

**MINUTES OF THE  
MINNEHAHA COUNTY PLANNING COMMISSION  
April 23, 2007**

A meeting of the Planning Commission was held on April 23, 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.

**APPROVAL OF THE CONSENT AGENDA**

Requests were made by the Planning Commission and the planning staff to place Items 10 & 13 on the regular agenda. A motion was made by O'Hara and seconded by Twedt to approve the consent agenda (Items 10 and 13 removed). The motion passed unanimously.

**ITEM 1. MINUTES – March 26, 2006**

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

Item 2 was deferred from the March 26, 2007 meeting.

**ITEM 2. 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 finds that the proposed use is consistent with the types of uses found in a commercially or industrially-zoned site and that the use can be made to conform to the uses on surrounding properties through the use of appropriate conditions. Staff 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.

Based on the staff report, a motion was made by O'Hara and seconded by Twedt to approve conditional use permit #07-15 with the conditions as stated. The motion passed unanimously.

**ITEM 3. CONDITIONAL USE PERMIT # 07-27 to allow a Class One Home Occupation – signs and graphics business.**

Legal Description - Lots 20& 21 Olson's Addn. to Renner in Section 9-T102N-R49W  
Location - 47444 258<sup>th</sup> St. Renner  
Petitioner / Owner- Tim Hinrichs

**General Information**

Present zoning - R/C Recreation/Conservation  
Existing Land Use - Residential  
Parcel Size - 0.34 Acres

**Report by:** Phil Kappen

**Staff Analysis**

The subject property is located along 258<sup>th</sup> Street (Co, Hwy 130) in Renner. The properties to the west, south and east are in single-family residential uses and the property to the north is agricultural land. The petitioner proposes a Class I Major Home Occupation to be operated out of an existing accessory building on the property. Specifically, the business will design, create and install vinyl stickers for signs and automotive graphics.

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

The petitioner has indicated that the business would be conducted inside an existing 864 sq.ft. accessory building on the property. Only 576 sq. ft. of the building will be used for the home occupation. The review criteria state that up to 750 sq. ft. of an accessory building may be used for a home occupation.

The petitioner lives on the site and is the only employee of the proposed business. The review criteria require the business to be operated by a person who resides on the site and allows for up to two non-resident employees with no more than four on the site. However, the size of the business and the available area for parking would limit the number of employees to less than that number.

No outside storage is planned of any vehicles to be lettered and there will be no outside storage of supplies. The review criteria state that there should be no outside storage.

The petitioner estimates that the maximum number of visitors in any 24-hour period would be three. The review criteria allow for up to 10 visits per day from clients or customers.

The review criteria allow for a building sign of up to two square feet and an additional sign along the driveway of up to four sq.ft. The petitioner proposed only one smaller sign on the property.

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

The property is located within the base flood plain which will limit future development in the vicinity. The proposed use should have no impact on future development.

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

The property is accessed from Co. Hwy 130. No hard surfacing of driveways will be required as the property is not zoned commercial or industrial and the proposed use is strictly an accessory use to the primary use of the property for a single-family residence.

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

The petitioner indicates that the only time any vehicle will be stored outside is when the lettering has been completed on a vehicles and it is awaiting pickup by the vehicle's owner. For a 750 sq.ft. building three parking places should be provided. The petitioner should maintain at least this number of parking places 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.**

Keeping the business within a building should help in ensuring that no nuisance odors, noise vibration or lighting occurs as a result of the business. The petitioner may wish to have security lighting on the property and any outside lighting on the site should be of a shoebox style that aims the light downward. The petitioner must ensure that no nuisance odors or noise emanate from the property.

**Recommendation**

Staff found that the proposed use would conform with the review criteria set forth for a Class I Major Home Occupation in the zoning ordinance and recommended approval of conditional use permit # 07-27 with the following conditions:

- 1) The occupations shall remain secondary to the use of the property for a single-family residence. If the residential use of the property ceases, then the home occupation use shall also cease.
- 2) The occupation shall be run by the petition and shall be limited to a no more than two employees on site.
- 3) There shall be no outside storage with the exception of one completed vehicle at any time that is awaiting pickup by the vehicle owner.
- 4) In addition to the home, up to 750 sq.ft. of the accessory building may be used for the occupation.
- 5) The petitioner shall ensure that no nuisance noise or odor is detectable beyond the property boundary.
- 6) Any outdoor lighting shall be of a shoebox style that directs light downward and prevents lights from spilling beyond the property boundaries.
- 7) The occupations shall be limited to one building sign not to exceed 2 sq.ft. in size plus 1 sign along the driveway not to exceed 4 sq.ft. in size.

Based on the staff report, a motion was made by O'Hara and seconded by Twedt to approve conditional use permit #07-27 with the conditions as stated. The motion passed unanimously.

**ITEM 4. CONDITIONAL USE PERMIT # 07-28 to transfer one residential building eligibility.**

From – NW1/4 NW1/4in Section 15-T103N-R52W

To – NW1/4 NE1/4 in Section 15-T103N-R52W

Location - 6 miles north of Humboldt

Petitioner / Owner- Virgil Meyer

**General Information**

Present zoning - A-1 Agriculture

Existing Land Use - Agricultural

Parcel Size - 40.00 Acres

**Report by:** Pat Herman

**Staff Analysis**

The property is located six miles north of Humboldt in a rural portion of the County. All of the surrounding land is in agricultural production and there are only two dwelling units in this section, one of which is owned by the petitioner. In October 2006 the petitioner transferred four residential building eligibilities to the northwest quarter-quarter of Section 15. The petitioner is now requesting to move one of those eligibilities back to the NW1/4 NE1/4.

**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.**

Agriculture is the primary land use in the area and a right-to-farm notice covenant must be filed on the deed of this property prior to any construction.

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

The proposed transfer will be in conformance with density zoning, moving an eligibility back to the quarter-quarter it was originally assigned to.

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

Access will be from 252<sup>nd</sup> St., a township gravel road. Clear Lake Township does not require driveway permits.

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

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

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

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

**Recommendation**

Staff found the request to transfer one building eligibility is consistent with density zoning and the comprehensive plan and recommended approval of Conditional Use Permit #07-28 with the following condition:

The lot must be platted and a right-to-farm notice covenant shall be filed of the lot prior to the issuance of any building permit.

Based on the staff report, a motion was made by O'Hara and seconded by Twedt to approve conditional use permit #07-28 with the conditions as stated. The motion passed unanimously.

**ITEM 5. CONDITIONAL USE PERMIT # 07-29 to allow a single family dwelling.**

Legal Description – SW1/4 (ex. Hansen's Tr. 1 & Ex. W1321') in Section 6-T104N-R49W

Location - 1.5 miles west of Dell Rapids

Petitioner / Owner- Marc & Tracy Michel

**General Information**

Present zoning - A-1 Agricultural

Existing Land Use - Agriculture

Parcel Size - 73.50

**Report by:** Pat Herman

**Staff Analysis**

The site is located 1.5 miles west of Dell Rapids and a ½ mile east of Interstate 29. The property has one residential building eligibility available by conditional use permit. A conditional use permit is required sue to the dates on which the legal descriptions for parcels of land within this quarter-quarter were recorded with the Register of Deeds. Approval of this building eligibility would not exceed the housing limits established by density zoning.

**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.**

Agriculture is the primary land use in the area and a right-to-farm notice covenant must be filed on the

deed of this property prior to any construction.

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

The proposed single family dwelling will be in conformance with density zoning and should have no impact on vacant properties in the area.

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

Access will be from either 245<sup>th</sup> St. or 473<sup>rd</sup> Ave., township gravel roads. Dell Rapids Township should be consulted regarding the location of the driveway.

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

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

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

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

**Recommendation**

Staff finds that the request to allow a single family dwelling is consistent with density zoning and the comprehensive plan and recommended approval of Conditional Use Permit #07-29 with the following condition:

The lot must be platted and a right-to-farm notice covenant shall be filed of the lot prior to the issuance of any building permit.

Based on the staff report, a motion was made by O'Hara and seconded by Twedt to approve conditional use permit #07-29 with the conditions as stated. The motion passed unanimously.

**ITEM 6. CONDITIONAL USE PERMIT # 07-31 to allow the transfer of one residential building eligibility.**

From – SW1/4 NE1/4 of Section 16-T103N-R48W  
To - NW1/4 NE1/4 of Section 16-T103N-R48W  
Location - 5 miles west of Garretson  
Petitioner / Owner- James Tilden

**General Information**

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

**Report by:** Pat Herman

**Staff Analysis**

This is a request to transfer one residential building eligibility. The parcel is located approximately 5 miles west of Garretson. The surrounding land use is agricultural with a number of rural residences. The transfer would move one eligibility from a land locked quarter-quarter to a location with road access.

**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 are agricultural practices in the area and a right-to-farm notice covenant is required to be filed on the deed before construction on a house commences.

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

This request is in conformance with density zoning.

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

Access will be from 252<sup>nd</sup> St., township gravel roads. Edison Township does require driveway permits

and that permit must be obtained prior to the County approving a building permit.

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

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

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

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

**Recommendation**

Staff found the request to transfer one residential building eligibility is consistent with density zoning and the comprehensive plan and recommended approval of Conditional Use Permit #07-31 with the following conditions:

- 1) The lot must be platted and a right-to-farm notice covenant shall be filed of the lot prior to the issuance of any building permit.
- 2) Written approval from Edison Township for the driveway access.

Based on the staff report, a motion was made by O'Hara and seconded by Twedt to approve conditional use permit #07-31 with the conditions as stated. The motion passed unanimously.

