

**MINUTES OF THE  
MINNEHAHA COUNTY PLANNING COMMISSION**  
July 28, 2008

A meeting of the Planning Commission was held on July 28, 2008 at 7:00 p.m. in the Commission Room of the Minnehaha County Administration Building.

COUNTY PLANNING COMMISSION MEMBERS PRESENT: Mike Cypher, Susie O'Hara, Becky Randall, Mark Rogen, Don South, Wayne Steinhauer, and Carol Twedt.

STAFF PRESENT: Scott Anderson, Phil Kappen, Pat Herman, & Robert Deringer - County Planning

The meeting was chaired by Don South.

**JOINT MEETING - MINNEHAHA COUNTY AND CITY OF DELL RAPIDS**

DELL RAPIDS PLANNING COMMISSION MEMBERS PRESENT: Bob Davis, Roger Dearduff, Chair Bob Lamberty, and Chris Mullaney

STAFF PRESENT: Bob Angerhofer

**Item 1 was heard jointly with Dell Rapids and was deferred from the June meeting.**

**ITEM 1. CONDITIONAL USE PERMIT #08-46 motor vehicle sales.**

Legal Description – Lots 1 & 2 Block 2 Dell Rapids Industrial Park Addition. SE1/4 of Section 12-T104N-R50W

Location – 47176 & 47180 Industrial Street. Dell Rapids exit from I-29

Petitioner / Owner- Daryl Springman

**General Information**

Present Zoning - I-1 Light Industrial

Existing Land Use - Vacant

Parcel Size - 2.0 acres

**Report by:** Robert Deringer

**Staff Analysis**

The petitioner is requesting a conditional use permit to allow motor vehicle sales. The subject property is located in the northeast quadrant of the Dell Rapids Exit on I-29 in the Dell Rapids Industrial Park Addition and is in the joint jurisdictional area with the city of Dell Rapids. The property is zoned I-1 Light Industrial District. To the east, south, and west are existing industrial uses. To the north is vacant industrially-zoned land. Currently two structures are situated on the two lots owned by the petitioner. The west lot, Lot 1 houses a diesel repair service, and Lot 2 houses a cold storage building. The applicant has not indicated that any out door storage will be needed.

On June 3, 2008, staff conducted a site visit. Performing a visual review of the site, staff noted that not all of the driveways and parking areas were hard surfaced as required by the zoning ordinance. One condition of the original permit authorizing the diesel repair shop on Lot 1 was that all driveways and parking areas were to be hard surfaced once Industrial Street was hard surfaced. Industrial Street has been hard surfaced for a number of years and the required hard surfacing must be completed. The petitioner will display trucks for sale in front of the cold storage building on Lot 2 and will display the repairable trucks in front of the diesel repair building on Lot 1.

On July 8, 2008 staff conducted a second site visit. During this second site visit, as was also noted in the first, machinery was present in the required 15-foot setback from the property line. It appears that the use of features such a curb stops will be necessary to ensure that the 15-foot front yard setback is maintained.

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

The surrounding properties are in industrial and commercial uses and the petitioner's use of their

property fits with those uses.

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

There is little likelihood of additional development to the north of the property in the foreseeable future. The property, however, is zoned for future industrial development. No outside storage will be permitted to promote the orderly future development of property to the north of subject property.

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

Industrial Drive provides access to the site. The Zoning Ordinance requires the parking and driving areas to be paved if the road or street providing access to the subject property is paved. The applicant will be required to pave his parking lot. The applicant did not provide an approximate building schedule, however staff has already given the applicant ample time to pave the parking area.

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

Article 15.02.U requires one (1) parking space for each 300 square feet of floor area for all non-residential buildings not specified in the regulations. Motor vehicle sales have not been specified. According to the submitted site plan, lot 2 contains a building that is 4,320 square feet in size. The petitioner shall maintain a minimum of fifteen (15) off street parking spaces and one (1) loading space. Article 15.01.B requires parking spaces for all structures shall be located on the same site as the structure is intended to serve. The petitioner shall maintain the minimum amount of parking spaces on Lot 2. The current parking area is not sufficient to meet these requirements.

Upon conducting a site review of the subject property it was noted that on Lot 1 the petitioner is in violation of Article 15.01 which states: "The parking lot shall maintain a minimum setback of 15 feet from the front property line." Repeated requests to honor this Article have not been followed by the petitioner. It appears that the use of features such a curb stops will be necessary to ensure that the 15-foot front yard setback is maintained.

The petitioner is currently accessing Lot 2 via the adjacent property to the east. The driveway on that property is hard surfaced, however the area between that driveway and the subject property is not hard surfaced. Upon discussion with petitioner of said problem, the petitioner has agreed to cease use of the access in that area and the construction of a barrier such as a fence or permanent curb stops should be required to prevent use of this access.

**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.**

Upon completion of hard surfacing, dust from the property will be minimized. Staff has also included a condition which would not allow inoperable or dismantled vehicles to be stored on the property. Any outdoor lighting shall be of a shoebox design that directs light downward and prevents light spillage beyond the boundaries of the property.

