

**MINUTES OF THE
MINNEHAHA COUNTY PLANNING COMMISSION**
April 20, 2009

A meeting of the Planning Commission was held on April 20, 2009 at 7:00 p.m. in the Commission Room of the Minnehaha County Administration Building.

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

STAFF PRESENT: Scott Anderson, Phil Kappen and Pat Herman -County Planning
Dustin DeBoer – Office of the State's Attorney

The meeting was chaired by Don South.

CONSENT AGENDA

At the request of the Commission, Item 5 was placed on the regular agenda. There being no other objections from the Planning Commission or audience, a motion was made by O'Hara and seconded by Rogen to approve the consent agenda (Item 5 removed). The motion passed unanimously.

ITEM 1. MINTUES – March 23, 2009

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

ITEM 2. CONDITIONAL USE PERMIT #09-25 to allow the transfer of 1 residential building eligibility from the SW ¼ NE ¼ to the NE ¼ NE ¼ in Section 9-T102N-R47W.

General Information

Location – 3 miles south of Garretson
Petitioner / Owner- H. Gerald Bly
Present Zoning - A-1 Agricultural
Existing Land Use - Agricultural
Parcel Size - 40 Acres

Report by: Scott Anderson

Staff Analysis

The applicant wants to transfer a land locked eligibility from the SW ¼ of the NE ¼ to the NE ¼ of the NE ¼ to allow for a home to be built for his son. The proposed building site would be located east of the existing farmstead near the intersection of 257th Street and 487th Avenue.

On April 2, 2009, staff conducted a site visit. In addition to the applicant's farmstead there is another existing farm located approximately ½ mile west on 257th Street. The applicant has indicated that there are no animal confinement operations near the location of the transfer. There are several single family residents located to the north, northeast and south of the subject property. There are over eleven (11) single family residences located within a one (1) mile radius of the subject 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.

A right-to-farm notice covenant should be required to notify potential buyers to the realities of locating in an agricultural area.

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

The transfer of the building eligibility does not increase the number of dwelling units allowed in this quarter.

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

Rural water is available in the area and a waste water system will be utilized. The applicant has indicated that the proposed building site will not share an approach with any other residence. This will then add an additional approach onto either 257th Street or 487th Avenue. Red Rock Township will have to approve the location of the proposed driveway approach prior to a building permit being issued.

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

Off-street parking requirements will be provided for once a single-family residence is constructed on the subject property.

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

The proposed conditional use will not cause odor, fumes, dust, noise, vibrations or lighting in any amounts that would constitute a nuisance.

Recommendation

Staff found this conditional use permit request to be consistent with density zoning and recommended approval of Conditional Use Permit #09-25 with the following condition:

- 1) The lot shall be platted and a right-to-farm notice covenant shall be placed on the deed prior to the issuance of a building permit.
- 2) That Red Rock Township shall approve the driveway approach prior to a building permit being issued.

Action

Based on the staff report, a motion was made by O'Hara and seconded by Rogen to **approve** Conditional Use Permit #09-25 with the stated conditions. The motion passed unanimously.

ITEM 3. CONDITIONAL USE PERMIT #09-26 to allow outside storage for personal and rental purposes.

General Information

Legal Description - Lot 1 Block 3 Brower's 2nd Addition SW ¼ in Section 27-T102N-R51W
Location – 26075 Jesse St. south edge of Hartford
Petitioner / Owner- Kevin Maras
Present Zoning - I-1 Light Industrial
Existing Land Use - Vacant
Parcel Size - 1 Acre

Report by: Phil Kappen

Staff Analysis:

The subject property is located in Brower's Addition, a commercial/industrial subdivision in the southeast quadrant of the I-90/Hartford Exit. Properties to the west, south and east are in existing commercial uses. The property to the north is vacant commercial property. The lot sits at the northwest corner of Jeffrey Street and Jesse Street. The petitioner proposes a screened outdoor storage area and in the future will add a storage building.

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

The use is consistent with the other properties in the area. The lot immediately to the north and that one to the northeast have also been approved for storage uses, however, those lots are not permitted for outside storage. In order to maintain the appearance of the subject property any outside storage should be screened. The use of visual screening is consistent with precedents that have been established in the area. Although it is not specifically noted on the site plan, it is assumed that the eastern boundary of the property is the eastern property line (right-of-way) and is not the edge of the road. The proposed 30-foot setback would then be from the right-of-way line.

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

The other lots in the immediate area will likely be developed with compatible uses. The proposed use will not impact the development of those lots.

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

The property will be accessed via Jesse Street to the east, a hard-surfaced road. The driveway onto Jesse will have to be hard-surfaced, however, the area within the screened storage area may have a gravel surface. The proposed use will not require few utilities at this time.

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

At this time, all storage and outdoor parking will need to be contained in the screened storage area. When a building permit is taken out for the proposed building in the future paved parking spaces (the number of spaces based on the size of the building) and paved

driveways will need to be provided.

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

Although it is not indicated on the site plan, it is likely that some form of security lighting will be required at the site. Any lighting should be of a full-cutoff and fully shielded type that prevents light from being directed upward and prevents a direct view of any light source (build, lamp or reflector) from off the site.

Recommendation

Staff found that the proposed use is consistent with the types of uses found in commercial or industrial areas and recommended approval of conditional use permit #09-26 with the following conditions:

- 1) All aspects of the operation shall conform to the site plan submitted as a part of the application. This shall include all fence setbacks from publicly dedicated right-of-ways. At such time as the petitioner proposes to construct the building, they shall prepare a revised site plan that shows all additional driveways and required parking areas.
- 2) All outside storage on the site shall be screened from public view by a minimum 6-foot high screening fence maintained with a minimum of 90% opacity over the full height of the fence. The fence shall be of earth-tone colors.
- 3) The business operator shall obtain and maintain a South Dakota sales tax license.
- 4) Any exterior lighting on the site shall be of a full-cutoff and fully shielded style.
- 5) Any signs shall meet the requirements of the Minnehaha County Zoning Ordinance and a building permit shall be obtained prior to the erection of any sign.

Action

Based on the staff report, a motion was made by O'Hara and seconded by Rogen **approve** Conditional Use Permit #09-26 with the stated conditions. The motion passed unanimously.

ITEM 4. CONDITIONAL USE PERMIT #09-27 to transfer one building eligibility from the NE ¼ SE ¼ of Section 34-T103N-R48W to the SE ¼ SW ¼ (to be platted as Tract 9 Grimmus Addn.) in Section 35-T101N-R48W.

General Information

Location – 1.5 miles south of Rowena
Petitioner / Owner- Earl Grimmus
Present Zoning - A-1 Agricultural
Existing Land Use - Agriculture
Parcel Size - 40 Acres

Report by: Pat Herman

Staff Analysis:

This is a request to transfer one residential building eligibility. The property is located approximately 1 ½ miles south of Rowena. Land use in the area is a mixture of farm and residential uses. The applicant is applying to move the eligibility from a land locked quarter-quarter to a site with road access.

There is an existing feedlot to the east of the proposed site, but this is owned by the petitioner. He is aware of the conflicts which can occur by moving residential uses closer to agricultural operations.

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

A right-to-farm notice covenant should be required to notify potential buyers to the realities of locating in an agricultural area.

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

This transfer should not negatively affect development in this area.

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

Rural water is available in the area and a waste water system will be utilized. Access will be to County Highway 150. An access permit will need to be obtained from the Highway Department.

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

Off-street parking requirements will be provided for once a single-family residence is constructed on the subject property.

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

The proposed conditional use will not cause odor, fumes, dust, noise, vibrations or lighting in any amounts that would constitute a nuisance.

Recommendation

Staff found this Conditional Use Permit request to be consistent with density zoning and recommended approval of Conditional Use Permit #09-27 with the following conditions:

- 1) The lot shall be platted and a right-to-farm notice covenant shall be placed on the deed prior to the issuance of a building permit.
- 2) Minnehaha County Highway Department shall issue a written driveway permit prior to the issuance of a building permit.

Action

Based on the staff report, a motion was made by O'Hara and seconded by Rogen to **approve** Conditional Use Permit #09-27 with the stated conditions. The motion passed unanimously.

