



**MINUTES OF THE  
MINNEHAHA COUNTY PLANNING COMMISSION  
March 25, 2019**

A meeting of the Planning Commission was held on March 25, 2019 at 7:00 p.m. in the Commission Room of the Minnehaha County Administration Building.

COUNTY PLANNING COMMISSION MEMBERS PRESENT: Adam Mohrhauser, Mike Ralston, Ryan VanDerVliet, and Doug Ode.

**STAFF PRESENT:**

Scott Anderson, David Heinold, and Kevin Hoekman - County Planning  
Maggie Gillespie – States Attorney

Mike Ralston chaired the meeting and called the Minnehaha County Planning Commission meeting to order at 7:15 p.m.

**PUBLIC COMMENT.**

Commissioner Ralston opened the floor for public comment and nobody moved to speak.

**Consent Agenda**

Commissioner Ralston read each item of the consent agenda.

A motion was made to **approve** the consent agenda consisting of Items 1, 2, 3, 4, and 5 by Commissioner Ode and seconded by Commissioner VanDerVliet. The motion passed unanimously.

**ITEM 1. Approval of Minutes – February 25, 2019**

As part of the consent agenda, a motion was made by Commissioner Ode and seconded by Commissioner VanDerVliet to approve the meeting minutes from February 25, 2019. The motion passed unanimously.



**Consent Agenda**

**ITEM 2. CONDITIONAL USE PERMIT #19-13 to allow a Class B, Hog CAFO (1,500 Animal Units) on the property legally described as SW1/4 SW1/4 (Ex Stoterau's Addn.) and SE1/4 SW1/4, Section 13-T104N-R48W.**

Petitioner: Chad Stoterau

Property Owner: Terry Stoterau

Location: 48320 247<sup>th</sup> St.

Located approximately 4 miles  
northwest of Sherman

Staff Report: Kevin Hoekman

**General Information:**

Legal Description – SW1/4 SW1/4 (Ex Stoterau's Addn.) and SE1/4 SW1/4, Section 13-T104N-R48W, Logan Township

Present Zoning – A1 Agriculture

Existing Land Use – Farmstead and Cropland

Parcel Size – 76.49 acres

**Staff Report:** Kevin Hoekman

**Staff Analysis:**

The property is located approximately 4 miles northwest of Sherman. The petitioner would like to expand and existing swine operation with a new finishing swine barn. The requested 1,500 animal units allows the existing Class C operation to expand as desired and to allow some room for minor additional animals in the future. The farmstead and the adjacent residential acreage is owned by the petitioner's father.

The farm has both nursery swine (less than 55 lbs) and finishing swine (over 55 lbs). Each finishing swine is calculated at 0.4 animal units, and each nursery swine is calculated at 0.1 animal units. The petitioner has proposed a new swine finishing barn to hold 1,200 swine larger than 55 pounds. This barn will be in addition to an existing 1,200 head finishing swine barn for 960 animal units of finishing swine. In addition the petitioner plans on having 1,200 nursery swine on the site for a total 1080 animal units in the CAFO. The petitioner's written request for 1,500 animal units will allow for some expansion in future years if plans change on how many animals will be housed on the site. The size of the requested operation will trigger the requirement for the petitioner to obtain a State General Permit. In addition, the facility will have to comply with the provisions and requirements of the 1990 Revised Zoning Ordinance.

The site plan is an important aspect of any conditional use permit. A list of required elements for general CUPs and specifically CAFOs have been created to provide clarity for any petitioner requesting a CAFO. The required elements are listed in bold font at the beginning of the following paragraphs, and each listed element includes a description of the petitioner submitted materials that regard each element. The petitioner has provided a site plan with various information. In addition, a narrative was included to describe some aspects of the plan.



**The address of the property and the legal description.** The location of the proposed swine facility is addressed within the application form at 48320 247<sup>th</sup> Street. The application for the project also includes the legal description of the property.

**The name of the project and/or business.** The name 'Terry Stoterau Proposed Swine Confinement Barn' is included on the site plan. Terry Stoterau is the landowner and Chad Stoterau is the petitioner for the facility.

**The scale and north arrow.** The provided map includes a graphic scale and north arrow.

**All existing and proposed buildings or additions.** The site plan is drawn over an aerial photo that show where existing buildings are. The site plan includes one proposed new barn which will take the place of a couple existing barns. The new barn is to be located within the farmstead and protected by existing trees. The narrative includes that the lagoon will be discontinued of use.

**The dimensions of all buildings.** The dimensions of the proposed confinement building is listed on the site plan as 208 feet by 51 feet. Dimensions are not provided for most the existing buildings. The proposed new building is common for this type of swine facility.

**The distance from all buildings to the property lines at the closest points.** The site plan indicates that the proposed confinement structure will be setback approximately 632 feet from the center line of the road. The farmstead is on an 80 acre parcel of land, and it would be impractical to show the property lines from other directions a thousand feet or more away.

**Building height and number of stories.** The barn will be one story with a slatted floor to allow for manure to be stored in a pit. Agricultural buildings are exempt from general height requirements.

**Dimensions of all property lines.** The provided site plan shows that the facility is located on an 80 acre section of land. It would be impractical to include the property line dimensions in the permit.

**Parking lots or spaces; designate each space; give dimensions of the lot, stalls, and aisles.** The proposed land use is for agricultural purposes on a large lot in a farmstead. Parking lots and space requirements are typically calculated for commercial and industrial uses. The proposed site will use the existing access off of the township road, 247<sup>th</sup> Street. The site will be large enough to allow for parking and maneuvering. No parking or loading will be allowed within the right-of-way.

**Screening including height, location, and type of material to be used. - And similarly - The landscape setback and trees indicating the species of trees and materials to be used for landscaping.** The proposed addition to the existing CAFO will take place



within the existing farmstead. The farmstead is surrounded by an existing grove of trees on the north, east, and west sides. There is no plan for additional trees at this time; however, a tree plan may be required if a waiver is not received by the property owner of the dwelling to the southwest of the site.

