

**MINUTES OF THE
MINNEHAHA COUNTY PLANNING COMMISSION
June 27, 2005**

A meeting of the Planning Commission was held on June 27, 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

Staff noted that the petitioner for Item 4, Donald Even, requested that his item be deferred until the August 22, 2005 meeting. Item 6 was moved to the regular agenda at the request of an audience member. 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 4 deferred, Item 6 removed.). The motion passed unanimously.

ITEM 1. MINUTES – May 23, 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 May 23, 2005 Meeting.

ITEM 2. 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

Report by: Pat Herman

Staff Analysis

This is an application to rezone property from R-1 Residential to A-1 Agricultural. The property is located on the north end of Lyons and is edged with trees along three sides. Property to the east and south is zoned R-1 Residential, to the north A-1 Agricultural, and the land to the west is zoned I-1 Light Industrial. There is a farmstead and agricultural land north of this site, three houses to the east and southeast, and Central States Fire is on the industrially zoned land to the west.

The property has been zoned for residential use for over 25 years. In 1992 a conditional use permit was approved to allow 2-4 plex apartment buildings. These were never constructed and the conditional use permit has expired. The Planning Department records show that the last time a building permit for a house was issued in the Village of Lyons was 1992.

Rezoning to A-1 Agricultural should not affect the surrounding property values. The property has never developed and has been used for agricultural storage for many years. The rezoning would reflect the current use of the property. A-1 Agricultural zoning on this site would provide both the industrial development to the west and the farm to the north a buffer from residential uses.

Staff found that based on past trends there is no demand for residential dwellings within Lyons and that the rezoning would help to preserve the existing agricultural and industrial uses to the north and west by creating a buffer. Staff recommended approval of the rezoning from R-1 Residential to A-1 Agricultural.

Based on the staff report, a motion was made by Hajek and seconded by Rogen to recommend **approval** of the rezoning from R-1 Residential to A-1 Agricultural. The motion passed unanimously (Bunde abstaining).

ITEM 3. CONDITIONAL USE PERMIT #05-49 to transfer two residential building eligibilities.
From – SW1/4 NE1/4 in Section 9-T101N-R52W

To – NW1/4 NE1/4 in Section 9-T101N-R52W
And
From – SE1/4 NE1/4 in Section 9-T101N-R52W
To – NE1/4 NE1/4 in Section 9-T101N-R52W
Location - 4.5 miles south of Humboldt
Petitioner / Owner- Roger Begeman
Present zoning - A-1 Agricultural
Existing Land Use - Agriculture
Parcel Size - 40 Acres

Report by: Pat Herman

Staff Analysis

The property is located in the southwestern part of the county, 4.5 miles south of Humboldt. The dominate land use in the area is agriculture. The petitioner is requesting a transfer of two residential building eligibilities to the north half of the quarter. The first lot will be approximately five acres in size and be located in the northwest corner of the quarter. The second lot will be approximately 6 acres large and will be situated south of an existing acreage in the northeast corner of the quarter.

1) The effect upon the use and enjoyment of other property in the immediate vicinity for the uses already permitted, and upon property values in the immediate vicinity.

Transfer of the eligibility should have no impact on the property values or on the existing uses. There are no CAFO's located near this site. A right-to-farm notice covenant should be required.

2) The effect upon the normal and orderly development and improvement of surrounding vacant property for uses predominant in the area.

This action does not increase the number of dwelling uses allowed under density zoning. With approval of this transfer the four allowed eligibilities for the quarter will have been developed.

3) That utilities, access roads, drainage and/or other necessary facilities are provided.

Access to both sites will come from township gravel roads. The petitioner had contacted Wellington Township but had not yet received an answer concerning the placement of the driveways at the time the application was submitted. A waste water system will be required for each dwelling unit.

Staff found the request to be in conformance with density zoning and the comprehensive plan and recommended approval of conditional use permit #05-49 with the following conditions:

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

Based on the staff report, a motion was made by Hajek and seconded by Rogen to **approve** conditional use permit #05-49 with the conditions as stated. The motion passed unanimously.

ITEM 4. CONDITIONAL USE PERMIT #05-50 to transfer one residential building eligibility.

From – NW1/4 NE1/4 in Section 8-T102N-R52W
To- NE1/4 NE1/4 in Section 8-T102N-R52W
Location - ½ mile northwest of Humboldt
Petitioner / Owner- Donald Even
Present zoning - A-1 Agricultural
Existing Land Use - Agriculture
Parcel Size - 40 Acres

Report by: Pat Herman

Staff Analysis

The subject property is located a ½ mile northwest of Humboldt. The surrounding land use is agriculture. The petitioner is requesting a transfer of one residential building eligibility. The receiving quarter-quarter has one available building eligibility.

1) The effect upon the use and enjoyment of other property in the immediate vicinity for the uses already permitted, and upon property values in the immediate vicinity.

Transfer of the eligibility should have no impact on the property values or on the existing uses. There are no CAFO's located near this site. A right-to-farm notice covenant should be required.

2) The effect upon the normal and orderly development and improvement of surrounding vacant property for uses predominant in the area.

This action does not increase the number of dwelling uses allowed under density zoning. A transfer will cluster the two dwelling units.

3) That utilities, access roads, drainage and/or other necessary facilities are provided.

Access to both sites will come from a township gravel road. A waste water system will be required for each dwelling unit.

At the request of the petitioner, a motion was made by Hajek and seconded by Rogen to **defer** conditional use permit #05-50 to the August 22, 2005 meeting. The motion passed (O'Hara abstaining).

ITEM 5. CONDITIONAL USE PERMIT #05-51 to allow a manufactured dwelling.

Legal Description - Lot 1 Tract 2 Barton Addition S1/2 NE1/4 SE1/4 & SE1/4 SE1/4 in
Section 36-T101N-R48W
Location - 6 miles east of Sioux Falls
Petitioner / Owner- David Finn
Present zoning - A-1 Agricultural
Existing Land Use - Agriculture
Parcel Size - 1 Acre

Report by: Scott Anderson

Staff Analysis

The applicant has requested a Conditional Use Permit to place a manufactured home on the subject property. The applicant will be subdividing a lot out of Tract 2 of Barton Addition for the new manufactured home to be located on.

On June 7, 2005 staff conducted a site visit. The existing land use for the area consists primarily of agricultural uses. There are two existing farmsteads located within 1/2 mile of the subject property, one across the road and another approximately 1/2 mile to the north. In addition, there are two residential sites both located approximately 1/2 mile to the southwest along 268th Street. The subject property is vacant and has been used for crop production.

1) The effect upon the use and enjoyment of other property in the immediate vicinity for the uses already permitted, and upon property values in the immediate vicinity.

Placing a newer double-wide manufactured home on the subject property should not affect the uses already permitted in the area or property values. There is an existing double wide manufactured home already located on the farmstead across the road and slightly to the north.

2) The effect upon the normal and orderly development and improvement of surrounding vacant property for uses predominant in the area.

The proposed Conditional Use Permit should not impact the agricultural/residential nature of the surrounding properties. The placement of a new manufactured home will have minimal impact on the development and improvement of any vacant properties in the area. The primary use of the surrounding area is predominately agriculture in nature. There is already manufactured housing located across the road.

3) That utilities, access roads, drainage and/or other necessary facilities are provided.

