



**MINUTES OF THE
MINNEHAHA COUNTY PLANNING COMMISSION
July 25, 2022**

A meeting of the Planning Commission was held on July 25, 2022 at 7:00 p.m. in the Commission Room of the Minnehaha County Administration Building.

COUNTY PLANNING COMMISSION MEMBERS PRESENT: Commissioners Bonnie Duffy, Becky Randall, Ryan VanDerVliet, Adam Mohrhauser, Doug Ode, Mike Ralston, and Jeff Barth.

STAFF PRESENT:

Scott Anderson, Kevin Hoekman and Mason Steffen – County Planning
Eric Bogue – States Attorney's Office

Bonnie Duffy chaired the meeting and called the Minnehaha County Planning Commission Meeting to order at 7:09 p.m.

PUBLIC COMMENT.

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

Consent Agenda

Commissioner Duffy read each item on the consent agenda, and Items 2 & 5 were requested to be moved to the regular agenda.

A motion was made to approve the consent agenda consisting of Items 1, 3, & 4 by Commissioner Mohrhauser and seconded by Commissioner Barth. The motion passed unanimously with 6 votes in favor and 0 votes against the motion.

ITEM 1. Approval of Minutes – June 27, 2022

As part of the consent agenda, a motion was made by Commissioner Mohrhauser and seconded by Commissioner Barth to **approve** the meeting minutes from June 27, 2022. The motion passed unanimously with 6 votes in favor and 0 votes against the motion.



Consent Agenda

ITEM 3. CONDITIONAL USE PERMIT #22-55 to exceed 2,400 square feet of accessory building space (requesting 6,220 square feet) on the property legally described as the S1430.98' N288.99' W321.81' SW¼ Section 25 T102N-R48W Brandon Township.

Petitioner: Spencer Schenk

Land Owner: Same

Location: 920 N Chestnut Boulevard

Staff Report: Kevin Hoekman

General Information:

Legal Description – S1430.98' N288.99' W321.81' SW¼ Section 25 T102N-R48W

Brandon Township

Present Zoning: A1 Agricultural

Existing Land Use: Residential Acreage

Parcel Size – 2.13 Acres

Staff Report: Kevin Hoekman

Staff Analysis:

This request is to allow 6,220 square feet of accessory building on a property located approximately a half mile east of the City of Brandon, and a quarter mile south of the Interstate on N. Chestnut Blvd. The petitioner wants to build a 60 feet by 80 feet detached structure in the northeast corner of the property. The property has two existing buildings approximately 28 feet by 40 feet and 15 feet by 20 feet in size. The total square foot area of all the detached accessory buildings including the existing sheds and the proposed shed is equal to 6,220 square feet.

The petitioner submitted a sketch plan of the site location of the proposed building. The building will be placed behind the existing accessory buildings and behind a large grove of trees. The existing building and trees will likely hide the view of the building from the road to the west, but the location will be close to, and visible from, the neighboring farmstead to the north. The potential use of the existing buildings is minimal for residential storage since they were built small with few overhead doors many years ago. The dwelling does not have an attached garage for vehicles or personal storage.

Conditional Use Permit Criteria:

1) The effect upon the use and enjoyment of other property in the immediate vicinity for the uses already permitted, and upon property values in the immediate vicinity.

The property is located in an area of residential acreages and agricultural uses. The buildings are setback far from the township road and are close to neighboring driveway and hay land. There is a large grove of trees in the north 1/3 of the property which screen much of the sightlines of the site from the west. The proposed building will have minimal effect on the existing neighboring uses.



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

The property is located a half mile east of the City of Brandon. Many of the residential sites surrounding the property have been used, however the City of Brandon is expanding east. The proposed building may be a non-conforming structure for city rules when annexation happens.

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

The property already has a single family dwelling with all necessary utilities and a driveway. Drainage will not significantly be affected by the building.

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

The property is large enough to accommodate off-street parking for the existing use.

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

The accessory building shall not be used for commercial or industrial purposes in order to prevent potential nuisances from the site. Lighting on the building should be cut off and directed downward to prevent glare from spilling onto neighboring properties.

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

The proposed accessory building will not have a negative effect on the health, safety, or general welfare of the public. The building will be used for non-commercial storage on a property where there is no attached garage. The size of the building is wide enough to require engineering and review by the building inspector to ensure structural soundness of building design.

