

**MINUTES OF THE
MINNEHAHA COUNTY PLANNING COMMISSION**
July 27, 2009

A meeting of the Planning Commission was held on June 22, 2009 at 7:00 p.m. in the Commission Room of the Minnehaha County Administration Building.

COUNTY PLANNING COMMISSION MEMBERS PRESENT: Mike Cypher, Dick Kelly, Susie O'Hara, Becky Randall, Mark Rogen, Wayne Steinhauer, and Don South.

STAFF PRESENT:

Scott Anderson, Phil Kappen, Pat Herman and Ryan Streff -County Planning
Gordy Swanson - Office of the State's Attorney

The meeting was chaired by Don South.

CONSENT AGENDA

At the request of the Commission and audience, Item 2 was placed on the regular agenda. There being no other objections from the Planning Commission or audience, a motion was made by O'Hara and seconded by Cypher to approve the consent agenda (Item 2 removed). The motion passed unanimously.

ITEM 1. MINTUES – June 22, 2009

A motion was made by Commissioner O'Hara and seconded by Commissioner Cypher to **approve** the minutes. The motion passed unanimously (6-0).

ITEM 3. CONDITIONAL USE PERMIT #09-48 to transfer one residential building eligibility from the N ½ NE ¼ NE ¼ to the S ½ NE ¼ NE ¼ & N ½ SE ¼ NE ¼ in Section 19-T102N-R50 W (Benton Township)

Location – 3 miles east of Hartford
Petitioner / Owner- James Nielson

General Information

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

Report by: Scott Anderson

Staff Analysis

The applicant wants to transfer a land locked eligibility from the N ½ of the NE ¼ of the NE ¼ to the S ½ of the SE ¼ of the NE ¼ to allow for the development of a residential lot. The proposed building site would be located on the east side of 467th Avenue.

On July 15, 2009, staff conducted a site visit. There are existing farms located around the subject property. There are four existing farms that have cattle located on the property. The proposed transfer would move a single family residence closer to these operations. Two of the operations are located to the southwest and not visible from the subject property due to the bluff running along Skunk Creek. Two of the cattle operations are located less than ½ mile to the south on 467th Avenue. Staff will recommend approval as the eligibility is not moving significantly closer to the two farmsteads to the south.

1) The effect upon the use and enjoyment of other property in the immediate

vicinity for the uses already permitted, and upon property values in the immediate vicinity.

A right-to-farm notice covenant should be required to notify potential buyers to the realities of locating in an agricultural area.

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

The transfer of the building eligibilities does not increase the number of dwelling units allowed in this section.

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

Rural water is available in the area and a waste water system will be utilized. The applicant hasn't indicated whether the proposed building sites will share an approach between themselves or with any other residence. A new approach will have to be constructed onto 467th Avenue. Benton Township will have to approve the location of the proposed driveway approach prior to a building permit being issued.

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

Off-street parking requirements will be provided for once a single-family residence is constructed on the subject property.

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

The proposed conditional use will not cause odor, fumes, dust, noise, vibrations or lighting in any amounts that would constitute a nuisance.

Recommendation:

Staff finds this conditional use permit request to be consistent with density zoning and recommended approval of Conditional Use Permit #09-48 with the following conditions:

- 1) The lot shall be platted and a right-to-farm notice covenant shall be placed on the deed prior to the issuance of a building permit.
- 2) That Benton Township shall approve the driveway approach prior to a building permit being issued.

Action

Based on the staff report, a motion was made by O'Hara and seconded by Cypher to **approve** conditional use permit #09-48. The motion passed unanimously (6-0).

ITEM 4. CONDITIONAL USE PERMIT #09-49 to transfer one residential building eligibility from the Tr. 1 Burkman's Addition NE ¼ SW 1/4 to the NW ¼ SW ¼; all in Section 3-T102N-R48W (Brandon Township)

Location – 4 miles north of Brandon
Petitioner / Owner- Kim Beiningen

General Information

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

Report by: Scott Anderson

Staff Analysis

The applicant wants to transfer a land locked eligibility from the NE ¼ of the SW ¼ to the NW ¼ of the SW ¼ to allow for the development of a residential lot. The location of the eligibility is situated in an area with no existing road network. The proposed building site would be located east of 481st Avenue.

On July 8, 2009, staff conducted a site visit. There is one existing farm located approximately ½ mile north of the subject property. There are no animal confinement operations near the location of the transfer. There are several single family residents located in the vicinity of the subject property. There are approximately (8) single family residences located within a one (1) mile radius of the subject property, primarily to the south and southeast.

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

A right-to-farm notice covenant should be required to notify potential buyers to the realities of locating in an agricultural area.

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

The transfer of the building eligibility does not increase the number of dwelling units allowed in this section.

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

Rural water is available in the area and a waste water system will be utilized. The applicant hasn't indicated whether the proposed building site will share an approach between themselves or with any other residence. A new approach will have to be constructed onto 481 Avenue. Brandon Township will have to approve the location of the proposed driveway approach prior to a building permit being issued.

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

Off-street parking requirements will be provided for once a single-family residence is constructed on the subject property.

5) That measures are taken to control offensive odor, fumes, dust, noise, vibration,

and lighting (inclusive of lighted signs), so that none of these will constitute a nuisance.

The proposed conditional use will not cause odor, fumes, dust, noise, vibrations or lighting in any amounts that would constitute a nuisance.

Recommendation

Staff finds this conditional use permit request to be consistent with density zoning and recommended approval of Conditional Use Permit #09-49 with the following conditions:

- 1) The lot shall be platted and a right-to-farm notice covenant shall be placed on the deed prior to the issuance of a building permit.
- 2) That Brandon Township shall approve the driveway approach prior to a building permit being issued.

