

**MINUTES OF THE
MINNEHAHA COUNTY PLANNING COMMISSION
December 12, 2005**

A meeting of the Planning Commission was held on December 12, 2005 at 7:00 p.m. in the Commission Room of the Minnehaha County Administration Building. The meeting was originally scheduled for November 28, 2005. Due to inclement weather, issuance of a no travel advisory, and the closing on the Courthouse at 3:00pm that day, the meeting was rescheduled.

COUNTY PLANNING COMMISSION MEMBERS PRESENT: Deb Bunde, Mike Cypher, Anne Hajek, Susie O'Hara, Don South, and Wayne Steinhauer.

STAFF PRESENT: Scott Anderson, Phil Kappen and Pat Herman.
Gordy Swanson, Deputy State's Attorney

The meeting was chaired by Don South.

BOARD OF ADJUSTMENT

A motion was made by Bunde and seconded by Cypher to convene the Board of Adjustment. The motion passed unanimously.

**Item 1 was deferred from the October 24, 2005 meeting.
The Planning Commission will convene as the Zoning Board of Adjustment to consider Item 1.**

ITEM 1. 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.

General Information

Present zoning - A-1 Agricultural
Existing Land Use - Electrical substation
Parcel Size - 1.3 acres

Report by: Scott Anderson

Staff Analysis

The applicant is requesting a variance to increase the height of an internal communication tower from 35 feet to 50 feet. East River Electric has indicated that the tower is for internal communication. The tower is used to monitor and communicate with the electric substation, which is currently under construction. On October 12, 2005, staff conducted a site visit. The electric substation is nearing completion. The subject property is located adjacent to Interstate 90 and is surrounded by agricultural uses.

The Zoning Ordinance provides the Zoning Board of Adjustment several criteria to consider when granting a variance.

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

The only circumstance or condition that exists is the need for adequate communication with the proposed substation, currently under construction. A fifty (50) foot tower is needed for adequate signal to reach the substation.

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

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

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

The Zoning Ordinance currently allows for a maximum height in this zoning district of fifty (50) feet. Strict application of the Zoning Ordinance would not create a hardship for the applicant, as there would be no communication capabilities with the substation. The applicant has indicated that the proposed tower is vital for the operations of the substation.

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

Granting of the proposed Variance does not harm the public. Staff can support the request to increase the height by fifteen (15) feet to fifty (50). The applicant has demonstrated a specific circumstance which does constitute a limited degree of hardship. The substation will provide critical infrastructure to the surrounding service area. The proposed height will not impact any of the existing land uses in the area.

Recommendation

Staff recommended approval of Variance #05-08 to allow a fifty foot internal communication tower.

Public Testimony

Commissioner Hajek recused herself from this item.

Ron Golden with East River Electric presented three power point slides. The first showed a site in Hurley which had a short lattice type tower. The second slide was of a substation with a 40' tower and the third slide showed the base of a lattice tower. Mr. Golden explained that a monopole tower would require a much larger foundation. Using a lattice design will reduce the number of man hours needed to service the site. A lattice tower can be climbed by one person using a safety wire. The monopole would require two people and a boom truck. The tower will be used only for the communication of East River Electric and this site. They will be able to take load measurements and record other data without having to do a site visit. The tower is located inside their gated substation and for security reasons the company has no interest in constructing a large tower which would allow the co-location of additional antennas.

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

Commissioner Cypher stated that he would like to see a monopole design for the tower. He feels a monopole is less intrusive and that the ladders could be attached to the monopole for access. The County has been requiring monopoles for towers whose height does not prohibit this type of design.

Based on the staff report and public testimony a motion was made by Cypher to approve Variance #05-08 to allow a fifty foot internal communication tower and that the tower shall be a monopole. There was no second and the motion died.

Commissioner Bunde stated that a monopole was not necessary given the location of this tower, its intended use, and the fact that the tower would be located within a electrical substation.

A motion was made by Steinhauer and seconded by Bunde to approve Variance #05-08 allowing a fifty foot internal communication tower. 4 ayes (Cypher nay). The motion fails.

Mr. Anderson explained that a variance requires a majority vote by 2/3 of the total Planning Commission. As two of the members have to recuse themselves due to conflicts, the five remaining Commission members hearing this item would all have to vote in the affirmative for the variance to be approved. The petitioner's only option at this point would be to pursue the matter in circuit court.

After due consideration a motion was made by Steinhauer and seconded by Bunde to reconsider Item 1. The motion passed unanimously.

A motion was made by Steinhauer and seconded by Bunde to approve Variance #05-08 allowing a fifty foot internal communication tower. The motion passed unanimously.

PLANNING COMMISISON

A motion was made by Cypher and seconded by O'Hara to adjourn the Board of Adjustment and to convene as the Planning Commission. The motion passed unanimously.

APPROVAL OF THE CONSENT AGENDA

There was request that Item 8 be placed on the regular agenda. There being no other changes from the Planning Commission or audience, a motion was made by Bunde and seconded by Hajek to approve the consent agenda (Items 8 removed). The motion passed unanimously.

ITEM 2. MINUTES – October 24, 2005.

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

ITEM 3. PRELIMINARY SUBDIVISION PLAN – **Andresen’s Addition.**

Legal Description – Tracts 1-3 S1/2 of Section 19-T102N-R50W
Location - 2.5 miles east of Hartford
Petitioner / Owner- John Andresen

General Information

Present zoning - A-1 Agricultural
Existing Land Use - Agricultural
Parcel Size – 7-15 acres

Report by: Pat Herman

Staff Analysis

In September 2005 the Planning Commission approved the transfer of two residential building eligibilities to the NW1/4 SE1/4 of Section 19-T102N-R50W. There was one available eligibility in that quarter-quarter, so a total of three building sites will be developed. As part of the approval of the transfer, the petitioner was required to submit a preliminary plan.

Access to all three lots will be from Andresen Place, an existing easement which will be platted as a private road. This road also provides access to an existing farmstead which lies to the south of Tract 3. The conditional use permit requires that a maintenance agreement be approved for all the lots which access the roadway prior to any construction occurring.

Two corrections should be made prior to submitting the final plat. The preliminary plan labels the new roadway as a private roadway easement. This should be depicted on the final plat in the same manner as other streets and only labeled with the street name, Andresen Place. The lot lines are shown on the preliminary plat to extent to the center to the roadway. On the final plat the lots lines should not extend into the roadway, but be congruent with the edge of the right-of-way.

Recommendation

The submitted plan is consistent with the Subdivision Ordinance and the conditions specified by the conditional use permit and staff recommended approval of the preliminary plan with the following condition:

The final plat shall depict Andresen Place as a private road and the lot lines shall be congruent with the right-of-way.