**Recommendation**

Staff found that the proposed motor vehicle sales business is consistent with the types of uses found in a commercially or industrially zoned area and recommended approval of Conditional Use Permit #08-46 with the following conditions:

- 1) The operation shall conform to the site plan dated July 16, 2008 unless otherwise noted in these conditions:
- 2) That the business operator obtains and maintains a South Dakota sales tax license.

- 3) That no inoperable or dismantled vehicles be stored outside on the property.
- 4) No outdoor storage of parts, materials, or scrap shall be allowed on the property.
- 5) All parking and driving areas shall be completely hard surfaced by August 15, 2008.
- 6) The petitioner should be required to cease use of the access between the east boundary of Lot 2 and the adjoining property's driveway and construct a barrier such as a fence or permanent curb stops to prevent use of this access. The barrier should be fully implemented by August 15, 2008.
- 7) Curb stops shall be utilized to maintain the required 15-foot front yard setback along the south side of the petitioner's properties. The curb stops must be in place by August 15, 2008.
- 8) The applicant shall maintain a minimum of fifteen (15) off street parking spaces and (1) loading space.
- 9) All outdoor lighting shall be of a shoebox design that directs light downward and prevents light spillage beyond the boundaries of the property.

### **Public Testimony**

Commissioner Dearduff stated that he did not feel the petitioner should have to blacktop where the used trucks will be parked. It is the petitioner's business and if he wants to have used cars and trucks in a mud hole then that should be his choice. Commissioner Dearduff stated he was not against paving the driveway and customer parking spaces, but not the display area. He also was opposed to the restriction of having no inoperable or damaged vehicles on the site. In the used vehicle business that is a given.

Mr. Kappen explained that ordinance required the hard surfacing. That part of the Ordinance was approved by the Dell Rapids City Council and County Commission in the early 1990s. Mr. Kappen stated that the petitioner was specifically asked if he would have inoperable vehicles and Mr. Springman said he would not.

The petitioner, Daryl Springman, stated that due to how the Dells Diesel building had been constructed on the lot there was no enough space between the building and the required parking and set backs to still get his trucks into the building. He does not want to hard surface all of this area as it will cost him at least \$70,000. He feels there are too many rules, that he owns the land and should be able to do what he wants. It seems like the County doesn't want to see the growth of small businesses.

Commissioner Lamberty pointed out that it was up to Mr. Springman to follow the ordinances that were in place. It was his responsibility to find out about the requirements before making plans. Commissioner Steinhauer explained that the hard surfacing requirement would prevent dirt and gravel being pulled out onto the roadways. The green spaces make the county more livable. Commissioner Steinhauer stated that change would not be appropriate in this case do to all of those people who did follow the rules.

Mr. Kappen pointed out that it was Mr. Springman's choice on where to place the building on the property. He created the problem himself. Commissioner Randall stated that Mr. Springman was very accommodating in letting people who were ride sharing to park on this lot. Some of the vehicles which were parked in correctly may have been from these people.

Commissioner Mullaney wondered if there were any definitions that distinguished between parking and storage/display areas. Mr. Kappen said the ordinance requires all parking areas to be hard surfaced, so technically even the storage areas should be hard surfaced. That is not being required.

Mr. Springman stated that his was the first business to start in this industrial park. The covenants do not require all this hard surfacing. Commissioner Steinhauer explained that covenants are not governmental, but civil. Individuals could sue to have the covenants enforced. Mr. Kappen noted that the County's restrictions were more stringent than the covenants.

No one else wished to speak to the item.

**Action**

Commissioner Steinhauer stated that based on the past infractions by this applicant, clear contempt for the ordinance, and the likelihood of further infractions, this conditional use permit should be denied.

Based on the staff report and public testimony, a motion was made by Steinhauer and seconded by Rogen to **deny** Conditional Use Permit #08-46. The motion passed unanimously. Same motion for Dell Rapids by Mullaney and seconded by Lambery, the motion passed (Dearduff nay).

**ITEM 2. ZONING TEXT AMENDMENT #08-03 adult oriented business restrictions.  
Petitioner - Planning Staff**

**Report by:** Pat Herman

**Staff Analysis**

The 2008 Legislature enacted new regulations concerning the location of adult oriented businesses which became effective on July 1, 2008. These new regulations are more restrictive than the zoning ordinance so staff is recommending the following changes be adopted.

- 1) The separation distance be changed from 500 feet to 1320 feet.
- 2) The list of uses from which an adult oriented business must be separated be changed to so that it is consistent with the State's wording.
- 3) Video/DVD store be added to the list of adult uses.
- 4) A new section (section B) be added restricting the hours of operation.

**Recommendation**

The proposed amendments will bring the zoning ordinance into compliance with the State regulations and staff recommends **approval** of Zoning Ordinance Amendment #08-02.

ORDINANCE MC

AN ORDINANCE AMENDING THE 2001 REVISED JOINT ZONING ORDINANCE FOR MINNEHAHA COUNTY AND THE CITY OF DELL RAPIDS BY REVISING THE ADULT ORIENTED USES RESTRICTIONS.

