



**Special Meeting Agenda  
City Council/County Commission**

5:15 p.m. Special Meeting  
Tuesday, December 11, 2012  
City Council Chambers  
25 Center Street  
Vermillion, South Dakota 57069

1. **Roll Call**
2. **Pledge of Allegiance**
3. **Adoption of Agenda**
4. **Public Hearings**
  - a. A request to rezone land from from Agricultural to Rural Residential District for property located at 46171 Timber Road, legally described as Lot 1 of Parcel A, N. ½ SE ¼, 15-92-52, Vermillion Township, Clay County, South Dakota.
  - b. A request to re-zone land from Agriculture to Commercial for a portion of property located at 1103 E SD Highway 50, Vermillion, South Dakota, which is Lee Tract 1, SE1/4, SE1/4 11-92-52, Vermillion Township, Clay County, South Dakota.
5. **Adjourn**

Access the City Council Agenda on the web – [www.vermillion.us](http://www.vermillion.us)

**Addressing the Council:** Persons addressing the Council shall use the microphone at the podium. Please state your name and address. Presentations are limited to 5 minutes. For those who do not appear on the agenda, no decision is to be expected at this time.

**Meeting Assistance:** If you require assistance, alternative formats and/or accessible locations consistent with the Americans with Disabilities Act, please contact the City Manager’s Office at 677-7050 at least 3 working days prior to the meeting.

**Council Meetings:** City Council regular meetings are held the first and third Monday of each month at 7:00 p.m. If a meeting falls on a City holiday, the meeting will be scheduled for the following Tuesday.

**Live Broadcasts of Council Meetings On Cable Channel:** Regular City Council meetings are broadcast live on Cable Channel 3.

As a courtesy to others, we ask that cellular phones and pagers be turned off during the meeting.



## *Council Agenda Memo*

**From:** Andy Colvin, Assistant City Manager

**Meeting:** December 11, 2012

**Subject:** A request to rezone land from Agricultural to Rural Residential District for property located at 46171 Timber Road, legally described as Lot 1 of Parcel A, N. ½ SE ¼, 15-92-52, Vermillion Township, Clay County, South Dakota.

**Presenter:** Cynthia Aden, Clay County Zoning Administrator

**Background:** Richard Jahn, owner of property located at 46171 Timber Road, submitted a petition to rezone his property from Agricultural to Rural Residential. Mr. Jahn plans to split his property into two 1-acre lots in order to construct a new home on one of the lots, while renting the existing home. 1-acre lots are only permitted in the Agricultural district if they are platted lots of record; therefore, the only way for Mr. Jahn to split his property is to rezone to Rural Residential. This is the first petition to rezone that has been submitted under the Joint Jurisdictional Zoning Ordinance. The City and County Governing Bodies consider the petition jointly.

**Discussion:** As this is the first zone change under the recently adopted joint zoning regulations, staff looked at the proposal according to the discussions held during its development. A committee composed of city and county elected officials and planning commissioners developed the regulations with the assistance of staff and SECOG. During those discussions, a major concern from the County was to avoid scattered development on the fringe areas of the City; instead promoting development that can easily be annexed and served by the City. This concern was echoed by City officials as well. The ordinance was drafted with the understanding that some existing properties are already platted for more dense development, which is why single family homes are permitted on lots of record. The zone change should be considered carefully as it may set a precedent for future changes. Overall, the petition to rezone is for a small area, 2 acres in size.

A few items for consideration include:

- The existence of a long-term plan for development. In the absence of a plan, this could be considered a spot-zone, creating a small island of residential in the middle

of A-1. In addition, the parcel is located adjacent to zoned industrial land with access to rail.

- Similar rezone petitions may be submitted in the future, relying on this particular application as a precedent.
- Access and utilities. From the application, it appears Mr. Jahn has a plan to address water and sewer issues as well as road access.

The City and County Planning Commission's considered the zone change on October 9<sup>th</sup>. The City Planning Commission forwarded a recommendation to deny the zone change. The County Planning Commission forwarded a recommendation to approve the change. In order for the change to take effect, a vote in favor of the change would need to be approved by both the City Council and County Commission.

**Compliance with Comprehensive Plan:** The Comprehensive Plan specifies that development should be encouraged in areas adjacent to the City where utilities can be provided easily. The property is not within the City's immediate growth area and it is not currently feasible for the City to serve Mr. Jahn's property. In addition, the adjacent zoning to the north is Industrial due to the proximity of rail access. No immediate plans are underway to develop the area for industrial uses, but due to the rail access and location along the Highway 50 corridor, development is feasible with the proper planning.

**Conclusion/Recommendations:** The City and County Governing Bodies are asked to take public comment and grant or deny the zone change petition. It is the responsibility of the applicant to demonstrate the need for a rezone. Staff would recommend denial of the application with the following comments and recommendations:

1. Rezoning the property to Rural Residential in the absence of a long-term plan would be contrary to the intent of the Joint Jurisdictional Ordinance, which was drafted to prevent scattered development.
2. A more suitable approach to Mr. Jahn's plan would be to allow the construction of an additional residence on a 1-acre lot via conditional use permit.
3. Reducing the minimum lot size from 2 acres to 1 acre in the Agricultural District would permit Mr. Jahn to apply for a conditional use permit. The City and County could consider the merits of an individual applicant's plan, which, in this case, would be acceptable since the maximum density has not been reached.

It is staff's opinion that the City Council and County Commission should pursue an amendment to the ordinance which would reduce the minimum lot size from 2 acres to 1 acre. Once the amendment has been adopted and published, Mr. Jahn could receive credit for his rezone application fee and submit an application for a Conditional Use

4. Public Hearings; item a

Permit to construct a single family home. Based on the information we have, there would be no reason to deny the application. The building eligibility limitations would control density as opposed to a minimum lot size. It is a difficult situation for the City Council and County Commission to grant a zone change for one individual without impacting the entire joint jurisdictional area. A conditional use permit would allow Mr. Jahn's project to be considered individually.

Richard Jahn  
Petition to Re-Zone Property

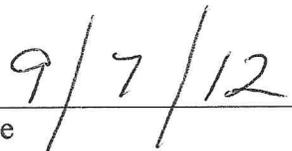
I am requesting that my property be re-zoned to Rural Residential. I intend to split my property into two (2) one-acre lots. I will then build a new home on the new lot and rent the existing home.

