

**MINUTES OF THE  
MINNEHAHA COUNTY PLANNING COMMISSION  
April 25, 2005**

A meeting of the Planning Commission was held on April 25, 2005 at 7:00 p.m. in the Commission Room of the Minnehaha County Administration Building.

COUNTY PLANNING COMMISSION MEMBERS PRESENT: Deb Bunde, Mike Cypher, Susie O'Hara, Mark Rogen, and Don South.

STAFF PRESENT: Scott Anderson, Phil Kappen and Pat Herman.

The meeting was chaired by Don South.

**APPROVAL OF THE CONSENT AGENDA**

There being no objections from the Planning Commission or audience, a motion was made by Bunde and seconded by Rogen to approve the consent agenda. The motion passed unanimously.

**ITEM 1. MINUTES – March 28, 2005.**

A motion was made by Bunde and seconded by Rogen to approve the minutes. The motion passed unanimously.

**ITEM 2. CONDITIONAL USE PERMIT to transfer one residential building eligibility and to allow a single family dwelling.**

From – NE1/4 SW1/4 in Section 24-T103N-R49W

To - SE1/4 (ex. N14 Rds & ex H-1 & ex. Tr. 1 Bucher's Addn. & ex Lot A Bucher's Addn.) in Section 24-T103N-R49W

Legal Description - SE1/4 (ex. N14 Rds & ex H-1 & ex. Tr. 1 Bucher's Addn. & ex Lot A Bucher's Addn.) in Section 24-T103N-R49W

Location - 3 miles east of the Midway Station

Petitioner / Owner- Bucher Family Trust

Present zoning - A-1 Agricultural

Existing Land Use - Agriculture

Parcel Size - 40 Acres

**Report by:** Pat Herman

**Staff Analysis**

The site is located three miles east of the Midway Station in Sverdrup Township. The surrounding land use is agriculture with scattered rural acreages. All properties in the area are zoned A-1 Agricultural. There are two existing dwelling units in the SE1/4. The petitioner is requesting two actions be taken with this conditional use permit.

The SE1/4 has two residential building eligibilities remaining. One is permissive, requiring only a building permit. The second eligibility requires conditional use permit approval before a single family dwelling can be constructed. The second action is a request to transfer one building eligibility to the SE1/4. The eligibility is coming from a land locked quarter-quarter.

Approval of this conditional use permit will result in three eligibilities that may be used anywhere in the SE1/4. At this time the petitioner has no plans to use the building eligibilities. A development plan for all three eligibilities should be submitted to the Planning Department for approval prior to any construction. Access is onto county highways so shared driveways should be used. A right-to-farm notice covenant should also be required as this is an agricultural area.

The new dwelling units will be consistent with the rural acreages which already exist in the area. Use of the surrounding properties and property values should not be affected. The single family dwelling and transfer of building eligibility do not increase the number of dwelling units allowed by density zoning. The petitioner has indicated the dwellings will be placed near the highway, preserving the interior land for farming.

Access will either be from Highway 121 or 122. Driveway access should be limited to one driveway per highway. The Highway Department will need to approve the driveway location. Wastewater systems will be used and staff believes rural water is available in the area.

Staff found the request to be consistent with density zoning and recommended approval of conditional use permit #05-29 with the following conditions:

- 1) A development plan for all three residential building eligibilities must be approved by the Planning Department prior to the issuance of any building permit.
- 2) The lots shall be platted and a right-to-farm notice covenant filed on the deed of each lot prior to the issuance of a building permit.
- 3) There shall be only one driveway access allowed onto each Highway 122 and Highway 121. The location of the driveway(s) shall be approved by the County Highway Department. Shared driveways shall be shown on the plat as access easements.

Based on the staff review, a motion was made by Bunde and seconded by Rogen to approve the conditional use permit with the conditions as stated. The motion passed unanimously.

**ITEM 3. CONDITIONAL USE PERMIT #05-30 to allow a single family dwelling.**

Legal Description – Tract 6 (ex. Lot 1 & ex. Songbird Acres) NW1/4 in Section 32-T102N-R50W  
Location - 3 miles southeast of Hartford  
Petitioner / Owner- Frank Kloxin  
Present Zoning - A-1 Agricultural  
Existing Land Use - Agricultural  
Parcel Size – 10.91 acres

**Report by:** Scott Anderson

**Staff Analysis:**

The property is located in a rural area approximately five miles west of Sioux Falls or 3 ½ miles southeast of Hartford. The subject property is located on the east side of an existing rural subdivision known as Songbird Acres. This property was platted as a parcel between 1978 (property recorded prior to this date is a “lot of record”) and 1988 when density zoning was instituted. The zoning ordinance specifies that property recorded between these two dates has a residential building eligibility by conditional use permit.

