

**MINUTES OF THE
MINNEHAHA COUNTY PLANNING COMMISSION
January 22, 2007**

A meeting of the Planning Commission was held on January 22, 2007 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, and Wayne Steinhauer.

STAFF PRESENT: Scott Anderson, and Pat Herman - County Planning

The meeting was chaired by Don South.

JOINT PLANNING COMMISSION

The Dell Rapids Planning Commission joined the meeting for a public hearing on Item 1. Members present – Bob Davis, Roger Dearduff, Darrel Donelan, Dale Dunn, Chair Bob Lamberty, Chris Mullaney, and Larry Skatvold.

ITEM 1. CONDITIONAL USE PERMIT # 07-04 to allow the brokerage, sale, and repair of vehicles.

Legal Description - Lot 6 Block 1 Dell Rapids Industrial Park Addition SE1/4 in Section 12-T104N-R50W
Location - 24599 472nd Ave. 2 miles east of Dell Rapids
Petitioner / Owner- Lee Burggraff

General Information

Present zoning - I-1 Light Industrial
Existing Land Use - Vacant
Parcel Size - 0.89 Acres

Report by: Pat Herman

Staff Analysis

The site is on the east end of the Dell Rapids Industrial Park located at the intersection of I-29 and Highway 115. This property is zoned I-1 Light Industrial, as are all the other properties located within the industrial park. Properties to the north, south, and east are zoned A-1 Agricultural, and to the southwest and far west there is land zoned for commercial uses.

The conditional use permit is to allow the brokerage, sale, and repair of vehicles. The vehicles involved will predominately be automobiles and trailers, but can also include boats, motorcycles or other transportation devices.

The petitioner plans to construct a 6,000 sq. ft. (50 x 120) building. A wash bay will be located on the north end of the building where the offered vehicles will be detailed. There are no plans to do major repair work at this site but there may be some minor repairs preformed. A set of plans for the building, including the wind and snow loads, must be submitted to the Building Inspector for approval prior to the issuance of a building permit.

The majority of the building will be used as a display room for the offered vehicles. Some vehicles, such as large trailers, will be displayed on the lot. Those vehicles shall only be displayed on a paved or graveled area. As required by the Public Nuisance Ordinance, all vehicles stored outside must be currently licensed and operable. No outside storage of any parts, materials, inoperable or unlicensed vehicles should occur.

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

The proposed use is compatible with those businesses in existence within the industrial park and the property is zoned to allow commercial and light industrial uses.

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

The use should have no negative effect on the surrounding vacant property.

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

The site will be accessed from 472nd Ave., the gravel township road which abuts the east end of the industrial park. The protective covenants for the industrial park do not require that access come from Industrial St., the interior road which fronts all twelve lots in the development. If access were taken from Industrial St., the petitioner would be required to hard surface all parking and driving areas as Industrial St. itself is hard surfaced. The Zoning Ordinance does not mandate hard surfacing for those properties taking access from a gravel road (472nd Ave). The petitioner has stated that he may hard surface the driveway and part of the designated parking area. Because 472nd Ave. intersects with Hwy 115, the driveway approach onto 472nd Ave. needs to be a minimum of 100 feet north of the southeast property corner.

The wash bay will be drained into a holding tank and a septic system will be used for all waste. As the property is zoned for industrial use, both the holding tank and septic system must be approved by the State prior to the issuance of a septic permit by the County.

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

The Zoning Ordinance requires that 20 parking spaces be provided for a building this size. The submitted site plan shows a parking area that is more than adequate for the site. No off-street parking should occur.

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.

All lighting shall be of a shoebox style design, directing light downward onto the property. No light spillage shall occur beyond the perimeter of the property. The proposed use of the property should not generate odor, fumes, dust, noise, and vibration to the extent that they would constitute a nuisance.

Recommendation

Staff found the requested use to be compatible with the surrounding land use and consistent with the I-1 Zoning District and recommended approval of Conditional Use Permit #07-04 with the following conditions:

- 1) The use of the property shall be the brokerage, sale, and repair of vehicles.
- 2) The property shall conform to the submitted site plan dated November 30, 2006 unless otherwise here noted.
- 3) The driveway approach onto 472nd Ave. shall be located a minimum of 100 feet north of the southeast property corner.
- 4) All vehicles displayed outside the building shall be licensable and operable. No parts, materials, or inoperable vehicles shall be stored outside.
- 5) All lighting shall be of shoe-box style design, directing light downward onto the property. No light spillage shall occur off the property.
- 6) All signs shall conform to the requirements of the Joint Zoning Ordinance and the required building permit shall be obtained.

Public Testimony

Commissioner Lamberty wondered if the covenants for the industrial park had accidentally omitted a requirement restricting access to Industrial Street. Commissioner Steinhauer suggested adding a condition that any access taken from Industrial St. onto this property must be hard surfaced. Other Commission members concurred.

The petitioner, Lee Burggraff, stated that he would like to keep the driveway on the south end on the property. It currently is 120' from the highway pavement, and he noted that there is a 200' right-of-way for Highway 115. The current location of the driveway is on the high spot and then the land slopes downhill as it goes to the north. Mr. Burggraff explained because of the way he had to sit the building on the property, access needs to come from 472nd Ave. To start with the parking areas will be paved and he eventually has plans to pave the driveway, just not at this time.

In response to Commissioner Donelan, Mr. Anderson explained that the AASHTO (American Association of State Highway and Transportation Officials) standards call for a set back of 230' from an intersection. To allow for proper stacking of vehicles the driveway should be placed as far back from the intersection as possible. There is always the possibility that the highway could be widened, so the highway right-of-way, not just the pavement, is the appropriate place to figure a required setback from.

Commissioner Lamberty asked in Mr. Burggraff had approached Burk Township about the driveway. Mr. Burggraff wondered why he would need to bother with that. The members of both Commissions agreed that the Township needed to be contacted regarding any requirements, such as a culvert, for the driveway approach.

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

Commissioner Steinhauer stated that the recommended set back for the driveway was appropriate to allow for adequate car stacking.

Commissioner Lamberty mad a motion to include a condition that Burk Township be required to approve the driveway approach. The motion died for a lack of second.

Based on the staff report and public testimony, a motion was made for the City by Lamberty and seconded by Davis to approve Conditional Use Permit #07-04 with the following conditions:

- 1) The use of the property shall be the brokerage, sale, and repair of vehicles.
- 2) The property shall conform to the submitted site plan dated November 30, 2006 unless otherwise here noted.
- 3) The driveway approach onto 472nd Ave. shall be located a minimum of 100 feet north of the southeast property corner.
- 4) All vehicles displayed outside the building shall be licensable and operable. No parts, materials, or inoperable vehicles shall be stored outside.
- 5) All lighting shall be of shoe-box style design, directing light downward onto the property. No light spillage shall occur off the property.
- 6) All signs shall conform to the requirements of the Joint Zoning Ordinance and the required building permit shall be obtained.
- 7) Any access/driveway taken from Industrial St. must be hard surfaced.

