

**MINUTES OF THE
MINNEHAHA COUNTY PLANNING COMMISSION
May 18, 2009**

A meeting of the Planning Commission was held on May 18, 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, Susie O'Hara, Becky Randall, Mark Rogen, Don South, and Wayne Steinhauer..

STAFF PRESENT: Scott Anderson, Phil Kappen 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 Commission and audience, Items 2 & 4 were placed on the regular agenda. There being no other objections from the Planning Commission or audience, a motion was made by Cypher and seconded by Randall to approve the consent agenda (Items 2 & 5 removed). The motion passed unanimously.

ITEM 1. MINTUES – April 20, 2009

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

ITEM 2. CONDITIONAL USE PERMIT #09-33 to allow the transfer of 2 residential building eligibilities from the S ½ SW ¼ to the NW ¼ SW ¼ (ex. Bur Oak Addn.) in Section 20-T102N-R48W.

Location – 1.5 miles northwest of Brandon
Petitioner / Owner- Jacob Heilman

Item 2 was placed on the regular agenda.

ITEM 3. CONDITIONAL USE PERMIT #09-35 to transfer two building eligibilities from the SW ¼ NE ¼ & the NW ¼ NE ¼ to the SE ¼ NE ¼; all in Section 8-T102N-R50W

Location – 1.5 miles west of Crooks
Petitioner / Owner- Alfred Miron

General Information

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 eligibility. The property is located approximately 1 ½ miles west of Crooks. Land use in the area is a mixture of farm and residential uses. The applicant is applying to move the eligibilities to allow them to have highway access.

There are existing feedlots in the area, but moving the eligibilities will not result in the

houses being any closer to the feedlots.

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, however agriculture production is always affected by the placement of houses.

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 141. 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 lots 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 Cypher and seconded by Randall to **approve** Conditional Use Permit #09-27 with the conditions as stated. The motion passed unanimously.

ITEM 4. CONDITIONAL USE PERMIT #09-37 to allow the transfer of one building eligibility from the SW $\frac{1}{4}$ NE $\frac{1}{4}$ to the NE $\frac{1}{4}$ NE $\frac{1}{4}$; all in Section 22-T103N-R51W

Location – 6 miles north of Hartford
Petitioner / Owner- Ron Steineke

Item 4 was placed on the regular agenda.

ITEM 5. CONDITIONAL USE PERMIT #09-39 to allow the transfer of one building eligibility from the SE ¼ NW ¼ to the SW ¼ NW ¼ (ex. Lot FE1 and H-1); all in Section 28-T102N-R48W

Location – ½ mile northwest of Brandon
Petitioner / Owner- Araglin LLP

General Information

Present Zoning - A-1 Agricultural
Existing Land Use - Agriculture
Parcel Size - 40 Acres

Report by: Phil Kappen

Staff Analysis

The subject property is located along the north side of I-90 and east of 480th Avenue. The petitioner wishes to transfer the residential building eligibility from the SE1/4 of the NW1/4 which is land locked to the SW1/4 NW1/4 along 480th Avenue. The eligibility would be moved from a pasture area to a wooded area along the west end of the property and an area adjacent to the wooded area.

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 predominant use in the area continues to be agriculture, however there are some non-farm acreages located approximately ½ mile to the east, and ¼ mile to the north. Immediately to the north is a farmstead, however, there is not a concentrated animal feeding operation at that site. That farmstead has been the site of an ongoing enforcement action over the last couple of years. The property owner has made some progress in addressing the large quantity of junk, but still has considerable work that remains. There is a natural ridge that provides some separation between these two properties.

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

The properties immediately to the west, north and east will likely continue in agricultural uses. Across Interstate 90 to the south the land is adjacent to the Brandon city limits and it is likely that Brandon will continue to grow in this area. The placement of a house towards the west end of the property rather than in the eastern half will preserve additional land for agricultural uses and should not affect the growth of Brandon to the south.

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

Access to the property is via 480th Avenue, a Brandon Township Road. The road dead ends against the interstate and there is limited traffic on the portion of the road next to the subject property. Brandon Township requires driveway permits for any new driveways accessing one of their roads. If added driveways are desired onto the subject property the petitioner will need to contact Brandon Township for the required permission.

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

There is ample space on the site for the parking required by an authorized residential use.

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

This property lies immediately next to I-90. Any outdoor lights should be of a type that prevents light trespass onto the interstate or other properties.