**ITEM 7. CONDITIONAL USE PERMIT # 07-35 to allow the transfer of seven residential building eligibilities.**

From -Transfer 4 building eligibilities from Tract 2 Engebretson's Addition in Section 8-T103N-R47W and from the NW1/4 NW1/4 and NE1/4 NW1/4 of Section 17-T103N-R47W

To -W1/2 NE1/4 of Section 17-T103N-R47W

**And** From - SW1/4 NW1/4 of Section 17-T103N-R47W

To - to the SE1/4 NW1/4 of 17-T103N-R47W

Location – north edge of Garretson

Petitioner / Owner- Dale Machmiller

**General Information**

Present zoning - A-1 Agricultural  
Existing Land Use - Agriculture  
Parcel Size - N/A

**Report by:** Pat Herman

**Staff Analysis**

The subject property is located east of S.D. Highway 11 (485<sup>th</sup> Avenue) adjacent to the northern boundary of Garretson. The surrounding properties are predominately in agricultural use with scattered acreages. The petitioner is requesting a transfer of four eligibilities from Tract 2 Engebretson's Addition in Section 8 of Palisade Township. These eligibilities were moved from their original site to their current location in July of 2006 with the approval of Conditional Use Permit #06-52. Those four eligibilities and the property on which they are located were subsequently purchased by the petitioner.

The petitioner is also requesting a transfer of three residential building eligibilities in Section 17 of Palisade Township. In addition to the eligibilities requested for transfer, there are three available building eligibilities on the receiving parcel. The end result will be a subdivision with a maximum of ten homes.

The location will move the building eligibilities closer to Split Rock Creek and further away from major access. The applicant has indicated that reason for this location is to maximize the view shed, overlooking Split Rock Creek. Some of the proposed lots will have a portion located on both sides of the creek. Access to the portion of lots located on the far side of the creek may be difficult.

Access to this site is available from 251<sup>st</sup> St. and from Hwy 11. Because of the topography in the area, access may be easier from the township road rather than the state highway. There is also the potential for this development to be accessed from Garretson, once the City begins development on the northwest side

of the river. The petitioner has submitted a preliminary subdivision plan for review at this same meeting.

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

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

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

The proposed transfer will preserve larger amounts of unbroken agriculturally zoned land.

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

Access will be provided from a private road. The petitioner will have to provide prove of maintenance for the road on the final plat. A drainage plan is required as part of the preliminary plan review process.

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

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

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

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

**Recommendation**

Staff finds this conditional use permit request to be consistent with density zoning and that the transfer of eligibilities will preserve viable farm ground. Staff recommended approval of Conditional Use Permit #07-35 with the following conditions:

- 1) A preliminary subdivision plan must be submitted as detailed by the County Subdivision Ordinance.
- 2) The lots shall be platted and a right-to-farm notice covenant shall be placed on the deeds prior to the issuance of any building permits.

Based on the staff report, a motion was made by O'Hara and seconded by Twedt to approve conditional use permit #07-35 with the conditions as stated. The motion passed unanimously.

**ITEM 8. SUBDIVISION ORDINACE VARIANCE # 07-03 to exceed 500' for a dead end private roadway.**

Legal Description – to be platted as Spirit Canyon Estates (Tracts 1-11) N1/2 of Section 17-T103N-R47W

Location - north edge of Garretson

Petitioner / Owner- Dale Machmiller

**General Information**

Present zoning - A-1 Agricultural

Existing Land Use - Agriculture

Parcel Size -

**Report by:** Scott Anderson

**Staff Analysis**

The applicant is requesting a Subdivision Ordinance Variance to increase the maximum allowable length of a cul-de-sac. The County Subdivision Ordinance indicates that cul-de-sacs should not generally exceed 500 feet in length. The applicant is proposing a 3,400 foot length. The proposed cul-de-sac will be called Spirit Canyon Trail. It will provide access to a new 12 tract subdivision located north of Garretson. The applicant has indicated that the remainder of the Spirit Canyon Trail will meet the Subdivision Ordinance requirements.

The site has many unique features. Spirit Canyon Road will generally follow the west side of Split Rock Creek. The location of Split Rock Creek precludes any road connection to the east due to the river crossing and terrain. In addition there is a significant amount of quartzite out-cropping in the area. They could extend a road to the west, reconnecting with S.D. Highway 11, however, there is a significant draw located between the subject property and the proposed road. The 30 foot deep draw poses another physical barrier for the road network.

The applicant is providing a loop at the south end of Spirit Canyon Road to allow for emergency vehicles and the traveling public an area to turn around in. The applicant has also provided a potential future connection to the south, should this area located within the city limits of Garretson be developed. The cul-de-sac has a 79 foot border with the property to the south, which would allow for a future road connection. Should the road continue to the south, then there is a potential for this cul-de-sac to be a through street.

Staff can support the request to increase the maximum length of a cul-de-sac from 500 feet to approximately 3,400 feet. The applicant has demonstrated an existing condition that would constitute a hardship if the requirements were strictly applied. There is evidence of physical hardships that impact the adherence to the County's Subdivision Ordinance.

### **Recommendation**

Staff recommended approval of Subdivision Ordinance Variance #07-03 to exceed the maximum length of a cul-de-sac from 500 feet to approximately 3,400 feet.

Based on the staff report, a motion was made by O'Hara and seconded by Twedt to recommend approval of subdivision ordinance variance #07-03. The motion passed unanimously.

### **ITEM 9. PRELIMINARY SUBDIVISION PLAN # 07-04.**

Legal Description - Spirit Canyon Estates (Tracts 1-11) N1/2 of Section 17-T103N-R47W  
Location - north edge of Garretson  
Petitioner / Owner- Dale Machmiller

### **General Information**

Present zoning - A-1 Agricultural  
Existing Land Use - Agriculture  
Parcel Size - 74.98

**Report by:** Scott Anderson

### **Staff Analysis**

The applicant has submitted a preliminary plan for a new subdivision located north of Garretson. The new subdivision will consist of ten (10) residential lots, one (1) tract designated as a private drive and one (1) tract designated as a park/picnic area. Several building eligibilities are being moved to accommodate this proposed subdivision. The final plat can not be approved unless these eligibilities have been transferred.

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 lot sizes of the tracts within the proposed subdivision range in size from between 1.83 acres to 15 acres. The smallest tract has been designated as a park parcel. Tract 11 is the private drive and contains 7.36 acres. The smallest residential lot is 3.12 acres. The entire subdivision will utilize on-site wastewater disposal systems and will connect to Minnehaha Community Water. Due to the location of the proposed subdivision, staff wants to determine prior to final platting that there are suitable soils for a conventional on-site wastewater disposal system. The proposed site is located over a significant rock feature. Staff is requesting that the result of two soil profile holes be provided to staff for review to determine that adequate soils are to be found on the site. The applicant shall provide this information prior to County

Board approval of the preliminary plan.

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 applicant will also be required to purchase a road sign for the intersection of 252<sup>nd</sup> Street and Spirit Canyon Trail. The sign shall be purchased upon final plat submittal.

Spirit Canyon Trail is proposed to be a private drive and is being platted as a separate lot. Staff indicated to the applicant that while a private drive is not preferred, it is not precluded by the Subdivision Ordinance. Staff expressed concerns about maintenance of the road, future use and payment of taxes. The applicant has indicated that a homeowner's association will address all of these concerns. Staff recommends that a copy of the covenants be submitted with the final plat to make sure maintenance is addressed. Likewise the ownership, use and maintenance of the park should also be addressed in the homeowner's covenants.

**Recommendation**

Staff recommended approval of Preliminary Plan #07-04 with the following conditions:

- 1) That prior to County Board approval of the preliminary plan, 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 plan, a drainage and grading plan shall be submitted for review and approval.
- 3) That prior to County Board approval, the results of two soil borings showing the soil profile shall be submitted to the Planning Director to determine that adequate soils exist for a conventional on-site wastewater disposal system. The soil boring shall be conducted on any of the following tracts: Tracts 6-9.

Based on the staff report, a motion was made by O'Hara and seconded by Twedt to recommend approval of preliminary plan #07-04 with the conditions as stated. The motion passed unanimously.

**ITEM 10. CONDITIONAL USE PERMIT # 07-36 to amend CUP #02-05 to allow mini-storage and revise hard surfacing requirements.**

**Item 10 was placed on the regular agenda.**

**ITEM 11. CONDITIONAL USE PERMIT # 07-37 to allow the transfer of one residential building eligibility.**

From – NW1/4 NE1/4in Section 23-T103N-R49W  
To - N 60 Acres S1/2 NE1/4 in Section 23-T103N-R49W  
Location - 2 miles north and east of midway corner  
Petitioner / Owner- Keith & Paula Harvey / Duane & Alvina Harvey

**General Information**

Present zoning - A-1 Agricultural  
Existing Land Use - Agricultural  
Parcel Size - 60 acres

**Report by:** Phil Kappen

**Staff Analysis**

The petitioner wishes to transfer an eligibility from a quarter-quarter north of their farmstead to the 60 acres on which their farmstead is located. This transfer would allow them to plat a lot near 477<sup>th</sup> Ave. for a residence. The surrounding properties are in agricultural uses with scattered residential 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 proposed transfer would move an eligibility from a bare 40 acres used for agricultural production to a site across the road from an existing residential acreage. This should be a better location for a residence. The area though is still predominantly agricultural. A right-to-farm notice covenant will be required on the property before any building permit can be issued.

**2) The effect upon the normal and orderly development and improvement of surrounding vacant**

**property for uses predominant in the area.**

The proposed site has lighter soils and is therefore less useful for agricultural production than the site from which the eligibility would be transferred.

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

Access to the proposed residence would be off 477<sup>th</sup> Avenue, a township road, and would use the petitioner's existing driveway. No additional driveways are planned onto the public roadway. An easement for this shared driveway should be placed on the plat of the proposed lot.

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

There is ample space on the property for the parking required 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.**

The addition of one residence at this site should result in no adverse effects of the listed types. Only residential uses would be allowed on the proposed lot.

