

**MINUTES OF THE  
MINNEHAHA COUNTY PLANNING COMMISSION  
June 26, 2006**

A meeting of the Planning Commission was held on June 26, 2006 at 7:00 p.m. in the Commission Room of the Minnehaha County Administration Building.

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

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

The meeting was chaired by Don South.

**APPROVAL OF THE CONSENT AGENDA**

There being no objections from the Planning Commission or audience and a motion was made by Zweep and seconded by O'Hara to approve the consent agenda. The motion passed unanimously (Bunde abstaining from Item 2).

**ITEM 1. MINUTES – April 24, 2006.**

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

**ITEM 2. CONDITIONAL USE PERMIT #06-40 to allow a single family dwelling.**

Legal Description - NE1/4 (ex. Ry & S 500' W300' E690.8' SW1/4 NE1/4) in Section 8-T103N-R50W

Location - 1 mile northeast of Lyons

Petitioner / Owner- Travis & Sandy Bunde / Terry & Deb Bunde

**General Information**

Present zoning - A-1 Agricultural

Existing Land Use - Agriculture

Parcel Size - 149 Acres

**Report by:** Pat Herman

**Staff Analysis**

The property is located one mile northeast of Lyons. The surrounding land use is agricultural with very limited residential development. The NE1/4 has four residential building eligibilities. One eligibility is used by an existing dwelling which sits on a legally described parcel created between July 1979 (lot of record) and September 1988 (density zoning enacted). The Zoning Ordinance then stipulates that the remaining three building eligibilities are only available for construction if approved by a conditional use permit. The petitioner is requesting approval for one single family dwelling.

**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 request is consistent with density zoning.

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

Rural water is available in the area and a waste water system will be utilized. Access is onto Lyons St., a township gravel road. Lyons township does not require culvert permits.

**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.

The petitioner has submitted a plat for a 3.74 acre parcel which has been approved by the Planning Department.

### **Recommendation**

The request is in conformance with the Comprehensive Plan and the Planning Department recommended approval of Conditional Use Permit #06-40 with the condition that a right-to-farm notice covenant be filed on the deed prior to the issuance of a building permit.

Based on the staff report a motion was made by Zweep and seconded by O'Hara to approve Conditional Use Permit #06-40 with the condition as stated. The motion passed unanimously (Bunde abstained).

### **ITEM 3. CONDITIONAL USE PERMIT #06-41 to allow a single family dwelling.**

Legal Description - Tract 9 Smith Swanson's Tracts in Section 12-T101N-R48W

Location - 1 mile southeast of Brandon

Petitioner / Owner- Brad Hoven

### **General Information**

Present zoning - A-1 Agricultural

Existing Land Use - Agriculture

Parcel Size - 37 Acres

**Report by:** Phil Kappen

### **Staff Analysis**

The subject property is located to the north of 264<sup>th</sup> Street, a township road, and to the west of 484<sup>th</sup> Avenue, County Highway 109. Properties to the west, north and east are predominantly in agricultural uses and the land to the south is in residential acreages. The subject property was divided after the date which defines a lot of record and before the date on which density zoning was enacted. This requires that any single-family residence on the property first obtain a conditional use permit.

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

The proposed site is on property that overlooks Beaver Creek, the topography of the lot does not readily allow for agricultural production. The proposed site lies well above the 100-year flood elevation along Beaver Creek. As the area is adjacent to an agricultural area, a right-to-farm notice covenant should be filed on the property before any building permits are issued.

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

The allowance of one single-family residence should not impact the continued agricultural production on adjacent properties. The lot to the east of the subject property, which is also owned by the same property owner, also has a building eligibility available. Much of that lot, however, lies with the flood plain area and only two small parts of the lot would be buildable, one area in the northeast and one in the southeast.

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

The residence would be served by a septic system. Soil tests will be required to ensure that the system is properly designed. There will be a required setback between the system and Beaver Creek, however, there is ample space on the property to install a system and meet the separation requirement.

The property is accessed via an existing driveway from 484<sup>th</sup> Avenue, across the intervening tract to the east, which is also owned by the petitioner. Due to topography, access to the building site from 264<sup>th</sup> Street would not be practical. Access to the east lot can be made from 264<sup>th</sup> Street or via the existing driveway onto Co. Hwy. 109.

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

There is ample space on the property for the parking that would be associated with a single-family residence. No parking is allowed along either 264<sup>th</sup> Street or Co. Hwy 109.

**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 allowed use of a single-family residence should not result in excessive odors, fumes, dust noise, or vibration. Any outdoor lighting should be of a shoe box style that directs light downward and does not allow light to spill beyond the property boundaries.

