

**MINUTES OF THE
MINNEHAHA COUNTY PLANNING COMMISSION**
July 27, 2015

A meeting of the Planning Commission was held on July 27, at 7:00 p.m. in the Commission Room of the Minnehaha County Administration Building.

COUNTY PLANNING COMMISSION MEMBERS PRESENT: Wayne Steinhauer, Mike Cypher, Becky Randall, Doug Ode, and Jeff Barth.

STAFF PRESENT:

Scott Anderson, Kevin Hoekman, and David Heinold - County Planning
Sara Show – Office of the State’s Attorney

The meeting was chaired by Wayne Steinhauer.

Each item in the consent agenda was read and items #3, 4, 8, and 9 were moved from the consent agenda to the regular agenda either by a Commissioner or by the audience.

A motion was made by Commissioner Cypher and seconded by Commissioner Barth to approve items #1, 2, 5, 6, 7, and 10 on the consent agenda. The motion passes unanimously.

CONSENT AGENDA

ITEM 1. Approval of Minutes – June 22, 2015

A motion was made by Commissioner Cypher and seconded by Commissioner Barth to **approve** the meeting minutes from June 22, 2015. The motion passed unanimously.

ITEM 2. CONDITIONAL USE PERMIT #15-42 to allow a Manufactured Home on the property legally described as S280' E271' S1/2 NE1/4, Section 1-T102N-R50W.

Petitioner: Ronald & Linda Smart

Property Owner: same

Location: 25649 472nd Ave. Approximately 1.5 miles east of Crooks

Staff Report: Kevin Hoekman

This would allow a manufactured home.

General Information:

Legal Description – S280' E271' S1/2 NE1/4, Section 1-T102N-R50W

Present Zoning – A-1 Agricultural

Existing Land Use – Single Family Dwelling

Parcel Size – 1.74 acres

Staff Report: Kevin Hoekman

Staff Analysis:

The subject property is located approximately 3 miles west of Crooks along county Highway 133 or 472nd Avenue. The parcel is located on the north end of a large lot and strip style residential subdivision. The petitioner is requesting to replace an existing single wide mobile home with another mobile home. The current mobile home was permitted in 1975 through the conditional use permit process. The 1990 Revised Zoning Ordinance for Minnehaha County states that “Mobile homes which are nonconforming uses may be replaced with another such structure by making application for a conditional use. The compatibility of the replacement dwelling with neighboring dwellings shall be considered in reviewing the conditional use request.”

Staff visited the site and found that the site currently had a mobile home with several accessory buildings as well. The property was generally in good order and the neighborhood was well established with tree belts along nearly every property. The current home is 14 feet by 70 feet and the petitioner would like to upsize to 16 feet by 80 feet. The petitioner noted and the site plan shows that the replacement dwelling will be placed roughly in the same location as the current dwelling.

Conditional Use Permit Criteria:

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

As a replacement home, the new mobile home will in general be an improvement to the property. At this time nothing else on the property will change to effect the neighboring land uses.

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

The property is located in a subdivision on the along a county highway. A newer style mobile home should have little to no effect on any future development.

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

No extra utilities or services will require expansion because there is already service to the existing dwelling.

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

The off-street parking requirements provides for a single-family residence are met through several accessory buildings and driveways.

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. This will include from the dwelling and from the accessory buildings.

6) Health, safety, general welfare of the public and the Comprehensive Plan.

The proposed conditional use will have a no effect on the health, safety and general welfare of the public. The replacement of this mobile home will not add density within the county.

Recommendation:

Staff finds this conditional use permit request meets the ordinance and is reasonable under the comprehensive plan. Staff recommends **approval** of Conditional Use Permit #15-42 with the following conditions:

- 1.) The replacement mobile home shall be placed within the approximate area of the existing dwelling unit.
- 2.) A building permit must be obtained prior to the placement of the mobile home.

ACTION

A motion was made by Commissioner Cypher and seconded by Commissioner Barth to **approve** CUP #15-42 with recommended conditions. The motion passes unanimously.

Conditional Use Permit # 15-42 - Approved

ITEM 5. CONDITIONAL USE PERMIT #15-45 to Transfer One Building Eligibility from Krier's Addition, SW1/4 & CNW RR ROW Lying Within SW1/4 to the proposed Tract 2 Siemonsma's Addition, Section 5-T102N-R52W.

Petitioner: Vincent Siemonsma

Property Owner: same

Location: Approximately 2 miles northwest of Humboldt

Staff Report: Scott Anderson

This would allow the transfer of building eligibility.

General Information:

Legal Description – Tract 2, Siemonsma's Addition, Section 5, T102N, R52W, Minnehaha County, SD

Present Zoning – A1 Agriculture

Existing Land Use – agriculture

Parcel Size – 9.16 acres

Staff Report: Scott Anderson

The applicant wants to transfer one building eligibility from the Krier's Addition in the SW ¼ of Section 5 of Humboldt Township to a 9 acre recently platted parcel called Tract 2, Siemonsma's Addition in the SW ¼ of Section 5. The applicant is engaged in some estate planning.

On July 7, 2015, staff conducted a site visit. There are no confined animal feeding operations near the proposed transfer. The applicant is moving the eligibilities from very productive crop land into an existing farmstead.

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 one building eligibility 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 indicated that the proposed building sites will use an existing 60 foot wide access easement.

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.

6. Health, safety, general welfare of the public and the Comprehensive Plan.

The health, safety, general welfare of the public will not be impacted by the transfer of one (1) building eligibility. The intent of the Comprehensive Plan will be met, as density zoning will be followed.

Recommendation: Staff finds this conditional use permit request to be consistent with density zoning and recommends **approval** of Conditional Use Permit #15-45

ACTION

A motion was made by Commissioner Cypher and seconded by Commissioner Barth to **approve** CUP #15-45 with recommended conditions. The motion passes unanimously.

Conditional Use Permit #15-45 - Approved

ITEM 6. CONDITIONAL USE PERMIT #15-47 to exceed 1,200 square feet of total accessory building area – requesting 1,920 sq. ft. on the property legally described as Tract 4, Hanisch Addition, NW1/4, Section 33-T102N-R51W.

Petitioner: Mike Ideker

Property Owner: same

Location: 26134 462nd Ave. Approximately 1 mile southwest of Hartford

Staff Report: David Heinold

This would allow 1,920 square feet of total accessory building area.

General Information:

Legal Description – Tract 4 Hanisch Addition, NW1/4, Section 33-T102N-R51W

Present Zoning – A-1 Agricultural District

Existing Land Use – Residential

Parcel Size – 3.04 Acres

Staff Report: David Heinold

Staff Analysis:

The petitioner is requesting to exceed 1,200 square feet of total accessory building area. The petitioner is requesting 1,920 square feet of total accessory building area. According to the Minnehaha County Zoning Ordinance, Section 12.07 (D) states:

(D) Accessory buildings shall not occupy more than thirty (30) percent of the rear yard, subject further to the following limitations:

(1). In the A-1 and RC Districts, the total area of accessory buildings shall not exceed 1,200 square feet when such buildings are located in a subdivision of more than four (4) lots unless a conditional use has been approved.

The petitioner is requesting to construct 1,920 square foot accessory building for personal storage, which will be located east of the existing residence.

The accessory building sizes in the general area range in size from 1,104 sq. ft. to 3,200 sq. ft. The property owner about a quarter-mile to the north at 46204 261st St. has 3,200 sq. ft. of total accessory building area. In addition, the property owner who lives at 26103 462nd Ave. and 26141 462nd Ave. have 2,560 sq. ft. and 1,104 sq. ft. respectively.

On July 15, 2015, staff received notification from the City of Hartford that they do not foresee any issues with the requested conditional use permit. Staff also visited the subject property and determined that the proposed building size is relatively comparable with accessory building sizes in the immediate area.