I understand that the property is located within the Joint Jurisdiction of Clay County and the City of Vermillion and that re-zoning requires the approval of both the City and County Planning Commissions and the approval of the Clay County Commission and the Vermillion City Council.

If the zoning change is granted, I will develop the property as stated below:

1. Sewage Disposal – I understand that the property is located in the Aquifer Protection Overlay (APO) Zone B. I will contract a state-licensed septic installer to install the septic system for the new home to make sure all requirements are met for APO Zone B.
2. Water Supply – I will connect to the existing rural water system.
3. Road Access – I will build a new road access for the new home if required. I will work with the Clay County Highway Department to build the drive according to their specifications.
4. Emergency Services – I will contact the Clay County Zoning Administrator to obtain a new E911 address so the new home is properly identified for emergency services.

  
Richard Jahn

  
Date

CLAY COUNTY REZONING PETITION

REZONING PETITION -55-1	Petition Fee - <del>\$150</del> <sup>\$175</sup>
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**SECTION 1: APPLICANT/OWNER INFORMATION**

	APPLICANT INFORMATION	OWNER INFORMATION	
NAME	Richard R. Jahn	Same	
ADDRESS	46171 Timber Rd.		
TELEPHONE	605-677-8695		
FAX			
EMAIL	rich.andrea.jahn@gmail.com		

**SECTION 2: PROPERTY INFORMATION**

STREET ADDRESS	46171 Timber Rd.		
LEGAL DESCRIPTION	Lot 1 of parcel A, N. half S.E. 1/4, 15-92-52		
TOWNSHIP NAME & SECTION #	Uermillion Twp. Sec # 15	ZONING DISTRICT	Ag

**SECTION 3: ZONING DISTRICT/LAND USE OF ADJACENT PROPERTY**

	North	South	Ag
	Ag	Ag	
	East	West	Ag
	Ag	Ag	

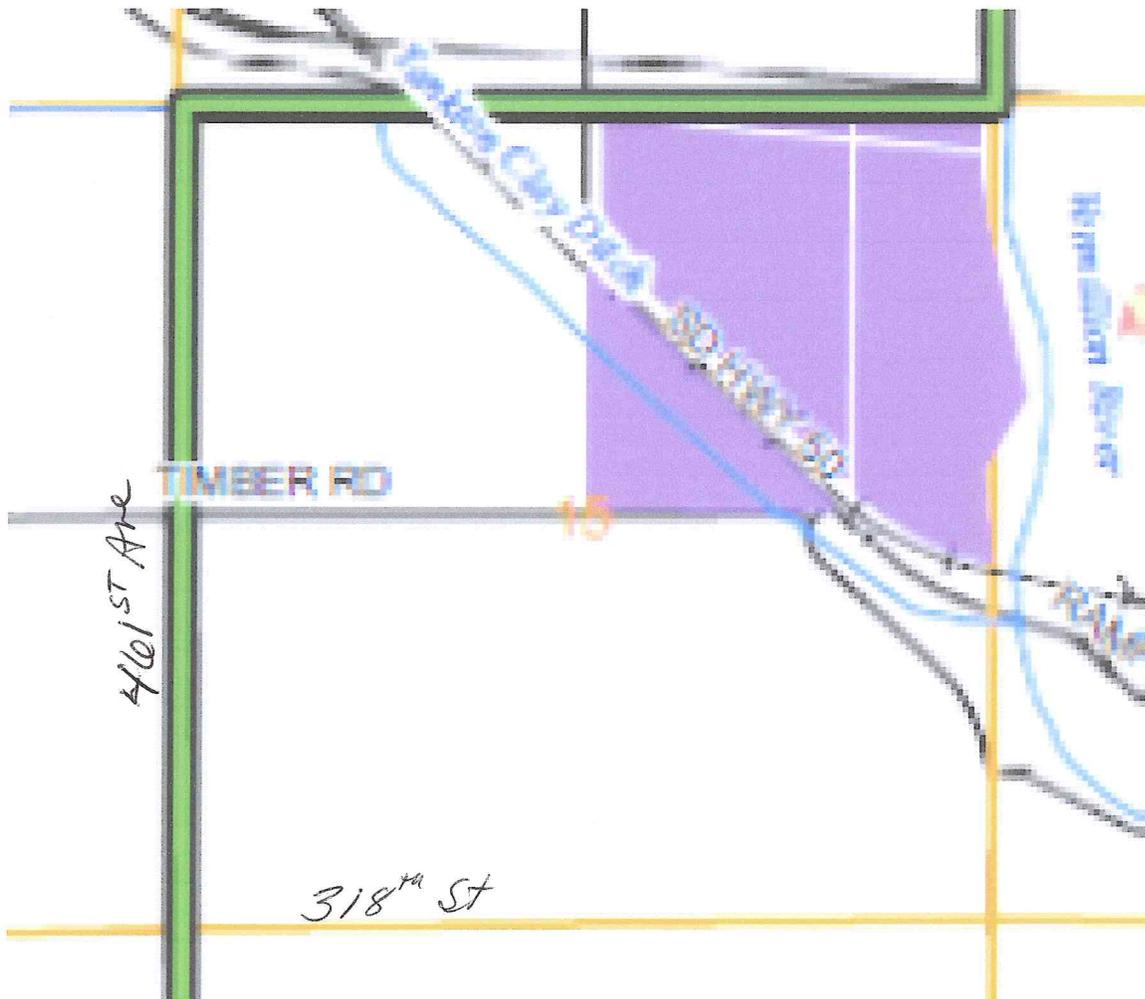
**SECTION 4: REASON FOR REZONING PETITION**

To build another residence for Primary home + rent out current resident.  
Request zone change to rural residential

Signature	Richard R. Jahn
Date	8/14/12

The applicant may be required to provide additional information and/or records.

