

**MINUTES OF THE
MINNEHAHA COUNTY PLANNING COMMISSION
October 27, 2008**

A meeting of the Planning Commission was held on October 27, 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, and Pat Herman -County Planning

The meeting was chaired by Don South.

CONSENT AGENDA

ITEM 1. MINTUES – September 22, 2008

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

ITEM 2. CONDITIONAL USE PERMIT #08-64 to allow a manufactured dwelling.

Legal Description - S ½ W ½ NW ¼ NW ¼ 13-T103N-R52W

Location – 25216 459th Ave. 7 miles northeast of Humboldt

Petitioner / Owner- Carol Brower

General Information

Present Zoning - A1 Agricultural

Existing Land Use - Agriculture

Parcel Size - 10 Acres

Report by: Pat Herman

Staff Analysis

The 10 acre parcel is located seven miles north of Humboldt. The surrounding land use is agricultural with a few scattered acreages or farmsteads. There is floodplain to the south of the site, but not within this parcel.

The petitioner is requesting approval to replace the existing dwelling with a 3-bedroom manufactured home.

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 manufactured home should have no impact on property values in the area and its use as a home will not affect the surrounding property.

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

The use of the property will remain the same, so the manufactured home will not impact development in this area.

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

provided.

All utilities and driveways will not change.

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

There is sufficient space to allow for all parking needs for a single family home.

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.

No of the items listed above should be at a level to constitute a nuisance.

Recommendation

Staff found the request will conform to the neighborhood and recommended approval of Conditional Use Permit #08-64 with the following condition:

The manufactured home shall be in compliance with Section 12.06(C) of the 1990 Zoning Ordinance.

Action

Based on the staff report a motion was made by O'Hara and seconded by Cypher to **approve** Conditional Use permit #08-64 with the stated conditions. The motion passed unanimously.

ITEM 3. CONDITIONAL USE PERMIT #08-65 to exceed 1200 square feet of accessory building area – 1440 square feet requested.

Legal Description - N270' S1229.37 E835.42 SE ¼ in Section 16-T101N-R47W

Location – 26481 487th Ave. 3 miles south of Valley Springs

Petitioner / Owner- Ryan Campbell

General Information

Present Zoning - A1 Agricultural

Existing Land Use - Residential

Parcel Size - 10 Acres

Report by: Scott Anderson

Staff Analysis

The property is located approximately 3 miles south of Valley Springs. The parcel is part of a group of residential lots which are accessed from 487th Avenue.

The petitioner would like to construct an accessory building on this site. In subdivisions or residential developments which exceed four lots in size, accessory building area is limited to 1200 sq. ft. unless approval for a larger size is obtained through the conditional use permit process.

The petitioner's requested size of 1,440 sq. ft. is smaller than the largest existing accessory buildings in the area located on parcels directly adjacent to the north and south. There are several other large accessory buildings located in this rural development. Square footage for accessory buildings on the neighboring properties range from 936 sq. ft. at 26485 487th Avenue, 2,400 sq. ft. at both 48698 265th Street and 26493 487th Avenue, 1,840 sq. ft. at 26477 487th Street, and 2,160 sq. ft. at 26501 487th Avenue. The petitioner's requested size of 1,440 sq. ft. would be consistent with the accessory building square footage on the other properties in the neighborhood.

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.

Given the existence of other larger accessory buildings, the construction of this structure should not impede on the enjoyment or use of the surrounding properties or effect property values.

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

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

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

There is existing access from 487th Avenue.

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

There is sufficient parking for any residential activities.

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 offensive odors, fumes, dust, noise or vibration from the allowed residential uses on this property.

The Planning Department will perform a building inspection to measure the size of the structure. Measurements are taken of the outside perimeter.

Recommendation

Staff finds that the proposed building size conforms to the general sizes of other accessory buildings in the area. Staff recommended approval of conditional use permit #08-65 with the following conditions:

- 1) The total accessory building square footage shall not exceed 1,440 square feet.
- 2) The building shall be used only for the petitioner's personal residential storage. No commercial or business uses or storage shall be allowed.
- 3) The building shall not exceed one story in height.
- 4) A building inspection is required.

Action

Based on the staff report a motion was made by O'Hara and seconded by Cypher to **approve** Conditional Use permit #08-65 with the stated conditions. The motion passed unanimously.

