

**MINUTES OF THE  
MINNEHAHA COUNTY PLANNING COMMISSION**

January 27, 2014

A meeting of the Planning Commission was held on January 27, 2014 at 7:00 p.m. in the Commission Room of the Minnehaha County Administration Building.

COUNTY PLANNING COMMISSION MEMBERS PRESENT: Bill Even, Mike Cypher, Becky Randall, Jeff Barth, Mark Rogen and Bonnie Duffy.

STAFF PRESENT:

Scott Anderson and David Heinold - County Planning

The meeting was chaired by Wayne Steinhauer.

**CONSENT AGENDA**

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

**ITEM 1. Election of Officers for 2014**

A motion was made by Commissioner Randall and seconded by Commissioner Duffy to **approve** the election of Commissioner Steinhauer to Chairman and Commissioner Cypher to Vice-Chairman. The motion passed unanimously.

**ITEM 2. Approval of Minutes – November 25, 2013**

A motion was made by Commissioner Rogen and seconded by Commissioner Randall to **approve** the meeting minutes from November 25, 2013. The motion passed unanimously.

**ITEM 4. REZONING #14-01 to rezone from the A-1 Agricultural District to the I-1 Light Industrial District in Tract 2 Benson's Addn. W1/2 SW1/4, Section 17-T103N-R50W.**

Petitioner: Rosenbauer South Dakota, LLC

Property Owner: same

Location: South side of Lyons

Staff Report: Scott Anderson

**General Information**

Legal Description – Tract 2 Benson's Addition, W1/2 SW ¼, Section 17, T103N, R50W, Minnehaha County, SD

Present Zoning – A-1 Agriculture

Existing Land Use – I-1 Light Industrial

Parcel Size – 11.54 acres

**Staff Report:** Scott Anderson

**Staff Analysis:** On January 8, staff conducted a site visit to the subject property. There is some existing light industrial development located directly to the north of the subject property, the Central States Fire Apparatus Company. The subject property is located between County Highway 143 or 467<sup>th</sup> Avenue and the DME Railroad. The applicant has not indicated a specific use for the property.

The Minnehaha County Comprehensive Plan, adopted in 1998, has identified areas of future growth. Commercial and industrial growth areas are called "Rural Service Areas". The subject property is 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 rezoning proposal meets the policies and objectives of the Comprehensive Plan. The site is located along a major County Highway and furthermore, has direct access to an existing rail line. Staff can support this rezoning request as it meets the criteria and development concepts of the Comprehensive Plan.

**Recommendation:** Staff recommended **approval** of Rezoning #14-01 to rezone the subject property from A-1 Agriculture District to I-1 Light Industrial District.

**ACTION**

A motion was made to **approve** Rezoning #14-01 by Commissioner Rogen and seconded by Commissioner Randall. The motion passed unanimously.

**Rezoning #14-01 - Approved**

**ITEM 5. CONDITIONAL USE PERMIT #14-02 to amend CUP #12-11 to exceed 1,200 square feet of accessory building area – requesting 4,374 square feet.**

Petitioner: Allan Hall

Property Owner: same

Location: 2200 N. Indian Hills Trl. approximately 1 mile east of Sioux Falls

Staff Report: David Heinold

**General Information**

Legal Description – Tract 3 Indian Hills Estates N1/2 Section 8-T101N-R48W

Present Zoning – A-1 Agricultural

Existing Land Use – Residential

Parcel Size – 6 Acres

**Staff Report:** David Heinold

**Staff Analysis:**

The petitioner is requesting to amend Conditional Use Permit #12-11 to exceed 1,200 square feet of total accessory building area, which was approved by the Minnehaha County Planning Commission on April 23, 2012 to allow 4,000 square feet of accessory building area. Now, the petitioner is requesting 4,374 square feet of total accessory building area. The proposed accessory building will be used for boat, recreational vehicles, utility tractor, mower, and automobile storage as well as a hobby shop. The accessory building will only be used for personal storage and hobbies.

The proposed structure, 81'x54', will be located northwest of the existing single-family residence. The proposed site location of the accessory building will be located near an established grove of trees, which would create a buffer between the building and traffic on Maple Street. Currently, there are approximately 17 houses within the Indian Hills Estates Subdivision and in close proximity that are of similar large-lot composition.

The existing accessory building sizes in the immediate vicinity are relatively comparable in nature to the petitioner's requested 4,374 square feet. In 2005, the property owner at 2212 N. Indian Hills Trl., 3 lots to the south of the petitioner's property, requested and was approved to allow 3,300 square feet in total accessory building area. The property owner at 2221 N. Indian Hills Trl. applied for a building permit fifteen years ago to construct a 36'x48' Horse Barn, which increased the total accessory building area to 3,228 square feet.

Recently, the property owner at 2220 N. Indian Hills Trl. requested and was approved to allow 2,320 square feet of total accessory building area in September 2013. In 1991, the property owner at 2208 N. Indian Hills Trl. applied for building permit to construct a 2,880 square foot accessory building. Given the character of large homes and lot sizes, the petitioner's requested total accessory building area of 4,374 square feet will be similar to the rest of the properties in the subdivision and should not set a precedent for larger accessory structures in residential areas.

**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 construction of the proposed accessory building should have no impact on further construction or development within the general area. The building will only be used for the owner's personal storage and as a hobby shop. The accessory structure shall not be used as a commercial operation at any time. This use will not affect the residential uses or agricultural land in the area.

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

The accessory structure may only be used for residential purposes, no commercial or business activities are allowed. Given the size of the other larger accessory structures in the immediate vicinity of the petitioner's property, a 4,374 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 the existing driveway at 2200 N. Indian Hills Trl. No further infrastructure will required due to the construction of the accessory structure.

**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.

**Recommendation:**

Staff found that the proposed building size conforms to the general sizes of other accessory buildings in the area. Staff recommended **approval** of Conditional Use Permit #14-02 with the following conditions:

- 1.) That the total accessory building square footage shall not exceed 4,374 square feet.
- 2.) That the accessory building shall not exceed 35 feet in height.
- 3.) That a building inspection is required to determine that the building does not exceed 4,374 square feet measured from the outside perimeter.
- 4.) That the building shall be an accessory use to the continued use of the property as a residential lot.
- 5.) That only personal residential storage shall be allowed in the building and no commercial uses or commercial storage will be allowed at any time.
- 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 a building permit is required prior to construction of the accessory building.
- 8.) 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 full compliance with the conditional use permit conditions of approval and the Minnehaha County Zoning Ordinance.

**ACTION**

A motion was made to **approve** Conditional Use Permit #14-02 by Commissioner Rogen and seconded by Commissioner Randall. The motion passed unanimously.

