

**MINUTES OF THE  
MINNEHAHA COUNTY PLANNING COMMISSION**  
January 26, 2009

A meeting of the Planning Commission was held on January 26, 2009 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  
Gordy Swanson – Office of the State's Attorney

The meeting was chaired by Don South.

**CONSENT AGENDA**

**ITEM 1. MINTUES – November 24, 2008**

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

**ITEM 2. CONDITIONAL USE PERMIT # 09-01**

**To allow the transfer of 1 residential building eligibility from Tract 1 Olson's Addn. to the NE ¼ NE ¼ NW ¼, all in Section 31-T103N-R49W.**

**General Information**

Location – 2 miles northeast of Crooks  
Petitioner / Owner- Gary & Cleo Snuggerud  
Present Zoning - A1 Agricultural  
Existing Land Use - Agriculture  
Parcel Size - 40 Acres

**Report by:** Pat Herman

**Staff Analysis:**

This is a request for transfer one residential building eligibility. The property is located approximately 2 miles northeast of Crooks. The surrounding area is a mixture of farmed ground and rural acreages. The original farmstead in this quarter-quarter contained two houses. The farmstead was split by a plat, and each house received a building eligibility. The transfer would move one eligibility to the northeast corner of the NW ¼. There are no plans to construct a house on this site at this time.

**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. There are no existing CAFO's in the immediate vicinity.

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

This transfer should not negatively affect development in this area.

**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. Sverdrup Township does require a driveway permit.

**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 finds this conditional use permit request to be consistent with density zoning and recommended approval of Conditional Use Permit #09-01 with the following conditions:

- 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) Sverdrup Township shall issue a written driveway or culvert permit prior to the issuance of a building permit.

**Action**

Based on the staff report, a motion was made by and seconded by to **approve** Conditional Use Permit #09-01 with the conditions as stated. The motion passed unanimously.

**ITEM 3. CONDITIONAL USE PERMIT # 09-02  
To allow small engine repair.**

**General Information**

Legal Description - Lot 3, Block 2 Brower Addn. SW ¼ in Section 27-T102N-R51W  
Location – 26066 Brower Circle south edge of Harford  
Petitioner / Owner- Justin Gillespie / Vance Peterson  
Present Zoning - A1 Agricultural  
Existing Land Use - Agriculture  
Parcel Size - 40 Acres

**Report by:** Phil Kappen

**Staff Analysis:**

The subject property is located in the Brower Addition, an industrial park located in the southeast quadrant of the Hartford exit on I-90. The property owner has constructed a building with a number of bays that he hopes to lease out to various businesses. The tenants of individual bays will apply for any required conditional use permit for their specific land uses. This request is for bay # 2 and the petitioner proposes to conduct a small engine repair business in the building.

**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.**

Surrounding properties are all in commercial or industrial uses. The small engine repair business should pose no problems provided that parts and materials are not allowed to accumulate on the property. The petitioner is not proposing outside storage, and the property owner has indicated to staff that he does not wish there to be outside storage. Also, the petitioner has not provided any site plan that designates an outside storage area. A prohibition on any outside storage should be placed as a condition on any permit.

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

The lot to the east of this site is currently vacant but is already zoned for Industrial uses. A small-engine repair shop is consistent with the types of uses that might be approved for the adjoining property and should pose negligible impact on the development of the vacant sites.

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

Access to the site is via Brower Avenue and Kelsey Drive, both privately maintained public right-of-ways. Both roads are currently graveled so there is no requirement for hard surfacing on the subject property. The amount of traffic on the roads, and the manner of construction and maintenance of the roads, have resulted in ongoing severe street problems and in safety concerns, particularly at certain times of the year. The continued addition of more traffic on these roads will only exacerbate these problems until such time as the road situation is properly addressed by the developer and property owners in the area. There has been discussion within the subdivision on improving the roads.

There is a floor drain and an oil trap in the bay. The floor drain is plumbed to a holding tank so the facility is in compliance with EPA wastewater regulations.

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

There should be ample space for the parking required on the site. Only 2 parking spaces would be required for the 30x50-foot area in this bay. There will be adequate parking in front of the specific bay.

**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.**

All work will be confined to the interior of the building. This will lessen the potential for odors, dust or noise. The petitioner proposes a 3x4 sign above his door. This is within the allowed square footage for signs on that portion of the building.

**Recommendation**

Staff finds that the proposed use is consistent with the types of uses found in a commercial or industrial area and that the proposed use can be accomplished in a manner that minimizes potential impacts on neighboring properties. Staff, therefore, recommended approval of Conditional Use Permit #09-02 with the following conditions:

- 1) The use shall operate with a South Dakota sales tax license in full force.
- 2) No outside storage of parts, materials, items to be repaired or equipment is allowed.
- 3) All work shall be conducted inside of the building.