**Name and location of all adjacent streets, alleys, waterways and other public places.**

The site plans include the name of the nearest street. The nearest water source is an intermittent stream located north of the farmstead by about 150 feet from the tree grove. This is enough to meet setback requirements. No public parks or other places are located nearby.

**A grading Plan designed to minimize contamination of stormwater runoff from manure containment facilities or animal pens.** The existing manure lagoon will be discontinued and manure will now be stored within an enclosed pit under the animals. The Minnehaha County GIS indicate that the general slope flows to the north of the proposed site.

**The location of all existing and proposed structures, including manure containment facilities and confinement buildings and corrals. All new structures and corrals shall be located a minimum of 50 feet from any property line.** The aerial photos within the site plan show the existing buildings. The proposed building is located within the farmstead and will take the place of a couple of existing barns. One of the existing barns crosses the property line between two quarter sections of land. Both parcels are owned by the petitioner. If the property was to be parceled separately the property lines must be platted 50 feet from the existing and proposed buildings. The submitted site plan includes that animal waste facilities will be located under a slatted floor where the hogs will be kept. The existing hog confinements are also located within enclosed structures.

In relation to the site plan, the 1,500 animal unit operation will require a 1,980 foot buffer from a dwelling, church, or business. Staff used GIS to confirm the setback distance indicated on the petitioner's site plan. The 1905 feet appears to be accurate for the dwelling to the northwest. The setback for the dwelling to the northwest may be reduced by the Planning Commission when the existing tree grove is considered as part of the plan. Another dwelling is located to the southwest of the farmstead. Staff would adjust the site plan setback distance by measuring from the existing barn which will remain active in the future. Staff finds that the dwelling to the Southwest is approximately 1,770 feet away from the CAFO. This is in a direction which does not have existing trees and the owner of the dwelling has not signed a waiver. The Commission can approve the CAFO with requirement to plant trees to the standards of the Minnehaha Conservation District between the CAFO and the dwelling to the southwest. If the petitioner is able to obtain a signed waiver, the requirement for planting trees can be removed by the Planning Commission. All other setbacks are met.

In addition to site plan elements, an application for a CAFO is required to submit other plans and meet requirements. The petitioner's narrative provides a basic description of the proposed facility. A dead animal disposal plan explains that animals are temporarily stored within the



structures until a rendering service is available. The county zoning ordinance requires that dead animals be placed out of view of the right-of-way and neighboring properties.

Manure is planned to be managed as a liquid that will be stored in a concrete pit below the barn. The existing lagoon is to be discontinued. The liquid manure will be planned to be injected in the fall primarily once per year. Spring application may happen in the event of an emergency.

**Conditional Use Permit Criteria:**

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

The proposed CAFO is located within a low density and predominantly agricultural area. The site is largely surrounded by a grove of trees and more can be planted to meet setback requirements for the nearby dwelling to the southwest of the CAFO. Since the surrounding area is primarily agricultural land uses, the proposed CAFO will have little effect on current use and enjoyment of surrounding properties. The proposed location may be advantageous for the area in that the barn is located near an existing facility rather than separating facilities throughout the section.

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

The surrounding land uses of the proposed CAFO are predominantly agricultural with scattered single family dwellings and farmsteads. There is potential for further development of agricultural uses, such as more CAFOs, and residential uses in farmsteads and acreages. The land use of a CAFO will unlikely affect further agricultural development in the area, especially since several of the farmsteads in the area already have animals confined on farmsteads.

As intense land uses such as CAFOs increase in numbers, residential uses may become less desirable in close proximity to this type of project. Locating this CAFO near an existing facility should help reduce the negative aspects that would affect future development. Future residential development will be required to have the Right-to-Farm Covenant placed on the deed prior to construction of a dwelling.

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

The proposed facility indicates that an existing access is planned to be used as the driveway for the facility. The petitioner will have to acquire and extend any utilities to the proposed facility. Grading and drainage are described in the narrative to be directed away from the proposed barn.

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

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

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

The petitioner is requesting a new CAFO facility. The inherent nature of a CAFO like this has



the potential to create nuisances if not managed properly. This is especially true for odor, fumes, and dust. The petitioner has submitted management plans and site plans. Any management practices included in the narrative will be expected to be carried out. In addition, the Planning Commission has the ability to add conditions if they feel the petitioner's plans and staff recommendations are inadequate to mitigate nuisances.

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

The proposed swine CAFO will have to comply with the conditions of this permit and the regulations for CAFOs in the 1990 Revised Zoning Ordinance for Minnehaha County. These rules and regulations are designed to allow for development while preventing much of the potential harms that a CAFO facility may create. The facility is also required to obtain a State permit because of the close proximity to an existing CAFO.

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

**Recommendation:**

Staff finds that the proposed facility meets the requirements of the ordinance and goals of the comprehensive plan. Staff recommends **approval** of CUP #19-13 with the following conditions:

- 1.) The facility shall be limited to swine confinement of 1,500 animal units in size.
- 2.) Trees must be planted according to the County Zoning Ordinance between the CAFO and the nearest dwelling to the southwest in order to meet setback requirements.
- 3.) The CAFO shall comply with all applicable regulations of the County Zoning Ordinance.
- 4.) The facility shall conform to the submitted site plans. Any minor changes may be approved by the Planning Director at the Minnehaha County Planning Department. Major changes will require an amendment to this permit and a public hearing.
- 5.) The proposed CAFO must obtain the State General Permit prior to the facility being populated with more than 1,000 animal units.
- 6.) The proposed barn shall have engineer certified drawings that shall be submitted for review by the Building Inspector prior to the issuance of a building permit.
- 7.) A building permit is required for all structures prior to construction.
- 8.) The Planning & Zoning Department reserves the right to enter and inspect the CAFO at any time, after proper notice to the owner, to ensure that the property is in full compliance with the conditional use permit conditions of approval and Minnehaha County Zoning Ordinance.



