

**MINUTES OF THE  
MINNEHAHA COUNTY PLANNING COMMISSION  
March 26, 2007**

A meeting of the Planning Commission was held on March 26, 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, Wayne Steinhauer and Carol Twedt.

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

The meeting was chaired by Don South.

The Dell Rapids Planning Commission joined the meeting.

MEMBER PRESENT: Bob Davis, Roger Dearduff, Darrell Donelan, Chris Mullaney, and Chair Larry Skatvold.

STAFF PRESENT: Jeff Traill

**Item 1 was heard jointly with the Dell Rapids Planning Commission.**

**ITEM 1. CONDITIONAL USE PERMIT #07-17 – to amend CUP # 93-30 by increasing hours of operation and blasting requirements for rock extraction.**

Legal Description - Lot 1 N1/2 NW1/4 Smith's Subd & TR1 NW1/4 & Lot 16 (EX N30 E149.2) & Lot 17 Kenefick's Subd & S1/2 NW1/4 (EX E100 S400.7) in Section 16-T104N-R49W and NE1/4 (east of the RR and south of the river) in Section 17-T104N-R49W.

Location - 24603 Quarry Road south of Dell Rapids

Petitioner / Owner- L.G. Everist, Inc.

**General Information**

Present zoning - A-1 Agriculture  
Existing Land Use - Agriculture  
Parcel Size - ± 180 Acres

**Report by:** Scott Anderson

**Staff Analysis**

The applicant is requesting to amend existing Conditional Use Permit #93-30. The applicant has been conducting mining activities on the property for the past 13+ years. The subject property has been involved in mining prior to that as well, before zoning was instituted in Minnehaha County, and then went in-active. Conditional Use Permit #93-30 was approved with thirty (30) conditions. The resolution approving the mining activity is included as an attachment for your review.

The applicant is specifically requesting to amend condition #5, the hours of operation and condition #10f, the amount of explosives used. The applicant would modify the hours of operation to be from 5 am to 10 pm Monday through Friday and from 6 am to 12 noon on Saturday. The current times allowed for the operation are: Monday through Friday 7 am to 6 pm, and 8 am to 12 noon on Saturday.

The applicant is also requesting to increase the amount of explosives used in blasting from 300 pounds of explosive per delay and 10,000 pounds of explosive per shot to 600 pounds per delay and 20,000 pounds per shot. The request would basically double the amount used.

All other conditions as approved with Conditional Use Permit #93-30 will remain the same.

**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 amendment could impact the enjoyment of surrounding properties with the longer hours of operation and perhaps more and louder explosions from the mining activities. Many of the existing uses in the area were started and have operated after the mining activity in the area. Mining activity on the subject property extends back more than 50 years.

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

Measures such as a large landscaped berm, air quality constraints and other provisions have been adopted.

The property in the area has developed in an orderly manner. Minor changes should not further impact that normal and orderly development.

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

The proposed amendments do not impact or change the above listed items.

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

The proposed amendments will not change the existing parking and loading requirement of Conditional Use Permit #93-30.

**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.**

Measures were taken in the original conditional use permit to limit the impacts of dust, fumes, noise, lighting and vibrations. The proposed amendments will increase the amount of noise as the applicant is requesting to increase the amount of explosives used during each blast. The mining techniques used, however, tend to limit the overall impact of each blast. All other conditions of approval will continue to be adhered to and should aid in allowing this use to co-exist with other uses in the vicinity.

While staff can support the use of increased explosives, the extended hours of operation are of more concern. Staff feels that beginning mining activities at 5 am may disrupt the surrounding property owners. Currently, the start time is 7 am. Staff could support moving the start time to 6:30 on Monday through Friday, but not any earlier. Likewise the requested start time on Saturday of 6 am is too early. Staff can support moving the start on Saturday one hour earlier to 7 am and could support allowing longer operation hours on Saturday until 1 pm.

**Recommendation**

Staff recommended approval of Conditional Use Permit #07-17 to amend two conditions of Conditional Use Permit #93-30. The remaining twenty-eight (28) conditions as approved in conjunction with CUP #93-30 will remain in effect unchanged. The amended conditions shall read as follows:

5. All operations with the exception of blasting shall be restricted to the following hours: ~~7:00~~ **6:30** am to 6:00 pm from Monday thru Friday and ~~8:00~~ **7:00** am to ~~noon~~ **1 pm** on Saturday. Operations shall not be conducted on legal holidays. Activities such as office operations and maintenance which produce no adverse off-site impacts shall not be restricted by the hours of operation.
- 10.f) A blast shall not exceed ~~300~~ **600** pounds of explosive per delay. Each delay shall be a minimum of 10 milliseconds. Explosives shall not exceed ~~10,000~~ **20,000** pounds per shot.

**Public Testimony**

There was some discussion among the Commission members about regulations for Myrl & Roys' and Sweetmans' mining operations. Mr. Anderson noted that Myrl & Roys was only allowed to blast Monday thru Friday, and that it was usually done at noon. They are also restricted to air blasts not exceeding a certain pressure and under regulations set by the U.S. Bureau of Mines.

The petitioner, Rob Everist, presented a power point slide show with many arterial shots of this mine. A mining plant had been in operation at this site beginning in the 1950s. He stated that they had been before the Commission in 1994 to get the conditional use permit which has 30 conditions. They built the berm and planted three rows of trees in 1997. After letting the trees get established they did a pre-operational inspection of the housing on 2<sup>nd</sup> St. and Prospect in 2002. Mining was commenced in 2004, and the current plant base built in 2005. The plant is all below grade, and is a stationary plant. The mine is currently 45 feet deep. In this quarry there have been a total 46 blasts since 2004. All the seismograph readings have been well within the CUP requirements of a peak particle velocity of 0.35 inches per second. There were 24 total blasts in 2006. In addressing the request to increase the blasting, he stated that because the mine would do a higher volume at one time there would be less blasts total. This would allow them to do shoot down a larger volume of rock at one time. By increasing production in the west quarry they are also reducing the number of trucks from the east quarry that are traveling down Main St. in Dell Rapids. In 2004 there were 35,000 truck trips through downtown. Opening the west quarry in 2005 greatly reduced the number of trips to 16,000. Mr. Everist stated that blasting is done at noon

because of procedures, safety, and tradition. The advantages to having a higher bulk rate is better efficiency, less expense, and better control. The increased control is because the charges would be loaded in bulk, not by hand as they are doing now. They did 24 blasts last year and if the increase is allowed they could accomplish the same thing with about 10 blasts with the same seismograph readings.

Commissioner Twedt noted that with the petitioner's request for longer hours, the mine would be in operation 32 hours more a week. Mr. Everist stated that this would give them a little more latitude. They may not need all that time. The request is in case they get into a crunch and need extra operating time. Currently they operate 7-5 Monday thru Friday and do maintenance on Saturday. He also pointed out that the east quarry is grandfathered in and that they could operate at that site 24/7.

Commissioner Mullaney asked whether air monitoring for dust and noise monitoring was done, what those results had been, and with the increased blasting would they still fall below the required levels? Mr. Everist stated that they have do dust monitors up and they take readings, and that they apply magnesium chloride to the haul roads. All the testing results are available but he didn't bring them because they are not expecting any change. Even with the increase in blasting they will still be within the conditions set by the original conditional use permit. With the increased blasting the mine will still be still meet the requirement to be at or below 55 db for a length of 10 minutes.

Mr. Anderson noted that the Commissions had been provided with a letter from Merlyn and Janet Christenson and pictures from inside one on the houses on 2<sup>nd</sup> street showing cracks in the drywall.

Merlyn Christensen, 605 W. 2<sup>nd</sup> St., stated that he lives above the mine. He is upset about the dust. He showed a picture taken in 2004 that showed the dust over the mining pit. He does not want to see an increase in the blasting and feels Everist is not controlling the dust. They also have significant vibrations. He noted that the Commissions had received a letter from him.

Lee Burggraff, 505 W. 4<sup>th</sup> St., owns one of the properties on the top of the hill and he stated that he had talked with Rob Everist the night before. He can live with staff's recommendations. He does not want to see the operational times increased to 10 pm at night. They can hear the beep, beep, beep and the grinding and it is noisy. He has the right to have a quiet environment and that would be taken away. He doesn't feel this is currently hurting property values but an increase to 10 pm would change that. Mr. Burggraff asked if there were engineers that could explain the data to lay people. At this point all that is given is Everist's opinion. He was involved with the original CUP and at that time they did an engineering study before operating. If the loads area going to be doubled, why not do another engineer's study now? He referenced the pictures taken at 207 Prospect with the cracked sheet rock. He doesn't know what is causing this - it could be poor construction but it could be the mining. How do we determine this? He would like answers before changing the conditional use permit.

Commissioner Mullaney asked if the seismograph readings are designed to measure what impact it would have and are the limits designed to prevent this type of damage to structures. Mr. Everist said the seismograph readings are a measure of the ground movement. The 0.5 inches per second allowance was determined 13 years ago. Some places have standards at 2 inches per second. It just depends on what people feel is acceptable. He agreed that the houses are probably vibrating. How much vibration is acceptable? There isn't any recommended vibration limit that is applied across the United States.

Mark Mergen, 405 Hwy 115, lives to the east of this site. He doesn't want things to get out of hand with this request. The hearings in 1994 raised a lot of bad feelings. His house is constructed differently and he has a hidden barrier in the road - a 4 foot pipe filled with sand. This is great noise control and they don't notice anything right now. He has a shop to the north and every once in awhile they feel the blast and occasionally trucks are lined up out front. None of this is a big deal. His concern is that he thought this was all over with, that they went through the war 13 years ago, and this was done. He thinks no one complained because everyone knew what the limits were. Mr. Mergen stated that he had talked with Mr. Everist about not having anyone to address complaints to. If one or two people keep complaining they will be labeled as constant whiners and just dismissed. He is disappointed to think we are going through this again. They should stick with the plan they established and laid out 12 years ago. Are we going to be back here again in 5 years for more changes? Mr. Mergen suggested that an overview committee be established. This would be a place for people to bring complaints to and for reviews.

Merlyn Christensen, 605 W. 2<sup>nd</sup>, stated that his main concern is the working hours. The drilling and crushing are disturbing. He wants to enjoy his property. Is there any way to diminish the continuous noise for these practices? He doesn't feel they are meeting the CUP requirements for dust. The dust is ok during the blasting. The problem is the dust coming off the conveyors, especially when there is a south

wind. Can't something be done for the dust on the top of these conveyors?

Mr. Everist stated that he would be all in favor for a neighborhood committee. He would prefer to have discussions as a group and not at a public hearing. He is up to meeting once a month or once a quarter – whatever would work. They do dust control daily. They shut down on days when the south wind is really blowing because a water truck can't keep up. They do everything they can to mitigate the dust. They put mag. chloride on the roads and have a water truck that runs full time spraying the piles and the road. Mr. Everist did agree that the transfer points on the pulleys need to be addressed and they need to do a better job of controlling dust at that point. He suggested the neighborhood put together a committee and he would be glad to meet with them. He also stated that there are new back up alarms that make a whoosing noise instead of the beeps. They have that on a machine and will put the new alarm on other vehicles.

Dave Schwebach, 717 W. 2<sup>nd</sup> St., has a water well and is concerned that the increased blasting may damage the well.

Rob Everist offered to do another housing survey if it is needed.

Commissioner Mullaney stated that increased hours are part of the request and that could effect noise. She stated that she had worked as an industrial hygienist for the State of S.D. doing both air and noise monitoring. She stated that if what Mr. Everist has said is true, that they do not exceed 55 db at any 10 minute stretch, that would be equivalent to the noise of spoken word in a small office. The back up alarms would have to be looked at.

Darrel Donelan, 603 W. 2<sup>nd</sup>, stepped down from the Dell Rapids Planning Commission to address the Joint Board. He thought everything was settled in 1994. The blasts do move the ground. He has called Everist repeatedly but never gotten any response. They are living with what is there. Some days the dust is bad enough you can't hang out laundry. The hour change would be ok. The increase to the charges is not good. Something is going to move and it will be the property. If you give them an inch, they will take a mile. This was supposed to be settled in 1994. Really consider what they area asking.