ITEM 4. CONDITIONAL USE PERMIT #08-68 to transfer 1 residential building eligibility from the NW ¼ SE ¼ to the S ½ (with ex); all in Section 11-T102N-R49W. (#1603560)

Location – 1.5 miles east of Renner

Petitioner / Owner- Edwin Powers

General Information

Present Zoning - A1 Agricultural

Existing Land Use - Agriculture

Parcel Size - 40 Acres

Report by: Pat Herman

Staff Analysis

The property is located 1.5 miles east of Rowena along Highway 130. The area is a mixture of farm land and rural acreages. There is a residential subdivision a half mile to the west. The petitioner is requesting to transfer one residential building eligibility. It is being transferred from a land locked quarter-quarter. The receiving parcel is listed as the S1/2 as the potential building site encompasses land on both sides of the quarter line.

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 request should have no impact on the similar residential uses in the area. A new house will always have some impact on farming practices. A right to farm notice is required.

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

There are no CAFOs in the immediate vicinity, and development should not be impacted.

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

Access will be from Hwy 130. There is an existing field access. Any change or widening of the access must be approved by the County Highway Department. Rural water is available and a septic system is required.

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

The lot will be large enough to provide sufficient area for parking.

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

The items listed above should not be at a level as to constitute a nuisance.

Recommendation

Staff found the request to be in conformance with density zoning and the comprehensive plan and recommended approval of Conditional Use Permit #08-68 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) Any changes to the driveway approach shall be approved by the County Highway

Department.

Action

Based on the staff report a motion was made by O'Hara and seconded by Cypher to **approve** Conditional Use permit #08-68 with the stated conditions. The motion passed unanimously.

ITEM 5. CONDITIONAL USE PERMIT #08-69 to exceed 1200 square feet of accessory building area – 2880 square feet requested.

Legal Description - E 280.83' SE ¼ SE ¼ (ex. Tract 1 Benson's Addition & Ex. Lucas Addn.) in Section 10-T102N-R50W

Location – 25793 470th Ave. ½ mile south of Crooks

Petitioner / Owner- Rob Gardner

General Information

Present Zoning - A1 Agricultural

Existing Land Use - Agriculture

Parcel Size - 1.83 Acres

Report by: Scott Anderson

Staff Analysis

The property is located approximately 1/2 mile south of Crooks. The parcel is part of a group of residential lots which are accessed from 470th Avenue and County Highway 130 or 258th Street.

The petitioner would like to construct an accessory building on this site. In subdivisions or residential developments which exceed four lots in size, accessory building area is limited to 1200 sq. ft. unless approval for a larger size is obtained through the conditional use permit process.

The petitioner's requested size of 2,880 sq. ft. is smaller than the largest existing accessory buildings in the area located on parcels directly adjacent to the west and north. There are several other large accessory buildings located in the rural development. Square footage for accessory buildings on the neighboring properties range from 1,772 sq. ft. at 46984 258th Street, 4,000 sq. ft. at 46990 258th Street, and 4,018 sq. ft at 25775 470th Avenue. The petitioner's requested size of 2,880 sq. ft. would be consistent with the accessory building square footage on the other properties in the neighborhood.

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.

Given the existence of other larger accessory buildings, the construction of this structure should not impede on the enjoyment or use of the surrounding properties or effect property values.

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

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

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

There is existing access from 470th Avenue.

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

There is sufficient parking for any residential activities.

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 offensive odors, fumes, dust, noise or vibration from the allowed residential uses on this property.

The Planning Department will perform a building inspection to measure the size of the structure. Measurements are taken of the outside perimeter.

Recommendation: Staff finds that the proposed building size conforms to the general sizes of other accessory buildings in the area. Staff recommended approval of conditional use permit #08-69 with the following conditions:

- 1) The total accessory building square footage shall not exceed 2,880 square feet.
- 2) The building shall be used only for the petitioner's personal residential storage. No commercial or business uses or storage shall be allowed.
- 3) The building shall not exceed one story in height.
- 4) A building inspection is required.

Action

Based on the staff report a motion was made by O'Hara and seconded by Cypher to **approve** Conditional Use permit #08-69 with the stated conditions. The motion passed unanimously.

ITEM 6. CONDITIONAL USE PERMIT #08-71 to exceed 1200 square feet of accessory building area – 2180 square feet requested.

