

**MINUTES OF THE
MINNEHAHA COUNTY PLANNING COMMISSION
May 23, 2005**

A meeting of the Planning Commission was held on May 23, 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, Anne Hajek, Susie O'Hara, Mark Rogen, Don South, and Wayne Steinhauer.

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

The meeting was chaired by Don South.

APPROVAL OF THE CONSENT AGENDA

Item 5 was moved to the regular agenda at the request of the petitioner. Staff requested that Item 8 be deferred until the June 27, 2005 meeting as the required notification had not been completed. There being no other objections from the Planning Commission or audience, a motion was made by Hajek and seconded by Rogen to approve the consent agenda with the amendments (Item 8 deferred, Item 5 removed.). The motion passed unanimously.

ITEM 1. MINUTES – April 25, 2005.

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

Item 2 was deferred from the April 25, 2005 Meeting.

ITEM 2. 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, a commercial/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 state permit for firework sales limits the sales season for stands such as this to a nine-day period.

The petitioner is a non-profit organization that uses the fireworks sales as a fundraiser for their organization that provides disabled children the opportunity to ride horses. The organization has had previous permits for firework sales and has met the conditions of those permits. Their previous sites, however, have been annexed into the city of Hartford which has prompted the organization to find a new location.

The existing land uses are commercial in nature. The temporary firework sales use should pose no particular impacts on surrounding land uses. It is standard for temporary firework sales uses that limits are established on when the "structure" and any signs may be placed on the property and when they must be removed. This is a temporary use for just a couple of weeks out of each year. There should be little effect on the development of the area.

Access to the property is via Jeffery Street. No direct access onto 463rd Avenue (Co. Hwy 151) is allowed. No on-street parking can be allowed. There is adequate space for parking on the subject property. For temporary firework stands it is standard that one 48 sq.ft. sign be allowed.

Staff found that the proposed use is consistent with the other uses in the vicinity and recommended approval of the conditional use permit with the following conditions:

1. The structures and sign shall not be placed on the property prior to June 23rd and shall be removed before July 8th.
2. On-premise advertising devices shall be limited to one sign with a maximum sign area of 32 square

- feet per face. Any off-premise advertising devices shall conform to current zoning regulations.
3. No parking shall be allowed along the highway or along Jeffery Street.
 4. The use shall cease if the property is annexed into the City of Hartford.

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

ITEM 3. CONDITIONAL USE PERMIT #05-39 to transfer one residential building eligibility.

From - NE1/4 SW1/4 in Section 14-T104N-R49W
To- Outlot B in Section 14-T104N-R49W
Location - 1 mile east of Dell Rapids
Petitioner / Owner- Melvin Fiegen
Present zoning - A-1 Agricultural
Existing Land Use - Agriculture
Parcel Size - 48.56 Acres

Report by: Pat Herman

Staff Analysis

The petitioner is requesting a transfer of one residential building eligibility. The property is located one mile east of Dell Rapids and runs between Centennial Place and Moody Street. There is a cellular tower on the south end of the property. The surrounding farm ground is owned by the petitioner. The land to the north is owned by L.G. Everist, parts of which are in mining production.

Transfer of the eligibility should have no impact on the property values or on the existing uses. This action does not increase the number of dwelling uses allowed under density zoning. As there are livestock and other farming practices in the area a right-to-farm notice should be required.

Access will be from a township gravel road and Dell Rapids Township should approve the driveway location. A wastewater system will be needed and other utilities should be available.

Staff found the request to in conformance with density zoning and the comprehensive plan and recommended approval of conditional use permit #05-39 with the following conditions:

- 1) The property shall be platted and a right-to-farm notice filed on the deed on the lot prior to the issuance of a building permit.
- 2) Written approval from Dell Rapids Township for the driveway approach.

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

ITEM 4. CONDITIONAL USE PERMIT #05-41 to allow a manufactured dwelling.

Legal Description – Tract 2 Lunstra's Addition in Section 36-T104N-R48W
Location - 3 miles west of Sherman
Petitioner / Owner- Jeffery & Bonnie Peterson
Present zoning - A-1 Agricultural
Existing Land Use - Agriculture
Parcel Size - 4.99 Acres

Report by: Pat Herman

Staff Analysis

The petitioner is requesting approval to allow a manufactured dwelling. The site is located three miles west of Sherman. The surrounding land use is predominately agriculture. In May 2004 the Planning Commission approved the transfer of a building eligibility to this site. There are four building sites which align 250th St., two of which have existing dwellings.

The Office of Equalization does not believe a manufactured dwelling will negatively impact property values or uses in the area. The petitioners have indicated this will be a new unit. Use of this site as residential was approved by a previous conditional use permit which also required a right-to-farm notice. Future development in the area will not be affected.

A wastewater system will be used and staff believes rural water is available in the area. Access is from Highway 114. The original conditional use permit required a shared driveway and the petitioner's are in agreement with that condition.

Staff found the requested use to be compatible with the neighborhood and recommended approval of conditional use permit #05-41 with the following conditions:

- (1). The structure shall have been constructed on or after July 15, 1976.
- (2). The exterior dimensions of the structure, measured by excluding overhangs, shall not be less than 22 feet.
- (3). The structure shall be supported by a foundation system consisting of walls along the perimeter and piers on the interior. All foundation walls and piers shall extend a minimum of 42 inches below final grade.
- (4). The roofing and siding material shall be consistent with the material used in site-built dwellings.
- (5). The roof pitch shall not be less than a 3 in 12 slope.

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

ITEM 5. CONDITIONAL USE PERMIT #05-42 to allow a horse boarding and training stable.
Legal Description – N487' W1049.47' & the N539.4'E343.53' W1393', of the NW1/4 (ex. Tr. 1 McKaughan's Addn. & ex. Jay's Addition) in Section 20-T102N-R51W
Location - 1 mile west of Hartford
Petitioner / Owner- Jay Jira
Present zoning - A-1 Agricultural
Existing Land Use - Agriculture
Parcel Size - 15.10 Acres

Item 5 was placed on the regular agenda at the petitioner's request.

ITEM 6. CONDITIONAL USE PERMIT #05-44 to exceed 1200 sq. ft. of accessory building area (100 sq.ft. existing, 1350 proposed, total 1450).
Legal Description – Lot 11 Block 2 Red Rock Estates in Section 31-T102N-R47W
Location - 1 mile east of Brandon
Petitioner / Owner- Jeffrey Albert
Present zoning - A-1 Agricultural
Existing Land Use - Agriculture
Parcel Size - Acres

Report by: Phil Kappen

Staff Analysis

The subject property lies within Red Rock Estates, a residential subdivision north of 262nd Street and east of 484th Ave. There are a number of larger accessory buildings within this subdivision, many of which are larger than the proposed building on the subject property. The proposed building should conform with the general character of the subdivision. There should be no additional impacts on the surrounding properties.

No additional parking requirements should be imposed by the construction of the building.

As the building will be used only for the owner's personal storage and since no commercial uses are allowed, there should be no added impacts from the placement of the proposed building.

A building inspection, preformed 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.

The proposed building conforms with the character of the area and staff recommended approval of the conditional use permit with the following conditions:

1. The total area of accessory buildings on the property shall not exceed 1450 square feet.
2. The building shall be used strictly for the property owner's personal storage. No commercial use is permitted and no storage of commercial items or vehicles is permitted.
3. Accessory building height is limited to one story.
4. A building inspection is required.

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

ITEM 7. CONDITIONAL USE PERMIT #05-45 to allow a paint and wood finishing business.

Legal Description- Lot 3 Block 4 Brower Addition SW1/4 in Section 27-T102N-R51W
Location - south edge of Hartford
Petitioner / Owner- Aaron Wohlleber / Richard Brower
Present zoning - I-1 Light Industrial
Existing Land Use - Vacant
Parcel Size - Acres (to be platted)

Report by: Scott Anderson

Staff Analysis

The subject property is located in an existing industrial development on the south edge of Hartford. Businesses in the development include trucking firms, manufacturing, mini-storage and retail. The applicant is seeking approval for a paint and wood finishing business. The wood working shop will focus on the staining and finishing of wood products. This requires a conditional use permit because of the regulated substances involved in the business. The petitioner is working with the building inspector on the required building specifications.