**Recommendation:**

Staff finds that the proposed residence is in conformance with the zoning ordinance and that the home can be constructed in a manner that does not pose excessive impacts on the surrounding properties. Staff, therefore, recommended approval of conditional use permit # 06-41 with the following stipulations:

- 1) A right-to-farm notice covenant shall be filed on the property prior to the issuance of any building permit.
- 2) No additional driveway accesses shall be allowed onto Minnehaha County Highway 109.
- 3) Any outdoor lighting shall be of a shoe box style that directs light downwards and does not allow light spillage beyond the property boundary.

Based on the staff report a motion was made by Zweep and seconded by O'Hara to approve Conditional Use Permit #06-41 with the condition as stated. The motion passed unanimously.

**ITEM 4. CONDITIONAL USE PERMIT #06-42 to transfer one residential building eligibility.**

From – S1/2 NE1/4 (ex. Tr. 1 Wheeler's Addn.) of Section 14-T103N-R48W

To - NE1/4 NE1/4 of Section 14-T103N-R48W

Location - 2.5 miles west of Garretson

Petitioner / Owner- James Solheim

**General Information**

Present zoning - A-1 Agricultural

Existing Land Use - Agriculture

Parcel Size - 40 Acres

**Report by:** Scott Anderson

**Staff Analysis**

The petitioner is requesting to transfer one residential building eligibility. The subject property is currently zoned A-1 Agricultural. On June, 2006, staff conducted a site visit. The area is an agricultural area with rolling fields. The closest agricultural operation is located approximately ½ mile to the southwest.

**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.**

Rural water is available in the area and a waste water system will be utilized.

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

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

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

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

**Recommendation**

Staff found this conditional use permit request to be consistent with density zoning and recommended approval of Conditional Use Permit #06-42 with the following conditions:

- 1) The lot(s) 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 a driveway approach permit be obtained from Edison Township prior to a building permit being issued.

Based on the staff report a motion was made by Zweep and seconded by O'Hara to approve Conditional Use Permit #06-42 with the condition as stated. The motion passed unanimously.

**ITEM 5. CONDITIONAL USE PERMIT #06-45 to transfer one residential building eligibility.**

From – NW1/4 SE1/4 of Section 5-102N-R48W

To - Tract 1 Hills View Addition SE1/4 in Section 5-T102N-R48W

Location - 47960 257th St. 3 miles northwest of Brandon

Petitioner / Owner- Brian & Becky Mohr / Marilyn Swenson

**General Information**

Present zoning - A-1 Agricultural

Existing Land Use - Agriculture

Parcel Size - 3.9 Acres

**Report by:** Scott Anderson

**Staff Analysis**

The petitioner is requesting to transfer one residential building eligibility from the NW ¼ SE ¼ to a recently platted parcel in the SW ¼ SE 1/4. The subject property is currently zoned A-1 Agricultural. On June 12, 2006, staff conducted a site visit. The area is an agricultural area with rolling fields. The proposed building site is located in an established tree grove. The closest agricultural operation is located approximately ½ mile to the west. During the site inspection, it appeared that a shared approach would be utilized. Should this be the case, proper documentation for such must be shown on the plat.

**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.**

Rural water is available in the area and a waste water system will be utilized.

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

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

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

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

**Recommendation**

Staff found this conditional use permit request to be consistent with density zoning and recommended approval of Conditional Use Permit #06-45 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 a driveway approach be approved by Brandon Township prior to the issuance of a building permit.

Based on the staff report a motion was made by Zweep and seconded by O'Hara to approve Conditional Use Permit #06-45 with the condition as stated. The motion passed unanimously.

**ITEM 6. CONDITIONAL USE PERMIT #06-46 to allow a single family dwelling.**

Legal Description - N 100 Acres SE1/4 of Section 21-T102N-R48W

Location - 1 mile west of Corson

Petitioner / Owner- Forrest Miller / Robert Rovang

**General Information**

Present zoning - A-1 Agricultural

Existing Land Use - Agriculture

Parcel Size - 100 Acres

**Report by:** Pat Herman

**Staff Analysis**

The property is located one mile west of Corson. The adjoining properties are in agricultural production and there are numerous residential acreages in the area. This 100 acre parcel has residential building eligibilities. One eligibility is available for use by obtaining a building permit, the second eligibility requires conditional use permit approval.

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

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 request is consistent with density zoning.

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

Rural water is available in the area and a waste water system will be utilized. Access is onto 483 Ave., a township gravel road. Brandon Township does require driveway permits and the driveway permit must be obtained before the Planning Department will issue a building permit.

**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:**

The request is in conformance with the Comprehensive Plan and the Planning Department recommended approval of Conditional Use Permit #06-46 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 driveway permit shall be obtained from Brandon Township prior to the issuance of a

building permit.

3)

Based on the staff report a motion was made by Zweep and seconded by O'Hara to approve Conditional Use Permit #06-46 with the condition as stated. The motion passed unanimously.