**Action**

As part of the consent agenda, a motion was made by Commissioner Ode to **approve** Conditional Use Permit #19-13 and seconded by Commissioner VanDerVliet. The motion passed unanimously.

**Conditional Use Permit #19-13 – Approved**





ITEM 3. REZONING #19-04 to rezone from the A-1 Agricultural District to the C Commercial District property legally described as a Portion of Eggen's Tract 1B (Except N8'), N1/2 SW1/4, Section 27-T103N-R49W

Petitioner: Mark Crisp

Property Owner: same

Location: 25472 475<sup>th</sup> Ave. - Located approximately 5 miles south of Baltic

Staff Report: Scott Anderson

**General Information:**

Legal Description – a Portion of Eggen's Tract 1B (Except N8'), N1/2 SW1/4, Section 27-T103N-R49W

Present Zoning – A1 Agriculture

Existing Land Use – vacant

Parcel Size – approximately .27 acres

**Staff Report:** Scott Anderson

**Staff Analysis:** The subject property is located between Renner and Baltic on SD Highway 115. The site has been a commercial property for over 20 years. The properties surrounding this parcel are zoned agricultural; however the property to the north has been used as a public greenhouse and nursery. The subject property has been an auction facility in the past, but is currently vacant.

Envision 2035, Minnehaha County's recently adopted comprehensive plan, encourages commercial uses at interstate highway interchanges and high traffic intersections. One of the goals is to encourage growth of the County's economic base. This is an existing commercial parcel that is requesting to slightly enlarge the parcel size, thus increasing its commercial viability.

The property owner is seeking to rezone approximately .27 acres directly east of the existing commercial lot. The enlarged commercial property will be enhanced and better able to be utilized. The subject property meets the criterion of the County's Envision 2035 Comprehensive Plan and is an expansion of the existing commercially zoned parcel.

**Recommendation:** Staff recommends **approval** of Rezoning #19-04 to rezone the subject property from A-1 Agricultural District to C Commercial District.

**Action**

As part of the consent agenda, a motion was made by Commissioner Ode to **recommend approval** Rezoning #19-04 and seconded by Commissioner VanDerVliet. The motion passed unanimously.

**Rezoning #19-04 – Recommend Approval**





ITEM 4. CONDITIONAL USE PERMIT #19-14 to allow a Motor Vehicle Repair Shop on the property legally described as Lot 4, Block 4, Brower Addition, SW1/4, Section 27-T101N-R51W.

Petitioner: Joshua Dean Hamann

Property Owner: Dean Stockwell

Location: 26062 Ashley St.

Located approximately 0.5 mile south of  
Hartford

Staff Report: David Heinold

**General Information:**

Legal Description – Lot 4, Block 4, Brower Addition, SW1/4, Section 27-T102N-R51W

Present Zoning – I-1 Light Industrial District

Existing Land Use – Industrial/Commercial

Parcel Size – 1.57 Acres

**Staff Report:** David Heinold

**Staff Analysis:**

The applicant is requesting to operate a general auto repair facility to include basic repairs, transmissions, engines, tires, and batteries. The written narrative describes that there will be no outdoor storage on the property. The proposed hours of operation to begin will be 5 pm to 10 pm, Monday thru Friday and 10 am to 11 pm on Saturday. The business will only be open for emergencies or appointments on Sundays.

On March 11, 2019, staff conducted a site visit and took pictures of the subject property where the proposed business will be located in one of two multi-tenant commercial buildings. The property has mutual access provided by a driveway to both Ashley Street and Kelsey Drive. The proposed business is appropriate for the immediate area and conforms to the zoning ordinance requirements.

**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.**

Much of the surrounding area is already developed with existing commercial and industrial uses. There should be no effect upon property values because there is no change in the appearance of the structure. A change in the intensity of use may cause negative issues for the use and enjoyment of other property in the immediate vicinity such as noise, smell, vibration, among other nuisances.



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

Currently, there are a wide variety of land uses located within the Brower Addition Industrial Park. The proposed use should not negatively affect the future growth of the area due to the proximity to Interstate I-90 and the City of Hartford. The subject property is located within the growth area for the City of Hartford as identified by the City's Comprehensive Plan, which shows the immediate area as an area for future industrial and commercial businesses.

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

The petitioner has listed all of the necessary utilities for the proposed business listed in the narrative. There is no city sewer or water connection south of Interstate I-90; therefore, the petitioner must provide for their own water service through Minnehaha Community Water and holding tank for removal of wastewater. There is existing access to both Ashley St. and Kelsey Dr. through the established development. Although it is not specified which driveway will be utilized for the business, it appears that Ashley St. will be the primary ingress/egress due to the proximity to the business.

The building complex appears to be full with many vehicles parked in front of the separate rental units that are approved for similar uses. As a result, the amount of vehicle traffic on the gravel driveway aisles between buildings appears to create poor drainage of stormwater runoff from the buildings and concrete parking pads. Although, the property owner would be responsible for addressing the drainage concerns within the existing development area. The petitioner plans on using a holding tank, which must be pumped for proper disposal at a treatment plant.

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

The Zoning Ordinance requires four (4) parking spaces per the identified land use, which the petitioner shows enough land area immediately adjacent to the proposed shop on the east side of the existing building for employee and client parking. The applicant has indicated that they plan to provide no more than four parking spaces at the business as part of the conditional use permit request. No parking will be allowed in the public right-of-way.

The applicant has indicated a desire to park additional vehicles on adjacent land. Staff suggests that the property owner put together a parking plan to meet the zoning ordinance requirements. At this time, the applicant will need to submit a different site plan that shows all proposed parking areas before additional off-site parking areas can be approved. No off-site parking is allowed without the submission of a parking plan to the County Planning Director. The use of the adjacent land for parking cars is prohibited until appropriate approval has been given by the County Planning Director.

