

**MINUTES OF THE  
MINNEHAHA COUNTY PLANNING COMMISSION**  
August 25, 2008

A meeting of the Planning Commission was held on August 25, 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, Mark Rogen, Don South, and Wayne Steinhauer.

STAFF PRESENT: Scott Anderson, Phil Kappen, and Pat Herman -County Planning  
Gordy Swanson- Office of the States Attorney

The meeting was chaired by Don South.

**ZONING BOARD OF ADJUSTMENT**

**ITEM 1. ZONING VARIANCE #08-03 to allow a reduced front yard set back and reduced lot size in the A-1 District.**

Legal Description – Lot No. 3A of Iverson's Tract No. 1 N1/2 of Section 33-T101N-R48W

Location – 1.5 miles east of Sioux Falls

Petitioner / Owner- James & Sandra Beck / Ehrhart Griffen & Associates

**General Information**

Present Zoning - A1 Agricultural

Existing Land Use - Agriculture

Parcel Size - 40 Acres

**Report by:** Scott Anderson

**Staff Analysis**

The applicant is requesting a variance to reduce the minimum lot size and lot width in the A-1 Agriculture District. All lots within the A-1 Agriculture District are required to have a lot size of at least one (1) acre and a lot width of at least 125 feet. The applicant submitted a plat proposing to create an 8.5 foot by 8.5 foot lot. The applicant has no intention of building on this lot. The lot is being platted as a well lot and is the location of an existing well head. Upon review of the plat, staff indicated to the applicant that the plat could not be approved by staff without first obtaining the appropriate zoning variances.

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

In this situation, the use of the lot actually presents a specific circumstance which warrants a smaller lot. A 1 acre lot simply to accommodate a well lot is typically not required and does not represent wise usage of land.

**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 would not allow a use otherwise excluded from the district.

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

The need to have this well lot platted is a situation that constitutes a specific circumstance. Requiring a one (1) acre well lot would be an unwarranted hardship.

**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.**

Granting of the proposed Variance does not harm the public. Staff can support the request to reduce the lot size and lot wide. The applicant has demonstrated a specific circumstance which constitutes a limited degree of hardship. The existing well provides infrastructure to an existing residence. The proposed reduction in lot size and width will not impact any of the existing land uses in the area.

**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.**

A variance is in order in this case, as the smaller lot provides the best and most reasonable use of the property. Strict conformity of the Zoning Ordinance in this case does not represent the best technique in land use planning. A reduction in lot size is in order and staff supports the request.

**Recommendation**

Staff recommended approval of Variance #08-03 to reduce the minimum lot size and width requirements to allow the platting of an 8.5 foot by 8.5 foot well lot.

**Public Testimony**

The petitioner was represented by Chris Curtis. No one wished to address the item and the floor was closed to public testimony.

**Action**

Based on the staff report, a motion was made by Cypher and seconded by O'Hara to **approve** Variance #08-03 to allow the platting of an 8.5' X 8.5' well lot. The motion passed unanimously.

**CONSENT AGENDA**

An audience member requested Item 4 be placed on the regular agenda. A motion was made by Steinhauer and seconded by Rogen to approve the consent agenda

**Item 2. Minutes**

A motion was made by Steinhauer and seconded by Rogen to approve the July 28, 2008 minutes. The motion passed unanimously.

**ITEM 3. CONDITIONAL USE PERMIT #08-58 to allow the expansion of an existing dairy.**

Legal Description – W1/2 SW1/4 in Section 20-T103N-R49W  
Location – 25370 473<sup>rd</sup> Ave. 4 miles south of Baltic  
Petitioner / Owner- Haagenon Farms, Inc

**General Information**

Present Zoning - A1 Agricultural  
Existing Land Use - Agriculture  
Parcel Size - 80 Acres

**Report by:** Phil Kappen

**Staff Analysis**

The subject property is located to the north of 254<sup>th</sup> Street and east of 473<sup>rd</sup> Avenue (4 miles south of Baltic, 4 miles northeast of Crooks and 4 miles north of Renner). The predominant land use in the immediate area is agricultural with scattered housing. The petitioner has an existing 350-stall dairy barn operation with additional animals kept in an outdoor lot. He proposes to increase the size of the dairy barn to 490 stalls, construct an enclosed building for the fresh cows and remove the outdoor lot. This would result in an approximate 40% increase over the capacity of the existing operation. The improved facilities would allow for up to 890 animal units (560 wet cows plus 100 dry cows).

