

**PLANNING & DEVELOPMENT**

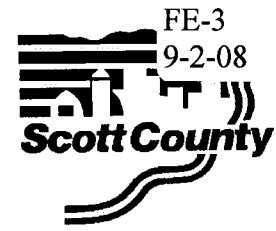
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Timothy Huey  
Director

To: C. Ray Wierson, County Administrator

From: Timothy Huey, Planning Director

Date: August 27, 2008

**Re: A request by Michael and Penni Steen to rezone Lot 1 McLaughlin's Riverside Addition, a .84 acre parcel, from Single-Family Residential (R-1) to Agricultural-Preservation (A-P) located in part of Section 15, Allens Grove Township**

The Planning Commission voted 6-1 to recommend denial of the rezoning request in accordance with staff's recommendation based on their determination that the request did not meet a preponderance of the criteria of the land use policies required to approve such a change. Commissioners stated that approval of the rezone would also appear to constitute illegal spot zoning since this request was to rezone only one of the lots in a subdivision when the rest of the eleven lots would remain residential. Commissioner Liske did not state any reason for his dissenting vote on the motion to recommend denial.

Staff presented aerial and site photos of the property and the structures, equipment and fill on the property that had been the subject of citations issued for zoning and building code violations on the property. Staff stated that the applicant had not given any purpose or proposed use of the property that required approval of the rezoning. The property had an existing cabin on the property that complied with the current residential zoning. One of the citations had been issued for the illegal operation of a commercial Halloween attraction in a residential zone. Staff noted that the A-P Zoning District regulations would allow submittal of a Special Use Permit for such a seasonal attraction while the R-1 zoning does not. Staff noted that the applicant had been found guilty of the civil infractions on all four citations and had been ordered to abate the violations. His appeal of those convictions had also been denied by the District Court.

The applicants, their attorney and about ten others were in attendance to speak in favor of the request. The applicant stated that he owned the adjacent 40 acres that was currently zoned A-P and this request was to have all his property zoned A-P. There was one neighboring property owner that spoke in opposition to the request because he did not want to see the Terror in the Woods operation continue.

**PLANNING COMMISSION RECOMMENDATION:** The Planning Commission recommends denial of the request to rezone a .84 acre (more or less) parcel from Single Family Residential (R-1 ) to Agricultural-Preservation (A-P) based on its clear and convincing lack of compliance with a preponderance of the criteria of the Land-Use Policies established in the 2008 Scott County Comprehensive Plan.

A request by Michael and Penni Steen to rezone .84 acre more or less from Single Family Residential (R-1) to Agricultural Preservation (A-P). The property is described as Lot 1 McLaughlin's Riverside Addition, Section 15, Allens Grove Township, 29600 98<sup>th</sup> Avenue



SECTION 15

Location



98<sup>TH</sup> Ave.

RIVER CAMP ROAD

CLINTON COUNTY

WAPISIPINICON

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STAFF REPORT  
August 5, 2008



**Applicant:** Michael and Penni Steen

**Request:** Rezone .84 acre more or less from Single Family Residential (R-1) to Agricultural Preservation (A-P).

**Legal Description:** Lot 1 McLaughlin's Riverside Addition, Section 15, Allens Grove Township

**General Location:** 29600 98<sup>th</sup> Avenue

**Zoning:** Single Family Residential (R-1)

**Surrounding Zoning:**

- North:** Single Family Residential (R-1)
- South:** Agricultural Preservation (A-P)
- East:** Single Family Residential (R-1)
- West:** Clinton County

**GENERAL COMMENTS:** This request is submitted to rezone a .84 acre parcel, which is one of the lots of McLaughlin's Riverside Addition, from Single Family Residential to Agricultural Preservation. There are six or seven cabins on the eleven lots in this subdivision. The eleven lots range in size from just over one half acre to just under one acre and have been zoned Single Family Residential since 1981, when the current Zoning Map was adopted.

The property is accessed by a narrow unimproved private road and is located about 1/3 mile back from the gated entrance off River Camp Road, a county maintained gravel road. The property and the access road are located entirely within the 100 year floodplain.

There is a small cabin on the property, along with a 2400 square foot accessory building, other outbuildings, truck trailers and appurtenances associated with the operation of a Halloween attraction known as Terror in the Woods. The 2400 square foot accessory building was built within the front yard setback, as an open sided picnic shelter, without a building permit. A variance was granted in 2001 to allow it to remain in the location where it had been built and a building permit was issued after construction for this residential accessory building. Both the variance and permit were approved with the condition that the building remained unenclosed, without side walls. The building was later enclosed without a permit and has been used in conjunction with the operation of the Terror in the Woods attraction.



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The applicant owns the adjacent 40 acre tract that is located between the subject .84 acre parcel and River Camp Road and is on the west side of the private road easement that provides access to the property. That 40 acre parcel is zoned Ag-Preservation and an application for a Special Use Permit to operate a music festival on the 40 acre parcel over the Labor Day week-end of 2007 as a special event was denied by the Board of Adjustment on July 25, 2007 due to the impacts of noise, dust and traffic on the surrounding property.

Under the current R-1 zoning regulations consideration of a Special Use Permit for special events could not be considered on the subject property. Approval of the rezoning of this .84 acre parcel to A-P would allow submittal of an application for a Special Use Permit for a special event such as the Terror in the Woods. This Halloween attraction has been operated on this .84 acre parcel for many years in violation of the R-1 zoning regulations and Scott County building codes.

