

CONDITIONAL USE PERMIT

MEETING DATE
June 7, 2007

ACTION ITEM:
Conditional Use Permit

- ✓ armored vehicle driving course
- ✓ indoor and outdoor shooting range
- ✓ related retail sales, including: souvenirs, promotional items, guns and other hunting-related products

Marie Borglum

**WASECA COUNTY PLANNING COMMISSION
June 7, 2007**

SUBJECT: Conduct an armored vehicle recreational facility including a driving course; also to include indoor and outdoor shooting range, including related retail sales, including but not limited to, souvenirs, promotional items, guns and other hunting-related products, and etc. Open daily and by appointment. Application also includes advertising sign for above-listed business. Parcel is Zoned Agricultural. Subd. 8.3, Conditional Uses, No. 10: *Commercial outdoor recreational areas, including recreational camping areas as defined in Section 19* & No. 13: *Golf courses, golf and country clubs, gun clubs, miniature golf courses, racetracks and golf driving ranges*, No. 23: *Other uses determined by the Planning Commission to be of the same general character as the conditional uses above and found not to be detrimental to the general health and welfare of the County.*

APPLICANT: Marie Borglum

LOCATION: PID 02.019.0400 & 02.019.0405, 8.71 ac beg 330ft N of SE cor of SE1/4 etc. (legal description attached) & PID 02.019.0405 16.29 ac that part of the SE1/4 of SE1/4 beg at SE cor thence N 863.98ft etc. (legal description attached)

EXISTING ZONING: "A" Agricultural

DATE OF HEARING: April 5, 2007 (original)

REPORTED BY: Angela Knish, Waseca County Planning & Zoning Administrator

APPLICATION SUBMITTED:	March 8, 2007
First Class Notices; 22 sent	April 20, 2007
60-days from date of application:	May 15, 2007 (Tuesday)
120- days from date of application:	July 6, 2007 (Friday)
Planning Commission Public Hearing held: Action: Table to May 3, 2007 Reason: Request more information from applicant	April 5, 2007, 8:00 p.m.
Citizen's Petition for an EAW received by Waseca County:	April 16, 2007
Citizen's Withdrawal of EAW request:	May 1, 2007
60-days restart after accepted withdrawal of Citizen's Petition:	May 1, 2007
2 nd Planning Commission Public Hearing Action: Table to June 7, 2007 Reason: To review documents submitted & allow further information through May 11, 2007.	May 3, 2007, 8:00 p.m.
60-days from withdrawal acceptance: County Board's extension of the 60-days & reasons: The issues are complicated; and A great deal of material has been submitted to the Planning Commission for its consideration; and The County Board simply needs more time to make a careful determination on your permit application.	June 30, 2007 June 17, 2007
Final Decision shall be made by 120 days from May 1, 2007:	August 29, 2007

Parcel information and surrounding area:

PROJECT PROPOSAL: as listed above.

Parcel History – I.E.: C.U.P.s, Variances, and Violations:

Wetland Conservation Act Cease and Desist Order: April 4, 2007, of record, submitted by Carol Overland.

Variance Granted: May 2, 2002: to construct a 60ft x 102ft addition to existing shop to be set back 24ft from the north property line, requesting relief of 16ft PID 02.019.0400 8.71 ac.

Conditional Use Permit Granted: November 7, 1995, Operation and sales of a concrete rock crushing business. PID 02.019.0405 16.29 ac.

Variance Granted: August 2, 1988, Cannot meet required 40ft side yard setback in order to locate a manufactured home and building. Is requesting 15ft setback. PID 02.019.0405 16.29 ac.

Conditional Use Permit Granted: June 23, 1987, Shop for land improvement business and storage of equipment and materials. Construction and excavation for a wildlife pond. PID 02.019.0405 16.29 ac.

STRUCTURES: those known – single-family dwelling, accessory structure for Land Improvement business, scale, Quonset shed, also includes crushed (concrete) product stockpile(s)

ADJACENT LAND USES: The adjoining area is zoned agricultural. Adjacent land uses include rural residential housing, agricultural farmland and/or animal agriculture, and a craft business located to the east.

ORDINANCE REFERENCES:

Ordinance Section 8.3, Conditional Uses in the Agricultural Zone

No. 10: *Commercial outdoor recreational areas, including recreational camping areas as defined in Section 19,*

No. 13: *Golf courses, golf and country clubs, gun clubs, miniature golf courses, racetracks and golf driving ranges,*

No. 23: *Other uses determined by the Planning Commission to be of the same general character as the conditional uses above and found not to be detrimental to the general health and welfare of the County.*

Ordinance Section 20.6, Standards: Motor Vehicle Tracks

- A. No motor vehicle track, including auto, snowmobile, motorcycle, go-cart or minibike shall be within three hundred feet of the right-of way.
- B. No motor vehicle track, including auto, snowmobile, motorcycle, go-car or minibike track shall

be allowed within 1,500 feet of any residential structure

Ordinance Section 20.6, Standards for Rifle, Trap and Skeet Ranges

- A. In the case of a rifle range, all firing shall be at targets backstopped by an earth berm or hillside as follows:
 - 1) The minimum distance between the top of the targets and the top of the berm or hillside shall be twelve (12) feet.
 - 2) The minimum angle between the side of the berm or hillside and the horizontal shall be sixty-five (65) degrees.
 - B. In the case of trap or skeet ranges, a clear field view of one thousand (1,000) feet shall be maintained, as measured from the firing points.
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STAFF REPORT:

NOTE: PLEASE REVIEW THE APPLICANTS RESPONSES TO ALL OF THE BELOW CUP CRITERIA, AS ATTACHED

Marie Borglum is requesting to conduct an armored vehicle recreational facility including a driving course; also to include indoor and outdoor shooting range, including related retail sales, including but not limited to, souvenirs, promotional items, guns and other hunting-related products, and etc. Open daily and by appointment. Application also includes advertising sign for above-listed business.