Legal Description - Tract 3 Ramstead Addition SW ¼ in Section 35-T103N-R50W

Location – 25582 470th Ave. ½ mile north of Crooks

Petitioner / Owner- Nick Swier

General Information

Present Zoning - A1 Agricultural

Existing Land Use - Agriculture

Parcel Size - 3.10 Acres

Report by: Scott Anderson

Staff Analysis

The property is located approximately 1 mile north of Crooks. The parcel is part of a group of residential lots which are accessed from 470th Avenue.

The petitioner would like to construct an accessory building on this site. In subdivisions or residential developments which exceed four lots in size, accessory building area is limited to 1200 sq. ft. unless approval for a larger size is obtained through the conditional use permit process.

The petitioner's requested size of 2,180 sq. ft. is smaller than the largest existing accessory buildings in the area located on parcels directly adjacent to the west and south. There are several other large accessory buildings located in the subdivision. Square footage for accessory buildings on the neighboring properties range from 768 sq. ft. at 25574 470th Avenue, 2,850 sq. ft. at 47036 256th Street, 3,400 sq. ft. at 47016 256th Street, and 3,656 sq. ft. at 25581 470th Avenue. The petitioner's requested size of 2,180 sq. ft. would be consistent with the accessory building square footage on the other properties in the neighborhood.

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.

Given the existence of other larger accessory buildings, the construction of this structure should not impede on the enjoyment or use of the surrounding properties or effect property values.

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

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

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

There is existing access from 470th Avenue.

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

There is sufficient parking for any residential activities.

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 offensive odors, fumes, dust, noise or vibration from the allowed residential uses on this property.

The Planning Department will perform a building inspection to measure the size of the structure. Measurements are taken of the outside perimeter.

Recommendation: Staff finds that the proposed building size conforms to the general sizes of other accessory buildings in the area. Staff recommended approval of conditional use permit #08-71 with the following conditions:

- 1) The total accessory building square footage shall not exceed 2,180 square feet.
- 2) The building shall be used only for the petitioner's personal residential storage. No commercial or business uses or storage shall be allowed.
- 3) The building shall not exceed one story in height.
- 4) A building inspection is required.

Action

Based on the staff report a motion was made by O'Hara and seconded by Cypher to **approve** Conditional Use permit #08-71 with the stated conditions. The motion passed unanimously.

ITEM 7. CONDITIONAL USE PERMIT #08-72 to transfer 1 residential building eligibility from the Lot A Blair Addition to NW ¼ SW ¼; all in Section 27-T03N-R49W. (#020483)

Location – 3.5 miles north of Renner
Petitioner / Owner- Judith Blair-Frye

General Information

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

Report by: Pat Herman

Staff Analysis

The property is located 13.5 miles north of Renner along Highway 115. The area is a mixture of farm land and rural acreages. There is a large area of residential development a half mile to the south.

The petitioner is requesting to transfer one residential building eligibility. It is coming from an existing farmstead where there were two dwelling units for many years. One of the dwelling units has been platted off from the farmstead and it is this eligibility that is to be transferred.

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 request should have no impact on the similar residential uses in the area. A new house will always have some impact on farming practices. A right to farm notice is required.

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

There are no CAFOs in the immediate vicinity, and development should not be impacted.

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

Access will be from Hwy 115. There is an existing field access. Any change or widening of the access must be approved by the State Highway Department. Rural water is available and a septic system is required.

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

The lot will be large enough to provide sufficient area for parking.

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

The items listed above should not be at a level as to constitute a nuisance.

Recommendation

Staff found the request to be in conformance with density zoning and the comprehensive plan and recommended approval of Conditional Use Permit #08-72 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) The existing dwelling unit shall be removed from the farmstead by January 1, 2009.

Action

Based on the staff report a motion was made by O'Hara and seconded by Cypher to **approve** Conditional Use permit #08-72 with the stated conditions. The motion passed unanimously.