Action

Based on the staff report, a motion was made by O'Hara and seconded by Cypher to **approve** conditional use permit #09-49. The motion passed unanimously (6-0).

This item was referred back to the Planning Commission by the County Commission.

ITEM 5. CONDITIONAL USE PERMIT #09-18 to allow a private campground.

Legal Description - S1/2 NE1/4 (ex. RY); & N1/2 SE1/4 (ex. ROW); & Tract
2 (ex. Lot1) & Lot 1 Tract1 in SE1/4; all in Section 2-
T102N-R48W
Location – 3 miles north of Brandon
Petitioner / Owner- Marvin Manifold

General Information

Present Zoning - A-1 Agricultural
Existing Land Use - Agricultural
Parcel Size - Approximately 10 acres

Report by: Phil Kappen

The petitioner has requested that this item be deferred to the August meeting.

Recommendation

Staff recommended that the item be deferred to the August 24, 2009 meeting.

Action

Based on the staff request, a motion was made by O'Hara and seconded by Cypher to **defer** conditional use permit #09-18 until the August 24, 2009 meeting. The motion passed unanimously (6-0).

REGULAR AGENDA

A motion was made by Steinhauer and seconded by O'Hara to approve the regular agenda, Item 2 added. The motion passed unanimously.

ITEM 2. CONDITIONAL USE PERMIT #09-40 to allow agriculturally related operations.

Legal - Bliss' Tract 2 (ex. W. 7' of N. 400' thereof) NE1/4
NW1/4 of Section 16-T102N-R49W
Location - 47449 258th Street Renner
Petitioner / Owner- Jack Cody

General Information

Present Zoning - R/C Recreation/Conservation
Existing Land Use - Agricultural/Residential
Parcel Size - 6.49 Acres

Report by: Phil Kappen

Staff Analysis:

The subject property is located to the south of 258th Street in Renner and just west of Silver Creek. Properties to the northwest, north and northeast have single-family residences. Properties to the west, south and east are in agricultural uses. The petitioner has operated a trucking business at this location for a number of years, however, it is not a legal non-conforming (grandfathered) use. Staff received a complaint about the business being operated here and, after contact from the planning staff, the owner has now applied for a conditional use permit to operate a trucking firm as an agriculturally related operation.

Both the petitioner and his son operate trucks out of the site which carry livestock. They have requested that they be allowed to have two semi tractors and two operating semi trailers on the site. In addition, they also wish to keep another semi trailer on the site which will be used as a storage container. As the Minnehaha County Zoning Ordinance has no provisions which allow the ongoing use of a semi trailer as a storage container, therefore, the presence of any such trailer would have to be addressed as a part of this conditional use permit.

On December 16, 2008 the Minnehaha County Commission approved Conditional Use Permit # 08-63 to allow a similar use in a residential area west of Sioux Falls. That permit limited the use to no more than one semi tractor and one semi trailer on the property. The present property, however, is more than three times larger than the previously considered lot and does not have residences immediately adjacent to the site, as was the case in the other situation. The present site appears to be an old farmstead area. Because of these factors it may be possible to allow a slightly larger operation than was allowed in the previous matter.

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 use has been conducted for many years with no known complaints from neighboring property owners. The complaint staff received came from a competing business located approximately 10 miles to the west of this site. The proposed use should not have an increased impact on neighboring properties provided that there are restrictions placed on the size of the business and its operation. The property is well maintained.

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

The subject property and the surrounding areas are located within the 100-year flood plain. There is little likelihood of large scale development in this area due to the presence of the flood plain. The future uses around the property will likely continue to be predominantly agricultural. Any new residential development is prohibited as residences cannot be constructed in the flood plain area. Due to these facts it may also be permissible to allow the two requested semi tractors and two semi trailers on the site.

In addition to the flood plain, the site also lies within the Water Source Protection Overlay District. This is the area that is underlain by the shallow aquifer. There should be minimal impact to the aquifer area provided that the scale of the operation is kept small and there is no storage of fuel at the site. The petitioner notes that they do not store fuel on the property.

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

Access to the site is via 258th Street (County Highway 130). In similar situations there have been problems with mud from trucks being dragged onto a highway. This can create a hazard for traffic along the highway. Such a problem can be easily corrected through the hard-surfacing of at least a portion of the driveway off the county highway. Any driveway should also be a minimum of 24-feet in width to allow for two-way traffic.

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

The petitioner's application indicates that the semi vehicles will be parked at the south end of the property. This is the portion of the property that is furthest removed from any existing residences. Parking of any semis should be limited to that area on the property.

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

The driveway of the site passes immediately adjacent to an existing residence. The operation of large trucks could result, at times, in dust affecting that or other properties. Hard-surfacing the drive past the residences would reduce this potential impact to neighboring properties.

Recommendation

Staff finds that the proposed use is an agriculturally-related operation and that it can be accomplished at this site provided that the potential for impact on neighboring properties, on the environment and on traffic along the county highway is addressed. Staff, therefore, recommended approval of Conditional Use Permit #09-40 with the following conditions:

1. The use shall be limited to a trucking firm that hauls strictly agricultural products such as livestock.
2. The principal operator of the business shall be a resident on the property.
3. There shall be no more than two semi tractors and two semi trailers allowed on the site. This shall apply to all semi tractors or trailers stored on the site whether or not they are currently used as a part of the operation.