Based on the staff report a motion was made by Bunde and seconded by Hajek to recommend approval of Andresen’s Addition Preliminary Subdivision Plat with the stated condition. The motion passed unanimously.

ITEM 4. PRELIMINARY SUBDIVISION PLAN – **Larson’s Addition.**

Legal Description – Tracts 1-5 S1/2 of Section 15-T101N-R47W
Location - 1.5 miles south of Valley Springs
Petitioner / Owner- Susan Lillo and James Larsen

General Information

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

Report by: Phil Kappen

Staff Analysis

The subject property is located north of 265th Street between 487th Avenue (Co. Hwy 103) and 488th Avenue (the Minnesota state line). The area is largely in agricultural uses with scattered residential acreages. There is a cluster of acreages to the west.

At the September meeting the Planning Commission approved a conditional use permit for the transfer of an eligibility from the NE1/4 SW1/4 to the NW1/4 SW1/4. That permit was approved with the following conditions:

- 1) The existing driveway just north of the creek on the subject property shall be removed and a new driveway constructed to align with the acreage driveway on the west side of the highway. No other driveways shall be allowed onto the county highway. A driveway permit shall be obtained from the Minnehaha County Highway Department prior to the construction of the new driveway.
- 2) A preliminary subdivision plan shall be prepared for the south half of the section showing, in addition to all required items, all existing or proposed lots in that portion of the section and all driveway access points. Where possible, shared driveways shall be utilized.
- 3) All lots shall be platted and a right-to-farm notice covenant shall be filed on each lot prior to the issuance of any building permit.

The petitioners now wish to subdivide the property to make use of the existing eligibilities. The property would be divided into 5 tracts. Tract 1 would contain three eligibilities (an existing house using the eligibility from the NW1/4 NW1/4, the eligibility transferred in September, and an eligibility at the south end of the tract (from the SE1/4 SW1/4). Tract 2 would have no eligibilities and will be used strictly for farming purposes. Tract 3 would use the eligibility from the SW1/4 SW1/4. Tract 4 would contain 3 eligibilities (1 in the NW1/4 SE1/4, 1 in the NE1/4 SE1/4 and one from the SW1/4 SE1/4). Tract 5 would have only 1 eligibility (from the SE1/4 SE1/4).

Some of the proposed lots have existing drive access to the adjacent roads. Any new driveways should have approval from the township responsible for road maintenance or from the county highway department as appropriate.

Recommendation

Staff found that the proposed subdivision layout meets the requirements of the Minnehaha County Subdivision Ordinance and staff recommended approval of the Preliminary subdivision plan with the following conditions:

1. The petitioner shall comply with all requirements of the conditional use permit approved in September, 2005 for this property. In particular, the petitioner shall move the driveway as noted in condition 1 of the CUP and with the filing of right-to-farm notice covenants on all lots.
2. The petitioner shall obtain township or county highway department approval for any new driveways and shall show the location of all driveways and shared access easements on the final plat(s).

Based on the staff report a motion was made by Bunde and seconded by Hajek to recommend approval of Larson's Addition Preliminary Subdivision Plat with the stated conditions. The motion passed unanimously.

ITEM 5. CONDITIONAL USE PERMIT#05-94 to allow an airplane landing strip.

Legal Description – Tract A Schreur's Addition S1/2 SE1/4 in Section 23-T103N-R49W
Location - 47670 254th St. 3.5 miles southeast of Baltic
Petitioner / Owner- Duane Schreurs

General Information

Present zoning - A-1 Agricultural
Existing Land Use - Residential
Parcel Size – 21.75 Acres

Report by: Phil Kappen

Staff Analysis

The subject property is located along the north side of 254th Street (Co. Hwy 122) approximately 1.5 miles east of Midway Corner. The surrounding land uses are a mix of agricultural fields and residential acreages. The petitioner wishes to construct an airstrip for his private use along the north edge of his property.

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 large number of acreages in the area, there could be potential for conflicts if the airstrip was used at hours that would disturb neighbors when the majority are likely to be sleeping. There should be limits placed on the hours of operation of the airstrip. Staff has also urged the petitioner to contact neighboring residents about his proposed airstrip. The petitioner should be prepared to address the efforts he has made to contact neighbors and the nature of the conversations with those neighbors.

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

The majority of the properties in the area have already had their building eligibilities used. The location map shows those areas that no longer have any eligibility remaining and those that still have available eligibilities. The greatest potential for future conflict would be from the property immediately west of the subject property. The petitioner should also address the potential for conflict with owners of this property. The use of the air strip for only the petitioner's personal use would limit the amount of traffic and the potential for conflicts.

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

Access to the airstrip would be via the petitioner's property. No additional driveways onto the highway would be necessary.

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

The petitioner has ample space on their property for any required 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.

There should be little continuing impact from odor or fumes. The airstrip will be maintained with a grass cover that will reduce the potential for dust. The potential for noise should be addressed by limiting the hours of operation of the use. Any outdoor lighting should be of a shoebox style that directs light downward and prevents the spillage of light onto adjacent properties.

Recommendation

Staff finds that, if any concerns of immediate neighbors can be addressed, then this use can be managed in a manner that will be compatible with neighboring land uses. Staff recommended approval of the conditional use permit with the following conditions:

1. The air strip will be used only for the petitioner's private use. No commercial use shall be operated from the premises.
2. The hours of operation of the airstrip shall be limited to the hours between 7 A.M. and 10 P.M.
3. The surface of the airstrip shall be maintained with a cover that prevents the occurrence of dust.
4. Any outdoor lighting on the property shall be of a shoebox style that directs light downward and prevents the spillage of light past the boundaries of the subject property.

Based on the staff report a motion was made by Bunde and seconded by Hajek to approve Conditional Use Permit #05-94 with the stated conditions. The motion passed unanimously.

ITEM 6. CONDITIONAL USE PERMIT #05-95 to allow a single family dwelling

Legal Description – NW1/4 (ex Tr. 1 Monsees Addn.) in Section 33-T102N-R51W

and the transfer of two residential building eligibilities.

From - NW1/4 (ex Tr. 1 Monsees Addn.) in Section 33-T102N-R51W

To - Tract 2 Pleasant View Addn. SW1/4 in Section 33-T102N-R51W

Location - 1 miles south of Hartford

Petitioner / Owner- Rozanne Hanisch

General Information

Present zoning - A-1 Agricultural
Existing Land Use - Agriculture
Parcel Size – 40 Acres

Report by: Pat Herman

Staff Analysis

The property is located one mile south of Hartford. The surrounding land use is agricultural with numerous acreages. The petitioner owns a 120 acre parcel with three building eligibilities which require conditional use permit approval before they can be used.

