

**MINUTES OF THE
MINNEHAHA COUNTY PLANNING COMMISSION**
July 23, 2012

A meeting of the Planning Commission was held on July 23, 2012 at 7:00 p.m. in the Commission Room of the Minnehaha County Administration Building.

COUNTY PLANNING COMMISSION MEMBERS PRESENT: Bonnie Duffy, Mike Cypher, Wayne Steinhauer, Mark Rogen, Becky Randall and Susie O'Hara.

STAFF PRESENT:

Scott Anderson, Pat Herman, Ryan Streff and Dustin Powers - County Planning
Kersten Kappmeyer – Office of the State's Attorney

The meeting was chaired by Susie O'Hara.

CONSENT AGENDA

A motion was made by Steinhauer and seconded by Rogen to **approve** the consent agenda. The motion passed unanimously.

ITEM 1. Approval of Minutes – June 25, 2012

A motion was made by Steinhauer and seconded by Rogen to **approve** the minutes from June 25, 2012. The motion passed unanimously.

ITEM 2. CONDITIONAL USE PERMIT #12-34 to transfer 1 residential building eligibility from NW ¼ SW ¼ to SW ¼ NW ¼; all in Section 7-T101N-R50W.

Petitioner: Nathan Grace

Property Owner: same

Location: 4 miles west of Sioux Falls

General Information

Legal Description –SW ¼ NW ¼ & NW ¼ SW ¼ Section 7-T101N-R50W

Existing Land Use - Vacant

Current Zoning – A-1 Agriculture

Parcel Size – 40 Acres

Staff Report: Dustin Powers

Staff Analysis

This is a request to transfer a residential building eligibility. The petitioner owns both the NW ¼ SW ¼ and SW ¼ NW ¼ of Section 7 in Wayne Township. Approval of the transfer request would move the unused eligibility to the SW ¼ NW ¼ from the NW ¼ SW ¼.

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 surrounding land use is predominately agricultural crop ground with rural residences to the

north. The petitioner's request to transfer a building eligibility will not increase the number of dwellings allowed under density zoning.

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

There should be no major effect upon the normal and orderly development of the area.

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

The construction of new dwelling units is required to be in conformance with the County's zoning, septic and building code. The petitioner will need to obtain a driveway permit from Wayne Township before the County can issue a building permit.

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

The minimum required lot size for a residential dwelling is 1 acre. This is sufficient space to meet any parking needs for a single family home.

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.

These should not be at a level as to constitute a nuisance.

Recommendation

Staff finds that the requested transfer is in conformance with the zoning ordinance and recommended approval of Conditional Use Permit #12-34 with the following conditions:

- 1) Each housing site shall be platted and a right-to-farm notice filed on the deed of each lot prior to the issuance of a building permit.
- 2) That Wayne Township shall approve any new driveway access.

Action

A motion was made by Steinhauer and seconded by Rogen to **approve** Conditional Use Permit #12-34 with the stated conditions. The motion passed unanimously.

CUP #12-34- APPROVED

ITEM 3. CONDITIONAL USE PERMIT #12-36 to exceed 1200 square feet of accessory building area – 5025 requested.

Petitioner: Justin Wieneke

Property Owner: same

Location: 48118 256th St.; 4 miles north of Brandon

General Information

Legal Description – Skalland’s Tract 1 SW ¼ SW ¼ Section 34-T103N-R48W

Existing Land Use - Residential

Current Zoning – A-1 Agriculture

Parcel Size – 11.81 Acres

Staff Report: Scott Anderson

Staff Analysis

The property is located approximately four (4) miles north of Brandon, on 256th Street. The parcel is located in Edison Township.

The petitioner would like to move an accessory building onto this site. In subdivisions or residential developments which exceed four lots in size, accessory building area is limited to 1200 sq. ft. unless approval for a larger size is obtained through the conditional use permit process.

