

**MINUTES OF THE
MINNEHAHA COUNTY PLANNING COMMISSION
August 28, 2006**

A meeting of the Planning Commission was held on August 28, 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, 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 Susie O'Hara.

APPROVAL OF THE CONSENT AGENDA

There being no objections from the Planning Commission or audience and a motion was made by Steinhauer and seconded by Bunde to approve the consent agenda (Items 1-6). The motion passed unanimously.

ITEM 1. MINUTES – July 24, 2006.

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

ITEM 2. CONDITIONAL USE PERMIT #06-57 to exceed 1200 sq. ft. of accessory building area – 1890 sq. ft. requested (720 sq. ft. existing).

Legal Description - Lot 5 Aasen's Subdivision SW1/4 in Section 31-T103N-R49W
Location - 47210 256th St. 1.5 miles northeast of Crooks
Petitioner / Owner- Ron Lind

General Information

Present zoning - A-1 Agricultural
Existing Land Use - Residential
Parcel Size - 2.32 Acres

Report by: Scott Anderson

Staff Analysis

The applicant is requesting a conditional use permit to allow for the construction of a 26' x 45' accessory structure. Currently there is an existing 720 sq. ft. garage located east of the existing single family residence. The applicant is requesting to construct an additional 1,170 sq. ft. structure for a total of 1890 square feet. On August 16, 2006, staff conducted a site visit and met with the applicant. The site for the proposed new accessory structure was staked out. The applicant indicated that he needed the new accessory structure for personal storage.

There are several larger accessory structures located in the general vicinity. There is a 2,352 sq. ft. structure located adjacent to the subject property on Lot 6, Aasen's Subdivision. In addition to this structure, there is a 2,078 sq. ft. accessory structure located at 47222 256th St. and a 3,602 sq. ft. accessory structure located at 25580 472nd Ave. and a 3,960 sq. ft. accessory structure located at 25576 472nd Avenue. The square footage of these accessory buildings exceeds the total accessory building area 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 building 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 256th Street, a township maintained road. No additional access 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 accessory building area conforms to the accessory building area existing on other properties in the area. Staff recommended approval of Conditional Use Permit #06-57 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 256th 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 area on the property shall not exceed 1890 square feet.

Based on the staff report a motion was made by Steinhauer and seconded by Bunde to approve Conditional Use Permit #06-57 with the conditions as stated. The motion passed unanimously.

ITEM 3. CONDITIONAL USE PERMIT #06-58 to amend CUP #96-08 by expanding gravel permit.

Legal Description - NE1/4 of Section 4-T102N-R51W

Location - 2 miles north of Hartford

Petitioner / Owner- Kevin Nothdurft

General Information

Present zoning - A-1 Agricultural

Existing Land Use - Agriculture / Mining

Parcel Size - 148.93 Acres

Report by: Jason Borah

Staff Analysis

The petitioner wishes to extend his current gravel pit to the north and east, potentially to expand up to those property lines, amending CUP #96-08. The land being requested will not be used in its entirety for aggregate extraction as parts of the site do not contain gravel. A site plan depicting the area to be mined must be given to and approved by the Planning Department before the operation may commence.

Staff made a site visit on August 10, 2006. A primary reason for the site visit was to determine the effectiveness of current dust control management. Lack of dust control on a haul road was the reason for the only complaint since 1996 when the original conditional use permit was granted. The problem was quickly corrected by the petitioner.

Because nothing is being changed by this conditional use amendment except for the amount of area covered, conditions will be primarily the same as they were in 1996, with a few changes.

The following are the conditions attached to approval of CUP #96-08 and all of these conditions have been properly followed by the petitioner.