Recommendation

Staff finds that the proposed transfer is in conformance with density zoning and that the use can be conducted in a manner to minimize any potential impacts to adjoining property. Staff, therefore, recommended approval of condition use permit #09-39 with the following conditions:

- 1) The lots 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) Brandon Township shall issue a written driveway permit should any new driveways onto the township road be proposed.
- 3) Any outdoor lighting shall be of a full cutoff and fully shielded design to prevent light spillage beyond the property boundaries.

Action

Based on the staff report, a motion was made by Cypher and seconded by Randall to **approve** Conditional Use Permit #09-39 with the conditions as stated. The motion passed unanimously.

ITEM 6. A PUBLIC HEARING FOR A ZONING TEXT AMENDMENT #09-01
To add agriculturally related operations involving the handling, storage and shipping of farm products to the RC Recreation/Conservation District

General Information

Petitioner - Staff

Report by: Phil Kappen

Staff Analysis

This item was heard by the Planning Commission at the January, 2009 meeting. It has come to staff's attention that the notice for this item was not properly published in the Argus Leader. The county, therefore, needs to run this item through the process again.

The Minnehaha County Zoning Ordinance currently has a section under the A-1 Agricultural District that allows "Agriculturally related operations involving the handling, storage and shipping of farm products" as a conditional use. The petitioner requests that a similar section be added to the RC Recreation/Conservation District.

The predominant use in much of the RC District is agriculture. Given that the intent of the "agriculturally related operations" section is help promote agriculture, it is reasonable that such uses should also be allowed in the RC District by conditional use. The CUP process allows a review of the potential impact of any proposed use on other properties.

Recommendation

Staff recommended approval of Zoning Text Amendment 09-01.

Action

Based on the staff report, a motion was made by Cypher and seconded by Randall to recommend **approval** of Zoning Text Amendment #09-01. The motion passed unanimously.

REGULAR AGENDA

A motion was made by Steinhauer and seconded by Rogen to approve the regular agenda, Items 2 & 4 added. The motion passed unanimously.

ITEM 2. CONDITIONAL USE PERMIT #09-33 to allow the transfer of 2 residential building eligibilities from the S ½ SW ¼ to the NW ¼ SW ¼ (ex. Bur Oak Addn.) in Section 20-T102N-R48W.

Location – 1.5 miles northwest of Brandon

Petitioner / Owner- Jacob Heilman

General Information

Present Zoning - A-1 Agricultural

Existing Land Use - Agricultural

Parcel Size - 40 Acres

Report by: Scott Anderson

Staff Analysis:

The applicant wants to transfer two land locked eligibilities from the S ½ of the SW ¼ to the NW ¼ of the SW ¼ to allow for the development of two (2) residential lots. The locations of the eligibilities are situated in an area with no existing road network. Interstate 90 cuts off any access to the south. The proposed building sites would be located east of the existing Hills Addition near the intersection of 479th Avenue and Bur Oak Place.

On May 6, 2009, staff conducted a site visit. There are no other existing farms located within one (1) mile of the subject property. There are no animal confinement operations near the location of the transfer. There are several single family residents located in the vicinity of the subject property. There are over twelve (12) 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 eligibilities does not increase the number of dwelling units allowed in this section.

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

Rural water is available in the area and a waste water system will be utilized. The applicant hasn't indicated whether the proposed building sites will share an approach between themselves or with any other residence. A new approach will have to be constructed along Bur Oak Place. Brandon 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 #09-33 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) That Brandon Township shall approve the driveway approach prior to a building permit being issued.

Public Testimony

The petitioner, Jacob Heilman, stated that he was in agreement with the conditions.

Ron Genzlinger, 25956 Ridgewood Place, lives in the adjacent subdivision. He is opposed to the transfer of the eligibilities. He was told by his realtor that no more eligibilities were available. Two more houses will make this area feel more like a city. He is also afraid it will affect the area wildlife. Mr. Genzlinger also raised the issue of entrance and exit as there is only one way in and out of this neighborhood.

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 Kelly and seconded by Rogen to **approve** Conditional Use Permit #09-33 with the stated conditions. The motion passed unanimously.

