

**MINUTES OF THE  
MINNEHAHA COUNTY PLANNING COMMISSION**

January 23, 2017

A meeting of the Planning Commission was held on January 23, 2017 at 7:00 p.m. in the Commission Room of the Minnehaha County Administration Building.

COUNTY PLANNING COMMISSION MEMBERS PRESENT: Mike Cypher, Bonnie Duffy, Doug Ode, Becky Randall, Mike Ralston, Paul Kostboth, and Jeff Barth.

STAFF PRESENT:

Scott Anderson, David Heinold, and Kevin Hoekman - County Planning

Planning Commission Chair Mike Cypher called the Minnehaha County Planning Commission meeting to order at 7:00 p.m.

**CONSENT AGENDA**

Commissioner Duffy made a motion to nominate Commissioner Cypher as Chair for 2017 and the motion was seconded by Commissioner Kostboth. The motion passed unanimously.

Commissioner Barth made a motion to nominate Commissioner Duffy as Vice Chair for 2017 and the motion was seconded by Commissioner Randall. The motion passed unanimously.

Commissioner Cypher read each item on the agenda individually. Planning staff requested that Item #4 be placed on the regular agenda for discussion. The remaining items on the consent agenda were read and Item #5 was placed on the regular agenda for discussion.

A motion was made by Commissioner Randall and seconded by Commissioner Barth to **approve** the consent agenda consisting of Items 2, 3, 6, 7, and 8. The motion passed unanimously.

**ITEM 2. Approval of Minutes – November 28, 2016**

As part of the consent agenda, a motion was made by Commissioner Randall and seconded by Commissioner Barth to **approve** the meeting minutes from November 28, 2016. The motion passed unanimously.

**Consent Agenda**

**ITEM 3. CONDITIONAL USE PERMIT #17-01 to exceed 1,200 square feet of total accessory building area – requesting 2,148 sq. ft. on the property legally described as S125' N250' W350' E383' E441.97' S579.97', SE1/4 NE1/4, Section 23-T103N-R52W.**

Petitioner: David Lenth

Property Owner: same

Location: 25345 459th Ave.      Approximately 5 miles north of Humboldt

Staff Report: David Heinold

This would allow 2,148 square feet of total accessory building area.

**General Information:**

Legal Description – S125 N250 W350 E383 E441.97 S579.97 SE1/4 NE1/4 23 103  
52 CLEAR LAKE TOWNSHIP

Present Zoning – A-1 Agricultural District

Existing Land Use – Residential

Parcel Size – 1 Acre

**Staff Report:** David Heinold

**Staff Analysis:**

The petitioner is requesting conditional use permit approval to allow an additional 1,620 square feet of total accessory building area. There is an existing 528 sq. ft. detached garage on the property. The petitioner is requesting 2,148 sq. ft. of total accessory building area. The subject property encompasses an area of approximately 1 acre.

The subject property is located approximately 5 miles north of Humboldt. The petitioner is requesting conditional use permit approval to exceed 1,200 sq. ft. in 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.

There are several buildings in the surrounding area that exceed the 1,200 sq. ft. requirement. The property owner, 25358 459th Ave., located about a quarter mile south of the subject property has 7,994 sq. ft. of total accessory building area on a 10 acre parcel used for personal storage. The property owner to the north, 25335 459th Ave., was approved for 3,200 square foot accessory building on a 2.5 acre parcel in August 2015 planning commission meeting.

On January 12, 2017, staff visited the property and determined that the proposed accessory building size is appropriate for the immediate area. The proposed building will be located on a 1 acre parcel.

**Conditional Use Permit Criteria:**

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

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

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

The accessory building may only be used for residential purposes, no commercial or business activities are allowed. Given the size of the other larger accessory buildings, 2,148 sq. ft. of accessory building area would be congruent with the land composition.

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

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

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

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

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

No offensive nuisances shall be permitted at any time during use of the proposed accessory structure. The use of lighting should be directed downward on to the property in order to prevent light pollution off site. There should be no operation or the appearance of a commercial business within neither the dwelling nor accessory building without being subject to the zoning ordinance.

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

The proposed accessory building should have no effect on the health, safety, and general welfare of the public. The use of the accessory building for private use and storage will create few problems to neighboring properties. The subject property is located within the agricultural production area identified in the Envision 2035 Comprehensive Plan, which recognizes that the primary purpose of the area is to protect, preserve, and promote agricultural uses and the economic viability of farming operations. The proposed use of the building for personal storage should not affect surrounding land uses with an established shelterbelt of landscaping around the perimeter of the proposed location for the accessory building.

**Recommendation:**

Staff finds that the requested total accessory building size is relatively comparable to the existing accessory buildings in the immediate vicinity. Staff recommends **approval** of Conditional Use Permit #17-01 with the following conditions:

- 1.) That the total accessory building square footage shall not exceed 2,148 square feet.
- 2.) That the accessory building shall not exceed 35 feet in height.
- 3.) That the building shall be an accessory use to the continued use of the property as a residential lot.
- 4.) That only personal residential storage shall be allowed in the building and no commercial uses or commercial storage will be allowed at any time.
- 5.) That all outdoor lighting shall be of a full cutoff and fully-shielded design to prevent direct spillage of light beyond the property boundaries.
- 6.) That a building permit is required prior to construction of the accessory building.

**ACTION**

As part of the consent agenda, a motion was made by Commissioner Randall and seconded by Commissioner Barth to **approve** Conditional Use Permit #17-01. The motion passed unanimously.

**Conditional Use Permit #17-01 –Approved**

**ITEM 6. CONDITIONAL USE PERMIT #17-04 to exceed 1,200 square feet of total accessory building area – requesting 2,400 sq. ft. on the property legally described as Tract 4 Johnson’s Addition, N1/2 NW1/4, Section 33-T104N-R49W.**

Petitioner: Cody Sundermann

Property Owner: same

Location: 24926 474th Ave.      Approximately 0.5 mile north of Baltic

Staff Report: David Heinold

This would allow 2,400 square feet of total accessory building area.

**General Information:**

Legal Description – TRACT 4 JOHNSON'S ADDITION N1/2 NW1/4 33 104 49

DELL RAPIDS TOWNSHIP

Present Zoning – A-1 Agricultural District

Existing Land Use – Residential

Parcel Size – 3 Acres

**Staff Report:** David Heinold

**Staff Analysis:**

The petitioner is requesting conditional use permit approval to allow 2,400 square feet of total accessory building area. The site plan shows the proposed 40’x60’ pole building will be south of the existing house.

The subject property is located approximately 0.5 mile north of Baltic. The petitioner is requesting conditional use permit approval to exceed 1,200 sq. ft. in 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.

There are a few properties in the surrounding area that have a total accessory building area exceeding the 1,200 sq. ft. requirement. The property owner, 24917 474th Ave., located across the road to the immediate west of the subject property has 5,289 sq. ft. of total accessory building area on an approximately 23 acre parcel used for personal storage. It is important to note that the property owner at this location also owns the surrounding farmland across the street from the 23 acre parcel.

On January 12, 2017, staff visited the property and determined that the proposed accessory building size is appropriate for the immediate area. The proposed building will be located on a 3 acre parcel.

**Conditional Use Permit Criteria:**

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

There is one other property within a half-mile of the subject property that has a building size larger than the petitioner's requested total accessory building area. It is unlikely that the proposed building size will have a detrimental effect on property values in the immediate vicinity. The proposed building will be used for the property owner's personal storage. The area is primarily agricultural with five residential acreages within a half-mile. It is important to note that the subject property lies just outside of the transition area for the City of Baltic and the surrounding area consists mostly of farmland with a few residential acreages in the immediate vicinity.

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

The accessory building may only be used for residential purposes, no commercial or business activities are allowed. Given the size of the other larger accessory buildings, 2,400 sq. ft. of accessory building area would be congruent with the land composition.

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

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

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

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

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

No offensive nuisances shall be permitted at any time during use of the proposed accessory structure. The use of lighting should be directed downward on to the property in order to prevent light pollution off site. There should be no operation or the appearance of a commercial business within neither the dwelling nor accessory building without being subject to the zoning ordinance.

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

The proposed accessory building should have no effect on the health, safety, and general welfare of the public. The use of the accessory building for private use and storage will create few problems to neighboring properties. The subject property is located within the agricultural production area identified in the Envision 2035 Comprehensive Plan, which recognizes that the primary purpose of the area is to protect, preserve, and promote agricultural uses and the economic viability of farming operations. The proposed use of the building for personal storage should not affect surrounding land uses with an established shelterbelt of landscaping around the perimeter of the proposed location for the accessory building.