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

As was noted above, there are scattered residences in the vicinity, some ag and some non-ag. The nearest residences in all directions around the site are as follows:

- To the west – 600', 1100', 1800'
- To the northwest – 1000'
- To the north – 1000', 1300'
- To the east – 2000', 2000', 2300', 2300'
- To the southeast – 2400', 2500'
- To the south – 2000', 2300', 2900'

There have, at times, been complaints against the existing facility regarding odor. The current operation has almost no odor control practices in place. In the past we have seen satisfactory reductions in odor by allowing reasonable increases in the size of existing dairy facilities and requiring the implementation of odor control practices. It is likely that a similar reduction in odor can be achieved at this site through similar methods.

The target criteria distance for the size of the proposed facility is 1980 feet. This is the distance at which added odor reduction methods would not always be necessary. There are six residences that fall within that distance so added odor control methods would have to be employed. Some practices that would help reduce odor include the planting of trees around the facility and the use of a solids separator for the manure. By removing the majority of the solids from the manure going into the manure basin, it greatly reduces the biochemical oxygen demand (BOD) of the basin. The BOD measures how much oxygen

is needed by organisms to break down the waste and corresponds to the amount of odor emitted from the basin. A lowering of the BOD results in a reduction of odor. Research continues on the odor reduction effects of both trees and of solid separators, however, it is estimated that the use of both methods together could result in a reduction of up to 80% in the amount of odor coming from a manure basin for a dairy. The research has shown that the use of trees is of greatest benefit closest to the facility.

Through use of the SD Odor Footprint Tool, which has been developed by SDSU, it is estimated that in order to reach a level where there is no annoyance odor from the existing facility for 96% of the time you would have to be an average distance of 2356 feet from the facility (2218 feet to the northeast, 2291 feet to the southeast, 2421 feet to the southwest and 2495 feet to the northwest). Through the use of tree plantings and the solids separator the 96% annoyance odor distance is reduced to an average of 1086 feet (1040 feet to the northeast, 1105 feet to the southeast, 1123 feet to the southwest and 1076 feet to the northwest). Most homes, with the exception of the home located 600 feet to the west, are located near or beyond those distances. Added odor control methods for that home are discussed in section 5 below.

It is interesting to note that, even though there have been some complaints in the past, two new houses have been constructed to the southeast of the property (just under ½ mile) within the last two years.

The subject property lies outside of all water source protection areas. There is a small area of designated floodplain located toward the northeast corner of the site. It appears that the current outside lot is located partly in this floodplain area. The petitioner has proposed to remove this lot which would remove all portions of the livestock operation from the floodplain. Should this permit be approved, the removal of the outside lot should be made a condition of the 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 land is in agricultural uses and will likely continue in these uses in the future.

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

The facility should be required to obtain a state general permit for a CAFO. The state engineers will look carefully at the drainage of the site in considering a permit application. Runoff will not only have to be controlled from the areas where animals are housed and from any manure retention areas, but also from all feed storage areas. There is no such control in place at this time for runoff from the barns or feed storage areas.

In the past there have been problems on this site with the quantity of material in the manure basin. Much of the basin has often been filled with solids leaving little space for the liquid portion of the manure. On at least one occasion the basin, due to a system management problem, was allowed to overflow. The use of the solids separator will greatly reduce the amount of solids in the basin. Through this management method, the

basin will likely be of an adequate size to accommodate the proposed facility and a larger basin should not be necessary. The State DENR will closely review this basin size in their state permit review and the petitioner will be required to provide an adequate size of waste storage area. Conditions should be placed on any conditional use permit to require the removal of most of the solids through the use of solids separation equipment and proper on-going maintenance to ensure adequate capacity in the manure storage basin.