The motion passed unanimously. Same motion for the County by Steinhauer and seconded by Cypher. The motion passed unanimously.

ZONING BOARD OF ADJUSTMENT

A motion was made by Cypher and seconded by Bunde to convene as the Board of Adjustment. The motion carried unanimously.

ITEM 2. VARIANCE # 07-01 to allow a 26' front yard setback (50' required).

Legal Description - N452' E645' NE1/4 NE1/4 in Section 26-T103N-R50W

Location - 25405 471st Ave.. 2.5 miles north of Crooks

Petitioner / Owner- Fiegen Construction / West Nidaros Lutheran Church

General Information

Present zoning - A-1 Agricultural

Existing Land Use - Church

Parcel Size - 6.7 Acres

Report by: Scott Anderson

Staff Analysis

The applicant is requesting a variance to reduce the minimum setback from a section line from 50 feet to 20 feet. The subject property is located at the intersection of County Highway 122 and 471st Avenue. The applicant is requesting the variance in order to construct a multi-purpose addition to the south of the existing structure.

1) That specific circumstances or conditions, such as exceptional narrowness, topography, or siting, exist.

The West Nidaros Church was originally constructed in 1911. The church was located on the property prior to the adoption of any county zoning regulations. Furthermore the church is limited in its ability to build on to the west as the cemetery is in this location. The church is now requesting to construct a large addition on the east and south sides of the church. There would be no further encroachment past the existing east side of the structure. The existing single family residence and attached garage will need to be moved or demolished for the proposed addition.

In 2001, the Zoning Board of Adjustment approved Variance #01-05. This variance reduced the setback along 471st Avenue to 37 feet. The original location of the 1911 portion of the church met the fifty (50) setback requirements. The 2001 variance allowed a new addition to be constructed with 37 feet of the east property. The addition was constructed and located only 26 feet from the east property line. Staff is extremely disappointed that the reduced variance approved in 2001 was not met. The applicant further encroached into the setback by eleven (11) feet. This variance would correct that oversight and allow the addition to be constructed. The applicant must, however, make sure that the reduced setback of 26 feet is strictly observed.

2) That the Variance does not grant a use which is otherwise excluded from that particular district, or diminish or impair property values within the area.

The requested Variance would not allow a use otherwise excluded from the district.

3) That due to the specific circumstance or existing conditions strict application of the Zoning Ordinance would be an unwarranted hardship.

The only minor hardship that would exist should the requirements of the Zoning Ordinance be strictly followed would be that any addition to the church would be off-set by nearly 25 feet from the main structure. This may not allow for maximum use of the site.

4) That the granting of a Variance is not contrary to the public interest and is in harmony with the general purposes and intent of the Zoning Ordinance.

The proposed addition and subsequent need for a reduced setback does not harm the public. Furthermore, staff finds that a reduced setback would be in harmony with the general purpose and intent of the Zoning Ordinance. The church is a quasi public place and the proposed addition will serve the general community.

Recommendation

Staff recommended approval of Variance #07-01 to reduce the setback on a section line road from 50 feet to 26 feet.

Public Testimony

The petitioner, David Van Nieuwenhuyzen with Fiegen Construction, explained that they had discovered the problem when doing the survey work for the new addition. From the property line, the front face of the building is 32' and the entry way is 26 feet. The new addition, because the existing building is set at a slight angle to the property line, will align with the entry way.

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

Based on the staff report and public testimony, a motion was made by Bunde and seconded by O'Hara to approve Variance #07-01. The motion passed unanimously.

APPROVAL OF THE CONSENT AGENDA

A motion was made by Bunde and seconded by Rogen to reconvene as the Planning Commission. The motion passed unanimously.

The Planning Staff requested that Items 6 & 8 be placed on the regular agenda. A motion was made by Steinhauer and seconded by O'Hara to approve the consent agenda (Items 6 & 8 removed). The motion passed unanimously.

ITEM 3. MINUTES – November 27, 2006

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

ITEM 4. CONDITIONAL USE PERMIT # 06-75 to exceed 1200 sq. ft. of accessory building area (1712 sq. ft. existing, 2040 sq. ft. requested, 3752 sq. ft. total).

Legal Description - Tr. 8 O'Rancho Tracts SE1/4 of Section 31-T101N-R50W

Location - 26753 467th Ave. 3 miles west of Sioux Falls
Petitioner / Owner- Mike Headrick

General Information

Present zoning - A-1 Agricultural
Existing Land Use - Residential
Parcel Size - 11.5 Acres

Report by: Phil Kappen

Staff Analysis

This item was first placed on the November, 2006 agenda. It was deferred at that time because the petitioner had not mailed out the required notification to the neighbors. The petitioner recently requested that this item be withdrawn.

No action needs to be taken on this item.

ITEM 5. CONDITIONAL USE PERMIT # 07-01 to allow automotive repair.

Legal Description - Lot 4 Block 4 Brower 4 Addition in Section 27-T102N-R51W
Location - 26062 Ashley St. Unit 12 south edge of Hartford
Petitioner / Owner- Steve Neitzert / Allan Stockwell

General Information

Present zoning - I-1 Light Industrial
Existing Land Use - Industrial
Parcel Size - N/A

Report by: Phil Kappen

Staff Analysis

The subject property is located in the northeast portion of the Brower Addition, a commercial/industrial subdivision located in the southeast quadrant of the Hartford exit on I-90. All surrounding properties are vacant commercial/industrial lots. Two buildings have been constructed on the property with sections for various businesses. This application, for unit 12 in the buildings (fourth unit from the north in the west building), is to allow automotive repair.

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 primary impact on surrounding properties from automotive repair facilities is often the outside storage of parts, scrap, or damaged vehicles. The petitioner has indicated that there will be no outside storage on the property. They have also not filed a site plan, which is a requirement when outside storage is planned, so there is no designated area where outside storage could be allowed in the future.

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

There should be little impact on the development of surrounding properties from the proposed use. All activities and storage must be maintained within the building. No outside storage can be allowed.

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

The Environmental Protection Agency rules prohibit the drainage of a floor drain in an area where automobiles are stored or repaired from entering into a septic system with a drain field. The petitioner plans on using a holding tank, which must be pumped for proper disposal at a treatment plant. This is allowable under the EPA requirements and under Minnehaha County Septic regulations.