484th Avenue provides access to the site. No new roads will be needed to access the site. The property is served by a community water system and an on-site wastewater disposal facility.

4) That the off-street parking and loading requirements are met.

The applicant must provide one (1) off-street parking space for the existing single-family residence. The property is currently vacant. Appropriate parking will need to be shown on the building permit application. Staff recommends that as part of the recommended conditions of approval, the application shall provide one (1) off-street parking space.

5) That measures are taken to control offensive odor, fumes, dust, noise, vibration, and lighting (inclusive of lighted signs), so that none of these will constitute a nuisance.

The location of a new manufactured home 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 supports the request to place a new manufactured home on the subject property. The applicant has indicated that the new manufactured home will have house-type siding and a peaked, non-reflective roof. The proposed manufactured home will blend into the existing housing stock of the area.

Staff recommended approval of Conditional Use Permit #05-51 to allow a double wide manufactured home to be placed on the subject property with the following conditions:

- 1) That a building permit be obtained for placement of the new manufactured home and any accessory structures, which requires a site plan to be reviewed and approved by the Planning Director.
- 2) That only a manufactured home meeting all of the requirements of Section 12.06 (C) of the Minnehaha County Zoning Ordinance be allowed on the property.
- 3) That the parking requirements of one (1) space for the residence be provided as required in Article 15.01(A) of the Zoning Ordinance.

Based on the staff report, a motion was made by Hajek and seconded by Rogen to **approve** conditional use permit #05-51 with the conditions as stated. The motion passed unanimously.

ITEM 6. CONDITIONAL USE PERMIT #05-52 to allow an electrical substation.

Legal Description - Lot U1 of Tract of Oak Ridge Tracts S1/2 SE1/4 and Lot U2 of Tract 2 of Lacey Tracts SW1/4; in Section 5-T101N-R48W

Item 6 was placed on the regular agenda.

ITEM 7. CONDITIONAL USE PERMIT #05-53 to allow a trucking firm.

Legal Description - Lot 2 Block 3 Brower Addition SW1/4 in Section 27-T102N-R51W

Location - south edge of Hartford

Petitioner / Owner- Donald Jenson / Allan Stockwell

Present zoning - I-1 Light Industrial

Existing Land Use -Commercial

Parcel Size - 0.98 Acres

Report by: Phil Kappen

Staff Analysis

The site property is located along Jeffery Street in Brower subdivision, an industrial subdivision located at the southeast quadrant of the Hartford exit on I-90.

1) The effect upon the use and enjoyment of other property in the immediate vicinity for the uses already permitted, and upon property values in the immediate vicinity.

The properties to the west, north and east are commercial properties. The land to the south has a single family residence. There is an existing shelterbelt between the residence and the subject property. The petitioner's site plan shows no outside storage areas and a location for a screened outside storage area would be limited. Outside storage of parts or materials should be restricted. Unlicensed, inoperable or

dismantled vehicles should not be allowed to accumulate on the property.

2) The effect upon the normal and orderly development and improvement of surrounding vacant property for uses predominant in the area.

This type of use is consistent with the uses in the subdivision. There are three other trucking firms that have been approved in Brower's Addition. The use will occupy only the north 30 feet of the 160-foot building. The remainder of the building will be available for additional uses. Conditional use approval may be required for those uses.

3) That utilities, access roads, drainage and/or other necessary facilities are provided.

Access to the property will be from Jeffery Street, a gravel subdivision road.

4) That the off-street parking and loading requirements are met.

There is adequate parking on the lot. The site plan shows that the required 15-foot front yard setback will be maintained to any parking areas.

The proposed use is consistent with the types of uses found in the subdivision. Staff, therefore recommended approval of the conditional use permit with the following conditions:

1. There shall be no outside storage of parts or materials.
2. No damaged, dismantled, unlicensed or inoperable vehicles shall accumulate on the property.
3. The area within 15 feet of the Jeffery Street right-of-way shall be maintained as a vegetated buffer area and no vehicular traffic or parking shall be allowed in this area.

Based on the staff report, a motion was made by Hajek and seconded by Rogen to **approve** conditional use permit #05-53 with the conditions as stated. The motion passed unanimously.

ITEM 8. CONDITIONAL USE PERMIT # 05-55 to transfer one residential building eligibility.

From – NW1/4 NE1/4 of Section 3-T03N-R50W

To- SE1/4 NE1/4 of Section 3-T103N-R50W

Location - 2.5 mile northeast of Lyons

Petitioner / Owner- Michael & Kerri Rollag / Marilyn Johnson

Present zoning - A-1 Agricultural

Existing Land Use - Agricultural

Parcel Size - 4 ± Acres

Report by: Pat Herman

Staff Analysis

The proposed building site is located 2.5 miles northeast of Lyons. The surrounding land use is agricultural with scattered acreages. The applicant would like to transfer one residential building eligibility, the last eligibility available in this quarter. The receiving quarter-quarter has two existing dwelling units. One is the eligibility assigned to that quarter-quarter, the other was transferred by conditional use permit in February 2004.

1) The effect upon the use and enjoyment of other property in the immediate vicinity for the uses already permitted, and upon property values in the immediate vicinity.

Transfer of the eligibility should have no impact on the property values or on the existing uses. There are no CAFO's located near this site. A right-to-farm notice covenant should be required.

2) The effect upon the normal and orderly development and improvement of surrounding vacant property for uses predominant in the area.

This action does not increase the number of dwelling uses allowed under density zoning.

3) That utilities, access roads, drainage and/or other necessary facilities are provided.

Access to this site is from County Highway 137. The petitioner will need to obtain written access approval from the County Highway Department before a building permit will be issued. A wastewater

system is also required.

Staff finds the request to be in conformance with density zoning and the comprehensive plan and recommended approval of conditional use permit #05-55 with the following conditions:

- 1) The property shall be platted and a right-to-farm notice filed on the deed of each lot prior to the issuance of a building permit.
- 2) Written approval from the County Highway Department for the driveway approach prior to the issuance of a building permit.
- 3)

Based on the staff report, a motion was made by Hajek and seconded by Rogen to **approve** conditional use permit #05-55 with the conditions as stated. The motion passed unanimously.

ITEM 9. REZONING #05-05 from the C Commercial District to the R-1 Residential District.

Legal Description - Lots 1-12 Block 3 Lyons Village Addition and that property lying adjacent to Lot 1 Block 3 described as depot grounds on the original plat of Lyons Village Addition in Section 17-T103N-R50W

Location - Lyons
Petitioner / Owner- Robert and Gail Carlson
Present zoning - C Commercial
Existing Land Use - Residential
Parcel Size - 0.9 ± Acres

Report by: Pat Herman

Staff Analysis

The subject property is located in Lyons. The block to be rezoned fronts along 3rd Street. Property to the north and east is zoned R-1 Residential, property to the south is zoned C Commercial and R-1 Residential, and there is I-1 Industrial zoning to the west. There are residential dwellings to the northeast, east and south of the site. There are cold storage buildings in the commercial zoned area to the south and Central States Fire is to the west.

This property has one residential structure. The Lyons Post Office is located in the house and the petitioner's have submitted a home occupation application for that use. Rezoning to R-1 Residential should not affect the surrounding property values. Despite the commercial zoning, the property has never developed any commercial uses. The rezoning would reflect the current use of the property.