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

Both Mr. Anderson and Mr. Traill explained that as an effected property owner, Mr. Donellan should not vote on this issue as it would be a conflict of interest.

Commissioner Twedt stated that mining issues are charged with good business people who are trying to create good economic development, and their product is needed for roads. These are emotional issues as you have neighbors affected by the operations and their way of life is impacted. It is troubling that once conditions are set, companies can keep coming back and asking to change the conditions.

Commissioner Cypher noted that one advantage to this is keeping the trucks out of Dell Rapids. The new blasting technique that is being proposed is better from a seismic stand point. The picture of the dust shows that Everist needs to address the conveyor issues, which could be as simple as spraying water on it 8 months out of the year. Commissioner South asked what will be the affect of doubling the blast.

Mr. Everist stated that they are not asking to change the permit, just how they achieve the results. The standards that are set are pretty tough and even with the requested increase would still meet them. They are trying to be compatible with the community and he would like to know if they miss the mark. He wants to hear if there are complaints. Mr. Everist noted that eventually the east quarry will go away putting all of the mine activity at this quarry. As they dig deeper there will be less impact.

There was discussion on whether a 3 month trial period should be allowed for the increased limits in blasting. This would allow for testing to see how the houses would be impacted. Commissioner Mullaney questioned the need for a trial period if Everist was still going to be meeting the conditional use requirement of 0.5 inches per second. Mr. Everist stated that due to their experience in the east quarry, they know this will be less that the limited maximum velocity level.

Based on the staff report and public testimony a motion was made for the County by Cypher and seconded by Rogen to approve conditional use permit #07-17 with the planning staff's recommended conditions. The motion passed unanimously. Same motion for the City by Mullaney and seconded by Dearduff. The motion passed unanimously (Donelan abstaining).

**APPROVAL OF THE CONSENT AGENDA**

Requests were made by the audience and the planning staff to place Items 3, 6, 7, and 12 on the regular agenda. A motion was made by Steinhauer and seconded by O'Hara to approve the consent agenda (Items 3, 6, 7, and 12 removed). The motion passed unanimously.

**ITEM 2. MINUTES – February 26, 2006**

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

Item 4 was deferred from the January and February meetings.

**ITEM 4. 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 west 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

**Staff Analysis**

The site is located a quarter mile west of Rowena on the south side of Hwy 42. The property is zoned C Commercial as is the land immediately adjacent to the west. North across the highway is Preston Place, a residential subdivision. The remaining surrounding property is either used for agricultural or quarrying purposes.

This property is the location of a 12,100 sq. ft. commercial building currently being used as for carpet and flooring sales and warehousing. Because the building exceeded 10,000 sq. ft. the petitioner was required to obtain a conditional use permit.

The petitioner is requesting this conditional use permit to construct mini-storage units on the east end of his property. There will be two buildings containing the storage units. No outside storage is shown on the submitted site plan, so no outside storage will be allowed. There are two existing garages which will be removed at the start of construction.

It appears from the site plan that the storage buildings extend into the existing gravel driveway. There is room to move the driveway further to the north and still provide the required 15' landscape buffer along Hwy 42. There are existing trees in this 15 foot buffer. The driveway should be graveled prior to the leasing of any of the storage units.

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

The existing commercial uses, a bar and flooring business, should not be affected by mini-storage units. No commercial businesses shall be run out of the storage units. The residential subdivision is well separated from this use by the highway right-of-way.

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

Neither the quarry nor agricultural uses should be negatively affected by this commercial use.

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

This property does not have direct access onto Highway 42. Access comes from an existing driveway from 482<sup>nd</sup> Avenue. There is electrical service to the site and no bathroom facilities will be needed.

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

The required 20 parking spaces needed for the existing commercial business (Tilden Carpet) are located where the new mini-storage units will be placed. There is sufficient space on the west side of this building to provide the parking spaces. The petitioner will need to submit a site plan for the new parking

area, and complete laying the gravel for this parking area, prior to the issuance of any building permits for the mini-storage units.

**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 must be of a shoebox style design with no light spillage off of the property.

A complete set of plans must be submitted for review by the building inspector prior to the issuance of a building permit.

**Recommendation**

The area is zoned for commercial use and mini-storage units should not negatively impact the neighboring properties. Staff recommended approval of conditional use permit #07-05 with the following conditions:

- 1) The property shall conform to the submitted site plan received on March 15, 2007.
- 2) No outside storage is allowed.
- 3) No commercial businesses shall be run out of the storage units.
- 4) A site plan for 20 parking space on the west end of the property must be submitted, and the graveling of this parking area completed, prior to the issuance of any building permits for the mini-storage units.
- 5) The relocated driveway and driving area between the storage buildings shall be graveled prior to the commencement of business.

Based on the staff report a motion was made by Steinhauer and seconded by O'Hara to approve conditional use permit #07-05 with the conditions as stated. The motion passed unanimously.

**ITEM 5. CONDITIONAL USE PERMIT # 07-16 to transfer one residential building eligibility.**

From - Tr. 1 NE1/4 in Section 28-T104N-R52W

To - N1/2 NE1/4 (ex. Tr. 1 and H-1) in Section 28-T104N-R52W

Location - 7 miles west of Colton

Petitioner / Owner- Shirley Olson

**General Information**

Present zoning - A-1 Agriculture

Existing Land Use - Agriculture

Parcel Size - 80 Acres

**Report by:** Phil Kappen

**Staff Analysis**

The subject property is located to the west of Buffalo Trading Post in Buffalo Township. The petitioner has a building eligibility on a small lot along the east edge of the property and wishes to transfer it to the west along 248<sup>th</sup> Street (Co Hwy 110). The property to the east is occupied by a bar and grill (Buffalo Trading Post), the properties to the west, north and south are agricultural with scattered acreages.

**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 closest animal feeding operations are over 1 mile away from the proposed house site. The principle land use in the area is agriculture. Before a building permit could be issued for any house a right to farm notice covenant would have to be filed in the Register of Deeds office.

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

The petitioner had originally requested that the eligibility be transferred to the N1/2 of the NE1/4 as she was not sure where the lot would be created. After staff had reviewed the site, we found that there were only two sites along the county highway where a house could be constructed as the majority of the land was very low. One of these sites was on a hilltop approximately 1/8 mile west of Buffalo Trading Post.

This site is in the NE1/4 NE1/4 and is the better site.

The other potential site was in the northwest corner of the NE1/4 and was a quite small hilltop. Staff has concerns about this site because the buildable area is limited and staff is unsure, without additional measurements, whether a house and the required septic system could fit within the applicable area. If an eligibility were transferred to that site, staff is concerned that it might result in a future application for a variance to the setback from the road.

Subsequently, staff contacted the petitioner and we were informed that the likely site would be the hilltop just west of Buffalo Trading Post, in the NE1/4 NE1/4. Because of staff's concerns we could support a transfer to the NE1/4 NE1/4 rather than to the N1/2 NE1/4. There is also one additional building eligibility remaining in the NE1/4. That eligibility, however, would require conditional use approval before any house could be constructed. This ensures that any proposal for that eligibility must come back before this board for approval.

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

Access to the site would be from Co Hwy 110 and there is good sight distance along that stretch of roadway which will allow for safer access onto the highway.

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

There is ample area on the property for any required parking for a residential use.

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

There should be little odor, fumes or other nuisance factors from a residential use being located on this property.

**Recommendation**

Staff finds that the request is in conformance with the precepts of density zoning and that the proposed residence can be placed in a site that will result in minimized impacts on surrounding land uses. Staff recommended approval of conditional use permit #07-16 with the following conditions:

- 1) The building eligibility is to be transferred from Tr. 1 of the NE1/4 to the NE1/4 NE1/4 (ex. Tr. 1 and H-1) all in Section 28-T104N-R52W.
- 2) The property shall be platted and a right to farm notice covenant shall be filed at the Register of Deeds office prior to the issuance of any building permit.
- 3) Written approval for any driveway access onto Co. Hwy 110 prior to the issuance of any building permit.

Based on the staff report a motion was made by Steinhauer and seconded by O'Hara to approve conditional use permit #07-16 with the conditions as stated. The motion passed unanimously.

**ITEM 8. CONDITIONAL USE PERMIT # 07-20 to exceed 1200 sq. ft. of accessory building area (2592 requested).**

Legal Description - Tr. 5 Rovang's 2<sup>nd</sup> Addition in the SE1/4 & S1/2 NE1/4 in Section 21-T102N-R48W

Location - 48070 260<sup>th</sup> St. 1 1/4 mile west of Corson

Petitioner / Owner- Mark Anderson

**General Information**

Present zoning - A-1 Agriculture  
Existing Land Use - Residential  
Parcel Size - 5 Acres

**Report by:** Phil Kappen

**Staff Analysis**

The subject property is located along 260<sup>th</sup> Street (extended Hemlock Blvd. in Brandon). All surrounding

properties are zoned A-1 Agricultural, however, the use of the immediate properties is residential. The property is current vacant, but the petitioner has plans to construct a residence and a 32x72' shop for personal storage. The petitioner request is to allow 2592 square feet of accessory building 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.**

Some of the other residential lots in this area have oversized buildings. On these properties accessory building area totals include 3024 sq.ft., 2940 sq.ft., 2500 sq.ft., 2079 sq.ft. and 1248 sq.ft.

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

The zoning ordinance requires that construction be commenced on a residence as a primary use of the property before construction can be started on the proposed accessory building.

The accessory building can be used only for the petitioner's personal use and no commercial storage (including storage of commercial vehicles) or commercial use can be allowed in the building.

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

Access will be from 260<sup>th</sup> Street, a township road. Wastewater treatment will be accomplished through the use of a septic system.

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

There will be ample space on the subject property for any necessary parking from a residential use.

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

There should be little of these type of impacts from the typical uses on a residential property.

**Petitioner's Note:** A building inspection is required. The building inspector will measure the outside perimeter to determine the square footage maximum has not been exceeded.

**Recommendation**

Staff finds that the proposed accessory building is consistent with other accessory building sizes in the vicinity. Staff recommended approval of conditional use permit #07-20 with the following conditions:

- 1) The total of all accessory buildings on the property shall not exceed 2592 sq.ft.
- 2) The building shall be used exclusively for the petitioner's personal storage. No commercial use or commercial storage shall occur in the building or on the property.
- 3) The building shall not exceed one story in height.
- 4) A building permit and a building inspection are required

Based on the staff report a motion was made by Steinhauer and seconded by O'Hara to approve conditional use permit #07-20 with the conditions as stated. The motion passed unanimously.

**ITEM 9. CONDITIONAL USE PERMIT # 07-21 to allow 9-day firework sales.**

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

Location - 48183 Hwy 42, 1/4 mile west of Rowena

Petitioner / Owner- Barry Baken / Dennis Tilden

**General Information**

Present zoning - C Commercial

Existing Land Use - Commercial

Parcel Size - 2.0 Acres

**Report by:** Pat Herman

**Staff Analysis**

The site is located a quarter mile west of Rowena on the south side of Hwy 42. The property is zoned C Commercial as is the land immediately adjacent to the west. North across the highway is Preston Place, a residential subdivision. The remaining surrounding property is either used for agricultural or quarrying

purposes.

This property is the location of a 12,100 sq. ft. commercial building currently being used as for carpet and flooring sales and warehousing. The petitioner wishes to obtain a conditional use permit for 9-day fireworks sales. The fireworks would be sold from two 8' x 40' trailers placed on the east end of the property.

**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 fireworks sales will take place on a lot that is zoned for commercial use and is separated from the nearest houses by Hwy 42. The limited time frame for the fireworks sales should have no effect on property values in the area. The hours of operation should be limited from 10 am to 10:30 pm. This is consistent with other fireworks sales approved by conditional use permit.

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

Given the temporary nature of the proposed use, there should be no impact on future development.

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

Access will be from 482<sup>nd</sup> Ave. onto an exiting gravel drive.

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

There is sufficient parking space on either side of the gravel driveway as well as additional parking at the carpet business during the times that business is closed.

**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.**

Any temporary lights used must be directed downward and may not allow any light spillage off of the lot.

