

**MINUTES OF THE
MINNEHAHA COUNTY PLANNING COMMISSION
October 24, 2005**

A meeting of the Planning Commission was held on October 24, 2005 at 7:00 p.m. in the Commission Room of the Minnehaha County Administration Building.

COUNTY PLANNING COMMISSION MEMBERS PRESENT: Deb Bunde, Anne Hajek, , Don South, and Wayne Steinhauer.

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

The meeting was chaired by Don South.

APPROVAL OF THE CONSENT AGENDA

There was request that Item 5 be placed on the regular agenda. There being not other changes from the Planning Commission or audience, a motion was made by Bunde and seconded by Steinhauer to approve the consent agenda (Items 5 removed). The motion passed unanimously.

ITEM 1. MINUTES – September 26, 2005.

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

ITEM 2. CONDITIONAL USE PERMIT #05-84 to allow a single family dwelling.

Legal Description – NE1/4 (Ex S3/4 SE1/4NE1/4 & Ex N208.71 E241.71 & Ex Graves 3rd
Addition in Section 18-T101N-R51W
Location - 2 miles west of Wall Lake
Petitioner / Owner- Renee May

General Information

Present zoning - A-1 Agricultural
Existing Land Use - Agricultural
Parcel Size - 116.58 acres

Report by: Phil Kappen

Staff Analysis

The subject property is located west of 461st Avenue northwest of Wall Lake. The surrounding properties are predominantly agricultural with scattered acreages. The petitioner currently own two lots (with a total of 1 building eligibility) and is purchasing a portion of the surrounding property that includes an additional eligibility. The eligibility is available only through a conditional use 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 house would be placed on property adjacent to the existing residential acreage resulting in a development pattern more conducive to continuing the farming on the property. As the property is in an agricultural area, a right-to-farm notice covenant should be required on the property.

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

There is one eligibility remaining in this quarter section. That eligibility remains on land that is not owned by the petitioner. It is unknown where that home would be located; however, that home would require a conditional use permit before a building permit could be issued.

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

The proposed home would access 461st Ave. An existing driveway provides access to the petitioner's current house at 26401 461st Avenue. A plat of the new lot should be required and the plat should show access easement(s) indicating how access to this property will be made. Wastewater would be treated with an on-site system.

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

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 should be no increase of odor, fumes, dust, noise or vibration from the placement of a single-family residence at this site.

Staff found that the proposed home conforms with the basics of density zoning and that the use can be accomplished in a manner that does not inordinately impact surrounding properties. Staff, therefore, recommended approval conditional use permit #05-84 with the following stipulations:

- 1) The lot shall be platted and access easements designated on the plat.
- 2) A right-to-farm notice covenant shall be filed on the property prior to the issuance of a building permit.

Based on the staff report a motion was made by Bunde and seconded by Steinhauer to approve conditional use permit #05-84 with the stated conditions. The motion passed unanimously.

ITEM 3. CONDITIONAL USE PERMIT #05-85 to allow a single family dwelling.

Legal Description – Tract 2 Stearns Addition NE1/4 in Section 14-T102N-R51W
Location - 46477 258th St. 1 mile northeast of Hartford
Petitioner / Owner- Joel Stearns

General Information

Present zoning - A-1 Agricultural
Existing Land Use - Agricultural
Parcel Size – 5.41 Acres

Report by: Pat Herman

Staff Analysis

The property is located one mile northeast of Harford. The surrounding land use is agricultural with a few scattered acreages. The NE1/4 has two remaining residential building eligibilities. The first eligibility is permissive, the second requires conditional use permit approval before a house can be constructed.

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 should be no negative impact on the surrounding property values or use. There are no CAFO's in the immediate area, but a right-to-farm notice covenant should be required as this is an agricultural area.

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

Approval of the conditional use permit would be consistent with density zoning by allowing the fourth house to be constructed in this quarter.

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

A plat has been recorded with the Register of Deeds for both of the remaining building eligibilities. The eligibility needing the conditional use permit will be located a quarter mile south of 258th St. (Hwy 130). There is a 30' wide access easement on the plat to provide access to the lot and the driveway has already been constructed. A wastewater system will be used and rural water is in the area.

