

**MINUTES OF THE  
MINNEHAHA COUNTY PLANNING COMMISSION  
November 23, 2009**

A meeting of the Planning Commission was held on November 23, 2009 at 7:00 p.m. in the Commission Room of the Minnehaha County Administration Building.

COUNTY PLANNING COMMISSION MEMBERS PRESENT: Don South, Susie O'Hara, Wayne Steinhauer, Becky Randall, Mark Rogen and Dick Kelly.

**STAFF PRESENT:**

Scott Anderson, Phil Kappen, and Pat Herman -County Planning  
Gordy Swanson - Office of the State's Attorney

The meeting was chaired by Chair Don South.

**CONSENT AGENDA**

At the request from the Commission, Item #3 was removed from the consent agenda and placed on the regular agenda. There being no other objections from the Planning Commission or audience, a motion was made by O'Hara and seconded by Kelly to approve the consent agenda (Item #3 removed). The motion passed unanimously.

**ITEM 1. MINTUES – October 26, 2009**

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

**ITEM 2. CONDITIONAL USE PERMIT #09-72 to exceed 1200 sq. ft. of accessory building area – 1350 sq. ft. requested.**

Legal Description - Tract A Fiegen's Addn. NE1/4 in Section 17-T103N-R48W

Location – 25237 480<sup>th</sup> Ave. 6 miles west of Garretson

Petitioner / Owner- Mark Beck

**General Information**

Present Zoning - A-1 Agricultural

Existing Land Use - Residential

Parcel Size - 4.0 Acres

**Report by:** Pat Herman

**Staff Analysis**

This property is located in Edison Township, a ¼ mile southeast of the EROS Data Center. The surrounding land use is agriculture with many small acreages. The parcel is part of a six lot subdivision which was platted out lot by lot on an original 60 acre parcel.

The petitioner is would like to exceed 1200 sq. ft. of accessory building area on his four acre lot. Section 12.07 D of the county zoning ordinance states:

In the A-1 and RC Districts, the total area of accessory buildings shall not exceed 1200 square feet when such buildings are located in a subdivision of more than four (4) lots unless a conditional use has been approved.

The petitioner is asking for approval for a 1350 square foot accessory building.

There are three lots to the south of the petitioner which each have large accessory

buildings in excess of 3,000 square feet.

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

The addition of this size accessory building will not impact this area. It is reasonable to expect that maintenance of a 4 acre parcel would require extra storage space.

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

The majority of the residential building eligibilities in the area have been used. This use will not effect the agricultural land.

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

This use will utilize the existing utilities on this property.

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

N/A

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

There should be no uses in the building which should constitute these type of nuisances.

**Recommendation**

Staff found the petitioner's requested building size is much smaller than the pervading neighborhood norm of 3,000 square feet and recommended approval of Conditional Use Permit #09-72 with the following conditions:

1. Accessory building area shall not exceed 1350 square feet on the property.
2. The building shall not exceed one story in height.
3. A building inspection is required to measure the outside dimensions of the building.
4. A building permit is required.

**Action**

Based on the staff report and public testimony, a motion was made by O'Hara and seconded by Kelly to approve Conditional Use Permit #09-72 with the conditions as stated. The motion passed unanimously.

**Conditional Use Permit #09-72 - APPROVED.**

**REGULAR AGENDA**

A motion was made by O'Hara and seconded by Rogen to approve the regular agenda with Item 3 added. The motion passed unanimously.

**ITEM 3. CONDITIONAL USE PERMIT #09-73 to transfer one residential building eligibility (#240148).**

From – NW1/4 NW1/4 of Section 17-T101N-R47W

To - SW1/4 NW1/4 of Section 17-T101N-R47W

Location - 2 miles southwest of Valley Springs

Petitioner / Owner- Miles Olson

**General Information**

Present Zoning - A-1 Agricultural

Existing Land Use - Agriculture

Parcel Size - 40 Acres

**Report by:** Scott Anderson

**Staff Analysis:**

The applicant wants to transfer an eligibility from the NW ¼ of the NW ¼ to the SW ¼ of the NW ¼ to allow for the development of a residential lot. The proposed building site would be located east of 485<sup>th</sup> Avenue.