- 1) *An annual fee shall be paid to the County in accordance with Section 15.14 of the zoning regulations. (Note: An annual fee of \$10 per acre of unreclaimed land is assessed to the operator.)*
- 2) *No fuel storage shall be permitted on the site.*
- 3) *All operations shall be restricted to the hours between sunrise and sunset.*
- 4) *No dewatering of the extraction area shall be permitted.*
- 5) *Dust control measures shall be employed on all haul roads.*
- 6) *The ambient air quality standards for total suspended particulate matter shall be 150 micrograms per cubic meter of air as a 24-hour average not to be exceeded more than once a year, and 60 micrograms per cubic meter of air as an annual arithmetic mean. The standards for PM¹⁰ (10 micrometers or less in size) shall be consistent with the regulations of the State of South Dakota.*
- 7) *The County Planning Department shall direct the operator to install air quality sampling stations if the above standards appear to be exceeded. Such monitoring shall be at the operator's expense.*
- 8) *The sound level from on-site operations shall not exceed an average of 55 decibels recorded over a 10 minute period measured at the nearest residence.*
- 9) *Topsoil shall remain on the site and be used in final reclamation.*
- 10) *There shall be no storage or accumulation of inoperable or discarded equipment or parts.*
- 11) *A gate shall be required at the haul road entrance to the property.*
- 12) *Reclamation shall be in accordance with the plan filed with the State. A copy of the full reclamation plan shall be filed with the Minnehaha County Planning Office.*
- 13) *The application, including the site plan submitted with the application, shall govern all other activities and operations not specifically enumerated in the above conditions.*

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.

Only two residences are within 1000 feet of the current or proposed aggregate extraction area. The proposed expansion could greatly affect the enjoyment of the neighbor to the south of the proposed expansion area. Multiple methods are available to prevent such problems from arising. The petitioner may choose to not go within 1000 feet of any residences. Or he may choose to plant trees, build a fence, build a berm, or request the neighbor sign a waiver allowing the expansion without protest.

Dust control, regardless of any other choices, will need to be used on a regular basis. Final decisions regarding buffers will need to be detailed, in-depth, on the final site plan and approved by staff before the operation may commence.

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

Surrounding land is primarily agricultural, and this expansion will not impede that use.

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

Everything needed for current aggregate extraction will suffice for the proposed expansion.

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

All vehicles visiting the site are easily accommodated for by the many acres of land beyond the actual pit and stockpiles.

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.

Dust, noise, and the visual line-of-sight of neighbors are the three primary concerns regarding the expansion. Dust will be controlled by the application of MAG water, as detailed below. Noise will be controlled by limiting the hours of operation, as detailed below. The visual impact will be dealt with by any number of options detailed prior and latter.

Recommendation

Staff recommended approval of Conditional Use Permit #06-58 with the following conditions:

- 1) An annual fee shall be paid to the County in accordance with Section 15.14 of the zoning regulations. (Note: An annual fee of \$10 per acre of unreclaimed land is assessed to the operator.)
- 2) No fuel storage shall be permitted on the site.
- 3) All operations shall be restricted to the hours between sunrise and sunset, if the petitioner remains at least 1000 feet away from all residences. If the petitioner wishes to operate within the 1000 foot range, hours of operation will follow current zoning ordinance criteria which state that the normal hours of operation for sand and gravel extraction will be weekdays 7:00 am to 6:00 pm and Saturdays from 8:00 am to noon, except legal holidays.
- 4) No dewatering of the extraction area shall be permitted.
- 5) Dust control measures shall be employed on all haul roads. Following the recommendation of the County Highway Department, MAG Water will be applied to all gravel haul roads at the rate of 0.50 gallons per square yard, once per year. If this is later deemed ineffective, staff reserves the right to increase or otherwise change dust control requirements.
- 6) The ambient air quality standards for total suspended particulate matter shall be 150 micrograms per cubic meter of air as a 24-hour average not to be exceeded more than once a year, and 60 micrograms per cubic meter of air as an annual arithmetic mean. The standards for PM¹⁰ (10 micrometers or less in size) shall be consistent with the regulations of the State of South Dakota.
- 7) The County Planning Department shall direct the operator to install air quality sampling stations if the above standards appear to be exceeded. Such monitoring shall be at the operator's expense.
- 8) The sound level from on-site operations shall not exceed an average of 55 decibels recorded over a 10 minute period measured at the nearest residence.
- 9) Topsoil shall remain on the site and be used in final reclamation.
- 10) There shall be no storage or accumulation of inoperable or discarded equipment or parts.
- 11) A gate shall be required at the haul road entrance to the property.
- 12) Reclamation shall be in accordance with the plan filed with the State. A copy of the full reclamation plan shall be filed with the Minnehaha County Planning Office.
- 13) The application, including the site plan submitted with the application, shall govern all other activities and operations not specifically enumerated in the above conditions.
- 14) If the petitioner's expansion stays at least 1000 feet away from a residence, no buffer or waiver is required. If the petitioner wishes to expand within 1000 feet of a residence, however, he must provide a buffer to lessen the expansion's effect on the enjoyment and/or property value of the affected neighbor(s). An appropriate buffer may include multiple tree lines, a tall opaque fence, a berm, or any combination of methods. The petitioner may also forgo the buffer requirement by having the neighbor(s) sign a new waiver, saying that the expansion is without protest. Regardless of method chosen, it will need to be shown or attached to the final site plan given to and approved by the planning department before the operation may commence.

