

**MINUTES OF THE
MINNEHAHA COUNTY PLANNING COMMISSION
June 28, 2010**

A meeting of the Planning Commission was held on June 28, 2010 at 7:00 p.m. in the Commission Room of the Minnehaha County Administration Building.

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

STAFF PRESENT:

Scott Anderson, Pat Herman and Ryan Streff - County Planning
Dustin DeBoer – Office of the State's Attorney

The meeting was chaired by Chair Susie O'Hara.

ZONING BOARD OF ADJUSTMENT

The Planning Commission will convene as the Zoning Board of Adjustment to consider Item 1, a request for a variance.

Commissioner Mark Rogen abstained from Variance #10-02 as he is his member of the East River Electric Board.

ITEM 1. VARIANCE #10-02 to exceed the maximum height allowed in the A-1 Agricultural District and to allow a reduced front yard setback.

Petitioner: Kurt Donelan for East River Electric

Location: 1 mile south of Lyons

General Information

Legal Description - SE corner of the S100 Rds NE1/4 (Ex Lot H-1 Rd) in Section 19-T103N-R50W
Present Zoning – A-1 Agricultural
Existing Land Use - Commercial
Parcel Size – 14.6 Acres

Staff Report: Pat Herman

Staff Analysis

The site is located 1 mile south of Lyons on the west side of Highway 143. The surrounding land is agriculture. The applicant is requesting a variance to increase the maximum height of a structure from 35 feet to 60 feet for the purpose of constructing a steel lattice antenna. The antenna is for use only by East River Electric. The antenna is used for the relay of data and for remote control of the switch. There is an existing overhead transmission line on the property which the lattice tower would be placed adjacent to.

The tower will not meet the required front yard setback of 50. Approval is needed to reduce the front yard setback to 10 feet.

Minnehaha County Zoning Ordinance clearly states that the Board of Adjustment may not vary the setback regulations unless it makes findings based upon evidence that **all** of the following conditions are present. Staff has visited the site and prepared its

observations in regard to the following.

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

The nature of the utility activities necessitates the need for a lattice that exceeds the height requirements. The tower must be situated in a spot to allow the transference of data between different substations. The reduced front yard setback will reduce any negative visual aspects of the tower and the proposed placement of the lattice tower will not exceed the reduced setback that already exists with the transmission line tower.

2. That the Variance does not grant a use which is otherwise excluded from that particular district, or diminish or impair property values within the area.

The requested variance would not allow a use otherwise excluded from the district. Electrical substations are allowed by conditional use approval in the A-1 zoning district. The lattice antenna is a part of the substation network that exists in Minnehaha County.

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

Strict application of the Zoning Ordinance would be a hardship for the applicant. The placement of the antenna tower must meet narrow siting confines to be able transmit data. Placement next to an existing tower will not further impede on the dedicated right-of-way.

4. That the granting of a Variance is not contrary to the public interest and is in harmony with the general purposes and intent of the Zoning Ordinance.

The proposed variance is in the public's interest. The intent of the Zoning Ordinance is to promote health and safety. The tower is needed to help monitor the efficiency of the electrical substations which provide service to residents of Minnehaha County. Occasionally, there is a legitimate need to increase the height and setback limitations for a use that is vital to the community.

5. That because of circumstances or conditions, there is no possibility that the property can be developed in strict conformity with the provisions of the zoning regulations and that the authorization of a variance is therefore necessary to enable the reasonable use of the property.

The small portion of this property would not be able to be further developed without the variance. The applicant has demonstrated the need for a taller tower and a reduced front yard setback. In reviewing the request staff has determined that there is a physical reason (topography and distance) that requires the need for a taller structure and reduced setback. The variance is needed to allow for the reasonable use of the property.

Recommendation

Staff recommended approval of Variance #10-02 to increase the maximum height of a structure from thirty-five (35) feet to sixty(60) feet and reduce the front yard setback from (50) feet to ten (10) feet.

Public Testimony

Commissioner Steinhauer asked the petitioner what the height of the current pole at the site was. Kurt Donelan (East River Electric) stated that the current pole is seventy-five (75) feet in height.

Commissioner Steinhauer questioned why the additional equipment is not able to be placed on the existing pole. Mr. Donelan continued to inform the commission that if this equipment was to be placed on the existing structure they would need to have a boom-truck on location at all times to conduct any repairs due to the transmission lines attached to this existing structure. Mr. Donelan stated that the new tower is needed to cut down on the time spent and equipment needed at the site.

Mr. Donelan stated that this tower will allow the company to transmit data between different substations and their home base located in Madison, South Dakota. He made it clear that this additional structure will also be utilized during storm situations when employees cannot travel to the site.

Commissioner Steinhauer asked if a different type of structure could be used in place of the steel lattice structure. Mr. Donelan stated that a monopole or wooden structure at this location would be harder to service and/or climb because additional equipment would be required. He informed the commissioners that a lattice type structure is much easier to climb and service.

Discussion

Commissioner Cypher stated that he did not want to see a lattice tower constructed. He would support either a monopole or a wood pole. Commissioner Steinhauer agreed and did not feel this request posed a hardship other than problems between company departments.

Action

A motion was made by Steinhauer and seconded by Cypher to **deny** Variance #10-02 to increase the maximum height of a structure from thirty-five (35) feet to fifty-five (55) feet and a reduced front yard setback from fifty (50) feet to ten (10) feet. The variance was denied as a favorable vote of 2/3's of the Board was not reached. (Rogan abstain, Randall & O'Hara nay).

Variance #10-02 – DENIED

CONSENT AGENDA

A motion was made by Cypher and seconded by South to approve the consent agenda with agenda item 6 being moved to the regular agenda and agenda items 4 and 5 being deferred to the July 26, 2010 Planning Commission meeting. The motion passed unanimously.

ITEM 2. MINTUES – May 24, 2010

A motion was made by Cypher and seconded by South to **approve** the minutes from May 24, 2010. The motion passed unanimously.

ITEM 3. CONDITIONAL USE PERMIT #10-33 to allow a horse stable.

Petitioner: Michael Pulizzi

Location: 46572 263rd St. 2.5 miles southeast of Hartford

General Information

Legal Description - Tracts 3, 4 & 5A Matthies Estates Addition SE1/4 In Section 1-T101N-R51W

Present Zoning – A-1 Agriculture

Existing Land Use - Residential

Parcel Size – 60.44 Acres

Staff Report: Ryan Streff

Staff Analysis:

The petitioner is requesting approval of conditional use permit #10-33 to allow a horse stable facility for boarding and training of horses at 46572 263rd Street. The subject property is located in the A-1 Agricultural district in the southeast quarter of section 1-101-51 (Wall Lake Township). The property is 60.44 acres in size with approximately 10-15 acres set aside to be used specifically for the facility, and the training and boarding horses.

The property is located approximately 2.5 miles southeast of Hartford in an area with a variety of land uses. There are ten (10) additional residences located within a ½ mile radius of the subject property. There are mining uses to the east and housing/residential uses to the west and southeast, with the remaining properties involved with agricultural production. This property has one single family dwelling and 3,888 square feet of accessory building area. With approximately 60 acres there is sufficient space to establish a horse stable facility on this property. The subject property appears to be well suited for horse stable facility.

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.

With proper management and use, the proposed horse stable facility should not impact the uses, property values, or the enjoyment of properties in the vicinity. The hours of

operation are by appointment only so traffic to the site should be minimized. It is expected that no more than 20 horses will be at the facility at one time. There will also only be one employee operating the horse training and boarding facility. This person currently occupies the home on the subject property.

The closest and adjacent residence to the west of the subject property is also owned by the petitioner. A shared driveway provides access to both of these properties.