On November 12, 2009, staff conducted a site visit. There is one existing farm located approximately 1 mile east of the subject property. There are no animal confinement operations near the location of the transfer. There are several single family residences located in the vicinity of the subject property. There are approximately eight (8) single family residences located within a one (1) mile radius of the subject property, primarily to the north, northwest and southwest.

**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 section.

**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. The applicant hasn't indicated whether the proposed building site will share an approach. A new approach will have to be constructed onto 485th Avenue. Valley Springs does not require driveway approach permits.

**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 #09-73 with the following condition:

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.

**Public Testimony**

Commissioner Rogen stated that this building eligibility is sitting on the corner quarter-quarter with access to two roads. He feels it is not the Commission's responsibility to move a building eligibility just because the owner can make more money selling the eligibility at a different location. Mr. Anderson noted that both locations have road access so it is really a wash as far as driveways. He added that the house can be constructed anywhere in the 40 acres.

The petitioner, Miles Olson, explained that moving the eligibility made sense because of the terrain and the value of the farm ground. The land gets worse the farther south you go. The transfer would preserve the best farm ground.

Commissioner Rogen said that when he drove by the area he noticed a lot of cows in the pasture just south of the transfer site. Will the people who buy these lots know about the fencing laws in SD and their responsibility to fence the animals out? Scott stated that is a "buyer beware" issue.

Miles Lacey 26511 485<sup>th</sup> Ave., owns the land to the south of the transfer site. Because of an existing cattle operation on the eastern half of the quarter, the fencing rule of being responsible for the fence on your right hand side was reversed, and he is responsible for the fence adjacent to the transfer site. He does not want to see two houses here and have to deal with two different homeowners about fencing issues. It should remain at one house per 40 acres. What about dogs? People move to the country and think they can just let their dogs run free. Depending on the alfalfa rotation, he sometimes has cattle in this field and dogs will get right through a fence.

Matt Swenson, 48452 265<sup>th</sup> St., owns land on the west side of 485<sup>th</sup> Avenue. He would prefer the eligibility remain to the north where there is already a little town of houses. These houses are ruining the area.

Selden Lacey, 48479 265<sup>th</sup> Ave., would like to see both eligibilities moved north, closer to where there are already houses developed and away from this land.

Commissioner Rogan stated that he can not see the wisdom in just carving off a parcel. The eligibilities should congregate where the other houses are. Commissioner Steinhauer stated that moving the eligibility to less productive farm ground meets the spirit of the ordinance. The other focus of the ordinance is to group houses together. In this case the concern of the neighbors is an influence. Commissioner O'Hara agreed, but did note that denying the request would take more land out of agricultural production. Commissioner

Kelly stated that either way you look at it, there are going to be two houses and there is already one in east side of this quarter. The transfer will leave the best ground for agricultural uses.

**Action**

Based on the staff report, public testimony, and his previously stated comments, a motion was made by Rogen and seconded by Randall to deny Conditional Use Permit #09-73. The motion passed (South & Kelly nay).

**Conditional Use Permit #09-73 – DENIED.**

**ITEM 4. CONDITIONAL USE PERMIT #09-71 to allow a construction and demolition debris disposal site.**

Legal Description – Tr. 4 Jacobson Addn. NW1/4 of Section 9-T101N-R50W  
Location – 26312 468<sup>th</sup> Ave. ¾ mile northwest of Ellis  
Petitioner / Owner- Don Runge, Astec Rubble

**General Information**

Present Zoning - A-1 Agricultural  
Existing Land Use - Agriculture  
Parcel Size - 25 Acres

**Report by:** Phil Kappen

**Staff Analysis**

The subject property is located west of Ellis along 468<sup>th</sup> Avenue, a section line road. The property to the east is in agricultural uses, to the south and west are sand and gravel mining sites, and to the north are t disposal site. They might also recycle concrete and trees or scrap lumber. The operation would be located within an existing sand and gravel mining excavation.