**Recommendation:**

Staff finds that the requested total accessory building size is relatively comparable to the existing accessory buildings in the immediate vicinity. Staff recommends **approval** of Conditional Use Permit #17-04 with the following conditions:

- 1.) That the total accessory building square footage shall not exceed 2,400 square feet.
- 2.) That the accessory building shall not exceed 35 feet in height.
- 3.) That the building shall be an accessory use to the continued use of the property as a residential lot.
- 4.) That only personal residential storage shall be allowed in the building and no commercial uses or commercial storage will be allowed at any time.
- 5.) That all outdoor lighting shall be of a full cutoff and fully-shielded design to prevent direct spillage of light beyond the property boundaries.
- 6.) That a building permit is required prior to construction of the accessory building.

**Action**

As part of the consent agenda, a motion was made by Commissioner Randall and seconded by Commissioner Barth to **approve** Conditional Use Permit #17-04. The motion passed unanimously.

**Conditional Use Permit #17-04 –Approved**

**ITEM 7. CONDITIONAL USE PERMIT #17-05 to allow Equipment Sales and Service - Used Truck Dealership on the property legally described as Lots 3 & 4, Block 2, Brower Addition, SW1/4, Section 27-T102N-R51W.**

Petitioner: Dylan Peterson

Property Owner: Vance Peterson

Location: 26066 Brower Cir. Approximately 0.5 mile south of Hartford

Staff Report: Kevin Hoekman

This would allow Equipment Sales and Service, Used Truck Dealership.

**General Information:**

Legal Description – Lots 3 & 4, Block 2, Brower Addition, SW1/4, Section 27-T102N-R51W

Present Zoning – I1 - Industrial

Existing Land Use – Warehousing and rental space

Parcel Size – 2.16 acres

**Staff Report:** Kevin Hoekman

**Staff Analysis:**

The property is located at the Brower Addition industrial park south of Hartford Exit of Interstate 90. A large building is located on the parcel, and several industrial type businesses have been located there since it was constructed. The petitioner would like to use a portion of the building for truck sales, display and service. The remainder of the building will continue as rental spaces for warehousing and industrial businesses.

The petitioner has submitted a site plan and brief narrative which describes the intended use of the site. The site plan indicates that the west side of the building will be used for the display and service of trucks for sale. The petitioner notes in the narrative that services will be located in the building and limited to incoming vehicles that will be placed on the lot for sale. Customers will park on the west side of the building and equipment display will be on the north side of the building. The narrative further describes that inventory will be approximately 15 to 20 units when the business begins. The site plan indicates that further storage is available in a fenced in area on the east side of the property. Offices and bathrooms will be available inside the building. A sign will be posted on the west side of the building to indicate the location of the tenant.

Staff visited the site and found that the conditions were similar to the surrounding properties. The fenced area that can be seen on the site plan for additional outdoor storage was in disrepair. The fabric that is tied to the fence for a screen was torn and not entirely in place. The fabric should be repaired, replaced, or chain link fence slats should be placed in the fence to screen the outdoor storage are properly.

The general site is set up to have multiple rental spaces for contractors or other tenants. Several conditional use permits have been issued for individual rental space units, and some of these will remain effective. It is likely that future conditional use permits will be needed when other spaces are rented.



**Conditional Use Permit Criteria:**

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

The proposed use is located within an established industrial park where similar type uses have been permitted nearby. The Brower Addition industrial park does not currently have paved roads. Previous developments have raised concerns regarding the condition of the road and its ability to support added traffic. The City Council for Hartford reviewed this request, and it also expressed concern regarding additional heavy weighted traffic in the subdivision. The proposed use will likely increase traffic, but the increase will not likely be greater than other industrial uses. The outdoor display and minimal service described should not disturb nearby industrial properties. No residential uses are located nearby.

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

Much of the Brower Addition industrial park has already been developed. The few undeveloped parcels are zoned industrial. The proposed truck sales should not have a negative effect on other industrial activities.

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

The facility will use the existing accesses on the west and north side of the parcel. A previous conditional use permit required these driveways to a limited width of 40 feet, it also required 15 feet of landscaping between the property line and parking lot. The 15 feet of landscaping should assist in allowing a clear drainage ditch. These requirements have been met and should be continued to ensure that no adverse changes happen on the property. All other necessary utilities are available to the parcel.

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

Adequate parking for customers and inventory is indicated on the site plan. The property should continue to maintain 15 feet of landscaped yard between the property line and the parking.

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

The proposed use will have outside display of vehicles for sale. The vehicles for sale should be in good working condition and have proper license on each vehicle. The service that was described in the narrative should take place inside the structure to avoid any nuisances from moving to neighboring properties.

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

It is unlikely that the requested equipment sales will create any additional health safety or welfare concerns. This area is located in an established industrial park and it 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 finds that the proposed equipment sales and service is an appropriate use of the industrial land at this site. Staff recommends **approval** of Conditional Use Permit #17-05 with the following conditions:

- 1.) The equipment sales and service shall adhere to the submitted site plan and narrative.
- 2.) The two existing driveways shall remain no wider than 40 feet.
- 3.) The required 15 foot landscaped front yard buffer must remain between the front property line and any driving lane or parking.
- 4.) All vehicles and equipment for sale must be in good working order and licensed if required.
- 5.) The screening material for the chain link fence that is indicated to surround outdoor storage shall be repaired or replaced to provide a 90% opaque screen for the area. The repair or replacement must take place before July 1, 2017.
- 6.) No outside storage of parts or other service items unless located behind a 90% opaque fence that is no shorter than 6 feet tall.
- 7.) A building permit is required before signage is placed for the business, and all signage must comply with the zoning ordinance requirements.
- 8.) That the Planning & Zoning Department reserves the right to enter and inspect the property 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**

As part of the consent agenda, a motion was made by Commissioner Randall and seconded by Commissioner Barth to **approve** Conditional Use Permit #17-05. The motion passed unanimously.

**Conditional Use Permit #17-05 –Approved**

**ITEM 8. PRELIMINARY SUBDIVISION PLAN #17-01**

Petitioner: Rebecca Eggers  
Property Owner: Lester Sittig Estate  
Location: Approximately 4 miles north of Sioux Falls  
Staff Report: Scott Anderson

**General Information:**

Legal Description – Sittig’s Addition  
Present Zoning – A1 Agriculture  
Existing Land Use – Agriculture  
Parcel Size – 850 acres

**Staff Report:** Scott Anderson

**Staff Analysis:**

The applicant has submitted a preliminary plan for a subdividing an 850 acre estate into eight (8) parcels. The parcels are located approximately 4 miles north of Sioux Falls. Approval of the preliminary plan will allow for final plats creating the lots to occur.

Staff has reviewed Section 4.01 of the Minnehaha County’s Subdivision Ordinance to determine that all requirements have been met. The applicant has not provided all of the required information for a Preliminary Plan, such as detailed topographic information, typical cross section for road construction, a grading and drainage plan, and erosion control plan. The proposed lot layout doesn’t not create any new roads. It is likely that these large parcels will be either sold to distributed to heirs. There are many building eligibilities available. So while this is being treated as a preliminary plan, future development of the parcels has not been decided. The applicant has not provided any contour information or a drainage plan. Since no development has been indicated, it is likely that the existing drainage patterns will stay in place. No erosion control plan is needed until further residential development occurs which requires additional platting. The applicant will need to provide contour information for the 850 acres and a statement that the existing drainage will remain in place.

The overall numbering of lots must be revised. There are duplications of Tract 2 and Tract 3 of Sittig’s Addition. While these tracts are in different sections, the Register of Deeds will not accept the numbering as it has been indicated on the preliminary plan.

The sizes of the lots within the proposed residential development range in size from between 9.33 acres to 175 acres. Any future development will likely utilize on-site wastewater disposal systems and would connect to Minnehaha Community Water.

**Recommendation:** Staff recommends **approval** of Preliminary Plan #17-01 with the following conditions:

1. That prior to County Board approval, contour information shall be provided covering all tracts.

2. That prior to County Board approval, a drainage plan and statement addressing any need for an erosion control plan shall be provided to the Planning Department for review and approval.
3. That prior to County Board approval, the tracts be renumbered so there is no duplication of numbers.

**Action**

As part of the consent agenda, a motion was made by Commissioner Randall and seconded by Commissioner Barth to **approve** Preliminary Plan #17-01. The motion passed unanimously.

**Preliminary Plan #17-01 – Recommended for Approval**

**Regular Agenda**

Staff requested that Item #9 be moved to the first spot on the regular agenda.

Commissioner Barth made a motion to move Item #9 first on the regular agenda and the motion was seconded by Commissioner Kostboth. The motion passed unanimously.

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

**ITEM 9. RECALL CONDITIONAL USE PERMIT #14-05 to allow a sanitation business.**

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

This would recall Conditional Use Permit #14-05 to review for failure to meet conditions of approval.

**PUBLIC TESTIMONY**

David Heinold, County Planning, provided a brief description of the enforcement case and update since the November 28, 2016 planning commission meeting.