**ITEM 7. ZONING TEXT AMENDMENT #06-18 notification requirements for Conditional Use Permit Applications.**

Petitioner – Planning Department

**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.

This item is being re-considered by the Planning Commission at the request of the County Commission. In May, the County Board adopted a revision to the Zoning Ordinance that would require Planning staff to mail the hearing notice and the County to bear the cost of the mailing. Later, the County Board reconsidered this concept and decided to follow the staff's and Planning Commission original recommendation. Therefore, this item is identical to the notification requirements considered by the Planning Commission in April of 2006.

**Recommendation**

Staff recommended approval of the Joint Zoning Text Amendment #06-18 to add notification requirements to Article 19.

Based on the staff report a motion was made by Zweep and seconded by O'Hara to recommend approve of Joint Zoning Text Amendment #06-18. The motion passed unanimously.

**REGULAR AGENDA**

A motion was made by Cypher and seconded by Rogen to recommend approval of the regular agenda. The motion passed unanimously.

**The Dell Rapids Planning Commisison joined the meeting.**

Members present: Roger Dearduff, Dale Dunn, Chair Bob Lamberty, Chris Mullaney, and Larry Skatvold

Staff present : Jeff Traill

**Item 8 was heard jointly with the Dell Rapids Planning Commission.**

**ITEM 8. JOINT ZONING ORDINANCE AMENDMENT #06-16– definition of same ownership as it pertains to the transfer of building eligibilities in the A-1 Agricultural and R/C Recreation/Conservation District**

Petitioner- Planning Department

**Report by:** Pat Herman

**Staff Analysis**

In April 2006 the County Planning Commission denied a conditional use permit for a transfer of eight residential building eligibilities. Three proprieties were involved in the transfer – the land the eligibilities

were coming from which was owned by John and Jane, a middle parcel owned by John and Jill, and the receiving parcel owned by John and Jack. The petitioner had just recently added his name to the deed for the middle parcel and the Planning Commission felt that the middle parcel was just being used as a conduit and did not meet the intent of the ordinance.

The denial of the transfer was subsequently appeal to the County Commission. At that meeting Chief Deputy State's Attorney Gordy Swanson stated that the zoning ordinance does require that the properties involved in a transfer must be contiguous and under the same ownership. Mr. Swanson explained that while John was listed on each deed, the properties could not be considered under the same ownership as each deed did not contain the same combination of names.

To reinforce this principle the Planning Department is proposing an amendment to the zoning ordinance to define same ownership as it pertains to the transfer of building eligibility. The following language will be added to the A-1 Agricultural and RC Recreation/Conservation District under those portions of the zoning ordinance addressing the transfer of building eligibility.

For purposes of this section, same ownership means: Two or more parcels of land owned or controlled by an individual or combination of individuals, corporations, partnerships, or other legal entities; with said owners described uniformly on the deed or other legally binding conveyance of each parcel.

#### **Recommendation**

The Planning Department recommended approval of zoning amendment #06-16.

#### **Public Testimony**

No one wished to speak to the item.

Based on the staff report and public testimony a motion was made for the County by Rogen and seconded by Bunde to recommend approval of joint text amendment #06-16. The motion passed (O'Hara nay). Same motion for the City by Mullaney and seconded by Dunn. The motion passed unanimously.

#### **Item 9 was heard jointly with the Dell Rapids Planning Commission.**

#### **ITEM 9. JOINT ZONING ORDINANCE AMENDMENT #06-19 - amend Section 3.03, expansion of concentrated animal feeding operation by removing the geotechnical test boring requirement.**

Petitioner - Planning Department

**Report by:** Phil Kappen

#### **Staff Analysis**

Within the last two months the Planning Commission approved some changes to the application requirements for Concentrated Animal Feeding Operations. The requirement for a geotechnical test boring was removed when the proposed site was not over a Water Source Protection District or over a mapped shallow aquifer. This allowed small facilities which were not located in an environmentally sensitive area to reduce their application costs. Larger facilities that were required to obtain a state permit are still required to have the test borings completed as a part of the state permit application.

Staff has found that the requirement for geotechnical test borings was also included in another section of the ordinance. The specific section is 3.03 under the A-1 Agricultural District which covers permitted special uses. Subsection "I" deals with the allowed expansion of concentrated animal feeding operations (CAFO). An existing CAFO is allowed to expand by small amounts provided that the operation is not located in a sensitive area, does not exceed a specific size, properly manages the waste from the facility, injects liquid wastes, and meets certain distance setbacks from municipalities and residences. The

ordinance currently requires that they also perform a geotechnical boring, however, if the ordinance is amended to require that when facility is over either a Water Source Protection District or over a mapped shallow aquifer then the expansion is not automatically allowed and the petitioner would have to apply for a conditional use permit. Then the proposed expansion would be evaluated the same as any other CAFO application and would need to meet the requirements of the conditional use application.

