

**MINUTES OF THE  
MINNEHAHA COUNTY PLANNING COMMISSION  
June 25 2007**

A meeting of the Planning Commission was held on June 25, 2007 at 7:00 p.m. in the Commission Room of the Minnehaha County Administration Building.

COUNTY PLANNING COMMISSION MEMBERS PRESENT: Deb Bunde, Mike Cypher, Susie O'Hara, Mark Rogen, Don South, and Wayne Steinhauer .

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

The meeting was chaired by Don South.

**APPROVAL OF THE CONSENT AGENDA**

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

**ITEM 1. MINUTES – May 21, 2007**

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

**Item 2 was deferred from the May 21<sup>st</sup> meeting.**

**ITEM 2. 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 Sieverson

**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 June 4, 2007, and requested that this item be continued to the July 23, 2007 Planning Commission meeting.

**Recommendation**

Staff recommended that Conditional Use Permit #07-36 be continued to the July 23, 2007 Planning Commission meeting at the applicant's request.

Based on the staff report a motion was made by Rogen and seconded by O'Hara to defer Conditional Use Permit #07-36 to the July 23<sup>rd</sup> meeting. The motion passed unanimously.

**ITEM 3. CONDITIONAL USE PERMIT # 07-49 to allow a waste storage facility for an existing livestock feeding facility.**

Legal Description – W1/2 SE1/4 of Section 4-T104N-R47W  
Location - 48668 245<sup>th</sup> St. 5 miles north of Sherman  
Petitioner / Owner- Brian Schneider / Yvonne Schneider

**General Information**

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

**Report by:** Phil Kappen

**Staff Analysis**

The subject property is located approximately 1 mile from the Moody County border and about 1½ mile from the Minnesota border. The petitioner currently has a 600 animal unit dairy operation. He wishes to obtain state approval for the facility which requires a means of managing the manure. He has applied for

a conditional use permit to construct a manure storage facility for the operation. No increase in size is proposed. The containment facility would be constructed along the east edge of the existing feedlot area. The site is not over a water source protection area, a shallow aquifer or in a flood plain area. There is an intermittent stream to the east of the facility and the proposed containment would prevent waste from entering that stream.

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

The existing feedlot is a legal non-conforming use and it is only the containment facility for which the conditional use permit is requested. There is no setback criteria for a manure holding pond, however, if the target criteria for a new facility were applied, we would be looking at a 1540-foot setback criteria. The petitioner's proposed system is 1800 feet from the closest house to the west, 3000' from the nearest home to the south, 2300' to a house to the east, and to the closest northern house, 3600 feet. Therefore, even if there were a setback criteria the facility would meet it.

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

The planned future uses for the surrounding area are agricultural. The addition of a manure holding pond to this existing dairy should not hinder agricultural development.

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

Access to the property is via 245<sup>th</sup> Street, a township road.

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

There is ample area on the property for any needed parking. No on-street parking is allowed.

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

The proposed manure holding facility will greatly improve the environmental friendliness of this CAFO. There will obviously be some odor connected with the site, however, there should be no great increase in odor as the facility will be populated by the same number of animals units.

**Recommendation**

Staff finds that the proposed manure containment will greatly decrease any potential for water impairment at this site and that the proposed use is consistent with the types of best management practices found at animal feeding operations. Staff recommended approval of conditional use permit # 07-49 to allow an animal manure containment facility with the following conditions:

- 1) The facility shall be limited to a 600 animal unit dairy operation unless additional conditional use approval is obtained.
- 2) The facility shall obtain a general water pollution control permit from the state of South Dakota for the CAFO facility and shall abide by all aspects and requirements of that permit. A copy of the state-approved permit shall be submitted to the county planning department.
- 3) The petitioner shall prepare a nutrient management plan for approval by the State, shall keep the plan up-to-date, and shall manage all waste from the facility in conformance with that plan. The petitioner shall prepare an executive summary of the nutrient management plan and file that summary with the Minnehaha County Planning Office. A new summary shall be prepared for the Planning Office each time that the plan is up-dated. A copy of the complete nutrient management plan as approved by the State shall be provided to the Planning Office upon request.

Based on the staff report a motion was made by Rogen and seconded by O'Hara to approve Conditional Use Permit #07-49 with the conditions as stated. The motion passed unanimously.

**ITEM 4. CONDITIONAL USE PERMIT # 07-50 to exceed 1200 sq. ft. of accessory building area (2268 sq. ft. requested).**

Legal Description – Johnson's Tr. 6 SE1/4 of Section 1-T102N-R50W  
Location - 25669 472<sup>nd</sup> Ave. 1½ mile east of Crooks

Petitioner / Owner- Bruce Fowlds

**General Information**

Present zoning - A-1 Agricultural  
Existing Land Use - Residential  
Parcel Size - 8.08 Acres

**Report by:** Phil Kappen

**Staff Analysis**

The subject property is located 1 ½ miles east of Crooks and a ¼ mile north. The surrounding properties are largely in acreages. The petition wishes to construct a building larger than 1200 square feet and has applied for a conditional use permit to construct a 2268 sq.ft building.

**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 the accompanying neighborhood map shows, there are a number of larger buildings in the area. The property to the north has 5002 sq.ft. of accessory building area, that to the south has 4708 sq.ft. of accessory bldg. area, and the lot across the road (472<sup>nd</sup> Avenue – County Hwy 133) has 2816 sq.ft. of building area. The proposed building should fit well 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 construction of a 2268 sq.ft. building on this property should have little effect on any future development.

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

Access to the property is via an existing driveway onto 472<sup>nd</sup> Avenue, a county highway. No other driveways should be allowed onto the highway.

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

There is ample parking area for the parking associated with a single-family dwelling. No on-street parking should be allowed.

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

There should be little odor, fumes, dust or noise from a single-family residential use. Any outdoor lighting should be of a shoebox style that directs light downward.

**Recommendation**

Staff found the proposed building to be consistent with other buildings in the neighborhood and recommended approval of Conditional Use Permit #07-50 with the following conditions:

- 1) The building shall be limited to a size of 2268 square feet. The use of the building shall be limited to the property owner's own residential use. No commercial uses or commercial storage is allowed on the property.
- 2) Access to the building shall be via the existing driveway on the property. No other driveways onto County Hwy 133 shall be allowed.
- 3) All outdoor lights shall be of a shoebox style that directs light downward and prevents light spillage beyond the property boundary.
- 4) The building shall not exceed one story in height.

Based on the staff report a motion was made by Rogen and seconded by O'Hara to approve Conditional Use Permit #07-50 with the conditions as stated. The motion passed unanimously.

**ITEM 5. CONDITIONAL USE PERMIT # 07-53 to transfer two residential building eligibilities.**

From – NE1/4 NW1/4 of Section 10-102N-51W

To - NW1/4 NE1/4 (ex. Bogg's Addn. & ex. N12 Rods E16 Rods) in Section 10-T102N-R51W

Location - 1.5 miles north of Hartford  
Petitioner / Owner- Gregory Boggs

**General Information**

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

**Report by:** Pat Herman

**Staff Analysis**

This subject property is located 1.5 miles north of Hartford. Agricultural is the dominate land use in the area but there are a number of residential acreages. The petitioner is requesting a transfer of two residential building eligibilities into a quarter-quarter which has two existing houses.

**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 which is adjacent to land used to pasture cattle.

**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 livestock. 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.

**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 found the request to be in conformance with density zoning and recommended approval of Conditional Use Permit #07-53 with the following condition:

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

Based on the staff report a motion was made by Rogen and seconded by O'Hara to approve Conditional Use Permit #07-53 with the conditions as stated. The motion passed unanimously.

**ITEM 6. CONDITIONAL USE PERMIT # 07-56 to allow a temporary anemometer tower.**

Legal Description – SE1/4 SE1/4 of Section 6-T103N-R52W  
Location - 7 miles north of Humboldt  
Petitioner / Owner- Tim Seck w/ PPM Energy / Ken Krouse

**General Information**

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

**Report by:** Scott Anderson

### **Staff Analysis**

The applicant is requesting approval to construct a temporary tower to gather data to be used in determining the feasibility of wind generation. The proposed tubular steel tower would be approximately 60 meters (183 feet) in height and would be used for collecting data over an unspecified period. The tower will utilize guy wires. The top 10 meters will be painted red. Wind speed and direction sensors are placed at several levels. The sensors then relay data to a data logger at the base of the tower. A solar panel will provide power to the data collection system. Tim Seck of PPM Energy indicates that this tower could be collecting data for two to five years.