**ACTION**

Commissioner Barth made a motion to **dismiss** the recall of Conditional Use Permit #14-05 and the motion was seconded by Commissioner Ode. The motion passed unanimously.

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

**ITEM 4. CONDITIONAL USE PERMIT #17-02 to allow a Class C CAFO (950 AU) on the property legally described as W1/2 SW1/4 (Ex. Trs. 2-5 Alderson Addn.) & Tr. 1 Alderson Addn. SW1/4, Section 17-T101N-R1W.**

Petitioner: Brian Alderson

Property Owner: same

Location: 26464 461st Ave.      Approximately 4 miles southwest of Hartford

Staff Report: Kevin Hoekman

This would allow a Class C CAFO, 950 Animal Units.

**General Information:**

Legal Description – W1/2 SW1/4 (Ex. Trs. 2-5 Alderson Addn.) & Tr. 1 Alderson Addn. SW1/4, Section 17-T101N-R1W

Present Zoning – A1 - Agriculture

Existing Land Use – Agriculture and Class D CAFO

Parcel Size – 57.46 acres

**Staff Report:** Kevin Hoekman

**Staff Analysis:**

The property is located approximately one and one half (1.5) miles northwest of Wall Lake and five (5) miles southwest of Hartford. The petitioner would like to expand a beef CAFO operation about one half a mile north of South Dakota Highway 42 and located on 461<sup>st</sup> Avenue. The petitioner currently operates two Class D (less than 250 animal units) CAFOs on two adjacent properties.

The petitioner has proposed to combine his two operations into one large building. The proposal is to have 950 beef cattle (950 animal units) on the site. 950 animal units is under the threshold for a required state permit. The facility will have to comply with the provisions and requirements of the 1990 Revised Zoning Ordinance.

The petitioner submitted with the application a detailed nutrient management plan and operation plan. The 5 page operating plans have been provided with this staff report for your review. These detailed plans have been reviewed in relation for the requirements of the Zoning Ordinance. Below is the review of these plans with what is required.

The site plan is an important aspect of any conditional use permit. Several items that are not visible on the site plan have been directly addressed in the operating plans. A list of required elements for general CUPs and specifically CAFOs have been created to provide clarity for any petitioner requesting a CAFO. The required elements are listed in bold font at the beginning of the following paragraphs, and each listed element includes a description of the petitioner submitted materials that regard each element.

**The address of the property and the legal description.** The site plan includes the landowner's address which is located adjacent to and north of the proposed site. The site plan does include a general description of the NW ¼ of the SW ¼, and the complete

legal description is provided on the application.

**The name of the project and/or business.** The indicated name of the project is Brian Alderson Beef Cattle Site Wall Lake Township Minnehaha County. The operating plan is named as Alderson Feedlot Improvement Project.

**The scale and north arrow.** The site plan includes a written scale and no noticeable north arrow. Several key measurements are written on the plans provided such as building dimensions and measurements from nearest houses.

**All existing and proposed buildings or additions.** The existing buildings are located on the site plan. The former barn is also noted to be reused as a commodities shed. The proposed building is located on the site plan.

**The dimensions of all buildings.** The site plan includes the dimensions of the proposed barn as 70' x 332' with an attached work area of 70' x 60'. The dimensions of existing building are not provided.

**The distance from all buildings to the property lines at the closest points.** The site plan does not explicitly include the setback distances to property lines. The narrative explains that the building will be setback 430 feet from the township road, well beyond the 50 foot setback requirement. The parcel on which the site is located is large, which makes it difficult to draw the property to scale in comparison to the proposed site. The proposed building is set further from the front yard than existing buildings and away from side and rear yards.

**Building height and number of stories.** The petitioner has submitted section drawings (drawings from the side perspective) of the proposed barn that show the barn will have a dug out pit with a slatted floor above. The proposed building is 33 feet tall from the top of the slatted floor to the peak of the rafters. The manure pit underneath is noted to be 10 feet deep. Although agricultural buildings are exempt from the height requirement of the zoning district, the height of the building is important to the character of the surrounding area and for emergency purposes.

**Dimensions of all property lines.** The provided site plan does not include the dimensions of the property lines. Staff recognizes that the proposed site is only a small portion of a much larger parcel, and that including the entire parcel on a small site plan makes the plan difficult to read.

**Parking lots or spaces; designate each space; give dimensions of the lot, stalls, and aisles.** The proposed land use is for agricultural purposes on a large lot. Parking lots and space requirements are typically calculated for commercial and industrial uses. The site plan indicates an access from 461<sup>st</sup> Avenue as well as access to the home site. The current farm buildings and barn has gravel and dirt maneuvering areas between the buildings and the road.

**Screening including height, location, and type of material to be used.** - And similarly - **The landscape setback and trees indicating the species of trees and materials to be used for landscaping.** The submitted operation plan includes detailed descriptions of the proposed landscaping. The current site conditions include large established trees north of the home site. Some rows of smaller trees have been planted along the west property line between the site and the township road. The written landscape plan indicates that another row of trees will be added to the west side of the site. In addition to the trees, the proposed building will be screened from the south by the existing feed bunkers and hoop barn.

**Name and location of all adjacent streets, alleys, waterways and other public places.** The site plan does not include the name of the adjacent street, but the address of the adjacent home site provides the name of the street that runs past the site. No named creeks, lakes, or parks are located near the site.

**A landscaping in plan designed to assist in the dispersal of odors.** The written landscaping plan includes existing and proposed rows of trees to provide material to disperse and absorb odors. The primary odor control method will be the reduction of surface area where the current cattle are kept to where the propose cattle will be kept.

**A grading Plan designed to help keep pens and solid waste containment areas dry.** The animals and manure will both be located inside the proposed structure. The site plan includes contours that show that rainwater will flow south from the site toward an intermittent stream. A narrative in the operating plan indicates that drainage will be sloped away from the proposed structure.

**The location and description of the animal waste facilities and structure.** The submitted site plan includes only one animal waste facility located under a slatted floor where the cattle will be kept. The plan indicates that the manure containment will have the capacity for approximately one year of operation. The petitioner included many engineered drawings regarding the waste containment.

In relation to the site plan, the 950 animal unit operation will require a 1,980 foot buffer from a dwelling, church, school, or business. The setback map submitted by the petitioner shows that two residential dwellings are located within the required setbacks. The petitioner must obtain a signed waiver from the two property owners who have dwellings within the setback. Staff reviewed all setbacks requirements, including from other nearby dwellings. The proposed CAFO will meet all other setbacks.

The Zoning Ordinance includes several requirements for additional plans to be submitted with the application: the pest control plan, odor management plan, and dead animal control plan. These plans are identified within the operating plan. The petitioner has indicated that the reduction in surface area for the operation will reduce nesting areas for vermin. The plan indicated that a rodent control company will be used if a problem arises. The plan also includes that insects will be controlled by spaying the grounds when needed. Odor will also be primarily controlled through the reduction of surface area for the CAFO. With the odor reduction plan, the



petitioner submitted a table created by the South Dakota Odor Footprint Tool that has been developed by South Dakota State University. The odor footprints were calculated for the existing and the proposed facilities. The Odor Footprint Tool indicates that the new facility will have a significant reduction in odor emitted. The petitioner includes a dead animal control plan for general losses and a catastrophic animal loss plan. General losses will continue to be removed by a rendering company, and dead animals will be out of public sight by a stub wall. The catastrophic animal loss plan indicates soils on the site suitable for mass burial of animal dead and the process for covering with soil. It also includes a list of contacts for the petitioner to inform of any catastrophic loss.

One of the major elements that the Planning Commission is to consider as part of a conditional use permit for a CAFO is the nutrient management plan. The petitioner has submitted a manure management plan that shows that he has enough land available for the nutrients that will be produced. The provided plan was prepared in cooperation with the Natural Resources Conservation Service. Maps of application sites and landowner agreements have been submitted with the plan.

**Conditional Use Permit Criteria:**

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

The proposed CAFO is located within a low density and predominantly agricultural area. The site is currently operated as two Class D CAFOs on adjacent lots; therefore this request is similar to an expansion of use. The proposed facility will have a smaller footprint than the existing operations, and this smaller footprint will reduce odors that are emitted. The petitioner must obtain waivers from two neighboring land owners, and he has noted that that will be possible. The site is well developed with trees to the north and distance to the south between the CAFO and the highway.

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

The surrounding land uses of the proposed CAFO are predominantly agricultural with scattered single family dwellings and farmsteads. There is potential for further development of agricultural uses, such as CAFOs, and residential uses in farmsteads and acreages. The land use of a CAFO will unlikely affect further agricultural development in the area. However, as intense land uses such as CAFOs increase in numbers, residential uses may become less desirable in close proximity to this type of project. Future residential development will be required to have the Right-to-Farm Covenant placed on the deed prior to construction of a dwelling.

