

**MINUTES OF THE
MINNEHAHA COUNTY PLANNING COMMISSION
August 27, 2007**

A meeting of the Planning Commission was held on August 27, 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
Gordy Swanson – Office of the State's Attorney

The meeting was chaired by Don South.

JOINT MEETING - MINNEHAHA COUNTY AND CITY OF DELL RAPIDS

DELL RAPIDS PLANNING COMMISSION MEMBERS PRESENT: Bob Davis, Dale Dunn, Darrell Donelan, Chair Bob Lamberty, and Chris Mullaney

Item 1 was heard jointly with the City of Dell Rapids.

ITEM 1. CONDITIONAL USE PERMIT # 07-72 to amend CUP #03-94 to include additional property.

Legal Description – That portion of Lot 3A Klein's 1st Addn. previously platted as Lot 5 and the adjacent portion of vacated Steele Street in Section 13-T104N-R50W
Location - 47151 Steele St. Dell Rapids exit of I-29
Petitioner / Owner- John Williams

General Information

Present zoning - C Commercial
Existing Land Use - Commercial
Parcel Size - 5.0 ± Acres

Report by: Phil Kappen

Staff Analysis

The subject property is located at the southeast quadrant of the Dell Rapids interchange on I-29. The properties to the west and north are in commercial uses, to the east are vacant commercial lots and to the south is agricultural land. The petitioner obtained a conditional use permit for automotive sales on the property to the west in 2003 and now wishes to amend the permit to include additional land.

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 property is zoned for commercial uses and meets the location standards for commercial properties as set forth in the Comprehensive Development Plan. The 2003 conditional use permit was approved with the following conditions:

1. The petitioner shall submit a revised site plan for staff approval which shows all hard surfaced areas, required setbacks, location and types of landscape trees, and features such as the wastewater treatment system.
2. All parking and driving surfaces shall be hard surfaced. Any hard surfacing within any or the required setback areas shall be removed.
3. Landscape trees shall be maintained within the required 15-foot setback along I-29 and Highway 115. The trees shall be spaced no greater than 40 feet apart and placed within a non-hardsurfaced area at least six feet in diameter. Deciduous trees shall be a minimum caliper of 1 ¼ inches and coniferous trees shall be a minimum height of 5 feet.
4. All exterior lighting shall be shoe box style that directs lighting downward.

The petitioner has met all requirements with the exception of the planting of trees along State Highway 115. Three of the trees along the interstate, however, have died and have not been replaced.

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

The proposed expansion should have no impact on any continued development in the area. Property to the south is accessible via Klein Avenue. Any further development to the east can be accessed from

Steele Street.

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

The subject property is in the process of being replatted. Steele Street originally ended in a cul-de-sac to the west of Klein Avenue. That cul-de-sac is being removed and a shared access easement platted between the subject property and the property to the north. The replatting meets the requirements of the subdivision ordinance. Access to both the existing portion of the operation and to the proposed expansion area is from Klein Avenue. The petitioner has supplied a revised site plan showing that the expansion parking area will be hard surfaced. The site plan shows that all required set-backs from rights-of-way are being maintained. The petitioner will be required to follow this site plan should the CUP amendment be approved.

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

There is ample space on the property for all required parking. No parking is allowed within the 246th Street, Klein Avenue or replatted Steele Street rights-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 petitioner has installed shoebox style lighting on the existing portion of his conditional use permit property. Similar requirements should be placed on the proposed expansion area.

Recommendation

Staff finds that the proposed use conforms with the types of uses found in commercially-zoned areas and that the proposed use can be conducted in a manner that is consistent with other uses in the area. Staff recommended approval of Conditional Use Permit #07-72 to add additional area to the use approved by CUP 03-94 with the following revised conditions:

1. All aspects of the use shall follow the site plan dated July 30, 2007.
2. All parking and driving surfaces shown on the site plan shall be hard surfaced.
3. Landscape trees shall be maintained within the required 15-foot setback along I-29 and Highway 115. The trees shall be spaced no greater than 40 feet apart. Deciduous trees shall be a minimum caliper of 1¼ inches and coniferous trees shall be a minimum height of 5 feet. Any trees that die shall be replanted within one growing season.
4. All exterior lighting shall be shoe box style that directs lighting downward and prevents the spillage of light beyond the property boundaries.

Public Testimony

The petitioner was not present and no one wished to speak to the item. Mr. Kappen noted that the office had not received any calls about this item. The floor was closed to public testimony.

Based on the staff report and public testimony, a motion was made for Dell Rapids by Davis and seconded by Dunn to approve Conditional Use Permit #07-72 with the conditions as stated. The motion passed unanimously. Same motion for the County by Twedt and seconded by Rogen. The motion passed unanimously.

Item 2 was heard jointly with the City of Dell Rapids.

ITEM 2. CONDITIONAL USE PERMIT # 07-75 to exceed 1200 sq. ft. of accessory building area (3200 sq.ft .requested).

Legal Description – Tract C Klein’s Addn. SW1/4 Section 8-T104N-R50W
Location - 47346 246th St., just west of Dell Rapids
Petitioner / Owner- Stephen Puttmann

General Information

Present zoning - RR-5 Rural Residential
Existing Land Use - Residential
Parcel Size - 5.0 ± Acres

Report by: Scott Anderson

Staff Analysis

The subject property is located on the west edge of Dell Rapids and north of Highway 115. The parcel is

zoned RR-5, Rural Residential, with a required lot size of five (5) acres. This zoning district is only found on the west and south edges of Dell Rapids. The Dell Rapids Comprehensive Plan proposes this area for residential development.

Staff found while researching this property that the applicant has been in violation of the Zoning Ordinance in the past. Specifically, he has been contacted in 2001 and 2003 about operating a landscaping business from the subject property. As a result of these zoning violations, staff wrote the applicant a code enforcement letter about the landscaping equipment, material and use of the property. Given the applicant's past history, staff has concerns that this structure could be used for commercial activities. Staff asked the applicant upon submittal of this conditional use permit application if the proposed structure would be used for any commercial purposes. The applicant responded that the building was for storing personal items and would not be used for any commercial storage or in association with any commercial operation. Upon discovery of the past zoning violations, staff contacted the applicant on August 10, 2007, to discuss the past zoning violations and future use of this over-sized structure. Once again, the applicant indicated it was for his personal use. Should this conditional use permit be approved, there will be a condition restricting the use of the structure to personal use only.

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

The petitioner proposes to exceed 1200 square feet of accessory building area, which requires conditional use permit approval. The applicant will construct one (1) accessory structure that will be 3200 square feet in area. The existing accessory buildings located in this neighborhood range in size from 288 square feet to 3200 square feet. Past actions by the Joint Planning Commissions have limited the maximum allowed accessory building area per lot to 3200 square feet.

The proposed larger accessory structure should not impact the uses or enjoyment of the other properties in the vicinity. An accessory structure should not impact the surrounding property values as they are commonly associated with single family residences.

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

The building size proposed by the applicant is consistent with the development of other properties in the neighborhood.

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

Existing roads and utilities will service the building.

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

Commercial uses are not allowed in the building, so the applicant must only meet the off-street parking requirements for a single family residence, which is two (2). The proposed structure will increase the number of off-street parking spaces to greater than two (2).

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 building will be used for personal storage only, so there should not be any impacts from the above list in significant enough amounts to constitute a nuisance.

To ensure the proper size accessory structure is constructed, a building inspection will be required. This inspection will be conducted by the Minnehaha County Building Inspector, who will measure the outside dimensions of the building.

Staff finds that the requested larger accessory structure to be compatible with the existing development standards of the area. Nine (9) other conditional use permits have been issued for accessory structures exceeding 1200 square feet in Section 8 of Dell Rapids Township. This request is at the maximum approved size of accessory building area in this development.

Recommendation

Staff recommends **approval** of Conditional Use Permit #07-75 to allow a 3200 square foot accessory structure on the above described property with the following conditions:

- 1) The accessory structure area shall not exceed 3200 square feet.

- 2) The accessory structure height is limited to one (1) story.
- 3) No commercial use of the accessory structure shall be permitted.
- 4) A building inspection is required to verify the 3200 square foot size limitation.

Public Testimony

The petitioner, Stephen Puttmann, stated that he agreed to the proposed conditions. When questioned by Commissioner Lamberty, Mr. Puttmann stated that he did not have a landscape business, was not operating a business at this site, and that his son was not operating a business here.

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 for Dell Rapids by Mullaney and seconded by Davis to approve Conditional Use Permit #07-75 with the conditions as stated. The motion passed unanimously. Same motion for the County by O'Hara and seconded by Rogen. The motion passed unanimously.

Item 3 is heard jointly with the City of Dell Rapids.

ITEM 3. ZONING TEXT AMEMDMENTS

Petitioner / Owner- Planning Staff

Report by: Pat Herman

Staff Analysis

The Planning Department is proposing several amendments to the Joint Zoning Ordinance. A copy of the ordinance is attached. Words being removed are shown with a strike through them, additions are underlined.

Section 1: The proposed ordinance amendment for intersection safety zones 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 these concerns and safety issues with the proposed ordinance amendment, which also includes a new definition for "intersection safety zone triangle" in Section 5.

Section 2: 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.

Section 3: This would change the words zoning permit to the words building permit. This term is better understood by the general public. It would also create a new section which specifically addresses zoning permits.

