

**MINUTES OF THE  
MINNEHAHA COUNTY PLANNING COMMISSION  
May 21 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.

The Dell Rapids Planning Commission joined the meeting.

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

**ITEM 1. REZONING # 07-04 from A-1 Agricultural to I-1 Light Industrial**

Legal Description - SE1/4 (Ex H-2 & Pliska's Addn. & Ex Tr. 2 Overaag's Addn. & Ex W525' and Ex. Lots 1 -6 Blk 1 & Lots 1-6 Blk 2 Dell Rapids Industrial Park Addn. ) and Tract 1 (Ex E723' S400') Pliska's Addn. W1/2 SE1/4 of Section 12-T104N-R50W

Location - Dell Rapids exit of I-29

Petitioner / Owner- Viereck Commercial Real Estate, LLC / Jerry Pliska

**General Information**

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

**Report by:** Pat Herman

**Staff Analysis**

This is a request to rezone property from A-1 Agricultural to I-1 Light Industrial. The property to be rezoned is located at the Dell Rapids exit of Interstate 29, east of the interstate and north of Hwy 115. It is adjacent to the Dell Rapids Industrial Park which was zoned I-1 Light Industrial in November 1996. There is also existing commercial zoning on the west side of Lindy Avenue, which was approved in February 2005. There is additional commercial zoning south of the highway and industrially zoned property west of the interstate.

The comprehensive plans for both Minnehaha County and for Dell Rapids designate the interchange location as a rural service area. Rural service areas are designed as the appropriate sites to allow commercial and industrial services to locate in the rural area.

The petitioner has submitted a concept plan depicting the design of the industrial subdivision. A preliminary plan, drainage and grading plan, and erosion control plan are required for approval by both the Planning Commissions and County Commission and City Council. There is designated flood plain on this site and County's Flood Plain Management Ordinance prohibits construction within the flood plain. The flood plain will need to be shown on the preliminary plan and the final plat.

Access to the site will be from Lindy Avenue and the roads within the subdivision will have to be hard surfaced. The petitioner should be aware that the County and City will require that there be a second entrance to the subdivision from 472<sup>nd</sup> Avenue.

**Recommendation**

The joint planning staff found the rezoning to be in conformance with the Minnehaha County Comprehensive Plan and the Dell Rapids Comprehensive Plan and recommended approval of rezoning #07-04.

**Public Testimony**

The petitioner, Joey Larsen with Viereck Commercial, and the property owner, Jerry Pliska, were both at

the meeting. They stated the area being rezoned was approximately 551/2 acres.

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

Based on the staff report, public testimony, and that the request was in conformance with both Comprehensive Plans, a motion was made for the County by O'Hara and seconded by Rogen to recommend approval of rezoning #07-04. The motion passed unanimously. Same motion for the City by Skatvold and seconded by Dearduff. The motion passed unanimously.

**APPROVAL OF THE CONSENT AGENDA**

At the request of the Planning Commission, Items 5 & 8 were placed on the regular agenda. A motion was made by Bunde and seconded by Cypher to approve the consent agenda (Items 5 & 8 removed). The motion passed unanimously.

**ITEM 2. MINUTES – April 23, 2006**

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

**Item 3 was deferred from the April 23<sup>rd</sup> meeting.**

**ITEM 3. 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 - 2.0 Acres

**Report by:** Scott Anderson

**Staff Analysis:** The applicant contacted staff on May 11, 2007, and requested that this item be continued to the June 25, 2007 Planning Commission meeting.

**Recommendation:** Staff recommended that Conditional Use Permit #07-36 be continued to the June 25, 2007 Planning Commission meeting at the applicant's request.

Based on the staff report a motion was made by Bunde and seconded by Cypher to defer conditional use permit #07-36. The motion passed unanimously.

**ITEM 4. CONDITIONAL USE PERMIT # 07-38 to transfer two residential building eligibilities.**

From – SE1/4 NE1/4 & SW1/4 NE1/4 in Section 9-T102N-R51W  
To – NE1/4 NW1/4 of Section 10-T102N-R51W  
Location - 1.5 miles north of Hartford  
Petitioner / Owner – Mike Grace

**General Information**

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

**Report by:** Phil Kappen

**Staff Analysis**

The subject property is located southwest of the intersection of 257<sup>th</sup> Street and Van Demark Avenue, north of Hartford. Most of the area is agricultural, however, there are a number of residential acreages immediately around where the site to where the eligibilities would be transferred.

**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 eligibilities would be transferred from property just across the road from an existing farmstead with livestock. The proposed transfer would move those eligibilities further from the farmstead.

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

The primary land use in the area will continue to be agricultural. The transfer would decrease the potential for conflict with the farmstead and livestock facility. A right-to-farm notice covenant will be required before any building permits can be issued.

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

Both 257<sup>th</sup> Street and Van Demark Avenue are Hartford Township Roads. Hartford Township does not require driveway permits at this time.

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

There will be ample area on any lots for the amount of parking required by a residential use. No other types of uses, such as commercial uses, are authorized on this 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.**

There should be little odor, fumes, dust, noise or vibration from a residential use. No other uses, such as commercial, are allowed. All lighting should be of a shoebox style that directs light downwards and prevents light spillage beyond the boundaries of the property.

**Recommendation**

Staff finds that the proposed use is consistent with the basics of density zoning and can be accomplished in a manner that limits impacts on neighboring properties. Staff recommended approval of conditional use permit # 07-38 with the following conditions:

- 1) Any lot shall be platted and a right-to-farm notice covenant filed on the property prior to the issuance of any building permit.
- 2) All outside lighting shall be of a shoebox style that directs light downwards and prevents light spillage beyond the boundaries of the property.

Based on the staff report, a motion was made by Bunde and seconded by Cypher to approve conditional use permit #07-38 with the conditions as stated. The motion passed unanimously.

**ITEM 5. CONDITIONAL USE PERMIT # 07-41 to allow mini-storage and retail sales of storage units.**

Legal Description – Lot 10 Blk 1 Brower Addn. and Lots 16 & 17 Blk 2 Brower's 2<sup>nd</sup> Addition, in the SW1/4 of Section 27-T102N-R51W  
Location - south edge of Hartford  
Petitioner / Owner- Haensel Distributing Company

**Item 5 was placed on the regular agenda.**

**ITEM 6. CONDITIONAL USE PERMIT # 07-42 to transfer one residential building eligibility.**

From – SE1/4 NW1/4 4 in Section 3-T101N-R52W  
To – NW1/4 NW1/4 of Section 3-T101N-R52W  
Location - 4 miles south of Humboldt  
Petitioner / Owner- Thomas Sieverding

**General Information**

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

**Report by:** Phil Kappen

**Staff Analysis**

The subject property is located 4 miles south-southeast of Humboldt at the intersection of 457<sup>th</sup> Avenue

and 262<sup>nd</sup> Street. The petitioner wishes to transfer an eligibility from a land-locked quarter-quarter to one accessible from either 457<sup>th</sup> Avenue or 262<sup>nd</sup> Street, which are both township roads.