**Recommendation**

Staff finds this temporary use to be appropriate on a commercially zoned lot and recommended approval of Conditional Use Permit #07-21 with the following conditions:

- 1) The business shall be allowed to operate annually between June 27<sup>th</sup> and July 5<sup>th</sup> from two trailers located on the eastern end of the lot.
- 2) The business shall be allowed to operate between the hours of 10:00 am and 10:30 pm.
- 3) One sign shall be permitted with a sign face not to exceed 32 square feet. No other signs, banners or flags, with the exception of the American flag, shall be permitted in conjunction with the business.
- 4) The sign shall not be placed on the property prior to June 23<sup>rd</sup> and shall be removed by July 8<sup>th</sup> of each year.
- 5) Parking shall not be allowed within the right-of-way of Highway 42 or 482<sup>nd</sup> Avenue. All parking shall be on McBeth Tr. 1A.

Based on the staff report a motion was made by Steinhauer and seconded by O'Hara to approve conditional use permit #07-21 with the conditions as stated. The motion passed unanimously.

**ITEM 10. CONDITIONAL USE PERMIT # 07-22 to allow a group day care.**

Legal Description - Tract 1 Struck's 1st Addition NE1/4 NE1/4 in Section 23-T103N-R52W

Location - 25319 459<sup>th</sup> Ave 4 miles north of Humboldt

Petitioner / Owner- Sarah Heumiller

**General Information**

Present zoning - A-1 Agricultural

Existing Land Use - Agriculture

Parcel Size - 3.0 Acres

**Report by:** Phil Kappen

**Staff Analysis**

The subject property is located along 459<sup>th</sup> Avenue (a township road), about one-quarter mile south of 253<sup>rd</sup> Street. The surrounding properties are all zoned A-1 Agricultural and there are a few non-ag residences along 459<sup>th</sup> Avenue. The petitioner wishes to operate a group day care out of her home. A group day care is limited to no more than 12 children under the age of fourteen, including the provider's own children six years of age or younger.

**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 no impact on the surrounding properties from the operation of the proposed use. There are no immediate neighbors that could be affected by the day care.

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

It is a standard in a group day care that a fenced outdoor play area be provided to ensure that children cannot run into a street and are kept on the subject property. The petitioner has indicated on the site plan that the fenced play area will sit behind the house. The house itself sits a distance off of the road, so the play area will be well separated from the road. There is also a drainage area through the back portion of the property. The fenced area will help separate the children from this drainage area. The septic system is located south of the residence, and the fenced area is also proposed for an area that separates the children from the septic drain field area.

Home occupations are allowed to have signs up to two square feet in size. This occupation should be allowed a similar-sized sign. The petitioner should be required to register with the state as a day care provider.

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

Access is via 459<sup>th</sup> Avenue, a publicly-dedicated right-of-way.

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

There is ample space on the property for the safe drop-off and pick-up of children. No parking is allowed along the 459<sup>th</sup> Avenue.

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

There should be little such effects from the group daycare.

**Recommendation**

Staff finds that the proposed use provides a needed service and will conform with surrounding land uses. Staff recommended approval of conditional use permit #07-22 with the following conditions:

- 1) The use shall be limited to a group day care with no more than 12 children under the age of fourteen, including the provider's own children six years of age or younger.
- 2) A fenced outdoor play area shall be provided. As weather may not allow construction of the fence at this time, the fence must be erected by June 30, 2007.
- 3) One sign not to exceed two square feet in size may be erected.
- 4) The petitioner shall be registered as a day care provider with the state of South Dakota.

Based on the staff report a motion was made by Steinhauer and seconded by O'Hara to approve conditional use permit #07-22 with the conditions as stated. The motion passed unanimously.

**ITEM 11. PRELIMINARY SUBDIVISION PLAN # 07-02 Brower 2<sup>nd</sup> Addition**

Legal Description - Brower 2<sup>nd</sup> Addition (Block 1 Lots 1-8, Block 2 Lots 1-17, & Block 3  
Lots 1-3) SW1/4 in Section 27-T102N-R51W

Location - south edge of Hartford

Petitioner / Owner- Richard Brower

**General Information**

Present zoning - I-1 Light Industrial

Existing Land Use - Vacant

Parcel Size - ± 35 Acres

**Report by:** Scott Anderson

**Staff Analysis**

The applicant has submitted a preliminary subdivision plan proposing the creation of twenty-eight (28) lots. The twenty-eight lots contain a total of approximately 35 acres and are an extension of the Hartford exit industrial area, known as Brower's Addition.

Staff has reviewed Section 4.01 of the Minnehaha County's Subdivision Ordinance to determine that all requirements have been met. It appears that two important items have not been submitted. One item that has not been submitted is the Preliminary Drainage and Grading information as required in Article 4.01.B.1 of the Subdivision Ordinance. The existing drainage pattern for the area proposed to be platted must be shown along with any proposed cut and fill operations that would alter the existing drainage pattern. Positive drainage around and through the proposed road must be shown.

The other item not provided by the applicant is an erosion control plan as required in Section 4.01.B.2. Staff recommends that prior to County Board approval of the preliminary plat, an erosion control plan shall be submitted for review and approval. As the proposed area being subdivided exceeds five (5) acres, an erosion control plan must be submitted to the Planning Director for review and approval.

The applicant is proposing to extend both Jeffrey Street and Kelsey Drive to the east. Two new north/south roads are proposed to be constructed. These are Jesse and Carter Streets. Prior to a final plat being approved, the applicant shall either construct all of the roads to the County's road standards or post surety in an amount to cover the construction cost. Engineered road plans shall also be provided. The Planning Commission indicated that these new roads and the extension of Kelsey Drive and Jeffrey Street shall be hard-surfaced. The applicant will also be required to purchase road signs for the new roads and the extensions of Kelsey Drive and Jeffrey Street. These signs shall be purchased upon final plat submittal.

**Recommendation**

Staff recommended approval of Preliminary Plat #07-02 with the following conditions:

- 1) That prior to County Board approval of the preliminary plat, an erosion control plan shall be submitted to the Planning Director for review and approval.
- 2) That prior to County Board approval of the preliminary plat, a drainage and grading plan shall be submitted for review and approval.

Based on the staff report a motion was made by Steinhauer and seconded by O'Hara to recommend approval of preliminary plat #07-02 with the conditions as stated. The motion passed unanimously.

**ITEM 13. CONDITIONAL USE PERMIT # 07-26 to allow a bowling alley, bar and grill, video lottery and associated uses.**

Legal Description - Lot 4 Interstate Inns 2<sup>nd</sup> Addition NW1/4 in Section 27-T102N-R51W  
Location - 1000 S. Western Avenue south edge of Hartford  
Petitioner / Owner- Jenny Goldammer

**General Information**

Present zoning - I-1 Light Industrial  
Existing Land Use - Vacant  
Parcel Size - 9.55 Acres

**Report by:** Scott Anderson

**Staff Analysis**

The applicant is seeking a conditional use permit to allow for the establishment of a "family entertainment center". The family entertainment center would consist of a 12 lane bowling alley, sports bar and grill, old fashion soda fountain, arcade/billiard tables, and video lottery. The subject property is located directly off the Hartford exit. The applicant submitted a detailed narrative that explained all of the activities that may take place in the family entertainment center. The applicant is proposing to construct a

new building for the business that would be approximately 11,600 square feet in size. The subject property is currently vacant.

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

The proposed use should not have any negative impacts on the vicinity. The family entertainment center will likely enhance property values in the area and perhaps encourage further economic development.

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

The proposed use will likely have a positive effect on the normal and orderly development of the surrounding vacant property.

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

The applicant is proposing to construct a large building and parking area. The applicant will be responsible for making sure that adequate surface drainage from the parking area is provided. The subject property is adjacent to the Hartford City limits. Hartford may provide water and sewer. If Hartford does not, the applicant will be required to obtain an approved wastewater disposal permit from Minnehaha County and the SD Department of Environment and Natural Resources. Diamond Street will serve as access to the subject property. It appears that a portion or all of the right-of-way for Diamond Street is in place. Diamond Street, however, has not been constructed. It will need to be constructed, meeting the subdivision requirements for Hartford and must be hard surfaced.

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

The applicant provided a site plan that shows 84 parking spaces. The applicant indicated 86 spaces; however, two appear to be too small for vehicular use. Article 15 of the Zoning Ordinance requires 3 spaces per lane of bowling. The bowling portion of the facility would need 36 parking spaces. As there will be other activities and uses in this facility some additional spaces should be required. Another 48 spaces should be required, as Article 15.02(P) requires one space for each 100 square feet of floor area for restaurants, bars and amusement facilities. The site plan submitted by the applicant meets these requirements. Staff will include the requirement for 84 parking spaces as a recommended condition of approval.

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

The proposed use should not create any of the above listed items in amounts that would constitute a nuisance. As the access road leading to the parking area will be hard-surfaced, the parking area will also need to be hard-surfaced. This will eliminate any dust issues. Lighting must be addressed. Due to the subject property's location adjacent to Interstate 90, all lighting should be directed either directly onto the building or downward onto the ground.

**Recommendation**

Staff recommends **approval** of Conditional Use Permit #07-26 to allow a bowling alley, bar and grill, video lottery and associated uses with the following conditions:

- 1) That the applicant obtain and maintain a S.D. Sales Tax License and any other permits required for operation of a bar/video lottery establishment.
- 2) That a minimum of 84 parking spaces be required and that a minimum of fourteen trees be provided in the landscaped parking area. The trees shall be a minimum of 5 feet in height, one inch caliper in diameter and maintained in a live state. They applicant shall not plant any type of ash tree.
- 3) That all parking lot lighting be of the shoe-box type and directed downward. All lighting for the building shall be directed onto the building.
- 4) The Diamond Street be hard surfaced, constructed to Hartford road standards within 30 days of the opening of the entertainment facility. The parking area shall be hard surfaced.
- 5) That prior to a building permit being issued, the applicant shall either have an agreement with the City of Hartford for sewage disposal or have obtained an on-site wastewater disposal permit from Minnehaha County, which has also been reviewed and approved by the S.D. DENR.

Based on the staff report a motion was made by Steinhauer and seconded by O'Hara to recommend approval of preliminary plat #07-26 with the conditions as stated. The motion passed unanimously.

**REGULAR AGENDA**

A motion was made by Cypher and seconded by Bunde to approve the regular agenda with the addition of Items 3, 5, 6, and 12. The motion passed unanimously.

**ITEM 3. CONDITIONAL USE PERMIT # 07-15 to allow a storage unit and workshop.**

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

Location - 26062 Ashley St. Unit 10 south edge of Hartford

Petitioner / Owner- Justin Moen / 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 10 in the buildings (north unit in the east building), is to allow indoor storage and personal workshop.

**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 contractor shops or commercial vehicle storage 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 10 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.**

Any repair activities and storage must remain 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 found 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 # 07-15 with the following conditions:

- 1) The use shall be limited to automotive storage and repair with no outside storage of parts, materials, equipment, 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.

**Public Testimony**

Ms. Herman explained that this item was moved to the regular agenda because the applicant had not sent out the required notification to property owners within 500 feet. She requested that this item be deferred until the April 23, 2007 meeting.

A motion was made by Bunde and seconded by Cypher to defer Item 3 until the April 23, 2007 meeting. The motion passed unanimously.

Item 6 was deferred from the February 26, 2007.

**ITEM 6. CONDITIONAL USE PERMIT #07-13 to allow a single family dwelling**  
Legal Description - E1/2 NW1/4 (ex H-1 & Ex Moan's Addn) in Section 12-T103N-R50W.  
**and to transfer one residential building eligibility.**  
From - NE1/4 SW1/4 of Section 12-T103N-R50W  
To - NW1/4 SW1/4 of Section 12-T103N-R50W  
Location - 2 miles southwest of Baltic  
Petitioner / Owner- Roger Moan

**General Information**

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

**Report by:** Pat Herman

**Staff Analysis**

The property is located approximately two miles southwest of Baltic. Land use in the surrounding area is agriculture with some scattered acreages. This conditional use permit is a request for two separate actions.

The first request is to allow a single family dwelling on the E1/2 of the NW1/4. A conditional use permit is required as part of the E1/2 was platted prior to density zoning. There is a small dairy operation on the north side of the road. The second request is to transfer one residential building eligibility from an interior quarter-quarter to a parcel with roadway access. There is an existing farmstead to the south of this site which has a limited number of cattle (approx. 100 head).

