

**MINUTES OF THE
MINNEHAHA COUNTY PLANNING COMMISSION
November 24, 2008**

A meeting of the Planning Commission was held on November 24, 2008 at 7:00 p.m. in the Commission Room of the Minnehaha County Administration Building.

COUNTY PLANNING COMMISSION MEMBERS PRESENT: Mike Cypher, Becky Randall, Don South, Wayne Steinhauer, and Carol Twedt.

STAFF PRESENT: Phil Kappen, and Pat Herman -County Planning
Gordy Swanson – Office of the State's Attorney

The meeting was chaired by Don South.

CONSENT AGENDA

ITEM 1. MINTUES – October 27, 2008

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

ITEM 2. CONDITIONAL USE PERMIT #08-77 to transfer one residential building eligibility from the NE ¼ SW ¼ to the SE ¼ SW ¼ , all in Section 9-T102N-R48W.

Location – 2 miles north of Brandon
Petitioner / Owner- Larry Larson

General Information

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

Report by: Scott Anderson

Staff Analysis:

The petitioner is requesting to transfer one residential building eligibility from the NE ¼ SW ¼ to the SE ¼ SW ¼. The subject property is currently zoned A-1 Agricultural. The area is an agricultural area with rolling fields. The closest agricultural operation is located approximately ½ mile to the east and west. No livestock are fed at the closest agricultural operation. The subject property is located approximately 2 miles to the north of Brandon. This area has been desirable and experienced residential growth over the last decade.

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 potential buyers to 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 does not increase the number of dwelling units allowed in this quarter.

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

Rural water is available in the area and a waste water system will be utilized.

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.

The proposed conditional use will not cause odor, fumes, dust, noise, vibrations or lighting in any amounts that would constitute a nuisance.

Recommendation

Staff found this conditional use permit request to be consistent with density zoning and recommended approval of Conditional Use Permit #08-77 with the following condition:

- 1) The lot shall be platted and a right-to-farm notice covenant shall be placed on the deed prior to the issuance of a building permit.
- 2) Brandon Township shall approve the driveway approach prior to a building permit being issued.

Action

Based on the staff report, a motion was made by Steinhauer and seconded by Randall to recommend approval of Conditional Use Permit #08-77 with the conditions as stated. The motion passed unanimously.

ITEM 3. CONDITIONAL USE PERMIT #08-80 to amend CUP #06-81 extending placement of temporary tower.

Legal Description - N ½ (ex H-2) & N ½ SE ¼ (ex H-4) in Section 24-T104N-R50W

Location – 1 ¼ miles south of Dell Rapids

Petitioner / Owner- Lloyd Richardson / Donovan Decker

General Information

Present Zoning - A1 Agricultural

Existing Land Use - Agricultural

Parcel Size - 120 Acres

Report by: Pat Herman

Staff Review

The applicant was before the Planning Commission on November 27, 2006 to request allowance for the construction of a temporary tower to gather data to be used in determining the feasibility of wind generation. The tower is 165 feet in height and utilizes guy wires. The subject property is located near the intersection of 247th Street and Interstate 29.

Initially the applicant had requested placement of the tower for a period of two years. Since that time, wind energy companies have increased the length of time for which they require wind data. The petitioner would like to have the tower in place for another four years. No complaints have been received about this temporary tower in the past two

years. Staff is comfortable allowing the tower to remain for another four years.

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 tower should have very limited effect on the surrounding properties. The area is primarily agriculture in nature. Furthermore, this tower is a temporary use. Property values should not be impacted.

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

The temporary tower should not impede orderly development or hinder improvements of the vacant properties in the area. As the primary use is agricultural, there is very little vacant property with the majority of land being utilized for crops or livestock production.

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

247th Street provides access to the temporary tower. No other facilities or improvements are needed.

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

The proposed use should not require much parking. The site will not be visited for periods of time. When an operator is on site, only one or two parking spaces would be needed. Staff will recommend that two (2) off-street spaces be provided.

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

The tower should not produce odor, fumes, noise or vibration. There could be some safety lights on the tower, but safety lights are not generally considered to be a nuisance.