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

There is ample space on the site for any necessary parking or loading required for the proposed 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.**

Much of the odor control has been addressed in the previous sections. There is one other aspect, however, that should be addressed. In discussion with the agricultural engineering department at SDSU a concern was expressed by the department about the proximity of the closest house to the west. They suggested that, in addition to the use of trees and the solid separator, a “windbreak wall” should be constructed near the property line across the road from the closest home. Such a wall should be solid, built to a height of at least 12 feet, and extend to at least 350 feet north of the 254<sup>th</sup> Street right-of-way. The wall should not extend into the required intersection safety zone at the corner of 254<sup>th</sup> Street and 473<sup>rd</sup> Avenue. A row or rows of dense trees should be allowed in lieu of a wall.

**Recommendation**

Staff finds that the proposed use is consistent with the types of uses found in agriculturally-zoned areas, that the property is not located within a water source protection area, and that any potential for impacts from the proposed increase in size of this livestock facility can be offset through the requirement that odor control practices be added to the existing facility and to the proposed expansion. Staff, therefore, recommends **approval** of conditional use permit # 08-58 with the following conditions:

1. The facility shall be limited to an 890 animal unit dairy operation.
2. The old open livestock lot area shall be completely closed and all livestock kept under roof as indicated by the site plan that accompanied the conditional use permit application.
3. The facility shall be fully permitted by the South Dakota Department of Environment and Natural Resources and copies of all permit approval documentation shall be provided to the Minnehaha County Planning Department. The petitioner shall comply with all provisions of the state permit.
4. An executive summary of the nutrient management plan shall be provided to the county. Summaries of any future updates to this plan shall also be provided to the Planning Office. The petitioner shall comply fully with all provisions of these approved plans.
5. The petitioner shall plant a minimum of a five-row shelterbelt around the facility and in particular around the manure storage basin. At least one row shall be of an extremely fast-growing species such as Austrees and at least four rows shall be of

- slower-growing but longer-lived tree species. The petitioner shall have a revised site plan prepared for Planning Department approval that shows the location of all tree belts and the species that will be used in each row. All tree plantings shall be planted by the Spring of 2010 and any trees that die shall be immediately replaced.
6. At a minimum, a windbreak wall or one or more rows of trees shall be situated in the southeast portion of the property between the livestock facility and the house immediately across the road to the west of the facility. The wall, or trees, shall be located 50 feet from the 473<sup>rd</sup> Avenue right-of-way, shall not extend closer than 50 feet to the 254<sup>th</sup> Street right-of-way and shall extend north to a distance of at least 350 feet from the 254<sup>th</sup> Street right-of-way. If a fence is used it shall be a minimum of 12- feet in height, and shall be solid. If trees are to be used there shall be at least one row of an extremely fast-growing species such as Austrees. Any trees that die shall be immediately replaced. This requirement shall be considered a minimum and the petitioner may erect added windbreak walls or trees provided that the location of such features is approved by the Planning Department. The windbreak wall or row of trees shall be planted by the Spring of 2010.
  7. The facility shall minimize the amount of solids entering the manure storage basin. This shall be accomplished through the use of a solids separator or similar technology.
  8. The facility operators shall take steps to ensure that the manure storage basin does not overflow. Should this occur at any time, the conditional use permit shall be brought back before the Planning Commission for a full review of the conditional use permit.

**Action**

Based on the staff report, a motion was made by Steinhauer and seconded by Rogen to **approve** Conditional Use Permit #08-58 with the conditions as stated. The motion passed unanimously.

**ITEM 5. CONDITIONAL USE PERMIT #08-60 to exceed 1200 sq. ft. of accessory building area, 2400 sq. ft. requested.**

Legal Description – Lot B Tract 3 Swenson’s Addn. in Section 6-T102N-R48W  
Location – 25617 479<sup>th</sup> Ave. 4 miles northwest of Brandon  
Petitioner / Owner- Jeremy & Jennie Hartung

**General Information**

Present Zoning - A1 Agricultural  
Existing Land Use - Residential  
Parcel Size - 10.27 Acres

**Report by:** Pat Herman

**Staff Analysis**

The subject property is located four miles northwest of Brandon, adjacent to 479<sup>th</sup> Avenue. Property in this area is used for agriculture with scattered residential acreages. The petitioner’s lot is part of an eight tract subdivision on which uses five residential building eligibilities.

The petitioner requesting approval for an additional 2400 sq. ft. of accessory building area. They currently have 1,162 square feet on this property. The requested amount would increase the total square footage to 3, 562. Staff has researched other properties in the area in regards to accessory building square footage. Residential lots have accessory building areas that range from 600 square feet to 4,050 square feet.

