

**MINUTES OF THE  
MINNEHAHA COUNTY PLANNING COMMISSION  
March 27, 2006**

A meeting of the Planning Commission was held on March 27, 2006 at 7:00 p.m. in the Commission Room of the Minnehaha County Administration Building.

COUNTY PLANNING COMMISSION MEMBERS PRESENT: Deb Bunde, Mike Cypher, Susie O'Hara, Mark Rogen, and Don South.

STAFF PRESENT: Scott Anderson, Phil Kappen, Pat Herman, and Gordy Swanson with the Office of the State's Attorney.

The meeting was chaired by Don South.

**APPROVAL OF THE CONSENT AGENDA**

There were no objections from the Planning Commission or audience and a motion was made by O'Hara and seconded by Rogen to approve the consent agenda. The motion passed unanimously.

**ITEM 1. MINUTES – February 27, 2006.**

A motion was made by O'Hara and seconded by Rogen to approve the minutes. The motion passed unanimously.

**ITEM 2. CONDITIONAL USE PERMIT #06-14 to transfer one residential building eligibility.**

From -	NE1/4 SW1/4 of Section 28-T103N-R50W
To -	SW1/4 SE1/4 of Section 28-T103N-R50W
Location -	2 miles south of Lyons
Petitioner / Owner-	Vincent Hanson

**General Information**

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

**Report by:** Scott Anderson

**Staff Analysis**

The petitioner is requesting to transfer one residential building eligibility. The eligibility that was originally assigned to this parcel was transferred in April of 2005 to the NW ¼ of Section 28. The applicant has now decided to utilize the subject property for a residential use and is transferring the eligibility back. The eligibility is being moved from the NE ¼ SW ¼ of Section 28 to the SW ¼ SE ¼ of Section 29. Access is provided by 255<sup>th</sup> Street. The subject property is currently zoned A-1 Agricultural.

**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.**

A right-to-farm notice covenant should be required to notify potential buyers to the realities of locating in an agricultural area.

**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 does not increase the number of dwelling units allowed in this quarter.

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

Access is off of 255<sup>th</sup> Street. Rural water is available in the area and a waste water system will be utilized.

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

Off-street parking requirements will be provided for once a single-family residence is constructed on the subject 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.**

The proposed conditional use will not cause odor, fumes, dust, noise, vibrations or lighting in any amounts that would constitute a nuisance.

**Recommendation**

Staff found the conditional use permit request to be consistent with density zoning and recommended approval of Conditional Use Permit #06-14 with the following conditions:

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

Based on the staff report a motion was made by O'Hara and seconded by Rogen to approve conditional use permit #06-14 with the conditions as stated. The motion passed unanimously.

**ITEM 3. CONDITIONAL USE PERMIT #06-13 to transfer one residential building eligibility.**

From - SE1/4 SE1/4 of Section 16-T103N-R48W  
To - SE1/4 SW1/4 of Section 16-T103N-R48W  
Location - 4.5 miles west of Garretson  
Petitioner / Owner- Waneta Erickson

**General Information**

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

**Report by:** Phil Kappen

**Staff Analysis**

The subject property is located along 253<sup>rd</sup> Street approximately 1 mile southeast of the Eros Data Center. The surrounding properties are zoned agricultural and are predominantly farmland with a number of existing residential acreages. The petitioner wishes to transfer a building eligibility from a quarter-quarter with a creek and a large amount of low ground to an area better suited for constructing a house.

**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 a number of acreages in the area and the addition of another home will have no additional impact on the nature of the area. The farmstead with the greatest likelihood for potential impact is owned by the petitioner. The approval of this transfer would move the eligibility farther away from the next closest farmstead. There are no concentrated animal feeding operations in the vicinity of the proposed house location. As the site is in an agricultural area, a right-to-farm notice covenant should be required to be filed on the property.

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

The two most predominant uses in the area are agriculture and residential acreages. The farming of the agricultural land will continue. The petitioner has one existing eligibility on property to the west of their farmstead. That area has a site which would already be conducive to the construction of a home. The building eligibility on that site is a permissive use and would require no action y the Planning Commission.

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

Access to the site would be via 253<sup>rd</sup> Street, a township road. Edison Township requires a driveway permit and such a permit would be necessary prior to the issuance of any building permit. There is a location where adequate sight distance exists to allow safe access to the road.

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

There is ample space on the property for the amount of parking required for a single-family residence. No parking should be allowed on the road.

**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 problem with the odor, fumes, dust, noise, vibration, or lighting from a single-family residence.

**Recommendation**

Staff finds that the proposed transfer is consistent with density zoning and that the proposed home can be placed in a manner that will minimize any potential conflict with neighboring land uses. Staff, therefore, recommended approval of conditional use permit #06-13 with the following conditions:

- 1) The home site shall be platted and a right-to-farm notice covenant filed on the property prior to the issuance of any building permit.
- 2) No building permit shall be issued until the applicant has written approval from Edison Township for the driveway specifications and location.

Based on the staff report a motion was made by O'Hara and seconded by Rogen to approve conditional use permit #06-13 with the conditions as stated. The motion passed unanimously.

**ITEM 4. CONDITIONAL USE PERMIT #06-16 to exceed 1200 sq. ft. of accessory building area (1800 requested) and to allow a class 1 major home occupation – mechanical design.**

Legal Description - Lot 12 Block 4 Country Acres 2<sup>nd</sup> Addition in Section 31-T101N-R50W  
Location - 26784 Country Acre Dr. - 2.5 miles west of Sioux Falls  
Petitioner / Owner- Jonathan Giles

**General Information**

Present zoning - A-1 Agricultural  
Existing Land Use - Residential  
Parcel Size - 1.69 Acres

**Report by:** Pat Herman

**Staff Analysis**

The site is located in the Country Acres Subdivision 2.5 miles west of Sioux Falls. The subdivision is zoned A-1 Agricultural and has over 65 residences. Wild Water West is to the west of this subdivision and Lincoln County immediately to the south. The petitioner is requesting two items – to exceed 1200 sq. ft. of accessory building area and to have a class one major home occupation.

The requested size for the accessory building is 1800 sq. ft. There are seven accessory buildings in this development which are larger than 1200 sq. ft., four of which exceed 1800 sq. ft. Most of the homes in this part of Country Acres are large and an accessory building in excess of 1200 sq. ft. would not dominate the residential structure. The front of the building would be used as a standard garage; the rear portion would be dedicated to the petitioner's second request, a class one major home occupation.