The petitioner is requesting to move on a 25 foot by 25 foot accessory building into the existing former farmstead. Currently, the applicant has several accessory buildings that total 4,668 square feet. The applicant has indicated that he would like to move this structure onto the property in order to store hay and house some animals. The subject property is approximately 12 acres in size and there is a similar parcel immediately to the west of the subject property that was also a former farmstead at 48096 256th Street. The adjacent parcel at 48096 256th Street consists of 10 acres and has many accessory buildings. The petitioner’s request would be consistent with the accessory building square footage on the property located to the west. There are 8,428 square feet of accessory structures and 7,000 square feet of silos located at 48096 256th Street, which is adjacent to the subject property.

The applicant prepared a narrative on the proposed use of the structure and drew a detailed site plan of his property. Staff has included these for your review.

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.

Given the existence of other larger accessory buildings in the area, the construction of this structure should not impede on the enjoyment or use of the surrounding properties or effect property values.

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

The building can only be used as an accessory structure to the established residential use and no commercial or business activities are allowed.

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

There is existing access from 256th Street. As this is only an accessory structure, no other infrastructure is required.

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

There is ample area on the subject property for any parking as a result of residential activities. No on-street parking will be allowed. No commercial or business parking is allowed.

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.

There should be no offensive odors, fumes, dust, noise or vibration from the allowed residential uses on this property.

Staff finds that the requested conditional use is appropriate for this residential area. The recommended conditions of approval will help to ensure the over-sized building will be in character with the surrounding area. The Planning Department will perform a building inspection to measure the size of the structure. Measurements are taken of the outside perimeter.

Recommendation

Staff finds that the proposed building size conforms to the general sizes of other accessory buildings in the area. Staff recommended approval of conditional use permit #12-36 with the following conditions:

1. The total accessory building square footage shall not exceed 5,293 square feet.
2. The building shall be used only for the petitioner's personal residential use. No commercial or business uses or storage shall be allowed.
3. The accessory building shall not exceed one story in height.
4. A building inspection is required to determine that the building does not exceed 5,293 square feet measured from the outside perimeters.
5. A building permit is required
6. That all outdoor lighting shall be of a full cutoff and fully-shielded design to prevent direct spillage of light beyond the property boundaries.
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 compliance with the conditional use permit conditions and the Minnehaha County Zoning Ordinance.

Action

A motion was made by Steinhauer and seconded by Rogen to **approve** Conditional Use Permit #12-36 with the stated conditions. The motion passed unanimously.

CUP #12-36- APPROVED

ITEM 4. CONDITIONAL USE PERMIT #12-37 to exceed 1200 square feet of accessory building area – 2400 requested.

Petitioner: David Rozenboom

Property Owner: same

Location: 1504 N. Oak Ridge Place, 1 mile southwest of Brandon

General Information

Legal Description – Tract 1 of White Cliffs NE ¼ SW ¼ Section 9-T101N-R48W

Existing Land Use - Residential

Current Zoning – A-1 Agriculture/RC Recreation and Conservation

Parcel Size – 21.79 Acres

Staff Report: Dustin Powers

Staff Analysis

The property owner has applied for a conditional use permit to exceed the 1,200 sq. ft. accessory building area at 1504 N. Oak Ridge Place in Split Rock Township. The property owner is requesting this conditional use permit to construct a 2,400 sq. ft. (40' x 60') storage building. The property is located approximately 1 mile southwest of Brandon. This particular parcel is part of a group of residential lots platted as White Cliffs Addition.

In this area there are four properties that exceed 1,200 square feet of accessory building area. The total accessory building areas are: 1536 square feet at 1601 N. Oak Ridge Place, 1350 square feet at 1600 N. Oak Ridge Place, 2400 square feet at 1612 N. Oak Ridge Place, and 10,148 square feet at 1304 N. Oak Ridge Place.

The property owner would like to construct this accessory building west of the primary structure. Regulations regarding accessory buildings found in *Article 12.07 Accessory Buildings and Uses* shall be met. Setbacks for an accessory building that is located in front of the primary structure in the A-1 Zoning District are front yard 30', side yard 7', and rear yard 30'.

In residential developments which exceed five or more lots in size, accessory building area is limited to 1,200 sq. ft. unless approval for a larger size is obtained through the conditional use permit process.