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

Unit 12 has 1800 sq.ft. of area. The zoning ordinance requires 1 parking space for every 300 sq.ft. of

floor area. The petitioner will, therefore, have to provide a minimum of 6 parking spaces for the business.

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.

All repair activities and storage must be maintained inside the building. This will aid in preventing impacts from the use. All signage must comply with the zoning ordinance requirements. All outside lighting should be of a shoebox style that directs light downward.

Recommendation

Staff finds that the proposed use is consistent with the types of uses found in a commercially or industrially-zoned site and that the use can be made to conform with the uses on surrounding properties through the use of appropriate conditions. Staff, therefore, recommended approval of conditional use permit # 07-01 with the following conditions:

1. The use shall be limited to automotive repair with no outside storage of parts, materials, scrap, or damaged or inoperable vehicles.
2. All outside lighting shall be of a shoebox style that directs light downward and prevents light spillage beyond the boundaries of the property.
3. All wastewater shall be contained in a holding tank to be pumped for proper disposal at a public wastewater treatment plant.

Based on the staff report, a motion was made by Steinhauer and seconded by O'Hara to approve conditional use permit #07-01 with the conditions as stated. The motion passed unanimously.

ITEM 6 was placed on the regular agenda.

ITEM 7. CONDITIONAL USE PERMIT # 07-03 to allow automotive repair.

Legal Description - Lot 4 Block 4 Brower Addition in Section 27-T102N-R51W

Location - 26062 Ashley St. Unit 3 south edge of Hartford

Petitioner / Owner- Reginald Zylstra / Allan Stockwell

General Information

Present zoning - I-1 Light Industrial

Existing Land Use - Industrial

Parcel Size - N/A

Report by: Phil Kappen

Staff Analysis

The subject property is located in the northeast portion of the Brower Addition, a commercial/industrial subdivision located in the southeast quadrant of the Hartford exit on I-90. All surrounding properties are vacant commercial/industrial lots. Two buildings have been constructed on the property with sections for various businesses. This application, for unit 3 in the buildings (third unit from the north in the west building), is to allow automotive repair. The petitioner indicates that he would repair his own vehicles and not do work for the general public.

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 primary impact on surrounding properties from automotive repair facilities is often the outside storage of parts, scrap, or damaged vehicles. The petitioner has not filed a site plan, which is a requirement when outside storage is planned, so there is no designated area where outside storage could be allowed in the future.

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

There should be little impact on the development of surrounding properties from the proposed use. All activities and storage must be maintained within the building. No outside storage can be allowed.

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

The Environmental Protection Agency rules prohibit the drainage of a floor drain in an area where automobiles are stored or repaired from entering into a septic system with a drain field. The building is served by a holding tank, which must be pumped for proper disposal at a treatment plant. This is allowable under the EPA requirements and under Minnehaha County Septic regulations.

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

Unit 3 has 1800 sq.ft. of area. The zoning ordinance requires 1 parking space for every 300 sq.ft. of floor area. The petitioner will, therefore, have to provide a minimum of 6 parking spaces for the business.

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.

All repair activities and storage must be maintained inside the building. This will aid in preventing impacts from the use. All signage must comply with the zoning ordinance requirements. All outside lighting should be of a shoebox style that directs light downward.

Recommendation

Staff finds that the proposed use is consistent with the types of uses found in a commercially or industrially-zoned site and that the use can be made to conform with the uses on surrounding properties through the use of appropriate conditions. Staff, therefore, recommended approval of conditional use permit # 07-03 with the following conditions:

1. The use shall be limited to automotive repair with no outside storage of parts, materials, scrap, or damaged or inoperable vehicles.
2. All outside lighting shall be of a shoebox style that directs light downward and prevents light spillage beyond the boundaries of the property.
3. All wastewater shall be contained in a holding tank to be pumped for proper disposal at a public wastewater treatment plant.

Based on the staff report, a motion was made by Steinhauer and seconded by O'Hara to approve conditional use permit #07-03 with the conditions as stated. The motion passed unanimously.

ITEM 8 was placed on the regular agenda.

ITEM 9. CONDITIONAL USE PERMIT # 07-07 to transfer two residential building eligibilities.

From - NE1/4 SW1/4 and SE1/4 SW1/4 in Section 28-T101N-R48W

To - SW1/4 SW1/4 in Section 28-T101N-R48W

Location - 5 miles south of Valley Springs

Petitioner / Owner- Stewart D. Smith

General Information

Present zoning - A-1 Agricultural

Existing Land Use - Agriculture

Parcel Size - 40 Acres

Report by: Pat Herman

Staff Analysis

This petitioner is a request to transfer two residential building eligibilities. The property is located approximately five miles south of Valley Springs. The dominate land use in the area is agriculture. The receiving quarter-quarter has an existing farmstead. Transferring the building eligibilities will allow the addition of two more dwelling units in this quarter-quarter. There are no confined animal feeding operations in the immediate area.

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

Transfer of the building eligibilities should not negatively affect property values or existing uses in the

area. This request does not increase in the number the housing units allowed by the Zoning Ordinance.

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

The transfer moves the building eligibilities from productive farm ground.

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

Both eligibilities will take access from township roads. Valley Springs Township does not require driveway permits.

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

There is sufficient area available for all parking requirements associated with single family dwellings.

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.

A single family dwelling should not generate odor, fumes, dust, noise, vibration and lighting as to constitute a nuisance.

Recommendation

Staff found the request to be in conformance with density zoning and recommended approval of conditional use permit #07-07 with the following condition:

The lots shall be platted and a right-to-farm notice covenant filed on the deed of each lot prior to the issuance of a building permit.

Based on the staff report, a motion was made by Steinhauer and seconded by O'Hara to approve conditional use permit #07-07 with the condition as stated. The motion passed unanimously.

ITEM 10. CONDITIONAL USE PERMIT # 07-06 for a Class 1 Home Occupation – farm equipment repair.

Legal Description - Tract 1 Burkhart's Addition NW1/4 of Section 2-T104N-R48W
Location - 24406 482nd Ave. 6.5 miles east of Dell Rapids
Petitioner / Owner- John Narigon

General Information

Present zoning - A-1 Agricultural
Existing Land Use - Residential
Parcel Size - 7.27 Acres

Report by: Scott Anderson

Staff Analysis

The applicant is seeking a conditional use permit to allow for a Class 1 home occupation. The applicant is currently operating a farm tractor and combine repair business without the necessary conditional use permit. Staff conducted a site inspection on January 8, 2007. The applicant was at the site and provided a tour of the repair facility. Staff indicated that a conditional use permit was needed prior to operation of the business. Staff indicated that because the use had commenced prior to obtaining the required conditional use permit, he would have to pay a \$250.00 penalty as stated in Section 24.05 of the Zoning Ordinance. Staff will include the payment of the penalty in the recommended conditions of approval.