**Action**

Based on the staff report, a motion was made by and seconded by to **approve** Conditional Use Permit #09-02 with the conditions as stated. The motion passed unanimously.

**ITEM 4. CONDITIONAL USE PERMIT # 09-04  
To allow the transfer of 1 residential building eligibility from SW ¼ NE ¼  
to the NW ¼ NW ¼ NE ¼ , all in Section 7-T102N-R48W.**

**General Information**

Location – 5 miles northwest of Brandon  
Petitioner / Owner- Earl & Ronda Egge  
Present Zoning - A1 Agricultural  
Existing Land Use - Agriculture  
Parcel Size - 40 Acres

**Report by:** Pat Herman

**Staff Analysis:**

This is a request for transfer one residential building eligibility. The property is located approximately 5 miles northwest of Brandon. The surrounding area is predominately farmland with some scattered acreages. The transfer would move the building eligibility from a landlocked quarter-quarter to an existing tree grove.

**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. There are no existing CAFO's in the immediate vicinity.

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

This transfer should not negatively affect development in this area.

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

A waste water system will be utilized. Brandon Township does require a driveway permit.

**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 finds this conditional use permit request to be consistent with density zoning and recommended approval of Conditional Use Permit #09-04 with the following conditions:

- 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 issue a written driveway/culvert permit prior to the

issuance of a building permit.

**Action**

Based on the staff report, a motion was made by and seconded by to **approve** Conditional Use Permit #09-04 with the conditions as stated. The motion passed unanimously.

**ITEM 5. A PUBLIC HEARING FOR REZONING #09-01  
To rezone from the C Commercial District to I-1 Industrial District.**

**General Information**

Legal Description – McBeth Tr 1A NE ¼ & SE ¼ in Section 27-T101N-R48W  
Location – 48185 Hwy 42 ½ mile west of Rowena  
Petitioner / Owner- Dan Gary / Dennis Tilden  
Present Zoning - C Commercial  
Existing Land Use - Commercial  
Parcel Size - 2 Acres

**Report by:** Pat Herman

**Staff Analysis:**

The petitioner is applying to rezone from property from the C Commercial District to the I-1 Industrial District. The property is located approximately a ½ mile west of Rowena, at the intersection of Hwy 42 and 482<sup>nd</sup> Avenue. The building on the site is currently occupied by Tilden Flooring. Due to retirement, the current use of the property will cease. The petitioner wishes to rezone the site to Light Industrial so that the facility may be used for light manufacturing.

The property immediately to the west is zoned for commercial use, well known for many years as the location of Skitzo's Bar. Mryl & Roy's quarry is located to the southwest, and to the south and east is pasture and farm ground. Across the Highway to the north is Preston Place, a 24 lot residential subdivision.

The Comprehensive Plan designates that commercial and industrial development occur in rural service areas or at the intersection of major roads. While this site does not meet either of these requirements, it does abut Highway 42 and has been the location of commercial/industrial uses since the 1950s. Despite the close proximity of the residential subdivision, staff believes the rezoning will not negatively impact that neighborhood. Hwy 42 provides a manmade buffer between the two the sites. In addition, the permitted uses in the I-1 district are either of a commercial nature or disallow outside storage of materials. These uses include office, bank, greenhouse, warehousing, repair services, retail sales, and trade services. All other uses, including the petitioner's light manufacturing business, require a conditional use permit.

The building on this site is over 10,000 square feet in size. Rezoning this site will make it easier to find uses which need such a large facility. This is more favorable for the surrounding area instead of an empty building which could invite crime into the area.

**Recommendation**

Staff finds that rezoning request is congruent with the historic use of the property, and will not negatively affect the surrounding neighborhood. Staff recommended approval of Rezoning #09-01 to I-1 Light Industrial.

**Action**

Based on the staff report, a motion was made by and seconded by to recommend **approval** of Rezoning #09-01. The motion passed unanimously.

**ITEM 6. A PUBLIC HEARING FOR REZONING #08-08.**  
**To rezone from A-1 Agricultural to I-2 Industrial.**

**General Information**

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

Location – 8 miles southwest of Humboldt  
Petitioner / Owner- Genesis Ethanol I / Walter Bones  
Present Zoning - A1 Agricultural  
Existing Land Use - Agriculture  
Parcel Size - approx. 22 Acres

**Report by:** Phil Kappen

**Staff Analysis**

The subject property is located 3 miles southwest of Wall Lake. Surrounding properties are agricultural with a few non-ag acreages. The petitioner currently has a conditional use permit for a farm-scale ethanol plant in the farmstead area. They wish to increase the production of the plant above the farm-scale size and are applying to rezone the property to I-2 Industrial to allow a larger plant. If the rezoning is approved, they will then have to obtain a conditional use permit for the enlarged plant in the industrially-zoned area.