Staff Comment: It is unclear at this time if Applicant is requesting the opportunity to drive the tanks over "junk" vehicles as a recreational opportunity. If so, other environmental issues will need to be addressed prior to granting permission to do so. This item in **NOT** included in this review. It may be beneficial to request the course layout and features from the applicant to determine specifics.

Zoning References:

Staff submits the following information from Waseca County Zoning Ordinance No. 75:

I. Section 5, Rules and Definitions for the purposes of clarifying certain terms or issues.

Subdivision 5.1 Rules

1. Word Usage

The language in this Ordinance shall be interpreted in accordance with the following rules of construction:

- D. *The word "shall" is mandatory, whereas, the word "may" is permissive.*
- E. *Any word or term, which appears in this Ordinance that, is not defined herein shall be interpreted and defined by the Zoning Administrator.*

2. Distances

All distances, unless otherwise specified, shall be measured horizontally.

II. Section 8, Agricultural District --- Subdivision 8.1 Purpose of the District:

Subdivision 8.1 Purpose

The "A" AGRICULTURAL DISTRICT is intended to provide a district that will retain suitable areas within the County in agricultural use; control scattered non-farm development and secure economy in governmental expenditures for public services, utilities and schools. Parcels in this district which are a minimum of 35 acres in size and designated for long term agriculture in the Waseca County Farmland Preservation Plan shall be eligible for the creation of exclusive agricultural use zones as prescribed in the 1984 Agricultural Land Preservation Policy Act, Chapter 40A, of the Minnesota Statutes.

III. Section 8, Agricultural District --- Subdivision 8.3 Conditional Uses.

Conditional Uses are defined as, "*Conditional Use -- a land use or development as defined by ordinance that would not be appropriate generally but may (permissive) be allowed with appropriate restrictions as provided by official controls upon a finding that certain conditions as detailed in the Zoning Ordinance exist, the use or development conforms to the comprehensive land use plan of the community and the use is compatible with the existing neighborhood*".

Staff Comment: In general, there are three kinds of uses within a zoning ordinance: 1) permitted, 2) conditional, 3) prohibited.

In addition, the Zoning Ordinance gives the Planning Commission latitude to determine if a proposed use "is of the same general character" to those uses listed within a specific district which are found not to be detrimental to the health and welfare of the community.

- 1) Permitted uses: A permitted use is a use that is listed within a district as a permitted use. This use is allowed if the standards of the applicable zoning district can be met.
- 2) Conditional Uses: A use permitted in a particular zoning district upon showing that such use in a specified location will comply with all the conditions and standards for the location or operation of the use as specified in the zoning ordinance and authorized by the approving agency. It is a land use or development as defined by ordinance that would not be appropriate generally but may be allowed with appropriate restrictions as provided by official controls upon a finding that certain conditions as detailed in the Zoning Ordinance exist, the use or development conforms to the comprehensive land use plan of the community and the use is compatible with the existing neighborhood.¹

Comment (from The New Illustrated Book of Development Definitions): *Conditional uses are permitted uses and are appropriate in the zoning district only (emphasis added) when all conditions are met. For example a house of worship may be desirable in a residential area but controls over parking, circulation, setbacks, and landscaping may be needed to prevent them from adversely affecting surrounding residences. By classifying them as conditional uses, separate regulations can be imposed to mitigate the adverse impacts. In some states, conditional uses are classified as special exception uses. In all cases the conditions must be specific.*

¹ *The New Illustrated Book of Develop Definitions*, by Harvey S. Moskowitz and Carl G. Lindbloom, Third Printing 1997 & Waseca County Zoning Ordinance No. 75.

- 3) Prohibited Use: If not specifically permitted by the zoning district or found by the planning commission to be of the similar character to the uses listed within the listed conditional uses, the use shall be considered prohibited.

IV. Subdivision 6.4 Uses Not Provided For In Zoning Districts

Whenever in any Zoning District a use is neither specifically permitted nor denied the use shall be considered prohibited. In such case the County Board or Planning Commission, on their own initiative upon the request of the property owner, may conduct a study to determine if the use is acceptable and, if so, what Zoning District would be most appropriate, and the determination as to conditions and standards relating to the development of the use. The County Board and Planning Commission may initiate an amendment to the Zoning Ordinance, if appropriate, to provide for the particular use under consideration or shall find that the use is not compatible within certain Zoning Districts.

