



**MINUTES OF THE
MINNEHAHA COUNTY PLANNING COMMISSION
February 27, 2023**

A meeting of the Planning Commission was held on February 27, 2023 at 7:00 p.m. in the Commission Room of the Minnehaha County Administration Building.

COUNTY PLANNING COMMISSION MEMBERS PRESENT: Commissioners Bonnie Duffy, Becky Randall, Ryan VanDerVliet, Mike Ralston, Adam Mohrhauser, and Joe Kippley.

STAFF PRESENT:

Scott Anderson, Kevin Hoekman, and Mason Steffen – County Planning
Maggie Gillespie – States Attorney's Office

Bonnie Duffy chaired the meeting and called the Minnehaha County Planning Commission meeting to order at 7:00 p.m.

PUBLIC COMMENT.

Commissioner Duffy opened the floor for public comment and several people from the audience spoke before the commission.

Anthony Ventura, of 47763 292nd Street, Hudson, SD, explained to the commission that Lincoln County recently passed a resolution to ban eminent domain for CO2 pipelines and has also approved a draft ordinance to regulate CO2 pipelines. Mr. Ventura finished by asking the commission to follow Lincoln County and approve similar rules and regulations.

Daniel Nelson, of 48680 260th Street, Valley Springs, SD, explained to the commission that he owns land within close proximity to one of the proposed CO2 pipelines. Mr. Nelson also stated that he wants to see larger setbacks put in place from the pipelines, as well as other safety regulations.

Kay Burkhardt, of 48494 260th Street, Valley Springs, SD, stated to the commission that she wants to see the county adopt an ordinance protecting the citizens from the CO2 pipelines. Mrs. Burkhardt also commented that California has adopted a statewide ban on new CO2 pipelines until more strict federal regulations can be adopted, and that she wants Minnehaha County to protect its citizens.

Betty Strom, of 7504 W Loganberry Street, Sioux Falls, SD, referenced South Dakota Codified Law and stated to the commission that it is their responsibility to protect the citizens of Minnehaha County from the CO2 pipelines. Mrs. Strom also stated that it is up to each county to develop emergency management protocols, and that she believes Minnehaha County needs specific protocols for CO2 pipelines.

Rick Bonander, of 26268 486th Avenue, Valley Springs, SD, explained to the commission that it is the responsibility of farmers to protect the land for future generations, and that he wants to see the county adopt the ordinance that was presented to the planning commission in January of 2023.



Travis Jones, a representative for Summit Carbon Solutions, stated to the commission that there is currently 5,000 miles of CO₂ pipelines within the United States that have operated safely since the 1990s. Mr. Jones also stated that if the County were to consider the pipeline ordinance, he would like to have a robust debate from both sides of the issue before any ordinance is approved.

Dale Bonnema, of 5005 E 49th Street, Sioux Falls, SD, came to the podium and stated that there has been sixty-six breaks of CO₂ pipelines since 1990, and that this shows there needs to be setbacks and regulations in place for the CO₂ pipelines.

Dennis Jones, of 4904 S Heatherwood Circle, Sioux Falls, SD, explained to the commission that he was a lead surveyor when a portion of I-29 was being built, and that based on this experience he would like to know who would inspect the construction of the CO₂ pipelines. Mr. Jones also commented that CO₂ pipeline companies have stated that they will inspect their own work, but that he does not see this as an adequate solution.

Chase Jensen, from Brookings, SD, stated to the commission that he wants to see the proposed pipeline ordinance from January move forward and be approved. Mr. Jensen also commented that his two issues with the proposed pipelines are the use of eminent domain by a private company, and the lack of safety measures to mitigate concerns from potential pipeline ruptures. Finally, Mr. Jensen explained that he understands that the county cannot control eminent domain, but that they can alleviate some concerns with pipeline ruptures by adopting an ordinance that includes more stringent setbacks.

Joy Hohn, of 46178 263rd Street, Hartford, SD, quoted the South Dakota Bill of Rights to the commission and explained how the proposed CO₂ pipelines will affect her property. Mrs. Hohn also stated that the proposed CO₂ pipelines that will run through South Dakota will be the largest and longest CO₂ pipelines in the United States. Then she stated that these pipelines will also have several junctures as more ethanol plants connect to the pipeline, which will add more locations where the pipeline could fail.

CONSENT AGENDA

Commissioner Duffy read each item on the consent agenda, and no Items were moved to the regular agenda.

A motion was made to approve the consent agenda consisting of Items 1, 2, 3, & 4 by Commissioner Ralston and seconded by Commissioner Randall. The motion passed unanimously with 5 votes in favor of the motion and 0 votes against the motion.

ITEM 1. Approval of Minutes – January 23, 2023

As part of the consent agenda, a motion was made by Commissioner Ralston and seconded by Commissioner Randall to **approve** the meeting minutes from January 23, 2023. The motion passed unanimously with 5 votes in favor of the motion and 0 votes against the motion.



Consent Agenda

ITEM 2. CONDITIONAL USE PERMIT #23-08 to allow a Kennel (Dog Training Facility) on the property legally described as the E1584.26' S546.96' SW¼ Section 1 T101N-R52W Wellington Township.

Petitioner: Robert Dickerson; Big Paws Canine Foundation

Property Owner: Same

Location: 45924 263rd Street

Staff Report: Kevin Hoekman

General Information:

Legal Description – E1584.26' S546.96' SW¼ Section 1 T101N-R52W Wellington Township.