On April 13, 2005, staff inspected the property. The property is currently vacant and being used to raise agricultural crops. The area has a mixed land use of residential to the west and agricultural to the north, south and east.

Planning staff does not anticipate that the approval of this conditional use permit will negatively affect the existing uses in the area. The predominant use of the general vicinity to the west is residential. The proposed conditional use would be an extension of that existing use. This is an agricultural area and a right-to-farm notice covenant should be required on the deed of the lot.

Access is provided from S.D. Highway 38 via Dorothy Drive, which has been extended through the property.

The proposed residence will not be allowed to install an additional approach, but shall use the existing Dorothy Drive approach. Off-street parking requirements will be met once a residence is constructed on the site.

The location of a new residence on the property as a permanent single-family residence should not create dust, noise, or fumes in any amounts that would constitute a nuisance.

Staff found that a single family dwelling will conform to the surrounding neighborhood and recommended approval of Conditional Use Permit #05-30 with the following condition:

The lot shall be platted and a right-to-farm notice covenant filed on the deed prior to the issuance of a building permit.

Based on the staff review, a motion was made by Bunde and seconded by Rogen to approve the conditional use permit with the conditions as stated. The motion passed unanimously.

**ITEM 4. CONDITIONAL USE PERMIT to allow over 10,000 sq. ft. of commercial building area.**

Legal Description- McBeth Tr. 1A NE1/4 & SE1/4 in Section 27-T101N-R48W  
Location - ½ mile west of Rowena

Petitioner / Owner- Peska Construction / Dennis Tilden  
Present Zoning – C Commercial  
Existing Land Use - Commercial  
Parcel Size – 2.0 Acres

**Report by:** Pat Herman

**Staff Analysis**

The property is located on Highway 42 a ½ mile west of Rowena. The site is zoned commercial as is the property immediately to the west. There is a quarry to the south and the Preston Place residential subdivision is to the north. There is an existing 5,120 sq. ft. building. In 1999 a conditional use permit was approved for a contractor's storage shop. The building will now be used as a carpet warehouse, a use which does not require conditional use permit approval.

The zoning ordinance states that warehousing is a permitted special use provided the following three conditions can be met:

- 1) There is no outside storage.
- 2) There is no storage of a regulated substance.
- 3) The building contains 10,000 square feet of area or less.

The petitioner is proposing an additional 6,240 square foot building which will be linked to the existing building. Because the buildings will be connected the conditional use permit is required. A building permit for the 6,240 square foot building has been issued. Pending approval an additional building permit will be needed for the 12 x 46 connection which will also house the restroom and office.

The property is zoned for commercial uses and the addition will be constructed to meet county regulations as shown on the submitted site plan. This proposal will be constructed on a commercial lot which had been vacant.

A holding tank for waste water purposes as there will be a low volume of use at this site. Access is from 482<sup>nd</sup> Ave., a township gravel road. Should the business ever be granted direct access to Highway 38 the driving, parking and loading areas will need to be hard surfaced at that time. The hard surfacing requirement is a regulation of the zoning ordinance and would be required even if a conditional use permit was not needed.

The site plan depicts 21 parking spaces at this site which exceeds the required amount. A 14' x 25' area has been dedicated as a loading zone. Odor, fumes, dust, noise, and vibration should not be an issue with the proposed business. No outside lights are shown on the site plan, but any lighting should be constructed so that there is no light spillage off the property. The site plan does not show any free standing sign. The petitioner should be aware that a building permit is required prior to erecting such a sign.

Staff found the requested increase in size will not negatively impact the existing commercial development nor the surrounding properties and recommended approval of conditional use permit #05-32 with the following conditions:

- 1) Commercial building area shall not exceed 12,100 square feet.
- 2) Outside lighting shall be of a shoe box type design and shall lighting shall not spill outside of the property lines.
- 3) The property shall conform to the submitted site plan dated 3/24/05.

Based on the staff review, a motion was made by Bunde and seconded by Rogen to approve the conditional use permit with the conditions as stated. The motion passed unanimously.

**ITEM 5. CONDITIONAL USE PERMIT to transfer one residential building eligibility.**

From - SE1/4 SE1/4 in Section 14-T103N-R49W  
To - SW1/4 SE1/4 (ex. W409.65' S319') in Section 14-T103N-R49W  
Location - 3 miles southeast of Baltic  
Petitioner / Owner- Ken Friesen / Roger Lunstra  
Present Zoning - A-1 Agricultural  
Existing Land Use - Agricultural  
Parcel Size - 40 Acres

**Report by:** Pat Herman

**Staff Analysis**

The property is located in agricultural area three miles southeast of Baltic. Surrounding properties are zoned A-1 Agricultural and are in agricultural production. The petitioner is requesting a transfer of one residential building eligibility. There is a house under construction in the receiving quarter-quarter. There have been no past requests for transfers in this section.