BE IT ORDAINED BY MINNEHAHA COUNTY, SOUTH DAKOTA:

That Ordinance MC28-01, the 1990 Revised Zoning Ordinance for Minnehaha County is hereby amended as follows:

**Section 1: That Article 12.09 (A & B ) is hereby amended to read:**

- A. None of the following uses may be established, operated, or maintained within 500~~500~~1320 feet of a residential dwelling, a residential district, a public playground, a child welfare agency, a ~~church~~ place of worship, a private or public school meeting all the requirements of the Compulsory Education Laws of the State of South Dakota, or a public ~~park~~ recreational facility, as measured from the closest point of the property lines.
  1. Adult bookstore and/or adult video/DVD store
  2. Adult theater
  3. Adult photo studio
  4. Adult mini motion picture theater
  5. Adult amusement or adult entertainment establishment
- B. None of the uses listed in 12.09 A may remain open at any time between the hours of 2:00 a.m. and 8.00 a.m. on Monday through Saturday and between the hours of 2:00 a.m. and 12:00 a.m. on Sunday.

Adopted this 26<sup>th</sup> day of August 2008.

MINNEHAHA COUNTY

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Chair, Board of County Commissioners

ATTEST:

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County Auditor

1 <sup>st</sup> Reading	8/5/2008
Legal Ad. –Dell Rapids	8/14/2008
Public Hearing	8/26/2008
Fact of Adoption –Dell Rapids Tribune	9/4/2008
Effective Date	9/24/2008

**Public Testimony**

No one wished to speak to the item.

**Action**

A motion was made for Dell Rapids by Mullaney and seconded by Davis to recommend approval of text amendment #08-03. The motion passed unanimously. Same motion for the County by Steinhauer and seconded by Randall. The motion passed unanimously.

**ITEM 3. Minutes – June 23, 2008**

**ITEM 4. ZONING TEXT AMENDMENT #08-01 adult oriented business restrictions.  
Petitioner - Planning Staff**

**Report by:** Pat Herman

**Staff Analysis**

The 2008 Legislature enacted new regulations concerning the location of adult oriented businesses which became effective on July 1, 2008. These new regulations are more restrictive than the zoning ordinance so staff is recommending the following changes be adopted.

- 5) The separation distance be changed from 500 feet to 1320 feet.
- 6) The list of uses from which an adult oriented business must be separated be changed to so that it is consistent with the State's wording.
- 7) Video/DVD store be added to the list of adult uses.
- 8) A new section (section B) be added restricting the hours of operation.

**Recommendation**

The proposed amendments will bring the zoning ordinance into compliance with the State regulations and staff recommends **approval** of Zoning Ordinance Amendment #08-02.

ORDINANCE MC

AN ORDINANCE AMENDING THE 1990 REVISED ZONING ORDINANCE FOR MINNEHAHA COUNTY BY REVISING THE ADULT ORIENTED USES RESTRICTIONS.

BE IT ORDAINED BY MINNEHAHA COUNTY, SOUTH DAKOTA:

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

**Section 1: That Article 12.09 (A & B ) is hereby amended to read:**

- A. None of the following uses may be established, operated, or maintained within ~~500~~1320 feet of a residential dwelling, a residential district, a public playground, a child welfare agency, a church place of worship, a private or public school meeting all the requirements of the Compulsory Education Laws of the State of South Dakota, or a public ~~park~~ recreational facility, as measured from the closest point of the property lines.
  1. Adult bookstore and/or video/DVD store
  2. Adult theater
  3. Adult photo studio
  4. Adult mini motion picture theater
  5. Adult amusement or entertainment establishment
- B. None of the uses listed in 12.09 A may remain open at any time between the hours of 2:00 a.m. and 8.00 a.m. on Monday through Saturday and between the hours of 2:00 a.m. and 12:00 a.m. on Sunday.

Adopted this 26<sup>th</sup> day of August 2008.

MINNEHAHA COUNTY

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Chair, Board of County Commissioners

ATTEST:

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County Auditor

1 <sup>st</sup> Reading	8/5/2008
Legal Ad. – Argus Leader & Dell Rapids & Garretson	8/14/2008
Public Hearing	8/26/2008
Fact of Adoption – Argus Leader & Dell Rapids Tribune	9/4/2008
Effective Date	9/24/2008

**Item 5 was deferred from the June Meeting.**

**ITEM 5. CONDITIONAL USE PERMIT #08-48 to transfer building eligibilities from the NE1/4 NE1/4 and NE1/4 SE1/4 and SW1/4 SE1/4 of Section 5-T104N-R52W to Clearbrook Addition in the N1/2 SE1/4 & N1/2 SW1/4 of Section 5-T104N-R52W.**

Location – northwest corner of Buffalo Township by Diamond Lake  
Petitioner / Owner- Jeffery Oyen

**General Information**

Present Zoning - A-1 Agricultural  
Existing Land Use - Agricultural  
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 the entire section. The surrounding land use is agricultural or the land is owned by Game, Fish, and Parks.