**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.**

An additional 2400 square foot building will have no effect on property values or the use of other property in the area. The building is consistent with the size of out buildings on the surrounding properties.

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

A new building will not have a negative effect on development in the area. This is a large lot and storage is needed for the equipment used to maintain the lot.

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

Access is to a township gravel road using the existing driveway..

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

N/A

**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.**

None of the above listed items would be at the level to constitute a nuisance.

A building inspection will be required on the completed building. The size of the

building will be measured on the outside of the perimeter walls and may not exceed the allowed square footage.

**Recommendation**

Staff found the request to be consistent with existing accessory buildings in the area and recommended approval of Conditional Use Permit #08-60 with the following conditions:

- 1) Accessory building area on Lot B Tract 3 Swenson's Addn. shall not exceed 3,562 square feet.
- 2) No commercial use of the accessory building is allowed.
- 3) The building shall not exceed one story in height.
- 4) A building permit is required prior to the start of construction.
- 5) A building inspection is required.

**Action**

Based on the staff report, a motion was made by Steinhauer and seconded by Rogen to **approve** Conditional Use Permit #08-60 with the conditions as stated. The motion passed unanimously.

**REGULAR AGENDA**

**A motion was made by Steinhauer and seconded by Rogen to approve the regular agenda (items 4 & 6).**

**ITEM 4. CONDITIONAL USE PERMIT #08-59 to exceed 1200 sq. ft. of accessory building area, 2900 sq. ft. requested.**

Legal Description – Tr. 4 Schaap & Wehde’s Addn. SW1/4 of Section 18-T103N-R49W

Location – 25262 472<sup>nd</sup> Ave. 3 miles southwest of Baltic

Petitioner / Owner- Sandra Campbell

**General Information**

Present Zoning - A1 Agricultural

Existing Land Use - Residential

Parcel Size - 1.71 Acres

**Report by:** Pat Herman

**Staff Analysis**

The subject property is located approximately three miles south west of Baltic, adjacent to Highway 133. There are a number of residential acreages which line the highway. The remaining property is in agricultural production.

The petitioner requesting approval for 2900 sq. ft. of accessory building area. Staff has researched other properties in the area in regards to accessory building square footage. Residential lots have accessory building areas that range from 601 square feet to 5, 660 square feet.

**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 2900 square foot building will have no effect on property values or the use of other property in the area. The building is consistent with the size of out buildings on the surrounding properties.

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

A new building will not have a negative effect on development in the area.

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

Access is to a hard surfaced road using an existing driveway.

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

N/A

**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.**

None of the above listed items would be at the level to constitute a nuisance.

A building inspection will be required on the completed building. The size of the building will be measured on the outside of the perimeter walls and may not exceed the allowed square footage.

**Recommendation**

Staff found the request to be consistent with existing accessory buildings in the area and recommended approval of Conditional Use Permit #08-59 with the following conditions:

- 1) Accessory building area on Tr. 4 Schaap & Wehde's Addn. shall not exceed 2900 square feet.
- 2) No commercial use of the accessory building is allowed.
- 3) The building shall not exceed one story in height.
- 4) A building permit is required prior to the start of construction.
- 5) A building inspection is required.

**Public Testimony**

The petitioner, Sandra Campbell, stated that she was in agreement with the conditions.

Kermit Oehlke, 25295 472<sup>nd</sup> Ave., lives a 1/3 of a mile south of this site. He is worried about all the garages going up in this neighborhood. He noted that the petitioners already have a attached and detached garage. Mr. Oehlke pointed out there was a trucking operation operating in this neighborhood.

Commissioner Steinhauer explained that the 2900 sq. ft. included the existing building area. He stated that part of the reason for having a public hearing is to nail down the applicants reason for the building and to prevent commercial uses.

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

**Action**

Based on the staff report, a motion was made by Steinhauer and seconded by Rogen to **approve** Conditional Use Permit #08-59 with the conditions as stated. The motion passed unanimously.

Item 6 was deferred from the July 28, 2008 meeting.

