



**MINUTES OF THE
MINNEHAHA COUNTY PLANNING COMMISSION
April 24, 2023**

A meeting of the Planning Commission was held on April 24, 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, Doug Ode, Ryan VanDerVliet, Mike Ralston, Adam Mohrhauser, and Joe Kippley.

STAFF PRESENT:

Scott Anderson and Mason Steffen – County Planning
Maggie Gillespie and Eric Bogue – States Attorney’s Office

Bonnie Duffy chaired the meeting and called the Minnehaha County Planning Commission meeting to order at 7:16 p.m.

PUBLIC COMMENT

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

CONSENT AGENDA

Commissioner Duffy read each item on the consent agenda and Item 3 was moved to the regular agenda.

A motion was made to approve the consent agenda consisting of Items 1, 2, & 4 by Commissioner Ralston and seconded by Commissioner VanDerVliet. The motion passed unanimously with 6 votes in favor and 0 votes against the motion.

ITEM 1. Approval of Minutes – March 27, 2023

As part of the consent agenda, a motion was made by Commissioner Ralston and seconded by Commissioner VanDerVliet to **approve** the meeting minutes from March 27, 2023. The motion passed unanimously with 6 votes in favor and 0 votes against the motion.



Consent Agenda

ITEM 2. CONDITIONAL USE PERMIT #23-12 to make one (1) building eligibility available on the property legally described as the SW¼ (Ex. Lot 1 Boadwine Subdivision) Section 28 T104N-R48W Logan Township.

Petitioner: Dale Weinacht

Property Owner: Same

Location: 24854 480th Avenue

Staff Report: Scott Anderson

General Information:

Legal Description – SW¼ (Ex. Lot 1 Boadwine Subdivision) Section 28 T104N-R48W Logan Township

Present Zoning – A1 Agricultural District

Existing Land Use – Farmland

Parcel Size – 117.87 Acres

Staff Report: Scott Anderson

Staff Analysis: The property is located approximately 7 miles northeast of Baltic near the intersection of 249th Street and 480th Avenue. The applicant is requesting to make one building eligibility available. A lot was platted in this quarter between 1979 and 1989, which means that the remaining 3 eligibilities need to be assigned via a conditional use permit as outlined in Article 3.04.D of the Zoning Ordinance. The area in which the building eligibility is now located is used as cropland. The move would locate the building eligibility near other existing residences.

On April 7, 2023, staff conducted a site visit. There are three residences located within 1/2 mile of the proposed location of the eligibility.

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.

There are only a few residences located near the proposed site. The area is generally sparsely populated. A right-to-farm notice covenant should be required to notify potential buyers to the realities of locating in an agricultural area.

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

The transfer of a building eligibility does not increase the number of dwelling units allowed in this section. The requested location for the eligibility places it near other residentially used property. Access would have to be approved by the Logan Township. The siting of a building eligibility in this location would have little to no effect on the orderly development of the



surrounding properties.

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

No other extra utilities or services will be required for this site to utilize the building eligibility. It is likely that rural water and electricity are already located in the ditch. There is already an approach onto the proposed building site. Logan Township will need to approve the location of any new driveways to be used for the new lot.

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

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

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

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

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

The proposed conditional use will have no effect on the health, safety and general welfare of the public. Placing this building eligibility in this location will enhance the productivity of the rest of this quarter section and locate the building eligibility in closer proximity of similar uses.

Recommendation: Staff finds this conditional use permit request to be consistent with density zoning and the comprehensive plan. Staff recommends **approval** of Conditional Use Permit #23-12 with the following conditions:

1. A right-to-farm notice covenant shall be placed on the deed prior to the issuance of a building permit for a single-family dwelling.
2. Approval from Logan Township must be obtained for the location of any new driveway before a building permit is to be issued.

Action

As part of the consent agenda, a motion was made by Commissioner Ralston and seconded by Commissioner VanDerVliet to **approve** Conditional Use Permit #23-12. The motion passed unanimously with 6 votes in favor and 0 votes against the motion.

Conditional Use Permit #23-12 – Approved



ITEM 4. AGRICULTURAL TOURSIM PERMIT #23-01 to allow a Farm Experience on the property legally described as Lot 24 Country Gable Estates 2nd Addition Section 5 T101N-R48W Split Rock Township.

Petitioner: Stephanie Peterson

Property Owner: Same

Location: 8700 E Sunset Circle, Approximately 2 miles east of Sioux Falls.

Staff Report: Mason Steffen

General Information:

Legal Description – Lot 24 Country Gable Estates 2nd Addition Section 5 T101N-R48W Split Rock Township.

Present Zoning – A1 Agricultural

Existing Land Use – Residential Acreage

Parcel Size – 7.06 Acres

Staff Report: Mason Steffen

Staff Analysis: The petitioner is requesting to operate a farm experience operation on a property less than twenty acres through an Agricultural Tourism Permit. Given that the property is less than twenty acres, the petitioner must follow the conditional use permit procedure as outlined in Article 19 of the 1990 Revised Zoning Ordinance for Minnehaha County. The petitioner has stated that the purpose of the farm experience operation will be to host educational tours, seasonal celebrations and field trips. The submitted site plan shows that the existing paved portion of the driveway will be used as the parking area for the operation. Finally, the activity areas will be located behind the existing dwelling, and the petitioner will also utilize an existing animal pen on the south side of the property.

On April 10, 2023, staff conducted a site visit of the subject property and surrounding area. The property is located on a large residential lot on the south side of the Country Gable Estates subdivision, which is a subdivision of approximately forty-five residential acreages. Since the proposed farm experience will be operated on a large residential lot, adjacent to other large residential lots and farmland, it should not overly impacted the surrounding area. Finally, the traffic increase involved with this use should not overly affect the area, since the daily traffic to the property should largely remain the same, and the traffic increase on the days when tours and events occur will not be significantly more than the current traffic to the 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.

Currently, the surrounding area is primarily used for large residential acreages and farmland. The proposed use of a farm experience operation is not likely to have an overly negative effect on the uses already permitted in the area. This is due to the fact that the day-to-day use of the property will not change dramatically, and the tours and events will take place behind the dwelling and will be screened from the surrounding properties.



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

Most of the lots within the Country Gable Estates subdivision have already been developed into residential lots. Any future development in the area will continue to be agricultural uses and large lot residential acreages until the cities of Sioux Falls and Brandon expand to this area.

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

The proposed operation will be on the site of an existing residential acreage that already has the proper infrastructure in place to operate the farm experience. The existing drainage on the property will not be altered, and the property will be accessed via a shared access easement off of E Sunset Circle.

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

This proposed use does not have any specified parking or loading requirements within the Zoning Ordinance. Since the use will occur outdoors it is difficult to calculate a maximum occupancy for the farm experience operation. However, given the size of the existing driveway on the property, there is sufficient space for at least twenty (20) parking spaces. Based on the available parking, the maximum occupancy for the tours and events held on the property should be limited to sixty (60) people, or three (3) people per parking space.