Recommendation: Staff recommends **approval** of Conditional Use Permit #22-55 with the following conditions:

- 1) The building location shall adhere to the submitted site plan.
- 2) The total area of all accessory buildings may not exceed 6,220 square feet.
- 3) That the building shall be an accessory use to the continued use of the property as a residential lot.
- 4) That only personal storage shall be allowed in the building and no commercial uses or commercial storage will be allowed at any time.
- 5) That all outdoor lighting shall be of a fully-cutoff and fully-shielded design to prevent direct spillage of light beyond the property boundaries.
- 6) That a building permit is required prior to construction of the accessory building.
- 7) Building plans must be stamped by a registered engineer and approved by the building inspector prior to obtaining a building permit.
- 8) That the Planning & Zoning Department reserves the right to enter and inspect the accessory building at any time, after proper notice to the owner, to ensure that the property is in full compliance with the conditional use permit conditions of approval and the Minnehaha County Zoning Ordinance.



**MINNEHAHA COUNTY
PLANNING COMMISSION
MEETING MINUTES**

JULY 25, 2022

Action

As part of the consent agenda, a motion was made by Commissioner Mohrhauser and seconded by Commissioner Barth to **approve** Conditional Use Permit #22-55. The motion passed unanimously with 6 votes in favor and 0 votes against the motion.

Conditional Use Permit #22-55 – Approved



ITEM 4. CONDITIONAL USE PERMIT #22-56 to exceed 2,400 square feet of accessory building space (requesting 4,752 square feet) on the property legally described as Tract A Roeman's Addition NE¼ NW¼ & Lot 1 Langdon's 3rd Subdivision all in Section 34 T103N-R49W Sverdrup Township.

Petitioner: Morton Buildings LLC.

Land Owner: Neal Brown

Location: 47527 255th Street

Staff Report: Mason Steffen

General Information:

Legal Description – Tract A Roeman's Addition NE¼ NW¼ & Lot 1 Langdon's 3rd Subdivision all in Section 34 T103N-R49W Sverdrup Township.

Present Zoning: A1 Agricultural

Existing Land Use: Residential Acreage

Parcel Size – 1.65 Acres

Staff Report: Mason Steffen

Staff Analysis: The petitioner is requesting conditional use permit approval to allow 4,752 square feet of residential accessory building area on the subject property. Currently, there is one existing accessory building on the property, which is a 40'x 60' building. This building was approved in 2009 by a conditional use permit, which only allowed for a total of 2,400 square feet. Finally, this request would allow the petitioner to build an additional 42'x 56' accessory building in the southeast corner of the property, which will be used for their own personal storage.

On July 8, 2022, staff conducted a site visit of the subject property and surrounding area. The property is located at the intersection of State Highway 115 & 255th Street, with several similar sized residential lots in the area. In addition, the proposed site of the accessory building is surrounded by trees, which will help to screen the building from the surrounding neighbors. Finally, the proposed size of accessory building is generally compatible with the buildings already approved in the surrounding area.

Conditional Use Permit Criteria:

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

There should be no anticipated negative effect upon the use and enjoyment of the residential properties in the immediate vicinity. Property values in the area should also not be negatively impacted due to the personal use of the proposed accessory building.

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

The proposed site of the accessory building is located in an area with other similar residential acreages and farmland. There should be no anticipated impacts to the normal and orderly



development and improvement of the surrounding vacant farmland or residential acreages. The proposed size of the accessory building is generally compatible with other residential properties in the immediate vicinity.

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

The petitioner will be required to extend all necessary utilities to the structure. The accessory building will be accessed by the same driveway as the current buildings on the property. The addition of another accessory building on the property should not have any negative effects on the drainage of the surrounding area.

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

The proposed site of the accessory building is large enough to accommodate the off-street parking requirement. The new accessory building will also add additional parking and storage to the property.

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

No commercial business or storage will be allowed in the proposed accessory building at any time. Any public nuisance violations will be addressed upon the Planning Department receiving a complaint about the subject property. All outdoor lighting will need to be directed downward onto the property. Lighting must be designed to be fully-shielded and fully-cutoff to prevent light pollution off site.

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

The health, safety, and general welfare of the public will not be negatively affected by the construction of the proposed accessory building. The proposed use will fit within the uses of other properties in the rural area.

Recommendation: Staff recommends **approval** of Conditional Use Permit #22-56 with the following conditions:

- 1) The building location shall adhere to the submitted site plan.
- 2) The total area of all accessory buildings may not exceed 4,752 square feet.
- 3) That the building shall be an accessory use to the continued use of the property as a residential lot.
- 4) The building shall not to be used for commercial uses or as a dwelling at any time.
- 5) That all outdoor lighting shall be of a full cutoff and fully-shielded design to prevent direct spillage of light beyond the property boundaries.
- 6) That a building permit is required prior to construction of the accessory building.
- 7) That the Planning & Zoning Department reserves the right to enter and inspect the accessory building at any time, after proper notice to the owner, to ensure that the property is in full compliance with the conditional use permit conditions of approval and the Minnehaha County Zoning Ordinance.