During the conditional use phase of this request questions about potential impacts on neighboring properties, parking requirements, access to roads and the need for hard-surfaced driveways can be addressed.

In addition to the allowance for commercial/industrial property at interstate highway interchanges and in rural service areas, the county's comprehensive plan allows for areas of commercial at the intersection of two highly traveled hard-surfaced roads. This site is at the intersection of County Highways 159 (459<sup>th</sup> Avenue) and 150 (268<sup>th</sup> Street). It, therefore, meets the location criteria for commercial or industrial property. The proposed use is also associated with the predominant use of the area, that of agriculture.

**Recommendation**

Staff finds that the proposed rezoning conforms with the location criteria for commercial or industrial property as set forth in the Minnehaha County Comprehensive Development Plan and recommends **approval** of rezoning request #08-08.

**Public Testimony**

The petitioner, Walt Bones, stated that they have a state permit to produce 2 million gallons a year, but to be efficient they need to produce 4 million gallons a year. Working with staff, it was determined that a rezoning would be needed for an ethanol plant of that size.

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

**Action**

With no discussion and based on the staff report and public testimony, a motion was made by Cypher and seconded by Rogen to recommend **approval** of Rezoning #08-08. The motion passed unanimously.

**ITEM 7. CONDITIONAL USE PERMIT # 08-78  
To allow Rock, Sand and Gravel Extraction.**

**General Information**

Legal -	E ½ NE ¼ (ex Tr. 1 & ex N8 Rods E20 Rods) & the E ½ SE ¼ in Section 7-T101N-R50W
Location –	26335 467 <sup>th</sup> Avenue 1.5 miles west of Ellis
Petitioner / Owner-	Friessen Construction Co., Inc.
Present Zoning -	A1 Agricultural
Existing Land Use -	Agriculture
Parcel Size -	155 Acres

**Report by:** Scott Anderson

**Staff Analysis:**

**Location and Background**

The location of the site is approximately 4 miles west of Sioux Falls at the intersection of 467<sup>th</sup> Avenue and 263<sup>rd</sup> Street (County Highway 140). Sand and gravel deposits are common in the areas adjoining Sunk Creek and other extraction operations currently exist north and south of this area. Pasture and crop land are the predominate land uses in those areas which have not yet been mined and on reclaimed land.

The proposed extraction area is located primarily on the south side of Skunk Creek south of County Highway 140 (263<sup>rd</sup> Street) and west of 467<sup>th</sup> Avenue. There appears to be two (2) residences and three (3) other rock, sand and gravel extraction businesses located in the general vicinity within ¼ mile of the area to be mined.

**Planning Considerations**

The applicant has not provided the Planning Department with an estimate on the duration of the mining activity on the subject property. The projected life of most mining operations is dependant on the demand for aggregate for construction. Extraction will be done with earth moving equipment. No blasting will occur on the site. Staff will recommend that all mining activity be concluded within ten (10) years. Should more sand and gravel extraction be called for, then the applicant will need to amend this conditional use permit to extend the life of the permit.

The applicant is proposing to mine a small portion of land located north of Skunk Creek and south of County Highway 140 and the old school house residence. From a visual perspective, staff does not feel this area should be included in the Conditional Use Permit and allowed to be mined. It is a small area located along a well traveled county highway. Staff will recommend that no mining occur on the subject property north of Skunk Creek.

The applicant has not shown any internal haul roads. It is likely that any internal haul roads would change as the mining moves around the site. The applicant will be utilizing 467<sup>th</sup> for slightly less than ½ of a mile to gain access to County Highway 140 or 263<sup>rd</sup> Street. County Highway 140 is a hard surfaced road.

There is designated floodplain located on the property. The subject property is located within the Skunk Creek drainage basin. The subject property is located over an aquifer recharge area. With property management, the aquifer should not be significantly impacted.

The zoning regulations list developmental and operational criteria for use in evaluating extraction activities. Following is a review of the proposal based on the criteria. Please note that the proposed use is for rock, sand and gravel extraction as regulated by Article 12.08 and not mineral exploration and development, Article 12.04.