Aside from the development along the Highway for Central States Fire there has been no commercial growth within Lyons.

The existing utilities and access to 3rd Street will be utilized and there is sufficient space for off-street parking.

Staff found the request to rezone to residential reflects the current use of the property and is compatible with the surrounding land uses and recommended approval of the rezoning to R-1 Residential.

Based on the staff report, a motion was made by Hajek and seconded by Rogen to recommend **approval** of the rezoning from C Commercial to R-1 Residential. The motion passed unanimously.

ITEM 10. CONDITIONAL USE PERMIT #05-54 class 1 major home occupation for a post office.

Legal Description - E6' Lot 3 & Lots 4-5 Block 3 Lyons Village Addition in Section 17-T103N-R50W

Location - Lyons
Petitioner / Owner- Robert and Gail Carlson
Present zoning - C Commercial
Existing Land Use - Residential
Parcel Size - 0.16 ± Acres

Report by: Pat Herman

Staff Analysis

The property is located in Lyons and fronts onto 3rd Street. This application is for a class 1 major home occupation to allow a post office in the existing dwelling. The post office has been operating in this building since 1912. The dwelling was originally a country store and the property's commercial zoning reflected that use. The petitioner's have applied to rezone the property to R-1 Residential, necessitating the need for a conditional use permit to continue the post office use.

The post office occupies approximately 500 sq. ft. of the existing dwelling. The living quarters of the house are directly accessed from the post office and the post master uses the sanitary and kitchen facilities of the dwelling. There is only one employee of the Lyons post office, who does not reside at this address.

In a 24 hour period, approximately 15 people will visit the post office. Sales are limited to those items pertaining to the mail system, such as stamps. The business hours are 8:15-11:00 am. and 1:00 to 4:45 pm. Patrons may access their post office boxes for a period of 13-14 hours during the day. There is lettering above the entrance stating "Lyons Post Office". No other signs are requested.

1) The effect upon the use and enjoyment of other property in the immediate vicinity for the uses already permitted, and upon property values in the immediate vicinity.

The post office has operated on this site for 90 years. No changes are being made to the operation so there should be no impact on the surrounding land uses or their property values.

2) The effect upon the normal and orderly development and improvement of surrounding vacant property for uses predominant in the area.

The easy accessibility of a post office is an asset to the future development of Lyons.

3) That utilities, access roads, drainage and/or other necessary facilities are provided.

No changes are required to the existing utilities or roads.

4) That the off-street parking and loading requirements are met.

Given the low volume of customers and the adequate street parking available, staff is not requiring any off-street parking.

5) That measures are taken to control offensive odor, fumes, dust, noise, vibration, and lighting (inclusive of lighted signs), so that none of these will constitute a nuisance.

The use of this home occupation will not generate any nuisances.

A post office is not what would typically be considered a home occupation. There are no members of the residence employed by the post office and the number of customers could exceed the visits recommended by the zoning ordinance. However, the post office has been operated in this building for over 90 years without impeding on the use of this or the surrounding properties.

Staff found that the post office can operate at this site while protecting the character and integrity of the neighborhood and recommended approval of the Class 1 Major Home Occupation with the following conditions:

- 1) The occupation shall be conducted entirely within the dwelling and limited to 500 square feet of space.
- 2) Employees of the occupation shall be limited to one non-resident employee.
- 3) The occupation shall not create noise which, when measured off the property, exceeds 60 decibels between the hours of 8:00 a.m. and 6:00 p.m. The occupation shall not create noise which is detectable to the normal sensory perception off the property between the hours of 6:00 p.m. and 8:00 a.m. These off the property noise standards shall not apply to public and railroad rights-of-way.
- 4) The occupation shall not create vibration, glare, fumes, odor, or electrical interference detectable to the normal senses off the property.
- 5) No outside storage, display of goods or merchandise, or external evidence of the occupation shall occur except the existing building sign above the doorway. No additional signage is allowed.
- 6) There shall be only limited and incidental sale of products conducted on the premise.
- 7) The number of deliveries generated by the occupation shall not significantly affect the

character of the area. Delivery vehicles shall be limited to auto, pick up, or typical delivery service truck.

Based on the staff report, a motion was made by Hajek and seconded by Rogen to **approve** conditional use permit #05-54 with the conditions as stated. The motion passed unanimously.

ITEM 11. REZONING #05-06 from the A-1 Agricultural District to the C Commercial District.

Legal Description - E800' W1155' N800' of Tract 1 Raven Hills Addition NW1/4 in Section 27-T103N-R49W

Location - ¼ mile east of the Midway Corner

Petitioner / Owner- Raven Industries, Inc.

Present zoning - A-1 Agricultural

Existing Land Use - Agricultural / Commercial

Parcel Size - 14.7 Acres

Report by: Pat Herman

Staff Analysis

The property is located ¼ mile east of the Midway Corner (intersection of 254th St. and 475th Ave.). Land to the north, south and east is zoned A-1 Agricultural and the land use is agricultural. West of 475th Ave. the land is zoned RC Recreation Conservation and the land use is agricultural. Immediately west of this property are three lots which front along 475th Ave. The northern most lot is zoned C Commercial and has a gas station and auto sales lot which has been there for at least 30 years. This lot was zoned C Commercial in July 2004 at the request of the property owner. The southern two lots are zoned A-1 Agricultural and each has a single family residence.

There is currently a building on the site which is used to store farm spray equipment. This location allows the equipment to be tested on the property. The building is being developed with offices, training classrooms and there is also a shop area. These uses require commercially zoned property.

The Minnehaha County Comprehensive Plan states that commercial uses should be located at interstate highway interchanges and high traffic intersections and that such uses should be developed in a nodal pattern. This location, at the intersection of State Highway 115 and County Highway 122, meets these recommendations.

The existing commercial and agricultural properties should not be impacted by commercial zoning. The two single family dwellings to the west could be impacted by future commercial uses. The planning department has received no complaints about the business currently on the site. Negating impacts from future commercial uses can be handled thorough the building permit and/or conditional use process.

The site is located at a major highway intersection which is recommended for commercial use. Rezoning may spur further interest in new businesses locating at the intersection. The location requires waste water systems and is served by rural water. There is an existing access approach onto Highway 122.

Staff found the request to be in conformance with the Minnehaha County Comprehensive Plan for commercial development and recommended approval of the rezoning from A-1 Agricultural to C Commercial.

Based on the staff report, a motion was made by Hajek and seconded by Rogen to recommend **approval** of the rezoning from A-1 Agricultural to C Commercial. The motion passed unanimously.

ITEM 12. CONDITIONAL USE PERMIT #05-56 class 1 major home occupation food sales by boat.

Legal Description – Lot 12 in Tract 2 Voigt's Subd. of Tracts 2 & 3 SW1/4 of Section 21-T101N-R51W

Location - Wall Lake

Petitioner / Owner- Melissa Beck

Present zoning - RR Rural Residential

Existing Land Use - Residential

Parcel Size - 0.14 ± Acres

Report by: Scott Anderson

Staff Analysis

The applicant is requesting a Conditional Use Permit to allow a class one home occupation on the above described property. The applicant has indicated that the home occupation will involve food sales by boat to the beach area and residences on Wall Lake. The food sales will be primarily ice cream, soda and other novelties. No food sales will take place at the residence.