Richard Jahn Re-Zoning Petition  
Section 15, Vermillion Township



Jahn, Richard



© 2012 Google

42°47'10.89" N 96°58'11.60" W elev 1150 ft

Go



**Legend**

-  Agricultural
-  Light\_Industrial

## *Council Agenda Memo*

**From:** Andy Colvin, Assistant City Manager

**Meeting:** December 11, 2012

**Subject:** A request to re-zone land from Agriculture to Commercial for a portion of property located at 1103 E SD Highway 50, Vermillion, South Dakota, which is Lee Tract 1, SE1/4, SE1/4 11-92-52, Vermillion Township, Clay County, South Dakota.

**Presenter:** Cynthia Aden, Clay County Zoning Administrator

**Background:** Eldon Nygaard contacted City staff about the legality of his billboard located near the intersection of Stanford/Highway 19 and Highway 50. Mr. Nygaard received a notification from the SDDOT that the billboard was not in compliance with state regulations, which require the land upon which the sign is located to be zoned commercial or industrial. The regulations are part of the state's highway beautification rules to control the location and number of billboards along state highways.

**Discussion:** The City sign ordinance regulates signage in the Joint Jurisdictional Area. Billboards are permitted uses within Agricultural District, which means that Mr. Nygaard's billboard is in compliance with City and County Ordinances. However, since the state requires the land upon which the sign is located to be zoned commercial or industrial, Mr. Nygaard is essentially forced to remove the sign or apply for a zone change.

Staff has the following recommendations:

- With respect to the zone change, staff would recommend approval. The Comprehensive Plan's future land use map calls for this area to be commercial. Additionally, the area is adjacent to City limits, within the growth area and *could* be annexed and served by utilities should development occur in the future.
- Even with the zone change the billboard will not be permitted. To address this issue the City will amend the sign ordinance to provide for regulations within the Joint Jurisdictional area, specifically. Right now the area is regulated by parallel districts

within the City. Staff could bring the amendment to the City Council and seek approval prior to the effective date of the zone change if approved.

City staff questioned how the state defines a commercial or industrial area and contacted the SDDOT for clarification. City staff contacted Bill Nevin, legal counsel for the DOT, to clarify the zoning matter. Mr. Nevin indicated that a zone change to commercial would bring the billboard into compliance with state regulations. The Planning Commission considered this zone change on November 13<sup>th</sup> 2012, recommended approval. The County Planning Commission approved the proposed change as well.

**Compliance with Comprehensive Plan:** The Comprehensive Plan specifies that development should be encouraged in areas adjacent to the City where utilities can be provided easily. Although today the area cannot be served by utilities without significant investment, the area is with the City's growth area and could be served should development take place. Therefore the zone change complies with the Comprehensive Plan.

**Conclusion/Recommendations:** The City and County Planning Commissions are asked to take public comment and grant or deny the zone change petition. It is the responsibility of the applicant to demonstrate the need for a rezone. Based on a thorough review of the request, staff would recommend approval. One item that needs to be addressed is platting of the property. It is staff's understanding that Mr. Nygaard is currently in the process of platting a portion of Lee Tract 1 where the sign is currently located. The zone change should be approved contingent on the property being platted.

**CLAY COUNTY REZONING PETITION**

REZONING PETITION *SI-02*

Petition Fee - <sup>175</sup>~~\$350~~

**SECTION 1: APPLICANT/OWNER INFORMATION**

	APPLICANT INFORMATION	OWNER INFORMATION	
NAME	<i>Eldon Nygaard</i>	<i>Verna Satto</i>	
ADDRESS	<i>1500 W 7th Ave Vermillion</i>	<i>1103 E Hwy 50</i>	
TELEPHONE	<i>6024-4500</i>	<i>6024-9382</i>	
FAX	<i>6024-8823</i>		
EMAIL			

**SECTION 2: PROPERTY INFORMATION**

STREET ADDRESS	<i>1103 E SD Hwy 50</i>		
LEGAL DESCRIPTION	<i>Lee Tract 1, SE 1/4, SE 1/4, 11-92-52</i>		
TOWNSHIP NAME & SECTION #	<i>Vermillion 92</i>	ZONING DISTRICT	<i>Ag</i>

**SECTION 3: ZONING DISTRICT/LAND USE OF ADJACENT PROPERTY**

North	<i>AG</i>	South	<i>GI</i>
East	<i>AG</i>	West	<i>AG</i>

**SECTION 4: REASON FOR REZONING PETITION**

*SD DOT requires re-zoning for billboard  
Change to Commercial - 50' x 50' or as required for the  
billboard*

Signature	<i>Eldon Nygaard</i>
Date	<i>10/3/2012</i>

The applicant may be required to provide additional information and/or records.

## MEMORANDUM

**TO:** Clay County Planning Commission and Vermillion City Planning Commission

**FROM:** Valiant Vineyards, Inc. President Eldon Nygaard



**SUBJECT:** Joint Public Hearing on Re-Zoning application – November 13, 2012

**DATE:** November 8, 2012

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Dear Members of the Joint Planning Commission:

As an interested party to this proceeding who is unable to attend the meeting due to prior obligations, I would like to explain how we are at this point. I have attached copies of DOT's August 30, 2012 letter to Valiant Vineyards stating that we had 30 days to remove the billboard. And, my response to DOT's letter dated September 13, 2012, DOT's subsequent response to me dated September 26, 2012. In addition, I have enclosed an October 31, 2012 DOT letter stating that I cannot renew my TODS signs until the billboard zoning issue is resolved.

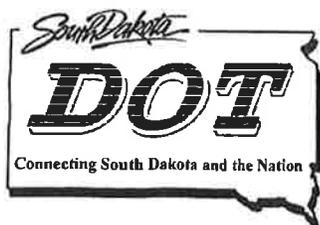
We are requesting a 50 ft. X 50 ft. square piece of AG land to be rezoned to Commercial to allow for our billboard to remain on that site. It has been on that site since December of 2003 when it was given a building permit by the City of Vermillion. The sign has been instrumental in getting customers to turn off Hwy 50 by pass across from Polaris and to drive to the winery. Valiant Vineyards Winery has collected and remitted over **\$434,296.00 of sales tax, tourism tax, general city tax, and bed, board and booze tax** since December of 2000'. Early in 2012 our property came into the City of Vermillion and since then our sales tax has increased by 2% general city tax and 1% bed, board and booze tax.

