

**MINUTES OF THE
MINNEHAHA COUNTY PLANNING COMMISSION**
August 23, 2010

A meeting of the Planning Commission was held on August 23, 2010 at 7:00 p.m. in the Commission Room of the Minnehaha County Administration Building.

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

STAFF PRESENT:

Scott Anderson, Pat Herman and Ryan Streff - County Planning

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 and Item 2, requests for a variance.

Deferred from the July 26, 2010 meeting.

Deferred to September 27, 2010 meeting.

ITEM 1. VARIANCE #10-04 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

Property Owner:

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 wooden pole 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 pole antenna 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 antenna 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 wooden 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 deferral of Variance #10-04.

Action

A motion was made by South and seconded by Cypher to **defer** Variance #10-04 until the September 27, 2010 Planning Commission meeting so that the petitioner or representative can be present. The motion passed unanimously.

Variance #10-04 – Deferred

ITEM 2. VARIANCE #10-05 to allow a reduced lot size in the A-1 Agricultural District.

Petitioner: Lewis & Clark Regional Water System

Property Owner: Lewis & Clark Regional Water System

Location: west side of West Acres, 2.5 miles west of Sioux Falls

General Information

Legal Description - 0.04 Acre SE ¼ SE ¼ in Section 18-T101N-R50W

Present Zoning – A-1 Agricultural

Existing Land Use - Vacant

Parcel Size – 0.04 Acres

Staff Report: Scott Anderson

Staff Analysis

The applicant is requesting approval to allow the creation of a lot that is less than one (1) acre in size. The proposed lot size measures 113 feet by 155 feet and would be approximately 0.4 acres in size. The applicant is planning on constructing a metering building on the site.

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

Not all situations or events can be covered by a zoning ordinance and thus a mechanism is put into place in which the public can seek a variation to the regulations. In this situation, there is a compelling set of circumstances and conditions which are somewhat unique and support the granting of a variance. The proposed use does not require an acre to function. Furthermore, the applicant is attempting to limit the amount of land taken out of agricultural production.

The one (1) acre minimum lot size may reflect the state's minimum lot size for a well and septic to be located on a residential lot. In this case, however, the lot being created will not be used for residential purposes. Furthermore, it will not be the site of any permanent work force requiring an office. Therefore, a smaller lot would benefit the applicant and surrounding land owners by reducing the footprint of the lot.

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.

Metering facilities are allowed in the A1 Agriculture District with a conditional use permit, for which the applicant has applied. The proposed use should not harm the property values in the area.

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

Strict application would be a hardship on the property owner selling the land and would be unwarranted in the needs of the applicant. A smaller lot size is in the public's best interest.

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 use is a public use and will be part of a water system that will supply water to hundreds of thousands of people in the region. The overall need is evident. The use is typical of any 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.

There is a public need for this infrastructure. The request is a reasonable use of the property and allows for the best development of the site.

Recommendation

Staff recommended approval of Variance #10-05 to reduce the minimum lot size in the A-1 Agriculture District from one (1) acre to approximately 0.40 acre in size.

Public Testimony

Dan Laskowski with the Lewis & Clark Regional Water System stated that they are planning to construct a block building that is 14'x44' in size with a driveway and two parking spaces.

Commissioner Cypher asked Mr. Laskowski if the digging that went on earlier this year in this same location was for the placement of valves. Mr. Laskowski stated that this was correct.

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

Discussion

There was no additional discussion on this item.

Action

A motion was made by South and seconded by Cypher to **approval** Variance #10-05 with the following condition. The motion passed unanimously.

- 1) That the parcel be platted prior to a building permit being issued.

Variance #10-05 – Approved

CONSENT AGENDA

A motion was made by South and seconded by Rogen to **approve** the consent agenda. The motion passed unanimously.

ITEM 3. Approval of Minutes – June 28, 2010 & July 26, 2010.

A motion was made by South and seconded by Rogen to **approve** the minutes from June 28, 2010 & July 26, 2010. The motion passed unanimously.

ITEM 4. CONDITIONAL USE PERMIT #10-41 to allow a Recreation Facility.