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

The proposed conditional use permit should not impact the nature of the surrounding properties. The current mixture of residential and agricultural uses in the area will not be affected by the establishment of a horse stable facility. The horse stable facility is an appropriate use within this environment.

Second Chance Rescue previously had a conditional use permit for an “animal livestock shelter” at this exact location. This use allowed Second Change Rescue to provide protection to all types of livestock for the purpose of promoting welfare and humane treatment of these animals. Horses were the majority of the livestock housed at this shelter facility.

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

The property has an existing access to the county highway 140 (263rd Street). The width of this access is adequate for safe vehicular traffic to pass one another while entering or existing the property. No additional accesses would be constructed. All other utilities are provided on the site.

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

The applicant has not indicated any off-street parking on the site plan submitted. The applicant will have to meet all of the requirements of Article 15 of the Minnehaha County Zoning Ordinance. It appears that there is ample parking space on the property to handle the traffic needs of the facility.

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 is a potential for increased odor and dust associated with this use. There will be increased dust associated with the increase of traffic into and out of the horse stable facility. The applicant must properly dispose of animal waste so that no odor occurs and flies are kept at a minimum. With proper maintenance dust and odor should not reach a level that would constitute a nuisance.

Recommendation

Staff finds that the proposed horse stable facility is an appropriate use in the agricultural

zoned district and it will be compatible with the surrounding land uses. Staff recommended approval of Conditional Use Permit #10-33 with the following conditions:

- 1) That no alteration to any building shall indicate from the exterior that the building is being utilized in whole or in part for any purpose other than a residential or agricultural use.
- 2) That all materials, supplies, and products associated with the facility shall be stored within a building or screened appropriately.
- 3) That the hours of operation are by appointment only and between the hours of 7:00 A.M and 8 P.M.
- 4) That a sign permit shall be obtained prior to the installation of any sign.
- 5) That the employees shall be limited to residents of the dwelling and up to two (2) non-resident employees, not to exceed a total of four (4) employees on site.
- 6) That the applicant is allowed to stable up to twenty (20) horse other than horses owned by the applicant.
- 7) That all animal waste be disposed of in such a manner that any odor is limited and the number of flies is mitigated.
- 8) That the applicant meets all of the parking requirements as outlined in Article 15 of Minnehaha County's Zoning Ordinance.
- 9) That the applicant obtains a Sales Tax License as required by the South Dakota Department of Revenue and any other licenses required for this facility by the state.

Action

A motion was made by Cypher and seconded by South to **approve** Conditional Use Permit #10-33 with the conditions stated. The motion passed unanimously.

Conditional Use Permit #10-33 – APPROVED.

ITEM 4. CONDITIONAL USE PERMIT #10-34 to allow a contractors shop and storage yard.

Petitioner: James Hofer

Location: 26071 Jesse Street South edge of Hartford

General Information

Legal Description - Lot 2 Block 3 Brower 2nd addition SW1/4 in Section 27-T102N-R51W

Present Zoning – I-1 Light Industrial

Existing Land Use - Vacant

Parcel Size – 1.0 Acres

Staff Report: Ryan Streff

Staff Analysis:

The petitioner is requesting approval of conditional use permit #10-34 to allow a contractors storage yard and shop to be located at 26071 Jesse Street. The subject property is located in the Brower's Addition, which is a I-1 Light Industrial district in the southeast quadrant of the I-90 and 463rd Avenue (Hartford exit). I-90 is the northern boundary of the site and 463rd Ave. is the west boundary of the site. There will be light industrial/commercial uses to the north, south, east, and west of the subject property.

The petitioner is proposing one (1) contractors shop that is 60' x 100' in size and a storage yard that is approximately 218' x 70'. The petitioner may also decide to lease parts of the building to other tenets in the future. In the event that part of the building is leased to other individuals a conditional use permit shall be obtained if the type of use changes and or does not comply with the terms of this conditional use permit. The building or each unit would have its own bathroom facilities, inside storage, outside parking areas, and a shared storage yard.

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.

To preserve the view from all roadways proper screening shall be erected around all outside storage. All outside storage is required to be screened from public view. The screening/fence shall be a minimum of 8 feet in height with a minimum of 90% opacity maintained over the entire height of the fence. The fence shall be maintained in earth-tone colors such as browns or greens.

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

The surrounding properties will all be developed in commercial or light industrial uses. The proposed use should be compatible with those types of uses.

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

Access to the property will be off of Jesse Street, which is a hard surface subdivision road. The proposed building will be served by a holding tank, which will be located in the northeast portion of the site as noted in the site plan. The petitioner should be aware that if it is decided to use a septic system instead of a holding tank the ground must be preserved and cannot be used for driving, parking, or storage.

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

The Zoning Ordinance specifies one (1) parking space for each 300 square feet of floor area, which would result in twenty (20) parking spaces. Staff is requesting that a minimum of five (5) hard surfaced parking spaces be provided for each unit or tenet. In the event that a contractor or tenet has more than five (5) employees additional hard surfacing will be required. An overflow gravel parking area will be allowed adjacent to the contractors shop to make up for the other required parking spaces. All other parking and driving surfaces on the property shall be hard-surfaced with the exception of the overflow parking area.

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.

Nuisances consisting of odor, fumes, dust, noise, and vibration should be expected in an industrial development. All outside lighting shall be fully cut-off and fully-shielded with recessed lights that prohibit the spillage of light beyond the boundaries of the subject property.

Recommendation

Staff finds the proposed contractor's shop and storage yard is appropriate use and is consistent with the types of uses found in this zoning district. Staff recommended approval of Conditional Use Permit #10-34 with the following conditions:

- 1) The lot shall adhere to the submitted site plan and application dated 6-15-10.
- 2) If the petitioner decides to change the layout of the property (buildings, holding tank, storage yard or parking) a new site plan shall be submitted to the Planning Department for approval.
- 3) The fencing shall be a minimum of 8 feet in height with a minimum of 90% opacity maintained over the entire height of the fence. The fence shall be maintained in earth-tone colors such as browns or greens.
- 4) A minimum of five (5) hard surfaced parking spaces be provided for each unit or tenet. In the event that a contractor or tenet has more than five (5) employees additional hard surfacing will be required. All other parking and driving surfaces on the property shall be hard-surfaced with the exception of the overflow parking area.
- 5) All outside lighting shall be fully cut-off and fully-shielded with recessed lights that prohibit the spillage of light beyond the boundaries of the subject property.
- 6) No unlicensed vehicles, inoperable or partially dismantled vehicles or equipment, or parts shall accumulate on the property.
- 7) Setbacks for the property shall conform to all requirements stated in *Article 7.00*

I-1 Light Industrial District.

- 8) All signage shall comply with the zoning ordinance requirements stated in *Article 16.00 On-Premise Signs*.
- 9) In the event that part of the building is leased to other individuals a conditional use permit shall be obtained if the type of use changes and or does not comply with the terms of this CUP #10-34.
- 10) A building permit is required for the contractors shop and any signage placed on the property.

Action

A motion was made by Cypher and seconded by South to **defer** Conditional Use Permit #10-34 to the July 26, 2010 Planning Commission meeting. The motion passed unanimously.

Conditional Use Permit #10-34 – DEFERRED.

ITEM 5. CONDITIONAL USE PERMIT #10-35 to allow the transfer of one building eligibility from the NE ¼ SW ¼ to the SW ¼ SW 1/4 ; all in Section 22-T103N-R50W.