ITEM 8. CONDITIONAL USE PERMIT #08-73 to transfer 1 residential building eligibility from the NW ¼ SE ¼ to the NE ¼ SE ¼ ; all in Section 8-T102N-R50W. (#150061)

Location – 2 miles west of Crooks

Petitioner / Owner- Tom Jass / Estate of Leona Whealy

General Information

Present Zoning - A1 Agricultural

Existing Land Use - Agriculture

Parcel Size - 40 Acres

Report by: Pat Herman

Staff Analysis

The property is located 2 miles west of Crooks. The area is a mixture of farm land and rural acreages. There is a residential subdivision directly to the east of this site. The petitioner is requesting to transfer one residential building eligibility. It is being transferred from a land locked 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 request should have no impact on the similar residential uses in the area. A new house will always have some impact on farming practices. A right to farm notice is required.

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

There is a CAFO to the south west of this site, but the transfer will move the potential house away from the farmstead.

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

Access will be from Hwy 141. There is an existing field access. Any change or widening of the access must be approved by the County Highway Department. Rural water is available and a septic system is required.

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

The lot will be large enough to provide sufficient area for parking.

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

The items listed above should not be at a level as to constitute a nuisance.

Recommendation

Staff found the request to be in conformance with density zoning and the comprehensive plan and recommends approval of Conditional Use Permit #08-73 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) Any changes to the driveway approach shall be approved by the County Highway

Department.

Action

Based on the staff report a motion was made by O'Hara and seconded by Cypher to **approve** Conditional Use permit #08-73 with the stated conditions. The motion passed unanimously.

REGULAR AGENDA

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

ITEM 9. CONDITIONAL USE PERMIT #08-75 to allow a vehicle recycling center and vehicle sales.

Legal Description - NW1/4 SW1/4 (ex. H-3) in section 26-T02N-R51W

Location – 26056 464th Ave. south east of Hartford

Petitioner / Owner- Gerry Gosmire

General Information

Present Zoning - I-2 Industrial

Existing Land Use - Industrial

Parcel Size - 35.44 Acres

Report by: Phil Kappen

Staff Analysis

The subject property is located along the south side of Interstate90 at the southeastern corner of Hartford. Surrounding properties are in agricultural uses with some non-farm acreages. The property has been zoned for industrial purposes for many years due to the presence of an existing salvage yard at the time of the zoning ordinance adoption. The “grandfathered” salvage use is limited to the existing old farmstead area. The petitioner is applying for a conditional use permit that would allow him to expand the salvage use into properly screened areas and to use a portion of the property closer to the interstate for operable vehicle sales.

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, the salvage use has been conducted for many years on the site. The continued, and expended, use should be compatible provided that the use is properly screened from neighboring properties, and limits are placed on then hours of operation to ensure that no crushing of vehicles or scrap is conducted at hours that would disturb neighbors.

The petitioner’s site plan shows that a screening fence will be extended as expansion of the use occurs and that two additional rows of trees will be planted along the north side of the salvage area and extending north of the old shop building in addition to the existing berm and trees located in that area. The petitioner proposes a 10-foot metal screening fence which matches the siding on the existing shop building. There are also existing trees along the north edge of the property in the interstate highway right-of-way. These trees provide a good landscape buffer between the commercial area of the property and the interstate; however, if at any time in the future the trees within the interstate right-of-way are removed then additional landscaping trees will need to be planted along the north edge of the property.

The petitioners also propose a new shop building and a scale to the west of the old shop building. This will provide added screening of the view from the interstate. The site plan does not indicate the setback between this building and the 464th Avenue right-of-way,

however, a minimum front-yard setback of 30 feet is required in the I-2 Industrial District. This setback will be addressed when a building permit application is considered by staff.

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

The surrounding property is planned for continued agricultural use. The salvage operation should have limited impact on the farming in the area.

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

Access to the site is via 464th Avenue, a Hartford Township Road. Since the road is gravel no hard-surfacing is required on the site.

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

There is sufficient space to meet all parking requirements.

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

A salvage operation does have the potential for noise, particularly from the crushing of scrap metal. Limits on the hours that crushing may occur will reduce the potential for noise impacts to neighboring residents.

