

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

A meeting of the Planning Commission was held on November 26, 2007 at 7:00 p.m. in the Commission Room of the Minnehaha County Administration Building.

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

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

The meeting was chaired by Don South.

CONSENT AGENDA

A motion was made by O'Hara and seconded by Steinhauer to approve the consent agenda with Item 2 removed. The motion passed unanimously.

ITEM 1. MINUTES – October 22, 2007

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

Deferred from the October 22, 2007 meeting.

ITEM 2. 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

Item 2 was placed on the regular agenda.

Deferred from the October 22, 2007 meeting.

ITEM 3. CONDITIONAL USE PERMIT # 07-84 to allow an outdoor storage yard.

Legal Description - Lot 7 Block 3 Brower Addn. in Section 27-T102N-R51W
Location – 46319 Jeffrey St. South edge of Hartford
Petitioner / Owner- Wayne Buseman

General Information

Present Zoning - I-1 Light Industrial
Existing Land Use - Commercial
Parcel Size - 1.0 Acre

Report by: Scott Anderson

Staff Analysis

On November 9, 2007, the applicant sent a letter to the Planning Department asking to have consideration of this conditional use permit withdrawn. He indicated that he has addressed any violation of outdoor storage and does not wish to obtain the conditional use permit.

Recommendation

Staff recommended acknowledgement of the withdrawal of Conditional Use Permit #07-84 at the applicant's request.

Based on the staff report, a motion was made by O'Hara and seconded by Steinhauer to acknowledge the withdrawal of Conditional Use Permit #07-84. The motion passed unanimously.

ITEM 4. CONDITIONAL USE PERMIT # 07-87 to allow a contractor's shop – well drilling.

Legal Description - Lot 4 Block 4 Brower Addn. in Section 27-T102N-R51W
Location – 26066 Ashley Units # 17, 18, & 19 South edge of Hartford
Petitioner / Owner- Doug Chase / Allan Stockwell

General Information

Present Zoning - I-1 Light Industrial

Existing Land Use - Commercial
Parcel Size - N/A

Report by: Scott Anderson

Staff Analysis

The applicant is requesting a conditional use permit to allow a contractor's shop for a well drilling business. The proposed shop would be operated out of units 17, 18 & 19 of the existing multi-unit structure located on the subject property. The applicant has indicated that there will be no outdoor 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.

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. There will be no outdoor storage.

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

This expanded use is located in an existing commercial/industrial area. The proposed use should not impede future or existing industrial development in the area.

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

Ashley Street provides access to the site. Ashley Street is constructed as a gravel road. The Planning Commission has encouraged this development to hard surface the interior roads. Property owners within the development have been pursuing this. Drainage and other needed facilities all appear to have been provided.

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. There is an existing large paved and graveled parking area that will accommodate approximately four (4) vehicles. Staff will recommend that a minimum of four (4) off street parking spaces be provided and maintained.

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

The applicant is conducting a business that may periodically produce some noise. The area is located within an industrial area and should not be out of line with noises typically found in an industrial area.

Staff finds that the proposed use is appropriate for this commercial area, provided adequate parking can be provided. The recommended conditions of approval will ensure that harmonious development will occur.

Recommendation

Staff recommended approval of Conditional Use Permit #07-87 to allow for a well drilling contractor's shop with the following conditions.

- 1) There shall be no outdoor storage.
- 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) That a minimum of four (4) off-street parking spaces shall be provided. The applicant shall continually meet the parking requirements outlined in Article 15 of the Zoning Ordinance.
- 5) All signs must meet the requirements of Article 16 of the Minnehaha County Zoning Ordinance.

Public Testimony

Based on the staff report, a motion was made by O'Hara and seconded by Steinhauer to approve Conditional Use Permit #07-87 with the conditions as stated. The motion passed unanimously.

ITEM 5. CONDITIONAL USE PERMIT # 07-89 to allow a manufactured home.
Legal Description - Tract 2 Gage's Addition SE1/4 in Section 9-T102N-R47W

Location – 48654 258th St. 4.5 miles north of Valley Springs
Petitioner / Owner- Anton Glasser

General Information

Present Zoning - A-1 Agricultural
Existing Land Use - Agriculture
Parcel Size - 3 Acres

Report by: Phil Kappen

Staff Analysis

The subject property is located along 258th Street approximately half way between Garretson and Valley Springs. The surrounding land uses are agricultural with scattered residential lots. In July of this year the Planning Commission approved the transfer of a building eligibility which enabled the placement of a residence on this lot. The petitioner has now purchased the property and wishes to place a double-wide manufactured home on the site.