Petitioner: Joan Eitrheim & Gary Brendtro

Location: 2 miles southeast of Lyons

General Information

Present Zoning – A-1 Agriculture

Existing Land Use - A-1 Agricultural

Parcel Size – 40 Acres

Staff Report: Pat Herman

Staff Analysis

The petitioners would like to transfer one residential building eligibility. The property is held in an estate and this request will allow an equitable division of the farm property. The transfer of building eligibilities requires action by the County Planning Commission as required in Section 3.04(Y) of the Minnehaha County Zoning Ordinance:

- (Y). The transfer of a building eligibility from one parcel to another parcel when all the following conditions are met: *(amended by MC16-69-04 3/16/04)*
- 1). The transfer of building eligibility shall occur only between contiguous parcels under the same ownership. For purposes of this section, same ownership means: Two or more parcels of land owned or controlled by an individual or combination of individuals, corporations, partnerships, or other legal entities; with said owners described uniformly on the deed or other legally binding conveyance of each parcel. *(amended 16-87-06 8/19/06)*
 - 2). Suitability as a building site based on the following factors:
 - a). Agricultural productivity of the soil.
 - b). Soil limitations.
 - c). Orientation of the building site(s) with respect to road circulation and access to public rights-of-way.
 - 3). The minimum lot size shall be one acre but a larger area may be required when soil conditions warrant.
 - 4). The parcel from which the eligibility is transferred shall continue as agricultural land or remain in its present use.
 - 5). Approval has been granted by the appropriate governing entity for access onto a public road.

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 building eligibility is being transferred from a land locked parcel to a site in which there is an existing tree grove. The parcel from which the eligibility is being transferred will remain in agricultural production.

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

The transfer would not move a house closer to an existing CAFO. There is an application pending for a 400 head heifer CAFO a ½ mile south of this site. A residence will have some impact on agricultural uses in the area but moving the building eligibility will not increase the effects. This transfer will preserve the portion of the land that is usable farm ground.

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

Access to the building site will be from either County Highway 122 or 469th Ave, a Lyons Township Road. Prior to obtaining a building permit, driveway access will need to be obtained from the County Highway Department. Lyons Township does not require driveway permits.

A wastewater system will be used and there is rural water in the area.

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

A minimum lot size of one acre allows sufficient space to meet the parking needs of a single family residence.

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 residential use should not create a nuisance of any of the items listed above.

Recommendation

Staff finds that the request is in conformance with Section 3.04 (Y) of the Minnehaha County Zoning Ordinance and recommended approval of Conditional Use Permit #10-35 with the following conditions:

- 1) The lot shall be platted and a right to farm notice covenant filed on the deed of the lot prior to the issuance of a building permit.
- 2) Written approval for driveway access shall be obtained from the County Highway Department if access is to be taken from Highway 122.

Action

A motion was made by Cypher and seconded by South to **defer** Conditional Use Permit #10-35 to the July 26, 2010 Planning Commission meeting. The motion passed unanimously.

Conditional Use Permit #10-35 – DEFERRED.

ITEM 7. CONDITIONAL USE PERMIT #10-39 to exceed 1200 sq. ft. of accessory building area – 2000 sq. ft. requested.

Petitioner: Daniel Tobin

Location: 46354 257th St. 2 miles north of Hartford

General Information

Legal Description – Tract 2A Kelley's Addition E1/2 of Section 3-T102N-R51W

Present Zoning – A-1 Agriculture

Existing Land Use - Residential

Parcel Size – 4.96 Acres

Staff Report: Ryan Streff

Staff Analysis

This subject property is located in section 3 of Hartford Township, approximately 2 miles north of Hartford. The surrounding land use is agriculture with many small to medium sized residential acreages. The petitioner has applied for a conditional use permit to exceed 1,200 sq. ft. of accessory building area at 46354 257th Street. The property owner is requesting this conditional use permit to construct a 2,000 sq. ft. (40' x 50') accessory storage building.

There are six (6) lots near the subject property that have larger accessory building areas than what is proposed by the petitioner. These six (6) larger accessory building areas consist of 2,032 sq. ft. to the north, 4,380 and 2,016 sq. ft. to the south, 4,032 sq. ft. to the east, 3,120 sq. ft. and 2,116 sq. ft. to the west. (See attached accessory building area map)

The petitioner would like to exceed the 1,200 sq. ft. of accessory building area on a lot that is approximately 4.96 acres in size and is in a subdivision of more than four lots. 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 property owner shall meet all regulations regarding accessory buildings. These regulations are found in *Article 12.07 Accessory Buildings and Uses*. Minimum setbacks required for accessory buildings in the A-1 Zoning District are front yard 30', side yard 7', and rear yard 30'. There is a minimum setback of 50' from any section line road or major arterial street.

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.

There are larger accessory structures in the general area of this property. The proposed site for the structure meets all applicable setbacks and the placement of the structure will not impact the neighboring properties. The construction of this accessory building should not impede on the enjoyment or use of the surrounding properties or effect property values.

2) The effect upon the normal and orderly development and improvement of

surrounding vacant property for uses predominant in the area.

The construction of the proposed accessory building should have no impact on further construction or development within the subdivision or general area. The building will only be used for the owner's personal storage, residential related items, and no commercial or business activities will be allowed. This use will not affect the agricultural land in the area.

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

Access to the proposed accessory building will be through a driveway located along 257th Street. This driveway also provides access to the residential dwelling unit on the property.

No other infrastructure improvements are required at this time.

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

The property has sufficient parking for all residential activities.

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

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

Recommendation

Staff found that the proposed accessory building size conforms to the general sizes of other accessory buildings in the area and recommended approval of Conditional Use Permit #10-39 with the following conditions:

- 1) Accessory building area shall not exceed 2,000 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.
- 5) The building shall be an accessory use to the continued use of the property as a residential lot.
- 6) Only personal residential storage shall be allowed in the building and no commercial uses or commercial storage will be allowed.
- 7) All outdoor lighting shall be of a full-cutoff and fully-shielded design to prevent direct spillage of light beyond the property boundaries.

Action

A motion was made by Cypher and seconded by South to **approve** Conditional Use Permit #10-39 with the conditions stated. The motion passed unanimously.

Conditional Use Permit #10-39 – APPROVED.

ITEM 6. CONDITIONAL USE PERMIT #10-37 to allow a 400 head (Class C) concentrated animal feeding operation.

Petitioner: Scott Swanson

Location: 2 miles northwest of Crooks

General Information

Legal Description - S1/2 NW1/4 & NE1/4 SW1/4 & NW 1/4 SE 1/4 in Section 27-T103N-R50W

Present Zoning – A-1 Agriculture

Existing Land Use - A-1 Agricultural

Parcel Size – 40 Acres

Staff Report: Scott Anderson

Staff Analysis

The subject property is located approximately 2 miles north/northwest of Crooks to the east of 469th Avenue and ½ mile north of 255th Street. The surrounding property is all in agricultural uses. There are scattered residential acreages located approximately ½ mile to the north and northeast and approximately ¾ miles to the east.

The proposed located of the feeding operation is not within a Water Source Protection Area and outside of any designated flood plains.

In February of 2007, the County Commission approved Conditional Use Permit #06-65 allowing a 999 animal unit concentrated animal feeding operation on the subject property. The applicant did not construct the proposed feeding operation and CUP #06-65 expired. The applicant has now applied for a smaller confined animal feeding operation of up to a 400 head dairy heifer feeding operation.

Staff has sent a notice of the Planning Commission meeting on this item to all property owners within ½ mile of the two half-quarters (S1/2 NW1/4 & NE1/4 SW1/4 & NW 1/4 SE 1/4 in Section 27-T103N-R50W) on which the CAFO would be located as required by the Article 12.10.D of the Zoning Ordinance. The actual CAFO, however, would not fill that entire area. Staff has prepared a map showing the proposed confinement area, the notification area, the setback criteria and the existing houses and the available building eligibilities and included it for the Planning Commission's review.

The applicant failed to provide a grading plan designed to help keep pens and solid waste containment areas dry with the application. This information is a requirement of Article 12.10.C.2.b. As this is a requirement of the Ordinance, staff recommends that this information be provided to staff for review and approval before the Planning Commission considers the conditional use permit request.