**Recommendation**

Staff finds that the proposed transfer meets the precepts of density zoning and that the proposed location would be a better site for the home because the soils are less productive than those found on the property from which the eligibility would be transferred, the transfer would allow a forty acre parcel to be reserved for agricultural production, and the proposed site would be across the road from another acreage. Staff recommended approval of conditional use permit #07-37 with the following conditions:

- 1) Any lot shall be platted and a shared access easement shown on the plat.
- 2) A right-to-farm notice covenant shall be filed on the platted lot prior to the issuance of any building permit.
- 3) The new residence shall be accessed via the existing driveway. No additional driveway accesses shall be allowed onto 477<sup>th</sup> Avenue.

Based on the staff report, a motion was made by O'Hara and seconded by Twedt to approve conditional use permit #07-37 with the stated conditions. The motion passed unanimously.

**ITEM 12. PRELIMINARY SUBDIVISION PLAN # 07-03.**

Legal Description – Plooster Investments Addition (Lots 1-3) SW1/4 of Section 30-T101N-R50W

Location - 3 miles west of Sioux Falls

Petitioner / Owner- Keith & Deb McGuire / Peggy Plooster

**General Information**

Present zoning - C Commercial

Existing Land Use - Agriculture

Parcel Size - 14.36

**Report by:** Pat Herman

**Staff Analysis**

The applicant has submitted a preliminary subdivision plan proposing the creation of three lots. These three lots contain a total of approximately 14.36 acres. This land was rezoned to C Commercial in June 2006. At this time only Lot 1, in the northeast corner of the property will be developed.

Staff has reviewed Section 4.01 of the Minnehaha County's Subdivision Ordinance to determine that all requirements have been met. The existing drainage pattern for the area has been submitted as well as a grading and drainage plan. An erosion plan is not required at this time as the portion of the property being developed is less than five acres in size. Prior to development of the remainder of the property, an erosion control plan must be submitted to the Planning Director for review and approval.

Access to Lot 1 will be provided from Hwy 17 by a new road – Arabian Place. SDDOT has approved this access point, approximately a ¼ mile north of 267<sup>th</sup> Street. This part of Hwy 17 is scheduled to be rebuilt in 2008. A temporary driveway and culvert will be used until the reconstruction. Because access is being taken from a hard surfaced road, Arabian Place is required to be hard surfaced. The State will hard

surface that portion of the approach within their right-of-way, if Arabian Place is hard surfaced at that time. Prior to a final plat being approved for Lot 1, the applicant shall either construct Arabian Place to the County's road standards or post surety in an amount to cover the construction cost. If surety is to be posted, the applicant must provide an engineer's estimate for the cost of road construction.

The entire property will also have access from 267th St. which is County Highway 148. There is an existing access road which allows entrance to the adjacent property. When the southern portion of the property is developed a new road, High Jump Place, will be constructed and the current access road removed. High Jump Place is required to be hard surfaced. To allow better circulation and traffic movement, High Jump Place must intersect with Arabian Place. Prior to a final plat approval for Future Lot 3, the applicant shall either construct High Jump Place to the County's road standards or post surety in an amount to cover the construction cost. If surety is to be posted, the applicant must provide an engineer's estimate for the cost of road construction.

The final plat of Lot 1 must show the dedicated right-of-way for the entire length of Arabian Place and that portion of High Jump Place which abuts Lot 1. The applicant will also be required to purchase road signs for Arabian Place and High Jump Place. These signs shall be purchased upon final plat submittal.

### **Recommendation**

Staff recommended approval of Preliminary Plat #07-03 with the following conditions:

- 1) Prior to a final plat being approved for Lot 1, the applicant shall either construct Arabian Place to the County's road standards or post surety in an amount to cover the construction cost. If surety is to be posted, the applicant must provide an engineer's estimate for the cost of road construction.
- 2) Prior to a final plat approval for Future Lot 3, the applicant shall either construct High Jump Place to the County's road standards or post surety in an amount to cover the construction cost. If surety is to be posted, the applicant must provide an engineer's estimate for the cost of road construction.
- 3) Prior to development Future Lots 2 and 3, an erosion control plan must be submitted to the Planning Director for review and approval.

Based on the staff report, a motion was made by O'Hara and seconded by Twedt to recommend approval of preliminary plat #07-03 with the stated conditions. The motion passed unanimously.

### **ITEM 13. CONDITIONAL USE PERMIT # 07-38 to allow mini-storage.**

**Item 13 was placed on the regular agenda.**

### **ITEM 14. CONDITIONAL USE PERMIT # 07-39 to allow a garden center with on site sales.**

Legal Description – N800' W1/2 NW1/4 (ex. H-1) in Section 28-T104N-R49W

Location - 47407 248<sup>th</sup> St. 2.5 miles south of Dell Rapids

Petitioner / Owner- Paula Eichten

### **General Information**

Present zoning - A-1 Agricultural

Existing Land Use - Agriculture

Parcel Size - 24.29 Acres

**Report by:** Scott Anderson

### **Staff Analysis**

The applicant is requesting a conditional use permit to allow for the establishment of a garden center with on-site sales. On April 4, 2004, staff conducted a site visit and met with the applicant. Staff noted that the temporary 8 foot by 16 foot greenhouse and a sales rack were already on the property, but not being used. The applicant also indicated that another hoop greenhouse may be erected at some time north of the parking area and west of the existing small greenhouse. There is a shop building directly north of the small greenhouse that will be used for an office, cashier location.

The applicant indicated that this year none of the bedding plants would be grown on the site. That may change once the greenhouses are established. They are planning on growing some produce and selling it

on-site. The site consists of over 24 acres, which would provide ample area for growing produce. The applicant is a certified horticulturalist.

**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 sale of plant material should not negatively impact the use and enjoyment of the surrounding properties. The site is fairly isolated. There is a major agricultural operation directly to the north of the property and two (2) rural residences located to the west less than ½ mile. The applicant has indicated that the hours of operation would generally be between 8 am and 8 pm, which would not be disruptive to the neighborhood.

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

The proposed use should not have any effect on normal and orderly development of the surrounding vacant properties.

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

All required infrastructure appears to be in place. The applicant has a long driveway that comes off of County Highway 110, which is a paved road.

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

The applicant has a long looped driveway, which would provide at least 6-10 parking spaces for the public. Article 15 does not indicate a parking requirement for this proposed use. Staff will require that a minimum of five (5) 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 should not produce any significant amount of odor, fumes, dust or noise that would constitute a nuisance. There may be minimal dust from customers on the driveway leading to the greenhouse and sales area. As there are no residences located within the area which would be impacted by any dust, staff does not see this as a concern.

The Zoning Ordinance does not regulate how garden centers are to be operated. In the past, the Planning Commission has required that a certain percentage of plant material be grown on the site. Staff can not find in the Zoning Ordinance where this would be required. It is likely, due to its location, that the proposed use will not generate much traffic. Staff believes that the proposed conditional use is appropriate for this site.

**Recommendation**

Staff recommended approval of Conditional Use Permit #07-39 to allow a garden center with the sale of produce with the following conditions.

- 1) That the applicant obtain and maintain all required sale tax licenses from the state of South Dakota.
- 2) That a minimum of five (5) off street parking spaces be provided.
- 3) That at least one (1) 2A-BC dry chemical fire extinguisher is accessible within the buildings where the gardening business occurs.
- 4) That the applicant obtains a building permit for all structures larger than 120 square feet.

Based on the staff report, a motion was made by O'Hara and seconded by Twedt to approve conditional use permit #07-39 with the stated conditions. The motion passed unanimously.

Item 15 was deferred from the March 26, 2007 meeting.

**ITEM 15. 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**

The applicant has not determined the potential size of the proposed ethanol production facility. If the infrastructure requirements are met, the applicant has indicated that they may consider constructing a 100 million gallon facility. As the infrastructure capacity has not been determined, a definitive project plan has not been submitted for review. They are requesting that this item be continued to the May 21, 2007 Planning Commission meeting.

**Recommendation**

Staff recommends that this item be continued to the May 21, 2007 Planning Commission meeting.

Based on the staff report, a motion was made by O'Hara and seconded by Twedt to defer the project plan until the May 21, 2007 meeting. The motion passed unanimously.

**ITEM 16. TEMPORARY USE PERMIT #07-01 – to allow a music festival and temporary campground.**

Legal Description - E1/2 NW1/4 SE1/4 & NE1/4 SE1/4 (Ex. H-1 & Ex. Tr. 1 Alvine's Addn.) in Section 36-T101N-R51W  
Location - 26767 466<sup>th</sup> Ave. 1.5 miles west of Sioux Falls  
Petitioner / Owner- Marilyn Alvine / LifeLight Communications

**General Information**

Present zoning - A-1 Agricultural  
Existing Land Use - Recreation  
Parcel Size - 20 + Acres

**Report by:** Scott Anderson

**Staff Analysis**

The applicant is requesting a Temporary Use Permit to allow for a music festival with associated camping and vending from August 30 to September 2, 2007. Festival attendance is expected to be between 200,000 and 275,000 over the three day event. The event is proposed to be held at the Wild Water West Water Park grounds, approximately three (3) miles west of Sioux Falls. This year would be the third year the event will be held on the proposed site. The 2006 event was complicated by heavy rains. While staff did not receive a single complaint about the 2006 event, there were parking issues.

The applicant has prepared a narrative of the proposed event. There will be two (2) primary stage areas and four (4) smaller performance areas for a total of six entertainment areas where performers will sing. Camping will also be offered on the festival grounds. The applicant has indicated that 2,000 camping sites will be provided for festival attendees. Electrical hook-ups will be provided to 500 sites. Portable showers will be provided by the applicant free of charge to those camping on the property.