**MINNEHAHA COUNTY
PLANNING COMMISSION
MEETING MINUTES**

JULY 25, 2022

Action

As part of the consent agenda, a motion was made by Commissioner Mohrhauser and seconded by Commissioner Barth to **approve** Conditional Use Permit #22-56. The motion passed unanimously with 6 votes in favor and 0 votes against the motion.

Conditional Use Permit #22-56 – Approved



Regular Agenda

ITEM 2. CONDITIONAL USE PERMIT #22-54 to allow a Solid Waste Facility for the Seasonal Stockpiling of Municipal Biosolids on the property legally described as the W½ NE¼ & E½ NW¼ Section 12 T102N-R49W Mapleton Township.

Petitioner: City of Sioux Falls

Land Owner: Same

Location: 47729 257th Street, approximately 3 miles north of Sioux Falls

Staff Report: Kevin Hoekman

General Information:

Legal Description – W½ NE¼ & E½ NW¼ Section 12 T102N-R49W Mapleton Township

Present Zoning: A1 Agricultural

Existing Land Use: Cropland

Parcel Size – 160 Acres

Staff Report: Kevin Hoekman

Staff Analysis:

The City of Sioux Falls is requesting to use a portion of the described property as location for seasonal stockpiling of municipal biosolids. Biosolids are listed as a solid waste within the Solid Waste Ordinance, and stockpiling requires a conditional use permit to approve the stockpile. If the CUP for a stockpile of biosolids is approved, then a solid waste permit must be approved by the County Commission before the permit is fully allowed.

The Planning Commission should be aware that this item was brought to the attention of planning staff by a Mapleton Township supervisor who noticed significant truck traffic to and from the site. The City of Sioux Falls Staff responded quickly to County requests to obtain a permit. The City obtained a permit from the SD Department of Agriculture and Natural Resources and explained that they were unaware of the need for a county permit.

The petitioner submitted a detailed site plan, a narrative of the proposed project and an approval letter from the State Department of Agriculture and Natural Resources. The narrative includes a description of the site, a description of what are biosolids, a description of how biosolids will be stored on the property, and how water runoff protection is planned.

The site plan shows a highlighted area east of an existing tree grove where biosolids would be stored. Several important setback considerations are shown to ensure the site is not located in the water source protection overlay or any aquifer. A berm is shown on the west side of the site, and it described in the narrative as a way to prevent water runoff. The site plan indicates the driveway location with access onto 257th Street. The driveway is shown as 225 feet long from the road.

Staff visited the site for review. Most of the parcel is planted with corn and the driveway is



started with coarse quartzite entry from the road and followed by a dirt driveway where corn was not planted. At the site visit, staff noted that the proposed storage area is already clear of crops and the berm is already in place along a large existing tree grove on the west side of the site. The nearest dwellings to the site are approximately ¼ mile away both to the northwest and to the northeast. An unoccupied farmstead on the Sioux Falls owned land is located to the west of the berms and tree grove.

Conditional Use Permit Criteria:

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

The area surrounding the proposed biosolids storage site is mostly agricultural cropland and pastureland. A farmstead with two dwellings on it is located approximately ¼ mile northwest of the site, and a farmstead with one dwelling is located approximately ¼ mile northeast of the site. For comparison, a quarter mile setback is the same as what is required for a Class C CAFO without tree protection. The end use of the biosolids will be for agricultural fertilizer. Close proximity to fertilizer will help nearby ag producers. The storage opportunity will allow for use of the fertilizer as soon as crops are harvested in the fall.

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

As stated in the previous criteria explanation, this property is in a mostly agricultural cropland and pastureland with a few residential acreages some distance away from the storage site. The City of Sioux Falls owns the 160 acres where the site is located, as well as the two large parcels along Slip Up Creek to the north. It is possible further residential acreages could be further developed with building eligibilities, however, it is not likely development will take place closer to the storage site than the existing dwellings currently nearby. City owned land and the Slip Up Creek floodplain will likely prevent residential development any closer to the storage site.

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

A Mapleton Township Supervisor concerned that he was seeing extra truck traffic down the township road brought this item to the attention of County Planning staff. The petitioner explains in the narrative that approximately 4,000 tons of biosolids will be stored at this site. The driveway is more than a half mile from the closest County Highway, and the operations will add potentially hundreds of extra truck trips coming to and going from the site. Staff spoke with Don Ahschlager, a supervisor for Mapleton Township. He expressed that previous use of the land has created extra truck traffic and dust. He stated that a road maintenance agreement should be required as part of the approval. County Planning staff agrees that that a road haul agreement is common practice for traffic producing uses such as this.

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

The site is large enough to accommodate loading and unloading without the need for doing so in the right-of-way. A gravel driveway should be installed to prevent mud from being pulled out onto the gravel road.