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

No offensive nuisances shall be permitted at any time during the operation of the farm experience. The main potential nuisance with this operation will be noise, given that the proposed tours will bring dozens of people to the property at one time. However, the property is a large residential lot and the activity areas will be set back several hundred feet from the surrounding residences. The other potential nuisance from this operation would be dust, given the traffic for the tours and events, but the existing subdivision and township roads in the area are already treated with dust suppression. In addition, the traffic increase to the property will only occur on a limited amount of days when tours and events take place, and during the rest of the year the traffic to the site will be the same as any other residential site. Finally, any new lighting that is installed for the farm experience operation should be directed downward on to the property in order to limit light pollution off-site.

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

The health, safety and general welfare of the public should not be impacted by the proposed farm experience operation. The petitioner already has the existing infrastructure in place to operate the farm experience, and this operation will promote a connection to the agricultural production within Minnehaha County. Finally, the subject property is located within the transition area of the 2035 Comprehensive Plan, and the proposed operation will meet the primary goal of the transition area to maintain the rural character of the county until municipal development.

Recommendation: Staff finds that the proposed use is consistent with the intent of the agricultural tourism ordinance and conforms to the goals and policies of the Envision 2035 Comprehensive Plan. Staff recommends **approval** of Agricultural Tourism Permit #23-01 to allow a farm experience operation with the following conditions:



- 1) That the farm experience operation shall meet the provisions of Article 12.13 (B) 6) of the 1990 Revised Zoning Ordinance for Minnehaha County, excluding the twenty (20) acres minimum lot size requirement.
- 2) That a minimum of twenty (20) off-street parking spaces shall be provided, and that no parking shall be allowed within the public right-of-way at any time.
- 3) That the maximum occupancy for tours and private events held on the property shall be limited to sixty (60) people.
- 4) That the total signage for the operation shall meet the provisions of Article 12.13 (E) and (F) of the 1990 Revised Zoning Ordinance for Minnehaha County.
- 5) That a building permit is required before any permanent signs are erected on the property.
- 6) That all outdoor lighting shall be of a full cutoff and fully-shielded design to prevent direct spillage of light beyond the property boundaries.
- 7) That the Planning & Zoning Department reserves the right to enter and inspect the operation at any time, after proper notice to the owner, to ensure that the property is in full compliance with the agricultural tourism 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 VanDerVliet to **approve** Agricultural Tourism Permit #23-01. The motion passed unanimously with 6 votes in favor and 0 votes against the motion.

Agricultural Tourism Permit #23-01 – Approved



Regular Agenda

ITEM 3. CONDITIONAL USE PERMIT #23-14 to allow a Rubble Dump (Tree Grinding Operation) on the property legally described as the NW¼ (Ex. R-1 & Ex. S½ NW¼ & Ex. E17' W50') Section 35 T101N-R51W Wall Lake Township.

Petitioner: Mueller Pallets, LLC.

Property Owner: Pine Knoll, Inc.

Location: Approximately 4 miles west of Sioux Falls; Located at the intersection of 267th Street & 464th Avenue.

Staff Report: Mason Steffen

General Information:

Legal Description – NW¼ (Ex. R-1 & Ex. S½ NW¼ & Ex. E17' W50') Section 35 T101N-R51W Wall Lake Township.

Present Zoning – A1 Agricultural

Existing Land Use – Pasture

Parcel Size – 77.17 Acres

Staff Report: Mason Steffen

Staff Analysis: The petitioner is requesting to operate a tree grinding operation as a rubble dump site on the subject property. The narrative explains that the site would be used to collect tress, tree branches, dimensional lumber, and other non-treated wood from the public in order to grind the wood and move to an off-site location. The hours of operation listed in the narrative are Monday through Friday from 7am – 5pm and Saturday from 7am – 12pm. However, the petitioner also states in the narrative that these hours of operation may vary when there is a natural disaster that causes significant tree loss. The site plan also indicates that the operation will be located on the west side of the property and will be accessed from 464th Avenue. Finally, the petitioner has explained that there will be a gated entrance to the property, along with a guard shack and security system, which will limit the concerns of any unlawful dumping occurring on the property.

On April 10, 2023, staff conducted a site visit of the subject property and the surrounding area. This seventy-seven acre piece of property is located directly north of the Sioux Falls Regional Landfill and will use the same access road as the landfill. The petitioner will be required to obtain a driveway permit from the proper road authority for the placement of the new driveway onto 464th Avenue before the operation may begin. In addition, there is an existing shelter belt of trees along the north property line that will screen the operation from the nearby residences to the north and northeast. Allowing this operation on a vacant agricultural lot will allow for a sustainable disposable site of natural wood products that will be located in close proximity to the existing regional landfill. Finally, previously approved conditional use permits in the county for this type of land use have had sunset clauses that required new conditional use permits after ten years, and therefore this permit should have a similar condition in order to remain consistent with these previously approved permits.



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.

Most of the land surrounding the subject property is either agricultural in use, or is being used in conjunction with the Sioux Falls Regional Landfill. There is an existing residential subdivision to the northeast of the property that includes approximately fifty dwellings, as well as one residential acreage directly north of the proposed operation location. However, the nearest residential acreage will be almost 1,000 feet from the operation, and will be separated by the county highway and an existing shelter belt of trees.

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

The subject property is currently a vacant agricultural lot and the surrounding area is mostly agricultural land or used for the existing landfill. The proposed wood grinding operation should not have an overly negative effect on the normal and orderly development of the surrounding vacant property, and any new development will be limited by the available building eligibilities in the area.

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

The site plan indicates that the operation will be accessed from a new driveway that will be constructed off of 464th Avenue. The petitioner will need to obtain permission from the proper road authority for the placement and construction of this new driveway. Additionally, the site plan indicates that the petitioner will be providing the other necessary utilities for the operation including a sign, outdoor lighting, a fuel tank, and an outdoor toilet. Finally, the driveway into the operation will have a gated entry, which will limit concerns of unauthorized access and dumping of materials on the site.

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

With this type of operation, a majority of the traffic to the site will be for deliveries and pickup, and the applicant should provide a truck turnaround point within the proposed rubble dump site. The site plan also indicates that employee parking will be provided on the site, to the north of the proposed driveway, and the petitioner should provide at least two parking spaces per three employees on the maximum shift for the operation. Finally, the site is large enough to accommodate these parking needs and no parking shall be allowed within the public right-of-way.

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

The grinding and processing of trees will create noise and dust that could have the potential to disturb single-family dwellings in the surrounding area. However, the nearest dwelling will be almost 1,000 feet away, and there is an existing shelter belt of trees along the north property line that will screen the operation. In addition, limiting the hours the operation will reduce concerns with any dust, noise, or light disturbances becoming nuisances to the surrounding properties. Finally, the petitioner has stated that they expect about forty daily visits to the property on average, which will be a minimal increase compared to the existing daily traffic to the landfill.



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

The health, safety and general welfare of the public should not be negatively impacted by the proposed operation. This operation is located in close proximity to the existing Sioux Falls Regional Landfill, and will provide citizens with a sustainable way to dispose of untreated wood products. Finally, the proposed operation is located within the agricultural production area of the 2035 Envision Comprehensive Plan, and this operation will not have a negative impact on the existing agricultural production in the area.