Based on the staff report a motion was made by Steinhauer and seconded by Bunde to approve Conditional Use Permit #06-58 with the conditions as stated. The motion passed unanimously.

ITEM 4. CONDITIONAL USE PERMIT #06-59 to transfer one residential building eligibility.

From - NW1/4 SW1/4

To - SE1/4 (ex. H-1, 2 & 3; and ex. E. 1518.84' & Ex. Haug Steel Tr & Ex. Hauges Addn. & Ex. Dawson's Tr. & Ex. Dawson's 3rd Addn. & Ex. W480') in Section 12-T102N-R50W

Location - ¼ mile west of the I-29 Crooks exit

Petitioner / Owner- Clayton & Donna Dawson

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 just north of 258th Street (Co. Hwy 130) and ¼ mile west of the Crooks/Renner exit. The surrounding property is agricultural uses with a number of residential acreages. There are commercially and industrially-zoned sites located an 1/8 to a ¼ mile to the east at the interstate interchange.

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

There should be little impact on the surrounding properties due to the number of existing rural residences in the area. Even though there are already many residential acreages in the area, the predominant use is still agriculture. The petitioner, or the purchaser of the property, will be required to file a right-to-farm notice covenant on the property before any building permit may be issued for a home.

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

This will use the petitioner's last building eligibility in the area. As all of the remaining agricultural land in the south half of the section is owned by the petitioner, there should be no more residences constructed in this area. There is also a VOR radar site for the airport located approximately ¼ mile to the northwest of the proposed home site. Federal regulations restrict development around a VOR, particularly building placement and height, and will pose a more restrictive limit on the amount and types of development that can occur in this area.

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

The petitioner has not developed the available building eligibilities in a comprehensive manner which has resulted in a poor development pattern along the county highway. There are a number of driveways which have been developed along the highway which can result in a potential traffic hazard. While the use of shared driveways is always preferable to individual driveways along a road, the petitioner has also not planned appropriately for the placement of a driveway for the proposed residence. The proposed home would be placed immediately to the east of his existing home but the use of a shared driveway for the two homes would be difficult because of the placement of the existing drive and of the landscaping.

This problem with driveways is not limited to the property belonging to the petitioner or property formerly in his ownership, but is also found along the south side of the highway. The addition of one more driveway may not have a great impact on the traffic safety along the highway because of the existing density of drives along the roadway. The petitioner will have to discuss that matter with the county highway department. If a new driveway is to be used, written approval for that driveway should be obtained from the highway department before any permits are issued for the proposed home and before any platting of the proposed lot is completed. The petitioner should be aware that, should he purchase any property in this vicinity in the future which includes an eligibility, and desire to transfer that eligibility along the highway, he should then use a shared driveway with an existing driveway. This would require that he plan ahead if he thinks that may be a possibility in the future.

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

There would be adequate space on the property for any parking required for a residential use. No on-street parking is allowed on the county highway.

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 problems with odor, fumes, dust or noise from the allowed residential use on the site.

Recommendation

Staff finds that the proposed use is consistent with the county zoning ordinance and that the proposed use

can be accomplished in a manner that will pose little additional negative impacts in the area. Staff recommended approval of the conditional use permit # 06-59 with the following conditions:

- 1) If a new driveway is to be used, the petitioner shall work with the Minnehaha County Highway Department and obtain written permission for the proposed driveway prior to the platting of the property or the issuance of any building permit on the property.
- 2) The residential lot shall be platted and a right-to-farm notice covenant filed on the property prior to the issuance of any building permit. If a shared driveway will be required by the County Highway Department (see condition number 1) a shared access easement will have to be shown on the plat.
- 3) Because of the location of the VOR radar, the petitioner, or the purchaser of the property, shall obtain written approval from the FAA for the placement and height of any structure prior to the issuance of any building permit.

Based on the staff report a motion was made by Steinhauer and seconded by Bunde to approve Conditional Use Permit #06-59 with the conditions as stated. The motion passed unanimously.