Petitioner: Jayne Solberg

Location: 25467 473rd Ave. 3 miles northeast of Crooks

General Information

Legal Description - NE1/4 SE1/4 (EX N 990' E 660') 30-103-49 SVERDRUP TOWNSHIP
Present Zoning – A-1 Agriculture
Existing Land Use - A-1 Agricultural
Parcel Size – 24.33 Acres

Staff Report: Ryan Streff

Staff Analysis:

In June of 2010 the Minnehaha County Planning and Zoning Department became alerted to the Heartland Ventures operation, which is a professional horse training, boarding, breeding and event facility. When the owners were first contacted about this zoning violation they stated that they were unaware that a conditional use permit was needed. They stated that “Heartland Ventures” was established in 1982 as a purebred and part-bred horse breeding facility. When the new barn was finished in 1984 the services were expanded to include professional training, boarding, riding lessons, small horse shows, horse theme parties, and other horse related activities. The petitioner thought that this type of a facility was a permissive use in their zoning district. After staff’s explanation, the petitioner understood the need for the conditional use permit and applied for the permit.

The subject property is located 3 miles northeast of Crooks in section 30 of Sverdrup Township. The property is one (1) mile east of Hwy 133 (472nd Ave) on 255th Street and ¼ mile north on 473rd Avenue. This property along with the surrounding land is zoned A-1 Agricultural and the land uses in the area are primarily agricultural in nature. The property is approximately 118 acres in size with almost 25 acres set aside to be used specifically for the recreational facility.

The petitioner wishes to operate a recreation facility with an emphasis on horses that involves professional training, boarding, minimal horse sales, riding lessons, small horse shows, arena riding, horse theme parties and play days, and other similar horse related activities, events and club meeting. The facility on average has between 30-40 horses on

the property, which includes horses owned by the petitioner. The facility normal operates between the hours of 8:00am and 5:00pm with occasional evening classes that may extend the hours of operation until 7:30pm. Heartland has on average 2 fulltime employees and 6 part-time employees.

The petitioner would also like to have the ability to hold approximately five (5) special events on the property grounds throughout the year at the facility. These events would have a maximum capacity of 250 people. The petitioner would have the ability to lease the property for one (1) day or weekend events such as private weddings, corporate business parties, and political campaigns. During these events all food would be catered from outside vendors, no food would be prepared on site. The petitioner would also like to supply occasional overnight camping (the night before events) for no more than 6 RV's, campers, and/or tents. Camping on the property would not take place more than 5 times per year. The owners will provide adequately sized trash receptacles during all events. The trash will then be disposed of in an appropriate and safe manner.

The recreation facility is adequate sized and has ample amounts of space for all events and activities associated with this use. The main barn (14,430 sq. ft.) on the property has 32 indoor pens (12'x12'), a riding arena (66'x66'), heated grooming area, locker area for boarders, office/lobby area, and an event space on the second floor overlooking the riding arena. The property also has approximately 16 large outside pens, a horse walker, large pasture with three shelter buildings (18'x50'), and an outdoor arena (100'x200') for professional training, lessons, events and other horse and event activities. The other accessory building (50'x120') on the property is used for storage purposes only. The property has adequate gravel parking and overflow grass parking for these types of events. The petitioner has five (5) restrooms available on the property but will provide portable restrooms for larger events as needed.

The petitioner would also like to provide foster care to unwanted or abused dogs while new owners are found. They will not provide permanent housing for any rescued animals. Foster care at this facility will be very minimal (2-4 dogs) and is only utilized as an overflow facility for animal rescue facilities.

The subject property appears to be well suited for a recreational facility and the uses described above.

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 recreational facility should not impact the uses, property values, or the enjoyment of properties in the vicinity. The hours of operation are from 8:00am to 5:00pm with occasional classes held until 7:30pm. It is expected that no more than 40 horses will be housed at the facility at a single time.

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 for a recreational facility should not impact the nature of the surrounding properties. Agricultural uses in the area are prominent will not be affected by the establishment of the proposed recreational facility. The recreational facility and its proposed uses is an appropriate use within this environment.