When considering a Conditional Use request:

The zoning ordinance states a use MAY be allowed WITH APPROPRIATE RESTRICTIONS when:

- 1) finding that certain conditions (the conditional use criteria (Section 8.3 & 20.6)) exist,
 - 2) when the use or development conforms to the comprehensive land use plan, and
 - 3) When the use is compatible with the existing neighborhood.
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V. Subdivision 8.3 Conditional Use ---Criteria

The following uses may be permitted in the "A" AGRICULTURAL DISTRICT, subject to the provisions of Section 20 and those as described below:

In addition to the provisions in Section 20, conditional use permits in the Agriculture District must address conformity of the proposed use with the Waseca County Farmland Preservation Plan, compatibility with the existing neighborhood and the following considerations:

- a) *Development must not interfere with ongoing agricultural practices on adjacent lands.*
- b) *Development must not alter the overall stability of land use in the area.*
- c) *Development must be situated on land unsuitable or impractical for the production of farm crops.*
- d) *Impact on the environmental sensitivity of the area must be considered.*
- e) *Soil suitability for on-site septic system must be considered.*
- f) *Only commercial uses clearly related to or compatible with agricultural production should be allowed in the district.*
- g) *Unsewered industrial, commercial or residential development within reasonable proximity to municipal sewer and water services shall be discouraged.*
- h) *Spot commercial development is discouraged.*
- i) *Proper screening by use of plantings, berms and fencing should be undertaken to minimize adverse impacts on adjacent land uses.*

VI. Subdivision 20.5 Criteria for Granting Conditional Use Permits

The Planning Commission shall not recommend a conditional use permit unless they shall determine the following:

1. *That the proposed use conforms to the County Land Use Plan.*
2. *That there is a demonstrated need for the proposed use.*
3. *That the proposed use will not degrade the water quality of the County.*

4. *That the proposed use will not adversely increase the quantity of water runoff.*
 5. *That soil conditions are adequate to accommodate the proposed use.*
 6. *That the proposed use does not create a potential pollution hazard.*
 7. *That adequate utilities, access roads, drainage and other necessary facilities have been or are being provided.*
 8. *That adequate measures have been or will be taken to provide sufficient street parking and loading space to serve the proposed use.*
 9. *That facilities are provided to eliminate any traffic congestion or traffic hazard which may result from the proposed use.*
 10. *That the Conditional Use will not be injurious to the use and enjoyment of other property in the immediate vicinity for the purposes already permitted nor substantially diminish and impair property values within the immediate vicinity.*
 11. *That the establishment of the Conditional Use will not impede the normal and orderly development and improvement of surrounding vacant property for predominant uses in the area.*
 12. *That adequate measures have been or will be taken to prevent or control offensive odor, fumes, dust, noise and vibration, so that none of these will constitute a nuisance, and to control lighted signs and other lights in such a manner that no disturbance to neighboring properties will result.*
 13. *That the density of proposed residential development is not greater than the density of the surrounding neighborhood or not greater than the density indicated by the applicable Zoning District.*
 14. *That the density of proposed commercial or industrial development is not greater than the intensity of the surrounding uses or not greater than the intensity characteristic of the applicable Zoning District. That site specific conditions and such other conditions are established as required for the protection of the public's health, safety, morals, and general welfare.*
 15. *That site specific conditions and such other conditions are established as required for the protection of the public's health, safety, morals, and general welfare.*
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STAFF ANALYSIS:

Q: Section 8 of the Zoning Ordinance states that purpose of the District is for agricultural uses. Is the proposed request, a shooting range (indoor and outdoor) & a motorized vehicle track, in agreement with the Zoning Ordinance? Is the Agricultural District the proper district for a shooting range and demilitarized tank track?

Subdivision 8.3 (Agricultural District) lists commercial outdoor recreational facilities as Conditional Use No. 10, stating, "Commercial outdoor recreational areas, {including recreational camping areas as defined in Section 19}"

Commercial Recreation is defined by Zoning Ordinance No. 75, Definitions: # 32 as:

Commercial Recreation – such things as bowling alley, cart track, jump center, golf, pool hall, vehicle racing or amusement, dance hall, skating, tavern, theater, firearms range and similar uses.

Commercial outdoor recreational areas, includes firearms ranges, cart tracks and vehicle racing or amusement. In review of the four major districts of Waseca County Zoning Ordinance; Agricultural, Residential, Commercial, and Industrial; the district that allows for "gun clubs" and "commercial outdoor recreational facilities" is the Agricultural District which includes the Shoreland Overlay portion of the Agricultural District. These uses are allowed as a conditional use*.

Therefore, it appears from the zoning ordinance the intended area for “gun clubs” and/or similar uses such as “firearms ranges” and motor vehicle tracks is within the Agricultural District. Both the Agricultural and Agricultural Shoreland Overlay Districts provides for this proposal as a conditional use*. (*Please see section regarding “Conditional Uses and the criteria required for granting them).

- Q: 1. Is the demilitarized tank course considered a motor vehicle track?**
- 2. Do the setbacks of the zoning ordinance apply to the tank course proposed use?**
- 3. What about the residence of Mr. Stinehart; will the motor vehicle track have to be setback from the residence which Waseca County does not seem to have issued a zoning permit for a residential use?**

It has come to the Zoning Administrator’s attention from a training session (held on April 23, 2007) and from review of the zoning ordinance that unless otherwise noted, it is the zoning administrator’s duty to interpret the words and meanings of the zoning ordinance when in question. When no specific definition is provided in the Zoning Ordinance, the meaning shall be ordinary use or as defined within a dictionary.

Subdivision 20.6 Standards

The following standards shall apply to those uses listed below in recognition of the peculiar characteristics inherent to these uses.

1. Motor Vehicle Tracks

A. *No motor vehicle track, including auto, snowmobile, motorcycle, go-cart or minibike track shall be allowed within three hundred (300) feet of the right-of-way of any public road or street.*

B. *No motor vehicle track, including auto, snowmobile, motorcycle, go-cart, or minibike shall be allowed within fifteen hundred (1,500) feet of any residential structure.*

1) Would the proposed use be a motorized vehicle track?