ITEM 5. CONDITIONAL USE PERMIT #06-56 to amend CUP #06-06 by increasing the number of animals allowed at an animal shelter.

Legal Description - Lot A, Tract 1 Matzen Addition NE1/4 in Section 36-T101N-R51W
Location - 26707 466th Ave., 3 miles west of Sioux Falls
Petitioner / Owner- 2nd Chance Rescue Center, Inc.

General Information

Present zoning - C Commercial
Existing Land Use - Commercial
Parcel Size - 2.31 Acres

Report by: Pat Herman

Staff Analysis

The property is located just south of the gas station at the intersection of Highways 17 and 148. The site is zoned for commercial use and there is an existing 10,000 sq. ft. building and a 3,250 sq. ft. detached storage building. The closest residential dwellings are located on the north side of Co. Hwy 148 and approximately a ¼ mile to the west. The surrounding land use is predominately farm ground. Wild Water West is a ½ mile south of this location. Staff conducted a site visit on August 16, 2006 and met with the petitioner.

On February 27, 2006 the Planning Commission approved Conditional Use Permit #06-06 allowing an animal shelter at this location. Due to growth and demand, Second Chance Rescue is applying to increase the number of animals allowed at the shelter and to expand the area devoted to shelter operations. The shelter is currently operating out of the 10, 000 sq. ft. structure which was constructed in 1997. The building currently has cages for 66 animals and the also holds staff offices, a classroom, grooming room, wildlife room and infirmary. The current conditional use permit allows 100 animals in this building and the petitioner would like to increase that number to 118.

The petitioner would like to expand the operation into the second structure on the property, a 3,251 sq. ft. storage building. This building is large enough to accommodate an additional 82 animals as well as a bathing area and small office for animal control officers. The storage building was constructed to commercial building code standards as shown on the original plans on file with the Planning Department. Approval from the building inspector must be obtained prior to its use as a shelter. As restroom facilities are available in the main structure, no facilities will be required in this second building.

Septic system will be required for the storage building to handle the animal waste. The submitted layout plan depicts floor drains in the kennel area. The petitioner is currently exploring options for the septic system and there is sufficient land to the west or south of the building to accommodate a drainfield. A septic permit and completed inspection is required prior to use of the building.

The petitioner would also like to have an outdoor area for the dogs. This will be a large, fenced area which will allow the dogs exercise and play time. This area is not planned for construction in the immediate future. Prior to constructing the play area, the petitioner must meet with the Planning

Department to determine an appropriate size and to submit a revised site plan. The dogs should be allowed in the area only between 8:00 am and 5:00 pm.

The kennels shall be constructed to the standards of the Animal Welfare Act – Part 3, Sub-part A, Sections 3.1-3.12. There shall be no more than 150 animals on the premise at any given time. This number should only be exceeded in an emergency situation, such as the removal of animals from a puppy mill, and the Planning Department must be notified within 24 hours of the animal's arrival. The Planning Department shall issue a written statement as to the length of time the excessive animal count shall be allowed.

The animal shelter has a small animal room which house rabbits, hamsters, rats, ferrets and guinea pigs. A wild life room is equipped to handle and rehab birds or small animals such as squirrels and reptiles. Other than these small animals, no exotic animals as defined by Ordinance MC29-02 2002 Animal Control Ordinance for Minnehaha County shall be allowed. 2nd Chance Rescue must obtain all the required state permits for working with wild animals.

The office will be open from 8 a.m. to 5p.m. Monday through Saturday with the kennel area opening to the public at 10 a.m. During the summer months the shelter may also be open on Sundays. Given the shelter's location and the commercial zoning on the property, staff is not opposed to extending the operating hours to seven days a week year round.

The South Dakota Codified Law does not define nor regulate animal shelters so the responsibility for the general welfare of the animals in such facilities falls upon the County. The County Planning Department reserves the right, with 24 hours verbal notice, to enter and inspect the animal shelter. Members of the department may be accompanied by persons with training in the field of animal care.

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

There are no eligibilities for the quarter-quarter the shelter is located in. The property is located at the intersection of two well traveled highways and zoned for commercial use. The gas station to the immediate north generates more traffic, is open longer hours, and has brighter lightening than the proposed animal shelter. Approval should not impact property values in the immediate vicinity nor impede development. It is probable that additional land will be zoned for further commercial development at this intersection.

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

Access is from Highway 17 using a driveway which is shared with the gas station. The lot is hard surfaced.