ITEM 4. CONDITIONAL USE PERMIT #09-37 to allow the transfer of one building eligibility from the SW ¼ NE ¼ to the NE ¼ NE ¼ ; all in Section 22-T103N-R51W

Location – 6 miles north of Hartford
Petitioner / Owner- Ron Steineke

General Information

Present Zoning - A-1 Agricultural
Existing Land Use - Agriculture
Parcel Size - 40 Acres

Report by: Scott Anderson

Staff Analysis

The applicant wants to transfer a land locked eligibility from the SW ¼ of the NE ¼ to the NE ¼ of the NE ¼. The proposed building site would be located north of the existing farmstead near the intersection of 464th Avenue and 253rd Street.

On May 6, 2009, staff conducted a site visit. In addition to the applicant's farmstead there is another existing farm located across the road on 464th Avenue. It appears that cattle are being raised on the farm across the road. The proposed eligibility would be moved to a location that is approximately the same distance away from this farm operation. There are several single family residents located to the north and south 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 share an existing approach in order to minimize the number of approaches onto 464th Avenue. Grand Meadow 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 #09-37 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) That Grand Meadow Township shall approve the driveway approach prior to a building permit being issued.
- 3) That the existing approach be shared to provide access to the future residence.

Public Testimony

Commissioner Cypher stated that he pulled this item off the consent agenda because of an on going issue enforcement issue with the petitioner. The petitioner has old manure pits which were supposed to be cleaned out and collapsed. He has heard that this has not been completed, and does not want to approve another request until the enforcement issue is taken care of.

The petitioner, Ron Steineke, was represented by his son-in-law Mike Langenfeld. Mr. Langenfeld stated that some of the pits had been caved in but not all, and there still might be manure in one, he wasn't sure. They didn't have enough available field last year to spread all of the manure.

Commissioner Cypher suggested that action be delayed until this issue could be cleaned up. When he suggest October 1st, Mr. Langenfeld sated that they would still be harvesting.

Action

Citing the continuing enforcement issues, a motion was made by Cypher and seconded by Kelly to defer Conditions Use Permit #09-37 to the October 26th meeting. The motion passed unanimously.

Item 7 was deferred from the April 20, 2009 meeting.

ITEM.7 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

Location – 3 miles north of Brandon

Petitioner / Owner- Marvin Manifold

General Information

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. The proposed site, above the creek has the potential to be a very scenic location and would be an attractive site for a campground.

Many of the required facilities for such a use would be specifically addressed under a campground license issued by the S.D. Department of Health. That licensing process includes, among other items, a review of the access roadways, potable water supply, toilet and wastewater requirements, dump station standards, fire prevention measures and availability of a fire extinguisher, garbage storage and collection, density of camp sites on the grounds and the size of individual campsites, prohibitions on animals running at large, swimming pool restrictions. A condition requiring state permitting for the campground will help tie those requirements into any conditional use permit issued by the county.

The possibility of requiring a state license if the use of the site increases over a certain level has been discussed. Staff has contacted the S.D. Department of Health regarding a potential occupancy limit before a license is required. State law notes that any campground which is open to the public must obtain a state license. One staff member at the Department of Health stated that it was their opinion that having any people other than the property owner at the site would be considered “open to the public” even if no fees were charged. Staff also found that state regulations have a definition for a temporary campground which includes a limit that the number of campers on site must be less than 20 people. It might be possible to use the “less than 20” wording as a cut-off between not requiring a state license or requiring the license. However, if that method were considered, there would have to be certain additional conditions applied to any county permit approval to ensure that some factors are addressed until such time that a state license may be required.

There was also discussion regarding limiting the conditional use permit only to the

current petitioner and that the conditional use permit would become void if the property were ever sold. If the planning commission desired to include such a provision in a permit, they would have to add a specific condition to that effect as conditional use permit typically carry with the land.

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. The primary potential impact on neighboring properties would be traffic. Given the relatively small size of the proposed campground, the potential for traffic impact is reduced. The site is bounded on the north by the BNSF railroad. Provisions would have to be made to prevent campers from accessing the railroad right-of-way and tracks.

At the April meeting some neighbors expressed concerns over items such as traffic, dust, fire danger and unrestricted pets. Concerns about traffic can be addressed through limiting the size of the campground or the number of people who can use the campground and by revising the site plan to make driveways less intrusive. Concern over fire danger and loose pets are addressed under the state campground licensing procedure or can be addressed through specific conditions attached to the permit.

The petitioner has also developed a revised site plan that may help address some of the neighbor's concerns.