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 property is zoned A-1 Agriculture. The primary use of the surrounding property in the area is for agricultural purposes. The proposed use could be incorporated into the landscape with appropriate conditions.

The target setback criteria distance for a CAFO of this size is 1100 feet. There are no homes other than the property owner's located within that criteria distance. There are existing trees on the east side of the proposed animal facility and the petitioner proposes to plant trees north and west of the proposed site.

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

The area is zoned A-1 Agricultural and the proposed use should have little impact on the continued agricultural uses of the surrounding land. The facility should have a minimal impact provided that best management practices are applied to the operation of the CAFO.

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

Access to the site is via 469th Avenue, a Lyons Township road. There is an existing driveway that can be used for access to the site.

There is a drainage area that flows along the southwest portion of the site. The petitioner proposes a grading system that will direct any contaminated runoff from the site into a holding pond to prevent it from entering the drainage way. The State Department of Environment and Natural Resources requires that a holding pond hold all contaminated water and that any clean water be diverted around the facility. DENR standards prohibit any contaminated runoff from the site. The feed storage area is proposed to be covered to prevent contaminated runoff from that portion of the site.

All waste shall be managed through a nutrient management plan that includes provisions for both nitrogen and phosphorus. A copy of an executive summary of the approved nutrient management plan should be filed with the planning office. The plan should also show that all liquid wastes are to be injected into the ground and that all semi-solid or solid waste are to be incorporated within 24 hours of application.

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

There is ample space on the subject property for any necessary parking. No parking is allowed on 469th Avenue.

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 location of the existing and proposed trees will aid in dispersal of potential odors. The petitioner will utilize rendering services to dispose of any dead animals and proper management practices will assist in reducing the potential for odors.

The trees around the proposed CAFO area will aid in the dispersal of potential odors. The topography also provides a barrier between the closest home to the southwest (approximately 2100 feet) and the proposed CAFO as there is a ridge between the two

sites. The petitioner will also utilize diets for the livestock balanced to aid in odor control. The use of a stacking pad for the animal waste (with runoff from the pad directed into a holding pond) will allow the waste to crust over and remain drier which reduces the potential for odor.

Pest control will initially be accomplished through the use of spray insecticides within the facility. Other options that may be employed include ear tags and feed additives. Dead animals will be removed from the property by a rendering company in accordance with state regulations.

Staff finds that the proposed use is in an area that is zoned A-1 Agricultural and that the use can be made to conform to other land uses in the area. Staff also finds that there are no homes, other than the petitioner's, within the 1,100-foot separation criteria distance.

Recommendation

Staff recommended approval of Conditional Use Permit #10-37 with the following conditions:

- 1) The facility shall be limited to a 400 animal unit concentrated animal feeding operation for dairy heifers.
- 2) The facility shall be designed to minimize release of waste entering the drainage channel that flows southwest of the proposed site.
- 3) The operator shall maintain inspection and maintenance records on animal waste facilities, and records on compliance with the waste and nutrient management plan and odor and pest control plan. Copies shall be filed annually with the County.
- 4) The petitioner shall prepare a nutrient management plan and shall keep the plan up-to-date, and shall manage all waste from the facility in conformance with that plan. The petitioner shall prepare an executive summary of the nutrient management plan and file that summary with the Minnehaha County Planning Office. A new summary shall be prepared for the Planning Office each time that the plan is up-dated. A copy of the complete nutrient management plan as approved by the State shall be provided to the Planning Office upon request.
- 5) Dead animals shall be promptly removed from the site according to South Dakota regulations.
- 6) A registered professional engineer shall inspect the facility during construction and certify to the County that the newly constructed facility conforms with the approved plans and to South Dakota Department of Environment and Natural Resources designs standards.
- 7) Trees shall be planted on the north and west sides of the facility. A complete planting plan shall be prepared for approval by the county planning staff. All trees shall be planted and maintained according to the Minnehaha Conservation District standards. Any trees that die shall be replaced within one growing season.
- 8) All application of liquid waste shall be injected into the ground. Semi-solid

and solid waste shall be incorporated within 24 hours. Surface application of solid and frozen waste shall be allowed as specified by the South Dakota General Permit. Surface application of liquid waste may be allowed only in extraordinary circumstances upon approval of the Planning Director after the petitioner has requested approval for such application in writing including the location on which the waste will be incorporated, the date of the proposed application and the amounts of waste to be applied. The petitioner will meet all setback requirements for waste application as specified in the county zoning ordinance.

- 9) That a grading plan designed to help keep pens and containment areas dry be provided to staff for review and approval before the Planning Commission considers the conditional use permit request.

Public Testimony

Commissioner Steinhauer questioned staff on how the petitioner planned to minimize manure and water run-off from this area and how this would then be enforced by staff. Scott Anderson stated that run-off from the site would be minimized through the grading plan of the concentrated animal feeding operation. The petitioner has submitted the required grading plan.

Commissioner Rogen stated that this operation would not need a general permit from the State and asked how condition #8 can be required. Scott Anderson stated that the Planning Commission can be more restrictive in the conditional use permit process if needed.

Commissioner O'Hara asked if the general permit has set guidelines that address the time frame in which waste has to be applied.

Lynn Boadwine (46945 251st St) stated that he owns property near this area. He informed the Commission that the petitioner, Scott Swanson, will be feeding heifers for him. Mr. Boadwine stated that Mr. Kappen, Scott Swanson, and he determined what type of waste control and other side work needed to be completed for this facility. He continued to state that they had discussed using the old conditional use permit with Mr. Kappen, who had insisted a new permit was needed. Mr. Boadwine stated that this facility is on the lower end of a Class C feeding operation. He told the commission that 999 animal units are needed in order to be classified under the State's general permit. He then added that the permit is designed and enforced by State Engineers.

Mr. Boadwine informed the Commission that at this time no structure (barn) will be built due to the lack of funds available to fully develop the site. He stated that they will be using pyramided round bales for a windbreak, concrete for a feeding area and corn stocks for a bedding area. He continued saying that the facility will be strategically built in pieces so that the facility can be expanded in the future. He stated that they would be starting with 400 head of cattle at this time. Eventually they hope to have everything under cover. Mr. Boadwine informed the commission that they would be burying or composting the solid waste that is collected. He stated that they will mainly use the drainage plan to control flies and control water by not allowing water to run through the site. He then added that they will try to minimize the chemicals used to control the files. He insured the commission that all liquid manure would be injected.

Mr. Boadwine asked that condition #8 be removed or changed to allow some latitude with the semi and solid waste. This far exceeds the states regulations and is a real hardship for farmers with size operation. It also is near impossible to meet the 24 hour requirement.

Commissioner O'Hara asked what kind of time frame is needed in order to appropriately dispose of the different types of waste. Mr. Boadwine stated that he would propose that solid and semi-solid waste be removed from the conditions, which would leave only the condition of liquid waste injection.

Commissioner Randall questioned why the Planning Commission was going through the conditional use permit process again when a permit for a 999 A.U. CAFO was approved in 2006. Mr. Boadwine is indicating that work had begun on the site. Commissioner O'Hara stated that they have 1 year to start the use in order to maintain the conditional use permit. Commissioner Cypher stated that they could have up to 2 years if the request is placed and approved by the Planning & Zoning Department. Mr. Anderson explained that he had been told by Phil Kappen that work had not begun on the site so he required the new permit. Regardless, the petitioner would have needed to come before the Planning Commission to revise the previous conditional use permit as the animals will no longer be housed indoors.

