

**MINUTES OF THE
MINNEHAHA COUNTY PLANNING COMMISSION**
March 23, 2015

A meeting of the Planning Commission was held on March 23, at 7:12 p.m. in the Commission Room of the Minnehaha County Administration Building.

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

STAFF PRESENT:

Scott Anderson, Kevin Hoekman, and David Heinold - County Planning
Sara Show – States' Attorney

The meeting was chaired by Wayne Steinhauer.

CONSENT AGENDA

Item #2 was moved to the regular agenda for discussion purposes.

A motion was made by Commissioner Cypher and seconded by Commissioner Duffy to **approve** the consent agenda consisting of item #1. The motion passed unanimously.

ITEM 1. Approval of Minutes – February 23, 2015

A motion was made by Commissioner Cypher and seconded by Commissioner Duffy to **approve** the meeting minutes from February 23, 2015. The motion passed unanimously.

REGULAR AGENDA

ITEM 2. CONDITIONAL USE PERMIT #15-17 to expand mini-storage units on the property legally described as Tract 3A, France's Tracts, S1/2 SW1/4, Section 7-T102N-R49W.

Petitioner: Timothy Tiaht

Property Owner: same

Location: 25788 472nd Ave. Approximately 2 miles north of Sioux Falls

Staff Report: Kevin Hoekman

This would allow mini-storage units.

General Information:

Legal Description – TRACT 3A FRANCE'S TRACTS S1/2 SW1/4 7 102 49
MAPLETON TOWNSHIP

Present Zoning – C - Commercial

Existing Land Use – Storage units and vacant land

Parcel Size – 9.03 acres

Staff Report: Kevin Hoekman

Staff Analysis:

The property is located at the northeast corner of the Crooks/Renner Exit off of Interstate 29. The parcel has recently been rezoned to entirely C – Commercial district to accommodate this requested expansion of mini-storage units. In 2012 a CUP was approved for mini-storage units on this site and the petitioner is requesting approval of an expansion of the allowable site plan buildings and total capacity of storage units.

Most of the approved and existing buildings are located on the south side of the parcel. The new site plan proposal adds storage building to the north to fill the parcel with storage units. The property to the north and east are single family dwellings that are zoned A1 Agricultural. The property to the northeast is used as pasture land. The other three corners of the Interstate intersection include commercial and industrial zoning.

The current arrangement of buildings do not comply with the site plan that was submitted in 2012. The petitioner has submitted a revised site plan that expresses the current arrangement and includes new buildings that extend to the north portion of the property. The site plan shows deciduous trees to be planted along the north and northwest property lines. The north side includes trees that are staggered to provide better screening form the adjacent residential property. Better screening may be obtained if one of the two rows of trees on the north side is planted with coniferous species of trees.

The entire facility is surrounded by a 4' tall barbed wire fence. The revised site plan does not indicate any fence other that what is existing. A gate is located at the entrance and it requires a passcode for a security. No outside storage is requested; therefore no screened fencing is required.

The site does include a BMP detention pond that will temporarily hold rainwater runoff. The petitioner indicated that the detention pond was engineered to detain water from a completely developed site so no additional drainage work will be necessary.

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 use will increase the traffic and use of the property, even if the increase is minimal. The residential property to the east has a well-established tree grove between the dwelling and the currently existing storage buildings. The residential dwelling to the north will be most affected by this request because of the new building that are proposed in closer proximity to the property on the north. The proposed tree configuration should provide some mitigation of sight lines from the existing dwelling on the north.

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

The area around the interstate exit is extensively industrial and commercial land uses. The area on this corner of the interstate exit has much more residential type uses that will likely inhibit, or at least slow down, any future commercial or industrial growth. All of the building eligibilities on this quarter section are already used except one at the intersection of 258th Street and Kiwanis Avenue that is located over ¼ mile away. Because of the lack of building eligibilities, this commercial development will not likely slow down the development of residential uses in the immediate area.

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

The facility will use the existing approved access onto the County Highway. All other necessary utilities are available to the parcel.

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

The buildings are spaced wide enough to allow for parking. No permanently parked vehicles will be allowed as outdoor storage. The parking areas and driveways will be required to be hard surfaced in accordance with Minnehaha County Minimum Improvement and Maintenance Standards.

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.

Lighting should be directed downward onto the property and not spill off the site. No commercial businesses will be allowed to operate in the units, reducing the chances of any nuisance being caused by this facility.

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

It is unlikely that the requested expansion will create any additional health safety or welfare concerns. This area is designated as a rural service area in the comprehensive plan. This designation allows for the development of commercial and industrial entities in the area.