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

There should be little difference in any potential impact between a stick-built house and a manufactured home. The county's zoning ordinance includes standard requirements for manufactured homes to ensure that the appearance of the home is comparable to that of a stick-built home. A right-to-farm notice covenant will be required to be filed with the Register of Deeds office prior to the issuance of any building permit.

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 surrounding property is agricultural and this is use for which the property is planned in the future. There should be little difference on that use between the use of a stick-built house or a manufactured home.

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

Access would be from County Highway 130 (258th Street). The applicant has received written approval from the Minnehaha County Highway Department for a driveway approach.

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

There is ample space on the property for any parking required by a single-family residence.

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

There should be little odor, fumes, dust, noise or vibration from the uses associated with a single-family residence. Any outdoor lighting should be of a shoebox style which prevents light from spilling beyond the property line.

Recommendation

Staff finds that the placement of a manufactured house on this property rather than a stick-built house should have no appreciable impact on surrounding property uses. Staff recommended approval of conditional use permit #07-89 with the following conditions:

- 1) The structure shall have been constructed on or after July 15, 1976.
- 2) The exterior dimensions of the structure, measured by excluding overhangs, shall not be less than 22 feet.
- 3) The structure shall be supported by a foundation system consisting of walls along the perimeter and piers on the interior. All foundation walls and piers shall extend a minimum of 42 inches below final grade.
- 4) The roofing and siding material shall be consistent with the material used in site-built dwellings.
- 5) The roof pitch shall not be less than a 3 in 12 slope.

- 6) Any outside lighting shall be of a shoebox style that directs light downward and prevents spillage of light beyond the boundaries of the property.

Public Testimony

Based on the staff report, a motion was made by O'Hara and seconded by Steinhauer to approve Conditional Use Permit #07-89 with the conditions as stated. The motion passed unanimously.

ITEM 6. CONDITIONAL USE PERMIT # 07-90 to allow storage units.

Legal Description - Lot 2 Block 1 Brower 2nd Addn. in Section 27-T102N-R51W

Location – 26070 Jesse St. South edge of Hartford

Petitioner / Owner- Jon Maras

General Information

Present Zoning - A-1 Agricultural

Existing Land Use - Residential

Parcel Size - 25.63 Acres

Report by: Scott Anderson

Staff Analysis

The applicant has failed to provide a site plan for review. At this time, it is not possible for staff to prepare an analysis of the proposal. The applicant indicated that he would provide a site plan by November 9, 2007. On November 14, staff contacted the applicant to determine if a site plan was forthcoming. The applicant indicated that he would attempt to prepare one. Staff indicated that this item would need to be continued if a detailed site plan was not provided by noon on November 15, 2007. No site plan was provided. As staff can not review the conditional use permit request, this item will need to be continued to the January 2008 Planning Commission meeting.

Recommendation

Staff recommended that Conditional Use Permit request #07-90 be continued to the January 28, 2008 Planning Commission meeting in order for a detailed site plan to be submitted and reviewed by the Planning staff.

Based on the staff report, a motion was made by O'Hara and seconded by Steinhauer to defer Conditional Use Permit #07-90 to the January 28, 2007 meeting. The motion passed unanimously.

ITEM 7. CONDITIONAL USE PERMIT # 07-91 to transfer two building eligibilities.

From – NW1/4 SE1/4 and from Lot 8 in Section 5-T104N-R52W.

To – NE1/4, east of the lake, in Section 5-T104N-R52W

Location – 9 miles northwest of Colton

Petitioner / Owner- Joseph Redder / Marvin Groeneveld

General Information

Present Zoning - A-1 Agricultural

Existing Land Use - Agriculture

Parcel Size - 40 Acres

Report by: Pat Herman

Staff Analysis

The property is located approximately nine miles northwest of Colton, on the east side of Diamond Lake. This part of Minnehaha County is very rural, there is only one residential structure in this section. The surrounding land use is agricultural.

The petitioner is requesting a transfer of two residential building eligibilities. Both of these eligibilities are located in the interior portion of the section. The transfer would place the potential dwellings adjacent to 456 Avenue. Lake County is just to the north of these sites.

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.

Rural acreages always have some negative impact on farming operations. There are no existing CAFO's in close proximity to the building sites. Much of land in this section is owned by Game, Fish and Parks.

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

The request is in conformance with density zoning and does not increase the number of dwelling units allowed in this section.

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

Access to the property will be from township road 456th Avenue. Buffalo Township does not require culvert or driveway permits. The petitioner has indicated that the two lots will be of a large enough size to prohibit a shared driveway.

