

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

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

COUNTY PLANNING COMMISSION MEMBERS PRESENT: Mike Cypher, Dick Kelly, Mark Rogen, and Don South.

STAFF PRESENT: Scott Anderson and Pat Herman -County Planning
Gordy Swanson – Office of the State’s Attorney

The meeting was chaired by Don South.

CONSENT AGENDA

At the request of the Planning Commission and the audience, Items 3, 5, 6, & 7 were moved to the regular agenda. A motion was made by Rogen and seconded by Cypher to approve the consent agenda. The motion passed unanimously.

ITEM 1. MINTUES – January 26, 2009

A motion was made by Rogen and seconded by Cypher to approve the minutes. The motion passed unanimously.

ITEM 2. CONDITIONAL USE PERMIT #09-05 to allow a contractor’s shop & storage yard.

Legal Description - Lot 3 & 4 Block 2 Brower’s Addition SW ¼ in Section 27-T102N-R51W

General Information

Location –	26066 Brower Circle, Unit #3 south edge of Hartford
Petitioner / Owner-	Daniel Handberg w/Great Plains Excavating, Inc. / Vance Peterson
Present Zoning -	I1 Light Industrial
Existing Land Use -	Commercial
Parcel Size -	2.16

Report by: Pat Herman

Staff Analysis:

The subject property is located in the Brower Addition, an industrial park located in the southeast quadrant of the Hartford exit on I-90. The property owner has constructed a building with a number of bays that he will lease to various businesses. The tenants of individual bays will apply for any required conditional use permit for their specific land uses. This request is for bay # 3 where the petitioner proposes to conduct a contractor’s shop. The petitioner would also like to have his contractor’s yard on the adjacent lot to the east, which would entail outside storage. The size of this storage area is estimated to be 50 x 70, but may be a bit larger to accommodate the petitioner’s equipment.

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

Surrounding properties are all in commercial or industrial uses. A contractor’s shop and storage yard would be appropriate in this development. The petitioner is proposing outside storage on the adjacent lot. As has been required throughout this development, the outside storage should be enclosed by a solid fence.

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

A contractor's shop and storage yard is consistent with the types of uses that might be approved for the adjoining property and should pose negligible impact on the development of the vacant sites.

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

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

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

There should be ample space for the parking required on the site. Only 2 parking spaces would be required for this bay. There will be adequate parking in front of the specific bay. The petitioner will have additional parking in the yard area on the adjacent lot.

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.

This is an industrially zoned development, so odor, fumes, dust, noise, and vibration are to be expected. Any lighting should be of a design to restrict light spillage onto the adjacent property.

Staff is recommending the construction of a fence to conceal the contractor's yard. Since the ground is currently frozen, staff will recommend that the fence be erected no later than July 1, 2009. This area is to be used only for the storage of the petitioner's equipment. The petitioner should be aware that any sign will require a building permit.

Recommendation

Staff finds that the proposed use is consistent with the types of uses found in an industrial development. Staff recommended approval of Conditional Use Permit #09-05 with the following conditions:

- 1) The use shall operate with a South Dakota sales tax license in full force.
- 2) Outside storage shall be restricted to the storage yard located on Lot 4, as shown on the submitted site plan.
- 3) The outside storage area shall be screened from public view by a screening fence. The fence shall be a minimum of 8 feet in height with minimum of 90% opacity maintained over the entire height of the fence. The fence shall be maintained in earth-tone colors such as greens or browns. The fence shall be completed by July 1, 2009.
- 4) No unlicensed vehicles, inoperable or partially dismantled vehicles or equipment or parts shall accumulate on the property.

- 5) All outside lighting shall be have a recessed light that directs light downward and prohibits the spillage of light beyond the boundaries of the subject property.
- 6) The operation shall conform to all sign requirements as set forth in the county zoning ordinance.
- 7) Commercial equipment shall not be parked on the roads or in the right-of-way.

Action

Based on the staff report, a motion was made by Rogen and seconded by Cypher to **approve** Conditional Use Permit #09-05 with the conditions as stated. The motion passed unanimously.

ITEM 4. CONDITIONAL USE PERMIT #09-08 to allow the transfer of one building eligibility from the SW ¼ SE ¼ to the NE ¼ SE ¼, all in Section 8-T102N-R50W

General Information

Location – 2 miles west of Crooks
Petitioner / Owner- Nathan Stroschein
Present Zoning - A1 Agricultural
Existing Land Use - Agriculture
Parcel Size - 40 Acres

Report by: Phil Kappen

Staff Analysis:

The subject property lies on the west side of 468th Avenue (County Highway 141) 2 miles west of Crooks. An eligibility was transferred from the NW1/4 SE1/4 to this location last year resulting in two eligibilities on this quarter-quarter. The petitioner proposes to transfer the one remaining eligibility on this quarter to the same site allowing the construction of three homes.

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.

Immediately across the road from the subject property is a small subdivision which utilized a number of eligibilities from that area. The placement of these eligibilities on the other side of the road allows a clustering of the allowed homes which preserves greater area for crop production.

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

Most of the property within the quarter section will continue in agricultural production. The area from which the eligibility is being moved is used for crop production. The area to which the eligibility is proposed to be moved is in grass and trees. This would allow the preservation of cropland.

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

Access to the property would be via Hwy 141. There is a low area which divides the subject property. Two of the eligibilities would be used to the south of this area and the petitioner proposes that those two homes would share a drive. There is a hill crest in this area at which there is excellent sight distance along the highway for an access. The other eligibility would be to the north of the low area. The property owner to the north has also discussed the possibility of transferring his eligibilities to the area immediately north of the subject property. This would allow the use of a common driveway for those eligibilities and the one eligibility on the subject property. That location also has an excellent sight distance.

A condition allowing only one additional driveway from this property onto the highway

would accommodate the proposal and prevent an excessive number of access points onto the highway.

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

There is ample space on the site for the parking required for single-family residences.

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 offensive odors, dust, etc. from a single-family residential use.

Recommendation

Staff finds that the proposed use meets the requirements of density zoning and that the use can be accommodated in a manner which minimizes impacts to the continued farming on the remainder of the property. Staff recommended approval of CUP #09-08 with the following conditions:

- 1) All lots shall be platted and a right-to-farm notice covenant filed on each lot prior to the issuance of any building permits.
- 2) The proposed homes shall result in the addition of only 1 additional driveway access from this property onto County Highway 141. Written county highway department approval for any access shall be required prior to the issuance of any building permit.

Action

Based on the staff report, a motion was made by Rogen and seconded by Cypher to **approve** Conditional Use Permit #09-08 with the conditions as stated. The motion passed unanimously.