4. No inoperable vehicles shall be allowed to be stored on the site.
5. The tractors or trailers shall be parked at the south end of the subject property.
6. No fuel shall be stored in the site.
7. The driveway shall be hard-surfaced for a minimum of 300 feet extending south from County Highway 130. The driving surface of the driveway shall be a minimum of 24 feet in width.
8. No semi trailers shall be used as storage containers.

Public Testimony

Commissioner Kelly asked if the road in question was a driveway or a street. He also questioned why it would be required that the roadway to be a minimum of 24' wide. Mr. Kappen stated that it is a private driveway and that in similar instances the county requires the street or roadway to be at a minimum of 24' wide.

Commissioner Steinhauer asked if the semi-trailers carry any agriculture chemicals or related products. Petitioner Jake Cody stated that the trailers do not carry any agriculture chemicals.

Commissioner Randall asked what the current width of the driveway was. Mr. Kappen stated that he did not measure the driveway but thought it had to be close to the 24' requirement. Commissioner O'Hara asked how far the 300' goes down the driveway in relation to the adjacent property and home. She questioned if the paved area would go past the home on the west. Mr. Kappen stated that it would.

Attorney AJ Swenson presented for the petitioner Jack Cody (47449 258th Street). Mr. Swenson stated that most of the conditions supplied by county staff were appropriate but a few changes would be needed. He noted that the rear of the shop was used for storage and housed the semi-tractors when they are not in use. He stated the Mr. Cody's started his trucking firm in 1981. He explained that Mr. Cody is also involved in some farming operations other than just hauling livestock. He stated that this involved growing, cutting, and baling hay and straw for bedding his trailers. He clarified that the majority of the time the trailers are only parked on the property on weekends because the Cody's are over the road truckers and are gone most of the week. He stated that the driveway was approximately 24'-25' wide. Mr. Swenson explained that the probability of the trucks meeting on this driveway was unlikely and that the semi traffic on the property was extremely limited. He stated that agriculture chemicals would not be hauled or stored in the trailers or on the property. He noted that the driveway is made up of fine rock and granite which cuts down on the dust and or mud (which is highly unlikely) that might be carried onto the roadway or adjacent properties. He explained that Mr. Cody received an estimate for the paving of the driveway and stated that it would cost approximately \$25,000 to pave the first 300' for the driveway. He stated that requiring this to be done is a bit excessive and should be rethought. Mr. Swenson stated that Mr. Cody was okay with conditions 1 thru 6. He stated that he would like to omit the section in condition number 6 that states "the driveway shall be hard-surfaced for a minimum of 300 feet extending south from County Highway 130". Mr. Swenson explained that there is one trailer on the property that is used for the storage of the hay/straw which is used for the bedding of the Cody's trailers. He noted that by placing this trailer inside it would become a fire hazard because of the type of material that is stored inside. He stated that that this storage trailer is kept behind the shop and is out of sight from Highway 130. Mr. Swenson stated that he would like to omit condition number 8.

Janice Peterson (47445 258th Street) noted that she is the property owner to the west of the site along Cody's driveway. She stated that there has never been a problem with dust

or mud at this location. She explained that Jack Cody is a great neighbor and is not causing any problems.

Paul Evenson (47594 257th Street) stated that he owns the farm next to Mr. Cody's property. He noted that he would be in favor of the conditions as stated by the petitioner and Mr. Swanson.

Duane Wohl (47446 258th Street) stated that he lives to the north of Mr. Cody's property. He noted that paving the driveway could be a concern because in the event of a flood the hard-surfacing would not hold up. He made it clear that he has no problem with this type of use on the property.

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

Commissioner Cypher stated that condition number 7 was not necessary. He explained that the storage trailer seems okay in this location but the commission might need to make sure a precedent isn't set here so that storage trailers like this are not used all over the county.

Commissioner Steinhauer asked if the storage trailer was operable and or able to be moved. Mr. Cody stated that the trailer is operable and could be used. He noted that if the commission wanted he could license the trailer so it was ready for use.

Action

Based on the staff report and public testimony, a motion was made by Steinhauer and seconded by Cypher to **approve** Conditional Use Permit #09-40 with the following conditions. The motion passed unanimously (6-0).

1. The use shall be limited to a trucking firm that hauls strictly agricultural products such as livestock.
2. The principal operator of the business shall be a resident on the property.
3. There shall be no more than two semi tractors and three semi trailers allowed on the site. This shall apply to all semi tractors or trailers stored on the site whether or not they are currently used as a part of the operation.
4. No inoperable vehicles shall be allowed to be stored on the site.
5. The tractors or trailers shall be parked at the south end of the subject property.
6. No fuel or chemicals shall be stored in the site.
7. One (1) licensed semi trailer shall be allowed to be used as storage for farm related products.

Item was deferred from the June 22nd meeting.

ITEM 6. CONDITIONAL USE PERMIT #09-36 to allow a rubble dump facility.

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

General Information

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

Report by: Phil Kappen

Staff Analysis

The subject property, as described by the petitioner on their application, is located south of 267th Street and between ¼ mile and ½ mile west of 465th Avenue. The property to the west and south is in agricultural uses, that to the east is predominantly residential and to the north are residential subdivisions. The subject property is located approximately 4-1/2 miles west of Sioux Falls.

The petitioner has applied for a conditional use permit to allow operation of a construction and demolition debris site on the property. Such a use also requires a solid waste facility permit from both Minnehaha County and from the state of South Dakota. The petitioner has indicated that only commercial demolition debris would be deposited at the site, that the hours of operation at the site would be 7:00 AM to 5:30 PM Monday through Friday, and that the approximate life span of the site would be ten years. Once closed, the site would be returned to native grassland. This item was first heard by the Planning Commission at the May meeting and was deferred to the June and then July meeting so that staff could provide some additional information and provide some potential conditions.