Commissioner South questioned what the difference is between solid and semi-solid waste. Mr. Boadwine stated that when manure is stored it cooks and shrinks. Solid waste is would contain the corn stock bedding while semi solid waste is somewhat runny. Liquid waste begins to create odor within 6-9 months. He told the commissioners that the manure that is cleaned off the feeding area will be spread in a conventional type manner. He stated that liquid waste is pumped into a tanker truck and then the waste is injected into the ground. The sludge that comes out of waste lagoons is what is really odorous. Commissioner Steinhauer questioned summer conditions and the likelihood that the manure will cause odor much more quickly. Commissioner Cypher stated that the odor depends on what type of animal being fed and what they are using for feed. The more foliage (fibrous material) that is in the feed the less there is of an odor problem.

Commissioner Steinhauer stated they needed to figure out a reasonable time frame for the disposal of solid and semi-solid waste.

Commissioner O'Hara questioned if the operation decided to change the type of animal being raised if an additional conditional use permit would be required.

Mr. Boadwine asked the commission to place some latitude on the time frame a CAFO of this size needs for waste disposed. Commissioner Steinhauer asked Mr. Boadwine what common practice is to incorporate the waste or manure. Mr. Boadwine stated that common practice is not to spread the waste but rather compost it. Commissioner Randall confirmed that State regulations state that only liquid manure needs to be incorporated and that solid and semi-solid waste does not. Mr. Boadwine explained to the commission that it is very hard in practice to have a specific time frame in which to have all waste disposed of.

Karin Renner (46946 254th St) presented a brief statement with concerns about this conditional use permit application. (Note: Statement is on file with the Planning & Zoning Office) She was opposed to the permit issued in 2006 due to water and air quality, drops in property values, and quality of life. There are 4 large CAFOs in this area of 40 houses. The Comprehensive Plan recognizes the importance of agricultural practices but it also allows for growth of residential structures. That needs to also be

considered. Spreading manure outside of the required setbacks has been done in the past by other operations.

Commissioner Randall asked if Ms. Renner called in a complaint about the manure that was spread within 40' feet of her home. Ms. Renner stated that she did not.

Ron Person (105 S. Susan Ave.) stated that his daughter purchased property from him in this area to build a new home. He informed the commission that this is his biggest concern. He stated that he has nothing against Mr. Swanson but rather against the smell that is created by a facility like this. Mr. Swanson has good management practices but what if he sells to someone else. Mr. Person made it clear that it is very hard to control these types of uses once they are approved. He expressed that once a 400 head unit facility is approved it will be allowed to expand or will be bought out by a larger farm operation that will then expand the use even more. He stated that water drainage is currently an issue all over the county and that no measures are being put into place to control this.

Commissioner Cypher questioned if he was correct when stating that there is only going to be one run-off pond. Mr. Boadwine stated that this was correct. The headlock feeding area will runoff to a concrete alley. Mr. Boadwine said that the bedding area is on top of a hill which makes it an ideal area for this facility because it will be much easier to divert water around the site.

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

Discussion

Commissioner Randall stated that there is nothing in place to stop the property owner from using all of the land to graze 800+ head of cattle and that this would not require a permit, but utilizing a CAFO will help minimize the effects it will have on the residents in the area. She made it clear that the commission wants to handle all issues in the best possible manner to insure the best quality of life for the surrounding property owners. Commissioner Steinhauer stated that using a CAFO allows the commission to impose stricter regulations and that it is finer than the state. Commissioner O'Hara stated that the county has a lot of residential property so it at many times makes sense for us to have stricter regulations. Commissioner Rogen stated that having to incorporate waste within 24 hours was a hardship and unrealistic.

Action

A motion was made by Rogen and seconded by Randall to **approve** Conditional Use Permit #10-37 with the following conditions. The motion amended condition # 8 removed condition #9 as the petitioner had submitted the required drainage plan.

- 1) The facility shall be limited to a 400 animal unit concentrated animal feeding operation for dairy heifers.
- 2) The facility shall be designed to minimize release of waste entering the drainage channel that flows southwest of the proposed site.
- 3) The operator shall maintain inspection and maintenance records on animal waste facilities, and records on compliance with the waste and nutrient management plan and odor and pest control plan. Copies shall be filed annually with the County.
- 4) The petitioner shall prepare a nutrient management plan and shall keep the plan

- up-to-date, and shall manage all waste from the facility in conformance with that plan. The petitioner shall prepare an executive summary of the nutrient management plan and file that summary with the Minnehaha County Planning Office. A new summary shall be prepared for the Planning Office each time that the plan is up-dated. A copy of the complete nutrient management plan as approved by the State shall be provided to the Planning Office upon request.
- 5) Dead animals shall be promptly removed from the site according to South Dakota regulations.
 - 6) A registered professional engineer shall inspect the facility during construction and certify to the County that the newly constructed facility conforms with the approved plans and to South Dakota Department of Environment and Natural Resources designs standards.
 - 7) Trees shall be planted on the north and west sides of the facility. A complete planting plan shall be prepared for approval by the county planning staff. All trees shall be planted and maintained according to the Minnehaha Conservation District standards. Any trees that die shall be replaced within one growing season.
 - 8) All application of liquid waste shall be injected into the ground. Surface application of liquid waste may be allowed only in extraordinary circumstances upon approval of the Planning Director after the petitioner has requested approval for such application in writing including the location on which the waste will be incorporated, the date of the proposed application and the amounts of waste to be applied. The petitioner will meet all setback requirements for waste application as specified in the county zoning ordinance.

The motion passed unanimously.

Conditional Use Permit #10-37 – APPROVED.

ITEM 8. REZONING #10-02 A-1 Agriculture to RR Rural Residential.

Petitioner: Megan Fredberg

Location: 46515 267th St. 3.5 miles west of Sioux Falls

General Information

Legal Description – W143' W1/2 E2/3 of Hulda Acres SW1/4 of Section 25-T101N-R51W

Present Zoning – A-1 Agriculture

Existing Land Use - Residential

Parcel Size – 2.05 Acres

Staff Report: Pat Herman

Staff Analysis

The property is located west of Sioux Falls on Highway 148. This area of the county has a high concentration of residential development. To the south is a seven lot subdivision created by the transfer of residential building eligibilities and to the southwest is a collection of eight acreages. To the west is the residentially zoned County Villa Estates with 61 lots and County Villa Estates 2nd Addition with 16 lots which are zoned A-1 Agricultural. To north and east are additional scattered acreages. The two adjoining lots on the west side of this property were rezoned to RR Rural Residential in 1979 to allow a second house.

The applicant is requesting to rezone a 2.05 acre lot from A-1 Agricultural to RR Rural Residential. The acreage is large enough to create 2 lots which would meet the minimum lot size of 1 acre. There is a house on the south end of the property. Access to the site would be from County Highway 148. A shared driveway would be used with an access easement extending across the southern portion of the property to the back portion of the property. A waste water system is required and rural water is available.

This area, due to subdivision plats created in the early 1970s, property splits in the 1980s, and the recent transfer of building eligibilities, has a predominately residential land use and an additional house would not impact the existing land use.

Despite the collection of rural dwellings, the Minnehaha Country Comprehensive Development Plan Future Development Plan Map 6 depicts this area as agricultural. Transitions zones (where change is occurring from agricultural land use to urban land use) are located in growth areas immediately adjacent to incorporated municipalities that can supply services and utilities. Urban services and utilities are not available in this area and the Comprehensive Plan maintains the use of density zoning for this part of the county.

The rezoning will set a precedent for the area. There is the potential for further requests to subdivide the many lots in this local which are greater in size then that of the petitioner. This could result in over 75 new residences in the immediate area. Such growth would place a further burden on rural services provided by the townships and rural emergency response teams. This part of the county also has a high water table and there have been problems with septic systems in this area.