The operation is expected to have a life span of 15-20 years depending on actual tonnage disposed at the site and the applicant will be seeking state approval for 25,000 or more tons per year. Actual annual tonnage is expected to be closer to 16,000 tons. The proposed hours of operation are 8 a.m. to 6 p.m. Monday through Friday, however, they also wish the option to open on Saturdays for special requests by customers. It is estimated that there may be up to 3 truck trips per hour bringing waste to the site.

A solid waste business like this, if the conditional use permit is approved, would also require a county solid waste permit, a state solid waste permit, and likely an NPDES construction stormwater permit from the South Dakota Department of Environment and Natural Resources. The NPDES permit will dictate how erosion control will be addressed on the site and where erosion control practices must be placed. The petitioner should be required to provide the county with a copy of the state solid waste permit and of any NPDES construction stormwater permit prior to commencing operations.

The state of South Dakota defines construction and demolition debris as solid waste resulting from the destruction of buildings and separates it into two categories, non-burnable and burnable. Non-burnable materials include concrete, brick, stonework, asphalt, shingles, painted or treated wood and any attached insulation. The state, however, also prohibits the disposal of asphalt-containing materials in gravel pits or quarries. Burnable construction and demolition debris may include scrap lumber, untreated wood, trees and tree branches. Items specifically excluded from the definition, or which could not be disposed of at the site include: cardboard, plastic, Styrofoam, foam rubber, other packaging materials, paints, sealants, adhesives and asbestos-containing wastes. Those items must all be taken to a municipal solid waste landfill for disposal.

Staff was concerned when we first checked the site and saw a small pile of old trees, a few culverts and a small amount of rebar. The petitioner, however, has indicated that those items resulted from cleanup efforts on the site so it does not appear that the proposed use has already commenced.

**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 greatest potential for an impact to surrounding properties is to the homes immediately north of the subject property. These homes, however, have dealt with the existing gravel operation and with the truck traffic from that and other gravel operations. There are a total of four homes with ¼ mile of the facility, all to the north. Any potential impacts to these homes can be largely mitigated through the use of berms, landscaping and through the control of dust from the proposed operation. Noise from crushing operations, if concrete materials are to be recycled, should also be limited to prevent adverse impacts to the residences. The petitioner must also ensure that no unlicensed or inoperable vehicles or equipment accumulate on the site.

The village of Ellis lies just over ½ mile to the east, however, visibility of the site from Ellis is severely limited. There is an additional home to the northwest, however, this is approximately ½ mile from the disposal site.

The petitioner proposes to construct a 6-foot landscaped berm along the north boundary of the property to assist in limiting the view of the site to the north homes. Materials such as trees or lumber will be kept within the disposal pit further limiting the view of these materials.

The property is not located within a floodplain and does not contain any designated wetland areas, but lies within the county's water source protection district, that area with the greatest likelihood of having water at a shallow depth. The types of waste that are allowed in this type of facility should not pose a problem with the water source area. The state does not require a soil boring for such facilities, but does require that the applicant include a description of the surface materials as a part of their permit application. A clay liner is not required for construction and demolition debris or rubble sites. As there is a possibility of a shallow depth to ground water, no storage of fuel should be allowed on the site.

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

There will not likely be much development which will occur in the area. The site is outside of the city of Sioux Falls' growth area and development to the south would encounter floodplain. The land to the west will likely continue in gravel extraction for a number of years. The property immediately to the east has two building eligibilities, however, it is likely that the property owner would wish to utilize those along the county highway at the north end of his property and away from the subject property.