Section 4: This would change the penalty portion of the zoning ordinance to reflect the changes made by the State Legislature for the amount a person can be fined if found guilty of a Class 2 Misdemeanor. Currently the fine is \$200.00 and 30 days in jail. The fine has been increased to \$500.00. The ordinance will refer to that portion of state law which addresses misdemeanors.

Section 5: The definition of an intersection safety zone triangle, building permit and zoning permit.

Recommendation

The joint staff recommended approval of the zoning amendments to the Joint Zoning Ordinance for Minnehaha County and the City of Dell Rapids.

Public Testimony

No one 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 for Dell Rapids by Donelan and seconded by Davis to recommend approval of the Zoning Text Amendment changes. The motion passed unanimously. Same motion for the County by Bunde and seconded by Cypher. The motion passed unanimously.

ORDINANCE MC

AN ORDINANCE AMENDING THE 2001 REVISED ZONING ORDINANCE FOR MINNEHAHA COUNTY AND THE CITY OF DELL RAPIDS BY REVISING THE TEXT PERTAINING TO ZONING AND BUILDING PERMITS, GENERAL PROVISIONS, CONDITIONAL USE PERMITS, AND INTERSECTION TRAFFIC ZONES.

BE IT ORDAINED BY MINNEHAHA COUNTY, SOUTH DAKOTA:

That Ordinance MC28-01, the 2001 Revised Zoning Ordinance for Minnehaha County and the City of Dell Rapids is hereby amended as follows:

Section 1: That Section 13.09 is hereby amended as follows:

13.09 INTERSECTION SAFETY ZONE

(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.

(B). Intersection Safety Zone Requirements

- 1) At every intersection of two roads or a road and a railroad right-of-way, there shall be a intersection safety zone 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 intersection safety zone 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.

Section 2: 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 3: That Article 23.00 is hereby amended to read:

ARTICLE 23.00 **BUILDING ZONING PERMITS**

- SECTIONS:
- | | |
|-------|---|
| 23.01 | <u>Building Zoning</u> Permits Required |
| 23.02 | Application |
| 23.03 | Information on Site Plan |
| 23.04 | Issuance |
| 23.05 | Validity of Permit |

- 23.06 Expiration
- 23.07 Suspension or Revocation
- 23.08 Zoning Permits Required

23.01 BUILDING ZONING PERMITS REQUIRED. It shall be unlawful for any person, firm or corporation to erect, construct, change, enlarge, alter, repair, move, improve, remove, convert, demolish, use, occupy or maintain any building or structure ~~or land use~~ regulated by this ordinance or cause the same to be done without first obtaining a separate building zoning permit for each building or structure ~~or land use~~ change from the Office of Planning & Zoning.

23.02 APPLICATION. To obtain a building zoning permit, the applicant ~~shall first file an application, therefore, in writing on a form furnished by the~~ shall apply at the Office of Planning & Zoning. Every applicant application shall:

- (A). Identify and describe the work to be covered by the permit for which application is made.
- (B). Describe the land on which the proposed work is to be done by legal description, street address or similar description that will readily identify and definitely locate the proposed building or work.
- (C). Indicate the proposed use or occupancy and work proposed.
- (D). Be accompanied by a site plan.
- (E). Be signed by permittee, or his authorized agent, who may be required to submit evidence to indicate such authority.
- (F). Give such other data and information as may be required by the Planning Director.

23.03 INFORMATION ON SITE PLAN. Plans shall be drawn to scale upon substantial paper or cloth and shall be of sufficient clarity to indicate the location, nature, and extent of the work proposed and show in detail that it will conform to the provisions of this ordinance and all relevant laws, ordinances, rule, and regulations.

EXCEPTION: The Planning Director may waive the submission of plans, if he finds that the nature of the work or change in land use applied for is such that reviewing of plans is not necessary to obtain compliance with this ordinance.

23.04 ISSUANCE. The application, plans, building permit fee and other data filed by an applicant for a building zoning permit shall be reviewed by the Planning Director. Such plans may be reviewed by other departments to verify compliance with any applicable laws or requirements under their jurisdiction.

If the Planning Director finds that the work described in an application for a permit and the plans, and other data filed therewith, conform to the requirements of this ordinance and other pertinent laws and ordinances, ~~and that the fees specified in Article 24.00 have been paid, he shall issue a permit~~ the building permit shall be issued.

The Planning Director may issue a building zoning permit for the construction or use of part of a building or a structure before the entire plans for the whole building or structure have been submitted or approved, provided adequate information and detailed statements have been filed complying with all pertinent requirements of this ordinance. The holder of such permit shall proceed at his own risk without assurance that the permit for the entire building, structure, or use will be granted.

23.05 VALIDITY OF PERMIT. The issuance or granting of a permit or approval of plans shall not be construed to be a permit for, or an approval of, any violation of any of the provisions of this ordinance or of any other ordinance of the jurisdiction. No permit presuming to give authority to violate or cancel the provisions of this ordinance shall be valid.

23.06 EXPIRATION. Every ~~building zoning~~ permit issued under the provisions of this ordinance shall expire by limitation and become null and void if the building or work or use authorized by such permit is not commenced within 180 days from the date of such permit, or if the building, work, or use authorized by such permit is suspended or abandoned at any time after the work is commenced for a period of 180 days. Before such work can be recommenced, a new permit shall first be obtained to do so, provided no changes have been made or will be made in the original plans and specifications for such work.

23.07 SUSPENSION OR REVOCATION. The Planning Director may, in writing, suspend or revoke a ~~building zoning~~ permit issued under the provisions of this ordinance whenever the permit is issued in error or on the basis of incorrect information supplied.

23.08 ZONING PERMITS REQUIRED. It shall be unlawful for any person, firm or corporation to change the use or occupancy within any building or structure regulated by this ordinance, or cause the same to be done without first obtaining a separate zoning permit for each use or occupancy change from the Office of Planning & Zoning. If the Planning Director finds that the change described in an application for a permit and the plans, and other data filed therewith, conform to the requirements of this ordinance and other pertinent laws and ordinances, the zoning permit shall be issued. A zoning permit shall be subject to the regulations of Section 23.06 Expiration and Section 23.07 Suspension or Revocation as outlined in this ordinance.

Section 4: That Section 25.02(A) is hereby amended to read:

- (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 ~~by a fine not to exceed \$200.00, 30 days in jail, or both.~~ pursuant to SDCL 7-18A-2. Each and every day that such violation continues may constitute a separate offense.

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:

109. BUILDING PERMIT. A document signed by County Planning Director or an authorized representative as a condition precedent to the commencement of a use or the erection, construction, reconstruction, restoration, alteration, conversion or installation of a building, which acknowledges that such use or building complies with the provisions of the zoning regulations or an authorized variance there from.

341. INTERSECTION SAFETY ZONE 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.

735. ZONING PERMIT. A document signed by the County Planning Director or an authorized representative as a condition precedent to the commencement of a use or the erection, construction, reconstruction, restoration, alteration, conversion, or installation of a building, which acknowledges that such use or building complies with the provisions of the zoning regulations or an authorized variance there from.

A document signed by the County Planning Director or an authorized representative as a condition precedent the commencement of a change in use or occupancy within any building or structure, or land regulated by this ordinance, which acknowledges that such use or occupancy complies with the provisions of the zoning regulations or an authorized variance there from.

1 st Reading	September 11, 2007
Legal Ad. – Argus Leader	September 19, 2007
Dell Rapids Tribune	September 19,2007
Public Hearing	October 2, 2007
Fact of Adoption – Argus Leader	October 17 & 24, 2007
Dell Rapids Tribune	October 17 & 24,2007
Effective Date	November 13, 2007

APPROVAL OF THE CONSENT AGENDA

Items 8 & 11 were placed on the regular agenda at the request of the Planning Commission. A motion was made by Bunde and seconded by O’Hara to approve the consent agenda (Items 8 & 11 removed). The motion passed unanimously.

ITEM 4. MINUTES – July 23, 2007

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

ITEM 5. CONDITIONAL USE PERMIT # 07-63 to allow a 2400 animal unit concentrated animal feeding operation.

Legal Description –N1/2 NW1/4 in Section 15-T103N-R50W
 Location - 46931 252nd St. 2 miles east of Lyons
 Petitioner / Owner- Todd & Dana Sundal

General Information

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

Report by: Phil Kappen

Staff Analysis

The subject property is located to the south 252nd street and approximately 5/8 mile west of 470th Avenue. The surrounding properties are agricultural with a few acreages. The petitioner currently has 1500 finisher swine and wishes to construct a 2400 head (999 Animal Unit) finisher swine barn. The barn would replace the existing facility and the petitioner has indicated that all livestock would be kept in the new structure.

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

The proposed facility would be an upgrade of the existing feeding operation and will allow better management of the manure on the site. The petitioner would keep all livestock in the new building which would leave any existing buildings for agricultural storage. These buildings may not have currently approved waste management facilities so should not be used for livestock without added approval.

The target distance criteria for a 999 A.U. facility is 1980 feet. The only homes within that distance are those of the petitioner and his father, who would both be involved in the operation. Therefore, the proposed facility meets the target criteria distances from other homes. Waste would be contained in deep pits below the building and all liquid waste would be injected. This would further reduce the potential for odor even though the facility meets the criteria targets.

Pest control on the site will be conducted through the use of sprays and feed additives. Dead animals will be removed by a rendering company.

The 999 A.U. facility is right at the threshold for a state operating permit. The petitioner should be required to obtain such a permit to ensure that the facility is operated in an environmentally-friendly manner.

