



**MINUTES OF THE
MINNEHAHA COUNTY PLANNING COMMISSION
October 24, 2022**

A meeting of the Planning Commission was held on October 24, 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, 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 7:00 p.m.

PUBLIC COMMENT.

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

CONSENT AGENDA

Commissioner Duffy read each item on the consent agenda and Item 2 & 4 were requested to be moved to the regular agenda.

A motion was made to approve the consent agenda consisting of Items 1, 3, 5, 6, & 7 by Commissioner Randall and seconded by Commissioner Ralston. The motion passed unanimously with 5 votes in favor and 0 votes against the motion.

ITEM 1. Approval of Minutes – September 26, 2022

As part of the consent agenda, a motion was made by Commissioner Randall and seconded by Commissioner Ralston to **approve** the meeting minutes from September 26, 2022. The motion passed unanimously with 5 votes in favor and 0 votes against the motion.



Consent Agenda

ITEM 3. CONDITIONAL USE PERMIT #22-74 to exceed 1,600 square feet of accessory building space (requesting 2,010 square feet) on the property legally described as Lot 4 Langdon's Subdivision (Ex. H-1) Section 34 T103N-R49W Sverdrup Township.

Petitioner: Dennis Holtz
Land Owner: Same
Location: 25564 475th Avenue
Staff Report: Mason Steffen

General Information:

Legal Description – Lot 4 Langdon's Subdivision (Ex. H-1) Section 34 T103N-R49W Sverdrup Township.
Present Zoning: A1 Agricultural
Existing Land Use: Residential Acreage
Parcel Size – .98 Acres

Staff Report: Mason Steffen

Staff Analysis: The petitioner is requesting conditional use permit approval to allow 2,010 square feet of residential accessory building area on the subject property. Since the subject property is less than one acre, it is limited to 1,600 square feet of accessory building space without a conditional use permit. Currently, there is one existing accessory building on the property that has a total of 1,200 square feet. This request would allow the petitioner to construct an 18' x 45' addition on the east side of the existing structure, which would make the total square footage of the building 2,010. Finally, the petitioner has stated that the use of the structure will remain as personal storage, and will not be used as a dwelling or for commercial uses.

On October 7, 2022, staff conducted a site visit of the subject property and surrounding area. The property is located within a subdivision along State Highway 115, approximately 1.5 miles south of Midway Corner. Since the property is located with a residential subdivision, it is surrounded by lots that are almost identical in size to the subject property. Finally, the proposed site of the accessory building addition will be screened from the surrounding properties by trees, and the overall size of the proposed building is generally compatible with other properties in the 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. Given that the property is located within a residential subdivision, there is relatively little vacant land in the area. Therefore, the proposed accessory building addition should not have any anticipated impacts to the normal and orderly development and improvement of the surrounding vacant land. Finally, the proposed size of the accessory building is generally compatible with the 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 continue to be accessed by the same driveway as the current buildings on the property. The addition to the accessory building 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 addition to the 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 #22-74 with the following conditions:

- 1) The building location shall adhere to the submitted site plan, and meet all applicable setbacks for the subject property.
- 2) The total area of all accessory buildings may not exceed 2,010 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.

Action

As part of the consent agenda, a motion was made by Commissioner Randall and seconded by Commissioner Ralston to **approve** Conditional Use Permit #22-74. The motion passed unanimously with 5 votes in favor and 0 votes against the motion.

Conditional Use Permit #22-74 – Approved



ITEM 5. CONDITIONAL USE PERMIT #22-76 to transfer one (1) building eligibility from the NE $\frac{1}{4}$ SW $\frac{1}{4}$ to the SE $\frac{1}{4}$ SW $\frac{1}{4}$ in the E $\frac{1}{2}$ SW $\frac{1}{4}$ (Ex. Tract 1 Muchow's Addition) all in Section 12 T101N-R51W Wall Lake Township.

Petitioner: Matthew Schumacher

Land Owner: Same

Location: Approximately 4 miles west of Sioux Falls, along 264th Street

Staff Report: Scott Anderson

General Information:

Legal Description – E $\frac{1}{2}$ SW $\frac{1}{4}$ (Ex. Tract 1 Muchow's Addition) all in Section 12 T101N-R51W Wall Lake Township.

Present Zoning: A1 Agricultural

Existing Land Use: Cropland

Parcel Size – 70 Acres

Staff Report: Scott Anderson

Staff Analysis: The property is located approximately 4 miles to the west of Sioux Falls along 264th Street. The applicant is requesting to move a landlocked building eligibility to the south where it will have access to 264th Street. The transfer would be from the NE $\frac{1}{4}$ SW $\frac{1}{4}$ to the SE $\frac{1}{4}$ SW $\frac{1}{4}$.