Valiant has employed a total of **259 employees** (see attached list) since December of 2000' paying out **\$1,497,255.86 in wages** and **\$109,308.02 in payroll taxes**. **Real Estate Taxes paid since 2000' total \$236,301.29**. Valiant contributions to charitable organizations in the local area and within South Dakota average \$30,000 per year. I point these numbers out to illustrate that we believe Valiant Vineyards has been and is a valuable addition to the Vermillion Community. We need your help in preserving our billboard that has been in place for nearly nine years now. Please look favorably on this re-zoning application.

8:47 AM  
11/08/12

# Valiant Vineyards Employee List November 8, 2012

Employee	Employee	Employee	Employee	Employee	Employee
Abby Moore	Casey A Merkwan	Gary De Jong	Kelsie Austin	Na'ahma Golden	Sidney A Mount
Adam Morse	Chad Cadwell	Gunnar Malek-Madani	Kenneth G. Puepke	Naomi Gillett	Stacey K. Orr
Adam P Jensen	Chad M Wilczynski	Hannah K Nelson	Kerri M Olsen	Natalie Edberg	Stacey M Kneiff
Adrian N Akyeampong	Charles A. Schley	Heath~ Nelson	Kevin T. Solberg	Neil M Ryan	Taylor R. Tigert
Ailee Johns	Christina M Harlan	Heather A Stosick	Kinsey L. Weydert	Nicholas D Pommersheir	Tera Dehner
Alexander C. Messerole	Christopher A. Roth	Heidi N Wentzlauff	Kortni J. Walker	Nick Schultz	Terri Malek-Madani
Alexx Rock	Christopher L. Cody	Jacenta R Varns	Kris J Hansen	Nicole Pederson	Thomas Keppen
Alison Buttemeier	Christy Carlson	Jacqueline D. Smidt	Kristen Malek-Madani	Nikki Abourezk	Tom Crouse
Allen Bowen	Colter J Ouradnik	Jacqueline G Johns	Kristin L Olson	Nora Zeller	Tracie I Maher
Amanda M Borgos	Cori M Bazemore	Jacqueline L Smith	Kristy Ostrom	Patricia M Merrigan	Tracy Magnuson
Anastasia Atyusheva	Cory Day	Jake Boerger	Kyle A Wasserman	Patrick Calkins	Tucker G Hansen
Andrea Wingo	Courtney E. Nelsen	James Slattery	LaRissa VanBeek	Paul L. Jensen	Tyler Weatherwax
Andrew Olson	Courtney Eidem	Jamie L Kuhnke	Larry Smith	Paula J Krier	Vicki Dehner
Angela A. Stalker	Courtney K Hannuksela	Jamie L Two Bulls	Lauren Johnson	Penny Decker	Wendy Samuelson
Angelena M. Plummer	Courtney K Wheeler	Jana M Prasek	Laurie Anderson	Rachel R Stokes	Whitney Feimer
Anna Ristic	Curt Pochardt	Jared L. Burcham	Leah Keating	Rebecca Gehm	Whitney Hollingsworth
Anne Walker	Cynthia D Simpson	Jeanette R Nygaard	Leif Nygaard	Rich Boyd	William P Hahn
April D Halsey	Cynthia J Braley	Jennifer Prasek	Leland Smith	Richard Vasgaard	Nicolette McLaughlin
Ashley Thompson	Danelle Cass	Jennifer R. Dickenson	Leonardo S. Silva	Rick Vasgaard	Mercedes Wilken
Ashton M Bird	Danielle Derby	Jenny Carlson	Linda K Holmberg	Roana Ostrom	Dianne Lewis
Barbara L Taylor	Danny R. Giffrow	Jim Olson	Lisa M Kester	Ronald A. Jenkins	Kristin L. Kurtz
Beau JC Freese	Dasha Erkina	Joanne Wingo	Lisa M Nau	Ross A. Bowman	Jessica M. Sorensen
Ben Deck	Dayton D. Bender	Joey Bures	Lonnell Newcum	Ryan L O'Connor	Sandra K. Crown
Benjamin Lemay	Delores Gregg	John M Newcum	Lori L Kesteloot	Ryan Leimkuhl	Elizabeth A. Szymonski
Beth Prasek	Dennis E Nelsen	Jon Hoadley	Luke M Sharpe	Sal Hernandez	Kate Berreth
Betty Heimes	Dennis Keller	Jordan A. Carlson	Lynette Axtell	Samuel D. Simonds	Sarah M. Szymonski
Brandon T Gann	Derek W. Klatt	Joshua A Burr	Mark R Lewis	Samuel K Lyman	Julie Paulson
Breean Solberg	Dustin Sagedahl	Joslyn Reimentz	Martin H Nygaard	Sara C Schelske	Ashley Klinger
Brett M Holmberg	e	Joslyn Reinitz	Mary E. Anderson	Sara Schelske	Michael L Kendall
Brett R. Myers	Eldon & Leif Nygaard	Joyce E. Vasgaard	Mary Redlin	Sara Wakeman	Adrienne Lewis
Britt Fremstad	Eldon E. Nygaard	Joyce Pearson	Matthew L Ward	Sarah Chavez-Detka	Sadie K Winckler
Brittany A Campbell	Elesha Whelchel	Joylyn Neutz	Meagan O'Connor	Sarah Decker	Douglas Wedel
Brittany Whelchel	Elizabeth A Egan	Juan Espinoza	Meghan L. Kelly	Sarah Dowling	Scott D Turnbaugh
Brittney M. Soto	Elizabeth Acosta	Julie	Meghan R Steever	Sarah Flom	
Bryana J Fossen	Emmanuel L. Schryvers	Julie Anderson	Melissa J Roel	Sarah J. Borgos	
Caleb Johns	Employee Sale	Julie Paulsen	Melissa J Sadler	Satumino John	
Cara Stogsdill	Eric Dehner	Kara N Johnson	Meryll A Kennedy	Scott Turnbaugh	
Carey A. Engstrom	Eric Hickenbottom	Karla Roggenbuek	Meryll Kennedy	Shannon Banashak	
Carly J Bernard	Erik M Halverson	Katelyn M Lubbers	Michael L Keating	Shannon Uithover	
Carmen Tovar	Erin L Austin	Kathleen K. Wilka	Michelle R Harnois	Shanon Skillman	
Carolline Smith	Erin L. Austin	Kati J Dehner	Mike Tiedeman	Sharon L. Wegner-Larsen	
Carson L. Merkwan	Erin Nielsen	Katie Dowd	Mildred Jensen	Shawn Keltie	
	Ethan Breen	Katie Nebelsick	Millie R Boppert	Shawna Chase	
	Evgenia Dikanskaia	Katie Pommersheim	Mischa B Brown	Sherry B Nygaard	
	Gabrielle M Richard	Kelsey L. Langer	Molly A Woodard	Sheryle C Horsley	