Most of the surrounding land is used for agricultural purposes and the available building eligibilities have not been used. This transfer will cluster two residential acreages together, leaving the remainder of 80 acres for agricultural uses. This is an agricultural area and a right-to-farm notice covenant should be required. Transfer of the eligibility is consistent with density zoning and does not increase the number of dwelling units allowed in the section. Access will be from 253<sup>rd</sup> St., a gravel township road. Sverdrup Township should approve road access. A waster water system is required.

Staff found the request to be in conformance with density zoning and recommended approval of conditional use permit # 05-33 with the following conditions:

- 1) The lot shall be platted and a right-to-farm notice covenant filed on the deed prior to the issuance of a building permit.
- 2) Written approval from Sverdrup Township for new driveway access.

Based on the staff review, a motion was made by Bunde and seconded by Rogen to approve the conditional use permit with the conditions as stated. The motion passed unanimously.

**ITEM 6. CONDITIONAL USE PERMIT #05-34 to transfer two residential building eligibilities.**

From – SW1/4 SE1/4 and SE1/4 SE1/4 in Section 29-T103N-R50W  
To - N1/2 NW1/4 in Section 28-T103N-R50W  
Location - 1.25 miles south of Lyons  
Petitioner / Owner- Vince Hanson  
Present Zoning – A-1 Agricultural  
Existing Land Use - Agriculture  
Parcel Size – 1-3 acres

**Report by:** Scott Anderson

**Staff Analysis:**

The petitioner is requesting a transfer of two residential building eligibilities. The subject property is part of a small rural subdivision consisting of six existing platted lots. The two eligibilities are being moved from the SE ¼ of Section 29 to the NW ¼ of Section 28. The additional transfer would complete the subdivision. Access is provided by Meadowview Circle, which extends off of 254<sup>th</sup> Street. The subject property is currently zoned A-1Agricultural.

On April 7, 2005, staff conducted a site inspection. There are two existing residents located north of the subject property and one residence under construction. A right-to-farm notice covenant should be required to notify potential buyers to the realities of locating in an agricultural area. The transfer of the building eligibility does not increase the number of dwelling units allowed in this quarter.

Access is off of 254<sup>th</sup> Street via Meadowview Circle. Rural water is available in the area and a waste water system will be utilized. Off-street parking requirements will be provided for once a single-family residence is constructed on the subject property. The proposed conditional use will not cause odor, fumes, dust, noise, vibrations or lighting in any amounts that would constitute a nuisance.

Staff found this conditional use permit request to be consistent with density zoning and recommended approval of Conditional Use Permit #05-34 with the following condition:

The lots shall be platted and a right-to-farm notice covenant shall be placed on the deed prior to the issuance of a building permit.

Based on the staff review, a motion was made by Bunde and seconded by Rogen to approve the conditional use permit with the conditions as stated. The motion passed unanimously.

**ITEM 7. CONDITIONAL USE PERMIT to transfer two residential building eligibilities.**

From – SE1/4 NW1/4 and the NW1/4 SE1/4 in Section 17-T103N-R48W

To - NW1/4 NE1/4 in Section 17-T103N-R48W

Location - 5 miles west of Garretson

Petitioner / Owner- Clarence L. Fiegen

Present Zoning - A1 Agricultural

Existing Land Use - Agricultural

Parcel Size - 40 Acres

**Reported by:** Phil Kappen

**Staff Analysis**

The subject property lies along 252<sup>nd</sup> Street south of the EROS Data Center. The EROS property is zoned I-1 Industrial and the remainder of the surrounding property is zoned A-1 Agricultural. The property to the north comprises the EROS land and to the west, south and east are agricultural uses with scattered non-ag residences. The petitioner wishes to transfer the eligibilities from two land-locked quarter-quarters to along 252<sup>nd</sup> Street, a township road, allowing the possibility of three lots to be subdivided. One lot would be established to the west of the existing farmstead driveway and two lots would be established to the east of the driveway.

There are a number of existing acreages in the area. This will allow the land-locked eligibilities access from a public right-of-way. The petitioner has one eligibility remaining on the property, along 479<sup>th</sup> Avenue to the east. There are no plans to move that eligibility at this time. The proposed transfer will cluster the other existing eligibilities and reserve the remaining land for agricultural production. As the predominant land use in the area is agricultural, a right-to-farm notice covenant should be required on all properties.

Clustering the eligibilities will allow a more efficient means of farming the remaining property. Access onto the township road should be reviewed to ensure that safe access is provided.