The narrative addresses several issues such as rodent and insect management, crowd hydration and cooling and temporary vending requirements. The narrative indicates that should the long-range weather forecast predict extreme heat, the placement of two misting stations might be provided. This is somewhat vague and staff prefers requiring misting stations once the temperature exceeds 90 degrees.

The applicant has provided a detailed medical care plan for emergency needs. They have obtained one mobile clinic from Sanford Health. The plan shows that two first aid stations will be provided. This appears to meet potential needs of the festival. Staff recommends that the location of each first aid station be clearly identified in the programs provided to festival attendees.

A command center will be located on the site. The narrative indicates that staff from the Sheriff's office will be used for an undetermined amount of protection. The Sheriff's department has been included in discussions with LifeLight and is aware that their manpower will be utilized for the event. In addition, the Metro Communications Center has indicated that they will be providing personnel time for the event. The applicant has offered to reimburse the County for personnel costs associated with event security and administration. Staff will include this in the recommended conditions of approval.

State approval is being sought by the applicant for a temporary campground. Shower facilities will be provided to campers. Information shall be provided to each camp site listing the location of the first aid station and information center. Furthermore, the temporary camping area shall only be allowed with the approval from the State.

Vendors will be located around the stage area of the festival grounds. The number and types of vendors has not been indicated within the narrative. Staff concludes that vendors are compatible with the proposed use, but will require that each vendor has obtained the necessary state sales tax license and state food license for the sale of food.

Provisions have been made for a mobile weather station to be located on the festival grounds during the event. The mobile weather station will be used to tract any severe weather that may arise. A weather emergency plan has been developed. Any severe weather will be assessed by festival management and public safety individuals. Any festival goers requiring shelter would be shuttled to the First Assembly of God Church located on 41<sup>st</sup> Street, six miles to the east. The narrative does not indicate the number of people this facility can shelter, nor an approximate time needed to move people to the shelter. This portion of the submitted plan is not adequate. Staff will need to have written confirmation from the First Assembly of God Church that they are willing to provide their facility as a storm shelter. The applicants will also need to provide an estimate on the duration needed to evacuate the facility and parking lots. The traffic capacity of the roads is approximately 1500 vehicles per hour. Should a severe weather arise during peak hours, any evacuation would require several hours. Campers would be at most risk. The applicant shall provide shelter information to each camper as part of the registration.

The plan does not address any temporary signage that may be used by LifeLight. The Zoning Ordinance does not specifically allow the placement of any banners or temporary signs for Temporary Uses, however, allows them in conjunction with roadside stands and firework stands when a Conditional Use Permit is obtained. Based on general intent of the Zoning Ordinance a limited number of temporary signs should be allowed. No temporary signs or banners however, shall be allowed to be displayed within any public right-of-ways. The applicant shall provide a Signage Plan to the staff for review and approval prior to the Planning Commission meeting. The plans shall identify the type, number, size, message, and location of each sign or banner and shall guarantee that no signs are placed in any road right-of-way. The applicant shall be required to obtain the property owners permission to place signs on private property. All temporary signs or banners shall be removed by September 10, 2007. Directional traffic signs are not considered advertising signs such as banners or other temporary advertising signs.

### **Vehicular Traffic**

Both S.D. Highway 17 and County Highway 148 (267<sup>th</sup> Street) have a maximum carrying capacity of 1900 vehicles per hour. The applicant has provided a plan that attempts to limit the amount of traffic that will be seen at this intersection. Traffic from the west will be directed from Interstate 90 down County Highway 151 (463<sup>rd</sup> Avenue). Traffic from Sioux Falls will be directed to S.D. Highway 42 and then south on S.D. Highway 17 to the north parking lots. Traffic arriving from the south on Interstate 29 will be routed to Exit 84 and then north. Traffic from the south appears to be parking in the east and west parking area. A temporary road will be constructed from the west parking area to 465<sup>th</sup> Avenue. The applicant has attempted to eliminate as much traffic volume at the intersection of 41<sup>st</sup> Street and S.D. Highway 17 as possible. Temporary signage will be used to direct festival goers to the closest and most suitable parking areas. The single largest event day is projected to be Sunday with up to 60,000 attendees. Based on this figure, staff projects that 24,000 spaces are needed to meet the parking demand. The narrative provided by the applicant indicates that in total over 35,000 parking spaces are available.

The applicant has indicated that the Temporary Use Permit application will be supplemented with approval of the traffic plan by the S.D. Department of Transportation, Minnehaha County Highway Department, Lincoln County Highway Department, Minnehaha County Sheriff, and the S.D. Highway

Patrol. Each of these agencies has been provided with the plan and their comments solicited for improvements. The traffic plan is rather detailed, indicating traffic routes, signage, and parking. Staff recommends as a condition of approval that prior to Planning Commission approval, the applicant supply the written approvals from the above identified agencies for traffic, signage and parking plans.

### **Pedestrian Traffic**

In 2005, the applicant had parking lots which required attendees to cross Highway 17 and 267<sup>th</sup> Street. These parking areas were not available in 2006. During the 2006 event, the applicant obtained additional parking which did not require attendees to cross either road. Staff believes this parking layout worked much better, as it did not require law enforcement to monitor foot traffic and promoted a safer environment for the attendees. The applicant has indicated that for 2007, none of the additional parking areas which required street crossing will be used.

#### **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.**

As this is a temporary use, extending only over a three (3) day period, no long lasting impacts on use or property values should occur. All existing residences will face temporary impacts on level of traffic services. The significant amount of traffic generated by this event will negatively impact the existing uses in the area for the duration of the event.

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

The proposed use, due to its temporary nature, should not impede the orderly development of the area.

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

The applicant is proposing the creation of two (2) new access points into the west parking lot of the festival area. The new approaches will come off of 465<sup>th</sup> Avenue. Staff has concerns with the use of these roads to access the west parking area. The roads will be constructed primarily over existing cropland. Any rain will result in mud being tracked out onto the county maintained road, unless adequate measures are taken. This was evident in 2006 when rains caused the new roads to become impassable and several cars became stuck in the mud. The road must be at least twenty-four (24) feet wide, constructed to allow for adequate drainage off of the road bed, not impede any natural drainage way, and constructed with at least a three (3) inch gravel surface.

The applicant has made provisions for a minimum of 160 porta potties to be serviced twice per day. Hand washing stations will be provided near each pod of portable toilets. This number of portable toilets appears to be sufficient.

The application/narrative addresses solid waste/trash management by indicating that it will be coordinated by festival volunteers. Trash receptacles will be placed throughout the venue and collected on a regular basis. The LifeLight group touts its history of leaving each venue in better condition than when they arrived. Staff recommends that a \$250.00 surety be held by the County to make sure that all trash and debris is cleaned not only from the festival area, but also from the parking areas and corridors leading to and from the event. Upon inspection and approval by the Planning Department, the surety shall be released minus a \$35.00 inspection fee.

The festival grounds are located within the Hartford Fire and Rescue service area. The Hartford Fire and Rescue is a volunteer organization. Staff wants to determine that an event of this size will not overwhelm the volunteer group. Staff recommends that prior to Planning Commission approval of the Temporary Use Permit, the applicant shall obtain a written statement from the Hartford Fire and Rescue that they have reviewed the plans and will be able to provide fire and rescue services during the event.

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

The applicant has indicated that over 15,000 parking spaces will be provided. Some parking will be provided on-site. Some ADA parking is being provided by the applicant on the site. Additional parking will be located ½ to 1 mile to the north and east of the festival site. This parking configuration will

require attendees to walk or use a shuttle service. The applicant has indicated that a tram system may be utilized to shuttle festival goers from the parking areas to the festival site. The plan indicates that attendees can also walk to the festival site. Last year pedestrian traffic was prohibited from walking in the road right-of-way. In 2005, a shuttle system was required to reduce the number of pedestrians walking in the highway right-of-way. This seemed to work well and has included this requirement as a recommended condition of approval for this year.

Rain would reduce the amount of parking. The utilization of a grassy field is certainly not the best case scenario. The west parking area will be tilled and planted into a crop that provides the optimum ground cover. Should a major rain event take place during the gathering, low areas could become muddy or inundated with water. Other issues faced with field parking are dust and maintaining an orderly parking configuration. The numbers provided by the applicant represent an optimum use of the grass parking lots. Irregular parking will reduce the number of parking spaces. In no case shall any vehicles park within the public right-of-ways. Any vehicles parking within the right-of-ways shall be ticketed by the Sheriff and towed at the owner's expense.

The applicant is proposing that the west parking lot will be accessed from 465<sup>th</sup> Avenue. The County Highway Superintendent has indicated that a temporary easement is needed from the property owner for the access road leading from 465<sup>th</sup> Avenue to the west parking lot and dust controls measures on both 465<sup>th</sup> Avenue and 268<sup>th</sup> Street. Staff will include these items as recommended conditions of approval. The applicant has not indicated the width, or construction method of the driveway approach into the west parking lot. Staff recommends that all driveway approaches into temporary parking areas have a minimum width of twenty-four (24) feet and be constructed with a minimum of three (3) inches of gravel. Furthermore, no natural drainage way shall be obstructed.

The parking lots will have temporary lighting. No lighting has been provided along the routes proposed to be utilized by foot traffic from the festival site to the north and northeast. As the concerts will be ending after dark, pedestrians will be walking along a state highway in the dark, which will result in reduced safety for the pedestrians. Staff recommends that temporary lighting also be included in the pedestrian paths between the parking areas and festival site.

The narrative indicates that the water park will remain open during the music festival. Water park goers were able to find parking during the 2005 and 2006 events. All water park patrons will be able to park in any available spaces found in the temporary parking lots.