The business is a mechanical consulting company which designs heating, venting, air conditioning, and plumbing systems for commercial and light industrial facilities. The operation will be conducted in the accessory building. There are a total of four employees for the business, the homeowners and two outside employees. This business requires no outside storage and will create no nuisances such as fumes, or noise. The petitioner estimates customer visits to be two per month. No sales are conducted on site and all deliveries will be made by standard delivery service trucks. The proposed home occupation meets all of the criteria listed in Section 12.0302 (A) of the Zoning Ordinance for a class one operation except building size.

Section 12.0302 (A) (4) states: In addition to the dwelling, up to 750 square feet of accessory building space may be used for the occupation. The petitioner would like to use 1200 square feet. The business requires room for a drafting table, computer and large printers as well as large conference size tables on

which to layout design plans. Given the size and nature of the business a limited increase in the portion of the building dedicated to the business is reasonable. 1200 square feet would dedicate 2/3 of the building for the business. Staff recommends that this area not exceed 1000 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.**

Both the accessory building and the home occupation should not negatively impact the surrounding properties. The building size is not excessive for the area and the business will not generate much traffic in this residential development.

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

The subdivision, aside from one or two lots, is completely built out.

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

Utilities exist to service the building. There will be a small restroom in the accessory building and this will be tied into the existing septic system. A septic permit is required.

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

Parking spaces for the two non-resident employees and any customers must be provided on the property. Between the attached garage, accessory building and driveway there is sufficient space to accommodate off-street parking.

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

The proposed home occupation should not create nuisances.

A building permit is required for the accessory building. Plans must be submitted showing the required fire wall between the garage and office and the exits from the building. The building will need to be inspected by the building inspector prior to the commencement of the business.

**Recommendation**

Staff found the request to increase the accessory building area to be congruent with the residential development. The class one home occupation is residential in nature and is not incompatible with the neighborhood. Staff recommended approval of conditional use permit #06-16 with the following conditions:

- 1) Accessory building area shall be limited to 1800 square feet.
- 2) The accessory building shall not exceed one story in height.
- 3) The maximum square footage of accessory building area dedicated to the home occupation shall not exceed 1000 square feet.
- 4) The home occupation shall meet the requirements of the County Zoning Ordinance Section 12.0302 (A) except for # 4.
- 5) All employee and customer parking shall be on the property. No parking shall be allowed on Country Acre Drive.
- 6) Approval from the County Building Inspector is required prior to the commencement of the home occupation.
- 7) The petitioner shall have a S.D. sales tax license.

Based on the staff report a motion was made by O'Hara and seconded by Rogen to approve conditional use permit #06-16 with the conditions as stated. The motion passed unanimously.

**ITEM 5. CONDITIONAL USE PERMIT #06-18 to replace one manufactured home with another.**

Legal Description - Vac alley lying adjacent & E1/2 vac Greenstone Ave. & S1/2 Lots 3 & 10 & all Lots 4-7 and 11-14 Block 19 Rowena Original in Section 26-T101N-R48W

Location - 26673 Brownstone Ave. - Rowena

Petitioner / Owner- William Forshoy

**General Information**

Present zoning - A-1 Agricultural & R-1 Residential  
Existing Land Use - Residential  
Parcel Size – 1.6 Acres

**Report by:** Pat Herman

**Staff Analysis**

The property is located in Rowena at the southern end of Brownstone Avenue. There is commercial zoning adjoining to the west, farm ground to the south and residential uses to the north and east. There is an existing double wide manufactured home which was placed on the property in 1975. The petitioner is requesting to replace that manufactured home with a 1999 model.

**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 newer model manufactured home will reflect positively on the community. The petitioner is planning a permanent foundation, something the existing unit does not have.

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

There should be no negative effect on development in the area.

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

All utilities are in place and will be transferred to the new unit. A new septic system will be installed as the existing system dates back to the original mobile home placement. The existing driveway will be used for access.

**Recommendation**

Staff found that the request to replace one manufactured home with another is a positive feature for the neighborhood and recommended approval of conditional use permit #06-18 with the following conditions:

The manufactured home will meet the requirements of the County Zoning Ordinance as specified in Section 12.06 (C):

- (1). The structure shall have been constructed on or after July 15, 1976.
- (2). The exterior dimensions of the structure, measured by excluding overhangs, shall not be less than 22 feet.
- (3). The structure shall be supported by a foundation system consisting of walls along the perimeter and piers on the interior. All foundation walls and piers shall extend a minimum of 42 inches below final grade.
- (4). The roofing and siding material shall be consistent with the material used in site-built dwellings.
- (5). The roof pitch shall not be less than a 3 in 12 slope.

Based on the staff report a motion was made by O'Hara and seconded by Rogen to approve conditional use permit #06-18 with the conditions as stated. The motion passed unanimously.

The Dell Rapids Planning Commission joined the meeting to take action on Item 6.

Members present: Bob Davis, Roger Dearduff, Darrel Donelan, Chair Bob Lamberty, and Larry Skatvold. Staff present – Jeff Trill

**ITEM 6. CONDITIONAL USE PERMIT #06-21 to allow vehicle sales and repair.**

Legal Description - N1/2 Lot 11 Lot C Keneficks Subdivision in Section 16-T104N-R49W  
Location - 24666 475 Ave. south edge of Dell Rapids  
Petitioner / Owner- Joe Cynkar

**General Information**

Present zoning - I-1 Light Industrial  
Existing Land Use - Vacant commercial  
Parcel Size - 0.46 Acres

**Report by:** Scott Anderson

**Staff Analysis**

The applicant is requesting a Conditional Use Permit to allow for vehicle sales and repairs. The site is located south of Dell Rapids and is in the joint jurisdictional area with the city of Dell Rapids. The property is zoned I-1, Light Industrial District. The proposed use requires a conditional use permit. The property across the highway to the west is zoned RR-5, Rural Residential.

Access to the site is from 475<sup>th</sup> Avenue, which is S.D. Highway 115. The driveway and parking areas are paved, although staff noted that the parking lot was in poor condition during a site visit on March 15, 2006. The petitioner will display cars in front of the building. Customer parking will also be at this location.

**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 area south of Dell Rapids along the east side of S.D. Highway 115 has developed as a commercial/industrial area. The proposed use is similar to other uses along this side of the highway. The proposed use should have little or no impact on the property values in the area or uses already permitted.

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

An auto sales business should not impact the normal development of the area. Most of the area along the highway has developed into a commercial/light industrial use.

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

Access to the site is provided by S.D. Highway 115. No further infrastructure is needed to service the site.