Staff found the request to be in conformance with density zoning and recommended approval of conditional use permit #05-85 with the following condition:

A right to farm notice should be filed on the deed of the lot prior to the issuance of a building permit.

Based on the staff report a motion was made by Bunde and seconded by Steinhauer to approve conditional use permit #05-85 with the stated condition. The motion passed unanimously.

ITEM 4. CONDITIONAL USE PERMIT #05-86 to allow a single family dwelling.

Legal Description - S1/2 SE1/4 (Ex. S614' E1773.62' & Ex. N 15 A) in Section 29-T103N-R52W

Location - 3 miles northwest of Humboldt

Petitioner / Owner- James Buss / Severin & Shirley Drobny

General Information

Present zoning - A-1 Agricultural

Existing Land Use - Agricultural

Parcel Size – 39.95 Acres

Report by: Pat Herman

Staff Analysis

This is a request to allow a single family dwelling unit. This 39.95 acre lot was created between June 1979, which was the date for a lot of record to be established, and September 1988 when density zoning was enacted. All parcels created during this time frame require conditional use permit approval before a house can be constructed.

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.

This is a highly agricultural area where very few of the available residential eligibilities have been used. There is a small existing feed lot (approx. 30 head of cattle) a ½ mile to the northwest. The operator has been notified of this application. A right-to-farm notice covenant should be required. Staff has provided the petitioner with a modified version of the covenant which includes the location and size of the feed lot as well language pertaining to the operations potential to expand.

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

Approval of this conditional use permit would not increase the amount of residences which would be allowed by density zoning.

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

Access will be from a gravel township road. A wastewater system will be required.

Staff found the request to be in conformance with comprehensive plan and comparable to the residential allowance of density zoning and recommended approval of conditional use permit #05-86 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 Clear Lake Township for the driveway approach prior to the issuance of a building permit.

Based on the staff report a motion was made by Bunde and seconded by Steinhauer to approve conditional use permit #05-86 with the stated conditions. The motion passed unanimously.

ITEM 5. CONDITIONAL USE PERMIT #05-87 to allow a Class One Major Home Occupation (mail order gun sales)

Legal Description - S669' W469' (Ex. H-1) S1/2 SW1/4 in Section 6-T104N-R51W

Location - 46004 245th St. 4 miles northwest of Colton

Petitioner / Owner- Karl Fedeler

Item 5 was placed on the regular agenda.

ITEM 6. CONDITIONAL USE PERMIT #05-89 to transfer one residential building eligibility.

From – NE1/4 SW1/4 of Section 22-T102N-R48W

To – S 60 Acres (Ex. Water Tower Addn. & Rovang's 2nd Addn.) in Section 21-T102N-

R48W

Location - 1 mile west of Corson
Petitioner / Owner- Ordell Rovang

General Information

Present zoning - A-1 Agricultural
Existing Land Use - Agriculture
Parcel Size – 60 Acres

Report by: Pat Herman

Staff Analysis

The site is located one mile west of Corson. The surrounding land use is agricultural, rural acreages, and industrial development in Corson. The receiving parcel was originally 60 acres and had one building eligibility which has been developed. There is a small subdivision of residential homes (six) just south of the receiving parcel.

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

Transfer of the eligibility abides with the principles of density zoning by preserving the prime crop ground and clustering the single family dwellings. The new dwelling would be built in an area with established rural acreages and should not impact the current use of the surrounding properties.

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

The transfer of the building eligibility should not effect the development of the vacant property. The land immediately surrounding where the house will be constructed is not farmed and will help to somewhat provide a buffer from the area farming practices.

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

A wastewater system and rural water will be utilized. Access will be from a township gravel road and Brandon Township will need to approve any new driveway approach.

Staff found the request to be in conformance with density zoning and recommended approval of conditional use permit #05-89 with the following conditions:

- 1) The lot shall be platted and a right-to-farm notice covenant filed on the deed on the lot prior to the issuance of a building permit.
- 2) Brandon Township shall approve the driveway approach.

Based on the staff report a motion was made by Bunde and seconded by Steinhauer to approve conditional use permit #05-89 with the stated conditions. The motion passed unanimously.

ITEM 7. CONDITIONAL USE PERMIT #05-91to transfer one residential building eligibility.