ITEM 8. CONDITIONAL USE PERMIT #09-12 to allow light manufacturing.
Legal Description - McBeth Tr. 1A NE ¼ & SE ¼ in Section 27-T101N-R48W

General Information

Location – 48185 Hwy 42 ½ mile west of Rowena
Petitioner / Owner- Dan Gary / Dennis Tilden
Present Zoning - I1 Light Industrial (pending)
Existing Land Use - Commercial
Parcel Size - 2 Acres

Report by: Pat Herman

Staff Analysis:

The petitioner has applied for a conditional use permit to allow light manufacturing on this property. Previously zoned C Commercial, the property was rezoned to I-1 Light Industrial by the County Commission on February 17, 2009.

The property is located approximately a ½ mile west of Rowena, at the intersection of Hwy 42 and 482nd Avenue. The building on the site is currently occupied by Tilden Flooring. Due to retirement, the current use of the property will cease.

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

The light manufacturing business will be conducted in the existing building which is over 10,000 square feet in size. The petitioner has indicated that the business will involve the repairing, fabricating, welding and manufacturing of items for agricultural industries, trucking industries, construction industries and farmers. It will also involve reconfiguring and modifying existing equipment to fit individual customer's needs. This work will all be done inside the building. The petitioner states that the business will create 4 new job openings immediately and add an additional 2-4 positions by the end of the year.

In addition to the light manufacturing, the petitioner will also sell trucks, trailers and related equipment. The submitted site plan indicates these items will be displayed outdoors on the west side of the building. Staff will recommend that no unlicensed vehicles, inoperable or partially dismantled vehicles or equipment or parts be allowed to accumulate on the property.

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 site has been used for commercial purposes since the 1950s. Since that time a residential subdivision has been developed north of the site. The Planning Department has not received complaints about commercial activity in this area.

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

surrounding vacant property for uses predominant in the area.

At this time, those uses allowed in the A1 zoning district are all that are allowed on the vacant surrounding land. This use should have no effect on the permitted uses.

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

Frontage of the lot is along Hwy 42 but the designated access is from 482nd Avenue. Access may also be gained from Hwy 42 through the adjoining properties. A waste water system is in place.

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

A manufacturing establishment is required to provide parking spaces at the rate of 2 spaces for each 3 employees. The site plan shows sufficient parking to meet these 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.

It is anticipated that with light manufacturing there will be some odor, dust, noise and vibration, but not at a level as to constitute a nuisance. All outside lighting should be installed to prevent light spillage off of the property.

Recommendation

Staff finds that the requested use is appropriate on industrially zoned property and that light manufacturing will not negatively impact the neighborhood. Staff recommended approval of Conditional Use Permit #09-12 with the following conditions:

- 1) The use shall operate with a South Dakota sales tax license.
- 2) The property shall adhere to the submitted site plan dated 12/29/2008.
- 3) Outside equipment display shall be limited to the area shown on the submitted site plan, dated 12/29/2008.
- 4) No unlicensed vehicles, inoperable or partially dismantled vehicles or equipment or parts shall accumulate or be displayed on the property.
- 5) All outside lighting shall be have a recessed light that directs light downward and prohibits the spillage of light beyond the boundaries of the subject property.
- 6) The operation shall conform to all sign requirements as set forth in the county zoning ordinance.
- 7) Commercial equipment shall not be parked on the roads or in the right-of-way.
- 8) The commencement of business shall not occur until the County Building Inspector has given approval.

Action

Based on the staff report, a motion was made by Rogen and seconded by Cypher to **approve** Conditional Use Permit #09-12 with the conditions as stated. The motion passed unanimously.

Regular Agenda

A motion was made by Cypher and seconded by Kelly to approve the regular agenda with the addition of Items 3, 5, 6, & 7. The motion passed unanimously.

ITEM 3. CONDITIONAL USE PERMIT #09-07 to allow a boarding kennel.
Legal Description - Lot 27 Vintage Village Addn. in Section 7-T102N-R49W

General Information

Location – 25711 Packard Lane
Petitioner / Owner- Ellen Bjordahl
Present Zoning - A1 Agricultural
Existing Land Use - Residential
Parcel Size - ± 1.4 Acres

Report by: Scott Anderson

Staff Analysis

The applicant is requesting a Conditional Use Permit to allow a kennel for the boarding of rescued cats. The applicant has provided staff with information indicating the maximum number of rescue cats to be boarded on the subject property (20-25 animals), how the animals will be cared for, waste disposal and a parking plan. The applicant's narrative is included for the Planning Commission's review.

Concerned neighbors have contacted staff and indicated that existing restrictive covenants preclude this use. The neighbors have indicated that businesses are precluded from the Vintage Village Addition. Staff has reviewed the covenants and found that Article 9, Section 1a simply indicated that each lot shall be used for residential purposes. The applicant is not operating a business and the proposed use would be accessory to the primary use of the property, which is as a residence. Further research into the covenants; however, reveal that Section 7 of Article 9 prohibits cats for being kept within the Addition for commercial purposes. The applicant's proposal may violate this section of the restrictive covenants. The County Animal Control Ordinance would limit a residence to a total of four (4) cats and dogs without this Conditional Use Permit. With approval of this Conditional Use Permit the requirements of the County's Animal Control Ordinance would be met, however, it will be the responsibility of the property owner to seek legal counsel to determine if the restrictive covenants are being followed.

The applicant has indicated that the proposed cattery would only be located on the subject property for approximately a year. During the time the cats are on the property, the applicant will be searching for a permanent location. Staff has been contacted by adjacent neighbors that expressed concerns if the use were to be permanent, however, felt that they would tolerate the additional traffic if the proposed use would cease in a year. Staff would also have serious reservation on recommending approval of this conditional use permit on a permanent basis. Staff can support a one year timeline.

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 proposed use should not negatively affect the use and enjoyment of the properties in the immediate vicinity for the uses allowed. It is unlikely that having cats located within the single family residence would have any impact on property values in the area. The traffic will be minimal.

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

There is no vacant property surrounding the subject property. There are four (4) platted lots surrounding the subject property. Each of the lots has an existing single family residences located on them.

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

Adequate access has been provided to the site. The existing residence has direct access off of Packard Lane, which is a paved, township-maintained road. All required utilities have been constructed to the site.

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

The applicant provided a simple site plan indicating parking spaces in front of the house and along the drive. The applicant has indicated that only one adoptive family would be allowed into the single family residence at a time, thus limiting the potential number of cars on the property at any one time.

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.

Staff finds that the proposed cat boarding/rescue facility can be compatible with the existing land uses of the area. The proposed use will be limited in the number of cats on the property and in duration. The applicant has indicated that this site would only be used temporarily until a permanent site is located and established. The proposed conditions of approval will address any concerns that may arise from the use.