On May 4, 2005, staff conducted a site visit. The property is currently vacant. No site plan has been provided. Prior to the issuance of any building permit, an accurate site plan shall be reviewed and approved by the Minnehaha County Planning Department.

The general area is a developing industrial/commercial area. A similar business was approved by the Planning Commission on the property located directly south of the subject property. The proposed use should not impact the existing businesses with observance of the conditions of approval. The proposed Conditional Use Permit should not impact the commercial industrial nature of the surrounding properties.

The County approved Conditional Use Permit #05-09 for a similar wood working shop on the property directly to the south of the subject property. Furthermore, the area is developing as a smaller industrial area. The proposed use fits into the other land uses in the area.

Ashley Street provides access to the site. Ashley Street has been constructed with a gravel driving surface. During staff's site inspection, no street sign was present. For safety reasons, staff recommends that this street sign be installed and has contacted the Highway Department. The site will use natural drainage ways for any storm water run-off.

The applicant has not provided a site plan showing the size of the building, setbacks or parking. The property owner is in the process of platting the property. As a result, staff can not make any determination on the minimum number of parking spaces that must be provided. The applicant will have to meet the minimum parking requirements as outlined in Article 15 of the Minnehaha County Zoning Ordinance. Staff recommends that no building permit is issued until a full review by staff has been completed to determine that the setbacks and parking requirements have been met.

Staff recommends that any lighting on the building be shoe box style and directed toward the ground. Any fumes that the paint or woodworking business produces shall be properly vented so as not to create a nuisance. Staff recommends approval of Conditional Use Permit #05-45 to be established and conducted in conformity with the Zoning Ordinance and the recommended conditions of approval.

Staff found the request to be compatible with the surrounding land uses and in conformance with the comprehensive plan and recommended approval with the following conditions:

- 1) That prior to the issuance of a building permit by Minnehaha County, the applicant shall provide a detailed site plan showing the location of any on-site wastewater disposal system, the number and orientation of all parking spaces, and setbacks.
- 2) That any fumes produced by the paint or woodworking business shall be properly vented so as not to create a nuisance.
- 3) A minimum 15 foot landscape area shall be maintained along the west lot line, excluding the driveway.
- 4) Any outside storage shall be screened from public view by a minimum 6-foot high screening fence. The fence shall be maintained with a minimum 90% opacity over the full height of the fence and be of earth toned colors.
- 5) That the applicant meets all of the parking requirements as outlined in Article 15 of the Minnehaha County's Zoning Ordinance.
- 6) That the applicant obtains a Sales Tax License as required by the South Dakota Department of Revenue.

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

ITEM 8. REZONING #05-04 from R-1 Residential to A-1 Agricultural.

Legal Description – Lots 1-10 & 23-33 Block 4 and N1/2 Vac 2nd St. & all Vac alley Lyons Village Addition in Section 17-T103N-R50W
Location - Lyons
Petitioner / Owner- Terry Bunde
Present zoning - R-1 Residential
Existing Land Use - Vacant
Parcel Size - 2.23 Acres

Staff requested that Item 8 be deferred to the June 27, 2005 meeting as the required notification had not been completed. A motion was made by Hajek and seconded by Rogen to **defer** the conditional use permit to the June 27, 2005 meeting. The motion passed unanimously.

ITEM 9. CONDITIONAL USE PERMIT #05-46 to AMEND CUP #04-89 to allow single driveways instead of a shared driveway.

Legal Description – Tracts 2& 3 Matthies' Addition SE1/4 in Section 26-T102N-R51W
Location - 1 mile southeast of Hartford
Petitioner / Owner- Mike Schuldt / Dwane Matthies
Present zoning - A-1 Agricultural
Existing Land Use - Agriculture
Parcel Size - 5.0 Acres

Report by: Phil Kappen

Staff Analysis

The subject property lies to the north of 261st Street, and between 464th and 465th Avenues. The surrounding properties are all agricultural with scattered acreages. The petitioner wishes to amend CUP #04-89 to allow individual driveways.

Conditional use permit # 04-89 approved the transfer of two building eligibilities to enable the clustering of residential uses on the Matthies property. When the application was made for the conditional use permit Mr. Matthies indicated that he would be using shared driveways, therefore, this was made a condition of the CUP. The full conditions placed on the permit were as follows:

- 1) All lots shall be platted and right-to-farm notice covenants filed on each lot prior to the issuance of the building permits.
- 2) The lots shall be located to provide a minimum of 1/4 mile separation between the houses and the existing farmsteads to the east and west.
- 3) A shared driveway shall be used to provide access to the houses from 261st Street. An

access easement shall be shown on the plats.

A plat has already been approved that showed the required access easement. If the conditional use requirements are changed, a revised plat should be prepared that is consistent with the new conditions.

As a part of the discussion of the original CUP, consideration was given to the distance of the residential lots from an existing livestock operation in the area. This separation was accomplished during the platting of the lots. Since the CUP approval the current petitioner has contacted Hartford Township and obtained Township approval for individual driveways. A copy of the township approval is enclosed in this packet.

Given the approval of the township board, staff finds that it may be appropriate to amend the conditional use permit and recommended approval of the CUP amendment with the amended conditions to read as follows:

- 1) All lots shall be platted and right-to-farm notice covenants filed on each lot prior to the issuance of the building permits. A new plat must be prepared for approval that deletes the mutually-shared access easement.
- 2) The lots shall be located to provide a minimum of 1/4 mile separation between the houses and the existing farmsteads to the east and west.
- 3) All driveway locations shall be approved by Hartford Township prior to the issuance of any building permit.

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

Regular Agenda

A motion was made by Hajek and seconded by Rogen to approve the regular agenda with the addition of Item 5. The motion passed unanimously.

ITEM 5. CONDITIONAL USE PERMIT #05-42 to allow a horse boarding and training stable.

Legal Description – N487' W1049.47' & the N539.4'E343.53' W1393', of the NW1/4 (ex. Tr. 1 McKaughan's Addn. & ex. Jay's Addition) in Section 20-T102N-R51W
Location - 1 mile west of Hartford
Petitioner / Owner- Jay Jira
Present zoning - A-1 Agricultural
Existing Land Use - Agriculture
Parcel Size - 15.10 Acres

Report by: Scott Anderson

Staff Analysis

The applicant is in the process of constructing a 72 foot by 112 foot accessory agricultural structure for the purpose of horse training and potential horse boarding. The applicant has indicated in a written statement that the structure will be primarily for personal use, however, occasional 4-H practice will be held there. In addition, the applicant would like permission to board up to ten (10) horses. This Conditional Use Permit request does not allow for any events such as rodeos or horse shows to be held on the property. Any such events would require the applicant to obtain a Temporary Use Permit.

The surrounding land uses are a mix of both agricultural and residential uses. There are two (2) other residences that use the same access easement as the applicant. These residences are located to the south and east of the subject property. A small development of houses is located at the intersection of 461st Avenue and S.D. Highway 38, approximately 1/2 mile to the west. Furthermore, there is a single residence located on the north side of S.D. Highway 38, north of the subject property.

On May 4, 2005, staff conducted a site inspection. Staff observed the grading of the site for the new 72 foot by 112 foot structure. The applicant's single family residence, located on a separate lot adjacent to the horse arena, was recently constructed. The access road coming off of S.D. Highway 38 was only

approximately 12 feet wide and graveled. Staff has concerns about the width of this shared access. The width is not sufficient for two vehicles to meet without someone driving on the shoulder of the road or ditch to pass each other. Staff recommends that prior to the operation of the stable/arena the access road from S.D. Highway 38 up to the driveway leading to the arena be improved to a width of twenty (20) feet.

With proper management and use, the proposed arena/stable should not impact the uses or enjoyment of properties in the vicinity. Hours of operation should be set in order to minimize any impact on neighboring properties. Staff recommends that the hours of operation should be between 7:00 a.m. and 10:00 p.m. daily.

The proposed Conditional Use Permit should not impact the nature of the surrounding properties. The mixture of residential and agricultural uses will not be hindered with the establishment of a horse arena and stable facility.

The applicant has indicated that no restroom facilities will be provided in the stable/arena, however, should the need arise, they will provide porta-potties. Any storm water will use the existing surface drainage ways to the west and south. The applicant should take precautions to avoid allowing any animal waste to enter into the natural drainage ways.

As staff noted, the access road into the site is only approximate 12 feet wide. Staff does not feel this width is adequate for safe vehicular traffic to pass one another without leaving the gravel driving surface.