Z/A Decision: Yes. The demilitarized army tank is a motorized vehicle. The proposed use is requesting a track and/or course in which to provide a driving area for a vehicle which includes a motor. Although the sentence lists, “auto, snowmobile, motorcycle, go-cart or mini-bike tracks specifically, the statement of “no motor vehicle” prefaces the sentence making it applicable to anything motorized that is a vehicle.

2) Is the proposed use subject to Subdivision 20.6 setbacks regarding Motor Vehicle Tracks?

Z/A Decision: Yes.

- A) The track and/or course are subject to a 300ft. setback from a public road right-of-way.
B) The track and/or course are subject to a 1,500ft setback of any residential structure?

3) It appears from the zoning records that the structure currently owned by Todd

Stinehart and his family were not issued a zoning permit to be used as a dwelling unit. Will the setback from the track apply to the structure Mr. Stinehart and his family are using as a residence?

First Issue: un-permitted use of a structure as a dwelling unit; currently owned by Todd Stinehart.

The setback of 1,500 feet will apply to the structure being used by Mr. Stinehart and family as their place of residence. The 1,500 foot setback also applies to the residence of the applicant, Marie Borglum.

WHY?

The setback from any residential structure is calculated from any and all residences, including the residence of the applicant. The ordinance does not indicate that an applicant's residence would be excluded from the setback standard; therefore it is interpreted to be inclusive.

Case in point: Within Feedlot Ordinance No. 76, it is specific that the "residence (other than feedlot owner/applicant) is subject to the 1,000 ft. setback." It is specific and clearly states not to include the owner's residence for setback purposes.

Zoning Ordinance No. 75, (the governing ordinance for this request) does not define the term "residence", however it does requires a 1,500 foot setback from any residence", therefore the word is given its plain meaning from the dictionary, which is as follows:

- 1 a: the act or fact of dwelling in a place for some time
- 1b: the act or fact of living or regularly staying at or in some place for the discharge of a duty or the enjoyment of a benefit
- 2 a (1): the place where one actually lives as distinguished from one's domicile or a place of temporary sojourn (2): **DOMICILE**
- 2a b: the place where a corporation is actually or officially established c: the status of a legal resident
- 3 a: a building used as a home: **DWELLING**
- B: housing or a unit of housing provided for students
- 4 a: the period or duration of abode in a place b: a period of active and especially full-time study, research, or teaching at a college or university

- Mr. Stinehart and his family have used the structure as their place of dwelling for some time. Mr. Stinehart purchased the property on a Contract for Deed, June 25, 1993, and
- The structure is a place where Mr. Stinehart and/or his family have actually lived since the date of purchase. The Waseca County Assessor's records show the property has been homesteaded since 1985, and
- Mr. Stinehart and/or his family established this structure as a place of residence since date of purchase by Contract for Deed, June 25, 1993, and
- Mr. Stinehart and his family have established this site and structure as their legal residence over a period of time, beginning in 1993, and
- The Waseca County Planning and Zoning Office became aware of the use of the structure as a residence as early as year 2000 and allowed the structure to continue its use as a residence without action.

4 – Why are machine sheds not allowed to be lived in as a residence?

Excerpt of Zoning Ordinance No. 43, Section 18, Subd. 10
 Passed by the Waseca County Board of Commissioner's May 17, 1983 (and still remains in effect under Zoning Ordinance No. 75. Subd. 18.10

Subdivision 10: DWELLING UNITS

*No cellar, **garage**, tent, trailer, basement with unfinished structure above, **or accessory building shall at anytime be used as a dwelling unit.** The basement portion of a finished home may be used for normal eating, living, and sleeping purposes provided it is properly damp-proofed, has suitable fire protection and exits, and is approved by the Zoning Administrator. A basement may be occupied with unfinished structure above during the time the owner or occupant is actively and regularly engaged in finishing said unfinished structure, but in no case longer than three years without a hearing before the Planning Commission and approval of a specified extension in time by the County Board.*

Mr. Stinehart's residence is located within a structure that was permitted by Waseca County Zoning Office, October 2, 1984, Permit No. 4982, as a Morton Building "pole shed" for storage. Permit was issued to Lonnie Proechel.

In 1987, a Conditional Use Permit was issued to Ronald Flitsch for use of the property for operation of a general repair and welding shop business, including a sign.

At some point (assumed to be between 1984-1985) the permitted pole shed structure was converted to include a residence. Waseca County Zoning Ordinance Subdivision 18.10, states, "Dwelling Units, No cellar, garage, tent, trailer, basement with unfinished structure above, **or accessory building shall at anytime be used as a dwelling unit.**"

It had been previously brought to my attention that this structure and use of the structure was not in compliance with the Zoning Ordinance. On or about September 2000, Larry Collins, then County Attorney and I met regarding this matter and discussed the possibility of pursuing the matter as a violation of the Zoning Ordinance, but because of not knowing exactly when the structure was altered or by whom, and in addition there had been several transfers of the property, a decision was made not to pursue the issue. The use of the structure as a residence was classified an "**illegal non-conforming use**". It was decided it would be allowed to continue as is, but once removed shall not be allowed to reconstruct. Permits would not be issued to expand the structure as a residence.

Machine sheds are considered to be an agricultural structure, garage or an accessory structure and are not subject to snow or wind loads as a residence is by building codes for human occupancy. Use of structure that is primarily designed to be an agricultural structure that is not architecturally designed nor engineered for human habitation. Adverse weather conditions, structural loads, and various mixed uses of the structure may endanger life and health of the occupants and/or guests.