## Department of Transportation

Office of Legal Counsel

700 East Broadway Avenue

Pierre, SD 57501-2586

Phone: (605) 773-3262

FAX: (605) 773-3921

August 30, 2012

Eldon Nygaard  
Valiant Vinyards  
1500 W. Main  
Vermillion, SD 57069

RE: Billboard at SD Hwy 50 mileage reference marker 408.874

Dear Senator Nygaard:

A matter has been brought to my attention concerning the above-referenced billboard that necessitates this letter.

I am advised that in July of this year, you informed Tom Newell, the department's outdoor advertising control agent, that one of your three TOD signs in the Vermillion area was not in place. Mr. Newell then reviewed the department's video log system to see if he could find the missing TODS, and in doing so, noticed the billboard near the location where the missing TODS should have been. Unfortunately, the billboard was not on our inventory, and we had no record of a billboard at that location. I have enclosed a copy of a photograph of the billboard. I am informed that the billboard is located on property owned by Verna Saito, and thus is an off-premise sign. I am further informed that the location is zoned for agricultural use.

The Department of Transportation records indicate this billboard was not authorized by a permit issued by the department as required by SDCL 31-29-7, which provides:

31-29-71. All signs, displays, or devices legally erected and maintained within the control zones established pursuant to this chapter, and those signs, displays and devices that are nonconforming to the controls established pursuant to this chapter may not be maintained unless a permit is obtained from the Department of Transportation. A sign, display or

device erected or maintained without a permit is a public nuisance and subject to abatement by the department of transportation.

Moreover, this location could not be permitted as a billboard site, because the location is not zoned as commercial or industrial, as required by SDCL 31-29-71.12:

**31-29-71.12.** Any zoned commercial or industrial area adjacent to the primary system is acceptable for outdoor advertising purposes to the extent it is lawfully enacted by the local government unit and it is within one mile of an incorporated municipality or within one mile of a commercial or industrial activity.

Unfortunately, it therefore constitutes an illegal outdoor advertising structure, and must be removed if it cannot be brought into compliance with SDCL chapter 31-29. As provided by SDCL 31-29-63.1:

**31-29-63.1.** Any advertising sign, display or device which violates the provisions of this chapter is hereby declared to be unlawful. The Department of Transportation shall give thirty days' written notice by certified mail, to the owner thereof to remove any prohibited sign, display or device. If the owner fails to act within the thirty days as required by the notice, the department shall cause the sign, display or device to be removed at the owner's expense. If for any reason, the department is unable to collect the removal costs, it may institute the necessary legal proceedings to recover them.

I am also compelled to note that A.R.S.D. 70:04:07:02, which sets forth the criteria that must be met to qualify for TOD signing, prescribes the following:

**70:04:07:02. Criteria.** To be considered for tourist oriented directional signing, a business must meet the following criteria:

(8) It is not maintaining a sign which is in violation of SDCL chapter 31-29.

At this time, the department does not intend to remove the TOD signs, so that you may have an opportunity to come into compliance with the requirement of 70:04:07:02(8).

As the location is not a lawful billboard site, and the billboard was not installed pursuant to a permit issued by the department of transportation, it constitutes an illegal advertising sign, and, in accordance with SDCL 31-29-63.1, it is required by law to be removed within thirty days after this notice.

This requirement for removal is also in accord with federal highway beautification regulations which apply to federal-aid highways. South Dakota Highway 50 is a federal-aid highway, and the department is compelled to cause the removal of illegal signs as a

condition of the receipt of federal funds. Our failure to do so could give rise to Federal Highway Administration requiring the state to pay back the federal funds that were used in the most recent reconstruction or resurfacing project for this section of SD Highway 50, as well as the possible suspension of future federal funds.

If you have any questions or wish to discuss this matter, please feel free to contact me at your convenience.

Sincerely yours,

OFFICE OF LEGAL COUNSEL

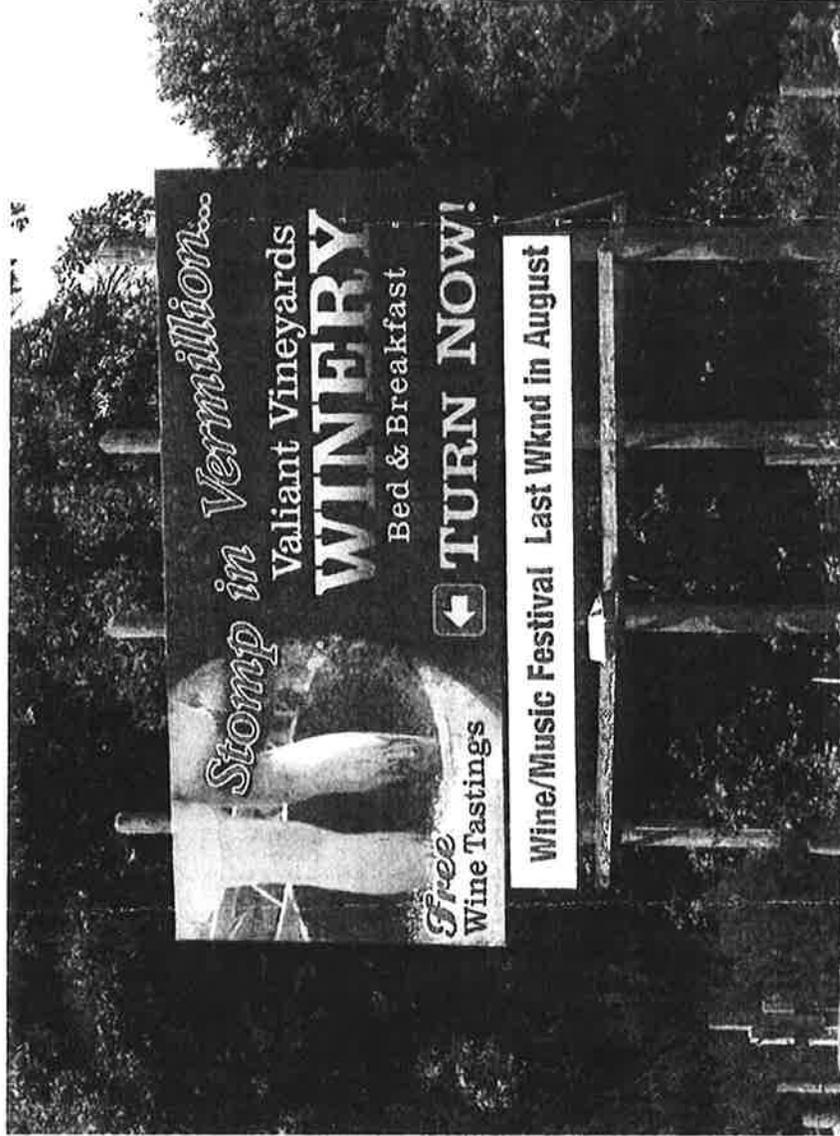
A handwritten signature in cursive script that reads "Bill Nevin". The signature is written in black ink and is positioned above the printed name.

