

**UNAPPROVED MINUTES OF THE November 7, 2007 MEETING OF
THE PLANNING COMMISSION**

SUP-21-07 Tiki Climbing & Grinding Professional Tree Service

Ms. Ellen Cook stated that this case was presented to the Planning Commission at its 10/3/07 meeting, but was deferred at the request of the applicant so that he could meet with neighbors and consider Commission suggestions. Ms. Cook stated that it is staff understands that the applicant met with neighbors in the intervening weeks, and staff also understands that the applicant has been circulating a petition. She stated that Mr. Timothy Soderholm has also updated the information previously provided to staff regarding the number of his employees that leave their vehicles on site during the day (one part time employee) and the equipment he stores on site (one stump grinder instead of two). She also stated that the applicant has also provided a conceptual landscape plan to the County as part of the SUP condition. Ms. Cook stated that the applicant has stated that he would be willing to allow a bus stop on the property. Staff has advised the applicant that the bus stop could be shown as part of the final site plan. Staff has not included a bus stop as a condition of the Special Use Permit as, while the applicant is offering to allow for one on his property, placing a condition requiring one as part of the use permit does not appear to fall within the guidelines for a legal nexus between the permit and the condition as advised by the County Attorney's Office. Ms. Cook stated that staff does not find the proposal consistent with the Low Density Residential Comprehensive Plan designation, consistent with the character of the surrounding area, and does not find that the size of the parcel, and the location and intensity of the use on the parcel, allow for conditions which would sufficiently overcome these concerns. For these reasons, staff recommends denial of this application to the Planning Commission. She also stated should the Planning Commission wish to recommend approval, staff recommends that the conditions listed in the staff report be placed on the case.

Ms. Hughes asked if the applicant ran his business as a home occupation at another location.

Ms. Cook stated that according to the County's Zoning records, the applicant ran his business as a home occupation from another location.

Ms. Hughes asked if the applicant filed a home occupation application for the current residence.

Ms. Cook stated that the business was in operation when staff was made aware of it, and that it was outside the scope of the definition of home occupation. She stated at that point it was determined a special use permit was required.

Ms. Hughes stated that the applicant listed his mailing address as Centerville Road, but that the driveway was on Settlers Lane. She asked what was the correct address.

Ms. Cook stated that for each corner lot, the Real Estate Office assigns two addresses. In this instance, Ms. Cook was unsure how the address was arrived at, but the lot was plotted as part of a residential subdivision in the 1960's.

Ms. Hughes opened the public hearing and asked the applicant if he wished to speak.

Mr. Soderholm stated that the address in all his closing documents was 6293 Centerville Rd and that it was zoned A-1. He did not realize that he needed a special use permit at this current address. He stated he did operate his business at another location but was forced to move due to the neighbors, and that the size of the lot was too small. Mr. Soderholm asked the post office which address to use and he was informed that he could use either one. He stated that he was not aware his lot was part of a subdivision.

Mr. Kevin Grady, speaking on behalf of Mr. Soderholm, stated that Mr. Soderholm did everything requested from the Planning Commission. Mr. Grady stated Mr. Soderholm met with the neighbors, invited them to look at the property and the equipment being stored there. He stated that Mr. Soderholm received the approval of 13 of the 18 neighbors in writing, although the neighbors did have some concerns. One of these was the bus stop for the children in the area. Mr. Grady stated that Mr. Soderholm contacted the Department of Transportation. Mr. Grady showed what the Department stated they would be willing to provide. He also stated that Mr. Soderholm would have to provide the Department with an easement, which he is willing to do. Mr. Grady stated that the neighbors wanted to have a fence installed on the side of the house. He stated Mr. Soderholm had plans to complete this. Mr. Grady stated the neighbors did not want this application to have an open ended agreement for growth. Mr. Grady stated that Mr. Soderholm was more than willing to keep things the same as it is now. Mr. Grady stated that Mr. Soderholm has agreed not to have a sign on the property. He stated that Mr. Soderholm's office is in a portion of his house, with just a desk, file cabinet, computer, etc. He stated that there are no individuals coming and going. He stated that Mr. Soderholm had his log books present to prove when employees are at the premises and the hours of operation. Mr. Grady stated that he and Mr. Soderholm are confident that the neighbors are satisfied with the improvements that Mr. Soderholm has done. He stated that the most important thing to Mr. Soderholm is to be able to run his business and support his family.

Mr. Soderholm showed pictures of his backyard and the equipment being stored. He stated that some of the equipment has been moved off of the property. He stated that the area used for storage is approximately 2800 square feet. Mr. Soderholm stated that from Centerville Road no equipment can be seen. He showed his landscape plan and what has already been installed.

Mr. Krapf asked Mr. Soderholm if he had an idea of the financial impact of stormwater management and the potential ramifications of an environmental assessment and if he had sufficient space on his property for a BMP and provides the safeguards.