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. The 2700-foot driveway into the site would be unacceptable if this were a road in a residential or commercial development due to emergency response concerns. This use, however, would be used during those times of the year in which there would likely be fewer weather related blockages of the road. The proposed use is also of a size that would limit the number of people using the site at any particular time.

The petitioner has indicated that they would construct a concrete block bathhouse with a bathroom and shower. They have also noted that the building would be sized to accommodate the storage of maintenance equipment. The building could also be sized to provide storm shelter in the event of severe weather. A state license requires that a service building be provided and that one toilet, one lavatory and one shower be provided for male campers and one each for female campers.

The petitioner should be required to develop an emergency preparedness plan showing how protection would be afforded to the campers at the time of a severe weather event. This plan should include details on how shelter would be provided or how evacuations would be accomplished, and availability of first aid and of fire extinguishers. All outdoor fires should be located and managed to prevent fire hazards.

The petitioner has not indicated that they would not have a commercial food service of any kind on the property. A food service would bring added requirements into play for any wastewater system. As none is proposed, there should be a prohibition on any commercial food service as a part of the operation.

Some campgrounds include facilities such as swimming pools. The petitioner does not have plans for such a feature. Given the location of the site, and that there will not be ongoing supervision at the location, a swimming pool should be prohibited for safety reasons.

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 little odor, or fumes, and the amount of traffic generated by such a use should result in only a minimal increase in traffic. A requirement for full cutoff, fully shielded outdoor lights will prevent any potential problems with light pollution to adjoining properties.

Recommendation

Staff finds that the proposed use, due to the location and the limited size of the campground, can be made compatible with surrounding land uses and staff recommends **approval** of conditional use permit #09-18 with the following conditions. These conditions include those requested by the Planning Commission.

1. The use shall be limited to a 12-unit campground including seven camping cabins.
2. The use shall conform to the revised site plan submitted as a part of the conditional use permit application for the May 18, 2009 public hearing. The site plan shall show that the access road is to be located at least 100 feet from Tract 1 of Skalland Tracts. The driveway access onto 257th Street shall meet AASHTO Standards.
3. The length of stay shall not exceed a maximum of 14 consecutive days.
4. The petitioner shall obtain a state campground license prior to commencing the land use. The petitioner shall maintain that license and shall follow all provisions of the license. Proof of ongoing state licensure shall be provided to the county planning office.
5. The petitioner shall obtain and maintain a state sales tax license if applicable.
6. No commercial food service shall be allowed at the site.

7. No swimming pool shall be allowed at the site.
8. All onsite wastewater systems shall be constructed and operated in conformance with state regulations and with the Minnehaha County On-Site Wastewater Treatment Ordinance. No dumping of any wastewater shall be allowed at the site unless disposed into a properly sized and maintained wastewater system. Septic approval from the state and a county septic permit are required.
9. The petitioner shall ensure that all solid waste management is performed in conformance with the Minnehaha County Solid Waste Ordinance.
10. 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).
11. 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. The plan shall also include a list of contacts in the event of a complaint or an emergency. A copy of the plan must be filed with the County Planning Office and the plan shall be kept current.
12. All barbeque locations or fire permits shall be constructed and sited to minimize the danger of fire.
13. A first aid kit and a fire extinguisher shall be available at all times that the site is in use.
14. 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.
15. No permanent or ongoing storage of recreational vehicles or other vehicles shall be allowed on the site.
16. At such time as the campground use ceases, all cabins shall be removed from the site.
17. A maximum of one sign up to 32 square feet in size may be used to identify the land use.
18. There shall be no commercial use of the campground or property.
19. No pets shall be allowed to run at large on the site.
20. The conditional use permit shall apply only to the petitioner Marvin Manifold. Upon any change in ownership of the property the conditional use permit shall become void.
21. A management list with contact phone numbers shall be provided to the Planning Department and the abutting landowners.
22. The use of 4-wheelers shall not be allowed on the property.

Public Testimony

Mr. Kappen stated that he had not received a revised site plan.

Commissioner Rogen suggested that condition #22 should read all terrain vehicles. Commissioner Kelly stated that the location for the access road into the campground is concerning. Why couldn't it go along the railroad? Mr. Kappen stated that right at the railroad there is a site distance problem.

