

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

A meeting of the Planning Commission was held on July 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, Susie O'Hara, Mark Rogen, Don South, Wayne Steinhauer, and Jim Zweep.

STAFF PRESENT: Scott Anderson, Phil Kappen, and Pat Herman - County Planning
Gordy Swanson – Office of the State's Attorney

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 Rogen and seconded by O'Hara to approve the consent agenda. The motion passed unanimously.

ITEM 1. MINUTES – June 26, 2006.

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

ITEM 2. CONDITIONAL USE PERMIT #06-48 to exceed 1200 sq. ft. of accessory building area (2400 sq. ft. requested).

Legal Description - N133.33' Lot 2 Toballs Subd. in the E1/2 N1/2 N1/2 of Section 18-T102N-R49W

Location - 25807 Kiwanis Ave., ½ mile east of the I-29 Crooks exit

Petitioner / Owner- Michael Harmon

General Information

Present zoning - A-1 Agricultural
Existing Land Use - Residential
Parcel Size - 1.87 Acres

Report by: Scott Anderson

Staff Analysis

The applicant is requesting to construct a 40 foot by 60 foot detached accessory structure. Currently there is a single family residence and two detached accessory structures. The two accessory structures have a combined square footage of 1200 square feet. One of the detached structures is a three car garage, which is nearly attached to the residences. A small deck connects the two, but they are considered two separate buildings.

There are several accessory structures in the area that exceed 1200 square. They include a 9600 square foot commercial stable 1/8 of a mile to the north across County Highway 130 and a 2160 agricultural building 1/8 of a mile to the east. In addition, there are several residences in the area that have attached garages and detached accessory structures. These include the property directly to the south, which has a 24 foot by 32 foot (768 square feet) detached garage. The three houses located on the east side of Country Lane all have detached accessory buildings in addition to the attached garages. These accessory structures range in area from 840 square feet to 1200 square feet.

The applicant would not need a conditional use permit if the existing garage would have been attached to the residences. There is no attached garage on the house. As it was constructed as a detached garage located within a few feet of the residence, the applicant must seek a conditional use permit to construct an additional accessory building.

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 accessory structure should not negatively impact the surrounding area and seems appropriate given the location of the existing garage.

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 Kiwanis Avenue, a county highway. 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 recommended approval of conditional use permit #06-48 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 Kiwanis Avenue.
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 2,400 square feet.

Based on the staff report a motion was made by Rogen and seconded by O'Hara to approve Conditional Use Permit #06-48 with the conditions as stated. The motion passed unanimously.

ITEM 3. CONDITIONAL USE PERMIT #06-49 to transfer one residential building eligibility.

From - SE1/4 NW1/4 in Section 11-T102-51

To - Tr. 3 Drymalski's Addn. S1/2 SE1/4 SW1/4 in Section 2-T102N-R51W

Location - 3 miles north of Hartford

Petitioner / Owner- Teri Drymalski

General Information

Present zoning - A-1 Agricultural

Existing Land Use - Agriculture

Parcel Size - 4.53 Acres

Report by: Jason Borah

Staff Analysis

The petitioner is requesting to transfer one residential building eligibility. On July 10, 2006, staff conducted a site visit. The subject property is currently zoned A-1 Agricultural and is already platted as a 4.53 acre lot. There are no concentrated animal feeding operations (CAFO) in the vicinity. The northern edge of this property is located within the floodplain, but several building sites exist outside the floodplain.

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. The subject property is pastureland.

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. Access will be via 257th Street.

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 #06-49 with the following conditions:

- 1) 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 Hartford Township prior to the issuance of a building permit.

Based on the staff report a motion was made by Rogen and seconded by O'Hara to approve Conditional Use Permit #06-49 with the conditions as stated. The motion passed unanimously.

ITEM 4. CONDITIONAL USE PERMIT #06-50 to exceed 1200 sq. ft. of accessory building area (2400 sq. ft. requested).

Legal Description - Lot 5 (Ex. E66') Paulson's Subdivision in Section 2-T101N-R48W

Location - 26264 Mc Hardy Rd. south edge of Brandon

Petitioner / Owner- Terry Engelmann

General Information

Present zoning - A-1 Agricultural

Existing Land Use - Residential

Parcel Size - 2.59 Acres

Report by: Scott Anderson

Staff Analysis

The applicant is requesting a conditional use permit to allow for the construction of a 2400 square foot accessory structure. On July 12, 2006, staff conducted a site visit. There were several "classic" cars located on the west side of the existing residence. Staff assumes that the applicant will store several, if not all, of these classic cars in the proposed structure.