Staff has had contact with representatives of the Edison Township board regarding access onto the township road. The board members have reviewed the site and have indicated that they wish some restrictions to be placed on the number and location of driveway accesses. They wish to have the west lot (west of driveway) access 252<sup>nd</sup> Street via the existing farmstead driveway. They will likely allow the petitioner to widen that driveway. The other two lots (east of the farmstead driveway) should be required to share a driveway. There is an existing field approach that could be moved to accommodate the two lots.

No parking may be conducted on the township road. No signs are allowed on properties with this land use. A single-family residential use should not pose undue problems with odors, dust, or noise.

Staff found the proposed use conforms with the precepts of density zoning and that the proposed use can be accomplished in a manner which poses a minimal impact on surrounding properties. Staff, therefore, recommended approval of conditional use permit #05-35 with the following conditions:

1. The lots shall be platted and a right-to-farm notice covenant shall be filed on all properties prior to the issuance of any building permit.
2. The western-most lot shall share a driveway with the existing farmstead driveway. The eastern two lots shall share a driveway. Written approval shall be obtained from Edison Township for all driveways prior to the issuance of any building permit. The petitioner shall meet all township requirements for driveway location and construction standards.

Based on the staff review, a motion was made by Bunde and seconded by Rogen to approve the

conditional use permit with the conditions as stated. The motion passed unanimously.

**ITEM 8. CONDITIONAL USE PERMIT to allow a winery.**

Legal Description- N479.31 S752.31 W420 and the E35 W420 S255 E1/2 E1/2 SW1/4 in  
Section 1-T102N-R50W  
Location - 1.5 miles east of Crooks  
Petitioner / Owner- Rich & Jennifer Hahn  
Present zoning - A1 Agricultural  
Existing Land Use - Agriculture  
Parcel Size – 4.82 acres

**Report by:** Scott Anderson

**Staff Analysis:**

The property is located two miles east of Crooks. The surrounding land is in agricultural use and rural acreages.

The property is on a township gravel road and one-half mile west of County Highway 133. The site has an existing shelter belt which will provide privacy and act as a noise barrier. There is sufficient land to provide parking for customers, as indicated on the petitioner's site plan.

On April 7, 2005, staff inspected the site. Two areas of grape vines have been planted. Staff did not see any evidence of the home occupation being currently operated.

The site plan provided by the applicant indicates that a future winery will be constructed. The applicant indicated the size of this structure will be approximately 60 feet by 72 feet. The applicant has indicated that there will be wine tasting in one of the two structures. The wine tasting area will not exceed 600 square feet. Currently, the applicant has a 60 foot by 72 foot detached accessory structure located west of the existing residence.

Employees of the winery will include the petitioners and up to two non-resident workers. There are times when additional temporary help will be needed but the length of employment would be less than a week.

On April 12, 2005, staff discussed the potential for special events and festivals. Because such events could generate additional traffic and may include live music, they are best handled through the temporary use permit process. This process would allow the surrounding landowners an opportunity for input. If the festivals operate successfully without complaints the petitioners could later apply to amend the conditional use permit to include the festivals. Staff indicated to the applicant that adequate off-street parking would need to be provided for any special event or festival. The applicant indicated that at this time the number of people attending the special events and festivals would be less than one hundred. Staff will recommend that prior to any special event or festival occurring the applicant shall obtain a temporary use permit and that the number of attendees for festivals and special events not exceed 100 with adequate off-street parking be provided by the applicant.

The proposed winery as a home occupation should have limited effect on the uses already permitted in the area or property values. The applicant has indicated that traffic to the site should be very limited. There may be occasional gatherings. Staff has addressed parking requirements in the recommended conditions approval. The proposed Conditional Use Permit should not impact the agricultural/residential nature of the surrounding properties. The applicant may not change the outside appearance of the residence to indicate any business activity. The proposed home occupation will have minimal impact on the development and improvement of any vacant properties in the area.

All of the required infrastructure, such as roads, is in place and no anticipated improvements are needed or expected to adequately service the proposed home occupation. The site plan provided by the applicant shows adequate parking located south and west of the existing single family residence. The proposed winery will have a loading area.

The proposed use is a value-added agricultural use and the size of the planned operation is consistent with the

size of a comparable agricultural major home occupation. Staff also finds that the use can be operated with minimal impact on neighboring land uses.