**ITEM 6. CONDITIONAL USE PERMIT #08-53 to transfer 8 residential building eligibilities**

**From** - NE ¼ NW ¼ (100572), SE ¼ NW ¼ (100574), SW ¼ NE 1/4 (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); all 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

**Staff Analysis**

The subject property is located to the east of 475<sup>th</sup> Avenue and northeast of the Rocky Ridge housing development. The subject property has existing residential areas on the north, east and south sides and agricultural land to the east. The petitioner wishes to transfer eight building eligibilities to the property which would allow the creation of an 8-lot subdivision.

The petitioner owns land along the west side of 475<sup>th</sup> Street (S.D. Hwy 115) that has a total of eight eligibilities. He recently purchased a residential lot to the north of his farmstead that provides a contiguous connection between his property to the west of Highway 115 and the property he owns on the east side of Highway 115.

In 1999 the petitioner had applied to transfer eligibilities to this same property from land that he owned to the northeast. That application was denied due to concerns about whether the applicable tracts were contiguous. Then, in 2006, he made application to do a transfer that was similar in nature to the present request. That application was also denied, this time because of questions about whether the properties were all under the same ownership. It was determined at that time that the properties were not under the same ownership. The petitioner has answered those questions and the properties are now contiguous and under the same ownership. The States Attorney has reviewed the request and found that it meets all the required criteria.

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

As the properties on three sides of the subject property are already in single-family residences, the addition single-family homes would conform with the predominant land uses in the immediate area.

Another concern expressed at the 2006 hearing was that there may be “mobile homes” placed on the site. The use of manufactured homes is controlled by the county zoning ordinance and if there was a desire to place such homes on the property it would first have to go through an extensive hearing process to determine if such homes would be allowed. Neighboring landowners would likely have much impact in such a hearing as to

whether manufactured homes were approved.

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

The subject property has been gradually broken up through the years to the point where it is now a farm field in the middle of existing residential uses. Moving the eligibilities to this site will allow the more productive farmland to be reserved exclusively for agricultural production.

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

There is an existing publicly-dedicated right-of-way (Washington Street) that provides access to the south portion of the subject property. There is also an existing 66-foot wide ROW at the north end of the property that allows access to 255<sup>th</sup> Street from the subject property and from two residential lots which abut the right-of-way. During the hearings held in 2006 a local landowner alleged that this north right-of-way was not in fact a true right-of-way, but was designed for field access. Staff has found, however, that the ROW was publicly dedicated when Lot 1 of Heikes Addition was platted in 1979 (Plat Book 41, Page 35). This is the lot immediately east of the ROW section.

In 2006 there was also a question from property owners alleging that there was no statement with the application regarding the maintenance of the road. It would be premature to have such a statement at this time as this is addressed through the preliminary subdivision plan and the final platting. At that time the petitioner will be required to either show that the township will accept the road, or he will have to create a homeowner's association that has full responsibility for the road.

Washington Street, as it exists at this time does not meet current subdivision regulations in that it is longer than would now be allowed. The development of a road between Washington Street and 255<sup>th</sup> Street would actually improve emergency vehicle access in the area and bring Washington Street into conformance with current standards.

Other neighbors appearing at the 2006 hearing stated that Washington Street was a township road. Staff has not been able to find that Sverdrup Township has ever formally accepted the entire length of Washington Street. The road is a publicly-dedicated right-of-way, but not all of it is a township road. There are some portions of Washington Street which the petitioner will have to improve to current construction standards in order to provide safe access to the proposed development. This would likely be done at the same time as construction of the road through the development. Building permits would be withheld until all roads were properly constructed.

The property also abuts Highway 115 (475<sup>th</sup> Ave.) which could allow another access point to this site. The petitioner would have to obtain approval from the SDDOT for any new approach onto the highway.

During the 2006 hearings there were questions regarding the drainage pattern on the property. The conditional use permit is only the first step in a rather extensive process. Stormwater management on the property will have to be addressed during the preliminary subdivision plan step of the process. A preliminary subdivision plan will have to be prepared by the petitioner and his engineers and submitted to the County for both Planning and County Commission approval. The petitioner will also have to obtain an NPDES permit from the SD DENR that will govern the erosion control methods that

must be used on the site.

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

There is more than enough area on the potential lots for any parking that would be required by the approved single-family residential uses.

**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 more impacts of these types than would be found in the existing residential properties surrounding the subject property on the west, south and north.