One eligibility would remain in this quarter with a house to be constructed on a 3 acre parcel in the southwest corner of the NW1/4. The remaining two eligibilities would be transferred to the SW1/4 and be developed as 10-15 acre lots. These lots would lie directly south of the proposed 3 acre 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.

The construction of three additional dwellings should not impact the existing residential development in the area. 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.

These are the only remaining eligibilities in the west half of Section 33. The transfer of the eligibilities will result in all but 2 of the 8 original eligibilities being clustered in (or immediately adjacent to) the SW 1/4.

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

Access to each of the lots will be from 462nd Ave., a gravel township road. Hartford Township does not require driveway/culvert permits and in the past has not restricted driveway locations. A wastewater system is required and private utilities are available in this area.

Recommendation

Staff found the request to be consistent with density zoning and recommended approval of conditional use permit # 05-95 with the following condition:

The lots shall be platted and a right-to-farm notice covenant filed on the deed of the lot prior to the issuance of any building permit.

Based on the staff report a motion was made by Bunde and seconded by Hajek to approve Conditional Use Permit #05-95 with the stated conditions. The motion passed unanimously.

ITEM 7. CONDITIONAL USE PERMIT #05-96 to allow a 250' cellular tower with equipment shelter.

Legal Description - SW1/4 NE1/4 (Ex. Wall Lake Sanitary District Tr. 1) in Section 28-T101N-R51W

Location - 3 mile south of Wall Lake

Petitioner / Owner- Todd Rahlf w/Verizon Wireless / Ronald Story

General Information

Present zoning - A-1 Agricultural
Existing Land Use - Agriculture
Parcel Size – 40 Acres

Report by: Pat Herman

Staff Analysis

This is a request to construct a 250' cellular tower and a 12' x 30' equipment shelter. The property is located 1/3 mile south of Wall Lake. The Wall Lake sanitary ponds are adjacent to this site and the

immediate surrounding property is agricultural. In addition to the residential population around Wall Lake there is an existing residential subdivision a ½ mile southwest of this site.

The petitioner meets all but two of the requirements for a telecommunication tower as required by Section 12.12 of the County Zoning Ordinance. Section B - Equipment Design requires that the tower be a single monopole or a guyed lattice tower. A height of 250' prevents the use of a monopole but that height also does not justify the need for guyed wires. The petitioner would like to use a self support tower.

The petitioner is also unable to meet some of the setback requirements. The tower will meet the required 1300' set back from the surrounding residential dwellings; however it does not meet the three mile spacing between existing towers. There is a tower, owned by the State, which is a mile west of Wall Lake. That tower cannot support the equipment needed by Verizon.

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 close 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 to the site will be from an existing access road which leads to the Wall Lake sanitary district ponds. This road has a 30' right-of-way which should be sufficient for any equipment or maintenance vehicles associated with the tower. For security purposes, the tower will be enclosed by a six foot high chain link fence topped with barbed wire.

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

The leased site will be 100' x 100' which will provide enough parking space for related vehicles.

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 most abundant complaint raised about cellular towers deals with the lighting. Per FAA regulations, this tower will have white lights during daylight hours and red lights at night. Any security or property lights should be of a shoe box type design and not allow light spillage off of the site.

Prior to the issuance of a building permit, a letter accepting responsibility for the removal of the tower as required in Section 12.12. (I) and a site plan of the 100 x 100 leased area will need to be submitted for planning staff approval.

Recommendation

Staff finds that the proposed wireless facility is in conformance with all of the requirements for a permitted special use for a telecommunications tower as detailed in Article 12.12 of the Minnehaha County Zoning Ordinance, except for the 3 mile separation listed in Section 12.12 (C) #3 and the equipment design (B) #1. Staff recommended approval of conditional use permit #05-96 with the following conditions:

- 1) The facility shall meet the requirements of Article 12.12 of the 1990 Revised Minnehaha County Zoning Ordinance with the exception of sections (B) #1 and (C) #3.
- 2) A site plan and letter of removal responsibility shall be submitted to the Planning Department prior to the issuance of a building permit.

Based on the staff report a motion was made by Bunde and seconded by Hajek to approve Conditional Use Permit #05-96 with the stated conditions. The motion passed unanimously.

ITEM 8. CONDITIONAL USE PERMIT #05-97 to allow a Class One Home Occupation – children's clothing consignment sales.

Item 8 was placed on the regular agenda.

ITEM 9. CONDITIONAL USE PERMIT #05-98 to allow a natural gas TBS (transaction based storage) station.

Legal Description – N100' S150' W24.81' W1/2 SE1/4 SE1/4 SW1/4 SE1/4 SW1/4 & N100' S150' E75.19' SW1/4 SE1/4 SW1/4 SE1/4 SW1/4 in Section 10-T102N-R51W
Location - 1 mile north of Hartford
Petitioner / Owner- Northern Natural Gas / Melvin Byg

General Information

Present zoning - A-1 Agricultural
Existing Land Use - Agriculture
Parcel Size – -0.5 Acres

Report by: Phil Kappen

Staff Analysis

The subject property is located ½ mile north of Hartford along the north edge of 258th Street (County Highway 130). The petitioner wishes to add a new TBS station on land adjacent to an existing TBS station on the property. The surrounding property is agricultural.

There was never any CUP approved for the existing TBS station so the legal description for that property is being included in this application in order to partially legitimize the existing 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.

The proposed use lies along to the natural gas pipeline that runs adjacent to the highway right-of-way. The proposed use should not have any adverse impact on properties uses or values 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 predominant use of the area is for agricultural purposes. The proposed use should have no impact on the continued use of the property for agricultural purposes.

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

Access is made from County Highway 130. There are excellent sight distances along this stretch of road and, due to the limited amount of time that the use will be accessed by the petitioner, there should be little impact to traffic safety from vehicular access off of the highway. The existing TBS station was built without conditional use approval and without first obtaining the required building permits. The existing building was subsequently place too close to the highway right-of-way. The building is approximately 50 feet off of the right-of-way and the required front-yard setback for any building is a minimum of 50 feet. The petitioner will have to obtain a variance for the existing building if they wish to keep it in its present location. The petitioner will be required to prove the necessity of said variance in accordance with South Dakota laws and the Minnehaha County Zoning Ordinance.

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

There will be limited access to the property and there is adequate space in the existing driveway for the parking of maintenance vehicles. All parking must be maintained outside of the public right-of-way.

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 adverse effects from odor, fumes, dust, or vibration from the use. Any outside lighting should be of a shoebox style that prevents the spillage of light beyond the boundary of the subject property.