The state solid waste regulations require that the facility operator provide postclosure care of the site for 30 years following final closure. The operator is also required to make a notation on the deed to the property so that future owners are made aware of the solid waste facility. These requirements help to prevent future problems from developing at the site.

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

Access to the property is off of 468<sup>th</sup> Avenue which is a gravel road. This road is used almost exclusively for access to a number of sand and gravel operations. All traffic must go north from the site as 468<sup>th</sup> has been vacated about one-quarter mile to the south and there is no longer a bridge over Skunk Creek in that area. From 468<sup>th</sup> the trucks will access 263<sup>rd</sup> Street (County Highway 140). There is good sight distance along the highway and the county highway superintendent has indicated that he has no concerns over truck traffic accessing the highway at this point. At the north end of 468<sup>th</sup> there are three homes. As the route has been used for gravel truck traffic the proposed use would not involve truck traffic in an area where there was none previously. There is a good possibility that the traffic may result in dust along the roadway. Applications of dust suppressant along the road will lessen any potential for impacts to the existing homes. Dust suppressant should also be used as needed on the haul roads within the site.

Staff also contacted Wayne Township about maintenance along 468<sup>th</sup> Avenue. The township has indicated that they do not currently maintain the road, but it is maintained by the gravel companies that use it.

Drainage through this area is predominantly from north to south. The South Dakota Department of Environment and Natural Resources, as part of the state solid waste permit requires that the site be constructed to divert runoff water around the disposal site. The petitioner's plan shows berms on the north, east and south sides of the site which will be used to divert runoff water around the disposal area. The state also requires that water in the disposal area be retained and that there is adequate retention to hold a 25 year, 24 hour storm. The petitioner's plan shows a dike to control runoff from the disposal site.

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

There is ample space on the property for any necessary parking and loading.

**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.**

Given the types of waste materials that are allowed to be disposed at this type of facility, there should be no appreciable change in odor from the site. Dust could, depending on weather conditions, be produced at the disposal area and on haul roads. Dust suppressant should be used as needed to control dust on both interior haul roads and on the portion of 468<sup>th</sup> Avenue from the subject property to County Highway 140.

**Recommendation**

Staff finds that the proposed site is appropriate for the proposed use and that the use can be operated in a manner that minimizes the potential for impact to surrounding properties. Staff, therefore, recommended approval of Conditional Use Permit #09-71 with the following conditions:

1. The property is approved strictly for use as a construction and demolition debris disposal and recycling site.
2. The operation shall conform to the site plan submitted as a part of the conditional use permit application.
3. All waste disposal and recycling uses shall end by January 1, 2030.
4. The petitioner shall prepare a full reclamation plan for the site and submit a copy of the plan to the County Planning Department. The site shall be fully closed and

- reclaimed once it reaches capacity.
5. The hours of waste disposal at the operation shall be between 8:00 a.m. and 6:00 p.m. Any crushing of concrete or other materials shall be limited to the hours of 9:00 a.m. to 5:00 p.m. on Monday through Friday.
  6. The sound level from the site shall not exceed an average of 55 decibels recorded over a 10 minute period as measured from the nearest residence.
  7. No prohibited materials such as cardboard, plastic, styrofoam, foam rubber, other packaging materials, paints, sealants, adhesives, tires, yard waste, asbestos-containing wastes, asphalt containing materials, liquid wastes, sludge, animal carcasses, or municipal solid waste shall be disposed or stored on the site.
  8. Waste materials shall be transported to the site in a manner which prevents the loss of any waste from vehicles.
  9. The petitioner shall also obtain and maintain the required county solid waste permit, state solid waste permit and, if required, a state NPDES (construction stormwater permit). The petitioner shall follow all stipulations of these permits.
  10. The petitioner shall provide copies of the state solid waste permit and any NPDES permit to the County Planning Department prior to the commencement of operations.
  11. There shall be no visible emissions of dust from the site. The petitioner shall, as needed, use calcium chloride or similar material to control dust on all interior haul roads at his site and on 468<sup>th</sup> Avenue from the north end of his property to County Highway 140.
  12. No fuel storage shall be allowed on the site.
  13. No unlicensed or inoperable vehicles or equipment shall accumulate on the site.
  14. The petitioner shall construct a minimum 6-foot high berm along the northern boundary of his property and shall plant landscape trees along the top of the berm a maximum of 15 feet on center. Any deciduous trees shall be a minimum caliper of 1-1/4 inches. Coniferous trees shall be a minimum of 4 to 5 feet in height. Any trees which die shall be replaced within one growing season.
  15. Any outdoor lighting shall be of a full cutoff and fully shielded design that prevents the spillage of light beyond the property boundaries.