Recommendation:

Staff found that the proposed mini-storage an appropriate use of the commercial land at this site. Staff recommended **approval** of Conditional Use Permit #15-17 with the following conditions:

- 1.) The property shall adhere to the submitted site plan dated 3-2-15. This includes building locations and tree planting plan.
- 2.) No outside storage shall be allowed at any time.
- 3.) No commercial businesses shall be allowed to operate out of the storage units
- 4.) New storage buildings shall match the colors of the existing buildings.
- 5.) All driving and parking areas shall be hard surfaced to the standards of Minnehaha County Zoning Ordinance. The hard surface is required to be installed once all of the storage units are constructed or by August 31, 2016, whichever is sooner.
- 6.) All lights shall be of shoe-box style, directing lights directly downward onto the property.
- 7.) All trees shall be kept in a live state. Any dead tree shall be replaced within one growing season.
- 8.) At least one of the staggered rows of trees on the north side of the property shall be planted with and evergreen coniferous species.
- 9.) Building permits are required for the storage units and for any signage.

PUBLIC TESTIMONY

Kevin presented a brief summary of the staff report analysis for Conditional Use Permit #15-17.

Commissioner Cypher asked if the retention pond on the site plan has already been constructed. Staff indicated that the petitioner has fully installed a retention pond that would serve the entire development area on site.

Tim Tiaht, 25524 472nd Ave., addressed the commission and asked if it would be possible to leave the area on site plan required to be hard surfaced as gravel.

Commissioner Barth asked how much of the site is being required to be hard surfaced and Mr. Tiaht noted that the entire site is to be paved. Mr. Tiaht proceeded to mention that it would cost several thousands of dollars to pave all of the driving and parking areas. He explained that there are roughly between 6-12 businesses across the interstate that do not have paved surfaces.

Commissioner Barth explained the situation with the subdivision located within the Brouwer Addition revolving around poor drainage and individuals having to drive across each other's yards to get to their business due to poor condition of the roads. He proceeded to mention that he does not want to see a hardship imposed upon the petitioner or on clients with storage units because of prior issues.

Commissioner Steinhauer concurred and asked the petitioner if there was a portion that would be most ideal to pave. Mr. Tiaht noted that the drainage from the developed area has been working very well with over a one percent grade from the buildings to the retention pond and expects to maintain that with the addition of the proposed buildings. He proceeded to mention that he has

had no complaints from customers or clients. Commissioner Steinhauer asked about the hard surfacing requirement and Mr. Tiaht indicated that he would like to reduce the requirement to pave all of it to none of it if allowed.

Commissioner Cypher asked the petitioner that he agreed to pave the areas on the site plan at the time of the previous conditional use permit approval and Mr. Tiaht concurred. Commissioner Cypher proceeded to mention that the applicant is requesting to beg forgiveness on the requirement to waive the hard surfacing requirement since what supposed to be completed has not been completed.

Mr. Tiaht thought that the hard surfacing requirement wasn't to be completed yet and Mr. Hoekman indicated that the requirement stated that paving was to be completed upon completion of 80 percent of the development on the site plan.

Scott Anderson explained that the planning commission would not have the authority to impose a condition that would negate the zoning ordinance and the petitioner needs to apply for a variance to reduce the amount of area to be hard surfaced before the Zoning Board of Adjustment.

Commissioner Steinhauer noted that the amount of gravel being brought out onto paved county roads has become a big issue over the past few years because of subdivision roads not being hard surfaced when accessed by a hard surfaced road.

Staff suggested that there may be an opportunity to further clarify what areas must be hard surfaced beyond what the zoning ordinance requirement states. Commissioner Steinhauer indicated that it would be more reasonable to expect that as much of the site as possible be hard-surfaced, including the access approach, without causing an inconvenience for customers as well as the petitioner's business plan. Staff also suggested that the petitioner submit a circulation, access, and pavement plan to show the movement of traffic throughout the facility.

Commissioner Barth asked the petitioner how much of the site is developed and Mr. Tiaht noted that there are three buildings presently there with a proposal for about five additional buildings in the future.

Commissioner Steinhauer pointed out that it would be nice if the applicant bring a plan for reducing the potential for gravel brought out on the highway as well as timeline on when everything is to be completed. He proceeded to mention in reiteration that there is no assurance of approval on the request.

Commissioner Steinhauer closed the floor to public testimony.

DISCUSSION

Commissioner Barth asked for clarification on the conditions of approval. Commissioner Cypher noted that the conditions include to pave the entire site area. Commissioner Barth believes that is reasonable, but there should time limit on when the requirement must be met.

Commissioner Steinhauer asked how long the petitioner has to complete the requirement and

staff explained that condition #5 allows the applicant until August 31, 2016 to complete the hard surfacing of all driving and parking areas.

ACTION

A motion was made to **approve** Conditional Use Permit #15-17 with conditions by Commissioner Cypher and seconded by Commissioner Randall. The motion passed unanimously.