Conditional Use Permit Criteria:

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

There are two other properties within a quarter-mile of the subject property that have more than the petitioner's requested total accessory building area. It is unlikely that the proposed building size will have a detrimental effect on property values in the immediate vicinity. The proposed building will be used for the property owner's personal storage. The area is primarily agricultural with five residential acreages within a quarter-mile of each other.

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

The accessory building may only be used for residential purposes, no commercial or business activities are allowed. Given the size of the other larger accessory buildings, a 1,920 sq. ft. accessory structure would be congruent with the land composition.

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

Access will be provided via an extension of the petitioner's driveway between the house and location for the proposed accessory building. No further infrastructure will need to be provided.

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

No off-street parking will be needed with the supplemental area for parking as a result of residential activities. No commercial or business parking will be allowed at any time.

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

No offensive nuisances shall be permitted at any time during use of the proposed accessory structure. The use of lighting should be directed downward on to the property in order to prevent light pollution off site.

6) Health, safety, general welfare of the public and the Comprehensive Plan.

The proposed accessory building should have no effect on the health, safety, and general welfare of the public. The use of the accessory building for private use and storage will create few problems to neighboring properties.

Recommendation:

Staff finds that the requested total accessory building size is relatively comparable to the existing accessory buildings in the immediate vicinity. Staff recommends **approval** of Conditional Use Permit #15-47 with the following conditions:

- 1.) That the total accessory building square footage shall not exceed 1,920 square feet.
- 2.) That the accessory building shall not exceed 35 feet in height.
- 3.) That the building shall be an accessory use to the continued use of the property as a residential lot.
- 4.) That only personal residential storage shall be allowed in the building and no commercial uses or commercial storage will be allowed at any time.

ACTION

A motion was made by Commissioner Cypher and seconded by Commissioner Barth to **approve** CUP #15-47 with recommended conditions. The motion passes unanimously.

Conditional Use Permit # 15-47 – Approved

ITEM 7. CONDITIONAL USE PERMIT #15-48 to allow a Class 2 Major Home Occupation, Agricultural Repair Shop, on the property legally described as N1/2 NW1/4 (Ex. 6.10A and Ex. H-1), Section 15-T103N-R49W.

Petitioner: Rob Siemonsma

Property Owner: same

Location: 25224 475th Ave. Approximately 2 miles southeast of Baltic

Staff Report: Kevin Hoekman

This would allow a Class 2 Major Home Occupation, Agricultural Repair Shop.

General Information:

Legal Description – N1/2 NW1/4 (Ex. 6.10A and Ex. H-1), Section 15-T103N-R49W

Present Zoning – A-1 Agricultural

Existing Land Use – Farmstead and related operations

Parcel Size – 72.63

Staff Report: Kevin Hoekman

Staff Analysis:

The property is located approximately 2 miles southeast of Baltic along SD Highway 115. The parcel is located across the street to the south of Hefty Seed Company. The parcel is large and predominantly agriculturally used land. A single family dwelling, general farmstead buildings and an open lot CAFO exist on the site.

The petitioner is requesting a home occupation permit to operate a repair shop for agricultural equipment. Staff visited the site and found many equipment items, a sign for RT-Equipment, and what appeared to be an existing repair shop. Staff contacted the petitioner and he has acknowledged that they have been operating a business since 2008. The petitioner will have to pay an additional \$250 because the fee for a conditional use permit is required to be double if work has started prior to the permit. Staff has found no record of nuisance violations since that time. In addition the site was found generally well kept for an operating business.

The petitioner has submitted a brief description of what is done and what he would like to do as part of the home occupation. A major part of the application is the addition of a 50 feet by 90 feet building to be used for the business and for personal agricultural equipment. The home occupation will be for a repair shop for agricultural equipment with incidental sales of rebuilt and new equipment. Staff inquired about the possibility of painting at the site, and the petitioner responded that they do not do painting on the equipment other than occasional use of spray paint cans on welds. The operation will utilize open hours of Monday through Friday from 8 am – 5 pm and Saturdays from 8 am – 12 pm. The petitioner included that he expects approximately 100 to 150 customers per year. His submitted description of the occupation lists 2 employees while the class 2 home occupation allows up to 5 total employees.

The site is currently surrounded by a dense tree grove. The site plan includes placing the 50' by 90' building just outside of the tree grove to the west of the farmstead and to the north of the driveway. An area to the east of the proposed building currently stores equipment and will

continue to be the primary storage area for equipment in the future. Equipment storage will be a potential indicator of a business located at the site; therefore equipment should be restricted to the proposed storage area and areas within the tree groves to hide the storage from view. The petitioner noted that the proposed building will have an office and a bathroom for the use of the business and farm.

Staff visited the property and found that the existing site is generally in good order. The dense tree groves do well to screen the farmstead and existing operations. The site lines from the driveway seem to be adequate. And the close proximity to Hefty Seeds places the operation near other agribusiness. The operation meets and must continue to meet all the conditions of section 12.0302 (B) Class 2: of Major Home Occupations.

Conditional Use Permit Criteria:

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

The property is located on a busy highway and near an existing agribusiness location. Several residential dwellings dot the landscape, and the closes dwelling is located approximately 800 feet to the north. A church is located to the northeast less than ½ mile away. The long distances, existing tree grove and indoor operation should allow for minimal effect of the proposed operation.

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

The surrounding area is primarily agricultural land uses with a few residential dwellings dotting the nearby area. It is unlikely that the proposed operation will affect future agricultural development, or the development of residential properties.

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

All utilities required for the operation are existing at the site. The facility may increase the amount of slower moving agricultural equipment along a fast moving highway; however there no noticeable obstructions to turning out of the driveway.

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

The site is fairly large to contain all parking and loading within the farmstead area. All new parking and driveways should be required to be covered with gravel surface to prevent mud and debris from pulling out onto the highway. Staff inspection found that adequate parking was available for the existing farmstead and proposed home occupation.

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

The property will not be allowed to create a nuisance at any time. Operations will have to take place completely within the proposed building and not outside. Indoor operations will reduce noise and other nuisances. The existing grove of trees currently and will screen the facility.

6) Health, safety, general welfare of the public and the Comprehensive Plan.

The proposed land use should have little to no health, safety, or general welfare concerns for the public. The proposed land use will primarily be located within an existing farmstead with only some pasture land being removed for the construction of a building. The proposed land use will primarily serve agricultural production in an agricultural zoning district. The promotion of agricultural production is a major theme of the comprehensive plan.

Recommendation:

Staff recommends approval of Conditional Use Permit #15-48 to allow a Class 2 major home occupation of an agricultural repair shop with the following conditions:

- 1.) The repair and sales of farm machinery shall be secondary to the property being a farmstead. If the dwelling or the farm ceases operations the home occupation shall cease.
- 2.) The home occupation shall be limited to indoor operations within the proposed 50' by 90' building.
- 3.) All outside storage and equipment display shall be located to the west of the proposed building and screened with a tree grove.
- 4.) The applicant shall be limited to one (1) non illuminated wall sign, which shall not be greater than two (2) square feet, and one (1) non illuminated free-standing sign, which shall not exceed four (4) square feet in area for the home occupation. A sign permit shall be obtained prior to the installation of any sign.
- 5.) All new driveways and parking for the proposed building shall have a gravel surface. The gravel surface of the driveway to the highway shall be maintained in good condition with a thickness of at least four inches at all times.
- 6.) The operation of the home occupation shall meet all requirements for a Class 2 home occupation in the 1990 Revised Zoning Ordinance for Minnehaha County.
- 7.) The petitioner shall pay a \$250 penalty for conducting a home occupation prior to obtaining approval from the County. The fee shall be paid prior to August 24, 2015.

ACTION

A motion was made by Commissioner Cypher and seconded by Commissioner Barth to **approve** CUP #15-48 with recommended conditions. The motion passes unanimously.