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

The majority of the property in the area will continue to be used for agricultural purposes. The upgrading of this facility should have no impact on the continued use of the area for agriculture.

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

Access to the site would be via an existing driveway off of 252nd Street which passes through the farmstead.

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

There is ample space on the site for any required parking. No parking is allowed on any road 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.

As has been previously noted, the use of a deep pit beneath the building for manure storage and the injection of the manure will greatly reduce the potential for odor.

Recommendation

Staff finds that the proposed use is consistent with the types of uses found in the agricultural zoning district and that the proposed upgrade of the feeding operation will improve the situation at the site. Staff also finds that the proposed use can be conducted in a manner that will minimize any potential for impact on surrounding properties. Staff, therefore, recommended approval of condition use permit # 07-63 with the following conditions:

1. The site shall be limited to a 999 A.U. swine finishing facility.
2. The petitioner shall obtain a general operating permit from the South Dakota Department of Environment and Natural Resources. Copies of all approval letters from the state shall be submitted to the county planning office.
3. As a part of the state permit the petitioner shall prepare and update as needed a nutrient management plan. All manure management on the site shall be conducted according to the approved plan. An executive summary of the approved plan shall be submitted to the county planning office as well as executive summaries of any future updates to the plan. A copy of the full plan shall be submitted to the county planning office upon request.
4. The old livestock buildings that are being replaced by the new structure will not be used for livestock, but can be utilized for other farm-related storage.
5. All liquid animal waste from the operation will be injected into the ground for agronomic uses.
6. Dead animals will be removed from the property by a rendering company and will be removed within the time frames established under South Dakota laws and regulations.

Based on the staff report, a motion was made by Bunde and seconded by O'Hara to approve Conditional Use Permit #07-63 with the conditions as stated. The motion passed unanimously.

ITEM 6. CONDITIONAL USE PERMIT # 07-64 to allow a wind anemometer tower.
Legal Description – NW1/4 (Ex. Tract 1 Crisps Addn.) in Section 13-T104N-R48W
Location - 3.5 miles northwest of Sherman
Petitioner / Owner- PPM Energy / Byrne Crisp

General Information

Present zoning - A-1 Agricultural
Existing Land Use - Agricultural
Parcel Size - 35 Acres

Report by: Pat Herman

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 and white. 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 east of 483rd Ave., and just under a mile south of Jasper Street.

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.

483rd Ave. 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 finds that the proposed temporary tower is acceptable to the area. Staff recommended approval of conditional use permit #07-64 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 Bunde and seconded by O'Hara to approve Conditional Use Permit #07-64 with the conditions as stated. The motion passed unanimously.

ITEM 7. CONDITIONAL USE PERMIT # 07-65 to allow 2 single family dwellings.
Legal Description – NW1/4 (Ex. Swancutt's Tr. 1.) in Section 33-T102N-R47W
Location - 1 mile north of Valley Springs
Petitioner / Owner- Lester Swancutt

General Information

Present zoning - A-1 Agricultural
Existing Land Use - Agricultural
Parcel Size - 35 Acres

Report by: Phil Kappen

Staff Analysis

The subject property is located along 486th Avenue between ½ and 1 mile south of the Valley Springs I-90 exit. The surrounding properties are in agricultural uses with a few scattered non-farm acreages. The subject property has a total of three building eligibilities, two of those by conditional use permit. The petitioner proposes to sell two acreages along 486th and leave the other eligibility with the agricultural property.

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

The proposed locations for the two homes are across the road from an existing acreage (north house) and in the southwest portion of the quarter section. As the area is agricultural, Right-To-Farm Notice Covenants would have to be filed on the properties prior to any building permits to ensure that potential owners are made aware of the nature of farming operations in the area. There are no existing CAFO near these proposed locations.

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

The predominant land use in the area will continue to be agricultural. The subject property will still have one remaining building eligibility. The placement of that eligibility should be restricted to along 261st Street (see section 3).

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

There are two existing driveways off of 486th Avenue (Co. Hwy 105), one approximately 1000 feet south of the NW section corner and one at the ½ mile line. Both of these sites have good sight distance along the highway. The petitioner proposes to use these existing driveways. Other portions of the ½-mile distance do not have good sight distances, also, it is not advisable to increase the number of access points onto a highway. Therefore, the one remaining eligibility on the quarter section should be required to access 261st Street, a township road.

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

There is ample space on the site for any parking required for the approved residential uses. No parking will be allowed within any road right-of-ways.

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 outside lighting should be limited to shoebox style lighting that directs the light downward.

Recommendation

Staff finds that the proposed use can be accommodated in a manner that minimizes any potential for conflict with neighboring properties. Staff, therefore, recommended approval of conditional use permit #07-65 with the following conditions:

- 1) The residential acreages shall be platted and a right-to-farm notice covenant filed on the properties prior to the issuance of any building permit.
- 2) The two acreages shall utilize the existing driveways onto 486th Avenue (County Highway 105). No additional access will be allowed onto the county highway. The remaining agricultural land and the building eligibility that goes with that land shall be accessed via 261st Street to the north.
- 3) All outside lighting shall be of a shoebox style that directs light downward and prevents the spillage of light beyond the boundaries of the property.

Based on the staff report, a motion was made by Bunde and seconded by O'Hara to approve Conditional Use Permit #07-65 with the conditions as stated. The motion passed unanimously.

ITEM 8. CONDITIONAL USE PERMIT # 07-68 to exceed 1200 sq. ft. of accessory building area (1800 sq. ft. existing, 2400 sq. ft. total requested).

Legal Description – S214.23' W305' E610' & S214.23' E305' NE1/4 SE/4 in Section 16-T102N-R48W
Location - 25875 481st Ave. 1.5 miles north of Brandon
Petitioner / Owner- Randall Eggert

Item 8 was placed on the regular agenda at the request of the Commission.

ITEM 9. CONDITIONAL USE PERMIT # 07-70 to exceed 1200 sq. ft. of accessory building area (1344 sq. ft. existing, 2128 sq. ft. total requested).

Legal Description – Lot 4 Block 1 Red Rock Estates in Section 31-T102N-R47W
Location - 48403 Red Rock Road ½ mile east of Brandon
Petitioner / Owner- Victor Wedeking

General Information

Present zoning - A-1 Agricultural
Existing Land Use - Residential
Parcel Size - 1.12Acres

Report by: Pat Herman

Staff Analysis

The site is located a quarter mile east of the Brandon city limits. The property is part of Red Rock Estates, an established residential subdivision. Lot sizes in the area range in size from 1 acre to 3 acres.

The petitioner is requesting to exceed 1200 sq. ft. of accessory building area and conditional use permit approval is required as detailed by the zoning ordinance. Currently there is a 1344 sq. ft. accessory building on the property. The petitioner would like to add a 784 square foot addition to that building. The building sits on the east side of the lot and is accessed from Red Rock Road.

Existing accessory building area on lots in this neighborhood ranges from 240 square feet to over 3024 square feet. With the addition the petitioner would have a total of 2128 square feet of accessory building area which, while one of the largest in the neighborhood, would still be under the existing maximum in this vicinity.

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

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

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

property for uses predominant in the area.

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

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

Access on this lot is from Red Rock Road using an existing driveway.

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

There is sufficient parking for any allowed uses on this property.

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

This building should not create any offensive odors, fumes, dust, noise or vibrations.

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

Recommendation

Staff finds that the proposed building area conforms to the general accessory building areas on other lots in the area. Staff recommended approval of conditional use permit #07-68 with the following conditions:

- 1) The total accessory building square footage shall not exceed 2,128 square feet.
- 2) The building shall be used for the personal storage only. No commercial or business uses or storage shall be allowed.
- 3) The building shall not exceed one story in height.
- 4) A building permit is required prior to the start of construction.
- 5) A building inspection is required.

Based on the staff report, a motion was made by Bunde and seconded by O'Hara to approve Conditional Use Permit #07-68 with the conditions as stated. The motion passed unanimously.

ITEM 10. CONDITIONAL USE PERMIT # 07-71 to allow an auto body shop.

Legal Description – Lot 1A, Block 1 Green Valley Addition in the NE1/4 in Section 12-
T102N-R50W

Location - 2 miles north of Sioux Falls

Petitioner / Owner- James & Stacy Miron

General Information

Present zoning - I-1 Light Industrial
Existing Land Use - Vacant
Parcel Size - 2.3 Acres

Report by: Scott Anderson

Staff Analysis

The applicant is requesting a conditional use permit to operate an auto body shop on the subject property.

The applicant has indicated in a narrative that approximately one half of the large portion of the building will be used for auto repair and the other half will be used for the paint shop. There will be a 30 foot by 60 foot office area and a fenced area that appears to be approximately 40 feet by 60 feet. Staff has indicated to the applicant that any outdoor storage must be screened.

Staff conducted a site inspection on August 13, 2007 and found a number of commercial and industrial uses in the area. Lot 1A is the first of the lots to be platted in the extension of the Crooks Exit Industrial Park area. The surrounding lots have not been platted, although a preliminary plat has been approved.

The applicant has provided a site plan that shows the paved parking area, signage and required parking setbacks from the road. The business will be utilizing an on-site wastewater disposal system, which will be located in the large grassy area to the north of the building site.