**Conditional Use Permit #14-02 – Approved**

**ITEM 6. CONDITIONAL USE PERMIT #14-03 to exceed 1,200 square feet of accessory building area – requesting 16,443 square feet.**

Petitioner: Bill & Tammy Watson

Property Owner: same

Location: 48609 254<sup>th</sup> St. approximately 1 mile southeast of Garretson

Staff Report: David Heinold

**General Information**

Legal Description – Tract 1 Hoogland Addition NW1/4 Section 28-T103N-R47W

Present Zoning – A-1 Agricultural

Existing Land Use – Residential

Parcel Size – 3 Acres

**Staff Report:** David Heinold

**Staff Analysis:**

The petitioners are requesting to exceed 1,200 square feet of total accessory building area. The petitioners are requesting 16,443 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 proposed building will be used to store agricultural equipment, hay for livestock, and ride horses in. The petitioners inherited 80 acres in Minnesota 9 miles north as well as land directly adjacent, to the east, of their property located southeast of Garretson and need an 81'x203' accessory structure for agricultural purposes. The proposed accessory building will be located on the southeast portion of the property.

Due to the presence of the agricultural industry, there are a few agricultural accessory buildings of comparable size to the petitioners' requested 16,433 square feet. In 2006, the property owner at 25378 486<sup>th</sup> Ave. applied for a building permit for a 70'x140' hay shed for agricultural storage only and a 36'x63' metal pole building for personal storage. The property a quarter-mile to the north has a combined total accessory building area of 12,068 square feet. Since the property's principal use is devoted to agriculture and the property owner owns more than 40 acres of contiguous parcels of land the total accessory building area of 12,068 square feet is permitted in the A-1 Agricultural District.

The property owner, 48587 254<sup>th</sup> St., to the west of the petitioner's property currently has a combined total of 4,300 square feet of accessory building area. The property owner at 48577 254<sup>th</sup> St. applied for a building permit in 2003 to construct a 36'x60' accessory structure. The petitioner is requesting a total accessory building area relatively comparable and directly pursuant to the neighboring property owner's use of the agricultural accessory structures on the property located

at 25378 486<sup>th</sup> Ave.; therefore, it is with reasonable belief that the proposed use of the accessory structure be devoted to agriculture would not seriously detract from the character of the 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 construction of the proposed accessory building should have no impact on further construction or development within the general area. The building will only be used for the owner's personal storage of agricultural equipment, hay, and as a horse barn/indoor riding area. The accessory structure shall not be used as a commercial operation at any time. The use as an agricultural storage building will not affect the property values of residential homes in the area.

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

The accessory structure may only be used for residential or agricultural purposes, no commercial or business activities are allowed. Given the strong integrity of the agricultural industry, the proposed accessory structure should not have a detrimental impact on future development of surrounding properties.

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

Access to the proposed agricultural accessory structure will be provided from both the north and the inherited land to the east.

**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.**

The addition of the proposed structure should not increase beyond the typical farm setting. 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.

**Recommendation:**

Staff found that the proposed building size to be relatively consistent with the general sizes of other agricultural accessory buildings within the county. Since the restrictions for accessory structures in the Zoning Ordinance are not intended to impede active farming operations, staff recommended **approval** of Conditional Use Permit #14-03 with the following conditions:

- 1.) That the total accessory building square footage shall not exceed 16,443 square feet.
- 2.) That the accessory building shall not exceed 35 feet in height.
- 3.) That a building inspection is required to determine that the building does not exceed 16,443 square feet measured from the outside perimeter.
- 4.) That only agricultural and/or personal residential storage shall be allowed in the building and no commercial uses or commercial storage will be allowed at any time.
- 5.) That all outdoor lighting shall be of a full cutoff and fully-shielded design to prevent direct spillage of light beyond property boundaries.

- 6.) That a building permit be required prior to construction of the accessory building.
- 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 full compliance with the conditional use permit conditions of approval and the Minnehaha County Zoning Ordinance.

**ACTION**

A motion was made to **approve** Conditional Use Permit #14-03 by Commissioner Rogen and seconded by Commissioner Randall. The motion passed unanimously.

**Conditional Use Permit #14-03 – Approved**

**ITEM 7. REZONING #14-02 to rezone from the A-1 Agricultural District to the I-1 Light Industrial District in the SW1/4 NW1/4 (Ex H-2), Section 18-T102N-R49W.**

Petitioner: H5 Investments, LLC

Property Owner: Fred Oien and Karen Morgan

Location: Approximately 1/4 mile south of Crooks/Renner exit, directly adjacent to I-29 northbound

Staff Report: Scott Anderson

**General Information**

Legal Description – SW ¼ NW ¼ (EX H-2), Section 18, T102N, R49W, Minnehaha County, SD

Present Zoning – A-1 Agriculture

Existing Land Use – Agriculture

Parcel Size – 31.72 acres

**Staff Report:** Scott Anderson

**Staff Analysis:** On January 8, staff conducted a site visit to the subject property. There is existing light industrial and commercially zoned property located to the north and northwest and west of the subject property at the Crooks exit of Interstate 29 and County Highway 130. The subject property is located at the south end of Trade Avenue. The applicant has not indicated a specific use for the property.

The Minnehaha County Comprehensive Plan, adopted in 1998, has identified areas of future growth. Commercial and industrial growth areas are called “Rural Service Areas”. The subject property is located within an identified rural service area, the Crook I-29 interchange. The concept behind the rural service areas is to promote good planning ahead of commercial growth in the county.

The rezoning proposal meets the policies and objectives of the Comprehensive Plan. The site is located adjacent to an existing industrial park complex. Staff can support this rezoning request as it meets the criteria and development concepts of the Comprehensive Plan.

**Recommendation:** Staff recommended **approval** of Rezoning #14-02 to rezone the subject property from A-1 Agriculture District to I-1 Light Industrial District.

**ACTION**

A motion was made to **approve** Rezoning #14-02 by Commissioner Rogen and seconded by Commissioner Randall. The motion passed unanimously.

**Rezoning #14-02 - Approved**

**REGULAR AGENDA**

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

**ITEM 3. CONDITIONAL USE PERMIT #14-01 to construct storage units on the property legally described as Tract 2 Roe's Addition, NE1/4, Section 26-T101N-R48W.**

Petitioner: Paul Roe

Property Owner: same

Location: 26646 Douglas Ave approximately 0.25 mile north of Rowena

Staff Report: David Heinold

**General Information**

Legal Description – Tract 2 Roe's Addition, NE 1/4, Section 26-T101N-R48W

Present Zoning – C Commercial

Existing Land Use – Residential

Parcel Size – 3.74 Acres

**Staff Report:** David Heinold

**Staff Analysis:**

The petitioner is requesting approval to construct storage units on the property legally described as Tract 2 Roe's Addition, NE1/4, Section 26-T101N-R48W, which was zoned C Commercial by the Minnehaha County Commission on May 21, 2013.

The neighboring property directly to the south of the site on Douglas Avenue consists of two residential properties; however, the Red Rock Corridor Plan designates the two residential lots as commercial on the future land use plan. Article 11.10.03 (D) of the Red Rock Corridor Overlay (RRCO) District Development Standards indicates that 30 feet of buffering or other form of visual screening be provided between any nonresidential and residential use.

The submitted site plan indicates the facility size will be approximately 3.74 acres. The storage unit facility will contain four 50 ft. by 180 ft. buildings. Separately, these buildings will consist of 84 units. The petitioner is requesting (30) 12'x20' units, (30) 12'x30' units, and (24) 15'x50' units. According to RRCO District Development Standards, the petitioner is required to provide a visual screen for the outdoor storage area on the north side and a 30 foot buffer with 32 trees spaced evenly apart or any other form of visual screening on the south side of the proposed storage unit facility.