Neighboring property owners at the May meeting expressed specific concerns over this site being much closer to existing residences than is the existing landfill. The proposal would move a waste disposal site over half the distance from the existing landfill towards two residential subdivisions with a combined total of 77 lots. Concerns were also expressed by neighbors and commission members about the high traffic counts along the county highway, the potential traffic hazards due to the presence of a no-turn lane on the highway along the site, the potential for noise and dust, the possibility of the use expanding in the future, a lack of details on the petitioner's berming plans, the tarping of trucks and the potential for litter, and the impacts on wetlands or drainage from the property. A petition signed by 50 citizens in opposition to the disposal site was also submitted to the Planning Commission.

The petitioner submitted a revised site plan and a written narrative late into the review process. Staff has tried to incorporate the added information into this revised staff report.

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.

According to the SD DENR, the state regulations for solid waste facilities state that the operational permitted area may not be located within 1000 feet of an occupied dwelling. They have noted to staff, according to an existing court decision, that the “operational permitted area” cannot be considered to be only the disposal site, but also must include all the other on-site operations associated with the disposal site. The state’s location standards for solid waste facilities also include setbacks to primary highways and note that the site “may not pose a potential safety hazard to the public.”

ARSD 74:27:11:05. Distance to residences, other buildings, roads, and parks. Facilities may not be located within 1,000 feet of an occupied dwelling, school, hospital, interstate or primary highway right-of-way, or public park or recreation area. The location may not pose a potential safety hazard to the public.

The petitioner has indicated to staff that they meet the 1000-foot minimum setback required by the state between solid waste sites and residences. The state’s role in permitting, however, is primarily aimed at environmental protection. They do not regulate land use issues as that responsibility is reserved in rural areas to the counties. At times, the county must look at the potential for land use conflict beyond a minimum distance recommended by the state. Also, most state regulations are developed without specific consideration of the density of development found in Minnehaha County.

Although the site is near the Sioux Falls Regional Landfill, the proposed operation would be considerably closer to at least three existing residential subdivisions than is the landfill (see attached map). Staff has serious concerns over the proximity of the proposed site to neighboring residences. This is particularly true at the point where access would be made to the site from County Highway 148. The houses along the north side of the highway are also quite close (see attached photos). The petitioner has indicated that there are no houses within 1000 feet of the disposal site. Staff has measured using our GIS system and found that there are three homes within 1000 feet of the disposal area belong to the petitioners. When considering other land uses the Planning Commission has also looked at the potential for land use conflicts within one-quarter mile of a proposed use. There are 21 houses within ¼ mile of the disposal area (again 3 of these belong to the petitioners). At a minimum, however, the designated operations area should also be included within the facility boundary. Within 1000 feet of the combined disposal and operations area there are 11 residences and within ¼ mile there are 26 (see attached map). The driveway location should also be considered in the setback standards due to the great potential for impact caused by traffic entering and leaving the site.

If the access road from the highway to the disposal site is considered as a part of the operation, there are 22 houses within 1000 feet and 41 houses within the one-quarter mile distance.

The state says that the operational permitted area must be specifically defined on the application for a state permit. The full legal description shown on the petitioner's conditional use permit application includes yet more land than is covered by either the disposal site or the operations area. Within 1000 feet of the legal description as shown on the application form there are 37 houses and within the ¼ mile distance there are 52 houses (see attached map). Again, three of those homes are owned by the petitioners. Staff must note, however, that the full legal description is much larger than the proposed operations and disposal areas as shown on the revised site plan.

The petitioner has indicated to staff that most of the houses in the neighborhood were constructed after the landfill had begun operations. This is true, but, those homes were constructed with the knowledge of the landfill, but this is a new use that would locate a waste disposal operation closer to the existing homes.

Neighboring property owners have indicated that they already have problems with litter from trucks traveling to the landfill. At the last meeting the Planning Commission questioned whether tarping would be required for the loads. Staff indicated that this could be placed as a condition on a permit, but that the petitioner would need to enforce the condition just as the city is responsible for enforcing their tarping requirement at the landfill. The petitioner has indicated that litter with a potential to blow would be policed and contained as necessary. Their plan and narrative shows that berms would be erected and trees planted in order to control litter. They also indicate that they would tarp at least some of the loads.

The city of Sioux Falls has, on numerous occasions, stopped municipal solid waste and asbestos waste from being deposited in their existing construction and demolition site. They must maintain an ongoing effort to ensure that these materials are not included in the C & D waste because the disposal of both of these items must meet much more stringent state and federal regulations. The petitioner has indicated that they hope to divert this material from the landfill. The applicant has not indicated how monitoring of wastes material would be performed and how enforcement will be accomplished.

Concern was expressed at the May meeting about the potential for runoff from the site. This site would be required to obtain a construction permit from the SD DENR that specifies how runoff from the site would be controlled. The petitioner also indicates that storm water will be diverted around the site and that storm water run-off from a 25-year storm would be retained. The petitioner would have to provide specific engineering plans to the Planning Office for storm water management and erosion control. The proposed best management practices should be constructed and the plan fully implemented prior to the commencement of any disposal operations at the site.

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

The petitioner has indicated that all excavated material would be retained on site and used in the construction of berms. The excavation of any clay soil for removal from the site

must be addressed. The proposed location of berms and landscaping trees have been indicated on the revised site plan. The petitioner proposes that coniferous trees from 5-8 feet in height would be planted 16 feet on center along the west and north sides of the disposal site and the operations area. In addition, shrubs would be planted between each of the coniferous trees.