**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.**

This request should not negatively impact property values in the immediate vicinity. A right-to-farm notice covenant is required on all new dwellings being constructed within Minnehaha County.

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

Approval of the conditional use permit will not increase the number of houses allowed under density zoning. The petitioner has two remaining eligibilities in the S1/2 of the SW1/4 and each will be used in its assigned quarter-quarter.

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

Access to both lots will be from township roads. Lyons Township does not require driveway permits.

There is floodplain on the parcel located in the northwest quarter of the section and the house cannot be constructed within the floodplain. While there is dedicated right-of-way, 251<sup>st</sup> Street has only been constructed to the western property line of this site. The petitioner will need to work with Lyons Township on the issue of extending the roadway.

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

The required minimum lot size of 1 acre is sufficient to accommodate all off-street parking needs for a single family dwelling.

**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.**

Single family dwellings should not create any of the above listed nuisances.

**Recommendation**

Staff finds the request to be in conformance with density zoning and recommended approval of Conditional Use Permit #07-13 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.

**Public Testimony**

The petitioner, Roger Moen, was present and asked that this request be approved.

Larry Hamman, 25176 471<sup>st</sup> Ave., lives south of the site where the eligibility would transfer to. He does not want people living there. He has a 100 head of cattle and doesn't want them disturbed.

Mr. Moen stated that he is asking to move the eligibility so that there is access to it from the gravel road. He is selling all this land at auction and doesn't know if someone will buy this property for residential use. He sold Mr. Hamman his farmstead and pasture ground.

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

Commissioner Bunde stated she had concerns about moving this eligibility closer to the cattle. With a farm there you are asking for conflict. Commissioner Cypher said that he did not agree that the transfer was contiguous. No matter what the legal says, there is pasture land owned by someone else in between the land the eligibility is coming from an where it is going to. This could set a bad precedent for future requests. Commissioner Steinhauer agreed.

Based on the staff report and public testimony a motion was made by Cypher and seconded by Steinhauer for conditional use permit #07-13 as follows:

Approve the single family dwelling in the E1/4 NW1/4 (ex h-1 & ex Moen's Addn) with the conditions as stated.

Deny the transfer of one building eligibility from the NE1/4 SW1/4 to the NW1/4 SW1/4.

The motion passed unanimously.

**ITEM 7. CONDITIONAL USE PERMIT # 07-19 to allow a dog boarding kennel.**

Legal Description - Tr. 1 Rovang's Addition & the N270' E5401' lying north and east of Tr. 1 Rovang's Addition in the S 60 Acres NE1/4 in Section 21-T102N-R48W

Location - 25939 481<sup>st</sup> Ave 1 mile northwest of Corson

Petitioner / Owner- Ken Bahnson

**General Information**

Present zoning - A-1 Agriculture

Existing Land Use - Residential / Cell Tower

Parcel Size - 8.34 Acres

**Report by:** Pat Herman

**Staff Analysis**

This conditional use permit request is to allow a dog boarding kennel with 30 indoor/outdoor runs. There are times when two dogs could be placed in a kennel together so the number of dogs could exceed 30. The property is located one mile northwest of Corson. The site is zoned A-1 Agricultural as are the surrounding properties. There is a cellular tower on this property which was approved by the Planning Commission in March 2001.

There are clusters of rural residences a 1/2 mile to the north and to the south of this site. The closest house is located approximately 600 feet to the northeast. The petitioner lives on the site and will be the owner and operator of the kennel. The petitioner plans to construct the kennel to the west of the cellular tower.

This will place the kennel in an existing gully, allowing an 8 foot ridge between the kennel and the adjoining property. This siting will also restrict the dog's sight line so they will not be aggravated by people or vehicles on the neighboring property.

**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 area has a mixture of agriculture and residential uses. The recommended conditions should mitigate any potential impacts the kennel would have on the surrounding land uses. Placing the kennel in the gully will provide a natural sound buffer. Previously approved kennels have been required to keep the animals indoors between the hours of 10 pm to 6 am and the same restriction should be applied to this site.

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

Due to approved eligibility transfers, there are only two remaining residential building eligibilities on properties adjoining this site. One is on the approximately 50 acres to the south and west, the other on the quarter-quarter to the east across 481<sup>st</sup> Ave. Both of the property owners were notified by the petitioner concerning this conditional use permit, as required by the Minnehaha County Zoning Ordinance.

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

Access to the site will be from an exiting driveway which is also used to allow entry to the cellular tower. The petitioner will be reconstructing this driveway to allow easier passage. Rural water is available in this area and the waste materials will be handled with either a septic system or a holding tank. The petitioner is currently working with a septic installer on the best method to use.

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

There is sufficient space to meet the minimum requirement of two parking spaces for this use.

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

All lights should be directed downward to prevent any light spillage off of the property.

The petitioner should be aware that the Minnehaha County Animal Control Ordinance requires that the kennel must be constructed to the standards of Animal Welfare Act- Part 3, Sub-part A, Sections 3.1-3.12. A set of building plans must be submitted to the Building Inspector for review prior to the issuance of a building permit.

**Recommendation**

Staff finds that the proposed use is compatible with the agricultural uses in the area, and that the existing topography reduces the potential for land use conflicts, and recommends **approval** of Conditional Use Permit #07-19 with the following conditions:

- 1) All operations shall conform to the site plan submitted as part of the application.
- 2) The kennel shall not exceed a maximum of 35 dogs.
- 3) Signage shall be limited to one on-premise sign not to exceed 9 square feet in area.
- 4) All animals shall be boarded indoors between the hours of 10 pm and 6 am
- 5) The kennel shall be constructed to the standards of Animal Welfare Act- Part 3, Sub-part A, Sections 3.1-3.12.
- 6) A septic system or holding tank shall be used to handle animal waste.

**Public Testimony**

Commissioner Twedt wondered how many kennels were in rural Minnehaha County and were located close to homes. Ms. Herman stated there are 4 or 5 that were approved by conditional use permit, and then there are some which never opened. The Happy Dog kennels on E. Madison St. and north Cliff Ave. are surrounded by homes. Commissioner Cypher also pointed out the kennel on E. Hwy 38<sup>th</sup> St.

The petitioner, Ken Bahnson, stated that he is retired after 35 years with the post office and now wants to operate a dog kennel. He lives on the site and wants this kennel to be and clean and quit as possible. He is in agreement with the conditions.

Clark Lee, 48081 259<sup>th</sup> St. lives a ¼ mile to the north across an open field. His concern is not the well being of the dogs at the kennel, but with the noise. He can hear the interstate from his house and it is a 1 ¼ miles away. The sound of dogs is a higher pitch or frequency. Any kind of wall or trees will not abate

that frequency. There is not way to keep the noise at a decibel limit that would be acceptable at where they live.

Bob Nuss, 2200 Byrum Circle, bought two lots with building eligibilities to the south of the site. He is in the construction business and plans to sell off the sites. When he bought the land he understood that these properties were surrounded by agricultural land, but did not know about the dog kennel. If he brings clients out to see the site and the dogs are barking that could devalue the property. The issue of the noise needs to be addressed now. What process would he have in the future is the noise is an issue? He feels the kennel will devalue the look and feel of the land he bought.

Tom Brown, 25878 480<sup>th</sup> Ave., stated that his family's farm is northwest of this site. They can hear the interstate at the site and will definitely be able to hear the dogs. You can hear the neighborhood dogs barking. There is a dog kennel on Madison St. that sits among houses. All those houses were there since the dog kennel was there. Those people are always having to listen to the dogs.

Joel Jellama, 48085 259<sup>th</sup> St., he can hear pheasants crow from the petitioner's property. He stated that he has dogs and that the dogs in the neighborhood all get along. He feels that they will be drawn to go down to the kennel. It will just be a calling card for dogs to go visit. This is the making of a bad situation. There is water drainage through the property and onto his. This could be contaminated. He doesn't want 30 dogs in that neighborhood.

Ken Satter, 25927 481<sup>st</sup> Ave., owns the house closest to this site. He understands the condition being set to keep the dogs inside during the night but that does him no good. He has driven trucks for 30 years. This job means that he needs to sleep at all hours of the day or night. He is concerned that there is a natural water way running through there which will be contaminated. If one dog barks, they will all bark.

Cathleen Satter, 25927 481<sup>st</sup> Ave., owns two registered dogs. She is afraid that the dogs that come to the kennel may have diseases that will kill her dogs, such as Parvo. She says that these diseases can travel through the air. Her dogs are like family and she does not want to loose them. Who would pay for the loss of her dogs and the heartache she would go through? These dogs are like her children.

Mr. Bahnson stated that he works with a vet in Tea and under the standards of the animal welfare act. He will not have dogs on this property that do not have the proper paper work. He lives there and will run a clean operation. He plans to be there 24 hours a day. He doesn't want to listen to a dog barking either. If a dog is barking it will be put inside.

Commissioner Twedt noted that farmers don't want rural residents and rural residents don't want these types of occupations. As the county is growing, where would you put a new dog kennel? As the community grows there are more and more people with pets and they have a need to board their pets. It is a needed use, it fits with the zoning ordinance, and it would be hard to turn it down.

Commissioner Bunde concurred that this is an agricultural area and that she is not concerned about the water contamination as this will be on a septic system. There are hours and conditions that he would have to adhere to. Ms. Herman suggested that a condition could be added that the kennel could only operate under the ownership of Mr. Bahnson. If it were sold the new owner would have to come back to the Planning Commission to reapply to operate a kennel at this site. Commissioner Cypher that he did understand the concerns about noise from the dogs. There are no required set backs for dogs. Commissioner Steinhauer stated that a request for a dog kennel is required to come to Planning Commission so that the neighbors can voice their concerns. There is an immediate neighbor that does have an occupation that necessitates unusual sleep patterns.

Based on the staff report and public testimony, a motion was made by Twedt and seconded by Bunde to recommend approval of conditional use permit #07-19 with the following conditions:

- 1) All operations shall conform to the site plan submitted as part of the application.
- 2) The kennel shall not exceed a maximum of 35 dogs.
- 3) Signage shall be limited to one on-premise sign not to exceed 9 square feet in area.
- 4) All animals shall be boarded indoors between the hours of 10 pm and 6 am
- 5) The kennel shall be constructed to the standards of Animal Welfare Act- Part 3,Sub-part A, Sections 3.1-3.12.
- 6) A septic system or holding tank shall be used to handle animal waste.
- 7) The boarding kennel shall only be in operation under the ownership of Ken Bahnson. The kennel shall cease operation if the property or kennel is sold.

The motion passed (Steinhauer and South nay).

**ITEM 12. CONDITIONAL USE PERMIT # 07-23 Class One Home Occupation to allow a garbage disposal hauling company.**

Legal Description - Tract F Fiegen's Addition N1/2 SE1/4 in Section 17-T103N-R48W

Location - 25267 480<sup>th</sup> Ave. 6 miles west of Garretson

Petitioner / Owner- Ryan Jaacks

**General Information**

Present zoning - A-1 Agricultural

Existing Land Use - Residential

Parcel Size - 6.0 Acres

**Report by:** Scott Anderson

**Staff Analysis**

The applicant is requesting a conditional use permit to allow the operation of a home occupation. The applicant is proposing to operate a garage hauling business, which will consist of four (4) trucks. The trucks will be kept in a 40 foot by 80 foot structure. The business will be operated by the owner of the property, Ryan Jaacks, and his father. The applicant estimated that no more than 2 visitors a day would be generated by the home occupation.

**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 could have significant effects on the enjoyment and use of property in the immediate vicinity. Furthermore, staff has concerns that property values in the surrounding area could be negatively impacted. Only through careful business operations and procedures can any impacts be mitigated.

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

The proposed home occupation could have a negative effect on the normal and orderly development and improvement of vacant property in the area. While the area is now primarily agricultural in nature, should any residential development in the area to occur, the location of a garbage handling business would deter growth.

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

Access is provided by 480<sup>th</sup> Street. Storage of the garbage trucks would be inside. The applicant has indicated in a phone conversation with staff that none of the trucks would be washed on the subject property. This will eliminate the need to address the disposal of any waste water.

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

The applicant has not provided a site plan showing any parking. This proposed use is not identified in Article 15 of the Zoning Ordinance. As such, staff is recommending that three (3) off street parking spaces are provided.

