

**MINUTES OF THE
MINNEHAHA COUNTY PLANNING COMMISSION
April 24, 2006**

A meeting of the Planning Commission was held on April 24, 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, Mark Rogen, Don South and Jim Zweep.

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

The meeting was chaired by Don South.

APPROVAL OF THE CONSENT AGENDA

Items 3, 4, & 9 were removed from the consent agenda at the request of members of the audience. There being no other objections from the Planning Commission or audience and a motion was made by Bunde and seconded by Rogen to approve the consent agenda (Items 3, 4 & 9 removed). The motion passed unanimously.

ITEM 1. MINUTES – March 27, 2006.

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

ITEM 2. CONDITIONAL USE PERMIT #06-22 to transfer two residential building eligibilities.

From – SE1/4 NW1/4 and SW1/4 NE1/4 of Section 3-T102N-R48W

To – N1/2 NW1/4 in Section 3-T102N-R48W

Location - 3 miles north of Brandon

Petitioner / Owner- Norbert Bruggeman

General Information

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

Report by: Pat Herman

Staff Analysis

The petitioner is requesting a transfer of two residential building eligibilities to the N1/2 of the NW1/4. There are two existing building eligibilities in this N1/2. One is used by an existing house and the second is used for a new house in the northwest corner of the section. The petitioner plans to sell one the building eligibilities which is being transferred for a new house which will be located in the south west corner of the NW1/4 NW1/4. There are no plans to use the other transferred eligibility at this time.

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 eligibilities does not increase the number of houses allowed under density zoning. The majority of the land to be used for the new building site is pasture land.

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

Access is from 481st Ave., a township gravel road. Brandon Township does require driveway permits and a building permit will not be issued by the Planning Department until the driveway permit is approved. A waste water system is also required.

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

The building lot is 20 acres which is sufficient to meet the parking needs of a single family residence.

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

This use should not create a nuisance caused by odor, fumes, dust, noise, vibration or lighting.

A plat for one of the transferred building eligibilities has been approved by the Planning Department.

Recommendation

Staff found the request to be in conformance with density zoning and recommended approval with the following conditions:

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

Based on the staff report a motion was made by Bunde and seconded by Rogen to approve conditional use permit #06-22 with the conditions as stated. The motion passed unanimously.

ITEM 5. CONDITIONAL USE PERMIT #06-26 to transfer one residential building eligibility.

From – N657' W810' NE1/4 SW1/4 in Section 34-T101N-R48W

To – W15434.04' S1703.78' SE1/4 in Section 27-T101N-R48W

Location - 1 mile west of Rowena

Petitioner / Owner- Myrl Unzelman, Inc.

General Information

Present zoning - A-1 Agricultural

Existing Land Use - Mining

Parcel Size - 60 Acres

Report by: Scott Anderson

Staff Analysis

The petitioner is requesting to transfer one residential building eligibility. The eligibility is being moved from a parcel in the SW ¼ of Section 34 to a parcel in the SE ¼ of Section 27. Access is provided by 267th 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 267th Street. Rural water is available in the area and a waste water system will be utilized when/if a residence is constructed.

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 this conditional use permit request to be consistent with density zoning and recommended approval of Conditional Use Permit #06-26 with the following conditions:

- 1) The lot 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) That prior to the issuance of a building permit approval from Split Rock Township shall be obtained for a driveway approach.

Based on the staff report a motion was made by Bunde and seconded by Rogen to approve conditional use permit #06-26 with the conditions as stated. The motion passed unanimously.

ITEM 6. CONDITIONAL USE PERMIT #06-28 to transfer one residential building eligibility.

From - SE1/4 SW1/4 in Section 10-T101N-R48W

To - SW1/4 SW1/4 in Section 10-T101N-R48W

Location - ½ mile south of Brandon

Petitioner / Owner- Forrest Miller / George & Deborah Shafer

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 at the northeast corner of the intersection of 264th Street and 481st Avenue (S.D. Hwy 11). The surround properties are agricultural with a few acreages. The property to the south is engaged in a truck farming operation. The petitioner wishes to transfer a building eligibility from a land-locked quarter-quarter to a site along the road.

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

The proposed use should have little impact on the uses of the surrounding properties. The subject property constitutes a small field south of the existing farmstead area. The field is of a small size that somewhat limits its use for economical agricultural production.

The predominant use in the area is agricultural in nature, therefore, a right-to-farm notice covenant should be required on the property.

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

The majority of the surrounding property is located within the base flood elevation area. This will limit development of the property in the immediate vicinity.

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

The subject property is located within the mapped base flood area (100-year flood). The petitioner, however, has had a surveyor study the property and found that the majority of the area lies just above the base flood elevation. The petitioner will be applying for a "Letter of Map Amendment" from FEMA that would remove this particular area from the mapped flood plain. No building permit may be issued until the petitioner obtains such a letter from FEMA. The residence should be required to be elevated to at least 1 foot above the base flood elevation.

Although the property is located at the corner of a township road and a state highway, no direct access should be allowed onto the highway. This requirement conforms with SD DOT policy regarding access to a state

highway when an alternative access is available. There is an existing driveway access at the southeast corner of the site. The petitioner will be required to obtain a driveway permit from Split Rock Township should any new driveway access onto the township road be desired.

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

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

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

There should be no odor, fumes, dust or vibration from the typical activities on a single-family residential site. Outdoor lighting should be situated so that no direct light is directed toward adjoining roadways or neighboring residences.

Recommendation

Staff found that the proposed use conforms to the precepts of density zoning and that the use can be accomplished with little impact on surrounding land uses. Staff recommended approval of the conditional use permit #06-28 with the following conditions:

- 1) The property shall be platted and a right to farm notice covenant filed on the property prior to the issuance of any building permit.
- 2) No direct access shall be allowed from the subject property onto State Highway 11 and all access to the property shall be via 264th Street. Any existing access onto the highway shall be abandoned.
- 3) No building permit for the property shall be issued before the petitioner has obtained a Letter of Map Revision (LOMA) from FEMA amending the boundaries of the mapped base flood area.
- 4) Any residence must be elevated so that the lowest floor is a minimum of one foot above the base flood elevation. Certification of this floor elevation must be done by a licensed surveyor.

Based on the staff report a motion was made by Bunde and seconded by Rogen to approve conditional use permit #06-28 with the conditions as stated. The motion passed unanimously.

ITEM 7. PRELIMINARY SUBDIVISION PLAN #06-01 - Green Valley Addition

Legal Description - Lots 1-10 Block 1 & Lots 1-4 Block Green Valley Addition NE1/4 of Section 12-T102N-R50W

Location - Crooks exit of I-29

Petitioner / Owner- Ben White w/JSA / Dunham Company

General Information

Present zoning - I-1 Light Industrial

Existing Land Use - Vacant

Parcel Size - 40 Acres

Report by: Scott Anderson

Staff Analysis

The applicant has submitted a preliminary plan proposing the creation of fourteen (14) lots. The fourteen lots contain a total of approximately 40.3 acres and is an extension of the crook exit industrial area.

Staff has reviewed Section 4.01 of Minnehaha County's Subdivision Ordinance to determine that all requirements have been met. The unplatted balance of the NE ¼ quarter has not been labeled as such and must be identified on the preliminary plat.

The applicant did not provide an erosion control plan as required in Section 4.01.B.2. Staff recommends that prior to County Board approval of the preliminary plat, an erosion control plan shall be submitted for review and approval.

A sheet depicting the existing drainage with contours has been provided. There is a significant drainage way that cuts through Lots 1-2, Block 2 and under the extension of Cottonwood Street. The applicant

shall provide adequate drainage easements on the final plat for this drainage way and shall obtain any required permits for any alterations to the existing wetlands.

Cottonwood Street is proposed to be extended to the north. Furthermore, two (2) new streets will be created. Each street is approximately 450 feet long. All three of the proposed streets are dead end streets without an appropriate or required cul-de-sac or turn around. A temporary easement for the turn around on Cottonwood can be shown as it may be extended further to the north in the future. Both of the new roads however will need to have permanent cul-de-sacs shown. These permanent cul-de-sacs are needed to provide the traveling public an area to turn around in and to promote safety. Furthermore, no road names are shown on the preliminary plat. These changes will need to be made on the preliminary plat prior to County Board approval.

Prior to a final plat being approved, the applicant shall either construct all of the roads to the County's road standards or post surety in an amount to cover the construction cost. Engineered road plans shall also be provided.

Recommendation

Staff recommended approval of Preliminary Plat #06-01 with the following conditions:

- 1) That prior to County Board approval, the unplatted balance of the NE ¼ quarter shall be labeled as such and identified on the preliminary plat.
- 2) That prior to County Board approval of Preliminary Plat #06-01, the applicant shall label all roads and provide cul-de-sacs on both east/west roads and either a permanent or temporary cul-de-sac on the extension of Cottonwood Street.
- 3) That prior to County Board approval of the preliminary plat, an erosion control plan shall be submitted for review and approval.

Based on the staff report a motion was made by Bunde and seconded by Rogen to recommend approval of Preliminary Plat #06-01 with the conditions as stated. The motion passed unanimously.

ITEM 8. CONDITIONAL USE PERMIT #06-27 to allow a communications facility (190' monopole w/equipment shelter).

Legal Description - SE1/4 (ex E1017 N of RY & Ex RY & H Lots & Ex E205 W843 N200 S619 & E30.3 W843 N89.08 S708.08 SW1/4 SE1/4) in Section 25-T101N-R48W

Location - 48360 267th St. ¾ mile east of Rowena
Petitioner / Owner- Dakota Systems Inc. / Larry & Jeane Wright

General Information

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

Report by: Pat Herman

Staff Analysis

This application is for a 190' monopole cellular tower with a 12' x 30' equipment shelter. The property is located ¾ miles east of Rowena. The surrounding land use is agricultural. There are existing farmsteads in the area but the site meets the separation criteria of 1300' from all residential dwellings, residential subdivisions, and residentially zoned property (except those owned by the landowners family).

The petitioner stated the following purpose for the proposed development:

The purpose of the proposed new site is to off-load call traffic from other Sioux Falls area cell sites operated by Verizon Wireless to keep the area system from getting overloaded, causing calls to be blocked due to lack of system capacity. Additionally, the proposed facility will provide much improved coverage to southeast parts of Minnehaha County.

The petitioner did contact those companies in the area which have existing towers. The Community Television property, a ¼ mile north of this site, which has the 1900' broadcast tower shared by KELO-TV

& KSFY-TV was evaluated. Any antennas placed on this tower faced damage from falling ice, which also poses a safety issue for operations personnel visiting the site. Community Television did not want to renegotiate their lease to allow a second tower at this site. Other towers in the southeast area of the county were either outside of Verizon's target area, were structurally unreliable, and/or would subject the antennas to ice damage and endanger their personnel.

The selected site allows the petitioner to meet all but one of the requirements for a telecommunications tower as required by Section 12.12 of the County Zoning ordinance. Section (C) #3 requires a minimum distance of three miles between towers. As indicated above, the petitioner did try to find a co-location site in this area. The tower and equipment shelter will be located within a 60' x 60' leased area.

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 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 267th St. As indicated on the submitted site plan there is an existing access approach. For security purposes, the tower will be enclosed by a six foot high chain link fence topped by barbed wire.

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

The leased site will be 60, x 60, 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 frequent complaint raised about cellular towers concerns 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 leased area will need to be submitted for planning staff approval.

Recommendation

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 set back between towers (C) #3. Staff recommended approval of conditional use permit #06-27 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 section (C) #3.
- 2) A 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 Rogen to approve conditional use permit #06-27 with the conditions as stated. The motion passed unanimously.

REGULAR AGENDA

A motion was made by Bunde and seconded by Rogen to approve the regular agenda with Items 3, 5 & 9 added to the agenda.

ITEM 3. CONDITIONAL USE PERMIT #06-23 to transfer one residential building eligibility.

From – W1/2 SW1/4 NE1/4 of Section 7-T102N-R52W

To – Lot 3 (ex Tracts 1 & 2 Haensel Addn.) in Section 7-T02N-R52W

Location - 3/4 mile southwest of Humboldt

Petitioner / Owner- Jerry Haensel

General Information

Present zoning - A-1 Agricultural
Existing Land Use - Agriculture
Parcel Size - 10+ Acres

Report by: Pat Herman

Staff Analysis

The site is located ¾ mile southwest of Humboldt just shy of the McCook County line. The surrounding land use is agriculture with scattered acreages. The petitioner is requesting a transfer of one residential building eligibility. The transfer will move the eligibility from the interior of the section to a location adjacent to developed residential lots. This is the last available eligibility the petitioner has in this section.

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 eligibilities does not increase the number of houses allowed by the zoning ordinance.

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

There is an existing access easement which runs along the quarter line. The 33 foot wide easement is dedicated on the north side of the quarter line for a distance of 741feet east from 454th Avenue. On the south side of the quarter line the 33 foot wide easement extends only 402.06 feet east from 454th Avenue.