From – NW1/4 SE1/4 of Section 31-T103N-R47W

To – property to be platted as Tract 2 Nussbaum’s Addn. NE1/4 SE1/4 in Section 31-T103N-R47W

Location - 1.5 miles south of Garretson
Petitioner / Owner- John Nussbaum

General Information

Present zoning - A-1 Agricultural
Existing Land Use - Residential
Parcel Size – 8.0 Acres

Report by: Pat Herman

Staff Analysis

The property is located 1.5 miles south of Garretson. There are some existing rural acreages but the

predominate land use is agriculture. The petitioner wishes to transfer one residential building eligibility from an interior quarter-quarter to a location adjacent to the township road. The petitioner has submitted a plat which shows the lot will be 8 acres in size.

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 transfer should have no effect on the existing residences in the area. The eligibility would be transferred from crop ground to an area of unused agricultural land. However, the transfer would move the eligibility closer to the Bly Brothers swine finishing facility. The finishing operation, which would be a ½ mile east of the new residence, was approved by conditional use permit in 1997 to allow 2400 animal units (960 hogs). There was a lot of opposition from the neighborhood during the public hearing, but the Planning Department has not received any complaints about the finishing operation since it began operation. Staff spoke with Bill Bly and he was opposed to allowing another residence in the area, whether it was transferred or not. He encourage the County to revisit the issue of allowing housing within agricultural districts.

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

A new dwelling unit could negatively impact any expansion plans for the finishing operation by adding another source of opposition to such farming practices. But the new residence could be built without any action by the Planning Commission if the eligibility were not transferred and the house would still be within a mile of the operation. There are existing houses that are closer to the operation and any expansion of the finishing operation would require a conditional use permit.

On the questionnaire portion of the application, the petitioner indicated that there were no CAFO's within a mile of this site. Staff contacted the person who will be buying the property, and he indicated that petitioner had not told him about the finishing operation. Staff explained that the operation could expand in the future and that County was supportive of agricultural uses. The potential for odor, especially during the time the waste is knifed into the fields, was also discussed. The buyer stated he was going to revisit the area.

A right-to-farm notice covenant must be placed on the deed of the property. Staff has provided the petitioner with a modified version of the covenant which includes the location and size of the finishing operation as well language pertaining to the operations expansion.

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

Access will be from a gravel township road and the petitioner indicated there is an existing driveway which will be used. Palisade Township will need to approve any new driveway approach. A wastewater system is required.

Staff found the request to be in conformance with density zoning and recommended approval of conditional use permit #05-91 with the following conditions:

- 1) The lot shall be platted and right-to-farm notice covenant filed on the deed of the lot prior to the issuance of a building permit.
- 2) Palisade Township shall approve any new driveway approach.

Based on the staff report a motion was made by Bunde and seconded by Steinhauer to approve conditional use permit #05-91 with the stated conditions. The motion passed unanimously.

ITEM 8. CONDITIONAL USE PERMIT #05-92 to allow automotive repair.

Legal Description - Lot 2 block 3 Brower Addition SW1/4 in Section 27-
T102N-R51W
Location - 46307 Jeffery St. South edge of Hartford
Petitioner / Owner-Tom Foley / Allen Stockwell

General Information

Present zoning - I-1 Light Industrial
Existing Land Use - Commercial/Industrial
Parcel Size – 1 Acre

Report by: Phil Kappen

Staff Analysis

The subject property is located in the Brower Subdivision at the southeast corner of the I-90/Hartford exit. Properties to the north, east and west are commercial. To the south is a residential acreage which is separated from the commercial area by a vegetative buffer of trees and shrubs. The petitioner plans to operate a repair garage in the center bay of then five-bay building. There would be no outside storage for the use.

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 should be no impact on the surrounding properties. The use will be contained within an existing commercial building and no outside storage is planned.

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

The area is zoned for commercial uses. This is a type of use that is commonly found in commercial areas.

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

Access to the property is via Jeffery Street. The property is served by a septic system. There are floor drains in the building, however, they are not connected to the wastewater system and have been plugged. The petitioner will operate a dry shop.

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

There is adequate off-street parking provided on the property.

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.