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

The proposed use will produce noise and some dust. There could also be odor associated with the operation of the business. With proper conditions of approval, however, none of these items should constitute a nuisance. Staff believes that conditions have been implemented that will greatly minimize any potential nuisance.

**Recommendation**

Staff recommends **approval** of Conditional Use Permit #07-23 to allow a garbage hauling business as a Class 1 Major Home Occupation with the following conditions:

- 1) That no more than two (2) garbage trucks be kept on the subject property at any time. Each garbage truck shall be empty of garbage while on the subject property.
- 2) That none of the trucks be washed on site unless an adequate wastewater disposal system has been reviewed and approved by the Planning Director.

- 3) That all requirements of Article 12.0302 shall be continually met.
- 4) That the applicant obtain and maintain all required sale tax licenses from the state of South Dakota.
- 5) That a minimum of three (3) off street parking spaces be provided.
- 6) That at least one (1) 2A-BC dry chemical fire extinguisher is accessible within the building used for storing the garbage trucks.
- 7) That any security lighting on the 40 foot by 80 foot building is of a shoe-box type and that the light is directed downward.

### **Public Testimony**

Commissioner Cypher noted that the zoning ordinance criterion is to allow only 750 sq. ft. of accessory building area to be dedicated to a home occupation. Commissioner Twedt confirmed that the petitioner was only requesting that two trucks be kept on this site. Commissioner South asked for a clarification of #2 in the staff analysis as to how this proposed use would negatively affect development and why approval was recommended. Mr. Anderson stated that a more extensive business in a more heavily developed area would not be appropriate. In this location, there is not a concentrated subdivision of homes. Most home occupations have the potential for some negative affects. The affects are minimized by the recommended conditions of requiring empty and washed trucks, trucks that are no louder than other vehicles and farm equipment, and limited dust generation. The truck would leave the shed in the morning, do the route, and come back at the end of the day, just like anyone else leaving for their job. Mr. Anderson noted that the Planning Department would be responsible for enforcing the conditions of the permit.

The petitioner, Ryan Jaacks, owns Heartland Disposal Service that operates in Sioux Falls and is also employed by a hauler out of Brandon. The Brandon operation picks up garbage in this neighborhood on Thursday afternoons. Mr. Jaacks noted that he is in the process of purchasing those customers. He has two trucks, a F-350 pick up and a packer truck. The pickup is equipped with a hydraulic dump on the box and isn't any louder than any one else's pick-up. The packer truck would go out once a week to pick up garbage at the commercial locations in this area and in Garretson. He is planning a 40 x 80 accessory building so that he has room for personal storage such as a camper and boat.

At the request of Reid Christopherson, 25270 480<sup>th</sup> Ave., approximately 20 people stood up in the audience who were opposed to this conditional use permit. He stated that he was speaking on behalf of the neighborhood. He presented the Commission with a letter he had sent to his surrounding neighbors dated March 21, 2007 and a second letter he sent out dated March 22, 2007. He read the following from the staff report for this item:

The proposed use could have significant effects on the enjoyment and use of property in the immediate vicinity. Staff has concerns that property values in the surrounding area could be negatively impacted. Only through careful business operations and procedures can any impacts be mitigated. The proposed home occupation could have a negative effect on the normal and orderly development and improvement of vacant property in the area. While the area is now primarily agricultural in nature, should any residential development in the area to occur, the location of a garbage handling business would deter growth. The applicant has not provided a site plan showing any parking. The proposed use will produce noise and some dust. There could also be odor associated with the operation of the business.

Mr. Christopherson stated that despite this analysis, this item was forwarded with a recommendation of approval. He referred the commission to Attachments 2 & 3 in the handout which showed the map which accompanied the staff report. He had added additional homes to the second map which had not been shown on the County's version. He felt that the map sent out was erroneous and may have been intentionally misleading. He also alleged that the photos taken by Mr. Anderson where intentionally misleading, leaving off the houses immediately across the street. (Mr. Anderson showed the next slide in the planning depts. presentation did include those houses). Mr. Christopherson felt the lot had not been maintained as it had an overgrowth of weeds, subsequently treated with round-up.

Attachment 4 showed the number of homes located within a 1.5 mile radius of the petitioner's property. 1.5 miles is the distance to the nearest improved county roads. There are 39 residences within this radius, 4 eligibilities planned for development, 2 cemeteries, and the EROS data center. He disagreed with Mr. Anderson's assessment of this area being undeveloped and under density zoning regulations feels this area is extremely developed. He stated this area has become know as West Garretson. Mr. Christopherson noted that this is an area where teenage children can legally operate recreational vehicles

on the road and there are 4-H horse programs.

Mr. Christopherson stated that staff's analysis is in further conflict with the Minnehaha County Zoning Ordinance Section 12.03 Home Occupations. Mr. Jaaks is planning to construct a 40 foot by 80 foot structure which would provide for 3,200 square feet of storage space. There is no stipulation placed on that for internal separation which has been the case for other conditional use permits approved by the County. Minnehaha County Zoning Ordinance 12 0302.A(4) states 'in addition to the dwelling, up to 750 square feet of accessory building space may be used for the occupation' which would be an area of space of 27 feet 5 inches by 27 feet 5 inches — hardly a space sufficient to allow for the parking of 2 garbage trucks would be permitted under this approval.

Minnehaha County Zoning Ordinance 12 0302A(5) states, "The occupation shall not create noise which is detectable to the normal sensory perception off the property between the hours of 6:00 pm and 8:00 am".

That does not take into account running vehicles or different noise frequencies, and yet approval is being recommended knowing there is going to be perceptible noise outside of those hours.

Minnehaha County Zoning Ordinance 12.0302.A(6) states that "The occupation shall not create odor detectable to normal senses off the property. The staff analysis recognizes that odors may be produced. Minnehaha County Zoning Ordinance 12.0302 A(11) states that "Delivery vehicles shall be limited to auto, pick up, or typical delivery service truck." This conditional use permit however, places no limitation on size or capacity of the garbage trucks.

Mr. Christopherson stated that the staff analysis did not mention the increased danger to 5 families with school age children living within a ½ mile and catching the school bus. There is an increased danger to children playing in the yards. Attachment 5 shows 3 blind hills in this facility, yet this would add more commercial traffic in the area. There will be a severe impact to township roads. Despite the excellent work of Edison Township there are known soft spots, deep ditches, and no shoulders. Tax payers will bare the wear and tear on these roads, as well as the deep ruts that will be caused by these trucks in the winter. Those tracks make it much more dangerous to neighbors in their personal vehicles.

Mr. Christopherson stated that this use would be more suitable in a planned commercial area. He does not feel the applicant would not be able to meet the conditions of this permit, and that would place the burden of reporting the violations on the neighbors, making them the police force. Approving these occupations, knowing they are not in line with the zoning ordinance, does nothing but make a mockery of the ordinance that exists at this point and constitutes a serious breach of trust with the existing land owners who moved into this area with the understanding that this was not a commercial area. The rights of the 39 property owners to enjoy their land should take precedence over the request of one owner who knew the rules and wants to change those rules for his own use.

Bill Waltz, 48094 252<sup>nd</sup> St., knows that gravel roads can get bad with increased traffic. There is a blind intersection at 252<sup>nd</sup> St. and 480<sup>th</sup> Ave. that is supposed to have a stop sign, but it's been down for months. He is concerned about adding more traffic here. He noted that a dump truck would also be noisy.

As a good businessman, he assumes the petitioner would be looking to grow the business. He views this request a wedge of commercial inserted into an agricultural area.

Mark Beck, 25237 480<sup>th</sup> Ave., lives directly north of the site. With south winds, any odor or noise would impact him. He has small children that play within distance of the road and he could see incidents happening. There is also a soft spot on 480<sup>th</sup> Ave., just to the south of the proposed site. Heavy duty traffic would cause grief for people getting to and from work. He cannot see putting a commercial establishment in a residential neighborhood. There is agriculture here but that's 5-6 weeks out of the year. The decibels from a diesel engine will be too loud. He would like this item denied.

Wade Omstead, 25194 480<sup>th</sup> Ave., is a motorcycle rider and so are his children. They ride street bikes

which are not good on gravel roads. The increased traffic, rutting in the road, or a nail or screw flying off the truck, would all be dangerous for them on their motorcycles.

Gale Larson, owns 200 acres northeast of this site. He wondered why these two trucks couldn't dispatch out of Sioux Falls, like the other two owned by the petitioner. He has plans for building houses someday and this could affect the sale of those lots.

Mr. Jaaks, stated that he has approximately 300 customers in this area that he will pick up garbage from. The only time the big truck will leave the shed is one day a week when he will do the route for all the commercial businesses in this area. All other times it will be F350 pickup driven to work and back. It's just like any other pickup other than it has a garbage box in the back. It is what he currently uses to pick up garbage in this neighborhood. When the trucks are full they go to the landfill and they come back empty. There shouldn't be any smell with no garbage in the truck. No garbage will be dumped on this property what so ever.

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

Commissioner Twedt stated that we have approved house upon house. Then people come and say I might want to build so don't do anything with this person and keep the road for cars or motorcycles only, not for garbage trucks. It is difficult to balance. Is two trucks too much traffic? Commissioner Bunde agreed that it was difficult. Looking at noise and it's ag area with tractors and there is nothing louder than 4-wheelers and ATV's running around. Odor, again this is agriculturally zoned area, this is not a rezoning. It is not a residential area. People can live in other places but you can't have a home occupation just any place. The issue that is concerning is the size of the building as we have denied some other applications for this reason. But if not here where?

Commissioner Cypher stated that this is real stretch on the size of the building when the criteria is 750 sq. ft. and then having two commercial trucks. Commissioner South said that the commercial areas designated by at major intersections such as at the Dell Rapids and Hartford Interstate exits are perfect opportunities for this type of use. This would be putting a light business in this area. The size is too large. Commissioner Cypher again stated that the size of this is just way too big. 1200 sq. ft. would be more acceptable. There is no delineation for this building. Mr. Anderson noted that this could be added as a condition. Commissioner Steinhauer feels that this is a commercial activity that should be in a commercial or industrial zone with hard surface access. He is also concerned about the size of the building.

Based on the staff report and public testimony, a motion was made by Rogen and seconded by Steinhauer to deny Conditional Use Permit #07-23. The motion carried (Twedt nay).

**ITEM 14. CONDITIONAL USE PERMIT # 07-24 to exceed 1200 sq. ft. of accessory building area (3072 sq. ft. requested).**

Legal Description - Lot 6 McHary 1<sup>st</sup> Addition S1/2 in Section 7-T101N-R47W  
Location - 26395 McHardy Circle 3 miles southwest of Valley Springs  
Petitioner / Owner- Donald Lootens

**General Information**

Present zoning - A-1 Agricultural  
Existing Land Use - Residential  
Parcel Size - 7.24 Acres

**Report by:** Pat Herman

**Staff Analysis**

The parcel is located three miles southwest of Valley Springs in a six lot subdivision. This subdivision was created through the transfer of building eligibilities which were approved by the Planning

Commission in July 2006. The petitioner has constructed the first house in the subdivision. He is now requesting approval for 3,072 sq. ft. of accessory building area.

This would be the first accessory building to be erected in this subdivision and there are no covenants which limit the size of an accessory building. If the parcels were only 1 or 2 acres in size a 1200 sq. ft. accessory area maximum would not be unreasonable. In this subdivision the lot sizes range from 7 to 10 acres in size so a larger size accessory building would not dominate the lot.

The Planning Commission has consistently consulted the size of the existing accessory buildings in a subdivision when considering a request to exceed 1200 square feet in area. While that is obviously not possible in this case, there is an existing six lot subdivision directly to the south of this site. Lot sizes in this developed subdivision are approximately 10 acres. The accessory building areas for these lots range in size from 832 sq. ft. to 2700 square feet. Staff believes that 2700 square feet would be a reasonable allowance in this case, given the lot size of the lot and the established accessory area set by the existing buildings in the neighboring subdivision.

**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 this structure should not impede on the enjoyment or use of the surrounding properties or effect property values.

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

The building can only be used for the personal storage of the petitioner's residential related items and no commercial or business activities are allowed.

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

Access on this lot is restricted to McHardy Circle.