William J. Nevin

Special Assistant Attorney General

SD 50 ~ Milepost 408.874

Outdoor Advertising Device without a permit and unable to permit  
Must be removed within 30 days as required in SDCL 31-29  
Photo taken July 25, 2012





# SOUTH DAKOTA LEGISLATURE

**ELDON NYGAARD**  
STATE SENATOR  
DISTRICT #17

September 13, 2012

William J. Nevin, Esq.  
Special Assistant Attorney General  
Department of Transportation  
700 East Broadway Avenue  
Pierre, South Dakota 57501-2586

Re: Billboard at SD Hwy 50 mileage reference marker 408.874

Dear Mr. Nevin:

I have enclosed herewith: a copy of City of Vermillion application for building permit no. 5601 approved December 17, 2003 together with the supporting documents filed with the application (site lease, billboard design, and receipt), a copy of APPENDIX B EXTRATERRITORIAL ZONING ORGINANCE NO. 514, and a copy of the record of payment to Johnson's Electric.

Your letter of August 30, 2012 caused a great deal of concern to Sherry and I as we rely on that billboard to bring customers into the winery. Also, we were almost certain that we had gotten a permit to construct the sign. It took a great deal of digging to find the approximate dates in 2003 that we began the process, then we were able to go to the City of Vermillion to ask if we had followed the correct procedure in putting up the sign. It took the city two days to find the permit they had issued. They also informed me that the lighting of the sign would have taken a State Permit being issued to the electrician. Since nearly nine years have passed since then we did not have a record of which company we used to light the sign. We looked on the electrical box for the state permit number (see attached photo) and found that the number that is hand written into the sticker had faded and is unreadable. A check written to Johnson Electric dated 7/8/2004 for \$473.42 marked "lights on billboard" would seem to indicate that they would have filed the affidavit to bring electricity to the sign and the presence of the sticker on the electric box suggests that it was completed pursuant to State requirements.

At the time back in 2003, we believed we were following the correct procedure as the site of the sign was located within the extraterritorial zoning that is authorized by SDCL 11-6-10 (1967) and we applied to the City of Vermillion. Sec. 6. A-1 regarding agricultural district regulations (a) (16) covers "...Commercial sign or billboards pertaining to a business not operated on the premises on which the sign or billboard is

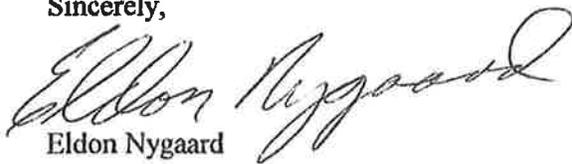
Vice Chairman Commerce & Energy Committee, Judiciary Committee Member,  
Taxation Committee Member

Home Office: 1500 West Main Street • Vermillion, South Dakota 57069 • 605-670-0695  
Email: sen.nygaard@state.sd.us • Website: www.nygaard.us

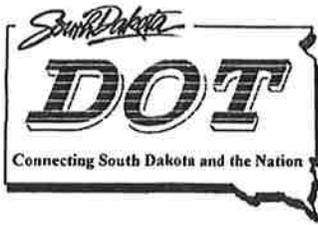
located when the sign or billboard is located two hundred (200) feet or farther from the center of any state highway." The City did not inform us of any further requirements with the state that needed to be met.

I hope this helps to shed further light on this matter. I will wait for further analysis by you on this matter.

Sincerely,

A handwritten signature in cursive script that reads "Eldon Nygaard". The signature is written in black ink and is positioned above the printed name.

Eldon Nygaard



## Department of Transportation

Office of Legal Counsel  
700 East Broadway Avenue  
Pierre, SD 57501-2586  
Phone: (605) 773-3262  
FAX: (605) 773-3921

September 26, 2012

Eldon Nygaard  
Valiant Vineyards  
1500 W. Main  
Vermillion, SD 57069

RE: Billboard at SD Hwy 50 mileage reference marker 408.874

Dear Senator Nygaard:

Thank you for providing me with copies of the building permit application, the first page of your billboard site lease with Saito Verna, receipt for the building permit fee, issued by the city of Vermillion, receipt for electrical work done on the sign, and the Extraterritorial Zoning Ordinance of the city of Vermillion. I have now had an opportunity to carefully review all the documents.

SDCL 31-29-63 prohibits the erection of an outdoor advertising device within 660 feet of the nearest edge of the right-of-way and visible from the main-traveled way on an interstate or primary highway (control zone) except, inter alia, signs, displays or devices located in areas that are zoned commercial or industrial or located in a commercial or industrial area that has not been zoned. The billboard for Valiant Vineyards along Highway 50 is in the control zone prescribed by the statute, but that location is not zoned commercial or industrial and is not an unzoned industrial or commercial area.