Recommendation

Staff finds the temporary tower to be acceptable to the area. Staff recommended approval of conditional use permit #08-80 with the following conditions:

- 1) That the tower not exceed 170 feet in height.
- 2) That any FAA lighting requirements are met and any permits be obtained if necessary.
- 3) That the tower be removed by December 1, 2012. Any future wind generation devices would require new conditional use permit approval.

Action

Based on the staff report, a motion was made by Steinhauer and seconded by Randall to recommend approval of Conditional Use Permit #08-80 with the conditions as stated. The motion passed unanimously.

REGULAR AGENDA

A motion was made by Cypher and seconded by Steinhauer to recommend approval of the regular agenda. The motion passed unanimously.

ITEM 4. CONDITIONAL USE PERMIT #08-63 to allow a rural trucking business.

Legal Description – W187' E1007.3' S500' in the SE1/4 of Section 31-T101N-R50W

Location – 46682 268th St. 3 miles west of Sioux Falls

Petitioner / Owner- Alvin Brockhouse

General Information

Present Zoning - A1 Agricultural

Existing Land Use - Residential

Parcel Size - 2.0 Acres

Report by: Phil Kappen

Staff Analysis

The subject property is located north of 268th Street 1 mile east of Wildwater West. Surrounding properties are residential acreages. The petitioner operates a trucking business and rents land in Lincoln County for the storage of his equipment. He states that he has been operating partly out of the subject property for a number of years. After receiving a violation notice from the planning office, he made a partial application for a conditional use permit in August in an attempt to legitimize his operation. The petitioner says that this type of use would fall under Section 3.04 (x) of the zoning ordinance which allows as a conditional use “Agriculturally related operations involving the handling, storage and shipping of farm products.” The petitioner claims he fits under this category because he hauls primarily hay and straw.

The application was not complete because it did not include a site plan. Staff has made multiple contacts with the petitioner or his agent requesting that a site plan be provided. Staff has also repeatedly refrained from placing this item on the Planning Commission agenda because we were awaiting the submittal of the site plan. As of the date of this report the petitioner had still not supplied the requested site plan, however, staff felt that we could no longer withhold this application from the Planning Commission agenda due to the number of months that had passed since submission of the partial application..

Staff disputes the need to park semis on the site. The petitioner claims that this is necessary because of the cost of deadheading the semis to his business site and because of security concerns. The conditional use permit application indicates that he already has a space to park his vehicles and equipment. Neither the applicant’s convenience nor the argument that this would save him money are valid reasons to justify the approval of such a use.

Staff disputes that interpretation of the ordinance. Staff believes that Section 3.04 (x) is intended to allow bono fide agricultural operations, through conditional use permit, to aid in partially processing or transportation their agricultural products. Staff does not believe that the proposed use is part of an actual agricultural operation given the location of the site in a residential neighborhood and the size of the subject property. Even if this section were to apply, which it does not, the use would have to be strictly limited to the transportation of agricultural products. This would require staff to ascertain what is being hauled on individual truck loads and would create a situation that is impossible to enforce.

Staff has looked at the conditional use permits issued since 1994 and found only two instances where this section of the ordinance was used. In 1999 a CUP was issued for a

person to operate a firewood business within their farmyard. Many of the trees came from their grove and some from other locations. The use was within the farmstead, which was set well back from the road, and was located on an 80-acre parcel. The other permit was issued on a 53-acre parcel with an existing feedlot. The applicant wished to do some custom butchering within their farmstead area. The approval of that permit was accompanied by conditions to limit the size of the use in order to prevent a large scale packing operation. Conditions included those that tied the use to the continued operation of the feedlot on the site, allowed only animals raised on the site to be butchered, required that the applicant himself be the only one to perform any butchering, and set limits on the hours of operation and disposal of waste. Both of those uses have since ceased.

In our review of past conditional use permit we also found that the only trucking firms that have been approved in the county are all located in either I-1 or I-2 Industrially-zoned districts or commercial districts where such uses are specifically listed as conditional uses.