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

The lots will be large enough to accommodate any uses association with a single family dwelling.

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

A single family dwelling should not generate a nuisance.

Recommendation

Staff found the request to be in conformance with density zoning and recommended approval of Conditional Use Permit #07-91 with the following conditions:

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

Public Testimony

Based on the staff report, a motion was made O'Hara and seconded by Steinhauer to approve Conditional Use Permit #07-91 with the conditions as stated. The motion passed unanimously.

ITEM 8. CONDITIONAL USE PERMIT # 07-92 to allow a landscape business and tree farm.

Legal Description - Tract 1 Funke's Addn. & Tracts 1 & 2 Klein's Addition NW1/4 SW1/4 of Section 36-T101N-R48W

Location - 26756 483rd Ave. 1 mile southeast of Rowena

Petitioner / Owner- Kim Hofer

General Information

Present Zoning - A-1 Agricultural
Existing Land Use - Agriculture/Residential
Parcel Size - 10 Acres

Report by: Phil Kappen

Staff Analysis

The petitioner currently has one lot (Tract 1 of Funke's Addition) on which he has a single-family home and is purchasing two additional lots (Tracts 1 and 2 of Klein's Addition). Neither of the two Klein Tracts has any eligibility for a residential structure. The one building eligibility on Tract 1 of Funke's Addition is used by the petitioner's existing home. The petitioner plans to use the properties for the production of landscaping trees and shrubs and wishes to operate a landscape business out of the three properties. Such a use is allowable by conditional use permit in the A-1 Agricultural District as long as it is specifically related to a type of agricultural use, i.e. the production of trees or nursery plant material. The petitioner does not plan on having any retail sales on the site.

The petitioner had already commenced the use of Tract 1 of Funke's Addition for a landscape business, however, upon contact by the County Planning Department he ceased that use on the property and removed the landscaping equipment and materials.

The petitioner did not provide a site plan with his application which showed the particulars on how the site would be laid out. It may be that the petitioner has not yet determined where all aspects of the

property, such as any accessory buildings, may be located. The petitioner should be required to supply a site plan for staff approval that shows all details of the property. The petitioner also has some materials on the property that would constitute a public nuisance violation. These include vehicle parts such as tires, old gas pumps and old lighting poles which are stored outside a permanent structure. . Some of these items, such as the light poles, are of a type that might be utilized in a landscape but should be completely screened from public view. A screened outside storage area should be designated on the petitioner's site plan.

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 a type of agricultural use. As the surrounding property is in agricultural uses, it should be possible to operate the proposed use in a manner consistent with neighboring properties.

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 surrounding land will remain in agricultural uses. The use of this property for an agriculturally-related use should not impact the continued agricultural use of the surrounding area. Conditions should be applied to this permit which require that the use of the property for a landscaping business be tied to the continued agricultural production on the property.

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

Access to the property is via County Highway 109 (484th Avenue). No additional driveways may be approved off of the highway without written approval of the Minnehaha County Highway Department. In addition, the two north lots could share a driveway approach that will limit the total number of access points onto the highway. There are some hills on the highway which partially obscure sight distance at certain spots in the highway. Access to the south lot should be either via a frontage road from the northern lots or at a location approved in writing by the Minnehaha County Highway Department. The location of any driveways shall be included on the petitioner's site plan along with copies of any necessary Highway Department approval.

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

There is ample space on the property for any needed parking. As the petitioner does not plan on having any retail sales on the site, there is no need for a specified customer parking area. All setbacks between property lines and parking areas must be observed. A condition can be applied to ensure that there will be no parking of vehicles or equipment adjacent to the highway. The required setbacks should also be indicated in the petitioner's site plan.

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 the primary use of the majority of the property will be agricultural production, there should be no odor, fumes, dust noise or vibration that would not be commonly found in an agricultural area. Any outside lighting should be of a shoebox style that prevents the spillage of light beyond the property boundaries.

Recommendation

Staff finds that the proposed use is a type of agricultural operation and that it can be operated in a manner consistent with surrounding agricultural uses. Staff recommended approval of conditional use permit #07-92 with the following conditions:

- 1) The operation of a landscape nursery and business on this property shall remain secondary to the use of the property for agricultural uses and for one single-family residence. A minimum of 50% of the total property shall be maintained in agricultural production, specifically the production of landscaping plants. At least fifty percent of the property must be established to the production of such nursery plants by July 1, 2008.
- 2) Tract 1 of Funke's Addition and Tract 1 of Klein's Addition shall share 1 driveway access off of County Highway 109. Access to Tract 2 of Klein's Addition should be via a frontage road from the north two lots along the Highway 109 ROW, or should be by a driveway approved in writing by the Minnehaha County Highway Department.