The subject property is located near the intersection of 251<sup>st</sup> Street and 455<sup>th</sup> Avenue.

Based on the data, the applicant has indicated that subsequent wind generation towers could be installed in the area. Staff has indicated to the applicant that any future wind generation towers require a conditional use permit for each tower and a building permit prior to 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 proposed tower should have very limited effect on the surrounding properties. The area is primarily agricultural in nature. Furthermore, this tower is a temporary use and would be removed approximately two to five years after construction. Property values 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.**

The temporary tower should not impede orderly development or hinder improvements of the vacant properties in the area. As the primary use is agricultural, there is very little vacant property with the majority of land being utilized for crops or livestock production.

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

251<sup>st</sup> Street will provide access to the temporary tower. No other facilities or improvements are needed.

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

The proposed use should not require much parking. The site will not be visited for periods of time. When an operator is on site, only one or two parking spaces would be needed. Staff will recommend that two (2) off-street spaces be 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 tower should not produce odor, fumes, noise or vibration. The applicant has indicated that safety lights are not required at this height, so there should be no nuisance lighting.

### **Recommendation**

Staff found the proposed temporary tower to be acceptable to the area. Staff recommended approval of conditional use permit #07-56 with the following conditions:

- 1) That the tower not exceed 60 meters in height.
- 2) That the applicant obtains a building permit prior to the erection of the temporary tower.
- 3) That any FAA lighting requirements are met and any permits be obtained if necessary, and that if lighting is required, red lighting shall be used at night.
- 4) That the tower be removed within six (6) years after the building permit is issued. Any future wind generation devices would require new conditional use permit approval.

Based on the staff report a motion was made by Rogen and seconded by O'Hara to approve Conditional Use Permit #07-56 with the conditions as stated. The motion passed unanimously.

#### **ITEM 7. CONDITIONAL USE PERMIT # 07-57 to allow a temporary anemometer tower.**

Legal Description – S1/2 SW1/4 of Section 29-T103N-R52W

Location - 2.5 miles north of Humboldt

Petitioner / Owner- Tim Seck w/ PPM Energy / Robert Zimmer

**General Information**

Present zoning - A-1 Agricultural  
Existing Land Use - Agricultural  
Parcel Size - 80 Acre

**Report by:** Scott Anderson

**Staff Analysis**

The applicant is requesting approval to construct a temporary tower to gather data to be used in determining the feasibility of wind generation. The proposed tubular steel tower would be approximately 60 meters (183 feet) in height and would be used for collecting data over an unspecified period. The tower will utilize guy wires. The top 10 meters will be painted red. Wind speed and direction sensors are placed at several levels. The sensors then relay data to a data logger at the base of the tower. A solar panel will provide power to the data collection system. Tim Seck of PPM Energy indicates that this tower could be collecting data for two to five years.

The subject property is located near the intersection of 255<sup>th</sup> Street and 455<sup>th</sup> Avenue.

Based on the data, the applicant has indicated that subsequent wind generation towers could be installed in the area. Staff has indicated to the applicant that any future wind generation towers require a conditional use permit for each tower and a building permit prior to 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 proposed tower should have very limited effect on the surrounding properties. The area is primarily agricultural in nature. Furthermore, this tower is a temporary use and would be removed in approximately two to five years after construction. Property values 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.**

The temporary tower should not impede orderly development or hinder improvements of the vacant properties in the area. As the primary use is agricultural, there is very little vacant property with the majority of land being utilized for crops or livestock production.

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

Either 455<sup>th</sup> Avenue or 255<sup>th</sup> Street will provide access to the temporary tower. No other facilities or improvements are needed.

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

The proposed use should not require much parking. The site will not be visited for periods of time. When an operator is on site, only one or two parking spaces would be needed. Staff will recommend that two (2) off-street spaces be 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 tower should not produce odor, fumes, noise or vibration. The applicant has indicated that safety lights are not required at this height, so there should be no nuisance lighting.

**Recommendation**

Staff found the proposed temporary tower to be acceptable to the area. Staff recommended approval of conditional use permit #07-57 with the following conditions:

- 1) That the tower not exceed 60 meters in height.
- 2) That the applicant obtains a building permit prior to the erection of the temporary tower.
- 3) That any FAA lighting requirements are met and any permits be obtained if necessary, and that if lighting is required, red lighting shall be used at night.
- 4) That the tower be removed within six (6) years after the building permit is issued. Any future wind generation devices would require new conditional use permit approval.

Based on the staff report a motion was made by Rogen and seconded by O'Hara to approve Conditional Use Permit #07-57 with the conditions as stated. The motion passed unanimously.

**ITEM 8. AMENDMENT #1 TO TAX INCREMENT FINANCE DISTRICT #1 to reduce the boundaries of the TIF district.**

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**

On February 6, 2007, following proper legal notification and a public hearing, the County Commission adopted Resolution #MC07-07 creating Tax Increment District Number One. Subsequently, staff became aware that the legal description of land involved in TIF District One was larger than what was intended by the applicant. The original legal was provided to staff by the applicant.

According to SDCL 11-9-18, amendment must be adopted in the same manner as the original Tax Increment District. Thus in order to adopt the correct legal description of the property to be included in TIF #1, the original process must be followed. Staff has had the proper legal notice published in the Argus Leader and Garretson Weekly papers.

The original legal description used created a larger TIF district than required. The adoption of this new legal description will reduce TIF District #1 to the property used by Buffalo Ridge Energy for their ethanol plant. Reducing the size of TIF District #1 should not harm the public and is in the public's best interest.

**Recommendation**

Staff recommended approval of Amendment #1 to Tax Increment Financing District #1 with the following legal description representing the boundaries of the Tax Increment District #1:

**Government Lots 1& 2 in the NE1/4 Section 34-T104N-R47W.; That portion of Government Lots 1 and 2 in the SE1/4 Section 34-T104N-R47W lying north and south of the railroad.; The SE1/4 SW1/4, and the S 587.34' of the NE1/4 SW1/4, and the S 587.34' E103.71' of the NW1/4 SW1/4, and the E103.71' SW1/4 SW1/4 (except Tract 1 Ramey Addition) all in Section 34-T104N-R47W of the 5<sup>th</sup> P.M. in Minnehaha County, SD.**

Based on the staff report a motion was made by Rogen and seconded by O'Hara to recommend approval of Amendment #1 to Tax Increment Financing District #1. The motion passed unanimously.

**APPROVAL OF THE REGULAR AGENDA**

A motion was made by and seconded by to recommend approval of the Regular Agenda. The motion passed unanimously.

**ITEM 9. CONDITIONAL USE PERMIT # 07-47 to allow signage on fences for an existing private recreation facility**

Legal Description – Tract 1 & 2 NW1/4 (Ex Lot 1 Tr. 1) and Huset's Lot 1 Tr. 1 NW1/4 in Section 10-T101N-R48W

Location - 2012 S. Splitrock Blvd. south edge of Brandon  
Petitioner / Owner- Steve Rubin for Raceway Promotions, Inc.

**General Information**

Present zoning - A-1 Agricultural  
Existing Land Use - Commercial  
Parcel Size - 47 Acres

**Report by:** Phil Kappen

**Staff Analysis**

The subject property is located along Split Rock Boulevard (S.D. Hwy 11) at the south edge of Brandon. The petitioner has operated a racetrack (Husets) for a number of years. The property is bounded by the Brandon city limits on the north and west.. To the south and east lies Split Rock Creek and the associated floodplain. The petitioner wishes to obtain a conditional use permit for a private recreation facility in order to allow him to utilize banners on the fence of the site. These banners would be tailored to welcome special groups to various races.