**ITEM 5. CONDITIONAL USE PERMIT #09-28 to exceed 1200 sq. ft. of
accessory building area, 1780 square feet requested.**

Item 5 was placed on the regular agenda.

- ITEM 6. CONDITIONAL USE PERMIT #09-29 to transfer two residential building eligibilities from the SE ¼ NW ¼ & the SW ¼ NW ¼ to Shumaker's Addition Lot 2 NE ¼ NW ¼; all in Section 16-T103N-R52W**
Location – 6 miles north of Humboldt
Petitioner / Owner- Susen Shumaker / Don Shumaker

General Information

Location – 6 miles north of Humboldt
Petitioner / Owner- Susen Shumaker / Den Shumaker
Present Zoning - A-1 Agricultural
Existing Land Use - Agriculture
Parcel Size - 40 Acres

Report by: Pat Herman

Staff Analysis:

This is a request to transfer two residential building eligibilities. The property is located approximately 6 miles north of Humboldt. Land use in the area is predominately agricultural. The applicant is applying to move the eligibilities from land locked quarter-quarters to a site with 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.

A right-to-farm notice covenant should be required to notify potential buyers to the realities of locating in an agricultural area.

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

This transfer should not negatively affect development in this area.

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

There is an existing access on the east end of the site. Clear Lake Township does not require driveway permits. It has not been determined what size lots will be created. Staff would encourage the use of a shared driveway if at all possible.

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

Off-street parking requirements will be provided for once a single-family residence is constructed on the subject property.

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

The proposed conditional use will not cause odor, fumes, dust, noise, vibrations or lighting in any amounts that would constitute a nuisance.

The transfer will move the two building eligibilities onto a platted lot. If this lot is going to be subdivided into two housing sites, the lots should be replatted. Staff will make this a recommendation.

Recommendation

Staff finds this Conditional Use Permit request to be consistent with density zoning and recommends **approval** of Conditional Use Permit #09-29 with the following conditions:

If Lot 2 is subdivided, the lots shall be platted and a right-to-farm notice covenant shall be placed on the deeds prior to the issuance of a building permit.

Action

Based on the staff report, a motion was made by O'Hara and seconded by Rogen to **approve** Conditional Use Permit #09-29 with the stated condition. The motion passed unanimously.

ITEM 7. CONDITIONAL USE PERMIT #09-31 to exceed 1200 sq. ft. of accessory building area – 2496 sq. ft. requested.

General Information

Legal Description - Tr. 6 Splitrock Estates NE ¼ of Section 35-T102N-R48W
Location – 2303 E. Redwood Blvd. northeast edge of Brandon
Petitioner / Owner- Vernon Smith
Present Zoning - A-1 Agricultural
Existing Land Use - Residential
Parcel Size - 7.3 Acres

Report by: Scott Anderson

Staff Analysis

The petitioner's requested size of 2,496 sq. ft. is smaller than the largest existing accessory buildings in the area located at 2020 E. Redwood Boulevard (11,750 square feet) and 2301 Oak Hill Circle (3,200 square feet). There are several other large accessory buildings located in the area. The petitioner's requested size of 2,496 sq. ft. would be consistent with the accessory building square footage on the other properties in the neighborhood.

The property is located approximately 1/2 mile east and north of Brandon. The parcel is part of a group of residential lots platted as Splitrock Estates.

The petitioner would like to construct an accessory building on this site. In subdivisions or residential developments which exceed four lots in size, accessory building area is limited to 1200 sq. ft. unless approval for a larger size is obtained through the conditional use permit process.

The petitioner's requested size of 2,496 sq. ft. is smaller than the largest existing accessory buildings in the area located on parcels to the south, southeast and northwest.

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.

Given the existence of other larger accessory buildings, the construction of this structure should not impede on the enjoyment or use of the surrounding properties or effect property values.

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

The building can only be used for the personal storage of the petitioner's residential related items and no commercial or business activities are allowed.

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

There is existing access from E. Redwood Boulevard. As this is only an accessory structure, no other infrastructure is required.

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

There is sufficient parking for any residential activities.

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

There should be no offensive odors, fumes, dust, noise or vibration from the allowed residential uses on this property.

Staff finds that the requested conditional use is appropriate for this residential area. The recommended conditions of approval will help to ensure the over-sized building will be in character with the surrounding area. The Planning Department will perform a building inspection to measure the size of the structure. Measurements are taken of the outside perimeter.

Recommendation Staff finds that the proposed building size conforms to the general sizes of other accessory buildings in the area. Staff recommended approval of conditional use permit #09-31 with the following conditions:

- 1) The total accessory building square footage shall not exceed 2,496 square feet.
- 2) The building shall be used only for the petitioner's personal residential storage. No commercial or business uses or storage shall be allowed.
- 3) The building shall not exceed one story in height.
- 4) A building inspection is required.

Action

Based on the staff report, a motion was made by O'Hara and seconded by Rogen to **approve** Conditional Use Permit #09-31 with the stated conditions. The motion passed unanimously.

ITEM 8. CONDITIONAL USE PERMIT #09-21 to amend CUP # 05-75 and #06-19 by reducing the required groundwater monitoring frequency.

General Information

Legal Description - Tr. 2 Ode Addition S ½ SE ¼ in Section 22-T101N-R48W
Location – 48170 266th St. 3 miles south of Brandon
Petitioner / Owner- Royalwood Farms by Gregg Ode
Present Zoning - A-1 Agricultural
Existing Land Use - Agriculture
Parcel Size - 103.73 Acres

Report by: Phil Kappen

Staff Analysis:

The subject property is located on the north side of 266th St., ¾ mile east of SD Hwy 11 (481st Ave.). A conditional use permit authorizing a dairy operation was approved at this site in 2005 and amended in 2006. The permit, as it currently exists, includes the following conditions:

- 1) The facility shall be limited to a total of 440 Animal Units.
- 2) The petitioner shall manage all agricultural waste according to an approved nutrient management plan that has been prepared with consideration to both nitrogen and phosphorus nutrients. The plan shall be kept up-to-date and a copy of the approved plan shall be filed with the Minnehaha County Planning Department.
- 3) The operation shall conform to the site plan dated March 3, 2006.
- 4) At a minimum, the existing tree plantings shall be maintained on the west and north sides of the property.
- 5) A minimum of four test wells (at least one well upgrade and three wells downgrade) shall be established at the facility. At a minimum, the wells shall be tested for the water quality parameters of ammonia, chlorides, nitrates, sulfates, total dissolved solids and depth to water to determine any impact to ground water. Quarterly testing shall be required during the first year. If no water quality problems are detected, testing may be reduced to a semi-annual frequency in following years upon approval of staff. The petitioner shall also provide the county with results of groundwater samples taken prior to the start of any construction in order to provide a background measurement of ambient water quality.
- 6) The standard means of applying liquid waste shall be by injection into the ground. Semi-solid waste shall be incorporated into the ground within 24 hours. Surface application of liquid waste stored in the waste containment area may be approved by staff on a case-by-case basis upon receiving a request in writing from the petitioner delineating the specific area on which the surface application will be made, the date on which the application would be made, and the amount of waste to be applied. Staff shall consider the proximity of neighboring residences, the amount of waste to be applied and the forecast weather conditions for the date of application before arriving any such request.
- 7) A pest, odor control and dead animal disposal plan shall be prepared for approval by the Minnehaha County Planning Director and a copy provided to the county.
- 8) The petitioner shall obtain state permit approval for the operation.
- 9) All holding ponds shall be maintained with a minimum 8-inch bio-cover and

an additive such as Pit Remedy shall be added to the pits to aid in the breakdown of the waste and the maintenance of the bio-cover. If the use of the pit additive and natural processes are not adequate to achieve the necessary bio-cover, a material, such as chopped straw shall be sprayed over the pond to maintain the required cover.

The facility has been in operation for over two years under those requirements.

The Ode's have been performing quarterly groundwater testing in four wells around their operation since before the new facility was constructed. Test well #1 is located to the north of the waste lagoon, #2 is west of the lagoon, #3 is east of the lagoon and well #4 is south between the lagoon and the dairy barn. Wells 2, 3 and 4 are all downgrade of the lagoon area. Testing is conducted for chlorides, ammonia, nitrates, sulfates, total dissolved solids (TDS) and pH.