Recommendation

Staff found that the proposed use is necessary for the provision of natural gas to citizens in the county and recommended approval of the conditional use permit with the following conditions:

1. All parking for the use shall be maintained on the subject property and no parking shall be allowed within the public right-of-way.
2. Any outdoor lighting shall be of a shoebox style that prevents the spillage of light beyond the boundary of the subject property.
3. The petitioner shall obtain all required building permits prior to the construction of any structures.
4. The petitioner shall obtain a variance to the front yard setback requirements if they wish to keep the existing building in its present location. The petitioner will be required to prove the necessity of the variance in accordance with state law and the Minnehaha County Zoning Ordinance.

A revised legal was submitted to the Planning Commission for Item 9. The Planning Commission made the motion with the following legal: N100' S150' W50'E804.61' E1/2 SW1/4 and the N100' S150' W100' E904.61' E1/2 SW1/4 in Section 10-T102N-R51W.

Based on the staff report a motion was made by Bunde and seconded by Hajek to approve Conditional Use Permit #05-98 with the stated conditions. The motion passed unanimously.

ITEM 10. CONDITIONAL USE PERMIT #05-101 to exceed 1200 sq. ft of accessory building area (1080 existing, 672 additional requested, total - 1752).

Legal Description – Vacated access road and Lots A & B Tract 1 Lot 6 and Tracts 20&21
Lot 6 in Section 20-T101N-R51W
Location - 26525 East Shore Pl. Wall Lake
Petitioner / Owner- Steve Flood

General Information

Present zoning - RR Rural Residential
Existing Land Use - Residential
Parcel Size – ± 0.5Acres

Report by: Pat Herman

Staff Analysis

The property is located on Wall Lake at the north end of East Shore Place. The surrounding properties along the lake are zoned for and developed as residential lots. The petitioner is requesting a conditional use permit to exceed 1200 sq. ft. of accessory building area. There is an existing 1080 sq. ft. building and a new 672 sq. ft. building would be added, resulting in a total accessory building area of 1752 square feet.

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.

Along East Shore Place there are at least six properties on which the accessory building area exceeds 1200 sq. ft. The buildings themselves range in size from 1280 sq. ft. to 2560 sq. ft. The requested increase would not be excessive and should have no impact on the other properties in the area.

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

The lots to the south of the site are developed and should not be impacted. There is a new development to the north of this site which has no access to East Shore Place. Approval of the increased building area should have no impact of the sale and development of those lots.

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

Access will be from East Shore Place and utilities are available.

A building permit is required for the new building prior to the start of construction. The building inspector will measure the outside perimeter of the building to ensure that the structure does not exceed 672 sq. ft.

Petitioner's Note: As there was some confusion as to the size of the existing accessory building the Planning Department requested that the county assessor measure the building. He determined that the

building was 30 x 36 or 1080 sq. ft.

Recommendation

Staff found the requested increase in accessory building area to be compatible with the existing development and recommended approval of conditional use permit #05-101 with the following conditions:

- 1) Total accessory building area shall not exceed 1752 sq. ft.
- 2) An inspection by the Building Inspector to measure the perimeter of the building is required.
- 3) The building shall not exceed one story in height.
- 4) There shall be no commercial use of the building.

Based on the staff report a motion was made by and Bunde and seconded by Hajek to approve Conditional Use Permit #05-101 with the stated conditions. The motion passed unanimously.

ITEM 11. CONDITIONAL USE PERMIT #05-103 to allow mail order gun sales.

Legal Description – Tract 1 Struck’s 3rd Addition NE1/4 NE1/4 in Section 23-T103N-R52W
Location - 25305 459th Ave. 4.5 miles north of Humboldt
Petitioner / Owner- Alexander Craig Ellman

General Information

Present zoning - A-1 Agricultural
Existing Land Use - Agricultural
Parcel Size - 2.5 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, ammunition and accessories out of the home. Zoning approval by the County is required before the applicant can update his 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 November 7, 2005, staff conducted a site visit. The subject property has direct access from 459th Avenue, a graveled, township road. There was adequate sight distance to the north and south. The subject property consists of a single family residence that was moved onto the site in 2004. 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.

459th Avenue provides access to the site. This road is graveled and in good 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.

Recommendation

Staff recommended approval of Conditional Use Permit #05-103 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, ammunition and gun accessories. Any expansion beyond this will require the Conditional Use Permit to be reviewed.
- 7) That the applicant obtains a state Sales Tax License.

Based on the staff report a motion was made by Bunde and seconded by Hajek to approve Conditional Use Permit #05-103 with the stated conditions. The motion passed unanimously.

REGULAR AGENDA

A motion was made by Bunde and seconded by Hajek to approve the regular agenda with the addition of Item 8. The motion passed unanimously.

ITEM 8. CONDITIONAL USE PERMIT #05-97 to allow a Class One Home Occupation – children's clothing consignment sales.

Legal Description – 1620 E. Redwood Blvd. Lot 2 Burkman's Tracts NW1/4 SW1/4 in
Section 26-T102N-R48W
Location - Northeast edge of Brandon
Petitioner / Owner- Tammi Ploen

General Information

Present zoning - A-1 Agricultural
Existing Land Use - Residential
Parcel Size – 1.93 Acres

Report by: Scott Anderson

Staff Analysis

The applicant is requesting a conditional use permit to operate a home occupation. The applicant would like to operate a children's clothing consignment business as a home based business. The interior dimension of the consignment area will be 26 feet by 28.5 feet. A site plan of the business area is included for review. The applicant has indicated that she will be the sole employee of the home based business. She anticipates that a maximum of 8-10 patrons per business day will frequent the establishment.

The proposed site is located adjacent to corporate limits of Brandon. The applicant's residence is located within Brandon. The accessory structure located adjacent to applicant's residence is located in an unincorporated portion of Minnehaha County. On November 15, 2005, staff contacted Dennis Olson, City Administrator for the City of Brandon, to discuss the proposed use. He indicated that the City would not be opposed to the use with the condition that upon annexation into the City of Brandon, the use would either need to be discontinued or receive proper zoning approval through the city. Staff will include this request in the recommended conditions of approval.

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 consignment clothing 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, not to exceed 10 visitors be day.

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. The proposed parcel is located adjacent Brandon and it can be safely assumed that this property will one day be annexed into the city.

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

Redwood Boulevard 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. Article 15 of the Zoning Ordinance requires one (1) parking space for each 600 square feet of retail floor area. The applicant is proposing to have approximately 741 square feet of floor area. 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 the sale of consignment clothes. 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. There is a potential for dust and staff will include a condition that the dust control be provided on the driveway to the home occupation.