Since access to the storage units will be provided via the petitioner's gravel driveway at the terminus of Douglas Ave., the driving and parking areas are not required to be hard surfaced as stated in Article 15.04 of the 1990 Revised Zoning Ordinance for Minnehaha County. The petitioner will be utilizing a gravel base for the driving, parking, and outdoor storage areas within the storage unit facility. The elevation for buildings 1 & 2 shows that the 15'x50' storage units will have 12'x10' overhead doors. The elevation for buildings 3 & 4 shows that the 12'x30' and

12'x20' storage units will have 9'x8' overhead doors. All buildings will be of typical pole building construction with 10' sidewalls for buildings 3 & 4 and 14' sidewalls for buildings 1 & 2.

The petitioner will be utilizing the existing shelter belt of mature deciduous trees that wraps around the northwest corner of the property as a visual screen for the outdoor storage area. The petitioner will be planting 32 pine trees along the southern property line as a visual buffer between the residential and nonresidential use. Currently, the petitioner is not considering any on-premise or off-premise signage for the storage unit facility.

The unincorporated community of Rowena is a mix of residential, commercial, and industrial uses and was originally developed along the railroad to provide basic convenience services to the agricultural community. Rowena is designated as a rural service area on the future development plan in the 1998 County Comprehensive Development Plan. A rural service area is defined as an area that encourages commercial and industrial uses. The properties north of SD Highway 42 are zoned for commercial, industrial, agricultural, and residential uses. Properties northwest and northeast of the petitioner's property are currently being used for agricultural purposes. Properties to the south include a variable mix of land currently zoned for residential, commercial, and industrial.

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

The proposed use should have minimal impact on the use and enjoyment of other property, specifically the two residential properties to the immediate south, but it may only be a slight visual impact as the property is changing from an agricultural to a commercial use. Given that a storage-unit facility is considered a soft commercial use, there will be less of an impact than some intensive agricultural uses. The land use change will not significantly affect property values in the area.

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

The two residential properties to the south of the petitioner's proposed location for the storage units are projected to be commercial on the future land use map for the RRCO District. Thus, the proposed use for the petitioner's property will be consistent with the future growth and development of the Red Rock Corridor.

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

Since the petitioner's request is to construct storage units on the property, on-site wastewater treatment or a facility for the collection and disposal of garbage, and screening structures will not need to be provided. On January 8, 2014, a written notice was sent to all adjoining property owners indicating that the submitted site plan will contain a waiver of these two requirements due to the nature of the proposed use.

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

The site plan indicates that adequate space will be provided for each individual storage unit to have a parking space while allowing enough clearance to drive in-and-out of the storage unit facility.

**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 use of lighting should be directed downward on to the property in order to prevent light pollution off site. No commercial businesses will be allowed to operate in the storage units at any time to reduce the likelihood of any nuisances being caused by this facility.

**Recommendation:**

Staff found that the request to construct storage units is an appropriate use in the C Commercial District and will not create a nuisance for surrounding property owners. Staff recommended **approval** of Conditional Use Permit #14-01 with the following conditions:

- 1.) That CUP #14-01 shall permit the construction of a storage unit facility.
- 2.) That the property shall adhere to the submitted site plan received on 11-14-2013.
- 3.) That all outdoor storage areas be screened with a 90% opacity fence or with live trees.
- 4.) That a 30 foot buffer consisting of 8 trees per 100 linear feet be spaced evenly fifteen feet from the southern property boundary to provide a visual separation between the proposed use and the residential properties to the south.
- 5.) That all trees be kept in a living state at all times.
- 6.) That no commercial business be conducted on the premises at any time.
- 7.) That the existing drainage pattern shall be maintained as shown on the site plan received on 11-14-2013.
- 8.) That a building permit is required prior to construction of the storage unit facility and installation of any signage.
- 9.) That all signage shall meet the requirements of Article 11.10.03 (C) of the RRCO District as well as be in conformance with Article 16.00 and 17.00 of the 1990 Revised Zoning Ordinance for Minnehaha County.
- 10.) That the petitioner shall be required to provide dust control on Douglas Avenue from SD Highway 42 to the end of the driveway at 26646 Douglas Ave.

**PUBLIC TESTIMONY**

Paul Roe, property owner at 26646 Douglas Avenue and petitioner, stated that he does not have any concerns regarding the presentation of the staff report for Conditional Use Permit #14-01. Commissioner Barth asked if Douglas Ave. exists at this point. The petitioner mentioned that Douglas Ave. ends at the driveway to his property at 26646 Douglas Ave. Commissioner Barth stated, "Who keeps the road clean?" Commissioner Duffy stated that Split Rock Township maintains the Douglas Avenue right-of-way. The petitioner proceeded to mention that he plows the road on an as needed basis in order to leave his property.

Ellen Schroeder, 26651 Douglas Avenue, is very opposed to the proposal for a storage unit facility. We have one road that ends at the petitioner's property at 26646 Douglas Ave. and is not proper. Douglas Ave. starts at 2 lanes and ends at less than the width of one lane. The road used to curve around to connect with County Highway 111, which is now blocked off. The petitioner has an appropriate amount of land that he does need storage sheds in this area. We already put up with enough running up-and-down this road. The road has not been maintained very well. Currently, you would get halfway down the road and slide into the petitioner's

driveway. We have no other access from our properties. The petitioner has been running a business at 26646 Douglas Ave., which has a lot big trucks travelling on this road. There is a lot of traffic on Douglas Ave. and there will be an increased strain on neighboring properties with the addition of these buildings.

Commissioner Cypher asked what is on the south side of Ms. Schroeder's property. She mentioned that there is another resident who lives to the south of her and the landscaping business is on SD Highway 42. She proceeded to mention that her home is a homestead, so I don't see it as being proposed commercial in the future.

Commissioner Barth asked Ms. Schroeder how she accesses her property. She noted that access is from Douglas Ave. Commissioner Barth added, "How far do you turn off when you back out of your driveway?" She stated that when she backs out of her driveway she almost ends up in the neighbor's yard across the road to the east of her. She added that there are only two culverts. Commissioner Cypher asked if there was any dust control on Douglas Ave. and she said no. A member of the audience brought up that dust control was provided last summer.

No further public input was given and the petitioner stated that he does not have any more comments.

### **DISCUSSION**

Commissioner Barth asked Commissioner Duffy about what she knows about the maintenance of this gravel road. Commissioner Duffy, Split Rock Township Supervisor, stated that it is a rotational process just like all of the other section line roads in the township. We maintain Douglas Ave. from the south side to the north side. The public should understand that unless someone calls a township supervisor to perform additional maintenance, there will be times when the roads may not be very well maintained. She confirmed that the township did do dust control last summer as well as the year before.

Commissioner Duffy explained that Douglas Ave. is not an average sized road nor is it sixty-six feet wide like every other road in the township. We know that Rowena is one of those little towns that has been in existence for a long time and we are doing the best job we can do with what we have. Commissioner Duffy added that the township installed a couple culverts a few years ago. Ms. Schroeder explained that as a homeowner she has the right to not have to put up with the potential impacts of the proposed use. She proceeded to mention that the petitioner has an adequate amount of land available that he can utilize that is near a highway and not off a single lane road that ends at the driveway of 26646 Douglas Ave.