In November 2007 the Planning Commission approved the transfer of two building eligibilities in this area. The property has since changed ownership and applicant wishes to transfer three building eligibilities to be grouped together by the lake.

**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.

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

The request 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 will be from a township road. Buffalo Township does not require approach permits. The access point onto 456<sup>th</sup> Ave shall be limited to one shared approach. The site distance in this area is good. The access into the three housing sites shall be platted as a street, either private or dedicated to the public. The plat must contain the appropriate certificates for maintenance of the street.

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

Housing lots are large enough to accommodate any uses associated with 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.**

A single family residence should not generate a nuisance.

**Recommendation**

Staff found the request to be in conformance with density zoning and recommended approval of Conditional Use Permit #08-48 with the following conditions:

- 1) The property shall be platted and a right-to-farm notice covenant filed on the deed of each lot.

- 2) There shall be one access street to the properties and the street must be named and shown on the plat with the appropriate certificate.

**Action**

Based on the staff report, a motion was made by O'Hara and seconded by Randall to **approve** Conditional Use Permit #08-048 with the conditions as stated. The motion passed unanimously.

**Item 6 was deferred from the June meeting.**

**ITEM 6. CONDITIONAL USE PERMIT #08-50 to allow a single family dwelling.**

**Legal Description** – Tract 3 Jandl's Addn E1/2 of Section 32-T104N-R52W  
**Location** – 2 miles southeast of Buffalo Trading Post  
**Petitioner / Owner**- Jeffery Oyen

**General Information**

**Present Zoning** - A-1 Agricultural  
**Existing Land Use** - Agricultural  
**Parcel Size** - 88.77 acres

**Report by:** Pat Herman

**Staff Analysis**

The property is located approximately two miles southeast of Buffalo Trading Post. This part of Minnehaha County is very rural, but there are some scattered acreages. The surrounding land use is agriculture.

The applicant is requesting approval for a single family dwelling. This 88 acre parcel has two building eligibilities. The parcel itself was created between 1979 and 1988. Per the zoning ordinance, the first eligibility is a permitted use; the second eligibility requires conditional use permit approval. The land itself is rolling with limited use for crop agriculture.

**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.

**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 is from a township road. Buffalo Township does not require a driveway permit.

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

The lot will be large enough to accommodate any uses associated with 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.**

A single family residence should not generate a nuisance.

**Recommendation**

Staff found the request to be in conformance with density zoning and recommended approval of Conditional Use Permit #08-50 with the following condition:

The property shall be platted and a right-to-farm notice covenant filed on the deed.

**Action**

Based on the staff report, a motion was made by O'Hara and seconded by Randall to **approve** Conditional Use Permit #08-50 with the conditions as stated. The motion passed unanimously.

**ITEM 7. CONDITIONAL USE PERMIT #08-54 to transfer one building eligibility from the NE ¼ SW ¼ (ex. Burkman Addn. & Ex. Memorial Park) in Section 36-T102N-R48W to the S1/2 NW1/4 (ex. Burkman's Tr. 1) in Section 36-T102N-R48W.**

Location – east edge of Brandon  
Petitioner / Owner- John Burkman

**General Information**

Present Zoning - A1 Agricultural  
Existing Land Use - Agriculture  
Parcel Size - 40 Acres

**Report by:** Robert Deringer

**Staff Analysis**

The subject property is located on the east edge of Brandon. The petitioner is requesting to transfer one residential building eligibility from the NE ¼ SW ¼, a land locked quarter-quarter, to the S ½ NW ¼. The subject property is currently zoned A-1 Agricultural. The area is an agricultural area to the north and east of subject property, and urban development of the City of Brandon to the south and west. The land-locked quarter-quarter, is in a low-lying area with power lines cutting across the 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.**

A right-to-farm notice covenant should be required to notify the potential buyers of the realities of locating in an agricultural area.

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

The transfer of the building eligibility meets the requirements of density zoning.

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

Access will be from North Chestnut Avenue. To the north of this access driveway is a small ridge that could potentially pose a traffic hazard if a new access to North Chestnut Avenue is constructed. Staff recommends that the existing access driveway be used for the construction of the new driveway approach. Construction of a new access driveway onto North Chestnut Avenue must first be approved by the City of Brandon or Brandon Township, whoever has jurisdiction at the time of construction. All other utilities and drainage have been provided.

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

Off street parking requirements will be provided for once a single-family residence is constructed on the subject property.

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

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

**Recommendation**

Staff found the request in conformance with density zoning and recommended **approval** of Conditional Use Permit #08-54 with the following conditions:

- 1) The lot 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.
- 2) That any new driveway approach not constructed from the existing access driveway be first approved by the City of Brandon or Brandon Township, whoever has jurisdiction at the time of driveway construction.

**Action**

Based on the staff report, a motion was made by O'Hara and seconded by Randall to **approve** Conditional Use Permit #08-54 with the conditions as stated. The motion passed unanimously.

