

**MINUTES OF THE JOINT MEETING
MINNEHAHA COUNTY & SIOUX FALLS PLANNING COMMISSIONS
August 22, 2005**

A joint meeting of the County and City Planning Commissions 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.

CITY PLANNING COMMISSION MEMBERS PRESENT: Dan Costello, Meredith Larson, Anita Wetsch, and David VanVeldhuizen.

STAFF PRESENT: Scott Anderson, and Phil Kappen - County; Steve Randall - City

The County Planning Commission was chaired by Don South. City Planning Commission Chair Anita Wetsch presided over the meeting.

APPROVAL OF THE CONSENT AGENDA

There being no objections from the Planning Commission or the audience, a motion was made for the County by Cypher and seconded by O'Hara to approve the consent agenda. The motion passed unanimously. Same motion for the City by VanVeldhuizen and seconded by Costello. The motion passed unanimously.

ITEM 1. APPROVAL of the June 27, 2005 minutes.

Motion for the County by Cypher and seconded by O'Hara to approve the minutes. The motion passed unanimously. Same motion for the City by VanVeldhuizen and seconded by Costello. The motion passed unanimously.

ITEM 2. CONDITIONAL USE PERMIT #05-68 to allow a wood working shop.

Legal Description - Tract 1 Peterson's Tracts SE1/4 NE1/4 in Section 25-T102N-R49W

Location - 26035 478th Ave., 1/2 mile northeast of Sioux Falls

Petitioner / Owner - Sherwin DeWitt / Brad Gullickson

Present zoning - C Commercial

Existing Land Use - Commercial

Parcel Size - 1 Acre

Report by: Pat Herman

Staff Analysis

The property is located in a commercial area in the northwest quadrant of the EROS exit from I-90. Land use to the north is agricultural and there are commercial uses to the east, west and south. The property is zoned C Commercial and shown on the 2015 Growth Plan for commercial use. In March 2004 the Planning Commissions approved a conditional use permit to allow vehicle sales on this site. That use has now ceased.

The petitioner is applying for a conditional use permit to allow a woodworking shop. Currently the business is a one man operation. There will be limited customer visits to the site.

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 should not impact the existing businesses with observance of the conditions of

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

The proposed use would be compatible with the existing land uses which include fireworks stands and bulk oil storage.

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

Access to the site is from County Highway 121. There is a shared driveway to the site, which is hard surfaced. The building is served by a holding tank which is sufficient for this type of commercial use.

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

The previous tenant hard surfaced the driving and parking areas for this site. The area available for parking exceeds the required six parking spaces needed for this business.

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 no residential dwellings in close proximity to this site and the woodworking shop should not constitute a nuisance to the existing commercial uses. Any outside lighting should be designed to prevent any spillage on light onto other properties.

The submitted site plan does not show any outside storage area and the petitioner does not need such storage at this time. Should the petitioner require outside storage in the future, a revised site plan should be submitted for approval by the Planning Department and the storage area will need to be fenced from public view. Staffs feel an outside storage area is an appropriate use for the area.

The County Building Inspector has been working with the petitioner on retrofitting the building to meet the building code for the storage of flammable liquids and for ventilation. The business should not be allowed to start operation until the Building Inspector has inspected and approved the building for this use.

Sign size is regulated by the Zoning Ordinance and a building permit is required prior to placing any signs on the site.

Staffs found that the proposed use was in conformance with the 2015 Growth Plan and staffs recommended approval of conditional use permit #05-68 with the following conditions:

- 1) The property shall conform to the submitted site plan dated 7/20/2005.
- 2) The woodworking business shall not commence operation until approval is given by the County Building Inspector.
- 3) Storage of flammable liquids shall be in accordance with the fire code.
- 4) A UL Rated spray booth must be used if spraying is done with an oil based stain.
- 5) A ventilation plan, addressing the collection and storage of dust, must be approved by the County Building Inspector.
- 6) The saw area must be separated from the remainder of the building by a one hour fire wall.
- 7) A plan for egress from the building must be approved by the County Building Inspector.
- 8) Any outdoor lighting shall be a shoebox style and prevent any light spillage off the property.
- 9) A revised site plan shall be submitted for approval by the County Planning Director prior to any outside storage. Any outside storage shall be screened from public view by a minimum 6-foot high screening fence. The fence shall be maintained with a minimum 90% opacity over the full height of the fence and be of earth toned colors.