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

Article 15.02.U requires one (1) parking space for each 300 square feet of floor area for all non-residential buildings not specified in the regulations. Auto repair and sales has not been specified. The Director of Equalization's records indicate that the proposed building has 9,000 square feet. The applicant shall maintain a minimum of thirty (30) off street parking spaces and one (1) loading space. The current parking area is sufficient to meet these requirements.

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

The parking lot is paved, which will minimize dust from the property. The condition of the parking area is poor. The parking lot shall not be allowed to deteriorate to such a point that it fails. Staff has also included a condition which would require any new lighting to be the shoe box type which reflects the light downward. There should be no significant noise issues associated with the proposed use.

Staff finds the request to be in conformance with the surrounding land uses and recommends approval of the Conditional Use Permit. The proposed use shall comply with all requirements of the Revised Joint Zoning Ordinance of Minnehaha County and the City of Dells Rapids.

**Recommendation**

Staff recommended approval of Conditional Use Permit #06-21 to allow a vehicle sales and repair business with following conditions:

- 1) That no inoperable or dismantled vehicles be stored on the property.
- 2) That the business operator obtains and maintains a South Dakota sales tax license.
- 3) Any new exterior lighting shall be shoe box style that directs the lighting downward.

- 4) The applicant shall maintain a minimum of thirty (30) off street parking spaces and one (1) loading space.

**Public Testimony**

The petitioner, Joe Cynkar, and Joe Haverman questioned condition # 1. As a repair business they are going to have damaged vehicles on the site. They plan to have a fenced in area on the east side of the building which will not be visible from the highway. The fencing will be white aluminum siding at a height of 6 feet.

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

After a brief discussion among all the commission members it was agreed that condition # 1 should be amended to read: Any inoperable, damaged or dismantled vehicles shall be stored in a fenced area located on the east side of the building. This area shall have a 6' high fence with 90% opacity. There shall be no outside storage outside of the fenced area.

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 for the county was made by Cypher and seconded by O'Hara to approve conditional use permit #06-21 with the following conditions:

- 1) Any inoperable, damaged or dismantled vehicles shall be stored in a fenced area located on the east side of the building. This area shall have a 6' high fence with 90% opacity. There shall be no outside storage outside of the fenced area.
- 2) That the business operator obtains and maintains a South Dakota sales tax license.
- 3) Any new exterior lighting shall be shoe box style that directs the lighting downward.
- 4) The applicant shall maintain a minimum of thirty (30) off street parking spaces and one (1) loading space.

The motion passed unanimously. Same motion for the City was made by Donelan and seconded by Davis. The motion passed unanimously.

**ITEM 7. CONDITIONAL USE PERMIT #06-19 to amend CUP #05-75 to change method of waste storage.**

Legal Description - Tr. 2 Ode Addition S1/2 SE1/4 of Section 22-T101N-R48W  
Location - 48176 266 St. - 3 miles south of Brandon  
Petitioner / Owner- Royalwood Farms

**General Information**

Present zoning - A-1 Agricultural  
Existing Land Use - Agricultural  
Parcel Size - 12.36 Acres

**Report by:** Phil Kappen

**Staff Analysis**

The subject property is located on the north side of 266<sup>th</sup> Street (Co. Hwy 146) and approximately ¾ mile east of Highway 11. The petitioner currently has a conditional use permit allowing him to expand an existing 140 A.U. CAFO into a 440 A.U. CAFO, specifically a dairy. This CUP was approved by the Planning Commission in August, 2005 with the following conditions:

- 1) The facility shall be limited to a total of 440 Animal Units.
- 2) The petitioner shall manage all agricultural waste according to an approved nutrient management plan that has been prepared with consideration to both nitrogen and phosphorus nutrients. The plan shall be kept up-to-date and a copy of the approved plan shall be filed with the Minnehaha County Planning Department.
- 3) The operation shall conform to the site plan dated July 29, 2005.
- 4) At a minimum, the existing tree plantings shall be maintained on the west and north sides of the property.
- 5) A minimum of three test wells (at least one upgrade and two downgrade) shall be established at the facility. At a minimum, the wells shall be tested for the water quality parameters of

- ammonia, chlorides, nitrates, sulfates, total dissolved solids and depth to water to determine any impact to ground water. Quarterly testing shall be required during the first year. If no water quality problems are detected, testing may be reduced to a semi-annual frequency in following years upon approval; of staff.
- 6) All application of liquid waste shall be injected into the ground. Semi-solid waste shall be incorporated into the ground within 24 hours.
  - 7) A pest, odor control and dead animal disposal plan shall be prepared for approval by the Minnehaha County Planning Director and a copy provided to the county.
  - 8) The petitioner shall obtain state permit approval for the operation.

Given the size of the facility and the fact that the 440 A.U. CAFO met the criteria distances from other residences, the expansion could have been accomplished without a CUP had the site not lain within a Water Source Protection District. As the site is with a WSPD, the CUP was necessary.

The approval of that permit was upheld by the Minnehaha County Commission in September, 2005. The petitioner now proposes to amend those conditions to change the method of managing the agricultural waste. In their previous testimony before the Planning Commission and the County Commission the petitioners stated that their method of waste management would be to utilize a stack pile for the waste and drain liquid portions of the waste into existing covered concrete pits. That means of waste management would work when using bedding materials such as straw. They now wish to utilize sand bedding which would not be conducive with the stack pad/covered pit method of waste management.

The petitioners now propose to construct a holding pond for agricultural waste in the northwest corner of the farmstead area. They propose that the holding pond have a concrete floor and packed clay sides to allow better retrieval of the bedding sand for reuse in the facility. There will be no increase in the allowed number of animal units on the site.

The petitioners also ask that condition # 6 be amended to allow them to surface apply liquid waste on hay land and pasture after first informing Minnehaha County in writing of where the liquid waste will be applied.

**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.**

As was previously noted, the facility meets the target setback criteria set forth in the zoning ordinance, 1100 feet between the 440 A.U. CAFO and any other residence. Staff sent notice of this meeting to all property owners within 1 mile of the facility.

The only difference between the facility itself as previously approved and what is now proposed is the change to a holding pond. A holding pond may have a greater odor impact than the covered concrete pit. Additional odor control measures will have to be required if this change is approved. Such control measures could include the use of bio-covers over the holding pond and the use of pit additives such as Pit Remedy. There are existing trees on the north and west sides of the facility which will also aid in the dispersal of any potential odors. The location of the proposed holding pond in the corner of the existing tree belts is likely the best location for the pond from an odor control standpoint.