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

Access to the property is off of 473rd Avenue. There are two (2) driveways that access the facility and petitioners personal residence. The two accesses form a large horseshoe shaped driveway which will provide one access to be used as an entrance and the other to be used as an exit. The width of the driveway access is adequate for safe vehicular traffic. The petitioner has five (5) restrooms available on the property but will provide portable restrooms for larger events as needed. All other utilities are provided on the site.

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

There is ample space on the property to meet all parking needs of the facility. The gravel parking area on the east side of the main barn is 110'x250'. Additional overflow parking will be provided on the west side of the main barn and is approximately 225'x650'. No on-street parking will be allowed along 473rd 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.

There should be little odor or additional dust from the facility and no fumes, vibration, or lighting issues from the proposed use. To minimize odor the petitioner must dispose of any animal waste in a proper manner which diminishes odor so that flies are kept at a minimum. If dust becomes a nuisance the petitioner will apply a dust control agent from Hwy 133 (472nd Ave) to the entrance of the property. Noise should not be a problem as the site is located back from the roadway. Lighting will not affect adjacent property owners because of the distance between homes in the area and the existing trees belt will further prevent any potential light spillage. With proper maintenance odor and dust should not reach a level that would constitute a nuisance.

Recommendation:

Staff finds that any potential impact of this use to neighboring properties will be minimal and that this use is appropriate in the A-1 Agricultural District. Staff recommended approval of the conditional use permit #10-41 with the following conditions:

1. That the recreation facility shall operate from 8am to 7:30pm.
2. That the recreation facility primary use is for equine related training, boarding, breeding, and other similar activities and events.
3. That special events be limited to 250 people with only five (5) of these larger

- events allowed per year.
4. That all materials, supplies, and products associated with the facility shall be stored within a building or screened appropriately.
 5. That the petitioner provides adequate restrooms facilities for all events that take place on the property.
 6. That no more than 6 camping spaces be allowed at the site.
 7. That camping shall only be allowed for one (1) night before an event and no more than five (5) times per year.
 8. That any outdoor lighting shall be of a full cutoff and fully shielded design that prevents the spillage of light beyond the boundaries of the subject property.
 9. That all animal waste be disposed of in such a manner that any odor is limited and the number of flies is minimized.
 10. That if dust becomes a nuisance the petitioner will apply a dust control agent from Hwy 133 (472nd Ave) to the entrance of the property.
 11. That foster care of dogs be limited to a maximum of 5 dogs and only utilized as an overflow location for animal rescue facilities.
 12. That the applicant meets all of the parking requirements as outlined in Article 15 of Minnehaha County's Zoning Ordinance.
 13. That no parking will be allowed along 473rd Avenue or other adjacent roadways.
 14. That a sign permit shall be obtained prior to the installation of any sign. A maximum of 32 sq. ft (4'x8') shall be allowed for on-premise signage.
 15. That temporary signage shall be allowed for a total of 60 days per year and the Planning Director shall be notified (Article 16.00 On-Premise Signs).
 16. 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 South and seconded by Rogen to **approve** Conditional Use Permit #10-41 with the conditions stated. The motion passed unanimously.

Conditional Use Permit #10-41 – APPROVED.

ITEM 5. CONDITIONAL USE PERMIT #10-50 to allow the transfer of one building eligibility from Lot 2 Flanagan's Addition Tract 4 to Lot 1 Flanagan's Addition Tract 4, all in the S1/2 of Section 20-T103N-R47W.

Petitioner: Steven Pitz

Property Owner: Same

Location: south edge of Garretson

General Information

Present Zoning – A-1 Agriculture
Existing Land Use - A-1 Agricultural
Parcel Size – 18 Acres

Staff Report: Pat Herman

Staff Analysis

This is a request to transfer one residential building eligibility from a platted lot to an adjacent lot. The property is located on the south edge of Garretson. To the west is agricultural land and the city's sewer lagoons and to the east is agricultural land. The city of Garretson is situated to the north and the River Ridge Golf Course and scattered acreages lie to the south.

The lot the building eligibility will be transferred from is landlocked. Railroad tracks are located on the east, west and north sides of the property and adjacent to the south is a platted lot. The transfer of the eligibility would be to a platted lot which has road access.