There has been an average drop in all readings since the inception of testing. The average on-site readings for the various parameters are as follows: Chlorides 38.6 ppm (groundwater standard 250 ppm) – an average drop of 3.9 ppm since testing began, Ammonia less than 0.1 ppm (no standard) – no change, Nitrates 7.5 ppm (standard 10 ppm) – average drop of 1.5 ppm, Sulfates 55 ppm (standard 500 ppm) – average drop of 29 ppm, TDS 642 ppm (standard 1000 ppm) – average drop of 31 ppm, and pH 6.74 (standard 6.5-8.5) – average drop of 0.79. All the drops in the pH readings occurred during the last testing event. The only parameter that has been consistently above the standard is the nitrate reading for well #4. That reading is currently at 14.7 ppm (standard 10 ppm), however, before the project started, that reading in that well was 26 ppm. This shows a decrease in the level of over 40% since the project began. This appears to be an ongoing trend and it is possible that the nitrate reading at this well will continue dropping to below the standard level.

It is interesting that the pH of the wells has been extremely consistent, but that there was a drop of pH levels in all wells during the last sampling event. The levels, however, still meet the standard. In checking with the environmental engineering company that performed the testing, it was indicated that the day on which the samples were taken, last December 15th, was extremely cold. The minus 10 degree temperature may have affected the pH meter. It is likely, given the previous readings since December of 2006, that the next reading will again be in conformance with previous readings.

Last year the state reduced their required sampling frequency to semi-annually. The county planning staff, in accord with condition number 5 of their CUP. Just recently the state reduced their testing requirement to an annual basis. The petitioner is requesting to reduce the required frequency of groundwater testing from the current requirement to an annual requirement in order to match the state requirement. Based on the sample results it appears there is justification for the change to annual testing.

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 area is located within the water source protection district which resulted in the initial

quarterly testing requirement. Testing of ground water in the area, which started prior to the petitioner's construction of the facility, has shown that there have been no negative impacts to the groundwater quality. In fact, there has been an overall increase in the quality of the groundwater at the site. Given the drop in parts per million at the site and the operating record at the facility, a reduction in testing frequency is feasible and would still allow adequate monitoring of the ground water.

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

The proposed change should have little impact on any future development as the majority of the land in this area is planned to continue in agricultural uses. The change would not affect the size or type of the facility.

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

The proposed change will not change any utilities, roads, or drainage.

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

There will be no change to the original parking requirements for the operation.

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.

No changes are proposed which would affect these factors.

Recommendation

The sampling results support the Ode's petition for a decrease in monitoring frequency. Staff recommended approval of CUP #09-21 to amend CUP #05-75 and #06-19 by changing condition #5 to read as follows:

A minimum of four test wells (at least one well upgrade and three wells downgrade) shall be established at the facility. At a minimum, the wells shall be tested for the water quality parameters of ammonia, chlorides, nitrates, sulfates, total dissolved solids and depth to water to determine any impact to ground water. Quarterly testing shall be required during the first year. If no water quality problems are detected, testing may be reduced to a semi-annual frequency in following years upon approval of staff. Staff is further authorized to change the testing frequency to annually upon a request by the petitioner and a determination that the state has reduced their sampling requirement for this operation to the once per year frequency. The petitioner shall also provide the county with results of groundwater samples taken prior to the start of any construction in order to provide a background measurement of ambient water quality.

Action

Based on the staff report, a motion was made by O'Hara and seconded by Rogen to **approve** Conditional Use Permit #09-21 with the stated condition. The motion passed unanimously.

ITEM 9. CONDITIONAL USE PERMIT #09-32 to transfer 1 building eligibility from the NW ¼ SE ¼ to the SE ¼ SE ¼; all in Section 17-T04N-R51W, and to allow a manufactured home.

Location – 24695 462nd Ave. 2 miles northwest of Colton
Petitioner / Owner- David Strom

General Information

Location – 24695 462nd Ave. 2 miles northwest of Colton
Petitioner / Owner- David Strom
Present Zoning - A-1 Agricultural
Existing Land Use - Agriculture / Residential
Parcel Size - 40 Acres

Report by: Pat Herman

Staff Analysis:

This is a request to transfer one residential building eligibility and to allow a mobile home. The property is located approximately 2 miles west of Colton. Land use in the area is predominately agricultural. The transfer would move the building eligibility from productive farm ground onto a residential site with existing shelter belt. There is a house on the site which will not be removed. The petitioner would like to add a second dwelling unit, a manufactured home.

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 a cattle lot with approximately 50 head 8/10s of a mile to the north. This transfer will not move a house any closer to that operation. A quarter mile to the west is a small lot at which staff observed two uninterested cows. The farmstead to the south of the site has a small flock of sheep. A right-to-farm notice covenant is required to notify potential buyers to the realities of locating in an agricultural area

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

A manufactured home will have no effect of property values in the area. This transfer should not negatively affect development in this area.

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

A shared driveway will be used which will access 462nd Ave. A new septic system will need to be installed for the manufactured home.

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

Off-street parking requirements will be provided for once a single-family residence is constructed on the subject property.

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

The proposed conditional use will not cause odor, fumes, dust, noise, vibrations or lighting in any amounts that would constitute a nuisance.

The farm ground and building site are under the same ownership. The manufactured home will be used by a family member and there are no plans at this time to subdivide the property. Staff does not feel the property needs to be platted but will include a recommendation that the property must be platted if the residential site is subdivided.

Recommendation

Staff found this Conditional Use Permit request to be consistent with density zoning and recommended approval of Conditional Use Permit #09-32 with the following conditions:

- 1) The lots must be platted when the building site is subdivided.
- 2) The manufactured home shall conform to the standards listed in Section 12.06 (C) of Minnehaha County Zoning Ordinance.

Action

Based on the staff report, a motion was made by O'Hara and seconded by Rogen to **approve** Conditional Use Permit #09-32 with the stated conditions. The motion passed unanimously.

REGULAR AGENDA

A motion was made by O'Hara and seconded by Rogen to approve the Regular Agenda (with Item 5). The motion passed unanimously.

ITEM 5. CONDITIONAL USE PERMIT #09-28 to exceed 1200 sq. ft. of accessory building area, 1780 square feet requested.

General Information

Legal Description - Lot 5 Block 7 Country Acres 2nd Addition in Section 31-T101N-R50W

Location – 3 miles west of Sioux Falls

Petitioner / Owner- Wes Schuiling

Present Zoning - A-1 Agricultural

Existing Land Use - Residential

Parcel Size - 1 Acre

Report by: Phil Kappen

Staff Analysis:

The subject property is in the southeastern portion of Country Acres, a residential subdivision north of 268th street and east of Highway 17. All surrounding properties are in residential uses. The petitioner has an existing 240 sq.ft. accessory building on the site and proposes to construct an additional 1540 sq.ft. building for a total of 1780 square feet.

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

A number of other lots in the near vicinity have buildings that are comparable in size. The allowed residential uses for which such a building may be used should have little impact on neighboring properties. There are no commercial uses proposed for the building by the petitioner.

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

Any vacant lots in the subdivision will likely have houses constructed upon them at some point in the future. Beyond the subdivision there is no further residential development planned for the area. The majority of the land will remain in agricultural uses. The construction of the proposed building should have little impact on further construction within the subdivision or continued farming in the surrounding area.

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

Access to the building will be from Meadow Lane on the west. This road is maintained by a Country Acres homeowners association. If any additional access were desired, it would have to be approved by the association.

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

There is ample space on the property for the allowed residential uses on the site.

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

Any outdoor lighting shall be of a full-cutoff and fully shielded style that prevents the spillage of light beyond the property boundaries.

The Planning Department will perform a building inspection to measure the size of the structure. Measurements are taken of the outside perimeter.

