lots of fears about planes, sprays and intensive farming...are they going to lose their right to operate the way they currently are...I understand the neighbors are concerned...solar is coming and we need to recognize that fact...the feedlot issue—there’s nobody in their right mind that would put in a feedlot with so many houses around it...the effective outcome of a feedlot or a gravel put would not be good, but the probability of either of those, to me, is slim to none...the only issue before us, I think, is—are solar panels offensive...there’s only so many places they can go...and this is one of them...I’d like to see us find a win-win...” Buerkle commented “...we have to go back to basics...this is a rezoning and we need to stick to that part of it...the Planning Commission did their due diligence...they don’t take their duties lightly...I think the only choice we really have is to go along with their recommendation...” McMahon commented “...I believe if we do not move to amend these ordinances, that would be a win-win for everybody involved...the farmers still farm and do exactly what they are doing today...the residences around the area, even if falsely thinking, will not lose property value or have some of these adverse things that could come in an agricultural district...I’m not saying they are going to...the Planning Commission does a very good job for us and gave us great evidence...” Motion by Peschl to approve Ordinance #466 amending the 2006 Comprehensive Plan Land Use Map (request by Prairie Farm Company Inc. to amend the Comprehensive Plan Land Use Map from Rural Residential to Agricultural). Second by Bauerly. Motion failed with Bauerly and Peschl voting aye and Buerkle, Popp and McMahon voting nay. McMahon read the following County Board Record of Findings and Decision into the record:
- Request to Amend a Portion of the Comprehensive Plan Land Use Map from Rural Residential to Agricultural—Findings:
- 1) Amending the subject area to Agricultural is inconsistent with the surrounding residential uses.
 - 2) Long term planning indicates the subject property is most suitable for future residential uses.
 - 3) Community Solar Gardens are not suitable for residential areas.
 - 4) Public testimony as detailed in the minutes from the July 12, 2018 Benton County Planning Commission meeting.
- Motion by Buerkle to deny Ordinance #467 amending the Benton County Zoning Map (request by Prairie Farm Company Inc. to rezone 302 acres in Watab Township from R-1 Single Family Residential to Agricultural) based on the following Record of Findings. Second by McMahon. Motion carried with Buerkle, Popp and McMahon voting aye and Bauerly and Peschl voting nay.
- 1) The rezoning request doesn’t fit the growth of the county as described in the Benton County Comprehensive Plan.
 - 2) A change in the zoning would affect surrounding property values.
 - 3) The request isn’t consistent with the long term planning of the County.
 - 4) Public testimony as detailed in the minutes from the July 12, 2018 Benton County Planning Commission meeting.
- A public hearing to consider Ordinance #468 amending the Benton County Development Code Ordinance #185, to amend the Administrative Subdivision process, was opened at 10:32 AM. Achman reported that, over the past several months, staff and the Planning Commission have reviewed and worked on changes to the Administrative Subdivision process that will alleviate much of the cost and time involved in splitting property (i.e. small plats); all township officials were also included in the discussions and, in general, the townships were in support of the proposed changes. She noted that the amendment is currently drafted to require five acres minimum to be allowed to split through the Administrative Subdivision process (to a maximum of 19.9 acres); there was a question of whether this should be dropped down to two acres in order to be consistent with the minimum lot size required in the Agriculture District—the consensus of the Planning Commission was to present a draft ordinance allowing a minimum split of five acres (must supply additional detail/requirements). Achman clarified that this ordinance amendment includes replacing Farmstead Splits with Administrative Land Splits, as well as clarification of residential density calculations. Steve Simones (7415 – 30th Street NE, Sauk Rapids) stated he is in favor of the administrative land splits, however he would like the minimum lot size allowed to be two acres, not five acres; he feels that the five acre minimum takes more agricultural land out of production and that two acres should be sufficient to find two sewerable sites. Achman clarified that two acre lots are not prohibited, but would require going through the platting process. Peschl/Bauerly unanimous to close the public hearing at 10:42 AM. Peschl/McMahon unanimous to approve Ordinance #468 amending the Administrative Subdivision process, as recommended by the Planning Commission, and authorize the Chair to sign.
- A public hearing to consider Ordinance #469 amending the Benton County Development Code Ordinance #185, to amend the Lot Access requirements, was opened at 10:43 AM. Achman explained that, with the changes to the Administrative Subdivision process, a common complaint surfaced—the current code requirement that each new lot have fee ownership access to a dedicated public right-of-way with no allowance for access through an easement. She stated that the key to allowing an easement is ensuring that it stays with the property for all future property owners; proposed ordinance language allowing an easement may help with the development of properties further from the road and may assist in having fewer driveways intersecting public roads. No one was present to speak at the public hearing. Peschl/Bauerly unanimous to close the public hearing at 10:44 AM. McMahon/Peschl unanimous to approve Ordinance #469, to amend the Lot Access requirements, as recommended by the Planning Commission, and authorize the Chair to sign.
- A public hearing to consider an amendment to the Benton County Fee Schedule to add Administrative Subdivisions (5-19.9 acres) and remove Farmstead Split, was opened at 10:47 AM. Achman stated that, in order to cover the cost of additional staff time resulting