Recommendation

Staff finds that this is the type of use that may be found in an I-2 Industrially-zoned area and that there has been a similar use on the site for many years. Staff, therefore, recommended approval of conditional use permit # 08-75 with the following conditions:

1. The operation shall conform to the site plan submitted as a part of the CUP application unless specifically addressed by this permit.
2. The north edge of the property, along I-90 shall be allowed for vehicle sales. No unlicensed, inoperable or partially dismantled vehicles shall be allowed in this area. Also, no scrap or vehicles parts shall be allowed in this area. A fifteen-foot setback shall be maintained between any vehicles in this area and both the interstate right-of-way and 464th Avenue right-of-way (road fences).
3. If at any time the trees in the interstate right-of-way are removed, then a row of landscape trees shall be planted along the north edge of the subject property. These trees shall be planted at a spacing of not more than 50-feet on center and shall be a minimum size of 1-1/4" caliper if deciduous and 4-5 feet in height if coniferous. Any trees that die shall be immediately replaced.
4. All crushing areas, salvage areas, and parts storage areas shall be completely screened from public view through the use of vegetated berms or screening fences. All existing berms shall be retained. Screening fences shall be a minimum of 10-feet in height, shall be of earth tone colors, and shall be maintained with a minimum 90% opacity over the full height of the fence. The fence can be placed along the property line on the east and south sides of the property, but must be set back a minimum of fifteen feet from the 464th Avenue right-of-way (road fence).
5. Two rows of additional trees shall be planted along the area where the existing northern berm is located and extending north of the existing shop building in order to provide additional screening of the salvage operation from the interstate highway. These trees shall be spaced at a minimum 15 feet on center and shall be

- a minimum size of 1-1/4" caliper if deciduous and 4-5 feet in height if coniferous. Any trees that die shall be immediately replaced.
6. Crushing operations shall be limited to that period of time between 9:00 AM and 7:00 PM on weekdays and Saturday and between 12:00 noon and 5:00 Pm on Sunday.

Public Testimony

Commissioner Twedt asked if the staff recommendation would be the same if the salvage yard did not pre-exist. Mr. Kappen stated that staff would not be recommending approval under that scenario. But with the history of the site, and a grandfathered use, the salvage yard could continue at its present size without a conditional use permit. Commissioner South noted that this expansion allowed the Planning Commission to set conditions for the salvage yard.

In response to the Commission, Mr. Kappen explained that vehicles that were for sale would be parked along the Interstate. The condition which addresses these cars, #2, is very specific as to what type of vehicles can be placed there. They all must be licensed, operable, and fully assembled. A vehicle sales lot is allowed by conditional use permit in the commercial zoning district. The I-2 district states that uses listed as conditional uses in the commercial zoning district may be applied for as a CUP in this zoning district.

Commissioner Steinhauer noted that lighting had not been addressed. Due to the lot's abutment of the interstate, he recommended that a condition be added requiring all lighting to be of a shoebox design.

Speaking in Support

The petitioner was represented by Ed Tounjian with Winfred Iron and Metal. He has no problem with shoebox lighting. He plans to eliminate the north berm and erect a screening fence all the way across. He noted that his land does extend to the eastern billboard. Mr. Tounjian stated that he is ok with eliminating crushing on Sunday. The most work that would be done on Sunday is to load a truck. He stated that he wants cars placed along the Interstate to look good. It's better for his business. Mr. Tounjian believes the better the place looks the better it is for him, and the better it is for his neighbors.

Speaking in Opposition

Erik Willadsen was representing Sam Assam, the property owner to the north across the Interstate. They have been working on a development which would lie between Hwy 38 and I-90. They submitted a working plan to Hartford which shows about 200 acres of single family and multi-family development. This development would be in direct view of the salvage yard. He didn't know about this proposal until last week, and hadn't been in contact with the County about his development because the land would be annexed into Hartford before building commenced. They are also proposing to develop a park area to run along Highway 38. The homeowner's would look out on the salvage yard. Mr. Willadsen asked the Commission to defer any decision on this matter until Hartford's Planning & Zoning Commission could review the salvage yard proposal. He also would like to have further time to review it. He doesn't feel the petitioner's site plan was adequate. At the Commissioner's request, Mr. Willadsen indicated on the map that the west edge of his client's property was in a line with the east edge of Mr. Tounjian's property. (The properties are kitty-corner, or would meet at a point if the interstate was removed.)

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

Mr. Kappen stated that there is a bean field in the northeast corner of the petitioner's

property. There are no plans for any expansion into this field.

Commissioner Twedt noted that the Planning Commission is between a rock and a hard place, given the current zoning. She stated that she does not like to see salvage yards on major highways. They can also cause problems as communities grow. She would like to defer until the Hartford Planning Commission can review this proposal.