Recommendation: Staff recommends **approval** of Conditional Use Permit #23-14 with the following conditions:

- 1) That the property shall adhere to the submitted site plan.
- 2) That the process of grinding wood shall only take place during the hours of 7:00 am to 7:00 pm on Monday through Saturday.
- 3) That only clean, untreated, unpainted, and unstained wood shall be accepted for processing. No other materials shall be accepted.
- 4) That approval for a driveway permit must be obtained from the proper road authority before the operation shall begin.
- 5) That all driveways, including loading and unloading areas, shall be gravel surfaced.
- 6) That a building permit is required for any buildings built in conjunction with the tree grinding operation.
- 7) That one on-premise sign is permitted and shall not exceed 32 square feet in size. A building permit must be obtained prior to installation, and the sign may not be located within the right-of-way.
- 8) That the operation must maintain a gate or a person on the site during drop off hours to prevent the dumping of non-wood products.
- 9) That no parking shall be allowed within the public right-of-way at any time.
- 10) That the operation will be allowed to operate under the conditions of this permit until January 31, 2033. The business owner will be required to obtain another conditional use permit before this date if they wish to continue operating at this location
- 11) That the Planning & Zoning Department reserves the right to enter and inspect the site at any time, after proper notice to the owner, to ensure that the property is in full compliance with the conditional use permit conditions of approval and the Minnehaha County Zoning Ordinance.

Public Testimony

Mason Steffen, of County Planning Staff, presented the staff report and recommendation to the Planning Commission.

The petitioner, Margie Mueller, presented an overview of her business to the commission. Mrs. Mueller explained that they are the largest pallet recycler in South Dakota, with 48 employees, and that they started the grinding operation in 2006. In addition, Mrs. Mueller explained the uses for the mulch product they produce, which included landscape uses, livestock uses, and water filtration uses. Finally, Mrs. Mueller stated that Mueller Pallets does not charge to dump the wood products at their locations, and that they would only be on-site to grind the wood approximately one week every month.



At this time, Commissioner Kippley stated that he knows the petitioner's lawyer Paul Tschetter and that Mr. Tschetter contacted him regarding this item before the meeting.

Paul Tschetter, the lawyer representing Mueller Pallets, explained to the commission that he had been in contact with both Commissioner Kippley and Commissioner Duffy prior to the meeting regarding this item. Mr. Tschetter explained that the proposed operation satisfies the county's requirements for a conditional use, and that Mueller Pallets is willing to work with the city of Sioux Falls on any traffic related issues.

Commissioner Randall asked for clarification on the hours of operation for the business because the hours listed in the narrative differ from what is listed in the conditions of approval. Margie Mueller explained to the commission that the hours of operation will be 7:00 am to 5:00 pm Monday thru Friday and 7:00 am to Noon on Saturdays.

Commissioner Kippley asked if this location would be replacing their current Lincoln County location, or if it will be in addition to that location. Mrs. Mueller commented that the land owner of the Lincoln County location has died, and that they are not sure as of now what will happen with that operation. Mrs. Mueller also commented that she understands that there will be concerns about potential dust, but that dust is money in her business, so they have incentive to create as little as possible.

Commissioner Ode asked the petitioner if they will have a rodent control plan, since the wood materials will be allowed to pile up on the property prior to grinding. Mrs. Mueller stated that they do implement rodent control measures, and that they have not had a rodent problem at their current location.

Several neighbors in the area of the proposed operation addressed the commission with their concerns regarding traffic, garbage in the ditches, potential drainage issues on the property, the potential for dust and noise, and other related issues. The neighbors who brought up these concerns are listed below:

Daniel Brandt, of 46408 267th Street, Hartford, SD
Glen Shade, of 26564 464th Avenue, Hartford, SD
Steven Mielke, of 26654 464th Avenue, Hartford, SD
Glenn Fuerstenberg, of 46524 267th Street, Hartford, SD
Chet Hofer, of 26662 465th Avenue, Harford, SD
Grant Edgecomb, of 26685 Dayspring Circle, Hartford, SD
Scott Wittrock, of 26693 Day Spring Circle, Hartford, SD
Mark Scott, 26693 Valdez Road, Hartford, SD
Shelly Wittrock, of 26693 Dayspring Circle, Hartford, SD
Phyllis Dubbe, of 46470 Inca Drive, Hartford, SD
Carrie Styles, 26676 Dayspring Circle, Hartford, SD
Diane Edgecomb, of 26685 Day Spring Circle, Hartford, SD



The City of Sioux Falls Environmental Services Manager, Josh Peterson, also addressed the commission with the city's comments regarding the conditional use permit. Mr. Peterson stated that the city has a good working relationship with Mueller Pallets, and he explained that the landfill is currently being upgraded with a new scale house and receiving lanes. Mr. Peterson also commented that on peak traffic days, the landfill sees approximately 1,400 daily visits, and that in order to handle this traffic they need approximately 1,300 feet of que length along 464th Avenue. Finally, Mr. Peterson explained that this maximum que length for the landfill will extend to the north past the proposed entrance for Mueller Pallets, and that the busy days for the landfill will coincide with Mueller Pallets busy days.

Commissioner Kippley asked Mr. Peterson what the peak days and seasons are for the landfill. Mr. Peterson stated that the main peak in traffic occurs in the summer, but that the traffic can also peak at other times, such as in the spring.

Commissioner Ode asked Mr. Peterson approximately how long the city plans to operate the landfill at this location. Mr. Peterson explained that the current location should be able to handle another 30 to 40 years, and then at that point the city would have to look at expanding to other land in the area.

After the discussion between the commission and the neighbors, Bryan Smit, of 4900 S Kalen Place, Sioux Falls, SD, addressed the commission as the real estate agent representing Mueller Pallets. Mr. Smit had several comments including that Mueller Pallets peak traffic will only be a 3% increase compared to the existing landfills peak traffic. Additionally, Mr. Smit explained that with South Dakota's prevailing northwest winds, any dust would blow towards the landfill and not the residences. Mr. Smit also stated that he has looked for other locations for this operation and none have been better than this proposed location. Finally, Mr. Smit explained that the city landfill charges \$25 to drop off wood products, whereas Mueller Pallets does not charge anything to drop off at their location.

Paul Tschetter also returned to the podium to address the neighbor's concerns regarding the proposal. Mr. Tschetter stated that the city of Sioux Falls already operates tree grinding machines within the landfill that no one has complained about, and that he understands the city's concerns about traffic but he feels that they can be worked out. Finally, Mr. Tschetter explained that it is Mueller Pallet's incentive to keep the dust to a minimum and to make sure the wood is being properly transported.

Commissioner Kippley asked the petitioner if they could address the potential noise from the operation. Margie Mueller stated that the grinders will make noise, but that they will only be operating the grinders at this location for one to two weeks a month.

Discussion

Commissioner Kippley stated that the comments made by the public appear to be an indictment on the landfill, and that he is not sure that that should be held against the petitioner.

Commissioner Kippley also commented that this is a sign to him that he needs to have a conversation with the city regarding all the feedback from the neighbors, but that he sees this



operation as a service to the community.

Commissioner VanDerVliet agreed with Commissioner Kippley and commented that the traffic to the area will still end up at the landfill even if the Mueller Pallet business is denied.