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

The submitted narrative includes an explanation that the biosolids will be dewatered and stockpiled as a Class B biosolid. It further states that Class B biosolids are considered by the EPA and the SD DANR to be safe for agricultural purposes. The narrative states that the biosolids are treated to a point where it does not attract disease or insects or rodents. No shallow aquifer was identified by the City and State DANR on the site, and there is a layer of impermeable till to prevent ground water penetration. As noted earlier, the site includes berms on the west side to prevent storm water runoff from leaving the site.

The narrative includes that hours of operation will be weekdays from 7:00 a.m. to 6:00 p.m. The limited hours of operation should reduce concerns such as noise to be limited during normal daylight hours. Staff recommends that the hours of operation become part of the conditions of approval in order to prevent evening and weekend nuisances.

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

This proposed biosolids storage area has already been reviewed and approved by the South Dakota Department of Agriculture and Natural Resources for safety and environmental concerns. The storage area will provide an alternative supply of fertilizer for area producers. In addition, the narrative describes this use to be an alternative to bringing the biosolids to the landfill. The landfill should be a last resort option when a beneficial option exists.

Recommendation: Staff recommends **approval** of Conditional Use Permit #22-54 with the following conditions:

- 1). A solid waste permit must be obtained according to the Minnehaha County Solid Waste Ordinance.
- 2). The site must conform to the existing site plans.
- 3). The applicant must maintain the Biosolids Permit as required by the SD Department of Agriculture and Natural Resources.
- 4). A gravel driveway must be installed from the access on 257th Street a minimum of 100 feet of distance onto the property.
- 5). A haul road agreement must be obtained with Mapleton Township on or before September 15th, 2022. The haul road agreement must be maintained while the operation exists on the property.
- 6). The hours of operation at the site shall be limited to Monday through Friday from 7:00 a.m to 6:00 p.m.
- 7). This permit is for municipal biosolid waste storage for the City of Sioux Falls only. The permit shall not be transferred to any other municipality or entity.
- 8). The Planning & Zoning Department reserves the right to enter and inspect the property at any time, after proper notice, to ensure that the property is in full compliance with the conditional use permit conditions of approval and Minnehaha County Zoning Ordinance.



Public Testimony

Kevin Hoekman, county planning staff, presented the staff report and recommendation. Commissioner Barth asked if the storage area was in operation. Kevin explained that the use was in operation last year and traffic just started this year when the city was contacted regarding the operation.

Commissioner Ode asked what route would the haul road take. Kevin Hoekman responded that the petitioner would have to consider that as part of the haul road agreement with Mapleton Township. He further explained that the road to the east of the driveway would make the most sense, because the road to the east would be the shortest distance to a paved highway.

Mark Perry, Wastewater Superintendent for Sioux Falls, introduced himself and other city officials pertaining to the project. Mark explained that Sioux Falls has been giving away this type of biosolids as a free fertilizer for area farmers since the 1980s. He stated that the early use of biosolids were transported as a liquid which involved many more trucks and higher costs to deliver the product as compared to today. Mark stated that the site is approved by the DANR which follows the EPA rules. Mark explained that temporary storage site is needed to process the biosolids and to wait for farm fields to be clear of crops for application later in the season. The long term goal for the city biosolids is to have a permanent location near the wastewater facility so that biosolids only need to be transported once. Mark Perry concluded his statements by explaining that the DANR approved the site with runoff control and that trucks will come from the east and back the same way.

Mark Hierholzer, Operations Manager, explained that biosolids are highly regulated by the EPA and DANR, and tests are completed on the product daily. He continued to state that the product is safe and beneficial for farmers and people. Mark added that long term storage is a capital improvement which is expensive to build.

Mark Perry explained that the Public Works Director has been working with the township regarding the haul road agreement.

Commissioner Barth asked how long has this site been used. Phil Greenwood, Biosolids Supervisor, responded that the site was used last year, and the DANR approved the site in April 2021. He stated that they were unaware of the county requirement and stopped as soon as they became aware. Commissioner Barth asked if there is another location to do storage. Phil responded that the city has an emergency site located at the landfill, but it is expensive to haul it to the landfill location.

Commissioner Ode asked what months will the biosolids operation take place. Phil Greenwood stated the operation will last from June to late August with about 3 to 4 trucks a day. The product will be applied once crops are out of the fields. Commissioner Ode asked if the biosolids will shrink while in storage. Phil responded that when brought out to the site the biosolids are about 80% water and will reduce to around 60% water.

Don Ahlschlager, Mapleton Township Supervisor, spoke on a number of concerns and ideas.