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

The proposed facility includes one driveway off of 461<sup>st</sup> Avenue and access to the home site to the north. The driveway is already installed. The petitioner will have to acquire any utilities to the proposed facility.

The proposed facility includes a site plan that includes contours that indicates the land generally sloping downhill to the south. The closest intermittent stream is located approximately 800 feet

away and separated by crop land and pasture land. The Envision 2035 Comprehensive Plan encourages the use of Low Impact Development for projects that may have an effect on waterways and watersheds. The long distance separating the CAFO and the intermittent stream and the area of pasture land around the intermittent stream will likely reduce the runoff from the site to the nearest water way.

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

The operation is located on a large site that will have enough space to meet off street parking and loading requirements. Parking and loading in the right of way will not be allowed.

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

The petitioner is requesting an expansion of a CAFO facility. The inherent nature of any CAFO has the potential to create nuisances if not managed properly. This is especially true for odor, fumes, and dust. The petitioner has submitted management plans and site plans to aid in reducing these nuisances. Anything included in the narrative will be expected to be carried out. In addition, the Planning Commission has the ability to add conditions if they feel the petitioner's plans and staff recommendations are inadequate to mitigate nuisances.

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

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

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

**Recommendation:**

Staff finds that the proposed CAFO is an acceptable land use under the comprehensive plan. Staff recommends **Approval** of Conditional Use Permit #17-02 with the following conditions:

- 1.) The facility shall be limited to 950 animal units in size.
- 2.) The CAFO shall comply with all applicable regulations of the County Zoning Ordinance.
- 3.) The facility shall conform to the submitted site plans. Any minor changes may be approved by the Planning Director at the Minnehaha County Planning Department. Major changes will require an amendment to this permit and a public hearing.
- 4.) The manure containment facility must be in conformance with South Dakota Department of Environment and Natural Resources design standards for any newly constructed waste containment facility. A registered professional engineer shall certify the plan specifications and the construction of the facility.

- 5.) The proposed barn shall have engineer certified drawings that shall be submitted for review by the Building Inspector prior to the issuance of a building permit.
- 6.) A building permit is required for all structures prior to construction.
- 7.) That the Planning & Zoning Department reserves the right to enter and inspect the CAFO at any time, after proper notice to the owner, to ensure that the property is in full compliance with the conditional use permit conditions of approval and Minnehaha County Zoning Ordinance.

### **PUBLIC TESTIMONY**

Before the item was presented, Commissioner Cypher recused himself from the item, and he took a seat in the audience.

Kevin Hoekman, County Planning, presented an overview of the staff report and recommendation to the planning commission.

The petitioner Brian Alderson, 26464 461st Ave., presented a handout with information regarding his proposal. Brian began by explaining his calculations from the South Dakota Odor Footprint Tool. He presented a letter from Dr. Cortis, SDSU Extension officer, which agreed with the findings from the petitioner. Brian noted that since operations started, he remembers two complaints from his closest neighbor, Mr. Sommers. Brian continued that through the application process for this permit, was the first time he heard a complaint about smell. He admitted that he normally doesn't notice the smell unless he is disturbing the manure through clean out and application days. Brian continued his presentation at length with a studies and description of how ammonia, the chemical of manure that smells and represents lost nitrogen value, will be better contained in the new pit style manure containment system. Brian also explained that the new building setup will result in less agitation of manure, and it will allow for fewer trips with the tractor and feed wagon and from manure handling trucks on the township road. This will lead to less mud on the township road. Brian concluded that he hopes that he has and plans to maintain an open line of communication with his neighbors and reduce the negative impacts.

Several Planning Commissioners asked questions of Brian. Commissioner Barth began with questions regarding the prevalence of similar waste containment systems, the discharge of water from the new facility and how manure is removed, dead animal removal. Brian Alderson responded first by listing a couple examples of deep pit cattle barns. He noted that mechanical separation can create an odor problem. Finally, Brian noted that he plans on having a stub wall made of rail road ties to block the view of any dead animals from the right-of-way and neighbors.

Commissioner Randal asked for clarification of the number of animals in the current operations. Brian noted that he has two operations, each with about 220 animal units. He added that the NRCS required abandonment of all outside lots.

Commissioner Barth asked about the potential traffic as a result of the proposed operation. Brian responded that there should be fewer overall trucks and wagon feeders that go out onto the road.

Brian added that he plans on buying and storing more corn on his property and that that will happen during normal harvest time.

Commissioner Duffy ask who maintains the road. Brian responded that Wall Lake Township maintains the road and that he would be willing to work with the township to spray for dust control while the project is under construction.

Mike Sommers, 26475 461<sup>st</sup> Ave, is the closest neighbor to the petitioner. Mike noted that he lived on a Bicentennial homestead since before the petitioner's current operation was even started. Mike described odor and dust from the current facility. He added that cows have gotten out and wandered onto his yard on multiple occasions. Mike noted that semi-trucks often park on the road because there is not enough space for maneuvering in the current yard. Mike raised concern for the value of his property with a larger CAFO nearby. Mike concluded by describing the situation where Brian walked on their property with a measuring wheel to find the current barn was located too close during construction, and thus moved further away from the property.

Commissioner Barth first asked Mike if he feels the new manure management will be less intrusive. Mike replied that he believes the new facility will be a better unit with animals in house and manure in a pit. He added that he believes the 1980 foot setback is a respectable setback.

Commissioner Ode asked Mike where the cows were getting out and where the prevailing winds come from. Commissioner Ode commented that he does not see that a CAFO will devalue property. Mike replied that the cattle would get out of the current barn and the wind primarily blows from the northwest and southeast. He added that smells will still travel to his place, especially on hot and humid days.

Mike Cypher, 26443 461<sup>st</sup> Ave., noted that he is a neighbor to the northwest of the petitioner. He began with noting that the petitioner has been working with the NRCS to improve the site by removing the outside lots. Mike Cypher also noted the lack of smell at his place. He recalled for the commissioners that the last major ordinance amendments were made in part out of concern for letting small producers to grow. Commissioner Barth asked about the issue of runoff from the facility into Wall Lake. Mike replied that this proposed building will fix some of that problem.

Less Sorge, 46264 266<sup>th</sup> St., first raised concern regarding the lake of analysis for Wall Lake where the facility will ultimately drain. He added that he feels a little better considering the zero discharge of the facility, and he continued to ask if the proposal was going to make the algae problem worse. Less pointed out that the petitioner is doubling his animal units and appears to be avoiding the 1000 animal unit threshold for a state permit. Less noted that the petitioner is not doing anything to his current operation to improve nutrient management. He concluded that many organizations are spending millions of dollars to clean up the Big Sioux River, so why shouldn't there be some extra attention to the Wall Lake Watershed.

Commissioner Barth commented that cows standing in the river cause problems for water quality, and that confinement buildings improve the situation. Less Sorge responded that he

agrees but the facility nearly meets the state permit threshold and there needs to be something to ensure and monitor what will happen with the facility.

Joel Wehrkamp, 26241 464 Ave., spoke as someone who helps Brian with his current operation. Joel first noted that the current building smells, and that the smell has been a concern of Brian's for years. Joel added that the new facility is the best opportunity for Brian to grow the farm. He pointed out that the financing for the building is because of the Government trying to clean things up.

Adrian S., 832 S Menlo Ave., raised concerns with expansion of the city west and for property values. He used an example of a colony hog confinement with the same concerns in Mayfield in Clark County. Commissioner Ode asked Adrian if he was happy with how the current open feed lot drains into the lake now. Adrian responded that the water runoff in Clark County hog confinement was bad, and he continued with a question of how does a facility get to be 100 percent odor free.

Kim Sommers, 26475 461<sup>st</sup> Ave., began with concern with what will happen to the operation if the building is destroyed by disaster. She also asked if the animals will be held outside as a result. Kim expressed concern the catastrophic dead animal disposal plan to bury the animals and the plans potential to hurt ground water and have run off. Kim continued with concern that there is no setback for her home where everyone else is at least 1980 feet away. She concluded with a question for whether or not the pit will be vented and where will the smell go.

Collin Devries, lives on the west side of Wall Lake. He expressed concern for the water inlet into the lake. He noted that the DENR should be involved in the project, and that would help ensure that the project is done correctly and to prevent further pollution of the water at Wall Lake. Commissioner Barth asked Kellen how would water run off the proposed facility. Kellen replied that one can't stop all run off especially when it is applied to the land.

Jack Peterson, 26556 North Shore Pl., noted that the proposed system for hog confinements is a good system, but he raised concerns for ensuring the clean water without something like the DENR permit and a contingency plan for manure spill. He recalled the years of improvements that have been made to the lake to help clean it up.