Conditional Use Permit # 15-48 – Approved

ITEM 10. CONDITIONAL USE PERMIT #15-50 to amend CUP #91-2 to allow a 27'x68' Mobile Home on the property legally described as Tract 1 Reiner's Addn., W1/2 SE1/4, Section 13-T102N-R51W.

Petitioner: Joyce Reiners

Property Owner: same

Location: 25868 Skunk Creek Ave. Approximately 1.5 miles northeast of Hartford

Staff Report: David Heinold

This would amend CUP #91-2 to allow a 27'x68' mobile home.

General Information:

Legal Description – Tract 1 Reiner's Addition, W1/2 SE1/4, Section 13-T102N-R51W

Present Zoning – A-1 Agricultural District

Existing Land Use – Residential

Parcel Size – 11.17 Acres

Staff Report: David Heinold

Staff Analysis:

The petitioner is requesting a conditional use permit to replace an existing 28'x60' manufactured home with a new 27'x68' manufactured home at the same site located approximately one-and-a-half miles northeast of Hartford. The current manufactured home was permitted in 1991 through the conditional use permit process.

On July 15, 2015, staff received notification from the City of Hartford that they do not foresee any issues with the requested conditional use permit. Staff also visited the subject property and determined that the proposed location for the mobile home will be an overall improvement to the condition of the existing mobile home that was permitted and placed on the site in 1991.

Conditional Use Permit Criteria:

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

The replacement of the existing double-wide manufactured home with a larger mobile home should not affect the uses already permitted or property values in the area. The mobile home will be located in the same spot as the current manufactured home. As a replacement home, the new mobile home will in general be an improvement to the property. At this time nothing else on the property will change to affect the neighboring land uses.

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

The area is primarily agricultural with a few residential acreages and farmstead properties including the petitioner's property. The proposed replacement of the smaller manufactured home with a larger unit will have minimal impact on the development and improvement of any vacant properties in the area. A newer style mobile home should have little to no effect on any

future development.

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

The petitioner already has access off the existing driveway on the east side of Skunk Creek Ave.

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

The petitioner has sufficient space on the property for parking as a result of 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.

The location of the new mobile home on the property as a permanent single-family residence should not create dust, noise, or fumes in any amounts that would constitute a nuisance as a result of residential use.

6) Health, safety, general welfare of the public and the Comprehensive Plan.

The proposed conditional use will have a no effect on the health, safety and general welfare of the public. The replacement of this mobile home will not add density within the county.

Recommendation:

Staff finds this conditional use permit request meets the ordinance and is reasonable under the comprehensive plan. Staff recommends **approval** of Conditional Use Permit #15-50 with the following conditions:

- 1.) The dwelling shall have been constructed on or after July 15, 1976.
- 2.) The exterior dimensions of the structure, measured by excluding overhangs, shall not be less than 22 feet.
- 3.) The structure shall be supported by a foundation system consisting of walls along the perimeter and piers on the interior. All foundation walls and piers shall extend a minimum of 42 inches below final grade.
- 4.) The roofing and siding material be consistent with the material used in site-built dwellings.
- 5.) The roof pitch shall not be less than a 3 in 12 slope.
- 6.) That a building permit is required prior to placement of the mobile home.

ACTION

A motion was made by Commissioner Cypher and seconded by Commissioner Barth to **approve** CUP #15-50 with recommended conditions. The motion passes unanimously.

Conditional Use Permit # 15-50 – Approved

Regular Agenda

ITEM 3. CONDITIONAL USE PERMIT #15-43 to amend CUP #13-33 – requesting 3,738 sq. ft. on the property legally described as Lots A, B, & C in Risty’s Tract 4 E1/2 SW1/4 & SE1/4, Section 15-T102N-R48W.

Petitioner: Kevin Buehner

Property Owner: same

Location: 48160 259th St. Approximately 1 mile north of Brandon

Staff Report: David Heinold

This would amend CUP #13-33 to allow 3,738 sq. ft. of total accessory building area.

General Information:

Legal Description – Lots A, B, & C in Risty’s Tract 4, E1/2 SW1/4 & SE1/4, Section 15-T102N-R48W

Present Zoning – A-1 Agricultural District

Existing Land Use – Residential/Agriculture

Parcel Size – 26.76 Acres

Staff Report: David Heinold

Staff Analysis:

The petitioner is requesting to exceed 1,200 square feet of total accessory building area. The petitioner is requesting 3,738 square feet of total accessory building area. According to the Minnehaha County Zoning Ordinance, Section 12.07 (D) states:

(D) Accessory buildings shall not occupy more than thirty (30) percent of the rear yard, subject further to the following limitations:

(1). In the A-1 and RC Districts, the total area of accessory buildings shall not exceed 1,200 square feet when such buildings are located in a subdivision of more than four (4) lots unless a conditional use has been approved.

The petitioner is requesting to construct a 2,226 square foot accessory building for personal residential storage and agricultural feed storage. The petitioner has an existing 27’6”x54’ accessory building. The proposed building will be located to the northwest of the existing residence.

Currently, the petitioner has 5,672 square feet of total accessory building area on the property adjacent, 48164 259th St., to the subject property. The total accessory building area sizes in the general area range from 1,568 sq. ft. to 10,032 sq. ft. The property owner at 48189 259th St., a little less than a half-mile to the east, has 10,032 sq. ft. of total accessory building area. The property owner who lives a quarter-mile to the west at 48132 259th St. has 4,158 sq. ft.

On July 15, 2015, staff visited the property and determined that the proposed building size replacement is relatively comparable to existing accessory building sizes at properties in the

surrounding area.

Conditional Use Permit Criteria:

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

There are two other properties within one-half mile of the subject property that have more than the petitioner's requested total accessory building area. It is unlikely that the proposed building size will have a detrimental effect on property values in the immediate vicinity since there are other larger accessory buildings in the area, which is primarily agricultural with four residential acreages not including the petitioner's farmstead property.

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

The accessory building may only be used for personal residential and agricultural storage, no commercial business activities are allowed. Given the size of the other larger accessory buildings, 3,738 sq. ft. of total accessory building area would be congruent with the land composition.

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

Access will provided off of the petitioner's existing driveway between the house and location for the proposed accessory building. No further infrastructure will need to be provided.

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

No off-street parking will be needed with the supplemental area for parking as a result of personal agricultural and residential activities. No commercial or business parking will be allowed at any time.

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

No offensive nuisances shall be permitted at any time during use of the proposed accessory structure. The use of lighting should be directed downward on to the property in order to prevent light pollution off site.

6) Health, safety, general welfare of the public and the Comprehensive Plan.

The proposed accessory building should have no effect on the health, safety, and general welfare of the public. The use of the accessory building for private use and storage will create few problems to neighboring properties.

Recommendation:

Staff finds that the requested total accessory building size is relatively comparable to the existing accessory buildings in the immediate vicinity. Staff recommends **approval** of Conditional Use Permit #15-43 with the following conditions:

- 1.) That the accessory building area shall not exceed 3,738 square feet on the property.
- 2.) That the building shall not exceed 35 feet in height.

- 3.) That a building inspection is required to measure the outside dimensions of the building.
- 4.) That a building permit is required.
- 5.) That the building shall be an accessory use to the continued use of the property as a residential lot.
- 6.) That only personal agricultural or residential storage shall be allowed in the building and no commercial uses or commercial storage will be allowed.
- 7.) That all outdoor lighting shall be of a full-cutoff and fully-shielded design to prevent direct spillage of light beyond the property boundaries.
- 8.) That the Planning & Zoning Department reserves the right to enter and inspect accessory buildings at any time, after proper notice to the owner, to ensure that the property is in compliance with the conditional use permit conditions and the Minnehaha County Zoning Ordinance.

PUBLIC TESTIMONY

David Heinold of Planning Staff presented the staff report and recommendations.

Michelle Buehner approached the podium on the petitioner's behalf. She stated that she was Kevin Buehner's (the petitioner) wife and that they would answer any questions.