Commissioner Barth added that the road, Webster St., does take a right turn at the end of Douglas Ave. and extends east to County Highway 111. A member of the audience mentioned that the township closed the road because there were holes in one of the culverts and people were getting stuck. Commissioner Duffy agrees and added that the township closed the road because they had to keep pulling people out of there.

Commissioner Cypher indicated that the proposed use, commercial, is actually jumping from a commercial use along SD Highway 42 across two residentially-used properties. Staff noted that

the property was rezoned to Commercial by the Minnehaha County Commission on May 21, 2013.

Commission Steinhauer asked staff to clarify what can be built in the C Commercial District without applying for a conditional use permit. Staff explained that such uses similar to offices, churches, banks, daycare, group homes, a nursery, or a telecommunications tower can be built without a conditional use permit.

Commissioner Cypher added that traffic will be the number one issue with the approval of the proposed use and that the applicant be required to maintain Douglas Ave. from SD Highway 42 to the end of the petitioner's driveway so that no dust occurs from usage of the storage unit facility.

Ms. Schroeder asked if the applicant can be forced to open the other road, Webster St. Commissioner Steinhauer noted that the applicant cannot be forced to open a road. She asked how can the residents be asked to sacrifice their living conditions allowing multiple vehicles to drive on this road. Commissioner Steinhauer stated that the issue regarding reopening Webster St. would have to be brought up to the township board.

Commissioner Barth asked Ms. Schroeder how far her home is from the petitioner's property and she mentioned that it is not that far. She proceeded to mention that it is not fair to put three other homes in jeopardy over somebody, in her opinion, being greedy.

Commissioner Duffy explained that Webster St. was vacated with the consent of all adjoining property owners. Webster St. posed a serious safety issue to motorists.

The petitioner addressed the concern that his property does extend to the east, adjacent to the highway; however, that area is a flooded creek bottom.

Commissioner Cypher mentioned that the duty of the Planning Commission is to determine if the proposed use is appropriate for the C Commercial District and it is. However, he stated that the petitioner should be required to provide dust control on Douglas Avenue as an additional stipulation.

### **ACTION**

A motion was made to **approve** Conditional Use Permit #14-01 with the addition of condition of approval ten (10) to require the petitioner to provide dust control on Douglas Avenue from SD Highway 42 to the end of the driveway at 26646 Douglas Ave. by Commissioner Cypher and seconded by Commissioner Barth. The motion passed unanimously.

**Conditional Use Permit #14-01 – Approved**

**ITEM 8. CONDITIONAL USE PERMIT #14-05 to allow a sanitation business on the property legally described as E359.65' W902.46' S481.5' (Ex H-1 & H-3) SW1/4 Section 15-T101N-R51W.**

Petitioner: Todd Snyders, R+S Sanitation

Property Owner: LUFCO, Inc.

Location: 46314 265<sup>th</sup> St. approximately 5 miles south of Hartford

Staff Report: David Heinold

**General Information**

Legal Description – E359.65 W902.46 S481.5 (Ex H-1 & H-3) SW1/4 Section 15-T101N-R51W

Present Zoning – C Commercial

Existing Land Use – Commercial

Parcel Size – 3.97

**Staff Report:** David Heinold

**Staff Analysis:**

The petitioner is requesting to allow the property to be used for a sanitation business. The building will be used as an office space and there will be outdoor storage of trucks along with garbage carts. Roll-off containers and dumpsters shall be stored outside in designated equipment parking areas and any other miscellaneous equipment will be stored behind fenced-in areas. The nature of the business is mostly conducted over-the-phone or on the computer with very little drive-up traffic at the site. Hours of operation will generally be from 6 AM and 6 PM, Monday thru Friday.

Staff received a \$250 penalty fee from R+S Sanitation on December 30, 2013 for conducting the sanitation business without proper approval. Staff met with the petitioner on January 2, 2014 to discuss the request to allow a sanitation business on the property located at 46314 265<sup>th</sup> St. The discussion included responses to ensure that the proposed use meets necessary utility, access, drainage, off-street parking, and loading requirements as well as other measures to lessen the impact of the business on neighboring properties.

The petitioner has provided a site plan that shows the concrete parking and loading areas. The plan also includes the location of the barrier fence, near the main entrance off of SD Highway 42, which will visually screen the outdoor storage area from public view. The outdoor storage, equipment parking, area will be screened by 20 deciduous trees on the east side of the property boundary. The business will be utilizing an on-site wastewater disposal system that will be located north of the main building as shown on the site plan. Signage will be located at the south front of the building.

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

With a majority of the business conducted over-the-phone, there should be a minimal effect on the use and enjoyment of neighboring properties. The low amount of drive-up traffic from the nature of the business should not have detrimental impact on either SD Highway 42 or existing land uses.

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

Since the location of the business near Wall Lake Corner is consistent with the future development plan there should be a reasonable expectation that the proposed use is appropriate and will not impede future growth of the defined rural service area; an area where commercial and industrial uses are encouraged to locate.

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

No additional utilities or access points will need to be provided. The existing drainage pattern on the property will be maintained, which drains to the ditch on the east property boundary and to the north grass area.

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

According to the site plan the petitioner has accounted for the 1 space per 300 sq. ft. of office space and the (1) 12'x20' loading space for approximately 10,000 sq. ft. of gross floor area in the main building.

**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.**

Upon inspection of the property during the meeting on January 2, 2014, the business currently meets all Zoning Ordinance requirements that would otherwise constitute a nuisance. Currently, all lighting is of a full cutoff and fully-shielded design to prevent light spillage beyond property boundaries.

**Recommendation:**

Staff found that the request to allow a sanitation business is an appropriate use in the C Commercial District and will not create a nuisance for surrounding property owners. Staff recommended **approval** of Conditional Use Permit #14-05 with the following conditions:

- 1.) That CUP #14-05 shall allow the operation of a sanitation business.
- 2.) That the property shall adhere to the submitted site plan received on 12-27-2013.
- 3.) That all outdoor storage areas be screened with a 90% opacity fence.
- 4.) That the existing drainage pattern shall be maintained as shown on the site plan received on 12-27-2013.
- 5.) That a building permit is required prior to the installation of any signage.
- 6.) That no materials, parts, tires, etc. shall be allowed outside of the fenced area.
- 7.) That all outdoor lighting shall be of a full cutoff and fully-shielded design to prevent direct spillage of light beyond the property boundary.
- 8.) That the Planning & Zoning Department reserves the right to enter and inspect the sanitation business 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 the Minnehaha County Zoning Ordinance.
- 9.) That the maintenance of all sanitation trucks, equipment, and garbage containers be performed inside the main building.

10.) That all sanitation trucks, equipment, and garbage containers shall be cleaned out prior to arrival at the site to ensure that no public nuisances will be caused by the sanitation business.

11.) The Minnehaha County Emergency Management Department shall be notified if there is any storage of a regulated substance.