Commissioner Ode commented that the landfill will be there for at least another thirty to forty years, and the small increase in traffic from this operation is not that much compared to the landfill traffic.

Action

Commissioner Kippley motion to **approve** Conditional Use Permit #23-14 with the amended hours of operation condition. The motion was seconded by Commissioner VanDerVliet. The motion passed unanimously with 6 votes in favor and 0 votes against the motion.

Conditional Use Permit #23-14 – Approved with the following conditions:

- 1) That the property shall adhere to the submitted site plan.
- 2) That the process of grinding wood shall only take place during the hours of 7:00 am to 5:00 pm on Monday through Friday, and 7:00 am to 12:00 pm on Saturday.
- 3) That only clean, untreated, unpainted, and unstained wood shall be accepted for processing. No other materials shall be accepted.
- 4) That approval for a driveway permit must be obtained from the proper road authority before the operation shall begin.
- 5) That all driveways, including loading and unloading areas, shall be gravel surfaced.
- 6) That a building permit is required for any buildings built in conjunction with the tree grinding operation.
- 7) That one on-premise sign is permitted and shall not exceed 32 square feet in size. A building permit must be obtained prior to installation, and the sign may not be located within the right-of-way.
- 8) That the operation must maintain a gate or a person on the site during drop off hours to prevent the dumping of non-wood products.
- 9) That no parking shall be allowed within the public right-of-way at any time.
- 10) That the operation will be allowed to operate under the conditions of this permit until January 31, 2033. The business owner will be required to obtain another conditional use permit before this date if they wish to continue operating at this location
- 11) That the Planning & Zoning Department reserves the right to enter and inspect the site 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.



ITEM 5. CONDITIONAL USE PERMIT #23-15 to allow a Class C Beef CAFO on the property legally described as Tract 4 Larsen's Addition S½ SW¼ Section 3 & N½ SW¼ Section 10 T101N-R47W Valley Springs Township.

Petitioner: John Zomer

Land Owner: Same

Location: 26326 487th Avenue

Staff Report: Kevin Hoekman

General Information:

Legal Description – Tract 4 Larsen's Addition S½ SW¼ Section 3 & N½ SW¼ Section 10 T101N-R47W Valley Springs Township.

Present Zoning: A1 Agricultural

Existing Land Use: Cropland

Parcel Size – 93.35 Acres

Staff Report: Kevin Hoekman

Staff Analysis:

This request is to allow a class C beef cattle CAFO on the described property. The proposal includes a 50 feet by 400 feet barn near the petitioner's residence approximately 1,000 feet south of municipal limits of the City of Valley Springs. The barn and adjacent property are proposed to have no more than 1,000 head of cattle on the property. With the application, the petitioner submitted a narrative of the proposed project, a site plan created by an engineering company, and a copy of the resolution from the Valley Springs Board of Commissioners to allow a class C CAFO to be located closer than the required 3,960 feet setback for a second class municipality.

The property is currently being used to confine beef cattle in several pens. The petitioner includes in the narrative that the property "is currently and will remain a 'Class C' CAFO." A class C CAFO is defined as a concentrated animal feeding operation ranging in size from 250 animal units to 999 animal units, and a conditional use permit is required for any new class C CAFO. No permits have been issued for a class C CAFO on the described property. Neither is the property considered to be an existing CAFO as defined as an operation of at least 50 animal units which existed on May 26th, 1998. Staff reviewed past County aerial imagery and historical imagery from Google Earth and found no evidence of a CAFO in 2014 or earlier. If the property currently has more than 249 head of cattle, the property is in violation of the zoning ordinance. If this permit is not approved, the property must comply with the 249 animal unit limit of a class D CAFO. The narrative explains that the applicant can prove that the current operation is in compliance with the ordinance.

The county zoning ordinance has several situations where a proposed CAFO would be required to obtain a general pollution control permit from the State DANR prior to the construction of the proposed facility. The first situation is regarding the size of the proposed CAFO. The petitioner has proposed the beef cattle CAFO with barn to hold no more than 1,000 head of cattle. Each head of cattle is calculated at one animal unit for a total request for the facility as 999 animal units. 999 animal units is under the threshold for a required state permit and will be considered a



class C CAFO for Minnehaha County's Ordinance. The proposed CAFO is not located over any known shallow aquifers or floodplains which would also be cause for a state permit requirement.

The site plan is a requirement and 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 the Planning Commission in reviewing 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 provided a site plan prepared by an engineer. In addition, several of the required elements are described within the submitted narrative.

The address of the property and the legal description. The address and legal description of the proposed beef CAFO is on the application. The address is 26326 487th Avenue. The legal description is Tract 4 Larsen's Addition S½ SW¼ Section 3 & N½ SW¼ Section 10 T101N-R47W, Valley Springs Township.

The name of the project and/or business. The proposed beef CAFO project does not have a specific name. John & Stacy Zomer are the petitioners for the facility.

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

All existing and proposed buildings or additions. Site appears to have two existing sheds, a hoop barn, and a single family dwelling. In addition, the existing pens for the feed lot are included on the site plan. The proposed barn is shown on the site plan with rows of dots representing trees shown on the north and northwest side. The property recently had two building permits approved for ag and commodity storage. These are not included on the site plan, but they are not used for animal or manure storage.

The dimensions of all buildings. The dimensions of the proposed confinement building is listed on the site plan as 50 feet by 400 feet. A 50 feet manure holding area is shown on the east side of the building. No existing buildings on the site plan have dimensions.

The distance from all buildings to the property lines at the closest points. The site plan indicates setbacks from the proposed building to various nearby locations. The ordinance requires CAFOs to be setback 50 feet from all property lines. The proposed barn will meet all property line setbacks, and the existing pens are greater than 50 feet from any property owned by a separate owner.

Building height and number of stories. Neither the site plan or the narrative state the height or number of stories of the barn. The number of stories will likely be one for ease of manure management. The style of construction is yet to be determined, and the narrative explains that a hoop barn style is likely.



Dimensions of all property lines. The property where the proposed CAFO will be located is large and contains many angles. Containing the distances of property lines would be difficult to display on the site plan and it will not change the dynamic of the CAFO location.

Parking lots or spaces; designate each space; give dimensions of the lot, stalls, and aisles. The proposed land use is for agricultural purposes on a large lot. Parking lots and space requirements are typically calculated for commercial and industrial uses. The site will have an access from County Highway 103 that is also known as 487th Avenue. The site will be large enough to allow for parking, loading, 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 submitted site includes a proposed tree belt on the north and west sides of the barn, and the narrative further explains that trees will be planted to NRCS guidelines. The species of trees are not included, however the Minnehaha Conservation District provides expertise on planting trees based on need and availability. Five rows of trees will be required to reduce the setback distance from the nearest dwelling to the east. The current layout of trees does not meet this requirement, and trees will need to extend between the barn and the closest dwelling to the east.