**Recommendation**

Staff finds that the proposed transfer meets all required criteria for a transfer of building eligibilities, that the transfer allows for necessary access improvements in the area, that the request meets the goals of the density zoning program in that it preserves more productive land exclusively for agricultural production and that the request is in conformance with the general character of the area surrounding the subject property which has become large-lot residential development. Staff, therefore, recommended approval of conditional use permit #08-07 with the following conditions:

1. A preliminary subdivision plan shall be prepared for county approval that addresses the basic layout of all lots and roads, as well as the erosion control provisions and stormwater management of the site.
2. All lots on the subject property shall be platted and a right-to-farm notice covenant filed on the lots prior to the issuance of any building permit.
3. The petitioner shall obtain a NPDES permit from the S.D. DENR and follow all stipulations of the approved permit prior, during and after the development process.

**Public Testimony**

Commissioner Steinhauer stated that the Conditional Use Permit process was to establish first if the request meets the criteria listed in the ordinance, and second, if the intent of the ordinance has been met. This would be the clustering of houses and the preservation of agricultural land.

At his request, Mr. Kappen explained that after the Conditional Use Permit, the next step for the applicant is to submit a preliminary subdivision plan. This plan looks at the design of the development including layout of the streets and lots, road construction standards, storm water management and erosion control. This plan requires approval from both the Planning Commission and the County Commission. A final plat is the final step. This is approved administratively. The final plat requires a road maintenance certificate, whether the road is private or public, which spells out who is responsible for road maintenance. Mr. Kappen also noted that manufactured homes require a conditional use permit. Notice of the request would be sent to all land owners within 500 feet of the site, a sign would be posted on the property, and a public hearing would occur before the Planning Commission.

The applicant was represented by Sam Assam. He was comfortable with Mr. Kappen's presentation and available to answer any questions.

Attorney Matt Bach with Woods Fuller Law Firm, is representing John and Shelly Cole, 47534 Washington Street. He noted that there were 20+ neighbors here in opposition to this request. Mr. Bach stated that he had six reasons why this request to transfer building eligibilities should be denied.

1) Access to roads as required by the Zoning Ordinance in Section 3.04(Y)5 which states that : *Approval has been granted by the appropriate governing entity for access onto a public road.* There are three roads in this area. Mr. Bach stated that the petitioner had not met this requirement. He noted Mr. Kappen's statement in the staff report that access to State Highway 115 was unlikely. The petitioner has not met his burden to show he has approval for access, so one of the technical requirements has not been met. Mr. Bach stated that Sverdrup Township is not on record saying that they would allow access and were against this transfer in 2006.

2) The ordinance requires that transfers occur between contiguous parcels that are under the same ownership, with same ownership meaning the name on the deed is the same for all parcels. This has been an issue in 1999 and in 2006. The issue in 2006 was a parcel not under the same ownership. At issue was a quick claim deed that was a partial interest with another owner so that did not meet the requirement of same ownership. Using a map, Mr. Bach stated that the small plot of land on the immediate west side of Hwy 115 was just being used as a conduit to jump or leapfrog the eligibilities to the east side of the highway. He stated that on the west side of the highway, the eligibilities were being moved over properties that do not have building eligibilities. This was jumping two properties to make the transfer, and to him that is not contiguous property because there are no housing eligibilities. Commissioner Steinhauer questioned whether Mr. Bach was saying that a property must have an eligibility for it to be used as part of a transfer request. Mr. Bach replied that the ordinance was not clear and that was up for debate. It says contiguous under the same ownership, do you have to have an eligibility on every parcel, the ordinance doesn't say. In 2006 the quick claim deed went right back and was reversed when the request was denied. Mr. Bach also alleged, having been told by area neighbors, that Mr. Peterson had an agreement with the previous owner of the small parcel of land. This agreement is to allow the previous owner to buy back the property within a number of years for the same price as Mr. Peterson paid for the property. Mr. Bach admitted that he had not proof of this, but such an action, trading properties, is just a way to circumvent the intent of the ordinance.