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.

There are larger accessory structures in the general area of this property. The proposed site for the structure meets all applicable setbacks and the placement of the structure should have little impact on neighboring properties. The construction of this accessory building should not impede on the enjoyment or use of the surrounding properties or effect property values.

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

The construction of the proposed building should have no impact on further construction or development within the subdivision or general area. The building will only be used for the owner's personal storage or residential related items and no commercial or business activities are allowed.

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

Access to the proposed accessory building would be through the current access to the primary structure (N. Oak Ridge Place). No other infrastructure improvements are required at this time.

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

The property has sufficient parking for all residential activities.

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.

There should be no offensive odors, fumes, dust, noise or vibration from the allowed residential uses on this property. All outdoor lighting shall be of a full-cutoff and fully-shielded design to prevent direct spillage of light beyond the property boundaries. The proposed building will only be used for personal storage and no commercial or business related activities will be allowed.

Staff has found that these conditions for approval will help ensure that over-sized accessory buildings will fit in with the character of the surrounding properties. The planning department will perform a building inspection to ensure that the accessory building adhered to the submitted site plan dated 6-22-12.

Recommendation

Staff found that the proposed accessory building size conforms to the general sizes of other accessory buildings in the area. Staff recommended approval of conditional use permit #12-37 with the following conditions:

1. That the accessory building area on the property shall not exceed 2,400 square feet.
2. That the building shall not exceed 35 feet in height.
3. That a building inspection is required to measure the outside dimensions of the building.
4. That a building permit is required.
5. That the building shall be an accessory use to the continued use of the property as a residential lot.
6. That only personal residential storage shall be allowed in the building and no commercial uses or commercial storage will be allowed.
7. That all outdoor lighting shall be of a full-cutoff and fully-shielded design to prevent direct spillage of light beyond the property boundaries.
8. That the Planning & Zoning Department reserves the right to enter and inspect accessory buildings at any time, after proper notice to the owner, to ensure that the property is in compliance with the conditional use permit conditions and the Minnehaha County Zoning Ordinance.

Action

A motion was made by Steinhauer and seconded by Rogen to **approve** Conditional Use Permit #12-37 with the stated conditions. The motion passed unanimously.

CUP #12-37- APPROVED

ITEM 5. CONDITIONAL USE PERMIT #12-38 to exceed 1200 square feet of accessory building area – 1392 requested.

Petitioner: Michael Parker

Property Owner: same

Location: 48194 265th St., 2 mile southeast of Brandon

General Information

Legal Description – S ½ Hildring’s Subdivision Lot 5 Section 15-T101N-R48W

Existing Land Use - Residential

Current Zoning – A-1 Agriculture

Parcel Size – 2.5 Acres

Staff Report: Ryan Streff

Staff Analysis

This subject property is located in Section 15 of Split Rock Township, approximately 2 miles southeast of Brandon. The petitioner’s property is 2.5 acres in size and is located in the A-1 Agricultural Zoning District. Adjacent properties that surround this site are zoned A-1 Agricultural and are mainly used as residential acreages and for agricultural farming operations.

The petitioner has applied for Conditional Use Permit #12-38 to exceed 1,200 sq. ft. of accessory building area at 48194 265th Street. The property owner is requesting this conditional use permit to construct a 720 sq. ft. (24’ x 30’) accessory storage building. This would be the second accessory building on the property bring the total of accessory building area to 1,392. A conditional use permit application is required by Section 12.07 (D) of the Minnehaha County Zoning Ordinance which states: *In the A-1 and RC Districts, the total area of accessory buildings shall not exceed 1200 square feet when such buildings are located in a subdivision of more than four (4) lots unless a conditional use has been approved.*

Larger accessory buildings areas can be found within the general vicinity and range in size from 832 sq. ft. to 3,750 square feet. (See attached accessory building area map)

The property owner shall meet all regulations regarding accessory buildings. These regulations are found in *Article 12.07 Accessory Buildings and Uses*. Minimum setbacks required for accessory buildings in the A-1 Zoning District that are located within 10 feet of the main building are front yard 30 feet, side yard 7 feet and rear yard 30 feet. Accessory building that are not considered part of the main building shall be no closer than 3 feet to the side and rear property lines. There is a minimum setback of 50 feet from any section line road or major arterial street.