Staff recommended approval of Conditional Use Permit #05-36 to allow a winery as a home occupation with the following conditions:

1. The winery shall be secondary to the principal use of the property as residential. If the residential use ceases, the winery operation shall cease.
2. The owner or occupant of the dwelling shall be engaged in the winery occupation. The winery shall have a limit of two full-time, non-resident employees, not to exceed 4 full-time employees on site.
3. An illuminated sign shall be allowed up to 32 square feet. The design of the sign shall be approved by the planning department. Additionally, one non-illuminated sign not exceeding four square feet may be located along the driveway.
4. Wine production shall not exceed 10,000 gallons per year.
5. All outside lighting shall be of a style that directs light downward and prevent light spillage onto adjoining properties. The occupation shall not result in any odor, outdoor music, or annoyance noise to adjoining properties.
6. Wine tasting and sales shall be considered an accessory use to the winery. The wine tasting and sales area shall not exceed 600 square feet in the wine production building.
7. That the applicant obtains a Sales Tax License.
8. That the applicant obtains a Building Permit prior to beginning construction on the accessory structure that will be used for the winery. This will require a site plan to be submitted indicating the setbacks and information outlining the disposal of any wastewater.
9. That the maximum numbers of people attending any special event or festival not exceed 100, that a temporary use permit be obtain before the event or festival takes place, and that adequate off-street parking be provided.

Based on the staff review, a motion was made by Bunde and seconded by Rogen to approve the conditional use permit with the conditions as stated. The motion passed unanimously.

**ITEM 9. CONDITIONAL USE PERMIT to allow a temporary fireworks stand.**

Legal Description- Lot 1 Block 3 Brower Addition SW1/4 in Section 27-T102N-R51W  
Location - south edge of Hartford  
Petitioner / Owner- Handi-Riders, Inc. / Allen Stockwell  
Present zoning - I-1 Light Industrial District  
Existing Land Use - Agriculture  
Parcel Size - approx. 56 acres

**Report by:** Phil Kappen

**Staff Analysis**

The subject property is located in Brower's Addition, an industrial subdivision in the southeast quadrant of the Hartford/I90 interchange. The surround properties all contain commercial uses. The petitioner wishes to operate a short-term fireworks stand on the subject property.

The owner of the subject property already has existing violations on the property. There are unlicensed/inoperable vehicles on the south edge of this lot and that to the east (Lot 2). Both lots are owned by the same owner. The presence of such vehicles constitutes a violation of the public nuisance ordinance. There is also a question regarding the uses in the buildings on the property. Building permits were issued on both lots for cold storage buildings. No other uses have been approved by CUP for either property. Also, no approval has every been obtained for outside storage on the property. Staff has concerns about approving any additional land uses when we already have violations on the property.

The petitioner has provided a draft site plan. The plan, however, does not show the setbacks of the proposed temporary structure from property lines. This would be a temporary use, however, we need to know more specifics about the site before we can recommend approval. If this use were approved, time restrictions would have to be placed on the property regarding when the structure and sign could be placed on the property and when they would have to be removed.

Access to the property is via Jeffery Street. No direct access onto 463<sup>rd</sup> Avenue (Co. Hwy 151) is allowed. No on-street parking can be allowed. It is believed that there would be adequate space for parking on the subject property; however, we have not received any site plan showing the specifics of where parking will be allowed. For temporary firework stands it is standard that one 48 sq.ft. sign be allowed.

Due to the existing public nuisance and zoning violations on the property staff could recommend approval at this time. The property owner has been apprised of the violations and has indicated that they will address them. Staff recommended deferral of conditional use permit #05-3 until the May 23, 2005 meeting. At that time, staff will have a list of potential conditions consistent with other temporary fireworks stands.

Based on the staff review, a motion was made by Bunde and seconded by Rogen to defer the conditional use permit until the May 23, 2005 meeting. The motion passed unanimously.

**ITEM 10. CONDITIONAL USE PERMIT to exceed 1200 sq. ft. of accessory building area, 2400 sq. ft. requested.**

Legal Description- Oline's Tract 1 Peterson's Subdivision in Section 34-T103N-R49W  
Location - 3 miles north of Renner  
Petitioner / Owner- Todd Roth  
Present zoning - A-1 Agricultural  
Existing Land Use - Residential  
Parcel Size - 2 Acres

**Report by:** Pat Herman

**Staff Analysis**

The site is located 2.5 miles north of Renner. There is a high concentration of residential dwelling units in the area adjacent to Highway 115 and in the residential subdivision Rock Ridge Addition. The surrounding properties are zoned A-1 Agricultural or RC Recreation Conservation.

The zoning ordinance specifies that accessory building area is limited 1200 sq. ft. in developed areas unless a conditional use permit is obtained. The petitioner is requesting accessory building area of 2,400 sq. ft. but would be amenable to being limited to 2,000 sq. ft.

Accessory building area on surrounding lots ranges from 1690 sq. ft. to over 3,000 sq. ft. The buildings on the lots with accessory building area of 2,000 sq. ft. or more were constructed in 1987 and 1996. This was prior to the amendments to the zoning ordinance which limited accessory building area.

Since the amendment changes in March of 2001 the Planning Commission has approved two requests for accessory building area in the Rock Ridge Addition. Both requests were for under 1600 sq. ft. which is consistent with the buildings in the subdivision.