Recommendation

Staff recommended approval of Conditional Use Permit #05-97 to allow the consignment sale of children's clothing as a Class 1 home occupation with the following conditions:

- 1) That no alteration to any building shall indicate from the exterior that the building is being utilized in whole or in part for any purpose other than a residential or agricultural use.
- 2) That the applicant be limited to one (1) non-illuminated wall sign, which shall not exceed two (2) square feet and one (1) non-illuminated free-standing sign, which shall not exceed four (4) square feet each in area for the home occupation. A Sign Permit shall be obtained prior to the installation of any sign.
- 3) That the employees of the home occupation shall be limited to residents of the dwelling and up to two (2) non-resident employees, not to exceed four (4) employees on site.
- 4) That no stock or trade shall be displayed or stored outside the enclosed structures located on the property.
- 5) That a minimum of three (3) off-street parking spaces be provided. Each parking space shall

- measure at least nine (9) feet by eighteen (18) feet and shall be kept in a dust free manner.
- 6) That the home occupation be limited to the consignment sales of children's clothing. Any expansion beyond this will require the Conditional Use Permit to be reviewed.
 - 7) That the applicant obtains a state Sales Tax License.
 - 8) That this Conditional Use Permit shall become void once the property is annexed into Brandon. The use shall cease or the applicant shall obtain zoning approval from the city of Brandon for the operation of the home occupation.
 - 9) That the applicant maintain the driveway from Redwood Boulevard to the home business in a dust free manner.

Public Testimony

The petitioner, Tami Ploen, stated that she currently had her business, A+ Kids Stuff, in a commercial area off of Sioux Blvd. in Brandon. She would like to move so she can be home with her kids. She has had the business for almost 3 years. Some improvements were made to the driveway this fall and in the spring they plan to add crushed rock or asphalt.

Randy Nelson, 1704 Redwood Blvd., lives just north of this site. There is a 3 inch water line which services three houses. He doesn't feel the line is big enough for an additional business. He stated that he was told by the City of Brandon they would support this use unless neighbors complained and that this did not fit the Comprehensive Plan. The site is surrounded by residential uses. Mr. Nelson alleged that the petitioner was running a trucking business at this site as there were two trucks on the property.

Ms. Ploen responded that the second truck belonged to the renter of the second house on this site. That house will only be about 10' from this building and her aunt owns the house at the start of the driveway. She will have a bathroom in this building. At her current site Ms. Ploen averages six customers a day.

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

Commissioner Hajek expressed concerns about locating a commercial use in a residential area. Commissioner Cypher noted that this does meet the recommended 750' square feet of use area and that the water line should not be an issue.

Based on the staff report and public testimony, a motion was made by Bunde and seconded by O'Hara to approve Conditional Use Permit #05-97 with the stated conditions. The motion passed unanimously.

ITEM 12.

This item was withdrawn by the petitioner.

Item 13 was heard jointly with the City of Dell Rapids.

ITEM 13. JOINT ZONING ORDINANCE TEXT AMENDMENT – to add “animal shelter” to the conditional use permit portion of the C Commercial District and to the Definition Section.

The Dell Rapids Planning Commission was not present as they did not have a quorum. Item 13 will be heard at the January 23, 2006 meeting.

ITEM 14. COUNTY ZONING ORDINANCE TEXT AMENDMENT - to add “animal shelter” to the conditional use permit portion of the C Commercial District and to the Definition Section.

Petitioner - Rosey Quinn

Report by: Scott Anderson

Staff Analysis

The petitioner has requested an amendment to the Minnehaha County Zoning Ordinance. Specifically, the petitioner is requesting that a definition for an animal shelter be created and that an animal shelter be a

conditional use in Article 6, the C Commercial District.

The petitioner is proposing the following definition: "Any facility operated, owned, or maintained by a duly incorporated Humane Society, animal welfare organization, or non-profit organization for the purpose of providing for and promoting the welfare, protection and the humane treatment of animals".

Staff supports the petitioner's request to amend the Zoning Ordinance. The addition of the definition and placing another conditional use within the commercial district may benefit the public. An animal shelter as a conditional use allows each site to be individually reviewed by the County to determine appropriateness. The proposed definition is for the most part well crafted. Staff has researched the definition for an animal shelter from other jurisdictions and has included those definitions for your review. Staff recommends that the individuals also be allowed to operate an animal shelter.

Recommendation

Staff recommended approval of the petitioner's request to add animal shelters as a conditional use in the C Commercial District and to add the following definition to Article 26, Definitions: Animal Shelter - Any facility operated, owned, or maintained by a duly incorporated Humane Society, animal welfare organization, non-profit organization, or person for the purpose of providing for and promoting the welfare, protection and the humane treatment of animals.

Public Testimony

Mr. Anderson noted that approval of this text amendment as a conditional use permit would allow applications to be submitted for an animal shelter. The conditional use process would allow the Planning Commission to determine whether an animal shelter should be approved.

Commissioner Hajek raised concerns over the wording of the definition, specifically the last portion dealing with providing for and promoting the welfare, protection and humane treatment of animals. She questioned what body would determine if the applicant was actually meeting this action.

Mr. Swanson stated that he was comfortable with the definition. He noted that state law does not define nor address animal shelters. He does not know of any agency which would license anyone running an animal shelter. The definition is used to describe the intent of the use. The conditional use process, a public hearing before the Planning Commission, would be the appropriate forum to address Commissioner Hajek's concerns. At that time the Planning Commission would have the authority to set restrictions or requirements pertaining to the animal shelter and could require inspections by the Humane Society or other welfare organizations. The Commission could also deny those applicants which they determined would not meet the intent of an animal shelter.

Commissioner's Steinhauer and South agreed that the conditional use permit would allow for a thorough review of the operation. Amending the ordinance would only be allowing someone to apply to run a shelter. The definition should not contain restrictions or conditions. The animal control ordinance also establishes basic care requirements.

Rosey Quinn with 2nd Chance Rescue stated that they had applied to amend the ordinance so that they could start an animal shelter for rescued or homeless animals. 2nd Chance Rescue would have only trained employees, some previously employed by the Humane Society. At this time, the animal shelter is not in operation and their contracts do not start until January.

Commissioner Hajek asked if this operation would cause conflicts with the Humane Society. Mr. Swanson noted that the County Commission had renewed the contract with the Humane Society for animal control and rescue. A second operation would not receive funding from the County nor would the County cover any expenses the rescue operation might incur from performing services in an area covered by the Humane Society. Ms. Quinn stated that their operation would respond to rescues in places which they had established contracts, such as Humboldt. If they are called to somewhere that another facility

has the contract, they would refer the caller to the appropriate facility.