Conditional Use Permit #15-17 – Approved

ITEM 3. CONDITIONAL USE PERMIT #15-16 to amend Conditional Use Permit #11-15 to allow a 1050 ton Fertilizer Plant on the property legally described as Lot 2, Boer's Addition, E1/2, Section 18-T103N-R50W.

Petitioner: Fremar, LLC (Steven Domm, G.M.)

Property Owner: same

Location: 25263 467th Ave. West of unincorporated area of Lyons

This would allow a 1050 ton Fertilizer Plant as an amendment to CUP #11-15.

General Information:

Legal Description – Lot 2, Boer's Addition, E ½, Section 18 – T103N- R50W.

Present Zoning – A1 - Agriculture

Existing Land Use – Grain Handling Facility

Parcel Size – 113.42 acres

Staff Report: Scott Anderson

Staff Analysis: On March 22, 2011, the County Commission heard an appeal by several adjacent property owners and approved conditional use permit #11-15 with the following conditions:

1. A minimum of 14 off-street parking spaces shall be provided.
2. All new exterior lighting shall be shoe box style that directs the lighting downward.
3. All signage installed by the applicant on County Highways 143 and 118 shall meet or exceed the requirements of the 2009 edition of the "Manual of Uniform Traffic Control Devices".
4. The applicant shall obtain an Approach Permit from the County Highway Department for the approach onto County Highway 143. The approach shall have a minimum driving width of 90 feet and extend for a minimum distance of 100 feet from the existing highway surface. The approach shall have a finished driving surface of PCC pavement.
5. The applicant shall submit a drainage plan to the County Highway Department for review and approval prior to construction of the access onto County Highway.
6. All pipes used in the County right-of-way shall be sized to handle the flows from the north and shall be sized by the applicant or applicant's engineer. The pipe shall be concrete pipe (RCP) with flared ends and tie bolts. The applicable size, type and location within the right-of-way shall be reviewed and approved by the County Highway Department prior to installation.
7. The applicant shall install two (2) solar powered, flashing 10" beacons, mounted on 4.5" steel posts with 36" by 36" W8-6 "Truck Crossing" signs at locations to be determined by the County Highway Department.
8. The railroad spur crossing of County Highway 118 shall be a concrete crossing. Any adjustment of County Highway 118 shall be approved by the County Highway Department prior to the

construction of the crossing. Any region of the highway which has been disturbed in the construction shall have its surfaced replaced to the minimum of 9” of compacted gravel and 3” of asphalt at the applicant’s expense.

9. Any requirements as instructed by the BNSF Railroad shall be forwarded to the County for review. All costs for construction of the crossing and continued maintenance of the crossing shall be the responsibility of the owner.
10. Two (2) 4’ by 8’ on-premise business signs, which may be lighted, shall be allowed with the issuance of a sign permit.
11. The applicant shall provide signage for “no dynamic braking” be posted 1000 feet in each direction of the entrance. The specifications for the signage shall be reviewed and approved by the County Highway Superintendent prior to installation.
12. The applicant shall be responsible for constructing a left turn lane off of County Highway 143. Construction plans for a left turn lane must be submitted to the County Highway Department for review and approval prior to construction of the left turn lane.
13. The applicant shall be responsible for installing a railroad crossing with flashing lights and cross bars which meet all local, state and federal standards and guidelines.
14. That dust control must be required on all interior roads which are not hard surfaced.

The applicant is now requesting to amend CUP #11-15 to allow a fertilizer plant to also be constructed and used on the subject property along with the grain handling facility. The applicant has prepared a narrative of the proposed 1050 ton fertilizer plant and several diagrams, which staff has included for your review. The applicant has indicated that an 80’ by 120’ heated building will be constructed to store chemicals and seed in. In addition, there will be several tanks and bins constructed which will be used to load chemical and fertilizer into arriving trucks. The tanks and bin would be constructed over a concrete foundation, which will allow monitoring of any leakage that might occur and provide for a hard surface to clean any leaked material off. The applicant will have to comply with all state requirements for storage of chemicals, which includes the use of lined dikes to control any spills.

The proposed fertilizer plan will be located south of the existing office and grain handling facility. The applicant has constructed the entire facility in such a way to allow for this additional use and continue to use the interior roadways.

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.

It is unlikely that there will be significant impacts on the use and enjoyment of the surrounding properties or the property values. The areas to the west, north and south currently are used for

agriculture. The village of Lyons is located to the east and the site of a large manufacturing operation. The grain handling facility has been in operation for nearly 3 years without impacting the surrounding property values or uses allowed.

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

Lyons is identified as a rural service area. This agri-business fits well into that area. The agricultural community and uses in the area should benefit from this new expansion of agricultural activity.