**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 wishes to place the eligibility on land next to the old farmstead on their property. The surrounding property is agricultural in nature with scattered acreages. A right-to-farm notice covenant will be required prior to the issuance of a building permit.

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

The transfer would allow the farm ground in the center of the section to be preserved.

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

Access to either of the roads would require the petitioner to obtain approval from the township.

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

There would be ample space on the property for the parking required of a residential use.

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

There should be little odor, fumes, dust, noise or vibration from a residential use. No other uses, such as commercial, are allowed. All lighting should be of a shoebox style that directs light downwards and prevents light spillage beyond the boundaries of the property.

**Recommendation**

Staff finds that the proposed use is consistent with the basics of density zoning and can be accomplished in a manner that limits impacts on neighboring properties. Staff recommended approval of conditional use permit # 07-42 with the following conditions:

1. Any lot shall be platted and a right-to-farm notice covenant filed on the property prior to the issuance of any building permit.
2. All outside lighting shall be of a shoebox style that directs light downwards and prevents light spillage beyond the boundaries of the property.

Based on the staff report, a motion was made by Bunde and seconded by Cypher to approve conditional use permit #07-42 with the conditions as stated. The motion passed unanimously.

**ITEM 7. CONDITIONAL USE PERMIT # 07-43 to transfer one residential building eligibility.**

From – S10 RDS W16RDS E134RDS SE1/4 in Section 21-T101N-R48W

To – NE1/4 lying E of Big Sioux River and N of H-3 (Ex H-8 & Ex S1147.92 E8509.95 & Ex. Iverson Crossing Addn. & Ex GH Perry Addn) in Section 28-T101N-R48W

Location - 3 miles south of Brandon

Petitioner / Owner- Iverson Crossing Development, LLC

**General Information**

Present zoning - A-1 Agricultural  
Existing Land Use - Agricultural  
Parcel Size - 1+ Acre

**Report by:** Scott Anderson

**Staff Analysis**

The property is located where 266<sup>th</sup> Street meets the Big Sioux River, or directly west of Iverson Crossing. The applicants are requesting to transfer the building eligibility from an existing lot with a single family residence to a vacant parcel located across 266<sup>th</sup> Street to the south. The applicant has indicated that the existing 1200 square foot house that was constructed in 1964 will either be sold and moved off the site or demolished. The existing one acre lot then may be divided among adjacent property owners or left vacant.

Staff has met with the applicant and indicated that the building eligibility is being moved closer to the floodplain of the Big Sioux. The location of any residence and wastewater disposal system can not be located in the floodplain without appropriate permits.

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

This parcel is located on the rural urban fringe. Iverson Crossing, a rural subdivision with 31 lots is located directly to the east. The subject property borders the Big Sioux River and S.D. Highway 42/11. There will be no net increase of residences in the area.

**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.

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

Access will be from 266<sup>th</sup> Street, a township gravel road. Split Rock Township requires a driveway permit for the approach to a new residence. All other infrastructure is in place.

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

The minimum lot size for any proposed lot is one (1) acre. This should allow ample space for the residential parking requirements, which are two (2) off-street parking spaces.

**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, noise, dust or fumes that result from the allowed residential use.

**Recommendation**

Staff recommended approval of Conditional Use Permit #07-43 with the following condition:

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

Based on the staff report, a motion was made by Bunde and seconded by Cypher to approve conditional use permit #07-43 with the condition as stated. The motion passed unanimously.

**ITEM 8. CONDITIONAL USE PERMIT # 07-46 to allow a storage yard.**

Legal Description – Lot 2 Blk 2 Brower’s 2<sup>nd</sup> Addition, in the SW1/4 of Section 27-T102N-R51W

Location - south edge of Hartford

Petitioner / Owner- Beth Stallman

**Item 8 was placed on the regular agenda.**

**REGULAR AGENDA**

A motion was made by Bunde and seconded by Steinhauer to approve the regular agenda (Items 5 & 8 added). The motion passed unanimously.

**ITEM 5. CONDITIONAL USE PERMIT # 07-41 to allow mini-storage and retail sales of storage units.**

Legal Description – Lot 10 Blk 1 Brower Addn. and Lots 16 & 17 Blk 2 Brower’s 2<sup>nd</sup> Addition, in the SW1/4 of Section 27-T102N-R51W

Location - south edge of Hartford

Petitioner / Owner- Haensel Distributing Company

**General Information**

Present zoning - I-1 Light Industrial

Existing Land Use - Agricultural

Parcel Size - 3 Acres

**Report by:** Phil Kappen

**Staff Analysis**

The subject property is located in Brower Addition, a industrially-zoned development at the southeast corner of the Hartford exit. To the north is I-90 and the city Hartford, and to the east and west are vacant Industrial properties, to the south is a property with two buildings that are leased for differing uses. The Planning Commission has addressed a number of conditional use permits for uses to be located in these buildings. The petitioner proposes a screened area with storage containers that will be rented on site as mini-storage. They also wish to have a sales lot for these containers. The petitioner should be aware that anyone who purchases such a container will need to obtain a building permit for a temporary structure before placing it on any property in the unincorporated portions of the county.

**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 subject property is located immediately along I-90 and the potential visual impact of uses in this entryway to Hartford must be carefully considered.

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

The other properties in the Brower addition have been required to use visual screening around all outside storage. Similar requirements should be required at this site in order to be consistent with other permit in the area. All storage containers to be rented on the site should be screened from public view. The petitioner has indicated that they would like to construct a solid fence of steel panels. This would be an appropriate means of screening provided that the panels are of a earthy-tone color and are adequately maintained.

The petitioner also would like to have some containers that are for sale on display. Staff has some concerns over this due to the number of similar containers that have been placed on a number of the petitioner's properties and on those of some of their relatives. These containers were all placed without the proper zoning or building permit approval. Some of these containers are not well maintained and are not visually appealing. It may be necessary to require that most of the 'for sale' containers are also screened and only one or two display models allowed which are well maintained to prevent an eyesore from developing.

In addition to the screening fence there should also be landscaping trees planted along the I-90 right-of-way. These trees may be planted within the 15-foot required setback between the interstate right-of-way and any screening fence, storage area or parking. Standards for the size and spacing of these trees should be similar to the requirements for landscaping on other commercial/industrial sites in the county.