On June 8, 2005, Staff conducted a site visit. The applicant showed staff the boat. The subject property is on a canal that leads into the lake. Due to the seasonal use of the lake, the applicant expects most of the retail activity to take place from June through September.

1) The effect upon the use and enjoyment of other property in the immediate vicinity for the uses already permitted, and upon property values in the immediate vicinity.

The proposed home occupation of ice cream and food sales as a home occupation should have limited effect on the uses already permitted in the area or property values. The applicant has indicated that there will be no customer traffic to residence. All sales will take place from the boat to customers at the Wall Lake Beach and residences on the Lake.

2) The effect upon the normal and orderly development and improvement of surrounding vacant property for uses predominant in the area.

The proposed Conditional Use Permit should not impact the 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.

3) That utilities, access roads, drainage and/or other necessary facilities are provided.

West Shore Place provides access to the site. This road is graveled and in fair condition. No new roads will be needed to access the site. All required utilities exist to the single-family residence.

4) That the off-street parking and loading requirements are met.

The applicant must provide one (1) off-street parking space for the existing single-family residence and should provide two (2) off-street parking spaces in front of the building to be used for the home occupation. Staff's inspection of the site found that 4 parking spaces are available. While the applicant has indicated that there will be no business traffic to the residence, two (2) parking spaces should be provided for occasions when business related parking is needed.

5) That measures are taken to control offensive odor, fumes, dust, noise, vibration, and lighting (inclusive of lighted signs), so that none of these will constitute a nuisance.

The applicant has indicated that the business conducted on the property will consist of food sales from a boat. As the majority of the business activity will take place away from the residence, the home occupation should create little of the above-listed elements in amounts that would constitute a nuisance.

Staff recommended approval of Conditional Use Permit #05-56 to allow food sales via boat on Wall Lake as a Class 1 home occupation 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-standing 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 of the home occupation shall be limited to residents of the dwelling and up to two (2) non-resident employees, not to exceed four (4) employees on site.

4. That no stock or trade shall be displayed or stored outside the enclosed structures located on the property.
5. That a minimum of three (3) off-street parking spaces be provided. Each parking space shall measure at least nine (9) feet by eighteen (18) feet and shall be kept in a dust free manner.
6. That the home occupation be limited to food sales via boat on Wall Lake. Any expansion beyond this will require the Conditional Use Permit to be reviewed.
7. That the applicant obtain a Sales Tax License and any other food handling permits required by the State.

Based on the staff report, a motion was made by Hajek and seconded by Rogen to **approve** conditional use permit #05-56 with the conditions as stated. The motion passed unanimously.

ITEM 13. CONDITIONAL USE PERMIT # 05-58 to transfer two residential building eligibilities.

From – NE1/4 SW1/4 and NW1/4 SW1/4 of Section 35-T101N-R50W
To- Tract 6 Grimmus' Addition and S1/2 SW1/4 of Section 35-T101N-R50W
Location - 4 miles east of Sioux Falls
Petitioner / Owner- Earl Grimmus
Present zoning - A-1 Agriculture
Existing Land Use - Vacant
Parcel Size - 40 Acres

Report by: Scott Anderson

Staff Analysis

The property is located in an agricultural area approximately six (6) miles east of Sioux Falls on 268th Street. Properties to the north, east and west are zoned A-1 Agriculture. The property to the south is located in Iowa and appears to be used for agricultural purposes. The petitioner is requesting to transfer two building eligibilities from the N ½ of the SW ¼ to two (2) ten acre parcels. One eligibility will be used for a home site on Tract 6 and the other for another tract directly east of Tract 6.

On June 7, 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. An extensive outcrop of Sioux Quartzite is located to the north. Several large communication towers are located in the vicinity.

1) The effect upon the use and enjoyment of other property in the immediate vicinity for the uses already permitted, and upon property values in the immediate vicinity.

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.

2) The effect upon the normal and orderly development and improvement of surrounding vacant property for uses predominant in the area.

This is an agricultural area and a right-to-farm notice covenant should be required on the deed of the lot.

3) That utilities, access roads, drainage and/or other necessary facilities are provided.

268th Street provides access to the subject property. This road is maintained by the County Highway Department. The applicant has been in contact with the County Highway Department in regard to driveway approach locations. The County Highway Department has approved two (2) highway approaches; however a permit for proper culvert sizing will be required.

4) That the off-street parking and loading requirements are met.

Off-street parking requirements will be met once a residence is constructed on the site.

5) That measures are taken to control offensive odor, fumes, dust, noise, vibration, and lighting (inclusive of lighted signs), so that none of these will constitute a nuisance.

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 #05-58 with the following condition:

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. That prior to construction of the two (2) driveway approaches onto 268th Street, the applicant shall obtain the necessary approach permits from the County Highway Department.

Based on the staff report, a motion was made by Hajek and seconded by Rogen to approve conditional use permit #05-58 with the conditions as stated. The motion passed unanimously.

REGULAR AGENDA

A motion was made by Cypher and seconded by Bunde to approve the Regular Agenda (Item 6 added). The motion passed unanimously.

ITEM 6. CONDITIONAL USE PERMIT #05-52 to allow an electrical substation.

Legal Description - Lot U1 of Tract of Oak Ridge Tracts S1/2 SE1/4 and Lot U2 of Tract 2 of Lacey Tracts SW1/4; in Section 5-T101N-R48W

Location - 1.5 miles east of Sioux Falls

Petitioner / Owner- East River Electric Power Cooperative, Inc.

Present zoning - A-1 Agricultural

Existing Land Use - Agriculture

Parcel Size - 2.24 Acres

Report by: Scott Anderson

Staff Analysis:

The property is zoned General Agriculture District. Article 3.04(V) of the Zoning Ordinance allows a utility substation as a Conditional Use in this zoning district. The applicant is proposing to operate a 115 kV substation.

The surrounding land uses are a mixture of residential and agricultural uses. The property to the north, east and west appears to be used for agricultural purposes. The property to the south consists of residential development.

1) The effect upon the use and enjoyment of other property in the immediate vicinity for the uses already permitted, and upon property values in the immediate vicinity.

Due to the existing sparse residential development and agricultural uses within the area, the proposed utility substation should not have a negative effect upon the normal and orderly development and improvement of these properties for uses predominant in the area. The utility substation will insure adequate electric service to present and future development for the area.

The site plan submitted by the applicant indicates landscaping consisting of pine trees and bushes. It appears that pine trees will be planted along the east and west sides of the property and partially along the north side. Only bushes will be planted along the south side. Staff is satisfied with the landscaping plan submitted and recommends that East River Electric follow this plan and keep the landscape in a live state.

2) The effect upon the normal and orderly development and improvement of surrounding vacant property for uses predominant in the area.

Due to the existing agricultural use on properties within the area and the natural buffer provided by the terrain, the proposed utility substation should not have a negative effect upon the normal and orderly development and improvement of these properties for uses predominant in the area. The applicant has indicated that the proposed substation will insure adequate electric service to present and future development for the area.

3) That utilities, access roads, drainage and/or other necessary facilities are provided.

Access to the proposed utility substation will be provided by Maple Street, which is a section line road. It appears that the site utilizes natural drainage. The proposed substation will not use any water or produce any wastewater.

4) That the off-street parking and loading requirements are met.