All activities will be contained within the building, there should be little problem with nuisance odors, dust, noise or vibration. Any signage shall be in conformance with the requirements of the zoning ordinance.

Staff found the proposed use to be consistent with the types of uses found in commercially-zoned areas and that the use can be conducted in a manner that will prevent impacts on neighboring properties. Staff, therefore, recommends approval conditional use permit #05-92 with the following stipulations:

- 1) The use shall be completely contained within the building, no outside storage of parts, materials, or damaged vehicles shall be allowed.
- 2) The use shall operate as a dry shop with no use of the floor drain in the building.

Based on the staff report a motion was made by Bunde and seconded by Steinhauer to approve conditional use permit #05-92 with the stated conditions. The motion passed unanimously.

ITEM 9. CONDITIONAL USE PERMIT #05-93 to allow two single family residences.

Legal Description - SE1/4 (ex. N687' E634.07' & Ex. Tr. 1 Millers Addn.) in Section 35-
T101N-R51W
Location - 3 miles west of Sioux Falls
Petitioner / Owner- Marvin Miller

General Information

Present zoning - A-1 Agricultural
Existing Land Use - Agriculture
Parcel Size – 107.32 Acres

Report by: Pat Herman

Staff Analysis

This is a request to allow two single family dwellings on a 100+ acre parcel. A conditional use permit is required as the parcel was recorded with the Register of Deeds prior to density zoning but after the date for established lots of record. These are the final eligibilities available in this quarter.

The property is located three miles west of Sioux Falls and Lincoln County is a ¼ mile to the south. The sanitary landfill lies to the west of this property. There are five single family dwellings that align 485th Avenue. The petitioner is proposed to add two more acreages directly to the south of those existing dwellings. The size of the lots will be determined at the time of sale.

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 addition of two houses should have no impact on the permitted uses in the area. The NE1/4 of this same section is predominately large acreages (10) and to the northeast of this site is a six lot subdivision which was approved in 2002. There is still some viable crop ground in the area and a right-to-farm notice should be required.

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

This request would not exceed the number of dwelling units allowed per quarter under density zoning.

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

Access will be from 465th Ave., a gravel township road. The petitioner has met with Wall Lake Township and the board is amenable to allowing two separate driveways. The area is flat so site distance should not be any problem. The dwellings will be equipped with wastewater systems and rural water.

Staff found the request to in conformance with comprehensive plan and is comparable to the residential allowance of density zoning and recommended approval of conditional use permit #05-93 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 Wall Lake Township for the driveway approaches prior to the issuance of a building permit.

Based on the staff report a motion was made by Bunde and seconded by Steinhauer to approve conditional use permit #05-93 with the stated conditions. The motion passed unanimously.

ITEM 10. CONDITIONAL USE PERMIT #05-88 to expand an existing CAFO.

Legal Description - W1254' of W1/2 (Ex S1320') and N2381.54' (Ex H-1) E1/2 W1/2 in
Section 30-T104N-R51W
Location - 46037 248th St. 4 miles west of Colton
Petitioner / Owner- Rodney Van Der Vliet

General Information

Present zoning - A-1 Agricultural
Existing Land Use - Agriculture
Parcel Size – 169 Acres

Report by: Phil Kappen

Staff Analysis

The subject property is located along 248th Street, a county Highway (CO Hwy 110). The surrounding properties are agricultural with scattered acreages. The petitioner currently has 200 animal units (200 cattle) in an open feedlot. He proposes to construct a 75' by 240' cattle feeding building on the northwest edge of his farmstead that would hold an additional 475 head of cattle for a total of 675 animal units.

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 operation would be a class C CAFO. The setback criteria in the ordinance for the facility would be 1540 feet. There are only two residences within that 1540' distance and the owners of those homes have signed waivers of the criteria distance. The existing feedlot area has trees on the north and west sides that aid in the dispersal of potential odors. The manure from the expansion would be held under the building roof on the west end of the new building. This will prevent rain water from mixing with the waste and increasing the amount of waste which must be managed.

Staff has sent out letters of notification to all property owners within one-half mile of the proposed facility. The letters informed them of the time and date 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 zoned agricultural and is planned for continued agricultural use in the Minnehaha County Comprehensive plan. The closest water source protection area is approximately 3.5 miles to the southwest. The proposed use should have little impact on the planned future development of the area.