Present Zoning – A1 Agricultural

Existing Land Use – Residential Acreage

Parcel Size – 19.93 Acres

Staff Report: Kevin Hoekman

Staff Analysis:

The petitioner is requesting to allow a limited use kennel for dog training on the above property in the A1-Agricultural zoning district. A kennel is an allowed use within the district if approved through a conditional use permit.

The property is located approximately 4.5 miles southwest of Hartford, and about one mile south of Grass Lake. The site is an existing acreage with former agricultural buildings and established tree grove. The petitioner included a site plan and a detailed narrative to accompany the application. A new building is proposed west of the existing machine shed and north of the driveway.

The petitioner describes in the detailed narrative that the new building will be used for training courses with dogs and owners combined. Some training will take place outside. Training times are said to take place during mostly business hours, and not open on Sundays. Dogs are not kept on the property overnight.

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 proposed training kennel will be located on a large residential acreage where most of the surrounding area is active agriculture. The nearest single family dwelling is located approximately 1,000 feet southwest of the training shed, and mature tree groves exist on both properties. The narrative explains that most training activities will take place inside the shed, and the hours of operation will be primarily 10:00 am to 2:00 pm with appointments and Saturday trainings lasting longer. Staff recommends maximum extents for hours of operation to include 9:00 am to 9:00 pm



Monday through Saturday, with no classes on Sunday. The long distances to neighbors, indoor classes, and limited hours of operation should limit any negative impact on neighboring properties.

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

The property is located within an active agricultural area several miles away from any city or town. The future development of the area will likely remain as agricultural use. The proposed training kennel will not inhibit development in the future of this area.

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

The property has an existing single family dwelling and several former outbuildings. Many utilities already exist on the property. The property owner is required to extend any required utilities. The property is accessed from a township road located about a quarter mile east of County Highway 159.

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

The property is large with plenty of space for off-street 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.

This proposed dog training kennel has potential to create noise through barking dogs. The potential should be limited by having most classes taking place inside the enclosed building. Barking dogs will also be limited in time with limits on hours of operation. The narrative explains that classes will not likely take place all day, but rather certain times of the day including Saturdays.

Lighting on the shed should be directed downward to prevent glare from trespassing onto neighboring properties.

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

The proposed use should have little to no negative affect on the, safety, and general welfare of the public. The purpose of training dogs will be for disabled veterans, and the public will benefit from the support dogs trained in the classes.

Recommendation: Staff recommends **approval** of Conditional Use Permit #23-08 with the following conditions:

1. This Conditional Use Permit to allow a dog training kennel is granted to Robert Dickerson, and it is non-transferable to any future owner or leasee of the subject property.
2. That training class sizes be limited to eight dogs. No dog boarding shall be allowed.
3. All new and replacement lighting must be pointed downward and of fully shielded and cutoff design as to prevent light from shining on other property.
4. The hours of operation shall be 9 am to 9 pm, Monday through Saturday.
5. That any signage shall meet the requirements set forth in the ordinance Article 16 (On-Premise Signs) and obtain a building permit prior to installation.
6. The applicant obtains as SD Sale Tax License and collects sales tax as needed.



7. That the Planning & Zoning Department reserves the right to enter and inspect the site, 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 Ralston and seconded by Commissioner Randall to **approve** Conditional Use Permit #23-08 with the staff recommended conditions. The motion passed unanimously with 5 votes in favor of the motion and 0 votes against the motion.

Conditional Use Permit #23-08 – Approved



ITEM 3. CONDITIONAL USE PERMIT #23-09 to allow a Manufactured Home on the property legally described as Tract 1 Frantz Addition NW¼ Section 26 T103N-R49W Sverdrup Township.

Petitioner: Alyssa Frantz

Property Owner: Same

Location: Approximately ¼-mile south of the 254th Street & 476th Avenue Intersection

Staff Report: Mason Steffen

General Information:

Legal Description – Tract 1 Frantz Addition NW¼ Section 26 T103N-R49W Sverdrup Township.

Present Zoning – A1 Agricultural

Existing Land Use – Vacant Acreage

Parcel Size – 4.08 Acres

Staff Report: Mason Steffen

Staff Analysis: The petitioner is requesting to place a 28' x 72' manufactured home as their primary residence on a recently platted property. The placement of manufactured homes on lots outside of a designated mobile home park requires a conditional use permit. Finally, Section 12.06 (C) of the 1990 Revised Zoning Ordinance for Minnehaha County includes several requirements & standards for manufactured homes, which the petitioner must follow if the conditional use permit is approved.

On February 8, 2023, staff conducted a site visit of the subject property and the surrounding area. The area surrounding the property is mostly used for agricultural purposes with a few other similar sized residential acreages. The nearest neighbor to the subject property is directly to the south, and the proposed manufactured home will be approximately 200 feet from this neighboring property line. Additionally, the existing residential acreages in the area are fairly large and spread out, which will reduce much of the concerns of a manufactured home being different than a typical stick framed house. Finally, prior to the issuance of a building permit the petitioner will be required to obtain an on-site wastewater permit, in order to insure the proper septic system is installed on the property.

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 area is mostly comprised of agricultural land with several similar sized residential acreages. A right-to-farm covenant will be required prior to a building permit being issued for the proposed manufactured home. The right-to-farm covenant informs property owners of some of the realities of living on a rural site. The low density of residential properties in the area will reduce much of the concerns of a manufactured home being different than a typical stick framed house.

