

**MINUTES OF THE
MINNEHAHA COUNTY PLANNING COMMISSION
August 22, 2005**

A meeting of the Planning Commission was held on August 22, 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 and Phil Kappen.

The meeting was chaired by Don South.

APPROVAL OF THE CONSENT AGENDA

There being no objections from the Planning Commission or audience, a motion was made by Steinhauer and seconded by Bunde to approve the consent agenda with the exceptions of Items 2, 6 and 9. The motion passed unanimously.

ITEM 1. MINUTES – June 27 2005.

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

ITEM 2. 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

Item 2 was deferred from the June 27, 2005 meeting.

Item 2 was withdrawn by the petitioner.

ITEM 3. CONDITIONAL USE PERMIT #05-65 to allow an electrical substation.

Legal Description - Lot U1 in the NW1/4 SW1/4 of Section 27-T102N-R50W
Location - 46902 Hwy 38, ½ mile north of the Hwy 38 and Ellis Road intersection
Petitioner / Owner- East River Electric Power Cooperative, Inc
Present zoning - A-1 Agricultural
Existing Land Use - Agriculture
Parcel Size - 1.3 Acres

Report by: Scott Anderson

Staff Analysis

The property is zoned A-1 Agricultural 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.

There are no rural subdivisions located in the area. There are three (3) existing farmsteads located within one half (1/2) mile of the subject property, the closest being across Interstate 90 to the northwest. These existing farmsteads have mature shelterbelts located around them that obscure the view of the substation. Due to the existing natural vegetation and sparse development, the applicant is not proposing any landscaping around the substation.

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 is needed to provide adequate electric service to present and future development for the area, specifically the large new business being constructed to the southeast.

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

The applicant has started to construct a new access road to the proposed utility substation location. The access road is being constructed within the section line of 469th Avenue. The applicant will need to work with Benton Township to schedule maintenance on the proposed access road.

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 Condition 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 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.

Staff finds that the proposed substation is needed to provide adequate infrastructure to the general area. The proposed location will only minimally impact surrounding property.

Staff recommended approval of Conditional Use Permit #05-65 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 obtains a building permit prior to any construction commencing on the site.
- 5) 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.

Based on the staff report a motion was made by Steinhauer and seconded by Bunde to approve the conditional use permit with the proposed conditions. 6 ayes, Rogen abstaining. Motion carried.

ITEM 4. CONDITIONAL USE PERMIT #05-70 to exceed 1200 sq. ft. of accessory building area (existing 936 sq. ft., requested 630 sq. ft., Total = 1566 sq. ft.).

Legal Description - Tract 9 Preston Place Addition SE1/4 NE1/4 of Section 27-T101N-R48W

Location - 48182 Kim Circle, 1/2 mile west of Rowena

Petitioner / Owner- Mitch Peterson

Present zoning - A-1 Agricultural

Existing Land Use - Residential

Parcel Size - 1.19 Acres

Report by: Phil Kappen

Staff Analysis

The subject property lies in the southwest corner of Preston Place, a manufactured home subdivision a 1/2 mile west of Rowena. The surrounding properties are of a residential nature.

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 building will be used for the owner's personal storage and no commercial uses are planned, nor are such uses allowed. Other lots in the subdivision have accessory buildings measuring 1890 sq.ft., 1440 sq.ft., and 1520 sq.ft. The proposed 1566 total sq.ft. on the subject property will not be out of character with other lots in the subdivision.

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

The proposed building should have no effect on any development in the surrounding area.

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

Access to the property would be from Kim Circle, a gravel subdivision road that is maintained by Split Rock Township. No additional driveways will be added onto Kim Circle.

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

There is ample space on the lot for off-street parking. No on-street parking is allowed.

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 building will be used strictly for the petitioner's personal storage. No commercial uses including storage for a business or rental storage are allowed. Since the building will be used strictly for storage there should be no increase in odor, fumes, dust, noise, or vibration. Any outdoor lighting should be restricted to shoebox style lighting that directs the light downward and prevents light spillage off of the subject property. No signs are allowed on the property.

A building permit is required prior to the construction of the structure. A building inspection will be required to measure the size of the structure. Measurements will be taken on the outside perimeter of the building.

Staff found that the proposed use was consistent with the zoning of the property and with surrounding uses. Staff, therefore, recommended approval of conditional use permit #05-70 with the following conditions:

1. The total of all accessory buildings on the property shall be limited to 1566 square feet.
2. All accessory buildings shall be used strictly for the owner's personal storage. No commercial use or the storage of any commercial equipment or materials shall be allowed.
3. Any outdoor lighting shall be of a shoebox style that directs the light downward and prevents light

spillage off of the subject property.

4. A building inspection is required to measure the size of the accessory building.
5. The building shall not exceed one story in height.

Based on the staff report a motion was made by Steinhauer and seconded by Bunde to approve the conditional use permit with the proposed conditions. The motion was approved unanimously.

ITEM 5. CONDITIONAL USE PERMIT #05-71 to allow a wireless communications facility.

Legal Description - W1/2 SW1/4 (ex. H-1 & ex. SW1/4 SW1/4 SW1/4 & ex. S1/2 NW1/4 SW1/4 SW1/4 & ex. W1/2 SE1/4 SW1/4 SW1/4) in Section 20-T104N-R50W

Location - 24764 467th Ave., 2.5 miles northeast of Colton

Petitioner / Owner - Western Wireless / Loyal L. Amundson

Present zoning - A-1 Agricultural

Existing Land Use - Agriculture

Parcel Size - Leased site of \pm 6.0 Acres

Report by: Pat Herman

Staff Analysis

This application is for a wireless communications facility. A conditional use permit is required because this site is just within three miles of another communications tower. That site is located in Section 23 of Burk Township, to the northeast of Willow Creek Lutheran Church. The distance between the two towers is approximately 2.9 miles.

The site is located in an agricultural area 2.5 miles northeast of Colton. The petitioner has provided the Planning Department a copy of the site lease agreement with the listed property owner. This wireless communications facility will consist of a 400 foot tall guyed wire tower and a 10' x 20' equipment shelter. The facility will be surrounded by a 6' high chain link fence topped with barb wire. The nearest house, that of the property owner, will be 984 feet from the tower. The next nearest house is 2060 feet to the south. There are no residences within close proximity to the east, west, or north.