With the proposed additional use of horse boarding, vehicles with horse trailers will be utilizing this road. The access road will need to be expanded up to the point where the driveway to the horse arena is located. Staff will include widening this road to a safe width of twenty (20) feet in the recommended conditions of approval

The applicant has not indicated any off-street parking on the site plan submitted. The applicant will have to meet all of the requirements of Article 15 of the Minnehaha County Zoning Ordinance or obtain a Variance reducing or waiving parking standards.

There is a potential for increased odor and dust associated with this use. There will be increased dust associated with the increase of traffic into and out of the arena/stable facility. The applicant must properly dispose of animal waste so that no odor occurs and flies are kept at a minimum. With proper maintenance, however, dust and odor should not reach a level that would constitute a nuisance.

Staff finds that the proposed use can be operated with minimal impact on neighboring land uses. Staff recommended approval of Conditional Use Permit #05-42 with the following conditions:

- 1) That no alteration to any building shall indicate from the exterior that the building is being utilized in whole or in part for any purpose other than a residential or agricultural use.
- 2) That the applicant be limited to one (1) non-illuminated wall sign, which shall not exceed two (2) square feet and one (1) non-illuminated free-stranding sign, which shall not exceed four (4) square feet each in area for the home occupation. A Sign Permit shall be obtained prior to the installation of any sign.
- 3) That the employees shall be limited to residents of the dwelling and up to two (2) non-resident employees, not to exceed a total of four (4) employees on site.
- 4) That this Conditional Use Permit allow the stabling of up to ten (10) horse other than horses owned by the applicant and arena to be used for horse training. Any special events will require the property owner to obtain a Temporary Use Permit.
- 5) That at least one (1) 2A-BC dry chemical fire extinguisher is accessible to all guests at all times.
- 6) That the applicant informs Metro Communications of the business name, address and activities occurring on the subject property.
- 7) That the applicant meets all of the parking requirements as outlined in Article 15 of Minnehaha County's Zoning Ordinance.

- 8) That the applicant obtains a Sales Tax License as required by the South Dakota Department of Revenue and any other licenses for horse boarding that may be required by the state.
- 9) That prior to the operation of the boarding/training facility, the applicant shall increase the width of the existing access road to a width of twenty (20) feet from S.D. Highway 38 to the driveway leading to the facility.
- 10) That the hours of operation for the arena shall be between 7:00 a.m and 10:00 p.m. All horse boarding activities should be completed during the same hours when possible.
- 11) That all animal waste be disposed of in such a manner that any odor is limited and the number of flies is mitigated.

Public Testimony

The petitioner, Jay Jira, presented the Commission with a letter signed by the two homeowners, Paul Anderson and Travis Nelson, who use the shared driveway. They stated they did not feel there was a need to widen the driveway width as recommended in the staff report. Mr. Jira explained that he requested a maximum of 10 horses but usually will have less. His own horses will be boarded there and he will do some occasional training of other horses. A horse would be dropped off for 1-2 months and then picked up. There should not be an increase in traffic using the driveway.

Mr. Anderson explained that there is a safety issue involved as this driveway accesses Highway 38. The State does not want people backing out onto the highway. He noted that he and the petitioner had visited on this issue last week and that Mr. Anderson had explained his concerns. He suggested that Mr. Jira raise the issue with the Planning Commission.

Commissioner Bunde stated that this was an agricultural area and the use fit the neighborhood. She questioned whether this small operation warranted the widening of the driveway. Commissioner Steinhauer stated that access onto Highway 38, a high speed, busy road, made safety an issue.

Mr. Jira stated he did not want to widen the road as there was a wetland on the west side of the drive. He does not own the property on the east side and there are power poles to contend with there. Both he and his neighbors always check to make sure no one is coming before pulling out of their driveways. He noted there is also a culvert on the east side of the driveway.

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

Commissioner Steinhauer stated that widening the driveway to 30' would allow traffic to enter the driveway from Highway 38 even if someone was waiting to pull out onto the highway. This would prevent traffic being stopped on the highway.

Based on the staff report and public testimony, a motion was made by Steinhauer and seconded by Hajek to **approve** the conditional use permit with the stated conditions. The motion passed unanimously.

The **Dell Rapids Planning Commission** joined the meeting. Members present: Bob Davis, Roger Dearduff, Chair Bob Lamberty, Chris Mullaney and Larry Skatvold. Staff Jeff Traill.

Item 10 was heard jointly with the Dell Rapids Planning Commission.

ITEM 10. TEXT AMENDMENTS to the 2001 Revised Joint Zoning Ordinance for Minnehaha County and the City of Dell Rapids.

Report by: 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 is for Section 3.03 (I) which allows the expansion of existing concentrated feeding operations by 500 animal units with conditions. The Office of the State's Attorney has advised us that the specification of 500 animal units should be listed in the conditions, not in the section label.

- (I). Concentrated animal feeding operation (existing) shall be allowed to expand ~~by up to 500 animal units~~ provided:
- 1). The operation is located in a farmstead or property contiguous to, and smaller than, the aforementioned farmstead.
 - 2). The operation shall not be located in the Water Source Protection Overlay District or a flood plain.
 - 3). The operation shall not exceed 1000 animal units.
 - 4). There is conformance with South Dakota Department of Environment and Natural Resources design standards for any newly constructed waste containment facility. A registered professional engineer shall certify the plan specifications and the construction of the facility.
 - 5). Results of a geotechnical test boring are provided to the Planning Department which were performed in conformance with Section 12.10 (C)(3). If a shallow aquifer is present, measures shall be employed to protect the groundwater from contamination. The County may call upon the expertise of the South Dakota Geological Survey in making a determination on whether a shallow aquifer exists on the site as based on the soil boring data.
 - 6). Approval by the Planning Director of a nutrient management plan which has been prepared in conformance with the South Dakota Department of Environment and Natural Resources standards.
 - 7). The operation shall meet the requirements of Table 1 in Section 12.10 (F) and Section 12.10 (G).
 - 8). All liquid waste generated by the additional animal units shall be injected. In the event of an extraordinary circumstance, surface application may be allowed in accordance with the provisions of Section 12.10 (E)(3). The Planning Director may approve the surface application of livestock production surplus water in accordance with Section 12.10 (E)(3).
 - 9). The operation is not located within 2640 feet of a municipality.
 - 10). The expansion shall not exceed 500 animal units.

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.

Staff recommended approval of the text amendments.

Public Testimony

Commissioner Steinhauer questioned whether something like a dog house would require a building permit under the new definition. Ms. Herman explained that the building code does not require building permits for structures less than 120 sq. ft. in size.

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

Based on the staff report and public testimony, a motion for the County was made by Bunde and seconded by O'Hara to recommend **approval** of the amendments to the zoning ordinance. The motion passed unanimously. Same motion for the City by Dearduff and seconded by Mullaney. The motion passed unanimously.

Item 11 was heard jointly with the Dell Rapids Planning Commission.

ITEM 11. DISCUSSION ITEM - on notification letters sent to petitioners.

Members of the Dell Rapids Planning Commission have requested that the wording in the letters sent to petitioners which addresses attendance at Planning Commission meetings be reviewed by the joint Planning Commissions. That portion of the letter is highlighted below.

You will find enclosed the Minnehaha County Planning Commission agenda and staff report on your conditional use permit application. Your application is scheduled to be heard by the Minnehaha County and Dell Rapids Planning Commissions on Monday, March 28, 2005 at 7:00 pm in the Commission Meeting Room on the second floor of the County Administration Building in Sioux Falls. **It is important that you or a representative attend this meeting and be prepared to answer questions pertaining to your application. The Planning Commission's policy is to defer or deny an item when the petitioner is not in attendance.** (The County Planning Commission may meet jointly with the Sioux Falls City Planning Commission prior to addressing the items on the enclosed agenda.)

Discussion

The discussion centered on whether the letter sent to petitioners should contain language requiring an applicant to be present. The Commissions considered saying their policy is to deny an item when the petitioner is not present, but that was discarded because an applicant would have to wait to reapply for six months. The Commissions noted that when a petitioner is not present the staff, Commission, and members of the public have all lost time on that item. However, there are legitimate reasons such as illness, accidents, etc. that would prevent a person from attending the meeting. After further comments the Commissions felt the current wording gave them the most leeway in determining how to vote when an applicant was not present.