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



The primary use of the general area is agriculture, and this is likely to continue into the foreseeable future. Any development that occurs on the vacant land in the area will be for agricultural purposes, or for land uses similar to this subject property. Therefore, there should be no anticipated impact on the normal or orderly development of vacant properties in the area.

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

The subject property already has a driveway access onto 476th Avenue, but the petitioner will be required to extend all other necessary utilities to the manufactured home site. Also, the proposed use of the property as a residential acreage with a manufactured home will not negatively impact the drainage in the area.

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

Each residence is required to have two (2) off-street parking spaces. The site of the proposed manufactured home is large enough to accommodate this residential parking requirement.

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.

A typical residential use will not create any offensive odor, fumes, dust, noise, or vibration. Any new lighting will be required to be shielded and pointed downward, and the property must be maintained in accordance with the public nuisance ordinance.

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

The zoning ordinance includes requirements to minimize the negative aesthetics associated with a manufactured home. These requirements include minimum width, roof pitch, and standard building materials. With general requirements and low density of the area, the placement of a manufactured home will not negatively affect the health, safety, or general welfare of the public.

Recommendation: Staff recommends **approval** of Conditional Use Permit #23-09 with the following conditions:

- 1.) A building permit must be obtained prior to the placement of the manufactured home.
- 2.) Each section of manufactured home must bear a label certifying that it is built in compliance with the Federal Manufactured Home Construction and Safety Standards.
- 3.) The manufactured home must comply with all requirements of Article 12.06 (C) of the 1990 Revised Zoning Ordinance for Minnehaha County.
- 4.) Prior to the issuance of a building permit, an on-site wastewater permit must be issued by the Minnehaha County Planning and Zoning Department.
- 5.) Prior to the issuance of a building permit, a right-to-farm notice covenant must be filed on the deed with the Register of Deeds.



Action

As part of the consent agenda, a motion was made by Commissioner Ralston and seconded by Commissioner Randall to **approve** Conditional Use Permit #23-09 with the staff recommended conditions. The motion passed unanimously with 5 votes in favor of the motion and 0 votes against the motion.

Conditional Use Permit #23-09 – Approved



ITEM 4. CONDITIONAL USE PERMIT #23-10 to allow a Motel (Short Term Rental) on the property legally described as Buffalo Ridge Minnehaha County Tract 6 Buffalo Ridge Tracts Section 30 T102N-R50W Benton Township.

Petitioner: Zoey North

Property Owner: Same

Location: 46642 SD Highway 38

Staff Report: Kevin Hoekman

General Information:

Legal Description – Buffalo Ridge Minnehaha County Tract 6 Buffalo Ridge Tracts Section 30 T102N-R50W Benton Township.

Present Zoning – C Commercial

Existing Land Use – Residential

Parcel Size – 1.93 Acres

Staff Report: Kevin Hoekman

Staff Analysis:

The petitioner for this request would like to use an existing single family dwelling for short term rentals of the entire house. The property came to county staff attention from a complaint, and the property owner responded quickly to the staff letter informing them of the need for additional permitting. This application is a little unique since the single family dwelling is a non-conforming use on a commercial zoned lot. Short term rentals and bed and breakfast establishments are not listed uses within the C-commercial zoning district, because those uses are associated with single family dwellings which are not allowed within the zoning district. The request is getting processed as a motel which is a listed use in the C-commercial zoning district. The petitioner is aware that her house is non-conforming, and she has stated that she intends to correct the zoning at a later date. This request will allow the use of the property for short term rental sooner than the entire process of rezoning and then another conditional use permit.

This conditional use permit is listed to allow a motel; however, the narrative describes the house rentals will operate like a short term rental when the petitioner is not actively using the house. The narrative describes a five bedroom house that is run with help of a property manager and professional services for property maintenance. The nearest neighbor is located on the adjacent acreage to the west of the property. Another single family dwelling on an acreage is located south and across the highway from the proposed short term rental.

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 proposed motel/short term rental house is located approximately one half mile southeast of Interstate 90 Exit 390. This area includes a mix of zoning and uses from commercial, industrial, agricultural, and residential acreages. The industrial park located south and west of the property is



quickly developing and filling in. The proposed use will not likely affect neighboring land uses in the area.

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

The mix of zoning districts and land uses in the area have potential to change how the neighborhood will be used in the future. The industrial area to the south and west of the property is quickly developing and filling in with many variations of industrial uses. It is possible that some day in the future the Buffalo Ridge establishment nearby could develop into other more intense commercial uses. It is not likely that the proposed use will affect the future development of the industrial or commercial lands around it. The agricultural land will also not be affected by the use.

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

The property is already developed with a non-conforming single family dwelling. The proposed use will not change the drainage or access to the property and utilities already exist for the house.

This property utilizes an on-site wastewater disposal system like most properties in the county. County records show that the septic system was designed for a daily wastewater flow of 360 gallons. Staff is recommending that the maximum occupancy of the house be limited to fifteen people, and if the house is full, the water usage of more than 24 gallons per person may strain the system. State on-site wastewater design requirements for a rooming house is for 40 gallons per person. The Planning Commission may consider reducing the total maximum occupancy of the property to align with the septic system design. The petitioner is encouraged to utilize water conserving faucets, toilets, and showers throughout the five bathroom house.

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

The property is large enough to accommodate many vehicles off the street. Staff recommends that a minimum of one off-street parking space be provided per bedroom. This would be a total of five parking spaces that need to be maintained.