The subject property is located just south of the county line between Minnehaha and Moody Counties. The driveway is a short distance, approximately 300 feet off of a paved highway, County Highway 113. The driveway into the site appeared to need gravel. Staff will recommend that a minimum of two (2) inches of gravel be placed on the driveway and parking area in order to prevent mud from being tracked out into the township road and County Highway 113.

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.

All of the property in the immediate vicinity is zoned A-1 Agriculture and used in an agricultural nature. The home occupation is providing a service to the agriculture operators in the area. The proposed use

should not impact the property values in the area, provided the applicant keeps the subject property clean, properly disposes of un-needed parts, tires and junk and limits the number of farm implements being held for pick up before and after repairs. Screening would not serve to hide the equipment due to their size. Staff recommends that not more than five (5) pieces of agricultural implements be kept outside of the shop; and that all implements dropped off for repair or having been repaired shall not sit outside of the shop for more than one (1) week.

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

The proposed Conditional Use Permit should not impact the agricultural nature of the surrounding properties.

The applicant may not change the outside appearance of the residence to indicate any business activity. The proposed home occupation will have minimal impact on the development and improvement of any vacant properties in the area.

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

482nd Avenue provides access to the site. The portion of the road in front of the subject property is in fair condition. No new roads will be needed to access the site. All required utilities exist to the single-family residence. Staff observed the parking area and driveway were both lacking adequate gravel. Staff recommends that by July 1, 2007 that applicant place at least two (2) inches of gravel in the parking area and the driveway from 482nd Avenue to the parking area.

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

The applicant must provide one (1) off-street parking space for the existing single-family residence and should provide two (2) off-street parking spaces in front of the building to be used for the home occupation. Staff's inspection of the site found that 6-8 parking spaces are available.

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 applicant has indicated that the business conducted on the property will consist of a tractor and combine repair business. The repairs of machinery will take place within an enclosed structure located on the property and the traffic to and from the site is limited; the home occupation should create little of the above-listed elements in amounts that would constitute a nuisance.

The requested use does not meet all of the general guidelines of Section 12.0302 of the Major Home Occupation portion of the Zoning Ordinance. The applicant will be utilizing more than 750 square feet of an accessory structure. Given the nature of the repair business, it would be very difficult to work on large machinery in a small space. The applicant has indicated that a 40 foot by 80 foot structure will be used. Staff recommends that the applicant be limited to 3200 square feet of area to be used for the business. Furthermore, no outdoor storage is allowed. Staff has addressed this by not allowing permanent outdoor storage, but allowing some temporary storage of equipment that has been dropped off for repair or equipment that has been recently repaired. This meets the intent of the Zoning Ordinance.

Recommendation

Staff recommended approval of Conditional Use Permit #07-06 to allow a farm equipment repair business as a Class 1 home occupation with the following conditions:

- 1) That no alteration to any building shall indicate from the exterior that the building is being utilized in whole or in part for any purpose other than a residential or agricultural use.
- 2) That the applicant be limited to one (1) non-illuminated wall sign, which shall not exceed two (2) square feet and one (1) non-illuminated free-stranding sign, which shall not exceed four (4) square feet each in area for the home occupation. A Sign Permit shall be obtained prior to the installation of any sign.
- 3) That the employees of the home occupation shall be limited to residents of the dwelling and up to two

- (2) non-resident employees, not to exceed four (4) employees on site.
- 4) That the applicant obtains a Sales Tax License.
- 5) That a minimum of one (1) smoke detector be installed in the shop area.
- 6) That prior to January 29, 2007, John Narigon pays a \$250 penalty for conducting a home occupation prior to obtaining approval from the County.
- 7) That no more than five (5) pieces of agricultural implements be kept outside of the shop; and that all implements dropped off for repair or having been repaired shall not sit outside of the shop for more than one (1) week.
- 8) That the area used for the repair shop not exceeds 3200 square feet.
- 9) That no junk, scrap iron, parts, tires or any other items that could constitute a nuisance be kept outside of the 3200 square foot shop area.

Based on the staff report, a motion was made by Steinhauer and seconded by O'Hara to approve conditional use permit #07-06 with the conditions as stated. The motion passed unanimously.

ITEM 11. CONDITIONAL USE PERMIT # 07-08 to transfer one residential building eligibility.

From - NW1/4 SE1/4 of Section 35-T101N-R48W
To - SE1/4 SW1/4 of Section 35-T101N-R48W
Location - 48248 268th St. 1.5 miles south of Rowena
Petitioner / Owner- Earl Grimmus

General Information

Present zoning - A-1 Agricultural
Existing Land Use - Agricultural
Parcel Size - 137.48 Acres

Report by: Pat Herman

Staff Analysis

The site is located approximately 1.5 miles south of Rowena and five miles east of Sioux Falls. The surrounding land use is agricultural with some rural acreages. The petitioner is requesting a transfer of one residential building eligibility.

In October 2006 the petitioner obtained a building permit for a 54 x 105 machine shed for this property. The County Planning Office received several complaints about the structure being placed on this property. After inspecting the site, the petitioner was contacted concerning the use of the building. Mr. Grimmus explained that after the original building permit was taken out, a decision was made to redesign part of the building as living quarters. The original building eligibility assigned to this quarter-quarter had been transferred several years ago, so the petitioner must transfer another eligibility from adjoining property to this site. Because construction of the dwelling was started prior to approval of the transfer, the conditional use permit fee was doubled.

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.

Transfer of the building eligibilities should not negatively affect property values or existing uses in the area. This request does not increase in the number the housing units allowed by the Zoning Ordinance.

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

The transfer should not effect the development of the surrounding properties.

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

Access is from County Highway 148 and an existing approach is used.

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

There is sufficient area available for all parking requirements associated with single family dwellings.

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.

A single family dwelling should not generate odor, fumes, dust, noise, vibration and lighting as to constitute a nuisance.

The transfer of the eligibility is not being requested for development purposes so staff is not requiring the property to be platted.

Recommendation

Staff found the request to be in conformance with density zoning and recommended approval of conditional use permit #07-08.

Based on the staff report, a motion was made by Steinhauer and seconded by O'Hara to approve conditional use permit #07-08 with the conditions as stated. The motion passed unanimously.

ITEM 12. SUBDIVISION ORDINANCE VARIANCE # 07-02 to reduce the required 50' ROW dedication to 45 feet.