A motion for the County was made by Cypher and seconded by Bunde to maintain the current wording in the applicant's informational letter. The motion passed unanimously. Same motion for the City by Davis and seconded by Skatvold. The motion passed unanimously.

ITEM 12. TEXT AMENDMENT to the 1990 Revised Zoning Ordinance for Minnehaha County.

Report by: Pat Herman

The Planning Department is proposing a text amendments for Section 3.03 (I) which allows the expansion of existing concentrated feeding operations by 500 animal units with conditions. The Office of the State's Attorney has advised us that the specification of 500 animal units should be listed in the conditions, not in the section label.

- (I). Concentrated animal feeding operation (existing) shall be allowed to expand ~~by up to 500 animal units~~ provided:
- 1). The operation is located in a farmstead or property contiguous to, and smaller than, the aforementioned farmstead.
 - 2). The operation shall not be located in the Water Source Protection Overlay District or a flood plain.
 - 3). The operation shall not exceed 1000 animal units.
 - 4). There is conformance with South Dakota Department of Environment and Natural Resources design standards for any newly constructed waste containment facility. A registered professional engineer shall certify the plan specifications and the construction of the facility.
 - 5). Results of a geotechnical test boring are provided to the Planning Department which were performed in conformance with Section 12.10 (C)(3). If a shallow aquifer is present, measures shall be employed to protect the groundwater from contamination. The County may call upon the expertise of the South Dakota Geological Survey in making a determination on whether a shallow aquifer exists on the site as based on the soil boring data.
 - 6). Approval by the Planning Director of a nutrient management plan which has been prepared in conformance with the South Dakota Department of Environment and Natural Resources standards.
 - 7). The operation shall meet the requirements of Table 1 in Section 12.10 (F) and Section 12.10 (G).
 - 8). All liquid waste generated by the additional animal units shall be injected. In the event of an extraordinary circumstance, surface application may be allowed in accordance with the provisions of Section 12.10 (E)(3). The Planning Director may approve the surface application of livestock production surplus water in accordance with Section 12.10 (E)(3).
 - 9). The operation is not located within 2640 feet of a municipality.
 - 10). The expansion shall not exceed 500 animal units.

Staff recommended approval of the text amendment.

Public Testimony

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

Based on the staff report and public testimony, a motion to recommend approval of the amendment to the zoning ordinance was made by Rogen and seconded by Bunde. The motion passed unanimously.

ITEM 13. CONDITIONAL USE PERMIT #05-47 to exceed 10,000 sq. ft. of commercial building area (12,000 sq. ft. requested) and to allow marine & small engine repair and vehicle (boat) sales.

Legal Description- Tr. 4 Crockett's Addn. NE1/4 in Section 23-T102N-R50W
Location - Hwy 38 and Ellis Road
Petitioner / Owner- Kevin Severson / Loretta Trouten
Present zoning - C Commercial
Existing Land Use - Vacant
Parcel Size - 1.1 Acres

Report by: Phil Kappen

Staff Analysis

The subject property is located at the intersection of SD Hwy 38 and Ellis Road (County Hwy 139). The property to the north contains the 38 Roadhouse, a bar. Across the state highway to the north is a farmstead, to the east, west and south are agricultural lands. The southern end of the subject property was recently rezoned from A-1Agricultural to C Commercial. The northern end of the property has been

zoned commercial for many years. The petitioner wishes to construct a building on the property, the north half of which he will use for the marine and small engine repair business. The south end of the building will be used for rental space. The petitioner understands that a future use in the south end of the building will likely require a conditional use permit.

The property lies within an area that the county comprehensive plan indicates is applicable for commercial uses. The 38 Roadhouse bar to the north has operated on and off for many years. The present application, with its proposed connection to the Roadhouse parking area will improve the existing traffic pattern around the bar. The petitioner's site plan shows that the parking area extends to the south property line. This would allow additional shared access should the property to the south be proposed for future development.

The building will be served by a holding tank for septic waste. No drain field is planned and the tank will be periodically pumped and the contents taken to a publicly-owned treatment facility for proper treatment. The use of a holding tank precludes the need to protect a drain field area from traffic (only the tank itself must be protected from encroaching traffic). The tank is located in an area that should provide easy access for the required pumping.

Access will be from Ellis Road (Co. Hwy 139), a hard-surfaced road. The zoning ordinance requires that all access roads in a commercial area that come off a hard-surfaced road must also be hard-surfaced prior to the commencement of operations. The site plan shows what appear to be columns at the entrances to the property. The petitioner should be aware that such columns must be placed on the subject property and cannot be erected within the highway right-of-way.

The petitioner's site plan shows a total of 29 parking spaces. A building of the proposed size would typically require 40 spaces. There are, however, another 12 parking spaces immediately north of the proposed building site that are used for the bar use. The bar use and the proposed boat and motor repair have differing hours of operation. This would allow for some shared parking spaces. The combination of the two parking areas will provide more than adequate numbers of spaces.

There is a required 15-foot front yard setback along the Ellis Road right-of-way for any parking areas. The petitioner's site plan shows adequate space to meet this setback. The site plan also shows that trees will be planted within that 15-foot buffer area. That conforms with the requirements that were placed on the 38 Roadhouse to plant trees along the right-of-way areas.

As the property accesses a hard-surfaced road, all parking will have to be hard-surfaced. This must be done before the approved use is commenced.

The petitioner shows that he will have storage areas on the north side of the property. These areas will hold boats that are to be repaired and completed boats that have yet to be picked up by the owners. Any such storage areas should be screened from public view (from any direction) with a screening fence and conditions should be added to the permit that will prevent the accumulation of scrap, unlicensed or inoperable vehicles, trailers or boats.

There are no outdoor lights or any signs shown on the site plan, however, it is assumed that the petitioner will wish such accessory uses on the property. Any signs will have to meet the requirements of the zoning ordinance. Sign placement and size details can be addressed when the petitioner applies for the required building permits prior to erecting any signs.

Staff found the proposed use is consistent with the types of uses found in commercially-zoned areas provided that site specific conditions are adopted, and that the site is consistent with the types of areas that are allowed for commercial use by the Minnehaha County Development Plan. Staff, therefore, recommended approval of the conditional use permit with the following conditions:

1. The use shall conform to the site plan submitted as a part of the conditional use application, unless specifically noted by this permit.
2. All outside storage of materials, parts, boats to be repaired or repaired boats, or the temporary storage of scrap materials must be screened from public view by an approved screening fence. Such fence shall be a minimum of 6-feet in height, shall have a minimum opacity of 90%

maintained over the entire height of the fence, shall be of earth-tone colors, and shall be kept in a well-maintained condition. There shall be no storage within the required 15-foot setback along the Ellis Road ROW.

3. Scrap and any unlicensed vehicles, boats or trailers shall not accumulate on the site.
4. No parking shall be allowed within 15-feet of the front yard property line along Ellis Road. All parking and driving lanes shall be hard-surfaced. Designated storage areas do not need to be hard-surfaced.
5. Landscaping trees shall be planted within the required fifteen-foot setback along Ellis Road. The trees shall be spaced no more than 50 feet apart and shall be a minimum caliper of 1 ¼ inches if deciduous and a minimum height of 5feet if coniferous.
6. All outside lights shall be of a shoebox style that directs the light downward and prevents the spillage of lights beyond the boundaries of the property.
7. A plat of the property shall be prepared which shows a shared access easement for the north driveway accessing both the proposed use and the business to the north.
8. All conditions must be satisfied prior to the commencement of business operations.

Public Testimony

Commissioner Steinhauer suggested that a chain link fence with slats not be allowed as acceptable fencing for the storage areas. Commission Cypher concurred that a wooden fence would have a cleaner and classier look.

The petitioner, Kevin Severson, explained that his proposed plan would help the traffic flow at the intersection. By adding a second entrance south of the Road House onto Ellis Road, all the traffic in and out of the bar would no longer be restricted to the one entrance just to the south of Highway 38. He noted that most boats will average 2 weeks on the lot when they are brought in for repairs. There is a 200' by 50' space behind the building which could be used for overflow storage. He is also considering using the space for outside storage of his small engine repair items. Mr. Severson also plans to use 3 or 4 of the parking spaces in the northeast corner to display boats for sale. For this reason he asked the Commission to consider allowing a larger distance between the required landscape trees along Ellis Road.