### **Public Testimony**

The petitioner, Don Runge, stated that he was in agreement with the staff presentation. Commissioner South asked if he would be in favor of extending the waste disposal hours to include Saturday. Mr. Runge stated he would like that. In response to Commissioner Kelly, Mr. Runge said that he would be willing to plant just evergreens and not deciduous trees.

Todd Olson, 951 S. Marion Road, explained that he owns the three houses immediately to the north of this site. He has long time renters in the homes and will someday move out to the area himself. He does not think a rubble dump is neighborhood friendly. Mr. Olson stated that he has beautiful property on which he has planted over 110 evergreens. Mr. Olson addressed the issue of the view and said that there is quite a grade change as land rises from the rubble site up towards his house on the hill. A 6 foot berm would be nothing more than a speed bump. Another issue is noise trespass, especially when the wind is from the south and crushing of concrete is occurring. He wouldn't want to live there during this and neither will his tenants.

Terry Steenholdt, 46818 263<sup>rd</sup> St., lives on the north side of Highway 140, 300 yards from the turn into the operation. He is curious about the notification process. His neighbors on the south side of the highway got notice, he did not. He also wonders, with a use that can make such a big impact, why people in Ellis did not receive notice. The highway is a school bus route and there are already a lot of gravel trucks. This use, with

40 trucks per day, which amounts to 80 trips each day, just adds to the traffic. Mr. Steenholdt also questioned why Commissioner South wanted to increase the hours to allow operations on Saturday. Five days a week is enough, no one needs to listen to the noise on Saturday also.

Mr. Anderson explained that notice had been sent out according to ordinance requirements, to all property owners with 500 ft. of the legal description listed on the application. The mailing list was determined using the GIS mapping system.

Doris Steenholdt, 46818 263<sup>rd</sup> St., wondered about the details. Was this a first reading and would there be more hearings? The petitioner's last application for a rubble dump had several public hearings before a decision was made. Ms. Steenholdt also questioned what reassurance there was that the whole property would not be used for this use, but just remain restrained to the pit. To save the roads and for the safety of the school bus route, she suggested access to the site come from the vacated road south of the pit. Ms. Steenholdt had further questions. What would happen with moldy dry wall and its potential health risks and possible aquifer contamination? There are wells in the area and the aquifer is very high here. Will there be a fence to contain blowing items? Ms. Steenholdt reiterated her main concerns, the aesthetics of the area, nature, traffic increase, proposed access road, fencing and contamination, and asked the Commission not to support this use.

Mr. Olson again addressed the Commission and questioned whether they had enough information to make this decision at this time. What will the scale look like and how tall will it be?

Ms. Steenholdt wondered if this could be just limited to use by the owner and not opened to other businesses.

Mr. Kappen explained that the applicant will be subject to the site plan, which limits the dumping to the pit area shown on the plan. If Mr. Runge wanted to change that, he would have to start the conditional use process over again. Addressing the suggestion that trucks come to the site from the south, Mr. Kappen said that the bridge over the creek had been removed and the road vacated. This means there is not longer any public ownership for a road and land would have to be obtained from the current property owners. Mr. Kappen thinks that the state permit will require fencing.