The proposed changes are shown below as overstrikes (proposed deletions) and Underscores (proposed additions).

### 3.03 PERMITTED SPECIAL USES.

- (I.) Concentrated animal feeding operation (existing) shall be allowed to expand by provided: *(amended by MC16-40-98 and MC16-75-05)*
- 1). The operation is located in a farmstead or property contiguous to, and smaller than, the aforementioned farmstead.
  - 2). The operation shall not be located in the Water Source Protection Overlay District, over a mapped shallow aquifer area, or in a flood plain.
  - 3). The operation shall not exceed 1000 animal units.
  - 4). There is conformance with South Dakota Department of Environment and Natural Resources design standards for any newly constructed waste containment facility. A registered professional engineer shall certify the plan specifications and the construction of the facility.
  - ~~5). Results of a geotechnical test boring are provided to the Planning Department which were performed in conformance with Section 12.10 (C)(3). If a shallow aquifer is present, measures shall be employed to protect the groundwater from contamination. 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 as based on the soil boring data.~~
  - 65). Approval by the Planning Director of a nutrient management plan which has been prepared in conformance with the South Dakota Department of Environment and Natural Resources standards.
  - 76). The operation shall meet the requirements of Table 1 in Section 12.10 (F) and Section 12.10 (G).
  - 87). All liquid waste generated by the additional animal units shall be injected. In the event of an extraordinary circumstance, surface application may be allowed in accordance with the provisions of Section 12.10 (E)(3). The Planning Director may approve the surface application of livestock production surplus water in accordance with Section 12.10 (E)(3).
  - 98). The operation is not located within 2640 feet of a municipality.
  - ~~109).~~ The expansion shall not exceed 500 animal units.

#### **Recommendation**

Staff found that the proposed amendments would place this portion of the ordinance in conformance with other portions of the ordinance and recommended approval of text amendment #16-19.

#### **Public Testimony**

No one wished to speak to the item.

Based on the staff report and public testimony a motion was made for the County by Rogen and seconded by O'Hara to recommend approval of joint text amendment #16-19. The motion passed unanimously. Same motion for the City by Dearduff and seconded by Skatvold. The motion passed unanimously.

**ITEM 10. COUNTY ZONING ORDINANCE AMENDMENT #06-15 – definition of same ownership as it pertains to the transfer of building eligibilities in the A-1 Agricultural and R/C Recreation/Conservation District**  
Petitioner- Planning Department

**Report by:** Pat Herman

**Staff Analysis**

In April 2006 the County Planning Commission denied a conditional use permit for a transfer of eight residential building eligibilities. Three properties were involved in the transfer – the land the eligibilities were coming from which was owned by John and Jane, a middle parcel owned by John and Jill, and the receiving parcel owned by John and Jack. The petitioner had just recently added his name to the deed for the middle parcel and the Planning Commission felt that the middle parcel was just being used as a conduit and did not meet the intent of the ordinance.

The denial of the transfer was subsequently appeal to the County Commission. At that meeting Chief Deputy State's Attorney Gordy Swanson stated that the zoning ordinance does require that the properties involved in a transfer must be contiguous and under the same ownership. Mr. Swanson explained that while John was listed on each deed, the properties could not be considered under the same ownership as each deed did not contain the same combination of names.

To reinforce this principle the Planning Department is proposing an amendment to the zoning ordinance to define same ownership as it pertains to the transfer of building eligibility. The following language will be added to the A-1 Agricultural and RC Recreation/Conservation District under those portions of the zoning ordinance addressing the transfer of building eligibility.

For purposes of this section, same ownership means: Two or more parcels of land owned or controlled by an individual or combination of individuals, corporations, partnerships, or other legal entities; with said owners described uniformly on the deed or other legally binding conveyance of each parcel.

**Recommendation**

The Planning Department recommended approval of zoning amendment #06-15.

**Public Testimony**

No one wished to speak to the item.

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 #06-15. The motion passed (O'Hara nay).

**ITEM 11. COUNTY ZONING ORDINANCE AMENDMENT #06-20 - amend Section 3.03, expansion of concentrated animal feeding operation by removing the geotechnical test boring requirement.**  
Petitioner - Planning Department

**Report by:** Phil Kappen

**Staff Analysis**

Within the last two months the Planning Commission approved some changes to the application

requirements for Concentrated Animal Feeding Operations. The requirement for a geotechnical test boring was removed when the proposed site was not over a Water Source Protection District or over a mapped shallow aquifer. This allowed small facilities which were not located in an environmentally sensitive area to reduce their application costs. Larger facilities that were required to obtain a state permit are still required to have the test borings completed as a part of the state permit application.