Recommendation

Staff recommended approval of Conditional Use Permit #09-07 to allow a cat boarding/rescue facility with the following conditions:

- 1) That all cat boarding/rescue operations shall cease by August 1, 2010.
- 2) That the applicant disposes of animal waste in such a manner as not to constitute a nuisance.
- 3) That all cages used for the cats meet the USDA cage size requires.
- 4) That any signage meets the requirements of Article 16, and that a permit is obtained for each sign.
- 5) The hours of operation when the public shall be allowed onto the property shall be from 8 a.m. to 7 p.m. on weekdays and from 8 a.m. to noon on Saturday.
- 6) That the applicant obtain a sales tax license from the S.D. Department of Revenue and charge any applicable sales tax on animals and/or accessory merchandise.
- 7) That the total maximum number of cats, including cats owned by the property owners, shall not exceed twenty-five (25).
- 8) That a maximum of two visitor vehicles be allowed on the property at any one time.

Public Testimony

Commissioner Cypher confirmed that the cats would all be kept inside the house. Commissioner South stated that the covenants were not an issue for the Planning Commission. Mr. Anderson concurred, stating that the county does not enforce covenants. The covenants were included in the staff report to make the applicant aware of their existence and give her the opportunity to seek legal council if she so desired. Commissioner Kelly asked why there was a condition to have a sales tax license if this is not considered a business. Mr. Anderson explained that this is not considered to be the primary use of the property but is a subordinante acitivity to the residential use. The tax license is listed to alert the applicant to research whether the State will require such a license for a non-profit.

The petitioner, **Ellen Bjordahl**, stated that a sales tax license is required and that she is

familiar with that process. She also noted that she will not be caging the cats. In response to Commissioner Kelly, Ms. Bjordahl explained that her purpose is not to make money, but that there is a real need in this community to provide a shelter for unwanted cats. She has spent her own money on this project and absorbed the costs of veterinary care, etc. She is currently looking for a place to locate the business. Commissioner Kelly questioned why she just didn't wait until a permanent location was found. Ms. Bjordahl explained that she had not anticipated the response and number of calls she would receive from the web site from people with cats that needed refuge. She is even receiving calls from places such as Second Chance Rescue.

Chad Roggow, 25793 Packard Ln., is president of the Vintage Village Road Association. He presented the following petition to the Planning Commission.

Vintage Village Road Association
Statement of Position By the Board of Directors
Regarding Conditional Use Permit #09-07
by Ellen Bjordahl, 25711 Packard Lane, Renner, SD

As the undersigned Board Members of the Vintage Village Road Association, we strongly oppose granting the Conditional Use Permit #09-07 to Ellen Bjordahl of 25711 Packard Lane, Renner, SD for the purpose of allowing a boarding kennel (Allcatrescue) within our development.

This request violates Article IX, Section 1, Section 4, and Section 7 of the Residential Area Covenants of the Vintage Village Road Association. To wit:

Section 1. Land Use and Building Type (a) No lot shall be used except for residential purposes.

Section 4. Nuisances (a) No noxious or offensive activity shall be carried on upon any lot, nor shall anything be done thereon which may be or may become an annoyance or nuisance to the neighborhood.

Section 7. Livestock and Poultry No animals, livestock or poultry of any kind shall be raised, bred or kept on any lot, except that dogs, cats, or other household pets may be kept, provided they are not kept bred or maintained for any commercial purposes. It shall be the owner's responsibility to restrict their pet to the owners property.

The Board maintains that any use of the property for purposes other than single family residential purposes is a violation of the covenants and restrictions that each property owner agrees to upon assuming title to their property. Any business, whether it is non-profit or for profit is prohibited. Furthermore, the Board maintains that any pets on that property be owned and kept for the family's own personal enjoyment and not be for any other purpose.

The Board has received numerous calls from the members of the association objecting to this request. They have voiced their concerns to the unknown size, duration and scope of this boarding kennel and the increased traffic which would result from it's operation.

Dated February 12th, 2009 (Signed by President Chad Roggow, Vice President Kevin Lawrence, Secretary Jerry Mlady & Treasurer Ron Hegge)

Mr. Roggow stated that the association and board had concerns about the violations of the covenants presented by the boarding kennel. They also worry about any future plans.

Jerry Mlady, 25718 Packard Ln., stated that the board was never approached about the kennel. This is a violation of the covenants and he would like the Planning Commission to respect the covenants. He feels that the staff research fell short of the mark – it doesn't matter if the kennel is for profit or non-profit, the use is still the same. Mr. Mlady questioned what would happen in a year if the petitioner has not found a new place for the kennel, would an extension be granted? The covenants are important and need to be enforced. Approval of this kennel could set a precedent. What if someone then decides to apply for a dog kennel. Mr. Mlady stated that this is admirable plan but it should not be done in a residential area. People bought houses in this development so that there would be no extra traffic and because it had these covenants. This use should be in a commercial area or on an acreage, not in a planned residential neighborhood.

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

Commissioner Kelly stated that he understood the applicant's concern for the cats but can not support this request for two reasons. First, the applicant is planning to move anyway and should wait till finding the right spot. Second, it is a slippery slope to approve this request and the covenants should be respected. He doesn't think the Planning Commission has the right to action against the covenants.

Commissioner Cypher stated that the covenants are not a part of this request. This falls under the county zoning ordinance, which states that a kennel may be allowed in certain instances. Density and traffic issues should be considered. There would not be much traffic, but this is a strictly residential neighborhood and this use is probably not appropriate for this area.

Action

Based on the staff report, a motion was made by Kelly and seconded by Cypher to **deny** Conditional Use Permit #09-07. The motion passed unanimously.

ITEM 5. CONDITIONAL USE PERMIT #09-09 to allow the transfer of one building eligibility from the SE ¼ NW ¼ to Tract 1A Opland's Addn. N1/2, all in Section 16-T103N-R50W.

General Information

Location – 1 mile east of Lyons
Petitioner / Owner- Patrick Glover / HEEC Holdings, LLC
Present Zoning - A1 Agricultural
Existing Land Use - Agriculture
Parcel Size - 40 Acres

Report by: Phil Kappen

Staff Analysis:

The subject property is south of 252nd Street and between 468th and 469th Avenues.

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 is an existing horse stable on the subject property which was approved by CUP in 1996. Existing eligibilities on the property have been used and lots for those homes split from the remainder of the property. The petitioner wishes to transfer the one remaining eligibility on their properties and plans to place a house in either the northwest corner of the subject property or in the southeast corner of the property. The use of the property for horses and a stable will continue.