On October 5, 2022, staff conducted a site visit. The site is relatively open with some residential development along 264th.

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 five existing residences located within $\frac{1}{2}$ mile of the proposed site, primarily to the west. The State of South Dakota owns the property to east, which is part of the former West Farm of the State Penitentiary. A right-to-farm notice covenant should be required to notify potential buyers to the realities of locating in an agricultural area.

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

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



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

No other extra utilities or services will be required for this site to utilize the building eligibility. It is likely that rural water and electricity are already located in the ditch. There is already an approach onto the proposed building site. Wall Lake Township will need to approve the location of this approach for use as a residential approach, which is a change in use from a field approach.

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

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

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

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

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

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

Recommendation: Staff finds this conditional use permit request to be consistent with density zoning and the comprehensive plan. Staff recommends **approval** of Conditional Use Permit #22-76 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 Wall Lake Township must be obtained for the location of the driveway before a building permit is to be issued.

Action

As part of the consent agenda, a motion was made by Commissioner Randall and seconded by Commissioner Ralston to **approve** Conditional Use Permit #22-76. The motion passed unanimously with 5 votes in favor and 0 votes against the motion.

Conditional Use Permit #22-76 – Approved



ITEM 6. CONDITIONAL USE PERMIT #22-77 to allow a Manufactured House on the property legally described as the N1320' E1221.25' NW¼ Section 19 T103N-R51W Grand Meadow Township.

Petitioner: Ronald Nedved

Land Owner: Same

Location: 46031 253rd Street

Staff Report: Mason Steffen

General Information:

Legal Description – N1320' E1221.25' NW¼ Section 19 T103N-R51W Grand Meadow Township.

Present Zoning – A1 Agricultural

Existing Land Use – Farmstead

Parcel Size – 37.00 Acres

Staff Report: Mason Steffen

Staff Analysis: The petitioner is requesting to place a manufactured home as their primary residence on the site of a previous farmstead. The placement of manufactured homes on lots outside of a designated mobile home park requires a conditional use permit. Finally, Section 12.06 (C) of the 1990 Revised Zoning Ordinance for Minnehaha County includes several requirements & standards for manufactured homes, which the petitioner must follow if the conditional use permit is approved.

On October 7, 2022, staff conducted a site visit of the subject property and the surrounding area. The area surrounding the property is almost entirely agricultural in use, and the neighboring residence to the north is the only other residence within a ½-mile of the subject property. The low density of residential properties in the area will reduce much of the concerns of a manufactured home being different than a typical stick framed house. Additionally, the western portion of the subject property is located within the flood plain of the West Branch of Skunk Creek, but the site plan indicates that the manufactured home will not be placed in this area. However, the proposed site of the manufactured home is located within the Water Source Protection Area. This means that before an on-site wastewater system may be installed on the subject property, the Minnehaha County Building Inspector must confirm that the soil conditions are adequate to handle a conventional septic system.

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 is mostly comprised of agricultural land and large farmsteads. A right-to-farm covenant will be required prior to a building permit being issued for the proposed manufactured home. The right-to-farm covenant informs property owners of some of the realities of living on a rural site. The low density of residential properties in the area will reduce much of the concerns of a manufactured home being different than a typical stick framed house.



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

The primary use of the general area is agriculture. The placement of a manufactured home on a site where a previous farmstead resided will not inhibit the agricultural production of the area. There should be no anticipated impact on the normal or orderly development of vacant properties in the area.

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

The proposed site of the manufactured home will be in the same location as a previous farmstead. The site is already serviced with most utilities, including a driveway onto 253rd Street. However, due to the property being located in the Water Source Protection Area, the petitioner will need to have the soil conditions of the property inspected by the County Building Inspector prior to the issuance of an on-site wastewater permit for the property.

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

Each residence is required to have two (2) off-street parking spaces. The site of the proposed manufactured home is large enough to accommodate this residential parking requirement.

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.

A typical residential use will not create any offensive odor, fumes, dust, noise, or vibration. Any new lighting will be required to be shielded and pointed downward, and the property must be maintained in accordance with the public nuisance ordinance.

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

The zoning ordinance includes requirements to minimize the negative aesthetics associated with a manufactured home. The requirements include minimum width, roof pitch, and standard building materials. With general requirements and low density of the area, the placement of a manufactured home will not negatively affect the health, safety, or general welfare of the public.