Recommendation

While the property is located in an area that has seen residential development in the past, this neighborhood is not classified as a transition zone by the Comprehensive Plan and only rural services are available. Any growth in the last 20 years has taken place through the transfer of building eligibilities. Staff recommended denial of Rezoning #10-02.

Public Testimony

Megan Fredberg (46518 267th ST) stated that she wanted to continue to keep this property in the family. She informed the commission of the tragic death of her step father and her mother's inability to properly maintain the property solely by herself. Ms. Fredberg continued to state that she wants rezone the property so that she can build a home in the northern part of the lot. She stated that the property is over 2 acres in size so there is plenty of land to accommodate 2 houses.

John McMillin (46516 267th ST) stated that he owns the property directly to the west and does not oppose the request to rezone the property to allow another home.

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

Commissioner Cypher stated that he will support staff on this rezoning request. He stated that once again we need to set a precedent on this board and cannot allow something just based a personal situation. He is sympathetic to the petitioner but there are plenty of other people who also have family needs and situations. Commissioner Steinhauer concurred, noting that the petitioner's heart was in the right place but that this set a bad precedent.

Action

A motion was made by Cypher and seconded by South to recommend **denial** of Rezoning #10-02 to rezone the property from A-1 Agriculture to RR Rural Residential. The motion passed unanimously.

Rezoning #10-02 – DENIED.

Item 9 was deferred from the May 24th meeting.

Item 9. CONDITIONAL USE PERMIT #10-28 to Class 1 Major Home Occupation – garbage hauling business, truck repair, truck and dumpster storage.

Petitioner: Todd Snyders

Location: 46350 265th St. ½ mile northeast of Wall Lake

General Information

Legal Description - Hofer Tracts 1 & 2 (EX H-1) SW1/4 in Section 15-T101N-R51W

Present Zoning – A-1 Agriculture

Existing Land Use - Residential

Parcel Size – 24.98 Acres

Staff Report: Presented by Scott Anderson, written by Phil Kappen

Staff Analysis:

The subject property is located north of 265th Street (SD Highway 42) approximately one-half mile east of the Wall Lake Corner. Abutting properties are all in agricultural uses and there are numerous non-agricultural acreages in the vicinity. There are existing commercial uses ½ mile southwest at the Wall Lake corner. The petitioner has applied for a conditional use permit with the stated purpose on the application form to be to “Service rural and small town garbage and recyclable collection needs; repair garbage trucks as necessary; store trucks and dumpsters when not in use.” This use is not listed in the ordinance as an allowed conditional use in the A-1 Agricultural District. The applicant and their agent were informed multiple times that a use listed in the A-1 Agricultural District must appear on the application form. They chose not to amend the application form as requested. In spite of this, it appears from their accompanying written information that they wish to apply for a Class I Major Home Occupation consisting of a garbage collection service including repairing garbage trucks and storing trucks and dumpsters.

A Class 1 Major Home Occupation may be addressed as a conditional use in the A-1 Agricultural District. The home occupation section was included in the ordinance to allow a resident of a property to operate certain limited types of businesses from their residence. Section 12.03 of the Minnehaha County Revised Zoning Ordinance prohibits consideration of certain uses as a home occupation. These prohibited uses include: “motor vehicle repair or body shop, motor vehicle sales, recycling center, retail business or similar type uses.”

Section 12.0302 of the county zoning ordinance requires that the following criteria be evaluated when considering a Class 1 Major Home Occupation:

- (1) The occupation shall be conducted entirely within a dwelling or accessory building and clearly incidental to the use of the structure for residential purposes.
 - The petitioner’s site plan indicates that there will be outside storage of trucks and of roll-off dumpsters. This is not consistent with the stipulation that the occupation be conducted entirely within a dwelling or accessory building.
- (2) The occupation shall be operated by a member of the family residing in the dwelling.
 - The application packet indicates that the business would be operated by Mrs. Swier along with Todd Snyders, owner of R&S Sanitation. Staff is unsure of Mrs. Swier’s actual involvement and position in the business enterprise.

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- (3) Employees of the occupation shall be limited to residents of the dwelling and up to two (2) non-resident employees, not to exceed four (4) employees on site.
 - The application packet indicates that the only employees on the site will be Mrs. Swier and one other employee. It also, however, indicates that all truck drivers will be operating out of this property. It states that they will travel to the site in the morning to pick up their garbage truck and will return after their route. This constitutes those employees being on the site.
- (4) In addition to the dwelling, up to 750 square feet of accessory building space may be used for the occupation.
 - The written information accompanying the application form indicates that only 750 square feet of building will be used in the business and the floor plan of the building indicates that the east 750 square feet of the building will be separated out through the use of a floor to ceiling curtain. The site plan, however, also indicates that there is a separate commercial building on the property. It appears that the petitioner plans to continue to use this building for commercial purposes as there is already outside commercial storage at this building and the petitioner's site plan shows that there will be continued outside storage in this area. There has been no zoning approval or building permit for any commercial building on this property.
- (5) The occupation shall not create noise which, when measured off the property, exceeds 60 decibels between the hours of 8:00 a.m. and 6:00 p.m. The occupation shall not create noise which is detectable to the normal sensory perception off the property between the hours of 6:00 p.m. and 8:00 a.m. These off the property noise standards shall not apply to public and railroad rights-of-way.
 - The movement of large garbage trucks and roll-off dumpster trucks to and from this property, as well as the loading and unloading of the roll-off dumpsters, may well result in noise that exceeds this standard.
- (6) The occupation shall not create vibration, glare, fumes, odor, or electrical interference detectable to the normal senses off the property.
 - A garbage collection service, by the very nature of their cargo, has a very great potential for the creation of odors and fumes. This is a concern given the proximity of the proposed use to neighboring residences.
- (7) No outside storage, display of goods or merchandise, or external evidence of the occupation shall occur except as outlined in this section.
 - As has been previously noted, not only is there outside storage of dumpsters and trucks already in existence on this property, but the petitioner's site plan indicates that this will continue. There is a statement in the written narrative accompanying the application that this will be discontinued, however, this statement does not coincide with the petitioner's site plan and photos supplied by the petitioner.
- (8) A non-illuminated nameplate not exceeding two square feet in area may be placed on the dwelling or accessory building. Additionally, one non-illuminated sign not exceeding four square feet in area may be located along the driveway for the occupation. No off premise signs shall be used.
 - The application packet indicates that the petitioner does not plan on using any signage.
- (9) The occupation shall not generate more than 10 visits per day from clients or customers averaged over a period of seven (7) consecutive days.

- The proposed use will likely have little customer or client traffic. There would be, however, considerable truck traffic as the drivers travel to and from the site.
- (10) There shall be only limited and incidental sale of products conducted on the premise.
- There are no sales of products proposed on the site.
- (11) The number of deliveries generated by the occupation shall not significantly affect the character of the area. Delivery vehicles shall be limited to auto, pick up, or typical delivery service truck.
- The purpose of this section is to ensure that the business does not significantly affect the character of the area. The use of garbage trucks and roll-off dumpster trucks is not consistent with typical delivery service trucks and would affect the nature of the neighborhood.

It a requirement with a conditional use permit application that the petitioner submits a concise site plan which shows all aspects of the site and of the proposed use. Instead of such a site plan, the petitioner provided a number of attachments including a photocopy of the plat of the property, a copy of the USDA map showing whether there is highly erodible land in the area, a location map showing the location of subject property in relation to the Wall Lake Corner area, a very small aerial photo of the site, and three photos which show existing ordinance violations on the property. The attachment that is most similar to a typical site plan, is the small aerial photo. It shows a “commercial building” in the northern portion of the property (there have been no commercial structures approved for this site), an auxiliary building adjacent to the existing home on the site, and areas for the parking and outside storage of trucks, rollaway/dumpster containers, and employee parking.