Mr. Runge stated that he planned to put a 6 foot chain link fence around the entire property to eliminate illegal dumping. The pit itself is 40' deep and even at the end of the its use there will still be about 20 feet of pit wall containing the debris. Mr. Runge responded to Mr. Olson's concern about the grade change and said he plans to gradually raise the height of the berm as it goes to the west to better block the view of the pit. Commissioner Randall wondered if there was a way to mitigate dust. Mr. Runge said that water can be sprayed on the concrete. He only crushes to a 3.5" size so this will not create as much dust as many operations. Mr. Runge acknowledged that there will be some increase in traffic but said it would be minimal compared to when Mryl and Roy's opens its new pit to the south. (The Mryl & Roy operation was approved about 5 years ago).

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, the Commission made the following motions.

Kelly made a motion to remove the second sentence in condition 14 which would eliminate the uses of deciduous trees. Seconded by Steinhauer. The motion passed unanimously.

Steinhauer made a motion to require a six foot tall, locking, chain link fence around the entire property listed on the application. Seconded by Kelly. The motion passed (Rogen nay.)

Randall made a motion to allow waste disposal at the operation on Saturdays between 8:00 a.m. and noon, and to reflect this change in condition 5. Seconded by Rogen. The motion passed (Steinhauer nay).

A final motion was made by Rogen and seconded by Randall to approve Conditional Use Permit #09-71 the following conditions:

1. The property is approved strictly for use as a construction and demolition debris disposal and recycling site.
2. The operation shall conform to the site plan submitted as a part of the conditional use permit application.
3. All waste disposal and recycling uses shall end by January 1, 2030.
4. The petitioner shall prepare a full reclamation plan for the site and submit a copy of the plan to the County Planning Department. The site shall be fully closed and reclaimed once it reaches capacity.
5. The hours of waste disposal at the operation shall be between 8:00 a.m. and 6:00 p.m. Monday through Friday and 8:00 a.m. till noon on Saturday. Any crushing of concrete or other materials shall be limited to the hours of 9:00 a.m. to 5:00 p.m. on Monday through Friday.
6. The sound level from the site shall not exceed an average of 55 decibels recorded over a 10 minute period as measured from the nearest residence.
7. No prohibited materials such as cardboard, plastic, styrofoam, foam rubber, other packaging materials, paints, sealants, adhesives, tires, yard waste, asbestos-containing wastes, asphalt containing materials, liquid wastes, sludge, animal carcasses, or municipal solid waste shall be disposed or stored on the site.
8. Waste materials shall be transported to the site in a manner which prevents the loss of any waste from vehicles.
9. The petitioner shall also obtain and maintain the required county solid waste permit, state solid waste permit and, if required, a state NPDES (construction stormwater permit). The petitioner shall follow all stipulations of these permits.
10. The petitioner shall provide copies of the state solid waste permit and any NPDES permit to the County Planning Department prior to the commencement of operations.
11. There shall be no visible emissions of dust from the site. The petitioner shall, as needed, use calcium chloride or similar material to control dust on all interior haul roads at his site and on 468<sup>th</sup> Avenue from the north end of his property to County Highway 140.
12. No fuel storage shall be allowed on the site.
13. No unlicensed or inoperable vehicles or equipment shall accumulate on the site.
14. The petitioner shall construct a minimum 6-foot high berm along the northern boundary of his property and shall plant landscape trees along the top of the berm a maximum of 15 feet on center. Coniferous trees shall be a minimum of 4 to 5 feet in height. Any trees which die shall be replaced within one growing season.
15. Any outdoor lighting shall be of a full cutoff and fully shielded design that prevents the spillage of light beyond the property boundaries.

16. A six foot high, locking, chain link fence shall be erected and maintained around the entire property legally described as Tr. 4 Jacobson Addn. NW1/4 of Section 9-T101N-R50W.

The motion passed unanimously.