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.

There are larger accessory building areas in the general vicinity of this property. The proposed site for the structure meets all applicable setbacks and the placement of the structure will not impact the neighboring properties. The construction of this accessory building should not impede on the enjoyment or use of the surrounding properties or affect property values.

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

The construction of the proposed accessory building should have no impact on further

construction or development within the general area. The building will only be used for the owner's personal storage, residential related items, and no commercial or business activities will be allowed. This use will not affect the residential uses or agricultural land in the area.

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

Access to the proposed accessory building will be through a driveway located at 48194 265th Street. This driveway also provides access to the residential dwelling unit on the property.

No other infrastructure improvements are required at this time.

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

The property has sufficient parking for all residential activities.

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.

There should be no uses in the building which should constitute these types of nuisances.

Recommendation

Staff found that the proposed accessory building size conforms to the general sizes of other accessory building areas in the vicinity and recommended approval of Conditional Use Permit #12-38 with the following conditions:

- 1) That the accessory building area on the property shall not exceed 1,392 square feet.
- 2) That the building shall not exceed one story in height.
- 3) That a building inspection is required to measure the outside dimensions of the building.
- 4) That a building permit is required.
- 5) That the building shall be an accessory use to the continued use of the property as a residential lot.
- 6) That only personal residential storage shall be allowed in the building and no commercial uses or commercial storage will be allowed.
- 7) That all outdoor lighting shall be of a full-cutoff and fully-shielded design to prevent direct spillage of light beyond the property boundaries.
- 8) That the Planning & Zoning Department reserves the right to enter and inspect accessory buildings at any time, after proper notice to the owner, to ensure that the property is in compliance with the conditional use permit conditions and the Minnehaha County Zoning Ordinance.

Action

A motion was made by Steinhauer and seconded by Rogen to **approve** Conditional Use Permit #12-38 with the stated conditions. The motion passed unanimously.

CUP #12-38- APPROVED

ITEM 6. CONDITIONAL USE PERMIT #12-40 to exceed 1200 square feet of accessory building area – 3600 requested.

Petitioner: David Duffy

Property Owner: same

Location: 26536 461st Avenue, 1 mile west of Wall Lake

General Information

Legal Description – Tract 3 Boll's Addition SE ¼ NE ¼ Section 19-T101N-R51W

Existing Land Use - Vacant

Current Zoning – A-1 Agriculture

Parcel Size – 3.96 Acres

Staff Report: Scott Anderson

Staff Analysis

The property is located approximately one (1) mile west of Wall Lake, on 461st Avenue. The parcel is located in Wall Lake Township.

The petitioner would like to construct an accessory building on this site. In subdivisions or residential developments which exceed four lots in size, accessory building area is limited to 1200 sq. ft. unless approval for a larger size is obtained through the conditional use permit process.

The petitioner's requested size of 3,600 square feet is smaller than the largest existing accessory building in the area. There is one other large accessory buildings located in the area. The petitioner's request would be consistent with the accessory building square footage on the other properties in the neighborhood. The largest existing accessory building in the area is located at 26536 461st Avenue. There are two (2) buildings on this property totaling 4,860 square feet. One building is 3,780 square feet in area and the other building is 1,080 square feet. These larger buildings are located across the road from the subject property.

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.

Given the existence of other larger accessory buildings in the area, the construction of this structure should not impede on the enjoyment or use of the surrounding properties or effect property values.

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

The building can only be used as an accessory structure to the established residential use and no commercial or business activities are allowed.

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

There is existing access from 461st Avenue. As this is only an accessory structure, no other infrastructure is required.

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

There is ample area on the subject property for any parking as a result of residential activities. No on-street parking will be allowed. No commercial or business parking is allowed.

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.