Recommendation

Staff found the proposed building conforms with the types of buildings found on neighboring properties and recommended approval of conditional use permit #09-28 with the following conditions:

- 1) There shall be a maximum of 1780 square feet of detached accessory building allowed on the site.
- 2) There shall be no commercial use made of the building or of the property. The building shall be used only for the property owner's personal, residentially related uses.
- 3) Any outdoor lighting shall be of a full-cutoff and fully shielded style to prevent spillage of light beyond the property boundaries.
- 4) A building inspection is required to measure the perimeter of the new building.

Public Testimony

Commissioner Kelly stated that he had pulled this item as he had concerns about the height and appearance of the building. There had been a large accessory building with small living quarters built north of town and didn't want to see that here.

The petitioner, Wes Schuilding, stated that the building would be 32 x 48 with 12' side walls and a 5/12 roof pitch to match his house.

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

Action

Based on the staff report and public testimony, a motion was made by Kelly and seconded by Rogen to **approve** Conditional Use Permit #09-28 with the stated conditions. The motion passed unanimously.

Item 10 was deferred from the March 23, 2009 meeting.

ITEM 10. CONDITIONAL USE PERMIT #09-18 to allow a private campground.

Legal Description - S1/2 NE1/4 (ex. RY); & N1/2 SE1/4 (ex. ROW); & Tract 2 (ex. Lot1) & Lot 1 Tract1 in SE1/4; all in Section 2-T102N-R48W

General Information

Location – 3 miles north of Brandon
Petitioner/Owner Marvin Manifold
Present Zoning - A-1 Agricultural
Existing Land Use - Agricultural
Parcel Size - Approximately 10 acres

Report by: Phil Kappen

Staff Analysis:

The subject property is located approximately ½ mile north of 257th Street on the west side of Split Rock Creek. The petitioner proposes to develop a 12-unit campground in the area for the use of his family and their friends. The campground would have four camping cabins and 8 additional campsites. The proposed site, above the creek has the potential to be a very scenic location and would be an attractive site for a campground. This item was discussed at the March 23rd meeting at which time staff recommended approval with a series of conditions.

The petitioner, through their representative, has indicated that they find many of the potential conditions discussed last month to be unreasonable since this campground would be used only by their immediate family and friends. In order to be consistent, however, staff, notes that the county should review similar factors for any campground application. These factors include access to the property, sanitary and public health concerns, public safety during disaster or emergency situations, conformance with state sales tax requirements, lighting, signage, and any necessary buffering from adjacent land uses. Staff will attempt to address all of these issues as a part of this report. It must also be noted that a conditional use permit carries with the property rather than being tied to a particular property owner. Were this permit approved without addressing the potential for a commercial campground, the property owner could sell the property to another person who would in turn start a commercial operation.

Staff also notes that the determination on whether a campground is used strictly for family and friends or if it becomes a commercial operation provides a difficult enforcement issue for the county. Should the petitioner, at some time, decide to rent out a camp site, how will the county be able to prove that situation? It is typical that the county would apply conditions to a land use that are easily enforceable by the county. This allows for a better allocation of county resources should problems occur in the future.

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 site is located in a relatively remote location, and about ¼ mile away from the nearest home. A potential impact on neighboring properties could be traffic. Given the relatively small size of the proposed campground, however, the potential for traffic impact is reduced. The site is bounded on the north by the BNSF railroad. Fencing

should be employed to prevent campers from accessing the railroad right-of-way and tracks.

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

The surrounding property is dedicated to agricultural production and is planned for continued agricultural use.

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

Access to the property is via 257th Street, a Brandon Township road. The sight distance at the location of the proposed drive meets AASHTO Standards. According to the petitioner's site plan access to the campground site would be via a 30-foot wide private gravel driveway approximately 2700 feet in length. This length of dead-end roadway would be unacceptable if this were a residential or commercial development due to emergency response concerns. The proposed use, however, is of a size that would limit the number of people using the site at any particular time. The driveway length, however, would be a serious concern if the proposed campground were of a larger size. Any proposed expansion of the use may require consideration for an additional access to a right-of-way. The petitioner's site plan also indicates that the one-way roads within the camping area would be of gravel and be 15 feet in width.

Many of the specific health issues for a campground are addressed through review by the S.D. Department of Health. The state requires that a campground permit be obtained. That permitting process includes, among other items, a review of the access roadways, potable water supply, toilet and wastewater requirements, outdoor cooking facilities, and garbage storage and collection. A condition requiring state permitting for the campground would incorporate those requirements as a part of a permit issued by the county.

The planning commission had questioned the length of stay. A condition could be added limiting the length of time that a camper is on the property. In larger commercial campgrounds however, there is often a campground host that camps at the site for most of the season. The petitioner should be prepared to address this issue as it relates to the present application.

The planning commission also questioned the placement of these buildings from an accessory building standpoint. The four cabins would total 1120 square feet. This total would be within the 1200 square feet allowance if a property were located within a subdivision.

The disaster at the scout camp in Iowa last year provides a reminder that there should be provisions for public and camper safety during weather emergencies. Factors which would be related to such concerns would include emergency preparedness plans or the provision of storm shelters.

Depending on the size of the campground, it may also be necessary to address to potential for food services on the site. The petitioner does not propose a food service, however, this could be a factor with a larger or longer-term campground.

Some campgrounds have facilities such as swimming pools. There are specific building code considerations which would need to be addressed as a part of a proposal for a

campground pool. The petitioner does not have plans for such a feature at this site and a swimming pool is not indicated on the petitioner's site plan..

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

There is ample space on the property for parking associated with the proposed 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.

A 12-unit campground should result in minimal odor, or fumes, and the amount of traffic generated by such a use should result in only a small increase in the potential for dust.

Full cutoff, fully shielded outdoor lights prevent nuisance impacts on adjoining property.

In the A-1 Agricultural District this type of use is allowed a sign only if specifically authorized as a part of the conditional use permit. The petitioner has not indicated a need for any sign, however, a provision should be made at this time in the event that the petitioner wishes to use a sign in the future.

Was this a commercial campground proposed at this site, staff would recommend approval with the following conditions:

1. The use shall be limited to a 12-unit campground including four camping cabins.
2. The petitioner shall obtain a state campground permit prior to commencing the land use, shall maintain that permit and shall follow all provisions of that permit. Certification of state permit approval shall be provided to the county planning office prior to the issuance of any building permits on the property.
3. The petitioner shall obtain and maintain a state sales tax license.
4. No commercial food service shall be allowed at the site.
5. All onsite wastewater systems shall be constructed and operated in conformance with the Minnehaha County On-Site Wastewater Treatment Ordinance. The septic tank(s) shall be pumped a minimum of once per year in order to prevent an excessive buildup of solids.
6. The petitioner shall ensure that all solid waste management is performed in conformance with the Minnehaha County Solid Waste Ordinance.
7. All outdoor lighting shall be of a full cutoff and fully-shielded design preventing direct spillage of light off the premises from any light source (bulb or reflector).
8. The petitioner shall develop an emergency preparedness plan for approval by the county Emergency Management Department which includes details on how shelter would be provided to campers or how evacuations would be accomplished during severe weather events. A copy of the plan must be filed with the County Planning Office.
9. The petitioner shall maintain a boundary fence between the campground and the railroad right-of-way to prevent access from the campground into the ROW or onto the tracks.
10. The two-way portions access drive shall have a minimum 30-foot wide driving surface and the one-way portions a minimum 15-foot driving surface. All driveways shall be constructed to meet the standards for gravel roads as set forth in the Minnehaha County Revised Subdivision Ordinance.
11. No permanent or ongoing storage of recreational vehicles or other vehicles shall be allowed on the site.
12. The use shall conform to the site plan submitted as a part of the conditional use permit application.
13. At such time as the campground use ceases, all cabins shall be removed from the

site.

14. No dumping of any wastewater shall be allowed at the site.

15. A maximum of one sign up to 32 square feet in size may be used to identify the land use.

Staff has met with the petitioner's representative and the petitioner has expressed specific concern over conditions number 2, 3, 4, 5, 6, 8, and 10 in the above list. There seems to be general agreement on the issues such as the of the size limitation on the campground, a prohibition on lights which could prove a nuisance to adjacent properties, the need for a separation fence between the site from the railroad as a safety measure, and the reasons for a prohibition on ongoing storage of vehicles at the site.