A full set of construction plans has been submitted to the Planning Department and the Building Inspector has approved these plans.

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.

There are few residences in the area of the facility site. There should be no impact on the use and enjoyment of those 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 facility should not negatively impact the development of permitted uses in the area.

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

Access will be from 467th Ave., a township gravel road. Other needed utilities are available in the area.

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

N/A

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.

This use should not generate the nuisances of odor, fumes, dust, noise, and vibration. The lighting on the tower will be per FAA requirements. The tower will have a dual lighting system, white lights during daylight hours switching to red at night. Lighting on the equipment building or on the site should be a shoebox type design and directed downward to prevent light spillage off of the parcel.

The petitioner should note that the address given on the application for this site is incorrect. The correct address will be 26764 467th Ave.

Staff found that the proposed wireless facility was in conformance with all of the requirements for a permitted special use for a telecommunications tower as detailed in Article 12.12 of Minnehaha County Zoning Ordinance, except for the 3 mile separation listed in Section 12.12 (C) #3. Staff recommended approval of conditional use permit #05-71 with the following conditions:

- 1) The facility shall conform to the plans submitted 7/25/05 for site number SDSF.
- 2) The facility shall meet the requirements of Article 12.12 (except for section (C) #3) of the 1990 Revised Minnehaha County Zoning Ordinance.

Based on the staff report a motion was made by Steinhauer and seconded by Bunde to approve the conditional use permit with the proposed conditions. The motion was approved unanimously.

ITEM 6. CONDITIONAL USE PERMIT #05-74 to transfer three residential building eligibilities.

From – NE1/4 SW1/4, NW1/4 SW1/4, & from the N1/2 N1/2 SE1/4 SE1/4 of Section 15-T101N-R48
To- NE1/4 SE1/4 in Section 15-T101N-R48W
Location - 2 miles south of Brandon
Petitioner / Owner - Cynthia Bruns
Present zoning - A-1 Agricultural
Existing Land Use - Agriculture
Parcel Size - 40 Acres

Item 6 was withdrawn by the petitioner.

ITEM 7. CONDITIONAL USE PERMIT #05-76 to allow a trucking firm.

Legal Description – Lot 2 Block 3 Brower Addition SW1/4 of Section 27-T102N-R51W
(south end of building)
Location - 46307 Jeffery St., south edge of Hartford
Petitioner / Owner - Kenneth Tietz / Allan Stockwell
Present zoning - I-1 Light Industrial
Existing Land Use - Commercial
Parcel Size - 0.98 Acres

Report by: Pat Herman

Staff Analysis

The site property is located along Jeffery Street in Brower Addition, an industrial development 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 have commercial uses. The land to the south has a single family residence. There is an existing shelterbelt between the residence and the subject property. There will be no outside storage with this use. 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 four other trucking firms that have been approved in Brower's Addition. The use will occupy the south end of the 160-foot building. The Planning Commission approved a trucking firm for the north end of the same building in June 2005.

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 proposed use was consistent with the types of uses found in the subdivision. Staff, therefore, recommended approval of conditional use permit #05-76 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 Steinhauer and seconded by Bunde to approve the conditional use permit with the proposed conditions. The motion was approved unanimously.

ITEM 8. CONDITIONAL USE PERMIT #05-77 for a Class 1 major home occupation.

Legal Description - E750' W1160' S290' S1/2 SE1/4 of Section 14-T103N-R49W
Location - 1.5 miles northeast of Midway corner
Petitioner / Owner - Dan Weber
Present zoning - A-1 Agricultural
Existing Land Use - Agriculture
Parcel Size - 5 Acres

Report by: Pat Herman

Staff Analysis

The property is located 1.5 miles northeast of Midway Corner. The surrounding properties are agricultural with few scattered acreages. The closest residence is on a three acre parcel which abuts the west edge of this property. The petitioner is waiting the outcome of this application before finalizing the purchase of this five acre site. There is no dwelling on this site, but there is a residential building eligibility which was transferred to the property in April 2005.

The petitioner is requesting approval for a class 1 major home occupation for a woodworking shop. There are two employees, the applicant and one non-resident. The core of the business is the staining, sealing and finishing of woodwork, trim and doors. A 2400 square foot accessory building would be constructed with 800 square feet to be used for the home occupation. The shop area should be partitioned off from the rest of the building. No outside storage has been requested. There will be no customers coming to the site. The petitioner anticipates two delivery trucks per week.

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 home occupation should not affect the surrounding properties and will be subordinate to the residential use of this five acre site. No customer visits will be generated and there will be limited deliveries.

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

The home occupation will have no affect of the use of the surrounding land for agricultural purposes, nor any housing constructed through the use of residential building eligibilities.

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

Access to the site will be from a township gravel road. Utilities are available in the area.

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

Five acres adequately provides for all off street parking and loading requirements.

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 petitioner is working with the County Building Inspector to ensure the accessory building has the proper venting and storage areas. Given the size of the business, fumes, odor, dust, vibration and noise should not be discernable off of the property.

Staff found that the class 1 major home occupation could operate at this site without impacting the character of integrity of the area with the adherence to certain conditions. Staff recommended approval of conditional use permit #05-77 with the following conditions:

- 1) The home occupation shall be limited to 800 square feet of accessory building area and that portion of building shall be separated from the remainder of the building by a wall or partition.
- 2) The home occupation shall be clearly incidental to the use of the property for residential purposes.
- 3) The occupation shall be operated by a member of the family residing in the dwelling.
- 4) Employees of the occupation shall be limited to residents of the dwelling and one non-resident employee.
- 5) 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.
- 6) The occupation shall not create vibration, glare, fumes, odor, or electrical interference detectable to the normal senses off the property.
- 7) No outside storage, display of goods or merchandise, or external evidence of the occupation shall occur except as outlined in this section.
- 8) A non-illuminated nameplate not exceeding two square feet in area may be placed on the dwelling or accessory building. Additionally, one non-illuminated sign not exceeding four square feet in area may be located along the driveway for the occupation. No off premise signs shall be used.
- 9) The occupation shall not generate more than 10 visits per day from clients or customers averaged over a period of seven (7) consecutive days.
- 10) There shall be only limited and incidental sale of products conducted on the premise.
- 11) 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.
- 12) The home occupation shall not commence operation until the final inspection is completed for the dwelling and until the shop is inspected and approved by the County Building Inspector.
- 13) Storage of flammable liquids shall be in accordance with the fire code.
- 14) A ventilation plan and an egress plan must be approved by the County Building Inspector.