Staff has found that the requirement for geotechnical test borings was also included in another section of the ordinance. The specific section is 3.03 under the A-1 Agricultural District which covers permitted special uses. Subsection "J" deals with the allowed expansion of concentrated animal feeding operations (CAFO). An existing CAFO is allowed to expand by small amounts provided that the operation is not located in a sensitive area, does not exceed a specific size, properly manages the waste from the facility, injects liquid wastes, and meets certain distance setbacks from municipalities and residences. The ordinance currently requires that they also perform a geotechnical boring, however, if the ordinance is amended to require that when facility is over either a Water Source Protection District or over a mapped shallow aquifer then the expansion is not automatically allowed and the petitioner would have to apply for a conditional use permit. Then the proposed expansion would be evaluated the same as any other CAFO application and would need to meet the requirements of the conditional use application.

The proposed changes are shown below as overstrikes (proposed deletions) and Underscores (proposed additions).

### 3.03 PERMITTED SPECIAL USES.

- (J.) Concentrated animal feeding operation (existing) shall be allowed to expand by provided: *(amended by MC16-40-98 and MC16-75-05)*
- 1). The operation is located in a farmstead or property contiguous to, and smaller than, the aforementioned farmstead.
  - 2). The operation shall not be located in the Water Source Protection Overlay District, over a mapped shallow aquifer area, or in a flood plain.
  - 3). The operation shall not exceed 1000 animal units.
  - 4). There is conformance with South Dakota Department of Environment and Natural Resources design standards for any newly constructed waste containment facility. A registered professional engineer shall certify the plan specifications and the construction of the facility.
  - ~~5). Results of a geotechnical test boring are provided to the Planning Department which were performed in conformance with Section 12.10 (C)(3). If a shallow aquifer is present, measures shall be employed to protect the groundwater from contamination. 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 as based on the soil boring data.~~
  - 65). Approval by the Planning Director of a nutrient management plan which has been prepared in conformance with the South Dakota Department of Environment and Natural Resources standards.
  - 76). The operation shall meet the requirements of Table 1 in Section 12.10 (F) and Section 12.10 (G).
  - 87). All liquid waste generated by the additional animal units shall be injected. In the event of an extraordinary circumstance, surface application may be allowed in accordance with the provisions of Section 12.10 (E)(3). The

Planning Director may approve the surface application of livestock production surplus water in accordance with Section 12.10 (E)(3).

98). The operation is not located within 2640 feet of a municipality.

109). The expansion shall not exceed 500 animal units.

### **Recommendation**

Staff found that the proposed amendments would place this portion of the ordinance in conformance with other portions of the ordinance and recommended approval of text amendment #16-20.

### **Public Testimony**

No one wished to speak to the item.

Based on the staff report and public testimony a motion was made by O'Hara and seconded by Cypher to recommend approval of zoning text amendment #06-20. The motion passed unanimously.

### **ITEM 12. CONDITIONAL USE PERMIT #06-43 to allow a 999 animal unit concentrated animal feeding operation.**

Legal Description - NW1/4 SW1/4 & NE1/4 SW1/4 of Section 27-T103N-R50W

Location - 2 miles north of Crooks

Petitioner / Owner- Scott & Kris Swanson

### **General Information**

Present zoning - A-1 Agricultural

Existing Land Use - Agriculture

Parcel Size - 160+ Acres

**Report by:** Phil Kappen

### **Staff Analysis**

The subject property is located 2 miles north northwest of Crooks to the east of 469<sup>th</sup> Avenue and ¼ mile north of 255<sup>th</sup> Street. The surrounding property is all in agricultural uses. There are scattered residential acres located just over one-half mile to the north, northeast and east.

The site is not within a Water Source Protection Area and lies outside of any designated flood plains.

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

The target setback criteria distance for a CAFO of this size is 1980 feet (3/8 mile). There is only 1 home located within that criteria distance, the farmhouse located approximately ¼ mile to the southwest. There are existing trees on the east side of the proposed feedlot and the petitioner proposes to plant trees to the north and west of the proposed site. Staff also believes that trees should be planted to the southwest of the feedlot area and to the east of the holding pond area.

The trees around the proposed feedlot area will aid in the dispersal of potential odors. The topography also provides a barrier between the home to the southwest and the proposed feedlot as there is a ridge between the two sites.

Staff has sent a notice of the Planning Commission meeting on this item to all property owners within ½ mile of the two quarter-quarters (N1/2 SW1/4 Section 27-103-50) on which the CAFO would be located. The actual CAFO, however, would not fill that entire area.

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

The area is zoned A-1 Agricultural and the proposed use should have little impact on the continued

agricultural uses of the surrounding land. The facility should have a minimal impact provided that best management practices are applied to the operation of the CAFO.