Matt Ulrich, 26540 461<sup>st</sup> Ave., began with noting that he is not a farmer but rather in the medical field. He raised concern about odor, flies, and land value. Matt also raised concern with potential conflict of interest in the information being presented by the petitioner. The data may have been cherry picked to support his operation. Matt is concerned that without a non-bias analysis the results could be different than what was stated. Matt warned that the information has an inherent bias and it would be unwise to rely entirely on what has been presented by the petitioner. Commissioner Kostboth pointed out that the studies sited in the presentation were independent sources. Matt responded that the petitioner will not pick information against his operation and we don't know if there is contrary information available in addition to what the petitioner presented.

Brian Alderson, the petitioner, returned to the podium to address some of the concerns that were presented. Brian started with noting that the proposed barn will not be mechanically vented, the barn will be open to the south and have curtains on the north. He continued that his research only found arguments against his production style from animal rights groups, but rather the research was mostly for the betterment of use of manure. Brian emphasized that he did not say 100% odor reduction. He continued that the NRCS is offering money for various conservation practices, and that the NRCS will govern how the operation is managed. Brian questioned how reducing odor and reducing visual impact will reduce property values. Commissioner Randall asked Brian what his buying and selling cycle will be. Brian responded that the cycle will be to sell and buy one sixth of the herd every two months, and this will take six semi-trucks to complete. He added that the new barn will necessitate him to install more driveway to prevent backup onto the township road. Commissioner Randall asked if trees will be part of the site plan. Brian responded that some trees will be moved and some will be added to create a better tree grove on the west side of the property.

Ryan Wieman stated that he has served on the Turner County Planning Commission. Ryan pointed out that EQIP requires certain practices to obtain funding including abandonment of current outdoor confinement. He added that the practices have been heavily researched for effectiveness from the EQIP program. Ryan finished by noting that the petitioner will continue to feed cattle as already permitted whether or not this permit is approved, and he added that the current facility is not as advantageous for the petitioner or the neighbors.

Shawn Tieszen, 46115 265<sup>th</sup> St., first asked if the petitioner owns all the cattle. He then raised concern for property values and the unattractiveness of the current operation.

Brian Alderson, the petitioner, returned to the podium one more time to address concerns. He noted that he owns 100% of the cattle. Brian added that he is a 4<sup>th</sup> generation farmer since 1876 in that location. Brian noted that the family moved off the land in 1997 and moved back in the fall of 1998. He added that if the operation started in the spring of 1998 he would be considered as an existing operation according to the ordinance.

Commissioner Duffy closed the floor for public comments.

Commissioner Randal motioned for approval for the purposes of discussion. Commissioner Barth seconded the motion.

## **DISCUSSION**

Commissioner Randall made a series of comments beginning with stating that she believes that everything that the petitioner is doing includes concern for air quality and the environment. The project will enhance Wall Lake, better control odor, and prevent run off and pollution. Commissioner Randall described a situation at Brant Lake where cows were wading in the lake they were swimming in, and how that was not good for water quality. She noted that the manure from the proposed facility will not go into Wall Lake. Commissioner Randall pointed out that the petitioner has worked with the DENR to meet regulations and to qualify for EQIP funding. She noted that the proposal will not increase the nitrogen applied to fields as a farmer will apply

commercial fertilizer if manure is not available. She also noted that it is easier to control flies in a confined area. She continued that she is familiar with agricultural research, and the research from land grant universities such as Iowa State, University of Minnesota, and Purdue is considered as reputable. She finished that because of the research and design of the CAFO she will vote in favor of approval of the request.

Commissioner Barth noted that the property is zoned for agriculture and not residential and not as a museum. He continued that agriculture is and industry. Commissioner Barth noted that new technology can be scary and made the example of how some people today are still afraid of vaccines despite studies. He commented that he wished more CAFO's would be converted into this type of operation because of the benefit to the environment.

Kevin Hoekman of Planning Staff read an ordinance requirement paragraph from Section 12.10 (F) to clarify what the Planning Commissioner's would need to do as part of the motion. The ordinance reads: *In the absence of a waiver, documentation shall be presented on new technology, management practices, topographic features, soil conditions or other factors which substantiate a reduction in the minimum separation criteria.*

Commissioner Barth noted that the containment of manure demonstrates that paragraph.

Scott Anderson of Planning Staff suggested to include the documentation as part of the motion.

Commissioner Duffy Commented that she lived east of Sioux Falls, and that she knew when she built her house that she was in the Ag community. She noted that she has farmers around her and smells and cattle in the yard have been part of rural life. And she noted that she lived out there for 30 years.

Commissioner Randall withdrew her motion based on the recommendation by planning staff. She made a new motion for approval due to the fact that the confinement building will contain more manure, and thus more nitrogen, which will adequately compensate for the lack of setback.

### **ACTION**

Commissioner Randall made a motion to **approve** Conditional Use Permit #17-02 due to the fact that the confinement building will contain more manure, and thus more nitrogen, which will adequately compensate for the lack of setback. The motion was seconded by Commissioner Barth. The motion passed unanimously.

**Conditional Use Permit #17-02 – Approved**

**ITEM 5. CONDITIONAL USE PERMIT #17-03 to exceed 1,200 square feet of total accessory building area – requesting 4,160 sq. ft. on the property legally described as Lot 1, Tract 2, Hammer’s Subdivision, NE1/4, Section 2-T101N-R52W.**

Petitioner: Dudley Deffenbaugh

Property Owner: same

Location: 26245 459th Ave.      Approximately 4 miles southwest of Hartford

Staff Report: Kevin Hoekman

This would allow 4,160 square feet of total accessory building area.

**General Information:**

Legal Description – Lot 1, Tract 2, Hammer’s Subdivision, NE1/4, Section 2-T101N-R52W

Present Zoning – A1 - Agriculture

Existing Land Use – Residential acreage

Parcel Size – 10.02

**Staff Report:** Kevin Hoekman

**Staff Analysis:**

The property is located approximately 4½ miles southwest of Hartford and a short distance south of Grass Lake on County Highway 159. The site is located within an area of more than 4 platted lots. In subdivisions or residential developments which exceed four lots in number, accessory building area is limited to 1,200 square feet, unless approval for a larger size is obtained through the conditional use permit process.

The petitioner would like to construct a 42 foot by 80 foot accessory building. This proposed 3,840 square foot building would be built in addition to an existing 800 square foot accessory building. The total size of the requested structures is 4,160 square feet of accessory building space. The property was previously used for farming operations, and the petitioner has removed several large agricultural buildings to make room for the proposed structure. The buildings that have been torn down totaled approximately 3,000 square feet.

The property is currently a large acreage including a single family dwelling. The proposed accessory building is shown on the site plan to be located north of the existing dwelling. The property has one driveway access to the highway. In addition to the site plan, the petitioner submitted several perspective renderings of the building that show the proposed building will resemble a classic style barn.

The subject property is located in a subdivision, but only two residential dwellings are in the subdivision and no additional building eligibilities. The surrounding area is predominantly agricultural. The provided map of accessory building sizes are only properties that are not currently agricultural farmsteads. Although the requested accessory building size is large for residential properties in the area, many large buildings can be found at nearby farmsteads.



**Conditional Use Permit Criteria:**

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

The construction of the proposed accessory building should have little impact on surrounding properties. The accessory building will have no effect on the agricultural use nearby. The accessory structure shall not be used as a commercial operation at any time.

**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. The large square footage may create a precedent if the neighboring residential property owner was to request a similar sized building. The surrounding agricultural land will likely remain for agricultural uses. Several building eligibilities exist nearby and outside of the subdivision. These building eligibilities may also be used for residential dwellings in the future. The proposed accessory building is set back far from the road and neighboring dwelling. It is unlikely that it will have any effect on the future development of agricultural or residential development in the area.

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

The petitioner will be responsible for attaining and extending utilities to the proposed accessory building, and the proposed accessory building will utilize the same driveway as the dwelling.

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

No off-street parking will be needed as a result of personal activities in this accessory building. No commercial or business parking will be allowed at any time.

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

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

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

The proposed accessory building should have little to no effect on the health, safety, and general welfare of the public as well as the Envision 2035 Comprehensive Plan. Other large accessory building totals are located on far and non-farm properties in the near area.

**Recommendation:**

Staff finds that the proposed accessory building is reasonable to the size of the existing structures, the size of the property, and the location on the property. Staff recommends **approval** of Conditional Use Permit #17-003 with the following conditions:

- 1.) The total accessory building square footage shall not exceed 4,160 square feet.
- 2.) A building permit is required prior to construction of the accessory building.

- 3.) That an inspection be made on the proposed addition to an accessory building to ensure that the total floor area of the addition does not exceed 3,840 square feet.
- 4.) That only personal residential storage shall be allowed in the building, and no commercial uses or commercial storage will be allowed at any time.
- 5.) That all outdoor lighting shall be of a full cutoff and fully-shielded design to prevent direct spillage of light beyond the property boundaries.
- 6.) 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.