**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.**

This event will generate noise, dust and additional lighting not typically found in a residential/urban fringe area. The vehicle traffic and pedestrians will generate noise and dust. Staff has serious concerns about dust resulting from the use of grassy fields and pastures for parking, as this was an issue in 2005. In order to mitigate dust, staff recommends that all parking areas be monitored and driving lanes watered down if needed as determined by the Planning Director or Sheriff. The applicant has indicated that 268<sup>th</sup> Street bordering the south side of Country Acres, one mile of 465<sup>th</sup> Avenue and 268<sup>th</sup> Street will be treated with magnesium chloride, a dust retardant, prior to the start of the festival. The narrative indicates that an unspecified number of water trucks will be donated to apply water on areas causing dust.

In the past, staff recommended that all concert activities cease by 11:00. The applicant appealed to the Planning Commission to change this proposed condition. The Planning Commission agreed with the applicant and indicated that the concert should end by 1:00 a.m. Staff will recommend a 1:00 a.m. finish time. It should also be noted that the Planning Department did not receive any complaints about noise from the 2005 or 2006 events.

Temporary lighting will be used in the temporary parking areas and corridors leading to and from the parking areas to the festival ground. While these lights are necessary, they will produce a significant amount of light not typically found in this residential/agricultural area. Staff recommends that the lighting be limited to minimize the impacts on the surrounding properties. All temporary lights should be directed towards the ground and must be shut off by 1 am.

Originally, staff had concerned with the event taking place at Wild Water West. Staff concerns were

primarily focused on the projected number of attendees at LifeLight that could potentially overwhelm the existing traffic network. This concern proved to be accurate when rain at the 2006 event caused vehicles to be stuck in 8 to 12 inches of slimy mud and forced cars to park on both Highway 17 and 267<sup>th</sup> Street. The event organizers appeared to be unable or unwilling to handle this parking issue. It was reported by the Argus Leader that an ambulance had difficulties reaching a festival goer with an injury due to the vehicles parked along the shoulders of the road and patrons walking in the right-of-ways and roadway. Staff can not allow this type of traffic situation to occur. Either additional restrictive conditions should be implemented or the event should not be held at this location.

At the February 2007 meeting of the Planning Commission, there was discussion on the parking and recommended conditions of approval. LifeLight requested a continuation to address several of the conditions. An ad-hoc committee was created to discuss city and county involvement, the conditions of approval and areas where improvements could be made. The ad-hoc committee met three times and spent most of the time revising several of the original recommended conditions of approval. The new recommended conditions reflect changes made by the ad-hoc committee.

### **Recommendation**

Staff recommended approval of Temporary Use Permit #07-01 to allow for a three (3) day music festival with associated camping and vendor sales with the following conditions:

- 1) That all parking areas shall be monitored and driving lanes watered down if needed as determined by the Festival Director, Planning Director or Sheriff.
- 2) That a shuttle service be provided for people parking in the northeast parking area.
- 3) That prior to the event a lighting plan be submitted for the parking areas and that temporary lighting also be included in the pedestrian paths between the parking areas and festival site.
- 4) That all concerts conclude by 1:00 a.m.
- 5) That a \$250.00 surety be held by the County to make sure that all trash and debris is cleaned not only from the festival area, but also the parking areas and corridors leading to and from the event. Upon inspection and approval by the Planning Department, the surety shall be released, minus a \$35.00 inspection fee.
- 6) That a minimum of 160 portable toilets be provided for each day of the event. Each portable toilet shall be serviced as needed with all waste to be properly disposed of.
- 7) The location of both first aid stations shall be clearly identified in the programs provided to festival attendees. The applicant shall have appropriately trained medical personnel manning each station while festival attendees are on the subject property.
- 8) That by October 1, 2007, the applicant shall reimburse Minnehaha County for overtime costs incurred by the county for law enforcement at the site, for security and/or traffic management as determined by the Sheriff. Any law enforcement overtime covered by grants will not require reimbursement from Lifelight. The applicant shall reimbursement any cost for Metro Communications as determined by the Metro Council.
- 9) That one (1) misting stations be provided for crowd cooling once the temperature exceeds 90 degrees.
- 10) That the number of temporary campsites shall not exceed 2000 sites and shall obtain approval from the State. Information shall be provided to each camp site listing the location of the first aid station and information center.
- 11) That prior to July 15, 2007, the applicant shall submit a plan to the S.D. Department of Transportation, Minnehaha County Highway Department, Lincoln County Highway Department, Minnehaha County Sheriff, and S.D. Highway Patrol for traffic, signage and parking plans.
- 12) That the applicant provides County Planning with a written confirmation from the First Assembly of God Church that they are willing to provide their facility as a storm shelter with the maximum occupancy indicated.
- 13) That prior to August 15, 2007, the applicants shall provide an estimate on the duration needed to evacuate the facility and parking lots, and shelter capacity and location to the County Emergency Management Office for review and approval.
- 14) That prior to August 15, 2007, the applicant shall obtain a written statement from the Hartford Fire and Rescue that they have reviewed the plans and that fire and rescue services will be provided

during the event.

- 15) Each vendor shall obtain the necessary state sales tax license and food handling permits for the sale of food from the State of South Dakota.
- 16) That the temporary lighting located in all parking areas and corridors to and from the festival grounds should be directed towards the ground and must be shut off by 1:45 a.m. unless extended by the Sheriff.
- 17) The applicant shall provide a Signage Plan to the staff for review and approval prior to the Planning Commission meeting. The plans shall identify the type, number, size, message, and location of each sign or banner and state that no temporary signs shall be placed in any right-of-way without the consent of the agency governing that right-of-way. The applicant shall be required to obtain the property owners permission to place signs on private property. All temporary signs or banners shall be removed by September 10, 2007.
- 18) That the applicant shall preventing festival patrons from obstructing the highway or ditches by parking vehicles or placing other material there. That prior to Planning Commission approval, that applicant has to obtain a temporary easement from the property owner(s) to the west of the west parking area for the access roads leading out of the west parking area.
- 19) That prior to the start of the LifeLight festival, the one mile of 465<sup>th</sup> Avenue located between 267<sup>th</sup> and 268<sup>th</sup> Streets and the one (1) mile of 268<sup>th</sup> Street located between 465<sup>th</sup> Avenue and S.D. Highway 17 shall be treated with magnesium chloride or an equivalent dust suppressant.
- 20) That all driveway approaches into the temporary parking areas have a minimum width of twenty-four (24) feet and be constructed with a minimum of three (3) inches of gravel and maintained during the event so that they always remain passable. Furthermore, no natural drainage way shall be obstructed. The applicant shall obtain Approach Permits from the appropriate agency for any new approaches to be constructed.
- 21) That prior to the construction of any temporary or permanent approaches, the applicant shall obtain an approved approach permit from either the County Highway Department or the S.D. Department of Transportation, depending on jurisdiction.

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

### **REGULAR AGENDA**

A motion was made by O'Hara and seconded by Twedt to approve the regular agenda with the addition of Items 10 & 13. The motion passed unanimously.

### **ITEM 10. CONDITIONAL USE PERMIT # 07-36 to amend CUP #02-05 to allow mini-storage and revise hard surfacing requirements.**

Legal Description – Haug Steel Tract (ex Rd. & ex. Haug Addn.) SE1/4 in Section 12-T102N-R50W

Location - 47176 258<sup>th</sup> St. Crooks exit of I-29

Petitioner / Owner- Kevin Severson

### **General Information**

Present zoning - C Commercial

Existing Land Use - Commercial

Parcel Size - 1.78 acres

**Report by:** Scott Anderson

### **Staff Analysis**

The applicant is requesting a conditional use permit to allow for outdoor storage of vehicles, primarily boats and watercrafts. The applicant currently has a boat sales and repair business located on the site. He has indicated that boat storage is needed to fully utilize his business. The proposed storage would be on the north and west side of the existing building. The applicant has requested that the storage area be allowed to remain graveled.

### **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 boat sales and repair business has been located on the subject property for over a year with no apparent negative impacts on surrounding properties. The general area has development as a commercial/industrial area, as it is located at an interstate interchange.

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

The proposed use should not impact normal and orderly development and improvement of the surrounding vacant properties. The predominate use of the general area is for commercial/industrial activities. The applicant's proposed use will blend in well with the existing uses.

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

All required utilities have been provided to the site. The subject property has access from two (2) paved roads, County Highway 130 and Cottonwood Avenue. Staff has noted that the site plan provided by the applicant shows the entrance to the fenced parking area will be over the existing drainfield. Staff met with the applicant on the site on April 4, 2007 and indicated that this was not desirable, as continuous traffic driving over the drainfield of a septic system will lead to damage, even failure over time. The applicant agreed with staff and dialogue followed. It was decided to move the entrance to the south side of the parking area and access it from County Highway 130 or a side driveway off of Cottonwood Avenue. This modification is acceptable to staff and will be included in the recommended conditions of approval.

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

The applicant meets the off-street parking requirements for the existing business. He is proposing to add additional parking through the storage lot.

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

The applicant is requesting to not be required to pave the storage area. Article 15 of the Zoning Ordinance states "Any driveways, parking lots, or loading/unloading areas in a commercial or industrial zoning district shall be constructed with a hard surface when the property is accessed from a hard surface road". In this case the parking area will be accessed from a paved road. The customer parking area is paved. The Planning Commission has in the past as a matter of policy indicated that storage areas that are completely fenced with material that has a minimum of 90% opacity. Staff will include this in the recommended conditions of approval.

Staff finds the proposed addition of outdoor storage at the subject property to be appropriate for the area. There are other storage units locate further to the north and there has been a contractor's equipment storage yard located across Cottonwood Avenue to the east. The applicant is agreeable to providing fencing with an opacity that will diminish the visual impacts of the storage.