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 motel/short term rental has the greatest potential to create nuisance noise from loud guests. The potential for loud noises to affect neighbors at this location is minimal as the closest has many trees and the garage of the short term rental is between the applicant's dwelling and the neighboring property owner. The next closest neighbor is across the highway and nearly 900 feet away.

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

It is not likely that the proposed motel/short term rental will have a negative effect on the health, safety, or general welfare of the public. Short term rentals are becoming popular in the area. One way staff has been limiting the impact of a short term rental is to limit the total number of guests allowed in the dwelling. The last few short term rental requests have included a recommendation of three people per bedroom occupancy. In this five bedroom house, the limit for occupancy would be fifteen people. A proposed ordinance amendment includes the recommendation of limiting



occupancy to two people per bedroom. For this permit, staff is recommending an occupancy limit of fifteen people to be consistent with similar requests. The Planning Commission may change the recommended occupancy if desired.

To protect the guests who stay at the motel, the house must have functioning smoke and carbon monoxide detectors as required by the building code as adopted by Minnehaha County. In order to protect the public, the petitioner should maintain a list of guests who stay at the motel. The list shall be maintained and available for law enforcement if needed.

Recommendation: Staff recommends **approval** of Conditional Use Permit #23-10 with the following conditions:

- 1.) The house must have functioning smoke and carbon monoxide detectors as required by the building code as adopted by Minnehaha County.
- 2.) The proprietor must obtain any applicable South Dakota Sales Tax that is required.
- 3.) The proprietor must obtain the required Lodging License with the South Dakota Department of Health.
- 4.) That the proprietor shall maintain a guest list and make such list available at the request of law enforcement.
- 5.) The property shall be limited to a total maximum of fifteen guests and visitors at any one time.
- 6.) Guests shall have at least five dedicated off street parking spaces. No on-street parking will be allowed.
- 7.) Only one sign may be permitted on the property not to exceed 32 square feet in size.
- 8.) A building permit is required before the placement of any sign on the property.
- 9.) That the Planning & Zoning Department reserves the right to enter and inspect the motel establishment 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 Ralston and seconded by Commissioner Randall to **approve** Conditional Use Permit #23-10 with the staff recommended conditions. The motion passed unanimously with 5 votes in favor of the motion and 0 votes against the motion.

Conditional Use Permit #23-10 – Approved



Regular Agenda

ITEM 5. REZONING #23-01 to rezone from the A-1 Agricultural & the RC Recreation/Conservation Districts to the RR Rural Residential District the property legally described as the W 1486' of the SW¼ Including RY ROW (Ex. N927.19' W1486') SW¼ Section 5 T102N-R49W Mapleton Township.

Petitioner: Grant Park Capital, LLC.

Property Owner: Brian Hefty

Location: Northeast Corner of the 473rd Avenue & 257th Street Intersection

Staff Report: Mason Steffen

General Information:

Legal Description – W 1486' of the SW¼ Including RY ROW (Ex. N927.19' W1486') SW¼ Section 5 T102N-R49W Mapleton Township.

Present Zoning – A-1 Agricultural & RC Recreation/Conservation

Existing Land Use – Farmland

Parcel Size – Approximately 60 Acres

Staff Report: Mason Steffen

Staff Analysis: The petitioner is requesting to rezone the subject property from the A-1 Agricultural & RC Recreation/Conservation Districts to the RR Rural Residential District. The proposed area to be rezoned is approximately sixty acres of a larger one hundred & twenty-eight acre property. The portion of the property that is not requested to be rezoned is mostly within the 100-year flood plain and has a significantly lower elevation than the requested sixty acres. Given that this rezoning is proposing a change to the RR Rural Residential Zoning District, if approved, it would allow for residential development and subdivision of the proposed property. Finally, the RR Rural Residential Zoning District has a minimum lot size of one acre, so this proposed rezoning would have the potential to add up to sixty individual residential lots.

The proposed rezoning request is on a property located approximately one and a half miles northeast of the Crooks/Renner Exit off of Interstate 29. This location is just north of the existing High Prairie Ranch Planned Development and Vintage Village residential subdivision. The High Prairie Ranch Planned Development is currently a subdivision of approximately fifteen dwellings that was approved for additional lots via a rezoning in September of 2022. Additionally, the Vintage Village residential development was subdivided prior to the existence of density zoning regulations, and has direct access onto a paved county highway. This proposed rezoning, however, will not have direct access onto a paved highway, and will share the same gravel township access roads as the High Prairie Ranch Planned Development. Therefore, this rezoning will create additional traffic over a mile away from any paved highway, and any additional residential subdivision beyond the established one dwelling per forty acres will have an impact on the gravel township roads.

Additionally, the petitioner has submitted several preliminary site plan variations of the proposed development that would take place if the rezoning is approved. These variations differ slightly in their road layouts, as well as the proposed sizes of the individual lots. The general proposed number



of lots for the subdivision would be between twenty and thirty individual lots, and the final number would ultimately depend on the final road layout and drainage. If this rezoning is approved, then the petitioner would need to apply for a preliminary subdivision plan that would also need approval from both the planning & county commissions. The petitioner also stated in the submitted narrative that they have discussed the development with Don Ahlschlager, the Mapleton Township Supervisor, and that Mr. Ahlschlager provided input that was included in the proposed site plan layouts. Additionally, the petitioner has submitted detailed soil samples of the property via six test boring hole locations, which indicated that the average percolation rate for the soil on the property would be adequate for a septic system. However, planning staff still has concerns in regards to a large cluster of twenty to thirty residential septic systems, given that residential development of this type should only be allowed if it has access to an adequate sanitary sewer system.