### **PUBLIC TESTIMONY**

Kevin Hoekman, County Planning, provided a brief overview of the staff report and analysis.

Dudley Deffenbaugh, 26245 459th Ave., identified himself as the petitioner for the proposed accessory building and mentioned that he has nothing new to add to the discussion.

Donna Lupien, 26241 459th Ave., stated that she believes the proposed building size will be an improvement to the property.

Commissioner Cypher called for additional public testimony but no one answered.

Commissioner Cypher closed the floor to public testimony.

### **ACTION**

Commissioner Barth made a motion to **approve** Conditional Use Permit #17-03 and the motion was seconded by Commissioner Kostboth. The motion passed unanimously.

**Conditional Use Permit #17-03 – Approved**

**ITEM 10. CONDITIONAL USE PERMIT #16-49 to allow a Permanent Water Tower Structure on the property legally described as Tract 5, Nelson's Addition, S1/2, Section 26-T102N-R48W.**

Petitioner: City of Brandon (Bryan Read)

Property Owner: Randy Nelson

Location: NW Corner of Redwood Blvd. & Chestnut Ave.

Approximately 0.5 mile northeast of Brandon

Staff Report: Scott Anderson

This would allow a Permanent Water Tower Structure.

**Staff Report:** Scott Anderson

**Staff Analysis:**

The property is zoned A-1 Agricultural District. Article 3.04(W) of the Zoning Ordinance allows a water metering facility as a Conditional Use in this zoning district.

On June 10, 2016, staff conducted a site visit. The surrounding land uses are a mixture of residential and agricultural uses. The subject property is located approximately 1/2 mile east of the Brandon corporate limits near the intersection of Redwood Boulevard and 483<sup>rd</sup> Avenue (Chestnut Boulevard).

The City of Brandon is proposing to construct a 149 foot tall water tower. The water tower will hold 1.25 million gallons of water. The growth of Brandon and surrounding communities necessitated the need for a continued reliable municipal water system. The proposed City of Brandon water tower is being constructed to fill that need and will be part of the Brandon water system. The applicant has indicated that the water tower will be constructed in 2018. It will be blue and white in color and lit with upward facing lights with a light on top for aircraft. The site plan shows a six foot high chain link fence surrounding the water tower.

This item was first heard by the Planning Commission on June 27, 2016. There were eight (8) people that testify during the public input. Several questions were raised by the surrounding neighbors. The conditional use permit request was continued for three months to allow the applicant time to hold meetings with the neighbors. The applicant met with most of those speaking at the meeting and those meeting minutes are included for the Planning Commission's review. This conditional use permit request was heard again by the Planning Commission on October 24, 2016 and was continued for another 3 months for land negotiations to continue.

The applicant has been working investigating other locations and asked at the September Planning Commission meeting to have this item continued for one (1) to allow for more time to negotiate a different located.

**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.**

Due to the existing residential development pattern and agricultural uses within the area, the proposed water tower should not have a negative effect upon the normal and orderly

development and improvement of these properties for uses predominant in the area. The water tower will insure adequate water to present and future development for the region. There is a similar water tower located approximately 1 mile to the south.

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

The proposed water tower should not have a negative effect upon the normal and orderly development and improvement of these properties for uses predominant in the area. The proposed water tower is part of a city water system that will aid in providing an adequate water system to present and future development for Brandon.

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

Access to the proposed water tower will be provided by Chestnut Boulevard, which is a township maintained road. It appears that the site utilizes natural drainage. The proposed water tower has access to water and no wastewater facilities will be provided.

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

Article 15 of the Zoning Ordinance does not specifically identify the parking requirements for a water metering facility. The applicant has indicated that two (2) off street parking spaces will be provided. A water tower typically does not generate any significant amounts of traffic. Each parking space should measure a minimum of 9 feet by 18 feet and be continually maintained in such a manner that no dust will result from continuous use. The two spaces will meet the parking requirements.

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

The proposed Conditional Use Permit may generate very limited dust and noise. The water tower will be providing a benefit to the community. With appropriate conditions of approval, any concerns can be mitigated.

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

The proposed use will benefit the health and safety of the public by allowing for the construction of a facility that will provide potable water to the city of Brandon.

Staff's review indicates that the proposed Conditional Use is a use which is appropriate for this site. Staff recommends approval of Conditional Use Permit #16-49 to be established and conducted in conformity with the Zoning Ordinance and the recommended conditions of approval.

**Recommendation:**

Staff recommends approval of Conditional Use Permit #16-49 to allow a water tower in the Agricultural District with the following conditions:

- 1.) That a minimum of two (2) off-street parking spaces be provided and that each parking space shall not be less than one hundred sixty two square feet, or nine feet by eighteen feet, and maintained in such a manner that no dust will result from continuous use.

- 2.) That all existing drainage is maintained and that erosion control measures are implemented on all disturbed areas so as not to allow any sedimentation of existing drainage ways or bodies of water.
- 3.) That the applicant obtains a building permit prior to any construction commencing on the site.

### **PUBLIC TESTIMONY**

Scott Anderson, County Planning Director, provided a brief overview of the previous meeting details and the staff report.

Jon Brown, Stockwell Engineers, identified himself as the representative for the City of Brandon. Mr. Brown discussed a few items related to the materials handed out to the planning commission that explains that the height of the proposed water tower is similar to the Sioux Falls and rural water towers in the area. He continued to explain that they took the opportunity since the last meeting to engage the members of the public in the area with letters and personal visits with most of the landowners in the surrounding area.

Mr. Brown indicated that the map displayed on the overhead projector tonight shows an analysis that they completed on three different sites with a cost comparison among each of them. He also explained that the site south of the proposed location where a water tower once stood is not city property, nor big enough in size, and did not present any feasible options for further study as an alternative location. Mr. Brown proceeded to discuss the map that shows a comparison of land and pipe construction costs among each of the alternative sites relating to the subject property.

Martha Smith, 2303 E. Redwood Blvd., indicated that the first proposal located on the subject property would be about 200 feet from her primary residence and that she owns two other tracts of land near the proposed site of the water tower. Mrs. Smith continued to explain that she has owned and lived in this area on about 21 acres total since 1979. She stated concerns over the potential diminution of her land, visual sight of the proposed tower from her house, and the overall opposition to the proposed request in the area for the effect it may have on her property.

Mrs. Smith mentioned a concern that some of surrounding property owners not being contacted about the proposed water tower. She also asked if the planning commission would be held liable for the diminished value of her land upon sale and Commissioner Cypher indicated that it would only be a question at this point in time.

Elizabeth Aaker, 2215 E. Redwood Blvd., indicated that she was in attendance at the previous meeting and just built their dream home that was featured in the home magazine as a handcrafted modern home with a view. Mrs. Aaker explained that they been informed that they will never be in Brandon city limits, but might have a giant water tower located near their house. She stated concerns over visual aesthetics and size. She noted that a 161-foot-tall water tower is almost the size of the state capital building and that there are no structures in the area close to the size of the proposed structure. Mrs. Aaker believes that the water tower would be better suited near the proposed school. She continued to mention that a realtor's blog urges people to not buy homes near water towers and to look up property values of the houses near existing water tower sites.

Chris Constant, 920 N. Chestnut Blvd., identified himself as the resident and landowner across the street to the east of the subject property for the proposed water tower. Mr. Constant stated concern about the proximity of the proposed tower to his house, effect on property values, and the impact on home financing alternatives. He explained that he is opposed to the water tower in the area, but not against growth.

Commissioner Kostboth asked where Mr. Constant lives in relation to the subject property and Mr. Constant pointed to the house right across the street to the east of the proposed tower site.

Sandy Elofson, 1102 N. Chestnut Blvd., identified herself as the property just north of Mr. Constant's house and has always been a family farm in the area for five generations. Mrs. Elofson explained that they understand the growth implications regarding decisions made for interstates and utilities, but this project will definitely have a negative impact on the neighbors. She indicated that they did propose the site next to Interstate 90 on their land that would be out of the view of the neighbors, but isn't necessarily among the preferred locations for a water tower. She continued to mention that the planning commission should deny the conditional use permit request and ask the City of Brandon to continue the search for property with all of the above stated considerations to reduce the significance of impact to surrounding property owners in this area.

David Elofson, 1102 N. Chestnut Blvd., reiterated the concerns of Mrs. Elofson about the siting of the proposed water tower and alternative locations. Mr. Elofson noted that the proposed water tower affects all of the surrounding property owners, but will not benefit any of them at all. He continued to explain that the proposed growth plan for the city does include pipe distribution to the alternative site one mile to the east along Redwood Blvd, but would additional cost upfront.

Commissioner Ralston asked for clarification on the land cost proposal estimate and Mr. Elofson stated that the cost was set because of detriment to their property with the siting of proposed water tower at that location.

Commissioner Cypher called for additional public testimony but there was no answer and asked the petitioner to come back to the podium to address the questions posed by the general public.