First, he stated that the City of Sioux Falls has a much larger budget than Mapleton Township, and he wants to protect Mapleton Township. Don explained that the city used 3 miles of township roads for distribution, and he has spoken with the city regarding a potential haul road agreement. Don Ahlschlager continued with concerns about the proposed operation, beginning that as a biological material, the product cannot be located over an aquifer or in a floodplain. He explained that he spoke with Raul Vasquez with the DANR, and that Raul did not know how much material would be stored at the site. Don suggested that it may be better if the city was to sell the land and use the money to build a concrete bunker somewhere else. He pointed out that a similar application for lime storage was denied a few miles to the west of the proposed site. He completed his statements with explaining that the city does not have an approved haul road agreement yet and that the city does not own land in any other township.

Commissioner Randall asked if two trucks could pass one another on the road at the same time. Don Ahlschlager responded that it is possible for two trucks to meet on the road but wheels would likely be on the edge of the grass. He added that school busses may pose an issue when trucks roll up and down the road.

Commissioner Ode asked how long it would take to get the haul road agreement set, and he added that school will be in session by August 15th, and that school busses will be added to the road.

Commissioner Bath asked if there were any things that should be done for the project. Don Ahlschlager responded that he has concerns over the DANR acting as a rubber stamping for this project and others. He also reiterated the need for a haul road agreement is very high.

Mike Bangasser, 47648 257th Street, noted that his family farmed the subject property for 50 years, and that he has concerns that the soil is not good enough for a berm to work to protect downstream water. He explained that clay would need to be brought on the property for the berm. He also stated that he is tired of meeting trucks on the road in dangerous locations. He reiterated that the soil should be tested to prove it meets EPA requirements.

Phil Greenwood and city staff responded to some of the concerns. He explained that trucks went west last year to an application site to the west. Going west was the shortest distance from storage to application. Phil explained that the biosolids are not considered organic because there may be traces of non-organic materials due to people flushing other stuff down the drain. He noted that biosolids may be the most studied constituent of wastewater treatment, and that the city has a long term goal to treat the biosolids to be safe enough to place on residential lawns. Phil stated that two trucks can pass each other on the road safely, and the site has a different access entrance than what was used last year. Phil also explained that site requirements are tested such as soils, berm with vegetation and grass buffer strips. He pointed out that Raul provided an updated email explaining that the site meets state requirements.

Commissioner Ode asked if the city would object to a monitoring well to be placed on the site. Mark Perry responded that just one monitoring well site would not monitor the entire site. He stated that the state requirements are adequate for the use.



Commissioner Barth asked if there was a signed haul road agreement and if the county puts the haul road agreement together. Scott Anderson, planning staff, responded that there is not yet a haul road agreement and that county staff does not put together the agreement.

Don Ahlschlager, spoke again. He noted that he thinks the haul road agreement can be met. Then he continued with concerns about when the state permit expire, how much tonnage can be stored on the site and if the tonnage weight will go up as wastes go up.

Chair Duffy closed the floor for Commission discussion.

Discussion

Commissioner Barth asked Commissioner Ode what his biggest concern is on the project. Commissioner Ode responded that the haul road agreement is his biggest concern. Commissioner Barth asked if the required date for the haul road agreement could be moved forward. Staff explained that the date in the recommendations was only a recommendation and could be changed. Commissioner Barth then suggested the requirement must be done before August 19th, 2022.

Don Ahlschlager noted that the next township meeting will be on August 9th, and he thinks an agreement can be raised at that meeting.

Commissioner Duffy agreed that she did not like the idea of the permit going forward without a haul road agreement.

Action

Commissioner Barth made a motion to change condition #5 to read - A haul road agreement must be obtained with Mapleton Township on or before August 19th, 2022. The haul road agreement must be maintained while the operation exists on the property. The motion was seconded by Commission Ode. The Motion Passed Unanimously

Commissioner Barth Made a motion to approve CUP #22-54 with the amended conditions. Commissioner Ode seconded the motion. The motion was approved unanimously.

Conditional Use Permit #22-54 – Approved with the following conditions

- 1). A solid waste permit must be obtained according to the Minnehaha County Solid Waste Ordinance.
- 2). The site must conform to the existing site plans.
- 3). The applicant must maintain the Biosolids Permit as required by the SD Department of Agriculture and Natural Resources.
- 4). A gravel driveway must be installed from the access on 257th Street a minimum of 100 feet of distance onto the property.
- 5). A haul road agreement must be obtained with Mapleton Township on or before August 19th, 2022. The haul road agreement must be maintained while the operation



exists on the property.

- 6). The hours of operation at the site shall be limited to Monday through Friday from 7:00 a.m to 6:00 p.m.
- 7). This permit is for municipal biosolid waste storage for the City of Sioux Falls only. The permit shall not be transferred to any other municipality or entity.
- 8). The Planning & Zoning Department reserves the right to enter and inspect the property at any time, after proper notice, to ensure that the property is in full compliance with the conditional use permit conditions of approval and Minnehaha County Zoning Ordinance.