There is also a required fifteen-foot setback between any fencing, parking areas or storage along the south edge of the property (Kelsey Drive). The petitioner's site plan shows that a future fence will be built up to the Kelsey Drive right-of-way. The petitioner will have to keep this fence back the required fifteen-foot setback.

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

Initially, there would not be a building constructed on the site. When a building is erected, a restroom will be required and an approved septic system of holding tank would be installed. Access to the property would be via Kelsey Drive, a publicly-dedicated right-of-way that is privately maintained. There are plan to hard surface a portion of Kelsey Drive. When that hard-surfacing is completed, the petitioner should be required to install hard-surfacing on the parking and driving areas on their property. A condition could be added which states that the on-site hard surfacing be completed within a period of time after the Kelsey Drive surfacing is implements.

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

There is ample area on the site for off-street parking. No on-street parking is allowed. Also, the petitioner currently runs a trucking business, however, no application for such a business had been made for the subject property. Therefore, no parking of truck should be allowed on the site.

**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.**

It is possible that the petitioners may wish to install some security lighting on the property. Any outside lighting should be of a shoebox style that directs light downward and prohibits the spillage of light beyond the boundaries of the subject property.

**Recommendation**

Staff found the proposed use to be consistent with the types of uses found in a commercial or industrially-zoned area and recommended approval of conditional use permit #07-41 with the following conditions:

- 1) All rental storage containers shall be screened from public view by a screening fence. The fence shall be a minimum of 8 feet in height with a minimum of 90% opacity maintained over the entire height of the fence. The fence shall be maintained in earth-tone colors such as browns or greens. Any other outside rental storage, such as a motor home, shall also be kept within the screened outside storage area as shown on the petitioner's site plan.
- 2) All storage containers for sale shall also be kept within a screened area with the exception of one display model. The fence shall be a minimum of 8 feet in height with a minimum of 90% opacity maintained over the entire height of the fence. The fence shall be maintained in earth-tone colors of browns or greens. The display model shall be maintained in good repair and shall be kept well-painted in earth-tone colors.
- 3) All screening fences on the property, and any storage or parking areas, shall be placed so as to maintain any required setbacks from property lines.
- 4) Landscaping trees shall be planted along the I-90 right-of-way at a maximum spacing of 40 feet on center. Deciduous trees shall be a minimum of 1½ inches in caliper and coniferous trees shall be a minimum of 5-6 feet in height.
- 5) All parking and driving surfaces on the property shall be hard-surfaced within six months of the hard-surfacing of Kelsey Drive.
- 6) All outside lighting should be of a shoebox style that directs light downward and prohibits the spillage of light beyond the boundaries of the subject property.

**Public Testimony**

Mr. Kappen explained that the driving and parking areas of this site would have to be hard surfaced because access will be coming from a hard surfaced road. The roads in the east 40 acres of Brower's subdivision are required to be hard surfaced. The sales lot must be screened but one storage unit can be left out to show for sales purposes.

The petitioners, John and Clint Haensel, stated that they did not object to the conditions.

Commissioner Steinhauer requested that Richard Brower, developer of the industrial park, come to the podium. He asked Mr. Brower what his intentions were for paying the roads in the old portion of the development. Mr. Brower stated that he plans to pave the new part this year. Commissioner Steinhauer stated the roads are in poor shape and that increased traffic with new development would make things even worse. It is not good planning to allow this to continue. Mr. Anderson stated that when the request to rezone the new part of the development was before the Planning Commission, there was discussion that Jeffery St. should be hard surfaced from the Highway east to the end of the road. However, conditions can not be placed on a rezoning application. Commissioner Cypher stated that an industrial park involves a lot of truck traffic and that there are drainage issues, pot holes, etc. Allowing more development will add more traffic and more damage to the roads. Mr. Brower stated that he had never seen the road broken up like it is this year. Part of the problem is a drainage issue caused by a neighbor. Mr. Anderson stated that surety has been posted for the new area, but the Commission cannot retroactively impose the same requirements on the old part of the development.

The Commission discussed the merits of not approving any new conditional use permits for the new area until the roads were fixed in the old part. There was talk about requesting the County Commission to place a moratorium on issuing any new building permits in this development. Mr. Anderson noted that in his experience it is often hard to enforce a moratorium when people go directly to the County Commission to plead their case. Mr. Brower asked who was going to pay for hard surfacing the old roads. Commissioner Steinhauer suggested that the cost be written into the sales price of the new lots.

Robert Dean, 46312 Kelsey Dr., stated that he had been before the Commission asking to use one of the storage units on his land. He can't understand how he was denied having a unit and then this application is to allow the same such units to be sold from the site, and to allow them to rent the units out for storage. Dr. Dean is also against trees and fences on the Interstate side as it would block the view of his retail business. He also cautioned the Commission that many times the storage units are stacked on top of one another and that that would not be hidden by any fence. Mr. Dean reiterated that if this use is allowed he should be able to have his storage unit.

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

Commissioner Steinhauer stated that the state of the roads in the Brower development should be discussed under new business at this meeting. He feels that this conditional use permit is an appropriate use for this property. He suggested a condition be added limiting the storage units to one unit in height.

Based on the staff report and public testimony, a motion was made by Steinhauer and seconded by Tvedt to approve conditional use permit #07-41 with the following conditions:

- 1) All rental storage containers shall be screened from public view by a screening fence. The fence shall be a minimum of 8 feet in height with a minimum of 90% opacity maintained over the entire height of the fence. The fence shall be maintained in earth-tone colors such as browns or greens. Any other outside rental storage, such as a motor home, shall also be kept within the screened outside storage area as shown on the petitioner's site plan.
- 2) Storage containers shall not be stacked and shall not exceed the height of one storage unit.
- 3) All storage containers for sale shall also be kept within a screened area with the exception of one display model. The fence shall be a minimum of 8 feet in height with a minimum of 90% opacity maintained over the entire height of the fence. The fence shall be maintained in earth-tone colors of browns or greens. The display model shall be maintained in good repair and shall be kept well-painted in earth-tone colors.
- 4) All screening fences on the property, and any storage or parking areas, shall be placed so as to maintain any required setbacks from property lines.
- 5) Landscaping trees shall be planted along the I-90 right-of-way at a maximum spacing of 40 feet on center. Deciduous trees shall be a minimum of 1½ inches in caliper and coniferous trees shall be a minimum of 5-6 feet in height.
- 6) All parking and driving surfaces on the property shall be hard-surfaced within six months of the hard-surfacing of Kelsey Drive.
- 7) All outside lighting should be of a shoebox style that directs light downward and prohibits the spillage of light beyond the boundaries of the subject property.