**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 some visual concerns, particularly with traffic coming along Split Rock Boulevard from Brandon and the view of the track and the large number of signs along the track and the potential for distracting drivers on the road. Staff believes that there are screening mechanisms that may be employed to, at least partially, block drivers' view of the track and signs and thereby reduce the potential for distraction and possible accidents. The petitioner has proposed planting a row of trees along the highway in this area to aid in blocking the view. He proposes that the trees would be planted by this fall and would be 30 to 35 feet on center. Staff, understands that, given the topography of the site it would not be possible to completely screen the view from the highway, however, they do feel that the trees should likely be planted somewhat closer to provide a better screening of drivers' view of the track. There will also have to be a gap in the row because of a power line that cuts through the area.

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

The property immediately to the east and south will not be developed because of the floodplain. There is the possibility that this property could become added recreation area. There is the potential that this future recreation area could be developed so as to tie in with the Husets site.

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

Access to the property is via Split Rock Boulevard (state highway) at the northwest and southwest corners of the site. Wastewater treatment is accomplished through the use of an onsite wastewater treatment system. There are two driveways onto the site from Split Rock Blvd. The petitioner proposes using up to three temporary banners at each driveway during races. The banners would be 3-4 high and 4-6 feet long (or 12 to 24 square feet) and would be placed the day of a race and removed by the next day.

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

There is ample parking area on the site. The parking area is located to the east of the track and adjacent to the floodplain area. No parking can be allowed at any time along the state highway.

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

The petitioner employs dust control measures during race events. There is noise with this use, but it is primarily during race events.

**Recommendation**

Staff found the proposed change in use to be consistent with the manner in which such uses are operated and recommended approval of conditional use permit #07-47 with the following conditions:

1. On site banners which are visible from the road shall be allowed as follows. Up to 72 square feet of banners is allowed at each of the two entrances during a race. The banners shall not be placed prior to the day of the race and shall be removed by the day following the race.

2. A row of trees shall be planted along the Split Rock Boulevard side of the property between the northeast end of the grandstand and the northeast driveway except that no trees shall be planted within the power line easement that crosses the property. The trees shall be planted at a maximum spacing of 20 feet on center. A preference shall be given to the use of taller and faster growing species. The minimum size of the trees shall be 1¼" caliper. Trees shall be maintained in a live state.

### **Public Testimony**

In response to the Commission, Mr. Swanson, stated that this CUP will apply to the banners or signs used at the facility. The existing use, a racetrack, will still be considered a legal non-conforming use. Should the CUP for the signs be revoked, the racetrack will still be allowed to continue.

The petitioner, Steve Rubin, stated that he is in agreement with the conditions. The banners will be used to welcome various groups to the facility.

Based on the staff report and public testimony, a motion was made by Bunde and seconded by Cypher to approve Conditional Use Permit #07-47 with the conditions as stated. The motion passed unanimously.

### **ITEM 10. CONDITIONAL USE PERMIT # 07-51 to allow gravel extraction.**

Legal Description – SE1/4 SW1/4 of Section 19-T102N-R50W and the NW1/4 (EX H-1 & 2  
Ex Kamp Dakota TR 1 & EX N276.37' S974.37' W400' SW 1/4 NW 1/4)  
& NW 1/4 NE 1/4 in Section 30-T102N-R50W  
Location - 2 miles east of Hartford  
Petitioner / Owner- Benson Farms Inc.

### **General Information**

Present zoning - A-1 Agricultural  
Existing Land Use - Agriculture  
Parcel Size - 100 + Acres

**Report by:** Scott Anderson

### **Staff Analysis**

#### **Location and Background**

The location of the site is approximately 5 miles west of Sioux Falls between 466<sup>th</sup> and 467<sup>th</sup> Avenues, north of SD Highway 38 and Interstate 90. Sand and gravel deposits are common in the areas adjoining Sunk Creek and other extraction operations currently exist south of this area. Pasture and crop land is the predominate land use in those areas which have not yet been mined and on reclaimed land.

The proposed extraction area is located on the west side of Skunk Creek, north of Interstate 90 and south of what would be the extension of 260<sup>th</sup> Street. There are approximately seven (7) residences and one (1) business located in within a ¼ mile of the area to be mined. The applicant's house would be the closest residence to the extraction site.

#### **Planning Considerations**

The projected life of the project is approximately 20 years depending on the demand for construction aggregate. Extraction will be done with earth moving equipment. No blasting will occur on the site. Staff will recommend that all mining activity be concluded within fifteen (15) years. Should more sand and gravel extraction be called for, then the applicants will need to amend this condition use permit to allow for an extended life of the permit.

A haul road will be constructed for truck access onto 466<sup>th</sup> Avenue. This portion of 466<sup>th</sup> Avenue is paved. 466<sup>th</sup> Avenue then leads directly to S.D. Highway 38, a hard surfaced road.

There is designated floodplain located on the property. The subject property is located within the Skunk Creek drainage basin. The subject property is located over an aquifer recharge area. With property management, the aquifer should not be significantly impacted. The applicant has not provided a hydrologic study

The zoning regulations list developmental and operational criteria for use in evaluating extraction activities. Following is a review of the proposal based on the criteria.

**Buffer area** - The suggested minimum setback between extraction areas and existing residences is 1000 feet. There is one residence located within the buffer area, which is owned by the applicant.

**Hours of operation** - The zoning criteria suggest that mining operations be limited to the hours from 7:00 am to 6:00 pm on weekdays and 8:00 am to noon on Saturdays. Other activities such as office or maintenance operations, which produce no noise, are not restricted to the times listed above.

**Berms** - Berms are commonly used to screen on-site activities from public view and to minimize noise. The petitioner has indicated that no berms will be constructed, but that the topography is such that the majority of mining activity will not be visible to the public.

**Noise** - 55 decibels recorded over a 10 minute period measured at the nearest residence. This standard is generally addressed on a complaint basis.

**Dust** - Air quality should not be a concern due to the nature of the extraction operation. Dust from truck traffic can be controlled by applying dust control agents to the haul road. The proposed haul road will run along the north side of an existing business. This portion of the haul road must be treated with a dust suppressant to control dust. The County Planning Department should be given authority to require the operator to install on-site monitoring devices if air quality becomes a problem.

**Hydrology, dewatering and drainage** - The petitioner has indicated that extraction will not extend below the water table. No dewatering of the pit is anticipated so the area's hydrologic conditions should not be impacted. The applicant shall be required to obtain a South Dakota Surface Water Discharge Permit for Storm Water Associated with Industrial Activities if required by the state.

**Haul roads** - The most common problem associated with extraction operations is the use of gravel township roads for truck hauling. In this case, the haul road will exit directly onto 466<sup>th</sup> Avenue. The applicant has provided an agreement with Hartford Township for the use of 466<sup>th</sup> Avenue. The applicant will be responsible for maintenance of 466<sup>th</sup> Avenue. Staff will require that the applicant meet all of the requirements of the haul road agreement in the recommended conditions of approval.

**Operator surety** - Article 12.08.G requires a surety bond to be filed with the County Auditor to protect the County in the event the operator abandons the site without completing the required conditions of approval. Staff recommends that a \$5,000.00 bond be filed with the County Auditor prior to any mining activities occurring on the site.

**Reclamation** - The plan submitted by the applicant simply indicates that the topsoil will be stripped and stockpiled for use in reclamation. The site shall be restored to a farmable status within one (1) year of conclusion of mining operations. Reclamation should result in the rehabilitation of affected land through contouring and soil stabilization, revegetation and other appropriate means so as to create an aesthetic appearance and promote the most appropriate future use of the property. The site shall be returned to agricultural use.

**Other considerations** - The entrance to the property should be gated to discourage individuals from

disposing of refuse in the pit during non-working hours.

The site is located in the Water Source Protection Overlay District. Only clean fill will be used as backfill on the site as defined by the County Nuisance Ordinance. Furthermore, the applicant shall not be allowed to store any fuel within the water source protection area or within any 100 year floodplain area.

Portions of the property are also located within the 100 year flood plain. The flood plain is managed through the Minnehaha County Flood Plain Management Ordinance (MC 32-3). The applicant shall abide by all regulations outlined in this ordinance when working in the 100 year floodplain and/or floodway.

**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 uses in the general vicinity reveal around agricultural production. The proposed use should not impact the property values of the agricultural land in the generally vicinity. With proper planning and execution of the plan, the proposed sand and gravel extraction should not effect of the enjoyment of other properties in the immediate vicinity. The applicant will be able to maintain the suggested 1000 foot buffer from adjacent residences.