Until the High Prairie Ranch Planned Development amendment last year, the county has been consistent in denying these types of rezonings, due to the potential harm they can have on the agricultural production and rural character of the county. This is because the proposed rezoning does not align with the county's density zoning regulations, and if this request is approved it will become even harder to justify denying future requests that also do not align with density zoning regulations. Also, the Envision 2035 Comprehensive Plan for Minnehaha County includes the subject property within the transition area for the city of Sioux Falls. The primary purpose of the transition area is to maintain the rural landscape of the county until municipal development expands to the area, and to limit new residential development unless there is access to an adequate sanitary sewer system and other necessary utilities. The petitioner has stated that the development will have access to the proper water, gas, & electric services, but that the proposed development would not utilize a sanitary sewer system and would require twenty to thirty individual septic systems. Also, any new residential subdivision in the area would add significant traffic onto gravel township roads over a mile from any paved highways. Therefore, approval of this request would be contrary to the goals of the 2035 Envision Comprehensive Plan and density zoning regulations. Approval of this rezoning could also encourage other similar requests within the county that are contrary to the goals of the comprehensive plan, as well as the past policies and actions of the Minnehaha County Commission.

Recommendation: Staff finds that the proposed rezoning is contrary to the goals and policies of the Envision 2035 Comprehensive Plan and recommends **denial** of Rezoning #23-01 to rezone the subject property from the A-1 Agricultural & the RC Recreation/Conservation Districts to the RR Rural Residential District.

Public Testimony

Mason Steffen, of county planning staff, explained to the commission the staff report and recommendation for the proposed rezoning request.

The petitioner, Brain Hefty of 47526 252nd Street, was present and addressed the commission with his comments on the request. Mr. Hefty explained that the subject property is approximately one and half miles from a paved road both to the east and west, and that he views this property as an adequate location for this type of request. Mr. Hefty also stated that the proposed number of septic systems on the property would cause a similar amount of waste to other animal operations that he



owns on smaller lots, and that the septic systems would be underground as opposed to above ground. Brian Hefty went on to explain that if Sioux Falls were to eventually expand to this area, the proposed one and half acre lots would not impede this growth, given that there are locations in the city with similar sized lots. Finally, Mr. Hefty stated that he believes it would be better to concentrate more housing in one location, instead of breaking up multiple pieces of farm ground to meet the required one dwelling per forty acres, and that the remaining seventy acres of the subject property will remain as farm ground.

Don Ahlschlager, the Mapleton Township Supervisor, came to the podium to explain his concerns with the proposed rezoning request. Mr. Ahlschlager explained that Brain Hefty had been in contact with him late last year after the High Prairie Ranch Planned Development amendment, and that he explained to Mr. Hefty what that petitioner went through to get their development approved. Then Don Ahlschlager stated that the township would not be able to properly maintain the township roads if the proposed amount of traffic on the up to two miles of gravel roads was approved. Mr. Ahlschlager also stated that emergency services, such as fire & ambulances, should be considered because they will have difficulty accessing the proposed development if the township cannot keep up the maintenance of the gravel roads.

Discussion

Commission Mohrhauser stated that he believes this rezoning will be a burden on the township, and that he is concerned with the fact that emergency services will only have one way to access the property.

Commissioner Kippley stated that the planning commission has been consistent in denying these type of requests in the past, but that he understands the need for more affordable housing. Commissioner Kippley then commented that he believes the comprehensive plan would need to be updated to allow for more housing options before the commission starts approving requests like the proposed rezoning.

Commissioner Duffy stated that she has concerns with the amount of septic systems that would be in place on the property, and she also understands the need for more affordable housing. Commissioner Duffy also commented that her experience on a township board gives her an understanding on the struggle to maintain township roads, and that she has concerns that the development would negatively impact the township gravel roads. Finally, Commissioner Duffy stated that this proposed request is not in an adequate location, and that this is not the right time to approve the request.

Action

A motion was made by Commissioner Mohrhauser to recommend **denial** of Rezoning #23-01. The motion was seconded by Commissioner Ralston. The motion passed unanimously with 5 votes in favor and 0 votes against the motion.

Rezoning #23-01 – Denial Recommended



ITEM 6. TEMPORARY USE PERMIT #22-03 to allow a temporary asphalt plant on the property legally described as Tract 3 Harr's Addition in the SW1/4 SE1/4 of Section 30-T102N-R50W, Benton Township.

Petitioner: Bituminous Paving Inc.

Land Owner: White Buffalo Ridge LLC

Location: Approximately ½ mile southeast of Interstate 90, Exit 390.

Staff Report: Kevin Hoekman

General Information:

Legal Description – Tract 3 Harr's Addition in the SW1/4 SE1/4 of Section 30-T102N-R50W, Benton Township.

Present Zoning: I1 Light Industrial

Existing Land Use: Vacant lot

Parcel Size – 13.28 Acres

Staff Report: Kevin Hoekman

Staff Analysis:

This request was first brought to the Planning Commission at the January 23rd meeting. Neighboring property owners brought up concerns about proposed asphalt plant and the operator expressed concerns over daytime time limits in the event that the work schedule pushes the operation into the fall. Since the last meeting, the petitioner submitted a narrative and several resources which explain the safety of asphalt manufacturing. The narrative explains the planned working season will be Labor Day through October 30th. Furthermore, the season could go longer depending when other contractors finish their portions of the job. This is what happened in the 2022 construction season which required the operator to begin work in November of that year.