The motion passed unanimously.

**ITEM 8. CONDITIONAL USE PERMIT # 07-46 to allow a storage yard.**

Legal Description – Lot 2 Blk 2 Brower's 2<sup>nd</sup> Addition, in the SW1/4 of Section 27-T102N-R51W

Location - south edge of Hartford  
Petitioner / Owner - Beth Stallman

**General Information**

Present zoning - I-1 Industrial  
Existing Land Use - Agricultural  
Parcel Size - 1 Acre

**Report by:** Pat Herman

**Staff Analysis**

The property is located in Brower's 2<sup>nd</sup> Addition, the second phase of the industrial park located south of Hartford. The surrounding land is zoned I-1 Industrial with the exception of the land to the south which is zoned A-1 Agricultural. There are a variety of commercial businesses operating within the subdivision including trucking operations, storage facilities, antique stores, and manufacturing facilities.

The petitioner is requesting approval for a storage yard. There is no building planned for the location at this time. The petitioner owns A-1 Portable Toilets and will store both the toilets and transport trailers at

this site. The property will need to be fenced, as is consistent with out storage throughout the subdivision.

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

This use is consistent with the existing uses within the subdivision.

**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.

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

Access will be from the subdivision road.

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

Customers will not be coming to the site so no off street parking is needed. The Zoning Ordinance does not specify a required number of parking spaces for this type of use, but there is sufficient space to provide two parking spaces.

**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 in the site shall be of a shoebox design, directing light downward onto the property. The toilets shall be cleaned and all waste disposed of prior to storage on the site.

Should the petitioner wish to construct a building on this site, a detailed site plan and set of plans must be submitted for the Planning Director's approval prior to the issuance of a building permit.

**Recommendation**

Staff found the request to be an appropriate use in an industrially zoned development and recommended approval of conditional use permit #07-46 with the following conditions:

- 1) The conditional use permit is approved for the storage of portable toilets and related equipment.
- 2) All outside storage shall be screened by a fence meeting a minimum of 90% opacity and at least six (6) feet in height.
- 3) Lighting for storage area be of the shoebox design, with light directed downwards.
- 4) Toilets shall be cleaned and all waste disposed of prior to storage on this site.

**Public Testimony**

(This item was placed on the regular agenda due to the condition of the roads in the development. That discussion was remanded to new business.)

The petitioner, Beth Stallman, stated that she understood the conditions.

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

Based on the staff report and public testimony, a motion was made by Steinhauer and seconded by Bunde to approve conditional use permit #07-46 with the conditions as stated. The motion passed unanimously.

Item 9 was deferred from the April 23, 2007 meeting.

**ITEM 9. 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 - Agricultural  
Parcel Size - 303 Acres

**Report by:** Scott Anderson

### **Staff Analysis**

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

The estimated cost of the public improvements for the developer is \$7.025 million. TIF funds can only be used for public improvements, thus while the overall project may be more than \$7 million, money raised through the TIF can only go to cover public improvement costs. The developer is estimating the overall investment on the subject property to be \$110 million. Once completed the estimated assessed value of the plant will range from \$10 to \$11 million. The applicant estimated that tax revenue would start at approximately \$176,942 per year and would increase to approximately \$257,771 over twenty years through the tax increment financing. The Director of Equalization's Office reviewed these estimates and indicated that slightly more funds would be raised, ranging from \$180,000 for the first year and raising to approximately \$262,226 at year 20. The Director of Equalization used an effective tax rate of 1.80% to calculate the projected increment in valuation. Staff will include this information from the Director of Equalizations Office for your review. The applicant has projected raising approximately \$4,299,225.00, which would be used in paying off the cost of public improvements at the site. The projected revenue is only estimation and could vary depending on economic conditions. The County should somehow place a cap on the amount that will be paid out through the TIF district. Staff would recommend this cap to be \$4.3 million. Once this amount has been collected and paid to the developer, all tax increment payments would cease.

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

### **Elements of the Project Plan**

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

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

- county ordinances.
- k. A statement of a proposed method for the relocation of persons to be displaced.

The applicant has submitted a written project plan which addresses all of the above listed items. Staff will include a copy of the project plan for your review. The applicant is using a "pay as you go" method. Often, developers will use a bonding method. The County Auditor and Director of Equalization will handle the valuation, taxation and payment of the tax funds into a special TIF fund. It should be noted that the TIF funds can only be used for public improvements within the portion of the ethanol plant located in South Dakota. A portion of the project is located in Minnesota. None of the TIF funds can be used for paying expenses in Minnesota. Staff has addressed the total amount that will be paid to the developer for project costs.

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

#### **Recommendation**

Staff recommended approval of the TIF #1 project plan with the following conditions:

1. That once Minnehaha County has made tax increment payments in the amount of \$4.3 million, the financing of the district shall be considered complete and no further tax increment payments shall be made.
2. All tax increment payments are to be used for development costs occurring in South Dakota.

#### **Public Testimony**

Mr. Anderson stated that the Director of Equalization and the Auditor had reviewed the proposal and provided the effective tax rate of 1.80%. Commissioner Twedt asked if the petitioner was aware of the conditions limiting the tax increment payments to the amount of \$4.3 million. Mr. Anderson said the petitioner had received the staff report. Commissioner Steinhauer noted a difference of \$74,000 between the applicant's and county's projected tax increment payments. Mr. Anderson stated the figures were somewhat subjective to economic conditions but the projections were sufficient to generate enough funds to cover the costs. He explained that public improvements would include water and gas lines, parking lots, driveways, and dirt work being done within the boundaries of the TIF district.

Mr. Anderson explained that the calculation of time needed to reach the \$4.3 million mark is not an exact science and will be influenced by factors such as economic growth. The TIF is capped at 20 years and the district will be dissolved at that point, even if the project has not generated the \$4.3 million. With the first condition, if it only takes 16 years to collect the \$4.3 million, the property tax will then revert back to the tax rolls. The condition of limiting the dollar amount for the tax increment payments puts the County in the best position.

The petitioner, Kathy Showalter with Planscape Partners, stated that their projections were an estimate and she did not disagree with the County's calculations. She presented the following information with a power point presentation.