Based on the staff report a motion was made by Steinhauer and seconded by Bunde to approve the conditional use permit with the proposed conditions. The motion was approved unanimously.

ITEM 9. CONDITIONAL USE PERMIT #05-78 to transfer one residential building eligibility.

From – NE1/4 NW1/4 in Section 22-T104N-R48W
To- NW1/4 NW1/4 in Section 22-T104N-R48W
Location - 5 miles northwest of Garretson
Petitioner / Owner - Danny Berg
Present zoning - A-1 Agricultural
Existing Land Use - Agriculture
Parcel Size - 40 Acres

Report by: Pat Herman

Staff Analysis

The site is located five miles northwest of Garretson. The surrounding land use is agricultural which has few existing residential acreages. The petitioner is requesting to transfer one residential building eligibility from land that is located in the floodplain. The eligibility in the receiving quarter-quarter has already been used.

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 eligibilities should not negatively impact other property values in the area. There are two existing CAFO's in the area, one ¾ mile to the north and the other ¾ mile to the west. Both operations were notified by the Planning Department about this application. 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.

Approval of the transfer will not increase the number of dwelling units allowed under density zoning.

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

Access will be from a gravel road and maintained by Logan Township. A wastewater system is required.

Staff found the request to be in conformance with density zoning and recommended approval of conditional use permit #05-78 with the following conditions:

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

Public Testimony

The petitioner, Dan Berg, was present and noted that he wishes to remove the eligibility from an area of pasture land in the flood plain and place it on the same 40 acres as his farmstead. A family member would live in the house. He recognized the concerns of livestock producers and noted that he has 80 head of cattle himself. He has already contacted the Logan Township Board and obtained permission for a driveway.

Bruce Burkhardt, 24607 481st Avenue, noted that he is not opposed to the item, but wanted the Planning Commission to be aware that he has a CAFO about a mile north of the site, that there are other CAFOS on farmsteads to the north and the west and that he applies animal waste on a field ½ mile to the west of the site.

Based on the staff report and public testimony a motion was made by Rogen and seconded by O'Hara to approve the conditional use permit with the proposed conditions. The motion was approved unanimously.

The **Dell Rapids Planning Commission** joined the meeting. Members present: Roger Dearduff, Dale Dunn, Bob Lamberty, Chris Mullaney and Larry Skatvold.

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

ITEM 10. CONDITIONAL USE PERMIT #05-67 to exceed 1200 sq. ft. of accessory building area (2160 sq. ft. requested) and to allow six horses.

Legal Description - Tract 2 Buskerud Addition in Section 16-T104N-R49W
Location - 24681 475th Ave., south edge of Dell Rapids
Petitioner / Owner - Patrick Harrington
Present zoning - RR-5 Rural Residential
Existing Land Use - Residential
Parcel Size - 5.05 Acres

Report by: Pat Herman

Staff Analysis

The subject property is located in a residential subdivision south of Dell Rapids and is zoned RR-5 Rural Residential. The lots immediately to the north, south, and west are also zoned RR-5. Property across the highway to the east is zoned I-1 Light Industrial. The petitioner would like to exceed 1200 sq. ft. of accessory building area which requires a conditional use permit. There is an existing 308 sq. ft. accessory

building on this property which would be replaced by a 2160 sq.ft. barn. In September 2003 the Planning Commissions approved 2280 square feet of accessory building area for the property directory north of this site.

The petitioner is also requesting approval to allow six horses on the site. There have been 4 horses on the site for some time and the Planning Department has not received any complaints about their presence.

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.

In a traditional subdivision of one acre lots, the petitioner's requested accessory building size would be considered excessive. In this subdivision, with a required minimum lot size of five acres, the large lots can easily accommodate considerably larger buildings. The property is also adjacent to a well developed industrial park which dominates the character and appearance of the entire area. Having a large accessory building on this lot would not make the property incompatible with the surrounding neighborhood.

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

Neither the accessory building nor the horses should have a negative impact on the development of the surrounding property.

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

The existing driveway will be used for access to the accessory building.

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

N/A

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.

Lighting on the barn should be directed downward, with no light spillage onto the surrounding properties.

The submitted site plan shows an outside arena next to the barn. Use of the arena or stabling of horses for commercial use is not permitted on this site. An inspection by the Building Inspector should be required to insure the proper size building is constructed.

Staff found the request to be compatible with the surrounding land uses and recommended approval of conditional use permit #05-67 with the following conditions:

- 1) Accessory building area shall not exceed 2160 square feet.
- 2) No commercial use of the accessory building or riding area.
- 3) There shall be no more than six (6) horses on the property.
- 4) An inspection by the County Building Inspector to measure the square footage of the accessory building.
- 5) Removal of the 308 sq. ft. building by December 1, 2005.

Public Testimony

The petitioner, Pat Harrington, was present and indicated that they had already removed the 308 sq.ft. building. They hope to build a building with stalls for 6 horses. The neighbors to the south have 5 horses and to the north are 2 horses.

No one else spoke to the item.

Motion for the County by Cypher and seconded by O'Hara to approve the conditional use permit with the proposed conditions. The motion passed unanimously. Same motion for the City by Mullaney and seconded by Dunn. The motion passed unanimously.

ITEM 11. ZONING ORDINANCE TEXT AMENDMENTS – to amend those portions of the Joint

Minnehaha County and City of Dell Rapids Zoning Ordinance pertaining to application and permit fees.