Mr. Severson explained that no matter what type of fence he placed around the storage area which faces onto Ellis Road, the contents would still be visible due to the difference in elevation between the road and the site. Some boats can exceed 20' in height when on a trailer. Commissioner Hajek pointed out that a 6' high fence would hide materials and parts. After further discussion the Commission and Mr. Severson agreed that the storage lot along Ellis Road would not be screened while the one on the west side of the property would require a wooden fence.

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

Based on the staff report and public testimony a motion to **approve** the conditional use permit with the following conditions was made by Steinhauer and seconded by Hajek.

1. The use shall conform to the site plan submitted as a part of the conditional use application, unless specifically noted by this permit.
2. All outside storage of materials, parts, or the temporary storage of scrap materials must be screened from public view by a 6' high screening fence. There shall be no storage within the required 15-foot setback along the Ellis Road ROW. As shown on the submitted site plan, the storage area on the west side of the lot shall be screen by a 6' high screening fence. Any screening fence shall be a minimum of 6 feet in height and shall be maintained with a minimum 90% opacity over the full height of the fence. The fence shall be of earth-tone colors and shall be kept in a well-maintained condition. The storage area fronting Ellis Rd. shall only be used for intact boats and no screening fence is required in that area.
3. Scrap and any unlicensed vehicles, boats or trailers shall not accumulate on the site.
4. No parking shall be allowed within 15-feet of the front yard property line along Ellis Road. All parking and driving lanes shall be hard-surfaced. Designated storage areas do not need to be hard-surfaced.
5. Landscaping trees shall be planted within the required fifteen-foot setback along Ellis Road. The trees shall be spaced no more than 50 feet apart and shall be a minimum caliper of 1 ¼ inches if deciduous and a minimum height of 5feet if coniferous.
6. All outside lights shall be of a shoebox style that directs the light downward and prevents the spillage of lights beyond the boundaries of the property.
7. A plat of the property shall be prepared which shows a shared access easement for the north driveway accessing both the proposed use and the business to the north.

8. All conditions must be satisfied prior to the commencement of business operations.

The motion passed unanimously.

ITEM 14. CONDITIONAL USE PERMIT #05-43 to allow a horse event center, kennel, livestock sales barn and mobile home.

Legal Description – SE1/4 NE1/4 in Section 3-T102N-R51W
Location - 2.5 miles north of Hartford
Petitioner / Owner- Joyce Reiners
Present zoning - A-1 Agricultural
Existing Land Use - Agriculture
Parcel Size - 40 Acres

Report by: Scott Anderson

Staff Analysis

The applicant is requesting a Conditional Use Permit to allow a number of uses on the subject property. The primary use of the property will be as a stable/riding arena/sale facility/event center approximately 64,440 square feet in area. Other uses also requested on the subject property include a manufactured home as a caretaker's/manager's unit, a dog and cat rescue facility and horse rescue facility. All of these uses require a Conditional Use Permit. The applicant has included a written narrative, which is included with the staff report for review.

The applicant is requesting to stable up to 65 horses within the proposed stable. Patrons would have access to the 100 foot by 200 foot indoor riding area, a turn out area, and outdoor riding arena. The stable would also include a 50 foot by 50 foot hay storage area located adjacent to both the riding arena and horse stall area, and a 50 foot by 50 foot shop area. Also located in the stall area will be three (3) customer tack rooms, a 12 foot by 25 foot lounge, a unisex restroom, and a 12 foot by 15 foot wash bay. This portion of the facility is proposed to have ten (10) foot high side walls.

The applicant is also proposing a sale arena to be located on the north end of the riding arena. The sale arena area will be approximately 40 feet by 80 feet in size. There will be a 40 foot by 44 foot kitchen/café area to service sale attendees, a veterinary office, two (2) business offices, a tack retail area, and one (1) unisex restroom. The riding arena, sale arena and retail area portion of the building is proposed to have side walls of 16 feet in height. The loading and receiving area of this facility will be located on both the east and west sides of the building. Both the stable area and riding arena, and the sales area will be constructed out of metal. The applicant has indicated that the building will be cream color with forest green trim and roof.

The applicant indicated that livestock sales will occur on a monthly basis, with special quarterly sales. The overall number of sales will be between 16 and 20 per year. During sales and any special events, the kitchen would provide commercial services to attendees. The applicant indicated that the proposed livestock sales could run past midnight. Special events will also be held within the riding arena area. The applicant indicated that these events could include 4-H events, riding events, team roping, team sorting, barrel racing, training as well as other non-equestrian events. The proposed sale barn can be covered by this Conditional Use Permit, however, the many proposed special events would need to be allowed through the issuance of a Temporary Use Permit, as outlined in Article 12 of the Zoning Ordinance. The applicant's overall plan more closely resembles an event's center, which is not a permitted use in the Agricultural District. Staff finds that these proposed activities and uses are not accessory to the stable or the sales barn facility.

The applicant is proposing to have a rescue kennel for both cats and dogs and a rescue horse facility. These will consist of two (2) buildings, each 40 feet by 60 feet in size. The buildings will be located on the west side of the complex, adjacent to the caretaker's facility. The proposed kennel will have the capacity for 30 dogs and 25 cats with foster care as an alternative. In the narrative provided by the applicant, the kennel is proposed to be constructed in a sound proof manner. The rescue animals will be offered to the public for adoption. The proposed hours of operation would be from 9 am to 5 pm. These facilities would have a separate parking area and driveway from the arena/stable area.

On-site management will be provided for the entire complex. The on-site manager will reside on the property in a 28 foot by 70 foot manufactured home. The home site will be located on the northwest corner of the complex. A future two (2) car garage is scheduled for construction at a later date. In

addition to the on-site manager, the applicant is anticipating employing between 6-10 full time personnel with up to 15 part-time employees.

The applicant has indicated that all of the building will have a security system, a monitoring system, lighting, sound and heating systems. Certain areas of the complex will have fire protection systems, such as the café area and hay storage area. An extensive lighting system is planned for the complex and is part of the protection system.

The subject property is entirely located within the Water Source Protection Overlay District. While the proposed use is not excluded within the overlay district, the proposed number of animals being kept on the property is approaching the numbers of animal units of a small confined animal feeding operation. A horse is considered two (2) animal units. The maximum number of horses to be kept on the subject property is 75, which would equal 150 animal units. Additional animal waste will be produced from the regular sales barn sales, and kennel. All human waste is proposed to be processed through a conventional on-site wastewater disposal systems (septic). The applicant has indicated that some of the animal waste may also be processed through septic systems. The applicant may have difficulty locating suitable areas for septic systems, due to the sand and gravel formations found in the area. Sand and gravel has been extracted on the subject property and on the property to the west. A portion of the subject property is also located within the 100-year flood plain of the west branch of Skunk Creek.

The surrounding land uses consist primarily of agricultural uses, with the exception of the sand and gravel activity to the west. The closest residence is located approximately 1/8 of a mile to the southeast along 464th Avenue. Two other residences are located approximately 1/4 mile to the northeast and northwest along 256th Street. There are approximately fourteen (14) building eligibilities remaining in the 1/2 mile to mile surrounding the subject property.

The majority of uses in the general vicinity reveal around agricultural production. There is a sand and gravel operation located to the west of the subject property. The proposed use should not impact the property values of the agricultural land in the generally vicinity. With proper planning and execution of the plan, improvements made on site could general enhance the area. The current state of the subject property as a past sand and gravel quarry does not enhance the area. The applicant has indicated that past evidence of that mining activity will be eliminated.

The proposed use could have an impact on the development of surrounding vacant property. While most agricultural uses, such as animal husbandry or crop production would not be impacted by the proposed use, some uses such as rural residences may not desire to locate near this proposed use. The proposed use will generate significant amounts of traffic, and minor amounts of noise and dust.

The subject property borders 464th Avenue, a paved and well maintained road. A twenty-eight (28) foot gravel access road extends along the north edge of the property, which was also used by the sand and gravel operation to the west. The existing access road is sufficient for the proposed uses. Community water is available to the site. The applicant has indicated that the site will be graded in such a manner to provide adequate drainage, but has not provided a drainage plan. Due to the scope of the project, staff recommends that prior to a building permit being issued, a drainage plan be reviewed and approved by the Planning Department.