#### **What will BRE Mean to the Area?**

- 18.5 – Market demand for bushels of corn
- New Taxable property value
- 50M Gallons of ethanol produced
- 160K tons of distiller grains
- Creation of 35-40 quality jobs with a 1.5+M payroll

#### **Tax Incremental District #1 – SDCL119**

- Encourage development - redevelopment within the designated area.
- "Frozen base" - captures NEW revenue
  - Increment - reinvested in the site

- County process
  - Create district, define boundaries
  - Approve plans and make provisions
  - Issue notes, bonds
  - Deposit money into special fund

*The plan will act as a catalyst for future growth and diversify the local economic base*

**Plan Components**

- Met plan requirements - finding of blight
- Current value of the base: \$1,123,439
- Current value of property in County \$9,954,190,275
- Base = 0.000112 of the County's value >10% limit
- Additional project value \$10,000,000+
- Projected new tax revenue \$180,000
- Pay-as-you-go method - no risk to County
- Capital costs for project \$7,025,000

**TIF Plan Economic Feasibility**

BRE significant positive impact on Minnehaha County

1. Corn purchased from area farmers - Corn planting up 15%
2. 35-40 new quality jobs – Payroll \$1.5M+
3. Added wealth -dividend payments for investors
4. No negative impact - taxing entities forgo new taxes period of time
5. Final payment scheduled 20 years - Dec. 1, 2029

**Minnehaha County Demographics**

The area around Sherman does not show the same growth or income levels as the rest of the County

<u>Population</u>	<u>1990</u>	<u>2000</u>	<u>2005</u>
Sherman	89	87	66
Change in Population		-2%	-24%
Minnehaha County	123,809	148,281	160,087
Change in Population		+19.76%	+8%
State of SD	696,004	754,844	775,933

	<u>Median Household Income (1999)</u>	<u>Per Capita Income (1999)</u>	<u>Unemployment Rate (Sept. 2006)</u>
Sherman	\$38,333	\$10,780	---
Minnehaha County	\$42,566	\$20,713	2.5%
South Dakota	\$35,282	\$17,562	3.2%

**The Multiplier Impact**

- Direct Impact - Tied to plant
- Indirect Impact - Tied to industries buying from one another-bolsters their sales & employment
- Induced Impact - Workers and investor spending- tied to spending from household as income / population increases

*(Garnett, Kansas).*

**Typical Benefits to Local Economy – 40M Gallon Ethanol Plant**

- **\$142M** boost during construction
- **\$1.2M** payroll for 30 new full-time jobs
- **\$19M** increase in household income collectively

- **\$56M** annual direct spending expands local base by **\$110M**
  - Increased corn producers price **5-10 cents** per bushel
  - Creates **600+** spin-off jobs
- Source: Urbanchik & Kapell "Ethanol and the Local Economy" 2002

**Potential Economic Impact- 100M Gallon Plant**

Annual

- Operations output \$182,000,000
- Payroll (75% of \$2.1M payroll)
  - \$1,800,000
- Operations employment related to
  - sales = 183 jobs + 14 for other
  - services to employees
- Increased corn price 5 -12 cents per bushel

One Time

- Construction employment of 2,661 jobs
- Construction spending \$161,280,000

Source: University of Northern Iowa 11/2004 study

**Local ownership creates more jobs**

*Iowa State University College of Agriculture study:*

- 29 more jobs for every 25%
  - increase in local ownership
  - "Any dollar that leaves the community has a hard time coming back but a dollar that stays has a multiplier effect."
- David Swenson, ISU Associate Scientist

**How Beneficial is Local Ownership?**

	BASELINE		PLANT		
	50 mgy		35 employees		
	Value of corn is not included				
	Direct	Indirect	Induced	Total	Multiplier
	\$118.6 M	\$13.3	\$1.5	\$133	1.13
	\$18.4 M	\$6 M	\$942K	\$ 25.4	1.38
	35	75	23	133	3.79

\* Salaries & benefits, payments to investors/owners, payments to govt. Iowa State University, July 2006, Swenson & Eathington

**Degrees of Local Ownership**

Regional Economic Activity Change (In Millions)

	25%	50%	75%
Output-sales	\$2	\$3.9	\$5.9
Value added payments*	\$1.2	\$2.4	\$3.6
Household Income	\$4.5	\$8.9	\$13.5

\* % of investor payments to local households

**"Ethanol production has led to a 38% increase in cattle farming due to the cheap, available co-product of ethanol production: dried distillers grains."** *Des Moines Register*, Sunday, July 30, 2006  
**DDGS saves \$20/head cattle.** *Iowa State University webcast* 11/14/06

**New Investment Follows**

Central Iowa Renewable Energy – Goldfield, Iowa  
2003 - \$175, 200 AV    2006- 241,600 AV  
Increase of \$72, 400 AV = new tax revenue of \$3,000/year

Commissioner South asked about an exit strategy for this plant, should it become obsolete. Ms. Showalter explained that there are ethanol plants which have been running for 50 years. This plant will be designed to handle and adapt to other alternative fuel methods such as switch grass. There have been no exit conditions placed on any the 35 projects she has worked on.

Commissioner Cypher noted his believe that a TIF district was not needed in order to have this project built. Commissioner Rogen wondered if any of the \$4.3 million would be used on public infrastructure in the area. Mr. Anderson explained that the TIF money could only be used inside the district boundaries. He reminded the Planning Commission that the applicant was required to bear the costs of adding a left turn lane on the County Highway. The County Commission has said that any other costs are part of normal economic business and the County will address those issues. Commissioner Rogen stated that \$3.4 million seems to be excessive for this type of project. He isn't comfortable with just writing a blank check for this project. Ms. Showalter stated that all bills have to be turned into the County for reimbursement and that the county staff can review and question what the money has been spent on. She noted that 29 letters of support of the project had been submitted to the County.

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

Based on the staff report and public testimony, a motion was made by Steinhauer and seconded by O'Hara to recommend approval of the Buffalo Ridge TIF #1 Project Plan. The motion passed unanimously.

**ITEM 10. CONDITIONAL USE PERMIT # 07-45 amend CUP #06-67 fencing requirements.**  
Legal Description – Lot 8 & 9 Blk 3 Brower Addition in the SW1/4 of Section 27-T102N-  
R51W  
Location - south edge of Hartford  
Petitioner / Owner- Karen Leisinger

**General Information**

Present zoning - I-1 Light Industrial  
Existing Land Use - Commercial  
Parcel Size - 2.88 acres

**Report by:** Phil Kappen

**Staff Analysis**

The subject property is located along the south edge of Brower's Addition, a commercial/industrial subdivision located in the southeast quadrant of the Hartford Exit on Interstate 90. The properties to the north and west are in commercial uses, the properties to the east are vacant commercial lots and the property to the south is currently in agricultural use (pasture).