As has been noted previously, staff has concerns about the equal treatment of such applications and the possibility of a change of ownership in the future. The petitioner has indicated that some of the potential conditions should not apply since this is to be used only for their family or friends. This, however, would create an extremely difficult enforcement situation. If the petitioner decides to allow some commercial use of the campground in the future, how is staff to know whether there are family members, friends or customers staying at the campground? Staff has also noted the potential that the use could change to a commercial campground under a change of ownership. At such time the new owner is only bound only by any existing conditions placed on the use. From an enforcement standpoint, it is much more efficient to consider that a campground will be a commercial campground and apply conditions accordingly.

Recommendation

Staff found the proposed use, due to the location and the limited size of the campground, could be made compatible with surrounding land uses and staff recommended approval of conditional use permit #09-18 with the following conditions:

1. The use shall be limited to a 12-unit campground including four camping cabins.
2. The petitioner shall obtain a state campground permit prior to commencing the land use, shall maintain that permit and shall follow all provisions of that permit. Certification of state permit approval shall be provided to the county planning office prior to the issuance of any building permits on the property.
3. The petitioner shall obtain and maintain a state sales tax license.
4. No commercial food service shall be allowed at the site.
5. All onsite wastewater systems shall be constructed and operated in conformance with the Minnehaha County On-Site Wastewater Treatment Ordinance. The septic tank(s) shall be pumped a minimum of once per year in order to prevent an excessive buildup of solids.
6. The petitioner shall ensure that all solid waste management is performed in conformance with the Minnehaha County Solid Waste Ordinance.
7. All outdoor lighting shall be of a full cutoff and fully-shielded design preventing direct spillage of light off the premises from any light source (bulb or reflector).
8. The petitioner shall develop an emergency preparedness plan for approval by the County Emergency Management Department which includes details on how shelter would be provided to campers or how evacuations would be accomplished during severe weather events. A copy of the plan must be filed with the County Planning Office.
9. The petitioner shall maintain a boundary fence between the campground and the railroad right-of-way to prevent access from the campground into the ROW or

- onto the tracks.
10. The two-way portions access drive shall have a minimum 30-foot wide driving surface and the one-way portions a minimum 15-foot driving surface. All driveways shall be constructed to meet the standards for gravel roads as set forth in the Minnehaha County Revised Subdivision Ordinance.
 11. No permanent or ongoing storage of recreational vehicles or other vehicles shall be allowed on the site.
 12. The use shall conform to the site plan submitted as a part of the conditional use permit application.
 13. At such time as the campground use ceases, all cabins shall be removed from the site.
 14. No dumping of any wastewater shall be allowed at the site.
 15. A maximum of one sign up to 32 square feet in size may be used to identify the land use.

Public Testimony

Commissioner Kelly wondered what constituted a commercial kitchen. Could a residential scale kitchen be used on this site? Mr. Anderson stated that a kitchen was allowed for family use, but items prepared could not be sold. It is the selling of the food that would make it a commercial use. Commissioner Kelley stated that a tax sales license didn't seem necessary if the campground was only the family's use. He suggested a condition be added stating that the campground was not for commercial use.

Commissioner Rogen asked that condition #14 be rewritten to allow the disposal of wastewater into a properly sized system on the site. Commissioner O'Hara reminded Mr. Kappen that the Commission had wanted to see a conditions limiting the number of consecutive nights one could camp.

The petitioner was represented by Sam Assam. Mr. Assam stated that he did understand the concerns of the staff, but that this campground is for non-commercial use. If the campground becomes commercial, the Commission has the power to revoke the conditional use permit. He explained that the site plan had been drawn by an in-law and was prepared to the specifications which had been given Mr. Manifold by Mr. Kappen at their first meeting. Mr. Assam proceeded to go through the each of the conditions and state his client's concerns:

1. Would like to have 7 cabins, not exceed 12 site total.
2. Game, Fish & Parks said no permit was required. (State Health Dept. is the office that requires a permit for all campgrounds)
3. This is pointless as there will be no revenues.
4. Ok with this as there will be no commercial kitchen.
5. Ok. Are planning a small toilet/shower building with storage space for a mower.
6. Don't think this is warranted as this is not a commercial use.
7. Ok.
8. This is no applicable to this small family use.
9. Ok.
10. Overkill to require this size road and that it be constructed to county standards.
11. Ok.
12. Ok with the exception to the road widths and the number of cabins.
13. Ok.
14. Ok.
15. Ok. Do not intend to have any sign.

Commissioner Rogen confirmed that with 7 cabins there would still only be 12 camping spaces. Jean Manifold Barber, sister of the petitioner, stated that this is to be used for 4

families – herself and three siblings and their three children and families. They are fair weather campers, just out for a weekend, and its very rare that everyone is out there at the same time. Commissioner South wondered if it would be prudent to have a plan for bad weather. Commissioner Kelly stated that this is just a place for a family outing and while a plan is needed, it should not be of the design that would be required of a commercial campground. Mr. Anderson stated that without electricity there should at least be a weather radio on site. He also explained that the Health Department require a permit for any campground and their biggest concern is potable water.

The petitioner, Marvin Manifold, stated that he has contacted Sioux Valley Electric and they can get electricity to the site. Water will provided with a cistern. He is working with a neighbor that is concerned about the driveway. He and his brother-in-law will put together a weather preparedness plan. When questioned if he had any intention of this being a quasi-commercial operation, Mr. Manifold replied “no, I don’t think so.” He stated he would not oppose a condition that the campground would cease when he sold the land.

Dan Irvine, 48343 256th St., has a farmstead to the north and his land, pasture & crop, abuts this site. He understands that this request is good for the Manifold family but he has some concerns. He runs sheep on his pasture and does not want them harassed by dogs. He has had people come from this property and trespass onto his land to hunt and fish. Mr. Irvine is also concerned about fire, either from fireworks or campground fires. The land is only separated by a woven wire fence which the fire could easily jump.

Steve Farly, 48292 257th St., owns the three acres that lie just east of the entrance to the campground. He lives at this site for the privacy it provides and the peace and quiet. Mr. Manifold has designed the driveway to the campground so that it goes along the west side of his property and then follows the property line on the north. With 257th St. to the south, he will have roadway on three sides of his acreage. He would like to see the road moved so it is not so intrusive.

Steve Skalland, 48283 257th St. , lives south of 257th Street. He has nothing against this recreational use of private land, but what is being planned may be a little excessive. He doesn’t mind it if the camping is kept small. He suggested that the driveway be moved to the west and run north along the railroad tracks.

Al Gustafson, 924 Elvira Dr., was representing his parents who live at 48291 257th Street. They have concerns about traffic, the location of the driveway directly across from their house, having unsupervised people camping, and trespassing. This is not about the Manifold family who are very nice, but about what could happen if the land changed hands. Could it turn into another Buffalo Chip? Mr. Gustafson stated the plans are awfully excessive for what the Manifold’s say they want. It seems more geared towards commercial. He is not aware of his parents having complaints at the present time.

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

Commissioner Kelly acknowledged that the neighbors had given him something to think about. The campground is going to be bigger than what it is now, and we need to think about the “what it could” be. This is a neat idea but it is not without its difficulties. Commissioner South recalled a previous application where the petitioner wanted to have an art house where there would be camping and the County said no way. He feels this is almost turning into a housing eligibility that the neighbors didn’t know could be there. There are issues of traffic and the road is a major encroachment on the neighbor. Commissioner Randall stated that her opinion has changed after listening to the

neighbors. She didn't realize livestock was this close and that in itself poses challenges. Dogs and fire danger are legitimate concerns. Commissioner Rogen stated that it could work with some changes and additions to the conditions.