There are several larger accessory structures located in the general vicinity. There is a 2,880 square foot structure allowed through CUP#01-08 located at 26254 McHardy Road. In addition to this structure, there is a 1628 square foot accessory structure located at 26274 McHardy Road and a 2400 square foot accessory structure located at 26284 McHardy Road. These accessory buildings are near the same size or larger than the accessory structure proposed by the applicant.

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

The construction of a larger accessory should not impinge on the enjoyment or use of the surrounding properties or effect property values. The area is a mixture of residential and agricultural properties, so a larger building would be in character with building stock found in the vicinity.

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 McHardy Road, a township maintained 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 recommended approval of conditional use permit #06-50 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 McHardy Road.
- 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 2,400 square feet.

Based on the staff report a motion was made by Rogen and seconded by O'Hara to approve Conditional Use Permit #06-50 with the conditions as stated. The motion passed unanimously.

ITEM 5. CONDITIONAL USE PERMIT #06-53 to allow a single family dwelling.

Legal Description – NE1/4 (Ex S3/4 S1/4 NE1/4 & Ex. N208.71 E241.71 & Ex. N1183 but including the E1182 thereof & Ex. Grave's 3rd Addn) in Section 18-T101N-R51W

Location - 1.5 miles northwest of Wall Lake
Petitioner / Owner- Lowell Grave

General Information

Present zoning - A-1 Agricultural
Existing Land Use - Agriculture
Parcel Size - 93.16 Acres

Report by: Pat Herman

Staff Analysis

The property is located 1.5 miles northwest of Wall Lake in an agricultural area. The NE1/4 has four residential building eligibilities. Two eligibilities are being used by an existing dwellings and one was approved for use in October 2005. This is the last building eligibility in the NE1/4 and it 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 a township gravel road and Wall Lake Township should be contacted for driveway approval.

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 #06-53 with the condition that the lot be platted and 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 Rogen and seconded by O'Hara to approve Conditional Use Permit #06-53 with the conditions as stated. The motion passed unanimously.

ITEM 6. CONDITIONAL USE PERMIT #06-52 to transfer five residential building eligibilities.

From – SE1/4 NE1/4, NE1/4 SE1/4 & SE1/4 SE1/4 of Section 8-T103N-R47W, from the NE1/4 NE1/4 (Ex RR & Ex W1/2 W1/2) of Section 17-T103N-R47W, and from the NE1/4 SE1/4 of Section 7-T103N-R47W
To - NW1/4 SW1/4 of Section 8-T103N-R47W
Location - ½ mile north of Garretson
Petitioner / Owner- Larry J. Engebretson

General Information

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

Report by: Phil Kappen

Staff Analysis

The subject property is located along the east side of SD Highway 11 (485th Avenue) ½ mile north of Garretson. The surrounding properties are predominantly in agricultural uses with scattered acreages. The petitioner wishes to cluster the remaining eligibilities on the property along the state highway. This will allow the development of seven acreages near the highway and will preserve

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 homes at this location along Highway 11 should have little impact on the predominant land use in the area, agriculture. There are no animal feeding operations in the vicinity. As agriculture is the primary use in the area, right-to-farm notice covenants must be required on all properties.

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

The proposed transfer will preserve larger amounts of unbroken A1-zoned land for agricultural uses.

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

Access would be from Highway 11. The petitioner will have to work with the SD DOT regarding access to the highway. The DOT will also have to approve any plats that would access the highway. A road will

need to be developed off the highway to serve the individual lots. That road will need to be hard-surfaced as it accesses a hard-surfaced roadway. The petitioner should be required to develop a preliminary subdivision plan with the proposed road layout and approximate lot sizes.

There is an existing driveway at the north edge of the subject property which is shared with the property owner to the north. There is a hill crest approximately 4 tenths of a mile north of 252nd Street which would allow safer access off of Highway 11.

Some of the properties from which eligibilities are being transferred have limited access. Access to the potential residential lots will have much improved access if moved to near the highway.

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

The minimum lot size for any proposed lots is one acre. This should allow ample space for any residential parking requirements.

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

There should be little odor, fumes, or dust from the allowed residential uses.

Recommendation

Staff found the proposed transfer to meet the goals of density zoning and recommended approval of the conditional use permit with the following conditions:

- 1) A preliminary subdivision plan must be prepared for county approval.
- 2) Any subdivision roads shall be hard-surfaced.
- 3) All lots must be platted and a right-to-farm notice covenant shall be filed on each lot prior to the issuance of any building permit.

Based on the staff report a motion was made by Rogen and seconded by O'Hara to approve Conditional Use Permit #06-52 with the conditions as stated. The motion passed unanimously.

The Dell Rapids Planning Commission joined the meeting.