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

There is sufficient parking for any residential activities.

**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.

**Petitioner's Note:** A building inspection is required. The building inspector will measure the outside perimeter to determine the square footage maximum has not been exceeded.

**Recommendation**

Staff finds a 2700 sq. ft. accessory building will conform to the general sizes of other accessory buildings in the area. Staff recommended approval of conditional use permit #07-24 with the following conditions:

- 1) The total accessory building square footage shall not exceed 2700 square feet.
- 2) The building shall be used only for the petitioner's personal residential storage. No commercial uses or commercial storage shall be allowed.
- 3) The building shall not exceed one story in height.
- 4) A building permit and a building inspection are required.

**Public Testimony**

The petitioner, Donald Lootens, is retired from the landscaping business. He has no plans to operate a business from this site. This is a large parcel and which he plans to maintain with the equipment he already owns. He would like to be able to keep the equipment at his home site so that is easily available for use on the lot. If he is not approved for the larger building size he is not sure what he would do with the equipment. Right now the equipment is being stored at his previous residence in Minnesota.

Derek Thompson, 48092 Red Rock Dr., owns the lot just to the north of Mr. Lootens and has not yet

constructed a house. He stated that the property owners in the subdivision are working together to on covenants. Some of the other land owners are planning on having horses and will need larger buildings to provide adequate stables. Mr. Thompson noted that these are large lots and the requested size would appear minimal on the lots. He asked the Planning Commission to support the request.

Peter Melon, 48458 264<sup>th</sup> St., owns the lot to the east where he is constructing a house. He has plans to construct a 40 x 60 building for an enclosed pool and another detached building for storage and for horses. He does not think that 3, 057 sq. ft. is unreasonable and is not out of line for this area.

Commissioner Steinhauer noted the Commission's concerns that these large buildings are used for commercial operations. This is tough call because if a larger size is not allowed stuff then sits outside. Commissioner Twedt stated that in some ways the Commission has to play God to have orderly growth.

Mr. Loots stated that the building would be designed to compliment the house and be located within 50 or 60 feet of the house. The building will have two overhead doors.

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

Stating that her motion would double the allowed size of 1200 sq. ft. and based on the staff report and public testimony, a motion was made by Twedt and seconded by Steinhauer to recommend approval of conditional use permit #07-24 with the following conditions:

- 1) The total accessory building square footage shall not exceed 2400 square feet.
- 2) The building shall be used only for the petitioner's personal residential storage. No commercial uses or commercial storage shall be allowed.
- 3) The building shall not exceed one story in height.
- 4) A building permit and a building inspection are required.

The motion passed unanimously.

**ITEM 15. CONDITIONAL USE PERMIT # 07-25 to exceed 1200 sq. ft. of accessory building area (2760 sq. ft. requested).**

Legal Description - Tract 3 Grave's 2nd Addition SW1/4 in Section 18-T101N-R51W  
Location - 26496 460<sup>th</sup> Ave. 2 miles northwest of Wall Lake  
Petitioner / Owner- Farlin Barse

**General Information**

Present zoning - A-1 Agricultural  
Existing Land Use - Residential  
Parcel Size - 3.08 Acres

**Report by:** Pat Herman

**Staff Analysis**

The petitioner is requesting to exceed 1200 sq. ft. of accessory building area. The site is located two miles northwest of Wall Lake. The parcel is part of a five lot subdivision which, as defined in the Minnehaha County Zoning Ordinance, requires conditional use permit approval for accessory building area in excess of 1200 square feet.

The petitioner would like to construct a 2400 square foot accessory building with a 360 sq. ft. carport. There is an existing accessory building currently on the property to which the car port is attached. The petitioner intends to remove that building but would like to reattach the carport to the new structure. The carport is considered an accessory building and will count towards the total accessory building square footage. The petitioner is requesting approval for 2760 square feet of accessory building area.

There is only one other accessory building in this small subdivision. That accessory building is 2400 square feet, and sits on a lot which is two acres larger than the subject property. The Planning Commission has been consistent in not approving accessory buildings which exceed the largest existing

accessory square footage area in the subdivision.

**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 this structure should not impede on the enjoyment or use of the surrounding properties or effect property values.

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

The building can only be used for the personal storage of the petitioner's residential related items and no commercial or business activities are allowed.

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

Access on this lot is restricted to 460<sup>th</sup> Avenue. No access is allowed from Highway 42.

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

There is sufficient parking for any residential activities.

**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.

**Petitioner's Note:** A building inspection is required. The building inspector will measure the outside perimeter to determine the square footage maximum has not been exceeded

**Recommendation**

Staff finds a 2400 sq. ft. building will conform to the general sizes of other accessory buildings in the area. Staff recommended approval of conditional use permit #07-25 with the following conditions:

- 1) The total accessory building square footage shall not exceed 2400 square feet.
- 2) The building shall be used only for the petitioner's personal residential storage. No commercial uses or commercial storage shall be allowed.
- 3) The building shall not exceed one story in height.
- 4) A building permit and a building inspection are required.

**Public Testimony**

The petitioner, Farlin Barse, stated that he had classic cars and boats and wanted a place to store them. The car port he is asking to keep sits on a concrete base and he would keep his mowing equipment in there.

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

Commissioner Bunde stated that she was bothered that the lot with the existing 2400 sq. ft. building was twice as large as this site. Commissioner South noted that the neighbors had not come out against this building.

Based on the staff report and public testimony, a motion was made by Steinhauer and seconded by Twedt to approve conditional use permit #07-25 with stated conditions. The motion passed unanimously.

Item 16 was deferred from the February 26, 2007 meeting.

**ITEM 16. REZONING #07-01 – from A-1 Agricultural to Buffalo Ridge Planned Development District for an ethanol production facility.**

Legal Description - Government Lots 1 and 2 in the NE ¼ ; and that portion of Government Lots 1 and 2 in the SE ¼ lying north and south of the railroad; and the SE1/4 SW1/4; and the S587.34' NE1/4 SW1/4; and the S587.34' E103.71' NW1/4 SW1/4; and the E103.71' SW1/4 SW1/4 (Ex. Tract 1 Ramey Addn.); all in Section 34-T104N-R47W  
Location - ½ mile northeast of Sherman  
Petitioner / Owner- PlanScape Partners / Carol DeShepper and Dean & Cindy Olson

**General Information**

Present zoning - A-1 Agricultural  
Existing Land Use - Agricultural  
Parcel Size - 303 Acres

**Report by:** Scott Anderson

**Staff Analysis**

Minnehaha County utilizes several zoning techniques such as density zoning, the use of subdivision regulations and Planned Development Districts. The County's Comprehensive Plan states that occasionally conventional zoning districts can be a barrier to innovative design and development techniques. The Planned Development District was added to the zoning regulations to provide developers with greater flexibility while at the same time increasing the public review of development proposals. Planned Developments can exactly outline proposed uses within the specific district and how development will occur. Furthermore, a specific set of guidelines for each planned development can be agreed upon by the County and developer. Planned Developments fill an important niche within the overall zoning of Minnehaha County.

The applicant, PlanScape Partners, has submitted a rezoning request to rezone the above described 300+ acre parcel from the A-1 Agricultural District to a Planned Development District. This planned development would be for an ethanol production facility. The applicant has submitted a plan outlining how the site will be developed, as well as a narrative explaining the development.

The entire parcel will be considered as one (1) sub-area. The one sub-area will consist of one (1) 50 million gallon nameplate dry mill ethanol production facility and associated offices, employee parking, rail lines and grain storage.

Staff conducted a site visit and found that the site is currently vacant. The City of Sherman is located approximately ¼ of a mile to the west. There are four farm residences to the south and west. A major rail line is located along the east boundary of the subject property.

Staff has prepared a recommended set of regulations for the proposed Buffalo Ridge Planned Development District. Staff finds that the Buffalo Ridge Planned Development District is in conformance with the Minnehaha County Comprehensive Plan. The proposed development is being established with due consideration to adequate highway and rail services. Furthermore, the ethanol plant will provide an improved and stronger market for agricultural products raised in the area, thus promoting the continued agricultural use of the surrounding property.

**Recommendation**

Staff recommended approval of Rezoning #07-01 to create the Buffalo Ridge Planned Development District as follows:

BUFFALO RIDGE PLANNED DEVELOPMENT DISTRICT. The regulations set forth herein or elsewhere in these regulations are the district regulations in the Buffalo Ridge Planned Development District:

- (1). USES PERMITTED. A building or premises shall be permitted to be used for the following purposes:  
  
Ethanol production facility.
- (2). ACCESSORY USES. Accessory uses and buildings permitted in this district are those accessory buildings and uses customarily incidental to any permitted use in the district.
- (3). PARKING REGULATIONS. Parking shall be regulated in conformance with the provisions of the I-2 General Industrial District.
- (4). SIGN REGULATIONS. The size and location of all on-premise signs shall be shown on the final development plan and shall be regulated in conformance with the provisions of Article 16 On-Premise Signs for I-2 Industrial zoning. Off-Premise signs shall not be permitted.
- (5). YARD AND HEIGHT REGULATIONS. The minimum setbacks shall apply to all structures, but not service roads, driveways, utilities, or railroad tracks.  
  
Required front yard ----- 75'  
Required side yard ----- 50'  
Required rear yard ----- 75'  
Maximum Height ----- 70'  
Maximum Height of ancillary structures such as cooling towers, storage bins, vent and exhaust stacks and grain elevators --- 225'
- (6). OTHER REGULATIONS. Other regulations for the entire Buffalo Ridge Planned Development shall be:
  - (a). That the ethanol facility continually meets or exceeds EPA standards for emissions. An annual air quality report shall be provided to the County Planning Department.
  - (b). A landscaped berm at least four (4) feet high shall be installed along the entire south and west property boundaries, with the exception of any entrance into the site. Deciduous and/or evergreen trees shall be planted at minimum spacing of 40 feet and shall be a minimum of 1 inch caliper. A complete landscape plan showing the trees, shrubs and grass shall be reviewed and approved by the Planning Director prior to installation and must be installed no less than 6 months after operation of the ethanol facility begins.
  - (c). All parking and driveway surfaces shall be hard surfaced.
  - (d). That all existing drainage ways be maintained and that erosion control measures be implemented on all disturbed areas so as not to allow any sedimentation of existing drainage ways or bodies of water;
  - e). That reasonable steps shall be taken to reduce light emissions from the

facility. All outdoor lights are to be of the shoe-box type that directs light downward. Any lighting required FAA shall not exceed the FAA minimum. Flashing white lights shall not be allowed for night time lighting.

- (f). That noise emissions be limited to 65 dbl at the property perimeter.
- (g). That all necessary wastewater processing permits be obtained from the County and State and continually held in good standing.
- (h). That prior to the commencement of any construction, a drainage plan be submitted for review and approval by the Planning Director showing how stormwater will be held and discharged at its current rate.
- (i). That a left turning lane be constructed on County Highway 114 to allow for truck traffic to safely enter the plant. The design and construction to be reviewed and approved by the County Highway Superintendent.

### **Public Testimony**

Commissioner Cypher asked about lighting, as many on the existing facilities have lights hanging all over them. These are not shoe box design by any means and are pretty obnoxious. He likes the recommended regulation for lighting, but doesn't know how they are going to do this. Mr. Anderson stated that other commercial type uses that have applied for conditional use permits have been required to reduce their light pollution as well. Commissioner Rogen wondered if the TIF district boundaries matched the legal for the rezoning. Mr. Anderson stated that the applicant had reduced their boundaries somewhat so the rezoning is actually smaller than the TIF district. Commissioner Steinhauer, referencing section 5 the yard and height set backs, wondered what was meant by the word utilities. Mr. Anderson said water lines, fire hydrants, or similar uses would not have to meet the set backs. That could include a switching building. Mr. Steinhauer requested that language be added that would not exempt utility structures from the set back requirements.

Mr. Anderson explained that if the facility was not built the property would have to be rezoned. Because there is only one allowed use in the Planned Development, the need of the property owner to commence a different use would generate the rezoning action.

