

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF SOUTH DAKOTA

)	HP 22-002
IN THE MATTER OF THE)	
APPLICATION OF NAVIGATOR)	
HEARTLAND GREENWAY LLC FOR)	PREFILED TESTIMONY OF
A PERMIT UNDER THE SOUTH)	SCOTT ANDERSON,
DAKOTA ENERGY CONVERSION)	DIRECTOR OF MINNEHAHA
AND TRANSMISSION FACILITIES)	COUNTY PLANNING AND
ACT TO CONSTRU THE)	ZONING DEPARTMENT
HEARTLAND GREENWAY PIPELIN)	
IN SOUTH DAKOTA)	
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1. Please introduce yourself to the PUC.

My name is Scott Anderson. I am the Planning and Zoning Director for Minnehaha County.

2. For how long have you worked in this field?

I have worked in my present position for 18 years. From 2000 through 2005, I worked as Planning Director in Pennington County and held another position in the joint city/county planning department for the rural division of Pennington County for approximately four years before that. I also worked as Planning Director for the City of Aberdeen from 1987 through 1995. I have served on the Board of Directors for Preserve South Dakota, a state-wide historic preservation training.

3. What is your educational background and training?

I hold a B.S. in Geography and a M.S. in Urban Planning and in Planning, all from Brigham Young University.

4. What are your job duties and responsibilities?

I supervise other employees within the Planning and Zoning Department. Our day-to-day responsibilities include enforcement of zoning and subdivision regulations, issuance of zoning and building permits, and inspecting new construction to assure compliance with building, plumbing, and sanitation codes. We also administer ordinances governing nuisances, solid waste disposal, and flood plain management. I also assist the Planning Commission and Minnehaha County Commission on land-use and zoning issues by providing research and technical support as part of their decision-making process.

5. What role does the Planning and Zoning Department have in land use in Minnehaha County?

The Planning Department is responsible for managing the physical growth and development of the unincorporated area of Minnehaha County. The Minnehaha County Comprehensive Development Plan is the official document to guide decisions on land use matters. Minnehaha County has also adopted the 1990 Revised Zoning Ordinance, which consists of regulations that are designed to carry out the goals and objectives of the Comprehensive Development Plan. *See Exhibit A.* The goals and objectives of the 1990 Revised Ordinance are to lessen congestion in the streets; to secure safety from fire, panic and other dangers; to promote health and the general welfare; to provide adequate light and air; to prevent the overcrowding of land; to avoid undue concentration or scattering of population; and to encourage a distribution of population or mode of land utilization that will facilitate the economical and adequate provision of transportation, water, drainage, sewerage, schools, parks, or other public requirements.

In June 2015, the Minnehaha County Commission adopted Envision 2035, a long-term comprehensive planning document that provides additional guidance and direction in making

land use and development decisions in Minnehaha County. *See* Exhibit B. I was directly involved in the drafting and adoption of Envision 2035, which included working with the Envision 2035 task force and other public and private stakeholders.

6. What purpose does Envision 2035 serve?

Envision 2035 is intended to update the Comprehensive Plan adopted in 1998 and to serve as a resource to address future agricultural, rural and urban choices and development. It sets the goals and priorities through 2035 that were recommended by the task force members, Planning Commission, county planning staff, the advisory board, members of the general public, and the County Commissioners. It recognizes a general consensus among both the public and the planning committee members that Minnehaha County should continue to support agricultural production and local farms while the county grows and develops.

7. What material was included in Envision 2035?

The 14-member Envision 2035 Task Force met monthly over a two-to-three year period and held multiple community events. It analyzed existing land use patterns and development trends to identify areas, intensities, and timing for potential future development and long-term preservation. This included an analysis of residential, agricultural, commercial, industrial, parks and recreation, protected land, and other land categories. It noted where residential construction has occurred, both within the incorporated areas and in unincorporated areas of Minnehaha County. For instance, Split Rock Township, which is located east of Sioux Falls, was the fastest growing and most heavily populated township in Minnehaha County when Envision 2035 was adopted. It also noted that the County's unincorporated areas will continue to experience pressure to provide locations for commercial, light and heavy industrial development in the future.

The Envision 2035 Comprehensive Plan includes several elements: a population and employment analysis, existing land use analysis, growth management, rural conservation, environmental stewardship, transportation, a future land use plan, and steps to implement the Plan. These implementation steps include continued reliance on and review of the existing zoning ordinance, as well as continued use of the GIS technology when evaluating proposed land uses.

8. Is Ordinance MC16-173-23, the pipeline transmission ordinance adopted by the County Commission on June 6, 2023, a stand-alone regulation or part of another ordinance or regulation?

It is not a stand-alone ordinance. It amends certain sections of the 1990 Revised Land Use Ordinance and adds provisions to that Ordinance to address Transmission Pipelines. The goal was to integrate provisions that are specific to Transmission Pipeline within the overall land-use regulatory and zoning scheme. As a general matter, when proposals to address new land uses or emergent issues come up, we look to the Comprehensive Plan and the existing regulations already on the books for guidance and determine how best to integrate new policy that the Commission wishes to consider and potentially adopt into the 1990 Ordinance.