The petitioner has previously indicated that the city of Sioux Falls was in favor of his petition and that the city landfill was no longer going to accept construction and demolition debris. Kevin Smith and the Manager of the landfill have indicated to staff that both of these ideas are incorrect. The city has capacity in their existing construction and demolition debris section at the landfill for another forty years. The petitioner has indicated that his disposal facility would benefit the city by allowing them to stop taking C&D waste to the landfill and thereby freeing up additional area for garbage. However, the cells for C&D waste are constructed in a much different manner than are those for municipal solid waste. The C&D cells could not be used for such without first rebuilding the cells to the more stringent standards that would allow the disposal of municipal solid waste.

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

The average daily traffic on that portion of Hwy 148 to the west of SD Hwy 17 is 3528 vehicles. The count on Hwy 148 at its end near the Wall Lake oil is 1743 vehicles. This difference of 1785 vehicles per day gives some indication of the amount of traffic on the road traveling from the east to the landfill and to the homes in the vicinity. The South Dakota Department of Transportation has determined that the revised access location meets the sight distance requirements for a motorist to see a 6" object in the road and have sufficient time to react and stop as necessary. It is also preferable to have accesses onto a road line up rather than have "T" intersections. Access onto the highway at this point will still entail that both accelerating and decelerating actions by trucks occur immediately in front of a number of existing homes. The county highway superintendent has indicated that it will be necessary to have both an acceleration lane and a turning lane for use by traffic entering and leaving this property on the county highway.

The petitioner has indicated that he has an existing site near Rowena that has only a few years of life remaining. It is reasonable to expect that, after his other site reaches capacity, that at least a portion of the traffic going to that location may be shifted to the proposed site. However, the petitioner's plan indicates that there would be no significant increase in traffic. Even if there were no additional traffic, this project would still introduce traffic into the middle of the traffic flow rather than having it enter the road at the end of the primary traffic route. The greatest amount of current traffic to the landfill is from municipal solid waste haulers rather than construction and demolition debris haulers. Therefore, a high traffic count will continue to pass the proposed site. The city's records show that there is an annual daily average of 335 trips to the landfill. Their heaviest day had 994 trips. The city estimates that an average of 80-100 of those daily trips are for construction and demolition debris. The turn to the landfill lies at the end

point of the majority of the traffic flow. The turn to the landfill is also located at a point with very good sight distance in both directions along the highway.

It is notable in the state regulations that solid waste sites may not pose a potential safety hazard to the public. There were substantial concerns over traffic safety with the location of the proposed access road in the original application. The revised plan moves that access road further east to line up with Valdez Road to the north. The revised location of the site access improves the sight distance problems along the highway. However, traffic approaching the property from the east would still be forced to cross the flow of traffic coming from the west and vehicles exiting the property to the east would be turning immediately into the flow of traffic from the west. The SD DOT has determined that the revised access location would meet the minimum sight distance standards for vehicles stopping on the road to avoid an obstruction. In order to ensure an adequate flow of traffic along the road, however, both an acceleration lane and a turning lane would be necessary. These lanes should be constructed to the specifications of the Minnehaha County Highway Superintendent. At the May meeting the petitioner indicated that they were willing to install deacceleration lanes or turn lanes along the highway.

The petitioner has indicated that a professional wetland consultant would be employed to determine whether there are any wetlands located on the property. The Department of Interior's National Wetland Inventory indicates that there are wetlands on the proposed disposal site, however, that preliminary inventory would have to be verified on the site. If wetlands were found, the petitioner would need to mitigate the loss and any wetlands in accordance with state and federal requirements.

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

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

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

Concern was expressed at the last meeting regarding the potential for dust. The petitioner has indicated that no crushing or grinding of material would be done on the site, that the access road would be hardsurfaced, that the berms and landscaping would aid in reducing the potential for dust and that water would be applied to control dust.

Concern has also been expressed about the noise from trucks shifting gears as they accelerate from the property. This acceleration would occur immediate next to a number of residential sites. The possibility that trucks coming to the site could utilize dynamic braking to slow down on the highway has also been questioned. The petitioner indicates that the types of trucks that would utilize the site do not have dynamic braking capability. Staff has no means to verify this information. This action would also occur adjacent to numerous homes. The petitioner does not propose to crush or grind materials at the site which would provide for some reduction of potential noise.

The petitioner has also indicated that they would be willing to plant additional screening trees along the north side of the highway. Any trees planted in that area would have to be located on private property and placed so that the drifting or deposition of snow on the highway is not increased. Staff does not believe that a requirement could be placed on a permit that required the planting of trees on an adjacent site that is not part of the application.

Staff understands that there are a number of concerns that could be partially addressed through the conditional use permit process. Sight distance problems along the highway could be mitigated through engineering means such as the relocation of the proposed access road or, if necessary, the provision of deceleration or turning lanes. Dust problems may be at least partially addressed through the use of hard surfacing the access road, the use of water sprays or dust suppressants, or the planting of dense landscaping around the site. Dense landscaping could also help mitigate problems with litter along with the use of tarps on trucks, the erection of litter fences, or requirements that the petitioner pick up litter along the highway at a specified frequency. The loss of wetlands can be mitigated through specific and standardized state or federal processes. A prohibition on the use of dynamic braking, the lack of crushing or grinding at the site and a strict limit on hours of operation would help control noise. Staff still believes, however, that the proximity of homes to the site and the density of development in the area would constitute a conflict to the approval of this application.