The west lot (Lot 8) of the subject property was approved by conditional use permit for a contractor's shop and storage yard in 2001. One condition of the permit had been that before any outside storage was allowed the petitioner had to first have a site plan approved by the planning staff and screen the area with screening fence. The petitioner had never submitted a revised site plan for approval by staff and had expanded onto the east lot (lot 9) with a large amount of outside storage. There was no screening and the new lot had not received a conditional use permit.

The petitioner then applied, after the fact, in 2006 for an amendment to the conditional use permit to include the new lot. Before obtaining approval of a revised plan by staff, and without approval from the Planning Commission, the petitioner erected screening fence along the north edge of the property, but not on other property boundaries as approved. Staff recommended approval of the amendment and indicated that since a very tight belts of trees and shrubs provided adequate screening on the east end of lot 9 that

screening fence may not be necessary in that area. Staff, however, did recommend that screening fence be used along the south edge of the property in order to conform with other outside storage area requirements in the subdivision.

The Planning Commission approved the amended conditional use permit in October 2006 with the following conditions:

- 1) The operation shall conform to the site plan supplied as a part of the conditional use permit application unless otherwise noted in these conditions.
- 2) The outside storage area shall be screened as follows
  - The north and south sides of the outside storage area on both lots shall, at a minimum, be screened from public view with an earth-tone screening fence a minimum of 6-feet in height. The fence shall be maintained at a minimum opacity of 90% over the full height of the fence. All screening fences shall be in place by June 1, 2007.
  - The east side of the Lot 9 shall be screened with either a screening fence as detailed above or dense belt of trees and shrubs similar to that which exists at this time.
- 3) All outside lighting shall be of a shoebox style that directs light downward and prevents the spillage of light beyond the property boundaries.

The petitioner contested the requirement of the screening fence along the south boundary and appealed the Planning Commission's approval to the County Commission. Among other items, the petitioner brought information from the property owner to the south that they did not wish to have the screening fence erected because it would dump snow on the fence along their cow pasture and damage the pasture fence. The County Commission, on November 28, 2006 upheld the Planning Commission's approval of the conditional use permit with the specified conditions.

In late April the petitioner contacted staff about using spruce trees along the southern boundary rather than the screening fence. Staff informed the petitioner that they would have to again apply to the review for this application, and the petitioner applied on April 27<sup>th</sup> to amend the CUP. They also provided a sketch site plan with little detail of the layout of the operations on the subject lots. Staff checked the site on May 5, 2006 and found that the petitioner had already planted 5-6-foot tall spruce at a 15-foot on center spacing prior to receiving approval.

Staff has checked the trees along the east end of the property and found a thick belt of alternated green ash and Siberian crabapple spaced 8 feet on center. It is possible that a tighter spacing of spruce could have provided the required screening, but, the 15-foot spacing would not provide adequate screening for a long period of time. The placement of the spruce trees at an on-center tree spacing similar to that along the east property boundary (7.5-8 feet) would be too close for spruce trees. It might be possible to alternate large shrub-like trees such as Amur Maple, Crappapple or a similar plant between the existing spruce to obtain screening. This should only be done, however, with stringent standards for tree spacing, plant size of planted trees and replacement of trees that die. The petitioner has indicated that, regardless of the decision of the Planning Commission, they wanted the trees anyway. They have not indicated whether the property owner to the south has agreed to the spruce trees along the south boundary as these trees will likely result in greater snow depositions in the area of the pasture fence than would a screening fence. They also placed the spruce trees along the outside of the screening fence on the north edge of the property. The fifteen-foot spacing in that site adds some very attractive landscaping along the existing screening fence.

**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 majority of the surrounding properties are in commercial/industrial uses and the petitioner's use of their property fits with those uses. The petitioner has constructed a screening fence along the Jeffery Street right-of-way (set back the required 15 feet from the ROW). There is an existing belt of mature trees and shrubs that supplies adequate screening from the east of the outdoor storage area. As long as this belt is maintained it will continue to provide adequate screening from the east. There is currently none of the required screening along the south side of the storage area

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

There is little likelihood of additional development to the south of the property in the foreseeable future. Still, screening of the subject property from the south must be completed to ensure that we are consistent with the requirements placed on other properties in the subdivision. Other properties in the subdivision have been required to use screening fence to screen outside storage areas.

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

Access to the property is via Jeffery Street, a gravel road within the subdivision. There is a possibility that Jeffrey Street could be hard-surfaced in the future. If this amendment is approved that should be a requirement that the parking and driving surfaces on the subject property be hard-surfaced within a specific period of time.

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

There is ample area on the property for any necessary parking. No parking may be allowed within the Jeffrey Street right-of-way.

**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 offensive odor, fumes, dust, noise or vibration from the continuance of the existing operation. Any outdoor lighting should be of a shoebox style that directs light downward and prevents the spillage of light beyond the property boundaries.

**Recommendation**

Staff still finds that the expansion of the contractor's yard was consistent with the types of uses found in a commercially or industrially zoned area. We have, however, concerns over the manner in which the expansions of the use, and the placement of screening fence and/or trees continue to occur without first having the required Planning Commission approvals or the staff approval of required site plans. Staff finds that, should the Planning Commission wish to approve amendment #07-45 allowing the use of trees as screening along the south edge of the property, that the existing conditions could be amended to read as follows. Additions to the existing conditions are underscored, deletions are struck through.

- 1) The operation shall conform to the site plan supplied as a part of the conditional use permit application unless otherwise noted in these conditions.
- 2) The outside storage area shall be screened as follows
  - The north ~~and south sides~~ side of the outside storage area on both lots shall, at a minimum, be screened from public view with an earth-tone screening fence a minimum of 6-feet in height. The fence shall be maintained at a minimum opacity of 90% over the full height of the fence. All screening fences shall be in place by June 1, 2007.
  - The south side of the outside storage area on both lots shall, at a minimum, be either screened from public view with a screening fence or with plant material. Any screening fence shall be an earth-tone screening fence a minimum of 6-feet in height. The fence shall be maintained at a minimum opacity of 90% over the full height of the fence. The petitioner shall also have the option of performing the required screening along the south edge of the property with plant materials. At a minimum, the plant materials would consist of alternating coniferous trees, such as spruce, and taller shrubs, such as Amur Maple or Siberian Crabapple. The trees shall be planted at a maximum spacing of 7.5 feet on center. Conifers shall be a minimum of 5-6 feet in height and the large shrubs shall be multi-stemmed and a minimum caliper of 1/2 inch. All plants in the screening area shall first be proved by Planning staff before they are planted. All screening fences or trees shall be in place by June 1, 2007. Any trees or shrubs which die shall be immediately replanted with a plant that is similar in height or caliper to the plant being replaced.
  - The east side of the Lot 9 shall be screened with either a screening fence as detailed above or dense belt of trees and shrubs similar to that which exists at this time.
- 3) All outside lighting shall be of a shoebox style that directs light downward and prevents the spillage of light beyond the property boundaries.
- 4) All parking and driving surfaces outside of the screening fence area shall be hard-surfaced within 6 months of the hard-surfacing of Jeffrey Street.