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

Access to the site is via 469<sup>th</sup> Avenue, a Lyons Township road. There is an existing driveway that can be used for access to the site.

There is a drainage area that cuts through the CAFO site. The petitioner proposes an underground pipe to divert clean water from northwest of the proposed facility around the feedlot area. The petitioner's debris basin and holding pond will also have to be designed to prevent the release of any waste into the drainage way. The facility should be fully permitted by the State of South Dakota. Copies of any approval forms from the state should be supplied to the Minnehaha County Planning Office.

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

There is ample space on the subject property for any necessary parking. No parking is allowed on 469<sup>th</sup> Avenue.

**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 location of the existing and proposed trees will aid in dispersal of potential odors. The petitioner will utilize rendering services to dispose of any dead animals and proper management practices will assist in reducing the potential for odors.

**Recommendation**

Staff finds that the proposed use is in an area that is zoned A-1 Agricultural and that the use can be made to conform with other land uses in the area. Staff also finds that there are mitigating circumstances (tree plantings and topography) that provide a separation between the proposed feedlot and the home to the southwest that lies within the 1980-foot separation criteria distance. Staff, therefore, recommended approval of conditional use permit #06-43 with the following conditions:

- 1) The facility shall be limited to a 999 animal unit concentrated animal feeding operation for beef cattle.
- 2) Clean Water from above the feedlot shall be diverted around the facility. The facility shall be designed to allow zero release of waste into the drainage channel.
- 3) The facility shall be fully permitted by the State of South Dakota and copies of all approval letters from the state shall be provided to the Minnehaha County Planning Office prior to the commencement of any operations.
- 4) The petitioner shall prepare a nutrient management plan for approval by the state, shall keep the plan up-to-date, and shall manage all waste from the facility in conformance with that plan. The petitioner shall prepare an executive summary of the nutrient management plan and file that summary with the Minnehaha County Planning Office. A new summary shall be prepared for the Planning Office each time that the plan is up-dated. A copy of the complete nutrient management plan as approved by the state shall be provided to the Planning Office upon request.
- 5) Trees shall be planted on the north, west and southwest sides of the feedlot area and on the east side of the holding pond area. A complete planting plan shall be prepared for approval by the county planning staff. All trees shall be planted and maintained according to the Minnehaha Conservation District standards. Any trees that die shall be replaced within one growing season.

**Public Testimony**

Mr. Kappen noted that the Planning Department had received a number of letters about this item and that the Planning Commission had been provided copies. Several of the letters mentioned the very odorous, existing hog feed lot which is in this same area. Mr. Kappen explained that the feedlot was "grandfathered" in and that it was not being addressed at this meeting. Mr. Kappen explained that the

petitioner is proposing an underground pipe to divert clean water from northwest of the facility around the feedlot area. The state will be involved in permitting that process. Mr. Kappen stated that the petitioner does currently operate a CAFO located north of this site. The state is requiring it be brought into compliance with the new regulations and because of the constraints at the current site the petitioner would like to relocate.

The petitioner, Scott Swanson, stated that he would be shutting down the location where the cattle are now. He doesn't own that property and the new site is closer to his house. He is proposing the drainage pipe as it is easier than constructing a holding pond large enough for all of the drainage shed. He has 800-1000 bunk space at the current site. He would like to construct the new site himself and gradually move the cattle to the new location. Mr. Swanson has been working on gaining grant money for the past 2 years to assist with this move. The grant is being administered by East Dakota Water District. Mr. Swanson stated that he had an engineering study done a couple of years ago when he first began this process.

Ron Pearson, 46460 257<sup>th</sup> St., owns land on the east side of this site. He questioned whether the operation could stay at 1000 animal units. In order to survive the site will have to expand and Mr. Pearson wondered what the plans for the future are. Mr. Pearson mentioned the problems with the existing hog farm – lagoon leakage, smell, the spreading of manure, and the frustration felt by the neighborhood that nothing can be done because the site is grandfathered in. He explained that there are about 20 houses within a mile of the proposed CAFO site, and eight of those sites are rural farmsteads. Support is given to the investment made by the CAFO operator but what about supporting the investment made by homeowners. It is the neighbors that are left to deal with the problems caused by feedlots. Mr. Pearson also explained that Crooks was restricted from releasing more water into the same stream which runs through the Swanson site. He questioned what restrictions Mr. Swanson might face.

Karin Renner, 46946 254<sup>th</sup> St., is part of a family that has owned land in the area for six generations. She questioned whether the trees would help with the dispersal of odors. She addressed the problems associated with the hog feed lot and their pump system to spray sewage. Ms. Renner noted that when the wind was from the south or southwest she cannot have the house windows open nor can she use the clothes dryer. Another CAFO in the area will result in a reduction in property values.