- 3) The petitioner shall maintain a fifteen-foot landscaped buffer along the Highway 109 right-of-way and shall not allow the parking of any vehicles or equipment within this buffer area.
- 4) All outside storage of automotive parts, pots, scrap, and all landscape materials such as rock, timbers, pallets or anything of a similar nature shall be completely screened from public view by either very dense vegetation or by a screening fence of a minimum 6-feet in height with a minimum opacity of 90%. Any fence shall be maintained in good condition and shall be of earth-tone colors.
- 5) The petitioner shall prepare a site plan for planning staff approval that shows all applicable aspects of the property including any outdoor screening area as required in condition number 4.
- 6) Any outside lighting shall be of a shoebox style that directs light downward and prevents the spillage of light beyond the boundaries of the property.
- 7) Accessory structures for the nursery operation shall be allowed on Tracts 1 & 2 Klein's Addition.

Public Testimony

Based on the staff report, a motion was made O'Hara and seconded by Steinhauer to approve Conditional Use Permit #07-92 with the conditions as stated. The motion passed unanimously.

ITEM 9. CONDITIONAL USE PERMIT # 07-88 to exceed 1200 sq. ft. of accessory building area (3360 sq. ft. requested).

Legal Description - S500' E435.6' W871.2' SW1/4 SW1/4 of Section 14-T101N- R48W
Location - 48212 265th St. 2 miles southeast of Brandon
Petitioner / Owner- Darwin Gramstad

General Information

Present Zoning - A-1 Agricultural
Existing Land Use - Residential
Parcel Size - 5 Acres

Report by: Phil Kappen

Staff Analysis

The subject property is located along 265th Street in a residential neighborhood between Brandon and Rowena. The petitioner currently has no accessory building on the property and proposes to construct a 3360 square-foot building. Due to the number of lots in the development, any total square footage of accessory buildings on a property in excess of 1200 square feet requires a conditional use permit.

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

There are a number of larger buildings in the immediate vicinity of the subject property. These include a 3888 square foot building to the east, 3696 square feet of accessory buildings to the south southeast and a lot with 3750 square feet of accessory buildings a little to the west. Immediately to the west is a lot with 2560 square feet of accessory building, immediately south is one with 2720 square feet and the first occupied lot to the east has 1944 square feet. It appears that the proposed building size would be larger than those on the lots immediately adjacent to the subject property, however, it is comparable with the size of other buildings in the development.

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

The size of the building is consistent with others in the neighborhood. There would also be limits how the proposed building may be used that would help ensure that it would conform with the residential uses in the development. The building could be used only for the property owner's personal residentially-related storage. There is no approval for any type of commercial use, storage of commercial vehicles or commercial storage.

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

Access to the property is off of 265th Street via an existing driveway. 256th Street is a township road. No additional driveway should be allowed for the proposed building.

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

There is ample space on the property for the requirements of any allowed residential use.

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

There should be no inordinate odor, fumes, dust, noise or vibration from approved single-family residential uses. Any outside lighting should be of a shoebox style that prevents light from spilling beyond the property boundary.

Recommendation

Staff finds that the size of the proposed building is consistent with the sizes of other accessory buildings in the immediate area and recommended approval of conditional use permit #07-88 with the following conditions:

- 1) The total of all accessory buildings on the property shall be limited to 3360 square feet.
- 2) The use of the property shall be limited to the property owner's personal residentially-related storage. No commercial use, storage of commercial vehicles or commercial storage is allowed.
- 3) All outside lighting shall be of a shoebox style that directs light downward and prevents the spillage of light beyond the property boundary.

Public Testimony

Based on the staff report, a motion was made by O'Hara and seconded by Steinhauer to approve Conditional Use Permit #07-88 with the conditions as stated. The motion passed unanimously.

REGULAR AGENDA

A motion was made by Bunde and seconded by Steinhauer to approve the regular agenda with Item 2 added. The motion passed unanimously.

ITEM 2. 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 - Agriculture
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 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 will have about 20 cattle. The properties to the west, north and east are agricultural. To the south is vacant commercial property. The item had been deferred from the August meeting at staff's request, due to existing zoning violations on the property. The zoning violations have now been corrected and the petitioner is aware that no commercial use of the property is allowed in the future.

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 setback criteria for a 250 animal unit livestock facility is 660 feet. The closest residences, other than the petitioner's, are located approximately 2000 feet to the east, and 2600 feet to both the southwest and north. Thus, the facility easily meets the target setback criteria for the proposed facility size.