The new building site must dedicate 33 feet to extend the access easement. Maintenance is currently handled by the abutting property owners. A maintenance agreement signed by all land owners adjoining the easement must be filed with the Register of Deeds prior any construction occurring on the new building site.

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

The building lot will be larger than 5 acres in size which is sufficient to meet the parking needs of a single family residence.

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

This use should not create a nuisance caused by odor, fumes, dust, noise, vibration or lighting.

Recommendation

Staff found that the request for transfer will not negatively impact the surrounding area and recommended approval of conditional use permit #06-23 with the following conditions:

- 1) The lot shall be platted and a right-to-farm notice covenant filed on the deed of the lot prior to the issuance of a building permit.
- 2) A 33 foot wide access easement shall be shown on the plat, running the entire length on the north end of the platted lot.
- 3) A maintenance agreement signed and notarized by all the landowners abutting both the existing and newly platted portion of the access easement shall be filed with the Register of Deeds, and a copy provided to the Planning Department, prior to the issuance of a building permit.

Public Testimony

The petitioner was not in attendance.

Jeff Kapperman, 25831 454th Ave. has a CAFO south of this site. This transfer would move the eligibility

closer to his livestock operation and has the potential to create more complaints. He has plans to expand his operation in the future and is afraid another house in the area could work against his expansion. He noted that the petitioner has moved the eligibilities away from his own site.

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

Commissioner Bunde stated that the Comprehensive Plan details Minnehaha County's support of agriculture. The transfer moves an eligibility closer to an existing CAFO which has plans to expand in the future.

Based on the staff report and public testimony a motion was made by Bunde and seconded by Rogen to deny conditional use permit #06-23. The motion passed (Zweep nay).

ITEM 4. CONDITIONAL USE PERMIT #06-25 to allow gas storage tanks and pumps.

Legal Description - Lot 3 Block 1 Benson Second Addition NE1/4 Section 13-T102N-R50W

Location - 25811 Cottonwood Ave. Crooks exit of I-29

Petitioner / Owner- LeRoy Koopman

General Information

Present zoning - I-1 Light Industrial

Existing Land Use - Vacant

Parcel Size - 0.9 Acres

Report by: Pat Herman

Staff Analysis

The site is located in a commercial development at the Crooks exit from I-29. This site is zoned I-1 Light Industrial as is the property to the south and east. The land to the north is zoned C Commercial and the west is agriculturally zoned farm ground. This is a request to place a 30,000 gallon liquefied petroleum gas storage tank (L.P. Gas) on this parcel. The petitioner would be relocating from his current location at the intersection of Cottonwood Ave and Hwy. 130. The submitted site plan also depicts two additional 30,000 gallon tanks to situated on this site in the future. This application is to approve the placement of all three tanks.

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 requested use is appropriate for industrially zoned land and should have no negative effect on other land uses 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 L.P. gas storage tanks have been located in this development since 1994. Their presence has had no effect of the development and improvement of the surrounding area.

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

Access will be from Cottonwood Ave. which is a paved road. The driving and parking surfaces of this parcel are required to be hard surfaced.

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

There is sufficient room at the site to accommodate the haul trucks associated with this use.

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

This use should not create any nuisance from odor, fumes, dust, noise, vibration or lighting.

The storage tanks meet the requirements for Homeland Security and the set backs required by the State Fire Code. They will be 5-6 feet off the ground and are ½ inch thick. Building permits are required before each tank is placed on the property.

Staff has never received complaints about the petitioner's current location in this development nor his second location at the I-29 Dell Rapids exit. This use is appropriate for industrially zoned property.

Recommendation

Staff recommended approval of conditional use permit #06-25 with the following conditions:

- 1) The property shall conform to the site plan dated March 27, 2006.
- 2) All parking and driving surfaces shall be hard surfaced by October 31, 2006.

Public Testimony

The petitioner's representative, Monty Koopman, asked for an extension on the hard surfacing until next year. Construction will not occur till fall and they would like to go through the whole freeze/thaw cycle before paving.

Commissioner Cypher felt that July 1, 2007 would be sufficient time to get the paving done. Mr. Koopman agreed they could make that date work.

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 Rogen to approve conditional use permit #06-25 with the following conditions:

- 1) The property shall conform to the site plan dated March 27, 2006.
- 2) All parking and driving surfaces shall be hard surfaced by July 1, 2007

The motion passed unanimously.

ITEM 9. CONDITIONAL USE PERMIT #06-24 to amend the conditions for CUP #02-39 - garden center and to allow retail food sales.

Legal Description - S1/2 S1/2 SW1/4 in Section 35-T103N-R48W
Location - 25588 482nd Ave. 4 miles north of Brandon
Petitioner / Owner- Thomas Krueger

General Information

Present zoning - A-1 Agricultural
Existing Land Use - Agriculture
Parcel Size - 38.92 Acres

Report by: Pat Herman

Staff Analysis

In 2002 the Planning Commission approved a conditional use permit for a garden center (herb and berry organic farm) at this location. The following conditions were placed on the property:

- 1) On-premise signage shall not exceed 20 sq. ft.
- 2) Any access onto Highway 11 shall be shared with the property to the north and shall be paved with crushed or recycled asphalt a minimum width of 24' extending from the highway surface to a point 20 feet inside the right-of-way.
- 3) Buildings shall be limited in use to the growing of produce and related retail sales.
- 4) Lighting shall be limited to security lights.

The petitioner is requesting to amend the conditions addressing signage and lighting and to allow retail food sales.

Lighting

The lighting on the site is currently limited to security lights. The petitioner is requesting to remove the lighting limitation to allow the barn to be lit up at night to draw attention to the business. The property is located in a highly agricultural area and is not zoned for commercial use. The garden center should blend with the neighborhood and not be the focal point. Staff is comfortable with lighting placed on the building if it designed in a shoe box style and directed downward. No upward projection lights should be allowed.

Signage

Presently, the petitioner is limited to 20 sq. ft. of sign area. The request is to allow an 8 x 10 sign along the roadway and/or to have a larger sign on the barn which would be illuminated. Staff has reviewed the sign sizes approved over the past ten years for similar uses, i.e. wineries, landscape centers, and golf courses, and found that no signs exceeding 32 sq. ft. have been approved. Staff can support an increase to 32 sq. ft. of face area for a sign. The petitioner may place the sign on the building or along the roadway. Illumination of the roadway sign is appropriate but staff would not support an illuminated sign on the building (see lighting above).

Retail Food Sales

The type of food sales the petitioner is requesting includes ice cream with berries, prepared salads, melons, tomato dishes, basil pesto and similar items which use products which are grown on the site. The items sold should be limited to snacks or side dish items, nothing which would constitute a meal. Retail food sales should remain incidental to the use of the property as a garden center. The sales should only be allowed as an accessory use to the garden center and only be occurring during the hours the garden center is open for business. The garden center should not remain open simply to accommodate food sales.

The zoning ordinance does not allow restaurants on agriculturally zoned property.

Recommendation

Staff recommended approval of the amendments with the following conditions for conditional use permit #06-09:

- 1) On-premise signage shall not exceed 32 sq. ft. of face area. Illumination is permitted only for signage placed along the roadway.
- 2) Any access onto Highway 11 shall be shared with the property to the north and shall be paved with crushed or recycled asphalt a minimum width of 24' extending from the highway surface to a point 20 feet inside the right-of-way.
- 3) Buildings shall be limited in use to the growing of produce and related retail sales.
- 4) Lighting shall be limited to a shoebox design and directed downward or be security lighting.
- 5) Retail food sales shall be incidental to the garden center. Foods shall utilize those products grown on the premises and shall be limited to side order items such as salads and deserts. Full meals shall not be allowed. Retail food sales shall only occur during the operational hours of the garden center. The garden center shall not be open only for the purpose of the accessory food sales.

Public Testimony

Citing a conflict of interest, Commissioner South turned the chair over to Commissioner Cypher and left the room.

The petitioner, Tom Krueger, first addressed his lighting request. He is not looking for a used car lot. This is a barn that was moved across the road and he would like to accentuate the area and make it an asset. Mr. Krueger stated that he has very little lighting now and that you can't even see the barn when coming from the north. He wants the barn and his business to be recognized. He would like to put base lights at the foundation which shine up and will highlight the shape and look of the barn.

Commissioner Cypher cited the Chevy dealership at the Dells exit as a good example of how downward shining lights can highlight a property without being intrusive on the neighborhood. Mr. Anderson stated that light pollution is an issue. Mr. Krueger argued that his residential or farming neighbors could light up their places without permission. Commissioner Bunde stated that the goal was different and that he is running a business and trying to draw people in.

Mr. Krueger then addressed the signage. He feels that he needs the larger size. If the sign is placed on the barn he would like to 2 wall signs, one on each side that are 32 sq. ft. Mr. Anderson stated that he would be restricted to 32 sq. feet total on the wall sign. If Mr. Krueger chooses to put in a ground sign along the right of way, both faces of that sign can be used.

Mr. Krueger also challenged the restriction on not being allowed to serve meals at this site. Ms. Herman explained that the property was zoned A-1 Agricultural and restaurants were not a use allowed by the zoning ordinance.

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 Bunde and seconded by Zweep to approve conditional use permit #06-24 with the conditions as stated in the staff report. The motion passed unanimously.

The Dell Rapids Planning Commission jointed the meeting for Items 10-14.

DELL RAPIDS PLANNING COMMISSION MEMBERS PRESENT – Roger Dearduff, Darrel Donelan, Dale Dunn, Chair Bob Lamberty, and Larry Skatvold.

STAFF PRESENT – Jeff Traill

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

ITEM 10. JOINT ZONING TEXT AMENDMENT #06-06- to change the definition of structure in Article 26 Definitions.

Petitioner - Planning Department

Report by: Pat Herman

Staff Analysis

Current Definition of Structure:

Anything constructed or erected with a fixed location on the ground, or attached to something having a fixed location on the ground. For the purpose of these regulations, retaining walls, concrete slabs and utility poles are not considered structures.

The current definition for a structure stresses the importance of having a fixed location on the ground. The Planning Staff is proposing a change to this definition for two reasons.

In the prosecution of enforcement cases this phrase has been interpreted by the court to mean attached to the ground or something that cannot be moved. This has hindered the County's ability to prosecute for illegally placed items such as mobile office trailers.

The definition is also in conflict with the currently adopted definition for building which requires permits for temporary structures. Temporary structures are usually not permanently attached to the ground and, by their very nature, may be moved around on the site or off and on a property. Adopting the new definition for structure would allow the two definitions to be congruent with each other.

The following definition has been reviewed by the Office of the State's Attorney.

655. **STRUCTURE.** A combination of material(s) constructed, erected or placed on, above or below the surface of land or water for use, occupancy or ornamentation. For the purpose of these regulations, retaining walls, concrete slabs and utility poles are not considered structures.

Recommendation

Planning Staff is recommended approval of zoning text amendment #06-06 for a new definition for structure.

Public Testimony

Commissioner Dearduff confirmed that garden sheds less than 120 sq. ft. in area would still not require a building permit.

No one 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 Zweep and seconded by Cypher to recommend approval of zoning text amendment #06-06. The motion passed unanimously. Same motion of the City by Donelan and seconded by Skatvold. The motion passed unanimously.

Item 11 was heard jointly with the Dell Rapids Planning Commission.

ITEM 11. JOINT ZONING TEXT AMENDMENT #06-07- to add right-to-farm-notice covenant requirement to single family dwellings in the A-1 Agricultural and RC

Recreation/Conservation zoning districts.

Petitioner - Planning Commission

Report by: Scott Anderson

Staff Analysis

Over the last six months, the County Planning Commission has been discussing ways of both making home owners aware of the agricultural nature of some parts of the county and protecting existing agricultural interests of the farming community. Many options were discussed, including reverse setbacks. Based on those discussions, it appears that one of the simplest ways to provide that information and protection would be require a “right-to-farm” notice to be placed on the property of all new residential construction in the county. Requiring this notice would make the new home owners aware of agricultural issues that may later arise. This proposed zoning amendment would utilize the existing “right-to-farm” notice that the County uses for the transfer of building eligibilities.

Proposed amendments to ARTICLE 3.01 A-1 AGRICULTURE DISTRICT AND ARTICLE 9.02 RC RECREATION/CONSERVATION DISTRICT.