The petitioner, Marvin Manifold, was represented by attorney Sam Assam. He presented

a site plan saying 90 trees had been added to be planted around the Farley property (the plan shows 64 trees). The location of the access road was not changed. Commissioner Kelly commented that in 10 years the trees might do some good. Mr. Assam stated that the entire Manifold family, which numbers 19 people, would only get together once or twice a year on this site. He also stated he would prefer the term all terrain vehicle, but recommended adding "for recreational use" as these vehicles are used for weed control.

Marvin Manifold, stated that he owns a mule and that would be used.

Steve Skalland, 48283 257th St., lives southwest of the proposed road access. He suggest that the road access be across from his driveway, then go west and turn north along the railroad. He also mentioned that there is an existing driveway on the west side of the railroad tracks that is used for farm vehicles. It goes north to an unimproved crossing over the tracks, which is very near the proposed campground. Mr. Skalland stated that he is not necessarily opposed to the campground but does want to see the driveway moved.

Steve Farley, 48292 257th St., lives on the acreage around which the proposed road curves. He stated that he shouldn't be penalized for the convenience of the Manifolds. His privacy and his property value are at stake. If this driveway goes in he will be surrounded by gravel roads on three sides. The Manifolds have the means to move the road, and there are other places to put it. Mr. Farley stated that he had called Mr. Manifold and told him he was not opposed to the campground, just the driveway. Mr. Farley noted the Manifolds had been camping here for several years. They have been going on his property to get into the pasture. While he has never said anything, the Manifolds have never asked permission.

Dan Irvine, 48423 256th St., has land that abuts the northern end of the Manifold property and he runs livestock on his land. The Manifolds have trespassed on his land to fish and hunt. He appreciates the condition which has restricted pets on the property due to potential harassment of his livestock. He would like to see a right-to-farm notice covenant also be required. Mr. Irvine's other major concern is fire, especially in an unsupervised campground. Can the Manifolds be required to carry some form of liability insurance?

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

In response to Commissioner Randall, Mr. Kappen stated that the state camping permit did have standards for fire rings and pets running at large. That is an annual permit. Violations of the conditional use permit would be handled by the Planning Department; other violations would be turned over to the State.

Commissioner Rogen reiterated his suggested change to condition # 22. There was some minor discussion among the Commissioner's on whether they were comfortable with this conditional use. Mr. Anderson stated that this conditional use had been deferred twice and little progress has been made on the concerns raised. The petitioner did not submit the revised site plan until this item was up for discussion. Mr. Anderson stated that he can not see this being deferred a third time and recommended denial of the permit.

Commissioner Kelly stated that there are three neighbors that have valid concerns. The road is a serious problem. He is also concerned with unsupervised camping and what could happen in that situation. Commissioner Randall agreed. She appreciates the petitioner's willingness to agree to the recommended conditions, but the road is still a big problem.

Action

Based on the staff report and public testimony, a motion was made by Kelly and seconded by O'Hara to **deny** Conditional Use Permit #09-18. The motion passed (Rogenay).

ITEM 8. CONDITIONAL USE PERMIT #09-36 to allow a rubble dump facility.

Legal Description - W1000.89' of Lots B & C of Tract 1, & the W250' S206'
E340' of Tract 4, All in Waitt Tracts 1, 2, 3, 4 & 5
inclusive, in the NE1/4 of Section 35-T101N-R51W
Location – 46451 267th St. 3.5 miles west of Sioux Falls
Petitioner / Owner- Don Runge / Chuck Runge, Robert Runge & Avry
Krietnitz

General Information

Present Zoning - A-1 Agricultural
Existing Land Use - Agriculture
Parcel Size - 30 acres

Report by: Phil Kappen

Staff Analysis

The subject property is located south of 267th Street and between ¼ mile and ½ mile west of 465th Avenue. The property to the west and south is in agricultural uses, that to the east is predominantly residential and to the north is a residential subdivision.

The petitioner proposes to operate a construction and demolition debris (rubble) site on the property. Only commercial demolition debris would be deposited at the site. The petitioner's proposed hours of operation of the site would be 7:00 AM to 5:30 PM Monday through Friday. The approximate life span of the site would be ten years and after closure, the site would be returned to native grassland.

Such a use would also require solid waste facility permits from both Minnehaha County and the state of South Dakota.

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.

Although the site is near the Sioux Falls Regional Landfill, the proposed operation would be considerably closer than the landfill to at least three existing residential subdivisions. The impact on these residences could be considerable due to their proximity to the subject site, the negative factors associated with such a use, and the great potential for added traffic and additional litter along the highway. The petitioner's site plan and written narrative provide no indication of how and screening of the site would be done or of how dust, noise and other negative factors would be controlled.