The petitioner's property is fronts Highway 115, as do the other lots with the large buildings. He also owns the lot immediately to the west of this property so has approximately 4 acres. Given the size of the existing accessory buildings on lots of similar size, staff believes that 2000 sq. ft. of accessory building area would blend with the exiting neighborhood. A building inspection, performed by the County Building Inspector, is required to verify the building does not exceed the allowed square footage. Measurements will be taken on the outside of the building to determine the square footage.

Placement of the accessory building should not impact the immediate vicinity negatively. There is little property left in the area that may be developed under the County's current regulations. Access will be from Highway 115 and the applicant will be restricted to the existing access approach.

Staff found that the request to increase the accessory building area to 2400 sq. ft. exceeds the general neighborhood character and so recommended approval of conditional use permit #05-38 with the following conditions:

- 1) Accessory building area shall not exceed 2000 sq. ft.
- 2) Accessory building height is limited to one story.
- 3) No commercial uses shall be permitted.

- 4) A building inspection is required.

Based on the staff review, a motion was made by Bunde and seconded by Rogen to approve the conditional use permit with the conditions as stated. The motion passed unanimously.

#### **APPROVAL OF THE REGULAR AGENDA**

A motion was made by Bunde and seconded by Rogen to approve the regular agenda. The motion passed unanimously.

Item 11 was deferred from the February 28, 2005 meeting. Don South recused himself from Item 11 which was then chaired by Susie O'Hara.

#### **ITEM 11. CONDITIONAL USE PERMIT to amend CUP #86-25 - hours of operation for trap shooting.**

Legal Description – E1/2 NW1/4 SE1/4 & NE1/4 SE1/4 (Ex. Tr. 1 Alvine's Addn. & Ex H-1) in Section 36-T101N-R51W

Location - 3 miles west of Sioux Falls

Petitioner / Owner- Francis Phillips

Present zoning - A1 Agriculture

Existing Land Use - Agriculture

Parcel Size – Approx. 56 acres

**Report by:** Phil Kappen

#### **Staff Analysis**

The subject property is located ¼ mile north of 268<sup>th</sup> Street and to the west of 466<sup>th</sup> Avenue (S.D. Hwy 17). The properties to the north, west and south are agricultural and the property across the highway to the east is residential. The petitioner has been operating a trap shooting business as a part of the Wild Water West complex since 1987. The shooting range is in the western portion of the amusement park area and the shooting range clubhouse is currently situated in the southwest corner of the property. The Planning Commission heard testimony on this conditional use permit request at their February meeting. At that time concerns were expressed that there may have been shot traveling over the boundary to adjoining property. The Planning Commission deferred the item to allow the petitioner time to address those concerns.

The conditional use permit for the shooting range use was approved by the Planning Commission in July of 1986 (CUP # 86-25) with the following conditions:

1. A five foot berm shall be placed along the south And east sides of the range.
2. Hours of operation shall be from 10:00 AM to sunset.
3. The Planning Office shall monitor the noise level.
4. Operation of the range shall commence no earlier than June 1, 1987. The Planning Commission shall review the operation before June 1, 1988 and determine if the conditional use permit should remain in effect.

The petitioner has met those conditions. The petitioner wishes to change the hours of operation from 9:00 AM to 10:00 PM.

The current layout of the site allows the firing of guns to the west. The petitioner proposed to change the layout to firing the guns towards the north. They have adequate spacing (830') between the proposed shooting area and their north property line. They have contacted a firearms manufacturer and found that the maximum distance shot would travel at a skeet range was 210 yards (7½ shot). This would allow a 200-foot buffer to ensure that no shot travels onto adjoining property. The petitioner has also contacted the property owner to the north and has been told that they do not have concerns about the proposed changes. The closest houses are found 2500' to the N; 3500' to the W; 3800' to the SW; 2300' to the S; 2400' to the SE; and 2100 feet to the east. The proposed site moves the trap shooting use further from existing houses than where the use currently exists.

The petitioner has prepared a comprehensive site plan for the amusement park. This provides an overall plan to guide any further development of the site. Access to the trap shooting site is currently through the south

parking area of Wild Water West and along a gravel access road to the southwest corner of the amusement park. The proposed access road would be along the north boundary of the Wild Water West Water Park. The amusement park has ample parking space for all proposed uses.

The trap shooting site currently has lighting only next to the clubhouse. It is assumed that the extension of the hours of operation after sunset may require additional lighting. All lighting should be limited to shoebox style lighting which directs the light downward and prevents the spillage of any light beyond the boundaries of the subject property.

Staff is not aware of any complaints that have been filed against the trap shooting use in the past, however, extending the hours to 10:00 PM could become problematic. Even though the use is being moved further from existing homes, the sound may still carry. There could be instances when a group isn't quite done with the trap shooting course at 10 o'clock and is allowed to finish. Given that fact that there are residential uses in the vicinity, it may be more appropriate to require that the trap course close at 9:00 PM to ensure that the use is closed down and the potential for noise ends well before ten o'clock. The site is not currently set up for rifle or pistol use and should be limited to the use of shotguns only.