On October 4, 2007 a Scott County District Judge approved the County's petition for an injunction preventing the operation of the Terror in the Woods attraction on the .84 acre parcel. In a guest column published in the October 27, 2007 Quad City Times, the applicant Michael Steen said that he had operated the Halloween attraction know as Terror in the Woods on this property for the previous eight years and that it was enforcement action by Scott County that prevented him from operating for a ninth season. The Scott County Planning and Development Department had also issued four citations for various infractions of zoning and building code violations on the property one of which was related to the operation of Terror in the Woods. On March 21, 2008 a District Court Magistrate entered civil penalties for all four infractions along with orders to correct. The applicant filed an appeal of those penalties and orders in District Court. That appeal was recently denied by a District Court Judge.

The applicant states on the rezoning petition under the Statement of Intended Use section that the application is made "for private use that would combine two separate adjoining properties owned by one owner to one complete property owned by one owner, giving the same zoning to one owner instead of two different zonings."

**STAFF REVIEW:** Staff has reviewed this request for compliance with the criteria of the Scott County Zoning Ordinance and the Revised Scott County Land Use Policies for review of rezoning applications. The Zoning Ordinance states that it is the intent of the Single Family Residential District to provide for the development of single family residences and subdivision in the rural areas of Scott County. The Zoning Ordinance states that the Ag-Preservation District is intended and designed to serve the agricultural community and protect agricultural land from encroachment of urban development. This District is not intended to be used for non-farm residential, commercial, industrial, or governmental buildings or uses, especially away from existing urban development and adequately





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paved roads. The Scott County Land Use Policies state that proposed changes in land use and zoning should comply with a preponderance of the applicable land use policies.

In general, the Scott County Land Use Policies encourage development to locate within cities, however the guidelines for reviewing development proposals in rural areas are:

*Is the development in compliance with the adopted Future Land Use Map*

The Future Land Use Map does not show this property or any property in the vicinity as appropriate for any land use changes. Therefore it would appear that this application does not comply with this criterion.

*Is the development on marginal or poor agricultural land?*

Because this request is to rezone an existing small tract that is developed with a river cabin and other outbuildings and not for agricultural use it would be staff's determination that this criteria does not apply to this request.

*Does the proposed development have access to adequately constructed paved roads?*

As stated above this property is located about 1/3 mile off the county maintained gravel road and obtains access from a narrow unimproved private road. Therefore it would appear that this request does not meet this criterion.

*Does the proposed development have adequate provision for public or private sewer and water services?*

The property is not currently served by either public sewer or water service, therefore all the residences in the area have to comply with State health regulations for private wells and on-site wastewater disposal. The property would not have an adequate water supply system that would be required to operate a fire sprinkler system for a commercial attraction operated within an enclosed building such as Terror in the Woods. Therefore staff would question whether this request meets this criterion for rezoning the property to A-P which would then allow a Special Use Permit application for a special event to be submitted.

*Is the area near existing employment centers, commercial areas and does not encourage urban sprawl?*

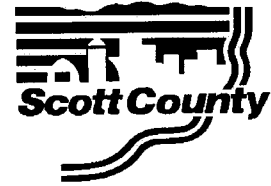
The property is located along the Wapsipinicon River in a very remote area of Scott County. It is located over a mile from any paved road and over three miles from the towns of Dixon and Donahue. However because this request is for a downzoning from R-1 to A-P this criterion would appear not to apply to this request.

*Is proposed development located where it is least disruptive to existing agricultural activities?*

There are limited ag uses in this area due to the poor soils and frequency of flooding. However because of the possible submittal of a Special Use Permit for a special event on



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this property if this rezoning is approved this request would appear to be disruptive to the residential uses in the area.

*Does the area have stable environmental resources?*

The topography of this property is relatively flat and as stated above is located entirely within the Wapsi River Floodplain. Most of the adjacent property is heavily wooded with a few small meadows interspersed. Because the entire property and access road is all located within the 100 year floodplain staff does not believe this request meets this criterion.

*Is the proposed development sufficiently buffered from other less intensive land uses?*

There is little buffering between this property and the closest adjacent residences. The intent of the zoning regulations is to allow sites for special events in ag zoned areas where they can be conducted in sparsely populated areas where neighbors are few and located a good distance away. Staff would contend that rezoning R-1 property to A-P in an existing residential area is directly contrary to the purpose and intent of both the zoning regulations and the adopted land use policies.

*Is there a recognized need for such development?*

The intent of the zoning regulation is to allow special events only in areas where the operation of such events can be conducted safely and without significant impacts on the surrounding property. As stated above, this would be an inappropriate area to allow a Special Use Permit for a special event of the nature of Terror in the Woods.

Staff has mailed notification to the adjacent property owners within five hundred feet (500') of this property of this hearing. A sign has also been placed at the entrance to this property stating the date and time this request would be heard by the Planning and Zoning Commission. Staff has received a number of calls with questions about this request.

**RECOMMENDATION:** Staff recommends that the rezoning of this property from Single-Family Residential (R-1) to Agricultural-Preservation (A-P) be denied based on its clear and convincing lack of compliance with a preponderance of the criteria of the Land-Use Policies established in the 2008 Scott County Comprehensive Plan.

Submitted by:  
Timothy Huey, Director  
July 31, 2008