Name and location of all adjacent streets, alleys, waterways and other public places. The site plan shows County Highway 103. The nearest waterway is an intermittent stream on the southeast side of the site. The waterway is shown to be approximately 520 feet from the proposed barn. The south confinement pen, which has already been built, is located approximately 30 feet from a small reservoir of the intermittent stream. The county ordinance requires that a CAFO maintain 100 feet of distance from an intermittent stream. The CAFO as built today does not meet the 100 feet setback requirement. Staff suggests that if this permit request is approved, the entire CAFO facility be brought into compliance with the 100 feet setback. The nearest public park and school is within Valley Springs approximately 4,000 feet to the northeast and 3,000 feet to the west respectively. These meet minimum setbacks for a class C CAFO. A cemetery exists slightly over ¼ mile to the northeast of the proposed barn.

A landscaping in plan designed to assist in the dispersal of odors. The submitted site plan includes a proposed tree belt on the north and west sides of the barn. The tree belt needs to extend further to the east in order to separate the nearest dwelling to the northeast. The ordinance requires a setback of 1,320 feet from the CAFO to any dwelling. The setback requirement can be reduced by half if five rows of trees are planted and maintained between the CAFO and a residence. The nearest residence is approximately 1,060 feet away to the northeast. Trees must be placed between the CAFO and this residence.



A grading plan designed to help keep pens and solid waste containment areas dry. The animals will be located inside the proposed structure in a deep pack bedding system, and the manure will be held to the east of the barn. The Minnehaha County GIS indicate that the general slope would have water flow to the south of the site towards the intermittent stream that flows to the west.

The location and description of the animal waste facilities and structure. The narrative indicates only the one manure containment facility as bed pack. Manure must be contained on the site where it is generated and cannot be brought off site unless being incorporated within 24 hours of off site delivery. The narrative explains that manure will be applied as fertilizer according to DANR rules.

In relation to the site plan, the 999 animal unit operation will require a 1,320 foot buffer from a dwelling, church, or business. This buffer may be reduced by half if five rows of trees are planted according to ordinance requirements. The submitted site plan indicates that the proposed barn and previously built confinement pens are located outside of the required setback for the dwelling to the west. The house to the northeast is shown on the site plan to be located 1,060 feet away. Trees will need to be provided between the proposed barn and the dwelling in order to reduce the setback.

The Zoning Ordinance includes a requirement for new CAFOs to be setback from municipal boundaries. The required setback from a municipality can be reduced if the municipal government passes a resolution in support of reducing the required setback. The petitioner submitted a copy of the resolution by the Valley Springs Board of Commissioners to waive the required setback for the proposed CAFO. The resolution passed unanimously. The proposed CAFO site is located a little approximately 1000 feet from the southernmost portions of the City of Valley Springs; although, development is further away.

In addition to site plan elements, an application for a CAFO is required to submit a manure management plan and dead animal disposal plan. The petitioner describes the manure management as using a deep bed pack and to be applied according to DANR requirements. There is no explanation of when manure would be removed for land application. Dead animals will be stored south of the barn until a rendering service pick them up.

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.

This CAFO site is located south of Valley Springs about 2,000 feet from residential houses, but closer to portions of incorporated area. Nearby farmsteads are about $\frac{1}{4}$ mile away to the west and 1,000 feet to the east. No residential houses exist south of the site for almost $\frac{3}{4}$ of a mile. The driveway access onto a paved county highway is beneficial to reduce dust created by truck traffic for things such as feed and animals. No plans have been submitted for building style, and the petitioner stated in the narrative that the site cannot be seen from Valley Springs. Trees would benefit the site for any site line aesthetics and reducing dust and smells from the CAFO to



residences in Valley Springs. The petitioner is correct that the site will not change significantly from what is currently constructed; however, as discussed before in the staff report, the property is limited to 249 animal units in size. The size of the current operation is stated to be larger than 250 animal units.

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

This CAFO site is located south of Valley Springs about 2,000 feet from residential houses, but closer to portions of incorporated area. Changes to the area will likely happen first within the incorporated area of Valley Springs, and lead to future annexations to the south. A development of residential units is currently being constructed to the Northwest of the CAFO within city limits. When fully developed, many more residential houses will be located near the CAFO. Valley Springs will likely continue to grow southward at a faster rate since there is a large floodplain which exists to the north of the city.

The 2035 Comprehensive Plan for Valley Springs does not have the CAFO site within the future growth area. If approved, it is likely the barn and CAFO will still be at the site in 2035, and the city will have to take it into consideration for future growth planning. The City Council did unanimously approve the setback reduction to allow the proposed CAFO closer than 3,960 feet. This action was taken in June of 2022.

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

The property is already developed for animal confinement. Access exists onto a paved County Highway and utilities already likely exist for the site. Open pens on the property have been constructed without changing the drainage, and the proposed barn would not significantly change the drainage on the site. The pens should be reconfigured to meet required setbacks from the intermittent stream.

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

Off-street parking and loading requirements are typically a concern of commercial and industrial projects. This property is setback from the highway and is large enough to accommodate loading and unloading entirely outside of the right-of-way.

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

It is the nature of CAFOs and agricultural production in general to produce some odor, fumes, dust, and noise. Depending on the style of barn, lighting can also be a nuisance factor in the project. Hoop barns, as suggested as a possible building type by the petitioner, are often lit up from the inside and can create a glowing structure visible for long distances. The site plan includes trees on the north and the west side of the barn. As stated earlier in the report, trees will need to be extended to the east to reduce the setback to the nearest neighbor to the northeast. It will take some time for trees to grow and become effective in reducing nuisances such as dust, lighting, and smells.



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

This property is located in close proximity to the City of Valley Springs, but within the agricultural production area as designated by the comprehensive plan. The agricultural production area has the development outlook to protect, preserve, and promote agricultural uses.

The proposed CAFO meets ordinance requirements with simple modifications that can be included in conditions of approval. Approval is recommended because the proposal meets minimum ordinance requirements. However, staff concerns of the project include previous development on the site without permits, and relatively close proximity to the City of Valley Springs. The Planning Commission may consider these concerns when deciding whether to approve the permit or add specific conditions of approval.

The City of Valley Springs Board of Commissioners have expressed support for the project in the form of a resolution to reduce the required setbacks. Without their support, this project would not be possible.

Recommendation: Staff recommends **approval** of Conditional Use Permit #23-15 with the following conditions.

- 1.) The maximum size of the beef CAFO facility shall be limited to 999 animal units.
- 2.) Plans for the shelter belt tree plantings must be reviewed and approved by the Planning Department.
- 3.) Trees must be planted around the west, north and east sides of the barn according to ordinance requirements on or before July 2024. Trees must be maintained with a 90 percent survivability rate, and dead trees must be replaced within one year.
- 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 existing confinement pens must be modified to meet minimum 100 feet setbacks from the intermittent stream on the south side of the property. An engineer or surveyor shall review the altered pens and submit records that show compliance to the planning department on or before July 2024.
- 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.) 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.
- 8.) All new structures must obtain building permits prior to construction.

Public Testimony & Discussion

Scott Anderson presented the staff report and recommendation.

Commissioner Kippley asked how measurements are made for buffers, and why was the Valley Springs resolution nearly a year old. Scott Anderson responded that measurements are made



from the barn or pen and to the house or structure. The delay since the resolution happened since the petitioner applied for a CAFO last summer but did not complete the application process. Staff has been working with the petitioner since then to obtain required site plan and materials.