As set out in the text of MC 16-173-23, the Commission determined that the proposed establishment of transmission pipelines “would constitute a new land use” that “will significantly impact future development of the County’s land-use planning vision.” The Commission determined that this new and expanded use would “adversely impact the traditional and predominant mixed-uses throughout Minnehaha County” and that establishment, development, and expansion of transmission pipelines “would be inconsistent with the 1990 Revised Zoning Ordinance.”

The purpose of MC16-173-23 is to implement new provisions of the ordinance addressing transmission pipelines in a manner that (a) is not inconsistent with federal or state law; (b) treats all transmission pipelines in a similar manner, to the extent they are similarly situated; and (c) utilizes to the greatest extent feasible the land use and zoning regulations and processes already utilized in Minnehaha County.

9. What was your initial involvement in considering amending the Minnehaha County's amendment to its land use ordinance to address transmission pipelines?

I was involved in preliminary discussions with various officials about a pipeline transmission regulation. These discussions occurred over a number of months. I submitted a staff report addressing the amendment to the 1990 Revised Zoning Ordinance to the Minnehaha Planning Commission before its April 24, 2023 meeting. As part of that report, I summarized the proposed amendment and recommended that Zoning Text Amendment #23-02 be approved. *See Exhibit C (April 24, 2023 Planning Commission Meeting Minutes, at 133).*

10. What action was taken regarding the Zoning Text Amendment at the April 24, 2023 meeting?

The Planning Commission moved to approve the Zoning Text Amendment. *Id.* at 138. Before the vote was taken, Eric Bogue of the Office of the Minnehaha County State's Attorney explained several updates to the text of the proposed amendment and provided copies of the amendment, which reflected those updates and changes, to the Commissioners and others present. A number of individuals addressed the commission, including individual landowners, representatives of Summit Carbon Solutions and Navigator, and attorney Brian Jorde. *Id.* at 134-137. A motion was made to approve the amendment and that motion passed unanimously.

11. What was the effect of the Planning Commission's approval of the amendment to the ordinance?

Approval from the Planning Commission does not amend a zoning ordinance, but functions as a recommendation to the Board of County Commissioners, which may adopt, amend, or reject the Planning Commission's recommendation.

12. What happened after the Planning Commission meeting approved the Ordinance?

The first reading of the proposed amendment occurred at the May 2, 2023 County Commission meeting. The proposed amendment was subject of public comment at that meeting, but no action was taken. The second reading of the proposed amendment occurred at the May 23, 2023 meeting. Before the proposed amendment was taken up for consideration at the May 23, 2023 meeting, I submitted a Memorandum dated May 16, 2023 to the Board of County Commissioners, which includes the following synopsis:

SYNOPSIS:

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. Upon reviewing the Zoning Ordinance to determine how transmission pipelines are addressed, it is appropriate to consider the potential long-term impact on future development of the County's land-use planning process.

The Zoning Ordinance is intended to provide good planning practices and promote public safety. A transmission pipeline will potentially impact future land uses. The siting and use should be evaluated and addressed. A proposed ordinance will accomplish promoting good land use, aid in protecting property values and determine impacts on existing infrastructure.

Staff has worked with the legal counsel to develop a proposed ordinance for your consideration. It identifies the districts in which a transmission pipeline could be located, develops criteria, and definitions. 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. The County Commission must now have a hearing on the proposed zoning text changes. The County Commission set a hearing date of May 23, 2023.

PLANNING COMMISSION:

The Planning Commission held a public hearing and after taking testimony voted 6-0 to approve the proposed amendments to the Zoning Ordinance.

The proposed ordinance, the Fact of Adoption and the draft minutes from the April 24, 2023 Planning Commission are included for your review.

See Exhibit D (May 23 County Commission Meeting Packet, at 123-124).

13. What role did you have at the May 23, 2023 meeting?

After the County Commission had addressed other items on its meeting agenda, I provided an overview of the difference between permitted uses, special permitted uses, and conditional uses. That explanation was largely for the benefit of the citizens and other interested parties attending the meeting. I further explained that under the language of the Pipeline Transmission Ordinance, as adopted by the Planning Commission, a transmission pipeline could qualify as a “special permitted use,” meaning that if an application meets all the criteria set out in the Pipeline Transmission Ordinance, then it is permitted and we would issue a special permitted use. I explained that a transmission pipeline would qualify as a special permitted use in the following types of zoning districts: the A1 agricultural district, the rural residential districts, the R1 residential districts, the commercial district, the light industrial district, and the recreation conservation district.

I also explained that if an application for construction of a transmission people did not meet all the criteria, then the applicant would still have the opportunity to seek a conditional use permit and described generally how that process works. All of this is set out in the Hearing Transcript (“HT”). *See* HT, May 23, 2023 Mtg., at 1-6.¹

¹ I understand that the full hearing transcripts from the May 23, 2023 County Commission Meeting and the June 6, 2023 County Commission Meeting are being submitted with testimony of Commissioner Kippley.

14. Can you give other examples of the conditional use permit process?

There are many different scenarios under which a party may seek a conditional use permit. For example, at the April 24, 2023 hearing, the Planning Commission considered conditional use permit applications on a wide range of topics.