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

There is no additional planned in this area. It cannot be determined from the petitioner's written narrative regarding the proposed use how an excavation would be made for the proposed rubble site. In other areas rubble sites have been approved in order to utilize existing gravel or sand pits. There has not been any conditional use permit approved for the extraction of aggregate or fill at this location and approval of such a permit would be made more difficult given the proximity of the residences and the setback criteria between extraction sites and homes.

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

The proposed entrance to the site would be off of 267th Street (County Highway 148). The petitioner suggests that the access road and a parking area would be graveled rather than hard-surfaced. Any new access onto the highway would have to be hard-surfaced to avoid drawing dust and mud onto the highway. Access onto the highway would need to be accomplished by constructing a new driveway, however, the driveway is proposed at a location for which staff has some considerable concerns. The sight distance to the east from the location is good, however, that to the west is limited. Given the great amount of traffic that already uses this highway to travel to and from the landfill, and the speed at which the traffic moves on the roadway, allowing additional access points along this stretch of road makes no sense and would likely result in added traffic hazards at the site.

Currently the access to the site is from the east off of 465th Avenue. A representative of the petitioner, however, has indicated that the property across which access is currently being made will be sold within one year. This could result in a land-locked parcel. If that property were sold it is required that the property be platted. The consideration of any plat by the county would include a review of whether proper access is retained to access the back portions of the property. This could require that a mutual access easement be added to the plat to allow access to the west property.

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

There is ample space on the property for the required parking and the proposed parking area is located well off the highway right-of-way.

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 would be a great potential for dust from such a use. The petitioner's written narrative provides no indication of how any dust control would be accomplished on the driveway, the parking area or on the remainder of the site. There is also no indication of how noise from the site would be abated.

Although it is a separate issue, staff must also note that when we inspected the property for this application we found that a contractor's shop and storage yard are being operated out of 26719 465th Avenue. This property is not zoned for such a use. Staff has reviewed air photos from 1981, when there was no such apparent use at the site; from 2004, when there was a limited amount of equipment located there; and from 2008 and found that there has been a great increase in the amount of equipment and materials at the site. Staff has contacted the applicant (April 27, 2009) about this violation and been informed that the use should cease within a year as they plan to sell the property.

Recommendation

Staff finds that the proposed use in this location would not be compatible with adjoining property uses, that such a use has a great potential for increased noise and dust in the area, and that the use at this site would result in increased traffic hazards along County Highway 148. Staff, therefore, recommended denial of Conditional Use Permit#09-36.

Public Testimony

Commissioner Steinhauer wondered if there would be tarping requirements for a rubble dump. Mr. Kappen stated that it could be a condition, but it would be up to the petitioner to do enforcement.

Don Runge spoke for all the petitioners. He noted that this site is surrounded by land

owned by the Runge family members and that there is good tree coverage to the east and south. This site will not be a nuisance. He has moved the site 500' to the north so it is hidden behind the trees. The depth on the hole on this property is 20 feet. Mr. Runge plans to excavate another 20' and use that extract to build a berm. Trees and grass will be planted on the berm. He hired JSA to design this dump so that it will meet the requirements for a state rubble site. This operation is 1000 feet away from the nearest residence.

Mr. Runge explained that he does not anticipate an increase in traffic because he expects to siphon off some of the traffic which is currently going to the landfill. He noted that the city had previously told him they didn't want rubble at the landfill but have since changed what they are saying. Mr. Runge feels that site distance is not a problem at this access point to the property as it is at the top of the hill. He has talked with the County Highway Department and they are not opposed to the location as long as the access is built to standards. He plans to hard surface this road, so dust should not be a problem. With a 40' hole he doesn't anticipate rubble will blow out of the pit, unlike the garbage which blows out of the landfill. Mr. Runge continued that he does not anticipate any odor from this site as only clean debris will be dumped. The only noise will come from a dozer covering the debris for about an hour once a day. There will be no lighting on the site.

In response to questions from the Commission, Mr. Runge confirmed that his driveway will be hard surfaced and that JSA has confirmed that the site is 1000 feet from all houses. There is some low land here but no slew. Currently he runs a pit on the east side of Sioux Falls by Hwys 11 and 38 which is gated and locked.