- 10) The applicant shall have a Sales Tax License as required by the South Dakota Department of Revenue.
- 11) The applicant shall notify Emergency Management of the location of the flammable liquids.

Based on the staff report, a motion for the County was made by Cypher and seconded by O'Hara to approve the conditional use permit with the conditions as stated. The motion passed unanimously. Same motion for the City by VanVeldhuizen and seconded by Costello. The motion passed unanimously.

ITEM 3 . CONDITIONAL USE PERMIT #05-69 to allow the stabling of two horses.

Legal Description - Tract 5 NW1/4 of Section 19-T101N-R48W

Location - 504 S. Powder House Rd., east edge of Sioux Falls

Petitioner / Owner - Teri Karels / Dakota Dirt 2

Present zoning - RR Rural Residential

Existing Land Use - Residential

Parcel Size - 1.87 Acres

Report by: Scott Anderson

Staff Analysis

The applicant is requesting to stable two (2) horses on the subject property. One horse is a stallion, while the other is a pregnant mare. The subject property is located on the edge of Sioux Falls on the east side of Powder House Road. The Zoning Ordinance requires the approval of a Conditional Use Permit for the stabling of horses on property zoned Rural Residential, provided the stabling is for personal use and not used as a commercial operation on the property.

Similar requests, CUP #98-66 and #01-27, were approved by the Joint Planning Commissions within the Sioux Falls Growth Area in 1998 at 1301 S. Six Mile Road and at 8109 West 46th Street. The approval of these conditional use permits also required the horses to be removed once the property was annexed into Sioux Falls.

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 placement of horses on the property should not impact the uses permitted in the area. Likewise, with proper maintenance, horses should not decrease the property values.

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

Two horses should not effect normal and orderly development of the surrounding property. It should be noted that this property is located adjacent to the Sioux Falls corporate limits. Staff contacted the Sioux Falls Planning Department to discuss this item. They expressed concerns with flies for current and future residents in the area and allowing a non-conforming use once the property is annexed into the city limits. Staff has addressed this by including a recommended condition of approval that requires the horses to be removed upon annexation of the subject property into the Sioux Falls corporate limits. The owner of the horses has agrees to this condition. Likewise, the owner will be made to keep the property clean of excessive horse manure to mitigate flies and odors as much as possible.

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

The lot has direct access off of Powder House Road. No further improvements are needed for the site.

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

There were two off-street parking spaces provided for the existing single-family residence. This meets the requirement of the Zoning Ordinance.

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.

Without proper maintenance, the stabling of two horses on the property could lead to odor and flies. Annexation of this area is likely in the future, which would bring a non-conforming use into the city limits. Staff has attempted to reduce the likelihood of any nuisances with the recommended conditions of approval and has addressed the possible non-conformity by requiring the horses to be removed upon annexation.

Staffs recommended approval of Conditional Use Permit #05-69 to allow the stabling of two (2) horses with the following conditions.

- 1) A maximum of two (2) horses owned by the resident of the property shall be allowed.
- 2) The horses shall be removed if the property is approved for future development or annexed into the Sioux Falls corporate limits.
- 3) That all manure be removed on a regular basis in order to reduce flies and odor.

Public Testimony

The petitioner, Teri Karels, was present and noted that they have lived in the house for one month. When they moved into the house, the weeds were taller than she is. They have repaired the house, removed the weeds, cleaned up junk and generally improved the appearance of the property.

The stud will be kept behind the barn and fenced in by a fence of steel panels. The mare and her foal are being pastured away from the site this summer and the foal will be sold before the mare is moved back to the site in the winter.

To control flies they use fly bait pellets. The stud also receives feed additives to help control flies. Access to the property is via an easement across the property to the south.

Marcella Shafer, 600 S. Powder House Road, stated that she lives in the house to the south of the subject property. They have lived there for thirty years and a neighbor once had a horse on the neighboring property and that it was terrible. She said that the smell of the horse will make it so that they cannot go outside. She also stated that the barn on the property is only a shed.

Michelle Black, 1100 S. Glendale Avenue, Sioux Falls, testified that she owns 2 horses that she boards in Brandon and that she has no fly problems. She also noted that Rainbow Stables, with over a hundred horses, is across the road.

Grant Houwman, 1704 S. Main Avenue, Sioux Falls, noted that he is one of the owners of the property. They have cleaned up the property in order to be better neighbors. He said that the tenant is aware that she needs to be very careful with how she manages the property.