There should be no offensive odors, fumes, dust, noise or vibration from the allowed residential uses on this property.

Staff finds that the requested conditional use is appropriate for this residential area. The recommended conditions of approval will help to ensure the over-sized building will be in character with the surrounding area. The Planning Department will perform a building inspection to measure the size of the structure. Measurements are taken of the outside perimeter.

Recommendation

Staff finds that the proposed building size conforms to the general sizes of other accessory buildings in the area. Staff recommended approval of conditional use permit #12-40 with the following conditions:

1. The total accessory building square footage shall not exceed 3,600 square feet.
2. The building shall be used only for the petitioner's personal residential use. No commercial or business uses or storage shall be allowed.
3. The accessory building shall not exceed one story in height.
4. A building inspection is required to determine that the building does not exceed 3,600 square feet measured from the outside perimeters.
5. A building permit is required
6. That all outdoor lighting shall be of a full cutoff and fully-shielded design to prevent direct spillage of light beyond the property boundaries.
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 compliance with the conditional use permit conditions and the Minnehaha County Zoning Ordinance.

Action

A motion was made by Steinhauer and seconded by Rogen to **approve** Conditional Use Permit #12-40 with the stated conditions. The motion passed unanimously.

CUP #12-40- APPROVED

ITEM 7. REZONING #12-06 to rezone from A-1 Agricultural to C Commercial.

Petitioner: Timothy Tiaht

Property Owner: same

Location: Northeast corner of Crooks/Renner I-29 Exit

General Information

Legal Description – Tract 3A (Except N. 150') France's Tracts S ½ SW ¼ Section 7-T102N-R49W

Existing Land Use - Vacant

Current Zoning – A-1 Agriculture

Parcel Size – 3.96 Acres

Staff Report: Pat Herman

Staff Analysis

Rezoning #12-06 is a request to rezone property from the A-1 Agricultural District to the C Commercial District. The property is located in the northeast corner of the I-29 and Hwy 130 interchange, commonly referred to as the Crooks exit. The area to be rezoned is just under 4 acres in size. This parcel, Tr. 3A, contains one residential building eligibility. The northern 150 feet are not included in the rezoning and the eligibility will be assigned to that portion of the tract.

Properties to the north of the applicant's land are zoned A-1 Agricultural and there are a number of rural residences. There is one lot zoned for commercial use to the east. Commercially zoned property exists to the south; and across I-29 to the west there is commercial and industrial zoning.

The Minnehaha County Comprehensive Plan encourages commercial uses at interstate highway interchanges and high traffic intersections. Such uses should be developed in a nodal pattern and geared to the support of highway users. The subject property meets this criterion.

Access to the property is from Co. Highway 133 and the petitioner has indicated he will use the existing access. Any changes to that access will need to be approved by the County Highway Department. Because the access to the site is from a hard surfaced road, the parking and driving portions of the lot are required to be hard surfaced. This was discussed with the petitioner at the time the rezoning application was submitted.

The petitioner is considering a mini-storage development on the property. Such a use will require a conditional use permit.

Recommendation

Rezoning #12-06 meets the criteria of the Minnehaha County Comprehensive Plan and is consistent with the zoning at the other three corners of the insertion. Staff recommended approval of Rezoning #12-06 from A-1 Agricultural to C Commercial.

Action

A motion was made by Steinhauer and seconded by Rogen to **recommend approval** of Rezoning #12-06. The motion passed unanimously.

RZ #12-06- APPROVAL RECOMMENDED

ITEM 8. CONDITIONAL USE PERMIT #12-41 to transfer 1 residential building eligibility from SW ¼ SE ¼ to Tract 1 of Guischer Addition; all in Section 15-T103N-R49W.

Petitioner: Arlie Brende
Property Owner: Robert Waagmeester
Location: 3 miles Southeast of Baltic

General Information

Legal Description – Tract 1 of Guischer Addition SE ¼ Section 15-T103N-R49W
Existing Land Use - Vacant
Current Zoning – A-1 Agriculture
Parcel Size – 1 Acre

Staff Report: Pat Herman

Staff Analysis

This conditional use permit is a request to transfer one residential building eligibility. The property is located in Section 15 of Sverdrup Township. The dominate land use of the surrounding area is agricultural with scattered acreages. The transfer will move the eligibility from an interior quarter-quarter to a 1 acre parcel adjacent to the roadway.