Legal Description – West Nidaros Lutheran Church Addition (Tract 1) NE1/4 NE1/4 in Section 26-T103N-R50W
Location - 25405 471st Ave. 2.5 miles north of Crooks
Petitioner / Owner- Jim Dunlap / West Nidaros Lutheran Church

General Information

Present zoning - A-1 Agricultural
Existing Land Use - Church
Parcel Size - 6.7 Acres

Report by: Scott Anderson

Staff Analysis

The applicant is requesting to waive the right-of-way requirement as outlined in Section 8.02(A) of the Minnehaha County 1993 Revised Subdivision Ordinance. This section requires road designated as an arterial or collector road to have a 100 foot dedicated right-of-way. The County has an adopted Major Street Plan that indicates County Highway 122(254th Street) as a collector road. When property is being platted or re-platted the applicant must provide any additional right-of-way needed to meet the minimum 100 foot width. This typically requires 17 feet of additional right-of-way to be provided on each side of the road.

The church has obtained additional property and is platting the newly acquired land with the land already owned into one (1) new lot. The applicant is requesting to waive the requirement of dedicating or reserving the additional 17 feet of right-of-way. Section 2.02 of the Subdivision Ordinance states that when due to unusual conditions that strict application of the Subdivision Ordinance would result in difficulties, substantial hardship, or injustice, the Planning Commission may recommend and the County Commission approve modifications to the Subdivision Ordinance.

In this situation, the church cemetery is located in the portion of land that would need to be dedicated for the additional right-of-way. The overall right-of-way of 90 feet has been secured. This additional right-of-way was obtained along the north side of County Highway 122 and will not impact the church cemetery.

Staff can support the request to waive the requirement to provide a 100 foot right-of-way. The applicant has demonstrated an existing condition that would constitute a hardship if the requirements were strictly applied. The County Highway has indicated to staff that the existing 90 foot of right-of-way is sufficient along this short section of road.

Recommendation

Staff recommends **approval** of Subdivision Ordinance Variance #07-02 to waive requiring a 100 foot right-of-way along County Highway 122(254th Street).

Based on the staff report, a motion was made by Steinhauer and seconded by O'Hara to recommend approval of Subdivision Ordinance Variance #07-02. The motion passed unanimously.

REGULAR AGENDA

A motion was made by Steinhauer and seconded by O'Hara to approve the regular agenda with the addition of Items 6 & 8.

ITEM 6. CONDITIONAL USE PERMIT # 07-02 to allow a storage unit.

Legal Description - Lot 4 Block 4 Brower Addition in Section 27-T102N-R51W

Location - 26062 Ashley St. Unit 1 south edge of Hartford

Petitioner / Owner- Doug Chase / Allan Stockwell

General Information

Present zoning - I-1 Light Industrial

Existing Land Use - Industrial

Parcel Size - N/A

Public Testimony

Ms. Herman noted that the petitioner failed to complete the required mail notification of the surrounding property owners and recommended that this item be deferred to the next meeting.

A motion was made by and seconded by to defer conditional use permit #07-02 to the February 26 meeting. The motion passed unanimously.

ITEM 8. CONDITIONAL USE PERMIT # 07-05 to allow mini storage units.

Legal Description - McBeth Tract 1A NE1/4 & SE1/4 in Section 27-T101N-R48W

Location - 48183 Hwy 42 1/4 mile east of Rowena

Petitioner / Owner- Dennis Tilden

General Information

Present zoning - C Commercial

Existing Land Use - Commercial

Parcel Size - 2.0 Acres

Report by: Pat Herman

Recommendation

The site plan which was submitted for this application was not representative of the amount of space available for development. The proposed location for the storage units would also eliminate the parking spaces which are required for the commercial business (Tilden Carpet) which is already in operation on this lot. On January 4, 2007, Pat Herman spoke with the applicant concerning these issues and suggested that the item be deferred for one month. Mr. Tilden agreed with requesting a deferral as this would allow him time to re-evaluate his plans for the mini storage units.

Staff recommended that conditional use permit #07-05 be deferred to the February 26, 2007 meeting.

A motion was made by and seconded by to defer conditional use permit #07-02 to the February 26 meeting. The motion passed unanimously.

ITEM 13. CONDITIONAL USE PERMIT # 06-65 999 animal unit concentrated animal feeding operation for beef cattle.

Legal Description - S1/2 NW1/4 & N1/2 SW1/4 in Section 27-T103N-R50W

Location - 2 miles northwest of Crooks

Petitioner / Owner- Scott Swanson

General Information

Present zoning - A-1 Agricultural

Existing Land Use - Agricultural

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 469th Avenue and 1/2 mile north of 255th Street. The surrounding property is all in agricultural uses. There are scattered residential acreages located approximately one-half mile to the north and northeast, approximately 3/4 mile to the east.

The proposed location of the feeding operation is not within a Water Source Protection Area and lies outside of any designated flood plains.

The petitioner had a different application which was heard by the Planning Commission in June of this year. That petition was approved by the Planning Commission but was denied upon appeal to the County Commission. The present application is substantially different, partly because that the proposed location of the facility has been moved to the north, but primarily because the current proposal is for a confinement facility with the animals inside buildings rather than being contained in an open lot as in the previous petition.

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 petitioner proposes the construction of a 999 animal unit (999 beef cattle) feeding operation. This would be a confinement facility with the animals confined within two buildings.

The target setback criteria distance for a CAFO of this size is 1980 feet (3/8 mile). There are no homes other than the property owner's located within that criteria distance. There are existing trees on the east side of the proposed animal facility and the petitioner proposes to plant trees north and west of the proposed site.

The trees around the proposed CAFO area will aid in the dispersal of potential odors. The topography also provides a barrier between the closest home to the southwest (approximately 2100 feet) and the proposed CAFO as there is a ridge between the two sites. The petitioner will also utilize diets for the livestock balanced to aid in odor control. The use of a stacking pad for the animal waste (with runoff from the pad directed into a holding pond) will allow the waste to crust over and remain drier which reduces the potential for odor.

Pest control will initially be accomplished through the use of spray insecticides within the facility. Other options that may be employed include ear tags and feed additives. Dead animals will be removed from the property by a rendering company in accordance with state regulations.

Staff has sent a notice of the Planning Commission meeting on this item to all property owners within 1/2 mile of the two half-quarters (N1/2 SW1/4 and S1/2 NW1/4 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 469th 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 flows along the southwest portion of the site. The petitioner proposes a grading system that will direct any contaminated runoff from the site into a holding pond to prevent it from entering the drainageway. The State Department of Environment and Natural Resources requires

that a holding pond hold all contaminated water and that any clean water be diverted around the facility. DENR standards prohibit any contaminated runoff from the site. The feed storage area is proposed to be covered to prevent contaminated runoff from that portion of the site.