Agenda Item 2 concerned an application for conditional use to assign a building eligibility to a parcel of land in A1 Agricultural Zoning district that comprised approximately 118 acres. The proposal was to move a building eligibility near other adjacent residences approximately one-half mile from the proposed location of the eligibility. A conditional use permit was needed under Article 3.04(D) of the 1990 Revised Zoning Ordinance.

Agenda Item 4 concerned a request to operate a “farm experience operation” and application for an Agricultural Tourism Permit. Because the property was less than 20 acres, the petitioner needed to follow the conditional use permit procedure as outlined in Article 19 of the 1990 Revised Zoning Ordinance.

Agenda Item 3 concerned a request to operate a tree grinding operation as a rubble dump site near the landfill operated by the City of Sioux Falls. The property in question was located in A1 Agricultural Zoning District, and the permit was sought pursuant to 3.04(R) of the 1990 Revised Zoning Ordinance.

Agenda Item 5 concerned an application to allow a Class C Beef concentrated animal feeding operation (“CAFO”). The Land Use Ordinance requires that a Class C CAFO be located a minimum of 3,960 feet from a second-class municipality. The applicant for the Class C CAFO had already obtained a waiver from Valley Springs, South Dakota, which is one means by which an applicant can operate a CAFO that would otherwise not comply with the specific

CAFO setback. The same type of waiver exists in the Pipeline Transmission Ordinance that was eventually enacted by the County Commission on June 6, 2023.

15. What criteria are used to evaluate a conditional use application?

As reflected in the meeting minutes from the April 24, 2023 meeting, each conditional use permit is evaluated based on six criteria. The six criteria are as follows:

- 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.
- 2) The effect upon the normal and orderly development and improvement of surrounding vacant property for uses predominant in the area.
- 3) That utilities, access roads, drainage and/or other necessary facilities are provided.
- 4) That the off-street parking and loading requirements are met.
- 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.
- 6) Health, safety, general welfare of the public and the Comprehensive Plan

The Planning Commission considers all criteria in deciding whether to approve the conditional use permit. Depending on the nature of the request for a conditional use permit, certain criteria may carry less weight or significance than others. This also is reflected in staff analysis and comments for each individual application, which appear in the meeting minutes from the April 24, 2023 hearing. *See generally* Exhibit C.

16. In support of its Motion to Pre-Empt County Ordinances, Navigator has submitted testimony from Monica Howard, which includes the statement that Minnehaha County’s Ordinance “fails to specify . . . what the criteria are for the County to determine whether a conditional use permit is appropriate.” Do you believe that is accurate?

No, the same criteria would apply to an application for a conditional use permit for a Transmission Pipeline as to conditional use permits for all other uses. The criteria are set forth in the 1990 Zoning Ordinance and are publicly available.

17. After the adoption of Ordinance MC 16-179-23 on June 6, 2023, did Ms. Howard or anyone else from Navigator contact you asking you to clarify any aspect of the conditional use process?

No.

18. You described the explanation that you provided regarding special permitted uses and the conditional use permit at the May 26, 2023 commission meeting. Were other attendees given the opportunity to speak?

Yes, a representative from Summit Carbon Solutions addressed the Commission, and Monica Howard of Navigator did as well. In addition, several citizens and one state legislator also spoke during the public comment portion of the meeting.

19. In what ways did your department assist the Commissioners in evaluating and understanding the various amendments and alternative proposals that were discussed at the May 23, 2023 Commission meetings?

We prepared a number of demonstrative exhibits, which provided a visual depiction of the potential impact that adopting different separation or setback criteria would have. These demonstrative exhibits utilized GIS data to visually represent what portions of unincorporated county would fall within the different setbacks from (1) dwellings, churches, and businesses; (2) public parks and schools; and (3) first, second, and third-class municipalities, respectively. For the 330' parcel map all of the parcels with dwellings were selected. Using GIS software a 330' GIS shape file was created with a buffer represented on the map. The buffer was created from the property boundaries on the residential parcels. Subsequently, another buffer for the municipalities was showing the buffer based on the class of city.

I also responded to a number of questions that the Commissioners had in the course of their deliberations at the May 23, 2023 meeting. For example, Commissioner Karsky had asked what setback or separation would apply as of the date of the meeting, absent any action by the County Commission. I explained that the 1990 Zoning Ordinance did not specifically address

transmission pipelines, so there was no county setback or even a guideline in place. The lack of any meaningful rules, standards, and procedures relating to land use was part of the original motivation to consider an amendment to the 1990 Zoning Ordinance to address transmission pipelines. I further explained that the only other regulatory limitation of which I was aware was a 50-foot restriction imposed by federal law. *See* HT, May 23, 2003 Mtg., at 33-34.

I was also asked about the fee provision that would apply to any applicant who applies for and is granted a conditional use permit for a Transmission Pipeline. That provision reads as follows:

If a conditional use is granted for a Transmission Pipeline, the Applicant or actual operator or their successors, assigns and agents shall pay to the County an annual fee of \$300 per linear mile of pipeline within the County. The fee shall be used to defray the direct and indirect costs associated with general administration and enforcement of this section. The fee shall be payable by January 20th of each year and deposited in the general fund of the County.