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

This transfer is from one piece of pasture ground to another. It does not exceed the number of houses allowed by the zoning ordinance and will not affect property values.

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

The new location is across the road from existing houses which were developed under density zoning. A new house will meld with other residential dwellings which have developed within close proximity to Garretson.

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

This site will allow access to water and electrical hookups. Access is from 254th Street. The petitioner will need to obtain a driveway permit from Palisades Township before the County can issue a building permit.

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

The platted lot is approximately 18 acres in size, more than adequate size to meet off street parking requirements for a single family home.

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

None of the above should be at a concentration as to constitute a nuisance.

Recommendation

Staff finds the transfer of the request to be congruent with development in the area and in conformance with Section 3.04 (Y) of the Minnehaha County Zoning Ordinance. Staff recommended approval of Conditional Use Permit #10-50 with the following conditions:

- 1) If the platted lot is to be subdivided, a new plat is required.
- 2) A right-to-farm notice covenant shall be filed on the deed of the lot prior to the issuance of a building permit.
- 3) A driveway permit shall be obtained from Palisade Township prior to the issuance of building permit.
- 4) A septic and building permit are required prior to the start of construction.

Action

A motion was made by South and seconded by Rogen to **approve** Conditional Use Permit #10-50 with the conditions stated. The motion passed unanimously.

Conditional Use Permit #10-50 – APPROVED.

ITEM 6. REZONING #10-03 from A-1 Agricultural to C Commercial.

Petitioner: Jeff KerKvleit

Property Owner: Same

Location: Hwy 42 and Iowa County Line

General Information

Legal Description - Tract 3 Severson's Addition SW1/4 in Section 32-T101N-R47W

Present Zoning – A-1 Agriculture

Existing Land Use - A-1 Agricultural

Parcel Size – 5.92 Acres

Staff Report: Pat Herman

Staff Analysis

The applicant is requesting to rezone property from the A-1 Agricultural District to the C Commercial District. The site is located in the southeast portion of the county and abuts the Iowa state line. Agricultural uses have been dominate in this area along with scattered acreages.

It is anticipated that in the next several years this area will experience a rapid change in land use. Immediately to the southeast of this property, the Grand Falls Casino is under construction. Property in Iowa which lies adjacent to the casino is also being rezoned to allow the development of commercial uses.

The Minnehaha County Comprehensive Plan supports commercial development at the intersection of hard surface roadways. The applicant's property is located at the intersection of SD Highway 42 and County Highway 150. The Comprehensive Plan states:

Locate commercial uses at interstate highway interchanges and high traffic intersections. Such uses should be developed in a nodal pattern and geared to support of highway users. Discourage strip development along transportation arteries, particularly those which serve as gateways to the cities and major activity centers.

This property complies with the Comprehensive's Plans designation for commercial land use. Its immediate location on the intersection of the two highways makes it part of the nodal pattern of commercial development that will occur in this area. Care needs to be taken in the future that the nodal pattern is maintained and strip development is not allowed to develop.

Commercial development will not be allowed to commence until a preliminary site plan has been approved by the governing bodies. Many commercial uses will also require conditional use permit approval.

Recommendation

The rezoning request is in conformance with the Comprehensive Plan's requirements for commercial development. Staff recommended approval of Rezoning #10-03 from A-1 Agricultural District to the C Commercial District.

Action

A motion was made by South and seconded by Rogen to recommend **approval** of Rezoning #10-03 from A-1 Agricultural to C Commercial as stated in the staff report. The motion passed unanimously.

Rezoning #10-03 – APPROVAL RECOMMENDED.

ITEM 7. CONDITIONAL USE PERMIT #10-51 to allow a public utility facility.

Petitioner: Lewis & Clark Regional Water System

Property Owner: Lewis & Clark Regional Water System

Location: west side of West Acres, 2.5 miles west of Sioux Falls

General Information

Legal Description - 0.04 Acre SE ¼ SE ¼ in Section 18-T101N-R50W
Present Zoning – A-1 Agricultural
Existing Land Use - Vacant
Parcel Size – 0.04 Acres

Staff Report: Scott Anderson

Staff Analysis

The property is zoned A-1 Agricultural District. Article 3.04(W) of the Zoning Ordinance allows a water metering facility as a Conditional Use in this zoning district.