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

The proposed use could have an impact on the development of surrounding vacant property. While most agricultural uses, such as animal husbandry or crop production would not be impacted by the proposed use, some uses such as rural residences may not desire to locate near this proposed use. The proposed use will generate additional heavy truck traffic, and minor amounts of noise and dust. The applicant has indicated that this use occurred on the site in the past and that the extraction activities will occur for up to twenty years. Staff is recommending that all mining activities conclude within fifteen (15) years.

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

The existing road infrastructure will be utilized for this proposed land use. The applicant is being required to enter into a Haul Road Agreement with the Hartford Township for the maintenance of 466<sup>th</sup> Avenue. No other infrastructure is needed for this land use.

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

Article 15 does not set any off street parking requirements for this land use. Staff recommends that a minimum of one off-street parking space for each employee and an additional two off-street spaces for customers be 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.**

With the proposed sand and gravel extraction, there is a possibility of noise, dust and vibration to occur. Staff has addressed dust and noise in the recommended conditions of approval. The hours of operation will reduce the possibilities of these elements becoming a nuisance. Staff is recommending that the haul road adjacent to the property used for the Goos Camper sales be hard surfaced and the balance of the road be treated with a dust suppressant. This will help to control dust from vehicular traffic.

Staff finds the proposed sand and gravel extraction use compatible to the surrounding land uses and a use that can be found in the general vicinity. With proper zoning controls, the use can be conducted in such a manner to minimize potential nuisances.

**Recommendation**

Staff recommended approval of Conditional Use Permit #07-51 to allow sand and gravel extraction with the following conditions:

1. An annual fee shall be paid to the County in accordance with Section 15.14 of the zoning regulations. (Note: An annual fee of \$10 per acre of unreclaimed land is assessed to the operator.)

2. There shall be no fuel storage allowed in areas designated as a ground water protection area or flood plain.
3. Hours of operation shall be from 7:00 am to 6:00 pm on weekdays and 8:00 am to noon on Saturdays.
4. That the only dewatering shall be for use in dust control, road projects and rock washing. The applicant shall obtain any required permits from the state for use of the water.
5. That prior to any sand or gravel extraction, the applicant shall obtain a Haul Road Agreement from Hartford Township for the use of 466<sup>th</sup> Avenue.
6. The ambient air quality standards for total suspended particulate matter shall be 150 micrograms per cubic meter of air as a 24-hour average not to be exceeded more than once a year, and 60 micrograms per cubic meter of air as an annual arithmetic mean. The standards for PM<sup>10</sup> (10 micrometers or less in size) shall be consistent with the regulations of the State of South Dakota.
7. The County Planning Department shall direct the operator to install air quality sampling stations if the standards appear to be exceeded. Such monitoring shall be at the operator's expense.
8. The sound level from on-site operations shall not exceed an average of 55 decibels recorded over a 10 minute period measured at the nearest residence.
9. That one (1) off-street parking place for each employee and two (2) customer off-street parking spaces shall be provided.
10. The boundaries of the extraction area shall conform to the site plan submitted with the application.
11. Topsoil shall remain on the site and be used in final reclamation.
12. Only clean fill shall be used as backfill.
13. There shall be no storage or accumulation of inoperable or discarded equipment or parts.
14. A gate shall be required at the haul road entrance to the property.
15. That all mining activity is concluded by January 1, 2022 and that reclamation shall be in accordance with the plan filed with the State and outlined in the application and all reclamation of the site shall be completed by December 31, 2022.
16. That if one (1) or more acres of area is disturbed the applicant is required to obtain a General Permit from the Department of Environment and Natural Resources.
17. That the applicant provides the Minnehaha County Auditor with a surety bond or cash in the amount of \$5,000.00.
18. The applicant shall abide by all regulations outlined in Minnehaha County Flood Management Ordinance, MC32-03, when working in the 100 year floodplain and/or floodway.
19. That the haul road adjacent to the property used for the Goos Camper sales be hard surfaced and the balance of the east/west road be treated with a dust suppressant and all trucks shall be covered

when loaded and leaving the pit area.

**Public Testimony**

Mr. Anderson noted that he had provided the Commission with a letter written by Tom Wilka that had been emailed to Gordy Swanson. There was a brief discussion by the Commission that the surety bond amount was too low.

The petitioner was represented by Dick Haas. He noted that the family lives at this site and are a family farm corporation as specified by South Dakota law. He explained that Benson farms would hold the mining permit but Myrl and Roy's will do the work as they are qualified and experienced in this filed. They are in agreement with the conditions. The family is concerned with restoration and want to return the land to farm quality at the end of the operation. The area should be as good as it is now. They would like to start work in the fall.

Tom Wilka, with Hagen, Wilka & Archer, stated that he is representing Goos RV, Lee and Terry Goos, and their son Lee. He presented the Commission with a packet of objections against the conditional use permit. Mr. Wilka first challenged the 500' notice, saying that there was no proof this had been sent. He then felt that the 30 closest neighbors were not notified as required by the zoning ordinance Section 12.08 (E), especially in the area of Hartford Heights. He feels the notice is defective. The wrong company was listed on the notice, Reynolds & Gustofson LLP, instead of Myrl and Roy's. This may have caused people not to come out and protest as they have thought it futile as Reynolds & Gustofson already have a gravel operation just to the south. Mr. Wilka stated that the operation will have a major impact on neighboring land owners. Mr. Wilka displayed an aerial map of four land sections in this area. He pointed out residential lots to the north of this site, along Andresen Ave., one which was bought by Lee Goos, Jr. These eligibilities were moved to this site by a conditional use permit because it was a desirable spot for houses. People paid a lot of money for the lots, plus they had to invest money in reconstructing Andersen Ave. He feels this mining operation will destroy, not inconvenience, these lots. They are looking down the hill onto this pit. The sales brochures for these lots advertise a "great view" which will now be a gigantic gravel pit.

Mr. Wilka continued that the needs of the neighborhood need to be balanced against Benson Farms/Myrl and Roy's needs to mine the gravel. There are 57 state-licensed sites for sand and gravel extraction throughout the County. There are many former mine sites that have not been reclaimed. The recommended \$5,000 surety bond is a joke. This will never cover the cost of reclamation 20 years from now. The zoning ordinance, 12.08(C), calls for a hydrological study but none has been provided and no documentation is given as to why this was not done. It is critical that the aquifer be protected. Other gravel operations approved by conditional use permit have been required to provide this information. There may be no impact, but that is not known unless a hydrologic study is done.

Mr. Wilka next addressed the haul road maintenance agreement which he labeled a joke. It is hand written and one sentence long. No criteria is given as to what proper maintenance should be. The people had to meet County standards to construct Andersen Ave., but this site has no standards.

Lee Goos owns Goos RV at 26036 466<sup>th</sup> Avenue. He was approved for a commercial use at this site. He does millions of dollars in business and does a lot of advertising. He has \$3-5 million in inventory on the site and a \$1/2 million in parts and accessories which are in an open building. Every time he opens the door dust is going to get on the RV's. The haul road is going to pass within 30-40' of the door. He had pictures of the site which he showed to the Commission. He stated that he has a mobile home on the site where his son lives so that should be considered a residence. He also noted that the road is only 9 feet wide. Mr. Goos stated his son had bought land overlooking the creek for \$93,000 plus cost of the road construction. He doesn't want to have a house overlooking this mining pit.

Donna Lupine, 25950 Andresen Ave., bought her house in January at the top on the hill for \$325,000. She will be looking straight down onto this mining pit. She thought the cost of the house was too much but they were buying the view. She feels the staff is wrong about the topography as this site can also be seen from I-90. Ms. Lupine stated that 20 years, or 15, is not a short time to live with a mining operation. She also noted that once something is started it is much easier to get the time line extended. Ms. Lupine stated that Article 15 called for berms, but those have not been required. Article 19 requires a site plan which must contain the items listed in the zoning ordinance, but that has also not been submitted. What the company submitted is vague and they will be able to do whatever they want. Things can run amuck. The applicant is required to submit maps and a plan for reclamation but that seems to be missing too. Where will the fuel storage be? There is floodplain on this site. Ms. Lupine also wondered where the

DENR study was as she hasn't seen any. She also felt the notification for this mining activity was lacking.