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

The greatest amount of property in the vicinity is dedicated to agricultural uses with scattered acreages. This is the last eligibility in this specific section that is currently available to either the petitioner or to the people from which the petitioner purchased the property.

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

Access to the property will be via 252nd Street, a Lyons Township road. If the home were located in the southeastern corner of the property an existing driveway from the township road could be used to access the home. If the home were located in the northwest corner of the property, a new driveway onto 252nd Street would be required. There are some sight distance problems at points along 252nd which would result in a "blind" driveway and unsafe conditions. There is, however, one point on the road, at the crest of a small hill, at which there is excellent sight distance for a driveway access. Lyons Township does not require driveway permits. Therefore, if the home is to be located in the northwest corner of the property the petitioner should be required to obtain planning staff approval for the specific location of the driveway in order to assure that the driveway is placed at a safe location.

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

There is ample space on the subject property for any parking needed by a single-family residence or for the horse stable use.

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

There should be little odor, etc. from the approved uses at a single-family residence. There may be some associated impacts from the horse stable use, however, the stable has been in existence for 12 years and, during that time there have been a number of homes built within the near vicinity.

Recommendation

Staff finds that the proposed eligibility transfer meets the requirements of density zoning and that the use can be conducted in a manner that minimizes any impacts to neighboring properties. Staff recommended approval of conditional use permit #09-09 with the following conditions:

- 1) The property shall be platted and a right-to-farm notice covenant filed on the property prior to the issuance of any building permit.
- 2) If the home is placed in the southeast corner of the property, one of the existing driveways shall be used to access the home. If the petitioner wishes to place the home in the northwest corner of the property they shall obtain planning department approval for the specific location of the driveway onto 252nd Street prior to the issuance of any building permit.

Public Testimony

The petitioner, Patrick Glover representing HEEC Holdings, LLC, stated that the person who will be building a home had not decided which area of the land to build on.

Robert Songstad, 25188 468th Ave., is concerned about this transfer. Two new houses have been hauled in and now this. He is not opposed to a house in the SE by the barn, but does not want the house placed in the NW, closer to his own home. For environmental reasons he does not think it should be placed closer to the creek. He moved to the country to get away from other homes and traffic. He would like to see congestion away from his property.

Lance Albers, 46807 252nd St., would like to see the house in the SE not the NW. If he wanted to live in town he would. This is becoming an urban area out here. He is opposed to the transfer.

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

Commissioner Cypher stated that this is a legal transfer according to the zoning ordinance. This transfer is not infringing upon a livestock operation or a business, it follows the ordinance.

Action

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

ITEM 6. CONDITIONAL USE PERMIT #09-06 to allow a private outdoor recreation facility – apple orchard.

Legal Description - NW ¼ SW ¼ (Ex. S500' W920') in Section 4-T103N-R49W

General Information

Location – south edge of Baltic
Petitioner / Owner- Joel Clark
Present Zoning - A1 Agricultural
Existing Land Use - Agriculture
Parcel Size - 25 Acres

Report by: Scott Anderson

Staff Analysis

The applicant is requesting a conditional use permit to allow for a private outdoor recreational facility. They are proposing to operate an apple orchard as “entertainment farming”. The applicant has provided a narrative on the proposed operation, which is included for the Planning Commission’s review. In addition to just the production of apples, the applicants envision a retail store, agriculturally related festivals, a pumpkin patch, hay rides, live folk music, and a petting zoo. They will be hosting tours and fieldtrips as well. The applicant has indicated that the majority of activities will occur from August through December. The applicant is anticipating approximately 250 attendees at the proposed festivals on a typical apple picking weekend. The Planning Commission has limited other similar uses to a maximum of four (4) special events in a calendar year. In order to remain consistent, staff will also recommend that a maximum of four (4) special events be allowed per calendar year. A special event could last up to four (4) days. The narrative indicated that the hours of operation for the special events shall be between 9 a.m. and dusk. Staff will include these hours of operation in the recommended conditions of approval.

The subject property is located immediately south of Baltic. The applicant is proposing a retail sales building that will be approximately 2,000 square feet. The retail sales facility will focus on apple and apple related products.

The applicant is also proposing a small petting zoo consisting of 3-5 cages of domestic animals. Staff views this as accessory to the orchard and will recommend approval of this use, with a condition limiting the number of cages of animals. The animal waste must be disposed off on a regular basis, so as not to constitute a nuisance.

The applicant is proposing 2 signs to be located at the driveway entrance on 474th Ave. Each sign is to be 4 feet by 8 feet. Article 16.02(2) indicates that these signs would be governed through the conditions approved with this Conditional Use Permit. Staff feels that the two signs are reasonable in size and will recommend approval of both signs in the conditions of approval.

The applicant is also proposing to use the orchard as a rental facility offered for special events such as weddings, family reunions and company picnics. Staff can support this provided they do not occur during the same time as a special event being offered to the public and with limitations as to the number of attendees.

The applicant is proposing a concession stand which will offer food. A commercial kitchen is also being planned for in the future that would make pies, sauces, preserves

and such. Any commercial kitchen would have to meet the requirements of the S.D. Department of Health. The Planning Commission denied a similar request for a snack shop for a “you pick” facility located at the intersection of 256th Street and S.D. Highway 11. Staff feels that consistency is important and will not recommend approval for a snack shop, other than the sale of beverages and food during the four (4) special events. Likewise commercial kitchens have been treated as accessory use to the agricultural activities. Staff must be consistent and will recommend that the commercial kitchen shall be accessory to the orchard and shall not become a full service restaurant.

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 proposed use is based on the agricultural production of apples and other crops such as pumpkins. The applicant is diversifying the agricultural economy by offering specialized events that will focus attention on the agricultural product being grown. This diversified agricultural use should not impact the enjoyment of the properties in the vicinity and not impact property values either. The events and festivals will be limited in size so as not to overshadow the agricultural character of the apple orchard.

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

The proposed use should not impact the normal and orderly development of vacant property in the area. Some people may even feel that being located near an apple orchard is serene and pastoral.

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

The applicant has indicated that wastewater will be handled with a conventional wastewater system that will be located within the retail building and will provide porta-potties as needed for festivals. The S.D. Department of Environment will be required to review and approve the plans for the wastewater system located within the retail store since it would be classified as a commercial use.

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

The parking plan outlined in the narrative indicates that approximately 150 spaces will be created in and around the retail store. The parking area is to be gravel. Any over flow parking would be directed to the pasture immediately east of the retail center. Based on the approximately size of the proposed events, staff feels that a minimum of 150 spaces is adequate and will make this a recommended condition of approval.