History of PID 02.019.0420 through County Records,

2.0 ac. 295.16ft x 296.16ft in SE1/4 of SE1/4, Section 19, Blooming Grove Township T108N-R22W

Date	Document	Info:	Notation
5/17/1983	Waseca County Zoning Ordinance No. 43 passed by Waseca County Bd. Of Commissioners	Section 18, Subdivision 10	See excerpt above table
6/15/1984	Contract for Deed	Miller to Proechel	
10/2/1984	Building Permit No. 4982	Issued by M. Scheidel to	Bld: Pole Shed, 24ft x

		L. Proechel	48ft Use: Storage
8/28/1984	Warranty Deed	Miller to Proechel	
11/8/1984	Building Permit No. 5029	Issued by L. Williams to L. Proechel	Sewage System for shed 1,000 gallon tank
Within years 1984-1985	(None found)	Construction within pole shed. L. Proechel was owner from 1984-1987	Co. Assessor's records reflect presence of a dwelling unit within 24ft x 48ft structure
10/7/1987	Warranty Deed	Proechel to Mueller	
11/3/1987	Conditional Use Permit	Issued by Co. Bd to Ronald E. Flitsch	Use: Operation of a general repair & welding shop business & sign. Condition: Limit of 5 employees over & above family.
11/9/1987	Zoning Permit No. 5926	Issued by C. Miller to R. Flitsch	4ft x 8ft sign
6/24/1988	Warranty Deed	Mueller to Flitsch	
6/25/1993	Contract for Deed	Flitsch to Stinehart	
4/19/1997	Warranty Deed	Flitsch to Stinehart	
10/2/1997	Zoning Permit No. 8224	Issued by L. Moore to T. Stinehart	Sewage System, 3 bedrooms; note: attached site sketch: large garage with 3 bedroom

Mr. Stinehart's Request:

Mr. Stinehart contacted Waseca Zoning Office 3-27-2007 8:55 a.m. stating; "We get along. I am asking that a privacy fence be placed on Borglum's property between our and their property for security and privacy reasons in addition to preventing noise and people from wandering over. Prefer a solid wood fence 4-6 feet tall."

Future Action Required of the Applicant:

1. The applicant will have to request a variance from the Board of Adjustment from the required setbacks for a motorized vehicle track:
 - i. From the applicant's residence
 - ii. From the Stinehart residence

Q: What are the zoning requirements for a rifle (shooting) range?

Subdivision 20.6 lists Standards for Rifle, Trap and Skeet Ranges

- A. *In the case of a rifle range, all firing shall be at targets backstopped by an earth berm or hillside as follows:

 - 1) *The minimum distance between the top of the targets and the top of the berm or hillside shall be twelve (12) feet.*
 - 2) *The minimum angle between the side of the berm or hillside and the horizontal shall be sixty-five (65) degrees.**
- B. *In the case of trap or skeet ranges, a clear field view of one thousand (1,000) feet shall be maintained, as*

measured from the firing points.

Applicant states that the shooting range will include the discharge of rifles, handguns, semi-automatic weapons and fully-automatic weapons. **Trap and skeet are not included as part of the applicant's request.**

Staff Note: *MN Statutes require the Department of Natural Resources to set minimum standards for the construction of shooting ranges. Staff recommends the more restrictive standard of either the Waseca County Zoning Ordinance or The NRA (1999) Range Source Book must regulate the construction of the shooting range.

CRITERIA - STAFF ANALYSIS

IN CONSIDERING THE REQUEST FOR A CONDITIONAL USE, THE PLANNING COMMISSION NEEDS TO MAKE A FINDING OF FACT. THE JUDGMENT BASED UPON, BUT NOT LIMITED TO, THE FOLLOWING FACTORS:

1. That the proposed use conforms to the County Land Use Plan.

A conditional use is defined as: "a land use or development as defined by ordinance that would not be appropriate generally but may be allowed with appropriate restrictions as provided by official controls upon a finding that certain conditions as detailed in the Zoning Ordinance exist, the use or development conforms to the comprehensive land use plan of the community and the use is compatible with the existing neighborhood." (Emphasis added). The Planning Commission is to determine if the proposed request meets or exceeds the above listed standard, is similar in nature to the conditional uses allowed in the agricultural district and is compatible with the existing neighborhood.

The 1972 Land Use plan states that development proposals will generally be encouraged and extended full cooperation, however the welfare of the public and the intent of the Comprehensive Plan will be of primary importance. However, it also set goals to protect agricultural and wildlife areas from the effects of urbanization and to free areas from nuisance characteristics, reduce/avoid congestion and conflict on public thoroughfares, and to promote high standards for all development to assure the best possible living environment.

2. That there is a demonstrated need for the proposed use.

The Planning Commission needs to determine if the applicant has demonstrated the need for the proposed use.

RE: Indoor Shooting Range: The applicant states that there is a need for an indoor shooting range for local law enforcement and shooting enthusiasts. The applicant claims to provide recreational and security benefits to the community.

RE: Military tank track: Applicant claims to be providing a unique recreational opportunity and experience to potential patrons. Applicant is hoping to take advantage of tourism drawn to the area during the spring and the fall from area craft shows and other area activities. The facility is proposed to operate year round; some opportunities may be affected by weather conditions.

RE: Outdoor Shooting Range: Applicant would like to utilize outdoor shooting range for unique shooting experience including, but not limited to semi-automatic and automatic weapon discharges (i.e. Machine gun).

Further Staff Comment: In review of various websites, it appears there may be an economic opportunity for such land use. Similar uses and/or events are held at various locations around the United States, Europe, and Australia.