Commissioner Barth asked why she needed 2 buildings (this pertained to both CUP #15-43 and #15-44). Michelle responded that they intended to remove and replacing several buildings to better serve the agricultural storage on the property.

ACTION

Commissioner Barth motioned for approval of both Conditional Use Permits #15-43 and #15-44 with recommended conditions. Commissioner Ode seconded the motion. The motion passed unanimously.

Conditional Use Permit # 15-43 - Approved

ITEM 4. CONDITIONAL USE PERMIT #15-44 to amend CUP #10-62 – requesting 6,156 sq. ft. on the property legally described as Lot D in Risty’s Tract 4 E1/2 SW1/4 & SE1/4, Section 15-T102N-R48W.

Petitioner: Kevin Buehner

Property Owner: same

Location: 48164 259th St. Approximately 1 mile north of Brandon

Staff Report: David Heinold

This would amend CUP #10-62 to allow 6,156 sq. ft. of total accessory building area.

General Information:

Legal Description – Lot D in Risty’s Tract 4, E1/2 SW1/4 & SE1/4, Section 15-T102N-R48W

Present Zoning – A-1 Agricultural District

Existing Land Use – Residential/Agricultural

Parcel Size – 7.95 Acres

Staff Report: David Heinold

Staff Analysis:

The petitioner is requesting to exceed 1,200 square feet of total accessory building area. The petitioner is requesting 6,156 square feet of total accessory building area. According to the Minnehaha County Zoning Ordinance, Section 12.07 (D) states:

(D) Accessory buildings shall not occupy more than thirty (30) percent of the rear yard, subject further to the following limitations:

(1). In the A-1 and RC Districts, the total area of accessory buildings shall not exceed 1,200 square feet when such buildings are located in a subdivision of more than four (4) lots unless a conditional use has been approved.

The petitioner is requesting to construct a 30’x50’ accessory building for personal storage and a 16’x24’ building for chickens and feed storage moved on. The existing 28’x50’ building will be removed from the property and replaced with the proposed 30’x50’ accessory building. The petitioner also plans to remove the existing concrete corn crib. Currently, there is 5,672 sq. ft. of total accessory building area; and the proposed request is to remove 1,400 sq. ft. and add 1,884 sq. ft.

Currently, the petitioner has 3,190 square feet of total accessory building area on the property adjacent, 48160 259th St., to the subject property. The total accessory building area sizes in the general area range from 1,568 sq. ft. to 10,032 sq. ft. The property owner at 48189 259th St., a little less than a half-mile to the east has 10,032 sq. ft. of total accessory building area. The property owner who lives a quarter-mile to the west at 48132 259th St. has 4,158 sq. ft.

On July 15, 2015, staff visited the property and determined that the proposed building size replacement is relatively comparable to existing accessory building sizes at properties in the

surrounding area.

Conditional Use Permit Criteria:

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

There is one other property within one-half mile of the subject property that has more than the petitioner's requested total accessory building area. It is unlikely that the proposed building size will have a detrimental effect on property values in the immediate vicinity since there are other larger accessory buildings in the area, which is primarily agricultural with four residential acreages not including the petitioner's farmstead property.

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

The accessory building may only be used for personal residential and agricultural storage, no commercial business activities are allowed. Given the size of the other larger accessory buildings, 6,156 sq. ft. of total accessory building area would be congruent with the land composition. The current total amount of accessory building area includes a 2,128 sq. ft. greenhouse and 1,568 sq. ft. warehouse, approved by CUP #01-77 on this property.

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

Access will be provided off of the petitioner's existing driveway for the proposed accessory building. No further infrastructure will need to be provided.

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

No off-street parking will be needed with the supplemental area for parking as a result of personal agricultural and residential activities. No commercial or business parking will be allowed at any time.

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

No offensive nuisances shall be permitted at any time during use of the proposed accessory structure. The use of lighting should be directed downward on to the property in order to prevent light pollution off site.

6) Health, safety, general welfare of the public and the Comprehensive Plan.

The proposed accessory building should have no effect on the health, safety, and general welfare of the public. The use of the accessory building for private use and storage will create few problems to neighboring properties.

Recommendation:

Staff finds that the requested total accessory building size is relatively comparable to the existing accessory buildings in the immediate vicinity. Staff recommends **approval** of Conditional Use Permit #15-44 with the following conditions:

- 1.) That the total accessory building area shall not exceed 6,156 square feet on the property.
- 2.) That the new buildings shall not exceed 1,884 sq. ft. in area and the 1,400 sq. ft. wood grainery building be removed upon completion of the new building.
- 3.) That a building permit is required.
- 4.) That the building shall be an accessory use to residential portion of the property.
- 5.) That only personal agricultural or residential storage shall be allowed in the building and no commercial uses or commercial storage will be allowed.
- 6.) That all outdoor lighting shall be of a full-cutoff and fully-shielded design to prevent direct spillage of light beyond the property boundaries.

DISCUSSION

This item was discussed at the same time as Conditional Use Permit # 15-43.

ACTION

Commissioner Barth motioned for approval of both Conditional Use Permits #15-43 and #15-44 with recommended conditions. Commissioner Ode seconded the motion. The motion passed unanimously.

Conditional Use Permit # 15-44 - Approved

ITEM 8. CONDITIONAL USE PERMIT #15-49 to exceed 1,200 square feet of total accessory building area – requesting 4,296 sq. ft. on the property legally described as Freiberg Tract 1 (Ex. N669.95), SE1/4 SW1/4, Section 28-T101N-R51W.

Petitioner: Michael Watt

Property Owner: same

Location: 46238 267th St. Approximately 6 miles west of Sioux Falls

Staff Report: Scott Anderson

This would allow 4,296 square feet of total accessory building area.

General Information:

Legal Description – Freiberg Tract 1, Section 28, T101N, R51W

Present Zoning – A1Agriculture

Existing Land Use – residential

Parcel Size – 4 acres

Staff Report: Scott Anderson

Staff Analysis:

The applicant is requesting approval of a conditional use permit to construct a 3,360 square foot accessory structure. The proposed accessory building would be located to the east of the single family residence and would be 42 feet by 80 feet. The applicant has indicated that the structure will be used to stable and ride two horses in. The subject property consists of a single family residence and a 24 foot by 36 foot detached triple stall garage. This existing 936 square foot structure combined with the proposed 3,360 square foot structure totals 4,296 square feet, the amount of square feet requested by the applicant.

The subject property is located south of Wall Lake. Staff conducted a site visit on July 6, 2015. The area surrounding the subject property consists of residential and agricultural uses. There are more than 20 residences surrounding the subject property.

There are two residences in the area that have accessory structures exceeding 1,200 square feet as shown on the map provided by staff. There is a 4,000 square foot accessory structured located at 26684 Apple Lane. A 4,374 square foot metal accessory structure is located at 46249 267th Street and can be seen from the applicant's property. A map of their locations is provided for the Planning Commission's review.

Conditional Use Permit Criteria:

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

Given the existence of the other larger accessory buildings in the area, 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 as an accessory structure to the established residential use and no commercial or business activities are allowed. The applicant has provided a statement indicating that the building will be used to house horses and ride indoors.

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

It appears from the site plan submitted by the applicant that the existing driveway will be used to access the new accessory structure. Wall Lake Township would need to approve a new approach. 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 ample area on the subject property for any parking as a result of residential activities. No on-street parking will be allowed. No commercial or business parking is allowed.

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.

6. Health, safety, general welfare of the public and the Comprehensive Plan.

The health, safety, general welfare of the public will not be impacted by the placement of a larger accessory structure on the subject property. The intent of the Comprehensive Plan will be met, as the site will retain its residential character and allow for the continued use of the 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 recommends **approval** of conditional use permit #15-49 with the following conditions:

- 1) The total accessory building square footage shall not exceed 4,296 square feet.
- 2) The building shall be used only for the petitioner's personal residential use. No commercial or business uses or storage shall be allowed.
- 3) The accessory building shall not exceed one story in height.
- 4) A building inspection is required to determine that the combined area of all accessory structures does not exceed 4,296 square feet measured from the outside perimeter.
- 5) A building permit is required
- 6) That all outdoor lighting shall be of a full cutoff and fully-shielded design to prevent direct spillage of light beyond the property boundaries.
- 7) That the Planning & Zoning Department reserves the right to enter and inspect the accessory building at any time, after proper notice to the owner, to ensure that the property is in compliance with the conditional use permit conditions and the Minnehaha County Zoning Ordinance.