Mr. Soderholm answered that he had 185 feet of 15 inch pipe that drains all water. To date there has not been any problem with standing water. He stated that the corner part of the lot tends to collect, but drains within 24 to 48 hours.

Mr. Krapf stated that it was his understanding that given the current circumstances that the pipe was not adequate for the amount of impervious cover that was on the property.

Ms. Cook answered that items that have been installed on the property have not been in coordination with the Environmental Division. She stated that with the site plan review, the environmental assessment and review would need to be done.

Mr. Soderholm stated that he is willing to comply with whatever is determined to be needed.

Mr. Obadal asked if Mr. Soderholm was contending that this application involved a home occupation.

Mr. Soderholm stated that he did work out of his home, however his equipment is stored at the residence and all consultations are done off site.

Mr. Obadal asked if there was a chipper on the property.

Mr. Soderholm answered, yes there was one stored, but it is used off site only.

Mr. Obadal questioned the idea of his business being a home occupation.

Mr. Soderholm stated that he did not know a special use permit was required to operate his business out of his home before buying the property.

Mr. Obadal asked if the chipper created noise at this site.

Mr. Soderholm answered no, it only creates noise where it is being used, and that this piece of equipment is only being stored at his residence.

Mr. Obadal questioned the idea that his property is part of a subdivision.

Mr. Soderholm stated that he had the option of putting a driveway either on Centerville Road or Settlers Lane. His driveway is on Settlers Lane.

Mr. Obadal discussed the A-1 ordinance stating the area requirements. He felt that the lot size is small for the business that is currently there.

Mr. Soderholm stated that if the special use permit is not approved, the only things that will be removed from the property will be a dump trailer, a bobcat, a chipper, and a flatbed trailer with a stump grinder. He stated that all this equipment takes up no more than 400 square feet on the property.

Mr. Obadal reiterated what is stated in the A-1 Zoning Ordinance.

Mr. Grady stated that Mr. Soderholm understands that he is not in compliance with the

current code requirements, that this is the reason he is seeking a special use permit. Most of this equipment is taken offsite and no noise is being made by the equipment.

Ms. Annette Gilbert, who lives at 6301 Centerville Road, spoke on behalf of the applicant. She stated that the applicant has done several things to gain approval of the neighbors. She asked Mr. Obadal to restate the definition of home occupation.

Mr. Obadal did so.

Ms. Gilbert answered that she lives across the street. She stated that she has seen employees coming to work, and that she does not hear any noises from any equipment, and that the employees use care when leaving and returning to the property. Ms. Gilbert stated that many neighbors run businesses out of their homes, yet they make demands on his business.

Ms. Kristin Wilson, who lives at 16 Settlers Lane, stated that she does not want Mr. Soderholm not be able to run his business out of his home and provide for his family, but was concerned this would undermine the area and it would become more commercial. She requested that if the special use permit is approved, that the open area on his property not be developed for any commercial use, and that the fencing be completed that the applicant spoke of, and that there be no signage at all.

Mr. Brent Peterson, who lives at 101 Ridgecrest Circle, spoke on behalf of the applicant. Mr. Peterson felt that Mr. Soderholm has made an effort to address all the stipulations that were given to him at the last meeting. He felt that Mr. Soderholm has made several improvements to his property. Mr. Peterson and Mr. Soderholm measured how much of his property is affected by the storage. Mr. Peterson stated that this amount is approximately 8 percent. He felt that this amount is small in regards to the size lot. He also stated that last time there were several people who spoke against this application, where at this meeting there were none.

Mr. Robert Soderholm, who lives at 46 Yeardeley Loop, also spoke on behalf of his son, the applicant. He stated that his son had a desire to serve the community. He also stated that his son is a young business person who is trying to provide for his family. Mr. Soderholm also stated that he has never seen standing water on his son's property. He reiterated the statement that his son has agreed not to store any other additional equipment. He also stated that his son's services are needed during times of crisis and disaster. He further stated that if this application is denied, it will be inhibiting him from providing for his family and putting a further financial burden for him by relocating the business.

Mr. Obadal asked if the applicant was willing to use the property for a limited amount of storage.

Ms. Cook stated that there is a condition that limits the amount of storage to a certain area, and that the applicant is willing to comply.

Mr. Soderholm stated that the 4000 square foot in the back of the property is the only area allowed for storage.

Mr. Obadal asked whether the applicant was putting any landscaping between his property and his neighbor.

Mr. Soderholm stated he put a berm in to minimize noise from Centerville Road. He also stated that he is constructing a fence to go around the back part of the lot. Mr. Soderholm showed pictures of the berm and the fence that is partial installed. Mr. Soderholm also clarified what was his neighbor's fence and what he himself has installed.