There is an existing septic system with a 1700 gallon tank on the east side of the 10,000 sq. ft. building. This is sufficient to handle the waste from the restrooms and grooming areas. The dog adoption room was originally constructed with a floor drain which empties into a 2000 gallon holding tank. Pumping of this tank will be handled by A-1 Septic. Waste from the cats and other animals will be collected and disposed of with other garbage in accordance with the Solid Waste Ordinance. A septic permit and completed inspection is required prior to use of the storage building as a shelter facility.

There is a ground mounted sign on the east side of the property which is utilized by the petitioner.

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

There are 27 parking spaces available for customer parking on the north side of the lot. Employee and volunteer parking would be on the west end of the lot where there is space available for at least 10 vehicles. This exceeds the 30 spaces which are required by the Zoning Ordinance. Two handicapped spaces are required.

4) 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 existing lighting is of a shoe box design. Any additional lighting should meet the same design

Staff Analysis

The County Planning Department is proposing a text amendment to the A-1 Agricultural and R/C Recreation/Conservation Districts of the Zoning Ordinance. The text amendment focuses on the allowance of agricultural/storage buildings. In both districts agriculture is a permissive use. The permissive use section, titled as follows, allows for a building or premises to be used for agriculture.

3.02 & 9.02 PERMISSIVE USES. A building or premises shall be permitted to be used for the following purposes in the A-1 Agricultural District

It has been the practice of the Planning Department to deny the issuance of a building permit for a storage building on bare ground unless the property was 40 acres or larger and the building was to be used for agricultural purposes. Many of the applicants applying for a storage building, farm property in abundance of 160 acres or run feeding and dairy operations. In this instance the building is needed for agricultural purposes.

As the population of the County has grown, there has been an increase in the number of applications for storage buildings in the rural area. There are numerous requests from people who have purchased lots of 10 acres or less for a house but wish to have a storage building on the property until such time as they are ready to begin construction, be it in 6 months or 3 years. For those properties clearly intended for residential use, the ordinance is absolute in prohibiting a storage/accessory building until the main building, the house, is under construction.

The issue becomes cloudy in dealing with large parcels in the 20-35 acre range. The Planning Department is faced with numerous claims as to how the storage building will be used for agricultural purposes. Typically, a landowner will apply to put up a storage building for their own property – a boat, RV, cars etc. When told that a personal storage building is not allowed, land owners then claim a storage building is needed for their horses, but after construction horses never appear on the property. Other property owners have claimed they are hay farmers but only produce two bales a year. Storage buildings on bare ground are an enforcement issue for the County as the buildings are rented out like storage units or for commercial businesses. Both of these uses, storage units and a commercial business such as automotive repair, require commercial zoning.

In consultation with the Office of the State's Attorney, it was determined that the public would be better served if the zoning ordinance clearly specified when an agricultural storage building was allowed. The underlined text would be added to both the A-1 Agricultural and RC Recreation/Conservation Districts.

3.02 & 9.02 PERMISSIVE USES. A building or premises shall be permitted to be used for the following purposes in the A-1 Agricultural District:

- (a). Agriculture. A building for the storage of agricultural equipment or products shall be allowed provided the following conditions have been met:
- 1) Ownership of contiguous parcel(s) of not less than forty (40) acres.
 - 2) The property's principal use is devoted to agriculture.
 - 3) At least 33.33 percent of the total family gross income of the owner is derived from the pursuit of agriculture.

Allowing contiguous properties to be combined to equal 40 acres takes into account those parcels which may be divided by roads, rivers, railroads or other obstructions which would cause the property to be recorded as separate legal descriptions. The figure for the third requirement, gross family income, is duplicated from the state regulations used to define land for agricultural tax purposes. This regulation is already used by the County Equalization Office.

Any property owner who cannot satisfy the specified requirements does have grounds for appeal. As this is a permitted use, the owner would have to submit an application for an appeal of an administration

decision and appear before the Zoning Board of Adjustment.

Recommendation

The Planning Department believes zoning text amendment #06-22 will assist the public in determining the placement of agricultural used storage buildings and recommended approval of the amendment.

Based on the staff report a motion was made by Steinhauer and seconded by Bunde to recommend approval of zoning text amendment #06-22. The motion passed unanimously.

There were no items on the regular agenda and with a motion from Steinhauer and seconded by Bunde the meeting was adjourned.