Recommendation

Staff's recommendation has not changed and recommends **denial** of Conditional Use Permit #09-36 due to the particularly close proximity of residential subdivisions and existing residences to the proposed site, the incompatibility of the proposed use with adjacent residential uses.

It is not typical for staff to provide a list of potential conditions when recommending denial of a permit, however, the Planning Commission at the May meeting requested that a list of potential conditions be prepared. This following list of potential conditions should be considered as a minimum.

- 1) The permit shall be used strictly for the disposal of construction and demolition debris as defined by the Administrative Rules of South Dakota. At no time shall any municipal solid waste be disposed at this site. No recycling, crushing or grinding of material shall be allowed at the site.
- 2) The operation shall conform fully to the revised site plan submitted on June 17, 2009 unless specifically varied under the terms of this permit.
- 3) No expansion of the disposal area shall be allowed.
- 4) Hours of operation shall be limited to 7:00 AM to 5:30 PM on Monday through Friday.
- 5) The operator shall obtain a county solid waste permit and a state solid waste permit and renew said permits as necessary. Copies of up-to-date state permit information shall be filed with the Minnehaha County Planning Department.

- 6) The operator shall obtain and follow a NPDES permit from the State of South Dakota which specifically addresses the control of runoff from the site and the prevention of erosion on the property. A copy of said permit shall be filed with the Minnehaha County Planning Department and the operator shall conform with all provisions of the permit.
- 7) No disposal areas or any operational areas associated with the facility shall be located within 1000 feet of any residence without a specific, written waiver from the owner of that residence.
- 8) The disposal area shall be fully screened from public view in all directions through the use of berms and landscaping in accordance with the revised site plan. At a minimum, trees shall be planted along both the west and north boundaries of the disposal area and the operations area, at a maximum spacing of 16 feet on center. All coniferous trees shall be a minimum height of 5 to 8 feet. Shrubs of a minimum height of 3 feet shall be planted between each of the screening trees. Any trees or shrubs that die shall be replanted within one growing season.
- 9) The access road to the site shall be aligned with Valdez Road. The full length of the access road off County Highway 148 and all parking areas shall be hard-surfaced according to the specifications of the Minnehaha County Subdivision Ordinance.
- 10) The operator shall construct, at the operator's expense, both an acceleration lane and a turning lane along the highway for traffic accessing the property. All such lanes and all construction shall be designed by a licensed professional engineer and shall meet the full specifications and requirements of the Minnehaha County Highway Superintendent. Any additional right-of-way required for such lanes shall be obtained at the operator's expense and shall be dedicated as publicly dedicated right-of-way.
- 11) The operator shall prepare a comprehensive reclamation plan of the site for approval by the Minnehaha County Planning Department. All excavated material shall remain on the site and be used in the construction of berms and in final reclamation of the site.
- 12) The site shall be fully reclaimed immediately after capacity at the site has been reached or immediately after a maximum ten-year life span of the site, which ever comes first.
- 13) The petitioner shall fully mitigate any designated wetlands on the site and obtain and follow all required permits from the state or federal government for said mitigation. Copies of any state or federal permits for such mitigation shall be filed with the Minnehaha County Planning Department.
- 14) The sound level from the on-site operations shall not exceed an average of 55 decibels recorded over a 10 minute period measured from the nearest residence.
- 15) In order to help reduce noise impacts on the neighborhood, no jake braking or dynamic braking shall be allowed by any trucks accessing the site.
- 16) All vehicles containing waste shall be fully tarped when accessing the subject property. The admission of any vehicles to this site which are not tarped shall result in a full review of the conditional use permit by the Minnehaha County Planning Commission.

- 17) Litter and blowing debris shall be fully controlled at the site and shall not be allowed to cross onto any neighboring property.
- 18) Any outdoor lighting shall be of a full cutoff and fully shielded design that prevents the spillage of light beyond the boundaries of the subject property.
- 19) There shall be no visible emissions of dust blowing from the site. All fugitive dust shall be fully controlled on the site and the operator shall not allow a discharge from any portion of the facility which is equal to or exceeds 20 percent opacity as determined according to the regulations of the state of South Dakota.

Public Testimony

Commissioner Kelly questioned if this roadway to the north of the proposed site was a state or county road. He continued to ask if this entity would then be paying for the road improvements. Mr. Kappen stated that the road in question is a County Highway and that all road improvements would be at the cost of the petitioner.

Don Runge (petitioner) stated that the rubble facility is different from the city dump in regards to what items are accepted. He informed the commissioners that the rubble facility does not except garbage (i.e. plastic, cardboard, paper) or other waste material of this nature. He stated the rubble facility only accepts items such as wood, concrete and other items of this nature. He explained that his facility would only consist of ten (10) acres as opposed to the city dump which is forty (40) acres. He stated that his facility would be forty (40) feet deep into the ground and the landfill is eighty (80) feet above ground. He noted that the dust that comes from the landfill is much more extreme than any dust that would generated from his site. He stated that his rubble site is approximately 400 feet north of the landfill. He commented that the compost area along the north side of the landfill site is much more of a nuisance the any rubble facility due to the odor that is generated by the compost material. Mr. Runge stated that the facility could be moved further south but he has proposed it in this area because of the natural lay of the land (20 foot hole in proposed area) which will cut back on the amount of excavated soil. He explained he performed noise tests in the area and found that acceleration and deceleration around the rubble site would be at the most 1.5 decibels higher then the existing decibel readings in the area. He stated that this facility would not interfere with the property owners' enjoyment of their land because the road is already being used for truck traffic to and from the landfill. He noted that between 10-25 more trucks using the roadway to get to the rubble facility would not affect these property owners. He explained that this land is virtually worth nothing if he can not develop it as a rubble facility because no one will build homes this close to the landfill. He stated that there are only four (4) homes located within 1100-1200 feet of the proposed facility. He noted that the conditions that were prepared by county staff were possible with the exception to have conditions 10, and 12 (10 years was only an estimate) omitted.