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 #22-77 with the following conditions:

- 1.) A building permit must be obtained prior to the placement of the manufactured home.
- 2.) Each section of manufactured home must bear a label certifying that it is built in compliance with the Federal Manufactured Home Construction and Safety Standards.
- 3.) The manufactured home must comply with all requirements of Article 12.06 (C) of the 1990 Revised Zoning Ordinance for Minnehaha County.
- 4.) The soil conditions of the property must be inspected by the County Building Inspector prior to the issuance of an on-site wastewater permit. An on-site wastewater permit must be obtained before a building permit is to be issued for the manufactured home.



- 5.) Prior to the issuance of a building permit, a right-to-farm notice covenant must be filed on the deed with the Register of Deeds.

Action

As part of the consent agenda, a motion was made by Commissioner Randall and seconded by Commissioner Ralston to **approve** Conditional Use Permit #22-77. The motion passed unanimously with 5 votes in favor and 0 votes against the motion.

Conditional Use Permit #22-77 – Approved



ITEM 7. CONDITIONAL USE PERMIT #22-78 to transfer one (1) building eligibility from Tract 1 Crist Subdivision to Tract 2 Crist Subdivision all in the SW¹/₄ Section 27 T101N-R52W Wellington Township.

Petitioner: Forrest Miller

Land Owner: Z & S LLP

Location: Located at the intersection of 457th Avenue & 267th Street

Staff Report: Scott Anderson

General Information:

Legal Description – Tract 2 Crist Subdivision SW¹/₄ Section 27 T101N-R52W

Wellington Township

Present Zoning: A1 Agricultural

Existing Land Use: Cropland/Pasture

Parcel Size – 72.06 Acres

Staff Report: Scott Anderson

Staff Analysis: The property is located approximately 12 miles to the west of Sioux Falls at the intersection of 457th Avenue and 267th Street. The applicant is requesting to move a landlocked building eligibility to the south where it will have access to 264th Street. The transfer would be within the SW ¹/₄.

On October 5, 2022, staff conducted a site visit. The site is relatively open with two residences located to the east and west about ¹/₂ mile away along 267th Street

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 two existing residences located within ¹/₂ mile of 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 a building eligibility does not increase the number of dwelling units allowed in this section. The requested location for the eligibility places it near other residentially used property. Access would have to be approved by the Wellington Township. The siting of a building eligibility in this location would have little to no effect on the orderly development of the surrounding properties.

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



No other extra utilities or services will be required for this site to utilize the building eligibility. It is likely that rural water and electricity are already located in the ditch. There is already an approach onto the proposed building site. Wellington Township will need to approve the location of this approach for use as a residential approach, which is a change in use from a field approach.

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

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

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

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

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

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

Recommendation: Staff finds this conditional use permit request to be consistent with density zoning and the comprehensive plan. Staff recommends **approval** of Conditional Use Permit #22-78 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 Wellington Township must be obtained for the location of the driveway before a building permit is to be issued.

Action

As part of the consent agenda, a motion was made by Commissioner Randall and seconded by Commissioner Ralston to **approve** Conditional Use Permit #22-78. The motion passed unanimously with 5 votes in favor and 0 votes against the motion.

Conditional Use Permit #22-78 – Approved



Regular Agenda

ITEM 2. CONDITIONAL USE PERMIT #22-73 to transfer two (2) building eligibilities from the NW¼ SE¼ & the SW¼ NE¼ to the NE¼ SE¼ & the SE¼ NE¼ in the S½ NE¼ & N½ SE¼ (Ex. H-1 & Ex. S150' E300' SE¼ NE¼ & Ex. N 150' E300' NE¼ SE¼ & Ex. S200' E 659') all in Section 27 T103N-R48W Edison Township.

Petitioner: Trent Dawley

Land Owner: Same

Location: Approximately 3 miles west of Garretson

Staff Report: Kevin Hoekman

General Information:

Legal Description – S½ NE¼ & N½ SE¼ (Ex. H-1 & Ex. S150' E300' SE¼ NE¼ & Ex. N 150' E300' NE¼ SE¼ & Ex. S200' E 659') all in Section 27 T103N-R48W Edison Township.

Present Zoning: A1 Agricultural

Existing Land Use: Cropland

Parcel Size – 152.37 Acres

Staff Report: Kevin Hoekman

Staff Analysis:

The petitioner is requesting to transfer two building eligibilities from interior quarter quarter sections to locations along South Dakota Highway 11. The location of the property is approximately three miles west of Garretson where South Dakota Highway 11 curves to the east.

At the time of application, the petitioner stated that he has plans to sell one of the building eligibilities and no plans for the other one at this time. A transfer of a building eligibility is allowed as long as locations are contiguous and under the same ownership and a conditional use permit is approved by the planning commission.

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 around this proposed transfer is predominately agricultural with scattered residential acreages and houses. An electrical substation exists in between the two receiving locations. Whoever uses the two building eligibilities must be aware of the existing substation. The transfer will allow closer access to South Dakota Highway 11. The applicant will need to work with the South Dakota Department of Transportation to obtain driveway access onto the highway. The transfer will not move the building eligibilities closer to any existing CAFOs.