The applicant has not indicated any off-street parking on the site plan submitted with the Conditional Use application. Article 15 of the Zoning Ordinance does not specifically identify the parking requirements for a utility substation. Staff recommends that two (2) off-street parking spaces be provided. A utility substation typically does not generate any significant amounts of traffic. Each parking space should measure a minimum of nine feet by 18 feet and be continually maintained in such a manner that no dust will result from continuous use.

5) That measures are taken to control offensive odor, fumes, dust, noise, vibration, and lighting (inclusive of lighted signs), so that none of these will constitute a nuisance.

The proposed Conditional Use Permit may generate limited fumes, dust and noise. The applicant has indicated that the proposed substation will have lights for monitoring and maintaining the facility; however, the substation will not be continually lighted. The property's terrain and the surrounding agricultural uses limit the impact the proposed substation may have on surrounding properties.

The utility substation will be providing a benefit to the community. With appropriate conditions of approval, any concerns can be mitigated. Staff's review indicates that the proposed Conditional Use is a use which is appropriate for this site. Staff recommends approval of Conditional Use Permit #05-52 to be established and conducted in conformity with the Zoning Ordinance and the recommended conditions of approval.

Staff recommended approval of Conditional Use Permit #05-52 to allow a utility substation in the Agriculture District with the following conditions:

- 1) That the substation be entirely enclosed in a minimum eight (8) foot high fence, gated and locked.
- 2) That a minimum of two (2) off-street parking spaces be provided and that each parking space shall not be less than one hundred sixty two square feet, or nine feet by eighteen feet, surfaced with gravel, concrete or asphalt and maintained in such a manner that no dust will result from continuous use.
- 3) That all existing drainage ways be maintained and that erosion control measures be implemented on all disturbed areas so as not to allow any sedimentation of existing drainage ways or bodies of water.
- 4) That the applicant follow the proposed landscaping shown on the vegetation plan and that the all landscaping be maintained in a live state. The applicant shall also control all noxious weeds on the site.
- 5) That the applicant obtain a building permit prior to any construction commencing on the site.
- 6) That any lighting for the substation be a shoebox type and all lighting be directed downward and not reflect onto any of the adjacent residences.
- 7) That the applicant obtain and keep current any required S.D. Public Utilities permits and meet all noise standards set by the Public Utilities Commission.

Public Testimony

Dan Wall, Manger of Transmission and Engineering Services, used a power point presentation to explain East River's substation plans. A handout was also provided to the Commission and audience. The substation will have the same design as the station in Corson. Power from this substation will be picked up by other companies who distribute the power to homes and businesses. Currently, the West Brandon, Splitrock, Brandon, and Corson substations all service this area. Should one of these stations go down, power is rerouted through the remaining three stations. The growth in this area has precipitated a need for another substation. Sioux Valley Electric requested a new substation be added.

There is a 3 phase circuit which runs on either side of Six Mile Road and the same on Maple Street. Sioux Valley Electric wanted the substation located as close as possible to this intersection. To accomplish this goal East River faced two options. The first was to run transmission lines in public land, such as through the road ditch, to hook into a substation at the road's intersection. The second option, which was selected, was to uses the existing utility corridor which runs a ½ mile east of Six Mile Road. That L & O line has extra capacity and East River reached an agreement which would allow them 15 mg watts from that power line.

The site on Maple St. was selected because it would allow a substation to be built adjacent to the exiting power lines thus preventing having to run new power lines. Mr. Wall explained that the property owners of the land being sold had approved the landscaping plan. The first phase of the project, which sits furthest to the north, would be constructed to handle immediate need. The second phase is for future need. There is no planned date for that construction. That portion of the property would be graded and seeded with grass. In recognizing the concerns that neighbors may have two rows of trees as well as bushes will be planted around the substation, except under the existing power lines. The cost of the project, both the physical and contractual portions, is approximately 1 million dollars.

Commissioner Cypher confirmed that the capacity of the overhead lines was not being increased. Mr. Wall stressed that the neighbors would have better quality and less interruptions of power with the new substation. Commissioner Bunde wondered about the noise level. Mr. Anderson noted that the substation would hum. Commissioner Steinhauer requested further details on the landscaping plan. Mr. Wall explained that pine trees would be planted along the fence with Amur Maples on the outside. The type of bushes has yet to be determined.

Dave Huntimer, 8501 E. Maple St., lives southeast of the site and will have a view of this substation. He noted that neither of the land owners who sold the property live where they can see this station. There is a house approximately 200' south of the substation and there are two other houses immediately south of the station. Mr. Huntimer pointed out that all of the previously mentioned substations had been built in industrial areas. Even though this area is zoned agricultural, the use to the south is residential. Why couldn't the station be moved further north, away from the houses? Mr. Huntimer stated that he had talked with Sioux Valley Electric and was told they need the substation because of the Ode development on the west edge of Brandon. He suggested that the substation could be moved to the northwest as the existing power lines go north and then cut west across Six Mile Road where there no one lives. Mr. Huntimer disagreed with several items in the staff report. He believes the substation will impact his quality of life. He pointed out that the lots in Indian Hills cannot be subdivided and doubted that further development would take place to the north given the existing rock. Mr. Huntimer also disagreed that there would be limited noise created by the substation. Safety is also an issue. He stressed that previous substations have been constructed prior to residential development occurring. Mr. Huntimer noted that this is a property value, health, and site issue and asked the Commission to select a different site for the substation.

John Hanson, 2231 N. Indian Hills Trail, is opposed to the substation. This plan would put the station on the highest hill along this stretch of road. He believes the location is to close to the road bed and will limit the opportunity of widening the road in the future. The substation is also not good for future development.

Allan Hall, 2200 N. Indian Hills Trail, lives directly south of the site. He stated that Sioux Valley encouraged East River Electric to talk to the residents but no one ever made the effort. Choosing this was a cost effective site, this is the cheapest location. The existing power lines run next to his house. Mr. Hall questions whether those lines were constructed to handle the increased electricity. Will the lines and poles have to be redone? Right now his house is located out of the fall line but if the height of the poles is increased his house would be in danger from a falling pole. Mr. Hall is an appraiser and one of the

things he is required to point out while doing an appraisal is substations. The impact of this substation will be on the residents of Indian Hills, not on the owners who sold the property. Mr. Hall stressed that the neighbors were never approached and that this comes down to a cost issue.

Commissioner South asked if the site could be moved north. Mr. Wall explained that to move the site to the intersection of Six Mile Road and Maple Street would require the construction of overhead lines. Moving the location to the north where the lines cross Six Mile Road would not be centrally located. The more centrally located the substation is the better the service. Mr. Wall stated he did not have a number on the noise produced by the substation and that he did not think the PUC had an established noise level. He also noted that moving the substation north would just impact different residents. The land sellers thought this site would be best for their future development plans. Mr. Wall also addressed a question on electric magnetic fields. He did not feel the substation would have a higher emission than the power lines running right by the houses. The substation will be fenced to federal standards with 3 strands of barbs along the top of the fence.

Commissioner O'Hara asked about the required set backs. Mr. Anderson explained that Maple St. has a 66' ROW and that an additional 17' was given to allow expansion to a 100' ROW, which is a standard width for many highways. The substation itself would be set back 90' from the property line.

