

**CITY OF GRANT, MINNESOTA
RESOLUTION NO. 2008-11**

**RESOLUTION DENYING AN APPLICATION FOR AMENDED
CONDITIONAL USE PERMIT FOR DAN AND CHRISTINE FLUG**

WHEREAS, Dan and Christine Flug (“Applicants”) have submitted an application for an Amended Conditional Use Permit which would authorize their property to be used for Horse Boarding and would increase the number of permitted animal units from forty four (44) to sixty seven (67); and

WHEREAS, the application is for property located at 8324 60th Street North (the “Property”), legally described as follows:

That part of the Southwest One Quarter of Section 33, township 30, Range 21, Washington County, Minnesota described as follows:

Commencing at the northwest corner of the East One Half of the Southwest One Quarter of said Section 33; thence North 88 degrees 39 minutes 59 seconds East on an assumed bearing along the north line of said Southwest One Quarter a distance of 7.80 feet; thence south 00 degrees 50 minutes 27 seconds East a distance of 334.01 feet to the point of beginning; thence continuing south 00 degrees 50 minutes 27 seconds East to the south line of said Southwest One Quarter a distance of 2300.71 feet; thence North 88 degrees 41 minutes 13 seconds East along said south line a distance of 528.72 feet; thence North 00 degrees 50 minutes 59 seconds West a distance of 1518.72 feet; thence North 88 degrees 41 minutes 13 seconds East a distance of 115.52 feet; thence North 00 degrees 50 minutes 59 seconds West a distance of 782.22 feet; thence South 88 degrees 39 minutes 59 seconds West a distance of 643.88 feet; to the point of beginning and there terminating; and

Parcel A

The Southeast Quarter of the Northwest Quarter (SE 1/4 of NW 1/4) of Section Thirty Three (33) in Township Thirty (30) North, Range Twenty-one (21) West of the Fourth Meridian, except the portion thereof conveyed to the St. Paul and St. Croix Railroad Company by deed dated May 27, 1984 and recorded in Book 14 of Deeds, Page 368, Washington County, Minnesota; and

Parcel 1

That part of the Southwest One Quarter of Section 33, Township 30, Range 21, Washington County, Minnesota described as follows:

Commencing at the northwest corner of the East One Half of the Southwest One Quarter of said Section 33; thence North 88 degrees 39 minutes 59 seconds East on an assumed bearing along the north line of said Southwest One Quarter a distance of 7.80 feet to the point of beginning; thence continuing North 88 degrees 39 minutes 59 seconds East along said north line a distance of 1303.11 feet to the east line of said Southwest One Quarter; thence South 01 degrees 14 minutes 23 seconds East along said east line a distance of 334.00 feet; thence South 88 degrees 39 minutes 59 seconds West a distance of 334.01 feet to the point of beginning and there terminating; and

Easement Acreage

An easement for pasture purposes, over, under and across the Southwest One Quarter of Section 33, Township 30, Range 21, Washington County, Minnesota, described as follows:

Commencing at the Northeast One Corner of the Southwest One Quarter of said Section 33; thence South 01 degree 14 minutes 23 seconds East on an assumed bearing along the east line of said Southwest One Quarter a distance of 334.00 feet to the point of beginning; thence continuing South 01 degree 14 minutes 23 seconds East along said east line a distance of 578.00 feet; thence South 88 degrees 39 minutes 59 seconds West a distance of 665.48 feet; thence North 88 degrees 39 minutes 59 seconds East a distance of 661.55 feet to the point of beginning and there terminating.

WHEREAS, the use of the Property is subject to an existing conditional use permit issued by the City in April 2000 (the "2000 CUP") authorizing the operation of a private riding stable on the property and further authorizing the applicants to keep forty four (44) animal units on the property; and

WHEREAS, the 2000 CUP specifically prohibits use of the Property in any commercial manner; and

WHEREAS, the Applicants have been using the Property in material violation of the 2000 CUP by operating a commercial horse boarding facility and boarding horses well in excess of the forty four animal units approved for the property; and

WHEREAS, subsequent to issuing the 2000 CUP, the City Council for the City of Grant adopted Ordinance No. 2004-109 permitting the operation of Horse Boarding and Training Facilities within certain zoning districts of the City housing greater than ten horses upon the issuance of a conditional use permit; and

WHEREAS, the Applicants were notified of their violation of the 2000 CUP and further that they were required to apply for an amendment to the 2000 CUP in order to comply with the City's ordinances; and

WHEREAS, the Applicants submitted their application for amendment to the 2000 CUP requesting a change in use classification to Horse Boarding and Training Facility with the right to board sixty seven (67) animal units on the property; and

WHEREAS, after due notice, on May 19, 2008, the Planning Commission held a public hearing on the application in accordance with state law and the City's ordinances at which time oral testimony was presented by the applicants, their agents, residents and other interested parties; and

WHEREAS, at the conclusion of the public hearing, the Planning Commission deliberated and voted to recommend that the City Council deny the applicants' request for amendment to the 2000 CUP; and

WHEREAS, the City Council for the City of Grant, at its regular city council meeting on June 3, 2008, received the recommendation of the Planning commission and accepted further testimony from the applicant; and

WHEREAS, the City Council, after having received all testimony on the applicant's request for amendment deliberated and voted four to one to deny the application for amendment to the 2000 CUP and further directed the City Attorney to prepare findings and this resolution as a contemporaneous record of the Council's decision.