**Conditional Use Permit #09-71 – APPROVED.**

**ITEM 5. CONDITIONAL USE PERMIT #09-76 to exceed 1200 sq. ft. of accessory building area – 1856 sq. ft. requested.**

Legal Description – Tracts 7, 8, 9, N1/2 Tr. 10, 30, 31, & 32 Lot 7 & Vac  
Access Road lying between Tract 33 Lot 7 and E ½ Vac  
Access Road lying adjacent, Bowman's Subdivision in  
Section 21-T101N-R51W.  
Location – 26567 East Shore Place, Wall Lake  
Petitioner / Owner- L. F. Lanpher

**General Information**

Present Zoning - RR Rural Residential  
Existing Land Use - Residential  
Parcel Size - 1.30 Acres

**Report by:** Phil Kappen

**Staff Analysis:**

The subject property is located along the east edge of Wall Lake. Surrounding properties are all in residential uses. The petitioner has an existing 768 sq.ft. accessory building and is constructing an additional 1088 sq.ft. building for a total of 1856 sq.ft. The petitioner had obtained a conditional use permit in September and had indicated that she wished to construct an additional 900 square feet of accessory building on her property to be used for personal storage. Subsequently, she obtained a building permit to construct the 900 square-foot garage. Last month the building inspector found that instead of the 900 square foot building, a 1088 square foot building was being constructed. The petitioner has noted that she did not understand that the entry being constructed as a part of the structure needed to be included in the total building size. She has now paid the penalty fee and applied for the conditional use permit to allow the 1088 square-foot 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.**

The requested building size is within the range of sizes that are found on neighboring properties. Properties in the immediate vicinity have accessory buildings ranging in size from 1280 to 2560 square feet. The added building should pose no great impacts on the surrounding properties provided that only residential uses are made of the structure.

The building is being constructed in a manner that is not typical for an accessory storage building as there are large windows being installed in a portion of the building. There are not, however, specific construction codes for detached residential accessory structures. The petitioner is also aware that no use other than her own personal storage for residential purposes is allowed in the building and that no type of commercial use may be made of the building. Prohibited commercial uses would include the use of the building for rental storage, as an office for a business use, or as a showroom for the display of products.

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

An additional 1088 sq.ft. building should have little impact on any additional development in the area. The petitioner will be required to obtain a building permit and

the required setbacks from property lines will be addressed at that time.

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

The area is within the Wall Lake Sanitary District and any further development would be required to connect to the sewer system. Access to the building will be via existing roads and driveways.

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

There is ample space on the property for any parking typically associated with a single-family residential use.

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

Any outdoor lighting should be of a full cutoff and fully-shielded design to reduce any potential for impact on neighboring properties.

**Recommendation**

Staff finds that the proposed building conforms with the sizes of existing accessory buildings in the area and recommends **approval** of conditional use permit #09-76 with the following stipulations:

- 1) The total area of all accessory buildings on the property shall not exceed 1856 square feet when measured from the exterior walls.
- 2) The building shall be used strictly for accessory uses to the residential use on the site and no commercial use or commercial storage shall be allowed.
- 3) All exterior lighting shall be of a full cutoff and fully-shielded design to prevent light spillage beyond the boundaries of the property.

**Public Testimony**

The petitioner, L.F. Lanpher, stated that since the last meeting a emergency exit and landing area had been added to the building. This accounts for the increase in size.

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

**Action**

A motion was made by O'Hara and seconded by Rogen to approve Conditional Use Permit #09-76 with the conditions as stated. The motion passed unanimously.

**Conditional Use Permit #09-76 – APPROVED.**

**OLD BUSINESS**

The Commission discussed a memo prepared by Ryan Streff examining the use of crushed asphalt as an acceptable hard surface for parking lots and driveways. While the Commission did not think this alternative would save an applicant money, they directed staff to draft an ordinance amendment that included standards for the construction of the driving surface.

**NEW BUSINESS**

Susie O'Hara was elected chair and Wayne Steinhauer vice-chair of the Planning Commission for 2010.