3. That the proposed use will not degrade the water quality of the County.

A. The question has been raised regarding the potential for lead contamination. The applicant's attorney has responded to the issue.

The Planning Commission will have to determine if the potential for lead contamination;

1. Exist.
2. If it does exist; is the potential for lead contamination significant or trivial?
3. If it does exist; can the issue be mitigated, and by what measures?
4. Is the applicant willing to implement such measures?
5. Should the Planning Commission consider a financial assurance from the applicant for potential clean up, if the issue exists? A bond could be required.

B. Wetland issues have been raised. The applicant's attorney has responded to this issue.

The Planning Commission will have to determine if the wetland issues:

1. Exist.
2. If it does exist; can the issue be mitigated, and by what measures?
3. Is the applicant willing to implement such measures?
4. Should the Planning Commission consider conditioning the application upon such measures?

Staff recommendation: The Planning Commission could require wetland delineation be completed and reviewed by the TEP panel before commencement of the project. The wetland shall be marked by permanent marker and the applicant required staying outside of the boundary for this conditional use application. Note: This would be similar to the subdivision requirements, implemented for Born, Burns, Keyes and others.

C. Are there any soil erosion issues that could affect the wetland, waters, or adjoining property owners? Issue has not been discussed.

The Planning Commission will have to determine if the erosion issues:

1. Exist.
2. If it does exist; can the issue be mitigated, and by what measures?
3. Is the applicant willing to implement such measures?
4. If so, the applicant shall work cooperatively with the Waseca County Soil Water Conservation District to address soil erosion and any wetland issues.
5. Applicant may have to apply to MPCA for NPDES permit or modify existing. Applicant shall be responsible for this requirement.

C. ISTS – Grey water issues

1. Restroom facilities – applicant proposes port-a-potties for septage.

4. That the proposed use will not adversely increase the quantity of water runoff.

The applicant has not submitted a runoff plan for the proposed facility. The applicant may be subject to an MPCA NPDES storm water permit for the grading or alteration of 1 or more acres.

Staff Recommendation: The applicant shall be responsible to confer with the MPCA to determine if an MPCA NPDES Storm water Permit is required.

5. That soil conditions are adequate to accommodate the proposed use.

Predominant Soils	Pa – Peat and Muck Deep; Illw-3	Cd – Canisteo clay loam, digressional Illw-1	LcC2 – Lester Clay Loam, 6-12% slope, Ille-1
Less predominant soils	LcB – Lester Clay Loam 2-6% slope Ile-1	LcE3 – Lester Clay Loam 18-24% slopes, severely eroded Vlle-1	

6. That the proposed use does not create a potential pollution hazard.

The proposed use has the *potential* to create noise, additional water runoff, light deflection, soil and dust erosion and leave behind spent bullet casings.

Staff Recommendation: The applicant shall be responsible for a mitigation plan for the above listed potential pollution or nuisance factors. A mitigation plan shall be reviewed by the Waseca County Zoning Administrator, Planning Commission and shall be approved by the Waseca County Board of Commissioner’s prior to commencement of the facility.

7. That adequate utilities, access roads, drainage and other necessary facilities have been or are being provided.

Current access to the property is from State Highway 13. Applicant may need to apply for a “change in use permit” from MN Dot for the proposed use. Applicant should provide written documentation to the P.C. this issue was addressed appropriately prior to commencement of the facility.

The application shall be considered only upon demonstration of the applicants that the necessary emergency services can provide appropriate services for such proposed use should they be needed.

8. That adequate measures have been or will be taken to provide sufficient street parking and loading space to serve the proposed use.

The applicant has demonstrated the ability to provide off-street parking via the site drawing.

The applicant shall be required to provide a topped parking area at the expense of the owner. The top shall consist of either aggregate, pavement, concrete or other adequate surface as

approved by the Waseca County Highway Engineer to allow for off-street parking in adverse weather conditions. A dirt field parking area would not suffice for wet weather conditions and would allow for transfer of mud to the highway.

No parking shall be allowed upon the access road to the facility and no parking shall be allowed in the right-of-way of the State Highway. It shall be the responsibility of the applicant to monitor such parking area to comply with such placed conditions. Blocking the access to the facility can pose a safety hazard should emergency services be needed. The drive shall remain open and unblocked.

Handicap Accessibility Codes shall apply to the parking area. Such areas must be appropriately posted for such.

All parking areas shall be located outside of the delineated wetland area.

9. That facilities are provided to eliminate any traffic congestion or traffic hazard which may result from the proposed use.

The applicant currently has access to State Highway 13. There should be no parking, stopping backing, or turning on the highway other than for direct access or egress to the facility.

Does the planning commission want to address driving on or across Highway 13?

10. That the Conditional Use will not be injurious to the use and enjoyment of other property in the immediate vicinity for the purposes already permitted nor substantially diminish and impair property values within the immediate vicinity.

The Board shall consider granting of the Conditional Use permit only after the applicant has demonstrated the ability not to create a nuisance, nor to diminish or impair property values within the immediate vicinity through the use of rules, policies, business practices, methods, etc. to limit negative impacts of adjoining landowners.

11. That the establishment of the Conditional Use will not impede the normal and orderly development and improvement of surrounding vacant property for predominant uses in the area.

From MN Statute: 87A.04 MITIGATION AREA.

(a) Except for those uses, developments, and structures in existence or for which approval has been granted by October 1, 2005, or as provided in paragraph (b), no change in use, new development, or construction of a structure shall be approved for any portion of property within 750 feet of the perimeter property line of an outdoor shooting range if the change in use, development, or construction would cause an outdoor shooting range in compliance with this chapter to become out of compliance.