John Huber, presented Brian Donohue over a phone and the representation of the petitioner. Brian Donohue explained that he represented the farm since last summer when the City approved the setback waiver. Brian described that after the waiver was signed he moved to Minnesota with a career change. If this permit is granted, any dispute of the cattle operation current size will be resolved. At the resolution with Valley Springs the Zomer's explained that the operation operated at 450 head of cattle. After notices were sent for this application, the city met on the issue and no decision to remove the resolution was made.

John Zomer, 26326 482nd Ave, the petitioner was present for the hearing. Commissioner Randall asked what plans are being made to mitigate drainage of manure from the storage to the stream. John responded that there will either be an indoor storage or outdoor on cement storage where drainage will run into the storage rather than out of the storage.

Commissioner Mohrhauser asked if the animals would be feeder cattle or cow/calf operation. John explained that he runs primarily cow/calf operation. The idea for the barn came from the 2019 spring where he experienced heavy losses. Plan to feed cattle to finish during non-calving season.

Commissioner VanDerVliet asked if the proposal will eliminate all outdoor pens. John Zomer replied that the outdoor pens will remain on the property. A 400 foot barn would allow for approximately 400 feeder cattle.

Wendy Roeder, 505 Southside Ave, Valley Springs, stated that she has a few things to discuss. She stated that she has smelled and heard the operation. It is difficult to know how large the operation is by driving by. She asked how many days out of the year will she not be able to spend time outdoors because of the CAFO.

Jacob Rosecky, 114 Skyline Drive, Valley Springs, stated that he lived in the new development on the south side of Valley Springs for about a year and a half. He stated that both he and his wife grew up in agriculture and understood the need to be good neighbors. The Zomer farm has been operating as a class C CAFO when they should have been operating at a class D. The area where the CAFO is part of the Topeka Shiner zone. The CAFO will impact air quality where many children live. Mr. Rosecky cited several articles explaining property value will decrease approximate 20% to 40% in close proximity to a CAFO.

Joe Kufka, Valley Springs, handed the Planning Commission a copy of the growth plan for Valley Springs. He stated that he was opposed to the operation because it would reduce growth of the city. The large building will turn off future home buyers. He stated that the proposed CAFO is within the city growth boundary. The only feasible direction for the town to grow is south because of floodplain and the State of Minnesota.

Hanna Duke, 607 Mae Rose Drive, Valley Springs, requested denial to the permit. She explained



that she relocated here from Colorado Springs. She compared the area to Colorado Springs 30 years ago to Sioux Falls now. Valley Springs's growth plan shows that this land with the proposed CAFO is designated for residential development. Residential development is more valuable to the city and the county for tax revenue. If the CAFO is approved new development will stop. Hanna Duke continued to explain that CAFOs would work where populations are shrinking and economics would benefit from a CAFO. The CAFO would be a disservice to the county and state.

Abby Erickson, Mae Rose Drive, Valley Springs, shared that she lived in Valley Springs for 41 years. City residents are opposing a generational farm from growing. Some concerns are about potential smell, but the sewage pond is smelled many more times than cattle. She further described that property values is a concern of residents, but her property values have always crept up since she built her house for \$80,000. She shared several issues within city limits which should be of concern but have seemingly not been brought up as concerns by neighbors. She explained that she has never met the Zomer family before, but she can see how they run the farm effectively every time she drives by from the road. She said she was invited to the farm on Saturday and was even more impressed with the farm.

Taylor Zeutenhorst, 107 Lynx Street, Valley Springs, introduced himself as one of the owners of Triple Z Angus. He shared that he grew up in town and his career led to a passion to livestock. Working on a farm is good for a young family values. A barn on the property would prevent excess mortality from weather conditions. He finished by sharing that Kristi Noem asked everyone to reach a hand out to a farmer in need due to unexpected weather. Commissioner Kippley asked if there was an alternate location to place the barn. John Zomer responded that a barn could be placed on the south side but it would increase cost and create an issue with tractors on the highway daily for feed.

Commissioner Randall clarified that the maximum number of cattle on the farm would be 999 but they would not all be in the barn. John Zomer agreed and stated that 999 animals would only be if they chose to go that high.

John Zomer, explained that the 2019 blizzard caused great heartache. Taylor stayed part of the cattle industry after that year and that he is involved for the long haul. John further explained that smell will happen, but they will work to mitigate smell. John shared the example of Rock Valley and Sioux Center Iowa for property values, and found populations have doubled and property values still went up despite nearby CAFOs. John stated that he sent 286 letters and only four people contacted them, and only a few came to the open house.

Commissioner Kippley asked what kind of phases will happen to get to 999 animals. John Zomer responded that they pasture animals out west for the summer and corn on winter. The livestock business cycles so the numbers will changer throughout the year and through years. John Zomer noted that one cannot see the farm from Valley Springs.

Benjamin Schleicher, 26355 488th Avenue, noted that his father has been in cattle business for 40 years. John Zomer has not shared a business plan which is typical of farming operations. One



farmer should not be able to choose how the town grows over the rest of the community.

Commissioner Kippley explained Valley Springs has nowhere to grow but south, but the County comprehensive plan shows this area as agriculture. The city approved a waiver for setbacks, and the planning commission likely would not approve this operation without the waiver.

Commissioner Ralston stated that CAFOs are sensitive subjects as there is emotions and fears of odor. He continued that the council approved the waiver and he did not want to second guess that the operation will work out.

Commissioner Ode commented that Valley Springs signed off on the plan and the city could grow to the east. Young farmers wanting to pursue the livestock industry is becoming fewer all the time. There is a plan for the facility and it is not lot how people did things in the past.

Commissioner Duffy noted that she lives in the country and farming is part of living in the country.

Commissioner VanDerVliet commented that the petitioner invited neighbors to the farm shows what kind of neighbor they will be, and the CAFO will work there.

Commissioner Kippley asked the commissioners if there would be any conditions to monitor that animals do not exceed a Class C in the future. Scott Anderson responded that the farm has to show numbers if asked going forward. If the permit is not approved we will need to address the current number of cattle.

Action

Commissioner Kippley motioned to **approve** Conditional Use Permit #23-15 with staff recommended conditions. The motion was seconded by Commissioner Ode. The motion passed unanimously with 6 votes in favor and 0 votes against the motion.

Conditional Use Permit #23-15 – Approved



Recess & Reconvene

A motion was made to **recess** the Minnehaha County Planning Commission for a five-minute break by Commissioner Kippley. The motion was seconded by Commissioner Randall. The motion passed unanimously with 6 votes in favor and 0 votes against the motion.

The Minnehaha County Planning Commission was **recessed** at 9:52 pm.

A motion was made by Commissioner Ode to **reconvene** the Minnehaha County Planning Commission. The motion was seconded by Commissioner Randall. The motion passed unanimously with 6 votes in favor and 0 votes against.

The Minnehaha County Planning Commissioner was **reconvened** 9:59 pm.



ITEM 6. ZONING TEXT AMENDMENT #23-02 to amend the 1990 Revised Zoning Ordinance for Minnehaha County to regulate Transmission Pipelines.