### **PUBLIC TESTIMONY**

Todd Snyders, owner of R+S Sanitation, does not think that it is necessary to provide a screening fence since previous businesses have not had this requirement. He mentioned that there is some old machinery sitting outside further to the north of the sanitation business that does not have a fence. He stated that he is not against the idea of the requirement to provide a screening fence. He added that the sanitation trucks, dumpsters, and roll-off containers are empty when they arrive at the site. He explained that all dumpsters and containers are tarped to prevent debris from blowing around. He noted that the odor is only detectable if you are right next to the containers.

Commissioner Barth asked where the employees will park their personal vehicles. The petitioner stated that they will park on the south side of the building. Staff confirmed that there is 1 parking space per 300 square feet of office space and that the petitioner has provided approximately 12-15 parking spaces.

Commissioner Barth explained that the proposed location for the business seems like a better location than the previous site for R+S Sanitation, which was approximately 1/2 mile northeast of the proposed site. He added that the petitioner moved to the proposed location, 46314 265<sup>th</sup> St., and started operation of a sanitation business prior to receiving proper approval. He asked the petitioner why Minnehaha County should think that the business will follow the restrictions that are placed on the permit.

The petitioner stated that he had not planned on moving to the new location early, but he wanted to get the sanitation trucks inside a building because of the winter conditions. The petitioner sent one check for the Conditional Use Permit filing fee and then one later because he changed his mind. The winter has been pretty miserable so far and it seemed necessary to put the sanitation trucks inside the big building.

Trent Swanson, 100 N. Phillips Ave., is legal representative for Bahne and Kay Bahnson. Bahne and Kay Bahnson, 46326 265<sup>th</sup> St., have known the property owner of the proposed site and want to be good neighbors but want to minimize the impact of the proposed business on their residential property located to the east of the petitioner's property. Trent mentioned that one of the top policies for Rural Service Areas will be to promote the optimum land use relationships and minimize land use conflicts.

Trent addressed an additional concern about vehicle parking and was pleased to hear that vehicle parking will be maintained west of the building. He asked if the maintenance of sanitation trucks inside the building will be included as a condition of approval. Staff confirmed that the stipulation is included with the conditions of approval for CUP #14-05.

He added that he is concerned about the addition of more trucks as the business grows and where they will be located. He mentioned the need for a proper screening fence of approximately 8-10 feet tall to account for an incline in the elevation from the petitioner's property to the neighboring property to the east. The main concern for screening is due to the fact that many of the trees are Ash trees with no foliage during winter and an uncertain future with the presence of the Ash Borer. The installation and maintenance of a proper screening fence will be important to providing visual relief for the neighboring property owners to the east.

Trent explained that it would be important to require that the sanitation trucks, equipment, and garbage containers be cleaned out prior to arrival on site to ensure that they no longer have any sludge or refuse in them that would cause any unwanted nuisances off site such as insects or vermin. He added a concern about where the regulated substances would be allowed to be released, but mentioned that it sounds like the septic system will only release greywater. The final concern of the neighboring property owners is the traffic on SD Highway 42, which is no fault of the sanitation trucks rather a driver behavior problem. The problem of vehicles passing the trucks as they head east on SD Highway 42 is something that the state Department of Transportation will have to continue to monitor to ensure traffic safety in this area.

Commissioner Barth asked about any concerns that the neighboring property owner had with the previous location of the driveway for the sanitation business about 1/2 mile east of the proposed location. Trent mentioned that the Bahnsons are concerned about the eastbound traffic on SD Highway 42 with vehicles attempting to pass the sanitation trucks.

### **DISCUSSION**

Commissioner Cypher asked staff for clarification on eliminating the trees from condition of approval #3 to only require the screening fence. Staff mentioned that the existing trees are located on the neighboring property owner to the east of the petitioner's property. The pictures submitted by Trent Swanson, legal representative for the property owner who lives at 46326 265<sup>th</sup> St., indicate that the trees are located east of the barbed wire fence located on top of the berm on the property line.

Commissioner Cypher asked for clarification on the location of the required screening fence. Staff explained the fence will need to be located on the west side of the existing trees. Commissioner Even asked for an explanation on where the existing berm is located in relation to the barbed wire fence. Staff noted that the berm sets at the property boundary with the fence on top of berm. Commissioner Randall asked staff to confirm the elimination of live trees as a screening method as well as the addition of three conditions relating to the maintenance of garbage trucks, cleaning out prior to arrival, and notification to the Minnehaha County Emergency Management Department of all fuel storage tanks. Staff confirmed the changes to the conditions of approval for Conditional Use Permit #14-05.

Commissioner Barth asked the petitioner if he will have any problem getting along with his neighbors. The petitioner stated that he does not anticipate any problems with any of his neighbors.

Commissioner Cypher stated that he agrees with the added conditions of approval and that they should be included in the requirements for the proposed use. He proceeded to mention that this is far better location than they were before and is a good building for the sanitation business. He added that there is a no-passing zone up to the petitioner's driveway; however, if you are within 15 minutes of a normal get-to-work day in Sioux Falls its irrelevant.

**ACTION**

A motion was made to **approve** Conditional Use Permit #14-05 with the conditions as stated by Commissioner Cypher and seconded by Commissioner Barth. The motion passed unanimously.

**Conditional Use Permit #14-05 – Approved**

**ITEM 9. CONDITIONAL USE PERMIT #14-04 to allow bulk fuel storage on the property legally described as Lot 1 Brower's 2<sup>nd</sup> Addition, SW1/4, Section 27-T102N-R51W.**

Petitioner: Hartford Farmers' Elevator

Property Owner: same

Location: 46339 Jeffery St. approximately 0.5 mile south of Hartford

Staff Report: Scott Anderson

**General Information**

Legal Description – Lot 1, Block 2 of Brower's 2<sup>nd</sup> Addition, Section 27, T102N, R51W, Minnehaha County, SD

Present Zoning – I-1 Light Industrial

Existing Land Use – vacant

Parcel Size – 1.00 acre

**Staff Report:** Scott Anderson

**Staff Analysis:** The applicant is requesting a conditional use permit to allow the bulk storage and distribution of fuel. The applicant has partially constructed the site without prior Planning Commission approval or without securing building permits. A site inspection on January 13th found that all five proposed tanks have been constructed. Tank #1 is 12,000 gallons and will contain dyed diesel, tank #2 is 6,000 gallons and will contain dyed diesel #1, tank #3 is 6,000 gallons and will contain gasoline, tank #4 is 12,000 gallons and will contain diesel #2, and tank #5 is 12,000 gallons and will contain clear diesel. The site plan also shows a 18' by 75' loading dock located on the west side of the tanks. This portion of the facility had not been constructed. The site plan does not indicate that any security fencing will be installed on the site.

The site plan submitted with the application does not indicate any screening, landscaping, security fencing or lighting. No driveway, roadways or parking areas are shown. The applicant provided a letter from the State Fire Marshal's Office indicating that they had reviewed and approved the plans and provided the approval to the Hartford Fire and Rescue and SD DENR for their files. The Minnehaha County Office of Emergency Management reviewed the conditional use permit application and did not have any comments on the proposed use. If approved, staff would typically require the applicant to register the types and amounts of materials stored on the site with the County Emergency Management Office.

The area consists of many industrial and commercial businesses. The site to the east is the location of a portable toilet and sanitation business. The property to the west is the location of a commercial business that works with highway resurfacing. The area to the south is agricultural land. The area to the north is the balance of the Brower Addition and has many businesses.