3.01 PERMISSIVE USES. A building or premises shall be permitted to be used for the following purposes in the A-1 Agricultural District:

- (A). Agriculture.
- (B). A single-family dwelling if the following provisions for building eligibility are met: *(amended by MC 28-02-04)*
 - 1). Each quarter-quarter section shall have one building eligibility when all the following conditions are met:
 - a). There are no other dwellings on the quarter-quarter section.
 - b). The building site shall be a minimum of one acre.
 - c). Approval has been granted by the appropriate governing entity for access onto a public road.
 - d). The remaining portion of the quarter-quarter section is retained as agricultural land or in its present use.
 - e). Prior to any building permit being issued for any new single family residence located in the A-1 Agriculture District, a Right to Farm Covenant shall be filed on the parcel of land upon which the new structure will be located. Only the following shall constitute a Right to Farm Covenant: “**RIGHT TO FARM NOTICE COVENANT**

You are hereby notified that the property on which you are constructing a structure is in or near agricultural land, agricultural operations or agricultural processing facilities or operations. You may be subject to inconvenience or discomfort from lawful agricultural or agricultural processing facility operations. Agricultural operations may include, but are not limited to, the following: the cultivation, harvesting, and storage of crops; livestock production; ground rig or aerial application of pesticides or herbicides; the application of fertilizer, including animal waste; the operation of machinery; the application of irrigation water; and other accepted and customary agricultural activities conducted in accordance with Federal, State, and County laws. Discomforts and inconveniences may include, but are not limited to:

noise, odors, fumes, dust, smoke, burning, vibrations, insects, rodents, and/or the operation of machinery (including aircraft) during any 24-hour period. If you live near an agricultural area, you should be prepared to accept such inconveniences or discomforts as a normal and necessary aspect of living in an area with a strong rural character and an active agricultural sector. You are also notified that there is the potential for agricultural or agricultural processing operations to expand. This notification shall extend to all landowners, their heirs, successors or assigns and because it is required pursuant to the issuance of a building permit, may not be removed from the record title without consent of the Minnehaha County and Dell Rapids Planning Commissions.”

- (C). Elementary or high school.
- (D). Historical sites.
- (E). Church.
- (F). Neighborhood utilities.
- (G). Antenna support structure. *(amended by MC28-01-03)*

9.02 PERMISSIVE USES. A building or premises shall be permitted to be used for the following purposes in the RC Recreation/Conservation District:

- (A). Agriculture.
- (B). Public park; forest preserve.
- (C). Public golf course.
- (D). Historic sites.
- (E). A single-family dwelling if the following provisions for building eligibility are met:
(amended by MC28-02-04)
 - (1). Each quarter-quarter section shall have one building eligibility when all the following conditions are met:
 - a). There are no other dwellings on the quarter-quarter section.
 - b). The building site is not in the 100-year flood plain as identified on the Flood Insurance Rate Map.
 - c). The building site shall be a minimum of one acre.
 - d). Approval has been granted by the appropriate governing entity for access onto a public road.
 - e). The remaining portion of the quarter-quarter section is retained as agricultural land or in its present use.
 - f). Prior to any building permit being issued for any new single family residence located in the RC Recreation/Conservation District, a Right to Farm Covenant shall be filed on the parcel of land upon which the new structure will be located. Only the following shall constitute a Right to Farm Covenant: “**RIGHT TO FARM NOTICE COVENANT** You are hereby notified that the property on which you are constructing a structure is in or near agricultural land, agricultural operations or agricultural processing facilities or operations. You may be subject to inconvenience or discomfort from lawful agricultural or agricultural

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

(F). Antenna support structure. *(amended by MC28-01-03)*

Recommendation

Staff recommended approval of the Joint Zoning Text Amendment #06-07 to add requiring a “right to farm notice” to Articles 3 and 9.

Public Testimony

No one 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 Rogen and seconded by Cypher to recommend approval of zoning text amendment #06-07. The motion passed unanimously. Same motion of the City by Dearduff and seconded by Donelan. The motion passed unanimously.

Item 12 was heard jointly with the Dell Rapids Planning Commission.

ITEM 12. JOINT ZONING TEXT AMENDMENT #06-08- to add notification requirements to Section 19 Conditional Use Permits.

Petitioner - Planning Commission

Report by: Scott Anderson

Staff Analysis:

Staff is recommending a modification of Article 19 (Conditional Use Permits) of the Zoning Ordinance. Specifically, staff is recommending that additional notification requirements be implemented. Currently, a sign is posted on the property. There is no requirement for legal advertisement in the paper or notification by mail. Staff recommends that the applicant be required to send a notice of hearing to all property owners within 500 feet of the subject property upon which the proposed conditional use permit is to occur. Staff would prepare the mailing list for the applicants using GIS information and prepare the hearing notices. The applicant would be required to mail the hearing notice one (1) week prior to the Planning Commission meeting and provide a notarized statement verifying the mailing was completed.

The proposed change will be an additional step in making sure the public is informed of proposed conditional use permits in their neighborhood.

Staff has prepared a sample copy of the hearing notice that the Planning Department will be using for the notification process.

Proposed amendments to ARTICLE 19.05 CONDITIONAL USE PERMITS.

(A) NOTIFICATION. A good faith effort must be made by the applicant to notify all property owners (inclusive of Contract for Deed buyers) of land laying within five hundred feet (500) feet, inclusive of right-of-way, of the outer boundaries of the property involved in the request. The list of landowners to be notified shall be determined by records of the Director of Equalization. The Planning Department shall provide the applicant with "Notice of Hearing" forms for this purpose, and the notices are to be sent by the applicant to all parties on the aforementioned list by first class mail no less than one (1) week prior to the public hearing on the request held by the Planning Commission. The applicant shall sign an affidavit certifying that the required mailing was completed. The affidavit shall be provided to the Planning Department at least five (5) working days prior to the Planning Commission meeting.

(A) (B).SIGNS. A sign(s) to be provided by the Office of Planning and Zoning shall be posted on or near the property at least five days prior to the scheduled hearing.

(B) (C).ACTION. The Planning Commission shall decide whether to grant the conditional use with such conditions and safeguards as are appropriate or to deny a conditional use when not in harmony with the purpose and intent of these regulations. The decision of the Planning Commission shall be final unless an appeal is filed in accordance with Article 19.06.

Recommendation

Staff recommended approval of the Joint Zoning Text Amendment #06-08 to add notification requirements to Article 19.

Public Testimony

No one 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 Bunde and seconded by Cypher to recommend approval of zoning text amendment #06-08. The motion passed unanimously. Same motion of the City by Skatvold and seconded by Donelan. The motion passed unanimously.

Item 13 was heard jointly with the Dell Rapids Planning Commission.

ITEM 13. JOINT ZONING TEXT AMENDMENT #06-12 - to add Contractor's Shop & Storage yard as a conditional use permit in the A-1 Agricultural District.

Petitioner -Tim Ramstead

Report by: Phil Kappen

The petitioner currently has a contractor's shop in the NW1/4 30-T104N-R50W that they claim is classified as a legal non-conforming (grandfathered) use in the A-1 Agricultural District. The petitioner recently inquired into the possibility of constructing an additional building for the contractor shop use and was informed that a grandfathered use cannot be expanded. The petitioner now wishes to amend the zoning ordinance to make a contractor's shop a conditional use in the A-1 Agricultural District.

Staff questions whether the existing use can be considered a legal, non-conforming use. The petitioner replaced a building on his property in 1993 which is being used for the contractor's use. Subsequent to staff's meeting with the petitioner's representative, staff researched the building permit for that building (permit #93-336 issued October 14, 1993) and found that the permit was issued for a "66x96' building for personal storage." There was no mention on the permit of any commercial use. Even if the use had existed prior to that permit, the construction of the building would be classified as expanding a legal, non-conforming use which is specifically prohibited by Section 18.05 of the zoning ordinance. The provisions of that building permit were agreed to by a representative of the property owner.

The zoning ordinance currently allows a contractor's shop or storage area as a conditional use permit only in the C Commercial or I-1 Industrial zoning districts. Small contractor shops can also be allowed by conditional use as a home occupation. For example, a contractor's shop for an electrical contractor was recently approved in conformance with the home occupation section of the zoning ordinance. That permit was approved as a Class 1 Major Home Occupation with the following stipulations:

1. There shall be no outside storage of business supplies or equipment.
2. The home occupation shall be limited to a 750 square foot area of the accessory building.
3. A non-illuminated sign not exceeding two square feet shall be used to identify the home occupation.
4. No more than two nonresident employees or a total of four employees shall be on site.
5. No customers shall be on site.
6. Delivery vehicles shall be limited to small delivery service trucks.

As with all home occupations the primary consideration was the potential for impact on neighbors, the appearance of the property (no outside storage) and restrictions to ensure that the business did not become too large. A small business can be made to work within the confines of the home occupation portions of the ordinance. Staff has concerns about the allowance for larger scale contractor's shops or yards. A heavy equipment contractor, for example may have a difficulty meeting the restrictions on outside storage. Or, if they did construct the buildings necessary for storing a quantity of large equipment there would then be the potential for some very large buildings in an area not zoned for commercial or industrial uses and, as has been noted in the past, the very great potential for future problems and difficult enforcement situations as future owners commence uses for which the property is not rezoned. Many of those areas could also not be rezoned for commercial or industrial activities because the comprehensive plan does not provide for such uses in those areas.

The Planning Office, in the past, has had to contend with some very egregious ordinance violations in which a person commenced a new contractor's shop in the A-1 District. There have been a number of cases in which a person was required to close the business at that site and relocate to one of the permitted commercial or industrial areas. A change in the ordinance at this time may be viewed by some persons as an allowance that they were not afforded when enforcement action was brought against them.

The current ordinance recognizes that larger-scale contractor's yards are appropriate only in those areas which are allowed for commercial or industrial use by the zoning ordinance and, more importantly, by the comprehensive plan. Staff feels that the appropriate location for such uses is in the C or I-1 districts.

Recommendation

Staff recommended denial of the proposed zoning text ordinance amendment #06-12.

Public Testimony

Commissioner Dearduff questioned how a contractor's storage yard would be different from a farmer having front loaders, tractors and other equipment on his farmstead. Mr. Kappen explained that the use of the equipment is for the farming operation and that it is needed for agricultural production.

The petitioner, Tim Ramstead, was represented by Rick Ramstead. The issue is not about whether that site needs a conditional use permit but about amending the text of the zoning ordinance to permit this use. Mr. Ramstead stressed they were applying not just for themselves but for the numerous people who drive their work truck home and park it in an accessory building. Drywall contractors, plumbing or electrical contractors, and those in similar businesses all drive home and by pulling their trucks into a structure that is not their garage are in violation of the ordinance. Mr. Ramstead feels to consider such businesses to be a home occupation is an extensive reading of the ordinance. You could argue that the small scale businesses are not an appropriate use of the home occupation portion of the ordinance. Mr. Ramstead felt that the staff report had focused too much on the size of the operation and the size of the equipment at his client's property. That is not the issue. What is at issue is whether people who live in the A-1 District can have a shed to keep their equipment and supplies in. Mr. Ramstead stated that he disagrees with the staff's contention that a farmer can keep this equipment because of what he is doing with it. Zoning is to regulate the intensity of the use from the lowest at single family to the highest of commercial with agricultural somewhere in between there. The equipment on this site might be a different color than that on a farm but the use that it is being put to is not there and the land or the neighborhood is not being burdened with some type of intensity one would otherwise equate with the nature of that equipment. It is what it is. Mr. Ramstead stated he is asking for the change so that in the future they can come back and get the building permit that his client is seeking. This is a business that has been in operation since 1988.

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

Commissioner Cypher stated that during his time on the Commission they have run into a lot of things out in the County which are not appropriate and he would support the staff in denying this amendment. Commissioner Bunde stated that the petitioner does have a marvelous looking place but in approving this we would have businesses upon businesses upon businesses. The appropriate place is to locate is in the commercial or industrial districts.

Based on the staff report and public testimony and citing his previous comments, a motion was made by Cypher and seconded by Bunde to recommend denial of zoning text amendment #06-12. The motion passed unanimously. Same motion of the City by Lamberty and seconded by Skatvold. The motion passed (Dearduff and Donelan nay).

Item 14 was heard jointly with the Dell Rapids Planning Commission.

ITEM 14. JOINT ZONING TEXT AMENDMENT #06-13 - to amend Section 12.10 (C) & (E) application requirements for Concentrated Animal Feeding Operations.

Petitioner –Planning Department

Report by: Phil Kappen

The zoning ordinance currently has a total of 6 requirements which must be included as a part of an application for a concentrated animal feeding operation (CAFO). These requirements include provisions for a description of type and size of the proposed facility; a site plan; geotechnical test borings; a nutrient management plan; a pest, odor control and dead animal disposal plan; and certification of all plans by a professional engineer. Staff is allowed to waive the application requirements for the test borings, nutrient management plan and engineer certification if the applicant will be required to obtain a state permit for the facility. This potential waiver is allowed because those items will be required as a part of the state permit.

Staff has begun to question, however, the need for some of these items as a part of the application. Is it necessary to require the expense of an engineer's certification for a very small facility? Is the requirement for a nutrient management plan necessary as a part of the application, or would it be more appropriate to require such a plan as a part of the conditional use permit and that it must be in place before the facility commences operation? Is it necessary to require a geotechnical boring for a small operation that is not located over the water source protection area or over a shallow aquifer? These questions have led staff to propose some potential amendments to the CAFO application requirements.