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 applicant has indicated that any lighting installed on or around the apple retail building and/or parking area will be shielded and direct the light downward. They have provided information indicating how garbage and dust will be handled. Staff has indicated that dust during special events is to be mitigated. The applicant has indicated that dust control will be implemented on the major interior access ways.

Staff supports the request and finds that the proposed use is consistent with the intent of

the A-1 Agriculture zoning district. The applicant will be producing a crop and marketing it to the public. Furthermore, the applicant will be opening up the agricultural production to the public to enjoy. The use proposed by the applicant will diversify Minnehaha County's agricultural base. With proper conditions of approval, the proposed private outdoor recreational facility can blend in well with the agricultural uses in the vicinity.

Recommendation

Staff recommended approval of Conditional Use Permit #09-06 to allow a private outdoor recreational facility with the following conditions:

1. The private outdoor recreational facility shall remain secondary to the principal use of the property as a residential site and to the use of the property for agricultural production. If the residential use or agricultural production on the site ceases, the private outdoor recreational facility shall cease.
2. The owner or occupants of the single family residence shall be engaged in the operational of the private outdoor recreational facility. In addition, there shall be a limit of two full-time, non-resident employees, not to exceed 4 full time employees on site.
3. Two (2) illuminated signs shall be allowed up to 32 square feet. The design of the sign shall be approved by the Planning Department. A sign permit shall obtain before any signs are erected on the subject property.
4. All outside lighting shall be of a recessed style that directs light downward and prevents light spillage onto adjoining properties. The uses shall not result in any odor, dust or annoyance noise to adjoining properties.
5. The retail sales building shall be limited to 2,000 square feet.
6. A maximum of four (4) special events with an expected attendance of no more than 300 people shall be allowed in any calendar year. No special event shall exceed four days in duration. Hours of operation for special events, including preparation shall be from 6 a.m. to 10 p.m. The applicant may operate a snack shop during special events offering food and drink to the public.
8. At least two (2) weeks prior to any special event, the petitioner shall submit for the Planning Director's approval, an event plan that shows the location of proposed parking, numbers and placement of sanitary facilities such as port-a-potties and garbage dumpster, a plan of proposed signage for the event, and an emergency plan detailing procedures to be followed in case of severe weather and provision for first aid.
9. A petting zoo shall be allowed with a maximum of 5 cages displaying domesticated animals. The applicant shall keep the cages clean and dispose of waste in a manner that does not constitute a public nuisance.
10. A commercial kitchen facility shall be allowed only as an accessory use to the orchard and shall not become a full-service kitchen. The applicant will be required to obtain any permits required for the operation of a commercial kitchen from the S.D. Department of Health.
11. Apple picking, hayrides, the operation of the petting zoo and pumpkin picking shall not be considered as special events and can occur from August 1 through December 31. The retail store and commercial kitchen shall be allowed to operate year round.
12. The applicant shall obtain a sales tax license from the S.D. Department of Revenue and collect sales tax on items as required by the state.
13. The applicant shall maintain a minimum of 150 parking spaces and have an overflow parking area available. No customer or guest parking shall be allowed on 474th Avenue.
14. The on-site wastewater disposal system located within the retail sales center shall

be reviewed and approved by the S.D. Environment of Natural Resources prior to installation. An on-site wastewater system permit shall also be obtained from the Minnehaha County Planning Department.

15. The applicant shall control the dust on the interior access roads of the subject property.
16. Weddings, company picnics and family reunions shall be allowed at the private outdoor recreational facility provided the maximum number of attendees does not exceed 250 and shall not constitute any of the four (4) special events.

Public Testimony

Mr. Anderson presented the Planning Commission with a letter and site plan maps which had been submitted after the staff report had been written and sent out. In response to the Commission, Mr. Anderson explained that access to the site is from a graveled, township road and the driveway and parking areas at the orchard would be graveled. He feels that people coming from Sioux Falls to the orchard would travel north on Hwy 115 then head west on Hwy 114, then south through Baltic, sticking to paved roads.

The petitioners, Laura and Joel Clark, used a powerpoint presentation to help the Commission envision what their orchard would develop into. They explained that they would like to increase the size of their building from 2,000 square feet to 3,608 square feet. This would allow them indoor space for a stage for musical acts. Moving the music indoors was in response to concerns that music would be a nuisance to the neighbors. This large building would also contain the apple sorting and washing area, walk in cooler, commercial kitchen and the retail area. Ms. Clark would like to bring tours to the orchard, especially children, so they will get to experience farm production. The retail area will feature apples, and apple related products such as apple butter, apple bread and apple soap.

They plan to have four festivals per season to be held indoors or outdoors, depending on the weather. Ms. Clark explained that having 300 people would be a dream, she envisions much smaller crowds. She continued, saying dust control would be provided by Environmental Dust Control, Inc., out of Minnesota, which uses soybean soapstock. Ms. Clark stated this would be applied to the driveway, parking lot, and the township road from Bulldog Ave. south to their driveway. This type of dust control needs to be applied only once a year and is supposed to work even if it is displaced. Commissioner Cypher doubted that the dust control would work if the road was bladed and re-graveled.

In response to Commissioner Kelly, Mr. Clark explained that weddings would have to be catered and the food brought from the outside. The kitchen will only be used to produce apple products such as cider or apple pies. The bulk of the building is used for the retail store and apple washing and storage.

Joel Hazel, 25061 Sverdrup Ave., is a Sverdrup Township Supervisor. Wayne Mohr was also present for the township. The main concern with the orchard is the gravel roads and the potential increase in traffic on them. He showed pictures of the road, noting the hills and that the speed limit was 55 mph. Mr. Hazel explained that 474th Ave. is gravel from Bulldog Ave. south to 251st St., $\frac{3}{4}$ of a mile. 474th Ave. is heavily traveled at harvest time. Mr. Hazel stated that the township does not provide dust control. With 52 miles of road it is fiscally impossible. He added that once the road is bladed, the dust control is gone. Add gravel, it's gone.

Mr. Hazel also raised concerns about the parking areas for the orchard. If it rains, people are going to want to park on the road as it will be a muddy mess in the overflow parking.

There can not be any parking on the roadway. Mr. Hazel addressed the issue of how people will get to the orchard. He stated that people will come from all directions and that people will take the gravel roads to go the shortest distance. The roads were not designed to handle this much traffic. While the applicant stated that there would be less than 300 people, how can you control how many will show up when something is advertised in the paper. He had received a phone call from the neighbor to the south worrying about traffic and dust control. He estimates that it will cost approximately \$5,000 to apply dust control once on the $\frac{3}{4}$ mile distance.