Jon Brown, petitioner's representative, stated for clarification that the Elofson property is the number two site of the three presented and is similar size to the site on the Nelson's property.

Commissioner Barth questioned the siting of future school further to the east of the subject property.

Bryan Read, City Administrator for the City of Brandon, mentioned that it is his understanding that the Brandon Valley School District has purchased about 20 acres to the south and east, which will be annexed at the time of construction but there are no plans at this time for a school.

Commissioner Barth questioned the meaning of a fall zone for a water tower. Mr. Brown explained that the 150-foot-tall tower would tip over 150 feet from the base.

Commissioner Barth questioned the spill effects and design of a water tower. Mr. Brown mentioned that a water tower is designed to withstand high winds and other extreme weather events and have an overflow built in to release water to the ditch where water can be handled.

Commissioner Duffy questioned the future school siting and timing. Mr. Read explained that the school district is debating between two sites and should know within the next five years of the future school site.

Commissioner Kostboth asked for clarification on the setback from the base of the water tower to Chestnut Blvd. is 105 feet. Mr. Brown explained that the water tower site is about 200 feet square, so it would be about 105 feet to road.

Commissioner Cypher closed the floor for public testimony.

### **DISCUSSION**

Commissioner Cypher mentioned that this is a similar case as the past sewage system proposals and he believes that what is for the City of Brandon should stay inside Brandon city limits.

Commissioner Kostboth asked the petitioner if there were any sites available in city limits. Mr. Brown mentioned that the proposed site on the subject property is conducive for a water tower due to elevation, cost, and size.

Commissioner Barth commented that towers are everywhere and do not seem to be a hindrance to anyone, but is not comfortable with approving this proposal.

### **ACTION**

Commissioner Barth made a motion to **deny** Conditional Use Permit #16-49 and the motion was seconded by Commissioner Randall. The motion passed with 5 yeas, 1 nay.  
Commissioner Kostboth voted nay.

**Conditional Use Permit #16-49 – Denied (5-1)**

**ITEM 11. CONDITIONAL USE PERMIT #16-71 to allow Sand and Gravel Extraction on the property legally described as E1/2, E1/2, SW1/4 and NW1/4, Section 31-T102N-R50W.**

Petitioner: Great Bear Sand and Gravel

Property Owner: Reynolds and Gustafson, LLP (Betty Reynolds LLP)

Location: 46645 261st St. Approximately 3 miles southeast of Hartford

Staff Report: Scott Anderson

This would allow Sand and Gravel Extraction.

**General Information:**

Legal Description – E1/2, E1/2, SW1/4 and NW1/4, Section 31, T102N-R50W

Present Zoning – A1 - Agriculture

Existing Land Use – mineral extraction

Parcel Size – approximately 200 acres

**Staff Report:** Scott Anderson

**Staff Analysis:**

On March 27, 2006, the Planning Commission approved Conditional Use Permit #06-82 for the extraction of sand and gravel on the above described property. Subsequently, the approval was appealed to the County Board and on April 18, 2006, the County Board upheld the Planning Commission's decision and approved the Conditional Use Permit with the following conditions:

1. An annual fee shall be paid to the County in accordance with Section 15.14 of the zoning regulations. (Note: An annual fee of \$10 per acre of unreclaimed land is assessed to the operator.)
2. There shall be no fuel storage on the site.
3. Hours of operation shall be from 7:00 am to 6:00 pm on weekdays and 8:00 am to noon on Saturdays.
4. That the only dewatering shall be for use in dust control, road projects and rock washing. The applicant shall obtain any required permits from the state for use of the water.
5. That all of the requirements in the Haul Road Agreement between Benton Township and the applicant dated February 23, 2006 be followed continually.
6. The ambient air quality standards for total suspended particulate matter shall be 150 micrograms per cubic meter of air as a 24-hour average not to be exceeded more than once a year, and 60 micrograms per cubic meter of air as an annual arithmetic mean. The standards for PM<sup>10</sup> (10 micrometers or less in size) shall be consistent with the regulations of the State of South Dakota.
7. The County Planning Department shall direct the operator to install air quality sampling



- stations if the standards appear to be exceeded. Such monitoring shall be at the operator's expense.
8. The sound level from on-site operations shall not exceed an average of 55 decibels recorded over a 10 minute period measured at the nearest residence.
  9. That one (1) off-street parking place for each employee and two (2) customer off-street parking spaces shall be provided.
  10. The boundaries of the extraction area shall conform to the site plan submitted with the application.
  11. Topsoil shall remain on the site and be used in final reclamation.
  12. Only clean fill shall be used as backfill.
  13. There shall be no storage or accumulation of inoperable or discarded equipment or parts.
  14. A gate shall be required at the haul road entrance to the property.
  15. That all mining activity is concluded by January 1, 2017 and that reclamation shall be in accordance with the plan filed with the State and outlined in the application and all reclamation of the site shall be completed by December 31, 2017.
  16. That if one (1) or more acres of area is disturbed the applicant is required to obtain a General Permit from the Department of Environment and Natural Resources.
  17. That the applicant provides the Minnehaha County Auditor with a surety bond or cash in the amount of \$5,000.00.
  18. The applicant shall abide by all regulations outlined in Minnehaha County Flood Management Ordinance, MC32-03, when working in the 100 year floodplain and/or floodway.
  19. That all trucks be covered/tarped when loaded and leaving the pit area and that the applicant hard surface the ¼ mile of 466<sup>th</sup> Avenue where it meets Highway 38 on the south.

On August 27, 2007, the Planning Commission approved amending condition #19 to read as follows:

19. That all trucks owned by the applicant be covered/tarped when loaded and leaving the pit area and that the applicant hard surface the ¼ mile of 466<sup>th</sup> Avenue where it meets Highway 38 on the south.

As per condition #15, the use allowed through this conditional use permit is set to expire on January 1, 2017 with all reclamation to be completed by the end of 2017. The applicant has requested to have the sand and gravel mining continue indefinitely.

In the 11 years since approval of Conditional Use Permit #06-15, staff has continually dealt with complaints and issues resulting from the use. Hartford Township has complained 3 different years about the condition of the hard surfacing on 466<sup>th</sup> Avenue. Staff was required to contact the owner/operator on each occasion and force them to comply with meeting condition #19. Staff also got calls from surrounding property owners regarding dust, noise and traffic on many occasions. All of these complaints required many hours of staff time to investigate the complaints and then take action on each complaint.

The applicant has submitted the same material submitted for Conditional Use Permit #06-15. They have indicated that the existing conditions of approval, minus the sunset condition (#15), are acceptable.

**Conditional Use Permit Criteria:**

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

Given the large amount of property used for the sand and gravel operation and the relatively sparse population of the area, it is likely that there is a neutral impact upon the use and enjoyment of surrounding properties. Over the past 10 years, the property values have not decreased in the area.

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

There has been limited development of the surrounding vacant properties. A cement manufacturing facility has been constructed within the last 3 years to the north of the subject property

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

The applicant has constructed a haul road that intersects with 466<sup>th</sup> Avenue. All other utilities needed for the operation have been provided.

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

The applicant is meeting all off-street parking and loading requirements.

**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.**

Conditional Use Permit #06-15 had provisions for the control of dust and noise. The proposed use would have some limited noise and vibrations. The most serious issue for the proposed use was dust. Staff received complaints in 2009 and 2010 about dust emanating from the subject property during the summer months when the area experienced prolonged dry spells with little

precipitation.

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

Goal 5 of the Environmental Stewardship chapter of the Envision 2035 Comprehensive Plan states, *“Recognize that sand and gravel deposits within the County are an un-renewable natural resource and beneficial to the economy of the County and welfare of its people.”* The Envision 2035 Comprehensive then has an action statement that suggests that conflicts with existing neighborhoods should be minimized.

The applicant has had ten (10) years of mining sand and gravel from the site. There was strong opposition to the sand and gravel operation when the conditional use permit was approved in 2006. Staff included a sunset clause in the approval, so surrounding property owners would be assured that the operation would be a limited operation and that the site would be restored. Staff believes that ten years has been a sufficient amount of time for the applicant to extract the sand and gravel and therefore will not support continued sand and gravel extraction at this site.

Should the Planning Commission choose to approve the continued sand and gravel extraction at this site, then staff would request a strengthening of the language dealing with the portion of 466<sup>th</sup> Avenue that is paved. The perpetual poor road condition of the paved portion of 466<sup>th</sup> Avenue was a perennial code enforcement issue for the Planning Department.