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

The transfer will move two building eligibilities to better take advantage to the state highway



system. It is unlikely the rural nature of the neighboring properties will change in the near future. Any new dwelling will require a right to farm notice covenant prior to obtaining a building permit.

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

The property owner will be required to extend any needed utilities when new dwellings are constructed. Driveway access will be from SD Highway 11, and access permit would need to be obtained from the SD DOT.

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

Off street parking requirements will be met when a single family dwelling is constructed.

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.

A single family dwelling is not typical land use to create odor, fumes, dust, noise, vibration, and lighting. Any property must conform to requirements in the public nuisance ordinance.

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

The proposed transfer will move two building eligibilities which located in the interior portion of the section to a location along a paved highway. The new location will not have negative effects on the agricultural uses in the area. It will allow some clustering of dwellings rather than scattering them throughout the section to preserve larger sections of ag land.

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 #22-73 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 SD Department of Transportation must be obtained for the location of any new driveway onto SD Highway 11 before a building permit is to be issued.

Public Testimony

Kevin Hoekman, of County Planning Staff, presented an overview of the staff report and recommendation to the commission.

The petitioner, Trent Dawley of 25458 481st Avenue, was present and available for questions from the commissioners. Commissioner Barth asked Mr. Dawley how close the future dwellings will be to the road. Mr. Dawley explained that he has no plans currently to develop the building eligibility to the north, and that he will be selling the one to the south so that decision will be up to the future owner.

Brad Halverson, of 25426 482nd Avenue, explained to the commission his concerns with the proposed transfer. Mr. Halverson stated that there has been past issues with access onto the



highway in this area, and that the amount of traffic has grown significantly. He also stated that the additional building eligibilities will add traffic to the highway in front of his residence, as well as his daughter's residence to the south. Finally, Mr. Halverson stated that the petitioner owns other adjacent property to the south, and that he could transfer the building eligibilities to this property in order to reduce the traffic on the highway.

Trent Dawley returned to the podium and stated that he only needs the one building eligibility to the south, and that if the neighbor is concerned with traffic he would be willing to leave the north eligibility in its current location.

Scott Anderson, the County Planning Director, explained to the commissioners that one of the conditions of approval is that any new driveway accesses would need to be approved by the State Department of Transportation. Therefore, it would be during the State driveway permit process that the questions of traffic and location of the driveways would be answered.

Commissioner Barth asked Planning Staff if this location was near the proposed ice hockey facility that was denied earlier in the year. Scott Anderson stated that the proposed location of the ice hockey facility was several miles to the south, and that that type of operation would have added significantly more traffic than two single-family dwellings.

Commissioner Ralston stated that he understands the neighbor's concerns with public safety on the highway, but that the State will insure public safety during their permit process.

Action

A motion was made by Commissioner Ralston and seconded by Commissioner Ode to **approve** Conditional Use Permit #22-73 with staff recommended conditions. The motion passed unanimously with 5 votes in favor and 0 votes against the motion.

Conditional Use Permit #22-73 – Approved



ITEM 4. CONDITIONAL USE PERMIT #22-75 to allow a Motor Vehicle Repair Shop on the property legally described as Lot 1 Block 1 Brower 2nd Addition SW¹/₄ Section 27 T102N-R51W Hartford Township.

Petitioner: Thomas Aesoph

Land Owner: Same

Location: 46334 Jeffrey Street

Staff Report: Kevin Hoekman

General Information:

Legal Description – Lot 1 Block 1 Brower 2nd Addition SW¹/₄ Section 27 T102N-R51W Hartford Township.

Present Zoning: I1 Light Industrial

Existing Land Use: Contractor's Yard

Parcel Size – 1.22 Acres

Staff Report: Kevin Hoekman

Staff Analysis:

This item was brought to the attention of planning staff by a complaint that trucks were being parked on the road and parts and other junk items are being stored outside of an enclosed building. Staff contacted the property owner on August 10th, and again on September 15th regarding outdoor storage, vehicle repair, and vehicles parking on the street. The petitioner applied for the conditional use permit for motor vehicle repair before the deadline of the second letter. A conditional use permit is required to operate a motor vehicle repair shop. After further review by staff, the proposed use should also include outdoor storage as many items for the use are being stored outside of the enclosed building. Outdoor storage requires a conditional use permit.

The petitioner submitted a narrative for the proposed repair shop. The petitioner explains that issues with supply chains have required him to maintain more used parts and supplies. A large warehouse was built on the property beginning in 2020 for the purposes of storing parts. The building has not yet obtained a final inspection to ensure building code requirements have been met. It has not been determined if the building is being utilized for storage or not. At the time of application, the petitioner stated that outdoor storage will not be an issue once the building is complete.