Staff does have some concerns about the surface application of liquid waste instead of injecting all liquid waste as is now required particularly due to the concentration of residences in the general area. Staff also understands, however, that the liquid waste is an excellent source of nutrients and that the petitioners would desire to use this resource on their pasture and hay land. Injecting the waste results in much less odor than surface application and provides greater nutrient value to crops, however, there have been incidents at other CAFOS in which the surface application of liquid waste has been approved on a individual basis. In considering requests for the surface application of liquid waste, consideration should be given to the proximity of neighboring houses, the amount of waste to be applied and the weather conditions at the time of application.

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

The facility does lie within the Water Source Protection District. The currently approved management system would contain all waste on concrete pads in existing covered concrete pits to prevent potential pollution of the shallower ground water in the area. Test wells and water sampling are also required to further ensure protection of water resources. The proposed holding pond is larger than what was

previously approved. Because of the larger holding pond the number of test wells may need to be increased to ensure that, if there is a detection of waste from the holding pond that the pond can be immediately pumped out for proper application to land and the pond repaired to stop the leak.

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

Access to the property would be via County Highway 146 (266<sup>th</sup> Street). Existing driveways would be used for all access. There would be no change in the proposed amendment.

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

There is ample space for all required off-street parking and loading. No on-street parking would be allowed. There would be no change in the proposed amendment.

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

There are existing trees on the north and west sides of the subject property that will aid in the dispersal of potential odors. These belts are required to be maintained by the existing permit

**Recommendation**

Staff found the proposed change in the waste management system on the facility to be consistent with the types of management found in other CAFOS. Staff, therefore, recommended approval of amending conditions number three, five and six of conditional use permit #05-75 to read as follows and adding a new condition (number nine):

- 3) The operation shall conform to the site plan dated March 3, 2006.
- 5) A minimum of four test wells (at least one well upgrade and three wells downgrade) shall be established at the facility. At a minimum, the wells shall be tested for the water quality parameters of ammonia, chlorides, nitrates, sulfates, total dissolved solids and depth to water to determine any impact to ground water. Quarterly testing shall be required during the first year. If no water quality problems are detected, testing may be reduced to a semi-annual frequency in following years upon approval of staff. The petitioner shall also provide the county with results of groundwater samples taken prior to the start of any construction in order to provide a background measurement of ambient water quality.
- 6) The standard means of applying liquid waste shall be by injection into the ground. Semi-solid waste shall be incorporated into the ground within 24 hours. Surface application of liquid waste stored in the waste containment area may be approved by staff on a case-by-case basis upon receiving a request in writing from the petitioner delineating the specific area on which the surface application will be made, the date on which the application would be made, and the amount of waste to be applied. Staff shall consider the proximity of neighboring residences, the amount of waste to be applied and the forecast weather conditions for the date of application before arriving any such request.
- 9) All holding ponds shall be maintained with a minimum 8-inch bio-cover and an additive such as Pit Remedy shall be added to the pits to aid in the breakdown of the waste and the maintenance of the bio-cover. If the use of the pit additive and natural processes are not adequate to achieve the necessary bio-cover, a material, such as chopped straw shall be sprayed over the pond to maintain the required cover.

**Public Testimony**

In response to Commissioner South, Mr. Kappen explained that the petitioner would have to notify the Planning Department each time they planned on surface applying liquid waste. This would have to be done in writing and specify when, where, and how much. Any complaints to the Planning Department would be forwarded to the petitioner in order to fix the problem. The fields on which the liquid waste is being spread must be listed in the nutrient management plan.

The petitioner, Doug Ode, and engineer Chris Skonard stated that the new building would not fit with the old pits. They have changed to using all sand in the barns so a new pit was needed to accommodate this. The pit will have cement body and slope slightly to the east. Access into the pit will be in the northwest corner. The only time they plan on surface applying waste is if there is a need due to a large rain. The pit is designed for a 270 day hold. Alfalfa is on a 28 day cut schedule so they do not want to apply waste until the end of the season. New equipment would be required to inject into alfalfa ground.

Ray Grimes, 26612 481<sup>st</sup> Ave., stated that effluent runs down a natural ditch from 266<sup>th</sup> St. south to the river. There has been enough to take down fences.

Sheila Agee, 26495 482<sup>nd</sup> Ave., had questions pertaining to state approval, whether this change would create more odor and how the enforcement of liquid waste application would be approved and enforced. Mr. Kappen stated that the applicant had not yet approached the state but that the more stringent regulations would trump. Testing is done to state standards. Mr. Kappen explained that trees are used to create agitation of the wind which works even if there are no leaves on the trees. One example would be snow drifts caused by trees in the winter. The required bio cover on the lagoons, either naturally occurring or by adding straw, will really cut the odor. The State, as mandated by the Clean Water Act, establishes the requirements for test wells to help protect the aquifer.

Rich Kielman, 48209 265<sup>th</sup> St., wonders how anyone will determine how the wind will be blowing on the day of surface application Mr. Kielman did say that there is sometimes a smell now.

Commissioner Bunde stated that this is an agricultural operation in an agricultural district. Smell is going to happen. She noted that the restrictions are very tough and that it is in the petitioner's best interest to be good neighbors. Doug Ode stated that there are other livestock producers in the area which spread manure.

Luann Eidsness, 26495 482<sup>nd</sup> Ave., had questions on the design of the lagoon and whether it would be built over permeable soils.

Chris Skonard stated that the lagoon would be clay lined with a 6" cement bottom. The state has established seepage standards. Good clay was found at this site and compacted it will provide protection. One soil boring to 32 1/2' deep and other to 10-20' deep all found clay.

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

Stating that the proposed changes were an improvement and should better protect the ground water, a motion was made by Bunde and seconded by Rogen to approve conditional use permit #06-19 with the conditions as stated. The motion passed unanimously.

**ITEM 8. CONDITIONAL USE PERMIT #06-15 to allow rock, sand and gravel extraction.**

Legal Description - E1/2 & the E1/2 SW1/4 & the NW1/4 in Section 31-T102N-R50W

Location - 1/2 mile southeast of Buffalo Ridge

Petitioner / Owner- Reynolds & Gustafson, LLP

**General Information**

Present zoning - RC Recreation/Conservation and A-1 Agricultural

Existing Land Use - Agriculture

Parcel Size - 560 Acres

**Report by:** Scott Anderson

**Staff Analysis:**

**Location and Background**

The location of the site is approximately 5 miles west of Sioux Falls between 466<sup>th</sup> and 467<sup>th</sup> Avenues south of SD Highway 38. Sand and gravel deposits are common in the areas adjoining Sunk Creek and other extraction operations currently exist south of this area. Pasture and crop land are the predominate land uses in those areas which have not yet been mined and on reclaimed land.