**Buffer area** - The suggested minimum setback between extraction areas and existing residences is 1000 feet. There are two (2) residences located within the buffer area. The applicant provided a waiver from the owner of the property located at 46672 263<sup>rd</sup> Street, but has not provided any waiver from the closest property owner located at 46697 263<sup>rd</sup> Street, which is at the corner of the 263<sup>rd</sup> Street and County Highway 140. The applicant noted on their site plan that this property is a school house and a non-residence. The property owner called staff on January 6, 2009 and indicated that the property is a residence. The current owner only uses the residence in the summer when gardening, however there is a locked eligibility on the site and the county views this property as a residence. The applicant will be required to obtain a waiver or remain at least 1,000 feet from the property lines of the old school house lot.

**Hours of operation** - The zoning criteria suggest that mining operations be limited to the hours from 7:00 am to 6:00 pm on weekdays and 8:00 am to noon on Saturdays. Other activities such as office or maintenance operations, which produce no noise, are not restricted to the times listed above. The applicant has requested hours of operation to be from 6 a.m. to 7 p.m. Monday through Saturday. The requested hours of operation exceed the criteria and what has been typically approved by the County. Staff will recommend that the hours of operation indicated within the Zoning Ordinance be followed.

**Berms** - Berms are commonly used to screen on-site activities from public view and to minimize noise. The petitioner has indicated that no berms will be constructed. Given the existing land use with the other existing gravel operation located nearby, staff does not feel berms would successfully minimize the view of the mining activities from the public and will not be recommending berms be constructed for this conditional use permit. Staff is recommending that no mining occur in the area that will be most visible to the public, which is along County Highway 140. Should the Planning Commission or County Commission allow mining in this area, then berms along the property lines of the existing residence would be in order.

**Noise** - 55 decibels recorded over a 10 minute period measured at the nearest residence. This standard is generally addressed on a complaint basis.

**Dust** - Air quality should not be a concern due to the nature of the extraction operation. Dust from truck traffic can be controlled by applying dust control agents to the haul road. The applicant has offered to pave this portion of the haul road to minimize the dust. The balance of the haul road shall be treated with a dust suppressant so that dust is eliminated. The County Planning Department should be given authority to require the operator to install on-site monitoring devices if air quality becomes a problem.

**Hydrology, dewatering and drainage** – The applicant has indicated that no dewatering of the pit is anticipated so the area's hydrologic conditions should not be impacted. The applicant shall be required to obtain a South Dakota Surface Water Discharge Permit for Storm Water Associated with Industrial Activities if required by the state.

The applicant provided the Planning Department with a Hydrologic Study of the site prepared by Tetra Tech dated November 26, 2008. The study provides information on the site, background information, information on the geologic setting, site reconnaissance and date review, some discussion of the finds and a conclusion. The sand and gravel formation has an average depth of 9 feet. The maximum thickness is 84 feet and the average cumulative thickness is about 22 feet. The ground water level in this area ranges from ten (10) feet to approximately forty-five (45) feet. The study indicated that no dewatering will result from the mining activities. The mining activity may be both above and below the water table. If the mining occurs below the water table a drag line will be used in the mining activities and there will be no dewatering. The study anticipates no impact to surrounding shallow and deep wells as a result of the mining operations. Should any dewatering in the future be planned, a dewatering permit would be required by the S.D. Department of Natural Resources – Water Rights Division. Tetra Tech concludes that based upon the geologic and hydrogeologic information they reviewed and the mining method to be used, that the sand & gravel operation will not adversely impact the ground water quantities or elevations in the wells.

**Haul roads** - The most common problem associated with extraction operations is the use of gravel township roads for truck hauling. In this case, the haul road will exit directly onto 467<sup>th</sup> Avenue. The applicant has provided staff with the minutes from the October 13, 2008 meeting of Wayne Township for the use of 467<sup>th</sup> Avenue. All truck traffic out of the extraction area will be directed north onto 467<sup>th</sup> Avenue and then east onto County Highway 140. Staff will place a condition indicating that no truck traffic is to go south when exiting the site unless the road to the north is blocked or closed for some reason. The Planning Commission and County Commission have required Township roads to be paved in the past, such as the requirement placed on the Reynolds and Gustavson pit located on 466<sup>th</sup> Avenue. In order to be consistent, staff will recommend that the portion of 467<sup>th</sup> Avenue located between the access point of the extraction site north to Highway 140 be hard surfaced. This is approximately 2,000 feet of 467<sup>th</sup> Avenue. The hard surfacing must meet any requirements set forth by Wayne Township. The applicant will be responsible for the maintenance of the hard surfacing for this portion of 467<sup>th</sup> for the duration of the extraction. Once extraction is concluded and the site has been completely reclaimed, the applicant shall either remove the hard surfacing or leave the hard surfacing

depending on the wishes of Wayne Township.

The Zoning Ordinance indicates that consideration of the potential impacts on any County highways to be used as haul routes. The routes proposed by the applicant do not use any County Highways.