NOW, THEREFORE, BE IT HEREBY RESOLVED BY THE CITY COUNCIL OF THE CITY OF GRANT, WASHINGTON COUNTY, MINNESOTA, that it does hereby deny the request of Dan and Christine Flug for an Amended Conditional Use Permit, based upon the following findings of fact:

Findings:

1. Ordinance 2004-109 of the Code of Ordinances for the City of Grant, permits the operation of Horse Boarding and Training Facilities boarding more than ten (10) horses upon the issuance of a conditional use permit by the City.
2. The issuance of a conditional use permit pursuant to Ordinance 2004-109 of the Code of Ordinances for the City of Grant requires consideration of the following matters:
 - a. The number of horses to be boarded on the property.
 - b. The number of grazeable acres contained within the property.
 - c. Arrangements for storage and disposal of manure.
 - d. Arrangements to preclude surface and/or groundwater contamination.
 - e. Compliance with City Lighting Ordinance.
 - f. Compliance with City Noise Ordinance.
 - g. Traffic and parking for the operation.
 - h. Frequency of equestrian events.
 - i. Hours of operation.
 - j. Fencing and building plans for operation.
3. Each of the considerations outlined in Ordinance 2004-109 is designed to protect the health, safety and welfare of the residents of the City of Grant.
4. The applicants have submitted a request which would change their allowed use of the property from private riding stable to horse boarding and training facility. The request would also increase the number of permitted animal units from forty four (44) to sixty seven (67). This is a significant intensification of the use.
5. The use of the Property is regulated by an existing conditional use permit approved by the City in 2000.
6. The conditional use permit approved in 2000 authorizes the applicants to keep one horse per every two grazeable acres of property either owned or leased by the applicants and was based upon a very broad and generous application and interpretation of the City's grazeable acres definition. At that time insofar as it assumes virtually every portion of the property is in fact grazeable and made no adjustment for wet areas and woodland areas.

7. Despite the City's broad interpretation of the grazeable acreage definition in favor of the applicants, the applicants proceeded to violate the 2000 CUP by among other things, operating a commercial horse boarding facility without authorization and boarding significantly more horses than authorized by the conditional use permit.
8. Applicants continued to violate the 2000 CUP until notified by City staff that unless an amendment to the conditional use permit was approved, enforcement action would be taken to ensure applicants' compliance with the City's Code of Ordinances.
9. In considering the number of animal units the applicants' property can support, the Planning Commission and City Council reviewed the City's grazeable acreage definition. Section 730.07 of the City's Code of Ordinances defines grazeable acreage as "dry land exclusive of the home site and its yard."
10. Based upon the definition contained within the City's Code, City staff determined that the property controlled by the applicants – both owned and leased – contains no more than seventy one (71) grazeable acres because there are wetlands of approximately seventeen (17) acres and approximately one (1) acre for the buildings and yard. The grazeable acreage located on the Property is sufficient to support thirty five (35) animal units – not the sixty seven (67) animal units requested by applicants.
11. Additionally, the Minnesota Pollution Control Agency ("MPCA") conducted a thorough inspection of the Property and identified an existing open lot with winter manure pack discharging to a wetland creating a significant pollution concern and determined that the site was required to be abated;
12. Applicants were to submit a manure management plan to address the pollution concerns raised by the MPCA, but failed to do so in a timely manner. The Applicants advised the Planning Commission that a permit had been issued when it had not.
13. The Washington Conservation District also identified a wetland impact on the site that has not been mitigated and changes necessary to the site in order to sufficiently protect surface waters from contamination.

14. The applicants failed to address and institute the changes identified as necessary by the Washington Conservation District to protect soil and waters even as the site and animals exist today.
15. Based upon the foregoing, the site fails to contain enough grazeable acreage to support the applicant's request for amendment to the 2000 conditional use permit. The site does not support allowing sixty seven (67) horses to be boarded on the Property because the site has not been used without wetland contamination and, apart from that, cannot be shown to have the number of grazeable acres needed to support this intensification.
16. The applicants have failed to make adequate and appropriate arrangements for the proper storage and disposal of manure and compliance with Section 730 of the City's Zoning Ordinance requiring that "No manure or livestock waste shall be deposited, stored, kept or allowed to remain in or upon any storage site or feedlot without reasonable safeguards adequate to prevent the escape or movement of such manure or waste or a solution thereof from the site which may result in pollution of any public waters or a health hazard."
17. The applicants have failed to make adequate and appropriate arrangements to preclude surface or ground water contamination and property drainage and have failed to comply with Section 740, 741 and 742 of the City's Zoning Ordinance.
18. As submitted by the applicants, the proposed use of the Property would negatively affect the character of the community and surrounding neighborhood due to the nature and intensity of the proposed use and the inability of the applicant to make a sufficient showing that the property adequately supports the number of animal units requested. Further, the applicants have failed to prove that they have adequately address concerns regarding the storage and disposal of manure and the protection against surface or ground water contamination.

Adopted by the Grant City Council this 1st day of July, 2008.

Tom Carr, Mayor

State of Minnesota)
) ss.
County of Washington)

I, the undersigned, being the duly qualified and appointed Clerk of the City of Grant, Minnesota do hereby certify that I have carefully compared the foregoing resolution adopted at a meeting of the Grant City Council on June 3, 2008 with the original thereof on file in my office and the same is a full, true and complete transcript thereof.

Witness my hand as such City Clerk and the corporate seal of the City of Grant, Washington County, Minnesota this _____ day of _____, 2008.

Kim Points
Clerk
City of Grant