Commissioner Cypher disagreed, saying that the proposed development is not across from this site, but to the east. The old salvage yard and its I-2 zoning came about under antiquated laws, but it is zoned for industrial development. The biggest concern should be the amount of traffic which is going to wind up on 261st Street. There will be semi trucks, and there is a steep climb on the west end where it meets Highway 151. The County doesn't seem to care as 261st Street is a township road. Commissioner Cypher stated that the screening fence should address the visual problems. Mr. Kappen noted that the condition states "screened from public view". This means nothing may be stacked above the fence.

Action

Commissioner Twedt made a motion to delay this item until the January meeting. There was no second. A substitute motion was made by Rogen and seconded by Steinhauer to **approve** Conditional Use Permit #08-75, modifying the conditions to allow no crushing on Sunday, removal of the berm, and restricting the lighting. The motion carried (Twedt nay) with the following conditions:

1. The operation shall conform to the site plan submitted as a part of the CUP application unless specifically addressed by this permit.
2. The north edge of the property, along I-90 shall be allowed for vehicle sales. No unlicensed, inoperable or partially dismantled vehicles shall be allowed in this area. Also, no scrap or vehicles parts shall be allowed in this area. A fifteen-foot setback shall be maintained between any vehicles in this area and both the interstate right-of-way and 464th Avenue right-of-way (road fences).
3. If at any time the trees in the interstate right-of-way are removed, then a row of landscape trees shall be planted along the north edge of the subject property. These trees shall be planted at a spacing of not more than 50-feet on center and shall be a minimum size of 1-1/4" caliper if deciduous and 4-5 feet in height if coniferous. Any trees that die shall be immediately replaced.
4. All crushing areas, salvage areas, and parts storage areas shall be completely screened from public view through the use of vegetated berms and screening fences. Screening fences shall be a minimum of 10-feet in height, shall be of earth tone colors, and shall be maintained with a minimum 90% opacity over the full height of the fence. The fence can be placed along the property line on the east and south sides of the property, but must be set back a minimum of fifteen feet from the 464th Avenue right-of-way (road fence).
5. Two rows of additional trees shall be planted along the area where the existing northern berm is located and extending north of the existing shop building in order to provide additional screening of the salvage operation from the interstate highway. These trees shall be spaced at a minimum 15 feet on center and shall be a minimum size of 1-1/4" caliper if deciduous and 4-5 feet in height if coniferous. Any trees that die shall be immediately replaced.
6. Crushing operations shall be limited to that period of time between 9:00 AM and 7:00 PM on weekdays and Saturday. No crushing shall occur on Sunday.
7. All outdoor lighting shall be of a shoebox style design.

ITEM 10. CONDITIONAL USE PERMIT #08-67 to allow a Class One Home Occupation – Artist Studio.

Legal Description - Tr 1A McHardy Addition NW ¼ of Section 2-T101N-R48W
Location – 26220 McHardy Rd. – south edge of Brandon
Petitioner / Owner- Diane Howey

General Information

Present Zoning - A1 Agricultural
Existing Land Use - Residential
Parcel Size - 9.9 Acres

Report by: Phil Kappen

Staff Analysis

The property is located at the southeast corner of Brandon. Across the road to the east is Brandon's McHardy Park. The other properties in the area are agricultural with numerous non-farm acreages. The petitioner proposes a class 1 major home occupation to allow an artist's studio with intermittent sales and art lessons.

The proposed use would be placed in an existing 1536 square-foot building. A building permit for that building was taken out by the petitioner in 2007. Prior to the issuance of the building permit a representative of the petitioner contacted our office and was informed of the restrictions and requirements for an accessory building at the site. Requirements for a home occupation were also explained. When the petitioner's representative came in for the permit their building plans showed a substantial studio area and a large display/retail area. They were again informed that no sales or commercial use was authorized for the building and stipulations were placed on the building permit that the building was for their personal use only and that no commercial business, no sales, no customers, no employees and no classes were allowed. Their representative agreed to these stipulations.

Then, on September 3, 2008 the Brandon Valley Challenger newspaper ran an article advertising the new studio and noting that people could register for art classes to be held at the site and quoting the petitioner as saying that the venture would "give people another place to shop." Staff also found that the petitioner had a website on which the Red Truck Studio and gallery was advertised as well as the availability of classes.