The facility will be rather close to the county highway, however, the use of a tree belt between the facility and the highway will aid in the dispersal of odors and will provide visual screening between the facility and the highway.

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

property for uses predominant in the area.

As has been noted, there is vacant commercial land to the south. That area, however, is separated from the proposed animal facility by at least the 660-foot criteria separation and by a small ridge. As the prevailing wind in the summer, when there is the greatest likelihood for any odor, is from the south, this will further reduce the probability of impact on the commercial development.

Staff has received a call from the property owners to the east, across County Highway 105, questioning their ability to build a home in the future. There is ample space on that property, however, to allow construction of a residence that meets the 660-foot target distance. The petitioner has also indicated that he plans to plant trees to the west and north of his home and the animal facility. A requirement for the proposed trees would aid in making the facility compatible with future land uses in the area.

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

Access to the property is via 486th Avenue (County Highway 105).

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

There is ample space on the subject property for any parking associated with the single-family residence and the proposed livestock facility.

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 noted that the primary form of manure from the proposed facility will be solid. This results in reduced odor. The petitioner will use a stack pad to hold the manure until it can be applied to agricultural land. He has ample land between his own property and that of his father for the amount of projected waste from the facility.

All outdoor lighting should be of a shoebox style to direct light downward.

Recommendation

Staff finds that the proposed use is consistent with the types of uses found in an agricultural area, that the petitioner meets the target criteria for setback distances and that the use can be operated in a manner that minimizes the potential for impacts to other properties. Staff, therefore, recommended approval of conditional use permit # 07-74 with the following conditions:

- 1) The facility shall be limited to a maximum 300 animal unit CAFO for finisher swine and cattle.
- 2) The petitioner shall utilize a stack pad for waste and maintain the waste in a mainly solid consistency in order to reduce the potential for odors.
- 3) At a minimum, the petitioner shall plant trees on both the west and north sides of the facility. The petitioner shall prepare a planting plan showing the types of trees and number of trees rows for approval by the county planning staff.
- 4) All outside lighting shall be of shoebox style that directs light downward and prevents light spillage beyond the property boundaries.

Public Testimony

Mr. Kappen explained that some property owner's names were missing from the mailing lists for notification. Staff is requesting that this item be deferred until the January 28th meeting to allow for proper notification.

A motion was made by Steinhauer and seconded by Bunde to defer Conditional Use Permit #07-74 to the January 28, 2008 meeting. The motion passed unanimously.

New Business

A. Home occupation amendment request

Mr. Anderson explained that the request was submitted by an attorney representing several people that the Planning Department and Office of the State's Attorney had taken enforcement action on. They are

requesting changes to the home occupation portion of the Zoning Ordinance. Mr. Anderson asked the Planning Commission to decide if the ordinance needed to be amended. Commissioner South stated that he felt things are fine the way they are. He doesn't understand why people believe they have a right to run a business just because they live out in the county. Commissioner Steinhauer feels that ordinance should not be changed, as long as home offices, Tupperware parties, and businesses of that nature are not being outlawed. Commissioner Cypher noted that everyone knows there are people running businesses in the county. Until someone is turned in there is a kind of "don't ask, don't tell" policy. Commissioner Steinhauer noted that sometimes the business grows too large, or the business uses hazardous materials. Commissioner Bunde stated that she supports not changing the ordinance. If the regulations were loosened there would be a lot more trouble. The rest of the Commission concurred that no changes should be made to the ordinance.

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November 6, 2007

Gordon Swanson

Assistant States Attorney

Minnehaha County Administration Building

415 North Dakota Avenue

Sioux Falls, SD 57104

Re: Minnehaha County zoning ordinances regarding limited business use of rural acreages (12.03, 12.0301, 12.0302, and 12.0303)

Gordon:

As we previously discussed, I have been retained by several Minnehaha County residents who live on acreages to assist them with attempting to convince the Minnehaha County Commissioners to revise the existing Minnehaha County ordinances regarding limited business use of rural acreages to allow acreage owners to (a) drive home and park overnight commercial vehicles that they use in their businesses or occupations (b) temporarily park commercial vehicles associated with their business or occupation on their acreages (c) park such vehicles and commercial equipment in storage buildings on their acreages and (d) store supplies or materials in storage buildings on their acreages.