Commissioner Kelly asked if the township was against economic development. Mr. Hazel replied that he is representing the township and its concerns. There will be an issue with traffic on the roads. 474th Ave. carries semis, tractors, and trucks all going to the elevator in Baltic. The township also has no control over the speed limit. Mr. Kelly stated that the County can control the speeding, just like it is done anywhere else. Put up signs and hope people obey them. Mr. Hazel stated that he is the one who will get the calls with people complaining about the condition of the road.

Ms. Clark stated that they plan to grow 3 kinds of apples with different mature dates – Aug. 25th, Sept 1-12, and Oct. 1st. The bulk of their business will be done before harvest really kicks in. They may do some things in December like sell Christmas trees.

Mr. Anderson stated that he did not feel site distance would be an issue with the driveway location.

Commissioner South stated that a letter had been submitted on February 18th from the Clark's attorney, drastically changing the square footage of the building. This was last minute. Mr. Anderson stated that he had had an interesting time with this request as the information came in at intervals. He got that letter last Thursday. Now tonight there is brand new information, like the sale of Christmas trees. That would be a violation of the permit.

Ms. Clark spoke up and said she had not realized that was a violation. They will not sell Christmas trees. She stated that this was the first time they have applied for a conditional use permit and they are somewhat ignorant about the process. Commissioner Cypher said that in order to avoid problems, the Planning Commission has to be specific on the conditions, so they need to know about all the plans the petitioner may have. Commissioner Kelly stated that the petitioner are savvy enough that they should know to call the Planning Department if they have questions on whether something is allowed or not.

Commissioner South floated the idea that this item be deferred for one month to allow staff time to review the new material. It would also allow the petitioners time to meet with the township. Commissioner Cypher stated that he was not opposed to an increase in size to the building. There are other buildings that size in the area. The township will be affected the most as they will get all the calls.

Mr. Clark stated that he did not want to wait a month on this request. He has lined up a builder for the house and a delay will increase the cost of materials and expense as crews will be unavailable. They already know they will not meet the 2010 deadline for some of the trees they need and want to get an order in. Mr. Clark explained that they increased the size of the building to respond to outside info that came to them expressing concerns over noise issues.

Commissioner South stated that the Planning Commission had just received the latest

information from them when the meeting started. It is not fair to the County to try and digest this information on such short notice. Mr. Clark responded that the information only kept changing as staff kept asking for more information. They were initially told they only needed a short paragraph on the orchard and a basic site plan. He feels that proper direction was not given by the staff.

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

Commissioner Kelly stated that time seemed somewhat of the essence and that he was not concerned about the size of the building. Over half of that will be used for apple cleaning and cooling. This will be a neat deal. Commissioner Kelly stated that he didn't think people would come to this site from the south, but he really didn't have anything to base that statement on.

Commissioner Cypher disagreed, saying traffic will come from all areas. He suggested that any brochures or advertising show access as only coming from the north. This is agri-tourism and it is an appropriate use at this site. He also has no problem with the size of the building.

Action

Based on the staff report, a motion was made by Kelly and seconded by Cypher to **approve** Conditional Use Permit #09-06, amending condition #5 to read:

5. The retail sales building shall be limited to 3,608 square feet., and the remaining conditions as stated. The motion passed unanimously.

ITEM 7. CONDITIONAL USE PERMIT #09-10 to allow an ethanol plant.

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

General Information

Location – 8 miles southwest of Humboldt
Petitioner / Owner- Genesis Ethanol I / Walter Bones
Present Zoning - A1 Agricultural
Existing Land Use - Agriculture
Parcel Size - approximately 5 Acres

Report by: Phil Kappen

Staff Analysis:

The subject property is located west of 459th Avenue (Co. Hwy 159) and north of 268th Street (Co. Hwy 150). Access to the site is from Hwy 150.

The subject property was recommended for rezoning to I-2 Industrial by the Planning Commission at their January 26, 2008 meeting. The petitioner, on the assumption that the county commission will approve the rezoning, has made an application for a conditional use permit to allow an expansion of their existing ethanol plant. They realize that should this conditional use permit be approved, it is only with the stipulation that the CUP cannot go into effect until such time as the rezoning becomes effective.

The petitioner currently has approval for a 1.5 million gallon ethanol plant on the site and is planning an expansion which could ultimately reach 6 million gallons of production. The size of this plant has been somewhat of a moving target. In the initial application submitted by the petitioner a 1.25 million gallon plant was requested. Then, at the planning commission meeting, the petitioner changed their request to 1.5 million gallons. Later last year the petitioner applied to amend the CUP to allow 2 million gallons of production and noted that it could go as high as 2.2 million gallons. That application was subsequently withdrawn. They now plan to construct a 4 million gallon plant, but have indicated that it could go as high as six million gallons. Staff believes that, if approved, the plant should be allowed to go to the 6 million gallon level to allow some additional expansion.

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 has been an existing grain elevator and feedlot on this property for many years. The site also has contained an existing farm-sized ethanol plant which was originally approved in 2008. With the existing plant at the site, and given the size of the proposed expansion, there should be a minimal change in potential effect on neighboring properties with the exception of additional truck traffic.

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

The subject property will be zoned I-2 and is located at a site that the county's comprehensive plan finds as a suitable location for commercial or industrial properties. Surrounding properties are largely in agricultural production, a use for which they are

planned to continue and one that the proposed use supports. The primary access will be from the county highway so the existing infrastructure is available to support an increased number of trucks.

The maximum height for buildings in the I-2 district is 55 feet. This excludes accessory uses such as chimneys. No structures should exceed that height without first receiving a variance.

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

The site is accessed from County Highway 150, a hard-surfaced roadway. The county ordinance specifies that all commercial or industrially-zoned properties that access a hard surfaced road must have all driving and parking areas hard-surfaced. The eastern driveway for the plant, as indicated on the petitioner's site plan, lies within the industrially-zoned area and must, therefore, be hard-surfaced. The western driveway for the facility passes into A-1 Agricultural property. There is no automatic requirement for hard-surfacing of this driveway, however, the county may require this as a part of any permit conditions. Due to the shifting nature of the proposed plant size, there is a potential for increased truck traffic which should require that the west driveway also be hard-surfaced if it is to be used for access to the plant.

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

There is ample space on the site for any required parking area. There will be a minimal number of employees located at the plant and likely a minimum number of customers and/or visitors at any particular time so only five hard-surfaced parking spaces should be necessary to handle potential cars or pickups. The plant sets a considerable distance off the road, and the number of trucks coming to the plant at any one time should not be excessive so the available on-site stacking area for trucks is adequate. No parking should be allowed on the county highways.

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.