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

The applicant constructed a new, major access road into the site. The road has to be a width of approximately 105 wide with a 40 wide approach onto County Highway 143. The approach onto County Highway 143 is constructed of concrete. The wide width of the interior access road allows 65 semi trucks to be stacked while waiting to unload prior to the scales. An additional stacking capability of 7 grain trucks is available after the scale. The proposed fertilizer facility would utilize all of the existing infrastructure.

4. That the off-street parking and loading requirements of these Zoning Ordinances are met.

The applicant was required to construct a minimum of 14 off –street parking spaces for employees. On March 10, 2015, staff conducted a site visit and confirmed that the applicant had met this requirement. With the additional use and large structure, the applicant shall provide an additional six (6) parking spaces, bringing the total number of off-street parking spaces for the entire facility to twenty (20).

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

This proposed use will create some noise and dust, but the amounts should not be significant enough to constitute a nuisance. The applicant may have security lighting. Any lighting should meet the standards typically required by the Planning Commission and designed to reduce light pollution. The lighting must be a shoe box style that directs the lighting downward.

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

The proposed addition of a fertilizer plant should not impact the health, safety and general welfare of the public. The applicant is required by state law to implement safety measures for any potential spill. The applicant has indicated that no anhydrous ammonia will be stored on the site. The subject property is located within the Water Source Protection Overlay District. A fertilizer plant, the storage of fertilizer or agricultural chemicals is not a prohibited use within the Overlay District. The applicant will have to meet all of the requirements for tank storage as outlined in Article 11 of the Minnehaha County Zoning Ordinance.

Lyons has been identified as a rural service area. The proposed use is a logical expansion of the grain handling facility that was approved in 2011 and has been in operation for several years.

Based on the information provided by the applicant, the proposed grain terminal is an appropriate use for this location. The Minnehaha County Comprehensive Plan identifies Lyons as a rural service area. The proposed use will be providing a service to the greater agricultural community.

Recommendation: Staff recommended **approval** of Conditional Use Permit #15-16 amending Conditional Use Permit #11-15 to allow a 1050 ton fertilizer plant in addition to the grain terminal and associated railroad loading track with the following conditions:

1. A minimum of twenty (20) off-street parking spaces shall be provided.
2. All new exterior lighting shall be shoe box style that directs the lighting downward.
3. All signage installed by the applicant on County Highways 143 and 118 shall meet or exceed the requirements of the 2009 edition of the "Manual of Uniform Traffic Control Devices".
4. The applicant shall obtain an Approach Permit from the County Highway Department for the approach onto County Highway 143. The approach shall have a minimum driving width of 90 feet and extend for a minimum distance of 100 feet from the existing highway surface. The approach shall have a finished driving surface of PCC pavement.
5. The applicant shall submit a drainage plan to the County Highway Department for review and approval prior to construction of the access onto County Highway.
6. All pipes used in the County right-of-way shall be sized to handle the flows from the north and shall be sized by the applicant or applicant's engineer. The pipe shall be concrete pipe (RCP) with flared ends and tie bolts. The applicable size, type and location within the right-of-way shall be reviewed and approved by the County Highway Department prior to installation.
7. The applicant shall install two (2) solar powered, flashing 10" beacons, mounted on 4.5" steel posts with 36" by 36" W8-6 "Truck Crossing" signs at locations to be determined by the County Highway Department.
8. The railroad spur crossing of County Highway 118 shall be a concrete crossing. Any adjustment of County Highway 118 shall be approved by the County Highway Department prior to the construction of the crossing. Any region of the highway which has been disturbed in the construction shall have its surfaced replaced to the minimum of 9" of compacted gravel and 3" of asphalt at the applicant's expense.
9. Any requirements as instructed by the BNSF Railroad shall be forwarded to the County

for review. All costs for construction of the crossing and continued maintenance of the crossing shall be the responsibility of the owner.

10. Two (2) 4' by 8' on-premise business signs, which may be lighted, shall be allowed with the issuance of a sign permit.
11. The applicant shall provide signage for "no dynamic braking" be posted 1000 feet in each direction of the entrance. The specifications for the signage shall be reviewed and approved by the County Highway Superintendent prior to installation.
12. The applicant shall be responsible for constructing a left turn lane off of County Highway 143. Construction plans for a left turn lane must be submitted to the County Highway Department for review and approval prior to construction of the left turn lane.
13. The applicant shall be responsible for installing a railroad crossing with flashing lights and cross bars which meet all local, state and federal standards and guidelines.
14. That dust control must be required on all interior roads which are not hard surfaced.
15. That the applicant meet all SD state requirements for containment and diking for above ground tanks storing fertilizer.
16. The applicant shall meet all of the requirements for tank storage as outlined in Article 11 of the Minnehaha County Zoning Ordinance.

PUBLIC TESTIMONY

Scott Anderson presented a brief summary of the staff report for conditional use permit #15-16. There were no questions for staff at this time.