There was a discussion about a facility that had been approved several months ago, and questions were raised how that shelter was approved without this text amendment. Mr. Anderson noted that the shelter had been part of a much larger facility which was to include a horse stable and arena, sales barn and horse rescue and was approved only as an accessory use on that site. It appears that that facility is not going to be developed. The County does not have any known animal shelters at this time.

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

Based on the staff report and public testimony a motion was made by Steinhauer and seconded by Bunde to recommend approval of the zoning text amendments pertaining to animal shelter. The motion passed (Hajek nay).

ORDINANCE MC16-

AN ORDINANCE AMENDING THE 1990 REVISED ZONING ORDINANCE FOR MINNEHAHA COUNTY BY REVISING THE C COMMERCIAL DISTRICT AND DEFINITIONS.

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 6.00 is hereby amended adding the following conditions use and shall read:

6.04 CONDITIONAL USES. (X) Animal Shelter.

Section 2: That Article 26.00 is hereby amended adding the following definition and shall read:

26.02 DEFINITIONS. 19. ANIMAL SHELTER. Any facility operated, owned, or maintained by a duly incorporated Humane Society, animal welfare organization, non-profit organization, or person for the purpose of providing for and promoting the welfare, protection and the humane treatment of animals.

Adopted this _____, 2005.

MINNEHAHA COUNTY

Chair, Board of County Commissioners

ATTEST:

County Auditor

ITEM 15. SUBDIVISION ORDINANCE VARIANCE #05-09 to allow a 20' wide driving surface and a maximum of 100' of hard surfacing for a private right-of-way.

Legal Description – Riverbend Place as shown on the plat: Tracts 1-7 Peterson's Subdivision in Section 29-T103N-R49W
Location - 3.5 miles northwest of Renner
Petitioner / Owner- Patrick Cannon

General Information

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

Report by: Scott Anderson

Staff Analysis

Commissioner Hajek recused herself from this item.

The applicant is seeking a Subdivision Ordinance Variance to reduce the minimum width of the driving surface on Riverbend Place from twenty-four (24) feet to twenty (20) feet as required in Article 8.03.C of the Subdivision Ordinance. In addition, the applicant is requesting to hard surface only the first 100 feet of Riverbend Road coming off of County Highway 122, instead of the entire 1200 feet as required in Article 8.03.D of the Subdivision Ordinance.

The applicant was made aware of these requirements during staff's review of the Final Plat. Subsequently, the applicant posted a surety in the amount of \$30,000.00 for road construction. Upon posting of the surety, staff approved the plat, which was filed at the Register of Deed's Office on September 22, 2005.

Riverbend Place provides access to four (4) parcels, Tract 1, 2, 4, and 7. The topography of the area within Tracts is varied as it is located adjacent to the Big Sioux River. In discussions with the owners, staff indicated that the Planning Department would be willing to recommend a reduction in the road width from 24 to 20 feet, however felt that the entire road should be hard surfaced. A twenty (20) foot wide roadway has a width that is adequate for two vehicles to safely meet and pass each other. This is essential as it reduces the potential for head-on accidents when weather conditions are not ideal or other emergencies.

The Subdivision Ordinance requires new roads that are accessed from an existing paved road to be hard surfaced. While the reason for this is not defined with the Ordinance, staff indicated to the applicant that the requirement is probably based on safety issues. Dust from traffic on the gravel can pose a safety risk to the traveling public. Likewise rock and other road material can be pulled out onto the paved road. The reasons for preferring a hard surface were outlined to the applicant. The applicant understood the reasons, but still did not want to hard surface the 1200 feet of new roadway, instead requesting to hard surface only the first 100 feet off of County Highway 122. The applicant felt this would provide a safe intersection. Varying this requirement will set a precedent within the County, which will be followed by other developers. Based on safety concerns, staff can not support the applicant's request to hard surface only the first 100 feet of Riverbend Place.

Recommendation

Staff recommended approval of the portion of Variance #05-09 to reduce the surface width of Riverbend Place from 24 feet to 20 feet. Staff recommends denial of the portion of Variance #05-09 to allow the hard surfacing of only the first 100 feet of Riverbend Place coming off of County Highway 122.

Public Testimony

Commissioner Cypher stated that the County would be setting a precedent if hard surfacing was not required. Other subdivisions have complied with the requirement. He questioned the 24' driving surface. Mr. Anderson explained that the subdivision ordinance requires 66' of right-of-way and that 24' is to be the driving surface. In this instance, with a few houses, a 20' wide driving surface would be acceptable

for providing access and passing ability for everyday traffic and to accommodate emergency vehicles.

The petitioner, Pat Cannon, is one of three property owners who will use the road for access to their houses. They have all posted letters of credit for road surfacing, as required as part of the platting process for these building sites. However, at the auction, it was not clear that hard surfacing would be required. Mr. Cannon does not feel this site meets the purpose behind the subdivision's requirement for hard surfacing as he interprets the ordinance.. First, this is not a subdivision and the road will never be extended. It dead ends at the building sites. Mr. Cannon argued that the 1500' right-of-way is a driveway. The cost to pay this would be \$30,000. The second reason for hard surfacing is to prevent drawing dirt and mud onto the county highway. He proposed that paving only be required to the first bend in the road, approximately 125 feet. Mr. Cannon doesn't think rocks and mud would follow the car around the curve. Putting in rumble strips might also help shake the rocks and mud loose.

Mr. Cannon noted that the road would not be traveled for some years as none of the land owners have plans to build anytime soon. He stated that they were not developers trying to get a break from the system. Mr. Cannon stated that since the lots adjoining the new road, Riverbend Place, should be considered the access and no hard surfacing should be required. He feels some flexibility should exist in the ordinance.

Commissioner Bunde stated that the subdivision ordinance requires the hard surfacing and that it should be adhered too. Other small subdivisions have abided by the ordinance. She is not opposed to narrowing the width.

Mr. Anderson stated that he had met with other potential buyers of the property and they had been told hard surfacing would be required. Some chose not to pursue the sites and would probably question why hard surfacing did not happen.

Commission Bunde stated that a standard was needed for the roads and that the ordinance should be upheld, otherwise everyone will be coming in and asking for a variance. Commission Cypher agreed, stating that the subdivision ordinance is based on sound reasoning and that it is logical to pave a road which provides access onto a county highway.

Based on the staff report and public testimony, a motion was made by Bunde and seconded by O'Hara to recommend approval of the portion of Variance #05-09 to reduce the surface width of Riverbend Place from 24 feet to 20 feet, and to recommend denial of the portion of Variance #05-09 to allow the hard surfacing of only the first 100 feet of Riverbend Place coming off of County Highway 122. The motion passed unanimously.