Staff has received many complaints over the past 10 years on the condition of the subdivision roads located within the Brower Addition. Most specifically Jeffery Street leading into the subdivision typically is very rutted and soft during the spring and wet periods during the summer. Jeffery Street is a gravel road for the first 1,000 feet coming off of 463<sup>rd</sup>. There have been maintenance issues with regard to the subdivision roads within the development. The applicant's request will

now place additional heavy truck traffic onto roads with issues. Staff has serious concerns that the current road system is not capable of handling additional heavy truck traffic and that the additional truck traffic will cause additional damage to the roads during the spring and wet periods. The additional truck traffic will also lead to more dust.

On January 14, 2014, the City of Hartford reviewed this development request. The Hartford City Planning Commission expressed concerns over the existing roadway. They also noted that the roads in the Brower addition are gravel. Spring thawing often leads to frost boils and very soft road conditions. They wondered how additional heavy truck traffic would damage the roads. Their other concerns focused on safety issues such as traffic safety at the intersection of the County Highway, Jeffery Street and the Interstate 90 interchange. They wondered if any measures would be required for spill containment.

**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.**

Staff has received a call from a concerned property owner adjacent to the subject property. The property owner stated his concerns over the potential fire danger. The adjacent property owner stores a significant amount of round hay bales on this property nearest to the area of the fuel storage tank. The caller indicated that his insurance would increase due to the safety issue.

The area is in a industrial complex. There are many commercial and industrial businesses located within the Brower Addition. There is 5 bulk storage tanks. These tanks and the use of the tanks in the future could have an impact on the use of the property in the area.

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

The proposed site is located between two existing businesses, so there has already been development in the area. The location of bulk fuel storage containing up to 48,000 gallons of fuel may impact the orderly growth and development of the area. Future businesses may not want to be located next to this use.

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

Water and electricity are provided to the site. The applicant has not indicated that the proposed use would require wastewater disposal. In 2008, On-site Wastewater Permit #08-010 was approved for five (5) 2,000 gallon in ground holding tanks, constructed and inspected. This septic design was approved by SD DENR on March 31, 2008. The most significant issues, which has already been identified, are the road network and infrastructure. The roads within Brower's 2<sup>nd</sup> Addition have been paved, but only the road leading into the development from 463<sup>rd</sup> is gravel for approximately 1,000 feet. This portion of Jeffery Street has been prone to road damage in the past. Staff has received several complaints, primarily in the spring, about the condition of the roads within the Brower Addition. Staff does not support allowing additional heavy truck traffic without some significant road improvements being done on Jeffery Street.

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

Article 15 regulates off-street parking for this area. The subject parcel is located on a paved section of Jeffery Street. All driveways into the site and any employee parking must be hard surfaced. Staff recommends that if the conditional use is approved, the applicant follows the minimum improvement and maintenance standards for driveways, parking lots and loading/unloading areas as outlined in Article 15.04 of the Minnehaha County Zoning Ordinance.

**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.**

Typically, the applicant would be required to install lighting that attempts to control light pollution and directs the lighting downward. Should the conditional use permit be approved, this condition should be added. It is likely that the bulk fuel storage facility will have fumes associated with its use. These fumes may be able to be smelled by adjacent properties. Additional heavy truck traffic will cause additional dust on Jeffery Street. The SD Department of Environment and Natural Resources required containment berms to be constructed around all fuel storage tanks within the state.

Staff finds that the proposed use is not appropriate to this location. The proposed use will increase heavy truck traffic on sub-standard roads which will likely cause further deterioration and dust. There is also a potential for the fumes to impact the neighboring properties. The proposed use may impact the use of the surrounding properties due to the fire potential.

**Recommendation:** Staff recommended **denial** of Conditional Use Permit #14-04 to allow a bulk fuel storage facility.

**PUBLIC TESTIMONY**

Monte Schraeder, Manager of Hartford Farmers Elevator, mentioned that the work that has been completed already is the result of a misunderstanding between the general contractor, the subcontractor, and himself. He stated that there were only supposed to be four posts in the ground, but the fuel storage tanks were placed on the site with a temporary containment structure surrounding the tanks. The petitioner takes full responsibility that the contractors were supposed to dig the four holes so that they could work at a later date. The subcontractor received word from the general contractor to start erecting the fuel storage tanks. Mr. Schraeder stated that when he visited the site unaware that they went that far.

Mr. Schraeder confirmed that the fuel storage tanks that are located on the site are empty. He does understand the concerns regarding the current condition of the roads within Brower's Addition. Currently, they haul fertilizer around the area as well as into the area. Monte agrees there needs to be something done about the roads in Brower's Addition. He is willing to do his part if everyone else does their part.

Commissioner Even asked the petitioner if the tanks are new. The petitioner explained that the tanks are brand new. Commissioner Even asked if Tammens' tanks in Hartford are gone or replaced. The petitioner mentioned that they are located behind the BP gas station. Commissioner Even asked if Tammens is still selling bulk fuel. The petitioner explained that

Hartford Farmers Elevator acquired that business as of January 1, 2014. Commissioner Even asked the petitioner how long ago they acquired the lot in Brower's Addition. The petitioner noted that they got a purchase agreement with Mr. Brower in October 2013. With regard to insurance values on neighboring properties, the petitioner continued to add that the insurance companies that he talked to said that what neighbors are doing on their property has no effect on your insurance.

Commissioner Steinhauer asked the petitioner to explain the temporary nature of the containment. Mr. Schraeder explained that it is not complete containment, there needs to be an enviro-liner on the inside of the containment installed. The petitioner stated that the containment is identical to the one in Hartford behind the BP gas station. Commissioner Steinhauer indicated that the tanks have to be lifted to put the liner underneath. The petitioner clarified that he had the company that built the tanks put them somewhere where the wind would not cause them to start rolling around.

Commissioner Steinhauer added that when the containment area is complete we will be looking at the new liner, corrugated metal, and four posts. The petitioner indicated that their insurance company requires a fence on the front side of the property. Commissioner Steinhauer asked the petitioner for clarification that there will be no berm or concrete reinforcement just the corrugated metal and he confirmed that the containment will just be corrugated metal.

Commissioner Even asked if there was enough room at the elevator site in the City of Hartford. Mr. Schraeder explained that they are limited on space and they did not think that they could get a permit from the city with the location of the elevator in the middle of the city.

Commissioner Barth stated his concerns regarding the potential rupture of fuel tanks with what has been happening recently and how the proposed containment area does not look like it could contain what could happen. He asked the petitioner if the potential rupture would flow to the south since it looks like the property drops in elevation from north to south. The petitioner confirmed that it would flow to the south. Commissioner Barth asked if there was any berm at the end of the lot. The petitioner explained that Sioux Equipment, contractor, measured that the containment area will hold 70,000 gallons. Commissioner Barth asked what the depth of the containment area will be and the petitioner stated that it is at approximately 4 feet.

Commissioner Randall asked if the petitioner has permission from the SD Department of Environment and Natural Resources (DENR). Staff explained that Sioux Equipment provided the plans for the bulk fuel storage facility to the SD Department of Public Safety and the Department of Public Safety sent the letter to the SD DENR for review. Staff noted that South Dakota Codified Law states that the applicant will need approval from the SD DENR for a bulk fuel storage facility.