SDCL 31-29-71 provides that an outdoor advertising device may not be maintained within the control zone unless a permit is obtained from the department of transportation. SDCL 31-29-71.5 excepts from the permit requirement outdoor advertising devices "within the corporate limits of a municipality." However, the location of this billboard, while within the extraterritorial jurisdiction of the city of Vermillion for purposes of zoning ordinance No. 514, is not within the corporate limits of the city. Thus under the city's ordinance, while construction of an off-premise sign is a permissible use of land zoned as A-1 agricultural district, and a building permit must be obtained, the requirements of SDCL chapter 31-29 still apply as to whether the actual location of the

billboard is a legal site. Nothing in ordinance No. 514 nullifies those statutory requirements.

I would note that under SDCL 31-29-68, where a bona fide local zoning authority recognized in Title 11 has made a determination of customary use regarding size, lighting and spacing of signs, those local determinations control over the size, lighting and spacing requirements set forth in chapter 31-29. Thus, I believe the city of Vermillion, by virtue of ordinance No. 514, could impose its own size, lighting and spacing requirements for outdoor advertising structures within its zoning jurisdiction. However, that regulatory authority relates only to those specifications for a sign, and not to whether the location is a legal billboard site under SDCL 31-29-63.

Although the electrical contractor who installed lighting for the sign is licensed by the state, and must certify that he followed electrical code requirements in his work, he would have no reason to know or question whether this was a permissible billboard site. The fact that the electrical work was performed by an individual licensed by the state does not, in my opinion, operate to legally bar the state from enforcing billboard regulations as required by both federal and state law.

Since this is not a legal site, the law requires the billboard to be removed within 30 days. Because the department's compliance with the federal Highway Beautification Act, as partially implemented through SDCL chapter 31-9, is a condition of our receipt of federal highway funds, this matter must be addressed. However, it is my information that a re-zoning of the land in the area of the billboard to commercial is a possibility. I am also informed that with such a zoning change, this would be a legal billboard site. If the state were apprised of the initiation of a re-zoning request within the 30 days prescribed for removal of the sign, and kept apprised of those proceedings, the department would be willing to suspend efforts to cause the removal of the billboard pending final action on that re-zoning request.

Please advise me at your earliest convenience whether you will be initiating a re-zoning request.

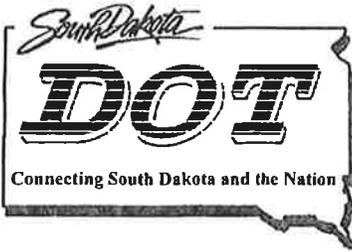
Thank you for your attention to this matter.

OFFICE OF LEGAL COUNSEL

A handwritten signature in black ink, appearing to read "Bill Nevin", with a long horizontal flourish extending to the right.

William J. Nevin  
Special Assistant Attorney General

cc: Darin Bergquist, Secretary Department of Transportation  
Kristine Hohn, Region Operations Technician – Beautification Specialist



## Department of Transportation

### Division of Operations

700 East Broadway Avenue  
Pierre, SD 57501-2586 605/773-3571  
FAX: 605/773-2893

October 31, 2012

Mr. Eldon Nygaard  
Valiant Vineyards  
1500 W. Main Street  
Vermillion, SD 57069

Dear Mr. Nygaard

The South Dakota Department of Transportation is in receipt of your renewal request and payment for two Tourist-Oriented Directional Signs (TODS). At this time, the Department is not able to approve this permit renewal.

As you may be aware, Administrative Rule 70:04:07:02 states that in order to be eligible for a TODS sign, a business may not be maintaining a sign in violation of SDCL chapter 31-29. At this point in time, I have been notified that Valiant Vineyards is maintaining a sign in violation of this chapter.

I have been informed by Bill Nevin, DOT Legal Counsel that you are currently working to bring your billboard into compliance with state regulations. Upon notification from DOT legal counsel that these issues have been resolved, we will be more than happy to evaluate your renewal request. The TODS signs that are currently in place will be allowed to remain provided that this issue is resolved in a timely manner.

I am enclosing your check and renewal statement.

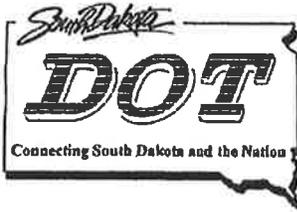
If you have any questions, or need any additional information, please do not hesitate to contact me.

Regards,

A handwritten signature in black ink, appearing to read "J. Humphrey", is written over a horizontal line.

Jason Humphrey, P.E.  
Construction and Maintenance Engineer  
South Dakota Department of Transportation

Cc: Tom Newell  
Kristi Hohn



## Department of Transportation

Office of Legal Counsel  
700 East Broadway Avenue  
Pierre, SD 57501-2586  
Phone: (605) 773-3262  
FAX: (605) 773-3921

September 26, 2012

Eldon Nygaard  
Valiant Vineyards  
1500 W. Main  
Vermillion, SD 57069

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Please advise me at your earliest convenience whether you will be initiating a re-zoning request.

Thank you for your attention to this matter.

OFFICE OF LEGAL COUNSEL



William J. Nevin  
Special Assistant Attorney General

cc: Darin Bergquist, Secretary Department of Transportation  
Kristine Hohn, Region Operations Technician – Beautification Specialist

## **PUBLIC NOTICE**

### **Clay County Board of Commissioners and Vermillion City Council to Hold Joint Public Hearing on Re-Zoning Application.**

Notice is hereby given that a Public Hearing will be held before the Clay County Board of Commissioners and the Vermillion City Council in joint session at 5:15 p.m. Tuesday, December 11, 2012 at Vermillion City Hall to consider the following applications:

A request by Richard Jahn to re-zone land from Agriculture to Rural Residential in order to split the property into two (2) one-acre lots for property located at 46171 Timber Road, Vermillion, South Dakota, which is Lot 1 of Parcel A, N1/2, SE1/4, 15-92-52, Vermillion Township, Clay County, South Dakota.