The proposed use is already in existence on the subject property. The petitioner’s agents contacted the county before commencing the use at this site and were informed that, based on a previous court case, the only commercial-type use which could be conducted on the property would be the continued sales of agricultural equipment by a person living on the site and actively engaged in farming. At a meeting between the petitioner, the property owner, their agent, county planning staff and the States Attorney held on March 4, 2010, the property owner specifically indicated that this pre-existing use had continued unabated. In the written materials accompanying their application, however, it twice notes that the agricultural equipment sales use had ceased when the property owner’s spouse passed away. Assuming the written materials to be correct, this means that the previous use expired for a period of longer than one year. South Dakota Codified Law allows legal non-conforming (grandfathered) uses to continue provided they do not cease for a period of longer than one year.

The materials accompanying the petitioner’s application form clearly show that the property is in violation of the county’s zoning ordinance. A staff review of the property on May 3, 2010 shows that the property continues to be in violation of the zoning ordinance and is also in violation of the county’s public nuisance ordinance because of piles of junk and scrap on the site. The operation of a garbage collection service at this site also constitutes a violation of the county’s solid waste ordinance.

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.

It appears that the petitioner wishes to conduct a commercial operation on the subject property. That property is zoned A-1 Agricultural and is located amidst other A1-zoned property. Such a use could be allowed by conditional use permit in either a commercially or industrially-zoned location. The only other garbage collection service that has been

approved in the unincorporated portion of Minnehaha County was by conditional use permit in a I-2 Industrially zoned property. The proposed type of use is not allowed in the A-1 zoning district and the placement of such a use is a violation of not only the Minnehaha County Zoning Ordinance and the solid waste ordinance, but also the county's Comprehensive Development Plan. The comprehensive plan allows for commercial or industrial areas at interstate interchanges or in designated rural service areas. The subject property does not fit any of the criteria for allowed commercial or industrial areas. There is a potential that this use could negatively impact neighboring property values. The property owner, in 1999, submitted an application to rezone the property to C Commercial. That request was denied by the county because the request did not comply with the standards for locating commercial or industrial property as outlined in the comprehensive plan.

Access to the facility lies adjacent to a single-family residential property. The traffic, noise and odors from a garbage collection business would have adverse impacts on the quality of life of the residents of this home. There are additional residences to the west and southwest of the subject property which could also be adversely impacted by the operation of this use on the subject property.

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

The surrounding area is designated for continued agricultural uses, however, the property immediately east of the subject property has existing building eligibilities for residential structures. The placement of a commercial use in this location is not consistent with the long term uses planned for this area in the county's comprehensive plan.

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

Access to the property is via a quarter-mile gravel driveway off of 265th Street (SD Highway 42). The operation of a garbage collection service on this property is a new commercial use. Even if this property were zoned commercial or industrial and the use had been approved as a conditional use in the commercial or industrial district, all parking and driving areas would have to be hard-surfaced since all new commercial uses that accesses a hard-surfaced highway must have hard-surfaced parking and driving areas.

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

There would be ample space on the site for the off-street parking required for an allowed use. The petitioner's site plan, however, shows that there would be outside storage of trucks roll-offs and dumpsters. Outside storage has not been allowed as a part of a Class 1 Major Home Occupation.

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 garbage collection service has the potential to create odors or fumes, noise and traffic that are not in conformance with neighboring residential uses. Access to the property runs past an existing home. There could also be noise issues with the loading or

unloading of vehicles and roll-offs. This could become a point of conflict if the commission were able to approve such a use at this site.

The proposed use is a type of solid waste facility and is similar to one of the uses that is prohibited from consideration as a home occupation. The petitioner is submitting this application in an attempt to legitimize an existing ordinance violation. The petitioner and their agent had been notified in advance of the types of uses that could be placed on the site. The existing use is not one of the allowed uses.

Staff finds that the proposed use is not consistent with the types of uses that may be considered as home occupations, that the proposed use is not consistent with the standards used to evaluate home occupations, that the use is not consistent with the Minnehaha County Comprehensive Development Plan, and that the use is not compatible with neighboring land uses.

Recommendation:

Staff recommended denial of Conditional Use Permit #10-28.

Public Testimony

The owner of the property Cindy Swier (46350 265th ST., Sioux Falls) and petitioner Todd Snyders (340 E Essex Ave., Salem) were present but wished to have their attorney speak on their behalf. Tom Claton (Attorney) stated that during the meeting which included Planning & Zoning staff, Gordy Swanson from the States Attorney's Office, Cindy Swier, Todd Snyders and himself there was discussion on the options of a conditional use permit based on a hardship and a conditional use permit based on a major home occupation. Mr. Clayton stated this application was of a hardship and a major home occupation, whichever could be approved.

Mr. Clayton stated that the property is close to a current commercial zoning district at Wall Lake Corner so this area is not pristine. He informed the commission that Ms. Swier maintains the property and the road that accesses the building site. He stated that Section 15.04 of the Zoning Ordinance that requires hard-surfacing when a commercial property is accessed from a hard-surfaced road does not apply because the site is approximately 3/8 of a mile from the highway. That distance is an exception. He continued to make the commission aware that this property is a very legal and proper site for a business of this nature. The garbage trucks can't been seen from the highway so this site should be a home occupation.

Mr. Clayton commented on each of the criteria for a Class 1 Home Occupation stated in Section 12.0302 of the zoning ordinance as follows:

- 1) The occupation shall be conducted entirely within a dwelling or accessory building and clearly incidental to the use of the structure for residential purposes.
 - The petitioner's site plan indicates that there will be outside storage of trucks and of roll-off dumpsters. This is not consistent with the stipulation that the occupation be conducted entirely within a dwelling or accessory building.

Mr. Clayton stated that if this approved as a home occupation the dumpsters would be removed and the trucks would be stored in the shed. He filed a site plan that met the specifications specified by Phil Kappen. If this is approved as a hardship permit then he feels the dumpsters would be allowed.

- 2) The occupation shall be operated by a member of the family residing in the dwelling.
 - The application packet indicates that the business would be operated by Mrs. Swier along with Todd Snyders, owner of R&S Sanitation. Staff is unsure of Mrs. Swier's actual involvement and position in the business enterprise.

Mr. Clayton explained that Mrs. Swier maintains the gravel road. If this approved she will be an employee of the company. They have an agreement on her employment ready to go.

- 3) Employees of the occupation shall be limited to residents of the dwelling and up to two (2) non-resident employees, not to exceed four (4) employees on site.
 - The application packet indicates that the only employees on the site will be Mrs. Swier and one other employee. It also, however, indicates that all truck drivers will be operating out of this property. It states that they will travel to the site in the morning to pick up their garbage truck and will return after their route. This constitutes those employees being on the site.

Mr. Clayton disagreed that employees will be on the site because the truck drivers are only there in the morning and then in the evening to pick up and drop off the garbage trucks. Only Mrs. Swier and a clerical employee will be on the site.

- 4) In addition to the dwelling, up to 750 square feet of accessory building space may be used for the occupation.
 - The written information accompanying the application form indicates that only 750 square feet of building will be used in the business and the floor plan of the building indicates that the east 750 square feet of the building will be separated out through the use of a floor to ceiling curtain. The site plan, however, also indicates that there is a separate commercial building on the property. It appears that the petitioner plans to continue to use this building for commercial purposes as there is already outside commercial storage at this building and the petitioner's site plan shows that there will be continued outside storage in this area. There has been no zoning approval or building permit for any commercial building on this property.

Mr. Clayton said that the second building is only a chicken coop and that there is nothing there, but with a Home Occupation Permit he thinks the shed would allowed. This is the first that he has heard that there is not a building permit for that building. He believes everything is in conformance on the property.