Staff is proposing that the requirements for a nutrient management plan and engineer certification be

removed from the application requirements and that a requirement for a nutrient management plan be added to the conditional use requirements for a CAFO. For any CAFO that requires state approval, there will be an automatic requirement for the engineering services. Further, staff recommends amending the application requirement for a geotechnical boring to only those areas that are over water source protection areas or a mapped shallow aquifer. The larger facilities that require state approval will still have to perform the soil borings as a requirement of their state permit application. The small facilities that are not over a sensitive area would not have to bear this unnecessary expense. The full text of the proposed changes is shown below. Additions are shown with underscores and deletions are shown with overstrikes.

Proposed amendments to ARTICLE 12.00 ADDITIONAL USE REGULATIONS

The following portions of Section 12.10 CONCENTRATED ANIMAL FEEDING OPERATIONS shall be amended to read as follows:

(C). Application Procedures and Requirements.

Prior to application submittal the operator of the proposed facility shall meet with the Planning Director to discuss application requirements.

The conditional use application shall be accompanied, at a minimum, by the following information. ~~Subsections 3, 4, and 6~~ The geotechnical boring requirement in subsection 3 may be waived if a state general permit is required.

- (1). A description of the type of concentrated animal feeding operation and the number of animals proposed for the facility.
- (2). A site plan of the proposed facility including:
 - (a). A landscaping plan designed to assist in the dispersal of odors.
 - (b). A grading plan designed to help keep pens and solid waste containment areas dry.
- (3). When the site is located within a designated water source protection area or over a mapped shallow aquifer area ~~A~~ geotechnical test boring log recording the geological data of at least one deep subsurface boring shall be required. This boring must be located below the location of the proposed containment facility and extend to a minimum of 25 feet below the ground surface and may stop when one of the following criteria has been met:
 - (a). At least 15 continuous feet of extremely low permeability geologic material such as unweathered clayey till or shale is encountered in the boring;
 - (b). At least 30 continuous feet of low to extremely low permeability weathered or unweathered till or shale is encountered;
 - (c). The boring reaches an aquifer; or
 - (d). A total depth of 100 feet is reached.
- ~~(4). A nutrient management plan for liquid and solid waste including:
 - (a). Location and description of the animal waste facilities and structures.
 - (b). Operational procedures and maintenance of the animal waste facilities.
 - (c). Description of the proposed method for animal waste application.~~

- ~~(d). Map showing distances from proposed animal waste application sites to natural features and land uses as shown in Table 3.~~
- ~~(e). Information showing the application of waste based on agronomic rates computed from the types of crops and estimated yields on the application sites, the available nutrients in the application site soils and the available nutrients in the waste.~~
- ~~(f). Waste application agreements shall be required if the petitioner does not own the minimum acreage required to apply the animal waste produced by the facility.~~

~~(5)~~ (4). A pest, odor control and dead animal disposal plan.

~~(6). Certification by a registered professional engineer that the plan specifications for the new waste containment facility conform with the South Dakota Department of Environment and Natural Resources design standards.~~

(E). Conditional Use Permit Requirements.

A concentrated animal feeding operation which is granted a conditional use permit shall, at a minimum, meet the following requirements:

- (1). ~~When a state permit is required State approved plans.~~ the operator shall file copies of all state-approved construction ~~and nutrient management~~ plans with the County.
- (2). Record Keeping. The operator shall maintain inspection and maintenance records on the animal waste facilities, and records on compliance with the waste and nutrient management plan and odor and pest control plan. Copies of records shall be filed annually with the County.
- (3). Waste Application. All liquid wastes shall be injected to provide for better agronomic benefits and to reduce the potential for runoff and minimize odor.
 - (a). In the event that an extraordinary circumstance requires surface application of liquid waste, the following information shall be submitted to the Planning Office: a description of the extraordinary circumstance which requires surface application; a map showing the proposed application sites along with soil types, slopes, and the required separations from natural features or adjoining land uses: the minimum volume of waste which will have to be applied in order to provide relief: and the means by which the waste will be applied. The Planning Director may authorize the surface application of liquid waste under the following minimum conditions:
 - (1). Waste shall not be surfaced applied on frozen ground with slopes of greater than 4 percent.
 - (2). Only the minimum amount of waste necessary to provide relief shall be surface applied.
 - (3). The separation requirements in Table 3, Section 12.10 (G) shall be met.
 - (b). The Planning Director may approve surface application of livestock production surplus water upon receiving an application from the producer. Such application shall include:
 - (1). The results of tests on the livestock production surplus water proposed for

- surface application which shows the percentage of solids and the amount of N (nitrogen) per 1000 gallons of water.
- (2). The amount of livestock production surplus water to be applied.
 - (3) A map showing the areas on which the producer proposes to surface apply the livestock production surplus water including soil types, slopes, and the required separations from natural features or adjoining land uses.
 - (4) The separation requirements in Table 3, Section 12.10 (G) shall be met.
- (4). Shallow Aquifer. If the geotechnical test boring shows the area to be over a shallow aquifer, then measures shall be employed to protect the groundwater. The County may call upon the expertise of the South Dakota Geological Survey in making a determination on whether a shallow aquifer exists on the site.
- (5). Inspections. A registered professional engineer shall inspect the facility during construction and certify to the County that the newly constructed facility conforms with the approved plans and with South Dakota Department of Environment and Natural Resources design standards.
- (6). If required by the South Dakota Department of Environment and Natural Resources or as a condition of the conditional use permit the ~~The~~ operation shall obtain a State General Water Pollution Control Permit for Concentrated Swine Feeding Operations or for Concentrated Animal Feeding Operations.
- (7). A nutrient management plan for liquid and solid waste including:
- a. Location and description of the animal waste facilities and structures.
 - b. Operational procedures and maintenance of the animal waste facilities.
 - c. Description of the proposed method for animal waste application.
 - d. Map showing distances from proposed animal waste application sites to natural features and land uses as shown in Table 3.
 - e. Information showing the application of waste based on agronomic rates computed from the types of crops and estimated yields on the application sites, the available nutrients in the application site soils and the available nutrients in the waste.
 - f. Waste application agreements shall be required if the petitioner does not own the minimum acreage required to apply the animal waste produced by the facility.

Recommendation

Staff recommended approval of the zoning text amendments #06-13.

Public Testimony

No one 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 Rogen and seconded by Zweep to recommend approval of zoning text amendment #06-13. The motion passed unanimously. Same motion of the City by Dearduff and seconded by Donelan. The motion passed unanimously.

Item 15 was deferred from the October 24, 2005 and January 23, 2006 meeting.

ITEM 15. CONDITIONAL USE PERMIT #05-90 to allow a campground.

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

General Information

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

Report by: Scott Anderson

Staff Analysis: On April 10, 2006, the applicant withdrew this conditional use permit request. He cited issues regarding the disposal of wastewater as his reason for not proceeding with the campground.

Recommendation: Staff recommends acknowledging the withdrawal of Conditional Use Permit #05-90 by the applicant.

The Planning Commission acknowledged that the petitioner has withdrawn this item.

ITEM 16. ZONING TEXT AMENDMENT #06-02 - to add Contractor's Shop & Storage yard as a conditional use permit in the A-1 Agricultural District.

Petitioner -Tim Ramstead

Report by: Phil Kappen

The petitioner currently has a contractor's shop in the NW1/4 30-T104N-R50W that they claim is classified as a legal non-conforming (grandfathered) use in the A-1 Agricultural District. The petitioner recently inquired into the possibility of constructing an additional building for the contractor shop use and was informed that a grandfathered use cannot be expanded. The petitioner now wishes to amend the zoning ordinance to make a contractor's shop a conditional use in the A-1 Agricultural District.

Staff questions whether the existing use can be considered a legal, non-conforming use. The petitioner replaced a building on his property in 1993 which is being used for the contractor's use. Subsequent to staff's meeting with the petitioner's representative, staff researched the building permit for that building (permit #93-336 issued October 14, 1993) and found that the permit was issued for a "66x96' building for personal storage." There was no mention on the permit of any commercial use. Even if the use had existed prior to that permit, the construction of the building would be classified as expanding a legal, non-conforming use which is specifically prohibited by Section 18.05 of the zoning ordinance. The provisions of that building permit were agreed to by a representative of the property owner.

The zoning ordinance currently allows a contractor's shop or storage area as a conditional use permit only in the C Commercial or I-1 Industrial zoning districts. Small contractor shops can also be allowed by conditional use as a home occupation. For example, a contractor's shop for an electrical contractor was recently approved in conformance with the home occupation section of the zoning ordinance. That permit was approved as a Class 1 Major Home Occupation with the following stipulations:

1. There shall be no outside storage of business supplies or equipment.
2. The home occupation shall be limited to a 750 square foot area of the accessory building.
3. A non-illuminated sign not exceeding two square feet shall be used to identify the home occupation.
4. No more than two nonresident employees or a total of four employees shall be on site.
5. No customers shall be on site.
6. Delivery vehicles shall be limited to small delivery service trucks.

As with all home occupations the primary consideration was the potential for impact on neighbors, the appearance of the property (no outside storage) and restrictions to ensure that the business did not become too large. A small business can be made to work within the confines of the home occupation portions of the ordinance. Staff has concerns about the allowance for larger scale contractor's shops or yards. A

heavy equipment contractor, for example may have a difficulty meeting the restrictions on outside storage. Or, if they did construct the buildings necessary for storing a quantity of large equipment there would then be the potential for some very large buildings in an area not zoned for commercial or industrial uses and, as has been noted in the past, the very great potential for future problems and difficult enforcement situations as future owners commence uses for which the property is not rezoned. Many of those areas could also not be rezoned for commercial or industrial activities because the comprehensive plan does not provide for such uses in those areas.

The Planning Office, in the past, has had to contend with some very egregious ordinance violations in which a person commenced a new contractor's shop in the A-1 District. There have been a number of cases in which a person was required to close the business at that site and relocate to one of the permitted commercial or industrial areas. A change in the ordinance at this time may be viewed by some persons as an allowance that they were not afforded when enforcement action was brought against them.

The current ordinance recognizes that larger-scale contractor's yards are appropriate only in those areas which are allowed for commercial or industrial use by the zoning ordinance and, more importantly, by the comprehensive plan. Staff feels that the appropriate location for such uses is in the C or I-1 districts.

Recommendation

Staff recommended denial of proposed zoning text ordinance amendment #06-02.

Public Testimony

Staff Note: This item was first heard as an amendment to the Joint Zoning Ordinance with the City of Dell Rapids earlier in the meeting. The petitioner, Planning Commission and staff continued the discussion and did not restate the previously given testimony. That testimony appears as the first part of the minutes for this item (indented) followed by the new discussion which occurred when this amendment was considered for the County Zoning Ordinance.

Commissioner Dearduff questioned how a contractor's storage yard would be different from a farmer having front loaders, tractors and other equipment on his farmstead. Mr. Kappen explained that the use of the equipment is for the farming operation and that it is needed for agricultural production.

The petitioner, Tim Ramstead, was represented by Rick Ramstead. The issue is not about whether that site needs a conditional use permit but about amending the text of the zoning ordinance to permit this use. Mr. Ramstead stressed they were applying not just for themselves but for the numerous people who drive their work truck home and park it in an accessory building. Drywall contractors, plumbing or electrical contractors, and those in similar businesses all drive home and by pulling their trucks into a structure that is not their garage are in violation of the ordinance. Mr. Ramstead feels to consider such businesses to be a home occupation is an extensive reading of the ordinance. You could argue that the small scale businesses are not an appropriate use of the home occupation portion of the ordinance. Mr. Ramstead felt that the staff report had focused too much on the size of the operation and the size of the equipment at his client's property. That is not the issue. What is at issue is whether people who live in the A-1 District can have a shed to keep their equipment and supplies in. Mr. Ramstead stated that he disagrees with the staff's contention that a farmer can keep this equipment because of what he is doing with it. Zoning is to regulate the intensity of the use from the lowest at single family to the highest of commercial with agricultural somewhere in between there. The equipment on this site might be a different color than that on a farm but the use that it is being put to is not there and the land or the neighborhood is not being burdened with some type of intensity one would otherwise equate with the nature of that equipment. It is what it is. Mr. Ramstead stated he is asking for the change so that in the future they can come back and get the building permit that his client is seeking. This is a business that has been in operation since 1988.

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

Commissioner Cypher stated that during his time on the Commission they have run into a lot of things out in the County which are not appropriate and he would support the staff in denying this amendment. Commissioner Bunde stated that the petitioner does have a marvelous looking place but in approving this we would have businesses upon businesses upon businesses. The appropriate place is to locate is in the commercial or industrial districts.

Commissioner Zweep stated that the County had dealt with these issues a number of years ago. The County's approach is not to keep business out but to help the development of the small towns. The towns have industrial and commercial parks which are the appropriate location for these types of uses. While the petitioner's property is well maintained, many are not. A contractor's shop and storage yard is not a desirable mix in the rural area. He cannot support this use in the rural area but feels they should move to existing industrial parks.