The surrounding land uses are a mixture of residential and agricultural uses. The subject property is located approximately 3 miles west of the Sioux Falls corporate limits. The property to the north, south and west of the proposed metering facility appears to be used for agricultural purposes. West Acres rural subdivision is located to the east of the subject property.

The growth of Sioux Falls and surrounding communities necessitated the need for a more reliable source of water. The Lewis & Clark Water System is being constructed to fill that need and this metering facility is part of the system.

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.

Due to the existing residential development pattern and agricultural uses within the area, the proposed water metering facility should not have a negative effect upon the normal and orderly development and improvement of these properties for uses predominant in the area. The water metering facility will insure adequate water to present and future development for the region.

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

The proposed water metering facility should not have a negative effect upon the normal and orderly development and improvement of these properties for uses predominant in the area. The proposed water metering facility is part of a water system that will aid in providing an adequate water system to present and future development for the region.

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

Access to the proposed utility substation will be provided by 467th Avenue, which is a township maintained road. It appears that the site utilizes natural drainage. The proposed

metering facility has access to water and will be using a holding tank for any wastewater.

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

Article 15 of the Zoning Ordinance does not specifically identify the parking requirements for a water metering facility. The applicant has indicated that two (2) off street parking spaces will be provided. A utility substation typically does not generate any significant amounts of traffic. Each parking space should measure a minimum of nine feet by 18 feet and be continually maintained in such a manner that no dust will result from continuous use. The two spaces will meet the parking requirements.

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

The proposed Conditional Use Permit may generate very limited dust and noise. The water metering facility will be providing a benefit to the community. With appropriate conditions of approval, any concerns can be mitigated. Staff's review indicates that the proposed Conditional Use is a use which is appropriate for this site.

Recommendation

Staff recommended approval of Conditional Use Permit #10-51 to allow a water metering facility to be established and conducted in conformity with the Zoning Ordinance and the following recommended conditions of approval:

- 1) That a minimum of two (2) off-street parking spaces be provided and that each parking space shall not be less than one hundred sixty two square feet, or nine feet by eighteen feet, hard surfaced with a concrete or asphalt and maintained in such a manner that no dust will result from continuous use.
- 2) That all existing drainage is maintained and that erosion control measures are implemented on all disturbed areas so as not to allow any sedimentation of existing drainage ways or bodies of water.
- 3) That the applicant obtains a building permit prior to any construction commencing on the site.

Action

A motion was made by South and seconded by Rogen to **approve** Conditional Use Permit #10-51 with the conditions stated. The motion passed unanimously.

Conditional Use Permit #10-51 – APPROVED.

REGULAR AGENDA

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

ITEM 8. 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 in Section 22-T103N-R50W and transfer one building eligibility from the NW ¼ NW ¼ of Section 27 to the NW ¼ NE ¼ of Section 28; both in T103N-R50W OR to transfer one residential building eligibility from the NE1/4 SW1/4 of Section 22-T103N-R50W to the NW1/4 NE1/4 of Section 28-T103N-R50W, and to transfer one residential building eligibility from the NW1/4 NW1/4 of Section 27-T103N-R50W to the SW1/4 SW1/4 of Section 22-T103N-R50W.

Petitioner: Joan Eitrheim & Gary Brendtro

Property Owner: Same

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 two residential building eligibilities. 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 northern most 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. This transfer would move the eligibility closer to a proposed CAFO but the petitioners are aware of this proposed use. The second transfer, moving the eligibility further to the west, will move away from the CAFO.

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

The proposed transfers 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. There are existing residences which are closer to the proposed CAFO site. The northern transfer will preserve the portion of the land that is usable farm ground. It appears that the transfer to the west is an equal exchange for usable farm ground.

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

Access to the building sites 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.

Wastewater systems 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.

Staff Report Update

Pat Herman met with the petitioners after last month's meeting. During the discussion and review of the prepared maps it came to light that if the location from which the building eligibilities being transferred to were reversed, no building eligibility would be moved closer to the planned CAFO. The eligibility being transferred from Section 27 would move north, away from the CAFO. The eligibility from Section 22 would move west to Section 28 to a location of approximate equal distance from the CAFO as its

currently assigned quarter –quarter. This is shown on the attached map. The final location of the building eligibilities would remain the same as the originally requested transfer.