I advised them that, in my opinion, the process should start with an analysis of the problems with the present ordinances, an analysis of the legitimate need for zoning ordinances that appropriately limit business activity on acreages to preserve their primary use as a residence, and the drafting of a revision of the ordinances that carries out the objective of promoting the primary use of acreages as residences, without unreasonably restricting the use of acreages for incidental commercial purposes. I additionally advised them that, once they had done that, they should present their draft and analysis to you and Scott Anderson of Planning and Zoning to try to convince you and Scott that the ordinances should be revised to better carry out the objective of promoting the primary use of acreages as residences, without unreasonably restricting the use of acreages for incidental commercial purposes. I advised them that working with you and Scott would allow the revisions to these ordinances to work their way up to the County Commissioners from you and Scott, and your staffs, and the Planning and Zoning Commission. The purpose of this letter is to begin that process.

These residents live in about a mile square area south west of Wall Lake. They are all small business owners who drive commercial vehicles to and from their acreages to the area where they are working, or

who sometimes have a commercial vehicle parked at their acreage while they are driving another commercial vehicle, or drive home a truck with an attached trailer which is carrying a piece of equipment or materials. Several are in the construction subcontracting trades. One drives a gravel truck to and from work and his home.

They have all been contacted by Minnehaha County Planning and Zoning for alleged violations of Minnehaha County ordinances 12.0301 based upon the complaints of one neighbor who has taken it upon himself to make sure that none of these acreages have any commercial vehicles parked on their acreages.

Working with these clients, I prepared drafts of a revision of 12.03, 12.0301, and 12.0302 (A). I am enclosing the drafts for your review. Once the drafts were completed, I prepared a petition supporting the revised ordinance for them to take around to their immediate neighbors. The present ordinances and the draft of the revision were attached and the petitions. My clients then visited neighbors within a 1 mile area of their acreages, discussed what had happened to them in terms of their being contacted by Minnehaha county Planning and Zoning regarding a violation of ordinance 12.0301 for having commercial vehicles on their acreages, and discussed the need to revise the ordinance. I am enclosing for your review two petitions signed by 23 acreage owners within that 1 mile area supporting the revision of ordinances, There is one additional petition still circulating. I had my clients do this to show that they were not the only acreage owners in the area who disagree with the way the ordinances are worded and are being enforced by Minnehaha County Planning and Zoning and the Minnehaha County States Attorney's Office.

These clients' experiences appears to be very similar to the facts involved in your office's recent unsuccessful prosecution of Jimmy Erickson for violation of ordinance 12.0301 because of the repeated complaints of two retired neighbors, who had long standing disputes with Jimmy because of all the activity on he and his wife's acreage occasioned by their raising 5 children ranging from small children to teenagers of driving age. Among other things, these two retired neighbors complained to the Minnehaha County Sheriff, the Minnehaha County States Attorney's Office, and the Minnehaha County Planning and Zoning Office so often and so aggressively about Jimmy driving his work truck home, and that it sometimes had a trailer with a skid loader attached, that you charged Jimmy with a violation of ordinance 12.0301. Judge Sage ruled that Jimmy driving his work truck home at night and parking it on his acreage, even if it had a trailer with a skid loader attached, was not a violation of ordinance 12.0301. By charging Jimmy with a violation of ordinance 12.030, the Minnehaha County Planning and Zoning Office and the Minnehaha County States Attorney's Office gave the complaining neighbors their day in court. But, it seemed significantly inappropriate to me that, because of the unduly restrictive wording of ordinance 12.0301 regarding incidental business activity on an acreage, and the incessant complaining of Jimmy's two neighbors, the Minnehaha County Planning and Zoning Office and the Minnehaha County States Attorney's Office felt compelled to take sides in this long running dispute between neighbors, and provide the complaining neighbors with an attorney to punish their neighbor, who had to spend considerable money defending himself against the neighbor's complaints.

I appreciate your candor in our pre-trial discussions in State v. Jimmy Erickson regarding the fact that there is selective enforcement of ordinance 12.0301 by the Minnehaha County Planning and Zoning Office, and the Minnehaha County States Attorney's Office in that enforcement of the ordinance is based almost exclusively on complaints of neighbors. The budget of the Planning and Zoning Office does not provide enough personnel to routinely inspect acreages for violations of the ordinance, and the budget of the States Attorney's office does not provide enough personnel to routinely prosecute all the zoning violations that are occurring on the acreages in Minnehaha County. Consequently, you end up investigating and prosecuting disputes between neighbors where one neighbor wants to control how another neighbor uses his acreage.