MC 16-179-23, ¶ 24.05(b)(2). One of the commissioners had asked if there were other instances under the 1990 Zoning Ordinance under which Minnehaha County collected annual fees from a conditional use permit. In the case of conditional use permits that are granted to do sand and gravel mining or hardrock mining, we collect a fee annually that is based on the number of open acres of a gravel pit. *See* ¶ 12.08(D). That fee structure is analogous to the fee proposal that applies in the case of a Transmission Pipeline under ¶24.05(b)(2).

This issue arose in the context of a proposed amendment by Commissioner Kippley to change the annual fee component of the Pipeline Transmission Amendment. With respect to the \$300 per linear mile fee, Commissioner Beyenberg commented:

If we maintain the fee for open gravel pits, I don't see why would not keep that for other conditional use permits. And then a question would be: Does that go into the general fund? Where does that fee go?

HT, May 23, 2003 Mtg., at 93:11-15. I responded that all fees collected by the Zoning and Planning Department go into the general fund.

Later in the discussion, Commissioner Beninga shared his views regarding the fee provision, stating:

I don't think the \$300 per linear mile is going to put anybody in the pipeline industry out of business. The other piece of that is we're going to ongoing issues to provide townships and rural communities with support of their volunteer fire departments, and all that kind of stuff, so I have no problem with the \$300.

Id. at 96. Commissioner Kippley's motion to amend the proposed ordinance to strike ¶24.05(b)(2) died for lack of a second at the close of the May 23, 2023 meeting. Consequently, the \$300 per linear mile annual fee remained in the proposed ordinance.

20. You previously testified about the \$300 per linear mile fee that will apply if a conditional use application for a transmission pipeline is granted. What is the fee that is charged as part of filing an application for such a conditional use permit for a transmission pipeline?

Under ¶24.05(b), a fee of \$25,000 will be charged for filing such an application.

21. Ms. Howard has offered testimony suggesting that this fee is arbitrary and unreasonable. Would you anticipate that your office would expend considerable time and energy assessing a conditional use permit application for a transmission pipeline?

Yes, it would involve considerably more work than the typical conditional use permit, including the examples from the April 24, 2023 meeting that I described above. I would anticipate that reviewing a conditional use permit for a transmission pipeline would be more complex and time-intensive and would require more staff to devote more time than almost any other type of proposed land use that we have encountered. We routinely make site visits as part of the review process, which usually involves visiting a single location. In assessing a pipeline transmission conditional use application, we would likely need to visit sites at multiple different points across the County, including not just unincorporated land but also rights-of-way and other

potentially affected land-uses. A Transmission Pipeline conditional use permit application will cover the entire proposed route in the application. The one-time \$25,000 fee will cover assessment of the entire application, including multiple site visits at different locations, as part of our efforts to assist the Planning Commission apply the conditional use permit criteria to the entire proposed route.

22. Are there other instances in which the County assesses a fee for a particular proposed use or fee?

Yes, pursuant to Resolution 21-55, Minnehaha County has determined that the initial application fee for a medical cannabis establishment license shall be \$5,000.00.

23. Did you also attend the June 6, 2023 meeting?

Yes.

24. Did the meeting follow the same general process?

Yes, the Commissioners permitted public comment again. Some of the citizens who were present took the opportunity to present their views. The Commissioners shared their own views and deliberated about various proposals under discussion as well as the amendment in general.

25. Were you asked to address issue raised by Commissioners at the June 6, 2023 meeting?

Yes, Commissioner Karsky asked that I address the relationship between the proposed 750-foot setback, the ability for an applicant to obtain waivers from affected landowners, and the conditional use process. HT, June 6, 2023 Mtg., at 15-17.

I explained that if a pipeline route was within the setback area and the property owner did not sign a waiver, then the next option would be for the applicant to file for the conditional use permit and take it to the planning commission and ask for a conditional use permit that would reduce the setback at a certain location or number of locations. In my example, I spoke about a

portion of a pipeline that would be 200 or 300 feet from a dwelling, but the option to seek waivers or use the conditional use process is available to a pipeline company regardless of the specific distance.

I was also asked as to the purpose of the setback, if there was a backup option through use of the conditional use permit. In Commissioner Karsky's words: "[W]hy have a setback if it can be appealed through a conditional use process?" HT, June 6, 2023 Mtg., at 16:16-18. I noted that the purpose of having a setback is because if an applicant is able to meet that setback and they plan accordingly, the proposed transmission pipeline is classified as a permitted use. I indicated that I was "skeptical" about whether that was going to occur in the case of the two companies who have indicated an intent to seek approval to construct transmission pipelines along, over, or across land in Minnehaha County. *Id.* at 17:13-24. I was referring to the 750-foot setback for dwellings, churches, and businesses that was part of the amendment under consideration at the time, but which was not included in the final amendment adopted by the Commission.

At present, I do not know whether the current routes proposed by either Carbon Summit Solutions or Navigator will meet the "permitted use" criteria, including the 330-foot setback. I do not know the specific routes that each company has proposed, and I would not be able to make a determination without receiving and reviewing the specific information that an applicant must provide under ¶12.18(B) of the Revised 1990 Ordinance. This much, at least, is indisputable: if a proposed route for a transmission pipeline does not comply with the setback criteria and therefore does not qualify as a special permitted use, the applicant will have other options to pursue, including seeking waivers from landowners and applying for a conditional use permit.