ITEM 5. CONDITIONAL USE PERMIT #22-57 to transfer & make available five (5) building eligibilities from the S½ NE¼ (Ex. RY) & the SE¼ NW¼ & NE¼ SW¼ (Ex. E 2 Rds. S 5 Rds. & Ex. S 99') & the N½ SE¼ (Ex. ROW) & E 2 Rds. S 5 Rds. NE¼ SW¼ & E 2 Rds. SE¼ SW¼ to the NE¼ SE¼ all in Section 2 T102N-R48W Brandon Township.

Petitioner: Marvin Manifold

Land Owner: Same

Location: Approximately 3 miles north of Brandon

Staff Report: Scott Anderson

General Information:

Legal Description – S½ NE¼ (Ex. RY) & the SE¼ NW¼ & NE¼ SW¼ (Ex. E 2 Rds. S 5 Rds. & Ex. S 99') & the N½ SE¼ (Ex. ROW) & E 2 Rds. S 5 Rds. NE¼ SW¼ & E 2 Rds. SE¼ SW¼ to the NE¼ SE¼ all in Section 2 T102N-R48W

Brandon Township.

Present Zoning: A1 Agricultural

Existing Land Use: Cropland

Parcel Size – 76.06 Acres

Staff Report: Scott Anderson

Staff Analysis: The property is located approximately 3 miles north of Brandon along 257th Street. The applicant is requesting to move five building eligibilities to the southwest. The area in which the building eligibilities are now located is used as cropland. The move would locate the building eligibilities near an existing permitted family campground and on a bluff overlooking Split Rock Creek.

On July 8, staff conducted a site visit. There are several residences located within 1/2 mile of the proposed location of the transfer. The proposed site is located approximately 1 mile west of SD Highway 11. The applicant has indicated that he would like to move a house onto the subject property.

Conditional Use Permit Criteria:

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

There are approximately five (5) residences located near the proposed site. A right-to-farm notice covenant should be required to notify potential buyers to the realities of locating in an agricultural area.

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

The transfer of five building eligibilities does not increase the number of dwelling units allowed



in this section. The requested location for the eligibilities places them near other residentially used property. Access would have to be approved by the Brandon Township. The siting of a building eligibilities in this area would have little to no effect on the orderly development of the surrounding properties.

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

No other extra utilities or services will be required for this site to utilize the building eligibilities. It is likely that rural water and electricity are already located in the ditch or area. Brandon Township will need to approve the location of any new driveways to be used for the new lots.

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

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

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

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

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

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

Recommendation: Staff finds this conditional use permit request to be consistent with density zoning and the comprehensive plan. Staff recommends **approval** of Conditional Use Permit #22-57 with the following conditions:

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

Public Testimony

Scott Anderson, the county planning director, explained the staff report and recommendation to the commission.

Commissioner Ode asked for clarification that the proposed site of the dwellings would be out of the floodplain. Scott explained that part of the property is within the floodplain, and that each dwelling's specific location would be addressed during their individual building permit processes. He further explained that there are parts of this property that are not within the



floodplain, and that during the building permit process staff would encourage the petitioner to not build within the floodplain. Finally, Mr. Anderson stated that if the dwellings were located in the floodplain then a floodplain development would be required before development.

The petitioner, Marvin Manifold of 2600 S Six Mile Road, was present and available for questions from the commissioners. Mr. Manifold stated that there is a large amount of development occurring near his existing residence, and that he would like to move to this property and use it as a summer home. Then Marvin explained that he currently only intends to use one of the building eligibilities for his home, and that he has no plans for the other four building eligibilities as of now.

Steven Farley, of 48292 257th Street, addressed the commission with his questions about the proposed building eligibility transfer. Mr. Farley explained that he lives on a three acre parcel just south of the proposed transfer, and he asked if it is permissible to have five building eligibilities so close together. Then Mr. Farley asked what the development timeline would be for the remaining eligibilities because this transfer would potentially add five new dwellings within close proximity to his property.

Marvin Manifold returned to the podium to address the neighbor's questions, and he reiterated that he only plans on using the one building eligibility.

Commissioner Ralston then asked staff to address the neighbor's question on having five building eligibilities so close to each other. Scott Anderson explained that it is not uncommon for multiple building eligibilities to be moved together. He also stated that it can be desirable in many cases because it preserves more farmland and clusters building eligibilities on a site that may be more desirable for dwellings than their originally assigned locations.