The proposed extraction area is located south of what would be 261<sup>st</sup> Street near the north 1/2 of Section 31. There are approximately (7) residences located between the subject property and Highway 38. Three (3) more residences area located approximately 1/4 mile to the west along 466<sup>th</sup> Avenue. The highest concentration of homes is located in Song Bird Acres approximately 1/4 mile to the east of the proposed sand and gravel mining area. There are approximately fifty (50) homes in this subdivision.

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

### **Planning Considerations**

The projected life of the project is between 10 and 15 years depending on the demand for construction aggregate. Extraction will be done with earth moving equipment. No blasting will occur on the site. Staff will recommend that all mining activity be concluded within ten (10) years.

The petitioner has not indicated how much material will be extracted from the site. A haul road will be constructed for truck access onto 466<sup>th</sup> Avenue. 466<sup>th</sup> Avenue then leads directly to S.D. Highway 38, a hard surfaced road.

There is designated floodplain located on the property. The subject property is located within the Skunk Creek drainage basin. The subject property is located over an aquifer recharge area. With proper management, the aquifer should not be significantly impacted. The hydrologic study provided by the applicant and prepared by Maxim Technologies indicates on page 6 that the aquifer may be improved by the activities by allowing for faster recharge.

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

**Buffer area** - The suggested minimum setback between extraction areas and existing residences is 1000 feet. There is one residence located within the buffer area, which is owned by the applicant.

**Hours of operation** - The zoning criteria suggest that mining operations be limited to the hours from 7:00 am to 6:00 pm on weekdays and 8:00 am to noon on Saturdays. Other activities such as office or maintenance operations, which produce no noise, are not restricted to the times listed above.

**Berms** - Berms are commonly used to screen on-site activities from public view and to minimize noise. The petitioner has indicated that berms will be constructed along the north, east and west edges the pit area. The topography is such that even with the berms, the mining activity will be visible to the public.

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

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

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

**Haul roads** - The most common problem associated with extraction operations is the use of gravel township roads for truck hauling. In this case, the haul road will exit directly onto 466<sup>th</sup> Avenue. The applicant has provided an agreement with Benton Township for the use of 466<sup>th</sup> Avenue. Staff will require that the applicant meet all of the requirements of the haul road agreement in the recommended

conditions of approval.

**Operator surety** – Article 12.08.G requires a surety bond to be filed with the County Auditor to protect the County in the event the operator abandons the site without completing the required conditions of approval. Staff recommends that a \$5,000.00 bond be filed with the County Auditor prior to any mining activities occurring on the site.

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

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

The site is located in the Water Source Protection Overlay District. Only clean fill will be used as backfill on the site as defined by the County Nuisance Ordinance. Furthermore, the applicant shall not be allowed to store any fuel on the site.

Portions of the property are also located within the 100 year flood plain. The flood plain is managed through the Minnehaha County Flood Plain Management Ordinance (MC 32-3). The applicant shall abide by all regulations outlined in this ordinance when working in the 100 year floodplain and/or floodway.

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

The majority of uses in the general vicinity reveal around agricultural production. The proposed use should not impact the property values of the agricultural land in the generally vicinity. With proper planning and execution of the plan, the proposed sand and gravel extraction should not effect of the enjoyment of other properties in the immediate vicinity. The applicant will be able to maintain the suggested 1000 foot buffer from adjacent residences.

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

The proposed use could have an impact on the development of surrounding vacant property. While most agricultural uses, such as animal husbandry or crop production would not be impacted by the proposed use, some uses such as rural residences may not desire to locate near this proposed use. The proposed use will generate additional heavy truck traffic, and minor amounts of noise and dust. The applicant has indicated that this use occurred on the site in the past and that the extraction activities will occur for up to 15 years. Staff is recommending that all mining activities conclude within ten (10) years.

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

The existing road infrastructure will be utilized for this proposed land use. The applicant is being required to enter into a Haul Road Agreement with the Benton Township for the maintenance of 466<sup>th</sup> Avenue. No other infrastructure is needed for this land use.

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

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

**5) That measures are taken to control offensive odor, fumes, dust, noise, vibration, and lighting**

**(inclusive of lighted signs), so that none of these will constitute a nuisance.**

With the proposed sand and gravel extraction, there is a possibility of noise, dust and vibration to occur. Staff has addressed dust and noise in the recommended conditions of approval. The hours of operation will reduce the possibilities of these elements becoming a nuisance. The applicant has indicated that dust control methods will be implemented on all of the haul roads and township roads to control dust

**Recommendation:**

Staff recommended approval of Conditional Use Permit #06-15 to allow sand and gravel extraction with the following conditions:

- 1) An annual fee shall be paid to the County in accordance with Section 15.14 of the zoning regulations. (Note: An annual fee of \$10 per acre of unreclaimed land is assessed to the operator.)
- 2) There shall be no fuel storage on the site.
- 3) Hours of operation shall be from 7:00 am to 6:00 pm on weekdays and 8:00 am to noon on Saturdays.
- 4) That the only dewatering shall be for use in dust control, road projects and rock washing. The applicant shall obtain any required permits from the state for use of the water.
- 5) That all of the requirements in the Haul Road Agreement between Benton Township and the applicant dated February 23, 2006 be followed continually.
- 6) The ambient air quality standards for total suspended particulate matter shall be 150 micrograms per cubic meter of air as a 24-hour average not to be exceeded more than once a year, and 60 micrograms per cubic meter of air as an annual arithmetic mean. The standards for PM<sup>10</sup> (10 micrometers or less in size) shall be consistent with the regulations of the State of South Dakota.
- 7) The County Planning Department shall direct the operator to install air quality sampling stations if the standards appear to be exceeded. Such monitoring shall be at the operator's expense.
- 8) The sound level from on-site operations shall not exceed an average of 55 decibels recorded over a 10 minute period measured at the nearest residence.
- 9) That one (1) off-street parking place for each employee and two (2) customer off-street parking spaces shall be provided.
- 10) The boundaries of the extraction area shall conform to the site plan submitted with the application.
- 11) Topsoil shall remain on the site and be used in final reclamation.
- 12) Only clean fill shall be used as backfill.
- 13) There shall be no storage or accumulation of inoperable or discarded equipment or parts.
- 14) A gate shall be required at the haul road entrance to the property.
- 15) That all mining activity is concluded by January 1, 2017 and that reclamation shall be in accordance with the plan filed with the State and outlined in the application and all reclamation of the site shall be completed by December 31, 2017.
- 16) That if one (1) or more acres of area is disturbed the applicant is required to obtain a General Permit from the Department of Environment and Natural Resources.
- 17) That the applicant provides the Minnehaha County Auditor with a surety bond or cash in the amount of \$5,000.00.
- 18) The applicant shall abide by all regulations outlined in Minnehaha County Flood Management Ordinance, MC32-03, when working in the 100 year floodplain and/or floodway.