(b) A change in use, new development, or construction of a structure subject to this section may be approved if the person seeking the approval or, at the discretion of the governing body, the approving authority agrees to provide any mitigation required to keep the range in compliance with this chapter. The person requesting an approval subject to this section is responsible for providing documentation if no mitigation is required under this section. Failure to provide the

documentation or any mitigation required under this section exempts the range from being found out of compliance with the shooting range performance and noise standards of this chapter with regard to the property responsible for the mitigation if the failure to provide the documentation or required mitigation is the sole basis for the range being out of compliance with the shooting range performance standards. Any action brought by the owner of the property against the range is subject to section 87A.06. With the permission of the range operator, any mitigation required under this section may be provided on the range property

12. That adequate measures have been or will be taken to prevent or control offensive odor, fumes, dust, noise and vibration, so that none of these will constitute a nuisance, and to control lighted signs and other lights in such a manner that no disturbance to neighboring properties will result.

The Planning Commission should review this and make appropriate recommendations to the Board of Commissioners to address the above issues. I will make "suggested conditions" later in this report to address some of these issues.

13. That the density of proposed residential development is not greater than the density of the surrounding neighborhood or not greater than the density indicated by the applicable Zoning District.

This is not a density issue. This is a conditional use permit where an applicant is requesting to use his/her land for something that is not ordinarily allowed in the agricultural district, but may be allowed by special permit upon review of the governing body.

14. That the density of proposed commercial or industrial development is not greater than the intensity of the surrounding uses or not greater than the intensity characteristic of the applicable Zoning District.

The proposed use would not necessarily be denser, but may be at a greater intensity than the existing characteristic of the existing Agricultural District.

15. That site specific conditions and such other conditions are established as required for the protection of the public's health, safety, morals, and general welfare.

To be determined by the Board. Staffs suggested conditions will be listed below for your consideration and review, but may not be all-inclusive. Additional information may become available at the public hearing that should be taken into account that was not available to the staff at the time of this review.

In addition to the provisions in SECTION 20, Conditional Use Permits in the Agricultural District must address conformity of the proposed use with the Waseca County Farmland Preservation Plan, compatibility with the existing neighborhood, and the following conditions as per SECTION 8 Agricultural District, Subdivision 3 Conditional Uses:

a) Development must not interfere with ongoing agricultural practices on adjacent lands.

Proposed use with conditions may not interfere with ongoing agricultural practices on adjacent land if applicant is aware that he/she, patrons and participants may be subject to ongoing agricultural practices which shall be but not limited to the spraying or spreading of manure, fertilizers, chemicals etc, or the construction or development of crops and possibly feedlots in the vicinity.

All shells shall be contained upon the applicant's property and shall not fall outside of the legally described property of the conditional use. This shall include the property currently owned by the tower company.

b) Development must not alter the overall stability of land use in the area.

From MN Statute: 87A.04 MITIGATION AREA.

(a) Except for those uses, developments, and structures in existence or for which approval has been granted by October 1, 2005, or as provided in paragraph (b), no change in use, new development, or construction of a structure shall be approved for any portion of property within 750 feet of the perimeter property line of an outdoor shooting range if the change in use, development, or construction would cause an outdoor shooting range in compliance with this chapter to become out of compliance.

(b) A change in use, new development, or construction of a structure subject to this section may be approved if the person seeking the approval or, at the discretion of the governing body, the approving authority agrees to provide any mitigation required to keep the range in compliance with this chapter. The person requesting an approval subject to this section is responsible for providing documentation if no mitigation is required under this section. Failure to provide the documentation or any mitigation required under this section exempts the range from being found out of compliance with the shooting range performance and noise standards of this chapter with regard to the property responsible for the mitigation if the failure to provide the documentation or required mitigation is the sole basis for the range being out of compliance with the shooting range performance standards. Any action brought by the owner of the property against the range is subject to section 87A.06. With the permission of the range operator, any mitigation required under this section may be provided on the range property

c) Development must be situated on land unsuitable or impractical for the production of farm crops.

The site is not being cropped. The site has been used as a land improvement contractor's business and a concrete crushing facility as permitted by prior conditional use permits since 1987.

d) Impact on the environmental sensitivity of the area must be considered.

The Board must make this determination.

e) Soil suitability for on-site septic system must be considered.

Adequate sanitary sewer methods shall be considered by the Board, approved by the Public Health Department.

f) Only commercial uses clearly related to or compatible with agricultural production should be allowed in the district.

The Board needs to determine if the proposed commercial use is clearly related to or compatible

with agricultural production.

g) Unsewered industrial, commercial or residential development within reasonable proximity to municipal sewer and water services shall be discouraged.

Municipal water and sewer services are not available to this site, nor anticipated from the City of Waseca within the next 10-years, per Mark Leiferman, City of Waseca Economic Development Director.

h) Spot commercial development is discouraged.

The Board needs to determine if the proposed use constitutes "spot commercial development." Other commercial development in the area includes a craft business, northland trenching and the uses already permitted upon the applicant's property.

i) Proper screening by use of plantings, berms, and fencing should be undertaken to minimize adverse impacts on adjacent land use.

The Board will need to determine if screening, fencing, berms and etc. will be required to minimize adverse impacts of proposed use.

Staff suggests an impermeable fence be considered between the applicant's property and that of Mr. Stinehart.

Staff suggests that berms be required to be constructed upon the outdoor shooting ranges for mitigation of noise from the shooting range. Berms are also necessary for safety purposes of the outdoor shooting ranges.