The Commission brainstormed the list of conditions that they would like to see as part of the conditional use permit. Commissioner Kelly made the motion for a denial which was seconded by Randall. Commissioner O'Hara noted that if this was denied the petitioner could not reapply for 6 months. She would like to see the petitioner work with the neighbors to iron out some of the differences such as the road, dogs, and who to contact with problems. A substitute motion was made by Rogen and seconded by O'Hara to defer this item to the May 18th meeting. The vote was unanimous to accept the substitute motion. Commissioner South mentioned restricting dogs and Commissioner Rogen raised the issue of 4-wheelers. Staff was directed to prepare a list of all the conditions mentioned, along with the petitioner's requested change to the number of cabins. The suggested amended conditions are underlined:

1. The use shall be limited to a 12-unit campground including seven camping cabins.
2. The petitioner shall obtain a state campground permit prior to commencing the land use, shall maintain that permit and shall follow all provisions of that permit. Certification of state permit approval shall be provided to the county planning office prior to the issuance of any building permits on the property.
3. The petitioner shall obtain and maintain a state sales tax license if applicable.
4. No commercial food service shall be allowed at the site.
5. All onsite wastewater systems shall be constructed and operated in conformance with the Minnehaha County On-Site Wastewater Treatment Ordinance. The septic tank(s) shall be pumped a minimum of once per year in order to prevent an excessive buildup of solids.
6. The petitioner shall ensure that all solid waste management is performed in conformance with the Minnehaha County Solid Waste Ordinance.
7. All outdoor lighting shall be of a full cutoff and fully-shielded design preventing direct spillage of light off the premises from any light source (bulb or reflector).
8. The petitioner shall develop an emergency preparedness plan for approval by the County Emergency Management Department which includes details on how shelter would be provided to campers or how evacuations would be accomplished during severe weather events. A copy of the plan must be filed with the County Planning Office.
9. The petitioner shall maintain a boundary fence between the campground and the railroad right-of-way to prevent access from the campground into the ROW or onto the tracks.
10. The two-way portions access drive shall have a minimum 30-foot wide driving surface and the one-way portions a minimum 15-foot driving surface. All driveways shall be constructed to meet the standards for gravel roads as set forth in the Minnehaha County Revised Subdivision Ordinance.
11. No permanent or ongoing storage of recreational vehicles or other vehicles shall be allowed on the site.
12. The use shall conform to the revised site plan submitted for the May 18, 2009 public hearing on the conditional use permit application.
13. At such time as the campground use ceases, all cabins shall be removed from the site.
14. No dumping of any wastewater shall be allowed at the site unless disposed of into a properly sized and maintained wastewater system. Septic permits from both the state and county are required.
15. A maximum of one sign up to 32 square feet in size may be used to identify the land use.

16. Length of stay shall not exceed a maximum of fourteen consecutive days.
17. There shall be no commercial use of the campground or property.
18. At such time as Marvin Manifold ceases to own the property, either through sale or death, conditional use permit #09-18 shall expire and the campground use shall cease or the new owners shall obtain a new conditional use permit.
19. Dogs shall not be allowed to run at large on the property.
20. A management list with contact phone numbers shall be provided to the Planning Department and the abutting landowners.
21. The use of 4-wheelers shall not be allowed on the property.

Action

Based on the staff report and public testimony, a motion was made by Rogen and seconded by O'Hara to **defer** Conditional Use Permit #09-18 to the May 18th meeting. The motion passed unanimously.

Item 11 was continued from the March 23, 2009 meeting.

ITEM 11. ZONING TEXT AMENDMENT – Agricultural Tourism

Petitioner / Owner- Planning Staff

Report by: Pat Herman

Staff Analysis

At last month's meeting staff was directed to investigate the percentage of trees which would be harvested per year on a holiday tree farm, and the size of these farms. Several operators were left messages to contact the Planning Office but no one replied. The National Christmas Tree Association does not research or keep any statistics of this kind. Using GIS and Google Earth, staff estimated the planted square footage on four area holiday tree farms, two in Minnehaha County, and one each in Lincoln and Clay County. The approximate sizes of the farms were 5, 22, 25, and 65 acres. The requirement to have 10 acres is not unreasonable.

Staff then consulted the 2007 Census of Agriculture (performed every 5 years). Only one farm within Minnehaha County reported trees being cut, so the number cut was not stated in order to protect that operation. Using the numbers posted for Lincoln County; the average holiday tree farm cut 393 trees in 2007. On a 25 acre farm with trees planted on a 6 x 6 grid (1,210 trees per acre), this would amount to .01% of the crop. Factors of water supply and disease would also affect the number of trees sold. Staff does not believe it is feasible to require that a certain percentage of on site trees be harvested each year.

Staff would recommend that condition g) listed under Holiday Tree Farms read as follows: The operation shall have 5 acres of holiday trees transplanted and growing for harvest prior to the start of retail operations on the site. A minimum of 10 acres shall be transplanted and growing within 5 years of approval as an Agricultural Tourism use. This shall not include shelter belts or old growth groves.

Due to state and federal regulations, the Planning Commission did not want a shooting/hunting preserve listed as a agricultural tourism. Staff has added this use under conditional use permits in both the A-1 and R/C zoning districts and added a definition.

Minnehaha County has experienced an increase in people interested in agricultural tourism. In the past few years a number of conditional use permits have been issued for wineries and orchards. To be responsive to the needs of this community and those interested in value added agriculture, the Planning Department is proising amendments to the A-1 Agricultural and R/C Recreation Conservation Districts of the Minnehaha County Zoning Ordinance. The amendments would add Agricultural Tourism as a specially permitted use in both zoning districts. Provided the applicant can abide by the conditions listed in the ordinance or required by the Planning Director, the agricultural tourism use would be approved administratively. Any applicant unable to meet the conditions of the ordinance would still have the right to apply for a conditional use permit.

It is the intent of this ordinance to support existing farming operations expansion into agriculturally related enterprises. The uses need to be complementary to agriculture and are not intended to be preformed by individuals owning one or two acres of land. Each of the sections contained in the ordinance are briefly described below.

Sections 1 & 2 Sections 1 & 2 add Agricultural Tourism as a Permitted Special Use in both the A-1 Agricultural and R/C Recreation Conservation zoning districts. This would allow these uses by right, provided they meet the specified conditions.

Sections 3 & 4 Four new uses are being added to the conditional use permit sections of both the A-1 and R/C zoning districts.

1. Produce Stand (replacing roadside stand)
2. Recreation Facility (replacing private recreation facility)
3. Farmer's Market (new listing)
4. Hunting/ Shooting Preserve (new listing)

Section 5 Adding new definitions to the zoning ordinance.

1. Six new definitions address Agricultural Tourism
 - a. Agricultural Tourism – defines what this term means
 - b. Agricultural Tourism Products – defines what products qualify
 - c. Agricultural Tourism Sign – Seasonal
 - d. Agricultural Tourism Sign – Permanent
 - e. Agricultural Tourism Special Event – public event, ex. Festival
 - f. Agricultural Tourism Private Event
2. Amend definition for Bed and Breakfast Establishment: expanded with a better explanation of what this use is
3. Farmer's Market – new, not defined before
4. Hunting/Shooting Preserve – new not defined before
5. Recreation Facility – replacement for the term *private outdoor rec. facility*. Will allow for indoor or outdoor, public or private.
6. Produce Stand – new, not define before

Section 6 Adds Section entitled Agricultural Tourism to the Additional Uses section of the zoning ordinance. There are 7 permitted special uses which fall under the umbrella of agricultural tourism – Winery, Produce Stand, Seasonal U-Pick & Orchards, Seasonal Outdoor Mazes, Holiday Tree Farms, Farm Experiences, and Shooting/Hunting Preserves. Each use has a list of conditions which would have to be met in order to operate the use without obtaining a conditional permit. The minimum six conditions which are listed under each uses are below. The description in each six will vary from use to use.

- a. a description of the use; a definition
- b. accessory uses allowed; i.e. a seasonal maze may also have hay rides
- c. retail allowed; U-pick could also sell jellies or bakery items
- d. food concessions; water, pop, coffee baked goods etc.
- e. special events; i.e. festivals at a winery
- f. private events; this would include weddings, business meetings

Depending on the use, other conditions which address topics such as resident

requirements, minimum acreages, or hours of operation have been added.

Parking

Each use must submit a parking plan when applying for an Agricultural Tourism permit. This plan will be reviewed by the Planning Director to ensure there is sufficient space provided.

Signs

Both seasonal and permanent signs are addressed. Seasonal signs will only be allowed for the length of the use.