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

The petitioner must ensure that all waste is properly disposed at the appropriate facility. The narrative states that hazardous waste removal will be handled by Jemco of Brandon and all waste



will be kept in drums indoors. There are other similar uses already in operation in the Brower Addition, especially within the storage unit complex that the proposed business will be located.

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

The subject property is located in the Transition Area for the City of Hartford as identified by the Envision 2035 Comprehensive Plan. The City of Hartford also identifies this area in the Hartford Comprehensive Plan as future industrial and commercial land. Goal 4 of the Envision 2035 Comprehensive Plan states to promote the orderly development of unincorporated land that will likely be annexed into a municipality in both the short and long term. The result of this action is to focus new growth and development within municipalities or areas adjacent to existing municipalities where infrastructure will be available.

Minnehaha County Planning Staff sent the conditional use permit application and submittal documents to the City of Hartford administration to obtain comments from the City Planning Commission on the proposed use. The City of Hartford Planning and Zoning Board reviewed conditional use permit application #19-14 and agrees with the County Staff recommendation.

**Recommendation:**

Minnehaha County planning staff recognizes the proposed use as compatible with the surrounding land uses and the Envision 2035 Comprehensive Plan. Staff recommends **approval** of Conditional Use Permit #19-14 with the following conditions:

1. The use conducted within 26062 Ashley Street, Unit #10 shall be limited to the repair of motor vehicles with no outside storage of parts, materials, or scrap.
2. The operator must obtain and maintain any required state or federal permits.
3. The loading and unloading of vehicles to and from transport must take place on the property and not within the right-of-way.
4. A building permit is required before any signs are enlarged or erected.
5. Parking of vehicles must be setback 15 feet from any right-of-way line. All vehicles must be parked adjacent to the building unit inside lined parking spaces on the concrete pad.
6. 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.
7. The hours of operation shall be 5 pm to 10 pm, Monday thru Friday and 10 am to 11 pm on Saturday. The business shall only be open for emergencies or appointments on Sundays.
8. All wastewater shall be contained in a holding tank to be pumped for proper disposal at a public wastewater treatment plant.
9. 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 Ode to **approve** Conditional Use Permit #19-14 and seconded by Commissioner VanDerVliet. The motion passed unanimously.

**Conditional Use Permit #19-14 – Approved**



**ITEM 5. CONDITIONAL USE PERMIT #19-16 to allow a Small Dog Breeding Kennel on the property legally described as NW1/4 NW1/4 NW1/4, Section 23-T101N-R48W.**

Petitioner: Steve Kielman

Property Owner: Steven & Amber Kielman

Location: 48209 265<sup>th</sup> St. Located approximately 3 miles east of Sioux Falls

Staff Report: David Heinold

**General Information:**

Legal Description – NW1/4 NW1/4 NW1/4, Section 23-T101N-R48W

Present Zoning – A-1 Agricultural District

Existing Land Use – Residential

Parcel Size – 10 Acres

**Staff Report:** David Heinold

**Staff Analysis:**

The petitioner is requesting conditional use permit approval to allow a Small Dog Breeding Kennel to breed and raise French Pointer hunting dogs to sell across the continental United States. There are no scheduled hours of operation with only about three to five visitors per year expected due to sales of the puppies conducted privately.

On March 11, 2019, staff conducted a site visit and took pictures of the proposed areas for the operation of a dog training and breeding kennel. The proposed training area will be in the area between the two existing accessory buildings surrounded by a fence on the subject property. The dog training and breeding kennel is appropriate for the immediate area.

**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 surrounding area consists of many residential acreages along 265<sup>th</sup> Street and farmland to the south of 265<sup>th</sup> St. There should not be a significant impact to property values in the immediate vicinity with the changes proposed for the subject property. The proposed use will either be conducted in the existing single family dwelling or a heated facility about 20 yards from the applicant's home.

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

The majority of surrounding property is already developed with single family dwellings on relatively large lots with the remainder of land used for agriculture. The future development of agricultural land is entirely dependent on the availability of building eligibilities and/or municipal annexation. The addition of a home occupation business should not negatively affect the development of existing farmland and residential properties in the immediate vicinity.



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

The narrative describes how they plan to manage the manure generated from the breeding and training operation, which will be handled as the need arises. No other facilities need to be provided for the proposed use.

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

The petitioner has provided enough space for the anticipated number of visitors per year as result of the nature of the proposed breeding and training operation. The driveway can accommodate this number of guests should there be a need for an on-site visit. The petitioner does not plan to have frequent visitors to the property for the dog training and breeding kennel business.

**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.**

Due to the nature of the proposed use, there is potential for odor and noise concerns from the dogs. The petitioner has prepared a response plan to mitigate any nuisances or annoyances for neighboring property owners in their training efforts with significant investment in bark collars and privacy fencing. Although it may be difficult to prevent all barking, these actions taken by the petitioner would significantly reduce the noise generated by barking dogs. 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.

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

The subject property is located in the Transition Area for the City of Brandon as identified by the Envision 2035 Comprehensive Plan. The Envision 2035 Comprehensive Plan states that the Transition Areas within the county have the primary purpose of maintaining the rural landscape until the eventual development of residential and/or municipal development.

**Recommendation:**

Staff finds this dog training and breeding kennel is an adequate accessory use for this residential lot. Staff recommends **approval** of Conditional Use Permit #19-16 with the following conditions:

1. That the dog training and breeding kennel shall remain as an accessory use to the property as a residential dwelling. If the property ceases to be residential property then the dog training and breeding kennel shall cease.
2. Client owned dogs shall remain locked inside during the night and early morning hours of 9:00 pm to 8:00 am.
3. All waste shall be disposed in conformance with the Solid Waste Ordinance.
4. No parking shall be allowed on the public Right of Way at any time.
5. An on premise sign may be permitted for identification of the site. The sign must be no larger than 2 square feet in size.
6. That the Planning & Zoning Department reserves the right to enter and inspect the premises, 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 Ode to **approve** Conditional Use Permit #19-16 and seconded by Commissioner VanDerVliet. The motion passed unanimously.