26. Navigator’s counsel has argued to the Public Utilities Commission that Minnehaha County’s ordinance, if left undisturbed, would “block Navigator’s project” and “render the PUC’s hearing a nullity.” How do you respond to these statements?

I strongly disagree. I am unaware whether any sections of Navigator’s proposed route would not qualify as a special permitted use, or how close the route may be to the setback requirements adopted in MC 16-179-23. But every version of that amendment has included a waiver provision and a conditional use permit provision. If a proposed routing does not qualify as a special permitted use, that does not mean the pipeline cannot be built or that the project is “blocked” by enforcing provisions of the Ordinance. The applicant can persuade affected landowners to waive the setback requirement. As I said at the hearing, the efficacy of that option will depend on how cooperative or willing property owners are to sign a waiver. If those efforts are unsuccessful, the applicant remains free to file a conditional use permit. Likewise, an applicant could bypass the waiver process and immediately file a conditional use permit.

I do not believe that enforcement of Minnehaha County’s ordinance renders the PUC hearing a “nullity.” There are a number of provisions in MC 16-179-23 that are tied to the PUC decision on a permit application. If the PUC grants a permit, that accelerates the timeline by which my office is obligated to determine whether a proposed route qualifies as a permitted use. If the PUC denies the application, then the application to the County is moot. If an applicant obtains waivers from land owners or municipalities as to specific separation criteria, those waivers become moot if the applicant fails to obtain permits or authorization from the PUC or other applicable federal agency within five years.

27. Were there any other issues that you addressed at the June 6, 2023 hearing?

No. The Commission modified the Planning Commission’s proposed amendment by reducing the separation and setback criteria from 750 feet to 330 feet as applied to dwellings,

churches, and businesses. After that change, the Commission voted 4-1 to adopt Ordinance MC16-179-23 at the conclusion of the June 6, 2023 meeting.

28. It would be helpful to understand how the separation criteria or setbacks that apply to Transmission Pipelines relate to other aspects of the 1990 Ordinance. Are there other sections in the Land Use Ordinance that include setback requirements?

Yes, the sections of the Ordinance that address CAFOs, gravel pits, and wind conversion systems also include standard setback or separation criteria. Those requirements are as follows:

CAFO Setbacks: There are four classes of CAFO – Class A through D – and the particular operation is classified based on the number of animal units. The minimum separation criteria for Classes A-C are as follows:

	Class A	Class B	Class C
Dwellings, Churches, and Businesses	3,960 ft (3/4 Mile)	1,980 ft (3/8 Mile)	1,320 ft (1/4 Mile)
Public Parks and Schools			
	5,280 ft (1 Mile)	2,640 ft (1/2 Mile)	1,980 ft (3/8 Mile)
First Class (Population of 5,000 and more)	13,200 ft (2.5 Miles)	7,920 ft (1.5 Miles)	5,280 ft (1 Mile)
Second Class (Population between 500 and 5,000)	7,920 ft (1.5 Miles)	5,280 ft (1 Mile)	3,960 ft (3/4 Mile)
Third Class (Population less than 500)	5,280 ft (1 Mile)	3,960 ft (3/4 Mile)	2,640 ft (1/2 Mile)

See 1990 Revised Ordinance, at ¶12.10. For a Class D CAFO to qualify as permitted special use, it must be located in a farmstead or comply with the following separation criteria:

- (1) a dwelling, church, school or business: 660 feet
- (2) a public park: 1320 feet
- (3) a municipality: 2640 feet.

As in the case of MC 16-179-23, the CAFO ordinance also allows an applicant to obtain waivers from surrounding landowners or municipalities, which may permit an applicant to site the CAFO to a dwelling or business that is closer than the minimum separation criteria would otherwise allow.

Wind Energy Conversion Systems. Commercial wind energy conversion systems are only permitted in lands zoned A-1 Agricultural, C Commercial, I-1 or 1-2 Industrial, or RC Recreation/Conservation. In addition, they are subject to the following setbacks:

- (a.) WECS shall be set back 2x the total WECS height from any exterior property line.
- (b.) WECS shall be set back 1.25x the total WECS height from the right of-way line of any public road or highway.
- (c.) WECS shall be set back 3X the total WECS height from any occupied structure. A reduced setback shall be considered only with written approval from the owner of the occupied structure.

¶12.02(C).

Rock, Sand, and Gravel Extraction. An applicant for rock, sand, and gravel extraction must show compliance with a “buffer area,” which applies as follows:

A minimum distance of 1000 feet should be maintained between an existing residence and a rock, sand or gravel operation, except in those instances when the operator secures a waiver from the affected landowner.

¶ 12.08(G).

Finally, telecommunication and broadcast towers are subject to separation requirements set out in ¶12.12.

29. The Commission discussed ways in which the Ordinance would not only address existing land use, but future development, including the use of building eligibilities. What is a building eligibility?

Under the 1990 Revised Ordinance a building eligibility, also referred to as an “eligible building site,” is defined as “[a] site which fulfills the requirements for the construction or placement of a residential dwelling or manufactured home.” Those requirements are set out in the Ordinance and in other County codes (e.g., building code). The 1990 Revised Ordinance continues: “To compute the number of eligible building sites on a lot of record of forty acres or more, the total acreage of the parcel shall be divided by forty acres. The resulting whole number is the number of building sites eligible on the lot of record.”