Planting of trees can assist in noise mitigation. However, the trees would have to be moved in of a significant size or fast growing trees would need to be established before they would provide visual and/or noise buffers.

RECOMMENDATION:

Should the Planning Commission recommend approval of the request of Marie Borglum, the staff recommends the following conditions should be considered by the Planning Commission to address certain issues in order to protect the health safety and welfare of the public, or mitigate potential nuisances.

The conditional use permit application is made by Marie Borglum to conduct an armored vehicle recreational facility including a driving course; also to include indoor and outdoor shooting range, including related retail sales, including but not limited to, souvenirs, promotional items, guns and other hunting-related products, and etc. Open daily and by appointment. Application also includes advertising sign for above-listed business.

1. All County, State, and Federal laws, regulations, and ordinance shall be complied with and all necessary permits and licenses shall be secured prior to operation.
2. This request shall be limited to Category I – Firearms as defined by ATF US Munitions Import List.
3. The wetland shall be delineated. The delineation shall be reviewed and accepted by the local TEP panel. The perimeter of the wetland shall be marked with permanent monuments so the location is permanent and visually marked. No activities of this Conditional Use permit shall be allowed within the delineated wetland area.
4. The tanks shall not be modified or used for artillery purposes, including modification of the tank for fire/flame purposes. They shall be used only as transportation, recreational purposes. The cannons may be equipped with compressed air for such things as spraying confetti and/or propelling t-shirts, or other soft promotional items from the cannon. This activity shall not pose a safety hazard.
5. Tannerite or other similar products shall be prohibited.
6. The site shall not be used as a junk yard or scrap yard. All refuse shall be properly disposed.
7. The applicant shall come into compliance with Subdivision 18.9 of the zoning ordinance. The site appears to contain several vehicles which may not be licensed as well as other scrap metals. These items should be stored indoors or be adequately screened as determined by the Board of Commissioners.
8. The applicant shall work cooperatively with the Waseca County Soil Water Conservation District to address soil erosion issues and/or wetland issues.
9. The applicant shall be responsible to confer with the MPCA to determine if MPCA NPDES Storm water Permit is required.
10. The applicant shall be responsible for a mitigation plan for the any potential pollution factors including closure of the facility and spent casings. The mitigation plan shall be reviewed by the Waseca County Zoning Administrator, Planning Commission and shall be approved by the Waseca County Board of Commissioners prior to operation of the facility.
11. The County shall require a bond in the amount of \$_____ to be held by the County for the purpose of clean up of the site should that not be completed by the owner/operator during or after closure of the site. The site shall be cleaned and discharged ammunition shall be reclaimed and properly disposed of within 3 months of the facilities closure.
12. The application shall be considered only upon the demonstration of the applicants that the necessary emergency services can provide appropriate services for such proposed use.
13. The applicant shall be required to provide a topped parking area at the expense of the owner. The top shall consist of aggregate, pavement, concrete or other adequate surface

as approved by the Waseca County Highway Engineer to allow for off-street parking in adverse weather conditions. A field parking area would not suffice for wet weather conditions. No parking shall be allowed upon the access road of the facility and no parking shall be allowed in the State Highway road right-of-way. It shall be the responsibility of the applicant to monitor such parking area to comply with such placed conditions.

14. Hours of operation:

Outdoor shooting range: 8 a.m. – dusk Monday – Saturday; 12:p.m. – dusk Sunday;

Indoor shooting range: 8 a.m. – 10 p.m. Monday – Saturday; 12 p.m. – 8 p.m. Sunday;

Motorized vehicle track: 8 a.m. – 10 p.m. Monday – Saturday; 12 p.m. – 8 p.m. Sunday.

No business activities of this conditional use permit shall occur on the following observed holidays: New Years Day, Easter, Thanksgiving and Christmas Day.

A one hour start up is allowed prior to the above-established times for the operator to test the equipment to make sure it is in working order.

15. The applicant shall file a Certificate of Liability annually with the Waseca County Board of Commissioners.
16. Impermeable fencing shall be established between the proposed site and the Stinehart property to deter trespassing onto adjoining landowner's property.
17. All lighting shall be deflected downwards to not create a nuisance to the traveling public or adjoining landowners.
18. Statutory Handicap Accessibility Code shall be met or exceeded for parking and public facilities and appropriately marked.
19. The applicant shall demonstrate that appropriate and acceptable measures shall be established for water, sewage, and proper waste disposal.
20. This conditional Use permit shall be reviewed upon an annual basis and shall be subject to cancellation, revocation or modification at the discretion of the Waseca County Board of Commissioner's for any violation of the above listed conditions or any additions or modifications deemed necessary.

GENERAL GUIDANCE

The Planning Commission may approve or deny the Conditional Use Permit request based upon its findings and review of the conditional use criteria and or other laws, rules, or statutes. One of

Any approval or denial of the request shall be based upon a "findings of fact" as presented by the applicant, supporters or opponents of the request. Opinions are not necessarily fact and/or a basis for denial. Please review your training materials regarding findings of fact.

If you are unsure of certain issues: you do have the ability to continue the meeting to another date and time for further information or to process the information provided, should it be overwhelming.

If you choose to table or delay action please is sure to inform the applicant or other presenters what it is you are requesting of them and when you want it. It would be appropriate that they bring the information to the Planning and Zoning Office by a certain date. Note that any information the Zoning office has becomes public and available for review of any interested person.

If you have any questions, please feel free to contact my office.
Please note the 60-day law, Subd. 15.99 of MN Statues does apply.