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

Drainage on the site is to the west and south, but, as the manure will be maintained under the roof, there should be no adverse impact from the proposed expansion to any surface waters in that direction.

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

There is ample space on the property for all loading and parking requirements. No on-street parking or loading 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.

By keeping the cattle and their waste within the building, water can better be managed and kept from mixing with the waste. The drier waste will result in reduced odor and will more readily crust over to reduce potential odors. The petitioner has indicated his willingness to plant additional trees around the expansion facility in order to better provide a mixing of the air and a subsequent further reduction in odors. It should be noted, however, that the two homes within the criteria setback area have both signed waivers.

Staff found the proposed facility to be the type of use that would be found in an area planned for long-term, continuing agricultural use and that the size of facility can be readily managed to avoid conflicts with neighboring land uses. Staff recommended approval of conditional use permit #05-88 with the following stipulations:

- 1) All operations shall conform to the submitted site plan. Minor changes to the site plan can be submitted to the planning staff for staff approval.
- 2) The petitioner shall obtain approval from the South Dakota Department of Environment and Natural Resources (DENR) for the proposed expansion. Copies of approved plans shall be filed with the Minnehaha County Planning Department.
- 3) The petitioner shall prepare and keep current a nutrient management plan that will govern the use of all waste from the site. The petitioner shall follow the plan and provide a copy of the plan, and of any amendments, to the Minnehaha County Planning Department.

Based on the staff report a motion was made by Bunde and seconded by Steinhauer to approve conditional use permit #05-88 with the stated conditions. The motion passed unanimously.

APPROVAL OF THE REGULAR AGENDA

A motion was made by Bunde and seconded by Steinhauer to recommend approval of the regular agenda with the addition of Item #5. The motion passed unanimously.

ITEM 5. CONDITIONAL USE PERMIT #05-87 to allow a Class One Major Home Occupation

(mail order gun sales)

Legal Description - S669' W469' (Ex. H-1) S1/2 SW1/4 in Section 6-T104N-R51W
Location - 46004 245th St. 4 miles northwest of Colton
Petitioner / Owner- Karl Fedeler

General Information

Present zoning - A-1 Agricultural
Existing Land Use - Residential
Parcel Size – 7.2 Acres

Report by: Scott Anderson

Staff Analysis

The applicant is requesting to operate a class 1 home occupation. The proposed home-based business would be a mail order gun business. The applicant would sell firearms out of the home. Zoning approval by the County is required before the applicant can obtain an ATF (Alcohol, Tobacco & Firearms) license. Customers will visit the property to order and pick up the firearms once they arrive. Due to the low volume of sales, customer visits to the subject property will be limited.

On October 12, 2005, staff conducted a site visit. The subject property has direct access from County Highway 104 or 245th Street, which is a paved, county maintained road. There was adequate sight distance to the east and west. The subject property consists of a single family residence and several older out-buildings. The applicant has indicated that the proposed home occupation will be conducted completely within the existing single-family residence. No external employees will be needed.

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

The proposed home occupation of gun sales as a home occupation should have limited effect on the uses already permitted in the area or property values. The applicant has indicated that traffic to the site should be very limited. Traffic will be limited to those ordering and picking up firearms.

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

The proposed Conditional Use Permit should not impact the agricultural/residential nature of the surrounding properties. The applicant may not change the outside appearance of the residence to indicate any business activity. The proposed home occupation will have minimal impact on the development and improvement of any vacant properties in the area.

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

245th Street provides access to the site. This road is paved and in excellent condition. No new roads will be needed to access the site. All required utilities exist to the single-family residence.

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

The applicant must provide one (1) off-street parking space for the existing single-family residence and should provide two (2) off-street parking spaces in front of the building to be used for the home occupation. Staff's inspection of the site found that 4-6 parking spaces are available.

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

The applicant has indicated that the business conducted on the property will be gun sales. If the home occupation is conducted within an enclosed structure located on the property and the traffic to and from the site is limited, the home occupation should create little of the above-listed elements in amounts that would constitute a nuisance.