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 petitioner's request to transfer a building eligibility will not increase the number of dwellings allowed under density zoning. The transfer will move the eligibility from pasture to pasture. A residential house will have impact of farm operations.

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

There should be no major effect upon the normal and orderly development of the area. There is one house immediately south of the receiving property and that owner is in favor of the transfer.

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

The construction of new dwelling unit is required to be in conformance with the County's zoning, septic and building code. Sverdrup Township does require driveway/culvert permits and the petitioner must receive approval from the Township before constructing a driveway.

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

The minimum required lot size for a residential dwelling is 1 acre. This is sufficient space to meet any parking needs for a single family home.

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.

These should not be at a level as to constitute a nuisance.

Recommendation

Staff finds that the requested transfer is in conformance with the zoning ordinance and recommended approval of Conditional Use Permit #12-41 with the following condition:

1. A right to farm notice covenant shall be filed on the platted Tract 1 prior to the issuance of a building permit.

Action

A motion was made by Steinhauer and seconded by Rogen to **approve** Conditional Use Permit #12-41 with the stated conditions. The motion passed unanimously.

CUP #12-41- APPROVED

ITEM 9. REVIEW CONDITIONAL USE PERMIT #10-01 to exceed 1200 square feet of accessory building area.

Petitioner: Tim Kapperman

Property Owner: same

Location: 1 mile north of Wall Lake Corner

General Information

Legal Description - Tract 2 Schoenfelder's Addition S1/2 SE1/4 in Section 9-T101N-R51W

Present Zoning - A-1 Agricultural

Existing Land Use - Residential

Parcel Size - 6.27 Acres

Staff Report: Ryan Streff

Staff Analysis

On January 25, 2010, the Minnehaha County Planning Commission conducted a public hearing on Conditional Use Permit #10-01 to exceed 1,200 sq. ft. of accessory building area. This property is located in Wall Lake Township, approximately 3½ miles south of Hartford or 1 mile north of the Wall Lake corner. The surrounding land use is agriculture with many small to medium sized residential acreages (2.45 -20 acres). The parcel is part of four (4) continuous lots along 264th Street in Section 9 of Wall Lake.

Based on the staff report a motion was made by Steinhauer and seconded by Kelly to approve Conditional Use Permit #10-01 (the motion passed unanimously) with the following conditions.

1. Accessory building area shall not exceed 4,576 square feet on the property.
2. The building shall not exceed one story in height.
3. A building inspection is required to measure the outside dimensions of the building.
4. A building permit is required.
5. The building shall be an accessory use to the continued use of the property as a residential lot.
6. Only personal residential storage shall be allowed in the building and no commercial uses or commercial storage will be allowed.
7. All outdoor lighting shall be of a full-cutoff and fully-shielded design to prevent direct spillage of light beyond the property boundaries.
8. A driveway/culvert permit will be required by Wall Lake Township prior to issuing a building permit.

As of January 25, 2010, no structures existed on this property. On March 9, 2010, a building permit for a single family dwelling with attached garage and a 44' x 104' detached accessory building was obtained and signed by Tim Kapperman.

On January 18, 2011, staff became aware of a possible construction business being run out of the detached accessory building on the property. Staff visited the property on January 20, 2011, and found a variety of commercial equipment and commercial storage. Staff contacted the property owner who indicated all the commercial equipment and storage was being used for the construction of the single family dwelling unit on the property. Even though the amount of

construction equipment and material was in excess of what was still needed on the property, staff determined that an extension to this violation would be granted until a final inspection could be conducted. Paul Clarke (Chief Building Official) and I consistently monitored the property and stayed in contact with the property owner when possible. When it was time to for the final inspection, the property owner did not allow staff to conduct a final inspection on the accessory building. He only allowed staff to conduct a final inspection on the single family dwelling unit. The property owner continues to use the property and accessory building for his commercial contracting business (Tim Kapperman Construction). Staff has found no evidence linking Tim Kapperman Construction to any properly zoned area for a contractor's storage yard.