**Public Testimony**

Mr. Anderson stated that a letter and picture from Don & Kristi Nimick, 46685 Hwy 38, had been given to the Planning Commission. The Nimicks were unable to attend this meeting but had concerns and objections to the mining operation.

Members of the Commission expressed concern that the surety bond of \$5000 was minor and would barely cover the fee for grass seed. Mr. Anderson stated that the zoning ordinance did not specify a dollar amount and that this was the largest bond the county had ever required.

Pat Knecht with Bangs, McCullen, Butler, Foye & Simmons, L.L.P. represented the petitioners. He stated that the Reynolds & Gustafson family had obtained the property 30 years ago and had always planned for a mining operation. They currently have an operation in Section 6 of Wayne Township and will move north when that site is closed. The two properties do not abut each other. The anticipated start date is July/August of 2006. Mr. Knecht stated that it would be possible to reclaim Phase 1 after operations had started in Phase 2. While the time frame for the phasing could shift depending on what is found, Phase 1 would be 1-4 years, Phase 2 4-7 years and Phase 3 the last three years. Butch Osby, More Rocks L.L.C., stated that it would not be a problem to reclaim the land as the phases are completed. The top soil would go back and a haul road and stock piles would be on the earlier phase. The only problem would be contamination of the top soil. The cost for the top soil would be approximately \$5,000-\$10,000.

Merle Ordal, 26117 466<sup>th</sup> Ave., feels that the land was purchased two years ago. 466<sup>th</sup> & 467<sup>th</sup> Avenues were not built for commercial use. This street is known for its roller coaster hills. Who's to guarantee that the trucks will not go south or west? Why couldn't the haul road go directly north to Hwy 38?

Liz Himmel-Roberts, 46708 266<sup>th</sup> St., stated that dust and traffic is already a problem. The posted speed limit of 25 mph is not abided by. Instead of quiet space and clean air there will be constant noise and dust which will linger over the subdivision. Resale of homes will be affected. The property has been used by the neighbors as a sledding hill. She would like the site to remain in its natural and pretty state.

Kim Williams, 46728 Meadow Lark Ln., noted that while the majority of the land use in the area is agricultural, there is a large residential subdivision. Who will want to live next door to a gravel pit? Will the county look at reducing their property values? He noted that they hear gun fire in the other mining pit and wondered who would be liable for this occurring close to residences. (It was pointed out that the county owned pit was used for target practice for area law enforcement agencies, hence the gunfire noises.) Mr. Williams also questioned noise and air quality monitoring. He would like to see dust control on both gravel roads.

Mr. Anderson noted that the conditions state that the county can require the petitioners to post monitors for both air and noise. The need for these monitors would be based on complaints filed with the planning department. Commissioner O'Hara inserted that the planning staff was very responsive to the public.

Mr. Knecht stated that the owner was responsible for the site. There would be 3<sup>rd</sup> party trucks hauling from the site but signs would be erected for the haul route. Mr. Osby estimated that trucks pulling out of the site would reach speeds of 45-50 mph by the time they reach the hill on Hwy 38.

Darrick & Rhonda Erickson, 26147 466<sup>th</sup> Ave., have a new home which will look out onto this site. She asked how many trucks would be going through a day. Mr. Osby stated it could be 40 or 60 or more. She stated that there are already a lot of accidents on 466<sup>th</sup> Ave. and that the pit to the south looks like a junk yard. Darrick Erickson doesn't think it is possible that trucks hauling a full load could pull out onto Hwy 38 and hit the hill to east at 40-50 mph. He feels it would be hard to even make 30 mph. 466<sup>th</sup> Ave. leaves no margin of error and has soft shoulders. 90 thousand pound trucks will be driving right down the middle of the road and vehicles are going to be hit. This is also a school bus route. They questioned if the company could be fined if the haul route wasn't used and if the operation could apply to extend the length they wanted to mine.

Mr. Anderson stated that the Planning Department cannot issue fines but that the item could be brought back before the Planning Commission if the company was not meeting the conditions. The operation can also come back to the same body to ask for an extension.

Ed Nolz, 2700 E. 60<sup>th</sup> St. N. owns property in the area. He feels the roads area not in shape to handle this use and that the operation should have to pave 466<sup>th</sup> Ave.

Steve Rud, 26122 467<sup>th</sup> Ave., stated that berms and trees will do nothing to hide the view from the bluff. He is a truck driver and knows that the trucks will be going slowly up the hill. This area is a no passing zone but kids on their way to school and commuters will try to pass anyway.

David Vinzant, 26123 Canary Dr., stated that even if the petitioners had envisioned mining this area 30 years ago the area has changed. When people built their houses no one knew this idea for a mine existed. No one will want to buy any houses in the neighborhood. The agreement with Benton Township for the haul road is questionable. The applicant did not attend either the January or February township meeting and there was no meeting on the date the agreement was signed.

Russ Tieszen, 26099 467<sup>th</sup> Ave., stated that there will be noise and dust from the pit and that their property values will be driven down. Truck drivers will use Jake brakes when coming down the hill to turn onto the haul road.

Kevin Patterson, 26118 467<sup>th</sup> Ave., is worried about light pollution because of his picture window. If there are lights in the pit he would like to see a shoe box style design required. The noise coming from the pit will be like a continuous vacuum and funnel right up the hill. He is concerned that if the trucks cannot go south on 466<sup>th</sup> Ave., they will use 467<sup>th</sup> Ave. He feels the land should be economically profitable as farm ground and that is the surrounding houses which stand to take the economic hit.

Marvin Fink, 46675 Hwy 38, is mainly concerned with the haul roads. He feels the trucks should have to go south through the property where other mine is operating. There are too many hazards on Hwy 38.