Please note in the following conditional use permit criteria that the use of the property for motor vehicle repair is generally compatible in the industrial park if a few conditions can be met. Considering this, staff has concerns about the motor vehicle repair already taking place on the property. Concerns are based on the condition of the property since staff received a complaint about junk being stored outside and vehicles parking within the right of way. There is further explanation of concerns within the conditional use permit criteria section below.



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 around the proposed motor vehicle repair shop is light industrial with many contractor lots, storage, and warehousing type uses. Several other trucking uses also exist in the industrial park. A truck repair shop would fit into the neighborhood well; however the petitioner is operating his business in a manner contrary to county ordinances and requirements.

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

The Brower Addition industrial park is not fully developed. Several vacant lots exist in the interior, and a more undeveloped area exists on the east side of the industrial park. A truck repair shop fits into the current development, however if the business continues as currently operating, trucks parking on the road and dismantled vehicle parts stored outside will discourage development further into the park. The current unsightliness of the business may encourage other businesses to utilize their land in a haphazard manner.

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

The property is already developed on an existing lot. The use will not affect drainage any further than the current state. Utilities must be present for the existing use. The property is accessed from a hard surfaced private road. The private road is hard surfaced and maintained by a road district. It is difficult to determine where any driveway begins or ends as an access onto the street because, nearly the entire south side of the property acts as a driveway. Vehicles parts stored up to and within the right of way make it even more difficult to determine the location of access driveways.

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

The property is large enough to meet ordinance requirements for parking; however, staff has many concerns over parking and loading on the property.

The applicant is currently illegally using the street for parking. This is a hazard to those using the right-of-way and problematic for street maintenance. Parking and loading in the right-of-way is not and should not be allowed. The current arrangement of trucks and parts in the yard make it difficult to leave any space for the required parking and loading.

The zoning ordinance requires 15 feet setback from the front yard for any parking. Many vehicles and items are currently positioned within this setback. If this use is approved staff would recommend the use of barrier to separate the required 15 feet parking setback.

The zoning ordinance also requires driveways and required parking to be hard surfaced per section 15.04 of the ordinance. The area behind the fence at the front of the building is considered maneuvering space and would not need hard surfacing. Hard surfacing has been an ongoing issue in the Brower addition since the streets were not paved all at once. This particular property was required to place hard surfacing in 2008 with the original contractor storage lot.



The hard surfacing requirement has never been met on 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.

The truck repair shop was brought to the attention of staff because of trucks being stored in the right-of-way and on the edge of properties. Parts and dismantled vehicles were also stored haphazardly throughout the property. The property appears as a salvage yard. With proper screening and parking vehicles in an appropriate storage area a motor vehicle repair shop would be able to operate with minimal nuisance to neighbors.

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

The property owner has been aware of concerning issues on the property since August. Other than the application for conditional use permit, it does not appear that effort has been taken to correct stated issues of outdoor storage and vehicles parking in the right-of-way. Planning staff will not recommend approval of the motor vehicle repair shop. If the request is denied the use will need to be removed and further enforcement will be needed.

The Planning Commission may allow a deferral of the permit to provide the petitioner time to complete the cold storage building and bring the property into order. If a deferral is made, staff recommends the following standards be met before approval of the permit.

- All on street parking must be removed.
- All parking must be placed a minimum of 15 feet from the front property line.
- All outdoor storage of parts or dismantled trucks must be placed behind a 6 feet tall privacy fence, or moved inside the storage building.
- The building permit #20-456 must get renewed, all fees paid, and a final inspection completed.

Recommendation: Staff recommends **denial** of Conditional Use Permit #22-75.

Public Testimony & Discussion

Kevin Hoekman, of County Planning Staff, discussed the staff report and recommendation with the commission. Kevin explained that since writing the staff report for denial, he had revisited the property and discussed the issues with the property owner. Kevin stated that as of October 24, 2022 the petitioner had removed most of the vehicles from the right-of-way, and that they were in the process of moving the outdoor storage into the recently built warehouse building. He also explained that the petitioner has renewed the building permit for the warehouse building, and that they will need to work with the County Building Inspector in order to complete the final inspection for the building. Finally, Kevin Hoekman explained that since the petitioner has been actively working to improve the property, the new staff recommendation would be to defer action on the request until the November 28, 2022 or January 23, 2023 meeting.