PUBLIC TESTIMONY

Scott Anderson of Planning staff presented the staff report and recommended conditions.

Michael Watt, the petitioner, spoke about his intentions for the accessory building and how he plans on maintaining his property. He intends on the accessory building to be used for riding space, hay storage, and stalls for two horses. Michael indicated that a manure trailer has been purchased for hauling waste to the landfill or elsewhere. In addition the riding arena will use a full footing to reduce dust and the building will be recessed in the trees.

Sheryl Fromm, 26689 Apple Lane, is the owner of the adjacent property to the north, and she raised concerns about the drainage way from the west. Water has backed up to her house before and she is concerned that manure from the pasture will be added to flooding waters and create a hazard. Sheryl showed several photos of flooding events and explained that the culvert is too small and prevents water from flowing properly. The pictures also showed the relative distance from her house and laundry to the petitioner's proposed pasture. Commissioner Barth asked if there was anything that could be done to make the situation easier to live with. Sheryl responded that moving the fence line away from her house would help.

Commissioner Cypher pointed out that the problem with a culvert being too small is the developer's fault, and now the group of houses will have to get together to fix the deficient culvert.

Commissioner Steinhauer noted that the problem is with the horses and not the larger accessory building. The petitioner could put horses there now and the accessory building should improve the situation.

Jason Krause, 26695 Apple Lane, is the owner of the adjacent property to the east. Jason raised frustration about the notification process, calling it disingenuous. The form had too little information on it and did not adequately explain how to obtain more information by contacting the Planning and Zoning Department. Commissioner Steinhauer explained the process of notification. Jason asked if there was a way to mitigate some of the concerns that have been raised at the meeting. He finished with reiterating that all the information is difficult to understand when it is issued on a piecemeal basis.

Michael Watt spoke to the concerns that were raised. He pointed out several areas nearby that included a number of animals and that his two horses should be a minimal concern. Commissioner Cypher asked how many acres of pasture the petitioner has. Michael responded 3 acres. Commissioner Cypher noted that that is plenty of land for two horses.

Commissioner Ode asked what was on the property before the proposal. The petitioner responded grass was on the property.

Scott Anderson noted that he wrote the staff report for a larger building and not for the potential use of the building.

DISCUSSION

Commissioner Cypher motioned to approve with an added condition of limiting the property to two horses. Commissioner Ode Seconded the motion.

Commissioner Barth noted that he would prefer to not have the condition of a two horse limit.

The petitioner raised concern with the strict limit in the case that he would need a replacement horse or similar situation.

Commissioner Cypher amended the motion to approve with recommended conditions only and no limit of horses. Commissioner Ode seconded the amended motion.

Commissioner Barth urged that communication among neighbors continue and that hopefully the tensions will subside.

ACTION

A motion was made by Commissioner Cypher and seconded by Commissioner Ode to **approve** CUP #15-49 with staff recommended conditions. The motion passed unanimously.

Conditional Use Permit # 15-49 – Approved

ITEM 9. REZONING #15-05 to rezone the property legally described as Tract 3 (Ex. H-1), Krell's Addition, SE1/4 SE1/4, Section 36-T101N-R51W from the A-1 Agricultural District to the C Commercial District.

Petitioner: Amanda and Josh Nelson

Property Owner: Roberta Wagner and Stephanie Kriens

Location: Approximately 3 miles west of Sioux Falls

Staff Report: Kevin Hoekman

This would rezone from the A-1 Agricultural District to the C Commercial District.

General Information:

Legal Description – Tract 3 (Ex. H-1), Krell's Addition, SE1/4 SE1/4, Section 36-T101N-R51W

Present Zoning – A1 – Agricultural

Existing Land Use – Crop and hay/pasture land

Parcel Size – 20.11 acres (Rezoning request of approx. 18 acres of the site)

Staff Report: Kevin Hoekman

Staff Analysis:

The applicant is proposing to rezone approximately 18.2 acres of a 20 acre parcel from A-1 Agricultural to C – Commercial zoning district. As noted in the description on the site plan that was attached to the application, the south 260 feet of the west 300 feet is planned to remain A-1 Agricultural zoning district in order to preserve and existing residential building eligibility. The building eligibility would be able to utilize approximately 1.8 acres on the southwest corner of the property. The petitioner expressed plans to construct a reception hall to be used for renting for private gatherings such as corporate meetings and weddings. If this property is rezoned the petitioner would have to obtain a conditional use permit to allow the proposed land use.

The property is located adjacent to the south of the amusement and water park Wild Water West. The southern border of the property is adjacent to a township road that serves as the border between Minnehaha and Lincoln Counties. A portion of the northeast of the parcel is adjacent to SD Highway 17, but the majority of the west side is next to an unimproved section line. The applicant would have to acquire permission from the Department of Transportation (DOT) in order to obtain access to the highway. If permission is not granted from the DOT the site's access would have to be from the gravel 268th Street or the unimproved 466th Avenue.

Many residential dwelling are located within proximity of the proposed site. Several residential dwellings are located between the site and SD Highway 17. A large subdivision of residential dwellings known as Country Acres Addition exists just to the east of the highway. A few more residential dwellings are located to the west and the south of the site.

The Minnehaha County Comprehensive Plan, adopted in 2015, has identified areas of future growth. Commercial and industrial growth areas are called "Rural Service Areas". The subject property is not located within an identified rural service area. The concept behind the rural service areas is to promote good planning ahead of commercial growth in the county. The

nearest planned Rural Service Area is located approximately 2 miles north and it is indicated to become approximate ¼ mile in size. The subject property is located along a major South Dakota highway, but the submitted preliminary site plan indicates access off of 268th Street. SD Highway 17 also serves as the boundary between the Transition area and the Agricultural Production area of the Comprehensive plan. Therefore, the proposed site is located in the Agricultural Production area which is characterized as suitable for further agricultural development. In addition the comprehensive plan states as an action to Goal 5 of the Future Land Use Plan chapter to “discourage commercial, industrial, and residential strip development of land along transportation routes, particularly along those that serve as a municipal gateway.”

The proposed rezoning site is located south of Wild Water West and approximately 2 miles south of a designated ¼ mile Rural Service Area. Wild Water West was established and built prior to the current zoning ordinance and comprehensive plan. In addition, the parcel on which the park is located is primarily zoned A-1 Agriculture. The proposed site’s location and size near the highway would lead to spot zoning of a parcel outside of a designated Rural Service area. However, it is recognized that the existing amusement park to the north of the site is a commercial use of the land despite its zoning district.

The rezoning proposal generally does not meet the policies and objectives of the comprehensive plan. The site is located outside of a Rural Service Area and within an Agricultural Production Area. Consideration should also be given to potential future land uses of the site. Although the petitioner expressed a desire to have a reception hall, other commercial business types are attainable in a commercial district.

Recommendation: Staff recommends **denial** of Rezoning #15-05 to rezone the subject property from A1 Agricultural District to C Commercial District.

PUBLIC TESTIMONY

Kevin Hoekman of Planning Staff briefly presented the staff report. He corrected a minor error in the report that the nearest Rural Service Area is located approximately one (1) mile to the north of the existing facility.