Commissioner Cypher suggested a 500' set back to deal with the noise issue. He noted that most of the substations in the county have been encroached upon. An effort should be made to increase the setback. Commissioner Steinhauer agreed that this substation would impact the neighborhood. He would like East River Electric to come up with some alternatives. If the set backs were greater he would probably support the request. He suggested the item be deferred to allow East River Electric time to meet with the neighborhood. Commissioner South asked the audience their opinion of a larger setback. Mr. Hall stated that moving the substation north 300-500' would place it into a dip, making it less visible. He would rather see it moved elsewhere but would accept the increased setback if that is the last alternative. Mr. Wall objected that a 500' setback was excessive and noted that was much greater than required by Sioux Falls. He does not feel sound is going to be an issue.

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

A motion was made by Steinhauer and seconded by Bunde to **defer** this item until the August 22, 2005 meeting to allow the company more time to explore alternatives and meet with the neighborhood residents.

The motion passed (Hajek and Rogen abstaining).

Item 14 was deferred from the May 23, 2005 meeting.

ITEM 14. 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 finds that 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, recommended 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

The petitioner, Warren Barse was in the audience, but was represented by his attorney David Kroon. Mr. Kroon stated that Judge Neiles indicated his client had tried in good faith to meet the requirements. The 6' berm is the only thing that is not in compliance. The fence that is in place runs parallel to the ground. The eastern property boundary is by the power lines and the petitioner states the power company will not let them raise the berm. Mr. Kroon views this as an opportunity to problem solve. They would like to place a fence, running north and south, which would begin at the jog in the fence on the north end of the property. There just needs to be a discussion on how long the fence should be. The current plan is to go 50' but he would be willing to go longer. Mr. Kroon stated they did not want to go to the trouble of submitting an application and then find out it does not meet the standards of the Planning Department. Mr. Kroon pointed out that a berm will not solve all of the screening problems, but their idea for a fence would help. He asked the Commission to defer this item to July to allow his client time to submit a new application. Mr. Kroon noted that at first his client had planted trees as required by the conditional use permit, but they got sprayed and died. His client thought the fence along the east side of the property was to be parallel to the ground. To meet the 6' height he would have to fill in the southeastern end of the property.

Commissioner Hajek asked if Mr. Barse would have a new plan ready if this item was deferred until the July meeting. Mr. Barse stated he had hired some to draw a new site plan but didn't think it would be finished by July 1st, the deadline to apply for the July meeting. Commissioner Steinhauer noted that with more delays this item would be pushed back to September, the deadline to meet the conditions.

Mr. Kappen briefed the Commission on the history of this conditional use permit. He mentioned that it was Mr. Barse who planted the trees however in the utility line easement. Staff had not required that they be placed there. The trial on the revocation was held on March 11. On March 25th Mr. Kappen met Mr. Barse and Mr. Kroon at the site and discussed the new fence. It wasn't until June 16 that the first site plan was submitted with the new proposals, and that site plan wasn't to scale. Mr. Kappen stated that he had suggested the berm along the east end of the property in July of 2003 and the Mr. Barse had stated he liked the idea. At that time the item was deferred so that Mr. Barse could meet with the utility company regarding the berm and that took him over 5 months to complete. In February 2004 the Planning Commission approved the amendments to include the berm. Mr. Barse did not attend the meeting but did receive the staff report and conditions in the mail.

Commissioner Hajek stated that this item had been before the Commission many times. She noted that the Judge had made the suggestion that the berm with the fence be built and wondered why the Planning Commission needed to take action when the Judge had ordered what should be done. Gordy Swanson, Deputy State's Attorney, stated that the Judge had suggested the new fence be built as a way to resolve this matter. The decision before the Planning Commission is whether to re-enact the conditional use

permit as presented with the September deadline. Mr. Barse is free to submit another plan to revise the CUP anytime in the future. Commissioner Hajek pointed out that the Judge ordered the permit to be reinstated. Mr. Swanson agreed and stated that the conditions are terms the Judge suggested he was happy with. The burden is therefore on the applicant to apply for any changes to the conditional use permit. He suggested the Commission reinstate the conditional use permit with the suggested conditions which would keep this matter moving on its own inertia.

Mr Kroon disagreed that the Judge had ordered the reinstatement. The frustration is whether the berm can be constructed give the restraints of the utility company. Commission Steinhauer pointed out that the berm could be put on the petitioner's property, outside of the power line easement where he has the control.

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

A motion was made by Steinhauer and seconded by O'Hara to **reinstate** the conditional use permit #03-46 with the nine stated conditions. The motion passed unanimously.

ITEM 15. CONDITIONAL USE PERMIT #05-48 to exceed 1200 sq. ft of accessory building area (4000 sq. ft. requested.)

Legal Description – Tract 6 Indian Hills Estates N1/2 Section 8-T101N-R48W
Location - 1.5 miles east of Sioux Falls
Petitioner / Owner- Randy Ronsiek
Present zoning - A-1 Agricultural
Existing Land Use - Residential
Parcel Size - 25 Acres

Report by: Phil Kappen

Staff Analysis

The subject property is located in Indian Hills, a residential subdivision between Sioux Falls and Brandon. The petitioner proposes to construct a 50x80' (4000 sq.ft. detached accessory building). The petitioner has already erected the forms for the building footings, but has not yet obtained a building permit or poured the footings.

1) The effect upon the use and enjoyment of other property in the immediate vicinity for the uses already permitted, and upon property values in the immediate vicinity.

All surrounding properties are in residential uses. Indian Hills is zoned A-1 Agricultural and Hidden Valley Estates to the south is zoned RR Rural Residential. A number of the other lots in Indian Hills have horses and most of the larger buildings in the subdivision are used to house livestock. The petitioner has already erected the forms for pouring the building footings. He has not, however, obtained any building permit for erecting the proposed structure. No commercial use or the storage of any commercial equipment may be allowed on the property and the site is not zoned for commercial uses.

2) The effect upon the normal and orderly development and improvement of surrounding vacant property for uses predominant in the area.

The totals size of existing accessory buildings on lots in the subdivision range from 100 sq.ft. to 3328 sq.ft. The proposed 4000 sq.ft. building would be the largest building in the whole subdivision. It would far exceed the accessory building size in the Hidden Valley Subdivision immediately to the south. As such, it would be out of character with the neighborhood and the 4000 sq.ft size should not be approved. A smaller building of approximately 3300 sq.ft. could be approved and still remain in character with the surrounding properties. Any building should be limited to the specific square footage and should include the total square footage of all levels. This can be accomplished by limiting the number of levels in the building.

3) That utilities, access roads, drainage and/or other necessary facilities are provided.

Access to the property will be made via Indian Hills Trail, a gravel road maintained by Split Rock Township. The existing driveway will be used for accessing the proposed building. The petitioner will

have to meet the setback requirements from all right-of-ways, property lines and other structures.

4) That the off-street parking and loading requirements are met.

No on-street parking is allowed. The petitioner has adequate land for any parking needs.

Staff found that the proposed use may be permissible if the size of the building is restricted to a size comparable with the existing accessory buildings in the area. Staff recommended approval of the conditional use permit with the following stipulations:

1. A total of 3300 sq.ft. of accessory building(s) shall be allowed on the property. Building sizes shall be measured on the exterior of the building and shall not include roof overhangs.
2. The building shall be limited to one story in height.
3. No commercial uses or the storage of commercial equipment shall be allowed on the property. The building shall be used strictly for the petitioner's personal, non-commercial storage.
4. The petitioner must call for an inspection of the building size and of the footings before the footings are poured to ensure that the building meets all required setbacks the size limitations.