Staff recommended approval of Conditional Use Permit #05-87 to allow gun sales as a Class 1 home occupation with the following conditions:

- 1) That no alteration to any building shall indicate from the exterior that the building is being utilized in whole or in part for any purpose other than a residential or agricultural use.
- 2) That the applicant be limited to one (1) non-illuminated wall sign, which shall not exceed

- two (2) square feet and one (1) non-illuminated free-stranding sign, which shall not exceed four (4) square feet each in area for the home occupation. A Sign Permit shall be obtained prior to the installation of any sign.
- 3) That the employees of the home occupation shall be limited to residents of the dwelling and up to two (2) non-resident employees, not to exceed four (4) employees on site.
 - 4) That no stock or trade shall be displayed or stored outside the enclosed structures located on the property.
 - 5) That a minimum of three (3) off-street parking spaces be provided. Each parking space shall measure at least nine (9) feet by eighteen (18) feet and shall be kept in a dust free manner.
 - 6) That the home occupation be limited to gun sales. Any expansion beyond this will require the Conditional Use Permit to be reviewed.
 - 7) That the applicant obtain a Sales Tax License.

Public Testimony

Commissioner Steinhauer questioned whether the business would expand to on-site sales. Commissioner Hajek raised concerns over security issues of storing guns at an isolated property.

The petitioner, Karl Fedeler stated that his business was mail order only. He used to be licensed to do this but had let the license expire. Guns would be delivered one at a time so at the most he might have two guns waiting to be picked up. He is planning to have a gun safe and has never had any problems in the past.

Gordy Swanson, Deputy State's Attorney, stated that the Commission could require that the guns be under lock and key but it was a question of how far the Commission wanted to go in overseeing this operation. Mr. Swanson did not feel County liability was an issue.

Commissioner Bunde stated that any house in the county could be broken into and there could easily be more guns in those houses than what the petitioner was proposing. She didn't feel that one or two guns would be an issue. Commissioner Steinhauer concurred.

Based on the staff report and public testimony a motion was made by Steinhauer and seconded by Bunde to approve conditional use permit #05-87 with the conditions as stated. The motion passed unanimously.

Item 11 was deferred from the August 22 & September 26, 2005 meetings.

ITEM 11. 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

General Information

Location -	48473 262 nd 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:

This item was first scheduled for the August Planning Commission meeting. Prior to that meeting, the petitioner requested that the item be deferred to the September meeting. 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 recommended denial of conditional use permit #05-66.

Public Testimony

Mr. Kappen explained that agricultural related businesses, such as a seed business, would be allowed on this site as it is zoned for agricultural uses. If this application is denied staff would work with the petitioner to establish a reasonable time table to relocate the business. Mr. Kappen noted that there was property north of this site that was listed for sale for commercial uses. He called the seller and was told it was being sold on speculation of being annexed into the city of Brandon. (That land is not included in Brandon's future growth plan.) Mr. Kappen stated that the Planning Office had received a complaint that a manufacturing plant was being run on this site with trucks going in and out. Signs were posted on the property but no one called the office.

The petitioner, Mark Erickson, was represented by attorney Chris Madsen with Boyce, Greenfield, Pashby & Wellk. He presented the Commission with a packet of information on this business. Mr. Madsen stated that this "family farm" had been owned by the Erickson family for generations and that it is still crop ground. Mark Erickson had been doing machine work and welding here since 1970 and eventually became interested in making parts for piper cub airplanes. These are the types of planes flown by bush pilots in Alaska. The business is to design and manufacture, or craft, parts for these planes. Mr. Erickson has been certified by the FAA to manufacture six different parts for the planes. Mr. Madsen noted that the business started small and then grew. In 2000 it became a full time job for Mr. Erickson and he had to look at expanding his work force. He stated that Mr. Erickson did not know he needed a permit for the business.

At this time Mr. Erickson is not looking to expand, just wants to operate as he is now. He noted that the FAA monitors all aspects of this process. Mr. Madsen stated that he thinks this business meets all the criteria of a Class 2 Home Occupation. Everything is done inside the buildings. The site is not visible from the road and looks like a typical farmstead. There is a 50 x 80' building that is used for the production of parts and a Morton building (48 x 105' according to Equalization) that is also used for the business. Less than 2% the land is used for buildings.