Mr. Kennedy asked if the applicant had a business license.

Mr. Soderholm stated yes that he does have one.

Mr. Kennedy asked the applicant when he located on this property, did he get a new business license or did he use the existing one.

Mr. Soderholm stated that he did not apply for a new one at the time he moved, but did change the address once he had to renew the license.

Mr. Kinsman stated that the Commissioner of Revenue issues the business license and the Zoning Office checks for compliance.

Mr. Soderholm stated that when he re-applied for his business license is when his address was changed. Mr. Soderholm was contacted by the Zoning Office and informed that he would have to apply for a special use permit. He then submitted an application for a special use permit.

Mr. Kennedy stated that when he moved, that is the time he should have changed the address with the Commissioner of Revenue. He stated that he is concerned when applicants ask for forgiveness after the fact. He stated that he did appreciate that Mr. Soderholm now has the support of his neighbors.

Mr. Soderholm did not realize that a special use permit was needed in the A-1 District, and thought that this type of business would be allowed.

Ms. Hughes closed the public hearing.

Mr. Kennedy stated that he appreciates small business and he believes in home based businesses. He also appreciated the fact that the applicant has gained support from his neighbors. He did state he was concerned about the procedures that were and were not followed. Mr. Kennedy did state that he would be supportive of this application.

Mr. Krapf stated that he was sympathetic to the applicant and all his efforts. His stated that he had concerns with compatibility with the surrounding neighborhood and whether his business provides a public benefit. Mr. Krapf felt that the answer was no to both. He also felt that this was not compliant with the Comprehensive Plan. Mr. Krapf also felt that by denying this application it would not preclude the applicant from moving his business to another location.

He stated that he felt that the application should not be approved.

Mr. Billups stated that he felt since most of the neighbors supported his application, and that the applicant had agreed to conditions that were placed upon him, that the democratic process should prevail. Mr. Billups stated that he felt that requiring the applicant to provide stormwater management was beyond what should be required of him. He also stated that he felt this type of business was compatible with the A-1 Zoning. Mr. Billups felt strongly that this application should be approved, and if there are conditions, that they should be moderate and not place an undue financial burden on the applicant.

Ms. Jones stated that she will support this application with the attached conditions. She does have some reservations that the applicant did not show due diligence when changing addresses regarding the business license. Ms. Jones felt that the space used for storage was not that large. Ms. Jones did state that the applicant might want to consider the option of locating offsite. She felt that the conditions concerning stormwater management may become very costly to the applicant. Ms. Jones did state also that she felt this Mr. Soderholm's business did provide a public benefit.

Mr. Obadal stated he did not see a public benefit with this business. He also stated that Ordinances needed to be enforced and that the Comprehensive Plan needs to be used as a guide. He also stated that he felt the lot size was too small for this type of business. Mr. Obadal felt that the lot size requirement in the Zoning Ordinance was there to protect residential neighborhoods from commercial uses.

Ms. Hughes stated that she felt the applicant knew the procedures concerning the home occupation. She stated she appreciated the fact that he has a young business but she also felt that he circumvented the rules. She felt the applicant should have known what to do when he relocated his business. Ms. Hughes felt that this property is part of a residential subdivision and that this type of business is not appropriate at this site. She also mentioned that the stormwater management requirements will most likely be very costly. Ms. Hughes stated she cannot support this application.

Mr. Kennedy made a motion to approve the application

Ms. Jones seconded the motion.

In a roll call vote the result was a 3/3 tie (3-3). AYE: Jones, Kennedy, Billups. NAY: Krapf, Obadal, Hughes. (Absent: Fraley)

Mr. Kinsman stated that the Code requires that the Planning Commission give the Board some guidance. He stated that there are a couple of options, one being to wait until next month when seven members are available, and re-vote, or send to the Board of Supervisors with no recommendation.

Mr. Kennedy stated he had no problem sending it to the Board with no recommendation.

Mr. Obadal asked if it is sent to the Board with no recommendation, can the comments and suggestions be attached with the application.

Mr. Kinsman stated that there is a comprehensive set of minutes that is part of the application that is reviewed by the Board of Supervisors.

Ms. Sowers also stated there is a representative from the Planning Commission that attends the Board meetings; therefore if there can be added input. Mr. Sowers also stated that as long as the special use permit is moving forward the applicant is allowed to continue operating his business.

Mr. Kennedy asked if the application was heard at the December Planning Commission meeting would it be heard at the December Board meeting.

Mr. Sowers stated that there is only one Board meeting in December. He stated it could possibly go to this one.

Mr. Krapf made a motion to send the application to the Board of Supervisors with a neutral recommendation.

Ms. Jones seconded the motion.

In a unanimous voice vote, the motion was approved (6-0). (Absent: Fraley)