30. Do the Comprehensive Land Use Plan and Envision 2035 speak to the issue of the siting of building eligibilities?

Yes. Ideally, building eligibilities would be clustered and near each other. That makes practical sense, as they will often have a common access road or other means of getting to the residences. We also believe that clustering building eligibilities close together will preserve and protect the use of long-term agriculture. Envision 2035 has a specific goal that speaks to this point. To take just one example, Action 3.4 states: “Support and encourage clustering of building eligibilities to protect prime agricultural lands.” *See* Exhibit B, at 91.

31. Does the 1990 Revised Land Use Ordinance also regulate the transfer of building eligibilities?

Yes, the criteria that apply to a proposed transfer of building eligibilities are set out in ¶ 3.04(Y). In general, a building eligibility may transfer from one parcel to another if the parcels

are contiguous and under the same ownership. The transfer is deemed a “conditional use” and is subject to the conditional use permitting process.

32. What factors influence whether a landowner who owns a property with an existing building eligibility may construct and place a residential dwelling or manufactured home?

There are specific provisions in the 1990 Revised Zoning Ordinance that would apply, along with other practical considerations. For land that is located in the A-1 Agricultural zoning district, Section 3.03(a) and (h) set forth the criteria for permissive use a building eligibility within a farmstead. Section 3.04(d) addresses specific criteria for a conditional use permit to use a building eligibility in the A-1 District, which includes, among other things, a showing that the building site does not “conflict with other existing or potential land use activities or the prevailing pattern of development” and a showing that “soil conditions are acceptable for a building site.” Additionally, the applicant must establish that “approval has been granted by the appropriate governing entity for access onto a public road.”

33. Are there ways in which a hazardous pipeline may limit or impede a landowner’s ability to use a building eligibility?

Yes, it is possible that a pipeline, if built, would limit and even negate landowner’s use of an existing eligibility. First, a landowner must be able to establish access points to the site of a proposed use of a building eligibility and a public road. It is my understanding that, if a transmission pipeline is built, no building or other structure may be built above the pipeline after it is buried or within 50 feet on either side of the center of the pipeline. To the extent that the terms of the easement on a landowner’s property or an adjacent property makes it difficult or impossible to obtain access approval, that may limit or negate the functional utility of a building eligibility.

Another potential limitation relates to potential siting of sewer systems. Before a landowner is able to obtain a building permit, the landowner must identify a location on the property that is suitable for a septic system and obtain the necessary permit. The placement of a septic system must comply with setback requirements from lakes, streams, and wells, and the drain field is subject to similar requirements. The location of the septic system and drainfield are also determined by the soil types, which may impact the depth at which the system is installed or eliminate certain portions of a parcel as potential building sites. Certain soil types that are prevalent in areas of Minnehaha County are not conducive to sewer systems and the sewer drain field, which may limit the options as to where a landowner may site a building eligibility.

If the routing of the pipeline crosses or traverses a section of property that would be the only suitable location for a septic system, the owner may be impeded or entirely prevented from making use of the building eligibility on that parcel.

34. In general terms, what are the effects of the Pipeline Transmission Ordinance?

The amendment will limit the location of where a transmission pipeline may be built as a “special permitted use.” If the routing of a proposed pipeline does not meet those criteria, then the applicant will need to obtain appropriate waivers or apply for a conditional use permit. Additionally, if a pipeline is built, that will have an effect on the potential land use of property owners on whose property the pipeline is built and the land use for owners of adjacent properties. MC 16-173-23 also has an effect on the overall development and growth of the county as a whole, in terms of potential routes for transmission pipelines but also in terms of land-use limitations on properties where the pipeline is built and on neighboring properties.

35. If a transmission pipeline is built in Minnehaha County, in what ways will that affect the future land use of the individual parcels of property where the pipeline is installed?

If a pipeline is built, it would prohibit the construction of residential dwellings and other buildings over the route where the pipeline is buried. It will also prohibit or limit certain other land uses, which may be permissive uses and special permissive uses depending on how the parcel is zoned. For example, the pipeline may limit or prevent use of parcels as parks and schools, which are permitted uses in land zoned as A-1 Agricultural District and as Rural Residential District but which are subject of the 1,000-foot setback that was included as part of the amendment adopted by the County Commission. I cannot speak in absolutes because the Ordinance includes mechanisms – such as waivers and the conditional use process – that may result in context-specific deviations from the terms of ¶12.18.