Note: Since the first staff report was written, staff received many resources from opposition and from the applicant in regards to the effects of asphalt production. The Planning Commission normally receives information as a paper packet, but there would be simply too many pages to be practical in a paper packet. Therefore, resources which were attached to emails or the petitioner narrative will be available to the Planning Commission by email. Others may request an email or find the resources as part of the on-line packet for the February 27th, Planning Commission Meeting. To find the information go to www.minnehahacounty.gov, and navigate to the Commission tab and to the Meeting Information link. The packet of information will be available as a download in the Current and Upcoming Events section.

One concern which was brought up to the Planning Commission in January is the possibility of work happening during spring graduation party. The narrative states that the primary season for the operation will be Labor Day through October 30th, but the request doesn't rule out work earlier in the season. There is no description specifically removing dates from the calendar such as time for the neighbor's expected graduation party. Staff recommends dates such as the graduation party and holidays including Memorial Day, Independence Day, and Labor Day should be no work days to allow neighbors to enjoy the holidays in a traditional manner. Graduation Day for the West Central School District is May 13th.



Temporary uses are allowed within the zoning ordinance through a process which includes notifying neighbors within 600 feet of the property, and allowing two weeks of time for neighbors to respond with any opposition. If written opposition is received, then a public hearing is scheduled for the Planning Commission with the same rules as a conditional use permit. A temporary use permit has the maximum duration of one year.

The following is the previously written staff report with changes made to reflect new plans and narrative materials submitted by the petitioner.

This temporary use permit request is for a temporary asphalt plant on the property near Hartford. A similar temporary use permit request was approved for the company on this property for the 2022 construction season. When staff sent notices for this request, two neighbors responded with written opposition to the request. Complaints about the asphalt plant include noise during morning through night, lights, smell, pollution with smoke and blown dust, and additional truck traffic not always knowing which driveway to use for the plant. The emailed opposition letters are included with this report.

Staff received an emailed narrative for the proposed request which briefly describes the request. The duration of the temporary use is requested to last through December 1, 2023. The hours of operation are planned for 6:00 am to 9:00 pm Monday through Saturday. As a reference, the neighboring gravel pit is limited to the hours of 7:00 am to 6:00 pm. The narrative explains that reducing the hours of operation may result in extended timeframe of work to make up for lost time. Staff recognizes that limiting the hours of operations to daylight hours may extend the timeframe of work, but this should be balanced with neighbor concerns of long working days. The hours of 7:00 am to 7:00 pm is closer to the quarry operating hours, and it provides twelve working hours per day. This will be longer than daylight hours beginning in the end of September. The Planning Commission may further adjust the hours of operation if it is determined to be necessary.

Standards for Review:

The County Zoning Ordinance includes nine standards that shall be used to determine the suitability and compatibility of a temporary use request. Below is a list of standards with a description of how the proposed use meets the standard.

1) The temporary use will have no adverse effect on nearby properties or jeopardize public health, safety, and general welfare.

The written opposition presented to the planning department lists many items that are affecting the use of neighboring properties. The Planning Commission can place conditions to limit the hours of operation and limiting how lighting should be directed. Limiting the hours of operation will reduce nuisance time frame of noise and lighting but it will also increase the number of days that will be needed for the petitioner to complete the job. Staff recommends that lights are required to be redirected away from the two residential properties adjacent to the site. Water can be used on the property to suppress dust from aggregate piles and driveway access on the property. An asphalt plant will produce a smell and smoke that cannot be avoided, but the short duration of the operation can be managed on a property that is zoned I1-light industrial. The temporary use will be for one construction season.



2) The temporary use will not create hazardous traffic conditions or result in traffic in excess of the capacity of the roads serving the use.

The proposed temporary use has direct access onto SD Highway 38. The driveway access has gravel a short distance from the highway to prevent mud and debris from tracking onto the road. The highway can handle the additional truck traffic.

3) The site is adequate to accommodate the proposed use, including the provision for on and off site parking.

The property is large and can accommodate many off street parking location and loading of trucks. The site is being used to store recycled road products and aggregate for the asphalt mix process. The operation is located within the center portion of the parcel with aggregate storage on the south and east side.

4) Adequate sanitation facilities will be available on the site.

The application includes and explanation that about 30 people will be working on the site including truck drivers. In addition two portable toilets are planned for the site. The two portable toilets should be adequate for the number of workers on the site.

5) The time period and hours of operation for the temporary use are clearly specified.

The petitioner states within the application form that the requested hours of operation is 6:00 am to 9:00 pm with no working hours on Sundays. Staff previously recommended a condition limiting working hours to daylight hours. Limiting working hours to daylight hours may only extend the required time it takes to complete the job and move out of the site. Staff recommends meeting the requested hours of Monday through Saturday 6:00 am to 9:00 pm. This will allow a work free Sunday for neighboring property owners.

6) Provision is made for the removal, clean-up, and restoration of the site.

Prior to the temporary asphalt plant in 2022, the property was a vacant industrial zoned parcel. Many pieces of equipment, trucks, and aggregate storage is part of the asphalt plant. The petitioner must be required to remove the equipment and aggregate storage after the expiration of the temporary use permit.