Due to the potential for nighttime operations, care must be taken that outdoor lights on this property do not cause nuisance conditions on any adjoining properties. There are no immediate neighbors, however, so ensuring that any outdoor lights are fully shielded is adequate. Full shielded means that the actual light source (bulb, lamp, or reflector) is not directly visible from beyond any property boundaries.

The plant should be required to meet or exceed any EPA emission standards.

Recommendation

Staff finds that the proposed use is in conformance with the types of uses found in I-2 zoning and that the use can be conducted in a manner that minimizes any potential impact on neighboring properties. Staff recommended approval of Conditional Use Permit #09-10 with the following conditions.

- 1) Ethanol production at the plant shall be limited to a maximum of 6 million gallons per year without further review by the county.

- 2) The plant shall obtain any required federal or state permits, including any applicable emission permits, and shall provide documentation of such permits to the county prior to commencing any expanded operations.
- 3) At a minimum, the eastern driveway from 268th Street and five parking spaces shall be hard-surfaced. The western driveway shall also be hard-surfaced if it is used for access to or from the plant.
- 4) All parking of trucks and equipment shall be contained on the site. No parking shall be allowed on any public right-of-way.
- 5) The plant shall meet or exceed all EPA emission standards. Any required testing or monitoring to document emissions shall be paid for by the ethanol plant operations.
- 6) All outdoor lights shall be fully shielded so that the actual light source is not directly visible from beyond the property boundaries.

Public Testimony

The petitioner, Walt Bones, stated that if the Planning Commission was willing, he only needed to discuss the requirement of hard surfacing and did not need the entire staff report read. No one else was in the audience for this item so the floor was turned over to Mr. Bones.

Mr. Bones presented the Commission with a handout detailing his traffic load estimates, the Zoning Ordinance improvement and maintenance standards, and an aerial map showing the three roads/driveways accessing his farmstead. The driveways were numbered from east to west, the easternmost driveway being #1.

Mr. Bones stated that if Section 15.04(B) applied to his farmstead he has no opposition to the conditions. He believes this is the section that should apply as his driveways are already gravel.

Section 15.04(B). If a driveway, parking lot or loading/unloading area is not hard surfaced with concrete or asphalt, a gravel surface shall be provided. The gravel surface shall be maintained to a minimum thickness of at least four inches.

Mr. Anderson stated that Section 15.04(A) applies as the petitioner's driveways take access from a hard surfaced road. If the petitioner's land took access from a gravel road, then Section 15.04(B) would apply. In this case, access is from a county highway, therefore Section (A) applies, and the driveways must be hard surfaced.

Section 15.04 (A) Any driveways, parking lots, or lading/unloading areas in a commercial or industrial zoning district shall be constructed with a hard surface when the property is accessed from a hard surface road.

Mr. Bones respectfully disagreed, saying Section(B) states that his driveways should be gravel. He has 1880 feet that would have to be hard surfaced. This is absorbedent for 4 trucks a day. The 1880 feet covers entering into driveway 1, traveling to the ethanol plant in the farmstead, and exiting with driveway 3. The suggested route is one way. He does have the parking area already in asphalt or concrete so parking is not an issue. The driveways have been there since 1960. He has been feeding cattle there since then. Last year he probably hauled 20 million pounds of feed back and forth across those driveways. Mr. Bones stated that he would put them up against any county or highway road. The driveways have a rock base. If access is the challenge, he has no problem driving in and out on those driveways. The corn will come in on driveway 3 to the bins, and exit on driveway 2, unless the wind direction requires the process to be reversed.

Mr. Anderson stated that staff does not have any authority to change the ordinance. It is

a requirement that can not be waived. This would be required whether or not it was listed as part of the conditions. The applicant could apply for a variance, but variances are based on physical hardships. This is not a physical hardship, but a financial hardship which doesn't meet the standards for granting a variance.

In response to Commissioner Kelly, Mr. Bones stated that it would cost \$50,000 to pave 1/3 of a mile. That would include the gravel, grading, packing, and the paving. Commissioner Kelly stated that the product from the plant will be sold. He wondered about the cost of the plant. Mr. Bones stated that the plant itself cost about \$2 million.

Gordy Swanson, State's Attorney's Office, stated that Section A would apply as this plant will be accessed from a hard surfaced road. Section B appears to apply in those instances when you would not be accessing from a hard surfaced road, but from gravel. It may be unfortunate in how it is worded, but this is the intent of the ordinance. People using gravel would go onto gravel, people using hard surfacing would go onto hard surfacing.

Commissioner Rogen wondered if this was grandfathered in site, given that the zoning was just changed. The commercial business, the elevator, has been there forever. Mr. Swanson stated that it would be grandfathered in at the level of the existing use, but not for the expanded use being contemplated here. So, the answer is no.

Commissioner Cypher stated that the other conditions are fine. The hard surfacing is the only issue. The Planning Commission needs to follow the attorney's recommendation. He has seen these roads and you don't see much dust around here ever. It does make it difficult to support the hard surfacing requirement.

Commissioner Kelly stated that this was set back a long way from the road. Does the entire driveway need to be done? Commissioner Cypher wondered if a compromise might be to pave only the first 250'-300' feet of the driveways? Is that unreasonable? Commissioner South called for a motion so discussion could occur.

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

Action

Based on the staff report, a motion was made by Rogen and seconded by Cypher to **approve** Conditional Use Permit #09-10 with the conditions as stated.

Commissioner Cypher stated that the biggest reason for hard surfacing is not to drag gravel out onto the road. Commissioner South stated that this has been required in all of our other commercial/industrial areas, at interstate intersections, and at crossings of state or county highways. He has nothing against changing the requirement to make only a percentage of the driveway be paved, but once you do this it is beyond slippery, it's a greasy slope to only require a certain percentage to be hard surfaced. We are still struggling with businesses in the Renner/Crooks exit to be brought up to standard, and Dell Rapids exit has properties still under enforcement. Commissioner South stated that Mr. Bones came to us with the rezoning. Commissioner Kelly stated that then the staff adds conditions on what has to be done. Mr. Bones didn't request a hard surface road, but I understand that when you make exceptions you really get yourself in a bind.

Commissioner Cypher stated that he wished Mr. Kappen (staff member) was here because he had told Mr. Bones that if he paved the first 250 feet that he wouldn't have to worry about the rest of it. This is unfortunate that it was brought up because it should not have even been said. Mr. Bones concurred that Mr. Kappen had made that statement.

Commissioner Cypher continued, saying that the worse thing we face is precedence. Commissioner Kelly stated that the main reason for the ordinance is to prevent gravel and mud being kicked out onto the road. That is a bad situation when this occurs. Commissioner Kelly can't image that \$25,000 or \$50,000 is going to jeopardize this project. Commissioner Rogen stated that the ordinance says they shall hard surface. They are going to have to do it. Can they have a time frame in which to get this done?