Staff found the proposed use can be made to fit with surrounding uses if specific conditions are applied to the permit. Staff recommended approval of conditional use permit #05-13 with the following conditions:

1. A five foot berm shall be placed along the south and east sides of the range.
2. Hours of operation shall be from 9:00 AM to 9:00 PM.
3. The Planning Office shall monitor the noise level. If noise complaints are received, the Planning Office can bring the permit back before the Planning Commission for further review.
4. The operation shall be limited to a trap shooting range for shotgun use only. The orientation of the range shall be changed so that all shooting is directed towards the north or to the west. The range shall be changed to conform with the proposed layout by September 1, 2005.
5. All exterior lighting shall be of a shoebox style which directs the light downward and does not allow the spillage of light beyond the boundaries of the property.

### **Public Testimony**

The petitioner, Francis Phillips, has changed the design so that there will no longer be any encroachment onto the adjoining land. He will stop all shooting at the current site when the Pluckers notify him that they will be working in that field. Mr. Phillips requested that the deadline to complete the changes be extended to November 1, 2005 due to the current construction which is going on at the site and the fact that September and October are busy months for trap shooting. This would allow him to earn revenue for this year from the trap shooting. Mr. Francis plans to keep the club house which is rented out for parties and receptions and construct a smaller clubhouse at the site of the new range. He is not opposed to the suggested hours of operation.

No one else wished to address the item and the floor was closed to public testimony.

A motion was made by Cypher and seconded by Rogen to approve the conditional use permit with the following conditions:

1. A five foot berm shall be placed along the south and east sides of the range.
2. Hours of operation shall be from 9:00 AM to 9:00 PM.
3. The Planning Office shall monitor the noise level. If noise complaints are received, the Planning Office can bring the permit back before the Planning Commission for further review.
4. The operation shall be limited to a trap shooting range for shotgun use only. The orientation of the range shall be changed so that all shooting is directed towards the north or to the west. The range shall be changed to conform with the proposed layout by November 1, 2005.
5. All exterior lighting shall be of a shoebox style which directs the light downward and does not allow the spillage of light beyond the boundaries of the property.

The motion passed unanimously (South recused).

### **ITEM 12. REZONING from A-1 Agricultural to C Commercial.**

Legal Description – S210' Tract 4 Crockett's Addition NE1/4 in Section 33-T102N-R50W

Location - intersection of Hwy 38 and Ellis Road  
Petitioner / Owner- Loretta Trouten  
Present zoning - A-1 Agricultural  
Existing Land Use - Agriculture  
Parcel Size - 1.1 acres

**Report by:** Phil Kappen

**Staff Analysis**

The subject property is located just south of the 38 Road House at the corner of 261<sup>st</sup> Street (SD Hwy 38) and the Ellis Road (County Hwy 139). The portion of the property where the roadhouse is located is currently zoned commercial. The petitioner wishes to rezone the remainder of the property to commercial to allow a boat repair business to be located at the site. Such a business will also require a conditional use permit. The surrounding properties are all agricultural with scattered acreages.

The approval of a commercial zoning area at this location should have little impact on surrounding properties or land uses. The majority of uses that would be allowed in a commercial district will also require a conditional use permit. Many specifics of a commercial land use that may have some impact on surrounding properties will be addressed during the conditional use permit process.

The Minnehaha County Comprehensive Development Plan allows for smaller areas of commercial at the intersection of highly traveled hard-surface roads. This location meets that requirement. The future alignment for the west-side transportation corridor will be located approximately ½ mile to the east of the subject property. The rezoning, therefore, should have little impact on that corridor.

Access from the subject property would be onto Ellis Rd., a County Highway. As the highway is hard-surfaced, all parking and driving areas on the property will need to be hard-surfaced. The rezoning of this property will also allow improved provisions for access to the roadhouse property. This access can be further defined during the conditional use permit process.

There are specific parking and loading requirements for all types of commercial uses. This will also be covered during the conditional use process. These aspects will be covered during the conditional use permit process. The zoning ordinance has specific requirements for sign size(s) and location(s).

Staff found the rezoning request meets the location criteria for commercial sites as set forth in the county's comprehensive plan. Staff, therefore, recommended approval of the rezoning.

**Public Testimony**

The potential purchaser of the property, Kevin Severson, stated that his plans are to construct a 200' x 60' building on the site. Approximately 6,000 sq. ft. of the building will be dedicated to his business, small engine and out door power equipment repair, with the remainder of the building to be rental space. He is working with the bar on the corner to develop a shared driveway to alleviate any congestion.