7) The temporary use will not adversely impact the natural environment.

An asphalt plant will release some smells and gases regardless of the location of the temporary facility. The petitioner submitted some materials to support that an asphalt plant has low emissions. Included is a copy of the general permit from the State Department of Agriculture and Natural Resources for Bituminous Paving Inc. The proposed facility is located in an industrial zoned property adjacent to a State Highway. There is a need for asphalt production, and the impact on the natural environment will be the same regardless of location. This location has the advantage of proper zoning and easy access to the highway.

8) The site is suitable for the proposed temporary use, considering flood hazard, drainage, soils, and other considerations which may constitute a danger to life, health, or property.

This site is not within the flood hazard area. Berms are constructed around the perimeter of the property which will help reduce potential drainage concerns on the property.



9) All temporary improvements and any permanent structures proposed to be used will comply with all applicable provisions of the county's building code.

The proposed temporary use will not have any permanent structures. A couple temporary job site trailers are present as shelters, and these temporary trailers will not need any building code review.

Recommendation: Staff recommends **approval** of Temporary Use Permit #22-75 with the following conditions.

- 1.) Temporary Use Permit #22-03 is approved for a temporary asphalt plant from March 1st, 2023 until December 1, 2023. Any request for an additional time period for the temporary use shall require a new temporary use permit.
- 2.) If one (1) or more acre of area is disturbed, the applicant is required to obtain a General Permit from the Department of Agriculture and Natural Resources.
- 3.) The temporary use shall operate in the area of the as depicted on the submitted site plan.
- 4.) The hours of operation, including lighting, shall be limited to not starting before 7:00 am or extending after 7:00 pm.
- 5.) No operations shall take place on Sundays. No operations shall take place between May 8th through May 14th. No operations shall take place on the holidays of Memorial Day, Independence Day, and Labor Day.
- 6.) All temporary lighting must be positioned and directed away from residential dwellings or SD Highway 38.
- 7.) The portable asphalt plant shall be removed from the site by December 1, 2023.
- 8.) The access to the site shall use the existing access on South Dakota Highway 38.
- 9.) No loading or unloading is allowed on the highway.
- 10.) A minimum of a four inch thick gravel surface must be provided for the driveway beginning at the edge of South Dakota Highway 38 for a distance of 75 feet of the driveway.

Public Testimony

Kevin Hoekman, of county planning staff, explained to the commission that the petitioner for this request had submitted a withdrawal letter to the planning office, and that the commission would only need to vote to acknowledge this withdrawal.

Action

A motion was made by Commissioner Ralston to acknowledge the **withdrawal** of Temporary Use Permit #22-03. The motion was seconded by Commissioner Randall. The motion passed unanimously with 5 votes in favor and 0 votes against the motion.

Temporary Use Permit #22-03 – Withdrawn



ITEM 7. ZONING TEXT AMENDMENT #23-01 to amend the 1990 Revised Zoning Ordinance for Minnehaha County to add Vacation Home/Short Term Rental Regulations.

Petitioner: County Planning Staff

Staff Report: Scott Anderson

Staff Report: Scott Anderson

Staff Analysis: The need to address, accommodate and regulate vacation homes and short-term rentals has come to light over the past several months. This use will continue to present itself throughout the county and this proposed ordinance amendment attempts to provide a fair framework on how the use can be accommodated. The ordinance amendment identifies vacation homes and short-term rentals as a use that should be handled through the conditional use permit process. It identifies specific zoning districts where the conditional use will be allowed. The proposed text amendment sets up criteria that the Planning Commission and County Commission can use to evaluate the proposed use and also provide guidance to the applicants and neighbors on how the County will regulate the use and finally creates a definition.

The Planning Commission has heard from both concerned citizens and advocates of this use at several of the past meetings. Areas of concern that have been discussed at past meetings include a registry and complaints procedure. Staff believes that this is not necessary. The conditional use permit would require that current owner and any manager information be kept current at the Planning Department. Furthermore, the property owner information is always available through the Director of Equalization's tax data base. There has also been discussion on the need for a complaints process. This process already exists. When conditions of a conditional use permit are not being met, the public can and does contact the Planning Department. This will start a review process on the complaint which can lead up to the revocation of the conditional use permit and legal enforcement of the Zoning Ordinance.

The criteria proposed by staff attempts to be fair to the applicant and surrounding neighborhood in order that the use can be compatible. The proposed ordinance sets guidelines for the number of occupants per bedroom and requires minimum parking requirements. The contact information for the owner/manager will required to be posted on site and provided to the Planning Department for issues to be addressed by both renters and planning staff.

Recommendation: Staff recommends **approval** of Zoning Text Amendment #23-01 adding Articles 3.04(HH), 4.04(Q), 5.04(L), 9.04(X), 12.17 and 26.02(679A) to the 1990 Revised Minnehaha County Zoning Ordinance.

Public Testimony

Scott Anderson, the County Planning Director, explained the proposed text amendment and gave background information in order to clarify the reasoning for the ordinance amendment.

Commissioner Randall thanked Scott Anderson for his work on the text amendment, and that she would still like to see the occupancy regulation changed from two people per bedroom to three



people per bedroom.

Commissioner Mohrhauser asked Scott Anderson if the conditional use permits for a short term/vacation home rental would be transferrable between property owners. Mr. Anderson explained that every conditional use permit is assigned to the property and would be transferrable between property owners, unless the commission adds a condition of approval to the permit limiting the permit to the current owner.