**Operator surety** – Article 12.08.G requires a surety bond to be filed with the County Auditor to protect the County in the event the operator abandons the site without completing the required conditions of approval. The standard amount of \$5,000.00 surety shall be required.

**Reclamation** – The plan submitted by the applicant simply indicates that the topsoil will be stripped and stockpiled for use in reclamation. The site will be reclaimed for agricultural uses either as tillable farm ground or pasture. The site shall be restored to a farmable status within one (1) year of conclusion of mining operations. Reclamation should result in the rehabilitation of affected land through contouring and soil stabilization, revegetation and other appropriate means so as to create an aesthetic appearance and promote the most appropriate future use of the property. The applicant shall be required to follow the reclamation requirements of the Minnehaha County Zoning Ordinance as outlined in Article 12(G). The site shall be returned to agricultural use.

The applicant is also required to post a \$20,000.00 surety with the State of South Dakota in order to obtain the state mining permit. The applicant has indicated that they have many years of operator experience in Minnehaha County and value their reputation as good business people.

**Security** – The Zoning Ordinance suggests that the sand and gravel operation site should be secured during non-working hours by means of gates and fencing. The gates and fences should remain in place until all required reclamation activities have been completed. Staff will include these considerations in the recommended conditions of approval.

**Other considerations** - The entrance to the property should be gated to discourage individuals from disposing of refuse in the pit during non-working hours.

The site is located in the Water Source Protection Overlay District. Only clean fill will be used as backfill on the site as defined by the County Nuisance Ordinance. Furthermore, the applicant shall not be allowed to store any fuel within the water source protection area or within any 100 year floodplain area.

Portions of the property are also located within the 100 year flood plain. The flood plain is managed through the Minnehaha County Flood Plain Management Ordinance (MC 32-3). The applicant shall abide by all regulations outlined in this ordinance when working in the 100 year floodplain and/or floodway.

**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 majority of uses in the general vicinity revolve around agricultural production. The proposed use should not impact the property values of the agricultural land in the generally vicinity. With proper planning and execution of the plan, the proposed sand and gravel extraction should not effect of the enjoyment of other properties in the immediate vicinity. The applicant will be able to maintain the suggested 1000 foot buffer from adjacent residences.

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

The proposed use could have an impact on the development of surrounding vacant property. While most agricultural uses, such as animal husbandry or crop production would not be impacted by the proposed use, some uses such as rural residences may not desire to locate near this proposed use. The proposed use will generate additional heavy truck traffic, and minor amounts of noise and dust. The applicant has indicated that this use occurred on the site in the past and that the extraction activities will occur for ten (10) years. Staff is recommending that all mining activities conclude within ten (10) years.

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

The existing road infrastructure will be utilized for this proposed land use. The applicant is being required to enter into a Haul Road Agreement with the Wayne Township for the maintenance of 467<sup>th</sup> Avenue. No other infrastructure is needed for this land use.

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

Article 15 does not set any off street parking requirements for this land use. Staff recommends that a minimum of one off-street parking space for each employee and an additional two off-street spaces for customers 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.**

With the proposed sand and gravel extraction, there is a possibility of noise, dust and vibration to occur. Staff has addressed dust and noise in the recommended conditions of approval. The hours of operation will reduce the possibilities of these elements becoming a nuisance. Staff is recommending that the portion of 467<sup>th</sup> Avenue being used as the haul road be hard surfaced. This will help to control dust from vehicular traffic.

Staff finds the proposed sand and gravel extraction use compatible to the surrounding land uses and a use that can be found in the general vicinity. With proper zoning controls, the use can be conducted in such a manner to minimize potential nuisances.

**Recommendation**

Staff recommended **approval** of Conditional Use Permit #08-78 to allow rock, sand and gravel extraction with the following conditions:

- 1) An annual fee shall be paid to the County in accordance with Section 15.14 of the

zoning regulations. (Note: An annual fee of \$10 per acre of unreclaimed land is assessed to the operator.)