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

This is an industrial area, so the proposed use blends in quite well and should not impact the use and enjoyment of the property in the area. This type of business will not impact property values, provided no auto body parts are stored in the open. The closest uses to the south are an existing contractor's storage building and 2 mini-storage buildings.

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

This is the first building and use in the newly platted industrial expansion area. The proposed use should not impede future industrial type development of the area.

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

As part of the preliminary plat, the developers have prepared a drainage plan for the entire development area. The site has been graded to provide drainage from the site. The roads have been constructed meeting County specification or surety has been posted for their construction. Minnehaha Community Water will provide water to the site.

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

The applicant is required to provide two (2) spaces for each three (3) employees. The narrative does not indicate how many employees will work at this facility. The site plan indicated twelve (12) spaces, which would accommodate up to eighteen (18) employees, as per the zoning ordinance parking regulations. The customer parking area must be hard-surface. The site plans shows these parking areas to be paved. The storage area appears to be recycled asphalt. This meets the County's 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 applicant will be conducting a business that will produce noise and fumes. The area is located within the industrial area and should not be out of line with noises typically found in an industrial area. The applicant will be required by code to install a dry chemical fire suppression system in the paint booth. In addition, staff will require that the ventilation be adequate to dissipate any fumes.

Staff finds that the proposed use is appropriate for the newly created industrial area. The recommended conditions of approval will ensure that harmonious development will occur.

Recommendation

Staff recommended approval of Conditional Use Permit #07-71 to allow an auto body and paint shop with the following conditions.

- 1) That no inoperable or dismantled vehicles be stored outside the screened area. The 6 foot high screening fence shall provide at least 90% opacity over the full height of the fence.
- 2) That the business operator obtains and maintains a South Dakota sales tax license.
- 3) Any new exterior lighting shall be shoe box style that directs the lighting downward.
- 4) The applicant shall maintain a minimum of twelve (12) off street parking spaces and one (1) loading space.
- 5) That the painting area be ventilated so not to allow any build up of noxious fumes. All required fire and building codes must be met. A dry chemical extinguisher system shall be required in the paint booth area.
- 6) Approval from the Minnehaha County Building Inspector is required prior to the start of operation.
- 7) All signs must meet the requirements of Article 16 of the Minnehaha County Zoning Ordinance.

Based on the staff report, a motion was made by Bunde and seconded by O'Hara to approve Conditional Use Permit #07-71 with the conditions as stated. The motion passed unanimously.

ITEM 11. CONDITIONAL USE PERMIT # 07-73 to amend CUP #06-31 to allow swine buildings to remain for storage.

Legal Description – SE1/4 & SW1/4 NE1/4 in Section 22-T103N-R51W
Location - 25319 464th Ave. 6 miles north of Hartford

Petitioner / Owner- Ron Steineke

Item 11 was moved to the regular agenda at the request of the Planning Commission.

ITEM 12. CONDITIONAL USE PERMIT # 07-74 to allow a 300 animal unit concentrated animal feeding operation.

Legal Description – Tract 1 & 2 Nelson's Addition NW1/4 of Section 28-T102N-R47W
Location - 26012 486th Ave., 2 miles north of Valley Springs
Petitioner / Owner- Ronald Kuipers

General Information

Present zoning - A-1 Agricultural
Existing Land Use - Agricultural
Parcel Size - 25.39 Acres

Report by: Phil Kappen

Staff Analysis

The subject property is located at the intersection of 260 Street and 481st Avenue, ½ a mile north of the Valley Springs exit on I-90. The petitioner wishes to construct an open-face hog barn for 500 finisher hogs and to have about 20 cattle. There are, however, existing zoning violations on the property and, until those violations are abated, staff cannot recommend approval of the CUP.

Recommendation

The petitioner currently has some zoning violations on the property and will be working to correct those problems. Staff recommended that this item be deferred until the October 22, 2007 meeting to allow the petitioner time to correct the existing violations.

Based on the staff report, a motion was made by Bunde and seconded by O'Hara to defer Conditional Use Permit #07-68 to the October 22nd meeting. The motion passed unanimously.

ITEM 8. CONDITIONAL USE PERMIT # 07-68 to exceed 1200 sq. ft. of accessory building area (1800 sq. ft. existing, 2400 sq. ft. total requested).

Legal Description – S214.23' W305' E610' & S214.23' E305' NE1/4 SE/4 in Section 16-T102N-R48W
Location - 25875 481st Ave. 1.5 miles north of Brandon
Petitioner / Owner- Randall Eggert

General Information

Present zoning - A-1 Agricultural
Existing Land Use - Residential
Parcel Size - 3.0 Acres

Report by: Pat Herman

Staff Analysis

The property is located one mile northwest of Corson. This area of the county has a high density of residential development which is interspersed with agricultural uses. Lot sizes in the area range in size from 1 acre to 10 acres.

The petitioner is requesting to exceed 1200 sq. ft. of accessory building area and conditional use permit approval is required as detailed by the zoning ordinance. Currently there is an 1800 sq. ft. pole shed on the property and a lean-to which is approximately 300 square feet. The petitioner would like to add another 600 square foot storage building. This building would be placed on north side of the property, west of the pole shed. At the time the staff report was written, the petitioner was debating on whether the lean-to would remain on the property. The lean-to is used to provide shelter to the livestock (donkeys) on this property.

Existing accessory building area on lots in this neighborhood ranges from 942 square feet to over 6400

square feet. With the addition of the lean-to the petitioner would have a total of 2700 square feet of accessory building area, well under the existing maximum in this vicinity. The property is zoned A-1 Agricultural and part of the building area is used for agricultural 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 construction of this structure should not impede on the enjoyment or use of the surrounding properties or effect property values.

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

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

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

Access on this lot is from 481st Ave. or from a shared access easement which runs along the northern edge of the lot.

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

There is sufficient parking for any allowed uses on this property.

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

This building should not create any offensive odors, fumes, dust, noise or vibrations.

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

Recommendation

Staff finds that the proposed building area conforms to the general accessory building areas on other lots in the area. Staff recommended approval of conditional use permit #07-68 with the following conditions:

- 1) The total accessory building square footage shall not exceed 2,700 square feet.
- 2) The building shall be used for the personal storage only. No commercial or business uses or storage shall be allowed.
- 3) The building shall not exceed one story in height.
- 4) A building permit is required prior to the start of construction.
- 5) A building inspection is required.

Public Testimony

The petitioner, Randall Eggert, stated that he understood the conditions. Commissioner Rogen stated that when Mr. Eggert had previously applied for a dog kennel, the submitted site plan had placed the kennel building on the southern part of the lot, and that Mr. Eggert had stated that was the best spot for a building. Why not put the building there? Mr. Eggert explained that the new building would be used to store hay so access is needed to the building. He does not want to have to drive across the yard. He has installed a gate along the road (access easement) to the north to allow a vehicle to drive right to the building. Mr. Rogen asked if he has paying for accessing the road. Mr. Eggert stated that he did have access to the road but that he had not been asked to pay for any upkeep. The only upkeep that has been done on that road is from the land owner behind the lots, and he is the only one that has put any money in. Up until a week ago Mr Eggert had not used that road at all, however, he does own the lot to the rear which has a building eligibility, so he does have access to the road. The trees that are along the north property line will not be taken out. Commissioner Rogen stated that snow removal could be a real nightmare for the neighbors if the building was put up along the road. Mr. Eggert replied that he had talked with the neighbor behind them and that that neighbor doesn't feel it is going to be a nightmare as far as snow removal. He plans to put up extra snow fences this year to try and keep snow from piling up in the first place. He has discussed this in great detail with his neighbor who uses the road year round, and it should not be a big deal as long as they work together. Mr. Eggert owns a tractor with a snow blade and so does the neighbor.

Commissioner Rogen stated that he had no further questions but would like to see the building moved so

that there would be no problems with the snow. Mr. Eggert stated that the kennel building was never going to be driven to, but accessed by walking. He needs vehicular access to this building in order to store hay in it. He stressed that he does have access to the road as he owns the back lot.

Commissioner Twedt asked if part of this building would be used to provide shelter for the donkeys? And if there were any plans to increase the number of donkeys? Mr. Eggert stated that the building would provide shelter for the donkeys. He continued, saying that there are four donkeys now, he had no plans to increase that number now, and that he is allowed to have up to 20 horses back there. He stated that he did not plan on putting twenty horses back there, he wants to put up a shed. The building will be used to store hay, his motorcycle and other personal items.

Commissioner Rogen asked why the new gate couldn't be used to access the same site where he was planning to put the kennel building. Mr. Eggert explained that he did not want to have drive across the yard, especially if it was muddy. This site is the most logical place for the building.

Bruce & Debbie Lund 25867 481st Ave., stated that they live just to the north of this site. Where they live is zoned agricultural but the development in the area is rural residential with lots of homes. He, and most of his neighbors, take pride in their property, but the Eggert's property looks like a shanty town. Mr. Lund has been the one responsible for cleaning snow off the road for the last 30 years. They have paid their third for road maintenance and have the checks to prove it. He pays to Mr. Grandorff in the back and he hires the maintenance. The road maintenance is supposed to split in thirds as stated on the deeds for the properties. The snow does drift terribly right now with the existing building and there is a drift now where the new building would be placed and this will make it much worse. He wondered if this were approved would the lean-to have to be pulled down? None of the close residential homes have 2 or 3 buildings. The large ones are all to the south. Ms. Lund showed pictures of the proposed site, showing the slope of the land, and a picture of the far southwest corner of the property where they would ideally like the building to be placed. She feels the reason the Eggerts want to put the building along the road is to get the noise and smell as close to them as possible. The far corner of the property would move that away from all the neighbors. Ms. Lund stated that the Eggerts horseshoe drive comes out onto this road so they use it every day. Years ago the Eggerts refused to pay for any upkeep on the road. She had heard that the Eggerts plan to put a lean-to onto this new building. Mr. Lund added that the hay wagons are parked down on the south property line now so they must be able to drive down there.