Mr. Madsen stated that there are 6 employees, some are relatives. Given that there is no definition of employee in the zoning ordinance it was hard to define. There are four full time workers who do everything from drafting to machine work to assembly. One part time employee works 16 hrs. per week as a programmer, another 8-10 hrs. per week as a welder. There is no shift work, they all work daylight hours.

Mr. Madsen stressed again that looking at this site it doesn't appear that anything but farming is going on. Everything takes place inside the buildings and there are no customers coming to this site. There are truck deliveries, but every farm has truck deliveries. Business is conducted over the internet or phone. Mr. Madsen feels this business does not change the character of the neighborhood and pointed out that seven affidavits from supportive neighbors were included in his handout. The site does not create dust, noise, or traffic and is not an eyesore. Mr. Madsen stressed that the business was good for the community and the state and that Mr. Erickson would agree to a condition that he not expand at this site.

Mr. Madsen also addressed the issue of precedence. This term makes him uncomfortable and he believes each product should be judged on its own merits and how it meets the criteria, not on what might come along in the future. Aside from the equipment he feels this business isn't any different from someone making cabinets or crown moldings. This is not large manufacturing, but crafting a specialized product for a specialized market.

Commissioner Hajek asked whether farming or this business was the principal income - as any home occupation was supposed to be secondary to the use of the property for farming. Neither Mr. Madsen nor Mr. Erickson could answer that question. Mr. Erickson did state that it is his cousin, not himself, who farms the land. Commissioner South, reacting to Mr. Madsen's statement about precedence, asked if this was approved how could anything else be stopped. Mr. Madsen responded that it should be dealt with by enforcement. Commissioner South pointed out that was why this business was before this body, it was operating illegally. Mr. Madsen stated that his client has applied to bring the property into compliance and that his client didn't know he needed a permit. He is not sure this business is an industrial use.

Mr. Anderson reminded the Commission that they needed to look at the criteria in the zoning ordinance for a class 2 home occupation. He noted that this use didn't even meet the first thing listed, having 80 acres. This is not just something that the staff was driving around and found, but a complaint was filed on this. In addition, the existing business exceeds the allowable number of employees as regulated by the ordinance. Commissioner Steinhauer stated that he felt this business met the spirit of a home occupation

in that it did not generate any dust, noise, odor or traffic. He would be willing to approve this with limits on employees and not to let it grow any larger. Commissioner Hajek expressed concerns about whether this business is really secondary to the agricultural use of the property and that the petitioner is not the person operating the farm. This is breaking the law in terms of zoning, and should it be approved just because you're a nice guy?

Nancy Kohler, 1613 Parkview Blvd., is Mark's sister. She doesn't feel this is a major manufacturing business. That is something more like Gateway. This is a small operation that has grown larger. To shut it down just because it is short a few acres or long by one employee is just ridiculous. This business is economically valuable, and Luverne MN would be glad to have it. She thinks this complaint was filed by a disgruntled employee.

Mark Erickson explained that his next major expansion would need to be done at an airport site. He is currently working on getting it approved by the FAA but it could take quite a while. He stated that he would like to keep the farmstead as his home base. He also stated that he has eight employees.

Commissioner Hajek again pointed out her concern that this business was not secondary to the farming operation. Mr. Madsen stated that this was part of orderly growth and the preservation of agriculture. This is the best of both worlds. It acts and smells like a farm with some manufacturing going on.

Commissioner Bunde noted that it is a question of whether the business exceeded its secondary status. She questioned whether the buildings met the building code for this type of use. Mr. Madsen stated that he could not find any building codes in the zoning ordinance. The buildings were put up as ag buildings because that was their intended use. It would be economically infeasible to retrofit the buildings. Mr. Kappen explained that the adopted building code is not part of the zoning ordinance. The buildings will need to meet the commercial code. Anyone applying for this type of use is required to provide the building inspector with an engineered set of plans and it must pass inspection. If this use is approved the petitioner will have to meet those same conditions.

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

Commissioner Steinhauer stated the acreage issue didn't bother him and that it is hard to prove primary vs. secondary use. Based on the staff report and public testimony he made a motion to approve the conditional use permit with the following conditions:

- 1) The class 2 major home occupation for the production of airplane parts is limited to its current size as presented at the October 24, 2005 meeting.
- 2) There shall be no more than a total of 10 full and part time employees. Family members are included in this total.