**ITEM 8. CONDITIONAL USE PERMIT # 08-55 to transfer one building eligibility from the NW ¼ SE ¼ of Section 32-T104N-R49W to the NE ¼ SE ¼ of Section 32-T104N-R49W.**

Location – north side of Baltic  
Petitioner / Owner- Karen & Garry Voelker / Julia Kramer

**General Information**

Present Zoning - A1 Agricultural  
Existing Land Use - Agriculture  
Parcel Size - 40 Acres

**Report by:** Phil Kappen

**Staff Analysis**

The subject property is located along 474<sup>th</sup> Avenue, just north of Baltic. The petitioner has no eligibility on the 40-acres next to the road (where the farmstead is located) and one eligibility on the land-locked forty to the west. He wishes to transfer the eligibility from the land-locked parcel to the east forty. The property to the west and north of the subject property is in agricultural use. The land to the east and south are in the city of Baltic and are used for residential 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 eligibility would be used in the same quarter-quarter as the existing farmstead sits. The land across the road to the east and that to the south are already in single-family residential use. The placement of one additional single-family residence should have little impact on the existing homes and the petitioner will be required to file a right-to-farm notice covenant before they can obtain a building permit. This will provide notice of the existing agricultural uses in the vicinity to the current and any future owners of the proposed home.

The petitioner's have also indicated that they have spoken to the neighbors and had heard of no problems.

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

The city of Baltic's Comprehensive Plan shows that this area will be future single-family residential. A single-family home should be compatible with the plan.

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

Access to the site will be from 474<sup>th</sup> Avenue, the township road immediately to the east. This road is partly city street and partly township road (the city limits extend down the middle of the road). As Baltic develops, however, the road will become a city street. The road has rolling hills and there are only certain areas where safe access can be made due to sight distance problems. The safest locations are at the south edge of the cemetery or across from Adam Avenue in Baltic (see map). Access should be limited to one of these points unless an alternative location is approved in writing by the city of Baltic.

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

There is adequate parking area on the site for the parking needs of 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 impacts such as these from a single-family residence. That is the only use

that would be allowed were this conditional use permit to be approved.

**Recommendation**

Staff finds that the proposed use conforms to the county's density zoning program and to the city of Baltic's Comprehensive Plan. Staff, therefore, recommended approval of conditional use permit #08-55 with the following conditions.

1. Any lot for the home shall be platted and a Right-to-Farm Notice Covenant filed at the Register of Deeds office prior to the issuance of any building permit.
2. Access onto 474<sup>th</sup> Avenue shall be made across from the south end of the cemetery or across from Adam Avenue, or at an alternative location approved by the city of Baltic. If the alternative location is to be used, written approval from Baltic shall be required prior to the issuance of any building permit.

**Action**

Based on the staff report, a motion was made by O'Hara and seconded by Randall to **approve** Conditional Use Permit #08-55 with the conditions as stated. The motion passed unanimously.

**ITEM 9. CONDITIONAL USE PERMIT #08-56 to transfer four building eligibilities from Lots 1 & 3-5 Mc Quisten's Addition SW ¼ SE ¼ in Section 36-T103N-R50W to the SW ¼ SE ¼ (ex. Lot 2 Mc Quisten's Addition & ex. W227' E545' S421.84' SW1/4 SE1/4 & ex. H-1) in section 36-T103N-R50W.**

Location – 1.5 miles northeast of Crooks  
Petitioner / Owner- Mel Raml

**General Information**

Present Zoning - A1 Agricultural  
Existing Land Use - Agriculture  
Parcel Size - 40 Acres

**Report by:** Pat Herman

**Staff Analysis**

The site is located approximately 1.5 miles northeast of Crooks. The area has a mix of agricultural and residential uses. Residential lots tend to be clustered along Hwy 133 which is a quarter mile east of the subject property. The petitioner is requesting a transfer of four residential building eligibilities.

In the spring 1979, a five lot subdivision (Mc Quisten's Addn.) was platted adjacent to 256<sup>th</sup> Street. Each of these lots received on residential building eligibility. Only one of the lots, Lot 2, currently has a dwelling unit. The petitioner wishes to relocate the four remaining eligibilities, combined with the eligibility for the SW ¼ SE ¼, to the east side of the quarter-quarter.

**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 develop five lots with a single access road. He has spoken to the one homeowner in this quarter and received no opposition. This new development would use all of the building eligibilities available in the quarter-quarter. Staff recommends that Lots 1, 3-5 of Mc Quisten's Addition be vacated, eliminating any future confusion as to those being buildable lots.

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

While this request exceeds the number of dwelling units allowed in an ideal quarter-quarter under density zoning, it does not exceed the number of dwelling units which could be constructed today with just a building permit. The petitioner's request simply repositions the eligibilities away from the Interstate into a cluster development, leaving the remaining land for crop farming. While rural housing always has impact on farming, there are no CAFO's in the surrounding area.

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

Access to this site will be from 256<sup>th</sup> St., a gravel township road. The petitioner has spoken with Lyons Township and they have no objections. There is an existing 66' ROW access which will be extended into a cul-de-sac to allow access to all five lots. The cul-de-sac will exceed the maximum 500 foot length sited in the Subdivision Ordinance, so the petitioner will need to apply for a subdivision variance for a longer street.