On October 24, 2016, the Planning Commission held a public hearing on Conditional Use Permit request #16-71 and recommended denial. The applicant appealed the Planning Commission recommendation and on November 22, 2016 the County Commission held their hearing on this Conditional Use Permit. After testimony from several parties, the County Commission referred Conditional Use Permit #16-71 back to the Planning Commission for further consideration. The applicant offered to address all of the concerns expressed at the Planning Commission meeting. The County Commission also requested that staff contact the S.D. Department of Transportation to request that they evaluate the intersection of 466<sup>th</sup> Avenue and S.D. Highway 38 for safety and traffic movements. Staff contacted Travis Dressen of the S.D. Department of Transportation on November 23, 2016 making the requests asked for by the County Commission.

Staff met with the applicant on November 2, 2016 to review the concerns expressed by staff, the Planning Commission and the public. As a result of this meeting and in an effort to address the concerns, the applicant prepared a letter dated 11/14/2016 in which they stated how they would attempt to satisfy the concerns. This letter is included for your review.

Staff believes that conditions of approval can be crafted which will address most of the concerns expressed by all parties. Staff’s major concern is that a sunset date of ten (10) years was given to the applicant. Continued operation of the sand and gravel activities will impact the surrounding properties owners. The conditions can only minimize the impacts.

Staff has included a set of conditions that reflect the suggested improvement by the applicant. Should the Planning Commission wish to recommend approval, other conditions suggested by surrounding property owners, staff or the Commission could be added. A set of proposed

conditions of approval are as follows:

1. An annual fee shall be paid to the County in accordance with Section 15.14 of the zoning regulations. (Note: An annual fee of \$10 per acre of unreclaimed land is assessed to the operator.)
2. There shall be no fuel storage on the site.
3. Hours of operation shall be from 7:00 am to 6:00 pm on weekdays and 8:00 am to noon on Saturdays.
4. That the only dewatering shall be for use in dust control, road projects and rock washing. The applicant shall obtain any required permits from the state for use of the water.
5. That all of the requirements in the Haul Road Agreement between Benton Township and the applicant dated February 23, 2006 be followed continually.
6. The ambient air quality standards for total suspended particulate matter shall be 150 micrograms per cubic meter of air as a 24-hour average not to be exceeded more than once a year, and 60 micrograms per cubic meter of air as an annual arithmetic mean. The standards for PM<sup>10</sup> (10 micrometers or less in size) shall be consistent with the regulations of the State of South Dakota.
7. The County Planning Department shall direct the operator to install air quality sampling stations if the standards appear to be exceeded. Such monitoring shall be at the operator's expense.
8. The sound level from on-site operations shall not exceed an average of 55 decibels recorded over a 10 minute period measured at the nearest residence.
9. That one (1) off-street parking place for each employee and two (2) customer off-street parking spaces shall be provided.
10. The boundaries of the extraction area shall conform to the site plan submitted with the application.
11. Topsoil shall remain on the site and be used in final reclamation.
12. Only clean fill shall be used as backfill.
13. There shall be no storage or accumulation of inoperable or discarded equipment or parts.
14. A gate shall be required at the haul road entrance to the property. The entire haul road shall have a dust control agent applied at least twice per year.
15. That all mining activity is concluded by January 1, 2027 and that reclamation shall be in

accordance with the plan filed with the State and outlined in the application and all reclamation of the site shall be completed by December 31, 2027.

16. That if one (1) or more acres of area is disturbed the applicant is required to obtain a General Permit from the Department of Environment and Natural Resources.
17. That the applicant provides the Minnehaha County Auditor with a surety bond or cash in the amount of \$5,000.00.
18. The applicant shall abide by all regulations outlined in Minnehaha County Flood Management Ordinance, MC32-03, when working in the 100 year floodplain and/or floodway.
19. That all trucks owned by the applicant be covered/tarped when loaded and leaving the pit area.
20. That the applicant hard surface 466<sup>th</sup> Avenue from the haul road to where it meets S.D. Highway 38 with a new 4" asphalt surface to a width of at least 24 feet. The asphalt surface shall always be maintained in a good condition as determined by County Planning Director.
21. The applicant shall install signs at the end of the haul road directing truck traffic leaving the pit to turn north and exit onto S.D. Highway 38.
22. The applicant shall pay for the installation of speed limit signs of 30 mph on the ½ mile of 466<sup>th</sup> Avenue from S.D. Highway 38 to the south.
23. The applicant shall arrange a site review with the Planning Director in July of 2022 to discuss the progress of the mining and reclamation operations, determine that all of the conditions of approval are being met and discuss any additional issues that may arise.
24. That the Planning & Zoning Department reserves the right to enter and inspect the property 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.

**Recommendation:** Staff is no recommendation on Conditional Use Permit #16-71.

**PUBLIC TESTIMONY**

Scott Anderson, County Planning Director, provided a brief overview of the previous meeting details and the staff report.

Commissioner Kostboth asked planning staff if the change in ownership of the gravel pit has produced any recent complaints. Mr. Anderson explained that conditions have improved and there has been no active code enforcement with Great Bear Sand & Gravel. He continued to mention that the road; however, is not in good shape because the base did not compact correctly.

Commissioner Kostboth asked planning staff if the Department of Transportation (DOT) had a chance to look at the complaints that were a part of the previous meetings. Mr. Anderson mentioned that the County Commission asked him to contact DOT. He explained that the DOT produces a study for basic information only related to items such as sight distance, crash reports, and pavement conditions; and requires that the applicant pay for the traffic study.

Harold Goeden, 3501 S. River Bluff Rd., identified himself as the representative for Great Bear Sand & Gravel and indicated that they tried to address every concern that has been presented. Mr. Goeden mentioned that they met with Hartford Township about leaving the existing two inches and plan to add four inches of gravel base for a total of six inches. He continued to mention that they have about 750,000 tons of gravel left on site and do not want to have come back to the planning commission requesting approval for sustaining the operations at this location. Mr. Goeden indicated that they have letters of support from the townships, City of Sioux Falls, and twenty-two other user groups of the gravel from their pit.

Mr. Goeden understands that there are a number of crashes along Highway 38, but through their own research nearly any were truck-related crashes. He also mentioned that speed limit lowering was approved at the Hartford Township, which he believes should help their traffic leaving the pit area.

Commissioner Ode questioned the amount of additional traffic beyond normal daily flow. Mr. Goeden explained that there will be additional traffic, but pointed to the fact that there are other businesses, expansions, and opportunities for future development along this stretch of road.

Commissioner Cypher questioned the requirement for tarping of all trucks and Mr. Goeden indicated that the requirement would only be for their trucks leaving the pit area.

Commissioner Barth questioned if there would be a real road built to proper standards. Mr. Goeden explained that there is already extra base gravel and asphalt in the road patches.

Gary Meyer, 26154 466th Ave., identified himself as a resident on top of the hill south of the pit entrance. Mr. Meyer asked the planning commission what the plan is for the road. Scott Anderson explained that was an agreement between the applicant and Hartford Township. Mr. Anderson indicated that he wrote the staff report and there was never a condition on the original permit regarding future maintenance of the road.

Mr. Meyer further questioned future plans for the section of 466th Avenue given that the townships do not have the right equipment for the asphalt road. Scott Anderson reiterated that there is no condition that states the road must be returned to gravel, but that is only an agreement between the township and applicant.

Mr. Meyer mentioned that the planning commission needs to approve the conditional use permit to allow this company to finish the work. He continued to explain that he hasn't seen his taxes go into that road and it is a dangerous place for traffic.

Commissioner Barth explained that the township can petition the county to takeover, then the state has to approve of the agreement.

Mr. Meyer indicated concern about the speed of traffic and that the tarping requirement for their trucks does nothing for the neighbors.

Commissioner Cypher called for public testimony but there was no answer from the audience.

Commissioner Cypher closed the floor for public testimony.

### **DISCUSSION**

Commissioner Duffy believes that the applicant is doing what needs to be done and from what she knows is that the road still belongs to the township who the applicant is working with now.

There was discussion amongst the planning commission regarding a review date for determining compliance with the conditions of approval and general inspection. Commissioner Cypher suggested a review date 18 months from the approval date and there was a general consensus among planning commission members. Discussion continued regarding revising condition #23 for applying the standard only to the current operator. Commissioner Barth suggested either revise condition #23 or move forward with a motion.

Commissioner Kostboth questioned whether the suggested date of review would too much of a push after hearing a review of the zoning ordinance requirements for recall and review of each conditional use permit.

Scott Anderson explained that the Planning Department will provide a report update in 18 months regarding the conditions of approval on the conditional use permit. Commissioner Ralston concurred with Mr. Anderson on conditional use permit review.

### **ACTION**

Commissioner Barth made a motion to **approve** Conditional Use Permit #16-71 as amended to condition #23 that the applicant shall arrange a site review with the Planning Director in July of 2018 to discuss the progress of the mining and the reclamation operations, determine that all of the conditions of approval are being met and discuss any additional issues that may arise. The motion was seconded by Commissioner Kostboth. The motion passed unanimously.

### **Conditional Use Permit #16-71 – Approved**

**Old Business**

**New Business**

**Adjourn**

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