Public Testimony

Commissioner Hajek questioned whether 1200 sq. ft. was the standard the Planning Commission usually upheld. Mr. Kappen explained that the zoning ordinance allows 1200 sq. ft. and to exceed that size a conditional use permit must be obtained.

The petitioner, Randy Ronsiek, stated that he agreed with the recommended conditions. Allan Hall, 2200 N. Indian Hills Trail, stated that this was a big parcel and the building would not be seen. He feels the petitioner should be allowed to build the size he requested. Lee Fritz, 2208 N. Indian Hills Trail, also spoke in favor of the petitioner.

Commission Steinhauer explained that the Commission is concerned with even approving a 3300 sq. ft. building. The problem is that the large buildings become an enforcement issue. In case after case a good intentioned neighbor moves, leaving a large building which the next owner then rents out as storage spaces or turns into a business. Big buildings are commercial uses waiting to happen. The decision made here is based on experience. There are stipulations placed on the building but not everyone adheres to them.

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

A motion was made by O'Hara and seconded by Rogen to **approve** conditional use permit #05-48 with the conditions as stated. The motion passed unanimously.

ITEM 16. CONDITIONAL USE PERMIT #05-57 to allow sand and gravel extraction.

Legal Description – Lot 1 & 2 (ex H1) NW1/4 and Lot 1 & 2 (ex. Pump station) NE1/4 in
Section 6-T102N-R47W
Location - 2 miles south of Garretson
Petitioner / Owner- Lowe Sand & Gravel / Oran Sorenson and Kenneth Gross
Present zoning - A-1 Agricultural
Existing Land Use - Agriculture
Parcel Size - Acres

Report by: Scott Anderson

Staff Analysis

Location and Background

The location of the site is approximately 3 miles south of Garretson on 256th Street. Sand and gravel deposits are common in the areas adjoining Split Creek and other extraction operations currently exist in this area. Pasture and crop land are the predominant land uses in those areas which have not yet been mined and on reclaimed land.

The proposed extraction area is located south of 256th Street near the middle of Section 6. Historically this area has been used in the past for sand and gravel extraction. Lowe Sand and Gravel has indicated that they will be reactivating two older pit areas with some minor expansion, approximately two (2) acres. There are three (3) residences located approximately ½ mile to the west along 484th Avenue and a single residence located ½ mile to the east at the intersection of 256th Street and 485th Avenue. The applicant has indicated that the majority of sand and gravel will be sold locally to various townships.

The 2015 Comprehensive Plan does not show this area in a specific land use category which would indicate that the long term land use is intended to be agriculture.

Planning Considerations

The projected life of the project is 15 years depending on the demand for construction aggregate. Extraction will be done with earth moving equipment. No blasting will occur on the site.

The petitioner has proposed to mine up to 20,000 tons per year which will result in traffic of 5 round trips per day on average (spring, summer & fall only). A haul road will extend to their current property from which the trucks will utilize 256th Street. 256th Street exits onto 484th Avenue which is a hard surfaced County highway.

There is no designated floodplain located on the property. The subject property is located within the Split Rock drainage basin.

The zoning regulations list developmental and operational criteria for use in evaluating extraction activities. Following is a review of the proposal based on the criteria.

Buffer area - The suggested minimum setback between extraction areas and existing residences is 1000 feet. There are no residences located within the buffer area.

Hours of operation - The zoning criteria suggest that operations be limited to the hours from 7:00 am to 6:00 pm on weekdays and 8:00 am to noon on Saturdays. However, no residences will be impacted by this activity. Furthermore, there are no restrictions on most of the existing extraction sites since they are pre-existing uses. It seems more appropriate that the hours of operation be from sunrise to sunset.

Berms - Berms are commonly used to screen on-site activities from public view and to minimize noise. The petitioner has indicated that no berms will be constructed around the pit area. The applicant indicated that the mining and extraction activities will not be visible from 484th Avenue or 256th Street. The topography is such that the roads are considerable lower than the pit locations. The applicant indicated that only portions of the piles of sand and gravel would be visible to the public.

Noise - 55 decibels recorded over a 10 minute period measured at the nearest residence. This standard is generally addressed on a complaint basis.

Dust - Air quality should not be a concern due to the nature of the extraction operation. Dust from truck traffic can be controlled by applying dust control agents to the haul road. The County Planning Department should be given authority to require the operator to install on-site monitoring devices if air quality becomes a problem.

Hydrology, dewatering and drainage - The petitioner has indicated that extraction will not extend below the water table. No dewatering of the pit is anticipated so the area's hydrologic conditions should not be impacted. The petitioner has anticipated mining to a depth of 15 feet on the site. The applicant shall be required to obtain a South Dakota Surface Water Discharge Permit for Storm Water Associated with Industrial Activities.

Haul roads - The most common problem associated with extraction operations is the use of gravel township roads for truck hauling. In this case, the haul road will exit directly onto 256th Street. The applicant has indicated that he has contacted Red Rock Township about the use of 256th Street. The Township indicated that the gravel road would need to be bladed when it becomes washboard. Staff has indicated that Lowe Sand and Gravel will have to enter into a Haul Road agreement with the township prior to any extraction activities occurring on the property. Staff will include this in the recommended conditions of approval.

Operator surety - The petitioner has indicated a willingness to file a surety bond of up to \$1,000 to ensure proper reclamation of the site. This figure is based on disturbing two (2) additional acres of land. The area has been used in the past for sand and gravel extraction. Lowe Sand and Gravel has operated without incident in the past and staff does not feel it is necessary to require the surety bond. It should be noted that the operator is required to file a \$1,000 surety bond with the State.

Reclamation – The plan submitted by the applicant simply indicates that the topsoil will be stripped and stockpiled for use in reclamation. The site will be restored to a farmable status within one (1) year of conclusion of mining operations. Reclamation should result in the rehabilitation of affected land through contouring and soil stabilization, revegetation and other appropriate means so as to create an aesthetic appearance and promote the most appropriate future use of the property. The application states that the site will be returned to agricultural use.

Other considerations - The entrance to the property should be gated to discourage individuals from disposing of refuse in the pit during non-working hours.

The site is not located in the Water Source Protection Overlay District. Only clean fill will be used as backfill on the site as defined by the County Nuisance Ordinance.

1) The effect upon the use and enjoyment of other property in the immediate vicinity for the uses already permitted, and upon property values in the immediate vicinity.

The majority of uses in the general vicinity reveal around agricultural production. 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, the proposed sand and gravel extraction should not effect of the enjoyment of other properties in the immediate vicinity.

2) The effect upon the normal and orderly development and improvement of surrounding vacant property for uses predominant in the area.

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 additional heavy truck traffic, and minor amounts of noise and dust. The applicant has indicated that this use occurred on the site in the past and that the extraction activities will occur for up to 15 years.

3) That utilities, access roads, drainage and/or other necessary facilities are provided.

The existing road infrastructure will be utilized for this proposed land use. The applicant is being required to enter into a Haul Road Agreement with the Red Rock Township for the maintenance of 256th Street. No other infrastructure is needed for this land use.

4) That the off-street parking and loading requirements are met.