Jeff Peters, 26123 Robin Dr., paid a lot of money for his lot because of the view. It is an investment for his children. He reminded the Commission that he had sent each of them a letter outlining his opposition to this operation. No environmental impact study has been done. Is a violation occurring when gravel extraction is being done next to a tributary? Has a 404 permit been obtained? Mr. Peters said an endangered species, the Topeka Shiner, had been found in the Skunk Creek area, as well as Indian artifacts. There are also traffic hazards with the mining trucks causing major congestion from the existing Reynolds and Gustofson mine to the south and this will just make the problem worse. Mr. Peters noted that 466<sup>th</sup> Ave. is actually owned by Benton Township, but maintained by Hartford Township.

Neal McLead, 26011 Hillside Dr., stated that there is a lot of traffic now on Highway 38 and that the trucks will tear up the road. The state is going to have to pay to repair the road. He feels the gravel trucks will decrease the value of his house and he plans to sell in a few years.

Lee Goos Jr., 26032 466<sup>th</sup> Ave., stated that people like to buy an RV at this site as it feels like it is out in the country. It also allows people to get right on the road and tryout their RV before they hit any traffic. He noted that there is a 90 degree turn in the road that can't be taken at more than 15mph. The gravel trucks will tip. Mr. Goos noted that he bought his land on Andresen Ave. for the quietness and the view. Now his view will be a gravel pit. He will take a huge loss on this land because he doesn't want to build to look at this site. He also paid money to widen Andresen Ave., 24' wide with a certain pitch, but there are no requirements here. When the wind blows, sand from the south pit hits cars on Hwy 38. Mr. Goos noted that are beautification laws that limit bill boards yet a gravel business is ok.

Judy Krossin, 25957 Andresen Ave., has lived on the farmstead for many years. She was looking at retiring, but that will be stolen if this is approved. She has seen the floodplain full of water. Ms. Krossin wondered who will oversee the mining operation. She also felt the notification was not adequate.

Mr. Anderson stated that Article 12.08(E) requires notification of the 30 nearest property owners. This list was created using GIS and because some property owners owned numerous properties the mailing list was less than 30 people. The Article also specifies that the time, date, place and purpose of the application must be stated in the notification, not the applicant. Mr. Anderson acknowledged that the listed applicant was in error, but he stated the all of the notification requirements have been met.

Mr. Anderson explained that the road construction on Andresen Ave. was required because that property was subdivide and platted, and therefore required to meet the standards of the subdivision ordinance. The Township sets its own regulations.

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

Commissioner South felt that the hydrological study should be required before this item was appealed to the County Board. Commissioner Bunde would like to raise the reclamation amount and Commissioner Cypher recommended \$100,000 for the surety bond. He would also like to see the period of operation reduced to 10 years. Commissioner Cypher also feels that alternatives to the back up beepers on trucks should be required as these are very annoying, and that berms should be put in place by Goos RV's. He also feels the road should be paved 160 yards past the Goos place. Commissioner Steinhauer wants to make sure this does not become a graveyard for mining equipment. He would like to see a more defined plan of where the extraction will take place and more suggestions on how to adequately buffer the site. The applicant should also investigate moving the haul road further to the north. Commissioner O'Hara suggested a deferral to give the applicant time to accomplish the Commission's requests.

Based on the staff report and public testimony, a motion was made by O'Hara and seconded by Steinhauer to defer Conditional Use Permit #07-51 to the August 27<sup>th</sup> meeting. The applicant is to prepare a hydrological study, reclamation plan, detailed site plan, berming options, and alternate location for the haul road. The motion passed unanimously.

**ITEM 11. REZONING # 07-05 from A-1 Agricultural to Haight Family PD Planned Development.**

Legal Description – E1/2 vac. Royal Oaks Road & Tract 1 Indian Hills Estates N1/2 NW1/4 in Section 9-T101N-R48W

Location - 9501 E. Maple St. 1/2 mile west of Brandon

Petitioner / Owner- Jon Smith / Stephen & Roberta Haight

**General Information**

Present zoning - A-1 Agricultural  
Existing Land Use - Agriculture  
Parcel Size - 59 Acres

**Report by:** Pat Herman

**Staff Analysis**

The site is located on E. Maple St., a ½ mile west of the Brandon City limits. There are two residential subdivisions in the vicinity; Indian Hills is a ½ mile to the west and Hidden Valley approximately a ¼ mile to the south. Just to the northeast is the Big Sioux Recreation Area. The property is currently zoned A-1 Agricultural. This application has been submitted to rezone a fifty-nine acre parcel to allow a second house on the property.

Staff met with the applicant several times in the past two months and discussed the various alternatives that might be pursued in order to allow a second dwelling. Those alternatives included applying for a rezoning, the purchase of land with a building eligibility from an adjacent property owner to transfer to this parcel, annexation of the property into the City of Brandon, and an appeal of an administrative decision that this parcel was only eligible for one residential building eligibility. Discussion was also had over providing a new legal description and rezoning the property to an existing residential district, or submitting an application for a Planned Development. The applicant chose to submit an application for a Planned Development, however, staff does not feel this meets the intent of a PD as described in the Comprehensive Plan. The applicant was informed several times that the rezoning would receive a recommendation of denial from the Planning Department.

The County adopted density zoning in September 1988 and each legally described parcel was allotted one residential building eligibility, as was this parcel. In 1988 there were two residential structures on the site, a stick built house and a mobile home. With the enactment of density zoning the mobile home became a non-conforming use. Section 18.02 states that the lawful use of a premise existing immediately prior to the effective date of this ordinance may be continued although such use does not conform to the provisions hereof.

In 2001 building permit #01-341 was issued to replace this second residence with a new house. At that time the mobile home was removed from the property. Construction did not commence on the new house and pursuant to section 23.06 of the Zoning Ordinance, the building permit expired after 180 days. No re-application was made for a new building permit.

Section 18.07 of the Zoning Ordinance states the following:

18.07 Discontinuance of nonconforming use. In the event that a nonconforming use is discontinued for more than one year, any subsequent use shall thereafter be in conformity with the regulations of the district in which it is located.

Because the mobile home was not replaced on the property within one year of its removal, the opportunity to do so ended, and the property is restricted to one residential building eligibility as allotted by density zoning.

The applicant has applied to rezone the property as a Planned Development because he does not wish to develop the parcel at the density level that would be allowed under the residential zoning districts found in the Ordinance. The rezoning is being applied for in order to restore the non-conforming use. The water hook-up for a 2<sup>nd</sup> house still remains on the property.

When considering an application to rezone property, SDCL 11-2-14 specifies that the county may be divided into zoning districts and that the regulations shall be made in accordance with a comprehensive plan. Section 5-3 of the Minnehaha County Comprehensive Plan outlines future development for the County. This section recognizes transition areas in the County where the pressure for increased residential growth will occur. These transition areas are designated around the small municipalities within the County and within the 2015 growth boundary for Sioux Falls. This property is located outside the 2015 growth boundary for Sioux Falls.

The property does fall with the joint platting jurisdiction shared by Minnehaha County and Brandon. The future land use map in the Brandon Comprehensive Plan depicts this area as agricultural. The growth

management strategy outlined by the Brandon Comprehensive Plan focuses growth to the west along Rice Street, north of I-90 and to the east towards Hwy 109. It discourages growth in this area due to the constraints in providing sewer service to this part of the County.

### **Recommendation**

The request to rezone the property is not in accordance with either the Comprehensive Plan for Minnehaha County nor for the City of Brandon. Staff recommended denial on the rezoning.

### **Public Testimony**

Ms. Herman stated that the applicant had been informed several times that the application did not comply with the Comprehensive Plan and the rezoning request would get no support from the Planning Staff.

The applicant, Jon Smith, explained that the property owner did not realize that he would lose the "building eligibility" when they did not replace the mobile home within one year. They have been paying electricity and water bills for the site since 2001. Mr. Smith stated that the petitioner owns another 53 acres adjacent to this 59 acre piece. A residential lot have been platted off that 53 acres. Mr. Smith noted that in 1993 the Commission had rezoned property immediately to the west of this site to allow for a residential dwelling. He proposed that this had set a precedence for this area.