Members Present: Rogen Dearduff, Dale Dunn, Chair Bob Lamberty, and Larry Skatvold

Staff Present: Jeff Traill, City Administrator

Item 7 was heard jointly with the Dell Rapids Planning Commission.

ITEM 7. CONDITIONAL USE PERMIT #06-51 to exceed 1200 sq. ft. of accessory building area (1144 sq. ft. existing, 1056 sq. ft. additional requested, total 2,200 sq. ft.)

Legal Description - E402.11 Overvaag Tract 6 Overvaag's Tracts SW1/4 in Section 8-T104N-R49W

Location - 47321 Golf View Drive west edge of Dell Rapids

Petitioner / Owner- John and Jane Dressen

General Information

Present zoning - RR-5 Rural Residential

Existing Land Use - Residential

Parcel Size - 4.24 Acres

Report by: Pat Herman

Staff Analysis

The subject property is located on the west edge of Dell Rapids and north of Highway 115. The parcel is zoned RR-5 Rural Residential. This zoning district is only found on the west and south edges of Dell Rapids. The Dell Rapids Comprehensive Plan 2000-2020 depicts this area for residential development.

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

The petitioner proposes to exceed 1200 sq. ft. of accessory building area which requires conditional use permit approval. There is an existing 1144 sq. ft. accessory building and the petitioner is proposing to add an 1056 sq. ft addition on the north side of that building. This would bring the total accessory building

area to 2200 sq. ft. The existing accessory buildings located in this neighborhood range in size from 288 sq. ft. to 3200 sq. ft. Past actions by the Planning Commissions have limited the maximum allowed accessory building area per lot to 3200 sq. ft.

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

The building size proposed by the applicant is consistent with the development of other properties in the neighborhood. The petitioner has indicated the new addition will be sided to match the existing building.

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

Existing roads and utilities will service the building.

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

Commercial uses are not allowed in the building so no additional parking spaces are required.

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 building will be used for personal storage only so there should be no impacts from offenses listed.

To ensure the proper size building is constructed a building inspection should be required. This inspection will be handled by the Minnehaha County Building Inspector who will measure the outside dimensions of the building.

Recommendation

Staff found the requested accessory building area to be compatible with the existing development standards and recommended approval of the conditional use permit with the following conditions:

- 1) Accessory building area shall not exceed 2,200 sq. ft.
- 2) Accessory building height is limited to one story.
- 3) No commercial uses shall be permitted.
- 4) A building inspection is required.

Public Testimony

The petitioner, John Dressen was present and requested approval for this request.

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 for the County by Cypher and seconded by O'Hara to approved Conditional Use Permit #06-51 with the conditions as stated. The motion passed unanimously. Same motion for the City by Dearduff and seconded by Skatvold. The motion passed unanimously.

ITEM 8. CONDITIONAL USE PERMIT #06-44 to amend CUP #88-04 to increase the size of on-premise signage.

Legal Description - Tracts A-B & C Leesch's Addition E1/2 in Section 18-T102N-R51W
Location - 2 miles west of Hartford
Petitioner / Owner- I-90 Speedway Inc.

General Information

Present zoning - A-1 Agricultural
Existing Land Use - Entertainment Commercial
Parcel Size - 50.29Acres

Report by: Scott Anderson

Staff Analysis

On February 22, 1988, the Planning Commission approved Conditional Use Permit #88-04 allowing the use of the subject property as a racetrack with one condition, that the operation would be subject to a review on a yearly basis. It was noted on the application that the existing land use as an abandoned track.

In 1993, Conditional Use Permit amendment #93-28 was approved allowing the placement of a caretaker's residence as part of the race track. This amendment was approved with the following four (4) conditions:

1. The exterior dimensions of the structure, measured by excluding overhands, shall be not less than 22 feet.
2. The structure shall be supported by a foundation system consisting of walls along the perimeter and piers on the interior. All foundation walls and piers shall be extended a minimum of 42 inches below grade.
3. The roofing and siding material shall be consistent with the material used in site-built dwellings.
4. The roof pitch shall not be less than a 3 in 12 slope.

In May of 2006, staff contacted the owner of the racetrack to indicate that a sign had been enlarged without a building permit. Originally the sign was a double sided 8 foot by 12 foot free-standing sign. Staff indicated at that time that the sign was expanded without a building permit or approval through the conditional use permit. Staff met several times with the applicant to discuss options. The applicant did not want to reduce the size to its original size. Staff indicated that another option could be a conditional use permit amendment, however indicated that this may or may not be approved by the Planning Commission and/or County Board.