Steven Domm, the petitioner, presented a Power Point with a description of the project in detail. This included site location, possible configurations, and how fertilizer will be stored and transported.

Commissioner Cypher asked about the potential for increased truck loads. Steve Domm responded that a semi-truck will carry 25 tons and there will be 1000 tons of revolving storage on the site. The petitioner is expecting 3000 to 4000 tons of fertilizer a year to start with potential to grow. Commissioner Cypher commented that the facility said that they would not have fertilizer and that this may stress the county roads.

Commissioner Barth asked what the hazard of the fertilizer is. Steve Domm responded fertilizer in any amount is hazardous in concentration, and that they will follow all state guidelines in handling and storing the fertilizer.

Commissioner Steinhauer commented that he was unaware of liquid fertilizer that would be stored on site. He asked how this would be stored and if the liquid fertilizer amount will need to be added to the permitted tonnage amount for the fertilizer storage. Staff responded that

approval should cover all of the storage that is on the site plan. Steve Domm responded that liquid fertilizer does not get stored on site for long periods of time and that again they will comply with state regulations.

Scott Burggraff, 47663 252nd Street, spoke in opposition to the proposal. He started that he would like to have government agencies to work together on projects of this scale. He raised concerns about the wetland water, city well sites, and an endangered bullhead that is located in Skunk Creek. He asked if the City of Sioux Falls, DENR, and Wildlife and Fisheries have been contacted. Scott then raised concern for wind potential to blow fertilizer and residue onto his property. Commissioner Barth asked Scott if he had any advice on how to build this facility. Scott responded that tanks in agriculture require a sealed bladder and the dyke will likely not be fully sealed. He finished that he thinks that this use should not go in because the facility is too close to the aquifer and the water will leach right in.

Commissioner Barth ask staff what the status of contacting other entities for notification of this sort of project. Staff responded that it is not a requirement but they did send notification and papers to contact the city. Commissioner Barth noted that the petitioner will have to obtain state approval and therefore the DENR will be informed of the project. Commissioner Barth then asked Steve Domm if he has had any contact with the DENR. Steve responded that he has contacted the DENR but has not submitted any application yet. Commissioner Barth added a question about how the fertilizer will be transported to the site, specifically in respects to rail freight. Steve responded that everything will be brought to the site by truck.

DISCUSSION

Commissioner Barth raised some discussion on continuing the petition for further notification. Staff responded that that would be fine but direction should be given as to who should be notified. It was then brought up that notification could be sent and opposition would have a change to appeal.

ACTION

A motion was made to **approve** Conditional Use Permit #15-16 with conditions including the liquid fertilizer portion that was described in the narrative by Commissioner Cypher and seconded by Commissioner Barth. The motion passed unanimously.

Conditional Use Permit #15-16 – Approved

Commissioner Barth made a motion to notify East Dakota Water District, DENR, and the City of Sioux Falls of the action of Conditional Use Permit #15-16 and to notify them of the appeal date. Commissioner Duffy seconded the motion. The motion passed unanimously with no further discussion.

ITEM 4. CONDITIONAL USE PERMIT #15-19 to expand existing dairy operation from 3,500 to 5,160 animal units.

Petitioner: Lynn Boadwine (Boadwine Farms, Inc.)

Property Owner: same

Location: 46945 251st St. Approximately 5 miles west of Baltic

Staff Report:

This would allow an expansion of an existing dairy operation from 3,500 to 5,160 animal units.

General Information:

Legal Description – NW1/4 10 103 50 LYONS TOWNSHIP

Present Zoning – A1 Agricultural

Existing Land Use – Dairy CAFO

Parcel Size – 160 acres

Staff Report: Kevin Hoekman

Staff Analysis:

The property is located approximately four (4) miles west of Baltic. The parcel has had a large (Class A) concentrated animal feed operation (CAFO) since the year 2000 when it was permitted to have up to 2,000 animal units. In 2004, the dairy operation expanded again with a conditional use permit to allow 3,500 animal units. The dairy operation still operates under the 2004 limits and conditions. The petitioner would like to make several major changes to the existing operation, and these expansions include raising the animal unit limit to 5,160, updating equipment and facilities, and expanding the site plan.

The current operation is primarily composed of dairy cows, but it also houses calves and heifers (not yet breed females) that are raised as replacements for when the dairy cows stop producing milk. The County Ordinance counts one dairy cow as 1.4 animal units. The heifers and calves are counted as 1 animal unit. The petitioner would be able to mix and match whatever combination of animals that he wants as long as the total animal units stays under the requested 5,160. His estimation is based on the desire to have 2,400 dairy cows and 1,800 heifers which calculates into 5,160 animal units.