Report by: Scott Anderson

Staff Analysis

Staff is proposing a fee increase for Temporary Use Permits, Rezoning, Conditional Use Permits, Variances and Appeals, Zoning Permits and Planned Developments. The proposed increase in fees is to better reflect the actual costs incurred by the County for the processing of applications. While it is impossible to give an exact amount each submittal costs to process, the County incurs the cost of processing the application, site visits and research, mailing notices, preparation of Planning Commission packets, staff overtime for meetings, and archiving the submittal. The amount currently collected for each submittal does not cover the actual costs incurred by the County.

The proposed fees were based on similar fees charged by the City of Sioux Falls. It should be noted that other counties in South Dakota, such as Pennington and Lawrence Counties, charge significantly more for identical requests within their jurisdictions.

Staff recommended approval of the attached Amendment to the Joint Minnehaha County and City of Dell Rapids Zoning Ordinance.

Public Testimony

Members of both Planning Commission expressed concern over the size of the proposed fee increase.

Motion for the County by Steinhauer and seconded by Cypher to defer consideration until the September meeting to allow staff time to provide an analysis of the county costs associated with various permits and the fees charged for those fees. The motion passed unanimously. Same motion for the City by Dearduff and seconded by Mullaney. The motion passed unanimously.

ORDINANCE MC30

An ordinance amending ordinance MC30-02, the 2002 Revised Extraterritorial Zoning Regulations for Minnehaha County and the City of Sioux Falls related to temporary uses and fees.

BE IT ORDAINED BY MINNEHAHA COUNTY, SOUTH DAKOTA:

That Ordinance MC30-02, the 2002 Revised Joint Zoning Ordinance for Minnehaha County and the City of Sioux Falls is hereby amended as follows:

Section 1: That Article 15.00 is hereby amended to read:

15.16 TEMPORARY USES (d) Fee. A fee of ~~\$50.00~~ 250.00 shall accompany the application for a temporary use permit.

Section 2: That Article 22.00 is hereby amended to read:

22.02 CHANGE OF ZONE. A fee of ~~\$175.00~~ 350.00 shall be charged for filing an application to change the zoning classification of property, except to the Planned Development District. If any use, for which a rezoning is required, is commenced prior to the application for a rezoning, the application fee shall be double the regular fee.

22.03 PLANNED DEVELOPMENT DISTRICT. A fee of ~~\$175.00~~ 350.00 plus ~~\$25.00~~ 50.00 for each subarea shall be charged for the filing of an application to change to the Planned Development District. If any use, for which a rezoning is required, is commenced prior to the application for a rezoning, the application fee shall be double the regular fee.

22.06 CONDITIONAL USE. A fee of ~~\$100.00~~ 250.00 shall be charged for filing an application for a conditional use permit in any district. If any use, for which a conditional use permit is required, is commenced prior to the application for a conditional use permit, the application fee shall be double the regular fee.

22.07 BOARD OF ADJUSTMENT. A fee of ~~\$50.00~~ 250.00 shall be charged for filing ~~an~~ a Variance application ~~for~~ or an appeal to the Zoning Board of Adjustment.

22.08 ZONING PERMITS. A fee of ~~\$20.00~~ 250.00 shall be charged for filing an application for a zoning permit. However, this fee shall be waived when the proposed construction is subject to the requirements and fees of the Uniform Building Code as adopted by Minnehaha County.

Approved this ____ day of _____, 2005

BOARD OF COUNTY COMMISSIONERS

Chairman

ATTEST:

County Auditor

Item 12 was deferred from the June 27, 2005 meeting.

ITEM 12. 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 - 8502 E. Maple St., 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 applicant held a meeting with the adjacent property owners on August 11, 2005 to discuss the electrical substation. Approximately 15-20 residents attended the meeting. Several questions were raised at the meeting. On August 12, 2005, the applicant contacted staff and requested that this conditional use permit be continued for another month to allow time for additional research and discussion of options. The applicant also sent a letter to the surrounding property owners indicating that a deferral had been requested.

Staff recommended that action on Conditional Use Permit #05-52 be continued to the September 26, 2005 Planning Commission meeting.

Motion by Hajek and seconded by O'Hara to defer the item to the September 26, 2005 meeting. The

motion passed unanimously.

A citizen in the audience asked whether he could ask a question regarding the item.

Motion by Hajek and seconded by O'Hara to bring the item back onto the table. The motion passed unanimously.

Staff reported that this item had first been heard at the June 27, 2005 meeting. The Planning Commission had deferred it at that time to the August meeting in order to allow the petitioner to meet with the residents in the neighborhood. Staff also noted that the petitioner was not present.

Public Testimony

David Huntimer asked whether East River Electric would be able to construct the proposed subdivision without the county's approval.

Gordy Swanson, Chief Civil Attorney for the Minnehaha County States Attorney office replied that East River Electric could not construct the substation without first obtaining a conditional use permit.

Motion by Steinhauer and seconded by Hajek to defer until September 26, 2005.

ITEM 13. CONDITIONAL USE PERMIT #05-66 for a Class 2 major home occupation.

Legal Description - W1/2 NE1/4 (ex W300' N450') & the W1/2 SE1/4 north of the RR in
Section 6-T101N-R47W

Location - 48473 262nd St., 2 miles west of Valley Springs

Petitioner / Owner - Mark Erickson

Present zoning - A-1 Agricultural

Existing Land Use - Agricultural

Parcel Size - 76.91 Acres

Report by: Phil Kappen

Staff Analysis:

The petitioner wishes to obtain a permit for a Class II Major Home Occupation to legitimize an existing use on the subject property. The petitioner currently operates a manufacturing facility in the farmstead area on this property for the purpose of manufacturing aircraft parts. The manufacturing use is operated out of two accessory buildings on the property. The two buildings are 4000 sq.ft. and 5040 sq.ft. in size. The amount of area utilized for the manufacturing uses in the buildings totals 6432 sq.ft. The zoning ordinance does not set a specific size criteria for Class II facilities, however, for comparison purposes the criteria for a Class I Major Home Occupation is 750 square feet.

Planning staff received a complaint about the use on the property and confirmed the violation through the Minnehaha County Equalization Office. Upon contacting the petitioner they immediately applied for the major home occupation permit.

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 petitioner currently has 6 employees (all family members who live on site) employed as a part of the manufacturing operation. Some of these employees are part-time. The ordinance sets a general limit of five employees for a Class II Major Home Occupation.