Action

A motion was made to **approve** Conditional Use Permit #22-57 with staff recommended conditions by Commissioner Ralston. The motion was seconded by Commissioner Mohrhauser. The motion was **approved** with 5 votes in favor and 1 abstain vote. Commissioner Barth abstained from voting due to being out of the room during the discussion on this item.

Conditional Use Permit #22-57 – Approved



ITEM 6. CONDITIONAL USE PERMIT #22-59 to a Major Home Occupation (Custom Pallets & Crates) on the property legally described as Tract 1 Roder Addition SE¼ SW¼ Section 28 T101N-R51W Wall Lake Township.

Petitioner: Tanner Hilger

Land Owner: Same

Location: 26680 Apple Lane

Staff Report: Kevin Hoekman

General Information:

Legal Description – Tract 1 Roder Addition SE¼ SW¼ Section 28 T101N-R51W Wall Lake Township.

Present Zoning: A1 Agricultural

Existing Land Use: Residential Acreage

Parcel Size – 2.25 Acres

Staff Report: Kevin Hoekman

Staff Analysis:

This property is located approximately one mile south of Wall Lake. Apple Lane is a dead end road, and the subject property is at the end of the road. Four other houses have access onto Apple Lane. The petitioner is requesting to operate a Major Home Occupation to build custom pallets and crates inside the attached garage. The plan is to bring in materials and deliver the pallets to the customer so that no customers will be coming and going from the site.

This property came to the attention of planning staff due to complaints from the neighbors. Neighbor complaints include a long list of concerns including possible public nuisance ordinance violations, solid waste ordinance violations, zoning ordinance violations, and concerns of items not enforceable by the Planning & Zoning Office. Staff has visited the property many times over the years and violations were visible sometimes and not visible other times. The assembly of pallets and storage of materials have been a common part of complaints for the property. This request is allow the continued pallet assembly on the site. If denied, pallet assembly must stop on the property. If this request is approved. The pallet assembly must meet the requirements of Section 12.0302 Major Home Occupation (A) Class 1 within the 1990 Revised Zoning Ordinance for Minnehaha County. The home occupation must also meet any conditions of approval as required by the Planning Commission.

A Class 1 major home occupation has 12 criteria in the ordinance that must be followed. Below are a few comments regarding the proposed pallet assembly and a few of the criteria requirements.

Criteria #1 requires the home occupation to be conducted entirely within a dwelling or accessory building, and similarly Criteria #7 prohibits outside storage. Currently materials and finished pallets are commonly stored on trailers outside. These materials and pallets must be stored inside the attached garage or another structure can be built to comply with Criteria's #1 and #7.



Criteria #3 limits employees to four (4) employees on site. The provided narrative explains there are six family members who work on the pallets. The applicant cannot exceed four people working on the home occupation at one time.

Criteria #5 limits noise from the home occupation to 60 decibels during the hours of 8:00 a.m. and 6:00 p.m. Audible sounds are restricted during evening hours. Staff recommends a condition that requires the garage door to be down during evening hours of 6:00 p.m. and 8:00 a.m.

Conditional Use Permit Criteria:

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

The property is currently developed with a single family dwelling, outdoor horse riding arena, and garden area. The site plan shows a planned area for loading and unloading and an area where a future building is being consider for more future working space. The proposed use has

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

This property is located on the end of a dead end private road. No building eligibilities remain available on Apple Lane and only a few building eligibilities remain nearby. It is not likely surrounding property uses will significantly change or develop for a long time into the future.

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

The proposed use will take place on an already developed parcel. Drainage will not change in the area, and utilities are already on the site.

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

Neighbors have complained that package delivery trucks cannot turn around in the petitioner's driveway so they tend to back up into neighboring driveways to turn around. The petitioner submitted a site plan that indicates an enlarged driveway that wraps to the north of the dwelling. With the additional driveway area, the property is large enough to accommodate off-street parking and loading.

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

This item was brought to the attention of planning staff through a nuisance complaint. Neighbors have complained about many things on and off the property. The Planning & Zoning Department does not have the ability to take action on many of the complaint actions. Some of the complaints such as the petitioner owning horses are allowed uses within the zoning district. Some of the complaints stem from ongoing construction projects on the house. Other complaint items should be addressed before this permit is approved. Specifically, the petitioner has accumulated many items and expired licensed vehicles which are being stored in the trees on the north side of the property. Staff is recommending deferral of action on this permit to allow the



petitioner to clean up the items defined as abandoned property within the Public Nuisance Ordinance. The October 24th, 2022 Planning Commission meeting should be enough time to allow for cleanup.