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

The lots will be large enough to accommodate any parking uses associated with 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.**

Single family residences should not generate any of the above to the degree as to constitute a

nuisance.

A preliminary subdivision plan must be submitted for approval prior to the lots being platted. The preliminary plan must also include a drainage and grading plan. The proposed road must be named on the preliminary plan. The subdivision variance and preliminary plan may be submitted at the same time. Plats must contain the written certificate for road maintenance, whether public or private.

**Recommendation**

Staff found the request to be consistent with the zoning ordinance concerning building eligibilities and recommended **approval** of Conditional Use Permit #08-56 with the following conditions:

- 1) A preliminary subdivision and drainage plan is required.
- 2) A subdivision variance is required.
- 3) Mc Quisten's Addition Lots 1 & 3-5 shall be vacated prior to the issuance of any building permits.
- 4) The new lots shall be platted and a right-to-farm-notice covenant filed on the deed of each lot prior to the issuance of any building permits.

**Action**

Based on the staff report, a motion was made by O'Hara and seconded by Randall to **approve** Conditional Use Permit #08-56 with the conditions as stated. The motion passed unanimously.

**ITEM 10. CONDITIONAL USE PERMIT #08-53 to transfer 8 residential building eligibilities from the NE ¼ NW ¼ (100572), SE ¼ NW ¼ (100574), SW ¼ NE ¼ (100577), NW ¼ NE ¼ (100575), NE ¼ NE ¼ (100576), SE ¼ NE ¼ (100578), NW ¼ SE ¼ (100583), & NE ¼ SE ¼ (100584); al in Section 33-T103N-R49W to Tract B Heikes Addn.(ex. S18' & Ex. Tr. 1A Replat Erickson's Addn.) N1/2 of Section 34-T103N-R49W**

Location – 2 miles north of Renner  
Petitioner / Owner- Wade Peterson

**General Information**

Present Zoning - A1 Agricultural  
Existing Land Use - Agriculture  
Parcel Size - 40 Acres

Report by: Phil Kappen

**Recommendation**

The petitioner has requested that this item be postponed until the August 25<sup>th</sup> meeting as he will be out of town on the July meeting date.

Staff recommended deferral of Conditional Use Permit #08-53 to the August 25<sup>th</sup> meeting.

**Action**

Based on the staff report, a motion was made by O'Hara and seconded by Randall to **defer** Conditional Use Permit #08-53 to the August 25<sup>th</sup> meeting. The motion passed unanimously.

**ITEM 11. A PUBLIC HEARING FOR REZONING #08-07 from A-1 Agricultural to C Commercial.**

Legal Description – Commencing at the southwest corner of section 27 thence north along the west section line of said section 27 a distance of 2223.31 feet on an assumed bearing of N1°17'33"W; thence due east a distance of 590.74 feet to the northwest corner of Tract I of Blair Addition on the east right-of way line of South Dakota Highway 115 ( Avenue) and the Point of Beginning; thence N80°43'09"E along the north property of said Tract 1 to the northeast corner of said Tract 1; thence east parallel to and south of the 1/4 line of said section 27 a distance of 450.00 feet; then north to the a point on said 1/4 line that is 1150.00 feet east of the intersection of said 1/4 line and the east right-of-way of said Highway 115; thence west along said 1/4 line a distance of 1150.00 feet to a point on the east right-of-way line of said Highway 115; thence south-southeast along the east right-of-way line of said Highway 115 back to the point of beginning. Said area containing 9.8 acres more or less all in the north 1/2 of the southwest 1/4 of section 27, township 103 north, range 49 west of the 5 P.M., Minnehaha County, South Dakota.

Location – 2.5 miles north of Renner  
Petitioner / Owner- Tony Lee / Judith Blair

**General Information**

Present Zoning - A1 Agricultural  
Existing Land Use - Agriculture  
Parcel Size - 9.8 acres

**Report by:** Phil Kappen

**Staff Analysis**

The subject property is located along S.D. Highway 115 approximaely 3-1/2 miles north of the Renner Corner and 4-1/2 miles south of the Baltic Corner. The surrounding properties are all zoned A-1 Agricultural. There is a small commercial area located ½ mile north (Midway Corner) at the intersection of SD Highway 115 and Minnehaha County Highway 122. There is a very small commercial lot located ¼ mile to the south (Sluiter's Auction) that was a grandfathered use. Immediately to the south is Belly Acres greenhouse. Greenhouses are allowed as conditional uses in the A-1 Agricultural District since they are engaged in the production of an agricultural crop.

The petitioner proposes to zone to commercial to allow the construction of a 7200 square foot warehouse facility.

The Minnehaha Comprehensive Plan allows for commercial zoning at interstate interchanges, in rural service areas (such as Lyons or Rowena) or small areas at the intersection of two hard-surfaced roads when the use will serve the traveling public (such as Midway Corner). There have also been some allowances for small commercial areas at the intersection of two hard-surfaced roads for ag-related uses. The subject property meets none of the location criteria set forth in the comprehensive plan for commercial or industrial sites.