The petitioner has noted several reasons for the desired increase in animal units. First, new efficiencies are planned through the remodeling of the milking parlor, and this will allow for more cows to be milked in the same amount of time and space. More cows can then be kept on site for milking. Second, the petitioner currently raises many replacement heifers off site, and he would like to be able to have all stages of cattle on the site for better efficiencies in not having to transport animals to and from the operation. In the process, the petitioner would build structures to house additional replacement heifers and cow calving units. The applicant has submitted a proposed layout for new and expanding site features.

As part of upgrading the operation, the petitioner noted that new waste handling and sand bedding separation systems will be constructed. The new systems will increase efficiency of the

dairy, and according to the petitioner's narrative, it will have the "potential to reduce odor." The odor reduction may be created by not recirculating the storage pond water and that will make it easier for the maintenance of bio-covers on the storage ponds. The new system will eventually require the expansion of the current holding pond system on the site that can be seen on the submitted site plan along with a belt of trees along the south side of the proposed pond.

As part of the Conditional Use Permit process, a new or expanding CAFO is required to meet certain setbacks from water resources and human activities. The proposed CAFO meets all the separation requirements for water resources; however, the separation requirements for human activities get larger as the animal unit count increases. This increasing setback of the proposed animal units of this operations extends 5.25 miles for municipalities, 3.16 miles for public parks, and 3.04 miles from dwellings, churches, schools, and businesses. At these distances all of Baltic and parts of Colton and Crooks are within the municipality setback and numerous dwellings and businesses are located within the 3.04 mile setback including the village of Lyons. The ordinance does allow two options to overcome these setbacks. In order to overcome setback requirements, the petitioner provided a list of best management practices to be considered as the ordinance allows. Many of these best management practices are also a part of the odor control plan that was utilized for the previous CUP. The provided Best Management Practices are listed below (as well as in the narrative):

- Microbial treatment of waste ponds targeting reduction of odor.
- New separation system that does not use liquid from storages (newest technology available)
- Proven rapid growth tree system that reduces wind action on pond surface.
- Fly control that utilizes controlled weekly area fogging plus a bedding pack compost area that kills fly larvae.
- Dead animal pickup daily from local rendering service.
- Liquid Manure is used locally to for organic fertilizer for crop growth.
- Dairy provides dust control throughout the summer on the gravel the gravel road entering the dairy.
- Adheres to South Dakota's Department of Environment and Natural Resources nutrient management plan.

The size of the current and the proposed operation must obtain a General Water Pollution Control Permit for Concentrated Animal Feeding Operation through the DENR. The petitioner will have to submit a waste management plan as part of the General Permit for the DENR, and a copy of the waste management plan will be provided to the county. The petitioner has noted that the engineering cost of completing an appropriate waste management plan is too high to spend for a conditional use permit that may be denied. The addition of any animal units will not be allowed until a waste management plan has been submitted and approved by the Planning Director. Likewise, approval of the General Water Pollution Control Permit will have to be approved by the DENR before additional animal units can be added to the operation.

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 primary use of property surrounding the dairy operation is agricultural farmsteads and cropland. There are also single family dwellings on acreages scattered throughout the area. If the 3 plus mile setback is considered to be the surrounding area for dwellings, businesses, churches, schools, and public parks then the village of Lyons and the businesses and residents near the Baltic Interstate Highway Exit is in the surrounding area. It is unlikely that development in Lyons and at the Baltic Exit will be effected by this expansion in any major way because of the long distance from the dairy operation.

The current operation and proposed operation does and will produce odor because of the nature of operating a CAFO. Some owners of nearby residences and farmsteads raised concerns of the odor during the hearing for the request to increase the operation to 3,500 animal units in 2004. Since that time, new operation practices have been put into place, but the mitigation of all smell is impossible. Mitigation measures for odor that work would be continued and improved when new systems and operation techniques become common.

The petitioner noted that by far the main traffic to and from the site travels the approximate $\frac{3}{4}$ mile to the east to the county road. Dust control practices should be continued down this heavily traveled portion.

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

The expansion of this operation will have little effect on the surrounding agricultural production lands. It may even be helpful to nearby agricultural production because of the manure that is produced can be applied onto cropland as an organic fertilizer. The CAFO produces more manure than what it can put on its own land so some of it will be sold to these nearby farms.

The real and potential and concerns of odor by potential buyers and developers may have an effect on the future development of rural single family acreages in the surrounding area. Since the operation is existing, it is unlikely that the additional requested animal units will create a larger problem for future development than already exists. The petitioner has held one open house at his site to explain his expansion and to try to alleviate the concerns by the neighbors. The comprehensive plan does also repeatedly warn against residential development inhibiting the productivity of agriculture within the county.

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

The dairy will use existing facilities and therefore no new utilities will be needed. The site plan does not include any new road access, but the petitioner noted that a new access would be needed on the west side of the proposed freestall barn. The construction of this access will greatly reduce the use of the current western access. The current road that leads approximately $\frac{3}{4}$ mile west of County Highway 137 is in good operational shape. The petitioner currently provides dust control throughout the summer months on the road leading to the operation. The use of dust control shall extend to the new access and be continued in order to prevent nuisance dust.