Jack Leininger (2900 E 23rd Street) own 5 acres of land across the road and just west of the property line of the proposed site. Mr. Leininger presented the following information to the Commission and provided staff with a copy for the minutes.

At the May meeting of the Planning Commission there were several concerns brought up by residents in the housing development and by land owners in the close proximity of the proposed rubble site. Some of the concerns were:

1. Increase in truck traffic on hwy 148.

2. Safety to the residents and general public traversing Hwy 148 between hwy 17 and the entrance to the city land fill.
3. Increased traffic congestion at the entrances to the existing residential subdivision of Country Villa Estates.
4. Increased costs for dumping at the City landfill if revenue is taken from the landfill.
5. Noise created from large trucks entering and leaving the site.
 - A) Gearing down to turn into the site.
 - B) Gearing up on departure.
6. Dust created from dumping the rubble.
7. Litter from building materials blowing off trucks and out of the dump site.
8. Decrease in residential property values.
9. Wet lands being taken by the site.

1. In regard to the increase in truck traffic on Hwy 148, Petitioner stated, at the May meeting, that there would be no more traffic than there is now.

However, in an informal informational meeting Mr. Runge held on May 6, 2009, he told us that that his Rowena site was reaching capacity. In that case, many of the trucks that are now going to the Rowena site will more than likely go to the proposed site. According to the Minnehaha County Highway Department Superintendent, Mr. Bob Meister, there is an average of 3375 vehicles per day using the stretch of Hwy 148 between Hwy 17 and the city landfill at last count (which is over 1 year old). That count is up to approx. 3500 at this time. Adding heavy truck traffic to this two lane Hwy will increase congestion and cause safety problems in of it self.

2. When safety was brought up at the last meeting, specifically the blind spot to the West of the proposed entrance to the site, Petitioner stated that he would put in turning lanes and deceleration and acceleration lanes at the entrance to resolve the problem. It is also, my understanding that Petitioner has now revised his plan to move the entrance eastward to line up with Valdez road to alleviate the site distance problem to the West. However, turning lanes, deceleration lanes and acceleration lanes will not alleviate the hazard of large trucks turning across traffic to enter the site. Petitioner stated at the May meeting that the highway department had no problems with the proposed entrance to the proposed site. In my discussion with County Hwy Supt. Bob Meister, he indicated that they do have substantial concerns about the high traffic count at that location on County Hwy 148 and the turning across traffic flow from the West. He also advised that he is very much apposed to the proposed access onto the County Hwy. He indicted that there would have to be a lot of work done on the road to alleviate the problem, i.e., widening the road for turning and acceleration and deceleration lanes, acquiring property in order to widen the road, etc.

3. Further, turning lanes and deceleration and acceleration lanes will not stop the congestion that will be created in front of the homes in the residential

sub-division (Country Villa Estates) by heavy trucks entering and leaving the proposed site. It will still be a safety problem for residents entering and leaving Country Villa Estates and a major annoyance to the residents living there, even if turning lanes, deceleration and acceleration lanes are put in.

4. The City Landfill presently has a construction rubble site that is already accepting the same materials that the proposed site will be handling. At one of the previous meetings, I believe it was the May 6, 2009 informational meeting, Mr. Runge stated that the city was in favor of the proposed site and the City Landfill was not going to accept construction and demolition debris. In his informational meeting on May 6, 2009, he also stated that his disposal site would be a benefit to the City Landfill because it would reduce rubble going into the landfill thus making more room for garbage at the landfill. In discussions with the Superintendent of the City Landfill, Mr. Dave McElroy, I was told that there is approximately 40 years life left at that rubble site in the City Landfill and that the requirements for dumping garbage (Solid Waste) are much different than the requirements for dumping rubble. As I understand it, the requirements for disposing of things such as solid waste, asbestos and things of that nature come under much more stringent State and Federal regulations. The existing rubble dump site at the City Landfill would have to be completely revamped in order to use the existing rubble dump location for dumping solid waste. That would include clearing out all the rubble that has been deposited there and bringing the area up to current regulations for dumping solid waste. In answer to my question on how the landfill operation is financed he informed me that the City Landfill is operated on a cost of service basis. It appears that it would not be cost effective to the public and totally unnecessary, given the fact that we already have a place at the City landfill to dump construction rubble. It is quite apparent that if construction debris is diverted from the City Landfill to the proposed site, there will be an increase in rates at the City Landfill that will affect all of us who use the City Landfill. Basically the General Public will be paying extra so that petitioners can make a profit at their private rubble disposal site. Petitioner claims that he will restore the area to native grassland once the rubble site is full or closed. However, I do not see anywhere in his request where he is proposing or is required to, set aside money so it is available for reclamation of the land after the site is closed. It is my understanding that money is being set aside by the City Land Fill, on a regular basis, for reclamation of the land when the City Land Fill reaches capacity and/or is closed. If this Conditional Use Permit is granted there should be some assurances that there is money set aside each year in the form of an Irrevocable Trust Fund, Bond, or similar vehicle, in favor of the County, to assure funds are available for reclamation at the end of the project. In this era of Bankruptcies and failing businesses the citizens of Minnehaha County should be assured that they will not be stuck with the cost of reclamation if this request is granted. Further, in a meeting with Mr. Mark Cotter (Sioux Falls Public Works) I was informed that the City was originally told by Petitioner that he was planning to put in a recycling facility at this location. Mr. Cotter advised that the City is in favor of the concept of recycling and was in favor of a recycling facility in the

Sioux Falls area. However, the proposal that Petitioner has presented and the statements he made at the May meeting clearly indicate that he is NOT going to recycle at this site. Petitioner's statement about the City being in favor of this proposal is not correct, based on the information I have received from the city.

