

**MINUTES OF THE  
MINNEHAHA COUNTY PLANNING COMMISSION**

June 22, 2015

A meeting of the Planning Commission was held on June 22, at 7:00 p.m. in the Commission Room of the Minnehaha County Administration Building.

COUNTY PLANNING COMMISSION MEMBERS PRESENT: Wayne Steinhauer, Mike Cypher, Bonnie Duffy, Bill Even, Jeff Barth, and Doug Ode.

STAFF PRESENT:

Scott Anderson, Kevin Hoekman, and David Heinold - County Planning  
Sara Show – Office of the State’s Attorney

The meeting was chaired by Wayne Steinhauer.

**CONSENT AGENDA**

Items #3 was moved to the regular agenda for discussion purposes.

A motion was made by Commissioner Barth and seconded by Commissioner Even to **approve** the consent agenda consisting of items #2, 4, and 5. The motion passed unanimously.

**ITEM 1. Approval of Minutes – May 18, 2015**

A motion was made by Commissioner Barth and seconded by Commissioner Even to **approve** the meeting minutes from May 18, 2015. The motion passed unanimously.

**ITEM 2. CONDITIONAL USE PERMIT #15-38 to exceed 1,200 square feet of total accessory building area – requesting 1,500 sq. ft. on the property legally described as Lot 1A, Block 4A, Sorum’s Subdivision, Part of the NE1/4, SE1/4 and SE1/4, NE1/4, Section 9-T102N-R49W.**

Petitioner: Lane Hawkins

Property Owner: same

Location: 25751 Lindbergh Ave. Approximately 2.5 miles north of Sioux Falls

Staff Report: Scott Anderson

This would allow 1,500 square feet of total accessory building area.

**General Information:**

Legal Description – Lot 1A Block 4A Sorum’s Subdivision, Section 9-T102N-R49W

Present Zoning – A-1 Agricultural District

Existing Land Use – Residential

Parcel Size – 1.31 Acres

**Staff Report:** Scott Anderson

**Staff Analysis:** The property is located approximately 2.5 miles north of Sioux Falls, on Lindbergh Avenue in Sorum’s Subdivision. The parcel is located in Mapleton Township.

The petitioner is requesting to exceed 1,200 square feet of total accessory building area. The petitioner is requesting to allow 1,500 square feet of total accessory building area. According to the Minnehaha County Zoning Ordinance, Section 12.07 (D) states:

(D) Accessory buildings shall not occupy more than thirty (30) percent of the rear yard, subject further to the following limitations:

(1). In the A-1 and RC Districts, the total area of accessory buildings shall not exceed 1,200 square feet when such buildings are located in a subdivision of more than four (4) lots unless a conditional use has been approved.

The petitioner’s requested size of 1,500 square feet is smaller than the largest existing accessory building in the area. The petitioner’s request would be consistent with the other large accessory buildings in the area. The other large existing accessory buildings in the area are 2,484 square feet and is located at 25755 Lindbergh Ave and 2,064 square feet located at 47497 Northview Drive. Staff has provided a map indicating the location of the existing larger accessory structures already located in the subdivision for the Planning Commission’s 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 within the immediate vicinity.**

Given the existence of the 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. The applicant has provided a statement indicating that the building will be used to store his camper, boat and trailers.

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

It appears from the site plan submitted by the applicant that the existing driveway will be used to access the new accessory structure. Mapleton Township would need to approve a new approach. 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.

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

The health, safety, general welfare of the public will not be impacted by the placement of a larger accessory structure on the subject property. The intent of the Comprehensive Plan will be met, as the site will retain its residential character and allow for the continued use of the 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 found that the proposed building size conforms to the general sizes of other accessory buildings in the area. Staff recommended **approval** of conditional use permit #15-38 with the following conditions:

- 1) The total accessory building square footage shall not exceed 1,500 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 combined area of all accessory structures does not exceed 1,500 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 Commissioner Cypher and seconded by Commissioner Duffy to **approve** Conditional Use Permit #15-38. The motion passed unanimously.