The facility should be fully permitted by the State of South Dakota. The State permitting process will require that the waste containment facilities be fully designed by a licensed professional engineer and receive specific approval from the State. Copies of any approval forms from the state should be supplied to the Minnehaha County Planning Office.

State permitting also requires that all waste be managed through a nutrient management plan that includes provisions for both nitrogen and phosphorus. A copy of an executive summary of the approved nutrient management plan should be filed with the planning office. The plan should also show that all liquid wastes are to be injected into the ground and that all semi-solid or solid waste are to be incorporated within 24 hours of application.

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 469th 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.

Pests will be controlled through the use of standard methods approved by South Dakota State University.

The use of buildings will also reduce the potential for odor as the area where the animals will be located will not be open to the weather. The use of buildings will also reduce the amount of extraneous water which must be treated. Water from the roofs of the buildings may be diverted around the animal waste areas and need not be treated if it does not come into contact with animal waste.

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 no homes, other than the petitioner's, within the 1980-foot separation criteria distance. Staff recommended approval of conditional use permit #06-65 with the following conditions:

- 1) The facility shall be limited to a 999 animal unit concentrated animal feeding operation for beef cattle confined in buildings.
- 2) The facility shall be designed to allow zero release of waste into the drainage channel that flows southwest of the proposed site.
- 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) Dead animals shall be promptly removed from the site according to South Dakota regulations.
- 6) Trees shall be planted on the north and west sides of the facility. 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.

- 7) All application of liquid waste shall be injected into the ground. Semi-solid and waste shall be incorporated within 24 hours. Surface application of solid and frozen waste shall be allowed as specified by the South Dakota General Permit. Surface application of liquid waste may be allowed only in extraordinary circumstances upon approval of the Planning Director after the petitioner has requested approval for such application in writing including the location on which the waste will be incorporated, the date of the proposed application and the amounts of waste to be applied. The petitioner will meet all setback requirements for waste application as specified in the county zoning ordinance.

Public Testimony

Mr. Anderson noted that letters from Claudia Krumm, Kelly Finke, Ag United, Tom Wenzel, and Laura Swanson were submitted regarding this issue, and the Planning Commission had been given copies of all the letters.

The petitioner, Scott Swanson, stated that he was accompanied by his wife and three children as well as the experts that have assisted him with this project – Engineer Brad Warner with Eisenbraun, Consultant Dean Collins, and agronomist Eric Parsons. Mr. Swanson pointed out that Section 3.01 of Zoning Ordinance clearly states that the Agricultural District is intended to provide for a vigorous agricultural industry. He noted that he is the 5th generation of his family that has been actively farming this land and that he would like his kids to have the same career opportunity. Mr. Swanson used a power point presentation which contained the following information pertaining to the design of the facility, animal disposal, waste handling, fly control, the siting of the feedlot, and ordinance compliance.

Design Utilizes:

- Initial barn capable of handling 500 feeder cattle.
- Simple manure management system
- Uses trees planted to provide shelter
- Second barn to handle an additional 499 head.
- Roofs keep rainwater off from manure.

Animal Disposal Policy:

Rendering service will be utilized. Any dead animals will be called in for removal as soon as discovered unless death requires post-mortem examination by either Swanson's vet or a governmental agency. In any event, dead animals will be collected for pickup by the rendering company in a place not visible to the public.

Waste Handling:

Solid manure to be contained in the facility. Manure that cannot be applied will be stored in an engineered containment facility. It is designed for state approved storage times. Land application will be maintained under best practices.

Fly Control:

- Spray Walls and ceilings with insecticide.
- Insecticide impregnated ear tags
- Other options available. Fly control is essential to animal comfort
- Environmentally Safe Product labeled for such use

Siting of Feedlot:

- Site meets all setback requirements for a

- Class C concentrated animal feeding operation
- 1000' from public water supply
- 250' from private wells
- 150' from owners private wells
- 200' from lakes rivers, streams, classified as fisheries

Compliance with the Zoning Ordinance:

- Setback criteria for Class C Concentrated Animal Feedlot Operation for a CAFO with 999 animal units
- 1980' to dwellings, churches, schools, businesses and public parks
- NO residences contained within prescribed setback of 1980'
- 2640' foot setback to Municipality.

Mr. Swanson emphasized that fact that this facility meets all the setback criteria listed in the zoning ordinance for a Class C CAFO. He noted that the buildings will be pole buildings with a normal roof.

Brad Warner stated that the stored feed would be covered and the intent is to divert any runoff from the storage area and stacking pad to the holding pond. The feed storage area as well as the stacking pad is 150 x 150. The intent on the stacking pad is to berm it on three sides so nothing is coming in and that the dirty water coming out is channeled to the holding pond. This meets DENR requirements.

Steve Dick, 301 N. Vandemark Ave, is executive director with Ag United. (letter submitted) He stated that this application meets the criteria setbacks as outlined in the zoning ordinance. Any family farm that can meet or exceed those requirements should be supported.

Eric Parsons explained the requirements for nutrient management. On a yearly basis the manure generated, precisely the amount of nitrogen and phosphorus potassium, is measured based on a calculated rate for the number of animal units. Then the yield goals for fields are determined. Soil samples are take to determine phosphate levels and the waste is applied accordingly. He noted that there are adequate acres available to handle the incorporation of waste generated by this CAFO.

Dean Collins, with the S.D. Assoc. of Conservation Districts (SDACD), is working on an EPA grant project that works to incorporate best management practices and technology. The program relies on active participation by producers. Mr. Collins stated that when he met Mr. Swanson, he was already trying to be pro-active and that Mr. Swanson approached his organization for assistance in achieving this goal. Mr. Collins works at eliminating suspended solids and fecal coli form from contaminating the Big Sioux River and attested that Mr. Swanson's CAFO was designed to address these concerns.

Noelle Harding, 25327 472th Ave., lives in the country and works with agricultural producers including the Swansons. She noted that much of the opposition to this CAFO is from acreage dwellers who are not actively involved in agriculture and do not want this use in their back yard. Ms. Harding is also an acreage dweller and explained that when she purchased her acreage she had to sign a right-to-farm notice. That notice explained that this was an agricultural area and along with that come smells and dust and other things association with agricultural production. With that notice Ms. Harding feels she signed off in accepting the practices that go along with agricultural production and she noted the majority of the people who live in new homes in the area had to do the same thing. If you live in the country you need to embrace the agricultural practices. Ms. Harding cannot understand why you would choose to live in the country if you are not supportive of farming practices and the things that go along with it. She believes Mr. Swanson sets a good example of farm maintenance and the farm practices that should be utilized.