Pat Knecht stated that their existing mine is a ½ mile to the south and that they do not own the land in between. He noted that there are approximately 2 dozen mining operations in this area. The hours of operation will be limited and that the mine has to meet county, state and federal regulations for noise and dust. The mine will not be operated 52 weeks a year, there will be times when nothing is going on. You can't just create a bubble on this site so neighbors can go sledding or look at the view. The petitioner's have a right to use their land. Mr. Osby explained that the operation would run from March – November. In the winter there would only be the loading of trucks. The only lights would be mounted on the work vans and the loaders.

Lance Lunde, 26706 467<sup>th</sup> Ave., is concerned about traffic on 467<sup>th</sup> Ave. He is afraid kids and adults will drive into the backs of the trucks.

Steve Crowe, 46689 Hwy 38, questioned how someone just had the right to change their land use after 60 years. He stated that his wife had been told by the planning staff that you didn't buy the view. Mr. Crowe is worried that property values will be affected.

Chuck Kirby, 46702 261<sup>st</sup> St., feels the view from Hwy 38 and the Interstate down Skunk Creek will be ruined. Reclamation will never replace the view.

Chairman South asked members of the audience to indicate if they were concerned about noise, dust, and traffic from the mining operation. The majority indicated these things were concerns.

Testimony from the floor was closed by Chair Don South.

Commissioner Bunde stated that she is concerned about the safety issues raised about trucks entering and exiting Hwy 38. The use of the property is appropriate. She would also like to see the entire Township

Board sign the agreement for the haul road. Commissioner O'Hara agreed that safety was the biggest issue. She would also like to see the reclamation bond increased. Commission Rogan also is concerned with the Hwy 38 issue but does not feel the use of the property is an issue. Commissioner Cypher feels the use of the land for mining is appropriate but that safety is an issue. The impact of the mining would not extend beyond the first row of houses in Song Bird Acres.

Citing that the use is appropriate for this location but that the safety issues override the land use, a motion was made by Cypher and seconded by Rogen to deny conditional use permit #06-15. The motion passed unanimously.

**ITEM 9. CONDITIONAL USE PERMIT #06-20 to allow a 5999 animal head CAFO.**

Legal Description - SE1/4 of Section 10-T104N-R47W

Location - 4 miles north of Sherman

Petitioner / Owner- Scott Helmer

**General Information**

Present zoning - A-1 Agricultural

Existing Land Use - Agriculture

Parcel Size - 130 Acres

**Report by:** Phil Kappen

**Staff Analysis**

The subject property is located 4 miles north of Sherman along 246<sup>th</sup> Street. The property is adjacent to the Minnesota state line. The surrounding properties are all agricultural with some scattered acreages. The petitioner wishes to operate a 5999 animal unit CAFO (a dairy). There was, at one time, a small existing feedlot on the property, but that is no longer in use. This, therefore, must be considered a new CAFO.

Staff has mailed notices of this hearing to all South Dakota property owners within 1 mile of the proposed facility, to Highland Township, to the Planning and Zoning Administrator for Pipestone, County, Minnesota and to one Minnesota resident who had contacted our office and requested that they be notified.

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

The target criteria distance for a CAFO of this size, as set forth in the zoning ordinance, is 15,210 feet (2.88 miles). That distance can be reduced if additional odor control practices are employed to reduce the potential for impact on neighboring properties. As a point of comparison, the separation distance for a facility of that size, with no odor control, would be approximately 4000 feet under the Minnesota OFFSET Model. That would be for a target of 94% nuisance odor free. Most of the counties in Minnesota that have adopted the use of the OFFSET Model have used a nuisance odor free standard between 92 and 94%.

The closest homes to the proposed facility are 1800 feet to the north northwest, 2800 feet to the south southwest, 3800 feet to the southwest and 4000 feet to the southwest. The owner of the home 1800 feet to the north northwest of the proposed facility has been contacted by the petitioner and has been an active participant in planning the CAFO.

The petitioner has proposed planting trees around the ag-waste holding pond. Staff believes that such a size of facility should also have trees around the barn area. If trees were planted around the entire facility, a pond additive such as Pit Remedy used and an 8-inch bio-cover maintained over the holding pond, the OFFSET Model would allow a reduction down to approximately 2200'. Such odor control practices have proven to be effective at the Boadwine Dairy southwest of Baltic. There may also be a potential to move the facility a small distance to the south to aid in maintaining a separation between the facility and the home to the north northwest. The petitioner should be prepared to address the proposed location of the

facility in relation to the home to the north northwest.

The petitioner plans on contracting with a pest control service for fly control. All lots and livestock housing will be sprayed a minimum of four times each year. Any dead animals will be removed by a rendering company. The need for removal will be reported to the rendering company as soon as the animals are discovered.

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

All surrounding property is planned for continued agricultural use.

The property is not within a flood plain, the nearest floodplain lies  $\frac{3}{4}$  mile to the southwest. The site is also not within a Water Source Protection Area. The boundary of the nearest WSPA lies approximately  $\frac{1}{2}$  mile to the south. Given the results of soil borings at the site, staff feels that it is unlikely that the DENR will require monitoring wells at the site. In the event that the state does require such wells, copies of all test reports should be provided to the county.

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

The property will be accessed via 246<sup>th</sup> Street, a Highland Township road. Highland Township has been notified of this hearing. Access from the road will be made via one of three existing driveways. No new driveways are proposed.

Drainage from the site would be to the southeast. The waste management system will have to be constructed to ensure that no waste leaves the property.

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

There is ample space on the property for any required parking. No on-street parking should 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.**

The best means of controlling odor are to maintain a cover, such as a bio-cover, over the holding pond, plant trees to aid in wind agitation and odor dispersal, and to require that all liquid wastes be injected or immediately incorporated into the ground to prevent volatilization of odorous compounds into the atmosphere. A combination of extremely fast growing trees and longer lived trees will provide for a quick wind screen and also to maintain long-term protection and prevention.

The use of pit additives has proven to aid in odor reduction and also in the formation of a bio-cover over the holding ponds or basins. Pit additives such as Pit Remedy have been shown to reduce odor and the levels of Hydrogen Sulfide. The use of such additives should be required.

Monitoring of odor, hydrogen sulfide and ammonia emissions should be required. Odor monitoring can be accomplished only through the use of trained panelists. Monitoring equipment can be used to measure the concentration of the hydrogen sulfide and ammonia gases. On-site methods will be used to determine whether there are any components of the facility that need odor controls. Air samples will also be taken from the site and evaluated in the laboratory.