In a perfect world, the complaining resident would be alerting law enforcement to serious violations of zoning laws that threaten the health, safety, welfare, or property value of those in the area of the offending acreage. But we do not live in a perfect world. Overly controlling citizens obsessed with how other people are using their acreages are demanding that Minnehaha County Planning and Zoning and the Minnehaha

County States Attorney's Office prosecute their neighbors (which includes criminal charges, jail sentences, and hefty economic fines) for having commercial vehicles and equipment on their acreages in violation of ordinance 12.0301. Because of the wording of ordinance 12.0301, when these citizens demand that their neighbors be prosecuted for having commercial vehicles and equipment on their acreages, the Minnehaha County Planning and Zoning and the Minnehaha County States Attorney's Office feel compelled to commence the enforcement process, even though they know there is no real threat to the health, safety, welfare, or property values of those in the area.

If the Minnehaha County Commissioners adopt a zoning ordinance, they should expect the Minnehaha County Planning and Zoning Office and the Minnehaha County States Attorney's Office to uniformly and routinely enforce it. If the zoning ordinance is worded such that it is unreasonable and is, therefore, ignored by the citizens, and law enforcement, unless and until one citizen wants it imposed upon another citizen that he or she had a personal dispute with, then it should be rewritten so that it is reasonable and acceptable to the citizens it is intended to benefit, and uniformly and routinely enforced.

It is my objective to convince you, Scott, the Planning and Zoning Commission, and the County Commission that Ordinances 12.03, 12.0301, and 12.0302 (A) needs to be rewritten so it is reasonable and acceptable to the citizens it is intended to benefit. This would eliminate the uncomfortable position you and Scott's staff are put in when one neighbor complains that another neighbor should be prosecuted because he or she drives home a commercial vehicle, or stores commercial vehicles, equipment, supplies, and inventory for their business in an out building on his or her acreage.

ANALYSIS

Well drafted zoning ordinances properly balance legitimate competing land uses, Minnehaha

County Ordinance 12.03 entitled "Home Occupations" is worded such that it properly balances the use of acreages in Minnehaha County as residences with the incidental use of the acreages for business purposes. It states in pertinent part, "It is deemed appropriate to allow limited non residential activities to operate in conjunction with a residence in those zoning districts where residential dwelling are permitted. The objective of these regulations is to allow limited commercial type activities associated with a residence only to the extent that the activity is clearly subordinate to the residential or agricultural use of the property."

It is the language in Ordinance 12.0301 entitled "Minor Home Occupation" where that proper balance is lost. It requires, among other things, that to be a Minor Home Occupation, which is allowable without a conditional use permit, that the acreage owner (1) must not conduct any business activity outside the residence (2) must not use "accessory buildings or structures" for storage and (3) all equipment, vehicles and supplies must be within the residence. This kind of restriction may be appropriate for a subdivision within the city limits of Sioux Falls. It is inappropriate for acreages in Minnehaha County.

There are literally hundreds of small family business owners living on acreage in Minnehaha County that are in violation of these primary 3 prohibitions set forth in Ordinance 12.0301. These are tax paying citizens whose ability to pay their real estate taxes are dependent upon their economic success, which, in part, is determined by their ability to use their acreages for incidental business activity, such as parking commercial vehicles and equipment inside or outside accessory buildings, or driving their commercial vehicles home at night, or storing vehicles, equipment, and materials in outbuildings on their acreage.

Examples are electricians, plumbers, dry wall contractors, painters, excavators, carpenters, roofers, cement contractors, truckers, bricklayers, landscapers, painters, and remodeling contractors. They drive commercial vehicles home, often towing trailers (both open and closed) carrying equipment, supplies and materials. They store vehicles, equipment, supplies and materials in accessory buildings. They may have several commercial vehicles or equipment for different uses, and leave one at the acreage while they do work with the other. They have gasoline and diesel fuel delivered in bulk into fuel tanks on their acreages, and then fuel up commercial and personal vehicles from the tanks, just like their next door neighbor who is a farmer. They bring home skid loaders and front end loaders to do landscaping, level gravel driveways, and remove snow. They purchased acreages so they could do such incidental business activity

without offending their neighbors, which would be the case if they owned homes in suburbs in Sioux Falls.

Zoning ordinances appropriate for living in a suburb in Sioux Falls cannot be applied without significant modification to acreages. Ordinance 12.0301 unnecessarily and inappropriately limits incidental business activity on acreages in Minnehaha County.

My draft combines present 12.03 and 12.0301, and provides examples of allowable incidental business uses. I use the words "Incidental Business Use", rather than "Home Occupation" to describe the ordinance. Many of these citizens are not engaged in "Home Occupations". They simply do some things on their acreages that are related to what they do for a living elsewhere. I think "Incidental Business Use" better describes the allowable activities on acreages.