- 2) There shall be no fuel storage allowed in areas designated as a ground water protection area or flood plain.
- 3) Hours of operation shall be from 7:00 am to 6:00 pm on weekdays and 8:00 am to noon on Saturdays.
- 4) That the only dewatering shall be for use in dust control, road projects and rock washing. The applicant shall obtain any required permits from the state for use of the water.
- 5) That prior to any sand or gravel extraction, the applicant shall obtain a Haul Road Agreement from Wayne Township for the use of 467<sup>th</sup> Avenue. All truck traffic is to be directed north onto 467<sup>th</sup> Avenue when leaving the extraction site.
- 6) The portion of 467<sup>th</sup> Avenue being used as the haul road shall be hard surfaced with a minimum of a 6 inch granular base course and a 2 inch thickness of asphalt or a 7 inch thickness of Portland cement concrete.
- 7) The ambient air quality standards for total suspended particulate matter shall be 150 micrograms per cubic meter of air as a 24-hour average not to be exceeded more than once a year, and 60 micrograms per cubic meter of air as an annual arithmetic mean. The standards for PM<sup>10</sup> (10 micrometers or less in size) shall be consistent with the regulations of the State of South Dakota.
- 8) The County Planning Department shall direct the operator to install air quality sampling stations if the standards appear to be exceeded. Such monitoring shall be at the operator's expense.
- 9) The sound level from on-site operations shall not exceed an average of 55 decibels recorded over a 10 minute period measured at the nearest residence.
- 10) That one (1) off-street parking place for each employee and two (2) customer off-street parking spaces shall be provided.
- 11) The boundaries of the extraction area shall conform to the site plan submitted with the application.
- 12) Topsoil shall remain on the site and be used in final reclamation.
- 13) Only clean fill shall be used as backfill.
- 14) There shall be no storage or accumulation of inoperable or discarded equipment or parts.
- 15) A gate shall be required at the haul road entrance to the property.
- 16) That all mining activity is concluded by January 1, 2020 and that reclamation shall be in accordance with the plan filed with the State and outlined in the application and all reclamation of the site shall be completed by December 31, 2020 in accordance to all requirements outlined in Article 12(G) of the Minnehaha County Zoning Ordinance.
- 17) That if one (1) or more acres of area is disturbed the applicant is required to obtain a General Permit from the Department of Environment and Natural Resources.
- 18) That the applicant provides the Minnehaha County Auditor with a surety bond or cash in the amount of \$5,000.00.
- 19) The applicant shall abide by all regulations outlined in Minnehaha County Flood Management Ordinance, MC32-03, when working in the 100 year floodplain and/or floodway.

- 20) The sand and gravel operations shall be secured during non-working hours by means of gates and fencing. The property shall be continuously secured until all required reclamation activities have been completed.
- 21) That no mining activity shall be allowed in the area north of Skunk Creek.
- 22) That the applicant obtains a waiver from the property owners of 46697 263<sup>rd</sup> Street or remains at least 1,000 feet from the property lines of the old school house lot.

### **Public Testimony**

#### ***Applicant***

The petitioner, Cindy Monnin with Friessen Construction, stated that she is in agreement with most of the staff's recommendations, but not all. Ms. Monnin explained that she did not attempt to get a waiver from the old school house property owner because this house is only used during the summer. She had visited with the owner about the mining plans, and after being contacted by Mr. Anderson she sent the owner a waiver. She has not yet received the waiver back. She does want to mine on the north side of the creek, if that spot is viable. There has not been a lot of sub-surface exploration done at this point, but the plans are to start mining south of Skunk Creek. Ms. Monnin displayed pictures of the surrounding land use showing the existing and abandoned mining pits in this immediate area.

Ms. Monnin is opposed to having to pave the haul road (467<sup>th</sup> Avenue). This situation is different because they are not the only producer or hauler to use this road. Why should she have to bare the cost burden of hard surfacing? A map of all the producers in the area was displayed, showing the users of this section of 467<sup>th</sup> Ave. which is used by haulers to get to Co. Hwy 140. Ms. Monnin mentioned that she would have preferred to exit directly onto Hwy 140, but Skunk Creek prevented that. They have chosen a point on 467<sup>th</sup> Ave. which has the best site distance. She noted that the first step in mining is to build a good entrance and internal road system as they do not want their trucks to get stuck.

Ms. Monnin agrees with not sending trucks south on 467<sup>th</sup> Ave/ and will post a sign at the exit from the pit which states that all traffic must go north. She met with Wayne Township and they were not concerned about the maintenance on this road due to all the other gravel operators which travel on this section of 467<sup>th</sup> Avenue. Her current pit, Beckman, uses a township road. The Beckman pit will be slowing down and the truck traffic moving to this new location – a trade off with the traffic. Ms. Monnin also pointed out there are no residences that would be affected by the dust so there is no need for hard surfacing.

Ms. Monnin continued that there is no intention to create another exit along 467<sup>th</sup> Avenue. The cost of putting in a scale and scale house makes having a second exit prohibitive. She also raised concerns about the 10 year time limit. She cannot say when mining will be done in the pit as a number of factors are in play such as demand for the product, the economy, and not knowing how much gravel is on this property. A silt fence will be placed around Skunk Creek as is required by the State for erosion control.