Vince Hanson, 25483 469th Ave., lives a ½ mile from this site. He opposed this application six months ago and does not feel this is an appropriate location for a CAFO. Despite the modifications to the site plan, the concerns remain the same - inappropriate location, threats to the environment, threats to health,

threats to quality of life of property owners. It will have a negative economic impact on the surrounding land uses. While the property is zoned for agricultural use, the growth in the greater areas of both Sioux Falls and Crooks must be considered. Mr. Hanson stated that one of the County Commissioners had asked last year what logic is there in allowing the proposed CAFO to be moved closer to an urban area than where his current operation is? Mr. Hanson asserts that this would be the 3rd CAFO allowed in Lyons Township with all three totaling 11,172 animals. They would be located in a line north to south of only four miles. The site of the existing hog CAFO and this site are only one mile apart. He noted that the Commission had received a letter from the Mayor of Crooks expressing concern about this site's proximity to the city. He also questions if there is enough land to handle all the solid and liquid waste that will be generated by this CAFO, in addition to all the existing CAFO's in this general area. He would prefer this be denied.

Ron Persons, 46460 257th St., is now on the 6th generation of owning land to the east of this site in Lyons Township. He is concerned with Mr. Swanson's plan to first contract out for feeding. He also feels that 999 AU is just the start and that there are additional plans to expand the CAFO to an even greater size; to a Class A CAFO as defined by the Zoning Ordinance. The CAFO will cause a significant threat to the quality of the water, people's health, and the quality of life for the neighborhood. These threats will be greatly magnified if Mr. Swanson has future plans to expand to 2,000 A.U. or more. If any future expansions would be approved, how could he meet any setbacks given the existing houses and would setback requirements just be ignored? This is a brand new CAFO, not an expansion of an existing site. The Commission needs to consider the size, location and environment, and the infringement on the rights of others when considering this application. A Class C CAFO or larger is not appropriate at this site.

Jay Peterson, 25534 468th Ave., lives one mile from this site. He would like this permit denied. He grew up in farming and supports family farms, but this just isn't a good location for a new CAFO. He is concerned about ground water and flood control. This site sits in a small valley above two streams and uphill from Willow Creek. He is concerned with the health issues associated with having 999 head of cattle on a 40 acre plot. This is the wrong operation in the wrong location. There are just too many clean water issues for this to make sense.

Karin Renner, 46946 254th St., is the 6th generation of her family to live in the area. She stated that research literature from Minnesota is showing that CAFO emissions can cause health problems to both farm and non-farm residents – nausea, headaches, allergies, breathing difficulties and worsening existing conditions such as asthma. The neighbors are concerned because Mr. Swanson's history of waste management practices that pose a threat to the environment and human health. She stated that last year Mr. Swanson had applied liquid animal waste within 40' of her house, when the ordinance requires a setback of 50 feet. She asked the Commission to consider the health of the citizens that would be living in close proximity to the CAFO as well as the land and water resources which could be damaged. Agricultural practices which threaten the health and the quality of life should not be approved.

Joan Eitrheim, 46904 254th St., lives less than ½ mile from the site and stated that she supports family farms but not at this location. This poses an environmental hazard and will have a negative economic impact by reducing property values. This burden could be quite high for people who consider their land and single family homes big investments for their future. Just because the land is zoned A-1 Agricultural doesn't mean a CAFO should be approved. At one time this area was predominately farming but it has been transitioning from family farms to a mix of farms and non-farm residences. She contends that there are more than 50 farm homes and residences within a 1.5 miles of this site and 30 of those homes lie within one mile of this site. Ms. Eitrheim reminded the Commission that the townships surrounding Sioux Falls are experiencing dramatic changes in their demographics and use. The decision on this CAFO needs to be based on what is best for all families, not just one family. Ms. Eitrheim asked that this permit be denied.

Mr. Swanson pointed out that the figures mentioned that pertained to animal units in the area were

incorrect.

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

Commissioner Cypher stated that this plan was much improved over the submittal from six months ago. It is very rare to be able to find a site that can meet all of the set back criteria and this one does. He noted that in most counties a 999 AU. CAFO would not require a state permit but Minnehaha County insists on getting that permit. He thinks it is appropriate to require the State permit.

Commissioner Bunde stated that Minnehaha County is requiring the right-to-farm notice covenants precisely for these types of situations and it specifically says you are moving into an ag district. This site is zoned for agricultural uses and the environmental concerns raised by the neighbors are quite adequately addressed by both the required County and State permits. She stated that the County's adopted Comprehensive Plan emphasizes ongoing support for and continued growth of agricultural practices. She noted that she has lived within throwing distance of 1000 A.U. swine operation and knows that it can smell, but this is being blown way out of proportion. Ms. Bunde, referencing the complaints raised about property values, stated that the right-to-farm notice tells people exactly what to expect when moving to the country. An argument could also be made that rural residences negatively impact those involved in farming by driving up the cost of land, severely limiting farmer's ability to purchase ground for expansion.

Commissioner Steinhauer stated that he was glad that Minnehaha County had had the foresight to implement density zoning. There is a transition going on but the County has set up regulations to address those changes. The Zoning Ordinance criteria and the CUP process do a good job in addressing the issues raised concerning rural acreages and farming practices.

Commissioner Steinhauer, stating that this application met all the criteria set back and environmental requirements for a Class C operation, made a motion to approve conditional use permit #06-65 with the conditions as stated. The motion was seconded by Rogen. The motion passed unanimously.

ITEM 14. TIF DISTRICT #01 - Creation of a Tax Increment Financing District for an ethanol plant.

Legal Description - 34-T104N-R47W
Location - ½ mile northeast of Sherman
Petitioner / Owner- Planscape

General Information

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

Report by: Scott Anderson

Staff Analysis

Planscape, the petitioner, has requested creation of a tax increment financing (TIF) district. The proposed district consists of approximately 303 acres in Section 34 of Highland Township. The TIF district will be used for the financing of construction of an ethanol distilling plant.

Tax Increment Financing is a method of financing improvements and development in an area which has been determined to be blighted according to the criteria set forth in SDCL 11-9. All this is done without incurring a general obligation for the taxpayers of the entire County.

The assessed value of a district is determined by the South Dakota Department of Revenue at the time the district is created by the County Commission. This valuation is termed the Tax Increment Base Valuation for the district, or simply the "Base Valuation." As the property taxes for the property are paid, that

portion of the taxes paid on the Base Valuation continue to go to those entities, (City, County, School, etc), which levy property taxes.