John Soderholm, 1612 N. Oak Ridge Place, is not concerned with the addition of one more house. He just wants to make sure that it is only one house. He has heard that a Planned Development can allow uses which are not following an established zoning district.

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

Commissioner Cypher stated that this request is eligibility generation. He feels this should be denied; otherwise he wants another eligibility for his property. It is not in conformance with density zoning. Commissioner Bunde concurred, stating that approval of a rezoning in 1993 does not justify approving this request. That approval was made of ignorance. Approval of this application would set precedence, a wrong precedence.

Based on the staff report, public testimony, and their public comments, a motion was made by Cypher and seconded by Bunde to recommend denial of Rezoning #07-05. The motion passed unanimously.

### **ITEM 12. CONDITIONAL USE PERMIT # 07-55 to allow a 2500 animal unit Confined Animal Feeding Operation.**

Legal Description – NW1/4 of Section 28-T104N-R48W  
Location - 48031 248<sup>th</sup> St. 6 miles southeast of Dell Rapids  
Petitioner / Owner- Michael Randall.

### **General Information**

Present zoning - A-1 Agricultural  
Existing Land Use - Agriculture  
Parcel Size - 160 Acres

**Report by:** Phil Kappen

### **Staff Analysis**

The subject property is located along 248<sup>th</sup> Street approximately halfway between Dell Rapids and Garretson. Surrounding properties are all in agricultural uses. The petitioner currently has a 900 animal unit feedlot and wishes to obtain a conditional use permit allowing them to expand to 2500 animal units over a period of time. The petitioner is currently working with Eisenbraun and Associates engineers and with the Natural Resources Conservation Service towards obtaining a state permit. The state permit will ensure that the proposed manure containment is properly designed and constructed so as to protect water resources. A nutrient management plan will also need to be developed for approval by the state DENR as a part of the state permit. This plan will need to be updated as crop rotations change the areas to which the waste is applied for agronomic purposes.

### **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 not within a 100-year flood plain and the site is not over a water source protection

area or a shallow aquifer.

The target criteria distance from another house for the proposed size facility is 6380 feet. The petitioner has contacted all 10 home owners within that radius and has obtained waivers from all of them. In addition, they have obtained waivers from three homes that are just beyond that boundary, and from one property owner within that boundary that currently has no house in the area.

The feedlot area is located to the south of an existing belt of trees. The proposed manure holding pond will be located at the west edge of those trees. The drainage area along the proposed facility has already been seeded down as a buffer area so that the sod can aid in the filtering of the water.

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

The area is planned for future agricultural development. The area is zoned for agricultural uses and the petitioner has obtained waivers from all homeowners within the setback criteria distance.

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

Access to the property is from 248<sup>th</sup> Street, a township road. There is a natural drainage area along the proposed CAFO, but the petitioner is locating the proposed manure holding pond to help protect that drainage way. He has also seeded areas to grass to further protect this drainage area.

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

There is ample space on the property for any necessary parking or loading. No parking or loading is allowed on any publicly dedicated 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.**

The trees along the feedlot area will provide for agitation of the wind and thus will aid in the dispersal of odors. The petitioner currently contracts with a professional pest control company for fly control and plan on continuing this practice.

**Recommendation**

Staff finds that the proposed use is consistent with the types of uses found in the A-1 Agricultural District and that the facility can be managed in a manner that makes it compatible with surrounding properties.

Staff recommended approval of conditional use permit #07-55 with the following conditions:

- 1) The facility shall be limited to a 2500 animal unit concentrated animal feeding operation for cattle.
- 2) The facility shall be fully permitted by the State of South Dakota and copies of all approval letters from the State shall be provided to the Minnehaha County Planning Office prior to the expansion of any operations.
- 3) The petitioner shall prepare a nutrient management plan for approval by the State, shall keep the plan up-to-date, and shall manage all waste from the facility in conformance with that plan. The petitioner shall prepare an executive summary of the nutrient management plan and file that summary with the Minnehaha County Planning Office. A new summary shall be prepared for the Planning Office each time that the plan is up-dated. A copy of the complete nutrient management plan as approved by the State shall be provided to the Planning Office upon request.
- 4) Dead animals shall be promptly removed from the site according to South Dakota regulations.
- 5) All application of liquid waste shall be injected into the ground. Semi-solid and solid waste shall be incorporated within 24 hours. Surface application of solid and frozen waste shall be allowed as specified by the South Dakota General Permit. Surface application of liquid waste may be allowed only in extraordinary circumstances upon approval of the Planning Director after the petitioner has requested approval for such application in writing including the location on which the waste will be incorporated, the date of the proposed application and the amounts of waste to be applied. The petitioner will meet all setback requirements for waste

application as specified in the county zoning ordinance.

**Public Testimony**

The petitioner, Mike Randall, stated that he is working on the nutrient management plan and is in agreement with the stated conditions. Commissioner South congratulated the Randalls on the effort they had made to contact and get waivers from all the neighbors located within the criteria area.

Bruce Burkhart, 24607 481<sup>st</sup> Ave., stated that the Randalls have been farming for generations and that they are good stewards of the land. He encouraged the Planning Commission to approve this application.

Jessie Randall, son of the petitioner, spoke about the need to support agriculture and for there to be incentives for young people to stay and work on the farm.

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

Based on the staff report and public testimony, a motion was made by Bunde and seconded by Rogento approve Conditional Use Permit #07-55 with the conditions as stated. The motion passed unanimously.

**ITEM 13. ZONING TEXT AMENDMENT # 07-01 pertaining to Wind Energy Conversion Systems, Additional Yard Regulations, Definitions, And Conditional Use Permits.**

**Report by:** Scott Anderson

**Staff Analysis**

Staff is proposing an ordinance amendment that would create Article 13.09 by providing a new definition for visibility triangle, further clarify Section 19.02 in requiring the property owner to sign any conditional use permit application, and revising Article 12.01 “Wind Energy Conversion Systems”.

In January, the Planning Commission started to review how wind energy was regulated within Minnehaha County. Subsequently, the Chairman appointed a subcommittee of four (4) Planning Commissioners and planning staff to review Article 12.01 and make any revisions needed to better reflect industry requirements and any methods to better protect the public, while still enhancing the viability of wind energy. The subcommittee compiled material and met twice to review possible changes. A new Article 12.01 was crafted based on the information collected and staff and PUC input. The proposed new Article 12.01 is provided within the proposed ordinance amendment for review.

The proposed ordinance amendment dealing with traffic visibility came from comments from the public. Staff was receiving complaints that items such as large, round hay bales were being stacked at or near the intersection and blocking the view of traffic and causing snow to drift. When staff began to analyze the sight triangle at intersections, other items also came to mind that could block the view of on-coming traffic, such as vehicles, farm equipment and structures. Staff research found that concerns over bales of hay, and equipment could not be adequately addressed with the current wording of the Zoning Ordinance. Staff is addressing this concern and safety issues with the proposed ordinance amendment, which include the Article 13.09 and a new definition for “visibility triangle”.

The other area of the Zoning Ordinance that staff feels needs to be addressed is Article 19 “Conditional Use Regulations”. Currently the Zoning Ordinance only requires the name, address and phone number of the property owner. Staff believes that it was an oversight of the Zoning Ordinance not to require the property owner’s signature. Otherwise, anyone could apply for a conditional use on someone’s property without their knowledge.

A copy of the proposed Ordinance is attached for review. It provides the new definition for “visibility triangle” and several wind energy definitions, the new Article 13.09, wording requiring the property owner’s signature on conditional use applications and revisions to Article 12.01.

**Recommendation**

Staff recommended approval of the Zoning Text Amendment #07-01 to create Article 13.09 “Traffic Visibility”, amending Article 19.02 requiring the property owner’s signature on a conditional use

application, revising Article 12.01 “Wind Energy Conversion Systems” and adding new definitions for “Visibility Triangle”, “Accessory WECS”, “Commercial WESC”, and “WECS Tower”

**Public Testimony**

Commissioner South asked in the Public Utilities Commission felt that Minnehaha County was being proactive in adopting a wind power ordinance. Mr. Anderson stated that during the meeting with PUC Commissioner Gary Hanson, the Commissioner expressed support of the County’s actions to develop an ordinance and was very helpful in what areas should be covered by the ordinance. Mr. Anderson explained that the sub-committee of the Planning Commission had met several types to work on the wind tower portion of the ordinance.