#### ***Additional Speakers***

Jim Noonan, 26445 466<sup>th</sup> Ave. is concerned about dust. He is used to the pits having lived in this area. This summer there was a steady line of trucks traveling the gravel road and they were choked by all the dust. The problem is that 466<sup>th</sup> Avenue lines up with Highway 17. Trucks travel north on 467<sup>th</sup> Ave., turn west on Highway 140 for one mile, then head south on 466<sup>th</sup> Ave. to hit Highway 17. He would like to see dust control on 466<sup>th</sup> Avenue. The trucks make the road a washboard and cause the road to deteriorate

more rapidly in the spring. He understands the use of this property for mining, just needs to see some more dust control.

Layton Wehrkamp, 46411 262<sup>nd</sup> St., is Wall Lake Township Chairman. He stated that the problem is not always the gravel pits, there are also independent haulers. They over use the roads. Some of these drivers do not know which way to go and use the gravel roads because they are the shortest travel route. He did note that the sign preventing trucks from turning at the Reynolds and Gustafson mine seems to be working. Commissioner Cypher stated that it is not possible to know who is hauling on a certain road. This is more a township issue.

Ab Oren, 46702 Buckeye St., lives in West Acres. His concern is having truck drivers abide by the posted 25 mph speed limit. Dust is also an issue.

Peggy Merrow, 26494 Kuhle Dr., has lived here for 33 years. She feels Friessen is the best mining company to deal with and that they are very consciences. Who is she to contract about the trucks that barrel through, and have untarped load? Commissioner South stated that the Sheriff would do enforcement on those issues.

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

Commissioner Cypher stated that he would make a motion to approve with the following changes. He noted that this is a multi-use road and it is not right to put the burden on one company to blacktop part of the road and condition #6 should be removed. Condition #21 should also be removed. If the applicant gets the waiver, then Friessen should be able to mine in this area. It is between Friessen and the property owner. The 10 year time limit should be changed in Condition 16 to a ten year review. This pit is located in the heart of all the other sand and gravel pits, so it should not be restricted to a time table. The motion was seconded by Rogen.

Commissioner Kelly question how truck traffic could be controlled from going south? Is it even legal on a public road? Commissioner Cypher stated that there is no control over the trucker and that that has always been the problem. In response to the Commission, Ms. Friessen noted that only other option left to haulers is to travel on Sands Road, which has no maintenance. If County money were available there is another route that could be paved allowing access to Hwy 42. She estimated the cost of applying mag-water in front of each residence to be between \$600-\$700.

Commissioner Steinhauer noted that another driveway would be need if the area north of Skunk Creek was mined. He would like to leave that condition in. Commissioners Cypher and Rogen agreed to leaving in condition #21, amending their motion. Mr. Anderson, as provide by Mr. Swanson, said that Section 12.08 (G) Air Quality (4)states: *Dust control agents should be applied to township gravel roads designated as haul routs and all driving surfaces within the extraction area.* Mr. Anderson stated that the applicant must do some type of dust control, but it does not have to be mag-water, it could just be water. He explained that he had added the hard surfacing requirement because the applicant is asking to put more traffic on the road. There are other producers in the area that are grandfathered in uses, but you have to start somewhere with these requirements. Commissioner O'Hara agreed that we have to look at where we are at this point.

Commissioner Randall wanted it on the record that \$5,000 is not an adequate surety should the mining operation be abandoned. Commissioner Cypher agreed but stated that the Planning Commission had tried to increase the amount to \$100,000 and that was

turned down by the County Commission. Commissioner Kelly agreed that \$5,000 was to small an amount.

Commissioner Cypher stated that he wanted to change his motion to include #6 that dust control agents be used as this is included in the zoning ordinance. Rogen agreed with the amendment.

**Action**

Based on the staff report and public testimony, a motion was made by Cypher and seconded by Rogen to **approve** Conditional Use Permit #08-78 with the conditions as follows. The motion passed unanimously.