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

Commissioner Twedt stated that there are two issues, whether to grant the additional space and the location of the building. Commissioner O'Hara stated that the Planning Commission had not addressed storage building placement in the past and wondered if the Commission wanted to even address that issue. Commissioner Rogen stated he wanted to see the building moved to the south. Commissioner Cypher noted that the setback from a township road was 50 feet and that that would be an appropriate setback distance from the north property line. Its not appropriate to build right on top of a driveway, its common sense.

Commissioner Rogen made a motion, seconded by Twedt, to approve the request with the added condition that the building be placed 100' from the north property line.

Commissioner Steinhauer stated that his issue was not with the setback but with the request for 2700 square feet. This location is quite a distance from the larger buildings. 2400 sq. ft. would be double the normal allowed size, which is enough. 2400 sq. ft. has what was applied for on the application. The petitioner will have to decide whether to remove the lean-to or build a smaller building. He is not comfortable with mandating a setback. He noted that any lean-to added onto the new building would count towards the total square footage.

Commissioner South asked for a vote on the motion. The motion failed. Commissioner Steinhauer made a motion to approve the conditional use permit with the staff's conditions, amended to allow a maximum 2400 square feet, based on the fact that it is twice the square footage allowed by the ordinance and that size is in keeping the existing building sizes in this part of the neighborhood. The conditions should also include that a lean-to counts towards the total square footage. Seconded by Twedt.

Commissioner Cypher stated that he feels that there should be a 50 foot setback because the driveway is being used by other people. Commissioner South asked for a legal opinion from Mr. Swanson. Mr. Swanson stated a set back can be imposed as the Planning Commission considers a number of factors in reviewing a conditional use permit application, five of which are listed in the staff report. One of factors

is to look at utilities, access, roads, drainage etc. A setback requirement to help with the upkeep of the driveway would be a reasonable condition.

Commissioner Steinhauer, seconded by Twedt, amended his motion to approve Conditional Use Permit #07-68 with the following conditions:

- 1) The total accessory building square footage shall not exceed 2,400 square feet. Lean-to square footage shall be included in the total square footage assessment.
- 2) The accessory building(s) shall be setback a maximum of 50 feet from the north property line.
- 3) The building shall be used for the personal storage only. No commercial or business uses or storage shall be allowed.
- 4) The building shall not exceed one story in height.
- 5) A building permit is required prior to the start of construction.
- 6) A building inspection is required.

The motion passed unanimously.

ITEM 11. CONDITIONAL USE PERMIT # 07-73 to amend CUP #06-31 to allow swine buildings to remain for storage.

Legal Description – SE1/4 & SW1/4 NE1/4 in Section 22-T103N-R51W
Location - 25319 464th Ave. 6 miles north of Hartford
Petitioner / Owner- Ron Steineke

General Information

Present zoning - A-1 Agricultural
Existing Land Use - Agricultural
Parcel Size - 200 Acres

Report by: Phil Kappen

Staff Analysis

The petitioner obtained conditional use permit # 06-31 in 2006 to allow the replacement of the old swine buildings and the construction of the holding pond. That permit was approved with seven conditions:

- 1) The replacement 2,400 head finisher hog barn (SE1/4) shall be located adjacent to the existing finisher barn in the N1/2 N1/2 SE1/4 of Section 22
- 2) The existing cattle feedlot in the northeast quarter and the swine finishing facility relocating from the southeast quarter of Section 22 shall both be limited to 1000 animal units each.
- 3) The petitioner shall prepare a landscaping plan that covers both facilities for approval by the planning staff. At a minimum, the plan shall include trees and shrubs around both the holding pond area and on south side of the replacement finishing facility. All belts shall be a minimum of five rows in width. All plants in the landscaping plan shall be established with one year of the completion of construction of the holding pond or the replacement barn. Any trees that die shall be replanted within one growing season.
- 4) Both the existing 1000 animal unit feedlot (NE1/4) and the replacement swine facility relocating from the SE1/4 shall obtain permits from the South Dakota Department of Environment and Natural Resources. Copies of all state approved construction plans shall be filed with the Minnehaha County Planning Office.
- 5) As a part of the state permit the petitioner shall have annual nutrient management plans prepared and approved by the state. All waste management shall be performed in conformance with this plan. Copies of an executive summary of the approved nutrient management plan shall be filed with the Minnehaha County Planning Department which show the sites proposed for nutrient application and the means of application. Copies of the full nutrient management plan shall be provided to the county upon request.
- 6) All liquid waste from the feedlot holding pond and all waste from the replacement swine facility shall be injected or knifed into the ground.
- 7) Upon completion of the replacement finishing facility all seven old swine buildings in the SE1/4 shall be removed.

Last month the Planning Commission reviewed the status the conditional use permit and directed Mr. Steineke to meet all conditions except number seven within two weeks and to address number seven within two months. Staff is happy to report that Mr. Steineke has currently met the requirements of all conditions except number 7 and has applied to amend his conditional use permit to allow him to utilize

those buildings for storage.

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 use of the buildings for storage should have little impact on neighboring properties provided that the storage remains inside the buildings and does not become a public nuisance. The buildings are of a size that would allow ample storage space inside.

The old buildings are close enough to the new, replacement swine facility that the state DENR would consider the two sites to be one CAFO. The waste management systems of the old buildings, however, are not approved under current regulations so the site of the old buildings should not be used for livestock purposes without specific approval from the county and the state. All livestock should be contained in the two approved swine buildings and in the approved beef feedlot in the farmstead to the north.

The old buildings should be limited to the storage of the petitioner's own farm-related supplies and materials. No use of the buildings can be made as commercial storage as the property is not zoned for commercial purposes.

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

The use of these buildings for storage should have no impact on the continued use of the surrounding property for agricultural uses, the predominant use in the area.

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

Access to the building site is via an existing driveway onto 464th Avenue (Co. Hwy 149). No other driveways are proposed.

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

The building site is the location of a former farmstead. There is ample parking area on the site and 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.

There should be little additional odor, fumes, dust, noise or vibration from the site if the buildings are used for the storage of the petitioner's own farm-related storage.

Recommendation

Staff finds that the use of the old buildings for farm-related storage is consistent with the use of other agricultural buildings in the agricultural zoning district. Staff, therefore, recommended approval of amendment #07-73 to CUP #06-31 with condition number seven amended to read as follows:

7. The old livestock buildings that are being replaced by the new structure will not be used for livestock, but can be utilized for the petitioner's other farm-related storage. No commercial use is approved for the property and the buildings cannot be utilized for commercial storage.

Public Testimony

Mr. Kappen noted that the petitioner had met all the requirements of the conditional use permit except for the removal of the buildings. If the land were to be sold to a different property owner, the new property owner would have to meet the conditions of this permit. In response to the Planning Commission, Mr. Kappen explained that the manure pits are still under the buildings. When Mr. Steineke applied for this conditional use permit he planned to put his CAFO on this site and the removal of the buildings was written as a condition. At the Planning Commission meeting he decided to move the operation to the north. Commissioner Bunde noted that Mr. Steineke did use the buildings for livestock, despite the conditions. Mr. Kappen noted that Newell Larson had submitted a letter with concerns about these buildings. Commissioner Bunde questioned whether, given the history of this producer, the Planning Department was prepared to police these buildings. She also raised a concern that rendering of the animals had not been addressed in the original application and requested that it be added to the conditions. Mr. Kappen stated that the condition to render the animals is usually put in the conditions but staff had neglected to add that condition. The DENR animal safety board requirements allow animals to be burned, buried, or rendered.

The petitioner, Ron Steineke, stated that he would like to keep the buildings for storage as he cannot find anyone to take them. He agreed that he had some cow/calf pairs in there this spring but that was because his new building had not yet been completed. He feels he could store corn stalk bales in these buildings.

Newell Larson, 25536 464th Ave., is concerned about the weeds on this property. There are three waterways that drain down onto his land. He feels Mr. Steineke should have to stick to the original agreement and that the Planning commission should hold him to that. The old buildings will just become a rat's nest.

Commissioner Twedt expressed her concern with the cost of having to policy the buildings. The decision should either be made to allow Mr. Steineke to have the buildings with no restrictions on the use or to enforce this condition and have the buildings removed. Commissioner Steinhauer stated he was concerned with the weeds and noted that there is a County Weed Board to address noxious weeds.

Dale Froelich, 132 S. Dakota Ave., spoke on behalf of himself and several other neighbors. He asked the Commission to uphold the conditions; otherwise they will have mislead the neighbors. This is a mess with rust and weeds and the manure is still in the pits. The petitioner stated that he had violated the conditions and there is no trust there. The burden should be on the petitioner to remove the buildings.

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

Commissioner Cypher noted that these buildings were designed for a swine CAFO, not as storage buildings. The manure pits should be caved in and cleaned out. The original agreement was to remove the buildings and that should be upheld.

A motion was made by Cypher and seconded by Bunde to add an 8th condition:

8. Dead animals shall be removed by a rendering company.

The motion passed unanimously.