When, in succeeding years, the assessed valuation of the district increases, then the total property taxes paid by the owners of property in the district will increase accordingly. That increase in taxable valuation is the "increment". When the tax bills are paid, only that portion of the tax bill which results from the Base Valuation is paid to the taxing entities. The remainder of the tax bill, known as the Tax Increment, is deposited in a special fund. A "project plan" will determine how these accumulated funds will be used.

This financing method is invaluable for encouraging growth and development in areas with special development problems, since the amount of funds available for use by the project plan is directly related to the increase in valuation which the given project or development will create.

SDCL 11-9-3 requires a hearing notice be published for the creation of the TIF district boundaries at least ten (10) days, but not more than thirty (30) days prior to the Planning Commission meeting. Staff published the hearing notice in the Garretson Weekly on January 3, 2007 and the Argus Leader on January 4, 2007. Furthermore, SDCL 11-9-3 requires a copy of the hearing notice to be sent by first class mail to the chief financial officer of all local governments having the power to levy taxes in said district. Staff mailed a copy of the hearing notice on December 28, 2006 to the Highland Township, Garretson School District and East Dakota Water Development District.

The Planning Commission is only considering the establishment of the TIF district boundaries. The specifics will be presented in February of 2007 in the project plan. Staff has prepared a map of the proposed TIF district boundaries for your review. There is another item to note. Should the district boundaries be created and then a project plan not approved or the location of the proposed ethanol plant change, the district can be easily dissolved. The Planning Commission's recommendation will be submitted as a recommendation to the County Commission for final action.

Recommendation:

Staff recommended approval of the creation of Tax Increment District #01 to include the following legally described parcels:

"Government Lots 1 and 2 in the northeast quarter (NE ¼); and Government Lots 1 and 2 in the southeast quarter (SE ¼), except the railroad right of way contained therein and except that portion of said Government Lots 1 and 2 lying south and east of the railroad right of way and except County Auditor's Lot H-1 contained therein, all in Section 34, Township 104 North, Range 47 West, of the 5th P.M., Minnehaha County, South Dakota.

And

The south half of the northwest quarter (S ½ NW ¼) and the southwest quarter (SW ¼) except Tract 1, Ramey Addition, and except Lot H-1 contained therein, of Section 34, Township 104 North, Range 47 West, of the 5th P.M., Minnehaha County, South Dakota."

Public Testimony

Mr. Anderson explained that State Law requires that proposals for TIF Districts first be heard before the Planning Commission and then be forwarded to the County Commission. Establishing the district boundaries is the first step in the process. The Planning Commission may consider this to be similar to establishing a new zoning district and they should use the same tools as to review this application as when considering a conditional use permit. They will be tasked with looking at the specific use for this district. A plan will be submitted for their review which will explain the uses, cost, and financing for this TIF District. While the proposed ethanol plant is not a standard agricultural use such as a CAFO or a winery, it does fit into the overall concept of agricultural uses in that it will create a market for a locally grown crop.

Commissioner Steinhauer noted that this was an economic development issue and the Commission needs

to decide if it is something the County wants and if the location is appropriate. Mr. Anderson stated that this proposed location provides access to two county highways and a major rail line. There will be added traffic on the highways so improvements may need to be made to those roads. Commissioner Rogen asked if the taxes now being paid on the farm ground would disappear and have to be made up by other land owners. Mr. Anderson explained that the base tax on the property would continue to go to the designated tax entities. The taxes on the improvements, such as the ethanol plant, will return to the developer to pay off the debt and to finance improvements within the district.

Jeff Eckhoff, Executive Director for Minnehaha County Economic Development Assoc., stated that a TIF is an economic development tool which was first used to address urban redevelopment issues. Today it is used in South Dakota to bring industrial services to an agricultural district. A TIF is project specific and can be dissolved if the proposed use never materializes. The existing infrastructure for trucks, rail, water and gas, and the availability of corn, is the reason this site was selected. As an example using a 20 year TIF, Mr. Eckhoff explained that the base tax amount set in 2007 would continue to be paid to the taxing entities for the next 20 years. However, because the base tax amount will stay at the 2007 level even if all the surrounding properties assessed with a 3% increase each year, the tax entities will lose some revenue.

He noted that most TIFs are done with a County letting the bonds. The developer fronts all of the debt up front and uses the tax increment money to pay off their debt. Some of the increment money is also put back into the development by funding improvements within the district. Mr. Eckhoff said that State Law requires the Planning Commission to review TIF Districts as they are the body which addresses change and growth. He noted that the County Commission had issued a resolution of support for this TIF District.

Kathy Showalter with PlanScape Partners, stated that this site will be known as Buffalo Ridge Ethanol. The appeal to this application is that the company will take all the financial risk. She noted that several sites had been under consideration but that this location, with the available infrastructure, is the company's first choice. The site will have storage capacity of 50 million gallons and use 18 million bushels of corn per year. Not only will this plant benefit the ag community as the corn will come from local producers, but the community as a whole will be able to invest in the plant. Fiegen ICM, who have constructed 70% of the ethanol capacity in the country, will construct this site. This TIF district does have 50 acres and the rail yard will be on adjacent property in Minnesota. While the size could be reduced, this will allow the plant to have a buffer around it and allow ample space for all the dirt work which will need to be done. She noted that they have optioned this property but are waiting until approval of the rezoning to purchase the land. It is likely that construction would begin this spring.

Randy Pierret, 25047 488th Ave., stated that TIF Districts were first established to develop undesired urban property, not farm land. The ethanol plant must be close to the railroad, a water source, natural gas, and a supply of corn. If this property meets all of those needs, why would the company need any further tax incentives to develop this site? If it doesn't meet their needs they wouldn't be interested. Mr. Pierret feels that the increment monies will not be going to public improvements, but to improvements within the district. He suggested that the County could instead use money to improve the existing highways in the area. Mr. Pierret wondered why the County needed to opt out of the tax freeze if the County has the money for a TIF. He also expressed concern about the proposed 20 year term as there may be many other renewal resources developed within that time frame. Twenty years is just too long given all the unknowns. Mr. Pierret does not feel that this use is ag friendly as it is being sold as an industrial development.

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

Stating that establishing the district was a preliminary action and based on the staff report and public testimony, a motion was made by Steinhauer and seconded by O'Hara to recommend approval of the creation of Tax Increment District #01. The motion passed unanimously.

New Business:

The Planning Commission selected Steinhauer, Cypher, Rogen and O'Hara to serve on the Wind Energy review committee.