Mr. Rick Ramstead stated that this would not lead to a wholesale expansion. Each time this would occur an applicant would have to come before the Planning Commission and it would have to be approved. The character of the property would have to be evaluated and its impact on the use on the surrounding neighborhood. This issue did come up in the 2nd most populated county, Pennington County, and they chose to approve this and that it has worked there. Mr. Ramstead stated that allowing this request would give them the opportunity to take land and allow a use which is less intense than agricultural and perhaps less burdensome on the neighborhood than what is already there.

Mr. Anderson stated that Pennington County does allow this but it is like comparing apples to oranges. The density and size of the two counties are different. In Pennington County you have areas where there are no small industrial parks readily available and you might be 50-60 miles from a city. So you need to have people, septic installers or plumbers, which are able to service these isolated areas. Mr. Anderson stated that Mr. Ramstead was correct in that all conditional use permits by their nature are able to be monitored. But the Planning Commission is correct in that it just leads to more incompatible uses and there is a much higher density in Minnehaha County and a different situation. The County does allow for home occupations and once a business grows past that then the next logical step is to move into a commercial or light industrial zoned area.

Cliff Ramstead, 600 Ash Grove Ln. Crooks, is a business partner with the petitioner. A shop is high priced to put up for something that is used three months of the year. It is not financially feasible for them to build a \$500,000 shop in an industrial area and it will never pay. Commissioner South pointed out that Cliff Ramstead had developed the Crooks/Renner exit specifically for that express purpose and there is a contradiction here. Mr. Ramstead reiterated that they don't have anything at this site in the summer.

Commissioner Bunde agreed that there was never anything sitting out however that is not the point. Commission South pointed out the issue was not just their property but whether this was appropriate for the whole county. Commissioner Bunde stated that the decision can't be made based on the background or the cleanliness of the property. It's either a good use for the land or its not.

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

Commissioner Cypher reiterated the fact that this was not appropriate for agriculturally zoned areas and that there is enough of a problem now with enforcement of the ordinance.

Based on the staff report and public testimony, a motion was made by Cypher and seconded by Rogen to recommend denial of zoning text amendment #06-02. The motion passed unanimously.

ITEM 17. CONDITIONAL USE PERMIT #06-28 transfer eight residential building eligibilities.

From – NE1/4 NW1/4, SE1/4 SW1/4, SW1/4 SE1/4, NW1/4 NE1/4, NE1/4 NE1/4, SE1/4 NE1/4, NW1/4 SE1/4 & NE1/4 SE1/4, all in Section 33-T103N-R49W

To – Tr. B (ex. S.18') Heikes Addition N1/2 in Section 34-T103N-R49W

Location - 2 miles north of Renner

Petitioner / Owner- Wade Peterson

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 to the east of 475th Avenue and northeast of the Rick Ridge housing development. The subject property has existing residential areas on the north east and south and agricultural land to the east. The petitioner wishes to transfer eight building eligibilities to the property which would allow the creation of a 8-lot subdivision.

The petitioner owns land along the west side of 475th Street (S.D. Hwy 115) that has a total of eight eligibilities. He recently purchased a residential lot to the north of his farmstead that provides a contiguous connection between his property to the west of Highway 115 and some property he also owns on the east side of 115. In 1999 the petitioner had applied to transfer eligibilities to this same property from land that he owned to the northeast. That application was denied due to concerns about whether the tracts were contiguous.

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 there are existing subdivisions on three sides of the subject property, the approval of this transfer would allow a use of the property that is more consistent with the majority of the property in the vicinity. There is still agricultural land in the area, so a right-to-farm notice covenant should be required on the proposed lots.

The area from which the eligibilities would be transferred is bottomland crop ground. Approval of the transfer would allow the preservation of a large block of agricultural land.

A development of this size will require that the petitioner obtain a NPDES permit from the SD DENR detailing how erosion will be controlled on the site during construction. The petitioner should also be required to develop a preliminary subdivision plan which shows not only how erosion will be controlled, but, also how storm water will be managed in a manner that does not result in an increase of runoff onto adjoining properties.

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

This application uses the remaining contiguous eligibilities owned by the petitioner. The petitioner would retain the property between the proposed subdivision and Highway 115 for agricultural purposes (to the west of proposed lots number 2 and 3). There are no plans to develop that property and the petitioner understands that there is no building eligibility remaining for that property. That property is currently accessed via a field approach off of Highway 115 and that approach will continue to be used for the use of the agricultural production on that field. That agricultural parcel should also be platted along with the other lots in the subdivision to allow easier reference to the property and to ensure that the petitioner has the appropriate SD DOT approval for access to the lot.

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

A new road would be constructed between the existing Washington Street on the south edge of the proposed development and 255th Street to the north. This will provide improved emergency access to the area. Staff has been informed that the petitioner has contacted the Sverdrup Township Board regarding the maintenance of the new road and has received verbal confirmation that the township will maintain the new road. The petitioner should be prepared to further address maintenance of the road at the Planning Commission meeting.

When the final plat is prepared for the subdivision, it will have to show either approval by the township that they will accept the road or detail the creation of a home owner's association that will have responsibility for all construction and maintenance. The road will have to be constructed according to Minnehaha County subdivision regulations before any building permits will be issued. New subdivision roads that access hard-surfaced roads are required to be hard-surfaced. Both Washington Street and 255th Street have gravel surfaces.

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

There is ample area on the proposed lots for any residential parking requirements. No on-street parking will be allowed.

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

There should be no odor, fumes, dust or vibration from the typical activities on a single-family residential site. Outdoor lighting should be situated so that no direct light is directed toward adjoining roadways or neighboring residences.

Recommendation

Staff finds that the proposed eligibility transfer meets the terms of density zoning in the county and that the transfer will allow the clustering of housing eligibilities in a manner that preserves productive agricultural land. Staff recommended approval of conditional use permit # 06-28 with the following conditions:

1. A preliminary subdivision plan shall be prepared for county approval which shows the basic layout of the subdivision and also addresses the drainage of the site and how erosion control and storm water management will be accomplished.
2. All lots on the subject property will be platted and a right-to-farm notice covenant filed on all properties prior to the issuance of any building permit.

Public Testimony

Commissioner Cypher asked if the petitioner had previously owned the property. Mr. Kappen stated it was recently obtained and that staff had been provided a copy of the quit claim deed. Commissioner Cypher noted that this situation was not much different from an area in Wall Lake Township where someone had purchased land to do a transfer.

The petitioner, Wade Peterson, was represented by Steve Quincy with Sayre Associates. He stated that the lot which was recently purchased is contiguous and that is the requirement. A road would be constructed from Washington St. and run north and connect to 255th St. through a previously platted dedicated right-of-way. Mr. Peterson did meet with the Sverdrup Township Board and they agreed to maintain the new road if it was constructed to county standards. Each of the houses will be on a septic system.

Lee Wintersteen, 26035 469th Ave., thought the houses would be laid out well and the lots big enough for septic tanks.

Bill & Ann Munch, 25523 475th Ave., reminded the Commission that the petitioner's previous attempt to transfer building eligibilities to this site had been denied. They had checked with the Register of Deeds and could not find the quit claim deed. (Staff confirmed the deed had been filed on April 3, 2006.) They have lived here for 40 years. When the area was originally developing they met with Mr. Peterson and had established covenants for the properties. However, after the land was platted, Mr. Peterson put in trailers and allowed animals, thereby breaking the covenants. They wonder what type of development will appear in this new area. The Munches do not want to live next to mobile homes.

Milt Borah, 47572 Washington St., owns the farmstead at the east end of Washington St. This development will be northwest of his tree line. With 16 cars up and down the new road the dust will blow over to his place. He is also afraid the road will become a race track road. Mr. Borah is also concerned about the safety of children in the neighborhood with the added traffic. He stated that Washington St. is a township road however the township is not doing their job of maintaining it now. Who will take make sure that the maintenance is done? Mr. Borah explained that he has horses, goats, peacocks and other animals on this farm. He does not want kids coming on his property and disturbing the animals and he is also afraid his shelter belt may become a playground. He moved to this site for privacy, the ability to raise animals and as a good location for his children.

Tony & Angela Lee, 47563 255th St., own the property which abuts the new road access at its north end. He submitted letters to the Commission from Geary Neilan 47573 255th St., William Waggoner 47559 255th St., and Jean & Jerry Hofer at 47569 255th St. Mr. Lee explained that Geary Neilan is concerned about a new development increasing the drainage problems in the area, water pollution, increased traffic and road problems, the safety issues at 255th St./Hwy 115, and sewage pollution. William Waggoner's property is on the east side of the new road way. He feels that this access is not needed and that the

property should have access to Hwy 115. The Hofer's have concerns about 255th St. as it is already poorly maintained and more traffic will only make it worse. They also question the type of houses which would be allowed on the new lots.

Mr. Lee stated that he has two sump pumps and there is always water in them. He feels like the wool was being pulled over his and his neighbors eyes. He was told by a Peterson representative that the neighbors supported this transfer. Later an offer was made to sell him 66' along his southern property boundary as a buffer. The same offer was made to other neighbors but the purchase cost was not consistent. Mr. Lee has lived in here for 1.5 years and a number of homes have been added in the area during that time. Washington and 255th Streets are not able to handle the current traffic with the number of houses in the area, construction traffic and a daycare. The access off of 255th St. was designed for field traffic not for 16 cars a day. Mr. Lee stressed he had moved to the area for privacy and safety reasons.

Mr. Lee went on to examine the issue of contiguous land. When Mr. Peterson had tried to transfer eligibilities in 1999 the Planning Commission stated that connection was not there. In a transfer the property owners must be the same. Mr. Peterson has done a quit claim deed in order to slide into the transfer. This is an attempt at avoiding the spirit and intent of the law. Mr. Lee stressed that the property ownership is not contiguous.

Commissioner Zweep verified that the previously platted right-of-way was 66' wide. He noted that 66' is the standard width for a township road.

John Cole, 47534 Washington St., stated that the Zoning Ordinance Section 3.04(Y) states in order to transfer a building eligibility property must be contiguous and under the same ownership. He contents that one deed lists Wade and Janice as joint tenants while the Quit Claim Deed has Wade and Carol as tenants in common. These are different types of deeds and different ownership. Mr. Cole cited the minutes from the June 28, 1999 Planning Commission meeting where staff had expressed concern over the access for eight new lots and more traffic going onto gravel roads. He quoted Commissioner Cypher's comment that this area is like a small town given the number of houses which exist. At that time staff had recommended that the eight houses must access Highway 115. Why not now? Mr. Cole stated that the Washington St. is only maintained from Hwy 115 east to Rock Ridge Ave. Snow removal has to be done by neighborhood residents. Where are the reassurances that maintenance will occur? He also mentioned that drainage is an issue in the area and that he would be down stream from the septic systems.

Shelley Cole, 47534 Washington St., explained that her house sits on a hill but there is water in the basement all the time. Surface water quality is an issue in this area. She is unhappy with the road maintenance performed now by Sverdrup Township and wondered who would maintain the roads during construction. Speeding cars on Washington St. are also a concern due to the way it is constructed and the site distance. Logically Washington St. will carry most of the traffic but this issue tonight only addresses the new road. Ms. Cole would like to see covenants on the property to control the type of houses which can be constructed.

Bill Munch asked what a quit claim deed really was. He feels that if this is approved the deed will just be reversed back to sole ownership under Carol Erickson. Mr. Anderson stated it allowed any vested rights to be transferred to another person. Commissioner Zweep said he had only see quit claim deeds used in deals involving school house land and railroads. In ownership of property it is not a secure deed.

Mr. Quincy stated that eight homes would be placed on 50 acres. There would not be a monumental disturbance given the number of homes already in the area. Mr. Peterson has the right to develop his land. He explained that Mr. Peterson is not proposing the placement of the homes in the "skinny" piece of land along Hwy 115 because that is better farm land. The other part of the land is best described as "rocky top". Mr. Quincy stated that he is a drainage engineer and that a change from row crops to sod and roof tops is not going to increase drainage off these properties. Dust will be reduced as the land changes to residential uses. Mr. Quincy noted that the north access was platted as a dedicated roadway with the thought that there would be future development in this area. It was not just a field access. Septic tanks will meet the county and state regulations, and utilities will run down the roadways to get to the lots. The township has verbally agreed to maintain the road. Mr. Quincy explained that the submitted plan was conceptual. The final configuration will depend on how large a lot each prospective client wants.

Mr. Kappen noted that the petitioner would be required to do a preliminary plan first. The plat would then have to match that plan. The whole road with a maintenance agreement would have to be part of the

first platted lot. Cul-de-sacs would not be allowed in this instance as they would be longer than 500 feet. The road shown on the concept plan allows good access for emergency vehicles.

The petitioner, Wade Peterson, stated that he owns the recently purchased lot and is buying the lot just to the north of it. He plans to develop high end homes in this area. Commissioner Cypher asked is he had always owned that lot? Mr. Peterson replied that he had not owned the lot since the 1970s.