A 2nd motion was made by Cypher and seconded by Twedt to deny the amendment to conditions #7. The motion passed unanimously.

Item 13 was deferred from the June 25th meeting.

ITEM 13. 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 - Agricultural
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 466th and 467th 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 are the predominate land uses 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 260th Street. There are approximately seven (7) residences and one (1) business located in the general vicinity within 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 ten (10) years. Should more sand and gravel extraction be called for, then the applicant will need to amend this conditional use permit to extend the life of the permit.

A haul road will be constructed for truck access onto 466th Avenue. This portion of 466th Avenue is paved. 466th 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. Please note that the proposed use is for rock, sand and gravel extraction as regulated by Article 12.08 and not mineral exploration and development, Article 12.04. Some of the opponents who spoke at the June Planning Commission meeting were referencing requirements in Article 12.04.

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. Originally, 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. After the June Planning Commission meeting where the applicant heard the concerns of the neighbor to the south, they are now proposing to construct a six (6) foot high berm along the south side of the haul road adjacent to the Goos property. The berm will be seeded with vegetation.

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. The applicant has offered to pave this portion of the haul road to minimize the dust. The balance of the haul road shall be treated with a dust suppressant so that dust is eliminated. 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.

On August 14, 2007, the applicant provided the Planning Department with a hydrogeologic review of the site prepared by Leggette, Brashears & Graham, Inc. The study provides information on the site, background information, information on the geologic setting, site reconnaissance and data review, some discussion of the finds and a conclusion. The sand and gravel formation exists from a depth of approximately four (4) feet to twenty-six (26) feet. The ground water level in this area ranges from six (6) feet to greater than thirteen (13) feet. The study indicated that no dewater will result from the mining activities. The mining activity may be both above and below the water table. If the mining occurs below the water table a drag line will be used in the mining activities and there will be no dewatering. The study anticipates no impact to surrounding shallow and deep wells as a result of the mining operations. LBG indicated that a dewatering permit would be required by the S.D. Department of Natural Resources – Water Rights Division should any dewatering be planned in the future. LBG concludes that based upon the geologic and hydrogeologic information they reviewed and the mining method, that the quarrying operation will not adversely impact the ground water quantities or elevations in the wells utilizing the surficial or deeper quartzite aquifer.

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 466th Avenue. The applicant has provided an agreement with Hartford Township for the use of 466th Avenue. The applicant will be responsible for maintenance of 466th Avenue. Staff will require that the applicant meet all of the requirements of the haul road agreement in the recommended conditions of approval. The applicant has provided a revised haul road proposal which call for the portion of the haul road adjacent to the Goos RV property to be hard surfaced. Staff will include this in the recommended conditions of approval.

The S.D. Department of Transportation has indicated that the paved portion of 466th Avenue is under their jurisdiction. The DOT has indicated that this road may not be able to sustain continuous heavy truck traffic. The DOT reviewed the surfacing on 466th Avenue and determined that it has a 4-5 inch asphalt matt over a 8-9 inch granular base. This construction is equivalent to most county highways in Minnehaha County. On August 14, 2007, Craig Smith, SD Department of Transportation Regional Supervisor, contacted staff and indicated that 466th Avenue is constructed sufficiently to handle the truck traffic but should be inspected annually to determine if any maintenance due to the truck traffic is required. Staff will include this in the recommended conditions of approval.

The Zoning Ordinance indicates that consideration of the potential impacts on any County highways to be used as haul routes. The routes proposed by the applicant do not use any County Highways.

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. At the June Planning Commission meeting, the Commission felt that the typical \$5,000.00 surety bond was not sufficient and indicated that a minimum of \$100,000.00 should be posted. Staff will follow this request by the Planning Commission and recommend that a \$100,000.00 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. Restoration of the property will be an ongoing project throughout the twenty (20) year mining plan. During the final phase, the overburden and topsoil will be filled back in and the land will have a gentle slope. 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 applicant shall be required to follow the reclamation requirements of the Minnehaha County Zoning Ordinance as outlined in Article 12(G). The site shall be returned to agricultural use.

The applicant is also required to post a \$20,000.00 surety with the State of South Dakota in order to

obtain the state mining permit. This amount added to the recommended \$100,000.00 surety posted to the County should encourage full restoration of the site. The applicant has indicated that they have over 45 years of operator experience in Minnehaha County and value their reputation as good business people.

Security – The Zoning Ordinance suggests that the sand and gravel operation site should be secured during non-working hours by means of gates and fencing. The gates and fences should remain in place until all required reclamation activities have been completed. Staff will include these considerations in the recommended conditions of approval.

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 revolve 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 twenty (20) years. Staff is recommending that all mining activities conclude within ten (10) 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 466th 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 and/or Benton Township (whichever maintains the road) for the use of 466th Avenue. An annual inspection shall be conducted by the S.D. Department of Transportation and the applicant shall be required to make any repairs resulting from the mining truck traffic.
- 6) The east/west haul road shall be hard surfaced for a distance of at least 408 feet from the 466th Avenue right-of-way line. The balance of the haul road shall be treated with a dust suppressant material.
- 7) 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 PM¹⁰ (10 micrometers or less in size) shall be consistent with the regulations of the State of South Dakota.
- 8) 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.
- 9) 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.
- 10) That one (1) off-street parking place for each employee and two (2) customer off-street parking spaces shall be provided.
- 11) The boundaries of the extraction area shall conform to the site plan submitted with the application.
- 12) Topsoil shall remain on the site and be used in final reclamation.
- 13) Only clean fill shall be used as backfill.
- 14) There shall be no storage or accumulation of inoperable or discarded equipment or parts.
- 15) A gate shall be required at the haul road entrance to the property.
- 16) That all mining activity is concluded by January 1, 2018 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, 2018 in accordance to all requirements outlined in Article 12(G) of the Minnehaha County Zoning Ordinance.
- 17) 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.
- 18) That the applicant provides the Minnehaha County Auditor with a surety bond or cash in the amount of \$100,000.00.
- 19) 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.
- 20) The sand and gravel operations shall be secured during non-working hours by means of gates and fencing. The property shall be continuously secured until all required reclamation activities have been completed.
- 21) The applicant shall construct a berm at least six (6) feet in height located between the haul road and the Goos RV property and extending at least 50 feet past the Goos RV east property boundary. A landscape plan for the berm shall be submitted to the Planning Director for review and approval. The berm shall be constructed prior to any sand, gravel or other material being removed or sold

from the subject property.

Public Testimony

Commissioner Twedt questioned what criteria had been used to increase the amount of surety bond required from the previously use \$5000 to the recommended \$100,000. Commissioner Cypher noted that the \$100,000 should be a minimum and that it costs at least \$2 per cubic yard to move dirt. Mr. Anderson noted that, in Pennington County, they had not required a surety bond. Commission Twedt noted that we need to determine a scientific method for determining the bond amount.

The petitioner, Dick Haas, was present. Benson Farms would continue to own the land, contracting with Myrl & Roy's Paving for aggregate removal. He noted that they also want proper reclamation after the mining, but were concerned about the jump in the surety bond.

Sue Unzelman, President of Myrl & Roys Paving, explained why they were proposing this location. She displayed a map of existing aggregate mining areas west of Sioux Falls showing gravel along the Skunk Creek corridor. She noted that there are no gravel pits close to Sioux Falls to the north, south or east. She provided statistics showing approximately 11 tons of aggregate are used per capita per year. This is a rural setting and thereby less homes are impacted. This is not a year-round operation. Operation is only during construction season and only when weather conducive to mining. They are asking to be allowed to mine during daylight hours. She discussed the site plan for the property and noted the locations of gravel extraction, berms, scale, haul roads, and the flood plain. Myrl & Roys has agreed to patch and repair 466th Avenue to Hwy 38 as determined by the DOT. A hydrologic study of the area showed that the mining would not impact water quality or well levels in the area. The company has worked at their other sites to address neighbors concerns. There has not been any loss of property value on areas around their other sites, in fact 42 new homes have been built near their quarry east of Sioux Falls since they began expanding that site in 1997. They feel that the \$100,000 bond is not consistent with the county's actions in the past and that their company's reputation does not merit the increaser in the surety bond. She showed pictures of completed reclamation on other sites they have mined. Ms. Unzelman said that there is a great economic impact on development based on the distance that the gravel must be hauled. Often the cost to transport the gravel is greater than the cost to produce the gravel. Most of the gravel they produce is used for public projects (township, county or state projects). Commissioner Cypher questioned whether their truck fleet was tarped. She responded that a portion of the fleet is tarped, but not all trucks.

Commissioner Twedt asked for clarification on which of the proposed conditions they were seeking to change. Ms. Unselman said that they would like a 20-year operation instead of the proposed ten years, day light hours for the mining instead of the proposed hours of operation, and the \$5,000 bond instead of the proposed \$100,000 surety bond.

Tom Wilka, 600 S. Main Ave., representing Goos RV, spoke to the potential impact on safety and traffic in the area. He said that the DOT plans on doing a safety study, but not for a couple of years. He reported that a study of traffic accidents showed that there were 52 accidents in the last five years within an approximate ½ mile radius of the haul road entrance onto Highway 38. Eighteen of those accidents were strictly on I-90 and would not be applicable to the traffic coming from the site. He questioned how trucks would be coming and going on a daily basis and noted that there is already much traffic due to Goos RV. A large number of gravel trucks could produce a difficult situation for the business. The only reason that the gravel pit proposes to place the haul road next to the RV business is that it is more convenient for Myrl & Roys. His client still has to deal with the noise, dust and traffic. He showed pictures of Myrl & Roy trucks that are overloaded (gravel visible above the side of the truck). He noted that a bond of \$120,000 would still be inadequate. He also questioned the hydrologic study and said he does not believe that wells would not be impacted.