Albert Huizing, of 2501 S Ascot Avenue, Sioux Falls, SD, stated that he is a member of the Short Term Rental Alliance of Sioux Falls, and that he wanted clarification on some of the points within the proposed ordinance. First, Mr. Huizing asked planning staff what the definition of a bedroom would be, given that some short term rentals utilize pull-out sofas in living rooms for additional guests. Scott Anderson explained that the zoning ordinance currently does not have a definition for a bedroom, and that he would need time to work on a definition that could be added to the ordinance amendment if the commission deems it necessary. Albert Huizing then asked if the off-street parking requirement includes both the garage and the driveway, or just the indoor parking. Scott Anderson explained that any off-street parking can be used to satisfy this requirement, including the driveway, as long as each parking space meets the minimum size requirement. Next, Mr. Huizing asked the commission if this ordinance adoption would require existing short term rentals to apply for a conditional use permit, or if they would be grandfathered uses that would be exempt from these regulations. Scott Anderson explained that any short term rental in the county that is currently in operation would need to apply for a conditional use permit and follow these proposed regulations, unless they have existed prior to 1983. Finally, Albert Huizing stated that he would like the maximum occupancy to be changed to four people per bedroom, in order to be more accommodating to a wider range of applications.

Commissioner Kippley then asked Albert Huizing if he knew how many short term rentals currently exist in the county that would need to apply for a conditional use permit to conform to these updated regulations. Mr. Huizing stated that he is only aware of a handful of existing short term rentals in county.

Billy Schlotter stated to the commission that the maximum occupancy criteria could be changed from a number of people per bedroom, to a number of people per a certain amount of square footage. Mr. Schlotter explained that this would accommodate requests that have larger bedrooms, and requests that have sleeping space in family rooms or living rooms.

Tyler Childress, of 47677 Slip Up Creek Road, Sioux Falls, SD, explained to the commission a South Dakota Supreme Court case that he believes would allow a short term rental as a special permitted use and not a conditional use. Mr. Childress also stated that it is his understanding that if a use is not specified within the zoning ordinance then that use is not allowed. He further stated that he believes if a long term rental is considered a typical residential use then a short term rental should also be considered a typical residential use that is permitted without a conditional use permit.

Commissioner Kippley asked Tyler Childress if he was aware that the Supreme Court case that he referenced was not specific to ordinances, and was answering a question in regards to restrictive



covenants. Mr. Childress stated that he believes the logic behind the Supreme Court decision can be used to justify short term rentals as a typical residential use within the zoning ordinance.

Lyle Bechtold, of 47614 Slip Up Creek Road, Sioux Falls, SD, stated to the commission that he would like to see more restrictions placed on short term/vacation home rentals, including noise restrictions and privacy fences.

John & Tina Beck, of 47645 Surrell Street, Sioux Falls, SD, stated to the commission that the county does not have a noise ordinance like the city of Sioux Falls, and that they want to see quiet hour regulations added to the proposed ordinance amendment. John Beck also stated that if the contact information for the property owner is only posted within the short term then the neighbors will not have access to this information, in order to contact the owner if they have issues with any of the guests. Mr. Beck then asked if the parking will be required to be on-site, or if off-site parking will be allowed. Finally, Mr. Beck asked what the requirements will be for other potential issues such as pets, garbage, and noise.

Scott Anderson explained to the commission that all parking for the short term rentals would be required to be on-site and off-street. Mr. Anderson also explained that the commission could add additional criteria to the ordinance amendment to include regulations they deem appropriate, or they could add conditions on a case by case basis for the individual conditional use permit requests.

Commissioner Ralston stated that this proposed ordinance would only set the general guidelines for the short term/vacation home rentals, and that each request would still be evaluated individually and the proper conditions could be added at that time.

Commissioner Kippley commented that the purpose of this ordinance amendment is to modernize the zoning ordinance in order to better accommodate short term rentals. Commissioner Kippley also stated that the proposed ordinance is a logical starting point, and not a large change from the precedent already set by the commission.

Ken Lambert, of 2415 W 57th Street Sioux Falls, SD, commented that if each request will need to go through the conditional use permit process then maybe the maximum occupancy and parking space regulations could also be handled on a case by case basis.

Discussion

Scott Anderson asked the commission if they would like him to research a definition for a bedroom that could be added to the amendment.

Commissioner Kippley stated that he believes using the common understanding of a bedroom would be appropriate, and that planning staff would be able to work with the individual applicants to determine the proper occupancy if the number of bedrooms in a house is in question.

Action

A motion was made by Commission Kippley to **amend** the maximum occupancy criteria for vacation home/short term rentals from two (2) people per bedroom to three (3) people per bedroom.



The motion was seconded by Commissioner Randall. The motion passed unanimously with 5 votes in favor and 0 votes against the motion.

Then a motion was made by Commission Kippley to **approve** the amended version of Zoning Text Amendment #23-01. The motion was seconded by Commission Ralston. The motion passed unanimously with 5 votes in favor and 0 votes against the motion.

Zoning Text Amendment #23-01 – Approval Recommended



**MINNEHAHA COUNTY
PLANNING COMMISSION
MEETING MINUTES**

FEBRUARY 27th, 2023

Old Business

None.

New Business

None.

Adjourn

A motion was made to **adjourn** by Commissioner Ralston and seconded by Commissioner Kippley. The motion was approved unanimously. The meeting was adjourned at 8:33 p.m.