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.

Public Testimony

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

Discussion

Commissioner Rogen asked if the properties in question were contiguous. Pat Herman stated that the properties were contiguous and that the petitioners own all of this land in the subject area.

Commissioner Cypher added that it is good practice to move building eligibilities away from CAFOs.

Action

A motion was made by South and seconded by Rogen to **approve** Conditional Use Permit #10-35 with the following conditions. The motion passed unanimously.

- 1) The lots shall be platted and a right to farm notice covenant filed on the deed of the lots 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.

Conditional Use Permit #10-35 – Approved.

Old Business

A) Comprehensive Plan Update – Scott Anderson

Scott Anderson gave a brief update on the new Minnehaha County Comprehensive that is being developed stating that the process and product has not improved. He stated that another meeting on the Comprehensive Plan is scheduled for Thursday, August 26, 2010 but the schedule has not been followed in the past. The updates to a chapter were supposed to come today but that didn't happen.

Commissioner South stated that he understands staffs frustration with the comprehensive plan development process as he has heard from several members of the committee. He asked if there is an alternative to using SECOG. Scott Anderson stated that funding would be needed in order to have an alternative. Mr. Anderson stated that he has budgeted for a new comprehensive plan the last few years but the funds are always cut from his budget. Scott Anderson stated that he wants this plan to be better than just average as Minnehaha County is a leader for the state. Right now it is mediocre. It needs to be a plan that the County and its residents can all be proud of. At the initial meeting with Toby Brown from SECOG he was told that public participation through meetings throughout the county needed to be part of the process. After 3 years nothing has happened and it is a again harvest time. Pat Herman added that the committee has been very loyal to showing up to meetings and participating and that it difficult to see their efforts going nowhere.

Commissioner Twedt stated that even when she was the liaison 3 years ago for Planning & Zoning Mr. Anderson had budgeted for a new comprehensive plan. Commissioner Twedt made it clear that it is not fair for our residents the county or staff to have a plan that is not up to professional standards. This plan is important to guiding growth in the future and it needs to be current. Commissioner Twedt stated that she is embarrassed by the slow and frustrating comprehensive plan development process.

Bonnie Duffy, Comp Plan Committee member, was in the audience and asked to speak. She stated that the process had been frustrating with large gaps in the meeting process. Materials were not provided by SECOG as promised and there is little guidance from that staff member.

Commissioner Randall stated that the Planning Commission should appeal or address this issue to the County Commission. Commissioner Twedt agreed that the Planning Commission should have this discussion brought forward to the County Commission by Scott Anderson and request a budget so that the plan can be done correctly.

Commission South stated that the County has many different types of development pressures at this time and that an updated professional plan is needed to address these issues. It is an important document and should not be overlooked. Commissioner Randall agreed that having an up-to-date comprehensive plan is the best thing for all of our county constituents. Getting something for free is not a deal if it is not a quality product. Commissioner South agreed that the county needs to stay current and be

prepared for development and that it is important for all county residents.

Action

A motion was made by South and seconded by Randall directing Scott Anderson request money in the budget for the creation of a new Minnehaha County Comprehensive Plan and to present this request to the County Commission on behalf of all the Planning Commissioners. The motion passed unanimously.

Old Business

B) Drainage Task Force Update – Scott Anderson

Scott Anderson stated that the department had their last Drainage Task Force meeting. He stated that the drainage ordinance has been redrafted to include new changes that the Task Force has requested. Mr. Anderson informed the Planning Commission that the next step is to bring the changes forward to the County Commission and go through the public hearing process. This will take place in October.

New Business

There was no new business.

County Commission Items – August 17, 2010

- A. Conditional Use Permit #10-28 to allow a Class 1 Major Home Occupation – garbage hauling business, truck repair, truck and dumpster storage; petitioner is Todd Snyders.

- B. Zoning Text Amendment #10-12 to require a CUP for adaptive reuse of a existing single family dwelling.