Several of the complaints raised against this property pertain to the proposed home occupation. Neighbors have complained about noise, outdoor storage, and burning waste materials. A home occupation requires all materials and actions to take place within an enclosed building. No outdoor storage is allowed as part of the home occupation. A home occupation has limits to audible noise. The petitioner will be required to meet the noise criteria of the home occupation section of the ordinance. Neighbors have complained about the petitioner burning trash. The petitioner has been informed that burning trash violates the solid waste ordinance. Since that notice, the petitioner neighbors have informed staff of continued burning of wood materials and possible trash on a frequent basis. Burning trash is not allowed by the ordinance, and burning waste materials from the home occupation should not be allowed as disposal method for any garbage or waste materials from the house or home occupation.

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

The home occupation section of the ordinance was created to allow limited commercial type activities associated with a residence only to the extent that the activity is clearly subordinate to the residential or agricultural use of the property. Staff finds that the requested home occupation has the potential to meet the standards required by the ordinance and this permit, but if the requirements cannot be met, the occupation should be moved to a commercial or industrial location.

Recommendation: Staff recommends **deferral** of Conditional Use Permit #22-59 to the October 24th, 2022 Planning Commission Meeting. The extended time is to allow the petitioner to address the following concerns:

- Six unlicensed/inoperable vehicles must be licensed, removed, or placed within an enclosed building.
- All motorized vehicles or equipment, which does not require a license, must be operational or stored within an enclosed building.
- The dilapidated camper must be removed or placed within an enclosed building.
- All building materials, pallets, and creates must be placed indoors.

Public Testimony

Kevin Hoekman, of county planning staff, explained the staff report and recommendation to the commission.

The petitioner, Tanner Hilger of 26680 Apple Lane, was present and available for questions from the commissioners. Commissioner Barth asked the petitioner how he feels about the request being deferred to the October planning commission meeting. Mr. Hilger stated that he is gracious that county planning staff is giving him time to address the concerns, and that he has no problem with this timeline.



Commissioner Ode then asked the petitioner how the pallets are hauled off the property once they are completed. Mr. Hilger explained that they use their own car hauler trailer and personal vehicle to haul the pallets off the property.

Sheryl Fromm, of 26689 Apple Lane, addressed the commission with her concerns regarding the request. Mrs. Fromm stated that she did not get noticed for this meeting, and that she only heard about the meeting through another neighbor. Then she went on to explain that the petitioner has been operating this business on the property for years, and that they are constantly burning all sorts of materials that produce smoke. Additionally, Sheryl stated that the noise produced from the operation is so loud that she cannot keep her windows open, and that the noise continues late into the night. She also added that the road access for her property and the petitioner's property is breaking down due to the traffic from the operation, and that she has had several flat tires along this road access. Mrs. Fromm then presented pictures to the commission and explained that she had to put up a fence on her property line in order to keep the petitioner's animals off of her property. Finally, she stated that the neighbors to this operation installed a speed bump on the road access in hopes of slowing down the petitioner's traffic on the road.

Commissioner Barth stated that he believes Sheryl makes some excellent points, and that she should be back when they reconsider this item. Commissioner Barth also commented that he has seen pictures similar to this property too often in the county.

Commissioner Ode asked Sheryl how far away her residence is from the operation. Sheryl stated that her current residence is approximately 250 feet from the petitioner's operation.

Commissioner Randall asked Mrs. Fromm who owns and maintains the road access to these properties. Mrs. Fromm explained that it is a private road and that she does not believe anyone owns the road. Commissioner Randall followed up to ask if there is a maintenance agreement for maintaining the road. Sheryl explained that there is no road maintenance agreement, and that discussions involving a road maintenance agreement have not progressed.

Action

A motion was made to **defer** Conditional Use Permit #22-59 to the October 24, 2022 meeting by Commissioner Barth. The motion was seconded by Commissioner VanDerVliet. The motion was **approved** with 6 votes in favor and 0 votes against the motion.

Conditional Use Permit #22-59 – Deferred to October 24, 2022



Old Business

Mason Steffen, of county planning staff, addressed the commission with updates on two items that were appealed to the County Commission. He explained that the decision by the planning commission to approve Conditional Use Permit #22-44 was amended by the County Commission to include an additional condition, which required the petitioner to adhere to the submitted site plan. Then he stated that the planning commission's approval decision of Conditional Use Permit #22-49 was also amended by the County Commission, and that the ninth condition on this permit was removed.

New Business

Scott Anderson, the county planning director, reminded the commission of the planning staff get together that will take place on August 18, 2022 at the Safari Bar & Grill.

Commissioner Ode asked Mr. Anderson if he needed to know the number of people that will be attending the get together. Scott stated that yes, he will need a general head count, but that he will send out another email closer to August 18th.

Adjourn

A motion was made to **adjourn** by Commissioner Barth and seconded by Commissioner VanDerVliet. The motion was approved unanimously.

The meeting was adjourned at 8:44 p.m.