Access to the property would have to be from S.D. Hwy 115. There is a vertical curve along the highway which results in a poor sight distance at the subject property, particularly with vehicles coming from the south along the highway. . There are two existing driveways, which accesses the property and the Belly Acres Greenhouse. The Belly Acres driveway is located at a much better location regarding sight distance. The sight distance at the existing driveway onto the subject property is characterized by the SD DOT as very poor.

In addition to the sight distance concerns are the very real potential for truck movements between the subject property and the highway. There are horizontal curves on the highway both to the north and the south of the subject property. The slowing of semi-trucks when they are

turning into the property, or the gradual acceleration of trucks when they leave the property would constitute a traffic hazard given the highway curves in both directions from the property. With the proposed warehouse use, it is very likely that there would be an increase in the amount of truck traffic to and from the property.

The current property owner had previously talked to the S.D. Department of Transportation about relocating the driveway onto the property. On October 1, 2007 the state granted provisional approval for relocating the existing driveway for agricultural purposes. That permit would have required that the relocated driveway be no wider than 24 feet, that it be for only agricultural or residential use, that the traffic volume using the driveway could not increase by 25% or more, that the truck traffic using the driveway could not increase by 10% or more, and that all work be completed by May 1, 2008. The DOT informs staff that that permit is now void because the work was not completed by the required date. The DOT also informs staff that they are not in favor of the use of a driveway in this location for commercial traffic due to the sight distance problems. If the proposed rezoning were approved, it would allow the petitioner a means to try and force the SD DOT to approve commercial access at what has been determined to be an unsafe location.

Staff has spent considerable time with the petitioner suggesting alternative sites that would meet the location criteria for commercial sites. These sites include ample vacant commercially zoned land at the southeast and northeast corners of the Dell Rapids exit; the northwest, southeast and southwest corners of the Renner-Crooks exit; the northeast corner of the Valley Springs exit; and the southeast corner of the Hartford exit. This is a total of seven currently zoned commercial or industrial areas, each with multiple lots available.

In addition to those areas already zoned for commercial or industrial purposes, there is a great amount of land that could be zoned for commercial development at the interstate interchanges which would meet the location requirements of the comprehensive plan. These include the southeast corner of the Dell Rapids exit, the northeast and northwest corners of the Baltic exit, the northwest, southwest and southeast corners of the Valley Springs exit, the southwest corner of the EROS exit, the southwest corner of the Buffalo Ridge exit, the southwest corner of the Hartford exit and the southeast and southwest corners of the Humboldt exit. Other areas where commercial rezoning could be easily accomplished which meet the location requirements of the comprehensive plan include Lyons, the Wall Lake Corner area, the area around the intersection of Co. Hwy 148 (west 41<sup>st</sup> St.) and SD Hwy 17; the area around the intersection of SD Hwy 115 and Co. Hwy 114 (Baltic Corner); Rowena, and, of course, in any of the eleven incorporated municipalities located in Minnehaha County. Those areas in the rural portions of Minnehaha County that could easily be rezoned for commercial total 16, each with at least 20 to 30 acres that would be conducive for commercial purposes.

### **Recommendation**

Staff finds that the proposed rezoning does not meet any of the location requirements for commercial or industrial properties as set forth in the Minnehaha County Comprehensive Development Plan, that there are very poor sight distances along the subject property for access to and from SD Hwy 115, and that there are great concerns with the potential for increased truck traffic to and from the highway at this site. Staff, therefore, recommended denial of rezoning application # 08-07.

### **Public Testimony**

The petitioner, Tony Lee, stated that precedence for commercial uses had already been set in this area due to Sluiter's Auction and the zoning at Midway Corner. He stated his business will service agricultural uses just as much as Ravens will. Neither Ravens nor his business sell to end uses, but both are agri-businesses. Mr. Lee stated that the DOT told him the driveway just has to be moved to a safer location. You can easily see both 254<sup>th</sup> and 255<sup>th</sup> Streets from this location.

Mr. Lee continued, stating that he doesn't feel the Planning Department has any right to dictate access issues, it is not their business. He would like to have his business in this location for several reasons. 1. The site is close to his home. 2. Dollars & cents – he can't afford commercially zoned land; it is too expensive for a business just staring out. 3. He plans to build a green building that uses geo thermal. 4. The Comprehensive Plan doesn't specify a distance

that you need to be from the intersection of two hard surfaced roads. He is only 3/8 of a mile from Sluiter's Auction. 5. Quoting the Argus Leader (Mr. Lee didn't not provide a date or article title) he said there was a lack of good industrial spaces in Sioux Falls with a vacancy rate of 3%. 6. This site has a 4" water main and 3-phase electricity which he needs.

Mr. Lee reiterated that he feels is not the Planning Department's job to determine if there is good site distance at this site. He has spoken with the DOT and they want a site plan. Mr. Lee stated that he has signed a purchase agreement for this site. He had pictures of the roadway looking each direction which he displayed for the Planning Commission.

Vernon Fry, 25466 475th Ave, owns the property. He concurred with Mr. Lee that your can see both Midway Corner and 255<sup>th</sup> St. with no problem.