The applicant has indicated that the sign was enlarged after a storm damaged the sign in 2003. The enlarged sign is now 12 foot by 22 foot per side or a total of 264 square feet per side. The sign was enlarged with a 12 foot by 14 foot addition to better direct attention to the entrance to the race track. The applicant has indicated a narrative outlining this concept, which staff has included for review.

On July 5, 2006, staff contacted Scott Jansen, Highway Engineer for S.D. Department of Transportation. Mr. Jansen indicated that Highway 38 is designed for a speed of 65 miles per hour. He indicated that at 65 mph, a person requires 3 to 5 seconds to read a sign, comprehend it and then take action. A vehicle travels approximately 95 feet per second at 65 miles per hour. Using these figures a minimum of 400 feet is needed to begin slowing for the approach to the raceway. On July 6, 2006, staff conducted a site visit. The site distance from the east, from which the majority of patrons come, is approximately 4/10 of a mile or 1320 feet. This allows an additional ten (10) seconds of reaction time. The site distance to the west is approximately 8/10 of a mile or 4224 feet. The State Highway Engineer indicated that these sight distances were adequate for a turning movement into the racetrack. Mr. Jansen indicated that often business people believe that a larger sign will provide more visibility, but that the lettering size is more important to visibility. A general rule of thumb is that for every inch of font size the word can be read from forty (40) feet away. The primary message I-90 Speedway should then be printed in a font that is a minimum height of ten (10) inch letters to allow for the needed 3-5 second reaction time. Mr. Jansen also provided staff with the ADT (average daily trips) for this section of S.D. Highway 38. In 2004, the ADT was 1732 for this portion of S.D. Highway 38.

The applicant has indicated that a larger sign is needed as a safety precaution for the traveling public. The location on the approach on the slight S curve on Highway 38 somewhat limits the sight distance. Staff, however, based on research with the S.D. Highway Department believes that there is adequate sight distance at the location of the approach and a larger sign is not warranted. The applicant has several options. The sign face could be re-lettered. The sign to be re-located to the knoll east of the existing approach. The knoll blocks some of the sight distance at the current location. Uses of this type typically have a following and the attendees know the location of the race track.

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 existing raceway has an effect upon the use and enjoyment on the surrounding properties. The use generates traffic to the site during races. In addition, race track noise can be heard by surrounding properties during races. Given the size of the parcel of property that the race track is on and the relatively sparsely population vicinity, it is unlikely that the race track has significantly impacted property values.

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

The race track has been in operation at this site for well over 20 years. During that time, several new houses have been constructed in the area. Based on this growth in the area, it appears that the race track has not impeded normal development and improvement of the surrounding properties. The race track has had no impact on the agricultural uses in the area.

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

It appears that all of the required utilities have been provided to the site.

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

Off street parking was never addressed during the original conditional use permit application and subsequent amendment in 1993. Article 15 of the Zoning Ordinance requires one space per three fixed seats. The applicant has not indicated the seating capacity of the race track. Based on the large acreage of the site and existing large parking lots, staff believes that this requirement is being met.

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 very nature of a race track produces almost all of the elements being controlled as nuisances. There are excessively loud noises, dust, fumes and vibrations. The use, however, has been at this site for over 25 years. Most development that has occurred in the area came after the race track. Furthermore, the site consists of over 50 acres. This size parcel allows for some buffering. No conditions were ever imposed upon the applicant to mitigate items that could be considered a nuisance.

The applicant has failed to adequately demonstrate the need for a larger sign. The current size of 264 square feet per side is larger than the County allows for on-premise signs in the C Commercial District and I-1 and I-2 Industrial Districts. Other options exist that could enhance the visibility of the sign without enlarging it. The sign could be moved and/or the font size could be enlarged. While the applicant did not increase the size of the sign, he must now bring the sign back into compliance with the original size or meet the requirements of the Zoning Ordinance. Allowing this particular site a larger sign will set a precedent for others to request larger signs. No hardship or compelling reasons exist for approval of a larger sign. The original size of 8 foot by 12 foot or 96 square feet per side should be adequate to inform the traveling public of the business location.

Should the Planning Commission concur with staff's recommendation, staff would request that the applicant be given until December 31, 2006 to bring the sign back to the original size of 8 feet by 12 feet with a double face.

Recommendation

Staff recommended denial of conditional use permit amendment #06-44 to increase the size of the on-premise sign.

Public Testimony

In response to questions from Commissioner Steinhauer, Mr. Anderson stated that an on-premise sign must contain verbiage pertaining to the use of the property but advertising for other products can be included. A business could not allocate their allotted on premises sign space just to advertise something other than their own business.