Petitioner: Minnehaha County

Staff Report: Scott Anderson

Staff Report: Scott Anderson

Staff Analysis: The transportation of toxic, hazardous and regulated substances via a pipeline and the facilities for handling such materials is an expanded land use within Minnehaha County. The proposed use will have an impact on the traditional and predominant uses within the County. Reviewing the Zoning Ordinance to determine how transmission pipelines is addressed seems appropriate considering the potential long-term impact on future development of the County's land-use planning vision.

The Zoning Ordinance also is intended to promote public safety. A transmission pipeline will potentially impact public safety. The siting and use should be evaluated and addressed. A proposed ordinance will accomplish promoting good land use and ensuring public safety.

Staff has worked with the legal council to develop a proposed ordinance for your consideration. It identifies the districts in which a transmission pipeline could be located, develops criteria, definitions and addresses public safety. The use would be a permitted special use and if the criteria is met, the transmission pipeline could be installed. Not meeting the criteria would require a conditional use permit to be obtained.

Recommendation: Staff recommends **approval** of Zoning Text Amendment #23-02 adding Articles 3.03(O), 4.03(E), 5.03(E), 6.03(I), 7.03(G), 8.03(D), 9.03(G), 12.18, amending 24.05 Fees, and amending and adding definitions to 26 to the 1990 Revised Minnehaha County Zoning Ordinance.

Staff Comments & Amendments

Scott Anderson, the County Planning Director, explained the staff report and proposed transmission pipeline ordinance to the commission.

Eric Bogue, of the State's Attorney Office, explained to the commission several updates to the ordinance that he has made since the ordinance was sent to the commissioners and posted to the public. Mr. Bogue provided copies of the newly amended ordinance to the commissioners and the audience present. Finally, Mr. Bogue requested that the commission make a motion to amend the proposed ordinance with these updates, so that the transmission pipeline discussion can reference the most recent version that was updated by his office.

A motion was made to **amend** the proposed zoning ordinance amendment with the updates provide by the State's Attorney by Commission Kippley. The motion was seconded by Commissioner Ralston. The motion passed unanimously with 6 votes in favor and 0 votes against the motion.

**Public Testimony**

Rick Bonander, of 26268 486th Avenue, Valley Springs, SD, stated to the commission that he appreciates the proposed ordinance and that he is in favor of approving the amendment version of the proposed ordinance.

Dan Nelson, of 48680 260th Street, Valley Springs, SD, handed the commissioners a packet regarding insurance liability in relation to the carbon dioxide pipelines. Mr. Nelson stated that this letter from his insurance company states that their insurance will not cover damages caused by pollutants, and that the insurance company considers carbon dioxide to be a pollutant.

Tim Scherb, of 26239 486th Avenue, Valley Springs, SD, stated that one of the carbon dioxide pipelines is proposed to be installed on his neighbor's land directly behind his dwelling. Mr. Scherb then stated that approving the proposed setbacks from dwellings would help move the pipeline further from his dwelling.

Dan Rentschler, of 7908 E Norway Pine Trail, Sioux Falls, SD, asked the commission to consider if this proposed ordinance amendment would apply to pipelines that are buried along the state line on the Iowa side of the ditch.

Scot Montgomery, of 320 Elm Street, Fairview, SD, stated to the commission that he does not understand why the setbacks are different for schools, dwellings, and municipalities because the same number of people could be at all of these land uses. Mr. Montgomery then stated that a school could have as many people as a third class municipality, and that he would like to see a 2,640 foot setback for every land use listed in the proposed ordinance.

Penny Baybridge, of 2812 S Center Avenue, Sioux Falls, SD, explained to the commission that she is concerned with the volatility and safety of the carbon dioxide pipelines. Mrs. Baybridge also stated that she is concerned about the emergency responders not being prepared to handle a potential carbon dioxide pipeline rupture without the proper training.

Gary Meyer, of 26154 466th Avenue, Hartford, SD, explained to the commission his concerns with the proposed carbon dioxide pipelines. Mr. Meyer's concerns included the issue of eminent domain and the protection of private property. Finally, Mr. Meyer stated that this ordinance will help protect private land owners in the county, and give property owners some protection from the proposed pipelines.

Kay Burkhart, 48494 260th Street, Valley Springs, SD, stated that her concern is the lack of insurance, and that she also has a letter from her insurance company stating that carbon dioxide is a pollutant that is not covered by their insurance. Mrs. Burkhart stated that if the setbacks were increased then the potential liability for the property owners would decrease.

Betty Strom, of 7504 W Loganberry Street, Sioux Falls, SD, also brought up concerns regarding insurance liability and passed out a document from her insurance company to the commissioners.



Joy Hohn, of 46178 263rd Street, Hartford, SD, stated her concerns regarding the safety of the carbon dioxide pipelines, and explained how a potential pipeline rupture would impact nearby property owners. Mrs. Hohn also thanked the commission for their work on the ordinance and for proposing setbacks that will protect residents in the county.

Michael Stangeland, of 1009 N Savannah Drive, Sioux Falls, SD, used the recent train derailment in East Palestine, Ohio as an example of a hazardous material company not responding properly to a disaster. Mr. Stangeland also stated that he is concerned that the proper infrastructure and response to an emergency will not be in place for carbon dioxide pipelines.

Gary Schuster, of 2812 W Stratton Circle, Sioux Falls, stated that regulations should balance both the costs and benefits of a proposed use, and he believes there will be a cost to farmers and land owners with this pipeline and not much benefit. Mr. Schuster then stated that he does not believe the proposed pipeline will reduce climate change, and that he has not seen any study that can prove otherwise.

John Sjaarda, of 115 Lynx Street, Valley Springs, SD, stated his concerns regarding the carbon dioxide pipelines, specifically his concern was with having two pipelines on either side of Sioux Falls, which could limit future growth in the county.

Alfred Slaathaug, of 48198 Kim Circle, Brandon, SD, explained to the commission that he owns land in Lincoln County that is affected by one of the proposed pipelines. Mr. Slaathaug also questioned what the proposed setbacks are based on, and why there are different setbacks for different land uses. Finally, Mr. Slaathaug stated his concerns with the pipeline affecting residential building eligibilities and existing residential subdivisions.

Dennis Anderson, of 48512 260th Street, Valley Springs, SD, explained to the commission the growth that he has seen in Brandon since living in the area, and that he does not believe the carbon dioxide pipelines are in the best interest of Brandon.

Aaron Aldridge, from Summit Carbon Solutions, shared a presentation with the commission that explained their business and responded to some of the questions raised by the citizens present. Some of the things explained by Mr. Aldridge included: why carbon dioxide sequestering cannot happen in South Dakota, that carbon dioxide pipelines are safe and not a new form of pipeline, that the carbon dioxide being transported is not explosive or combustible, that the carbon dioxide pipeline will be regulated by the United States Pipeline and Hazardous Materials Safety Administration (PHSMA), that no land owner will be required to have insurance that covers the pipeline because that will be the responsibility of Summit Carbon Solutions, and finally that the pipeline companies will be responsible for the pipeline if anything were to go wrong.