**Conditional Use Permit #19-16 – Approved**





**Regular Agenda**

ITEM 6. REZONING #19-01 to rezone from the I-1 Light Industrial District to the R-1 Residential District on the property legally described as Lots 1-6, Block 5, Rowena Original, Section 26,-T101N-R48W.

Petitioner: Deb Larson

Property Owner: same

Location: 48272 South Dakota State Highway 42

Located approximately 4 miles east of Sioux Falls

Staff Report: David Heinold

**General Information:**

Legal Description – Lots 1-6, Block 5, Rowena Original, Section 26-T101N-R48W

Present Zoning – I-1 Light Industrial District

Existing Land Use – Residential

Parcel Size – 1.53 Acres

**Staff Report:** David Heinold

**Staff Analysis:**

The applicant is requesting to rezone approximately 1.53 acres from the I-1 Light Industrial District to the R-1 Residential District to align the zoning of the property with the current use. Currently, the property owner maintains the existing house on Lots 4, 5, and 6 with the remaining Lots 1, 2, and 3 vacant. The proposed change of zoning would bring the property to match the residential zoning of adjacent land to the south and east. The land to the west is primarily zoned commercial and the property to the north is zoned light industrial.

The subject property is located within the Rural Service Area known as the unincorporated town of Rowena identified by the Envision 2035 Comprehensive Plan for Minnehaha County. Goal 5 states to support the orderly development of non-agricultural land uses. The result of this is to support development around rural service areas and intersections that are delineated on the land use map and are compatible with existing land uses.

On February 13, 2019, staff visited the property and determined that the proposed rezoning from I-1 Light Industrial District to the R-1 Residential District is appropriate for the immediate area. There is an existing house on one half of the subject property and the other half is vacant.

**Staff Update:**

Since the past Planning Commission meeting, County Planning Staff is developing a written update addressing the public testimony and planning commissioner discussion at the February 25, 2019 Planning Commission meeting.

On February 26, 2019, the petitioner visited the county planning staff to discuss the rezoning application. Staff provided a few of the suggestions that were discussed at the planning



commission meeting such as keeping two of the lots zoned light industrial to act as a buffer between land uses as well as for the petitioner to meet with the neighboring property owner to mitigate any potential effects of rezoning their property to residential.

Residential Policy 5 of the Red Rock Corridor Plan aims to protect existing residences from encroachment of new development by buffering and screening. The result of leaving two of the lots zoned light industrial would accomplish this policy and not detract from the future growth of the Rowena unincorporated area as laid out in the Red Rock Corridor Plan.

On March 7, the applicant visited the planning office to discuss the proposed rezoning. The discussion focused on the options for helping to mitigate the effect of the proposed rezoning on adjacent landowners. The applicant would like to retain the existing house and have the right to build a new house if a natural disaster were to completely destroy the entire structure.

Currently, the subject property is used as a residential single family dwelling. The adjacent commercial land uses are already required to meet a minimum 30-foot wide bufferyard of trees evenly spaced according to the length the property boundary abutting a residential land use. The chart below describes the bufferyard requirements for land uses within the Red Rock Corridor Overlay District.

<b>Table 1: Bufferyards (width in feet)</b>				
	<i>Neighboring Use</i>			
<i>Developed Use</i>	Agricultural	Residential	Commercial	Industrial
Agricultural				
Residential				
Commercial		30	15	10
Industrial		40	20	15

The applicant provided an explanation letter for the proposed rezoning request to change the zoning from I-1 Light Industrial District to the R-1 Residential District for your review. Staff is including a copy of the Buffer Requirements as listed in the Red Rock Corridor Overlay Zoning District in your packet as well.

**Recommendation:**

Staff finds the proposed rezoning from the I-1 Light Industrial District to the R-1 Residential District is consistent with the goals and policies of the Envision 2035 Comprehensive Plan and recommends **approval** of Rezoning #19-01.



**Public Testimony**

David Heinold, County Planning Staff, presented a brief update for Rezoning #19-01 from the February 25, 2019 Planning Commission meeting.

Deb Larson, 1301 S. Suburban Ave., explained that the property was sold as residential and there is no business on the subject property.

Commissioner Ralston called for public testimony but there was no answer.

Commissioner Ralston closed the floor to public testimony.

**Discussion**

Commissioner Ode mentioned that the existing house has been there while he was growing up in the area.

**Action**

A motion was made to **recommend approval** of Rezoning #19-01 by Commissioner Ode and seconded by Commissioner Mohrhauser. The motion passed unanimously.

**Rezoning #19-01 – Recommend Approval**



**ITEM 7. CONDITIONAL USE PERMIT #19-15 to amend CUP #06-20 to amend condition #1 to allow 8,000 animal units on the property legally described as Lot 1, Moody County Dairy Subd., Gov’t Lots 1 & 2, SE1/4, Section 10-T104N-R47W.**

Petitioner: Lynn Boadwine

Property Owner: same

Location: 48772 246<sup>th</sup> St.

Located approximately 4 miles north of Sherman

Staff Report: Kevin Hoekman

**General Information:**

Legal Description – Lot 1, Moody County Dairy Subd., Gov’t Lots 1 & 2, SE1/4, Section 10-T104N-R47W

Present Zoning – A1 Agriculture

Existing Land Use – Class A Dairy CAFO

Parcel Size – 98 acres

**Staff Report:** Kevin Hoekman

**Staff Analysis:**

The property is located approximately 4 miles north of Sherman along township road 246<sup>th</sup> Street. The petitioner would like to expand an existing Class A dairy CAFO that holds 5,999 animal units to a Class A dairy CAFO with 8,000 animal units (4,300 cows and 2,000 Heifers). This proposal does not change the classification of the CAFO size, and the facility will be required to maintain its State General Permit from the SD Department of Environment and Natural Resources.