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

This site is along a gravel township road which already suffers from the amount of traffic that utilizes it due to the park and the number of acreages in the area. The placement of a shop at this site with the potential to further increase traffic could result in safety considerations due to the condition of the road.

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

The Brandon Comprehensive Plan shows that this entire area is planned for future single-family development. A retail establishment may not be a good fit for the proposed future use. Any type of retail and/or commercial should be greatly limited in size to avoid future conflicts with the residential uses.

The County zoning ordinance contains criteria for evaluating home occupation requests. These criteria list 750 square foot of accessory building as the standard for the use of a home occupation. The existing building is over 1500 square feet in size, so limits should be placed on the use of the entire building for the home occupation. As the building has already been constructed, this may entail the construction of a separation wall to limit the size of the building allowed for the occupation.

Should the city of Brandon be agreeable to the use of a larger portion of the structure for a commercial use, the petitioner, since the property is adjacent to the Brandon city limits, could petition the city for annexation.

Other criteria for home occupations in order to limit the potential for impacts to neighboring properties include: limits on the number of employees, limitations on the amount of noise or odor, limits on outside storage and the outside display of products, a limit on the number of customer visits, and limits on the size of delivery vehicles.

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

The building is served by a holding tank to hold wastewater. The 1300-gallon tank would be the minimum requirement for a retail building of the size on the site. It is unknown whether the petitioner or their septic installer obtained the required SD DENR approval for a commercial wastewater system.

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

There would be adequate off-street space for required parking.

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.

Staff has not been given any details on the specific uses which might result in odor or on any planned efforts to mitigate any potential odors. Greatly limiting the size of the proposed use would mitigate potential impacts on any neighboring properties.

Recommendation

In spite of the manner in which the petitioner addressed the obtaining of a building permit and the way in which the petitioner knowingly began advertising a commercial venture without first obtaining the required zoning approval, staff can agree to a limited use of a portion of the building for a home occupation. Staff, therefore, recommended approval of conditional use permit #08-67 with the following conditions:

1. The home occupation shall be limited to a studio and classroom area. Only limited retail use shall be allowed.
2. The number of employees shall be limited to residents of the dwelling and up to 2 non-resident employees and shall not exceed four total employees.
3. Up to 750 square feet of the accessory building may be used for the home occupation. A permanent separation wall shall be used to separate the 750-square foot area from the remainder of the building which shall be used only for the petitioner's personal storage and shall not have any type of commercial, retail, or classroom use. The building inspection is required of the separation wall prior to the commencement of the home occupation.
4. The occupation shall not result in noise or odor that is detectable beyond the

- boundaries of the property.
5. There shall be no outside storage of materials or products.
 6. The occupation shall not result in more than 10 visits per day from clients or customers averaged over a period of seven days. Events exceeding this number of clients, such as a holiday open house or festival, require a temporary use permit.
 7. The number of delivery vehicles shall not affect the character of the area and shall be limited to autos pickups, or typical step van or box truck delivery vehicles.
 8. The use shall be allowed one nameplate on the building not to exceed two square feet in size and one non-illuminated sign not to exceed four square feet in size located on the property along the driveway.

Public Testimony

Speaking in Support

The petitioners, Tom & Diane Howey, asked if the Planning Commission had any questions. Commissioner Twedt, noting that the building permit clearly stated that no commercial use was allowed in the building, asked who had obtained the permit. Tom Howey said he had gotten the building permit. Commissioner Twedt pointed out that he should have known that no commercial use was allowed.

Mr. Howey stated that the building was constructed so the light would be better for his wife, an artist. At that time there were no plans for any other use, just his wife's hobby. Mrs. Howey stated that this was just a hobby. She makes and sells jewelry. He presented the Commission with six pictures of the accessory building. Two pictures showed the exterior of the building, one showed an interior dividing wall (not a structural wall attached to other walls or ceiling), a picture of the display and sales area and two photos of the work area. He also submitted a letter from Dennis Olson, Brandon City Manager, stating that he had no objections to this use. Mr. Howey stated that they do not want a large retail operation on their home site. This business is not their income. He submitted a plan which showed that the main room had been divided into two parts by the "wall". 700 square feet would be devoted to classroom space and 250 square feet would be used for a display area and customer space. Mr. Howey raised the issue of needing a temporary use permit for special events such as a holiday open house or festival. He feels that Section 12.11 (I) of the Zoning Ordinance would allow them to hold two events without needing a temporary use permit.