Commissioner South closed the floor to public testimony.

Commissioner Cypher stated that this is in inappropriate transfer. The recently purchased lot is being used as a conduit and Mr. Peterson has not owned that lot for a long time. Approving this request would set an inappropriate precedent. Commissioner Bunde concurred that just buying a piece of property in order to make the transfer was an awful precedent to set. Commissioner Zweep stated that the petitioner has just recently purchased the property again with a quit claim deed and that this is a problem.

Based on the staff report and public testimony a motion was made by Cypher and seconded by Rogen to deny conditional use permit #06-28. The motion passed unanimously.

ITEM 18. CONDITIONAL USE PERMIT #06-30 to amend CUP #98-72 garbage hauling service.

Legal Description - N450' E333' NW1/4 SW1/4 (Ex. H-3) in Section 26-T102N-R51W

Location - 26056 464th Ave. ¼ mile southeast of Hartford

Petitioner / Owner- Rick Blomberg / Doris Berscheid

General Information

Present zoning - A-1 Agricultural

Existing Land Use - Agriculture

Parcel Size - 3.44 Acres

Report by: Phil Kappen

Staff Analysis

The subject property is located immediately south of I-90, 1 mile east of the Hartford exit. The property to the north and west is agricultural and the area to the east and south of the subject property was previously used as a salvage yard and is zoned I-2. The subject property had also been used as a part of the salvage yard. That use changed in July of 1998 when Mr. Blomberg began to use the subject property for a garbage hauling business.

When Mr. Blomberg began operating the garbage service out of this property it was without first obtaining the required conditional use permit. He had previously operated the business from his residential acreage ½ mile to the south which was not zoned for commercial purposes. He applied for the CU permit on the subject property which was approved by the Planning Commission on October 26, 1998 with four conditions:

1. The petitioner shall screen the east, north and west sides of the subject property with a solid row of large shrubs such as Amur Maple. The plants shall be planted by June 1, 1999.
2. The petitioner shall maintain the planting according to the specifications of the Minnehaha Conservation District. Any plants that die shall be replaced.
3. All garbage or waste shall be contained in the trucks and shall be transported each day for disposal at a licensed solid waste facility.
4. No vehicle parts or unlicensed, inoperable or dismantled vehicles shall be allowed to accumulate on the site.

Since that time staff has contacted Mr. Blomberg on many occasions. He repeatedly promised that the screening trees would be planted, but the work was not completed and the property was not in conformance with the conditional use permit.

The property continued in violation of the terms of the conditional use permit two years after the permit

was approved, and, on November 27, 2000 staff brought the matter back to the Planning Commission with a recommendation to revoke of the conditional use permit.

At the November 27, 2000 meeting the petitioner, Rick Blomberg, admitted he had procrastinated in getting the trees planted. He stated that he would plant the trees by June 1, 2001.

Members of the Planning Commission pointed out to Mr. Blomberg had been repeatedly notified for the past year and half that he was not in conformance with this permit. Mr. Blomberg stated he had made an arrangement to purchase trees but the person he was working with had passed away. The sale of the trees could not take place until the estate was settled. He plans to plant the trees in the spring.

Members of the Planning Commission asked staff if a temporary screen could be erected until the trees were planted in the spring. Staff stated that a temporary screen should not be necessary if the trees were planted next spring. Mr. Blomberg stated he would have the trees planted by June 1, 2001. The Planning Commission extended the deadline date for planting the trees to June 1, 2001.

In spite of the staff repeatedly encouraging Mr. Blomberg to plant the trees, the trees had not been planted by June 1, 2001. At the June 25, 2001 Planning Commission meeting the staff again brought the matter before the Planning Commission. Mr. Blomberg requested that he be allowed to plant 5' spruce trees instead of the required large shrubs. He stated that he would be moving the spruce trees in from a farmer's property. Staff had initially planned to again ask for revocation of the permit, but instead asked that the petitioner be allowed to use the 5' spruce as they would provide good screening and, due to the size, would provide that screening in a quicker manner. The Planning Commission approved the amendment to the permit with a requirement that the screening trees be planted by October, 2001.

That summer Mr. Blomberg planted a single row of one-foot tall Scotch Pine trees in the areas where screening was required. These were planted instead of the 5-foot spruce which Mr. Blomberg had indicated would be planted at the site. There were also unlicensed vehicles in the area in violation of permit condition number 4. Mr. Blomberg also had placed roll-off garbage dumpsters in the old road right-of-way to the south of the interstate. When staff contacted Mr. Blomberg, he agreed to move the dumpsters out of the right-of-way, and move the dump trucks into the area of the property that was still used as a salvage yard and was screened from the interstate by fencing, berms and a building. Mr. Blomberg also agreed to provide better care for the trees and maintain a complete row of screening trees.

Staff checked the property in October, 2001 and found that the property was in compliance within the exception of the size of trees that had been planted. Since the trucks had been moved from the site and the appearance of the property had been improved, staff allowed Mr. Blomberg to continue operations without taking the matter back before the Planning Commission.

Staff spot checked the site in May of 2003 and found that vehicles had been placed outside of the row of trees and that a number of the trees had died. Staff contacted Mr. Blomberg and was assured that the problems would be corrected.

Staff again checked the site on August 1, 2003 and found that, although the trees had not experienced much growth, there was a complete row of trees around the site and it was obvious that trees which had died had been replaced.

In spot checking compliance on some conditional use permits on February 27, 2006 staff found that there were only 17 small, stunted trees in the area around the CUP site, that the trees were surrounded by weeds which signified that the plants had experienced poor care. It was also noted that dumpsters were again parked on the stub road right-of-way to the south of the interstate. Staff contacted Mr. Blomberg and he subsequently brought in another application to amend his conditional use permit. He now proposes to replace the evergreen trees with one row of Common Lilac shrubs and one row of Green Ash trees.

Because of the petitioner's continuing past failures to establish the vegetative screening, staff cannot

support this request. It has been almost eight years since the initial conditional use permit was approved and we are no nearer to establishing screening than we were when the use was illegally begun. Staff believes that the petitioner should be directed to immediately erect a fence around the area which meets the county standards for a screening fence, or the CUP should be revoked. If the fence is allowed, the petitioner should be required to erect a fence with a minimum height of 8-feet and a minimum 90% opacity maintained over the entire height of the fence. The petitioner should be required to ensure that the fence is of an earth-tone color and that the fence is constructed along the east, north and west sides of the conditional use area and meets the minimum 15-foot setback along the north and west boundaries of the property. The petitioner should also be required to have the fence completed, at the latest, by June 1, 2006.

Public Testimony

The petitioner was represented by Tom Clayton. He asserted that he is well acquainted with Mr. Kappen and his attempts to drive people out of business. He stated that in 1990 the petitioner was to plant shrubs and trees around the property in the form of amur maples, whatever those are. The Planning Commission acquiesced to allow the petitioner to plant spruce trees. He did that and took care of them. There have been no complaints about this property. Between 1999 and 2004 the Planning Commission never said anything to the petitioner about any problems. They would like to plant shrubs and trees that will grow well in the soil here such as lilacs, ash, willows and cottonwoods. This site is not a visual hazard and has no blight. There have never been any complaints from anyone around the area, just Mr. Kappen.

Mr. Clayton stated that the property is zoned I-1 Industrial and that this use is in compliance and has been since it started. The Planning Commission should have a vested interest in helping the business to grow. A fence is not an appropriate requirement and it is too large an expense. Mr. Clayton asked the Commission to let the petitioner plant the appropriate fast growing trees. The State of South Dakota favors free use and best use. This sight has improved; it is no longer a salvage yard and has no blight.

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

Mr. Anderson stated that the personal attacks made by Mr. Clayton were unwarranted and that it was not Mr. Kappen's intention to run anyone out of business. Commissioner Bunde stated that she was also very offended by Mr. Clayton's remarks. She noted that the Planning Commission has addressed this issue more than once and that the petitioner was given several opportunities to bring the property into compliance. She is supportive of requiring a fence.

Mr. Kappen explained that the N300' W300' of the property needed to be screened, not the entire area which is zoned for industrial use. The petitioner keeps changing what type of shrub will be planted. What is on the site now is not in compliance. Some of the trees are spruce and others are pine and they are weed choked. This property has not been in compliance for eight years and that is why staff is recommending a fence.

Commissioner Cypher acknowledged how long this situation has been going on. He suggested deferring the item until the May 22nd meeting with the understanding that the petitioner would submit a revised site plan showing the area to be screened with a fence. Commissioner Cypher warned the petitioner that he will not be given another extension.

Based on the staff report and public testimony a motion was made by Cypher and seconded by Rogen to defer conditional use permit #06-30 until the May 22, 2006 meeting. The motion passed unanimously.

ITEM 19. CONDITIONAL USE PERMIT #06-31 2,400 head finisher hog barn; and holding pond for an existing CAFO.

Legal Description - SE1/4 & SW1/4 NE1/4 of Section 22-T103N-R51W
Location - 6 miles north of Hartford
Petitioner / Owner- Ron Steineke

General Information

Present zoning - A-1 Agricultural
Existing Land Use - Agriculture
Parcel Size - 200 Acres

Report by: Phil Kappen

Staff Analysis

The subject property is located west of 464th Avenue (Co. Hwy 149) and north of 254th Street (Co. Hwy 122). The surrounding property is agricultural with a few residential acreages. The petitioner has an existing 2400 swine finishing facility (1000 animal units) that lies just south of his north farmstead. That facility was approved in 1996 (CUP # 96-56) with the following conditions:

- 1) The facility shall be limited to a 2400 head finishing operation.
- 2) The petitioner shall meet all state requirements for a state hog confinement general permit, facility construction plans and nutrient management plans. Copies of the state-approved construction and nutrient management plans shall be provided to the county prior to the issuance of any building permits.
- 3) The petitioner shall have a South Dakota licensed engineer perform inspections during all phases of the construction to ensure conformance with the approved plans. A copy of the inspection reports shall be filed with the County Planning Department.
- 4) Waste generated by the facility shall be either injected or knifed into the ground.

The 1996 facility is fully permitted by the state of South Dakota and the petitioner has met all requirements. The petitioner has already planted trees around the new swine facility.

He also has an existing 1000 animal unit cattle feedlot in the northern farmstead (northeast quarter of section 22) and in his south farmstead (southeast quarter of Section 22) he has 7 existing swine buildings totaling 20,184 square feet. He is proposing to construct a holding pond to be used for managing the waste from the existing feedlot (north farmstead) and to construct a new 19,392 square foot swine finisher barn to replace the 7 old buildings (south farmstead). The new barn would hold 2400 finisher swine totaling 1000 animal units. The petitioner has indicated that the old swine buildings would be removed after the replacement facility is complete.

Both the holding pond/feedlot and the replacement swine facility should also be permitted by the state. Part of the petitioner's reason for proposing the holding pond is so he can meet the requirements for permitting the feedlot through the state.

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 there are two separate facilities included in this application staff will address each separately.

Holding pond – The holding pond for the existing feedlot in the north farmstead would not result in any increase of animal units at the site, but would provide a more efficient manner of managing the waste. The holding pond would also greatly improve the environmental aspects of the facility. The petitioner proposes to place the holding pond immediate north of the farmstead. Trees should be planted around the holding pond to create an agitation of the wind and aid in the dispersal of any potential odors. Liquid wastes from the facility should be knifed in or injected to reduce the potential for odor.

Replacement barn – The replacement barn for the old swine buildings at the south farmstead is proposed to be placed immediately south of the existing farmstead. The petitioner has proposed a tree planting to the west and south of the new building. The trees around the existing farmstead would be to the north. The existing buildings have very little waste storage capacity resulting in the much more frequent application of the waste. The new building would have much more storage in the deep pit beneath the building. This will result in many less waste applications per year and less potential for odor. This waste would have to be injected or knifed into the ground.

The petitioner should be required to develop a landscaping plan for approval by planning staff that shows the specific locations, rows and species that will be used in the plantings around both the holding and area and the replacement barn.

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

The surrounding properties are all planned for continued agricultural uses. The two proposed improvements should both result in improved

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

Access to the facilities can be made via existing driveways from one of the two county highways. No additional driveways should be necessary.

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

There is ample space on the petitioner's property for any required parking or loading. No parking or loading should occur on any public roadways.

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 planting of trees should aid in the dispersal of potential odors. The injection of liquid wastes from the feedlot and of all waste from the swine facility will greatly reduce the potential for odor. The injection of liquid wastes also provides greater nutrients for plant use.