There are no on-site visits from customers, all orders are taken by phone and deliveries made off-site. There is also no outside storage of parts, materials or scrap on the property. The property is well cared for and, at this time, does not pose any concern as far as being an eyesore. The site sets well back off of the county highway.

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

The zoning ordinance requires that a Class II Major Home Occupation use remain secondary to the primary use of the property for agricultural production.

Staff has concerns about the potential precedent which may be set by approval of a manufacturing plant as a major home occupation. Manufacturing of this sort would typically require an I-1 Industrial zoning and a conditional use permit. The Minnehaha County Comprehensive plan delineates those areas adjacent to interstate exchanges or rural service areas such as Lyons and Crooks as proper locations for industrial development. The proposed site does not meet any of those location requirements and staff has concerns that approving this type of use could encourage the petitioner to commit to additional expenditures and improvements on the site that would result in uses or structures that would be inconsistent with the allowed long-term uses.

Staff also wishes to express concern over the potential precedent which could be set by approving a use that was first begun in violation of both the comprehensive plan and the zoning ordinance. This could lead to people starting other types of uses in violation of either the plan and ordinance because “the property owner was unaware of the law” and then, because of expenditures and improvements made to the property, asking the county to legitimize their use.

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

Access to the property is via 262nd Street (Co. Hwy 138).

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

There would be ample space for 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.

Manufacturing uses can result in increased odor, fumes, dust, noise or vibration. The petitioner should be prepared to specifically address these factors at the planning commission meeting. Manufacturing buildings such as this are also required to meet specific requirements under the building code. Since these buildings were not approved for manufacturing use prior to construction, it is doubtful whether they meet the code requirements. The only building permits for accessory buildings which have been issued for this property are for a 50x80' pole shed farm building in 1982 and a 48x105' metal pole building for personal agricultural storage in 1998.

Staff has concerns about the potential precedent set by approving this type of use at this location. The comprehensive plan does not provide for manufacturing uses in this type of location and staff must, therefore, recommend denial of conditional use permit #05-66.

The petitioner had contacted staff to request that the item be deferred to the September 27, 2005 meeting.

Motion by Hajek and seconded by O'Hara to defer the item to September 27, 2005. The motion passed unanimously.

ITEM 14. CONDITIONAL USE PERMIT #05-72 to allow a dog kennel (boarding and breeding).

Legal Description - E295.16' W673.8 S295.16' W1/2 W1/2 SE1/4 in Section 1-T101N-R51W

Location - 46560 263rd St., 2.5 miles southeast of Hartford

Petitioner / Owner - Cindy Wollmann

Present zoning - A-1 Agricultural

Existing Land Use - Residential

Parcel Size - 2.0 Acres

Report by: Scott Anderson

Staff Analysis

The applicant is requesting a Conditional Use Permit to allow a kennel for the breeding of dogs, a boarding facility for up to 40 dogs and the operation of a training and grooming facility, such as obedience classes. Currently the applicant has nine (9) dogs, two of which are breeding animals. The applicant breeds Labradors and Trollers. The applicant did not indicate the number of animals that will eventually be used for breeding purposes.

On June 28, 2005, the applicant obtained Building Permit #05-201 for a 44' x 54' detached accessory structure. It was indicated that this structure would be used for personal storage. The applicant is proposing to use this structure for the kennel business. Water and a septic system have been installed for the accessory building. In addition, in-floor heat will be installed. Six (6) foot covered dogs runs will be located along the south side of the building. Each dog run will measure 4 foot by 6 foot and have a concrete floor with drain.

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 use will have a negative impact on surrounding properties to the east. There are two (2) existing residences located approximately 250 feet and 640 feet away from the proposed kennel site. The noise and additional traffic will reduce the enjoyment of those existing residences.

During a site visit on August 10, 2005, staff stopped and visited with the adjacent property owners. They indicated that the existing dogs bark at night and disturb the peace. Staff also observed that construction of the 44 foot by 54 foot detached accessory structure was underway.

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 negatively impact the normal and orderly development of the area. Any future development could see the kennel as a negative due to noise, flies and additional traffic.

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

Adequate access has been provided to the site. The existing residence has direct access off of 263rd Avenue, which is a paved, county-maintained road. All required utilities have been constructed to the site.

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

In addition to the attached double stall garage, there are approximately 4 to 6 off-street parking spaces provided by the driveway, approach to the garage and side yard area. This would not meet the minimum parking requirement of 8 spaces. One space is required for each 300 square feet of floor area for retail businesses. The kennel has 2,376 square feet.

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.

There is a significant possibility that the proposed use could become a nuisance. The most serious issue when dealing with kennels is noise abatement. It only becomes possible if all animals are kept in a building which has been constructed to minimize sound. Dogs allowed outside of the building can bark, especially as customers come and go.

Staff finds that the proposed kennel is not compatible with the existing land uses of the area. The existing single family residences of the area need to be protected from the negative aspects of the proposed use. Any dogs allowed outside may result in noise. In addition, traffic into and out of the business will negatively impact the area.

Staff found that a kennel, boarding facility and training business is not suited to the existing neighborhood and recommended denial of Conditional Use Permit #05-72.

Public Testimony

The petitioner, Cindy Wollman, was present and read a letter in which she addressed some of the staff's concerns. They currently have their dogs on the east side of their property. They feel that, moving the dogs to the south side of the new building will reduce the noise to neighbors. They have also purchased bark collars for the offending dogs. The dogs typically bark when there is some activity that disturbs them.

She disputed neighbor claims that her dogs had gotten out of their pens. They clean all waste from the kennels twice daily, wash down the area daily and spray tempo fly spray every other day.

They currently have two females that could be bred. They currently use them for hunt testing and hunting during the spring through fall. They would only be available to breed in the winter. They would like to have the opportunity to train dogs other than their own dogs and offer obedience classes. They would also like to provide limited kenneling of other dogs.

Karen Dover, 46568 263rd Street, lives immediately east of the subject property. She stated that there was no house in the area when they bought their home. She checked and found that there was one eligibility on the 30 acres to the east of their home and none to the west. The owner of the property to the west later transferred an eligibility to that spot. The petitioner's dogs are currently right outside her bedroom window and the dogs bark frequently. They still bark early in the morning and late at night.