For more information regarding this review please see the attached Planning Commission meeting minutes from January 25, 2010, photos of the violation and the property notes that have been documented for this property.

Recommendation

At this time staff has concluded that the property is still in violation of condition #6 of Conditional Use Permit #10-01 based on our inspection notes, documents and property photos. Staff recommended Conditional Use Permit #10-01 be revoked and declared null and void.

Public Testimony

Tim Kapperman, 46282 264th Street, stated that the materials that were shown in the pictures were being used for the construction of his own residence. The equipment that was shown in the pictures was all personal equipment and trailers, not commercial. He stated that he does not operate a commercial business out of the accessory building and all of his commercial equipment is stored on the job sites. There are building materials stored in the building but they are not used for commercial purposes. He stated the worst case scenario is that he may bring a trailer home at night and he leaves with it in the morning to go to another job site.

He stated that he is a compulsive hoarder of used equipment and used tools that someday he may get a chance to restore and sell them. He stated that in the building is a boat, 44 bags of insulation to insulate the attic, an old set of cupboards to put in his shop, plywood for when the walls are built, 1000 old tools that do not work (old air nailers, saws, tile saws, brick saws) that he may fix someday.

Commissioner O'Hara asked if there was a reason he would not let staff inspect the building. Mr. Kapperman stated that the building was inspected by former Building Inspector Tom Warne in late September, early October 2010. He stated that Paul Clarke (current Building Inspector) came onto his property and took pictures without his permission. In January, Paul Clarke and Ryan Streff came out to his property with two police officers and because of that he would not let them inside to inspect the building.

Commissioner Steinhauer asked Mr. Kapperman if there was proper notice would he allow the building to be inspected. Mr. Kapperman stated that if they give him proper notice and it's just Paul Clarke and not two officers and Ryan Streff to inspect the building. Commissioner Steinhauer stated that Mr. Kapperman would not be determining who inspected the building.

Jeremy Bartmann, 46274 264th Street, stated that if there are commercial tags on the trailers they should not be parked there. There are piles of rubble, window crates, pallets, insulation, decking/fencing all scattered about the lot. He stated that you're not allowed to burn commercial materials on a residential property. Mr. Bartmann stated that the purpose of a large building is to store the personal items in it but there always are trailers located in front of the shed near the road and his property.

Ryan Streff indicated that the Building Inspector is able to go onto a property when there is an open building permit, and he is able to take pictures and do inspections during that time there is an open building permit. There were no notes from Tom Warne of a final inspection being done on the detached accessory building or single family home therefore the permit was never closed. He indicated that he understood that Mr. Kapperman was upset with the sheriff escorting staff onto the property but when staff receives a threat that involves the use of a gun then the sheriff is going to be required when entering a property.

Discussion

Commissioner Steinhauer asked what the process would be if the commission were to revoke the conditional use permit. Ryan Streff indicated that if the permit were revoked the applicant would appeal the decision to the County Commission. If the County Commission upheld that decision to revoke the permit the applicant would have to reduce the size of the building down to 1200 square feet, which is the maximum size allowed without a valid conditional use permit; the building would still only be for residential use. The applicant could appeal the County Commission decision to Circuit Court and then a judge would determine the outcome.

Commissioner Steinhauer indicated that since the applicant has indicated a willingness to allow an inspection of the building he would recommend deferring this item until next month after an inspection is completed.

Action

A motion was made by Steinhauer and seconded by Rogen to **defer** the review of Conditional Use Permit #10-01. The motion passed unanimously.

CUP #10-01- DEFERRED

Old Business

No items.

New Business

Scott Anderson gave a briefing on the Envision 2035 Plan.

County Commission Items

Dustin Powers indicated that County Commission approved Conditional Use Permit #12-32 for a private governmental training facility.