Nathan Lucas, representing Alfred and Donna Lupien, submitted a petition signed by 55 people in the

area who are opposed to the gravel pit.

Lee Goos, Jr., 26036 466th Ave., manages the RV sales business, lives on that site, and two years ago bought one of the lots on the bluff above the Skunk Creek with the hope of building a house. The proposed access road would be right next to his current house. The only reason they applicant doesn't want to move the road further north is it would be closer to his (the applicant's) home. Mr. Goos' multimillion dollar business has been there for fifteen years and is also seasonal, the same season as the gravel business, so there would be a good potential for conflict. Many of their customers have never driven an RV before and the increased traffic would create a safety problem. The road (466th Ave.) is already broken up. The gravel pit would be an eyesore right along I-90. He questions whether he will now build a new house because he would have to look down on a gravel pit.

Donna Lupien, 25950 Andresen Ave., stated the original owner of the properties to the north were relatives of Dick Haas. She feels they had a long term plan to sell off the building sites and then apply for the mining permit, knowing no one would be the home sites after they began mining. She feels she got screwed by the deal.

Kristi Nimick, 46685 Hwy 38, stated that 80-90 trucks a day are using the pit south of Hwy 38. This new pit will double the amount of trucks in the area and she is now stuck between two mining operations. The trucks should be tarped. The intersection needs to be made safer.

Robert Willard, 25551 Stoneway, noted that some places require trees to help with dust control. He thinks the Planning Commission is crazy if they believe there will be enough black dirt on this site to fill back in the hole that will be created.

Leonard Maxwell, 1710 E. 2nd St., stated that this will be disaster on Hwy 38 with trucks coming from both mining pits in the area.

Sue Unzelman, responding to comments, stated that the 1000' setback from existing homes is measured from the area that will be mined, not the property lines. She explained that after reclamation, the elevation will be somewhat lower. The ground will be sloped for drainage but the ground will never be restored to the level it is at today. The property owners of the land they have reclaimed at other sites are all happy with the results.

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

Commissioner Steinhauer stated that gravel is needed to continue growth in the community and it is only found in certain sites. This location, with access directly onto a hard surfaced road, is better than some other locations. Commissioner Cypher agreed that we need to support our local resources but feels it is extremely important to limit the extraction time to 10 years. Commissioner Twedt noted that it is fortunate that this is a growing community and that this is a great company with a great reputation. Economic development is an important consideration for the planning commission. Growth is going to the south into Lincoln County and it is important to support development in Minnehaha County. That support includes the resources that need to be available for development. This application meets all aspects of the County ordinances and she will be proud to support it. Commissioner Steinhauer stated that he was not in support of extending the operational hours as there are rural residences in the area. He also agrees with limiting extraction time to 10 years. He is not sure what to do about the surety bond. Commissioner Cypher feels that a \$100,000 bond is too low.

Stating that the applicant had addressed the questions raised at the first hearing and made progress with adding the berms, a motion was made by Steinhauer and seconded by Twedt to approve Conditional Use Permit #07-51 with the conditions as stated. The motion passed unanimously.

ITEM 14. CONDITIONAL USE PERMIT # 07-62 to amend CUP #06-85 by expanding areas of operation of sand and gravel extraction.

Legal Description – NW 1/4 NE 1/4 including Sudenga's Tract 1, Section 23-T102N-R48W
E 1/2 NE 1/4 NW 1/4, Section 23-T102N-R48W and the SE 1/4 (except
S 750', W 1108.44"), Section 23-T102N-R48W

Location - east and north of Corson

Petitioner / Owner- Sweetman Construction

General Information

Present zoning - A-1 Agricultural
Existing Land Use - Agricultural
Parcel Size - 62.92 Acres

Report by: Scott Anderson

Staff Analysis

On September 24, 2001, the Minnehaha County Planning Commission approved Conditional Use Permit #01-85 to allow sand processing, rail loading and unloading of sand and gravel, concrete ready mix plant and accessory activities with the following conditions:

- 1) There shall be no buildings or fuel containment facilities constructed within the FEMA designated 100-year flood plain area.
- 2) Buildings, conveyors, and other on-site structures shall consist of earth tone colors to visually blend into the area.
- 3) The existing haul road from the east boundary of the site to the scale house shall consist of a recycled asphalt surface.
- 4) Fugitive dust control measures shall be employed on all driving surfaces around the sand processing plant.
- 5) All facilities and operations shall comply with state and federal air quality standards and utilize the most reasonable available technology to control fugitive dust.
- 6) The existing shelter belt along State Highway 11 shall be extended as shown on the site plan dated 9/18/2001.
- 7) The shelter belts as indicated on the site plan dated 9/18/2001 shall be maintained.
- 8) The sand processing plant and concrete ready mix plant shall be limited to the hours from 6:00 am to 8:00 pm except as authorized by the Planning Department.
- 9) Recycled concrete or asphalt shall not be stored on site. Unused concrete from the ready mix plant shall not be allowed to accumulate on the property.
- 10) A non-point discharge elimination system (NPDES) permit shall be obtained for the site.
- 11) All other required federal and state permits shall be obtained for the facility.
- 12) The facility shall comply with all plans submitted to the planning staff.

The applicant is now requesting to amend the existing conditional use permit to allow for rock, sand and gravel extraction from additional property. The additional property equals approximately 180 acres located in two (2) areas, north and south of the existing mining area.

Staff conducted a site inspection with Jon Mulloy, agent for the applicant, on August 15, 2007. Staff was able to observe the conveyor belt operating and load sand into rail cars. The tour included driving around the entire exterior of the operation and noting the existing and possible future residences. The views from various parcels were noted to determine if the future sand and gravel operations would impact them.

Buffer area - The suggested minimum setback between extraction areas and existing residences is 1000 feet. The applicant has indicated that there is one (1) residence located within the 1000 feet buffer area. They have indicated that the owner of this residence is willing to sign a waiver as required in the Zoning Ordinance.

Hours of operation - The zoning criteria suggests 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. There is a future building site along 260th Street whose view will be impacted by future mining. In order to minimize this impact, staff is recommending that a berm be constructed along the west side of 483rd Avenue along the subject property from the north boundary to the bottom of the draw and creek. The berm shall not be located in any FEMA designated 100-year flood plain.

The applicant is proposing berms along the south area running southwest to northeast across the property. Another berm is proposed within property located northeast of the current operations. This area is not included in the CUP request.

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 applicant will not be constructing any additional haul roads. The operator primarily utilizes railcars loaded with a conveyor belt. No additional haul roads have been indicated on the site plan.

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.

The applicant has provided a hydrological study to staff for review. During the tour of the site on August 15, 2007, it was indicated to staff that the sand and gravel overlay a layer of clay. Once the sand and gravel is extracted the clay remains and is reclaimed with topsoil. The ground water is located below and in the clay formation.

Haul roads - The most common problem associated with extraction operations is the use of gravel township roads for truck hauling. In this case, no new haul roads will be constructed. All interior roads lead to S.D. Highway 11.

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. The Planning Commission feels that the typical \$5,000.00 surety bond was not sufficient and has indicated that a minimum of \$100,000.00 should be posted. Staff will follow this request by the Planning Commission and recommend that a \$100,000.00 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. Restoration of the property will be an ongoing project. There are several areas that are included in this conditional use permit request. Mining will occur in these areas beginning in 2007 and concluding around 2027. Reclamation will be in phases as the mining activities conclude in one area, it will be reclaimed. Staff is recommending that the subject property be reclaimed by the end of 2028.

Security – The Zoning Ordinance suggests that the sand and gravel operation site should be secured during non-working hours by means of gates and fencing. The gates and fences should remain in place until all required reclamation activities have been completed. Staff will include these considerations in the recommended conditions of approval.

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 revolve around agricultural production. The proposed use should not impact the property values of the agricultural land in the general 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.

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 two (10) 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's haul route is onto S.D. Highway 11. As this is an expansion to the mining activities, no further agreements are needed. 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. This use has been occurring in this location for many years with minimal or no adverse results on the surrounding land uses. The use does not appear to have impaired the growth pattern in the area.

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 #07-62 to allow for an expanded area of 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) The applicant shall obtain a waiver from the owner of any existing residences within 1000 feet of any the subject property prior to commencing with any sand or gravel extraction.
- 6) A berm shall be constructed along the west side of 483rd Avenue along the subject property from the north boundary to the bottom of the draw and creek. The berm shall not be located in any FEMA designated 100-year flood plain. The berm shall be a minimum of six (6) feet in height and vegetated. A landscaping plan for the berm shall be reviewed and approved by the Planning Director prior to any sand or gravel being mined.
- 7) 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 PM¹⁰ (10 micrometers or less in size) shall be consistent with the regulations of the State of South Dakota.
- 8) 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.
- 9) 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.
- 10) That one (1) off-street parking place for each employee and two (2) customer off-street parking spaces shall be provided.
- 11) The boundaries of the extraction area shall conform to the site plan submitted with the application.
- 12) Topsoil shall remain on the site and be used in final reclamation.
- 13) Only clean fill shall be used as backfill.
- 14) There shall be no storage or accumulation of inoperable or discarded equipment or parts.
- 15) A gate shall be required at the haul road entrance to the property.
- 16) That all mining activity is concluded by January 1, 2027 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, 2028 in accordance to all requirements outlined in

Article 12(G) of the Minnehaha County Zoning Ordinance.