The petitioner was represented by Pam Hoeffert. Ms. Hoeffert stated that when you are approaching the driveway when coming from the east you first see the sign when you are 1300 ft. away. The sign is then hidden by some trees and reappears at 1100 ft. from where the turn must be made. Ms. Hoeffert spoke with Greg Bedeman with Midwest Trucking who said a commercial driver would need a breaking distance of 665 feet to make the corner. He told her perception is 1.5 seconds and reaction in one second. She explained that there are 80 rigs which come to the racetrack, all arriving between 5:30-6:00 pm. They hit their brakes at 1200 sq. ft., when they see the sign. It is the height of the sign that they see. At that distance they cannot see the lower part of the sign. They are really going by the color of the sign.

Commissioner South questioned how many accidents had occurred prior to increasing the size of the sign. Ms. Hoeffert admitted that no accidents had been reported on Highway 38. Some had occurred on leaving the raceway with people rushing to leave. She stressed that the location of the raceway is on an "S" curve with a hill. They average 2 ¾ races a week with an estimated attendance of 1500 people per show or 60,000 people per year. All of these people need to be able to stop in time to make the corner.

Ms. Hoeffert asserted that only two other businesses located in agricultural areas of the county pull in a similar number of people. She feels Huset's Speedway in Brandon does not need a large sign because of their location right adjacent to the highway and the fact that they have two entrances, so if you miss one you can stop in time for the other. Wild Water West also has two entrances but they also have over sized signs which she has been told are grandfathered in. Buffalo Ridge has four big signs up year round for fireworks sales.

Ms. Hoeffert doesn't believe the race track should have to have a sign that meets the A-1 zoning regulations because their use is commercial. She would agree to a condition that the larger sign be removed if the ownership changed. This race track has been here 30 years. They need a larger sign to bring in more patron sand to make it easier for those participants which come from out of state to find the race track. If they are not granted the larger size they will be in dispute with the commercial contracts which were made before purchasing the property.

Ms. Hoeffert stressed that the location is on an "S" curve with a hill and on a two lane highway with 65 mph traffic. The track cannot be seen from the road and the sign is the only thing that lets patrons know the track is there. She doesn't feel it is safe with the smaller sign.

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

Commissioner Zweep asked if the County had approved larger size signs in the past. Mr. Kappen stated that the County had always upheld the sign regulations and had not allowed larger signs for any use. At this race track, the original sign at 96 sq. ft., exceeds the maximum allowed by ordinance which is 32 square feet.

Commissioner Cypher stated he supported the recommendation of the Planning Staff and made a motion to deny Conditional Use Permit #06-44 for three reasons. First, this year the county has brought other businesses into compliance such as the fireworks stands at the EROS exit from I-90. Second, the county recently denied a request from a landscape garden center to enlarge their sign in an agricultural district. And lastly, the original sign was up high and it worked. Mr. Cypher added that he would favor allowing the petitioner until October 1, 2007 to bring the sign into compliance. The motion was seconded by Steinhauer. The motion to deny passed unanimously.

ITEM 9. CONDITIONAL USE PERMIT #06-55 to allow an ethanol plant for farm use.

Legal Description - NW1/4 of Section 10-T103N-R50W

Location - 2 miles northeast of Lyons

Petitioner / Owner- Lake Vermillian Ethanol, L.L.C./ Lynne Boadwine

General Information

Present zoning - A-1 Agricultural

Existing Land Use - Agricultural

Parcel Size - 40 Acres

Report by: Phil Kappen

Staff Analysis

The subject property is located south of 251st Street. The surrounding properties are in agricultural uses with scattered acreages. The Boadwine farmstead contains a 3,500 animal unit dairy operation which was approved in 2003.

The petitioner proposes to construct a farm-scale ethanol plant. The plant would produce up to 750,000 gallons of ethanol per year. The Minnehaha County Zoning Ordinance allows smaller operations related to the processing and storage of agriculturally-related products as a conditional use permit in the A-1 Agricultural District.

The by-products of the facility would be sweetwater and distillers grain which would be fed to the cattle on the site as feed additives. These products are highly nutritious and are in demand as feed additives. The size of the proposed facility is based on the size of the existing CAFO. Because of this connection between the CAFO and the ethanol plant, any approval of the proposed ethanol plant should be tied to the continued operation of the CAFO.

The proposed plant will also be regulated by the Federal Alcohol, Tobacco and Firearms branch of the

Treasury Department. Proof of approval by the ATF (and of any state-required permitting) should be provided to the county before the plant begins operation.

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 ethanol plant, because of the size and type of operation proposed, should have little additional impact on any surrounding properties.

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

The predominant land use in the area is agriculture. The plant should have no adverse impact on the continued agricultural use for properties in the vicinity.

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

Access to the property will be from 251st Street, a township road. There should be minimal increases in the overall truck traffic on this road due to the proposed plant.