Article 15 does not set any off street parking requirements for this land use. Staff recommends that a minimum of one off-street parking space for each employee and an additional two off-street spaces for customers be provided.

5) That measures are taken to control offensive odor, fumes, dust, noise, vibration, and lighting (inclusive of lighted signs), so that none of these will constitute a nuisance.

With the proposed sand and gravel extraction, there is a possibility of noise, dust and vibration to occur. Staff has addressed dust and noise in the recommended conditions of approval. The hours of operation will reduce the possibilities of these elements becoming a nuisance.

Staff recommended approval of Conditional Use Permit #05-57 to allow sand and gravel extraction with the following conditions:

- 1) An annual fee shall be paid to the County in accordance with Section 15.14 of the zoning regulations. (Note: An annual fee of \$10 per acre of unreclaimed land is assessed to the operator.)
- 2) There shall be no fuel storage on the site.
- 3) Hours of operation shall be from sunrise to sunset.
- 4) No dewatering of the extraction area shall be permitted.
- 5) That a Haul Road Agreement shall be obtained from Red Rock Township prior to any sand or gravel extraction occurring. The Haul Road Agreement shall indicate how 256th Street shall be maintained. A copy of the Haul Road Agreement shall be provided to the County Planning Department and kept on file.
- 6) The ambient air quality standards for total suspended particulate matter shall be 150 micrograms per cubic meter of air as a 24-hour average not to be exceeded more than once a year, and 60 micrograms per cubic meter of air as an annual arithmetic mean. The standards for PM¹⁰ (10 micrometers or less in size) shall be consistent with the regulations of the State of South Dakota.
- 7) The County Planning Department shall direct the operator to install air quality sampling stations if the standards appear to be exceeded. Such monitoring shall be at the operator's expense.
- 8) The sound level from on-site operations shall not exceed an average of 55 decibels recorded over a 10 minute period measured at the nearest residence.
- 9) That one (1) off-street parking place for each employee and two (2) customer off-street parking spaces shall be provided.
- 10) The boundaries of the extraction area shall conform to the site plan submitted with the application.
- 11) Topsoil shall remain on the site and be used in final reclamation.
- 12) Only clean fill shall be used as backfill.
- 13) There shall be no storage or accumulation of inoperable or discarded equipment or parts.
- 14) A gate shall be required at the haul road entrance to the property.
- 15) Reclamation shall be in accordance with the plan filed with the State and outlined in the application and all reclamation of the site shall be completed by July 1, 2020. A copy of the reclamation plan approved by the state shall be provided to the Planning Department prior to any mining activity commencing on the property.
- 16) That the applicant provides the Planning Department with proof of a \$1,000 surety bond posted with the State of South Dakota for reclamation.

Public Testimony

The petitioner, Leo Lowe, state that there is about 20,000 ton of gravel and sand at this site. This will not be a big operation and not much traffic will be generated.

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

Commisisoner Hajek asked how many neighbors had been notified. Mr. Andersons tated that letters had been sent to 33 neighbors and that he had received two phone calls. One caller wanted to complain about the trucks at the Corson sand plant, the other caller just called to get more information. The applicants did contact the township and Mr. Anderson had received a letter in support of the extraction operation.

A motion was made by Rogen and seconded by Bunde to approve conditional use permit #05-57 with the conditions as stated. The motion passed unanimously.

A motion was made by Bunde and seconded by O'Hara to adjourn the Planning Commission meeting. The motion passed unanimously.

ZONING BOARD OF ADJUSTMENT

Commissioner South called to order the Zoning Board of Adjustment

ITEM 17. VARIANCE #05-06 to allow a front yard setback of 23' for an addition to an existing dwelling.

Legal Description – Lots 1 & 2 lying south of Rd. & SW1/4 NE1/4 (Ex Wall Lake Sanitary District Tr. 1) & NE1/4 NW1/4 & inc. Wall Lake Sanitary District Lots A & B, in Section 28-T101N-R51W
Location - south of Wall Lake
Petitioner / Owner- Rolland Story
Present zoning - A-1 Agricultural
Existing Land Use - Residential / Agricultural
Parcel Size - 136 Acres

Report by: Phil Kappen

Staff Analysis

The subject property is located south of 266th Street on the south edge of Wall Lake. The petitioner wishes to obtain a variance to encroach into the required front yard in order to place a small deck and steps for the front door of their home. In this area 266th Street curves off of the section line alignment because of the proximity of Wall Lake. The home was built many years ago and the road alignment has also been in place for many years (it was platted in 1917). In 1997 the basement of the home was replaced (the home was placed in the same location as it was previously located as allowed by the zoning ordinance. Then, in 2003 an attached garage was added to the south side of the home—away from the road right-of-way.

The existing home sets 31 feet off of the road right-of-way. The petitioner proposes an 8-foot deck across the front (north side) of the house with steps on the east and west ends. If the existing home had met the setback requirements, such a deck would be automatically permitted as the ordinance allows an “open unenclosed porch” to project up to 10 feet into the required front yard. In this case, however, the house itself projects into the required front yard. A variance is therefore required.

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. The topography of the area and the location of Wall Lake required the relocation of 266th Street off of the normal section line alignment. This resulted in the road being closer to the existing home that would typically be allowed. The petitioner had no control over the placement of the road. There are also wetlands to the east of the farmstead which dictate the location of site features such as the septic system and restrict where the home can be situated. The petitioner has an existing doorway on the north side of their house. The building code requires that safe access can be made to that door. The door is elevated approximately 3 feet above grade and would therefore require steps and a small landing to allow safe access.
- (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. This is a unique situation on this property because of the location of the road and

the age of the house. Other, newer homes along the road were able to meet all setbacks.

- (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. The placement of the deck on the home should not result in any detriment or injury to other properties or to people.
- (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 deck will not impair light or air, increase traffic congestion, increase fire danger, endanger public safety or impair property values. Staff has consulted with the County Highway Department and they have no objections to the proposed variance.
- (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. It is a requirement of the building code that the existing doorway have a safe access to the ground level. Some provision for access must be allowed.
- (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. If the petitioner were to use a set of steps with a small landing to access the doorway, a standard size for such a situation would extend out approximately 7 feet from the building. Placement of set of steps, because it is required by the building code, would require only a building permit. The petitioner proposes to encroach into the front yard only 1 foot more than such a set of steps. Restrictions can be placed on a variance that would require the access steps to be placed to either side of the deck area and thus prevent further encroachment into the front yard. A restriction can also be placed regarding the sides and any covering over the deck to ensure that it meets the intent of the ordinance in allowing open, unenclosed porches in the front yard of a home.

The petitioner would still be required to meet other building codes such as the types and depth of foundation for the deck and would need to obtain a building permit before commencing any work and the have the requisite inspections performed during construction.

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.

Staff found that the proposed variance meets the six requirements for a variance and recommended approval with the following stipulations:

1. The maximum additional encroachment into the front yard shall be 8 feet from the existing structure. All steps must be placed to either side of the deck and may not extend further into the front yard.
2. No walls or roof shall be constructed as a part of the deck.

Public Testimony

The petitioner, Rolland Storey, stated that the deck and steps would not exceed the width of the house. It was designed to allow enough room for movement when exiting the door.

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

A motion was made by Bunde and seconded by O'Hara to **approve** variance #05-06 with the stated

conditions. The motion passed unanimously.