Amanda Nelson, the petitioner, spoke about the rezoning and the plans to build a reception hall on the property. She included some details about the desired reception hall including example photographs of facilities that they would like to mimic. Many of these details were included in a packet that was handed out to the Planning Commissioners. Amanda stated that since the facility is designed to be a barn like building, the request would have to take place in the country and outside of the city. In addition, the nearly two acre area that is to remain A-1 Agricultural zoning would become the area that they plan on building their dwelling. She also included that they have submitted a request to the SD DOT for an approach to the property from SD Highway 17. This would be preferable if approved because the alternative would direct traffic along a gravel township road that passes a couple of residential properties.

Kirk Walters, 46602 268th Street, started with pointing out where he lives adjacent to the proposed property. He raised concern for traffic and dust along 268th Street. He also raised concern with what may be placed on the property if the reception hall does not succeed.

Lee Kriens, 26754 463rd Street, stated that he is the tenant of the property, and he included that the family has farmed the ground for generations. Lee raised concerns about the wet area on the north side of the property. This area may create problems for on-site waste disposal. He also pointed out that there is a broken tile line on the property and 3 drainage ditches that move water off of the site.

Amanda Nelson added that they have viewed the property and it is not in the flood plain. She added that they are aware of the wet area and they plan on building the facility outside of the problem.

DISCUSSION

Commissioner Barth asked if staff notified Lincoln County. Staff replied that they did.

Commissioner Cypher pointed out that Wild Water West has been at that location since before zoning. He added that this decision is about a commercial zoning and not the proposed project. He finished with a statement that the project is nice but the zoning is inappropriate.

Commissioner Steinhauer clarified that this would be spot zoning. He also raised concern about traffic along the township road, and he raised doubt that the DOT would approve an access permit from the Highway.

Commissioner Randall reiterated that they were not voting on the land, and that the rezoning request is inappropriate.

Commissioner Barth spoke in disagreement that the Wild Water West was there and adjacent to the property. He stated that this is a logical place for a business with easy access to the highway.

Commissioner Cypher indicated that there would be Wild Water West then 100 yards of nothing then the rezoning.

ACTION

A motion was made to recommend denial of rezoning request #15-05 by Commissioner Cypher and seconded by Commissioner Randall. The motion passed with a vote of 3 ayes and 1 nay. Commissioner Barth voted against the motion.

Rezoning #15-05 – Recommended Denial

ITEM 11. CONDITIONAL USE PERMIT #15-37 to allow a Class C Beef Cattle CAFO on the property legally described SE1/4 (Ex. N996.35' S2213.44' E534.46'), Section 31-T102N-R51W.

Petitioner: Bryan Albers

Property Owner: same

Location: Approximately 2.5 miles southwest of Hartford

Staff Report: Kevin Hoekman

This would allow a Class C Beef Cattle CAFO (749 Animal Units).

General Information:

Legal Description – SE1/4 (Ex. N996.35' S2213.44' E534.46'), Section 31-T102N-R51W Hartford Township

Present Zoning – A-1 Agriculture

Existing Land Use – Agricultural Crop Land

Parcel Size – 147.78 acres

Staff Report: Kevin Hoekman

Staff Analysis:

The property is located approximately two and a half (2.5) miles southwest of Hartford. The petitioner would like to construct a beef cattle CAFO operation on the southwest corner of the nearly quarter section parcel. The petitioner currently operates an existing facility at his farmstead approximately 1/2 mile to the west of the proposed CAFO site. The petitioner expressed the intention of moving and expanding his existing facility to this new location primarily because of direction from the State DENR to protect the Skunk Creek watershed. The proposal protects the watershed primarily by moving the facility further away from the intermittent stream that is the overflow for Grass Lake. The existing CAFO is located adjacent to this intermittent stream.

The petitioner has proposed a beef cattle facility to hold 749 animal units which is well under the threshold for a required state permit. The facility will have to comply with the provisions and requirements of the 1990 Revised Zoning Ordinance. Each beef cow would be counted equivalent to 1 animal unit. During review of a family operated proposed dairy and at the last Planning Commission meeting, concern was raised for the watershed because of the location of the existing facility. The proposed facility is located approximately 150 feet east an intermittent stream that feeds into the outlet of Grass Lake. The 150 foot separation exceeds the 100 foot minimum separation requirement, and it is further from a designated intermittent stream than the existing facility. The proposed barn is described as a monoslope building with a roof. In addition the proposed manure containment facility is described that it will be graded to prevent water from running into or out of the containment. The increased distance from the intermittent stream, the provisions to keep the animals under a roof, and a self-contained manure containment facility may help prevent pollutants from running off the site and entering the watershed.

The petitioner has drawn a site plan for the proposed operation that combined with an attached description includes all the required elements for a CAFO and a CUP. The site plan includes a

650 foot by 200 foot barn that was described on the site plan as using bedpack and in the narrative as a monoslope with a maximum height of 40 feet. However, the site plan description that the applicant submitted raises the question of whether building height is regulated or not. This comment seems to imply that the petitioner does not yet know the height of the proposed barn. The county ordinance states that “there shall be no height limit for farm structures”, but knowing the size and height of a proposed structure is important for CUP items in order to understand how a proposed use will impact current and future development. In addition to the uncertainty of the height of the structure, Kyle Albers, who submitted the additional material to the Planning Department, noted that the building dimensions are not yet finalized. The site plan description indicates that the desired size of barn will be approximately 65,000 square feet. Kyle explain that the exact dimensions may change due to grading limitations. Kyle added that the 50 foot setbacks from the front and side yards will remain no matter the size of the final building. Staff recommends that the footprint size of the proposed barn should not be allowed to expand beyond 65,000 square feet or outside of the location area as depicted on the site plan.

The site plan includes a 200 foot by 200 foot area labeled “stack slab” for a manure containment facility located to the north of the proposed barn. The facility is also depicted as having a 50 foot side yard setback from the west property line. The manure containment is labeled on the plan as a stack slab and described in the site plan description as uncovered and graded so that stormwater will not drain in or out of the containment facility. The description also states that the approximate size of facility will be 10,000 square feet. The location and description of the manure containment facility is a required element for a site plan as part of the nutrient management section of the ordinance and as a structure of the CUP.

Two driveways are included on the site plan. The western driveway is an existing field approach and the eastern driveway is located at the east end of the proposed barn. Both driveways enter the property from 262nd Street. Article 15 of the Zoning Ordinance requires that all driveways and loading/unloading areas to meet minimum standards. This CAFO operation will be required to have a gravel surface of a minimum four (4) inches thick for all its driveways and loading/unloading zones. It is suggested that the maneuvering and loading/unloading areas be setback from the front property line by fifteen (15) feet which is a standard for parking lots within the ordinance.

The general drainage of the property is included on the site plan, and some portions of the narrative includes descriptions of how the drainage will be directed. The site plan includes a non-mapped natural water way that flows to the intermittent stream that is the outlet for Grass Lake. A submitted topography map of the area shows that the site is located on the top of a hill where water will roll off of the site primarily to the west and east of the site. Water that runs to the west of the site will flow onto the neighboring property and into an intermittent stream about 150 feet from the property line. The description in the narrative matches the site plan. As noted earlier, the site plan description includes that the manure containment facility will contain all rain water and drainage will be directed around the facility.

The 749 animal unit operation will require a 1,540 foot buffer from a dwelling, church, school, or business. The setback map created by the GIS department shows that the proposed CAFO is outside of all required setbacks, and therefore no waivers from adjacent property owners are

needed.

The ordinance requires a landscaping plan designed to assist in the dispersal of odors. The site plan description states that “no trees - odor dispersion under control.” The petitioner has supported this statement with submitting calculations of the South Dakota Odor Footprint Tool (SDOFT) and a supporting map that is drawn to scale on a large sheet of brown paper. Staff has recognized that the calculations for the SDOFT for the size of building was different than what was described; however, those calculations were turned in prior to the final site plan, and the supporting scale drawn map shows the setbacks supporting the 65,000 square foot barn.