The applicant has indicated that approximately 80,000 square feet of off-street parking will be provided. The parking area will be graveled. Based on the size of the facilities, the Zoning Ordinance requires 231 spaces. The proposed parking area would be able to accommodate over 460 spaces, meeting the minimum requirements of the Zoning Ordinance.

Several measures are included in the recommended conditions of approval that will aid in mitigating elements that could be considered a nuisance. Staff has recommended that all animal waste be disposed of in a manner that would reduce odor and flies. All of the lighting fixtures on the building need to be of a shoe-box type and directed toward the ground. None of the dogs shall be allowed outside between the hours of 9:00 pm and 7:00 am and the kennel building shall have sound attenuation measures included in the construction. Hours of operation will regulate the flow of traffic during quiet times of the day.

Staff recommended approval of Conditional Use Permit #05-43 to allow a stable and riding arena, livestock sales barn, kennel, horse rescue facility, and manufactured home with the following conditions:

- 1) That this Conditional Use Permit allow the stabling of up to sixty-five (65) horse and an arena to be used for horse training, horse rescue and rehabilitation for up to ten (10) horses, a thirty (30) dog and twenty-five (25) cat kennel, a livestock sales barn, and one (1) manufactured home measuring at least twenty (20) feet by twenty (20) feet. Any special events will require the property owner to obtain a Temporary Use Permit for each event.
- 2) That up to twenty (20) livestock sales shall be allowed per calendar year.
- 3) That the daily hours of operation for all activities shall be conducted between 6 am and 10 p.m. All rescue dogs and cats shall be kept indoors from 9:00 pm to 7 am.
- 4) That the applicant meets all applicable state fire codes and obtain any other state licenses needed for the operation of the livestock sales facility and stable.
- 5) That the applicant informs Metro Communications of the business name, address and activities occurring on the subject property.
- 6) That the applicant meets all of the parking and loading requirements as outlined in Article 15 of Minnehaha County's Zoning Ordinance.
- 7) That the applicant obtains a Sales Tax License as required by the South Dakota Department of Revenue and any other kenneling or stable licenses required by the state.
- 8) One free standing sign of sixteen (16) square feet or less shall be permitted with the issuance of a building permit.
- 9) That any wastewater disposal system (septic system) be approved by the S.D. Department of Environment and Natural Resources and the necessary permits obtained from Minnehaha County prior to installation.
- 10) That all animal waste be disposed of in such a manner that any odor is limited, the number of flies is mitigated and contamination of groundwater resources be avoided.
- 11) That prior to a building permit being issued, a drainage plan be reviewed and approved by the Planning Department.
- 12) All outdoor lighting affixed to buildings shall be of a shoe-box type with the light directed toward the ground.

Public Testimony

In response to questions from the Commission, Mr. Anderson explained that the driveway and parking areas are not required to be hard surfaced as the property is zoned A-1 Agricultural, not C Commercial. All of the requested uses are listed as requiring a conditional use permit in the agricultural district. The point at which control over the water source protection area becomes critical is 250 animal units. This is a 40 acre parcel so the petitioner should be able to spread manure and still meet the 300' setback from the stream that crosses the south portion of the property.

Jackie Buysse, 25978 487th Ave., spoke on behalf of the petitioners. Using the submitted site plan, Ms. Buysse explained that the well will be moved to the southeast to meet the set back requirements from the septic system for the caretaker's house. The septic tank shown by the horse stalls will be moved south of the turn-out pens and an additional system will be added to serve the arena/vet/and kitchen uses. The septic system for the house will also handle waste from the cat & dog rescue building. The rescue area will be reached by a separate drive. This area will have a security fence which will also serve as a privacy fence. There will be a locked gate. This gate as well as access to the stables and indoor arena will require a swipe key to enter when the facilities are locked.

Ms. Buysse continued by explaining that they are preparing an elevation plan for the buildings and are considering collection points at the end of the buildings for water run off. This would then be channeled south of the site. Ms. Buysse feels that there is a real need for dog/cat rescue shelters. This will be a complement to the Humane Society. There will be a fee to adopt from the shelter. Euthanasia will be used at this site. Ms. Buysse did studies that show an astronomical need for stables and that there are plenty of spend-able dollars being used for horses and related activities.

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

Commissioner Hajek mentioned that the petitioner would like to have extended hours for the livestock sales. Mr. Anderson explained that he felt that given the surrounding land use the hours of operation for this activity should not extend beyond 10 p.m. Commissioner Steinhauer noted that this use could create a lot of traffic.

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

ITEM 15. RECONSIDERATION OF CONDITIONAL USE PERMIT # 03-46 for a contractor's storage yard.

Legal Description- Tract 4 Dawson's Addition and Lot 4 Haug's Addition SE1/4 in Section 12-T102N-R50W
Location - NW Quadrant of Renner/Crooks exit on I-29
Petitioner / Owner- C & W Enterprises, Inc. – Warren Barse
Present zoning - C Commercial
Existing Land Use - Commercial
Parcel Size - 5.9 Acres

Report by: Phil Kappen

Staff Analysis

The subject property is located in the northwest quadrant of the Crooks/Renner interchange on I-29. In 2000 C&W Enterprises commenced a contractor's storage yard use on the subject property without first obtaining the required conditional use permit. After contacting the property owner, Warren Barse of C&W Enterprises, he applied for a CUP which was approved April 24, 2000 with a series of conditions that were required to be met by June 1, 2001. The Planning Commission heard requests from the petitioner to amend the CUP at both the January 22, 2001 and April 23, 2001 meetings. These amendments were approved, with the deadline for meeting the requirements still remaining on June 1, 2001. The petitioner did not meet that deadline, but was in compliance with the CUP by the fall of 2001.

Some of the screening trees which the petitioner had planted subsequently died and were not replaced. This put the property in non-compliance and staff contacted the property owner. After a series of delays the petitioner again applied to amend the CUP. The Planning Commission first heard that amendment application on July 28, 2003. Staff suggested the possibility of using a combination of berming and fencing to provide screening along the east end of the property. Mr. Barse, the property owner, expressed interest in the idea and the PC deferred action on the item until Mr. Barse could supply a revised plan. After a number of requests from staff, the petitioner supplied the revised plan and the Planning Commission approved an amendment on February 23, 2004 with a requirement that all conditions be completed by July 1, 2004. Mr. Barse did not attend this meeting. Mr. Barse again did not meet the compliance deadline and the Planning Commission took action at the July 26, 2004 meeting to revoke all CUPs on the property if the conditions were not met by August 31, 2004. Mr. Barse appealed that decision to the County Commission. The conditions were still not met by the August 31st deadline and the Minnehaha County Commission upheld the Planning Commission action on September 7, 2004. Staff then considered that all CUPs on the property had been repealed. The petitioner then appealed the County Commission decision to Circuit Court.

A trial was held March 11, 2005 before Circuit Court Judge Neiles. The judge found in the county's favor on many of the points raised by Mr. Barse, however, the judge did overturn the revocation of the conditional use permits and remand the case to the Planning Commission. The judge did suggest that Mr. Barse install a 6-foot high berm across the east end of the property with a screening fence on the top and that the county allow sufficient time for compliance.

Prior to the judge reaching his decision, the petitioner's attorney, David Kroon, contacted our office and requested that staff meet his client and himself at the site to discuss additional options. Staff met them at the site on March 25, 2005. They asked about the possibility of changing the site plan to allow storage of parts and some equipment in only a portion of the lot and screening that area. Staff indicated that when Mr. Barse had first applied for the CUP that was what had been approved. Mr. Barse had subsequently applied to amend the CUP to change that condition. Staff indicated that they would support such a change as long as some screening remained along edge of the property near the interstate and that the petitioner would have to ensure that certain materials and equipment were always stored in the well-screened area. Staff informed them that they would have to apply to amend the CUP and provide a revised site plan. No such application has been received by the Planning Office.

Since the judge's opinion indicated that the petitioner should meet the conditions (particularly that of the berm and across the entire east end of the property) and that the county should allow additional time for Mr. Barse to meet that requirement, staff contacted Mr. Kroon in late April and left a message asking him

to contact the Planning Department if they had a conflict for the May 23, 2005 meeting. Since Mr. Kroon did not return the call, the item was placed on the Planning Commission agenda.