Ron Fiscus with PlanScape Partners presented a power point presentation on the proposed ethanol facility. The intent is to build up to a 100 million gallon nameplate plant. They are currently discussing whether to stay at 50 million gallons or increase to the 100 million gallon size. With either size the plants will look very similar, but there would be a change in the rail area. With 50M gallons the rail spur would be on the north side of the plant in a laddering effect. At 100M gallons the rail would be a loop track. Of the 300 acres at this site the majority is taken up by rail. Mr. Fiscus detailed the following topics as taken from the attached power point presentation.

### **Site Selection Process**

- Determine access to corn, rail, utilities and water on adequate acres
- Conduct initial investigation
- Further due diligence/discovery on local financial assistance and detailed site information
- Choose site
- Complete discovery period, start rezoning, begin permitting process

The decision on which size plant to build is going to be based on the availability of natural gas, which should be determined in the next few weeks. From a land use standpoint, there is very little difference between the two sizes of plants.

### **Why/How Counties Plan**

- Control impacts to roadway and utility systems
- Assure best use of natural and manmade resources

- Establish reasonable controls for impacts to other properties

These actions let Buffalo Ridge know where to look for the placement of this facility.

#### Comprehensive Plan

- Goals/Policies
  - Provide for orderly, efficient land use
  - Maintain viable agricultural economy
  - Support growth of economic base and job opportunities
  - Encourage transition development that doesn't need costly public infrastructure

An ethanol facility provides wonderful jobs, a great investment in the community, and they are not dependant on municipal water or sanitary sewer systems which gives them more flexibility on where they can locate.

- Commercial/Industrial Agriculture Area
  - Allow siting of agri-businesses in rural areas
  - Discourage industrial uses that don't support agriculture
  - Rail access is limited. Encourage industrial use - discourage non-industrial development - adjacent to rail

There is no industrial use that supports agriculture better than an ethanol plant. This use needs, and will use, rail.

#### Development Plan Summary

".....industrial uses intended to support the agricultural sector should be accommodated at appropriate rural locations."

"The planned development zoning district will be a key component in formulating subarea plans."

There is value in using the planned development process.

#### Reasons for Rezoning Support

- Industrial use that supports and enhances agricultural uses in county
- Bounded by railroad
- Excellent highway access
- Logical Expansion of Sherman Ag/Industrial Development Area

#### Planned Development District

- Intent of a PD
  - Increased public review
  - Well-planned, efficient development
  - Protect sensitive areas – proper placement of buildings on site
  - Improve communication and cooperation among County, developer, etc., in development of ag land

Part of this property is in Minnehaha County and the rest in Rock County, Minnesota.

One of the environmentally sensitive issues is wetlands (map displayed). The area has been mapped and there are about 7 acres, out of the total 300 acres, which are delineated as wetlands. The siting of the plant has been done to avoid the wetlands. As the loop track is installed this may infringe on the wetlands. They would then have to go through the Corps of Engineers with a 404 permit, identifying where the wet lands are, and providing a mitigation/replacement plan for the wetlands being disturbed. With the small amount of wetlands involved it would probably just be an administrative review and an expansion of the wetlands out of the area of the rail loop.

#### Environmental Stewardship

- Controlled minor source of air emissions
- Facility will utilize best emissions controls and technology.
- Incinerates VOCs, which have contributed to odors
- All process water recycled in the system

#### Thermal Oxidizer

- Significantly reduces the odor, volatile organic compounds, carbon monoxide coming from the DDGS dryer.

The air emissions are controlled though a process called thermal oxidization. The thermal oxidizer takes material, that previously in old technology plants would have been distributed in the air and which could have some odors, and simply burns that material so that the emissions that go into the air are well within the standards of the EPA. There are federal and state standards that have to be met. The thermal oxidizer

technology continues to improve and remove more of the particulate and the odor, staying ahead of the federal standards that are always being updated. (Schematic drawing displayed) Through the summer you would not see steam from the plant. Once the temperature drops to 58 degrees and below the steam will be visible. It is just steam or water vapor, not smoke or harmful products, being distributed.

#### Noise On Site and Off

- Hearing protection only needed in 1 place (from OSHA standards)
- Normal residential sounds – ambient noise level is 40-45 decibels
- No impact at 1500 feet – sound reduced to 39 decibels

The rail line will operate at a 60 decibel level. The plant will meet the staff's regulation for this zoning district.

#### Traffic and Lights and Fire

- Lighting only for security purposes
- Less lumens than "big box" store or car dealership
- Traffic at approx. 75 vehicles/day
  - Employees
  - Grain deliveries
- Majority traffic on Co. Highway 114
- Self contained fire loop
- Sprinklers throughout plant
- 400,000 g water on site for 2 hour supply

A number of other ethanol plants are excessively lit. They are comfortable with the lights being a shoebox design. Security lighting is needed at night but they don't need to look like a car lot or a big box retail center. A 50 M gallon plant will bring in 75 vehicles per day. Grain will come in by truck and, for the most part, the ethanol will be distributed by rail. This will not be like a grain elevator with an influx of trucks at harvest time. A 10 day supply of grain can be stored on the site; the rest will be stored elsewhere. There will be daily deliveries so the traffic will be evenly distributed. There are ample areas on site to store the trucks that assemble when they are dropping off grain during the day.

#### No Evidence of Negative Impact

One question frequently raised is what is going to happen property values. They don't claim to be real estate experts or have done extensive research. They looked at several sites and found the following results:

Golden Grain Ethanol in Mason City, IA

Property Tax Values

Adjacent farmstead increased in value 17.8% between Jan. 1 2003 and Jan. 1, 2005

CORN Plant in Goldfield, IA

15 adjacent properties

- 5 increased A.V. 9.3% 1/1/2004 – 1/1/2006
- 9 stayed level
- 1 new house built within one block of plant

Based on what they've seen, there doesn't seem to be any impairment from the plants. What they do see consistently is the spin off, the ripple effect from the plant. For example, in Goldfield a run down convenience store was redone when it was announced an ethanol plant would locate across the street.

#### New Investment Follows

Central Iowa Renewable Energy - Goldfield, Iowa

Increase of \$72,400 Assessed Value = new tax revenue of \$3,000/year

#### Multifaceted Impact

- New jobs 35-40 or 40-45
- New tax revenue
- \$50-100 M in annual corn purchases
  - 50 – 100 MGY ethanol
  - 160 – 320 K DDGS
- Potential for increased livestock production – by products of dried distiller's grains for feed for livestock
- Reduction in feed costs for livestock
- Dividend payments to investors

Project Timeline

June 2006 – site selection started

Sept. 2006 - site optioned

2<sup>nd</sup> Q 2007 – local approvals finalized

3<sup>rd</sup> Q 2007 – financing completed

3<sup>rd</sup> Q 2007 – preconstruction work begins

4<sup>th</sup> Q 2007 – plant construction starts

3<sup>rd</sup> Q 2009 - ethanol production begins

Mr. Fiscus discussed the zoning regulations for the planned development district starting with #6 which deals with landscaping. He noted that there is no way to effectively screen an ethanol plant. What they would like to do is create something in the foreground to take people's attention away from the plant in the background. He would like to suggest on the south and southwest boundary the planting of a tree on average every 40', but would like to do a variety of trees and berming that would be more natural. He understands the need for screening between this site and Sherman. To the northwest there is a ridge that naturally hides the plant from the highway so they would request not having to landscape in this area due to its lack of effectiveness of not providing any screening.

Mr. Fiscus also requested that item 6(i) which requires a turn lane. He asked that the highway superintendent determine whether a turn lane was needed, not just make it mandatory.

Commissioner Twedt asked if the County Highway Superintendent had commented on the issue of traffic and impact on the road and the turn lanes. Mr. Anderson stated that Mr. Meister had been present at the initial meetings but at that time there had not been any numbers for the amount of traffic. Seventy-five trips per day should not have a significant impact on the hard surfaced road. Commissioner Rogen stated that the landscape needed to be done correctly so that the landscaping was installed in a manner that would not dump snow on the road or the railroad track. Mr. Fiscus responded that they would consider the site distance at the corner or at the rail line and take into consideration the snow issue.

Greg VanZant, 46000 244<sup>th</sup> St., stated that there have been positive comments about this plant. His son farms land 3 miles south of this site. Many corn and live stock producers in the area are excited about this and what it can do for the community.

Mr. Bill Janklow stated that he was representing Delbert and Linda Danielson (48765 250<sup>th</sup> St.). He agreed that this is a phenomenal economic development deal – new jobs, things on the tax role. But the people directly across the street are not going to see their property enhanced by this. The house is located 900 feet from where the center of the plant will be. Mr. Janklow presented the Commission a map which depicted the distance. A 4 foot berm is great, but the buildings at the plant are 4 or 5 or 6 feet high. It looks like a tank refinery for something in the petroleum industry. It is also going to take time for the trees to grow. Mr. Delbert is 57 years old. It won't be good for him, maybe for his heirs. Mr. Janklow stated that the Danielsons had built the house with their own hands on 40 acres. There is 2100 feet of Split Rock Creek on their property as well as their horses and the out buildings, which they also built by hand.

Mr. Janklow stated that the ethanol company was coming here asking for a privilege and that the company wants to step on the rights of the land owners. With the 100 M gallon plant that they are going to build why not just buy this property. Why wasn't it included in their district? This is a great deal for Minnehaha County but it's lousy for the Danielsons. And that's what's important in this country. The Bill of Rights was passed 200 years ago as amendments to the Constitution. No one should be deprived of life, liberty or due process of law. Due process of law is not just a hearing before the Planning and County Commissions It gives us the right not to have our property taken. When this company asks for the right to set up this marvelous project, they don't have the right to step on people who are the close neighbors. It could fall on them it is so close. This plant is great for corn but what about people?

It was stated that this meets the EPA standards, but other plants they are involved with have been in violation for years. Mr. Fiscus stated that the oxidizer was getting better all the time but that just means that not everything is contained. The Danielsons live southeast of the site and the wind is predominately from the northwest. Any lousy admissions will come across their house and their property. The County has given them a TIF, financial assistance to build this, but they don't want to take care of someone they are destroying. That is fundamentally wrong. Mr. Janklow stated that he was not being paid for his representation because he feels that is how important it is not to use economic development to crush other people. If the ethanol company feels this land is going to increase in value, let them buy this as an

investment.

Mr. Janklow continued that the plant will have 50 trucks a day. Ask them if 50 trucks a day will take care of a 50 M or 100 M gallon plant. That is 50 semis if it's every day, all holidays. If there aren't trucks on Sundays, that means more trucks on the other days. The plant itself might be quiet, but the jake brakes on the trucks won't be. 70,000 pound semis using their brakes to gear down for the Danielsons to listen to. This is going to 25,000 or 30,000 trucks a year. The jake brakes are not subject to conditions placed on this plant by the County. Why?

Mr. Janklow said that there is more being done to protect wetlands than is being doing to protect living, breathing human beings who pay taxes in this County. They are being giving less consideration than seven acres of wetlands. This is not fundamentally right. The investors could buy this land. It is ridiculous to suggest that the Danielson's property is not going to be destroyed as a place to live. The plant ought to be built but after the few neighbors that are really affected by it are taken care of. There is also another gentleman here with a house on 488<sup>th</sup> Ave. that is also very concerned. This type of bad mistreatment has never be allowed in Sioux Falls or Minnehaha County or the State of South Dakota, where people have gone to governmental bodies and asked for the privilege to treat taxpayers and homeowners with property rights this badly. And for that reason we oppose it at this time. Mr. Janklow stated that the two sides had been trying to work it out, but had not reached an agreement. What is the rush on getting this done? The real test of America is not how one treats one million but, how one million treat one.

Randy Pierret, 25047 488<sup>th</sup> Ave., stated that 2 months ago the Commission heard a CAFO request by Crooks. At that time a Commissioner had stated that Minnehaha County is an agricultural county and is proud of the rules they have established to keep it an agricultural county. What has changed in this short time that this area is being rezoned to a planned development district. This is just a generic version of industrial development. The exhaust stacks are 225' in height and this is industrial. The use of the plant cannot be considered agricultural if they have to rezone the property. They content this is an ag based industry with the key word still being industry. If the use of ag products makes this agricultural then most manufacturing can be considered ag based. Chemical companies, plastic manufacturing, soft drinks, and machinery manufacturing are just a few that use ag products in their processes. None of these would be considered truly agricultural in nature. Mr. Pierret asked the Commission to consider a home whose residents had looked out their picture window at a natural environment, an empty lot where your kids have played and where you have seen deer and rabbits. And then one day someone decides that the empty lot should be turned into a truck stop, and their house is changed forever. The animals are gone, the kids are endangered by the increased truck traffic, and they have to keep their shades pulled.