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

The operation is composed of approximately 75 acres of farmstead and operation elements. Buildings are arranged so that loading can take place where needed and not on the street.

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.

Concern was raised by many nearby residences over the odor during the last request to increase the dairy operation. An odor control plan was created for the facility with the assistance of Dr. Dwaine S. Bundy. The odor control technologies that are listed in the plan have been used except for continuation of monitoring. The best management practices that have been listed in the petitioner's narrative appear to have the potential of greater odor control. The application of manure shall conform to the county ordinance and the state issued permit. These technologies shall continue to be used and monitoring shall be done at least temporarily or periodically to demonstrate that odor is not becoming worse as the operation continues. It is recognized that in no case, the odor can be completely eliminated.

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

The requested expansion will unlikely cause a significant increase to the public health, safety, and welfare concerns that are not currently present at the dairy operation if mitigation techniques continue within the dairy operation. The dairy operation has maintained a permit through the DENR and has submitted documentation to the county of these permits and conditions. The dairy shall comply with state and county regulations regarding the operation.

The proposed CAFO expansion is located firmly within the Commercial Agricultural Area of the 1998 Comprehensive Development Plan. In the description of this designated area, the Comprehensive Development Plan states that the area is "intended to be preserved for farm related use where such activities can freely operate without the need to impose restrictions due to competing uses." One of the policies of this designated area is to "regulate concentrated animal feeding and processing operations to protect the environmental quality and minimize conflicts with human activities." Through state permitting requirements to avoid water pollution and the county's conditions recommended with this permit, the CAFO expansion works within the directions of the Comprehensive Development Plan

Recommendation:

Staff found that the proposed CAFO expansion from is an appropriate use within the commercial agricultural area of the comprehensive plan. Staff recommended **approval** of Conditional Use Permit #15-19 with the following conditions:

- 1.) The facility shall be limited to 5,160 animal units in size.
- 2.) The entire facility, including existing and future expansion shall be fully permitted by the state of South Dakota, and it shall remain in good standing.
- 3.) Copies of the state-approved nutrient management plans shall be filed with the Minnehaha County Planning Department.
- 4.) The facility shall comply with all of the best management practices that were listed within the submitted narrative that was received with the application and listed in the staff report.
- 5.) Odor monitoring shall be completed by a trained panelists using industry standards of air samples at varying locations. This monitoring shall be done within 2 years of

- this CUP approval and at least every 4 years thereafter. The reports of this monitoring shall be submitted to the Minnehaha County Planning Department.
- 6.) Shelter belt trees shall be planted and irrigated before the use of the proposed holding pond. Any dead trees shall be replaced within one season.
 - 7.) The shelter belt trees that are shown on the site plan shall be planted utilizing at a minimum Minnehaha County Conservation district standards.
 - 8.) Approval must be obtained by the township for the construction of the new road access.

PUBLIC TESTIMONY

Kevin Hoekman provided a brief summary of the staff report for Conditional Use Permit #15-19. In the presentation Kevin presented a 9th condition and a revised version of condition #5 with the intent of clarification. The additional conditions are listed below:

9. Annual copies of an executive summary of an approved nutrient management plan shall be filed with the Minnehaha County Planning Department which shows the sites proposed for nutrient application and the means of application. Copies of the full nutrient management plan shall be provided to the county upon request.

Replace Condition #5 with the following more specific condition.

5. Odor monitoring shall be completed during one season within 2 years of this CUP approval and at least one season every 4 years thereafter. Odor monitoring shall be completed by a qualified expert who is approved by Minnehaha County Planning and Zoning Department. The odor monitoring shall test for odor, hydrogen sulfide, and ammonia at and around the site. Each season of monitoring shall include at least two days of on site collection of emissions. Similar data collection methods shall be used from year to year to allow comparisons.

Commissioner Steinhauer asked what was meant by a season in condition #5. Kevin responded that a season would be considered one year with the intent to have two monitoring days in the same year.

Commissioner Duffy asked for clarification on the access that was mentioned in the staff report. Kevin Responded that the access would be a new driveway located further west than the current street access on the township road and that this would require culverts and a driveway.

Lynn Boadwine, the petitioner, handed out a packet power point to each commissioner and presented portions of it on the video screen. He explained some of the process of growing the dairy from when he started it to where it is now. He commented that much of the changes he is requesting is to streamline his system because of the pieced together growth that has happened through the years. He then explained the new closed loop manure system that he would like to have on his site. He also explained that he will continue to do odor management and that the new systems should reduce odors in addition to what has been working over the years.