No one in the audience 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 Rogen and seconded by Cypher to recommend approval of Zoning Text Amendment #01-01. The motion passed unanimously.

ORDINANCE MC

AN ORDINANCE AMENDING THE 1990 REVISED ZONING ORDINANCE FOR MINNEHAHA COUNTY BY REVISING THE TEXT PERTAINING TO WIND ENERGY CONVERSION SYSTEMS, ADDITIONAL YARD REGULATIONS, DEFINITIONS, AND CONDITIONAL USE PERMITS.

BE IT ORDAINED BY MINNEHAHA COUNTY, SOUTH DAKOTA:

That Ordinance MC16-90, the 1990 Revised Zoning Ordinance for Minnehaha County hereby amended as follows:

**Section 1: That Section 12.02 is hereby amended to read:**

12.02 WIND ENERGY CONVERSION SYSTEMS. The regulations regarding Wind Energy Conversion Systems (WECS) shall be as follows:

(A). Intent

The intent of regulations for Wind Energy Conversion Systems is to encourage the development of alternative sources of energy while protecting the health, safety and welfare of the public.

(B). Accessory WECS

The applicant shall provide to the Planning Director documentation that the tower structure for the system has received a professional structural engineer's certification.

1). Height.

- a). The lowest portion of the blade shall be at least thirty (30) feet above the ground.
- b). WECS are exempt from the maximum height requirements of this Ordinance.

2). Setbacks

- a). The WECS shall be located in the rear yard only and shall be set back 1 .25X the total WECS height from the property lines.
- b). Contiguous property owners and planned developments may construct a WECS for their use in common. If property held by more than one single owner is used to meet the setback requirements, a site plan establishing easements or reserved areas must be submitted to the Planning Commissions for their approval.

3). Illumination and Security

(a). Illumination and markings shall be limited to the requirements of the FAA. There shall be no lights on the tower other than what is required by the FAA. FAA approved red lights shall be used from dusk till dawn. This restriction shall not apply to infrared heating devices used to protect the monitoring equipment.

b). Access to the WECS shall be restricted by one or more of the following means:

- i). Tower-climbing apparatus located no closer than twelve (12) feet the ground; or
- ii). A locking anti-climb device installed on the tower; or
- iii). Enclosure of the tower by a fence at least six (6) feet high with locking portals.

4). Noise

The noise level of the WECS shall not exceed 50 dB(A) as measured at any property line or the WECS shall not create noise beyond the lot containing the WECS which exceeds 60 dB(A) as measured the ~~nearest~~ nearest habitable dwelling.

Deleted:

Deleted:

5). Signs

One sign, not to exceed four (4) square feet, shall be posted at the base of the tower and display suitable warning of danger to unauthorized persons, the system's manufacturer, and emergency shut-down procedures. No other signage shall be allowed.

6). Electromagnetic interference

If a WECS is installed in any location along or within the major access of an existing microwave communications link, the person desiring to install the WECS shall be required to provide a letter from the business whose link they are within or adjacent to stating that the business whose link is affected would have no objection to the installation of the WECS.

7). Air space

A WECS shall be located or installed in compliance with the guidelines of the Federal Aviation Administration Regulations with regard to Airport Approach Zones and clearance around VOR stations.

8). Interconnect.

The WECS, if interconnected to an electric utility distribution system, shall meet the interconnect requirements of the electric utility company.

C). Commercial WECS

Commercial WECS shall be permitted only on lands zoned A-1 Agricultural, C Commercial, I-1 or I-2 Industrial, or RC Recreation/Conservation.

1). Equipment Design

Tower

The tower(s) shall be of singular tubular steel construction.

Color

The color of the turbines and equipment buildings shall be unobtrusive and non-reflective with a galvanized or matte finish. Black blades are acceptable for mitigation of icing.

Height

(a). The lowest portion of the blade shall be at least thirty (30) feet above the ground and thirty (30) feet above the highest existing structure within a radius of two hundred fifty (250) feet.

(b). WECS are exempt from the maximum height requirements of this Ordinance.

Distribution Lines/Power Poles

All on-site electrical wires associated with the WECS shall be installed underground and maintained in conformance with the National Electric Safety Code or other applicable codes.

2). Setbacks

(a.) WECS shall be set back 2x the total WECS height from any exterior property line.

(b). WECS shall be set back 1.25x the total WECS height from the right-of-way line of any public road or highway.

(c.) WECS shall be set back 3X the total WECS height from any habitable structure.

3). Illumination and Security

(a). Illumination and markings shall be limited to the requirements of the FAA. There shall be no lights on the tower other than what is required by the FAA. FAA approved red lights shall be used from dusk till dawn. This restriction shall not apply to infrared heating devices used to protect the monitoring equipment.

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(b). Each turbine shall be equipped with a braking system and blade pitch control.

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(c). All guy wires shall be distinctly marked.

(d). Signs warning of the electrical and other hazards associated with the WECS shall be posted at the base of each tower.

(e). Anti-climbing devices shall be installed on each tower.

4). Noise

The noise level of the WECS shall not exceed 65 dB(A) as measured at any property line.

5). Signs

(a). No advertising signs or logos shall be permitted on the WECS.

(b). One (1) project identification sign, not to exceed twenty (25) square feet, shall be allowed.

6). Inoperable or Unsafe WECS/Site Reclamation

(a). Unsafe commercial WECS, inoperable commercial WECS, and commercial WECS for which the permit has expired shall be removed by the owner. All safety hazards created by the installment and operation of the WECS shall be eliminated and the site shall be restored to its natural condition to the extent feasible. A bond or other appropriate form of security may be required to cover the cost of removal and site restoration.

(b). A Commercial WECS shall be deemed inoperable if it has not generated power for 12 consecutive months.

7). Roads

a). Public Roads. Prior to commencement of construction, the permittees shall identify all state, county or township "haul roads" that will be used for the WECS project and shall notify the governing body having jurisdiction over the roads to determine if the hauls roads identified are acceptable. The governmental body shall be given adequate time to inspect the haul roads prior to use of these haul roads. Where practical, existing roadways shall be used for all activities associated with the WECS. Where practical all-weather roads shall be used to deliver concrete, turbines, towers, assemble nacelles and all other heavy components to and from the turbine sites.

The permittees shall, prior to the use of approved haul roads, make satisfactory arrangements with the appropriate governmental body having jurisdiction over approved haul roads for construction of the WECS for the maintenance and repair of the haul roads that will be subject to extra wear and tear due to transportation of equipment and components. The permittees shall notify the County Planning Department of such

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arrangements.

b). Turbine Access Roads. Construction of turbine access roads shall be minimized. Access roads shall be low profile roads so that farming equipment can cross them and shall be covered with Class 5 gravel or similar material. When access roads are constructed across streams and drainage ways, the access roads shall be designed in a manner so runoff from the upper portions of the watershed can readily flow to the lower portion of the watershed.

c). Private Roads. The permittee shall promptly repair private roads, easements or lanes damaged when moving equipment or when obtaining access to the site, unless otherwise negotiated with the affected landowner.

d). Dust Control. The permittees shall utilize all reasonable measures and practices of construction to control dust.

8). Soil Erosion and Sediment Control Plan.

The permittees shall develop a Soil Erosion and Sediment Control Plan prior to construction and submit the plan to the County Planning Department. The Soil Erosion and Sediment Control Plan shall address the erosion control measures for each project phase, and shall at a minimum identify plans for grading, construction and drainage of roads and turbine pads; necessary soil information; detailed design features to maintain downstream water quality; a comprehensive revegetation plan to maintain and ensure adequate erosion control and slope stability and to restore the site after temporary project activities; and measures to minimize the area of surface disturbance. Other practices shall include containing excavated material, protecting exposed soil, stabilizing restored material and removal of silt fences or barriers when the area is stabilized. The plan shall identify methods for disposal or storage of excavated material.