- 17) 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.
- 18) That the applicant provides the Minnehaha County Auditor with a surety bond or cash in the amount of \$100,000.00.
- 19) 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.
- 20) The sand and gravel operations shall be secured during non-working hours by means of gates and fencing. The property shall be continuously secured until all required reclamation activities have been completed.

Public Testimony

Commissioner Twedt wondered why this mining operation has different hours and is allowed 20 years to complete, unlike the Benson Farms application. Mr. Anderson stated that the hours were the same. The difference in the time frame is because of the amount of aggregate available and that this is an established operation. Commissioner Twedt stated that the Planning Commission needed to be as consistent as possible, not be arbitrary and capricious and whimsical. Commissioner Cypher stated that the two locations were totally different. This is located in area with I-1 Industrial zoning and little residential use.

The petitioner, John Malloy for Sweetman Construction, agreed that this site is unique. In 1992 Sweetman had to fight to get a conditional use permit for extraction and a lot of the reason had to do with the truck traffic through Corson. In 2001 the company secured permission from Burlington Northern to use the rail to transport the material. They also rezoned the property for the sand and gravel plant and the ready mix plant. Mr. Malloy displayed a PowerPoint presentation detailing where mining will take place. When the mining is complete, the area will be a much flatter, gentler sloping area that is better for crops and horses. He explained that there are two clay layers. The top layer has very fine sand but it is the lower level, the goeey clay, through which water will not penetrate. The land will be reclaimed as the mining occurs. Mr. Malloy suggested that perhaps the surety bond could be based on a per acre fee, allowing a company only to be bonded for the land being mined. This would be similar to the annual fee now charged for un-reclaimed land. Mr. Malloy addressed the issue of limiting the length of time for mining. Ten years is a blink of eye in the mining world which looks out 30-40 years to maintain reserves. The reserves are needed to stay in business; otherwise it would be foolish to invest in the equipment and plant. Ten years is just unrealistic. He noted that this is in an industrial area and that there will be no increase in truck traffic. He asked that the surety bond be set at the original \$20,000. He would also like to maintain his original operating hours.

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

A motion was made by Cypher and seconded by Twedt to approve Conditional Use Permit #07-62 with the conditions as stated.

Commissioner Rogen stated that he agreed the hours could remain the same as the work was done internally, away from any residences and that the plant is operating under those conditions now.

Commissioner Cypher amended his original motion to approve Conditional Use Permit #07-62 with the conditions as stated except that conditions #3 shall read as follows:

- 3) Hours of operation shall be from 6:00 am to 8:00 pm except as authorized by the Planning Department.

Seconded by Twedt. The motion passed unanimously.

ITEM 15. CONDITIONAL USE PERMIT # 07-69 to amend CUP #06-15 by reducing tarping requirements.

Legal Description – E1/2 & E1/2 SW1/4 & NW1/4 of Section 31-T102N-R50W
Location - 2.5 miles east of Hartford
Petitioner / Owner- Reynolds & Gustafson, LLP

General Information

Present zoning - A-1 Agricultural
Existing Land Use - Extraction

Parcel Size - 200+ Acres

Report by: Scott Anderson

Staff Analysis

On March 27, 2006, the Planning Commission approved Conditional Use Permit 06-82 for the extraction of sand and gravel on the above described property. Subsequently, the approval was appealed to the County Board and on April 18, 2006, the County Board upheld the Planning Commission's decision and approved the Conditional Use Permit 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 on the site.
- 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 all of the requirements in the Haul Road Agreement between Benton Township and the applicant dated February 23, 2006 be followed continually.
- 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 PM¹⁰ (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, 2017 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, 2017.
- 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 all trucks be covered/tarped when loaded and leaving the pit area and that the applicant hard surface the ¼ mile of 466th Avenue where it meets Highway 38 on the south.

The applicant has submitted a request to amend the original conditional use permit to change the tarping requirement in condition #19. The applicant has indicated that they are the only sand and gravel operation in Minnehaha County that is required to tarp all trucks leaving the pit area.

It is staff recollection that the tarping requirement was added by the County Board as an attempt to limit dust from truck traffic. Very little dust is generated from the sand and gravel once loaded into the trucks. Tarping primarily reduces rocks that may come off the trucks and strike an on-coming vehicle or a vehicle following the truck. The sand and gravel that is loaded into the trucks typically has enough moisture in it to eliminate dust.

Staff has researched approximately 30 of the most recent conditional use permits issued for sand and

gravel extraction in Minnehaha County and found that none of them required all trucks to be tarped upon leaving a pit area. The applicant has a valid point that this requirement places them in an unfair position compared to other sand and gravel operators in the county. The applicant has offered to tarp their own vehicles when leaving the sand and gravel pit area, but would like to eliminate the requirement to have other trucks cover their load with tarps. The applicant has justified a reasonable case for amending the condition. The tarping requirement has not been placed on any other sand and gravel operators in the county. Staff will recommend approval of the amendment to only require the tarping of the Reynolds and Gustafson's trucks.

Recommendation

Staff recommended approval of Conditional Use Permit #07-69 which would amend the conditions of approval for Conditional Use Permit #06-15. Condition #19 shall be revised to read:

- 19) That all trucks owned by the applicant be covered/tarped when loaded and leaving the pit area and that the applicant hard surface the ¼ mile of 466th Avenue where it meets Highway 38 on the south.

Public Testimony

The petitioner was represented by Pat Knecht. Mr. Knecht stated that this was a straight forward issue. There are 56-57 active pits in Minnehaha County and this is the only one required to tarp all trucks. There are no state or county laws requiring tarps. Pits a mile away don't require tarps. Customers that come from other counties don't know about the tarping requirements, don't have a tarp, and then choose to go elsewhere for their purchase. Local customers are choosing to go to other businesses because they don't want the hassle of dealing with the tarp. Mr. Knecht said they had tried providing tarps but that didn't work either. They are willing to keep the condition that they tarp their own trucks, but it is arbitrary to require that customer's trucks be tarped.

Derek Lauer, 26126 467th Ave., wanted to talk about honesty and integrity. He feels the petitioner is not meeting the conditions and is not doing what they are required to do. He has not seen any trucks tarped but he has seen trucks with the tarp tied onto the back of the trailer. Mr. Lauer believes that the Planning Department and the County Commission have just dismissed his complaints about the trucks not being tarped. On June 28, July 3, August 13, August 14, August 24, and August 27 Mr. Lauer observed trucks leaving the pit without being tarped. He talked to some of the drivers but they still didn't put the tarps on and they pull onto Highway 38 that way. Despite these clear violations the petitioner has not been fined and has faced no consequences. He has also seen them violating the operating hours by starting work early. The petitioner sent the neighbors a letter saying they would build a 10-12' berm around the perimeter of the property but that hasn't happened. Mr. Lauer stated that he had policed this business without any fee to the County. He asked the Commission to uphold the condition.

Scott Anderson stated that Mr. Lauer had given him a copy of the letter which addressed the berm. The berm was not a condition of the conditional use permit.

Merle Ordal, 26117 466th Ave., believes that tarping is the way to go, just like is required to use the landfill. This regulation needs to start somewhere. The condition should be kept as it is.

Hubert Benz, 46709 Meadowlark Ln., is upset that the company has just resisted this and not complied with the requirement. He feels the petitioner is not abiding by state law to have a load that does not spill out. This regulation has just been ignored.

Gary Meyer, 26154 466th Ave., complimented the petitioner on the paved road and noted that this was the first time a gravel company had done that. He feels the tarping requirement should be kept and added to all new permits.

Pat Knecht reiterated that one out of the 57 mining operations should not have to bear the burden of tarping. What is accomplished by that? People in the neighborhood are convinced that if they see a truck

without a tarp it has come from this pit. They do not have any enforcement ability on the drivers leaving the pit. Mr. Knecht noted that they had just approved a pit that didn't have tarping requirements. At this time the current owner and operator are not hauling anything out of the pit, it has all been third party trucks. The petitioner is willing to tarp his own trucks but doesn't think he should have to tarp the others.

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

Commissioner Twedt noted that the County Commission was responsible for placing the tarping requirement on the permit. There was no consistency in this decision, it was arbitrary. The problem with the tarping is that it cannot be policed on a daily basis. The Commission needs to be careful in creating conditions in which there is no money to be able to support the enforcement.

Commissioner Steinhauer stated that consistency is a laudable goal however each situation has mitigating circumstances. A conditional use permit allow for varying conditions to be placed on a use and for review on a case by case business. Commissioner South felt this was an unfair business disadvantage to the petitioner. Commissioner O'Hara noted that it was impossible for the petitioner to police this regulation. Commissioner Cypher opined that this condition should be applauded and that he would like to see it state wide.

In response to the Commissioners, Mr. Anderson stated that when this condition was added at the previous County Commission meeting, the petitioner agreed to the condition because he understood that it was to apply to his trucks, not all trucks using the pit.

A motion was made by O'Hara and seconded by Twedt to approve Conditional Use Permit #07-69 with the stated condition. The motion passed (Cypher nay).