Ryan Postman, 704 S. Powder House Road, noted that the entire property is a grove of trees. He questioned what type of fence would be used and noted that disposal of the manure was a concern.

Based on the staff report, public testimony and on the fact that there would only be two horses and that there was a stable with over 100 horses across the road, a motion was made for the County by Cypher and seconded by Bunde to approve the conditional use permit with the proposed conditions. The motion passed unanimously. Same motion for the City by Van

Veldhuizen and seconded by Costello. The motion passed unanimously.

ITEM 4 . REVIEW OF CONDITIONAL USE PERMIT #86-37 for a fireworks business.

Legal Description - N1/2 (EX 2 H-1 H-2 & EX PT NE S OF HY 90 & EX N 640'

W 300' NW 1/4) in Section 30-T102N-R48W

Location - 26036 478th Ave., ½ mile northeast of Sioux Falls

Petitioner / Owner - Ray & Audrey Aljets

Present zoning - Commercial and A-1 Agricultural

Existing Land Use - Commercial

Parcel Size - 259.45 Acres

Report by: Phil Kappen

Staff Analysis

A longer-term fireworks sales business was approved here in March of 1987 (CUP #86-37). A temporary (not to exceed 9 days) fireworks stand had been operated on the site for the preceding three seasons. The 1987 permit was approved with the following conditions:

1. The business shall be operated from a permanent building.
2. No advertising devices including banners and flags shall be used either on or off site except for signs in accordance with the zoning regulations.
3. No blinking or rotating lights shall be used.
4. The building shall not be located within the power line easement.
5. A bathroom shall be provided inside the building.

The first violation of the conditional use permit conditions occurred in July of 1987. A letter dated July 22, 1987 from Dave Queal (former Minnehaha County Planning Director) informed the operator's agent that the property was in violation of the number and size of allowed signs and that signs had been placed on the property without first obtaining the required permits. There have been added contacts between the fireworks business operator and the Minnehaha County Planning Department regarding the sign violations on the property. These have consistently related to the number and size of the signs on the property and the failure to obtain permits prior to erecting signs.

In October of 2004 staff responded to a complaint about the number and size of signs on the property. In checking the site staff found that a total of 636 square feet of signs were in place on the building. When the CUP was approved the zoning ordinance allowed 1 square foot of building sign per foot of building frontage. Since the building has 70 feet of frontage that would have allowed 70 square feet of building sign. The ordinance has since been amended to allow 2 square feet of building sign per foot of building frontage. That means that the current ordinance allows 140 square feet of building signs. This means that there were 496 square feet of excess building signs on the property. In checking the site on August 8, 2005 we noted that the 160 square-foot sign on the east side of the building had been removed. Therefore, the property remains in violation with 336 square feet of excess building sign or 340 percent of the allowed building signage.

In addition to building signs, the ordinance provided for free standing signs on the property of up to 1 square foot per foot of lot frontage with a maximum of 200 square feet. The fireworks property has 300 feet of lot frontage which would allow the maximum of 200 square feet. The property currently has 192 square feet of freestanding signage and is, therefore, in compliance regarding the freestanding signage on the property.

Staff recommended that, since the property owner had shown an action of good faith by removing one sign so far, and since the business will complete their season in early September, that this item be deferred to the September Planning Commission meeting.

Public Testimony

Don Lantis, operator of the fireworks business, stated that he had been told by the county attorney to leave the signs up.

Gordy Swanson, Chief Civil Attorney for the Minnehaha County States Attorney office noted that he had been called down to the Auditor's office to speak with Mr. Lantis. He noted that Mr. Lantis told him that the signs were up prior to the zoning ordinance. Mr. Swanson had told Mr. Lantis that, if the signs were up prior to the ordinance that they might be grandfathered. When he was back at his office Mr. Swanson discovered that there was a previous zoning ordinance that would have precluded the place of that number of signs, therefore, the signs were not grandfathered.

Members of the Planning Commission expressed concern that the violation had continued for so many years. Based on the length of time in which the violation had occurred and the fact that the property owner had been notified of the violation on multiple occasions a motion was made for the County by Steinhauer and seconded by O'Hara to revoke the conditional use permit effective in 30 days unless the illegal signs were removed and the property brought into compliance by that time. The motion passed unanimously. Same motion for the City by Costello and seconded by Larson. The motion passed unanimously.