On May 4, 2005 Mr. Kroon e-mailed Deputy States Attorney Gordy Swanson to ask why the discussion of the reduced storage area was no longer being considered. The planning staff attempted to call Mr. Kroon and again left a message asking him to call the planning department. Mr. Kroon did not return that phone call. Staff again phoned Mr. Kroon on May 6, 2005 and reminded him that he and Mr. Barse had been told at the March 25, 2005 meeting that Mr. Barse needed to submit an application for a hearing before the Planning Commission to amend the requirements of the CUP which restrict that portion of the property where full screening is required. The Planning Office has not received any application for such an amendment.

Staff found the judge's decision be construed as a final step to allow Mr. Barse to bring his property into compliance with the previously approved conditions. Staff, therefore, recommends that conditional use permit # 03-46 be amended to reflect a new deadline date of September 1, 2005. The amended conditions would read as follows:

- 1) Conditional Use Permit #01-29 shall be repealed.
- 2) Lot 4 Haug's Addition shall be limited to the parking of trucks. Trucks shall be in an operable condition. A barrier such as curb stops shall delineate the required fifteen-foot front yard setback along Cottonwood Avenue and Wild Clover Circle.
- 3) Outside storage of inoperable or dismantled equipment, parts, or material shall be restricted to Tract 4 of Dawson's Addition. The lot shall be screened from public view screening fence on the north, south and west sides and located inside the required fifteen-foot front yard setback. The screening fence shall be a minimum of six feet in height, shall be of earth-tone colors and shall be maintained with a minimum of 90 percent opacity over the full height of the fence.
- 4) The east end of Dawson's Tract 4 shall be filled to a minimum of 6 feet above present grade. All fill material must be contained within Dawsons Tract 4 and must not extend into the interstate R/W. The exposed slopes of the fill material must be established to a grass cover to prevent erosion.
- 5) A screening fence shall be erected along the eastern border of the property on top of the filled area. The fence shall be a minimum of six feet in height, earth-tone in color and maintained with a minimum of 90% opacity over the full height of the fence. The fence must be set back a minimum of 15' from the south and east property boundaries to provide for the required yard setbacks.
- 6) A fifteen-foot landscaped area shall be maintained along the west and south sides of Tract 4 Dawson's Addition and consist of either deciduous or coniferous trees planted a maximum of 30 feet on center.
- 7) All trees referenced in conditions 2 and 3 shall be a minimum caliper of 1 1/4 inches if deciduous or a minimum height of 5 feet if coniferous. All trees shall be maintained according to Minnehaha Conservation District standards and dead trees shall be immediately replaced.
- 8) The driveways and parking areas as shown on the site plan dated November 20, 2003 shall be hard-surfaced.
- 9) The fill and fencing shall be completed by September 1, 2005. Fill material shall not erode onto adjacent land.

Public Testimony

Mr. Kappen explained that the Planning Department had contacted C & W's attorney, David Kroon, prior to finalizing this meeting agenda on April 29, and left a message that this item would be heard on May 23, 2005. Mr. Kroon never responded and the item was scheduled for the public hearing. Much later Mr. Kroon telephoned Gordy Swanson with the Office of the State's Attorney and requested that this item be deferred. Mr. Kroon never informed the Planning Department of this request. Mr. Kappen recommended this item be deferred till next month's meeting.

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

Based on the staff report and public testimony, a motion to **defer** the item until the June 27, 2005 meeting was made by Cypher and seconded by O'Hara. The motion passed unanimously.

A motion was made by Cypher and seconded by O'Hara to adjourn the Planning Commission. The motion passed unanimously. Chairman South called to order the **Zoning Board of Adjustment**.

Item 16 was deferred from the April 25, 2005 meeting.

ITEM 16. 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

Report by: Phil Kappen

Staff Analysis

The subject property is located ½ mile east of Hartford. It is part of a small subdivision approved via the transfer of some eligibilities in 2003. One lot in the subdivision has already had a home constructed on it.

The appellant contacted the planning office to obtain a building permit to erect an accessory structure. They wish to build the accessory structure at this time and construct a house later (possibly in a couple of years). Staff informed the appellant that the zoning ordinance prohibits the construction of an accessory building prior to commencing construction on the principle structure. The appellant took exception to that answer and applied to appeal an administrative decision.

Section 12.07, Subsection B of the 1990 Revised Zoning Ordinance for Minnehaha County reads as follows:

“12.07 ACCESSORY BUILDING AND USES. The regulations regarding accessory buildings and uses shall be as follows:

(B). Time of Construction. No accessory buildings shall be constructed upon a lot until the construction of a main building has been actually commenced, and no accessory buildings shall be used unless the main building on the lot is also being used. Accessory buildings may not be used for dwelling purposes.”

The reasoning behind this section was that it is difficult to consider a structure as an accessory use to another use when the primary use has not yet commenced. There have been a number of incidents in the past where an existing detached accessory building setting alone on a parcel of land was sold to a person who took advantage of the existing building to start a business. It is reasonable to require that the primary structure be constructed prior to the construction of an accessory building.

Staff found that the meaning of the zoning ordinance in this instance is quite plain and that there is no justification for the requested overturning of the administrative decision.

Public Testimony

The petitioners, Leonard and Gloria Maxwell, stated that they have one residential building eligibility on this lot. They have removed ¼ of damaged trees on the site, planted 558 trees and shrubs, constructed a driveway, and put in rural water. All of this was done at considerable cost. They would like to build a garage to store their truck, wood chipper, tractor and other materials. They plan to build a house in the northwest part of the property next year. The Maxwells stressed that they have every intention of constructing the house and would not let the accessory building be used for other purposes.

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

Commissioner South stated that he understood why the Maxwells wished to build the garage at this point, but asked them to understand the concerns of the Commission in granting such a request. Commissioner

Cypher stated that the staff had correctly interpreted the zoning ordinance and that the reasoning behind the law was sound.

A motion was made by Cypher and seconded by Bunde to uphold the staff's interpretation and **deny** the request to overturn the administrative decision.

ITEM 17. VARIANCE #05-02 to allow a front yard set back of 36' for an accessory building.

Legal Description – Vacated ROW lying adjacent and Tract 1 Michael's Addition SE1/4 in Section 28-T101N-R48W
Location - 3 miles east of Sioux Falls
Petitioner / Owner- Clark Meyer
Present zoning - A-1 Agricultural
Existing Land Use - Residential
Parcel Size - 7.89 Acres

Report by: Phil Kappen

Staff Analysis

The subject property is located to the west of 481st Avenue (Co. Hwy 115) and north of 267th Street. Earlier in 2005 the petitioner began construction of a detached accessory building without first obtaining the required building permit. He had completed the foundation of the building before the planning office became aware of the building permit violation on February 23, 2005. The foundation was placed only 36 feet from the county highway right-of-way rather than the required 50 feet.

After we contacted the petitioner, he came in and obtained the required building permit (permit 05-037 issued 3/4/2005). The site plan attached to the building permit shows that he will meet the required 50-foot set-back from the right-of-way. The petitioner now wishes to obtain a variance to the setback requirements to allow him to keep the building at the location that he has already constructed the foundation.

State law allows for variances and the Minnehaha County Zoning ordinance makes provisions for variances to zoning ordinances when all of the following conditions are present:

- (A). The particular physical surroundings, shape or topographical conditions of the specific property involved would result in a particular hardship upon the owner as distinguished from a mere inconvenience, if the strict letter of the regulations were to be carried out.
- (B). The conditions upon which the application for a variance is based would not be applicable generally to other property within the same zoning classification or other property substantially similar in use.
- (C). The granting of the variance will not be detrimental to the public welfare or injurious to other property or improvements in the area in which the property is located.
- (D). The proposed variance will not unreasonably impair an adequate supply of light and air to adjacent property; increase the congestion in the public streets; increase the danger of fire; endanger the public safety; or diminish or impair property values within the area.
- (E). That because of circumstances or conditions, there is no possibility that the property can be developed in strict conformity with the provisions of the zoning regulations and that the authorization of a variance is therefore necessary to enable the reasonable use of the property.
- (F). That the variance, if authorized, will represent the minimum variance that will afford reasonable relief and will represent the least modification desirable of the zoning regulations.

In addition, the ordinance provides that the Board can hear and make determinations on variance to exceed the height limits as established by these regulations and that the Board of Adjustment, under its authority to grant variances may impose reasonable conditions on the grant, and one accepting those conditions is bound by them.