Anthony VanderHagen, 46462 267th St., submitted pictures which compared this site to the landfill. This site is closer to existing houses and visible from more houses than the landfill. He noted that traffic coming from the east will have to make a left hand turn into the rubble dump. This will be against the majority of the traffic coming from the landfill and on winter evenings it will be very hard to see. The trucks themselves will have to shift gears, there will be engine pitch changes and the revving of the engines as the trucks are stopping and starting. This will create much more noise than trucks going to the landfill. Those trucks are at a constant speed and the noise level is consistent. Mr. VanderHagen submitted a petition signed by persons against the rubble dump.

Chad Malwitz, 46514 Lorraine Circle, stated that in order to use this site, the hole would have to be mined. That activity will cause a lot of noise due to the equipment that will be needed.

Ann Decker, 46507 Lorraine Circle, asked what happened after 10 years. She also stated that the Runge family owns the land around this site. Can they change the access and start coming in from the gravel road? She is concerned that truck traffic will increase and the highway is already a concern with people trying to pass the slower trucks.

Grant Edgecomb, 26685 DaySpring Circle, noted that there was a no passing zoning on the highway in this area which is not observed by the trucks. There are many young families here and many new drivers who are just 14 years old. This also happens to be a area where the buses from the Parker, Lennox, Tea, and Hartford schools all converge. Mr. Edgecomb believes that traffic will increase as Mr. Runge's customers from the east dump come to this site, and as Mr. Runge competes for customers from other dumps in the area.

Darci Willemsen-Adams, 26711 465th Ave., can see this site from her window. She is

concerned her property value will be affected. She would like to see more information on the berm construction.

Chet Hofer, 26662 465th Ave., is against this use. He anticipates that they will grind the wood, which is very dusty. Burying slabs of concrete takes up a lot of room so will that be ground and recycled for money? There is a mess on the highway now from the trucks. He also mentioned that OSHA is concerned about the silicosis from concrete dust.

Todd Sandman, 46485 Inca Dr., also owns a lot on Lorraine Circle through which the drainage from this area will travel. How are they going to control drainage?

Glen Fuerstenberg, 46524 267th St., stated that people don't tarp on the way to the landfill. Many pull into his driveway to pull on the tarp so they don't get fined. He was planning on building a new house on his lot this year but if this goes through he won't. He believes the property value will be affected. He recently talked with someone involved with this proposed dump and was under the impression that they would do concrete crushing on the site.

Don Boyd, 1309 Larksup Trail, owns the 80 acres directly to the west of the site. He has 4 building eligibilities that he would like to someday develop. They will lose their value if the driveway is placed right next to where the lots will be.

Mr. Runge responded to the concerns expressed by the area residents. He does not believe that there will be anymore traffic; trucks will just be turning a ½ mile short of the landfill. Issues with the driveway access can be fixed by engineering. If a turn lane and acceleration lane are needed those will be put in. Mr. Runge stated that there will be no recycling of products, no grinding of wood, and no crushing of concrete or asphalt. No trucks will be leaving this site until it is hard surfaced. Mr. Runge pointed out that the houses in the area had been developed in the 1980s, long after the landfill was in operation. If that doesn't affect the property values, his site won't either.

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

Commissioner Steinhauer stated that he understands the concerns of the neighbors but it sounds like Mr. Runge is willing to work to mitigate the issues. He would like to have some potential conditions in order to do a better review of the proposal. It may be reasonable at this site or it may not. No matter where this use is placed there will be a group of people opposed to the use.

Commissioner Cypher said that at first blush this seemed like it should be denied. The issue raised about the truck noise pattern is a big concern. He pointed out that there are no turn lanes at the landfill and that this site supposedly meets the State's setback criteria. The Commission needs to look at what is the best case scenario and can this site adequately meet those conditions.

Commissioner Kelly stated that the close proximity to the housing development is not a good situation. There will be an increase in traffic for a community which already has to put up with a lot now. 40 years ago when Runge's had the land there was an opportunity but the area has changed. With 50-60 neighbors showing up in opposition he cannot support this request.

Action

Based on the staff report and public testimony, a motion was made by Kelly to deny Conditional Use Permit #09-36. The motion died for a lack of second.

Commissioner O'Hara, stating that she would like to see some potential conditions and to have the staff work with Mr. Runge, made a motion to **defer** Conditional Use Permit #09-36 to the June 22nd meeting. Seconded by Steinhauer. The motion passed (Kelly nay).