Jim Dunlap, 46572 263rd Street, agreed that the noise still occurs. He said that the activity level on the site will increase if the proposal were approved and that this could lead to increased barking. There could be a decrease in property values. He noted that approval of this use would put a commercial use in the middle of what has become an area of rural residentials. He also noted that the driveway into the Wollman property is a blind driveway and increasing traffic to the site could result in accidents.

Chris Madsen, attorney for Ms. Dover and Mr. Dunlap, noted that the proposed kennel is very close to the neighbor's properties and is only 200 feet from Ms. Dover's bedroom window. He noted that the building permit for the Wollman's accessory building had a provision for "no commercial use allowed." Approval of this use would allow a commercial operation in the country, one which does not meet the criteria for a home occupation.

A motion was made by Cypher and seconded by Rogen to deny the conditional use permit. The motion passed unanimously.

**ITEM 15. CONDITIONAL USE PERMIT #05-73 to exceed 1200 sq. ft. of accessory building area
(720 sq. ft. existing; total requested – 2220 sq. ft.)**

Legal Description - Lot 7A High Country Estates SW1/1 SE1/4 in Section 7-T102N-R49W

General Information

Location -	25798 Country Lane, 1 mile west of Renner
Petitioner / Owner-	David Kearney
Present zoning -	A-1 Agricultural
Existing Land Use -	Residential
Parcel Size -	1.0 Acre

Report by: Phil Kappen

Staff Analysis

The subject property is located in the residential subdivision just east of the Renberg School. Properties to the west, north and east are residential. To the south is agricultural land with a few acreages. The petitioner has an existing accessory building on the site and wishes to construct a second accessory building. The petition states that the existing accessory building is 720 sq.ft. and that a 1500 sq.ft. building is to be constructed for a total of 2220 sq.ft. The property tax records, however, show that the

existing building is 864 sq.ft. which is also what the building permit for the building stated. That, plus the proposed 1500 sq.ft. building would total 2364 sq.ft.

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 largest accessory building area in the High Country Estates Subdivision is 1200 sq.ft. on the lot to the north. The potential 2364 square footage total on this lot is 197% of the existing largest building in this subdivision. The subdivision is immediate next to the Vintage Village subdivision. The largest building in that subdivision is 2160 square feet. That building was approved primarily because it was to be constructed with an appearance similar to the house.

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

The predominant use in the immediate area is for residential uses. The proposed building size would be more consistent with an agricultural or commercial area.

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

Access to the property, and to the proposed building would be via Country Lane.

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

There is adequate space for parking on the property. No on-street parking is allowed.

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 petitioner proposes to use the requested building strictly for his personal storage. No commercial use, rental storage, or storage of commercial vehicles or materials would be allowed.

Staff finds that the proposed building is not consistent with the other buildings in the immediate vicinity. Staff, therefore, recommends **denial** of conditional use permit #05-73.

Public Testimony

The petitioner, David Kearney, was present and indicated that he wishes to store his motor home, and boat in the building. He stated that he had talked to all the neighbors in High Country Estates and the neighbor to the east in Vintage Village and that none of them had any concerns about the proposed building. He would build a steel building which will be painted to match the house.

No one else spoke to the item.

A motion was made by Steinhauer and seconded by Bunde to deny the conditional use permit because the building size would be inconsistent with the area. The motion passed unanimously.

ITEM 16. CONDITIONAL USE PERMIT #05-75 to expand and existing CAFO.

Legal Description – Tract 2 Ode Addition S1/2 SE1/4 in Section 22-T101N-R48W
Location - 48178 266th St., 3 miles south of Brandon
Petitioner / Owner- Royalwood Farms Partners.
Present zoning - A-1 Agricultural
Existing Land Use - Agriculture
Parcel Size - 12.36 Acres

Report by: Phil Kappen

Staff Analysis

The subject property is located on the north side of 266th Street (Co. Hwy 146) and approximately ¾ mile east of Highway 11. The petitioner currently has a 140 animal unit (A.U.) dairy facility and wishes to expand to 440 A.U. The petitioner has also supplied documentation that they had 140 A.U. in the feedlot site as of May 26, 1998 which was when the current CAFO ordinance became effective.

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 target setback criteria set forth in the zoning ordinance is 1100 feet between a 440 A.U. CAFO and a residence. The proposed expansion would meet that criteria setback as the closest residence is 1100 feet to the east of the subject property.

Though the setback criteria is only 1100 feet, Planning staff sent out a letter to all property owners within 1 mile of the proposed facility informing them of the date and time of the Planning Commission meeting.

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

The surrounding property is planned for future agricultural uses.

An expansion of this size could be accomplished without Planning Commission approval if the site were not over a Water Source Protection District. The proposed site, however, does lie within the Water Source Protection District, therefore, a conditional use permit must be obtained before the expansion can be undertaken.

The Water Source Protection District will be protected because all waste will be contained on concrete pads or in a covered concrete pit. Test well and water sampling should be required to further ensure protection of water resources.

It appears that the site was an existing CAFO as of the May 26, 1998 date specified in the ordinance. The ordinance requires at least 50 animal units confined in buildings or in a feedlot area as of that date. Staff showed air photos of the site from the summers of 1997, 1998 and 1999. The photos showed that there was a feedlot area on the property in each of those years. Staff noted that the petitioners would likely provide specific information about the number of animal units on the site in 1998.

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

Access to the property would be via County Highway 146 (266th Street). Existing driveways would be used for all access.

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

There is ample space for all required off-street parking and loading. No on-street parking would be allowed.

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.

There are existing trees on the north and west sides of the subject property that will aid in the dispersal of potential odors. These belts should be maintained. The manure will be handled by stacking it on a concrete pad that drains to an existing covered concrete pit. By separating the solid and liquid components of the manure odor will also be reduced. Retaining the liquid portion in a covered concrete pit will also reduce odor as the wind will not be able to blow across the surface of the water. The manure will then be applied as fertilizer to the 500 acres of farm ground that the Ode's farm. This should be done according to an approved nutrient management plan.