**Public Testimony**

The petitioners, Dave and Karen Leisinger, stated that they had tried to do the right thing. Their landscaper told them that they had to get the trees in the ground. Had they had foresight, they would have asked to put trees up at the time they appealed the decision on putting the fence up. The fence on the north side of the property has caused problems and been a total hindrance. It has backed up snow on the township road and township didn't plow the road. It also backed snow up into their yard and they were unable to use the yard. The Leisinger's stated that they had repaired the culvert and had put crushed asphalt on the entire storage area. That has taken care of the mud. They would like to take the lath out of the fence to allow snow to move through. It really caused a hardship with the neighbors when the

township wouldn't plow the road. They are willing to plant other bushes in between the trees.

Commissioner Bunde questioned the Leisinger's about issues of employee parking and truck loading on Jeffery Street. The Leisinger's said that with the new gravel on the lot they have taken care of those problems. They also explained that the material on the lot to the east was theirs. They have been hired to prepare the new development area and are using the materials in that endeavor.

Commissioner Twedt stated she would not support this request due to the petitioner's past practices in not abiding by the conditions.

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

Based on the public testimony and the staff report, a motion was made by Steinhauer and seconded by Bunde to approve conditional use permit # 07-45 with the conditions as stated. The motion passed (Twedt nay).

**ITEM 11. CONDITIONAL USE PERMIT # 07-48 to allow waste water treatment ponds.**

Legal Description – N935.25' S1585.52' E1490' NE1/4 of Section 9-T102N-R50W

Location - ½ mile west of Crooks

Petitioner / Owner- City of Crooks / Gerald & Shirley Potratz

**General Information**

Present zoning - A-1 Agricultural

Existing Land Use - Agriculture

Parcel Size - 32 Acres

**Report by:** Scott Anderson

**Staff Analysis**

The City of Crooks is seeking a conditional use permit for an expansion to their existing sewage lagoon. The S.D. Department of Environment and Natural Resources is requiring improvements to be made to the Crooks sewage disposal system. The date imposed by the DENR for compliance with water discharge requirements is 2009. The property is being obtained from the Potratz family through condemnation. Approximately 32 acres were obtained through court order for approximately \$4,000.00 per acre on April 24, 2007.

On May 4, 2007, staff spoke with Tim Slowey, Crooks City Engineer. He indicated that the total acreage of the lagoons will be 15.7 acres. A lagoon system typically operates with three (3) cells. Each cell performs a specific task and takes wastewater and clarifies and cleans it. The largest pond which will take the initial wastewater from the city is 9.3 acres of surface area. The middle sized pond is 3.7 acres in surface area, while the smallest pond is 2.6 acres in size. Mr. Slowey indicated that construction work may begin as early as this fall, with construction continuing in 2008.

Staff conducted a site visit on May 3, 2007. No odor was detected standing from the property line. Staff noted the approach to the current lagoons is located approximately 200-300 feet north of a hill that obscures the sight. Staff suggested to the Rick Ramstead that for safety purposes, signage should be placed on the township road indicating an oncoming approach. The closest property owner is located approximately ½ mile to the north on 257<sup>th</sup> Avenue. These property owners are the owners of the land that was condemned. The corporate limits of the City of Crooks are located approximately ½ mile to the east.

**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 surrounding property is zoned Agricultural. Staff observed that the land was being prepared for planting of crops. The existing sewage lagoon has been in this location since at least 1987 when Crook obtained their first conditional use permit for the existing sewage lagoon system. Property values may be impacted due to the location of the sewage lagoon system. The agricultural uses should not be impacted.

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

Because the property is zoned Agriculture, there is only one building eligibility per 40 acres. The location of any houses could be placed to minimize the impacts of the sewage lagoon.

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

Access is provided by 469<sup>th</sup> Avenue. All required facilities for operation of the lagoons are in place.

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

There is an existing approach off of 469<sup>th</sup> Avenue. Access to the facility is restricted by state law. The site is fenced. City maintenance workers visit the site weekly to perform required work. There are two (2) off-street parking spaces for the municipal workers, which meets the minimum 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.**

The City Engineer indicated that landscaping will be placed along the north property boundary to buffer the lagoons from the adjacent property. Due to the nature of the use, there will be odor. Proper maintenance of the lagoons will minimize odor and the odor should not constitute a nuisance.

The proposed expansion is being required by the state. The County's Comprehensive Plan encourages growth in and around existing municipalities. These areas are identified as transition areas. The expansion of municipal infrastructure is a logical outcome of growth in our transition areas. The expanded lagoons are vital to the continued growth of Crooks. The Comprehensive Plan identifies Crooks as a growth area. Population growth is to occur where services permit. The expansion of the lagoons is in the public's best interest. Staff supports the request for expanded sewage lagoons.

**Recommendation**

Staff recommended approval of Conditional Use Permit #07-48 to allow for the expansion of the Crooks sewage lagoon system with the following conditions:

- 1) That erosion control measures be implemented during and after construction so that no sedimentation enters Willow Creek.
- 2) That a landscaping plan be submitted to the Planning Director for review and approval for landscaping along the north boundary of the lagoons.
- 3) That if one (1) or more acre of area is disturbed during construction the applicant is required to obtain a General Permit from the SD Department of Environment and Natural Resources.

**Public Testimony**

Mr. Scott Anderson explained that the old lagoons would continue to be used. The lagoons are sited by Willow Creek so that the treated water can be discharged into the creek using gravity flow.

The petitioner, the City of Crooks, was represented by Rick Ramstad. He stated that the State had said the lagoons need to be expanded. The city incited condemnation proceedings, there has been a jury trial, and the court has granted the city access to the site. Mr. Ramstad explained that there is some odor associated with the lagoons for a short time in the spring and fall. This is when the air temperature creates agitation in the lagoon and gas is released causing the odor. Once the temperature stabilizes there is no odor. This same thing occurs in all bodies of water. The effluent entering this system is 96.4% water, unlike a CAFO. The first, and largest, pond gets the waste stream and is the source of the odor. The other ponds are not odorous. Mr. Ramstad stated that they don't expect an increase in the waste stream except with city growth. These lagoons are to help the city come into compliance with state regulations. Mr. Ramstad explained that the city is required to be able to hold effluent for 180 days. The lagoons have measured slightly over the pH level. The city has to expand to accommodate future growth.