The petitioner claims that the situation merits a variance due to the hardship imposed by the cost to move

the building foundation. It is a standard of planning law that the literal enforcement of the ordinance result in an unnecessary hardship in order for a variance to be approved. It is also, however, a standard of planning law that a hardship not be self-imposed. In this instance the hardship results from the fact that the petitioner did not obtain the required building permit and commenced construction of the accessory building. Had he applied for the required permit, staff would have checked the setback from property lines on the proposed site plan. If the plan had showed that the setback requirement would not be met, staff would have required that a revised site plan be prepared that showed the proper setback. There is a bold print notation on all building permits that states "NOTE: Measurements are shown from road rights-of-way." This notation was present when the petitioner obtained a building permit to construct his home on June 12, 2000. The site plan he submitted as a part of that permit also shows the setback from the county highway right-of-way rather than from the highway. It would seem from this that he was aware that any front-yard setback must be measured from the right-of-way.

Staff finds that any hardship cited as a reason for the requested variance is self-imposed due to the failure of the petitioner to obtain the required building permits in a timely manner. Staff recommended denial of the variance request.

Public Testimony

The petitioner, Clark Meyer stated that he had phoned the Planning Department last fall and was told he did not need a permit until the poles were in the ground. He decided to go with footings on his building. Once he was informed he had started too soon he came in and got the building permit and paid the double fee. He would now like to increase the size of the building to 48 x 80, but he has not started working on the larger size building.

His land slopes to the river and he feels where he poured the footings is the only spot on his land which is level enough to place the building. If he has to move back the building an electrical box will be left out in the open. Mr. Meyer stated that he had the signatures of 15 of his neighbors in support of his request; however he never presented those signatures to the Commission. He pointed out that there is an existing building a ¼ mile south of him which is on 30' from the right-of-way. He is asking for a 36' set back.

Mr. Kappen stated he was not familiar with the building Mr. Meyer mentioned. He explained that there is provision in the zoning ordinance that allows a new building to be built as close to the right-of way as any adjacent buildings. In this case there is not anything adjacent to this site that is not in compliance with the set back requirements. Mr. Kappen also stressed that Mr. Meyer knew building permits were required as he had previously obtained one for his house.

Gordy Swanson, Office of the State's Attorney, stated that zoning ordinance stipulates that all of the conditions listed under variances must be present in order for a variance to be granted by the Zoning Board of Adjustment. (Those conditions are listed in the staff report as A-F). The Board can not approve a variance if these conditions are not met. Mr. Swanson felt that the planning staff could be asked to document which of these conditions were not met. He stressed to the Board that even if only one or two of the conditions were not met, they still must deny the variance.

Mr. Kappen addressed each of the conditions as listed in the ordinance.

- (A). The particular physical surroundings, shape or topographical conditions of the specific property involved would result in a particular hardship upon the owner as distinguished from a mere inconvenience, if the strict letter of the regulations were to be carried out.

There are no conditions with the property which would prevent Mr. Meyer from meeting the set back. This hardship is self imposed by Mr. Meyer not inquiring what set backs are required. Had he applied for a building permit before starting construction, as required by the zoning ordinance, he would have been told by the staff that a 50' set back was required. It has been established in planning law that a self-imposed hardship does not warrant the granting of a variance.

- (B). The conditions upon which the application for a variance is based would not be applicable generally to other property within the same zoning classification or other property substantially similar in use.

The 50' set back is not specific to this property. All properties fronting this highway are required to meet the same set back.

- (C). The granting of the variance will not be detrimental to the public welfare or injurious to other property or improvements in the area in which the property is located.

Set backs are established for public safety reasons. They allow a clear view for persons pulling onto the highway, allow room for vehicles to pull out of the way of traffic, for construction crews to have a safety buffer, and preserve right-of-way for future expansion of the road way.

- (D). The proposed variance will not unreasonably impair an adequate supply of light and air to adjacent property; increase the congestion in the public streets; increase the danger of fire; endanger the public safety; or diminish or impair property values within the area.

The request for the variance meets this condition.

- (E). That because of circumstances or conditions, there is no possibility that the property can be developed in strict conformity with the provisions of the zoning regulations and that the authorization of a variance is therefore necessary to enable the reasonable use of the property.

The property has been developed by the petitioner. He constructed a house, meeting the required set backs. He has stated at this meeting that he wishes to increase the size of the accessory structure.

- (F). That the variance, if authorized, will represent the minimum variance that will afford reasonable relief and will represent the least modification desirable of the zoning regulations.

This asks for a minimum which would work. This request is not for a minimum set back, it is a request to correct a mistake the petitioner made, and to avoid the cost of correcting that mistake.

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

Commissioner Bunde stated that the petitioner did not satisfy the conditions as required by the ordinance. Commission Steinhauer stated that he was in support of the Planning Department's recommendation of denial.

A motion was made by Bunde and seconded by Steinhauer to **deny** the variance request. The motion passed (Hajek nay).

ITEM 18. VARIANCE #05-04 to allow the temporary placement of a 4'x 8'sign.

Legal Description – Tract 1A Vandersnick's Addition NE1/4in Section 29-T103N-R47W

General Information

Location -	south edge of Garretson
Petitioner / Owner-	River Ridge Golf Course / Joe Vandersnick
Present zoning -	A-1 Agricultural
Existing Land Use -	Agricultural
Parcel Size -	20.76 Acres

Report by: Scott Anderson

Staff Analysis

The applicant is requesting to place a 32 square foot directional sign instead of the permitted 9 square foot sign allowed by Article 17.02(A) 1 of the Zoning Ordinance. The applicant has indicated that this sign will be a temporary sign to provide direction to the River Ridge Golf Course from County Highway 105 instead of S.D. Highway 11, which is being reconstructed during 2005.

Staff conducted a site inspection on May 6, 2005, of the subject property. Staff observed a sign already advertising the golf course, which meets the current size requirements. The sign was located at the

intersection of County Highway 105 (486th Avenue) and 254th Street. The nearest residence was located about 400 feet to the west and east. Both the existing sign and proposed sign will be non-illuminated. Should this Variance be approved, the 32 square foot sign would replace the smaller sign currently advertising the location of the golf course.

The Zoning Ordinance requires the Zoning Board of Adjustment to determine that four (4) specific criteria are met.

1. That specific circumstances or conditions, such as exceptional narrowness, topography, or siting exists.

South Dakota Highway 11 is being reconstructed for the balance of 2005. The primary entrance to the golf course is located off of S.D. Highway 11 via 485th Avenue. This entrance is temporary closed due to road construction. The road construction constitutes a hardship. Once the road construction is complete, the hardship will disappear.

2. That the Variance does not grant a use which is otherwise excluded from that particular district, or diminish or impair property values within the area.

The requested Variance would not allow a use otherwise excluded from the district.

3. That due to the specific circumstance or existing conditions strict application of the Zoning Ordinance would be an unwarranted hardship.

The Zoning Ordinance currently allows for a nine (9) square foot sign. Strict application of the Zoning Ordinance would not create a hardship for the applicant. They simply desire greater visibility for their business.

4. That the granting of a Variance is not contrary to the public interest and is in harmony with the general purposes and intent of the Zoning Ordinance.

Granting of the proposed Variance does not harm the public. Staff can support the request with a condition that the larger sign be removed once the reconstruction of S.D. Highway 11 is complete. The applicant has demonstrated a specific circumstance which does constitute a limited degree of hardship. The sunset clause attached with the approval of this Variance will mitigate any long term impact on the public.

Recommendation

Staff recommended approval of Variance #05-04 to allow a 32 square foot off-premise directional sign with the following conditions:

- 1) That the 32 square foot sign be moved once the reconstruction of S.D. Highway 11 is completed.
- 2) That the applicant removes the smaller sign and obtains a building permit for the 32 square foot sign prior to installation.

Public Testimony

The petitioner, Bobbi Jo Sakry, stated that the construction on Highway 11 has caused a hardship as people have to take a detour to get to the golf course. She would like a larger sign just for the duration of the construction. Once Highway 11 is completed the sign would be removed.

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 Cypher to **approve** the variance with the conditions as stated. The motion passed unanimously.

Commissioner South adjourned the Zoning Board of Adjustment.

There was no old or new business. Mr. Anderson briefed the Commission on the County Commission's actions on the CUP for off-premise signs. The Commission requested that they be notified by email when an item has been appealed.