At the last Planning Commission meeting it was noted that the application for the conditional use permit for the proposed CAFO was not complete or sufficient. Several items must be presented as part of the permit application and several items must be addressed as part of an approved conditional use permit. The previous paragraphs include a description of the required site plan, landscape plan, and grading plan. A pest control plan, odor control plan, and a dead animal disposal plan is also required as part of the application. These plans are found as part of the provided narrative, and they are discussed below.

The pest control plan includes control methods for rats and flies. Rats will be controlled by not storing feed on the site and with barn cats. The petitioner noted that flies will be controlled on an as needed basis and that he will make the call when to control them because the flies affect his cattle too. The plan notes that larvacide may be used if the problem persists. Staff finds that these plans are not adequate because there is no schedule or threshold described as to when treatment is necessary. In addition, the effectiveness of barn cats is questionable without alternative proven methods of control for rats. Inadequate pest control may affect the future development of the area. Pests may affect residential development and may prevent the location of other agriculture operations in the vicinity due to a potential refuge for pests.

The submitted narrative states that “neighbors will have little to no affect from odors”. The petitioner submitted a chart created with data from the South Dakota odor footprint tool. The data that the petitioner entered into the tool assumes no methods of controlling odor. The submitted map of the data shows that two dwellings are located within the 99% annoyance free zone. The property owner of the dwelling to the northeast of the proposed site has submitted a signed waiver that he accepts the proposed CAFO. As noted earlier the landscaping plan and description also includes nothing for odor control. This petitioner has considered effects of odor and appears to have decided to not use any control methods because of the odor footprint tool. The lack of control methods for odor may have a negative effect on future land uses within close proximity to the proposed CAFO. This is especially true for residential dwellings.

The dead animal control plan is included in the narrative. It was noted that a rendering service will be used and that the longest wait for pickup would be no more than 72 hours. A long time for service would only be in the case of animals dying on weekends or holidays.

One of the major elements that the Planning Commission is to consider as part of a conditional use permit for a CAFO is the nutrient management plan. The petitioner has submitted a manure management plan that shows that they have enough land available for the nutrients that will be

produced. The plan is comprehensive between this proposed CAFO and a dairy CAFO that is operated within the same family and recently approved by the County Commission. The Planning Department received signed manure application agreements for potential land for nutrient application. The submitted narrative notes that manure will be applied onto fields at least twice a year, and the manure will be incorporated within 48 hours after application. It is also noted that manure will be added to the containment facility on a weekly basis.

Conditional Use Permit Criteria:

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

The proposed CAFO is located within a low density and predominantly agricultural area. The site meets the required setbacks for the size of the facility, and the closest neighbor has signed a waiver for the construction of the CAFO. The petitioner's submitted documentation from the South Dakota Odor Management Tool shows that most residential dwellings are outside of the 99% annoyance free zone. Two dwellings are located within the 98% annoyance free zone. Since the surrounding area is primarily agricultural land uses, the proposed CAFO will have little effect on current use and enjoyment of surrounding properties.

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

The surrounding land uses of the proposed CAFO are predominantly agricultural with scattered single family dwellings and farmsteads. There is potential for further development of agricultural uses, such as CAFOs, and residential uses in farmsteads and acreages. The land use of a CAFO will unlikely affect further agricultural development in the area, but as intense land uses such as CAFOs increase in numbers, residential uses become less desirable in close proximity. The petition has proposed few provisions to control the undesirable effects of a CAFO. This may create greater effect on any future development including agricultural land uses. This is especially true with a lack of defined pest control. Pest control is important so that pests and diseases do not transfer from one CAFO to another. Future residential development will be required to have the Right-to-Farm Covenant placed on the deed prior to construction of a dwelling.

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

The proposed facility includes two proposed driveways off of 262nd Street. One access is using an existing field approach and the eastern access will be new. The driveway access should have approval of the township in order to assure that the placement does not affect the road and any necessary culverts are properly sized. The petitioner will have to acquire any utilities to the proposed facility.

The large proposed building and compact gravel will create a large area of impermeable surface. The submitted drainage plan shows that the majority of the water will be flowing off the site to the west and into a non-mapped waterway. The Comprehensive Plan encourages the use of Low Impact Development for projects that may have an effect on waterways and watersheds. Staff recommends that a grass filter strip be included at the mouth of the non-mapped waterway in order to slow down and absorb runoff water and potential pollutants before it reaches the

intermittent stream.

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

The operation is located on a large site that will have enough space to meet off street parking and loading requirements. The parking and loading areas must be surfaced with gravel according to Article 15.04 (B) of the 1990 Revised Zoning Ordinance for Minnehaha County. Parking and loading in the right of way will not be allowed. Staff recommends that any on-site driveways or loading/unloading areas should be located at a minimum fifteen (15) feet from the front yard property line. This fifteen (15) foot buffer is a requirement for parking lots and would prevent parking and storage of items from being located next to the 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.

The petitioner is requesting a new CAFO facility. The inherent nature of a CAFO like this will create nuisance type issues, this is especially true for odor, fumes, and dust. Although these nuisances could unlikely be fully controlled for a CAFO, it is common practice to provide documentation of methods and management to reduce the effects of nuisances. The reduction of nuisances is not only for current residences, but also for future development. The petitioner has submitted few and obscure ways to reduce nuisances. For example, it appears as if the petitioner believes that odor control is not needed because “neighbors will have little to no affect from odors” and his detailed map of the results of the South Dakota Odor Footprint Tool.

The Zoning ordinance requires that plans are submitted; it does not provide minimums as to what is required in a plan. Nuisance enforcement is difficult to pursue for agriculture operations once permitted because of many farming exemptions and the Right-to-Farm Covenant. It is up to the Planning Commission to decide if the provisions stated within the petitioner submitted materials are enough to approve this Conditional Use Permit. Staff has included several recommended conditions that may assist in reducing nuisances. These recommended conditions may be accepted or denied by the Planning Commission.

6) Health, safety, general welfare of the public and the Comprehensive Plan.

The proposed beef CAFO will have to comply with the conditions of this permit and the regulations for CAFOs in the 1990 Revised Zoning Ordinance for Minnehaha County. These rules and regulations are designed to allow for development while preventing much of the potential harms that a CAFO facility may create. The facility is not required to obtain a State permit; however the state will review the application if Minnehaha County deems state permitting to be necessary.

The proposed CAFO is located firmly within the Agricultural Production Area of the Envision 2035 Comprehensive Development Plan. In the description of this designated area, a goal of the Comprehensive Development Plan is to “protect, preserve, and promote agricultural uses and the economic viability of farming operations.”

The petitioner noted at the last Planning Commission meeting that this proposed facility is in response to state resources to move his existing herd further away from an intermittent stream and to place the animals under a contained roof. With proper management the new facility will

be ecologically better for the Skunk Creek Watershed. The Comprehensive Plan states that the county should support state programs that are designed to assist farming operations and support conservation and natural resource management programs.