**Recommendation**

Staff recommended approval of Conditional Use Permit #07-36 to allow for out-door storage and to revise paving requirements of the storage area with the following conditions:

- 1) That the entire outdoor storage area be fenced with material meeting a minimum of 90% opacity and at least six (6) feet in height.
- 2) That with fencing opacity requirements met, the parking area shall be allowed to remain in a gravel condition.
- 3) That any security lighting for the outdoor storage area be of the shoebox type, so that any light is directed downwards.
- 4) That the entrance to the outdoor storage area not be located so as to continually drive across the drainfield area of the septic system.

**Public Testimony**

Mr. Anderson explained that the applicant had not completed the notification requirements for this conditional use permit and requested that this item be deferred for one month.

A motion was made by Cypher and seconded by Bunde to defer conditional use permit #07-36 to the May 21, 2007 meeting. The motion passed unanimously.

**ITEM 13. CONDITIONAL USE PERMIT # 07-38 to allow mini-storage.**

Legal Description – the north portion of the W544’ S1320’ SW1/4 in Section 30-T101N-R50W

Location - 3 miles west of Sioux Falls

Petitioner / Owner- Keith & Deb McGuire / Peggy Plooster

**General Information**

Present zoning - C Commercial  
Existing Land Use - Agriculture  
Parcel Size - N/A

**Report by:** Pat Herman

**Staff Analysis**

The site is located a ¼ mile north of the intersection of County Highway 148 (267<sup>th</sup> St.) and State Highway 17 (466<sup>th</sup> Ave.) The property is zoned C Commercial. There is commercially zoned land to the southwest, on which is located a gas station and an animal rescue center. Land to the north, south, west and east is zoned A-1 Agricultural. There are rural acreages to the immediate west of this site.

This is a request to allow commercial storage, both inside and outside. The submitted site plan shows two buildings, 70’ x 400’, for RV storage. The petitioner has indicated that these structures will be phased in and built in 80 foot sections. Outside storage will be available until the buildings are constructed. Depending on customer preference, part of lot may remain as outside storage.

The lot will surrounded by a security fence topped by barbed wire. The petitioner is proposing to surround the fence with cedar trees to limit the visual impact of the storage facility. Because of issues with growth rate and maintenance of live fencing, outside storage facilities have been required to have opaque fencing throughout the County. Such fencing should be required for this facility. If there werer no outside storage, fencing would not be required.

Section 15.04 of the zoning ordinance requires that the driveway and parking areas of this lot be hard surfaced. The portion requiring hard surfacing is labeled on the submitted site plan. The petitioner has proposed to phase in the hard surfacing in conjunction with the building construction.

**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, residential, and commercial uses. The recommended conditions should mitigate any potential impacts the storage facility would have on the surrounding land uses.

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

The property is located at a rural service center as designated in the Comprehensive Plan and in an area zoned for commercial uses.

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

Access to this lot will be from Arabian Place. A preliminary site plan has been submitted which details the road and drainage for this lot.

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

There is sufficient room to provide for any parking needs.

**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 lighting shall be of shoe box design, directing light downward onto the property. Odor, fumes, dust,

noise and vibration should not be at a level to constitute a nuisance.

**Recommendation**

Staff found the requested use to be appropriate for a rural service area and recommended approval of conditional use permit #07-38 with the following conditions:

- 1) The lot shall conform to site plan dated March 30, 2007.
- 2) Lot 1 shall be screened from public view by an earth-tone screening fence at least six feet in height and with a minimum 90% opacity maintained over the full height of the fence. No outdoor storage shall occur before the screening fence is constructed.
- 3) Arabian Place shall be hard surfaced to coincide with the re-surfacing of Hwy 17.
- 4) Prior to occupation of the storage building, the abutting driving surfaces, as shown on the submitted site plan, shall be hard surfaced.
- 5) Signs shall conform to Section 16.0 of the Zoning Ordinance.
- 6) All lights shall be of a shoe box design directing light downward onto the property.

**Public Testimony**

The petitioner, Keith McGuire, stated that he would start with a 240' section of building. He had no other comments.

Greg Krell, 26685 466<sup>th</sup> Ave., lives across from this site. He wondered about the type of lighting and when the facility would be open.

Commissioner South noted that the lights had to be a shoe box design which would direct light downward so it would not spill off of the property. Mr. McGuire stated that the facility would be open 24 hours but would have a locked gate with a key code to allow access.

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

A motion was made by Rogen and seconded by Bunde to approve conditional use permit #07-38 with the conditions as stated. The motion passed unanimously.

**ITEM 17. CONDITIONAL USE PERMIT # 07-30 to allow a dog breeding kennel.**

Legal Description – S214.23' E305' & S214.23' W305' E610' in the NE1/4 SE1/4 in Section 16-T102N-R48W

Location - 1 mile northeast of Corson  
Petitioner / Owner- Vicki Eggert

**General Information**

Present zoning - A-1 Agricultural  
Existing Land Use - Residential  
Parcel Size - 2 + Acres

**Report by:** Phil Kappen

**Staff Analysis**

The subject property consists of two lots in a residential development area located along 481<sup>st</sup> Avenue to the northeast of the village of Corson. The petitioner currently has a total of six female dogs and wishes to operate a commercial dog breeding facility. The proposed facility would be located on the western lot which is located behind the lot on which the petitioner's house is located.

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

The proposed site has two houses immediate to the north and another house a small distance to the south. The two north properties are located at a higher elevation than the subject property and would look directly down on the proposed facility. Staff has concerns about the proposed use and the immediacy of the neighboring homes.

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

Even though the property is zoned agricultural, the area is currently a residential development area. The county's animal control ordinance prohibits a person from having a total of more than four dogs or cats in such an area. This limit is the total of all dogs and cats. As the petitioner has indicated that she currently

has six female dogs she is already in violation of the animal control ordinance. It is also assumed that a breeding facility would have some male dogs. It is unknown how many male dogs that the petitioner may have on the property.

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

Access to the proposed site would be via the petitioner's house lot. The area along 481<sup>st</sup> Avenue, a township road, is quite hilly in this area. Any use that may potentially increase traffic onto the township road could pose a traffic hazard as there are some poor sight distances in this vicinity along that road.

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

There would be ample areas on the petitioner's property for parking, however, it may not be advisable to increase the number of vehicles accessing this property (see number 3).

**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.**

Even a small breeding facility may have the potential to increase odors at neighboring residences, particularly given the proximity and difference in elevation between this property and the adjoining residences. Noise would almost certainly be a problem for neighboring properties as it appears there would be little effective means of providing a visual separation given the physical layout of the lots. This situation is completely the opposite of the boarding kennel that was addressed approximately one mile south of this site last month. In that case there was not only some physical separation between the kennel and adjoining properties, but the kennel was being placed in an area with very limited visibility from other properties. Neither of those factors applied in the current application.

**Recommendation**

Staff finds that the proposed use is not compatible with surrounding land uses due to the great potential for inordinate noise, the potential for odor and the close proximity to abutting properties. Staff recommended denial of conditional use permit #07-30.

**Public Testimony**

Mr. Kappen supplied the Commission with a number of letters and a petition from neighbors who are opposed to this operation.

The petitioners, Randall and Vicki Eggert, stated that they have three breeds of dogs, Pukes, Pugs, and Maltese. They plan to construct a building to house the dogs. The building will have sprayed in insulation, heated floors, and drain going to a septic tank. There will be a fenced area around the building to allow the dogs play space outside when the weather is nice. Mr. Eggert noted that his property is zoned A-1 Agricultural. They own a big shed which is placed between their lot and the neighbor's home to the north, so that neighbor will not be able to see the kennel building from their house. Their site is 250' from the neighbor to the south. There will be no odor from this operation as the dogs will be inside and they will have a septic system. Mr. Eggert presented the Commission with aerial photographs showing the location of the proposed building in relation to his neighbors. Ms. Eggert explained that breeding the dogs was a hobby and that selling the pups would help to defray the medical and upkeep costs of the dogs.

Commissioner Twedt stated that the Commission had received letters from more than one neighbor plus a petition against this operation. She asked if the Eggerts knew about the Animal Control Ordinance. Ms. Eggert stated she had not been aware of the ordinance and that she owns 4 female Pukes and two male Pukes. She is also keeping dogs that belong to her sister and daughter. She stated that when she had first called about a breeding business she had been told by Ms. Herman that she could have up to four breeds of dogs. Ms. Herman explained that the conversation had been on the phone and Ms. Eggert had misunderstood the word "breeders." Ms. Herman stated that she had not mentioned the Animal Control Ordinance during that conversation.

Ms. Eggert stated that the neighbor to her south and the northwest are ok with her running this business. She hopes to have 10 females that would be bred once a year. With an average of 4 pups a litter that would be 42 dogs a year. Some would be sold at this site but many times they travel to a meeting site to sell the dogs. Often it is to larger communities where people are willing to pay more for these dogs. Ms. Eggert stated that there would be no odor with a septic tank and that she would put bark collars on the dogs. She said the neighbors around her do not hear these dogs barking.

Jackie Meisenheimer, 48088 259<sup>th</sup> St., stated that she can hear the dogs barking. She is concerned about odor and waste from the dogs. There is a creek to the south of this lot and there could be runoff into the creek. She has been on the deck of the house immediately to the south and you can easily see into the yard. The other night there were 8-10 dogs back there and they were barking. Ms. Meisenheimer noted that the terrain is very hilly and there is concern with increased traffic on the road. She just can't imagine that Ms. Eggert will put bark collars on 42 dogs. She also stated that when the Eggerts found out that the neighbors were opposed to the kennel they made threats about having pigs and donkeys.

Jim Caldwell, 48078 259<sup>th</sup> St., stated that he has a row easement which runs along the south boundary of the Eggerts property. This allows access to a lot he owns that has an unused building eligibility. He is concerned that this lot will lose value if a potential home buyer has to travel past barking dogs to get to the site. He could hear the dogs barking today.