Mr. Anderson stated that one option would be to redesign the area and to reduce the length of the road. Perhaps they could come in driveway 1 and exit on driveway 2, or come in driveway 1 and make a loop and exit by the same driveway. There are some options here to shorten the length of the driving surface. Mr. Anderson also stated that he would work with the petitioner on a flexible schedule for hard surfacing. It would not be required to all be hard surfaced at one time.

Commissioner Kelly stated that at least half the length would need to be done no matter what. So the cost would be about \$25,000 on a \$2 Million project. Commissioner Cypher stated that we must go by the requirements of the Zoning Ordinance which is the law. He also suggested that Section (B) be rewritten so that it is clearer to the lay person. Mr. Anderson noted that the Buffalo Ridge ethanol plant was required to hard surface. Commissioner Cypher stated that Mr. Bones could get by with less hard surfacing if the trucks made a loop and he does have some options to reduce the cost.

A vote was taken on the motion. The motion passed unanimously.

ITEM 9. CONDITIONAL USE PERMIT #09-11 to allow the transfer of one building eligibility from the SE ¼ SE ¼ to the SW ¼ SE ¼; all in Section 13-T102N-R51W.

General Information

Location – 1.5 miles east of Hartford
Petitioner / Owner- Jeff Zacharias
Present Zoning - A1 Agricultural
Existing Land Use - Agriculture
Parcel Size - 40 Acres

Report by: Pat Herman

Staff Analysis:

This is an application to transfer one residential building eligibility. The property is located approximately 1.5 miles east of Hartford. The surrounding land use is predominately agriculture with a few scattered acreages. The petitioner would be transferring a building eligibility from a quarter-quarter which contains flood plain and has access issues due to Skunk Creek.

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.

An increase of residential structures in a farm production area will have an impact on those activities. However, this transfer of building eligibility does not exceed density zoning. The transfer does place a dwelling unit directly across from the feed lot.

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

The transfer of this building eligibility will preserve some crop ground and moves the eligibility from an area with limited access.

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

Access to the site is from Skunk Creek Road. Hartford Township does not require driveway permits.

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

A minimum one acre lot will provide sufficient parking area for uses associated with a single family dwelling.

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 single family dwelling will not create any of the above listed items at the level to constitute a nuisance.

Transfer of the eligibility will preserve some crop ground and allow for the clustering of two dwellings. At the same time it will move eligibility directly across from an existing feedlot, creating the potential for conflict between two competing land uses. Residential

units located close to feeding operations often hinder or impede the expansion of such facilities.

Transferring eligibility requires a conditional use permit to ensure that the new location will not negatively impact the surrounding land uses. In this instance, the transfer has the potential to limit the expansion of an existing feeding operation. Denial of the transfer would impede the applicant's ability to use the eligibility in its assigned quarter-quarter due to Skunk Creek and the amount of property in the floodplain. There is property with in the SE ¼ SE ¼ , south of Skunk Creek which could be accessed from either Skunk Creek Road or the existing road leading down into the mining area, however this is not an ideal building site.

Recommendation

The A1 Agricultural District was established to preserve and promote the farming industry. Both the adopted Zoning Ordinance and the Comprehensive Plan recognize the conflicts that arise when residential uses are placed in close proximity to an agricultural use and this is especially true when that agricultural use is a feed lot. Staff recommended denial of Conditional Use Permit #09-11.

Public Testimony

The petitioner, Jeff Zacharias, stated that he is from the country and understands what goes on in farms. All the neighbors have come tonight in support. He presented the Planning Commission with the following letter of support from the property owner of the feed lot:

Bernice Rubach
304 E 2nd st.
Hartford, SD 57033

February 19, 2009

Minnehaha County Planning Commission
415 N. Dakota Ave.
Sioux Falls, SD 57104

To whom it may concern:

In regard to Justin Zacharias wanting to move the building eligibility located across from my property on Skunk Creek Ave, Hartford South Dakota. I have no objections what so ever to this request and feel the requested location is a fine place for a home. The Zacharias' have always maintained good relationships in the community and I foresee no problems with the proposed arrangement.

I no longer reside on my property on Skunk Creek Ave. I rent the property to Robert Person. I authorize Mr. Person to appear as my personal representative

in this mater.

Bernice Rubach (signature)

Jeff Zacharias explained that they are in the final stages of mining in the pit to the east of this location. The new house would share the haul road driveway.

Justin Zacharias, 5401 W. 23rd St., stated that he and his finance would live in the house. He has talked with Robert Person who runs the feed lot and is willing to put a letter together stating that he will not oppose any expansion of the feed lot. He does not think the smell is an issue and doesn't care what Mr. Person does on his property.

Robert Person, 25875 Skunk Creek Rd., lives at and runs the feed lot. He has no problem with a house being built across the street. As long as they don't care, he doesn't have a problem. He is not planning to increase his head count.

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

Commissioner South commented that this was a strange one. Commissioner Cypher stated that the staff recommendation was understandable and the Planning Commission has denied these types of requests. However, the farm operator is not opposed.

Commissioner South stated that if this is approved it should have the conditions of being platted, right-to-farm notice, and shared driveway.

Action

Based on the staff report and public testimony, a motion was made by Cypher and seconded by Kelly to **approve** Conditional Use Permit #09-11 with the following conditions:

- 1) The lot shall be platted and a right to farm notice filed on the deed of the lot prior to the issuance of a building permit.
- 2) Access to the dwelling shall be a shared driveway with the gravel pit haul road.

The motion passed unanimously.

Old Business

Mr. Anderson stated that the Comprehensive Plan Committee had reviewed the introduction portion of the plan. Toby Brown with SECOG is working on another chapter and the committee will meet in March to start revisions.

New Business

Commissioner Kelly raised a concern about a building which has been constructed at 6805 N. 9th Ave. in Meadow View Tracts. This "house" was constructed with 720 sq. ft. of living space and a 4800 sq. ft. attached garage. Commissioner Kelly had received a complaint that this is just a big shed which might be used for a business. He is raising the issue to see if a size limit should be placed on attached garages. Mr. Anderson explained that the building met the zoning ordinance requirements for a single family dwelling so a permit had to be issued. It was constructed to the IBC for a dwelling. He has talked with the owner who stated that it would not be used for a business but to store his personal

belongs such as a trailer, snow mobiles, boat, etc. His son will be living in the dwelling space. The Commission noted that this was not ideal but legal. There was no support for limiting the size of an attached garage, especially since large attached garages have become the norm on new construction.