The petitioner, Thomas Aesoph of 46334 Jeffrey Street, was present and addressed the commission with his comments. Mr. Aesoph stated that he has owned the property for around nine years and that the current condition of the property was the same before he owned it, so he



has only maintained the status quo. He also explained that the trucks that are parked on the street are either completed projects waiting for pickup from the customers, or they are dropped off by customers after hours. Mr. Aesoph also stated that there is enough room along the south property line to park one semi-truck while still meeting the required 15-foot parking setback. Finally, Mr. Aesoph stated that 80% of the Brower Addition does not have hard-surfacing, but that he is willing to add crushed concrete to the driveway and parking areas.

Commission Barth stated that the Brower Addition has come a long way in his time as a commissioner, and that he is impressed with the steps that have been taken to improve the industrial development. Commissioner Barth also commented that he believes a one month deferral would be adequate, but that he would also be open to deferring action until January.

Action

A motion was made by Commissioner Barth to **defer** action on the request until the January 23rd, 2023 meeting. The motion was seconded by Commissioner Mohrhauser. The motion passed with 4 votes in favor and 1 vote against the motion. Commissioner Ode voted against the motion.

Conditional Use Permit #22-75 – Deferred to the January 23rd, 2023 Meeting



ITEM 8. 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

CUP Update:

This item was brought before the Planning Commission on July 27, 2022 and deferred to the October meeting. The purpose of the deferral was to allow the property owner to clean up portions of the property prior to approval. In July, staff listed four items that should be addressed before approval can be recommended. Below is the list of recommendations and what staff found at the site visit on October 13th, 2022. This was the latest date an inspection could be made prior to sending a staff report for the Planning Commission meeting. Two of the four recommendations were satisfactorily met.

- Six unlicensed/inoperable vehicles must be licensed, removed, or placed within an enclosed building.
 - Not met - Three unlicensed vehicles remained on the property. The white mini-van was pulled out of the trees and appears ready for quick removal.
- All motorized vehicles or equipment, which does not require a license, must be operational or stored within an enclosed building.
 - Met - Staff saw that outdoor storage remained on the site. Items that remained outdoor appeared to be readily usable. Items such as children's bicycles and equipment for the horses can be stored outside unless they are in an inoperable condition. If any of these items become unusable, derelict, or deteriorated, then they must be removed according to the public nuisance ordinance.
- The dilapidated camper must be removed or placed within an enclosed building.
 - Met - The camper was removed.
- All building materials, pallets, and creates must be placed indoors.
 - Not met - Most of the building materials were moved out of the trees and close to the garage on the north side of the house. There were still many wood products stored outside at the time of the site visit.



As I left the property, Susan Hilger was driving up and we met in the driveway. She stated that they still intend on meeting the target recommendations and will have photos available at the hearing.

The staff analysis below has been updated to reflect the staff recommendation for the request based on the condition of the property on October 13th.

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 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 the potential to create noise from sawing and hammering during construction. If the use is maintained indoors, the potential problems can be reduced.

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 items. 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. Four recommendations were set to clean up the property at the July Planning Commission meeting. Two of the four item were completed by the October site inspection.

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. Further limits on hours of construction can help reduce concern about noise. Staff has not received any complaints about noise since the July hearing. The lack of complaints may not mean noise has stopped but rather neighbors not complaining while a



conditional use permit is pending.

Neighbors have complained about the petitioner burning trash. The petitioner has been informed that burning trash violates the solid waste ordinance. 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. Since the hearing in July, no new complaints about burning have been made.

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. The Planning Commission allowed nearly three months of extra time to accomplish four requests to clean up the property, and two of the concerns have not been fully resolved. Staff cannot recommend approval without the concerns being resolved. If the request is denied, the petitioner must continue to bring the property into compliance with the nuisance ordinance, and stop all pallet construction on the site.

If the Planning Commission considers approval, staff recommends the following conditions be applied to the permit.

1. The home occupation must meet all requirements of Section 12.0302 Major Home Occupation (A) Class 1 within the 1990 Revised Zoning Ordinance for Minnehaha County.
2. All pallet and create construction must take place within the enclosed garage with doors shut.
3. All material storage shall be stored within the enclosed garage. One trailer may be used outside to temporality store, stack, and transport finished pallets and creates.
4. No audible noise shall be heard off the property from 6:00 pm to 8:00 am.
5. All waste material must be disposed of in a proper landfill, and no burning of waste material shall be allowed.
6. The Planning & Zoning Department reserves the right to enter and inspect the facility at any time, after proper notice to the owner, to ensure that the property is in full compliance with the conditional use permit conditions of approval and Minnehaha County Zoning Ordinance.

Recommendation: Staff recommends **denial** of Conditional Use Permit #22-59.