This property received a permit from Minnehaha County in 2006, and began construction in 2007. Included with this report is a couple photos of the site; one photo from 2007 and the other from 2017 which shows some of the changes over the years of the site.

The site plan is an important aspect of any conditional use permit. Below is a list of required elements for general CUPs as well as the last two elements that specifically address requirements for CAFOs. The required elements are listed in bold font at the beginning of the following paragraphs, and each listed element includes a description of the petitioner submitted materials that regard each element. The petitioner has provided a site plan that shows many details with existing infrastructure. In addition, a one page narrative was submitted to accompany the application and site plan. Some of the required site plan elements are described within the narrative.

**The address of the property and the legal description.** The address of the expanding dairy CAFO is 48772 246<sup>th</sup> Street, as it is shown on the application. The application also includes the legal description of the property.



**The name of the project and/or business.** The dairy is called Moody County Dairy, and the name is on the site plan.

**The scale and north arrow.** The site plan includes a north arrow and a graphic scale.

**All existing and proposed buildings or additions.** The site plan includes an aerial photo as the background of the map. The aerial photo shows the locations of existing buildings, lagoons, and other parts of the CAFO operation. The site plan includes one proposed barn on the north side of the facility.

**The dimensions of all buildings.** The dimensions of the proposed confinement building and existing buildings are listed on the site plan.

**The distance from all buildings to the property lines at the closest points.** The site plan does not include distances of facilities to property lines. Lot one is an irregular shaped lot that roughly follows the outside of the dairy. The remaining portion of the quarter section functions as part of the operating CAFO. The proposed new structure appears that it will meet the required 50 feet setback from the north property line of Lot 1 Moody County Dairy Subdivision. It certainly meets the 50 feet setback from the north line of the quarter section. Adjustments can likely be made to make one of the options work to meet requirements. All other confinement buildings and manure containment facilities are existing on the property. Most of these structures meet the required setbacks.

**Building height and number of stories.** The height of the building is not included in the narrative or site plan. It is likely that an animal feeding barn will have only one story to keep the animals. Agricultural structures do not have a height limitation.

**Dimensions of all property lines.** The dimensions of the property lines are not included on the site plan. The property is approximately 98 acres in size. The platted lot is entirely within the SE ¼ of the section.

**Parking lots or spaces; designate each space; give dimensions of the lot, stalls, and aisles.** The proposed land use is for agricultural purposes on a large lot. Parking lots and space requirements are typically calculated for commercial and industrial uses. The proposed site will use the existing access off of 246<sup>th</sup> Street. The site will be large enough to allow for parking and maneuvering. No parking or loading will be allowed within the right-of-way.

**Screening including height, location, and type of material to be used. - And similarly - The landscape setback and trees indicating the species of trees and materials to be used for landscaping.** An existing and mature grove of trees are located south of the lagoons and separate the lagoons from a couple on site dwellings. Another existing



shelter belt is located along the entire west side of the dairy and approximately the west half of the north side of the site. As these trees grow the benefits of wind, odor, and visual barriers should increase.

**Name and location of all adjacent streets, alleys, waterways and other public places.**

The nearest street is 246<sup>th</sup> Street where the dairy is addressed from. There are also no known public places around this facility either.

A Class 'A' CAFO is required to meet a setback of 100 feet from the nearest Intermittent Stream or Waterway. Staff has found that there is an intermittent stream that runs through a portion of the property in the northeast side. A couple of the lagoons for the dairy have been constructed closer than 100 feet to the intermittent stream. One lagoon (Pond 2 on the site plan) was built in 2007 with initial construction and the other (Pond 5 on the site plan) was built approximately 2012. The planning department does not require building permits for lagoon construction, and the construction of a manure containment facility is not typically overseen at the county level. However, the dairy has received state permit form the DENR. The state permit is designed to prevent water pollution for both ground water and surface water, and the 100 feet setback is also design to protect surface water. The proposed expansion will not encroach further on the intermittent stream. Further discussion on the intermittent stream can be found under the Additional Considerations section later in this report.

**A grading Plan designed to minimize contamination of stormwater runoff from manure containment facilities or animal pens.** The animals will be housed within the barns. Manure containment will be located within the lagoons located directly east of the barns. The rim of the lagoon is higher in elevation than the surrounding land and the animals are kept under a roof at all times.

**The location of all existing and proposed structures, including manure containment facilities and confinement buildings and corrals. All new structures and corrals shall be located a minimum of 50 feet from any property line.** The proposed new structure appears that it will meet the required 50 feet setback from the north property line of Lot 1 Moody County Dairy Subdivision. It certainly meets the 50 feet setback from the north line of the quarter section. Adjustments can likely be made to make one of the options work to meet requirements.

**Setbacks and other requirements.**

In relation to the site plan, the 8,000 animal unit operation will require a 3,960 foot buffer from a dwelling, church, or business. The property owner of a dwelling, church, or business may sign a waiver to reduce the required setback. The setback can also be reduced by half to 1,980 feet if trees are planted as designed by the Minnehaha Conservation District or a Professional Landscape Architect as required by the Zoning Ordinance. Three dwellings are located within the 3,960 foot buffer. Waivers have been submitted for properties that require a waiver for setback reduction. The situation for these three properties are described below



A dwelling to the northeast is located approximately 1,500 feet from the northeast corner of the property line of the CAFO, but this dwelling is owned by Moody County Dairy and no waiver will be needed for this dwelling.

A dwelling to the southwest is located approximately 2,785 feet (a little farther than ½ mile) from the southwest corner of the property line of the CAFO. A waiver for setback reduction has been signed by the property owner.

A dwelling to the northeast is located approximately 3,510 feet (approximately 2/3 mile) from the northwest corner of the property line of the CAFO. A waiver for setback reduction has been signed by the property owner.