Steve Kayser, 25426 470<sup>th</sup> Ave., stated that the required notification area need to be changed to at least one mile when dealing with CAFOs. He was outside the notification area and only found out when someone left him a copy of the letter. Mr. Kayser sited the area hog farm and several other CAFO sites as being surrounded by trees that do nothing to alleviate the odor. A holding pond will only increase the odor. He suggested that Mr. Swanson owned land further north and that the CAFO should locate there. At this site, Mr. Swanson's house will be downwind from the prevailing south, southwest winds in the summer so Mr. Swanson will not be affected by the smell. The rest on the neighbors will. Mr. Kayser also questioned if Mr. Swanson will own the cattle.

Kristin Swanson, petitioner, stated that they have three children who wish to work in agriculture and continue the family farm. This move will allow them to give their kids a start.

Mary Brendtro, 208 E. 5<sup>th</sup> St., is represent three sisters and is part of a family that has owned land in the area for six generations. They currently have two homes along 254<sup>th</sup> Street. Ms. Brendtro is concerned about the effects of the CAFO on property values. She has four building eligibilities which have not yet been developed. She also questioned how the regulations are enforced and noted that Mr. Swanson's current site has been out of compliance for some time. Are there any reassurances that the regulations will be enforced at the new site?

Lynn Boadwine, 46945 251<sup>st</sup> St., has property just to the east of the site. He doesn't think the current Swanson location can really be considered out of compliance under the EPA regulations. East Dakota Water District has encouraged producers to use the grant program to improve their operations.

Vince Hanson, 25483 469<sup>th</sup> Ave., owns the home which lies closest to the proposed site. He believes the problems with the existing hog operation must be taken into consideration when considering this application. No one seems to be willing to deal with the manure management practices at the hog feed lot. The neighborhood is already dealing with the effects of these operations. If Mr. Swanson only has some of the cattle is a holding pond still required?

Mr. Kappen stated that any new CAFO is prohibited from using an irrigation sprayer by the County

Zoning Ordinance. All liquid waste must be injected. Unfortunately, the regulations can not be made retroactive. The State does not look at odor, only water pollution. If an operation is polluting the waters of the State, then the State will step in. State regulations do allow surface application of waste, with required set backs from water sources. It is only the County who restricts how waste may be applied.

Commissioner O'Hara wondered if a condition could be added requiring Mr. Swanson to shut his old facility once this new site was fully operational. Mr. Kappen stated that was not possible as Mr. Swanson did not own the property. Mr. Swanson stated that one of the conditions in receiving the grant money is that the old site must be closed. Ms. O'Hara noted that the complaints about the existing hog operation were valid. Commission Zweep noted that the hog operation had been established before the County even had a Planning & Zoning department.

Mary Brendtro stated that she understood that something in the past cannot be undone but two wrongs don't make a right. The hog operation is part of the context and its effects on those living in the area must be taken into consideration. Another CAFO in the area could have huge impacts on property values.

Mr. Swanson stated that he could not move his cattle to the property he owns to the north as that land lies in the Skunk Creek bottom. He also explained that he would prefer to own all the cattle at this site but may need to do contract feeding while getting started.

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

Commissioner Bunde stated that should the petitioner wish to expand in the future he would have to apply again. If there have been management problems the expansion could be denied at that time. The same worry could be applied to moving building eligibilities in that clustering eligibilities may negatively impact farming practices. Commissioner Bunde stressed that this is an agricultural district, not residential, and the main concern has to be for agricultural uses. It is too bad that there is not a better track record with DENR. Commissioner Bunde does not feel Mr. Swanson should be penalized for the problems with the hog feedlot.

Commissioner O'Hara agreed that Mr. Swanson should not be penalized for someone else's problems. This request is not an expansion but a move to bring a property into compliance. This gives the County more control over the operation. Commissioner Cypher stated that he supported that application and that this area is an agricultural district and that the petitioner lived at the site.

Based on the staff report and public testimony, a motion was made by Cypher and seconded by Rogen to approve Conditional Use Permit #06-43 with the conditions as stated. The motion passed unanimously.

**ITEM 13. CONDITIONAL USE PERMIT #06-47 to exceed 1200 sq. ft. of accessory building area (2646 sq. ft. existing, 2,688 sq. ft. requested, 5,334 total).**

Legal Description - Tract 3 Murschel's Addition in Section 30-T101N-R50W

Location - 3 miles west of Sioux Falls

Petitioner / Owner- Patrick Doyle

**General Information**

Present zoning - A-1 Agricultural  
Existing Land Use - Residential /Agriculture  
Parcel Size - 20.32 Acres

**Report by:** Scott Anderson

**Staff Analysis**

The subject property is located in Murshel's Addition, a larger tract subdivision located at the intersection of 266<sup>th</sup> Street and SD Highway 17, approximately 2 miles west of Sioux Falls. Murshel's Addition consists of five (5) tracts that range in size from 9.05 acres to 20.32 acres. The four parcels to the west are part of the Murschel's Addition. The land to the north, south and east is agricultural land. The petitioner proposes to construct a 2688 square foot accessory building on his property in addition to the existing 2646 square foot accessory structure. The applicant's proposed, new accessory structure is larger than the permissive size of 1200 square feet, and thus a conditional use permit is required.