**Recommendation**

Staff finds that the proposed use is consistent with the types of uses found in a vibrant agricultural area. Staff also finds that the proposed site is not within a Water Source Protection Area or in a regulated flood plain. Staff believes that the proposed use can be made to conform with other land uses in the area and recommends **approval** of conditional use permit #06-20 with the following conditions:

- 1) The facility shall be limited to 5999 animal units in size.
- 2) The entire facility shall receive a permit from the state of South Dakota.
- 3) Annual copies of an executive summary of a state-approved nutrient management plan shall be

- filed with the Minnehaha County Planning Department which show the sites proposed for nutrient application and the means of application. Copies of the full nutrient management plan shall be provided to the county upon request.
- 4) All application of animal waste on cropland shall be either injected into the ground or immediately incorporated upon application. Surface application shall be allowed on hay land only after the petitioner has informed the Minnehaha County Planning Department in writing of the location on which the waste will be applied, the date of the proposed application and the amounts to be applied. The petitioner shall meet all setback requirements for waste application as specified in the county zoning ordinance.
  - 5) An odor control plan shall be implemented which includes the application of full bio-covers a minimum of 8 inches in thickness over all ag-waste holding ponds or basins. Microbial additives, such as Pit Remedy, shall be used on all components of the animal waste treatment system.
  - 6) The petitioner shall have a full landscaping plan prepared for planning staff approval. At a minimum, the plan shall include the planting of a minimum of 5 rows of trees around all holding ponds and also to the west, north and east of the area with the livestock housing. Each belt shall have a minimum of 1 row of an extremely fast-growing tree species such as Austrees and a minimum of 4 rows of longer-lived tree species to provide for an effective, long-lived shelterbelt. All trees shall be planted and maintained according to Minnehaha Conservation District standards. The trees shall be watered with a drip irrigation system and any trees that die at any time shall be replaced within one growing season.
  - 7) Any complaints submitted to the Minnehaha County Planning Department must include dates and times relative to the complaint. Complaints shall be forwarded to the facility operator and the operator shall report to the Planning Department the possible cause of problems that resulted in the complaint and the actions that will be taken to address the problems.
  - 8) At a minimum, an annual monitoring of odor, hydrogen sulfide and ammonia emissions from the facility shall be performed by a qualified expert, approved by the Minnehaha County Planning Department. The County Planning Commission may review the odor control practices at a public hearing in order to determine whether the odor control program needs to be revised with additional or revised conditions.
  - 9) If a monitoring well system is required by the state the petitioner shall provide copies of all test reports to the Minnehaha County Planning Department.

### **Public Testimony**

Commissioner Rogen recused himself from this item and left the room.

The petitioner, Scott Helmer, stated that he currently has a dairy in Nisland, SD and sees the growth opportunities in the northwest part of the state diminishing. He is working with Lynn and Kent Boadwine to develop this dairy and he plans to live on the site.

Lynn Boadwine, 46945 251<sup>st</sup> St., presented a slideshow explaining the aspects of the dairy. A copy of the slides are attached to the minutes. He noted that they planned to start with 800 head and that it would be a slow process to grow to the full size. This is at least a 30 year commitment and they want the dairy to be big enough to be valuable in the future. The site will be constructed for bio-security, with cows going from birth to death at this site. He stated that they had worked hard to find the right site in the county. Mr. Boadwine explained that a hose system will eventually be used to pump and inject manure. A pump system is put into the storage pond and hose attached. The other end is attached to an injector tractor and it is pulled out and winds through the fields. This will virtually eliminate tanker traffic.

Larry Jones with 1<sup>st</sup> National Bank spoke favorably of the effort being made to look at anaerobic digestion and other alternative measures.

Dick Rogen, 258<sup>th</sup> St. has a ¼ section of land to the west which is the family farm. He has four building eligibilities which he wants the county to move to a different location because he doesn't think anyone will want to build next to the dairy. The Planning Commission stated the eligibilities could only be moved if the conditions of the zoning ordinance were met.

Doug Flier, 401 Jackson St., Valley Springs, owns land in the area. He is concerned about water supply at this site. There is a low water table in the area and he doesn't want wells to go dry. The well at this location is very deep and water had to be hauled in for the previous feed lot. He also questioned the

amount of truck traffic that would be created by milk and feed trucks as well as employees. Waste management could also be a problem and Mr. Flier wonders if there is enough acreage available for application.

Mr. Boadwine agreed that water is an issue at this site and it is a concern for them. He stated that the conditional use permit is just the first step in the process. The first concern was to make sure that this use was feasible for the neighborhood and acceptable to the county. Because of the cost associated with this operation, they did not want to proceed further until this step was completed. He has visited with Jay Gilbertson with East Dakota Water District and they do not believe that this dairy would drain the shallow aquifer. The problem is not taking the water, but finding it. Mr. Boadwine noted that part of the state permit is proving that they have enough land to support the full size of the dairy in terms of waste management. That is just another step in taking the process forward. He explained that this was the only acreage on this road. He expects a couple of milk trucks a day and a feed truck every other day.

Brian Schneider, 912 Park Drive SW, Pipestone, MN, has a family farm 1.5 miles from this site. He has 300-400 cattle and had to construct a huge reservoir to supply water. The well is very deep and he is concerned this dairy will make it hard to pump water at his site. Water is a huge issue. Mr. Schneider also noted that Highway 103 to Sherman was in rough condition and more trucks would make it worse. There was agreement in the audience about the condition of the highway.

Dale Fjellanger, 24645 487<sup>th</sup> Ave., lives a half mile south of the proposed site along a creek. His wells are 24 and 30 feet deep and on a dry year there may be only 10 feet of water in the well. How will this new demand for water affect their wells? He also has a housing eligibly and feels the dairy will effect his ability to sell off a building site because there will be a smell. He questioned how people can come into an established neighborhood and put in a dairy. Two of the three people involved with this dairy won't even be living in the area. Mr. Fjellanger also seemed to feel immigrant workers would cause problems.

Don South closed the floor to public comment.

Commissioner Cypher explained that any commercial or agricultural use which draws more than 18 gallons a minute must appear before the State Water Board and obtain a permit. Commissioner O'Hara, while acknowledging that water is a legitimate concern, stated that if Minnehaha County is supportive of agriculture this is the best location for a dairy and should be supported. Commission Cypher stated that the presentation had answered his questions. He feels this area of the County is hard core ag and that the state boards will address the other issues.

Based on the staff report and public testimony, a motion was made by O'Hara and seconded by Cypher to approve conditional use permit #06-20 with the conditions as stated. The motion passed unanimously.

#### NEW BUSINESS

Mr. Kappen presented the Planning Commission with the Boadwine Dairy odor report which showed a significant drop in odor when Pit Remedy was used.