The county Zoning Ordinance requires setbacks from a CAFO to municipalities. The nearest municipality to Moody County Dairy is Jasper Minnesota. Jasper MN is a Second Class city with a population between 500 and 5,000. As a Second Class city, the dairy must meet 1.5 mile setback from the city limits. Staff finds that Jasper MN is approximately 2.3 miles northeast of the dairy, and the setback requirement is met.

In addition to site plan elements and setbacks, an application for a CAFO is required to submit other plans and meet requirements. The petitioner's narrative explains the manure management will be updated for separating bedding sand from manure. The manure is expected to maintain existing operation styles of cell lagoons which carry liquid manure and maintained to form crusts when possible to reduce smells. Manure in the original permit is noted to be placed in the fall and according to DENR requirements. According to the narrative the operation has a contract with a rendering service to remove dead animals. And the facility has a program in place to reduce insects and flies including insecticides and habitat limitations.

Since this request is for an expansion of an existing facility, this CUP will amend the conditions of CUP 06-20. CUP 06-20 was approved with nine conditions. Many of these conditions pertain to the process of building the facility in phases and have been met. Other conditions are ongoing and active. The Planning Department receives regular updates of the state permit validating the approved nutrient management plan. With the conditions complete and continuing (all the conditions are included in the staff recommendation), only the first condition is being requested for change by the petitioner. The original first condition is located below in italics. The suggested rewritten condition is written below that.

Change from:

- 1.) *The maximum size of the facility shall be limited to 5999 animal units. The facility shall be developed in three phases. Phase 1 shall be up to 500 animal units in size, Phase 2 shall be up to 1000 animal units in size, and Phase 3 shall be anything over 1000 animal units in size.*

Change to:





- 1.) The maximum size of the facility shall be limited to 8,000 animal units.

**Conditional Use Permit Criteria:**

As part of any conditional use permit request, the Planning Commission is required to consider several criteria.

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

The proposed CAFO expansion is located within predominantly agricultural area and this proposal is expanding an existing site that was originally permitted in 2006. A few of the nearby dwellings are owned by the farm operation or built for employees of the farm. Other dwellings are on farmsteads and acreages. A tree grove has already been planted on the west side of the property. An established grove of trees is also located south of the lagoons. The grove should aid in the reduction of wind, smell, and visibility of the farm. Additional trees are planned on the north side of the property for the same reason. Staff has received complaints of smell during the application of manure. The complaint was followed with site visits which found manure to be applied by injection as required by the ordinance. The most likely time of year to have nuisance smells is likely during application of manure.

The proposed use is an expansion of an existing use. The expansion will increase the number of allowable animal units on the property by 2,000 animal units (33%). All the animals will still be located within barns and the lagoons will remain at the current sizes. The tree belt should reduce smells and site lines of the facility.

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

The surrounding land uses of the proposed CAFO are predominantly agricultural with several single family dwellings and farmsteads. Agricultural uses such as crops and livestock will likely continue into the future of the area. The expansion of a CAFO will unlikely affect further agricultural development in the area, and it may increase value with easy access to manure for fertilization of the soils. In general, when intense land uses such as CAFOs increase in numbers, residential uses may become less desirable in close proximity to this type of project. Expanding an existing facility should help reduce the negative aspects that would affect future development. Future residential development will be required to have the Right-to-Farm Covenant placed on the deed prior to construction of a dwelling.

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

The proposed facility will use the existing driveway. The petitioner will have to extend any utilities to the proposed new barn. Grading and drainage are shown on the site plan.

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

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



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

The petitioner is requesting an expansion of an existing CAFO facility. The inherent nature of a CAFO like this has the potential to create nuisances if not managed properly. This is especially true for odor, fumes, and dust. The petitioner states management plans and are in place for reducing nuisance flies. Any management practices included in the narrative will be expected to be carried out. In addition, the Planning Commission has the ability to add conditions if they feel the petitioner's plans and staff recommendations are inadequate to mitigate nuisances.

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

The proposed CAFO expansion will have to comply with the conditions of this permit and the regulations for CAFOs in the 1990 Revised Zoning Ordinance for Minnehaha County. These rules and regulations are designed to allow for development while preventing much of the potential harms that a CAFO facility may create. The facility is also required to obtain a State permit because of its size and location on a mapped aquifer.

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

**Additional Considerations:**

Earlier in the staff report there was an explanation of how the existing lagoons for the dairy are encroaching on the 100 foot setback from an intermittent stream that runs through the property. This situation is a concern for planning staff. The Planning Commission may take several actions. This first potential action is to acknowledge that the error has happened and ensure that no further encroachment will happen in the future. Another possibility is to require the petitioner to obtain a variance to reduce the required setback. And finally the Commission may require corrective action to comply with the permit. Staff finds that the intent of the 100 foot setback is to prevent surface runoff from a CAFO to contaminate water. The site has been designed to not allow runoff from entering the intermittent stream and for the lagoons to contain manure. The State DENR requires manure containment structures to be properly sized for this size of facility. The state safeguards and the intended purpose of the ordinance may be adequate for moving forward with expansion.

Staff has reviewed the conditions of approval for CUP #06-20 throughout this amendment request. The operation has met many of the conditions because the conditions were created considering a phased build out of the dairy. Other conditions require continual compliance with what is required. Staff has not received any substantial complaints regarding the operation of the dairy, and the operation has maintained good standing with the State Department of Environment and Natural Resources. In addition, the portions of the Zoning Ordinance that pertain to CAFOs was amended in 2017 in part to reduce redundant paper work for operations with a State General Permit. Condition #3 pertains to the nutrient management plan for the operation and is included below in italics. Staff finds that annual reporting of the nutrient management plan to the DENR



and to Minnehaha County is redundant, and suggests a change as stated below. This was not a request of the petitioner and the Planning Commission may decide the need for this requirement.

Change from:

- 3.) *Also, prior to expansion to either Phase 2 or 3, annual copies of an executive summary of an approved nutrient management plan shall be filed with the Minnehaha County Planning Department which show the sites proposed for nutrient application and means of application. Copies of the full nutrient management plan shall be provided to the county upon request.*

Change to:

- 3.) Copies of the full nutrient management plan shall be provided to the county upon request.