ITEM 16. CONDITIONAL USE PERMIT #05-102 to allow a private recreation facility.

Legal Description – SW1/4 SW1/4 (ex. H-2) & W825' SE1/4 SW/4 in Section 18-T102N-R49W

Location - 2808 W. 84th St. N. 1.5 miles southeast of Crooks

Petitioner / Owner- Crooks Gun Club - Donald Renner, President

General Information

Present zoning - A-1 Agricultural

Existing Land Use - shooting range

Parcel Size – 52.67 Acres

Report by: Scott Anderson

Staff Analysis

The Crooks Gun Club is requesting a conditional use permit to bring the existing use into compliance, and to expand the uses on the property. Currently there are 13 trap shooting pits, a club house, ticket and vendor building and two (2) accessory buildings. In addition to the gun activities, there is also a small campground, consisting of 32 sites on the 52 acre property.

The gun club was started in the 1940's. Throughout the years there were expansions. The club house that was recently destroyed by fire, was constructed in 1961. A new 7,500 square foot club house was constructed in 2005. The applicant would now like to expand the use of the clubhouse to include hosting

of events such as weddings, receptions, and parties. They are seeking to allow the sales of beer and wine through a separate conditional use permit.

On November 7, 2005, staff inspected the property. The surrounding land uses consist primarily of agricultural uses. There are a few residences located in the area. The closest residence is located directly south of the gun club on 84th Street North, while two (2) others are located near the intersection of Kiwanis Avenue and 84th Street North. These three residences stand to be impacted the greatest by any expansion in activities at the gun club.

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 Crooks Gun Club has been in existence at this site since the 1940's, predating the development in the area and formal zoning controls. There are certain impacts on enjoyment of properties in the immediate vicinity. These impacts primarily are noise, dust and traffic. The applicant is now requesting an expansion to the existing grandfathered uses on the property. This expansion will create more traffic to the site. Staff has attempted to mitigate the traffic impact by requiring the applicant to provide dust suppression on 84th Street North. The use of guns will always generate noise. To date staff has not received any complaints from neighbors regarding noise at the site. The firearms noise can be limited to certain times of the day. Staff is recommending that any shooting occur between 7 am and 10 pm.

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

The location of existing wetlands and the interstate have a much greater impact on the orderly development of the area. Interstate 29 is located along the west property boundary and a significant amount of wetlands are located to the north and south of the subject property. The gun club has been operating on the subject property since the 1940's. The establishment and use of the shooting range does not appear to have had a negative impact on growth and development of the area. The predominant use of the area is for agricultural purposes. The existing and proposed uses planned by the gun club will not negatively impact the agricultural uses in the area.

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

The primary route into the site is via 84th Street North, which comes off Kiwanis Avenue. While Kiwanis Avenue is paved, 84th Street North is not. There is approximately 1250 feet of 84th Street between Kiwanis Avenue and the driveway into the subject property. Staff has serious concerns with the potential for dust due to the expanded use of the property. A wedding, wedding reception or other similar types of gatherings will produce significant, additional traffic into the property. Staff believes that the adjacent properties should not be exposed to any additional dust from the proposed of new events at the site. Staff has recommended that dust control measures be instituted on 84th Street. Dust suppression will minimize the impact of additional traffic.

All other utilities have been provided to the subject property and no further improvements or upgrades are needed.

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

Article 15 of the Minnehaha County Zoning Ordinance requires one (1) parking space for each 300 feet of floor area within private clubs. The minimum parking requirements for this new structure would be 25 spaces. During staff's inspection of the site, forty-three (43) regular and five (5) handi-capped parking spaces were counted, which exceeds the minimum parking 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.

Staff has identified the potential for dust from additional traffic to the site and required dust control. The use by its very nature will generate noise. Most of the shooting is conducted during daylight hours, which should reduce the nuisance to the neighbors. The gun club has extensive tree shelter belt located along the southeast boundary. The shelter belt should reduce some of the visual impacts. The gun club has been in operation on the site for nearly 70 years without significant issue.

Staff can support the approval of this conditional use permit request. The applicant is attempting to bring an existing use into compliance while also requesting a small expansion. The facility is well suited and has a long history within the community.

Recommendation

Staff recommended approval of Conditional Use Permit #05-102 to allow a private recreational facility with the following conditions:

- 1) That approved uses for this conditional use permit are as follows: shooting range, up to 32 camping spaces, events associated with the gun club, and hosting non-related gun club events.
- 2) Any outdoor music provided in association with an event shall conclude by 11:00 p.m.
- 3) The applicant shall provide dust suppression on 84th Street North from the driveway into the Gun Club to Kiwanis Avenue. The type and optimum amount of dust suppressant shall be determined by the governing body responsible for maintaining 84th Street North.
- 4) That a minimum of 25 parking spaces be maintained for use in conjunction with the 60' by 125' club house building.
- 5) That any outdoor shooting take place between 7 am and 10 pm.

Public Testimony

Mr. Anderson stated that the neighbor immediately south of the site, Charles Meyer, could not attend the meeting but had some concerns. He is not opposed to the proposed use but does have concerns about the traffic. He would like to see a slower speed limit posed on 84th St. and also a "Children at Play" sign. Mr. Anderson explained that the Township would need to petition the County Commission to establish a reduced speed limit. The Planning Commission does not have the authority to require either the speed limit reduction nor the posting of warning signs.

Commissioner Hajek asked why 84th Street did not have to be paved. Commissioner South explained that 84th St., is not a new road, but an existing township gravel road. The gun club takes access from 84th St., not Kiwanis Ave.

Commissioner Steinhauer suggested that condition #4 be changed to require all existing parking spaces be maintained.

The president of the gun club, Don Renner, stated that the club house had been built this year to replace one which had burned. They average 60-100 cars on league nights. He is not opposed to a reduced speed limit. The hours of operation will not be a problem as currently league shooting runs from 6 pm to 9 pm on week nights and the club is usually open from 8 am to 5 pm on weekends. Mr. Renner stated that the club will take care of dust suppression and that they are currently researching the best method to use.

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

Based on the staff report and public testimony a motion was made by O'Hara and seconded by Bunde to recommend approval of Conditional Use Permit #05-102 with the stated conditions. The motion passed unanimously.

ITEM 17. CONDITIONAL USE PERMIT #05-100 to allow on-site malt beverage sales.