Mike Volken, 46304 Jeffrey St., owns the property at the stop sign right off County Highway 151. He has the luxury of owning property from Jeffrey St. to the north along part of Brower Circle, which is right in the heart of the road issues in Brower's Addition. Mr. Volken's main concern is the impact on the roads. He has been a part of developing the industrial park and his building was one of the original buildings in the area. He believes staff would agree that they

have received letters from him supporting some of the businesses that want to locate in this industrial park.

Currently, he is part of a group in the 4<sup>th</sup> year of a lawsuit with the Road Association and Mr. Brower. The Road Association was put together to drain Brower's property to the north of his property to take care of Jeffrey St. with some concrete dust. According to Mr. Volken, there was nothing legitimately done when the Road Association decided to complete the initial work. The property owners on Jeffrey St. were each sent an invoice for \$5,000 to have our roads torn up.

Mr. Volken has attended countless township meetings trying to get something done with the roads. He has been continuing to fight the Road Association because it is not a road association, it was not endorsed by the county. He wants to ensure that the industrial park will have county oversight and that professional road engineering work gets done. He said that just laying more gravel with no base does the tenants of Brower's Addition no good. He added that when road conditions become mushy everybody cuts through his property. He always felt like his property was the gateway, and now it is tough to maintain the same great appearance with the current road conditions. He also mentioned that the property owners cannot mow their ditches because they were cut down so deep that they have become holding ponds.

He hopes that somebody will take over enforcement of the industrial park to continue to maintain a great appearance and attract new businesses. He stated that it is nice to see fresh asphalt on the roads in Brower's 2<sup>nd</sup> Addition; however, our roads have no base under them. He indicated that as traffic increases the road conditions will get worse and springtime thaw represents major problems for the road. He believes that their roads should be maintained just as nice as in Brower's 2<sup>nd</sup> Addition, but it will not be done by laying asphalt over the top of an old road.

Commissioner Duffy asked Mr. Volken if the townships are working with him. He explained that they did work with him in the beginning and the meetings were very productive. The township hired a contractor to fix a road blowout near the intersection of Jeffrey St. & Brower Circle. He added that the township mentioned to him that they spent money they did not have, but they fixed the issue. He discussed that the property owners have approached the township regarding snow removal and they have been cooperative; however, as time goes on things have gotten muddier. Currently, the property owners brought suit against the Road Association for the way they handled the roads with nothing to show for it and expected the property owners to pay for it. The township claimed that they spent \$24,000 to fix Jeffrey St., but only drained properties from Richard Brower and Matt Maras.

Mr. Volken mentioned that Richard Brower platted some property at the end of Jeffrey St. At that time, Matt Maras became President of the Road Association and met with Mr. Volken numerous times explaining that they need to pave Jeffrey St. Mr. Volken stated that Matt Maras was not getting anyone to rent his property, storage units for motorhomes, because the road conditions were so poor that it would be very hard to get a motorhome down Jeffrey St.

Mr. Volken discussed that 14 of the property owners in Brower's Addition met with the township to ask for assistance. Upon conclusion of that meeting, Mr. Volken met with Steve Farmer and Steve asked if the property owners would nominate one person to discuss how to

solve these issues. Mr. Volken met with the township continuously and they determined that there was not enough money in the tax base to fix the roads. When he met with Commissioner Kelly and Sue Roust it was how to form a Road District Association. Sue agreed to accompany Mr. Volken to witness the vote that formed the Road District Association. Upon formation of the Road Association, they determined that they needed to fix the roads in Brower's Addition. Mr. Volken explained that it sets a precedent as soon as the property owners start paying for the maintenance of the road that is nonexistent it becomes a black hole. Mr. Volken reiterated that the county and the township need to provide oversight in helping the property owners get the job done right because this situation has gone on for too long.

Karen Liesinger, 46423 Jeffrey St., is concerned with the current road conditions in Brower's Addition and has owned property in the area for about 13 years. Upon purchase of the property she owns, the deed stated that Mr. Brower would maintain and take care of the roads within Brower's Addition to keep them in satisfactory condition. She stated that property owners are taking it upon themselves to maintain the road because Mr. Brower has never done what was listed in the deed that she obtained. All of the property owners are doing everything they can to make their property accessible. It has been at least 13 years and nothing has been done on a consistent basis to maintain Jeffrey St. She stated more traffic will only deteriorate the road more unless something is done about the road.

Bob Schulte, 309 S. Madison St., asked if the petitioner has applied for a building permit. Staff noted that the use has not been approved by the Planning Commission yet. Mr. Schulte proceeded to mention that all the work has been done illegally, it should not have been done without prior approval. First off, they should be told to tear everything down and start the process right. He stated that if they did not know they needed a building permit, then they are lying.

Mr. Schulte owns a storage unit facility at 46315 Jeffrey St. and is mainly concerned with the current road conditions. He has customers complaining that they are concerned about damaging their boats and antique cars or getting them stuck with the road conditions in the spring. Mr. Schulte asked why the Planning & Zoning Department continues to issue building permits with the current road conditions in Brower's Addition. He added that Mr. Brower will not pave the road unless he is forced to complete the work. He mentioned that there was nothing in the deed when he purchased the property that we had to provide a Road District. The property owners were in favor of doing the work, but nothing was done correctly or legally.

Mr. Schulte explained that Jeffrey St. is not wide enough to allow a semi-trailer to turn around. There was a semi business across the street from his business and when they tried to turn around they had to go into his driveway, which bent the culvert because there is not enough drainage in this area. Work has been done that should not have been done at all, they should have applied for a conditional use permit long before this month. He stated that he has not seen a sign indicating that a conditional use permit has been issued anywhere. He asked where the fire protection will be for this site. He added that 50,000 gallons of fuel could have big impact on surrounding properties if not contained properly. Mr. Schulte stated that he is still unsure why the petitioner completed as much work as they did on the site.

Mr. Schulte discussed that any work done on Jeffrey St. needs to be designed to accommodate additional truck traffic because right now it can barely handle pickup trucks and cars. He asked how they are going to turn their trucks around. He also asked how far the fuel storage tanks will be from Jeffrey St. Commissioner Steinhauer added that it looks like the tanks are about 55 feet from the road. Mr. Schulte mentioned that it is already difficult to turn onto Jeffrey St. from County Highway 151 with only pickup trucks and cars. He believes that there needs to be serious considerations regarding the safety of increased truck traffic turning onto Jeffrey St. to prevent any accidents from occurring.

His final concerns are that Mr. Brower never built the road correctly, the roads hold water in the ditches, and the roads need to be designed to drain water. He added that some of the culverts are not designed right, they are bent at the ends, and they do not take water in. He believes that the business that the petitioner currently does in Brower's Addition is minimal because he has never seen much business in the area for the fertilizer they are delivering. He believes that the use should never be allowed if the roads are not maintained properly or if adequate fire protection is not provided. He added that the petitioner should be instructed to remove everything from the property before anything is decided. Commissioner Barth asked Mr. Schulte where his property is relative to the petitioner's property. Mr. Schulte explained that his property is about 500 feet to the west of the petitioner's property. He hopes that something will be done to address the current issues with how the road was laid out.