Recommendation

Staff finds that the proposed holding pond and the replacement of the old swine buildings will result in an overall improvement in both the north and south farmsteads on the petitioner's property. Staff recommended approval of conditional use permit #06-31 with the following conditions:

- 1) The existing cattle feedlot in the northeast quarter and the swine finishing facility in the southeast quarter of Section 22 shall both be limited to 1000 animal units each.
- 2) The petitioner shall prepare a landscaping plan that covers both facilities for approval by the planning staff. At a minimum, the plan shall include trees and shrubs around both the holding pond area (NE $\frac{1}{4}$) and on the west and south sides of the replacement finishing facility (SE $\frac{1}{4}$). All belts shall be a minimum of five rows in width. All plants in the landscaping plan shall be established with one year of the completion of construction of the holding pond or the replacement barn. Any trees that die shall be replanted within one growing season.
- 3) Both the existing 1000 animal unit feedlot (NE $\frac{1}{4}$) and the replacement swine facility (SE $\frac{1}{4}$) shall obtain permits from the South Dakota Department of Environment and Natural Resources. Copies of all state approved construction plans shall be filed with the Minnehaha County Planning Office.
- 4) As a part of the state permit the petitioner shall have annual nutrient management plans prepared and approved by the state. All waste management shall be performed in conformance with this plan. Copies of an executive summary of the 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.
- 5) All liquid waste from the feedlot holding pond (NE $\frac{1}{4}$) and all waste from the replacement swine facility (SE $\frac{1}{4}$) shall be injected or knifed into the ground.
- 6) Upon completion of the replacement finishing facility in the SE $\frac{1}{4}$ all seven old swine buildings shall be removed.

Public Testimony

Mr. Kappen explained that the holding pond is required to be designed with a holding capacity of 365 days and the barns must have a holding capacity of 270 days.

The petitioner, Ron Steineke, stated that the new barn will allow better odor management and reduce the application of manure to once a year vs. the 3-4 times a year that he does now. He stated that he would not be opposed to putting the new barn at the northern site but he questions whether he would still qualify for E.Q.I.P. money.

Cheryl Steineke noted that the neighbor across the street has pumped his pits and spread the manure onto the ground which caused odor problems. She understands her neighbor's concerns and feels that the new barn is a good thing.

Barry Berg with the South Dakota Association of Conservation Districts is working with Mr. Steineke on this site. The DENR is looking at the farmstead as a replacement operation, not a new or expanding site. He has spoken with Jeanie Votava at DENR and there is currently nothing in the regulations on how far

you can move a CAFO and still meet the status of an existing operation. The DENR is not opposed to placing the new barn at the northern site. The E.Q.I.P. funding should be available for this project. The distance to be moved is less than a ¼ mile. Mr. Berg also explained that a holding pond is for liquids only while a lagoon holds solid and liquids in a slurry form.

Brad with MDS Manufacturing Co. Inc., Parker S.D., submitted a schematic of the finishing barn and stated that the building would work in either location. He feels the situation will be better for everyone with the new building. He also presented the Commission with a binder with pictures showing the interior and exterior of a similar finishing barn.

Brian Topp with USDA, stated that the E.Q.I.P. money will be available even if the site is moved to the north. He stressed that the new barn is a proactive move and it will be better for the environment.

Harlan Anderson, 25274 465th Ave., lives northeast of this site and is in favor of this application. He believes Mr. Steineke does a good job.

James Pike, 46521 256th St., has a confinement operation close to him and there is no smell. He approves of the job Mr. Steineke is doing.

Newel Larson, 25536 464th Ave., owns the land across the highway. He feels the barn shouldn't be close to his land or to the road. 80 rods back would be ok.

Jim McFarland, 46338 254th St., has lived here for 58 years. He doesn't think the south buildings have housed hogs for several years. He presented the Commission with a handout detailing his concerns. He feels there are enough feeding operations in this small area. The odor from the facilities is horrible and there are times when it is almost impossible to breath. There are 4 operators within a ½ mile of his house. Mr. McFarland is also concerned about his well water and the potential for its pollution. The Tri-Valley School is only two miles away and odor is a concern there too. He believes having this many CAFO's in one area violates the zoning ordinance.

Teresa Matthies, 25449 463rd Ave., has a well with no option to hook up to rural water. She is concerned about the ground water. She has had Mr. Steineke dump waste in the ditch south of her. She is down hill from the site and all the run off comes towards her well. She feels Mr. Steineke is not courteous to his neighbors and that this operation will take away equity from her house. Ms. Matthies agreed that there would be some smell but how bad? She noted that the petitioner had moved his house north of the CAFO site and suggested that the barn be put in his back yard.

Barry Berg stated that the site will have to be in compliance with DENR regulations. This new barn will be an improvement with the new storage and will improve the water quality.

Mr. Kappen noted that the CAFO on the south side of Highway 122 does stink. Commissioner Cypher felt that the north location would be better, especially with the prevailing winds coming from the northwest.

Mr. Steineke stated they are presently feeding 960 animals and that he has had hogs in the south buildings. He noted that he cannot be blamed for every smell in the county. This new barn will be an improvement.

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

Members of the Commission commented that they would support this application if the new barn was located in the NE1/4 next to the existing barn.

Based on the staff report and public testimony a motion was made by Rogen and seconded by Cypher to approve conditional use permit #06-31 with the following conditions:

- 1) The replacement 2,400 head finisher hog barn (SE1/4) shall be located adjacent to the existing finisher barn in the N1/2 N1/2 SE1/4 of Section 22
- 2) The existing cattle feedlot in the northeast quarter and the swine finishing facility relocating from the southeast quarter of Section 22 shall both be limited to 1000 animal units each.
- 3) The petitioner shall prepare a landscaping plan that covers both facilities for approval by the planning staff. At a minimum, the plan shall include trees and shrubs around both the

- holding pond area and on south side of the replacement finishing facility. All belts shall be a minimum of five rows in width. All plants in the landscaping plan shall be established with one year of the completion of construction of the holding pond or the replacement barn. Any trees that die shall be replanted within one growing season.
- 4) Both the existing 1000 animal unit feedlot (NE¹/₄) and the replacement swine facility relocating from the SE¹/₄ shall obtain permits from the South Dakota Department of Environment and Natural Resources. Copies of all state approved construction plans shall be filed with the Minnehaha County Planning Office.
 - 5) As a part of the state permit the petitioner shall have annual nutrient management plans prepared and approved by the state. All waste management shall be performed in conformance with this plan. Copies of an executive summary of the 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.
 - 6) All liquid waste from the feedlot holding pond and all waste from the replacement swine facility shall be injected or knifed into the ground.
 - 7) Upon completion of the replacement finishing facility all seven old swine buildings in the SE¹/₄ shall be removed.

The motion passed unanimously.

ITEM 20. SUBDIVISION ORDINANCE AMENDMENT #06-01- Establish time limits for recording plats with the Register of Deeds.

Petitioner - Planning Department and Office of Register of Deeds

Report by: Pat Herman

Periodically a plat is presented for recording with the Register of Deeds which had been approved by the county offices months or even years previous to filing. During the delay in filing the circumstances surrounding the plat may have changed. The adjoining land may have been plated, road right-of-ways may have been widened, or the ownership of the property could have changed hands.

Allowing 120 days to register a plat is consistent with the standards of the Joint Subdivision Ordinance with the City of Sioux Falls.

Recommendation

To ensure that plats are filed within a reasonable amount of time staff recommended approval of subdivision ordinance amendment #06-01 by adding the following section to the 1993 Revised Subdivision Ordinance for Minnehaha County.

3.02 D) Approval of any plat shall be contingent upon the plat being recorded within 120 days after the certificate of approval is signed by the Planning Director.

Public Testimony

Commissioner Zweep suggested that the time allowed be reduced to 60 days. Ms. Herman noted that 120 days was consistent with the City of Sioux Falls.

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 Cypher and seconded by Rogen to recommend approval of Subdivision Ordinance Amendment #06-01. The motion passed unanimously.

ITEM 21. ZONING TEXT AMENDMENT #06-09- to change the definition of structure in Article 26 Definitions.

Petitioner - Planning Department

Report by: Pat Herman

Current Definition of Structure:

Anything constructed or erected with a fixed location on the ground, or attached to something

having a fixed location on the ground. For the purpose of these regulations, retaining walls, concrete slabs and utility poles are not considered structures.

The current definition for a structure stresses the importance of having a fixed location on the ground. The Planning Staff is proposing a change to this definition for two reasons.

In the prosecution of enforcement cases this phrase has been interpreted by the court to mean attached to the ground or something that cannot be moved. This has hindered the County's ability to prosecute for illegally placed items such as mobile office trailers.

The definition is also in conflict with the currently adopted definition for building which requires permits for temporary structures. Temporary structures are usually not permanently attached to the ground and, by their very nature, may be moved around on the site or off and on a property. Adopting the new definition for structure would allow the two definitions to be congruent with each other.

The following definition has been reviewed by the Office of the State's Attorney.

655. **STRUCTURE.** A combination of material(s) constructed, erected or placed on, above or below the surface of land or water for use, occupancy or ornamentation. For the purpose of these regulations, retaining walls, concrete slabs and utility poles are not considered structures.

Recommendation

Staff is recommended approval of e zoning text amendment #06-09 for a new definition for structure.

Public Testimony

No one 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 Rogen and seconded by Cypher to recommend approval of zoning text amendment #06-09. The motion passed unanimously.

ITEM 22. ZONING TEXT AMENDMENT #06-10- to add right-to-farm-notice covenant requirement to single family dwellings in the A-1 Agricultural and RC Recreation/Conservation zoning districts.

Petitioner - Planning Commission

Report by: Scott Anderson

Staff Analysis

Over the last six months, the Planning Commission has been discussing ways of both making home owners aware of the agricultural nature of some parts of the county and protecting existing agricultural interests of the farming community. Many options were discussed, including reverse setbacks. Based on those discussions, it appears that one of the simplest ways to provide that information and protection would to be require a "right-to-farm" notice to be placed on the property of all new residential construction in the county. Requiring this notice would make the new home owners aware of agricultural issues that may later arise. This proposed zoning amendment would utilize the existing "right-to-farm" notice that the County uses for the transfer of building eligibilities.

Proposed amendments to ARTICLE 3.01 A-1 AGRICULTURE DISTRICT AND ARTICLE 9.02 RC RECREATION/CONSERVATION DISTRICT.

3.01 PERMISSIVE USES. A building or premises shall be permitted to be used for the following purposes in the A-1 Agricultural District:

- (A). Agriculture.
- (B). A single-family dwelling if the following provisions for building eligibility are met:

(amended by MC16-69-04)

- 1). Each quarter-quarter section shall have one building eligibility when all the following conditions are met:
 - a). There are no other dwellings on the quarter-quarter section.
 - b). The building site shall be a minimum of one acre.
 - c). Approval has been granted by the appropriate governing entity for access onto a public road.
 - d). The remaining portion of the quarter-quarter section is retained as agricultural land or in its present use.

e). Prior to any building permit being issued for any new single family residence located in the A-1 Agriculture District, a Right to Farm Covenant shall be filed on the parcel of land upon which the new structure will be located. Only the following shall constitute a Right to Farm Covenant: “**RIGHT TO FARM NOTICE COVENANT** You are hereby notified that the property on which you are constructing a structure is in or near agricultural land, agricultural operations or agricultural processing facilities or operations. You may be subject to inconvenience or discomfort from lawful agricultural or agricultural processing facility operations. Agricultural operations may include, but are not limited to, the following: the cultivation, harvesting, and storage of crops; livestock production; ground rig or aerial application of pesticides or herbicides; the application of fertilizer, including animal waste; the operation of machinery; the application of irrigation water; and other accepted and customary agricultural activities conducted in accordance with Federal, State, and County laws. Discomforts and inconveniences may include, but are not limited to: noise, odors, fumes, dust, smoke, burning, vibrations, insects, rodents, and/or the operation of machinery (including aircraft) during any 24-hour period. If you live near an agricultural area, you should be prepared to accept such inconveniences or discomforts as a normal and necessary aspect of living in an area with a strong rural character and an active agricultural sector. You are also notified that there is the potential for agricultural or agricultural processing operations to expand. This notification shall extend to all landowners, their heirs, successors or assigns and because it is required pursuant to the issuance of a building permit, may not be removed from the record title without consent of the Minnehaha County Planning Commission.”