- 1) An annual fee shall be paid to the County in accordance with Section 15.14 of the zoning regulations. (Note: An annual fee of \$10 per acre of unreclaimed land is assessed to the operator.)
- 2) There shall be no fuel storage allowed in areas designated as a ground water protection area or flood plain.
- 3) Hours of operation shall be from 7:00 am to 6:00 pm on weekdays and 8:00 am to noon on Saturdays.
- 4) That the only dewatering shall be for use in dust control, road projects and rock washing. The applicant shall obtain any required permits from the state for use of the water.
- 5) That prior to any sand or gravel extraction, the applicant shall obtain a Haul Road Agreement from Wayne Township for the use of 467<sup>th</sup> Avenue. All truck traffic is to be directed north onto 467<sup>th</sup> Avenue when leaving the extraction site.
- 6) Dust control agents shall be applied to that portion of 467<sup>th</sup> Avenue being used as the haul road.
- 7) The ambient air quality standards for total suspended particulate matter shall be 150 micrograms per cubic meter of air as a 24-hour average not to be exceeded more than once a year, and 60 micrograms per cubic meter of air as an annual arithmetic mean. The standards for PM<sup>10</sup> (10 micrometers or less in size) shall be consistent with the regulations of the State of South Dakota.
- 8) The County Planning Department shall direct the operator to install air quality sampling stations if the standards appear to be exceeded. Such monitoring shall be at the operator's expense.
- 9) The sound level from on-site operations shall not exceed an average of 55 decibels recorded over a 10 minute period measured at the nearest residence.
- 10) That one (1) off-street parking place for each employee and two (2) customer off-street parking spaces shall be provided.
- 11) The boundaries of the extraction area shall conform to the site plan submitted with the application.
- 12) Topsoil shall remain on the site and be used in final reclamation.
- 13) Only clean fill shall be used as backfill.
- 14) There shall be no storage or accumulation of inoperable or discarded equipment or parts.
- 15) A gate shall be required at the haul road entrance to the property.
- 16) That a review of Conditional Use Permit #08-78 shall be presented to the Planning

Commission in January 2020.

- 17) That if one (1) or more acres of area is disturbed the applicant is required to obtain a General Permit from the Department of Environment and Natural Resources.
- 18) That the applicant provides the Minnehaha County Auditor with a surety bond or cash in the amount of \$5,000.00.
- 19) The applicant shall abide by all regulations outlined in Minnehaha County Flood Management Ordinance, MC32-03, when working in the 100 year floodplain and/or floodway.
- 20) The sand and gravel operations shall be secured during non-working hours by means of gates and fencing. The property shall be continuously secured until all required reclamation activities have been completed.
- 21) That no mining activity shall be allowed in the area north of Skunk Creek.
- 22) That the applicant obtains a waiver from the property owners of 46697 263<sup>rd</sup> Street or remains at least 1,000 feet from the property lines of the old school house lot.

**ITEM 8. A PUBLIC HEARING FOR A ZONING TEXT AMENDMENT #09-01**  
**To add agriculturally related operations involving the handling, storage and shipping of farm products to the RC Recreation/Conservation District**

**General Information**

Petitioner - A.J. Swanson for Jack Cody

**Report by:** Phil Kappen

**Staff Analysis**

The Minnehaha County Zoning Ordinance currently has a section under the A-1 Agricultural District that allows “Agriculturally related operations involving the handling, storage and shipping of farm products” as a conditional use. The petitioner requests that a similar section be added to the RC Recreation/Conservation District.

The predominant use in much of the RC District is agriculture. Given that the intent of the “agriculturally related operations” section is help promote agriculture, it is reasonable that such uses should also be allowed in the RC District by conditional use. The CUP process allows a review of the potential impact of any proposed use on other properties.

Much of the agricultural land in the RC District will continue in agricultural uses. This is particularly true as the RC District comprises the flood plain areas and the potential for any other development is severely limited. Specific concerns over the placement of a proposed use in the flood plain or over the water source protection area can be addressed as a part of conditional use permit reviews.

**Recommendation**

Staff finds that the proposed zoning text change is compatible with the goals of the comprehensive plan and with the promotion of agriculture as set forth in the zoning ordinance and recommended approval of Zoning Ordinance Text Amendment #09-01 by adding a new section 9.04 (T) to the Revised Zoning Ordinance of Minnehaha County to read as follows:

- (T). Agriculturally related operations involving the handling, storage and shipping of farm products.

**Public Testimony**

Commissioner Kelly stated that this issue had been before the County Commission just recently. Mr. Kappen explained that this same text exists in the A-1 District and that there had been a conditional use application for hauling hay that had been advanced to the County Commission.

The petitioner, A.J. Swanson, representing John J. Cody, stated that his client’s family had been in the livestock trucking business since 1942, and had been hauling from his present site since 1991. Mr. Cody’s property is zoned RC Recreation/Conservation and he would like the same opportunity to apply for a conditional use permit as would be afforded him under the A1 Agricultural District.

There was some discussion between Mr. Swanson and the Commission on what constituted a farm product. In Mr. Swanson's opinion, a pig would be a farm product while it is alive, but hauling pork or other swine by-products would not be considered farm product. Hauling unprocessed milk would be a farm product.

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

**Action**

Based on the staff report and public testimony, a motion was made by Rogen and seconded by O'Hara to recommend **approval** of Text Amendment #09-01. The motion passed unanimously.