Debbie and Bruce Lund, 25867 481<sup>st</sup> Ave., live directly north of the Eggerts. Ms. Lund stated that the neighbors to the west and south have not said they approve of this request, they have said they will not get involved in the issue. Ms. Lund explained that her husband has lived at this site for 32 years and she has lived there for 16 years. Last fall the privacy fence was put up 75' from her house in an attempt to limit the dogs from barking. That has not worked. She believes the Eggerts have 12+ dogs and have been running the breeding operation out of the garage. There is nothing that can be done for the noise. She is not opposed to animals, just to the noise and smell of this operation. She noted that the County has a 4 pet maximum in rural development areas. This must be because of the smell and noise and the inconvenience to other neighbors. The big shed on the Eggert's property does nothing to stop the barking. The Eggerts do not control their dogs and they are allowed to run at large and do their business on other people's property. She has had to chase home as many as 8 Pekingese dogs. Ms. Eggerts is also concerned about the welfare of the dogs as the Eggerts both work full time and because they are gone are not aware of how noisy the dogs are. They had had an illegal number of dogs for quite some time and are only applying for this permit because they want to put up a new building. Ms. Eggert called the Commissioner's attention to a report in their packet written by Jim Hess, the animal control officer, noting the number of dogs on the property. She read portions 3.04 A & B of the Animal Control Ordinance which addresses the number of dogs allowed and disturbing the peace, and part of the ordinance dealing with home occupations. Ms. Lund noted these two ordinances seem to be in conflict and wondered what recourse they will have with noise. At Ms. Lund's request, 12-15 people in the audience stood up in opposition to this kennel.

Mr. Anderson stated that there could be conflicting language between the two ordinances; however noise can be addressed through the conditional use permit process.

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

Commissioner Twedt stated her concern as this property was already out of compliance for having too many dogs. Mr. Kappen noted that the animal control officer was addressing that issue as he had received a complaint.

Commissioner Cypher, stating that he agreed with the staff's reasons for recommending denial, the opposition for the neighbors and the petitioner's inability to control the animals, made a motion to deny conditional use permit #07-30. Seconded by Twedt. The motion passed unanimously.

**ITEM 18. CONDITIONAL USE PERMIT # 07-32 to allow a garden center with on site sales.**

Legal Description – S261.19' E298.32' NE1/4 in Section 7-T104N-R48W

Location - 47896 Jasper St. 3.5 miles east of Dell Rapids

Petitioner / Owner- Mitch & Cindy Kannenberg

**General Information**

Present zoning - A-1 Agricultural  
Existing Land Use - Agriculture  
Parcel Size - 1.79 Acres

**Report by:** Scott Anderson

**Staff Analysis**

The applicant is requesting a conditional use permit to allow for a retail seasonal nursery and garden

center. The applicant is proposing to locate a 16 foot by 24 foot hoop greenhouse on the subject property and sell garden plants. The applicant has indicated that none of the plants will be raised on site this year, but next year they hope to begin raising some of the bedding plants on the site.

On April 4, 2007, staff conducted a site visit. The subject property is rather small, slightly under 2 acres. There is an extensive shelterbelt located on the north and west sides of the property. Additional large trees are located on the east and south sides. The property has very limited area to locate an additional structure.

**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 neighbor is located nearly one (1) mile away. The surrounding area is primarily agricultural fields. It is unlikely that the proposed use would impact any of the use of these fields.

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

Due to the isolated location, there would be minimal impact to the normal and orderly development of vacant property in the area.

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

Access to the site is via Jasper Street, which is a paved county highway. It appears that all required infrastructure is in place.

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

The subject property has very poor accessibility. There is a paved driveway with limited parking. Article 15 does not specify the minimum number of required parking spaces for this proposed use. Staff has required five (5) spaces in similar requests. Should this conditional use be approved, staff would request that five (5) spaces be required.

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

The proposed use should not produce any significant amount of odor, fumes, dust or noise that would constitute a nuisance. As there are no residences located within the area which would be impacted by any noise emanating from the site, staff does not see this as a concern.

Staff is concerned however, with the potential traffic issues on this site. The applicant has indicated that the daily traffic will be very minimal. Staff is concerned that should there be any busy periods, there is a significant traffic safety issue. The potential for traffic movement within the subject property is very limited. The driveway drops off from Jasper Street and is very narrow. It would be difficult for two vehicles to meet on the existing driveway. The site does not appear to be safe for the public at this time. Staff can not support the conditional use permit application due to safety concerns.

**Recommendation**

Staff recommended denial of Conditional Use Permit #07-32.

**Public Testimony**

Mr. Anderson explained that a new site plan had been submitted which moved the greenhouse to the east side of the residence. Commissioner South confirmed that the driveway and parking surfaces would have to be hard surfaced. Mr. Anderson explained that his concern with this site is safety issues. Access is coming from a high speed highway and turning into a relatively narrow driveway. Commissioner Rogen suggested that if trees are going to be removed on the east side of the property to accommodate the greenhouse, perhaps access could be made from the township road.

The petitioner, Cindy Kannenberg, stated that it would be possible to widen her existing driveway from 14' to 20', but she could not do that this year. She would have to do some work with building up the ditch. She is willing to explore the possibility of access from the township road. Ms. Kannenberg explained this would only be in operation 6-8 weeks out of the year. The highway itself does not carry a lot of traffic.

Commissioner Cypher explained that the parking area would not have to be hard surfaced if access came

from the township road. Commissioner Steinhauer expressed concern that the produce was not grown on the site. He feels this should be condition. Commissioner South stated that the first year it would be hard to do that.

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

Commissioner South suggested that the petitioner be given the option to either widen the existing approach or move the access to the township road.

Based on the staff report and public testimony, a motion was made by Steinhauer and seconded by Rogen to approve conditional use permit #07-32 with the following conditions:

- 1) Beginning in 2008, a majority of the product for sale must have been grown on this property.
- 2) The approach from Hwy 104 shall be widened to a minimum of 20 feet and five paved parking spaces provided or access to the greenhouse shall be moved to 479<sup>th</sup> Ave. with five parking spaces provided. This shall be completed by June 1, 2008.
- 3) The applicant shall obtain and maintain all required sales tax licenses from the state of South Dakota.
- 4) The applicant shall obtain a building permit for all structures, permanent or temporary, larger than 120 square feet.

**ITEM 19. CONDITIONAL USE PERMIT # 07-33 to exceed 1200 sq. ft. of accessory building area.**

Legal Description – Tracts 13 & 14 Weis Tracts SW1/4 in Section 28-T101N-R51W  
Location - 46206 Weis Circle 1 mile south of Wall Lake  
Petitioner / Owner- Leonard Wollman

**General Information**

Present zoning - A-1 Agricultural  
Existing Land Use - Residential  
Parcel Size - 2.09 acres

**Report by:** Phil Kappen

**Staff Analysis**

The subject property is in Weis Tracts, a residential subdivision at the northeast corner of 472<sup>nd</sup> Avenue and 267<sup>th</sup> Street. The petitioner owns two lots in the northwest corner of the subdivision and has a home and an existing 1620 sq.ft. (30x54') accessory building. He wishes to construct an additional 500 sq.ft. building for a total of 2120 sq.ft. of accessory building area on the site.

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

The petitioner already has the largest accessory building in the subdivision. In 2004 the Planning Commission heard an application from another petitioner in the subdivision for a 1900 sq.ft. accessory building. At that time it was noted that the largest existing accessory building in the subdivision was 1620 sq.ft. (the building of the current petitioner). The 2004 petitioner's permit was approved, but with a size limitation of 1620 sq.ft.

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

The proposed 2120 sq.ft. building area would be much larger than any other buildings in the subdivision. Approval of this size building could set a precedent for other larger buildings in the area which could ultimately result in a push to change the uses of nearby properties to something that does not meet the requirements of the comprehensive plan.

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

Access would be from Weis Circle, a publicly-dedicated subdivision road that is privately maintained by the property owners along the road.

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

There is adequate parking area on the property for a strictly residential use. No types of commercial use have ever been approved for the property.

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

There should be little problem with the listed factors from the approved residential use on the property.

**Recommendation**

Staff finds that the proposed building would be larger than the largest accessory building in the subdivision and that the size of the petitioner's current building has already been cited as a reason to deny a proposed building size that was smaller than what the petitioner is currently proposing. Staff recommended denial of conditional use permit #07-33.

**Public Testimony**

The petitioner, Leonard Wollman, stated that he wanted to add 500 sq. ft. of storage area. This would allow him to keep his boat, tractor and bob cat inside instead of out in the elements. He just needs more space for his own possessions.

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

Stating that the petitioner's existing storage building had established the maximum allowance for storage buildings in this subdivision and that it was already in excess of the 1200 sq. ft. limit, a motion was made by Twedt and seconded by Bunde to deny conditional use permit #07-33. The motion passed unanimously.

**ITEM 20. REZONING #07-03 from A-1 Agricultural to PD Planned Development Lake Shore Estates.**

Legal Description – Tract 9 Voigt's Subdivision SW1/4 in Section 21-T101N-R51W  
Location - south edge of Wall Lake  
Petitioner / Owner- Brian Ross for CRC Property Group, LLC / Mike Headrick

**General Information**

Present zoning - A-1 Agricultural  
Existing Land Use - Agriculture  
Parcel Size - 4.71 Acres

**Report by:** Pat Herman

**Staff Analysis**

The subject property is located on the south side of Wall Lake, approximately a ¼ mile east of 462<sup>nd</sup> Avenue. There are residentially zoned lots to the north and east along West Shore Place and South Shore Place. To the east there is one residentially zoned lot and the remaining land is zoned A-1 Agricultural.