City Engineer Kim Slowey, East River Engineering, explained that the lagoons occasionally may need to have the sludge removed. The by-product is usually spread on farm fields. Having a second lagoon system will allow one system to still operate while the other is being flushed. He feels the lagoons do not have much odor.

Attorney Duane Anderson represented the property owners, Gerald & Shirley Potratz. Mr. Duane Anderson stated that while the court had established a monetary value for the land, the court did not cover all the issues involved with sewer lagoons. He believes that the only reason Crooks needs the lagoons is to be able to handle the 280 houses that are on the drawing board. Mr. Duane Anderson displayed pictures which showed how close the lagoons are to the Potratz house and to Willow Creek.

Richard Gregerson, Woods Fuller Law Firm, stated that they have filed a motion for a new trial and will appeal to the SD Supreme Court if needed. They are trying to stop the acquisition of the property through legal means. The land has been in the Portratz family for over 100 years. Mr. Portratz has breathing problems as a result of his service in WWII, and is afraid he will have to move if the lagoons are approved. Mr. Gregerson briefly spoke about severance damages from the 1<sup>st</sup> & 2<sup>nd</sup> lagoons. He stated that the City of Crooks wrote a letter opposing a feed lot three miles away because of the smell yet the City said this lagoon will not cause any problems. Mr. Gregerson stressed that this is an important decision for the Planning Commission. He stated that the Zoning Ordinance did not have any review criteria on where a sewer lagoon should be located nor is there any definition for a sewer lagoon. Total discretion is left up to the Planning Commission. Mr. Gregerson spoke about the condemnation procedures and trial.

Mr. Gregerson quoted the purpose of the zoning ordinance "to preserve and protect existing property uses and values against adverse or unharmonious adjacent uses..." Approving this lagoon would not be beneficial for the Potratz property. He stated that there is odor from the lagoons and has provided letters attesting to this. No one in the neighborhood wants the lagoons here. Crooks has said people will build next to the lagoons, so why not build them next to the city. The DENR strongly recommends that lagoons be 1000' from any dry well and ¼ mile from any residence. This site doesn't meet either of those criteria. The Potratz house is 887' from this site.

At Mr. Duane Anderson's request 20-25 people in the audience stood up in opposition to the lagoons. They also indicated that the lagoons do smell. Mr. Duane Anderson stated that there are alternatives and that the Planning Commission has the authority to mitigate odor.

Dick Haas, engineer, spoke about the alternative methods for treatment lagoons. The first choice would be to pipe the effluent to the Sioux Falls treatment plant. A second alternative is to have aerated lagoons instead of the proposed shallow lagoons. An aerated lagoon eliminates the odor problem and these types of systems have been used around the state.

Mr. Slowey stated that the water table in the area is at the level of the creek. He doesn't know if the lagoons could be dug deep enough to utilize an aerated system. Aerated systems are predominately used when there is high BOD loading such as heavy manufacturing or with a CAFO. It is more expensive to operate a aerated system.

Mr. Ramstad answered Mr. Gregerson's comments about the previous legal proceedings. He then stressed that this lagoon system is not needed to handle the same type of waste product as from a CAFO. The waste stream into this system is predominately water. They have testimony that people will live by these types of sewer lagoons. The proposed building lots for Crooks are going right towards this site. In response to Commissioner Bunde, Mr. Ramstad explained that the City of Sioux Falls does not have a sewer basin constructed to allow Crooks to hook up to Sioux Falls system. An aerated system is too costly for a water based waste stream.

Mr. Slowey stated that Crooks is expected to have a population of 2,000 people in 20 years. At that time the City will again have to examine their sewer system. The City has been studying this issue since 2001. 20 years is a pretty standard time frame for sewer expansions.

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

Commissioner Cypher stated that the adverse affects from the lagoon are already in place due to the existing system. The city is at capacity and needs the lagoons in order to grow. This is where growth in the County should occur, not as rural housing like at Wall Lake. This is an appropriate location for this use. Commissioner Steinhauer agreed that this was an appropriate location; however there should be conditions on this permit. It should be as inoffensive as possible. Commissioner Twedt stated that the die was cast when the first lagoons were located on this site. Growth is to be expected. Commissioner Bunde agreed this was a good location and the growth in Crooks should be supported. She feels that an aerated system would be appropriate. Commissioner Rogen concurred, noting that CAFOs must meet conditions and so should sewer lagoons.

Based on the staff report and public testimony, a motion was made by Bunde and seconded by Steinhauer to approve conditional use permit #07-48 with the following conditions:

1. That erosion control measures be implemented during and after construction so that no sedimentation enters Willow Creek.

2. That a landscaping plan be submitted to the Planning Director for review and approval for landscaping along the north boundary of the lagoons.
3. That if one (1) or more acre of area is disturbed during construction the applicant is required to obtain a General Permit from the SD Department of Environment and Natural Resources.
4. The system shall be aerated lagoons to eliminate odor as much as possible.

The motion passed unanimously.

### **NEW BUSINESS**

#### A. Roads in Brower Addition in Section 27-T102N-R51W

The Commission discussed the condition of the roads in the existing portion of Brower Addition, which are in awful shape. The new portion of the addition is required to be hard surfaced, but there were no requirements that this existing portion have hard surfacing. The Commission thought that at the time the Mr. Brower applied to rezone property for the new area he stated that he would hard surface Jeffery Street. The Commission considered asking the County Commission to place a moratorium on issuing building permits in the new area until the roads were hard surfaced in the existing development. At Mr. Anderson's suggestion, it was agreed that Mr. Anderson would meet with Mr. Brower concerning the road issue and report back to the Planning Commission at the June meeting.

#### B. County Commission's approval of a request to rezone land at Tract 9 Voigt's Subd. 21-101-51 (south side of Wall Lake)

Members of the Planning Commission expressed their disappointment with the County Commission's decision to approve the rezoning, especially when it was advanced to the Commission with a unanimous recommendation of denial. The Planning Commission was upset that Commission had disregarded their recommendation for the 3<sup>rd</sup> time, had ignored the comprehensive plan, and not followed density zoning. County Commissioner Twedt stated that she felt the applicant had an excellent presentation, presented new information, and that the County Commission had the authority to make the decision to approve the rezoning. Planning Commission members continued to express their displeasure with the decision and disagreed that any new information was presented. The Planning Commission requested that a joint meeting be set up between the two bodies as a means of creating better understanding between the two different boards.