No one else wished to address the item and the floor was closed to public testimony.

A motion was made by Rogen and seconded by O'Hara to recommend approval of the rezoning to C Commercial. The motion passed unanimously.

**ITEM 13. TEXT AMENDMENTS TO THE ZONING ORDINANCE.**

**Staff Report:** Pat Herman

The Planning Department is proposing text amendments to three different portions of the 1990 Revised Zoning Ordinance for Minnehaha County.

The first revision would be in Section 19 – Conditional Use Permits. In Section 19.11 the last sentence begins: The County and Planning Commission. The word *and* would be removed thereby eliminating

any confusion that both the County Commission and Planning Commission would need to take action to revoke a conditional use permit. Only the Planning Commission needs to take action unless their decision is appealed to the County Commission.

19.11 REVOCATION. If the County Planning Director finds that at any time that the terms, conditions, or requirements of the conditional use permit have not been complied with, or that any phase thereof has not been completed within the time required under the permit or any amendment thereto, the Director shall report this fact to the permittee, landowner, and/or operator, and the Minnehaha County Planning Commission. The County ~~and~~ Planning Commission may, after conducting a public hearing, of which the permittee, landowner and/or operator shall be notified, revoke the conditional use permit for failure to comply with the terms, conditions, or requirements of the permit.

The second amendment is in Section 17 – Off Premise Signs. Section 17.03 (A) allows the option of exceeding 288 sq. ft. for an off-premise sign with approval of a conditional use permit. Approval of this amendment would remove this option from the ordinance, so the maximum size off -premise sign would be limited to 288 sq. ft.

~~17.03\_ (A). Off premise signs over 288 square feet to a maximum of 672 square feet and signs with more than one sign face per direction of facing in the C and I Districts.~~  
Reserved.

The third amendment addresses the definition for a building. The existing definition would be replaced with a new definition. The phrase “permanently affixed to the land” has caused problems with people placing structures on blocks or skids to avoid getting a building permit.

85. BUILDING. ~~Any structure built for the support, shelter, or enclosure of persons, animals, chattels, or movable property of any kind, and which is permanently affixed to the land. When any portion thereof is completely separated from every other portion by masonry or fire wall without any window, which wall extends from the ground to the roof, then such portion shall be deemed to be a separate building.~~

85. Building – Any structure, either temporary or permanent, forming an open, partially enclosed, or enclosed space constructed by a planned process of materials and components to be designated and used for the shelter or enclosure of any person, animal or property of any kind. For the purpose of these regulations, retaining walls, concrete slabs, utility poles and fences are not considered structures.

### **Public Testimony**

No one in the audience wished to address the item and the floor was closed to public testimony.

A motion was made by Cypher and seconded by Bunde to recommend approval of the text changes to the zoning ordinance. The motion passed unanimously.

A motion was made by Cypher and seconded by Rogen to adjourn the Planning Commission and to convene as the Zoning Board of Adjustment. The motion passed unanimously.

### **ITEM 14. APPEAL OF ADMINISTRATIVE DECISION to allow a garage as the primary use of the property.**

Legal Description- Tract 4 Runack Addition in NE1/4 of Section 23-T102N-R51W  
Location - ½ mile east of Hartford

Petitioner / Owner- Leonard & Gloria Maxwell  
Present zoning - A-1 Agricultural  
Existing Land Use - Agriculture  
Parcel Size – 6.91 acres

Ms. Herman explained that the petitioners had contacted the Planning Department and, due to illness, were requesting a deferral of this item until the May 23, 2005 meeting.

A motion was made by Bunde and seconded by O'Hara to defer Item 14 to the May 23, 2005 meeting. The motion carried unanimously.

A motion was made by O'Hara and seconded by Bunde to adjourn as the Zoning Board of Adjustment and reconvene as the Planning Commission. The motion passed unanimously.

### **OLD BUSINESS**

Gordy Swanson, Deputy States Attorney, briefed the Planning Commission on the Circuit Court's decision on C&W Enterprise's lawsuit regarding the revocation of their conditional use permit. The Court issued an 8 page ruling, most of which agreed with county actions. However, in looking at the economic assessment and the money spend building the brick wall, the judge was sympathetic to C&W's investment. The judge also felt that staff had mislead the Planning Commission on the number and length of the violations on this property. The judge remanded the revocation back to the County Commission who is to sent it back to the Planning Commission to take another look at the issue. Discussions are under way with C&W to reach a possible solution and any resolution would be brought back before the Planning Commission.

Mr. Swanson also noted that Tom Meyer had filed suit against the County for their denial of the expansion of his CAFO. The Office of the States' Attorney will not push to move the action along as the CAFO cannot expand while the lawsuit is in play. The DENR has turned their findings over to the Attorney General.

There was no new business and the meeting was adjourned.