5. With regard to the Noise problem – The trucks that now turn into the entrance at the City Landfill will be gearing down to turn, and in all probability will be using Jake brakes, to slow down to turn into the proposed site. This noise will be right in front of the homes in Country Villa Estates as well as other residences in the area. There is no way to alleviate the noise of trucks down shifting or shifting during acceleration from an entrance point, on Hwy 148.

6. The potential for dust and debris that would affect the homes in the immediate area would increase greatly. The dust that is associated with demolition of old buildings, sheetrock rubble, and dumping it is next to impossible to control. The wind in this area during the summer, especially, would be blowing the dust right over the homes in Country Villa Estates 1 & 2.

7. During the May meeting, the residents and property owners in the immediate area brought up concerns about the litter that will increase from trucks hauling rubble such as insulation, paper from packaging material, Styrofoam, etc. Petitioners' only response was that there would be no litter from the site. However, with the wind blowing across the site toward the residential area there will be litter no matter how many rules are made to try to stop it. Further, rules have to be enforced by someone once they are made if they are to work at all. Enforcement takes money and with the reduced budgets in government, who will be there to enforce any rules that are laid down.

8. At the May meeting of this body, the problem of decreasing property values in the residential community around the proposed site was brought up. Petitioners' response to that concern was that the houses were built after the City Landfill was put into operation and that property values would not be affected by the rubble site. The fact is that, the homes now in the area were constructed with the full understanding of where the City Landfill was located, i.e., South of where the proposed site is to be located, not with the understanding that there would be rubble dumped at a location less than half the distance, from where the City Landfill is located with respect to the existing houses in the area. The predominant use of the land in the immediate area since the City Landfill was established has been residential. People who built homes in this area, when the predominant usage of the land has been residential since the landfill was established, had reason to expect that their interests would not be jeopardized by the County allowing additional rubble sites in the area, after they approved usage of the property in the area for residential purposes. In the May meeting, Petitioner stated that this proposal would not affect the property values in the area. However, I personally had an offer to sell the five acres I own just before this proposal came to light. Remarkably, after it became known, the offer to buy was

rescinded. It not only will reduce the property values, but in probability will prevent the sale of property altogether. Who would buy a house or land to build a house on if it is known before hand that a rubble dump is going to be put in across the road from your home!?! Unless they can get it at an extremely reduced price.

9. During the May meeting the question of wetlands was brought up. Petitioner stated that, there were no problems with the area being wetlands. However, in researching the wetland areas it is apparent that Petitioner is in error in that statement also. A review of the aerial maps taken off the Minnehaha County GIS. Website and National wetlands inventory site, there is apparently wetland in the area of the proposed disposal site.

After reviewing the maps of the area it appears that Petitioner is also incorrect in his statement regarding the wetlands at the location of the proposed site. The property owners in the residential community in the area of this proposal respectfully request that you deny the request for Conditional Use permit #09-36.

Jim Larson (46494 Country Ln) explained that at the previous meeting in May a petition of sixty (60) signatures was provided to the commissioners.

Dan Brandt (46408 467th Street) stated that Jake Breaks are being used by the truckers entering the landfill area.

Grant Edgecomb (26685 Day Spring Cir) noted that noise and traffic in this location is already very heavy and the added traffic will only make this worse. He stated there are four (4) rows of trees and a large fence along the north side of the landfill and garbage still continues to blow out of the landfill and into adjacent properties. He explained that one (1) berm and one (1) row of trees is proposed around the rubble facility and this will not keep garbage and other material from blowing onto adjacent properties. Mr. Edgecomb stated that the people in this development had no idea that the landfill was going to be 85 feet in height and that it is extremely hard to fight the city when they want approval of something like this.

Cathy Brant (46408 467th Street) commented that the landfill has certain hours, but that other trucks currently go by their home at all hours of the night to the landfill when special projects are being done.

Glen Fuerstenberg (46524 267th Street) stated that commercial sites within the county are suppose to be located at intersection of major highways. He noted that people will be confused by the rubble facility and will enter this facility instead of going to the landfill. Mr. Fuerstenberg explained that there are many school district buses that go by this property and load and unload children within the development. He stated that the added traffic is unsafe for the residential subdivision.

Chet Hofer (26662 465th Street) questioned why concrete should get dumped into a hole when it can be crushed and reused.

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

Commissioner Cypher stated that the Rowena site operated by the Runge's on the east

side of town looks good but this is a whole different situation because of the housing development and traffic in the area.

Commissioner Steinhauer explained that the added traffic is a concern to him. He questioned if two wrongs (landfill & rubble sites) make a right.

Commissioner Randall stated that the proposed location is great because it is located by the city landfill. Unfortunately, she can not support this use because of all the residential homes in the immediate area.

Action

Based on the staff report and public testimony, a motion was made by Cypher and seconded by O'Hara to **deny** Conditional Use Permit #09-36. The motion passed unanimously (6-0).