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

The placement of an accessory structure exceeding 1200 square feet should not impact the enjoyment or use of properties in the vicinity. Indeed, some of the properties in the area also have accessory structures exceeding the 1200 square foot maximum size requirements. There are three residences to the west that have accessory structures exceeding 1200 square feet. The sizes of accessory structures located on those residences are 1904, 3240 and 4770 square feet.

Much of this area is used for agriculture. The applicant has indicated that he requires more accessory building use for storage of his agricultural equipment. The applicant conducts haying activities not only on his property but also on other property in the vicinity. Given the nature of the applicant's agricultural activities and existing sizes of structures in the area, staff can support the applicant's request and believes that the effects on surrounding properties in the area are minimal.

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

The petitioner must be made aware that the building can be used strictly for his personal storage of residential related items and no commercial or business activities or storage is allowed.

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

Access to the property is via 266<sup>th</sup> Street, a township road. No additional accesses onto the road should be allowed or is being requested by the applicant. All other utilities and drainage have been provided and no further improvements are needed.

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

There is ample area on the subject property for any parking as a result of residential activities. No on street parking will be allowed. No commercial or business 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 offensive odors, fumes, dust, noise or vibration from the allowed residential uses on this property. No other types of uses are allowed.

**Recommendation**

Staff finds that the proposed building size conforms to the general sizes of other accessory buildings in the area. Staff recommends **approval** of conditional use permit #06-47 with the following conditions:

- 1) The existing driveway onto the property shall be used for access to the building. No additional driveway access shall be allowed onto 266<sup>th</sup> Street.
- 2) The building shall be used only for the petitioner's personal residential storage. No commercial or business uses or storage shall be allowed.
- 3) The building shall not exceed one story in height.

**Public Testimony**

Commissioner Bunde suggested that a condition be added stating that the square footage be limited to the approved size.

Mr. Anderson explained that the zoning ordinance limits accessory building size in subdivisions of more than four lots. Prior to Mr. Anderson's employment with the County, the zoning ordinance had been interpreted differently for these five subdivided lots.

The petitioner, Pat Doyle, explained that the building will be used to store his farm machinery, hay and horses. He bought this property in 1996 and the ordinance was changed in 2001. Two years ago his

neighbor was allowed to expand without going through the CUP process. Mr. Doyle currently has a 42 x 63 building and would like to add a 42 x 64. A smaller building would not be usable for driving farm machinery inside. He farms 65 acres for hay. Mr. Doyle stressed that the land was zoned and taxed for Agricultural use.

Larry Christensen, 46601266<sup>th</sup> St., owns three of the tracts in this subdivided area. He applied for a permit for a second building and was told had to go through the CUP process. Dave Queal, the previous director, called and told him that the intent of the ordinance did not apply to this area and refunded the fee and issued a building permit. Mr. Christensen said if they wanted to be limited in size they would have moved to town. When you have farm machinery you need a big building.

Mr. Anderson stated that there is nothing in the ordinance that indicates the intent of the regulations. His job is to enforce the ordinance as it is written.

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

A motion was made by Zweep and seconded by O'Hara to approve Conditional Use Permit #06-47 with the following conditions:

- 1) The existing driveway onto the property shall be used for access to the building. No additional driveway access shall be allowed onto 266<sup>th</sup> Street.
- 2) The building shall be used only for the petitioner's personal residential storage. No commercial or business uses or storage shall be allowed.
- 3) The building shall not exceed one story in height.
- 4) The total accessory building square footage shall not exceed 5,334 square feet.

The motion passed unanimously.

### **New Business**

- A. The Commission discussed the issue of new regulations to allow eligibilities to be transferred from the floodplain to non-adjointing land. Commissioner Zweep was in favor of allowing movement from the floodplain to a designated area east of town. The remaining members of the Commission were opposed to the idea. Commissioner Cypher stated that if you own land in the floodplain you have to accept its limitations. It's the luck of the draw and he is not in favor of this idea. Commissioner O'Hara concurred and stated that the property owner would get a value people with other limitations would not. It would also do away with the requirement of land being contiguous. Commissioner Cypher stated that the county had adopted density zoning, and in some areas it is not appropriate to have houses. There was no motion to continue perusing this issue.
- B. The Commission directed the staff to consider options in limiting the placement of agricultural buildings on properties that do not have a dwelling unit.