Staff note: Section 12.11 (I) lists those uses which are exempt from having to obtain a temporary use permit. The part of the ordinance referred to by Mr. Howey is as follows:

12.11 (I) 2) Garage, yard or rummage sales provided:

b. Sales are held no more than twice yearly.

This section of the ordinance applies only to garage sales and was added to prevent a homeowner from have a perpetual yard sale.

Mr. Howey stated that they didn't understand that they needed this permit. He said their attorney, Roger Hunt, told them this was a minor home occupation. Commissioner Steinhauer asked if they had approached Brandon about annexation. Mr. Howey said he spoke with Dennis Olson and was told Brandon wasn't interested because they would have to provide the Howey's with services.

Commissioner Twedt stated that she found this situation terribly irritating. "If everyone did what you did, we wouldn't have any regulations. You need to ask for permission first. You did this the wrong way." Commissioner O'Hara stated that the Howey's knew where the County was as they got the building permit there. Why didn't they contact the County about this?

Commissioner Steinhauer stated that he was concerned about many things; more traffic

on the road, using more space than 750 sq. ft., the display area and traffic it would generate. This is like putting a retail site out in the country. He is bothered that a website has already been established and that this has been advertised in the paper.

Mr. Howey noted that 4 soccer fields were to built across the street and that these would generate a lot of traffic. Brandon has plans to pave that portion of the road.

Commissioner Cypher noted that the Howey's had left out the storage, office, clay art or mechanical rooms as part of the use of the building. These types of rooms have always been included in the total square footage for other home occupations. Given the way the building was constructed, the petitioner will have quite the time putting in the required separation wall

Commissioner Twedt stated that similar businesses in Sioux Falls don't have this much space. Commissioner Randall said she was most concerned about the classes and how many would attend and if there was enough parking. Mr. Howey noted that his paved driveway was 600' long so there was plenty of parking. Mrs. Howey said the class size would not exceed eight people.

Commissioner Twedt noted that no matter what, the building is still 1500 square feet in size. Mr. Kappen stated that before the Howey's began construction on this building they were told it exceeded the criteria in the Ordinance. Ms. Herman stated that she had been contacted twice by the Howey's representative, Dave Swier with the City of Brandon, before the building permit was issued, and had explained the zoning ordinance regulations. Commissioner Randall asked if staff had seen the drawing where the Howey's had separated the building into two parts. Mr. Kappen stated that the Howey's had not shown that to staff. He continued that the dividing wall shown in the pictures did not qualify as a separation wall.

Commissioner Twedt said that it was interesting that Dennis Olson would write a letter in support of this use, but then say no to an annexation. Mr. Kappen pointed out that just talking about annexation was a lot different than putting in a formal application. He also noted that it was the city council which made the decision on annexation, not the city manager.

John Monahan, Split Rock Township Supervisor, stated that the township maintained McHardy Rd. north to the river. This is one of the worst roads in the township. It has washouts and is a real safety concern. There is a curve and a railroad track there.

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

Commissioner Cypher said that this gets back to the ordinance and following the criteria. It also goes to the building permit. The Howey's got the permit for personal storage, that is what the building was constructed for.

Commissioner Steinhauer stated that he has concerns that the home occupation could be transferred to future land owners, the traffic that could be generated by the retail use, and that the total area stretches the amount of square footage allowed by the Zoning Ordinance for a home occupation. Commissioner Cypher agreed. Commissioner Twedt stated she is concerned about the road after hearing from the Township. This use might have worked here, had the Howey's approached this the right way with the right size building. Commissioner Steinhauer stated he would still have concerns with this retail use as a home occupation.

Action

Based on his stated concerns, a motion was made by Steinhauer and seconded by Cypher to deny Conditional Use Permit #08-67. The motion carried unanimously.

ITEM 11. CONDITIONAL USE PERMIT #08-66 amend CUP #08-18 to allow increased ethanol production..

Legal Description - SE ¼ (Ex. H-1, H-2, H-3, H-4) in Section 35-T101N-R52W

Location – 8 miles southwest of Humboldt

Petitioner / Owner- Genesis Ethanol I – Walt Bones

ITEM 11 was withdrawn by the petitioner before the scheduled meeting.