9). Decommissioning/Restoration/Abandonment

a). Decommission Plan. Within 120 days of completion of construction, the permittees shall submit to the County Planning Department a decommissioning plan describing the manner in which the permittees anticipate decommissioning the project in accordance with the requirements of paragraph (b) below. The plan shall include a description of the manner in which the permittees will ensure that it has the financial capability to carry out these restoration requirements when they go into effect. The permittees shall ensure that it carries out its obligation to provide the resources necessary to fulfill these requirements. The County Planning Department may at any time request the permittees to file a report with the County Planning Department describing how the permittees are fulfilling this obligation.

b). Site Restoration. Upon expiration of this permit, or upon earlier termination of operation of the WECS, the permittees shall have the obligation to dismantle and remove from the site all towers, turbine generators, transformers, overhead and underground cables, foundations, buildings and ancillary equipment to a depth of four feet. To the extent possible, the permittees shall restore and reclaim the site to its pre-project topography and topsoil quality. All access roads shall be removed unless written approval is given by the affected landowner requesting that one or more roads, or portions thereof, be retained. Any agreement for removal to a lesser depth or for no removal shall be recorded with the County Planning Department and shall show the locations of all such foundations. All such agreements between permittees and the affected landowner shall be submitted to the County Planning Department prior to completion of restoration activities. The site shall be restored in accordance with the requirements of this condition with eighteen (18) months after expiration.

(c). Abandoned Turbines. The permittee shall advise the County Planning Department of

any turbines that are abandoned prior to termination of operation of the WECS. The County Planning Department may require the permittees to decommission any abandoned turbine.

d). Providing Surety. The Planning Director shall decide if it is prudent to include provisions that ensure financial resources will be available for decommissioning. This may include establishing an escrow account into which the project developer/owner will deposit funds on a regular basis over the life of the project. The unit of government shall then have access to the escrow account for the explicit purpose of decommissioning. Financial provisions shall not be so onerous as to make WECS projects unfeasible.

10). Application Contents.

Every application for a commercial WECS permit shall include the following information:

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- a). Name and address of the applicant.
- b). Evidence that the applicant is the owner of the property involved or has written permission of the owner to make such application.
- c). A plot and development plan drawn in sufficient detail to clearly describe the following:
  - i) Physical dimensions and locations of the property, existing structures, and proposed structures.
  - ii) Location of electrical lines and facilities.
  - iii) Existing topography.
  - iv) Proposed grading and removal of natural vegetation.
  - v) Wind characteristics and dominant wind direction is the direction from which 50 percent or more of the energy contained in the wind flows.
  - vi) Setbacks.
  - vii) Ingress and egress identifying the following factors:
    1. Location and distance to the nearest publicly maintained road;
    2. A description of the access route from the nearest publicly maintained road to include:
      - a. Road surface material stating the type and amount of surface cover;
      - b. Width and length of access route;
      - c. Dust control procedures;
      - d. A road maintenance schedule or program.
      - e. Utilization of the property under the requested permit.
- d). Utility interconnection data and a copy of written notification to the utility of the proposed interconnection.
- e). Specific information on the type, size, height, rotor material, rated power output, performance, safety, and noise characteristics of each WECS model, tower and electrical transmission equipment.
- f). A location map to scale of all dwellings within ½ mile of the boundary of the property upon which the WECS are to be located.
- g). If the Planning Director determines it is necessary, the application shall be

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accompanied by a photograph or detailed drawing of each model of WECS including the tower and foundation; and one or more detailed computer or photographic simulation drawing showing the site fully developed with all proposed WECS and accessory structures.

h). An application including any WECS which is located within a 100-year flood plain area, as such flood hazard areas are shown on the maps designated by FEMA, shall be accompanied by a [Flood Plain Development Permit](#).

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i). An application including any WECS which is located within two miles of any microwave communications link shall be accompanied by a copy of written notification to the operator of the link.

j). The types and quantities of wastes, fluids, or pollutants that are proposed to be handled, processed, treated, stored, disposed of, emitted, or discharged at each vessel containing fluid and for the entire project.

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k). Project schedule.

l). Such additional information as shall be required by the Planning Director.

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#### (D). Application Review

##### 1) Administrative Review

An Accessory WECS shall require an administrative review.

The Planning Director will make a decision to approve or deny within fifteen (15) days of submittal or the application is deemed approved. If a [third-party](#) technical study is required, a decision to approve or deny an application may be postponed until the study is complete. Any decision to deny a request to place, construct or modify facilities must be in writing and include specific reasons for the action. The Planning Director's decision can be appealed by the applicant within five (5) working days to the Planning Commission.

##### 2) Conditional Use Permit

A conditional use permit is required for a Commercial WECS.

##### 3) Technical Issues and Expert Review.

[Wind Energy Conversion Systems](#) may involve complex technical issues that require review and input that is beyond the expertise of County staff. The Planning Director may require the applicant to pay reasonable costs of a third-party technical study of a proposed facility. Selection of expert(s) to review the proposal will be in the sole discretion of the County.

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##### 4) Building Permit.

[Administrative and Conditional Use Permit](#) approval of Wind Energy Conversion Systems is separate from the building permit process. Building permits for the construction of facilities can not be issued until the facility is approved through the administrative or conditional use permit process.

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### **Section 2: That Section 13.09 is hereby added as follows:**

#### 13.09 TRAFFIC VISIBILITY

(A). There shall be no obstructions, such as buildings structures, grain bins, baled agricultural products, farm machinery, vehicles or other objects, not including vegetation, within fifty (50) feet from a State, County, or section line highway right-of-way or thirty (30) feet from a platted right-of-way.

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(B). Traffic Visibility Triangle Requirements

- 1) At every intersection of two roads or a road and a railroad right-of-way, there shall be a traffic visibility triangle. Within the triangle, no obstructions such as structures, parking or vegetation shall be allowed between two and one half (2.5) feet and ten (10) feet above the elevation of the roadway. Agricultural crops, such as corn, are exempt from this regulation. Fences shall conform to Section 12.01 of this ordinance.
- 2) Such traffic visibility triangles shall be formed by the intersection centerlines and a line connecting points on the centerlines of the intersection roads or railroad right-of-way one hundred (100) feet distant from the intersecting centerlines.

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**Section 3: That Section 19.02 (B) is hereby amended as follows:**

- (B). Name, address, phone number, and signature of the owner of the property which is the subject of such application.

**Section 4: That Section 25.02 is hereby amended as follows:**

25.02 VIOLATION AND PENALTY. Violations shall be treated in the manner specified below:

- (A). The owner or agent of a building or premises in or upon which a violation of any provision of these regulations has been committed or shall exist, or the lessee or tenant of an entire building or entire premises in or upon which violation has been committed or shall exist, or the agent, architect, building contractor or any other person who commits, takes part or assists in any violation or who maintains any building or premises in or upon which such violation shall exist, shall be guilty of a misdemeanor and shall be punished pursuant to SDCL 7-18A-2. Each and every day that such violation continues may constitute a separate offense. (amended by MC16-19-94)

In case any building or structure is erected, constructed, reconstructed, altered, repaired, converted or maintained, or any building, structure or land is used in violation of these regulations, the appropriate authorities of Minnehaha County, in addition to other remedies, may institute injunction, mandamus or other appropriate action or proceeding to prevent such unlawful erection, construction, reconstruction, alteration, conversion, maintenance or use, or to correct or abate such violation, or to prevent the occupancy of said building, structure or land.

**Section 5: That Section 26.02 is hereby amended as follows:**

679. VISIBILITY TRIANGLE. A triangular area on corner properties within which the placement of certain structures, materials and the like are imposed under the provisions of this ordinance.
- 705A. ACCESSORY WECS. A WECS which is an accessory use to the principal use of the site, in that the power production is no more than twice the annual site need.
- 705B. COMMERCIAL WECS. More than one WECS which are the principal use of the site.
- 705C. WECS TOTAL HEIGHT. The height of the tower and the furthest vertical extension of the WECS.
- 705D. WECS TOWER. The primary structural support of the WECS.

County Planning Commission Minutes

June 25, 2007

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1 <sup>st</sup> Reading	July 3, 2007
Legal Ad. – Argus Leader	July 7, 2007
Public Hearing	July 17, 2007
Fact of Adoption – Argus Leader	July 23 & 30, 2007
Effective Date	August 19, 2007