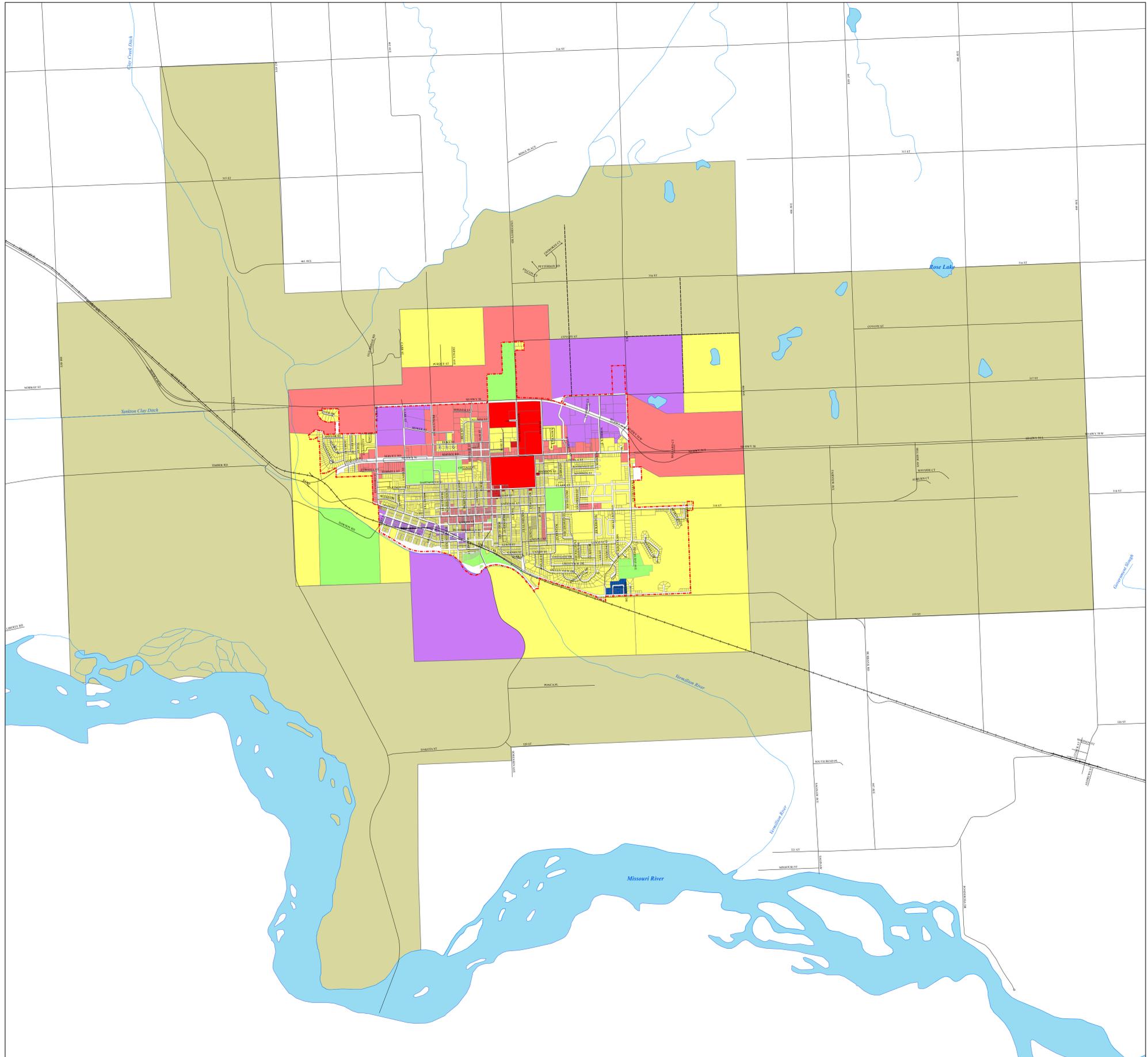
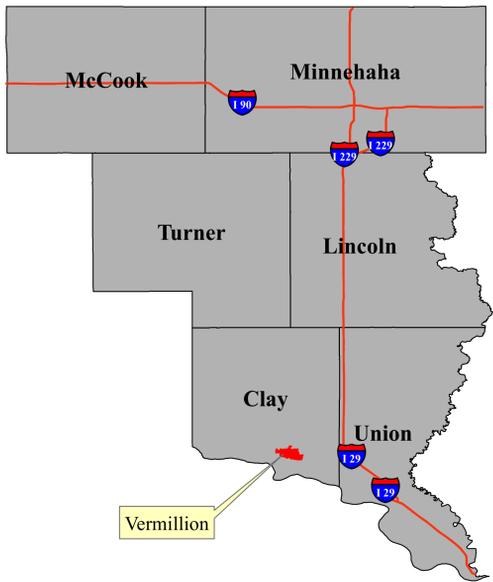
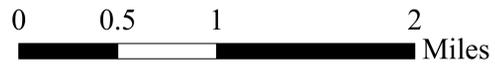
A request by Eldon Nygaard to re-zone land from Agriculture to Commercial as required by the State of South Dakota to place a billboard for property owned by Verna Saito and located at 1103 SD Highway 50, Vermillion, South Dakota, which is Lee Tract 1, SE1/4, SE1/4 11-92-52, Vermillion Township, Clay County, South Dakota.

All interested persons are encouraged to attend this public hearing. Those interested persons not able to attend are invited and encouraged to send written comments before December 11, 2012 to the Clay County Auditor, 211 W. Main Street, Suite 203, Vermillion, SD, 57069.

**Ruth Bremer**  
**Clay County Auditor**  
**Publish: November 30<sup>th</sup> 2012**

**Legend**

- Residential
- Commercial
- Industrial
- Urban Reserve
- Planned Development
- University of South Dakota
- Parks, Recreation & Open Space
- Roads
- Railroad
- Creeks, Rivers & Lakes
- City Limits



Map 4

# Future Land Use

City of Vermillion



Limit on Liability: This information has been secured from sources we believe to be reliable, however, we do not guarantee the accuracy of the information contained herein. This map does not eliminate the need for an onsite investigation.

# Official Zoning Map

Clay County and City of Vermillion  
Joint Jurisdictional Area

## Legend

### Zoning Districts

-  A-1 Agricultural
-  RR Rural Residential
-  C Commercial
-  LI Light Industrial
-  HI Heavy Industrial
-  NRC Natural Resource Conservation

### Other Features

-  Joint Jurisdictional Area  
(Excluding Incorporated Area of the City of Vermillion)
-  City Limits (2011)
-  Roads
-  Railroad
-  Creeks, Rivers & Lakes