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

There is ample space on the site for any necessary parking or loading. No on street parking or loading should be allowed.

As the petitioner currently ships in sweetwater and distillers grain as feed additives, and as corn is already being delivered to the dairy for feed, there should be little increase in truck traffic to the facility with the proposed small-scale ethanol plant.

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

With the larger, industrial ethanol plants, the majority of the odor results from the drying of the distillers grain prior to shipping. There will be no drying of the distillers grain at this facility which will greatly reduce the potential for any odors and result in no discharge of volatile organic compounds. The boiler will be electric, so the only stack emissions will be odorless carbon dioxide.

The property owner currently utilizes both sweetwater and distillers grain shipped from ethanol plants as a part of the diet for the dairy cattle. Since the products are already being utilized as a part of the cattle's diet there should be little effect on the odor from the dairy facility due to diet changes.

Recommendation

Staff finds that the proposed use represents a form of value-added agriculture that can be made consistent with the county zoning ordinance and that the proposed use can be conducted in a manner that does not adversely impact surrounding properties. Staff recommended approval of conditional use permit #06-55 with the following conditions:

1. The plant shall be limited to a 750,000 gallon per year facility.
2. The plant shall be considered an accessory use to the existing concentrated animal feeding operation (dairy). Should the feeding operation cease, the use of the ethanol plant will also cease.
3. The plant shall obtain all required federal and state permits and provide proof of those permits to the county before commencing operations.
4. The facility shall change operations from the proposed electric boiler and shall not initiate any drying process for the distillers grain without first obtaining an amendment to this permit.

Public Testimony

The petitioner was represented by Kent Boadwine. He presented the following information to the Commission.

Why an Ethanol Plant on a Dairy?

- Plant has a small footprint at 2,880 sq. ft. in comparison to one of the dairy freestall barns (78,540sq. ft.).
- Plant will produce sufficient Wet Distillers Grain and Sweetwater as by-products of the ethanol production process to provide sufficient feed components as part of the dairy herd's ration.
- Dairy is currently buying Distillers Wetcake from shipped from Aurora, SD.
- Nutritional requirements dictate the size of the plant.
- Plant designed to operate as continuous flow which works with dairy operation's 24-7-365

schedule.

Lake Vermillion Ethanol, L.L.C.

- Lake Vermillion Ethanol, L.L.C. (LVE) is the business entity providing the investment capital for the plant since this is a prototype plant. Typical farmer owners are not in a position to build such plants due to the limited track history and intellectual property utilized in the plant design. The ultimate goal of LVE is to sell fully operational plants to farmer(s) and build additional farm based plants based on the success of this plant. Ultimate goal is to couple feedlots with corn farmers as owners to add value to corn and provide value-added feed source for the feeding operation.

Environmental Impact

- Plant will be powered by electricity- no gas used in processing ethanol. Wet distillers grains require no drying.
- Net water use is virtually zero. Plant use is 3-5 gallons per minute with dairy utilizing sweetwater in calf ration, thus replacing water already being used.
- CO₂ is the only discharge from the process. CO₂ is an odorless, colorless gas. CO₂ will be scrubbed, so smells associated with yeast or ethanol should not be detectable. There are no stack emissions or volatile organic compound emissions since there is no drying of by-products.
- Minnehaha County has a farm-size ethanol plant at the Geraet's farm near Buffalo Trading Post in the Northwest corner of Minnehaha County. This plant has been in service for approximately 14 years.

Planned Site

- Plant to be sited on the eastern edge of the SW ¼ of Section 10- Lyons Township, which is the site of the current dairy. There is an existing driveway on the very eastern edge of the property which will service the ethanol plant. The following picture from 2004 shows approximate size and location of ethanol plant in red. Additional livestock facilities not pictured have been built with more in construction at this time. By this fall the CAFO construction will be fully completed.

Conditional Uses

- Minnehaha County Zoning Ordinance 3.04(x) relates to agriculturally related operations involving the handling, storage and shipping of farm products, in this case corn and wet distillers.
- The energy production process is not being pursued in an industrial manner as to the size and scale of ethanol plants being sited today are 50-100 million gallons/yr vs. 750,000 gallons/yr. for this plant. No rail facilities are necessary for either the removal of ethanol or transportation of grain to the facility. The grain will be bought from local farmers.
- Approximately 2 tanker loads of ethanol per week will be transported from the facility. The dairy operation should approach 3 tanker loads of milk per day when completely filled.
- Federal Alcohol, Tobacco and Firearms branch of the Treasury Department will provide regulatory oversight on ethanol portion of the operation.