- (C). Elementary or high school.
- (D). Historical sites.
- (E). Church.
- (F). Neighborhood utilities.
- (G). Antenna support structure. (amended by MC16-65-03)

Section 4: That Article 9.00 is hereby amended to read:

9.02 PERMISSIVE USES. A building or premises shall be permitted to be used for the following purposes in the RC Recreation/Conservation District:

- (A). Agriculture.
- (B). Public park; forest preserve.
- (C). Public golf course.
- (D). Historic sites.
- (E). A single-family dwelling if the following provisions for building eligibility are met:
(*amended by MC16-69-04*)
 - (1). Each quarter-quarter section shall have one building eligibility when all the following conditions are met:
 - a). There are no other dwellings on the quarter-quarter section.
 - b). The building site is not in the 100-year flood plain as identified on the Flood Insurance Rate Map.
 - c). The building site shall be a minimum of one acre.
 - d). Approval has been granted by the appropriate governing entity for access onto a public road.
 - e). The remaining portion of the quarter-quarter section is retained as agricultural land or in its present use.
 - f). Prior to any building permit being issued for any new single family residence located in the A-1 Agriculture District, a Right to Farm Covenant shall be filed on the parcel of land upon which the new structure will be located. Only the following shall constitute a Right to Farm Covenant: “**RIGHT TO FARM NOTICE COVENANT** You are hereby notified that the property on which you are constructing a structure is in or near agricultural land, agricultural operations or agricultural processing facilities or operations. You may be subject to inconvenience or discomfort from lawful agricultural or agricultural processing facility operations. Agricultural operations may include, but are not limited to, the following: the cultivation, harvesting, and storage of crops; livestock production; ground rig or aerial application of pesticides or herbicides; the application of fertilizer, including animal waste; the operation of machinery; the application of irrigation water; and other accepted and customary agricultural activities conducted in accordance with Federal, State, and County laws. Discomforts and inconveniences may include, but are not limited to: noise, odors, fumes, dust, smoke, burning, vibrations, insects, rodents, and/or the operation of machinery (including aircraft) during any 24-hour period. If you live near an agricultural area, you should be prepared to accept such inconveniences or discomforts as a normal and necessary aspect of living in an area with a strong rural character and an active agricultural sector. You are also notified that there is the potential for agricultural or agricultural processing operations to expand. This notification shall extend to all landowners, their heirs, successors or assigns and because it is required pursuant to the issuance of a building permit, may not be

removed from the record title without consent of the Minnehaha County Planning Commission.”

- (F). Antenna support structure. *(amended by MC16-65-03)*

Recommendation

Staff recommended approval of Zoning Text Amendment #06-10 to add requiring a “right to farm notice” to Articles 3 and 9.

Public Testimony

No one 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 Bunde to recommend approval of zoning text amendment #06-10. The motion passed unanimously.

ITEM 23. ZONING TEXT AMENDMENT #06-11- to add notification requirements to Section 19 Conditional Use Permits.

Petitioner - Planning Commission

Report by: Scott Anderson

Staff Analysis

Staff is recommending a modification of Article 19 (Conditional Use Permits) of the Zoning Ordinance. Specifically, staff is recommending that additional notification requirements be implemented. Currently, a sign is posted on the property. There is no requirement for legal advertisement in the paper or notification by mail. Staff recommends that the applicant be required to send a notice of hearing to all property owners within 500 feet of the subject property upon which the proposed conditional use permit is to occur. Staff would prepare the mailing list for the applicants using GIS information and prepare the hearing notices. The applicant would be required to mail the hearing notice one (1) week prior to the Planning Commission meeting and provide a notarized statement verifying the mailing was completed. The proposed change will be an additional step in making sure the public is informed of proposed conditional use permits in their neighborhood.

Proposed amendments to ARTICLE 19.05 CONDITIONAL USE PERMITS.

- (A) NOTIFICATION. A good faith effort must be made by the applicant to notify all property owners (inclusive of Contract for Deed buyers) of land laying within five hundred feet (500) feet, inclusive of right-of-way, of the outer boundaries of the property involved in the request. The list of landowners to be notified shall be determined by records of the Director of Equalization. The Planning Department shall provide the applicant with “Notice of Hearing” forms for this purpose, and the notices are to be sent by the applicant to all parties on the aforementioned list by first class mail no less than one (1) week prior to the public hearing on the request held by the Planning Commission. The applicant shall sign an affidavit certifying that the required mailing was completed. The affidavit shall be provided to the Planning Department at least five (5) working days prior to the Planning Commission meeting.
- (A) ~~(B)~~. SIGNS. A sign(s) to be provided by the Office of Planning and Zoning shall be posted on or near the property at least five days prior to the scheduled hearing.
- (B) ~~(C)~~. ACTION. The Planning Commission shall decide whether to grant the conditional use with such conditions and safeguards as are appropriate or to deny a conditional use when

not in harmony with the purpose and intent of these regulations. The decision of the Planning Commission shall be final unless an appeal is filed in accordance with Article 19.06.

Recommendation

Staff recommended approval of the Joint Zoning Text Amendment #06-11 to add notification requirements to Section 19.

Public Testimony

Jeff Kapperman, 25831 454th Ave., raised concerns that 500 ft. was not a great enough distance for notification in the rural area. He has a CAFO and is concerned about eligibility transfers. A transfer could occur which would impact his ability to expand the CAFO but unless he sees the sign he would miss an opportunity to address the issue with the Planning Commission. At a minimum notification should be for a quarter mile. Mr. Kapperman also asked if something could be done about the signs. He feels they are too small and hard to see. The item he was interested in was wrapped around a fence post and he was just lucky to spot it. Perhaps the signs could be made larger.

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

Commissioner South stated that to increase the notification area beyond 500 ft. could lead to instances where a huge amount of people would have to be notified. Commissioner Zweep suggested a range, 500-1000 ft. and leave it up to the Planning Staff to determine who should be notified. Mr. Anderson stated that it is hard to tell which items would be most contentious to a neighborhood. Commissioner South noted that there is some responsibility to property owners to educate themselves about issues in their own neighborhood. Commissioner Bunde advocated for 1000 feet and feels the signs are not working well enough.

Based on the staff report and public testimony a motion was made by Rogen and seconded by Cypher to recommend approval of zoning text amendment #06-11. The motion passed (Bunde nay).

ITEM 24. ZONING TEXT AMENDMENT #06-14- to amend Section 12.10 (C) & (E) application requirements for Concentrated Animal Feeding Operations.

Petitioner –Planning Department

Report by: Phil Kappen

The zoning ordinance currently has a total of 6 requirements which must be included as a part of an application for a concentrated animal feeding operation (CAFO). These requirements include provisions for a description of type and size of the proposed facility; a site plan; geotechnical test borings; a nutrient management plan; a pest, odor control and dead animal disposal plan; and certification of all plans by a professional engineer. Staff is allowed to waive the application requirements for the test borings, nutrient management plan and engineer certification if the applicant will be required to obtain a state permit for the facility. This potential waiver is allowed because those items will be required as a part of the state permit.

Staff has begun to question, however, the need for some of these items as a part of the application. Is it necessary to require the expense of an engineer's certification for a very small facility? Is the requirement for a nutrient management plan necessary as a part of the application, or would it be more appropriate to require such a plan as a part of the conditional use permit and that it must be in place before the facility commences operation? Is it necessary to require a geotechnical boring for a small operation that is not located over the water source protection area or over a shallow aquifer? These questions have led staff to propose some potential amendments to the CAFO application requirements.

Staff is proposing that the requirements for a nutrient management plan and engineer certification be

removed from the application requirements and that a requirement for a nutrient management plan be added to the conditional use requirements for a CAFO. For any CAFO that requires state approval there will be an automatic requirement for the engineering services. Further, staff recommends amending the application requirement for a geotechnical boring to only those areas that are over water source protection areas or a mapped shallow aquifer. The larger facilities that require state approval will still have to perform the soil borings as a requirement of their state permit application. The small facilities that are not over a sensitive area would not have to bear this unnecessary expense. The full text of the proposed changes is shown below. Additions are shown with underscores and deletions are shown with overstrikes.

Recommendation

Staff recommended approval of zoning text amendments #06-14 to Article 12.10.

Proposed amendments to ARTICLE 12.00 ADDITIONAL USE REGULATIONS

The following portions of Section 12.10 CONCENTRATED ANIMAL FEEDING OPERATIONS shall be amended to read as follows:

(C). Application Procedures and Requirements.

Prior to application submittal the operator of the proposed facility shall meet with the Planning Director to discuss application requirements.

The conditional use application shall be accompanied, at a minimum, by the following information. ~~Subsections 3, 4, and 6~~ The geotechnical boring requirement in subsection 3 may be waived if a state general permit is required.

- (1). A description of the type of concentrated animal feeding operation and the number of animals proposed for the facility.
- (2). A site plan of the proposed facility including:
 - (a). A landscaping plan designed to assist in the dispersal of odors.
 - (b). A grading plan designed to help keep pens and solid waste containment areas dry.
- (3). When the site is located within a designated water source protection area or over a mapped shallow aquifer area ~~a~~ A geotechnical test boring log recording the geological data of at least one deep subsurface boring shall be required. This boring must be located below the location of the proposed containment facility and extend to a minimum of 25 feet below the ground surface and may stop when one of the following criteria has been met:
 - (a). At least 15 continuous feet of extremely low permeability geologic material such as unweathered clayey till or shale is encountered in the boring;
 - (b). At least 30 continuous feet of low to extremely low permeability weathered or unweathered till or shale is encountered;
 - (c). The boring reaches an aquifer; or
 - (d). A total depth of 100 feet is reached.
- ~~(4). A nutrient management plan for liquid and solid waste including:~~

- ~~(a). Location and description of the animal waste facilities and structures.~~
- ~~(b). Operational procedures and maintenance of the animal waste facilities.~~
- ~~(c). Description of the proposed method for animal waste application.~~
- ~~(d). Map showing distances from proposed animal waste application sites to natural features and land uses as shown in Table 3.~~
- ~~(e). Information showing the application of waste based on agronomic rates computed from the types of crops and estimated yields on the application sites, the available nutrients in the application site soils and the available nutrients in the waste.~~
- ~~(f). Waste application agreements shall be required if the petitioner does not own the minimum acreage required to apply the animal waste produced by the facility.~~

~~(5)~~ (4). A pest, odor control and dead animal disposal plan.

~~(6). Certification by a registered professional engineer that the plan specifications for the new waste containment facility conform with the South Dakota Department of Environment and Natural Resources design standards.~~

(E). Conditional Use Permit Requirements.

A concentrated animal feeding operation which is granted a conditional use permit shall, at a minimum, meet the following requirements:

- (1). ~~When a state permit is required. State approved plans.~~ The operator shall file copies of all state-approved construction ~~and nutrient management~~ plans with the County.
- (2). Record Keeping. The operator shall maintain inspection and maintenance records on the animal waste facilities, and records on compliance with the waste and nutrient management plan and odor and pest control plan. Copies of records shall be filed annually with the County.
- (3). Waste Application. All liquid wastes shall be injected to provide for better agronomic benefits and to reduce the potential for runoff and minimize odor.
 - (a). In the event that an extraordinary circumstance requires surface application of liquid waste, the following information shall be submitted to the Planning Office: a description of the extraordinary circumstance which requires surface application; a map showing the proposed application sites along with soil types, slopes, and the required separations from natural features or adjoining land uses: the minimum volume of waste which will have to be applied in order to provide relief; and the means by which the waste will be applied. The Planning Director may authorize the surface application of liquid waste under the following minimum conditions:
 - (1). Waste shall not be surfaced applied on frozen ground with slopes of greater than 4 percent.
 - (2). Only the minimum amount of waste necessary to provide relief shall be surface applied.
 - (3). The separation requirements in Table 3, Section 12.10 (G) shall be met.
 - (b). The Planning Director may approve surface application of livestock production

surplus water upon receiving an application from the producer. Such application shall include:

- (1). The results of tests on the livestock production surplus water proposed for surface application which shows the percentage of solids and the amount of N (nitrogen) per 1000 gallons of water.
- (2). The amount of livestock production surplus water to be applied.
- (3). A map showing the areas on which the producer proposes to surface apply the livestock production surplus water including soil types, slopes, and the required separations from natural features or adjoining land uses.
- (4). The separation requirements in Table 3, Section 12.10 (G) shall be met.
- (4). Shallow Aquifer. If the geotechnical test boring shows the area to be over a shallow aquifer, then measures shall be employed to protect the groundwater. The County may call upon the expertise of the South Dakota Geological Survey in making a determination on whether a shallow aquifer exists on the site.
- (5). Inspections. A registered professional engineer shall inspect the facility during construction and certify to the County that the newly constructed facility conforms with the approved plans and with South Dakota Department of Environment and Natural Resources design standards.
- (6). If required by the South Dakota Department of Environment and Natural Resources or as a condition of the conditional use permit the ~~The~~ operation shall obtain a State General Water Pollution Control Permit for Concentrated Swine Feeding Operations or for Concentrated Animal Feeding Operations.
- (7). A nutrient management plan for liquid and solid waste including:
 - a. Location and description of the animal waste facilities and structures.
 - b. Operational procedures and maintenance of the animal waste facilities.
 - c. Description of the proposed method for animal waste application.
 - d. Map showing distances from proposed animal waste application sites to natural features and land uses as shown in Table 3.
 - e. Information showing the application of waste based on agronomic rates computed from the types of crops and estimated yields on the application sites, the available nutrients in the application site soils and the available nutrients in the waste.
 - f. Waste application agreements shall be required if the petitioner does not own the minimum acreage required to apply the animal waste produced by the facility.

Public Testimony

No one 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 Cyper and seconded by Rogen to recommend approval of zoning text amendment #06-14. The motion passed unanimously.