Commissioner Cypher asked how many acres are in the manure management plan. Lynn responded that they have nearly 4,000 acres currently and that he has not had a problem finding land to put manure on because the farmers want the manure.

Lynn Boadwine raised his concerns about odor monitoring in condition #5. He commented that the last expansion request in 2003 there was a lot of anxiety and concerns, but he feels that much of that has been alleviated after testing that was done after the expansion. Lynn expressed concern about precedence of including odor monitoring for a large CAFO in the state. He also mentioned that odor monitoring is not a part of the ordinance. Commissioner Steinhauer asked Lynn for clarification of why he felt that odor monitoring was not applicable, especially in regards to the lack of access to professional monitors. Lynn responded that he does have some concern about finding someone, but also that he feels that best management practices have proven effective for odor control and that monitoring may not be needed.

Deb McGee Langrehr, 25174 467th Ave, spoke on behalf of Eunice McGee who owns land in section 9. Deb included a signed letter from Eunice that she had permission to speak on her behalf. She raised concerns for the roads. First, a farm located between 252nd Street and 251st Street on 467th Ave, and the road is very hilly and has blind driveways on the roads. Deb requested signage indicating the blind driveways. She also requested a sign located at the intersection of 469th Ave and 251st Street because it is a blind intersection.

Dennis Williams 46924 452nd Street, spoke that he lived at this location for 4 years and that he does not smell anything on most day and that he is in support of the expansion.

Commissioner Cypher asked to have Lynn Boadwine address the sign concerns for the roads. Lynn Boadwine commented that he was on the township board but is no longer on the board. He added that if the township does not add the signs that he would be very willing to add signage for these concerns. Commissioner Duffy commented that it is the township's responsibility for the safety signs.

Commissioner Barth Motioned to approve the Conditional Use Permit #15-19. The motion was seconded by Commissioner Duffy.

DISCUSSION

Commissioner Cypher commented that the last time Lynn requested an expansion, this size of facility would have not been possible. He added that because of good management concerns for larger CAFO's have largely gone away.

Staff interjected that before any vote is made that the Planning Commission be sure to address any changes to the conditions so that there is no confusion of what was passed.

Commissioner Barth commented that the facility has been doing well without adding any additional pressures on the operation.

Commissioner Randall asked about the odor control that was placed on the last permit. Staff responded that there was nothing in the conditions it was only part of the submitted odor control plan. Lynn Boadwine explained the process of who and what the last odor monitoring entailed. Commissioner Barth asked Lynn what he would like to see, and Lynn responded that he would prefer not to have it at all.

Commissioner Stienhauer commented that the indefinite testing may be onerous but at the same time the new process should have testing done in order to show the difference between the old and the new systems.

Commissioner Barth withdrew his motion and Commissioner Duffy withdrew her second.

ACTION

A motion was made to **approve** Conditional Use Permit #15-19 with amended conditions by Commissioner Cypher and seconded by Commissioner Barth. The motion passed with four ayes with the following Conditions:

- 1.) The facility shall be limited to 5,160 animal units in size.
- 2.) The entire facility, including existing and future expansion shall be fully permitted by the state of South Dakota, and it shall remain in good standing.
- 3.) Copies of the state-approved nutrient management plans shall be filed with the Minnehaha County Planning Department.
- 4.) The facility shall comply with all of the best management practices that were listed within the submitted narrative that was received with the application and listed in the staff report.
- 5.) Shelter belt trees shall be planted and irrigated before the use of the proposed holding pond. Any dead trees shall be replaced within one season.
- 6.) The shelter belt trees that are shown on the site plan shall be planted utilizing at a minimum Minnehaha County Conservation district standards.
- 7.) Approval must be obtained by the township for the construction of the new road access.
- 8.) Annual copies of an executive summary of an approved nutrient management plan shall be filed with the Minnehaha County Planning Department which shows the sites proposed for nutrient application and the means of application. Copies of the full nutrient management plan shall be provided to the county upon request.
- 9.) Odor monitoring tests shall be completed within 2 years of this CUP approval after the installation of the new manure management system. Odor monitoring shall be completed by a qualified expert who is approved by Minnehaha County Planning and Zoning Department. The odor monitoring shall test for odor, hydrogen sulfide, and ammonia at and around the site.

Commissioner Randall abstained from voting.

Conditional Use Permit #15-19 – Approved

Old Business

None

New Business

Update of Envision 2035 Comprehensive Plan by staff. An announcement was given to remind the general public that there will be a public open house hosted by the planning department to solicit feedback, comments, and suggestions on a draft comprehensive plan update document. Citizens can find out more information by visiting the Envision 2035 webpage on the Minnehaha County website.

Scott Anderson, Planning Director, briefly noted several applications for the planning commission vacancy and that the County Commission will select one individual among the applicants to serve on the planning commission at their next meeting.

County Commission Items

None

Adjourn

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