Summary of Requirements for Conditional Use Permit

- This conditional use permit does not change animal units or prior conditions required for the operation of the existing CAFO.
- This use qualifies as an agricultural use as the dairy operation is utilizing the facility for feed production. Cessation of CAFO will also cease conditional use approval of farm sized ethanol plant.
- The plant's engineer is contracted to produce 750,000 gallons per year which is the limit imposed by the conditional use permit.
- Changes in operations from the electric boiler or adding a drying process will require amendment of the conditional use permit.

Mr. Boadwine noted that 1 bushel of corn can produce 2.6 gallons of ethanol. There will be some increase in traffic, but there will also be a reduction in the number of feed trucks. The traffic on this portion of road is predominately from the farm. A grain truck will hold 1000 bushels, a tanker 6,000 gallons. Currently they don't need to increase grain storage but depending how the plant works, buildings could be added in the future.

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 Rogen and seconded by Zweep to

approve Conditional Use Permit #06-55 with the conditions as stated. The motion passed unanimously.

ITEM 10. PRELIMINARY SUBDIVISION PLAN #06-02 Golden Shore Addition Phase 3

Legal Description - Lots 1-36 & 1-42 Golden Shore Addition W1/2 in Section 21-T101N-R51W

Location - Wall Lake

Petitioner / Owner- Golden Shore LTD

General Information

Present zoning - A-1 Agricultural

Existing Land Use - Agricultural

Parcel Size - 51.6 Acres

Report by: Pat Herman

Staff Analysis

The applicant has presented a preliminary plan proposing the creation of seventy-eight (78) residential lots on the west side of Wall Lake. The 78 lots contain a total of approximately 51.6 acres with the average lot size of a 1/2 acre.

The original lots encircling Wall Lake were platted in 1932. When Minnehaha County enacted density zoning in 1988, each of the platted lots received one residential building eligibility. The applicant has purchased all of the undeveloped property and platted parcels on the west and north sides of Wall Lake and has sufficient building eligibilities for the proposed development.

The property is currently zoned A-1 Agricultural which requires a minimum lot size of 1 acre and a minimum lot width of 125 feet. There is no provision in the A-1 District for a reduction in lot size if central sewer is available. The petitioner will need to submit an application to rezone the development to R-1 Residential. This residential zoning district is designed to allow an increased residential density when a central sewer is available. The lot area required is 7,500 sq. ft. with an increase to 8,500 sq. ft. for corner lots. The minimum required lot width abutting the road is 60 feet and there appears to be one lot that will need to be configured to meet this requirement.

The development will be served by the Wall Lake Sanitary District. The applicant has initiated talks with the District's engineers and it appears the District has the capacity to handle the additional residential units. The petitioner is aware that development cannot occur until such time as the County has written approval from the Sanitary District for the additional hook-ups. Minnehaha Community Water Corporation has indicated that it may take some up grading but they will service the new development. The erosion and drainage plans have been provided as part of the preliminary plan.

Access to the lots will be from a new street, Golden Shore Drive, and a short cul-de-sac, Golden Shore Circle. The cul-de-sac will need to meet the minimum turning radius as specified by the Subdivision Ordinance. Golden Shore Drive accesses 462nd Ave., a township gravel road, so hard surfacing is not required for the new road. However, the applicant is considering hard surfacing which would have to be constructed to meet the specifications of the subdivision ordinance.

The final plat must contain a certificate of maintenance for the new streets. Prior to final plat approval, the property will need to be rezoned to R-1 Residential and the Planning Department will need to have written authorization from the Sanitary District for the additional hook-ups.

The 100 year flood plain is shown on the plan. The flood plain will need also need to be shown on all plats as well as the established high water mark. The ordinary high water mark has been set by the SD DENR and a copy of that report is available at the Planning Department.

Recommendation

The development does not exceed the available residential building eligibilities for this area and will be serviced by a central sewer system. Staff recommended approval of Preliminary Subdivision Plan #06-02 Golden Shore Addition Phase 3 with the following conditions:

- 1) All lots with shoreline shall have the ordinary high water mark shown and labeled on the plat.
- 2) Written approval from the Wall Lake Sanitary District for the additional hook-ups prior to the approval of any plats and the issuance of any building permits.

Public Testimony

The petitioner, Kevin Nothdurft, stated that he did plan to asphalt Golden Shore Drive and Circle and would mag water 462nd Ave. going north to Highway 42. Mr. Nothdurft noted that he had started talks with Wall Lake Sanitary. In response to Commissioner Steinhauer, Mr. Northdurft stated he would not be opposed to a condition requiring hard surfacing of the new streets and he would agree to not have any community access point onto Wall Lake. There will be 25 lots that about the lake and 8 lots along the channel. There are settlement ponds on the west side of this development.