Staff found that the proposed use was consistent with the types of uses found in the agricultural zoning district and that the proposed expansion met the setback criteria for a 440 A.U. CAFO as set forth in the county zoning ordinance. Staff, therefore, recommended approval of conditional use permit #05-75 with the following conditions:

- 1) The facility shall be limited to a total of 440 Animal Units.
- 2) The petitioner shall manage all agricultural waste according to an approved nutrient management plan that has been prepared with consideration to both nitrogen and phosphorus nutrients. The plan shall be kept up-to-date and a copy of the approved plan shall be filed with the Minnehaha County Planning Department.
- 3) The operation shall conform to the site plan dated July 29, 2005.

- 4) At a minimum, the existing tree plantings shall be maintained on the west and north sides of the property.
- 5) A minimum of three test wells (at least one upgrade and two downgrade) shall be established at the facility. At a minimum, the wells shall be tested for the water quality parameters of ammonia, chlorides, nitrates, sulfates, total dissolved solids and depth to water to determine any impact to ground water. Quarterly testing shall be required during the first year. If no water quality problems are detected, testing may be reduced to a semi-annual frequency in following years upon approval; of staff.
- 6) All application of liquid waste shall be injected into the ground. Semi-solid waste shall be incorporated into the ground within 24 hours.
- 7) A pest, odor control and dead animal disposal plan shall be prepared for approval by the Minnehaha County Planning Director and a copy provided to the county.
- 8) The petitioner shall obtain state permit approval for the operation.

Public Testimony

Doug Ode showed a 1977 photo of the farmstead and explained that there was once both a dairy operation and a farrow-to-finish swine operation on the site. The swine operation included 600 finisher hogs, 360 feeder pigs, 200 nursery pigs and 140 sows. The swine operation was discontinued in 1997. He explained that they are requesting a confined animal feeding operation to include 200 milk cows and their offspring which would total 440 animal units. The old swine finisher unit would be removed to make way for the new dairy. The former swine gestation barn is now used for calves.

The manure will be kept on a concrete stack area and the runoff captured in a covered concrete pit. No large containment structures will be constructed. The site is surrounded by existing buffers consisting of mature trees. The plan would add less than 200 animals, including calves, to their existing operation. Less than 100 mature cows will be added.

Kent Boadwine, a consultant for the petitioner, presented information on their odor control plan. They have mature trees on the north and west sides of the site that will aid in the dispersal of odor. He also showed prevailing wind charts which showed that the prevailing winds are not towards the existing residents and discussed the University of Minnesota OFFSET Model. The model shows that at a distance of 2308 feet the proposed operation should be 99% nuisance odor free and 98% nuisance odor free at a distance of 1315 feet. They will contract with the Van Essen Fly Control company for pest control on the site.

Mr. Boadwine also discussed the Dairy Herd Summary sheets from May of 1998. He explained the numbers shown on the sheet and which animals shown on the sheet were at other sites. The sheets show that there were 84 animal units on the site as of May 27, 1998. The zoning ordinance required at least 50 animal units as of May 26, 1998 for a site to be considered an existing CAFO.

In addition to meeting the setback criteria for the distance from residences, he noted that the facility meets all setback requirements for distances from public water supplies, private wells and lakes, rivers and streams.

They also noted that a new subdivision on the west side of Brandon is being constructed less than ¼ mile from a similar sized dairy.

Curt Van Oort, 26621 Tucker Drive, asked the petitioner whether, if this petition were approved, would this only be a stepping stone to a future, larger facility at this site. He also questioned what would happen with the Ode's current appeal to circuit court regarding the application denied last year on a separate site. The petitioner responded from the floor that they do not have enough land at the site to increase further, that this would be the only facility at that site, and that they would be dropping the court appeal.

Mr. Van Oort noted that the subdivision he lives in, Iverson Crossing, was designated as being in a transition area in the county's 1998 comprehensive plan and that the plan states that a CAFO is not appropriate in a transition area. He also noted that the subject property is over the Water Source Protection Area (WSPA) and that the county zoning ordinance says a person has a right to ask for an expansion of a CAFO over the WSPA, but it is not a guarantee.

He addressed the ordinance definition of an existing CAFO as one that has at least 50 animal units as of May 28, 1998 and questioned whether those animal unit numbers had been maintained since 1998.

Gerald Haak, Hills, Minneapota, said that he owns property just north of the Ode property. He noted that the county plan shows that his property is planned to continue as agricultural land. He, however, would like to develop his property and approval of this request would place a dairy right next to his development.

Kristie Holm, 26609 Tucker Drive, questioned whether there is an existing CAFO on the subject property. She stated that there are a number of people who have lived in the area for many years and say that the animals have not been kept there the whole time. She also claimed that this did not meet the definition of a CAFO because there were parts of the farmstead that had vegetation. She questioned whether the operation should be allowed to double or triple.

Linda Kielman, 48209 265th Street, stated that she drives by the site everyday and that she has never seen any more than 20 cows.

R.J. Wright, 48198 267th Street, questioned when the city would get sewer to the Iverson Crossing Subdivision. It was noted that this would not occur in the foreseeable future.

Matt Staab, 48206 265th Street, questioned whether the petitioner's met the requirements for the CAFO application.

Todd Egge, 48285 Creekview Circle, stated that he does not have a issue with the dairy. He was given the opportunity to live in the country, but that doesn't give him the right to affect the existing farmers.

Ray Grimes, 26612 481st Avenue, noted that there is a creek that flows off the farm ground by the Ode property and down to the river. He questioned whether manure could flow down that stream to the river.

Bob Ode, 48176 266th Street, noted that he had lived for 50 years at the site. They used to raise 2000 head of hogs on the site and never had one complaint about manure. He noted that the Bluffs development at Brandon is being developed very near an existing dairy. He stated that farmers should be able to make a living.

Gordy Swanson, Chief Deputy Attorney for the States Attorney office noted that the definition of a CAFO which states that there can be no vegetation in a CAFO does not preclude vegetation anywhere on the property, just in the area where the animals are confined. He noted that the Planning Commission has the authority to require added details to a plan.

Commissioner Bunde noted that the proposed operation meets the criteria for setbacks from a residence. She acknowledged that the site is over a WSPA, but that protections are being put in place. She noted that the current operation does meet the definition of a CAFO.