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

Action

Commission Cypher stated that it is tough to find affordable land to start a business. However, this is not in conformance with the Comprehensive Plan and he agrees with concentrating commercial development at major insertions.

A motion was made by Cypher and seconded by Twedt to **recommend denial** of rezoning #08-07. The motion passed unanimously.

**ITEM 12. VARIANCE #08-02 to allow an accessory building without a main building.**

Legal Description – Tract 1 Burns Addn. in Section 15-T101N-R48W  
Location – 48173 265<sup>th</sup> St 2 miles south of Brandon  
Petitioner / Owner- Paul Loney

**General Information**

Present Zoning - A1 Agricultural  
Existing Land Use - Agriculture  
Parcel Size - 25.98

**Report by:** Scott Anderson

**Staff Analysis**

The applicant is requesting to construct and use an accessory building prior to constructing a residence on the subject property. Accessory structures are only allowed once a principal use has been established. The Zoning Ordinance in Section 12.07 (B) states:

Time of Construction. No accessory buildings shall be constructed upon a lot until the construction of a main building has been actually commenced, and no accessory buildings shall be used unless the main building on the lot is also being used.

The applicant's intent is to construct the accessory structure and then use it for storage of material and various items before the residence is constructed. As the subject property is vacant, staff has not visited the site specifically to evaluate this request, however has been on the site several times before during subdivision review.

Typically, the Board of Adjustment hears requests to vary a specific standard set forth by the Zoning Ordinance, such as a building setback from the property line or the height of a building. In this case, however, the applicant is actually requesting a variance to a use of the property. Use variances are often found to be contrary to the intent of zoning variances and often not upheld by the courts.

Minnehaha County Zoning Ordinance clearly states that the Board of Adjustment may not vary the zoning regulations unless it makes findings based upon evidence that **all** of the following conditions are present. Staff has visited the site and prepared its observations in regard to the following.

**1. That specific circumstances or conditions, such as exceptional narrowness, topography, or siting exists.**

There are no conditions which preclude the applicant from utilizing the subject property in a method that would meet the requirements of the Zoning Ordinance. The applicant is requesting a privilege.

**2. That the Variance does not grant a use which is otherwise excluded from that particular district, or diminish or impair property values within the area.**

The requested variance is a use that is restricted from the A-1 zoning district. The Zoning Ordinance is clear on this matter. An accessory use is not mentioned in the permissive uses, permitted special uses or conditional uses. Furthermore, the definition of an accessory building indicates that an accessory building is subordinate to the main building or use on the premise. There is no established main building on the property

**3. That due to the specific circumstance or existing conditions strict application of the Zoning Ordinance would be an unwarranted hardship.**

No hardship exists. The applicant has full use of the property with the potential to construct a single family residence in several places on the subject property

**4. That the granting of a Variance is not contrary to the public interest and is in harmony**

**with the general purposes and intent of the Zoning Ordinance.**

The proposed variance is not in the public's interest. Granting the proposed variance would be actually issue a favor to one specific landowner that has not demonstrated any physical hardship brought on by any unique characteristic of the subject property.

**5. That because of circumstances or conditions, there is no possibility that the property can be developed in strict conformity with the provisions of the zoning regulations and that the authorization of a variance is therefore necessary to enable the reasonable use of the property.**

In reviewing this aspect of the criteria set forth in the Zoning Ordinance, the applicant can not make a case. The property can be developed as any other property within the county. The applicant has full use of the property. Once the required permits are obtained, the applicant could build a single family residence on the property, which would then allow an accessory structure to be constructed.

While staff can understand the applicant's desire to have a large accessory building to use now, the applicant has failed to provide any evidence of a physical reason why an accessory structure is needed prior to a principal use. The Board of Adjustment must follow guidelines set forth in Article 21.04 of the Zoning Ordinance which indicate that without a variance no reasonable use of the property exists. Staff can not support the variance request.

**Recommendation**

Staff recommended denial of Variance #08-02 to allow an accessory building prior to principal use on the subject property.

**Public Testimony**

Commissioner Steinhauer stated that the Commission's hands are pretty much tied by the ordinance. The reason this restriction is in the ordinance is because there is no assurance a person will build a house and that the accessory building could be used for commercial purposes. He wondered if there is any ordinance amendment that could give some leeway.

The petitioner, Paul Loney, stated that he understood he faced quite a bit of difficulty to get this approved. He provided the Commission with a handout and made the following points in conjunction with it. He has 29.5 acres and has spoken with his immediate neighbors to the west and east. Neither neighbor had any concerns with a pole shed on this site. He understands the concerns about having businesses move into this building, but feels that sometimes the regulations punish those who are doing things right. He wants a building with a lock & key to keep materials used in maintaining the property. Mr. Looney stated he plans to build a house here in 4 or 5 years.

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

**Action**

Commissioner Cypher stated that the current ordinance doesn't allow what the petitioner is requesting and that he was unable to meet all of the criteria set forth in the zoning ordinance.

Based on the staff report and public testimony, a motion was made by Cypher and seconded by Randall to **deny** Variance #08-02. The motion passed unanimously.