- 5) The occupation shall not create noise which, when measured off the property, exceeds 60 decibels between the hours of 8:00 a.m. and 6:00 p.m. The occupation shall not create noise which is detectable to the normal sensory perception off the property between the hours of 6:00 p.m. and 8:00 a.m. These off the property noise standards shall not apply to public and railroad rights-of-way.

- The movement of large garbage trucks and roll-off dumpster trucks to and from this property, as well as the loading and unloading of the roll-off dumpsters, may well result in noise that exceeds this standard.

The nearest house is 600 feet away and the nearby residents are not opposed stated Mr. Clayton. If this is approved as a home occupation the roll-aways will be moved. There have been no complaints by the neighbors and the trucks will be on the driveway. There have been no noise tests done to say that this will be more than 60 decibels.

- 6) The occupation shall not create vibration, glare, fumes, odor, or electrical interference detectable to the normal senses off the property.
 - A garbage collection service, by the very nature of their cargo, has a very great potential for the creation of odors and fumes. This is a concern given the proximity of the proposed use to neighboring residences.

- 7) No outside storage, display of goods or merchandise, or external evidence of the occupation shall occur except as outlined in this section.

As has been previously noted, not only is there outside storage of dumpsters and trucks already in existence on this property, but the petitioner's site plan indicates that this will continue. There is a statement in the written narrative accompanying the application that this will be discontinued, however, this statement does not coincide with the petitioner's site plan and photos supplied by the petitioner.

Mr. Clayton explained that there will be no commercial activity at the site except for the trucks going in and out. The trucks will be in the shed if this is not approved as a hardship. The only repair to the trucks will be what is needed to be able to get a truck into the shop or a tire change.

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- 8) A non-illuminated nameplate not exceeding two square feet in area may be placed on the dwelling or accessory building. Additionally, one non-illuminated sign not exceeding four square feet in area may be located along the driveway for the occupation. No off premise signs shall be used.
 - The application packet indicates that the petitioner does not plan on using any signage.

Mr. Clayton was ok with # 8.

- 9) The occupation shall not generate more than 10 visits per day from clients or customers averaged over a period of seven (7) consecutive days.
 - The proposed use will likely have little customer or client traffic. There would be, however, considerable truck traffic as the drivers travel to and from the site.

Mr. Clayton said traffic will only be trucks in the morning and the evening. With a home occupation this would be four trucks, as a hardship that will be five trucks.

- 10) There shall be only limited and incidental sale of products conducted on the premise.
 - There are no sales of products proposed on the site.

No complaints with #10.

11) The number of deliveries generated by the occupation shall not significantly affect the character of the area. Delivery vehicles shall be limited to auto, pick up, or typical delivery service truck.

- The purpose of this section is to ensure that the business does not significantly affect the character of the area. The use of garbage trucks and roll-off dumpster trucks is not consistent with typical delivery service trucks and would affect the nature of the neighborhood.

Mr. Clayton reiterated that there will be no deliveries, just garbage trucks in and out.

Mr. Clayton then explained that this use is currently occurring on the property. He did pay the double application fee as required when a use is started without conditional use permit approval. He satisfied this penalty by paying the \$500.00. No one told him that if the equipment and was moved off the site he would have a better chance of getting this permit approved. Mr. Clayton asserted that having paying the penalty the fact that the use is going on should not have any bearing on this request. After all, these are not the first people to start a use and then want to get a permit. The county should grant this permit because the rural area needs garbage haulers and this is a perfect site for the business.

Mr. Clayton confirmed that for 36 years a tractor sales and implement dealer operated out of this site. He stated that past attempts to rezone the property failed and a lawsuit was brought on by the State of South Dakota but in the end the State found in favor of the Mr. & Ms. Swier, which allowed them to continue their operation at the site. Mr. Clayton stated that this business has now dissolved and no longer operates on the property. He told the commissioners that even though this business is no longer in operation, Ms. Swier still wishes to utilize the property in the best way possible.

Mr. Clayton informed the commissioners that all accessory buildings on the property are in compliance with all applicable County Ordinances. He stated that if a home occupation is allowed on the site the dumpsters would be removed and the trucks would be placed in the shed. He continued to inform the commissioners that Ms. Swier will operate the site and will be an employee of the use if it is approved. Mr. Clayton questioned what the definition of an on-site employee consisted of. He questioned this because he did not consider the truck drivers to be on-site employees due to the minimal time they spend on the premises. He stated they come to the site in the morning and do not return until late afternoon/evening. Mr. Clayton told the commissioners that all the surrounding residents have signed off stating they do not oppose a garbage hauling business at this site (documents on file with the Planning & Zoning Department). Mr. Clayton made it clear that no smells or odors would be associated with the use as a garbage hauling business. He asked where the junk and scrap was on the site because he did not know of any items that were posing a nuisance at the property.

Mr. Clayton stated that Mr. Snyders garbage haulers license will be approved with the conditional use permit. He feels that a circular argument is being used because the required hauler's solid waste permit was denied because staff didn't like the site. Having a conditional use permit would negate their argument. He then supplied the commissioners with photos of the property and equipment used for maintenance and landscaping. He said that this is a former farm and that it is still farmed and everything there is not a problem. He said that the building that would be used for the garbage trucks was approved for a commercial use. He also feels that the Swier's prior use of the property was in conformance with the Comprehensive Plan.

The petitioner Todd Snyders stated that only limited repairs would be conducted on site

and that all major repairs would be done in a different location.

Ms. Swier wanted to make it clear to the commission that the tractor sales and impalement dealership has not ceased for over a one year, so if she wished to start this business again it would be allowed.

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

Discussion

Commissioner Steinhauer questioned if the truck drivers received a W-2 or a 10-92. (He continued to ask what role or title Ms. Swier would have in the business. Mr. Snyders stated that his employees receive a W-2 as would Ms. Swier and that she would have the title of Vice President of R & L Incorporated.

Commissioner Randall asked staff if only 750 sq. ft. of accessory building area could be used for the business operation. Scott Anderson stated that only 750 sq. ft. of accessory building area could be used if a home occupation was approved. Commissioner Steinhauer wanted to make it clear to the applicant that if a home occupation was approved there would be no outside storage (i.e. dumpsters) and the only trucks allowed would have to be parked inside the 750 sq. ft. of accessory building area. Mr. Clayton said he understood this.

Commissioner Steinhauer questioned whether Ms. Swier's involvement with the business and the fact that she would be the vice president of the company is only so this can be located on her property. He also questioned whether the employees that are coming and going from the site in the morning and in evening would not be considered on-site employees.

Commissioner Steinhauer asked Mr. Anderson what a hardship conditional use permit was because he didn't understand it. Mr. Anderson replied that there is no such thing and he didn't understand the concept either.

Commissioner South stated that approving this use would be compatible to spot zoning. He continued, stating that the commission should follow their comprehensive plan and that this type of use is only allowed in commercial or industrial zoning districts. Again, this is a situation where a bad precedent would be set.

Commissioner Rogen stated that a garbage hauling business in an A-1 Agriculture District is not an appropriate use and is not really a home occupation. He reminded the commission that four years ago they had denied a home occupation permit for this same use in another township because it didn't meet the comprehensive plan and belonged in a commercial zoning district.

Action

A motion was made by South and seconded by Rogen to **deny** Conditional Use Permit #10-28 for a garbage haulers business as it is not in conformance with the Comprehensive Plan, would constitute a spot zoning, exceeds the criteria of a home occupation, and is not an allowed in use in the A-1 Agriculture zoning district. The motion passed unanimously.

Conditional Use Permit #10-28 – DENIED

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Old Business

No old business

New Business

Scott Anderson gave the Planning Commissioners a brief summary of a proposed ordinance change that would add a definition for adaptive reuse of an existing single family dwelling.

County Commission Items

No County Commission items.