Special Events

These are events which exceed the normal day to day activity of the allowed use. For example, a winery may host a festival on its grounds or an orchard may host a craft fair. The number of events allowed per year is listed under the seven different uses. The operator is required to give notice to the Planning Director 60 days prior to any special event. A plan detailing such things as additional parking, sanitation, hours of operation, and emergency response measures is required. Like a temporary use permit, the Planning Director will notify surrounding land owners of the proposed event. The Planning Director may also set conditions for the event or even deny approval of the event. The operator may appeal any decisions of the Planning Director to the Board of Adjustment.

Permit

Prior to the start of operations, each use must obtain an Agricultural Tourism Permit from the Planning Department. The Planning Director will have 20 days to review the application. If denied, the operator may appeal that decision to the Board of Adjustment.

Section 7 This section adds *Agricultural Tourism Permit* to the list of fees detailed in the zoning ordinance.

Recommendation

The planning staff finds that agricultural tourism is congruent with the Comprehensive Plan's focus on maintaining and supporting agriculture within Minnehaha County and recommends **approval** of Zoning Text Amendment #09-02.

ORDINANCE MC

AN ORDINANCE AMENDING THE 1990 REVISED ZONING ORDINANCE FOR MINNEHAHA COUNTY BY REVISING THE TEXT PERTAINING TO ZONING AND BUILDING PERMITS AND GENERAL PROVISIONS.

BE IT ORDAINED BY MINNEHAHA COUNTY, SOUTH DAKOTA:

That Ordinance MC16-90, the 1990 Revised Zoning Ordinance for Minnehaha County

hereby amended as follows:

Section 1: That Article 3.03 (L) is hereby added to read:

(L). Agricultural Tourism in conformance with Section 12.13.

Section 2: That Article 9.03 (G) is hereby added to read:

(F). Agricultural Tourism in conformance with Section 12.13.

Section 3: That Article 3.04 (J, M, & P) is hereby added or amended to read:

(J). Produce Stand exceeding 400 square feet in area.

(M). Recreation Facility.

(P). Farmer's Market.

(CC). Shooting/Hunting Preserve.

Section 4: That Article 9.04 (D, I, & U) is hereby added or amended to read:

(I) Produce Stand exceeding 400 square feet in area.

(D) Recreation Facility.

(Q) Farmer's Market.

(U). Shooting/Hunting Preserve

Section 5: That Article 26.02 Definitions is hereby added or amended to read to read:

11. AGRICULTURAL TOURISM. Agriculturally related accessory uses, that are subordinate to the growing of crops or the raising of livestock, designed to bring the public to the farm on a temporary or continuous basis, such as U-pick farm sales, farm stands, farm mazes, pumpkin patches, farm animal viewing and petting, wagon rides, thrashing bees, farmland and activities tours, horticulture nurseries and associated display gardens, cider pressing, classes or workshops, wine or cheese tasting, and similar uses.
12. AGRICULTURAL TOURISM PRODUCTS. Includes but is not limited to, crops (corn, wheat, hay, potatoes); fruit (apples, peaches, grapes, cherries, berries.); cider; apiary products; vegetables (sweet corn, pumpkins, tomatoes.); floriculture; herbs; forestry; husbandry; livestock and livestock products (cattle, sheep, hogs, horses, poultry, ostriches, emus, farmed deer, farmed buffalo, milk, eggs, fur); aquaculture products (fish, fish products, water plants and shellfish); and holiday trees.
13. A AGRICULTURAL TOURISM SIGN - SEASONAL. A sign erected for a limited period of time during the year when retailing activities for an approved

agricultural tourism use are available to the public.

13. B AGRICULTURAL TOURISM SIGN - PERMANENT. A sign erected for an approved agricultural tourism use.
14. A AGRICULTURAL TOURISM SPECIAL EVENT. An activity, involving more than 100 people, that is desirable but unrelated to agriculture, which is held on active, agriculturally productive land in conjunction with agricultural tourism. Special events are open to the public and include festivals, craft shows, and other similar events. Music festivals and/or outdoor concerts are not special events and require temporary use permit approval.
14. B AGRICULTURAL TOURSIM PRIVATE EVENT. Events not related to the operational and marketing aspects of the agricultural tourism use, such as weddings, receptions, and meetings/retreats, and which are not open to the public. The maximum number of participants that shall be allowed by the Planning Director shall not exceed 250.
55. BED AND BREAKFAST ESTABLISHMENT. A bed and breakfast accommodation may provide no more than ten bedrooms for guests (exclusive of the living quarters of the owner or operator). Guests at a bed and breakfast accommodation may stay up to fourteen consecutive days provided that the bed and breakfast accommodation may only offer a daily rate and shall not offer weekly or bi-weekly rates. A bed and breakfast accommodation may include kitchen and dining facilities to furnish meals for guests only. Food preparation within a guest bedroom is prohibited. A bed and breakfast accommodation may not include a restaurant, banquet facilities or similar services.
63. SHOOTING/HUNTING PRESERVE. Any acreage, either privately owned or leased, on which hatchery raised game is released for the purpose of hunting, for a fee, over an extended season.
257. FARMER'S MARKET. An area where space is rented to individual vendors who grow farm products such as agricultural and horticultural goods, or who produce food specialty products such as baked goods, candies, jams, jellies, spices, condiments, cheeses, eggs, milk, honey, meats, fish and pasta. This definition does not include the sale of arts and crafts products.
503. RECREATION FACILITY. A place designed and equipped for the conduct of sports, leisure-time activities, and other customary and usual recreational activities, either active or passive. Related functions such as changing rooms or restrooms, and maintenance may be housed in buildings or structures
558. PRODUCE STAND. A produce stand is defined as a temporary or permanent structure used for the display and sale of agricultural products, not to include

retail nursery operations.

Section 6: That Article 12.13 is hereby added to read:

12.13 AGRICULTURAL TOURISM.

- (A). Intent. It is the intent of this Article to provide for uses which help to promote and maintain local farming operations, are complementary to agriculture, which help maintain an agricultural heritage and rural character, and help to sustain the local farming community.
- (B). Permitted uses, provided the following conditions are met.
- 1) Wineries producing and selling a product, in a tasting room, which must have one acres of crops grown on the site and used in the wine production.
 - a) Description. The retail and manufacturing premises of a small winemaker operating pursuant to SDCL 35-12.
 - b) Accessory Uses Allowed. Vineyard and Winery Tours, picnic area, and hay/sleigh rides.
 - c) Retail. Tasting room for sampling of wine and other beverages made by the winery. Bottles of wine, wine related items such as glasses, corkscrews, and coolers. Business related items such as t-shirts, bags, caps, wine books and non-prepared foods.
 - d) Food Concessions. Wineries will be allowed limited food services on-site. This food service is not to include restaurants, but may include the following:
 1. Deli-service of prepackaged food;
 2. Winemaker dinners;
 3. Tasting room events with food;
 4. On-site catering food service for events.
 5. No interior seating will be dedicated solely to the purpose of meal service.
 6. No food will be cooked to order, although a list of prepackaged foods may be posted.
 - e) Special Events. The winery shall be allowed a maximum of four special events throughout the year. Additional special events require a temporary use permit.
 - f) Private events. The participant capacity for such events shall be determined separately for each winery by the Planning Director. The Planning Director shall consider the size of the parcel, surrounding land use, available parking, transportation routes, and other land use factors in making the determination. The maximum capacity shall be stated in writing to the applicant.