Chris Munger, 26549 East Shore Pl., stated that she is president of the Wall Lake Sanitary District. She first met with the petitioner on Saturday night. While the Board is not opposed to this development they are not in the position yet to approve it. Ms. Munger stated that the 1st Phase on the east side of the lake had not yet been completed and that the sewer connections had never been approved. There is a 30 year life span for the current sewer system. Ms. Munger wants to see a comprehensive plan before recommending approval and she doesn't want to see this pass until there have been more details provided. Commissioner South noted that one on the conditions was that nothing could be built prior to approval from the district. The District would hold the key to this development moving forward. Commissioner Cypher asked for an explanation concerning Phase I not being approved. Ms. Munger stated that she had not seen any plans for sewer connection for Phase I and that it was not tied into the system. The only blue plans she received were for a main line under the street and that state has approved that. She feels the district has worked in good faith to tract down that information. This past makes here leery of going forward with this new project. It would double the houses over night. She would like to see the issues with Phase I completed prior to this new development.

Dave Jibbon with JSA engineers in Sioux Falls is working with the petitioner. For Phase I plans were prepared and sent to Tom Wall with DGR Engineers, representatives for the Sanitary District. He approved the plans. SD DENR also approved the plans. This is not something they just went out and put in. The new sewer line is not connected to the system yet. There is about 143' left to run to make the connection. To put in the system they need to cross a wetland and they have gotten the necessary approval for that from Game, Fish and Parks and the Army Corps of Engineers. Mr. Jibbon explained that the curb and gutter was in. Phase I is tying into an existing lift station and they went through all the calculations with DGR. The plans for this new phase have not yet been completed but a new lift station with a forced main will need to be required.

Chris Munger stated that preliminary drawings were given to the engineers but that they have never signed off on them and have not seen any final drawings prior to or after construction. The DENR does have the blueprint for the mainline. So to say the District has signed off on this Phase I project is not correct and the engineer has stated that he has not signed off on the project and neither has anyone in the district. Ms. Munger thinks things have changed drastically since it first developed.

Mr. Anderson stated that he was concerned about the direction of the discussion as it was focusing on subdivision improvements for a development that has already been platted. He presented the Planning Commission with a letter dated June 28, 2004 from J. B. Lammers of Lammers, Kleinbacker & Brown, LLP., the District's legal representatives. The letter stated that the District had approved 16 additional hook ups for Phase I.

Mick Munger, 26549 East Shore Pl., stated that he thinks the DENR is not aware that ground has been broken on the Phase I. There have been no plans submitted for integrating to the sewer system. He asserted that the District wants to work with the developer to get this done, as the District will inherit the piping.

Russ Fleming, 46258 West Shore Pl., has been on the District Board since the start. He stated that drawings were submitted to DGR and discussions occurred. Since that time the area has been grated and the original line was removed and replaced. There are two lines in the area. One is the gravity line to serve the homes. The other is a forced main which will temporarily pipe sewage out to the Hartford hard top. That needs to be addressed. That part wasn't really in the original plans.

Roger Russell, 26545 East Shore Pl., asked about notices sent out to sewer district. Commissioner South stated that the Planning Commission is not involved with the District.

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

Commissioner Steinhauer inquired about the building eligibilities available in this area. Ms. Herman

noted that she did not remember the exact number but that it is in excess of 120 building eligibilities. The petitioner could develop the lots as they were originally platted but would still need permission for the sewer hookups. With this development 78 building eligibilities will be used up.

Commissioner Steinhauer noted that this area will be developed but he does have concerns about the density, traffic on the road up to Highway 42, and the danger on the lake given the existing boat traffic. It is germane to consider traffic and boating safety and it is a land use issue. Commissioner Steinhauer stated that there clearly is some controversy with what is going on the Sanitary Board. This Board does not have the same wherewithal as some of the other agencies the Planning Commission requires approval from before construction can begin. There are still issues with the Phase I development. He continued that he did not want this to be an issue where 78 houses are approved and the District then feels pressured to let them hook up.

Citing his concerns over the density of the development, lake traffic and the sequencing of the Planning Commission's action prior to the sanitary board, Commissioner Steinhauer made a motion to defer this item until the October 23, 2006 meeting to allow the Sanitary District time to review and make a decision on the sewer hook-ups and to allow the petitioner to consider the density concerns. Seconded by Bunde. The motion to defer preliminary subdivision plan #06-02 passed unanimously.

OLD BUSINESS

The Planning Commission reviewed a proposed text amendment to limit the placement of agricultural buildings when there is no main building. A motion was made by Cypher and seconded by Rogen to place the text amendment on next month's agenda.