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 property, though zoned agricultural, is occupied by a number of residential acreages. As such, the use of the property is not appropriate for a use that would typically be found in a commercial or industrial area.

Staff also noted in checking the site that the petitioner has a large number of tractors and much junk on the site. It appears that he may be engaged in repairing or restoring some of these tractors and other vehicles. Finding a tractor on an agriculturally-zoned site is not uncommon. It is a concern, however, when that site is located in a residential use area. The petitioner should be aware that he cannot store other people's tractors nor can he perform any repair or restoration work any equipment or vehicles belonging to others as these uses would constitute a commercial activity and a further zoning violation.

The petitioner's agent had told us that the trucks and related materials had been removed from the site. Because of this staff did not charge the petitioner the double application fee which is required when a use is commenced prior to obtaining the necessary approval. In checking the site, however, we found items such as truck parts and an old semi cab. There were also piles of junk and scrap across the north portion of the property. All of the vehicle parts, dismantled vehicles and tractors, junk and scrap, which are located outside of a permanent building, constitute serious violations of the county public nuisance ordinance. The petitioner must take immediate steps to clean up the property and abate the nuisance violations.

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

The area will continue to have the residential acreages and other land in the area will remain in agricultural production. The use of a site for a trucking business is not compatible with the continued use of neighboring properties for residential purposes due to noise, traffic and dust.

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

Access to the property is via 268th Street, a gravel township road. A use such as a trucking firm is better located in our designated commercial or industrial areas where we have existing highway infrastructure to handle the commercially-related traffic.

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

There is adequate space on the property for any authorized residential uses on the site.

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 trucking business has the potential for dust problems from large commercial vehicles on the gravel road, and both noise and fumes due to running semis. Due to these concerns the operation of such a business in a residential use area is not a compatible use.

Recommendation

Staff finds that the proposed use is not compatible with surrounding properties, that the use is not allowed under the county's zoning ordinance as trucking businesses are allowed only in the C Commercial or in the I-1 or I-2 Industrial districts by conditional use, that the proposed use does not meet the standards for agriculturally-related operations that have been established as precedents in previous conditional use permits, that the petitioner has incorrectly indicated to staff that the trucking business had been removed from the site, and that serious public nuisance violations have occurred on the site. Staff recommended denial of conditional use permit #08-63.

Public Testimony

Mr. Kappen noted that he had received one letter against this request, noting that the trucks have been running at 4:00 am in the morning. There were also four letters in support of the petitioner. The Planning Department also received about five calls for more information on this conditional use permit request. Mr. Kappen showed pictures he had taken of the petitioner's property which depicted the violations of the Public Nuisance Ordinance. In response to Commissioner Twedt, Mr. Kappen explained that the public nuisance problem had been discovered when the request for this permit was submitted. He stated that the conditional use permit could be granted and that would not prevent addressing the nuisance issues.

In Support

The petitioner, Alvin Brockhouse, was present and represented by his attorney, A.J. Swanson (27452 482nd Ave., Canton). He presented the Commission with a handout entitled *Applicant's Response to Staff Report and Recommendation*. Mr. Swanson explained that the petitioner has always been employed in the trucking of farm products. The last several years the product has been hay and straw. The petitioner does not have a fleet of trucks that are moving in and out of this property. He only owns one truck but does have several trailers. The petitioner's excess equipment is parked in Harrisburg, a distance of 18 miles from this residence. A round trip empty movement (nothing on the trailer) is approximately 40 miles, a trip that is expensive at five miles to the gallon.

Mr. Swanson questioned why a truck cab is allowed to be brought home to the site, but not a trailer. He has not received an answer from the Planning Department. The extra things that the petitioner has on this property are a trailer and John Deere tractor with a heavy loader which is used to load and unload hay. The trailer is used with his pickup. These are "tools of his trade."

Mr. Swanson next addressed the issue of the site plan. He had wrongly assumed that because the petitioner was not addressing anything new the requirement for a site plan would be waived. So the site plan was late. It is a simplistic site plan, didn't add all the trees in. It shows the driveway where the trucks come and go. Mr. Swanson added that there are times when hay is brought in on the trailer and then the tractor is used to move the hay to the smaller trailer. This allows the petitioner to use his pickup to deliver smaller loads in the Sioux Falls area.