3) Mr. Bach believes the purpose of an eligibility is not to cluster housing eligibilities but to transfer them from productive land to less productive land. Mr. Bach read aloud Section 3.01, the intent of the Agricultural District: *It shall be the intent of this district to provide for a vigorous agricultural industry by preserving for agricultural production those agricultural lands beyond areas of planned urban development. It is recognized that because of the nature of both agricultural activities and residential subdivisions, that these two uses are generally poor neighbors and therefore a concentration of housing in the A-1 District shall be discouraged.* Mr. Bach stated that this is an area that is beyond urban development and, with eight eligibilities, is a subdivision. It is not the intent of the

ordinance to cluster them in one area, it is in fact the opposite, you should discourage the clustering of residential uses in the agricultural district. This is an agricultural community.

4) Mr. Bach thought the petitioner should be required to remain the owner of the conduit parcel. Mr. Bach read the following quote from the minutes of the 2006 County Commission meeting regarding this item: "The common thread property that was recently acquired would need to be replatted as part of the original parcel for the criteria of continuity to be met." He noted that the property has not been replatted, so the property is not all in one piece. The requirement from 2006 has not been met.

5) Mr. Bach stated that Mr. Peterson had filed a lawsuit against the County for the denial of his transfer request in 2006 by the County Commission. That action is still pending and he feels that matter should be cleared up before this new request is considered. He also has found that there is a title defect with one of the parcels on which there is an eligibility and that needs to be taken care of before any action can be taken. We don't know if it is under the same ownership today, it is unclear. When pushed by Commissioner Steinhauer, Mr. Bach refused to offer an opinion on whether the defect affected land ownership.

6) Mr. Bach stated that roads and the concentration of septic systems are significant concerns. This is not the spirit of the ordinance to cluster houses and septic systems.

Commissioner Steinhauer pointed out that there was a dedicated road at the north end of the property which allowed access onto township road 255<sup>th</sup> St. Mr. Bach agreed it was a dedicated road but still feels the petitioner should have to obtain approval from the township prior to approval. Both Commissioners South and Steinhauer stated that access approval is set as a condition of the conditional use permit. Mr. Bach disagreed, saying that it is a threshold that must be met beforehand. Commissioner Steinhauer stated that he disagreed with Mr. Bach's assessment of the intent of the ordinance and that it can be put as a condition. He continued that there are multiply purposes for the ordinance. The protection of agricultural land is paramount and the clustering of houses assists in the protection. The Planning Commission for years has considered the clustering of houses as a way to limit the conflicts between homes and agricultural uses.

Mr. Kappen noted that Book 41 Page 35 in the Register of Deeds has the publicly dedicated road that allows access to 255<sup>th</sup> Street. As such it does allow access and as such it allows access whether the Township wants it or not.

Tony Lee, 47563 255<sup>th</sup> St, stated that the petitioner has requested this same transfer before in 1999 and 2006. The petitioner didn't listen to the Commission before and nothing has changed. There no proven track record with the petitioner that he is going to listen to the Commission and move forward in good faith. History has to set some precedence. The DOT ordinance states that if you are going to affect a road more than 25% of the existing traffic you have to apply for an access permit. Mr. South pointed out

that 255<sup>th</sup> St. had nothing to do with the State highway. Mr. Lee stated that moving more traffic onto 255<sup>th</sup> Street would need approval by the State. The site distance at which 255<sup>th</sup> St. intersects Highway 115 doesn't meet the State standards. Mr. South stated that 255<sup>th</sup> St. was a township road and that traffic on the township road was an independent action. The State would not be involved.

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

**Action**

Commissioner Cypher stated that he believes the purchase of the small lot, which has a single family dwelling, to obtain a contiguous connection stretches the intent of the zoning ordinance. The eligibilities that are requested to be moved are in the flood plain. The petitioner cannot argue that moving the eligibilities will preserve agricultural land. Moving them will place them on farm land. It is preserved now as the eligibilities can not be used in the flood plain. There are already a large number of lots in this area without any sanitary sewer system. Moving the eligibilities would increase the density of housing in the area.

Motion by Cypher to deny Conditional Use Permit #08-53. Steinhauer seconded the motion.

Commissioner Steinhauer concurred that he was uncomfortable with the applicant's purchase of one little lot in order to move these eligibilities. This action stretched the intent of the ordinance. It's normally to allow building eligibilities to be moved between quarter-quarter.

Commissioner Cypher stated that the petitioner had created this situation himself as he was the one who had sold the lots along the highway years ago.

The Planning Commission voted on the motion. The motion passed (Rogen no).