Mr. Pierret continued that industrial uses should be industrially zoned areas not agricultural areas. He noted that there is industrial zoning as close as Corson, which also has rail line. They encourage and look for industrial growth there. He asked the Commission to vote as if they were living across from this site. He also questioned Mr. Fiscus' claims that property values increased around ethanol plants. How far away from the ethanol plant did properties see an increase? Did they increase slower the further away you were from the plant? The example of a convenience store being fixed up in another town is troubling. Will there be more requests for commercial zoning in this area? The Commissioners need to consider the rights of the property owners in the area, not just the rights of the ethanol company.

Mr. Janklow stated that the assessed value is not the real value of any property, including the property in this area.

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

Commissioner Twedt felt that the staff report should have been clearer on how close the Danielson's house is to the proposed site. She disagreed with this being a farmstead, rather than a single family dwelling. Is there any way to mitigate this? Mr. Anderson agreed that there was no way to totalyl obscure this plant. The landscaping requirement was put in the conditions as the next best thing. He agreed that Mr. Janklow was right, that it would take time for the trees to grow.

Commissioner Steinhauer stated that jake braking is definitely an issue, but not necessarily a land use issue, in which the County could require the owner to tell of his customers not to jake brake. He is concerned with this industrial use being placed so close to residential. In the city there would be a stepping back of uses, a buffer between residential and industrial uses. There doesn't seem to be a way to do that here. We might defer this and ask to see the landscape plan and to review it.

Commissioner O'Hara noted that there are large set backs for CAFO's, but only 75' for this ethanol plant vs. 3/8<sup>th</sup> of a mile for a CAFO. Commissioner Twedt concurred that there was no landscape plan in the world that would help the Danielsons. This is either passed or not, but this project is an economic development gem in this part of the County. This is an agricultural use. She stated that she feels there is a family that is terribly compromised. Commissioner Steinhauer agreed that he was in favor of this type of development, but does think that the Commission could have some influence on a good landscape plan. A deferral would also allow time for the neighbor and the applicant to get together and see if there are other ways to work things out.

Mr. Fiscus stated that there is a large hill in the area just north of the railroad track. They could build a 12' berm in that area with larger sized plantings, such as 2 ½ diameter trees and 6-8' evergreens.

Mr. Janklow responded that there are not just two choices, approve or deny. This could be deferred. He asked the Commission to look at this site and his client's home. Look at the rise in the earth and see if this is really a hill. Imagine the berm and trees and then see if the Danielson's property is not going to be injured.

Commissioner Cypher, stated that you can argue about that landscape stuff all you want. These people live in S.D.; they have trees on the north side of their place. What is going to get them is the jake brakes. The rest of the stuff is all fluff, but you start running trucks with jake brakes and noise. The receiving times on these plants are usually anytime. There is no noise ordinance. That is the only thing that is really objectionable to the whole thing. Commissioner Steinhauer agreed that you couldn't control jake brakes, but you could limit hours of delivery.

Kevin Story, with the ethanol company, stated that jake brakes shouldn't be a problem coming from Sherman or from the other direction. This is public road and other people haul on the road. He isn't sure if you do a study just how much increase there will be on the road, and if they would be stopping here or going on by. It's a public road for a public purpose. He stated that they have been trying to negotiate with the Danielson's but that is a separate issue from the rezoning – whether their property is impacted or not and to what extent. This is not a defense or a reason to stop the rezoning. They plan on continuing to negotiate.

Mr. Janklow disagreed, stating that jake brakes will be used because it's cheaper. You don't have to be speeding to apply the jake brakes. He said that the Commission's job was to consider the whole impact of the ethanol plant. You can't just take a portion of it under consideration and ignore the other part of it. Mr. Fiscus said that deliveries will occur between 7 am and 5 pm.

Commissioner Twedt stressed that she did not want to see this plan fall apart. Too much work has been put into it. She does believe that this family has to be taken care of. Commissioner Cypher stated that you can't pick and choose families. There are other families that are also close to this site.

Commissioner Cypher stated that from a purely zoning view it was tough to say no. He made a motion to recommend approval of the rezoning with changes to the regulations in item (1), (5), and (6)(j) as shown in bold below. Seconded by Twedt. The motion to recommend approval passed unanimously.

BUFFALO RIDGE PLANNED DEVELOPMENT DISTRICT. The regulations set forth herein or elsewhere in these regulations are the district regulations in the Buffalo Ridge Planned Development District:

- (1). **USES PERMITTED.** A building or premises shall be permitted to be used for the following purposes:  
  
Ethanol production facility, **up to a 10 million gallon name plate.**
- (2). **ACCESSORY USES.** Accessory uses and buildings permitted in this district are those accessory buildings and uses customarily incidental to any permitted use in the district.
- (3). **PARKING REGULATIONS.** Parking shall be regulated in conformance with the

provisions of the I-2 General Industrial District.

- (4). SIGN REGULATIONS. The size and location of all on-premise signs shall be shown on the final development plan and shall be regulated in conformance with the provisions of Article 16 On-Premise Signs for I-2 Industrial zoning. Off-Premise signs shall not be permitted.
- (5). YARD AND HEIGHT REGULATIONS. The minimum setbacks shall apply to all structures, but not service roads, driveways, utilities (**not including utility equipment buildings**), or railroad tracks.

Required front yard -----	75'
Required side yard -----	50'
Required rear yard -----	75'
Maximum Height -----	70'
Maximum Height of ancillary structures such as cooling towers, storage bins, vent and exhaust stacks and grain elevators ---	225'

- (6). OTHER REGULATIONS. Other regulations for the entire Buffalo Ridge Planned Development shall be:
  - (a). That the ethanol facility continually meets or exceeds EPA standards for emissions. An annual air quality report shall be provided to the County Planning Department.
  - (b). A landscaped berm at least four (4) feet high shall be installed along the entire south and west property boundaries, with the exception of any entrance into the site. Deciduous and/or evergreen trees shall be planted at minimum spacing of 40 feet and shall be a minimum of 1 inch caliper. A complete landscape plan showing the trees, shrubs and grass shall be reviewed and approved by the Planning Director prior to installation and must be installed no less than 6 months after operation of the ethanol facility begins.
  - (c). All parking and driveway surfaces shall be hard surfaced.
  - (d). That all existing drainage ways be maintained and that erosion control measures be implemented on all disturbed areas so as not to allow any sedimentation of existing drainage ways or bodies of water;
  - (e). That reasonable steps shall be taken to reduce light emissions from the facility. All outdoor lights are to be of the shoe-box type that directs light downward. Any lighting required FAA shall not exceed the FAA minimum. Flashing white lights shall not be allowed for night time lighting.
  - (f). That noise emissions be limited to 65 dbl at the property perimeter.
  - (g). That all necessary wastewater processing permits be obtained from the County and State and continually held in good standing.
  - (h). That prior to the commencement of any construction, a drainage plan be

submitted for review and approval by the Planning Director showing how stormwater will be held and discharged at its current rate.

- (i). That a left turning lane be constructed on County Highway 114 to allow for truck traffic to safely enter the plant. The design and construction to be reviewed and approved by the County Highway Superintendent.
- (j) **The hours of delivery shall be between 7 a.m. and 5 p.m., Monday thru Friday.**

**ITEM 17. BUFFALO RIDGE TIF #1 Project Plan.**

Legal Description - Government Lots 1 and 2 in the NE ¼ ; and that portion of Government Lots 1 and 2 in the SE ¼ lying north and south of the railroad; and the SE1/4 SW1/4; and the S587.34' NE1/4 SW1/4; and the S587.34' E103.71' NW1/4 SW1/4; and the E103.71' SW1/4 SW1/4 (Ex. Tract 1 Ramey Addn.); all in Section 34-T104N-R47W  
Location - ½ mile northeast of Sherman  
Petitioner / Owner- PlanScape Partners / Carol DeShepper and Dean & Cindy Olson

**General Information**

Present zoning - A-1 Agricultural  
Existing Land Use - Agriculture  
Parcel Size - 80 +Acres

**Report by:** Scott Anderson

**Staff Analysis**

This Plan proposes the development for Tax Increment Financing (TIF) #1. This TIF district is located northeast of Sherman, SD and is intended to be developed into the Buffalo Ridge Ethanol Plant. The TIF District was created by the Minnehaha County Commission on February 6, 2007. The proposed development will include the ethanol production facility, potable water development, and transportation improvements such as new rail lines and access roads.

The estimated cost of the public improvements for the developer is \$7.025 million. The developer is estimating the overall investment on the subject property to be \$110 million. Once completed the estimated assessed value of the plant will range from \$8 to \$8.5 million. The applicant has indicated that approximately \$142,000.00 per year would be raised through the tax increment financing. They have projected raising \$2,840,000.00, which would be used in paying off the cost of public improvements at the site. These figures do not appear to account for any increase in valuation. Over a 20 year time period, the valuation stays at \$8 million. It is, however, a certainty that the valuation will not stay static. This could result in significantly more than \$2.84 million being raised. The County should somehow place a cap on the amount that will be paid out through the TIF district. Staff would recommend this cap to be \$2.84 million. Once this amount has been collected and paid to the developer, all tax increment payments would cease.

Staff has included a diagram of how a tax increment district works. It should be noted that conceptually most districts are urban and the property values may be declining. For this district and in Minnehaha County however, agricultural property values have been increasing and not declining. The proposed development would increase the overall tax value to a greater degree than simply having the land remain assessed at agricultural rates.

**Elements of the Project Plan**

The project plan as required by SD codified law will address the following elements.

- 1. Boundaries
  - a. The boundaries of the district must be contiguous.
  - b. The boundaries cannot divide property used for a single use.

- c. A minimum of 25% of the real property located within the district must be classified as blighted.
  - d. The district cannot exceed 10 percent of the total taxable property value of the county.
  - e. The improvement of the area is likely to significantly enhance the value of most of the other realty in the district.
2. Project Plan
- a. The kind, number, and location of all proposed public works or improvements within the district.
  - b. Economic feasibility study.
  - c. Estimated project costs; including capital financing, real property assembly, professional services, computed administration, relocation and organizational costs.
  - d. A list of estimated non-project costs.
  - e. Fiscal impact statements showing the impact of the tax increment district both until and after bonds are repaid, for all contributing taxing jurisdictions.
  - f. Methods of financing and repayment schedule.
  - g. A map showing the existing uses and conditions of real property.
  - h. A map showing the proposed improvements and uses therein.
  - i. A map showing the proposed changes of zoning ordinances.
  - j. A statement listing changes needed in the master plan, map, building codes and county ordinances.
  - k. A statement of a proposed method for the relocation of persons to be displaced.

The applicant has submitted a written project plan which addresses all of the above listed items. Staff will include a copy of the project plan for your review. The applicant is using a "pay as you go" method.

Often, developers will use a bonding method. The County Auditor and Director of Equalization will handle the valuation, taxation and payment of the tax funds into a special TIF fund. It should be noted that the TIF funds can only be used for public improvements within the portion of the ethanol plant located in South Dakota. A portion of the project is located in Minnesota. None of the TIF funds can be used for paying expenses in Minnesota. Staff has addressed the total amount that will be paid to the developer for project costs.

Should the Planning Commission recommend approval of this project plan, it would be forwarded to the County Commission for approval, as required in SDCL 11-9-13.

### **Recommendation**

Staff recommended approval of the project plan with the following conditions:

- 1) That once Minnehaha County has made tax increment payments in the amount of \$2.84 million, the financing of the district shall be considered complete and no further tax increment payments shall be made.
- 2) All tax increment payments are to be used for development costs occurring in South Dakota.

### **Public Testimony**

Mr. Anderson explained that the petitioner was debating whether to construct a 50 million gallon or 100 million gallon nameplate facility. The petitioner is requesting a deferral until the April 23, 2007 meeting.

A motion was made by Rogen and seconded by Bunde to defer the project plan until the April 23, 2007 meeting. The motion passed unanimously.