Citing the enforcement letter sent by Mr. Kappen, Mr. Swanson stated that the trailer mentioned had been removed. He said the zoning ordinance was written prior to the petitioner purchasing this property. There must have been something in mind to have Section 3.04(X). What is the purpose of this section if not for the petitioner's use? With a cab and trailer this use seems to fit why 3.04(X) was created. There has to be a transportation medium for agricultural products and that is trucking.

Mr. Swanson agreed that there were nuisance problems and the petitioner is working at eliminating these things. He pointed out the four letters of support that had been submitted from the neighbors.

Commissioner Steinhauer confirmed from Mr. Swanson that the petitioner does transfer hay from the large trailer to a smaller trailer on this site. In doing this the petitioner may leave the larger trailer at this site to prevent an empty trip back to Harrisburg. Mr. Swanson added that the petitioner has three trailers and a car trailer at the site in Harrisburg. Commissioner Twedt questioned whether the convenience and cost saving to the petitioner for leaving his trailer at this site vs. taking it back to Harrisburg should be a factor in this request. Mr. Swanson stated that it is a balancing act. If the Commission is going to consider the convenience and monetary issues of the neighbors, it must consider those same factors for the petitioner. Commissioner Twedt then pointed out that the petitioner doesn't grow hay which makes it hard to call this an agricultural operation. Mr. Swanson read Section 3.04(X) out loud. He stated that no one disagrees that hay and straw are a farm product. The term ag related as stated in Section 3.04(X) is not a term that is defined in either the zoning ordinance nor the comprehensive plan. The petitioner buys and sells to farmers so this is an agriculturally related business.

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

Commissioner Cypher stated that he had a problem with the location of this business. It is in a housing district and access is onto a township road. He noted that Farm Bureau doesn't recognize anything as farm until there are ten acres. If this were to be approved there must be a condition that the property is cleaned up and there be a limitation of one truck and one trailer.

Commissioner Steinhauer addressed the term ag related. In any business you need to be in close proximity to your customers. He questioned whether it met the intent of the ordinance as this was operating on a site which did not produce an ag product. On the other hand, a conditional use permit could be used to improve the situation. The hours of operation and the number of vehicles could be limited, lighting and screening addressed, and the clean up of the property required.

Looking at the staff report on where this section of the ordinance had been previously applied, Commissioner Twedt said there were clearly agricultural operations on the property in those instances. The agricultural product was produced on the site. Approving this could be opening the door to unknown consequences. Commissioner

Steinhauer agreed. What if someone operated a fertilizer business and wanted to bring home the equipment in Country Acres (a subdivision just to the west of this site)? Would that be allowed? Or how about a dairy hauler with his trucks? asked Commissioner South. Commissioner Twedt suggested a deferral on even considering the item until this place was cleaned up. Commissioner Steinhauer suggest the petitioner drive a high mileage gas vehicle to limit costs. The fact that the transfer of product is taking place on the site goes beyond just a storing a trailer. Approval would set a precedent.

Action

Based on the staff report, public testimony and stating that this request was inconsistent with the zoning ordinance, was not congruent with the residential development of the area, and the current disrepair of the property which indicates a lack of concern for the area, motion was made by Steinhauer and seconded by Cypher to **deny** Conditional use permit #08-68. The motion passed unanimously.

ITEM 5. A PUBLIC HEARING FOR REZONING #08-08 from A-1 Agricultural to I-2 Industrial.

Legal Description – That portion North and East of the Highway of the W1750' S800' (except the S485' W450' E1750') SE1/4 Section 35-T101N-R52W

Location – 8 miles southwest of Humboldt

Petitioner / Owner- Genesis Ethanol I / Walter Bones

Mr. Kappen stated that proper notification had not been sent to the Turner County Auditor and that the petitioner had not sent out certified notification. He requested a deferral until January 26, 2009.

Action

A motion was made by Cypher and seconded by Randall to **defer** Rezoning #08-08 to the January 26, 2009 meeting. The motion passed unanimously.