Commissioner Cypher noted that the proposed requirements would be good for the surrounding area. He said that there are houses in the area, but that there is still land that needs to be farmed. He said that the proposed manure handling system with the concrete storage, would provide additional protection for the WSPA. He also said that the state permit requirements are very stringent.

Commissioner Hajek noted that the petitioner can do some things now that will be improved if their application is approved. She said that they had gone through the required hoops and are entitled to conduct their business. She noted that the dead animal disposal plan and pest control plan should be tightened up.

Commissioner Steinhauer noted that, from a water quality standpoint, the proposed plan will improve the situation.

A motion was made by Rogen and seconded by O'Hara to approve the conditional use permit with the proposed conditions. The motion passed unanimously.

ITEM 17. ZONING ORDINANCE TEXT AMENDMENTS – to amend those portions of the Minnehaha County Ordinance pertaining to application and permit fees.

Report by: Scott Anderson

Staff Analysis

Staff is proposing a fee increase for Temporary Use Permits, Conditional Use Permits, Variances and Appeals, Zoning Permits and Planned Developments. The proposed increase in fees is to better reflect the actual cost incurred by the County for the processing of applications. While it is impossible to give an exact amount each submittal costs to process, the County incurs the costs of processing the application, site visits and research, mailing notices, preparation of Planning Commission packets, staff overtime for meetings, and archiving the submittal. The amount currently collected for each submittal does not cover the actual cost incurred by the County.

The proposed fees were based on similar fees charged by the City of Sioux Falls. It should be noted that other counties in South Dakota, such as Pennington and Lawrence Counties, charge significantly more for identical requests within their jurisdictions.

Staff recommends **approval** of the attached Amendment to the Minnehaha County Zoning Ordinance.

A motion was made by Steinhauer and seconded by Cypher to defer consideration until the September 27, 2005 meeting to allow staff time to provide an analysis of the county costs associated with various permits and the fees charged for those fees. The motion passed unanimously.

ORDINANCE MC16-

AN ORDINANCE AMENDING THE 1990 REVISED ZONING ORDINANCE FOR MINNEHAHA COUNTY BY REVISING TEMPORARY USE PERMITS AND FILING FEES APPLICABLE TO APPLICATIONS.

BE IT ORDAINED BY MINNEHAHA COUNTY, SOUTH DAKOTA:

That Ordinance MC16-90, the 1990 Revised Zoning Ordinance for Minnehaha County is hereby amended as follows:

Section 1: That Article 12.00 is hereby amended to read:

12.11 TEMPORARY USES (H) Fees. A fee of ~~\$50.00~~ 250.00 shall accompany the application for a temporary use permit.

Section 2: That Article 24.00 is hereby amended to read:

24.02 CHANGE OF ZONE. A fee of ~~\$175.00~~ 350.00 shall be charged for filing an application to change the zoning classification of property, except to the Planned Development District. If any use, for which a rezoning is required, is commenced prior to the application for a rezoning, the application fee shall be double the regular fee.

24.05 CONDITIONAL USE. A fee of ~~\$100.00~~ 250.00 shall be charged for filing an application for a conditional use permit in any district. If any use, for which a conditional use permit is required, is commenced prior to the application for a conditional use permit, the application fee shall be double the regular fee.

24.06 BOARD OF ADJUSTMENT. A fee of ~~\$50.00~~ 250.00 shall be charged for filing ~~an~~ a Variance application ~~for~~ or an appeal to the Zoning Board of Adjustment.

24.07 ZONING PERMIT. A fee of ~~\$20.00~~ 50.00 shall be charged for all zoning permits not requiring a building permit fee.

24.08 PLANNED DEVELOPMENT DISTRICT. A fee of ~~\$175.00~~ 350.00 plus ~~\$25.00~~ 50.00 for each subarea shall be charged for the filing of an application to change to the Planned Development District. If any use, for which a rezoning is required, is commenced prior to the application for a rezoning, the application fee shall be double the regular fee.

Adopted this _____, 2005.

MINNEHAHA COUNTY

Chair, Board of County Commissioners

ATTEST:

County Auditor

ITEM 18. SUBDIVISION ORDINANCE TEXT AMENDMENTS – to amend those portions of the Minnehaha County Subdivision Ordinance pertaining to platting fees.

Report by: Scott Anderson

Staff Analysis

Staff is proposing an increase in the application fee for plats. The proposed increase in fees is to better reflect the actual costs incurred by the County for the processing of applications. Each plat has to be processed by a Planner, then reviewed and signed by the Planning Director. The current fee of \$20.00 plus \$5.00 per lot does not cover the actual costs involved in the processing and review. In addition, typically each plat approved requires additional county services such as highway maintenance and law enforcement.

The proposed fees were based on similar fees charged by the City of Sioux Falls. It should be noted that other counties in South Dakota, such as Pennington and Lawrence Counties, charge significantly more for identical requests within their jurisdictions.

Staff recommended approval of the attached Amendment to the Minnehaha County Subdivision Regulations.

A motion was made by Steinhauer and seconded by Cypher to defer consideration until the September 27, 2005 meeting to allow staff time to provide an analysis of the county costs associated with various permits and the fees charged for those fees. The motion passed unanimously.

ORDINANCE MC23-

AN ORDINANCE AMENDING THE 1993 REVISED SUBDIVISION ORDINANCE FOR MINNEHAHA COUNTY BY REVISING PLAT FILING FEES.

BE IT ORDAINED BY MINNEHAHA COUNTY, SOUTH DAKOTA:

That Ordinance MC23-93, the 1993 Revised Subdivision Ordinance for Minnehaha County is hereby amended as follows:

Section 1: That Section 3.00 is hereby amended to read as follows:

3.03 C) Filing Fee

The developer shall pay to the Planning Department a fee in the amount of ~~\$20.00~~ 250.00 for the plat plus ~~\$5.00~~ 25.00 for each lot shown on the plat or replat. Prior to release of the plat, the developer shall also pay for the cost of all road signs as specified in Section 8.01(C).

Adopted this _____, 2005.

BOARD OF COUNTY COMMISSIONERS

Chairman

ATTEST:

County Auditor