This request is to rezone property from the A-1 Agricultural District to a PD Planned Development District – Lake Shore Luxury Estates. A planned development district permits flexibility from the conventional zoning regulations, allows for uniform site design, and permits public review.

The property to be rezoned is 4.71 acres and has one residential building eligibility. The proposed zoning district would allow eleven residential lots with a minimum lot size of 10, 800 square feet. Front and rear yard set backs would be slightly smaller than those required for Rural Residential zoning, while the side yard set back would be larger. The submitted development plan states that homes would have 3,000 to 3,500 sq. ft., main floor and above. Potential buyers would select from a set of established floor plans.

The twelfth lot would be designated for a private clubhouse for the use of the community's residents. This is the lot nearest to the lake and the plan proposes a private boat dock. Use of the lot is restricted due to water and sewer easements. Direct access to Wall Lake is not currently available as there is a platted right-of-way between the lot and the lake.

This property is required to be connected to the Wall Lake Sanitary District. The applicant has submitted an agreement, signed by Chris Monger, President of the Sanitary District, in which the sanitary district is

supportive of this development and willing to allow a connection to the central sewer system. The Planning Department has not yet received any notification that the Sanitary District can accommodate the fourteen lots located along Lake View Dr. on the northeast end of the lake which were approved in 2003; nor for a 78 lot development approved last year on the west side of the lake.

In 1988, Minnehaha County adopted density zoning which allows one house per quarter-quarter. This approach accommodates residential uses in agricultural areas of the County but maintains control over the density in such a manner that urban development is less likely to occur. All legally described lots which were on file with the Register of Deeds in 1988 received one residential building eligibility. The original lots which encircle Wall Lake were platted in 1932. This allowed for the development of a much greater density of residential units around the lake. The subject property received one residential building eligibility at that time.

The Comprehensive Plan does account for additional growth in the transitions areas of the County. These areas are found adjacent to existing municipalities and in the joint jurisdictional area around the City of Sioux Falls. Wall Lake is not designated as a transition area.

Last year a rezoning request was submitted to allow 78 residential lots on 51 acres on the west side of Wall Lake. The applicant in that case owned property which contained legally described lots from the original 1932 plat. The rezoning was to reconfigure the layout of the lots to accommodate contemporary building design. That request was supported by the Planning Department because there were existing building eligibilities, therefore the allowable residential density was not increased. During the public hearings before the Planning Commission and County Commission there was opposition to the new housing from the current Wall Lake residents. The Planning Commission recommended denial of the rezoning because of the density of the development and because the lake, roads and sewer system could not handle the impact. The County Commission reversed the Planning Commissions decision and approved the rezoning solely because there were existing residential building eligibilities.

The applicant is requesting this rezoning in order to develop just under 5 acres of land for a limited number of residential units. While the number of houses may seem inconsequential, the impact of approval and the precedent it will sent for the Wall Lake area is immense. Within the section containing Wall Lake there are over 235 undeveloped acres (excluding the approved 78 lot subdivision). If each of those property owners applied to rezone their property to the density requested by the applicant, an additional 900 + homes would be developed. In contrast, under density zoning, there are only 53 available building eligibilities available in this section.

The Planning Department cannot support this application for rezoning as the request is not congruent with the Comprehensive Plan and does not comply with density zoning. Approval of the rezoning would set a precedent which would not only overwhelm the supportive services for the Wall Lake area, but would encourage applications for rezonings throughout the County in effort to usurp the density zoning requirements. The Planning Department is also respectful of the opposition expressed by the existing residents to allowing an increase in residential units around Wall Lake.

#### **Recommendation**

Staff found the request is not in conformance with the Comprehensive Plan nor density zoning and recommended denial of the rezoning.

#### **Public Testimony**

The petitioner, Brian Ross with CRC Property Group, stated that he is a Sioux Falls native, attended O'Gorman High School, and went to college in South Dakota. He currently lives in San Diego where he works as a developer for exclusive homes, building only two or three at a time. He is considering returning to Sioux Falls to allow his son to also attend O'Gorman. While looking at other lots at Wall Lake he found that this parcel was for sale. The original plan was to construct his own home but then he envisioned an upscale community that would enhance this area. He put together a development team resulting in this concept plan and the request to rezone to a planned development. Mr. Ross stated he had

several colleagues that would address the Commission.

Chris Monger, 26549 East Shore Place, is president of the Wall Lake Sanitary District. She stated the district is mainly opposed to large developments but feels eleven homes is a reasonable project. The sewer system is at capacity and needs refurbishing. The district is not against development. CRC is willing to put a substantial dollar amount into the district. This will only be used within the limits of what the district currently owns. Ms. Monger stressed that the engineering specs must be met. None of the homeowners on the lake will be picking up the tab. Ms. Monger noted that she was supportive of this development as a homeowner on Wall Lake. She feels this is a workable amount of homes and that the sewer system will benefit from this development. The district has undertaken a lengthy study as to what they can handle on the system and that study is still on going. At this point she cannot say it will accommodate eleven homes, it might be only nine. The study results will dictate the allowable number of hook ups.

Amy Stockberger, 608 E.38<sup>th</sup> St., is a realtor with the real estate company. She feels this development would be a benefit to the Wall Lake community. The design and aesthetics of these homes is not like anything Minnehaha County has right now. She has had several clients looking property on or close to a lake and they have chosen to locate outside of the County. Ms. Stockberger believes this is a good residential development and will be good for property values in the area.

Bret Merkle, Merkle Law Firm Harrisburg, SD, stated that they had worked throughout the winter with the Wall Lake Sanitary District and reached an agreement. The District needs to increase capacity and this agreement would allow them to expand. Mr. Merkle stated that a precedent would be set by this development, a good precedent. This is needs to be viewed differently, as a great opportunity. This written agreement states that the development must pay money to the District before anything can be done with the land. It was clear when meeting with the District Board they did not know how they were going to pay for upgrades to the system. This development will provide capital for the refurbishing. This process will set a precedent for all new developers – you can do this if you pay before the start of development. Mr. Merkle stated that this is a great plan and a great development proposal.

Bill Huffman, 46270 West Shore Place, owns the property on the north side of this parcel. He explained that there is a slew that drains through this land and that it is currently underwater. This land will have to be built up and a wall put up to keep the water out. This will then dump the water onto his land. He also stated that the water table is only 3 or 4 feet below the ground. Mr. Huffman explained that the state owns land between this site and the lake and there is also a platted right-of-way blocking access to the lake. He is opposed to this rezoning.

Jim Voigt, 46224 260<sup>th</sup> St., owns the land to adjacent to the west. He is opposed to the rezoning. The sewer is in trouble now and the ponds are leaking and cracked. He doesn't believe that adding houses will help the problems. He also feels there is not enough land to build eleven houses and they will be crowded on top of one another.

Marsha Huffman, 46270 west Shore Place, questioned the wisdom of allowing 11 homes on this site. There is other vacant land around the lake; will it be filled up with homes too? Ms. Huffman questioned the precedent that would be set if this is approved. What's fair for one applicant would have to be fair for the next. She is opposed to this.

Commissioner Steinhauer responded that it would put the Commission in an awkward position to approve this rezoning and then turn down the next applicant.

Dan Voigt, 46208 266 St., lives west of this property. He wanted to know what it would take to develop his property. If they can get eleven houses, what can he get?

Mr. Kappen reiterated that this rezoning does not comply with the Comprehensive Plan and that State Law states that property cannot be rezoned if it does not match the plan. Mr. Merkle stated that this is a sewer district and development should be allowed. Commissioner South read the paragraph from the staff report pertaining to the Comprehensive Plan and stated that there are no building eligibilities available to increase density on this site. Mr. Merkle concurred, stating that this is why there was an application to rezone the property.

Commissioner Steinhauer noted that the Comprehensive Plan directs growth to the areas adjacent to existing municipalities that have existing services that can be expanded. He is struggling to find justification in how this rezoning would work. Commission Twedt stated that if Wall Lake were much

larger, such as Lake Madison, it would make it more unique and would probably have been targeted for development in the Comp. Plan. Mr. Merkle argued that development around Wall Lake was a grandfathered use. Commissioner South disagreed stating that the lots around Wall Lake were platted in the 1930s, long before the Comprehensive Plan was enacted. When density zoning was adopted each of the lots was assigned a building eligibility, as was this property. It is those building eligibilities that are being developed.

The floor was closed to public testimony.

Commissioner Steinhauer commended the petitioner on the approach he had taken with this application. He agreed that no matter which way the vote went, the petitioner had set a good precedent on how to work with the Sanitary District in requiring money be paid before development occurs. Commissioner Steinhauer stated that he was not happy with County Commission's action to approve the 78 lot development on the west side of the lake. He felt that was too dense and had argued for only 50 lots, at a density of one per acre. He believes in the one building eligibility per quarter-quarter system used by the County. It would be an error to approve this rezoning. He would have been more agreeable in seeing this as four, one acre lots, but even that option would take more convincing. Commissioner Steinhauer stated that he lives on Wall Lake and understands that he will have to write checks to fix the sewer district. The fact that the developer was willing to give money to the sewer district does not over rule bad planning.

Commissioner Cypher stated that in considering this request he first looked at the availability of central sewer, which in this case, needs major work. The other consideration is the precedent that would be set by approving this rezoning. He noted that a neighboring property owner questioned how many houses could be developed on his property. Approval of this rezoning would encourage more applications. He will not support this request.

Commissioner Twedt stated that the County had to be prepared for unprecedented growth. Wall Lake is too small to support a lot of growth. There will be growth occurring both inside and outside the municipalities. Roads, police and fire protection will all be issues the county will have to deal with.

Based on the staff report, public testimony, and his previous comments, a motion was made by Steinhauer and seconded by Cypher to recommend denial of the rezoning. The motion passed unanimously.