Legal Description – SW1/4 SW1/4 (ex. H-2) & W825' SE1/4 SW/4 in Section 18-T102N-R49W

Location - 2808 W. 84th St. N. 1.5 miles southeast of Crooks

Petitioner / Owner- Doug Erstad with Old Towne Specialties / Crooks Gun Club

General Information

Present zoning - A-1 Agricultural
Existing Land Use - shooting range
Parcel Size – 52.67 Acres

Report by: Scott Anderson

Staff Analysis

This application is a request to allow on and off premise malt beverage sales. The applicant has indicated that the beer and wine would be served out of the new clubhouse that was constructed in 2005. The applicant has indicated that beer and wine would be served on Wednesday and Thursday nights to gun club members during leagues and on Friday and Saturday nights during special events, such as wedding receptions and parties.

On November 8, staff conducted a site visit and found the property to be in excellent condition. There were a total 48 paved parking spaces, of which five (5) were handi-capped spaces. The road leading into the property from Kiwanis Avenue is graveled, and approximately ½ of the driveway was graveled. Staff is concerned with the dust that will be generated through the new use of the Gun Club. This however will be addressed in the review of Conditional Use Permit #05-102.

There are three (3) existing residences located to the east of the Gun Club along 84th Street North and Kiwanis Avenue. These existing residences could be impacted by the expanded use of the property and the sale of beer and wine.

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 closest residential use is directly across the road of the site and it is somewhat buffered from the existing business by a shelterbelt. The uses and enjoyment of the surrounding property should not be impacted nor should the addition of malt beverage sales to this site have any effect on the property values 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 sale of beer and wine should have little or no impact on the normal development of vacant property in the area. Much of the property to the north and west is wetlands and any development in this area would be difficult.

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

All required utilities are in place. The site naturally drains to the west; no further drainage work is needed. Staff has indicated that dust control measures will be required on 84th Street North.

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

The site has the required paved parking spaces for the existing use as well as abundant overflow 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.

All activity will take place inside the existing building and should not generate any nuisances.

Recommendation

Staff recommended approval of Conditional Use Permit # 05-100 with the following conditions:

- 1) The sale of beer and wine shall be allowed only in the newly constructed club house.
- 2) On-premise signs shall adhere to Article 16.00 of the Minnehaha County Zoning Ordinance and require a building permit.
- 3) The business will adhere to the state and county regulations governing the sale of malt beverages.

Public Testimony

Nick Erstad with Old Towne Catering stated that they will be applying for a malt beverage license. They will provide malt beverages only for special events at which it is requested.

Commissioner Hajek noted that for a nominal fee a one day liquor license can be obtained from the County.

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

Based on the staff report and public testimony a motion was made by Cypher and seconded by O'Hara to recommend approval of Conditional Use Permit #05-100 with the stated conditions. The motion passed unanimously.

ITEM 18. REVIEW CONDITIONAL USE PERMIT #05-62 – contractor’s storage yard.

Legal Description – Tract 4 Dawson’s Addition & Lot 4 Haug’s Addition SE1/4 in Section 12-T102N-R50W.

Location - 47184 258th St. Crooks exit of I-29

Petitioner / Owner- C & W Enterprises

General Information

Present zoning - C Commercial

Existing Land Use - Commercial

Parcel Size – 5 Acres

Report by: Phil Kappen

Staff Analysis

The subject property is located in the northwest quadrant of the Crooks/Renner interchange on I-29. Earlier conditional use permits on this property had been revoked due to the petitioner’s non-compliance with permit conditions. The petitioner subsequently appealed the county’s decision in revoking the CUPs to circuit court. The court ordered the reinstatement of the conditional use permit and told the petitioner that he should meet the permit conditions. The conditional use permit was officially reinstated by the Planning Commission in June, 2005. Subsequent to that meeting, the petitioner applied for a revised CUP that would allow them to reduce the size of the storage area for equipment parts, materials, and infrequently-used equipment and to screen that area with an additional fence. The Planning Commission approved a revised conditional use permit on July 25, 2005 with the following conditions:

1. All previous conditional use permits on this property shall be repealed.
2. Lot 4 Haug’s Addition shall be limited to the parking of trucks. All trucks shall be maintained in an operable and currently licensed condition. A physical barrier such as curb stops shall delineate the required fifteen-foot front yard setback along both Cottonwood Avenue and Wild Clover Circle. If access is made from this lot to either of the adjoining street right-of-ways, all access driveways shall be hard-surfaced for a minimum distance of 50 feet onto the lot. Any security fences on this property must also be set back from the Cottonwood and Wild Clover ROWs by a minimum of 15 feet.
3. Screening fences shall be erected and maintained along the west, south, east and north sides of Tract 4 Dawson’s Addition. The screening fences shall be a minimum of 6 feet in height, shall be of an earth-tone color and shall have a minimum of 90% opacity maintained over the entire height of the fence. The screening fences along the Cottonwood, 258th Street and I-29 ROWs shall be setback a minimum of 15 feet.
4. No unlicensed or inoperable vehicles or equipment shall be allowed to accumulate on the property.
5. All equipment parts, materials, and infrequently-used equipment shall be limited to Tract 4 Dawson’s Addition and shall be screened from public view behind an interior screening fence as delineated on the petitioner’s revised site plan. This fence shall be a minimum of 160 feet long and shall be a minimum of 8 feet in height, shall be of an earth-tone color and shall have a minimum of 90% opacity maintained over the entire height of the fence.
6. A fifteen-landscaped area shall be maintained along the west and south sides of Tract 4 Dawson’s Addition and shall include either deciduous or coniferous trees planted a maximum of 30 feet on center. All trees shall be a minimum 1¼ inches if deciduous or a minimum height of 5 feet if coniferous. Any damaged or dead trees shall be immediately replaced.
7. The driveway and parking area on Tract 4 Dawson’s Addition, as shown on the revised site plan, shall be hard-surfaced.
8. All permit conditions shall be fully met by September 1, 2005.

Staff has inspected the site and believes that the petitioner is in compliance with all conditions except for the fencing required in condition number five. The petitioner did have the fence constructed by the required deadline, however, the contractor used slats in the fence that only provide 75% coverage rather than the required 90%. Staff has notified the petitioner of the discrepancy. The petitioner has stated that they were told by the fence company that the fence in questions would be at least 90% coverage. The petitioner has since contacted the fence company about the discrepancy. Staff has noted that the

equipment parts, materials, and infrequently-used equipment all appear to have been moved into the reduced storage area. Construction equipment, usually on various construction sites, has been moved onto the property for the winter season. Both staff and the planning commission were aware that this would occur and the equipment is neatly lined up on the property. The petitioner should be prepared to address the problems with the screening fence at the Planning Commission meeting.

Public Testimony

Carol Barse explained that the fencing company had told her that the fence which was erected met the County's requirements. She has contacted them and ordered the replacement slats.