My proposed Ordinance 12.0302 entitled "Significant Business Use" requires a conditional use if the acreage owner wants to use his or her acreage for more significant business uses than those allowed by my proposed ordinance 12.0301. It then specifies the business activity allowable under "(A) Class 1". You will see that I broadened somewhat the allowable activity for a Class 1 Conditional Use Permit. I propose no change to "(B) Class 2 under present Ordinance 12.03 02.

CONCLUSION

Once you and Scott, and Scott's staff have had a chance to review this letter and my proposed revisions, I would like to meet with you and Scott to discuss the proposed revisions. Several of my clients have expressed a desire to attend the meeting with me.

Thank you in advance for considering these proposed revisions.

For the Firm:

Charles L. Dorothy

Cc: clients

REVISED 12.03

12.0301 Incidental Business Use Limited business use of rural acreages where residential dwellings are permitted is allowable, provided that such use is merely incidental to the primary use of the acreage as a residence.

The following are examples of allowable incidental business uses: (1) bookkeeping and accounting work for the business of one or more of the residents (2) making and receiving business telephone calls, faxes, and emails (3) showing and selling products that are marketed through small meetings of acquaintances, such as Mary Kay Cosmetics, Tupperware, and similar products (4) parking resident's business vehicles and equipment inside a building (5) parking vehicles, equipment, trailers, campers, and water craft belonging to a non resident ma building for a fee (6) parking outside of a building no more than 2 licensed and operable business vehicles belonging to a resident (7) parking outside of a building, on weekends and holidays, a licensed and operable business vehicle belonging to or driven by a resident (this would include a business vehicle with an attached and licensed trailer, and load) (8) no more than 2 bulk fuel tank outside of a building used only to fuel personal or business vehicles of the residents (9) storage inside a building of equipment, inventory, or supplies for the business of a resident, with no more than 6 deliveries or removal of equipment, inventory, or supplies a day (9) no more than 6 visits from employees, clients, or customers per day and (10) one non illuminated sign no larger than 3 feet by 3 feet attached to the side of a building.

The following are examples of business uses that would not be incidental and so would not be allowable without a conditional use permit: (1) repair of motor vehicles, trailers, water craft, off road vehicles, or equipment (other than those owned by the residents) (2) sale of motor vehicles, trailers, watercraft, off road vehicles or equipment purchased for resale (3) recycling boxes, bottles or cans other than those of

the residents (4) retail sales (other than those occurring through marketing at small meeting) (5) manufacturing anything for sale (6) parking of more than 2 licensed and operable business vehicles outside of a building (7) storage of business equipment, inventory, or supplies outside of a building (8) a sign larger than 3 feet by 3 feet attached to the side of a building and (9) storage or use of any substance toxic, explosive, flammable, corrosive, radioactive or other material considered hazardous by the Environmental Protection Agency of the United States Government

1 Significant Business use Business use of rural acreages where residential dwellings are permitted, which exceed incidental business use as set forth in 12.03, may be appropriate in a low density residential setting or if associated with an agricultural use, but are only allowable upon issuance of a Conditional Use Permit pursuant to Section 3.04. There are 2 classes of uses. Such uses shall be evaluated for purposes of issuance of a conditional use permit giving consideration to the following criteria:

(A) Class 1: (1) the business is owned and operated by a resident (2) except for parking outside of a building no more than 5 licensed and operable business vehicles belonging to a resident, the business activity shall occur inside a building (3) there shall not be more than four non resident employees of the business on the acreage at any one time (4) in addition to the dwelling, up to 3,600 square feet of non dwelling building space may be used for the business (5) the business shall not create noises which an objective person, using a reasonable neighbor standard, would find obnoxious, annoying, or overly loud (6) the business shall not create vibration, glare, fumes, odor, or electrical interference detectable to the normal sense off the acreage (7) no more than 2 bulk fuel tank outside of a building used to fuel business vehicles of the residents (8) storage inside a building of equipment, inventory, or supplies for the business of a resident, with no more than 12 deliveries or removal of equipment, inventory, or supplies a day (9) no more than 12 visits from employees, clients, or customers per day and (10) one non illuminated sign no larger than 3 feet by 3 feet attached to the side of a building and (11) One non-illuminated sign no larger than 4 feet by 4 feet located along the driveway of the acreage.

(B) Class 2: (unchanged)

12.0303 (deleted)

PETITION

Minnehaha County Ordinance 12.03, a copy of which is attached, unnecessarily limits and prohibits the owners of rural acreages in Minnehaha County, South Dakota, from engaging in limited business activity out of their homes, buildings and land.

The attached revision of Minnehaha County Ordinance 12.03 is superior to Minnehaha County Ordinance 12.0 as presently worded.