Monte Schraeder explained that Sioux Equipment designed the bulk fuel storage facility for the trucks to enter on the east side of the tanks, turn around, load and unload on the cement area, and exit the site on the west side of the tanks. Commissioner Barth asked the petitioner if they are going to pave the horseshoe truck route on site. Mr. Schraeder stated that the driving and loading areas will be poured with concrete. Commissioner Barth asked the petitioner if he will provide enough of a track for the truck traffic. The petitioner mentioned that he will add a wide approach off of Jeffrey St. and lay a gravel base in the areas around the poured concrete track. He proceeded to mention that the tanks near the BP in Hartford have no fire suppression on their bulk fuel storage tanks and he does not think that it is required by state law. Commissioner Steinhauer asked the petitioner if there are any fire hydrants on the site. Mr. Schraeder indicated that there are currently no fire hydrants on the site.

Mr. Schulte mentioned that the water that runs along Jeffrey St. is only a 4 inch line, so if they ever get fire protection in Brower's Addition with fire hydrants the water line will need to be upgraded to handle additional capacity. Staff provided clarification that Minnehaha Community Water does not provide fire protection anywhere in its service area, so there are not any fire hydrants in its' service area.

Mr. Volken discussed how the issues with Jeffrey St. have become what the property owners experience presently. He explained that he had an option to purchase the land just south of the intersection of County Highway 151 and the eastbound on ramp for I-90 where the antique mall is, was nonexistent. The drainage problem with the road began when Mr. Brower sold the property to the south of the property located at 46304 Jeffrey St. and all the dirt from the area near the I-90 eastbound on ramp to 46301 Jeffrey St in order for Mr. Stockwell to build his building on the lot he purchased from Mr. Brower. He added that he was told that Mr. Brower

was going to replace the fill dirt that was removed from the property south of the I-90 eastbound on ramp as a temporary deal. As a result, the property south of I-90 eastbound on ramp was lower than the property at the intersection of Jeffrey St. and Brower Circle. The result of this caused the drainage to reverse its' course and created a holding pond that led to road blowouts in this area because there was no drainage.

The petitioner stated that he is willing to work if other property owners want to start a legitimate road association. Commissioner Barth mentioned 12 years ago there was a residential subdivision where they were going to build 12 houses, but they were only going to build 2 to start. They wanted them to pave the whole road and they said they wanted to do it later because they were only building 2 houses right now. Eventually, there were 9 houses built and they asked the County Commission when they were going to pave their road. This is a prime example of what happens when you do not have any regulations in place that keep these issues from happening.

Commissioner Barth stated that he spoke to the County Highway Department and from a highway engineer's perspective there needs to be at least a 12" engineered base and 4" base of asphalt as a baseline requirement. He added that another issue of bringing mud onto the County Highway presents a safety hazard for motorists travelling on the road. He believes that there is no way the Planning Commission can approve this request as well as any other development or construction in Brower's Addition with the current conditions of the roads. There is a way to get the project completed with a well-organized road association and some financial help from the economic development fund.

### **DISCUSSION**

Commissioner Barth asked if the corrugated iron is the correct containment vessel for the bulk fuel storage facility. Staff indicated that corrugated iron placed around the fuel storage tanks are only temporary. Commissioner Cypher brought up when the county wanted to require Richard Brower to pave the road, Jeffrey St., with the approval of Brower's 2<sup>nd</sup> Addition, but could not because of the regulations. Staff noted that the requirement failed because it was already an existing road. Commissioner Cypher added that we wanted to use the requirement as leverage to make him pave the road. Staff has attempted to bring the parties together to work something out. Currently, there is a defunct road district and an unwillingness to cooperate among property owners.

Commissioner Even asked staff if there is potential for the City of Hartford to annex this industrial park area in the future. Staff met with the Hartford Economic Development group and they have an interest in the area. They are concerned with being able to provide water and sewer under Interstate 90, which would be a major cost to the city. Commissioner Even asked staff if the City of Hartford or any other municipality in the county have extra-territorial input. Staff explained that Minnehaha County has a gentleman's agreement with the City of Hartford. Staff has sent the conditional use permit request and their Planning Commission discussed the item. We have a formal platting area for the cities of Hartford and Brandon. We also have a joint platting and zoning jurisdiction with the City of Sioux Falls and Dell Rapids. Commissioner Even asked whether the City of Hartford has legal authority over what happens in Brower's Addition. Staff noted that they do not have legal authority, only a gentleman's agreement that

allows the City of Hartford and Minnehaha County to cooperate on planning and zoning requests.

Commissioner Rogen asked staff if the tanks that are on the property contain any fuel. Staff believes that the fuel storage tanks are empty.

Commissioner Randall agrees with the statement by Commissioner Barth that there too many problems in this area to allow more development to occur at this time. Commissioner Randall added that the site plan does not include the location of the driveway among other things that are not present that she would like to see that should be addressed.

Commissioner Barth stated that he hopes that we do not have to kill the request to make it live, but he thinks that there is hope in obtaining financial help from the state's economic development fund to solve the issues present in this area.

Commissioner Even mentioned that there are options for funding from the Department of Transportation as well as the Governors Office of Economic Development. He indicated that there is a funding mechanism for road improvements and gave a prime example of the boom in ethanol plants during the mid-2000s that necessitated the expansion of state highways for acceleration, deceleration, and turning lanes. He stated that it would be a good idea to bring the idea of road improvements in this area up to the various entities in order to help stimulate economic growth in this area.

Commissioner Barth noted that the Minnehaha County Economic Development Association (MCEDA) may potentially have some ideas regarding road improvements in this area.

Commissioner Even discussed that a 90-day deferral would give the affected parties a chance to offer a solution to mitigate the issue with Jeffrey St. and then the other issues could be addressed with stipulations added to the conditional use permit. The alternative is if the conditional use permit is denied there will be a one year delay.

Staff clarified that the petitioner would have to wait one full year to apply for the same conditional use.

Commissioner Barth added that a 90-day deferral would not sync up with our scheduled meetings, so he made a motion to defer for three months.

Commissioner Rogen agreed with the public comments that were made that it is not the tenants' fault that Mr. Brower did not pave the road. We should not be hurting good businesses for something that has been done in the past. He believes that we need to get that road fixed somehow.

Commissioner Barth suggested that one entity bring the issue up to par, then have a well-organized road district devise a plan to adequately fund future maintenance of the road. He believes that if we brought the road up to a 12" engineered base with a 5" asphalt top that would help if the property owners pitched in on maintenance of the road.

Commissioner Cypher noted that it would do nothing if the water is not drained properly. He agrees with the three month deferral; however, there should not be anything placed on the site right now. He mentioned that it should also state that if nothing happens in 90 days, then everything has to be removed from the property. He stated that this is no different than the people east of town; we made them tear down their garage that looked weird. There's no difference, its coming in to beg for forgiveness; it doesn't always work.

**ACTION**

A motion was made to **defer** Conditional Use Permit #14-05 for three months by Commissioner Barth and seconded by Commissioner Rogen. The motion passed unanimously.

**Conditional Use Permit #14-04 – Deferred**