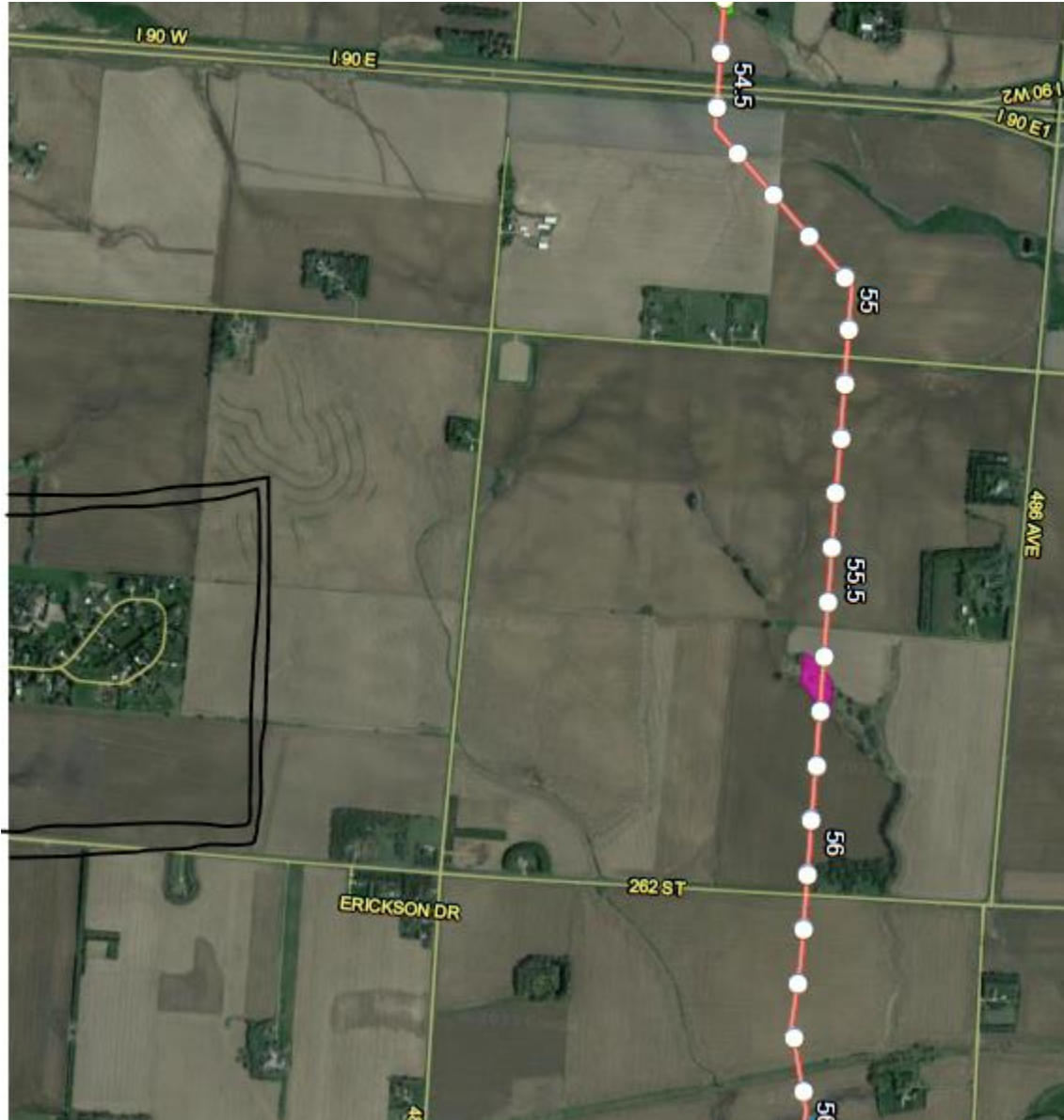
36. If a transmission pipeline is built in Minnehaha County, in what ways will that affect future land use and development beyond individual parcels on or across which the pipeline is built?

The construction of a transmission pipeline may impact future land use development in any number of ways. For example, a transmission pipeline may impact where access roads can be built, how and whether parcels adjacent to the pipeline may accommodate further residential development, and how and whether parcels adjacent to the pipeline may be used for schools and parks. The siting of schools is a leading driver of future residential and commercial growth, and I think it is possible, even probable, that the construction of a pipeline will limit the potential future sites of schools, which in turn affects the location of residential and commercial development in areas adjacent to schools.

The location of Navigator’s pipeline may function as an outer boundary of development in areas within Minnehaha County that have experienced rapid growth and that I anticipate will

continue to experience rapid growth. One example of this with respect to Navigator's proposed pipeline is the section of pipeline that traverses across unincorporated Minnehaha County land between Brandon, South Dakota, and Valley Springs, South Dakota. I understand that there has been evidence presented in the case that the proposed Navigator pipeline is more than 9,000 feet from the City of Brandon. I have no basis to dispute that figure, but I am aware that the proposed route is closer to residential developments within the unincorporated portions of Minnehaha County directly outside the current city limits of Brandon.