**Recommendation:**

Staff recommends **Approval** of CUP #19-15 to amend CUP #06-20 to have the following revised conditions.

- 1.) The maximum size of the facility shall be limited to 8,000 animal units.
- 2.) Before the facility can be expanded to either Phase 2 or 3 the entire facility shall be permitted by the state of South Dakota.
- 3.) Copies of the full nutrient management plan shall be provided to the county upon request.
- 4.) All application of liquid animal waste on cropland shall be either injected into the ground or immediately incorporated upon application. Surface application shall be allowed on hayland only after the petitioner has informed the Minnehaha County Planning Department in writing of the location on which the waste will be applied, the date(s) of the proposed application and the amounts of waste to be applied. Solid and semi-solid waste should be incorporated within 24-hours of application. Only solid or semi-solid waste can be applied to frozen ground, and then, only in accordance with the rules and regulations of the South Dakota Department of Environment and Natural Resources. The petitioner shall meet all setback requirements for waste application as specified in the county zoning ordinance.
- 5.) Before the facility expands to Phase 2, an odor control plan shall be implemented which includes the implementation of full bio-covers, a minimum of 8 inches in thickness, over all solids basins. Microbial additives, such as Pit Remedy or equivalent product, shall be used throughout the entire animal waste system.
- 6.) Prior to expansion to Phase 3, the petitioner shall have a full landscaping plan prepared for planning staff approval. The plan shall include the planting of a minimum of 5 rows of trees around all holding ponds. Each belt shall have a minimum of 1 row of extremely fast-growing tree species such as Austrees and a minimum of 4 rows of longer-lived tree species to provide for an effective, long-



lived shelterbelt. The landscaping plan shall also include either the establishment of trees around the barn area or around the perimeter of the property. All trees shall be planted and maintained according to Minnehaha Conservation District standards. When trees are planted a minimum 6-foot width strip of planting fabric shall also be employed along each row to aid in increased survival of the trees and improved growth. Any trees that die at any time shall be replaced within one growing season.

- 7.) Any complaints submitted to the Minnehaha County Planning Director must include dates and times relative to the complaint. Complaints shall be forwarded to the facility operator and the operator shall report to the Planning Department the possible cause of problems that resulted in the complaint and the actions that will be taken to address the problems.
- 8.) Prior to any expansion to Phase 3, Monitoring of the odor, hydrogen sulfide and ammonia emissions at and around the site shall be conducted by a qualified expert, approved by the Minnehaha County Planning Department in order to establish background levels for those parameters. During the first year of phase 3 operations similar monitoring shall be performed a minimum of three times. During the second year of Phase 3 operations similar monitoring shall be performed a minimum of two times and during year three of Stage 3 operations the monitoring shall be conducted a minimum of 1 time. All monitoring shall be for odor, hydrogen sulfide and ammonia emissions from the facility and shall be performed by a qualified expert, approved by the Minnehaha County Planning Department. At any time the County Planning Commission may review the odor control practices at a public hearing in order to determine whether the odor control program needs to be revised with additional or revised conditions.
- 9.) If a monitoring well system is required by the state for the permit required by the state for the permit required for either Phases 2 or 3, the petitioner shall provide copies of all test reports to the Minnehaha County Planning Department.

### **Public Testimony**

Kevin Hoekman, planning staff, briefly presented the staff report and staff recommendation.

Lynn Boadwine, the petitioner, was present at the hearing for any questions. Commissioner Ode asked how often the intermittent stream flowed with water. Lynn responded that water does not often flow through the stream and that the water way was addressed during engineering plans that began in 2010. He further explained that the intermittent stream is designed with a relief for built up water that would flow along the north side and around of the lagoon before it would flow into the lagoon.

Doug Flier, 401 Jackson Street, Valley Springs, was opposed to the expanding operation. Doug explained that the original permit included restrictions on smell and incorporation of manure, and that neither of these items are properly address yet. He further stated that the operation did trespass on his family land with a pumping operation for manure injection. He stated that the injection method used causes overflowing manure and that there is enough stuff on the property



already without the expansion. Lynn Boadwine asked Doug Flier to explain where the trespassing occurred, and Doug pointed on the map that it happened 1½ mile to the west of the site.

Lynn Boadwine stated that he has not had any DENR problems with manure and that they use best management practices for manure application. He noted that he was not aware of any trespassing issue and had not received many complaints from the low populated area.

Commissioner Ode clarified with Doug Flier that the trespassing took place on family owned land and that the renter took the complaint to Moody County Dairy, and the landowner received a compensation check for the trespassing. Commissioner Ode commented that the proposed CAFO is large, and he stated the importance of open communication with a producer for potential issues.

### **Action**

A motion was made to **approval** of Conditional Use permit #19-15 with the amended conditions by Commissioner Ode and seconded by Commissioner VanDerVliet. The motion passed unanimously.

### **Conditional Use Permit #19-15 – Approved**

Scott Anderson, Planning Director, encouraged the Planning Commission to take action regarding the intermittent stream on the property. The Planning Commission discussed options for addressing the intermittent stream setback. Commissioner Mohrhauser explained that he felt that the state DENR and engineers have addressed potential issues with the setback problem. Commissioner Mohrhauser made a motion to acknowledge that the error of setback took place and let it remain as it is. Commissioner Ode seconded the motion. The motion passed with 3 for approval of the motion and Commissioner Ralston in opposition to the motion.



**Old Business**

Kevin Hoekman of planning staff explained that the item may be postponed to the next meeting because of a small number of planning commissioners present at the meeting. The Planning Commission agreed and moved on.

**New Business**

There was no new business.

**Adjourn**

A motion was made to **adjourn** by Commissioner Mohrhauser and seconded by Commissioner Ralston. The motion passed unanimously.

The meeting was **adjourned** at 7:56 pm.