Public Testimony & Discussion

Kevin Hoekman, of County Planning Staff, explained the staff report and recommendation to the commission. Kevin also explained that the staff report was written on October 13, 2022 and that since that date there have been several updates to the property. These updates include that the six unlicensed vehicles & camper have been removed, all other vehicles and equipment on the property are licensed and in an operable condition, and that all building materials are being stored within the enclosed garage. Finally, Kevin explained that given the updates the petitioner has done to the property, staff is now recommending approval with the six conditions suggested



in the staff report.

Commissioner Ode asked Kevin to clarify if all of the unlicensed vehicles have been removed from the property. Kevin stated that there are no unlicensed vehicles currently on the property.

The petitioner, Tanner Hilger of 26680 Apple Lane, was present and available for questions from the commission. Commissioner Barth asked Mr. Hilger how the process of working with Planning Staff to improve the operation has been going. Mr. Hilger explained that he believes the improvements are favorable to everyone, and that they have had no problems meeting the deadlines or complying with the rules. Commissioner Barth then asked Mr. Hilger if he had been in communication with his neighbors since the meeting in July. Tanner Hilger stated that he has tried contacted a few of the neighbors and that he has apologized for any problems he has caused in the past.

Mr. Hilger then explained a basic overview of the operation to the commission. He stated that he uses his own vehicles and trailers to deliver the pallets and crates to local businesses, and that he usually delivers them on the way to his full-time job. He further explained that there are no visitors or customers visiting the site, and that there are rarely outside deliveries to the property. Finally, Mr. Hilger stated that this business provides a service to the Sioux Falls area, and that he is thankful for the extra time that was given for him to be in compliance with the county ordinances.

Sheryl Fromm, of 26689 Apple Lane, addressed the commission with her concerns regarding the proposed home occupation. Sheryl Fromm explained that the noise from the property has only gotten worse since the meeting in July. Then Mrs. Fromm presented pictures of the subject property to the commission. These pictures showed lumber materials being stored outside and the garage doors open at night with the lights on. Sheryl Fromm also stated that Apple Lane is in bad shape, and that the neighbors have received several flat tires from nails she believes are coming from this operation.

Commissioner Ode asked Mrs. Fromm if Apple Lane dead ends into Mr. Hilger's property, and she replied that yes it does. Commissioner Ode then stated that he wanted to make sure that everyone understands that Mr. Hilger is not entirely to blame for any road degradation because the entire neighborhood uses the road. Mrs. Fromm responded that Tanner Hilger is the most to blame for the road degradation because he drives heavy equipment up and down the road for the operation. Commissioner Ode asked Mrs. Fromm to clarify what she meant by heavy equipment, and she stated that she considers the trailers to be heavy equipment.

Larry Johnson, of 26684 Apple Lane, came to the podium to address his concerns with the request. Mr. Johnson stated that the noise from the property and the pallets being stored there is a public nuisance based on the Minnehaha County Public Nuisance Ordinance. Then Mr. Johnson presented his pictures of the subject property, which showed pallets stacked in the driveway. Finally, he stated that his main concern is that the property is cleaned up for now, but that if the request is approved the condition of property will only deteriorate again.



Jason Krause, of 26695 Apple Lane, addressed the commission with his comments on the home occupation request. Mr. Krause stated that he believes this is a problem amongst neighbors that has risen to a level where it was inevitable that the Planning Commission would get involved. He also explained that there has been a lack of communication between Tanner Hilger & Sheryl Fromm, and that in his opinion that is why so many problems exist in the neighborhood. Mr. Krause then stated that he believes there is precedent to approve the request, but that he would like to know what the process would be if the conditional use permit is not followed after it is approved.

Kevin Hoekman explained to the commission that if the request is approved with the recommended conditions, and those conditions are broken, then the Planning Department would be able to recall & review the permit. This would involve another public hearing in front of the Planning Commission to address whatever conditions had been broken by the petitioner. Kevin also explained that the commission could add a condition to the permit that would require the operation to be reviewed by the Planning Commission every several years, in order to insure that the conditions are being met long term.

Commissioner Barth commented that neighborly disputes are difficult and that the neighbors cannot let every small issue grow into a larger problem. Commissioner Barth then asked the neighbors present at the meeting if there was anything that they would like to see done by the commission or petitioner, so that they would be satisfied that the operation could continue.

Sheryl Fromm stated that the neighbors have tried to talk with the Hilgers, including sending them a letter regarding the speed at which they travel on the road, but that it has only gotten worse over time.

Commissioner Randall asked Kevin Hoekman about the unfinished building located on the property that was reference by Sheryl Fromm. Kevin explained that the neighbor could have been referring to the horse building on the north side of the property, but that the petitioner has received all the proper permits for the other work completed on the property.