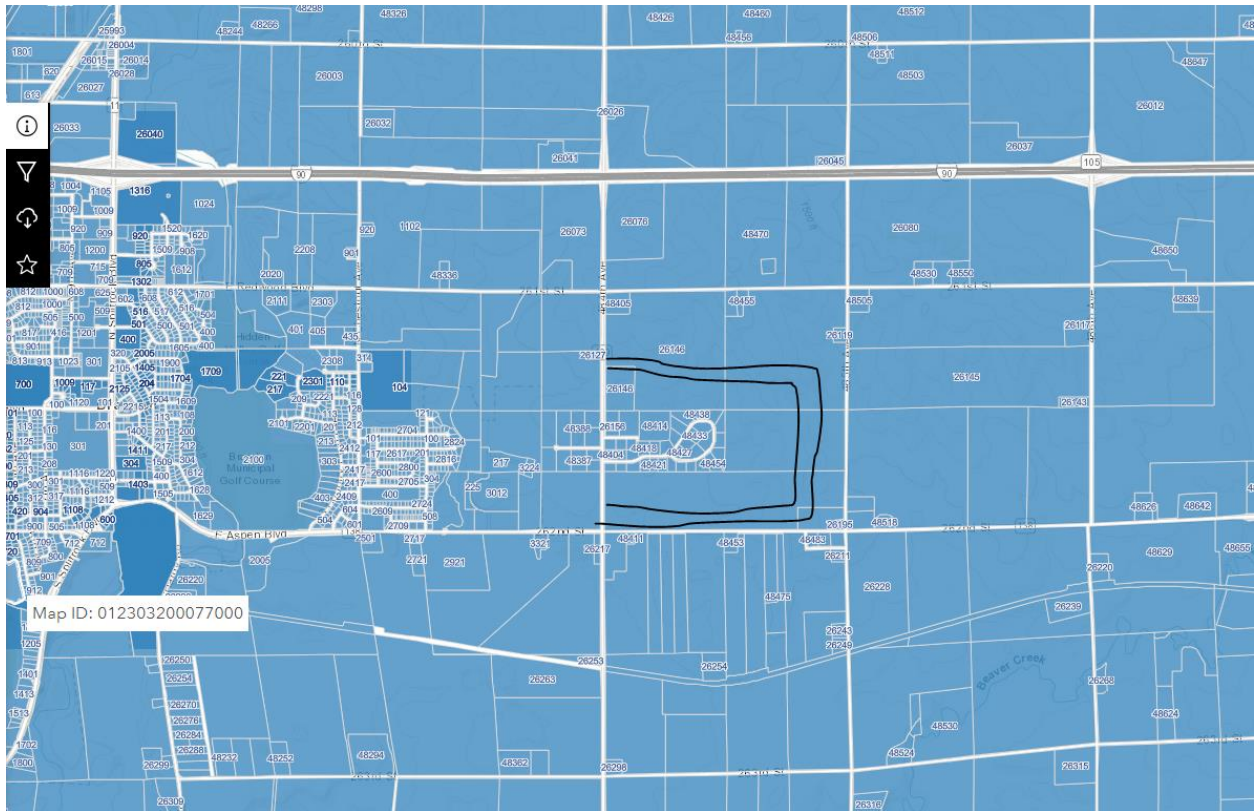
Navigator has presented an aerial map that shows a section of the pipeline that passes between Valley Springs and Brandon and crosses Interstate 90. This section of the pipeline shows miles "53.5" through "59" on Navigator's exhibit. *See* Exhibit N1, at 87 (Exhibit A2, Aerial Map, p. 9 of 18). The sections of the pipeline shown here lie to the west of a residential cul-de-sac that is visible in Navigator's exhibit and that is located to the west of 484th Avenue and to the north of 262nd Street. I've used a screenshot of Navigator's aerial photo, reoriented the photo so the north-south axis runs vertically rather than horizontally, and drawn a box around the cul-de-sac in question:



This cul-de-sac sits at the outer edge of a residential development to the east of Brandon Golf Course. Some of this development lies within Brandon city limits; the cul-de-sac is county land and zoned as A-1 Agricultural District.

To better show the location of the cul-de-sac in relation to the residential development, I've provided another screen shot from the Minnehaha County GIS website that shows the cul-de-sac in question in relation to the residential development of which it is part. The residential

developments sit directly to the east of the Brandon Golf Course, and the cul-de-sac sits at the edge of development that has occurred thus far.



If current development trends continue, it would be my expectation that this housing development would continue to expand to the east and extend to the portion of Navigator’s proposed pipeline route that runs north-south along the pipeline mile range 55-57. I have no ability to predict when this might happen, but I think it is likely that county land will be developed and used for residential or commercial development to the west of the cul-de-sac and toward where the pipeline route in this portion of Minnehaha County is proposed.

A great deal of attention has been paid to ways in which the Pipeline Transmission Ordinance may affect where a pipeline could be built. But the Ordinance is also significant inasmuch as it will influence whether development occurs in areas that surround a pipeline that is actually built. Having an Ordinance in place gives my office and citizens the ability to

understand what that development process may look like in the near term and in the future. The Ordinance also gives citizens the ability to make informed choices about how their properties may be affected and how (and if) they may be developed or put to a different use.

37. In what ways does having a zoning ordinance that addresses transmission pipelines aid the Planning and Zoning Department achieve its objectives?

Having set criteria for transmission pipelines helps to promote orderly and efficient growth and provides citizens and landowners with the ability to make informed decisions about their own property and the development of the surrounding areas. Having the ordinance in place gives coherence to how growth and development may proceed in Minnehaha County. I also believe that it helps my office provide useful guidance to citizens and to the Planning Commission and County Commission, whether the discussion concerns future land-use planning or is addressing specific proposals about individual parcels or conditional use requests.

38. Does this conclude your testimony?

Yes.

Date: August 21, 2023.

/s/ Scott Anderson
Scott Anderson, Director, Minnehaha County Planning & Zoning