The motion was seconded by Bunde. Bunde and Steinhauer voted for the motion, South and Hajek against, a tied vote.

Commissioner Hajek stated that 10 employees is too many and it is too far outside the criteria. Commissioner South stated that he felt that for the past 10-12 years the petitioner has done a great job at building and growing this business but now it has grown too large. It should be moved into Brandon or Valley Springs.

Commissioner Hajek asked staff if the buildings will have to meet code. Mr. Anderson stated that they would be required to meet the building code and that the issue would be turned over the building inspector. He also noted that the Director of Equalization would be notified that commercial taxes should be levied.

A motion was made by Steinhauer and seconded by Bunde to approve conditional use permit #05-66 with the following conditions:

- 1) The class 2 major home occupation for the production of airplane parts is limited to its current size as presented at the October 24, 2005 meeting.
- 2) There shall be no more than a total of 8 full and part time employees. Family members are included in this total.

The motion passed (South nay).

ITEM 12. CONDITIONAL USE PERMIT #05-90 to allow a campground.

Legal Description - E1/2 NW1/4 SE1/4 & NE1/4 SE1/4 (ex. H-1 & ex. Tr. 1 Alvines Addition) in Section 36-T101N-R51W
Location - 26767 466th Ave. 3 miles west of Sioux Falls
Petitioner / Owner- Francis Phillips

The petitioner requested that Item 12 be deferred until the January 23, 2006 meeting. A motion was made by Hajek and seconded by Steinhauer to defer conditional use permit #05-90. The motion passed unanimously.

The Planning Commission will convene as the Zoning Board of Adjustment for Item 13.

ITEM 13. VARIANCE #05-08 to erect a substation tower exceeding 35' in height.

Legal Description - Lot U1 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.

The Zoning Board of Adjustment did not have a quorum so Item 13 could not be heard. This item is rescheduled for the November 28th meeting.

OLD BUSINESS

- A. The Planning Commission reviewed the right to farm notice covenant and with a motion from Bunde and seconded by Steinhauer unanimously approved to changes to the covenant as shown below.

RIGHT TO FARM NOTICE COVENANT

You are hereby notified that the property you are purchasing is in or is located near agricultural land, agricultural operations or agricultural processing facilities or operations. You may be subject to inconvenience or discomfort from lawful agricultural or agricultural processing facility operations. Agricultural operations may include, but are not limited to, the following: the cultivation, harvesting, and storage of crops; livestock production; ground rig or aerial application of pesticides or herbicides; the application of fertilizer, including animal waste; the operation of machinery; the application of irrigation water; and other accepted and customary agricultural activities conducted in accordance with Federal, State, and County laws. Discomforts and inconveniences may include, but are not limited to: noise, odors, fumes, dust, smoke, burning, vibrations, insects, rodents, and/or the operation of machinery (including aircraft) during any 24-hour period. If you live near an agricultural area, you should be prepared to accept such inconveniences or discomforts as a normal and necessary aspect of living in an area with a strong rural character and an active agricultural sector. You are also notified that there is may be the potential for agricultural or agricultural processing operations to expand. This notification shall extend to all landowners, their heirs, successors or assigns and because it is required pursuant to a conditional use permit, may not be removed from the record title without consent of the Minnehaha County Planning Commission.

- B. The Planning Commission agreed that a special meeting should be held to allow the Commission time to discuss building eligibilities, transfer of development rights, and the preservation of agricultural land.
- C. The Planning Commission decided to form a sub-committee to look at options for temporary use permits.
- D. Staff briefed the Planning Commission on recent actions taken by the County Commission.
1. The County Commission (and jointly with Sioux Falls and Dell Rapids) approved the increase in fees as recommended by the Planning Staff.
 2. The County Commission and Sioux Falls City Council upheld the Planning

Commission's decision to deny a rezoning for property at the intersection of River Bluff Rd. and E. 41st St.

3. The County Commission overturned the Planning Commission's to deny rezoning land to I-1 Light Industrial at the Crooks/I-29 interchange and approved that rezoning.