Recommendation:

Staff finds that the proposed CAFO is an acceptable land use under the Comprehensive Plan. Staff recommends **Approval** of Conditional Use Permit #15-37 with the following conditions:

- 1.) The facility shall be limited to 749 animal units in size.
- 2.) Only beef cattle shall be confined in the CAFO.
- 3.) No animals shall be kept in the concentration or quantity of a defined CAFO on the petitioner's farmstead located at 26193 460th Avenue. All animals shall be removed from the farmstead within 90 days of the completion of the construction of the barn and waste containment facility of the new CAFO.
- 4.) The CAFO shall comply with all applicable regulations of the County Zoning Ordinance.
- 5.) The facility shall conform to the submitted site plans. Any minor changes may be approved by the staff at the Minnehaha County Planning Department. Major changes will require an amendment to this permit and a public hearing.
- 6.) The manure containment facility must be in conformance with South Dakota Department of Environment and Natural Resources design standards for any newly constructed waste containment facility. A registered professional engineer shall certify the plan specifications and the construction of the facility.
- 7.) Approval must be obtained by the township for the construction of the new road access.
- 8.) All driveways, parking, and loading areas within the CAFO site must comply with minimum standards that are listed in section 15.04 of the Zoning Ordinance for Minnehaha County.
- 9.) All driveways, parking, and loading areas must have a setback of a minimum of fifteen (15) feet from the front yard property line.
- 10.) An address sign must be purchased at the planning department and placed at the driveway of the facility.
- 11.) No water shall be allowed to sit on the site in a stagnant state for longer than 10 days without using mosquito control. This includes, but is not limited to puddles, buckets, the manure containment facility, and tires.
- 12.) A rendering service must be used to pick up and remove dead animals from the property.
- 13.) The waterway to the west of the CAFO site shall have a minimum of 100 feet of grass filter planted from the mouth of the waterway into the intermittent stream north of the CAFO. The grass filter shall be planted and maintained at a minimum of 30 feet wide.
- 14.) The proposed barn shall have engineer certified drawings that shall be submitted for review by the Building Inspector prior to the issuance of a building permit.
- 15.) A building permit is required for all structures prior to construction.
- 16.) That the Planning & Zoning Department reserves the right to enter and inspect the CAFO at any time, after proper notice to the owner, to ensure that the property is in

full compliance with the conditional use permit conditions of approval and Minnehaha County Zoning Ordinance.

PUBLIC TESTIMONY

Kevin Hoekman of planning staff presented the staff report and recommendations.

Commissioner Ode asked who was the person to determine whether a change is minor or major in condition #5. Staff responded that the Planning Director would make that determination.

Commissioner Steinhauer asked staff to explain the length of time of a building permit. This was to clarify the meaning of Condition #3. Staff responded that a building permit is good for one year, and an extension of 180 days may be purchased before the permit expires. Commissioner Steinhauer considered a change to Condition #3 to include that the existing CAFO must be closed 90 days after the building permit expires. He stated that this would help prevent both operations from being open because the petitioner does not finish the barn.

Commissioner Steinhauer also considered changes to Condition #12 to include a requirement of 72 hours maximum that a dead animal can be on the site.

Commissioner Steinhauer questioned the site plan and the size of the facility. he pointed out that the site plan included 200 by 200 foot area for the waste containment facility and a 650 by 200 foot barn, but the narrative includes a 10,000 square foot waste containment facility and a 65,000 square foot barn. Staff responded that the narrative stated the size of the buildings and the site plan was described as an area where these buildings would be placed. Staff included that a condition can be included that limits the size of these facilities if the Planning Commission wants it.

Commissioner Barth reiterated that the facility could be used before it is completed, and that may be a problem with the new facility never being finished and the old facility never being shut down.

Kyle Albers spoke on behalf of the applicant. He started with some comments about the pest control and why he was not going to set a stringent plan. The barn cats have worked before and if there is a rat problem then they would use poisons. He did not feel that he should set an exact date of when poison would be set out. On several visits to other CAFO's, Kyle found that flies are generally not a problem. He added that he may need a plan to control flies, but he was not going to set up a schedule or a threshold because it is based on personal farmer preference. Kyle suggested that the county should create a threshold for when fly control is needed.

Kyle Albers also spoke of several concerns regarding the conditions placed on the proposed CAFO. The concerns included the following: Condition #2 that only beef cattle would be allowed in the CAFO. Kyle noted that there is nothing in the ordinance that limits the type of animals of a CAFO because it is based on animal units. Condition #3 to close the existing CAFO. Kyle stated that he has not found anything that limits a farm to only one CAFO. He also stated that closing the existing facility is between him and the NRCS. And that certain portions of the existing CAFO qualify as to be allowed to continue. Condition #13 to require a grass

waterway. Kyle stated the condition is not needed because most of the water will drain to the east and to the west. To the east there is cropland and to the west is an intermittent stream that is a grass waterway. Kyle then showed and explained several photos of the site and nearby property. He continued that the crops do a lot in the dispersion of odors from the facility. Trees may affect the airflow of his sight which in turn can affect the fly control and odor control. Kyle finished by pointing out that they took the proactive approach of moving further from the neighbors in order to reduce nuisances.

Commissioner Steinhauer stated that most applicants have a willingness and eagerness to plant trees and that trees will do a lot of good for neighbors. Kyle responded that if a neighbor moves nearby, it is their choice to live next to a CAFO, and that they should look at planting trees themselves. Commissioner Steinhauer noted that he heard a lot of “might’s” in the petitioner’s presentation, and asked what he is planning on doing. Kyle responded that they may someday put in Aus trees. The trees will not be planted yet, because they have the possibility to hold odors on the site and not dispersing odors.

Orrin Geide, 46134 263rd Street, is a landowner to the southwest of the proposed CAFO. Orrin stated that the County should first know how well he handles the recently approved dairy operation before this operation with its monstrosity of a building is permitted.

Dennis Kapperman, 45994 263rd Street, is a landowner adjacent to the west of the site. Dennis stated his concern for being boxed in by CAFO’s on all sides and limiting his land use. Commissioner Barth asked where the building site is located. Dennis Kapperman responded that he has many Building Eligibilities and the site he would like is just to the west of the proposed CAFO.

Commissioner Steinhauer asked what may be done to improve the CAFO in this plan. Dennis Kapperman responded that he would move the facility to the east and the north to prevent it from being boxed in for future expansion. Commissioner Steinhauer asked if an additional 50 feet would make a difference. Denis Kapperman responded that any more distance would be good for all aspects: for him as a neighbor and for the applicant for future expansion.

Kyle Albers spoke again to address some of the concerns stated before. He noted that moving to the east would be difficult because of the waterway. The site plan area includes extra space for moving the building within the 200 by 650 foot building area. The west corner was chosen to move out of setbacks of neighboring properties. Kyle added that neighbor has not done anything on his property for 28 years.

Commissioner Randal asked where the process was at for the NRCS and engineering for the project. Kyle referred the question to Bryan Albers.

Bryan Albers, the petitioner, noted that they were in the middle of a long process. It is not a done deal. He added that the engineering is not needed until the building permit.

Kyle Albers noted that the County should move forward on the project so that so that cattle can be moved out of the old facility.

Commissioner Barth agreed that he would like to see a modern facility built. He also noted that the application is missing dotted “i’s” and crossed “t’s” and the County Commission would not approve the current application. He included that he did not believe that the application is ready yet.

Commissioner Randall agreed that she wanted to move forward with the CAFO, but the application is not clear.

Commissioner Ode agreed that the CAFO is good but there is too many question marks.

DISCUSSION

Commissioner Steinhauer asked Commissioner Ode about his experience with pest control. Commissioner Ode replied that he operates a dairy farm and he sprays for flies once a month and that flies are not an issue as they stay on top of the control. He continued that there will always be rats; even when control measures are put into place. Commissioner Ode added that trees are very beneficial. Blockage has not been a problem and the trees help the operation and neighbors. He included that trees should be accepted with open arms.

Commissioner Barth asked Commissioner Ode about advocacy type groups that would potentially help with planning and preparation of a project like this. Commissioner Ode replied that there are several avenues that can be taken to pursue resources farm operations.

Commissioner Barth motioned to defer action for one month to encourage the applicant to type the application narrative, draft the site plan, and find some consultation from professionals in the industry. Commissioner Randall seconded the motion.

Commissioner Ode commented that two months would be better to allow for some more time to prepare. Commissioners Barth and Randall amended their motion and second to defer action until September 28, 2015.

ACTION

A motion was made by Commissioner Barth to **defer** action on CUP #15-37 until the regular Planning Commission Meeting on September 28, 2015. Commissioner Randall seconded the motion. The motion passed unanimously.

Conditional Use Permit #15-37 – Deferred until September 28, 2015

Old Business

Staff reminded commissioners of the August 6th recognition dinner at Strawbale Winery.

New Business

None

County Commission Items

None

Adjourn

A motion was made by Commissioner Barth to **adjourn** the meeting. Commissioner Cypher seconded the motion. The motion passed unanimously.