ITEM 5. REVIEW OF CONDITIONAL USE PERMIT #89-04 for a fireworks business.

Legal Description - Tract 5 Peterson's Tracts SE1/4 NE1/4 in Section 25-T102N-R49W

General Information

Location -	26045 478 th Ave., ½ mile northeast of Sioux Falls
Petitioner / Owner-	American Properties LLC
Present zoning -	C Commercial
Existing Land Use -	Commercial
Parcel Size -	1.72

Report by: Phil Kappen

Staff Analysis

A longer-term fireworks sales business was approved here in February of 1989 (CUP #89-4). A temporary (not to exceed 9 days) fireworks stand had been operated on the site since 1984. The 1989 permit was approved with the following conditions:

1. The existing driveway entering onto Highway 121 at an acute angle be removed.
2. One new driveway be allowed with a minimum spacing of 80 feet from the Interstate right-of-way.

The first violation of the zoning ordinance sign provisions occurred in July of 1987 prior to the approval of the existing CUP. A letter dated July 22, 1987 from Dave Queal (former Minnehaha County Planning Director) informed the operator agent that the property was in violation of the number and size of allowed signs and that signs had been placed on the property without first obtaining the required permits. There have been added contacts between the fireworks business operator and the Minnehaha County Planning Department regarding the sign violations on the property. These have consistently related to the number and size of the signs on the property and the failure to obtain permits prior to erecting signs.

In October of 2004 staff responded to a complaint about the number and size of signs on the property. In checking the site staff found that a total of 552 square feet of signs were in place on

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the building. When the CUP was approved the zoning ordinance allowed 1 square foot of building sign per foot of building frontage. Since the building has 72 feet of frontage that would have allowed 72 square feet of building sign. The ordinance has since been amended to allow 2 square feet of building sign per foot of building frontage. That means that the current ordinance allows 144 square feet of building signs. In checking the site on August 8, 2005 we noted that none of the building signs had been removed. Therefore, the property remains in violation with 408 square feet of excess building sign or 283 percent of the allowed building signage.

In addition to building signs, the ordinance provided for free standing signs on the property of up to 1 square foot per foot of lot frontage with a maximum of 200 square feet. The fireworks property has 378 feet of lot frontage which would allow the maximum of 200 square feet. The property currently has 336 square feet of freestanding signage and, therefore, exceeds the allowable square footage of free-standing signs by 136 square feet.

A representative of the property owner applied in 2004 to expand the firework sales use on this property. At that time staffs noted the lack of compliance regarding the square footage of signs on the property. That permit was denied as the application had been deferred twice and the petitioner had failed to appear at either meeting.

Staff noted that at least one sign had already been removed in a good faith effort to address the violations. Staff, therefore, recommended that, since the property owner had shown an action of good faith by removing the sign, and since the business will complete their season in early September, that this item be deferred to the September Planning Commission meeting.

Public Testimony

Tom Farrell, attorney representing the property owners, noted that they had removed several signs that day. They are also getting estimates from Pride Neon to repair certain signs.

Rachel Broward, current manager of the business, noted that she has removed some signs only to find old signs underneath. She will continue to remove signs.

As with the previous item, members of the Planning Commission expressed concern that the violation had continued for so many years. Based on the length of time in which the violation had occurred and the fact that the property owner had been notified of the violation on multiple occasions a motion was made for the County by Steinhauer and seconded by O'Hara to revoke the conditional use permit effective in 30 days unless the illegal signs were removed and the property brought into compliance by that time. The motion passed unanimously. Same motion for the City by Costello and seconded by Larson. The motion passed unanimously.

ITEM 6. ZONING ORDINANCE TEXT AMENDMENTS – to amend those portions of the Joint Minnehaha County and City of Sioux Falls Zoning 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, Rezoning, Variances and Appeals, Zoning Permits and Planned Development. 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

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 following amendment to the Joint Minnehaha County and City of Dell Rapids Zoning Ordinance.

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.

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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

Public Testimony

Commissioner Steinhauer said that he understood that the fees may have to be raised, but questioned the amount of the increase.

Commissioner Hajek noted that it was responsible government to cover more of the public's costs through use fees.

Commissioner Cypher stated that he agreed with Commissioner Steinhauer.

Commissioner Wetsch noted that the city would likely have little concern over the proposed increase as the city had used similar fees for a period of time.

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 Larson and seconded by VanVeldhuizen. The motion passed unanimously.