Commissioner Ode then asked Kevin what the condition was of Apple Lane based on his site visits. Kevin stated that Apple Lane is in a similar condition as many private roads in the county where there may not be an official road authority that maintains the road. Commissioner Duffy then asked for clarification from staff on who maintains the road, and Kevin Hoekman stated that it is a private road that would be maintained by the residents that live along the road.

Tanner Hilger returned to the podium to address the neighbor's comments regarding the operation. Mr. Hilger stated that he has had conversations with the other neighbors about the letter sent to him by Sheryl Fromm, and that according to him the other neighbors had no knowledge of the letter. Mr. Hilger also stated that he believes the issue with the flat tires is caused by the properties being located on the road to the landfill and that he has also had flat tires in the past. Additionally, Tanner Hilger explained that he and Larry Johnson used to maintain Apple Lane, but that after the neighborly relationship broke down they stopped maintaining the road. Mr. Hilger also explained that it would be difficult for him to comply with



condition #3 that requires only one trailer to be used, and that allowing two trailers on the property would be adequate.

Commissioner Randall asked Mr. Hilger if the garage being used was insulated because she believes that would help with the noise concerns. Mr. Hilger stated that the garage is not currently insulated but that they will eventually have to insulate it due to the weather. Commissioner Randall then asked if the petitioner uses any rodent control on the property. Mr. Hilger stated that they do use rodent control, but that it is only to prevent a rodent problem and not because they actively have a rodent problem.

Kevin Hoekman returned to the podium and clarified that condition #2 would require the garage doors to be shut at all times, and that the commission may change that condition if they so choose. Kevin further explained that the commission could also change condition #3 to allow for additional trailers for the transport of materials. Next, Commissioner Randall asked staff how much insulating the garage would dampen the sound from the operation, and Kevin explained that the operation cannot go above 60 decibels which is as loud as a normal conversation.

Tanner Hilger explained to the commission that they have measured the sound from the property line, and that they have experimented with the best ways to keep the sound at a minimum. He also explained that during these measurements the sound from the operation was louder with only one garage door open, as opposed to all three garage doors.

Action

A motion was made to **amend** condition #3 to allow two trailers on the property for the temporary storage of materials by Commissioner Ode. The motion was seconded by Commissioner Barth. The motion passed unanimously with 5 votes in favor and 0 votes against the motion.

Commissioner Barth commented that this neighborhood has several issues, and that the Planning Commission will not be able to solve all of these issues. Commissioner Barth then stated that he does not care for anonymous letters and that they do not carry much weight with him.

A motion was made by Commissioner Barth to **approve** Conditional Use Permit #22-59 with the six updated conditions discussed by the commission. The motion was seconded by Commissioner Ode. The motion passed unanimously with 5 votes in favor and 0 votes against the motion.

Conditional Use Permit #22-59 – Approved with the following conditions:

- 1) The home occupation must meet all requirements of Section 12.0302 Major Home Occupation (A) Class 1 within the 1990 Revised Zoning Ordinance for Minnehaha County.
- 2) All pallet and create construction must take place within the enclosed garage with doors shut.



- 3) All material storage shall be stored within the enclosed garage. Two trailers may be used outside to temporality store, stack, and transport finished pallets and crates.
- 4) No audible noise shall be heard off the property from 6:00 pm to 8:00 am.
- 5) All waste material must be disposed of in a proper landfill, and no burning of waste material shall be allowed.
- 6) The Planning & Zoning Department reserves the right to enter and inspect the facility at any time, after proper notice to the owner, to ensure that the property is in full compliance with the conditional use permit conditions of approval and Minnehaha County Zoning Ordinance.



Old Business

Scott Anderson, the County Planning Director, explained to the commission that two of the Conditional Use Permit requests from the September 26 meeting were appealed to the County Commission. Scott further explained that the County Commission upheld the Planning Commission's decision to deny Conditional Use Permit #22-71 to allow a Bed & Breakfast Establishment. Finally, he explained that the County Commission deferred action on Conditional Use Permit #22-72 to allow a Manufactured House & a Bed and Breakfast Establishment until their next meeting date on October 25th, 2022.

New Business

Scott Anderson, the County Planning Director, explained to the Planning Commission that due to the issues that have been caused recently by online rentals, the County Commission has asked the Planning Staff to amend the zoning ordinance to define vacation home rentals. Scott explained that he will be preparing a draft ordinance amendment that the Planning Commission will be able to discuss at their next meeting in November, and at that time they will be able to decide when to set the hearing date for the ordinance amendment.

Adjourn

A motion was made to **adjourn** by Commissioner Barth and seconded by Commissioner Ralston. The motion was approved with 5 votes in favor and 0 votes against the motion.

The meeting was adjourned at 8:34 p.m.