- g) Minimum ½ acre of product used in the production of wine must be grown on the site.
 - h) The Operator of the winery must reside on the site.
 - i) The winery shall remain secondary to the principal use of the property as a residential site and a site for agricultural production. If the residential use or agricultural production on the site ceases, the winery operation shall cease.
 - j) The winery must be on a parcel of land that is not less than 10 acres in size.
- 2) Produce stand for the direct marketing of farm products, 25% of which are grown by the on the site.
 - a) Description. Produce stand no greater than 400 square feet in building area.
 - b) Accessory Uses Allowed. None.
 - c) Retail. The retail area may sell in-season fruits and vegetables grown on the farm or from local growers. Locally made products such as honey, jams, jellies, or related bakery items may also be sold.
 - d) Food Concessions. None.
 - e) Special Events. None.
 - f) Private Events. None.
 - g) The produce stand shall remain secondary to the principal use of the property as a residential site and a site for agricultural production. If the residential use or agricultural production on the site ceases, the winery operation shall cease.
- 3) Seasonal U-pick fruits and vegetables operations, orchards.
 - a) Description. U-Pick means a fruit or vegetable-growing farm that provides the opportunity for customers to pick their own fruits or vegetables directly from the plant.
 - b) Accessory Uses Allowed. Wagon or hay rides, picnic area, contests.
 - c) Retail. The retail area may sell in-season fruits and vegetables grown on the farm or from local growers. Locally made products such as honey, jams, jellies, or related bakery items may also be sold.
 - d) Food Concessions. Limited service for such items such as water, pop, coffee, snacks or baked goods.
 - e) Special Events. U-pick operations and orchards shall be allowed a maximum of four special events per year. Additional special events require a temporary use permit.
 - f) Private Events. Allowed for orchards. The participant capacity for such events shall be determined separately for each orchard by the Planning Director. The Planning Director shall consider the size of the parcel, surrounding land use, available parking, transportation routes, and other land use factors in making the determination. The maximum

capacity shall be stated in writing to the applicant. The Operator of the U-pick operation or orchard must reside on the site.

- g) The U-pick operation or orchard shall remain secondary to the principal use of the property as a residential site and a site for agricultural production. If the residential use or agricultural production on the site ceases, the U-pick or orchard operation shall cease.
 - h) The operation must occur on a parcel of land that is not less than 10 acres in size.
- 4) Seasonal outdoor mazes of agricultural origin such as straw bales or corn.
- a) Description. An intricate network of interconnecting pathways, within a cornfield or made from straw bales.
 - b) Accessory Uses Allowed. Wagon or hay rides, picnic area, petting farm.
 - c) Retail. The retail area may sell in-season fruits and vegetables grown on the farm or from local growers. Locally made products such as honey, jams, jellies, or related bakery items may also be sold.
 - d) Food Concessions. Limited service for such items such as water, pop, coffee, snacks or baked goods.
 - e) Special Events. None.
 - f) Private Events. None.
 - g) The operation must occur on a parcel of land that is not less than 10 acres in size.
 - h) The outdoor maze shall remain secondary to the principal use of the property for agricultural production. If the agricultural production on the site ceases, the outdoor maze operation shall cease.
- 5) Holiday Tree Farms.
- a) Description. One that grows trees on the site for landscape or holiday decoration, either pre-cut or for the consumer to cut.
 - b) Accessory Uses Allowed. Wagon or hay rides, petting farm, bonfire, Tree drilling and baling.
 - c) Retail. The retail area may sell pre-cut holiday trees, wreaths, garland, ornaments and decorations.
 - d) Food Concessions. Limited service for such items such as hot chocolate, coffee, snacks or baked goods.
 - e) Special Events. None.
 - f) Private Events. None.
 - g) The operation shall have 5 acres of holiday trees transplanted and growing for harvest prior to the start of retail operations on the site. A minimum of 10 acres shall be transplanted and growing within 5 years of approval as an Agricultural Tourism use. This shall not include shelter belts or old growth groves.

- h) If the agricultural production of trees on the site ceases, the retail, accessory uses and food concessions shall cease.

6) Farms Experiences.

- a) Description. A working farm where agricultural animals and products are produced.
- b) Accessory Uses Allowed. Tours and hayrides, petting farm and animal feeding, picnic area.
- c) Retail. Agricultural tourism products.
- d) Food Concessions. Limited service for such items such as drinks, ice cream or other dairy products, snacks or baked goods.
- e) Special Events. A farm shall be allowed a maximum of four special events throughout the year. Additional special events require a temporary use permit.
- f) Private events. The participant capacity for such events shall be determined separately for each event by the Planning Director. The Planning Director shall consider the size of the parcel, surrounding land use, available parking, transportation routes, and other land use factors in making the determination. The maximum capacity shall be stated in writing to the applicant.
- g) The operator of the farm must reside on the site.
- h) The special and private events shall remain secondary to the principal use of the property as a residential site and a site for agricultural production. If the residential use or agricultural production on the site ceases, the events shall cease.
- i) The operation must occur on a parcel of land that is not less than 20 acres in size.

(D) Parking

- 1) A parking plan must be submitted for approval by the Planning Director.
- 2) Parking facilities may be located on a grass or gravel area for seasonal uses such as produce stands, u-pic operations and agricultural mazes. All parking area shall be defined by either gravel, cut lawn, sand, or other visible markings.
- 3) All parking areas shall be located in such a manner to avoid traffic hazards associated with entering and exiting the public roadway.

(E) Agricultural Tourism Sign- Seasonal

Seasonal signs may be erected for a limited period of time during the year when retailing activities for a particular farm product is available to the public.

- 1) Signs shall not exceed 32 square feet in area.
- 2) No more that two signs shall be erected.
- 3) Signs shall not be erected for longer than one week before through one week after the retailing activities.

(F) Agricultural Tourism Sign- Permanent

A permanent signs may be erected on the site of an approved agricultural tourism use.

- 1) The sign shall not exceed 32 square feet in area.
- 2) Only one sign shall be allowed.
- 3) A building permit is required for the sign.

(G) Special Events

- 1) Written notice of each special event shall be submitted to the Planning Director 60 days prior to the event.
- 2) The Planning Director shall review the proposed special event using the following guidelines:
 - a) The special use will have no adverse effect on nearby properties or jeopardize public health, safety, and general welfare.
 - b) The special use will not create hazardous traffic conditions or result in traffic in excess of the capacity of the roads serving the use.
 - c) The site is adequate to accommodate the proposed use, including the provision for on and off site parking.
 - d) Adequate sanitation facilities will be available on the site.
 - e) The time period and hours of operation for the special event are clearly specified.
 - f) Provision is made for the removal, clean-up, and restoration of the site.
 - g) The special use will not adversely impact the natural environment.
 - h) The site is suitable for the proposed special use, considering flood hazard, drainage, soils, and other conditions which may constitute a danger to life, health or property.
 - i) All temporary improvements and any permanent structures proposed to be used will comply with all applicable provisions of the county's building code.
 - j) Emergency response measures.
- 3) The Planning Director shall send written notice of the special event to the owners of all property located within at least 600 feet of the property involved. Such notice shall be sent at least 14 days before the Planning Director makes its determination on the special use permit. If any of the owners so notified file a written objection prior to the time the Planning Director makes his determination regarding the application, the application shall be referred to the Planning Commission for action.
- 4) Conditions of approval. Reasonable conditions may be required in connection with the approval of any special use permit which are deemed necessary to protect the public health, safety and welfare and the social and economic well being of those who will use the special use, residents and landowners immediately adjacent to the proposed use, and the community as a whole. Any condition imposed must be clearly specified in writing to the applicant.

- 5) Appeal of decision. Any person aggrieved by an action of the Planning Director in granting, denying, revoking, or suspending a special event may appeal such action to the Zoning Board of Adjustment. Such appeal shall be in writing and filed with the Planning Department within five working days of the decision.

(H) Prior to the start of operations an Agricultural Tourism Permit is required with the associated fee as shown in Article 24.00. The Planning Director shall have twenty days to review the application and issue or deny the permit. Denial of the permit or imposed conditions may be appealed to the Zoning Board of Adjustment. Such appeal shall be in writing and filed with the Planning Department within five working days of the Planning Director's decision.

Section 7: That Article 24.09 is hereby added to read:

24.09 AGRICULTURAL TOURISM PERMIT. A fee of \$250.00 shall be charged for the filing of an agricultural tourism permit. If the use, for which an agricultural tourism permit is required, is commenced prior to the application for a permit, the application fee shall be double the regular fee.

Public Testimony

The Commission reviewed the proposed changes suggested by Ms. Herman and directed that they be added to the ordinance. The Commission agreed that the ordinance should be advanced to the County Commission for adoption.

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

Action

Based on the staff report and public testimony, a motion was made by Randall and seconded by Rogen to **recommend approval** of Text Amendment #09-02. The motion passed unanimously.