Commissioner Ode asked Mr. Aldridge who would be doing the inspections during the installation of the pipeline. Mr. Aldridge stated that a third-party would handle all inspections during construction, and that they would not be handled by Summit Carbon Solutions directly.



Trevor Jones, from Summit Carbon Solutions, explained to the commission their emergency response plan and that their number one concern is safety. Mr. Jones also stated that they have already met with Minnehaha County's Emergency Manager, as well as with other emergency responders in the area, and that they plan on having meetings with these people again. Mr. Jones also presented to the commission a map of existing pipelines within the Sioux Falls area, and explained that these pipelines did not have to meet any setback requirements. Finally, Mr. Jones stated that there is already approximately 200 miles of hazardous material pipelines within Minnehaha County, and that he does not see the need to add further regulations to the carbon dioxide pipelines.

Kelly Breck, of 2812 W Stratton Circle, Sioux Falls, SD, stated that she does not see the need for more pipelines in the county, and that she does not agree with the argument that no regulations are needed.

Scott Montgomery, of 320 Elm Street, Fairview, SD, returned to the podium and stated that he does not agree with the Summit Carbon Solutions presentation, and that new rules are needed because this proposed pipeline is different than any other existing pipeline in the county.

Dennis Anderson, of 48512 260th Street, Valley Springs, SD, also returned to the podium and stated that he disagrees with the statement that the carbon dioxide pipelines are not explosive because to him a pressurized pipeline is explosive.

Dennis Jones, of 4904 S Heatherwood Circle, Sioux Falls, SD, stated that he is opposed to the pipeline, and that from his professional experience carbon dioxide poisoning is dangerous. Mr. Jones also stated that the private companies should not be able to take private land through eminent domain.

Dennis Feickert, a former Brown County Commissioner from Aberdeen, SD, addressed the commission with his comments on the issue. Mr. Feickert stated that Brown County will be discussing a pipeline ordinance on Tuesday April 25, 2023, and that several other counties in the state have taken actions towards pipelines.

Lindy Montgomery, of 320 Elm Street, Fairview, SD, stated that the only people who benefit from the proposed pipelines are the private companies and that she is in favor of passing the ordinance amendment.

Elizabeth Burns-Thompson, from Navigator CO2 Ventures, explained to the commission the general plan for the proposed Navigator pipeline. Mrs. Burns-Thompson explained that their project will comprise of approximately 1,300 miles of pipeline, with 112 miles in South Dakota, which will be split between five counties. Mrs. Burns-Thompson then highlighted several points in the proposed ordinance that Navigator would like to have further explained or changed.

Chase Jensen, from Brookings, SD, addressed the commission with his comments regarding the transmission pipeline ordinance. Mr. Jensen stated that he approves of the fact that natural gas pipelines are excluded from the ordinance, given the existing federal regulations for natural gas,



and that he appreciates that the county is treating carbon dioxide pipelines in a different manner. Finally, Mr. Jensen stated that he would like to have clarification on the reasoning behind the proposed setbacks, and why they have been set at what is proposed in the ordinance.

Dennis Jones, of 4904 S Heatherwood, Sioux Falls, SD, returned to the podium with additional comments regarding the pipeline companies, and the installation and maintenance of the pipelines.

RJ Wright, of 48198 267th Street, Brandon, SD, explained to the commission his concerns with the carbon dioxide pipelines, specifically the liability involved if the pipeline were to ever rupture.

Bryan Jorde, from Domina Law Group in Omaha, NE, addressed the commission on behalf of his client, Orrin Geide. Mr. Jorde commented that the purpose of the planning commission is to regulate intelligent land uses, and that the proposed easements for the pipelines will be permanent and could cause land use development issues in the future. Mr. Jorde also commented that the federal government does not have any role in the placement of the pipelines and that responsibility is solely on the planning commission to regulate. Finally, Mr. Jorde stated that in his professional opinion the proposed ordinance would stand up to legal challenge because the ordinance does not regulate safety issues and the proposed setbacks are a reasonable starting point.

Discussion

Commissioner Kippley stated that he appreciates the work done by staff and that he believes there will need to be more dialogue before the ordinance is ultimately passed by the County Commission. Commissioner Kippley also commented that it is his goal to find a way to get an ordinance adopted that protects citizens but also does not kill any potential pipeline projects. Then Commissioner Kippley stated that safety is largely the role of the federal government, and eminent domain and liability issues would be handled by the State Legislature and the Public Utility Commission. Finally, Commissioner Kippley stated that going forward he would like to see more constructive feedback on issues that the Planning Commission & County Commission can actually regulate.

Commissioner Ralston thanked staff for the work on the transmission pipeline ordinance, and stated that the role of the Planning Commission is to regulate appropriate land uses. Commissioner Ralston also commented that the proposed setbacks could be larger or smaller, but that the setbacks laid out in the proposed ordinance are a good starting point. Finally, Commissioner Ralston asked staff what the next step would be to move the ordinance along.

Scott Anderson, the County Planning Director, stated that this item is a public hearing and therefore the commission may vote to approve, deny, or amend the proposed ordinance. Mr. Anderson also stated that any action taken by the Planning Commission is only a recommendation that will be forward to the County Commission for final action.



Commissioner Randall also thanked staff for their work on the proposed ordinance, and stated that the regulations are a good example of the Planning Commission staying in their lane and regulating what they can regulate.

Commissioner Ode thanked staff for working on the pipeline ordinance, and stated that he believes the proposed ordinance is on the right track. Commissioner Ode also explained that safety is his main concern, and that he is pleased with this ordinance as a starting point that can be adjusted before final approval.

Commissioner VanDerVliet agreed with the rest of the commissioners and stated that they need to protect the citizens in the county, and that he will be in support of the ordinance.

Commissioner Mohrhauser thanked staff and all the citizens who continued to show up at the meetings and provided comments for the proposed ordinance.

Commissioner Duffy commended staff for their work on putting together the proposed ordinance, and that the commissioners are doing a public service by being on the Planning Commission. Commissioner Duffy also stated that she appreciates all the people that show up to the meetings and explain their points of view, and that the commission's decisions will not always satisfy everyone. Finally, Commissioner Duffy stated that the proposed ordinance is a good start and that the biggest job of the Planning Commission is to decide land use.

Commissioner Kippley addressed some of the amendments that he believes could be brought up at the County Commission meeting on May 23rd, 2023. These included potential amendments to the proposed setbacks, amending how the setbacks will be measured, and potential amendments to the application process for any potential transmission pipelines.

Action

A motion was made by Commissioner Ralston to recommend **approval** of the amended version of Zoning Text Amendment #23-02. The motion was seconded by Commissioner Ode. The motion passed unanimously with 6 votes in favor and 0 votes against the motion.

Zoning Text Amendment #23-02 – Approval Recommended



**MINNEHAHA COUNTY
PLANNING COMMISSION
MEETING MINUTES**

APRIL 24, 2023

Old Business

None.

New Business

None.

Adjourn

A motion was made to **adjourn** by Commissioner VanDerVliet and seconded by Commissioner Mohrhauser. The motion was approved unanimously. The meeting was adjourned at 11:53 p.m.