**Conditional Use Permit #15-38 – Approved**

**ITEM 4. AGRICULTURAL TOURISM PERMIT #15-01 to amend Conditional Use Permit #08-41 on the property legally described as S ½ SW ¼ Including Whealy Tract 1 (Ex. H-1), S1/2 SW1/4, Section 24-T103N-R48W.**

Petitioner: Sue Greenlee

Property Owner: same

Location: 48332 254th St.            Approximately 2 mile west of Garretson

Staff Report: Kevin Hoekman

This would allow an amendment to Conditional Use Permit #08-41.

**General Information:**

Legal Description – S1/2 SW1/4 INCLUDING WHEALY TRACT 1 (EX H-1 & EX KOEPP'S ADDN) 24 130 48 EDISON TOWNSHIP

Present Zoning – A1 Agricultural

Existing Land Use – Vineyard and Winery

Parcel Size – 66.69

**Staff Report:** Kevin Hoekman

**Staff Analysis:**

This property is located approximately 1 mile west of Garretson along South Dakota Highway 11 in the Edison Township. The site is located on the north side of the highway in between West Pipestone Creek and Split Rock Creek. The property is the site of the vineyard and farm winery for Tucker's Walk Winery. A conditional use permit was approved for the winery in 2008.

The petitioner would like to make several changes to the Conditional Use Permit #08-41 that allows the current winery to adapt to the provisions of an Agricultural Tourism Permit and to expand several parts of the winery to. A new wine production building and tasting room was built at the location that was noted in the 2008 CUP. This new location is located to the west of the current facility and dwelling.

Several changes to the existing CUP are requested as part of this Agricultural Tourism Permit application. The petitioner is requesting the use of more space for a tasting room. The requested amount of floor space is 1000 square feet which will allow for some wiggle room in the facility planned for 800 square feet of floor space. Adjacent to the tasting room, the petitioner has constructed a commercial grade kitchen to prepare and serve readymade items and wine makers dinners to accompany wine tasting. This use is not allowed as part of CUP #08-41, and the petitioner stated that they would comply with the allowable conditions of the agricultural tourism article of the ordinance for food concessions as part of a winery.

In the narrative and staff report for CUP #08-41, several mentions of a greenhouse and plant sales were made. The current operation includes a greenhouse, and it is used primarily for the production of fruit plants with occasional sales of vines and produce to the public. The greenhouse sales will continue as part of the operation with the primary sales happening at the new winery location. The greenhouse would remain at its current site with most sales taking place at the winery building.

In addition to the requested increase in size and the use of the winery, the petitioner is requesting an increase in the allowable signage for an agricultural tourism site. The petitioner would like to use a portion of the winery/tasting building for a wall sign that includes the winery logo and name. This wall sign is intended to make the building easily identifiable as the winery. Staff suggested that the wall sign not to exceed 80 square feet because this amount is the equivalent allowable square footage of wall sign for a commercial building this size. The additional size request was requested in order to make the wall sign readable from the highway when the building is nearly 500 feet away from the property line. Lights are installed in the soffit of the building and will illuminate the sign.

In addition to the wall sign, the petitioner would like to move the existing 32 square foot sign (or similar sign of the same size) to be placed closer to the new driveway for the winery instead of the current location.

The total requested signage would be 112 square feet which is larger than the permissible 32 square feet for a farm winery. Except for the increase in signage, the requested winery including expansions meets the conditions for a permitted special use in the 1990 Revised Zoning Ordinance for Minnehaha County. This request for an increase in allowable signage is the reason this Agricultural Tourism Permit is required to have a public hearing in front of the Planning Commission.

**Criteria for Conditional Use Permit:**

**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.**

Agriculture crop and pasture land is the predominant land use of the area. The vineyard and winery has operated successfully since 2008 with little effect on the surrounding properties. The expansion of uses and the size of signage will unlikely effect the existing land uses and development.

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

The development of the site is closely conforming to the site plan for CUP #08-41. There has been no notable changes in land use since the operation started in 2008 and it is unlikely that any future changes will come in relation to the minor changes included in this report. The location of the site along SD Highway 11 makes it important that customers can easily locate the driveway and entrance of the winery.

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

All needed infrastructure is in place. No other new infrastructure is required. The driveway access has been approved by the DOT, and it has been installed during the construction process of the winery. Condition #11 of CUP #08-41 required the petitioner to pave the first fifty (50) feet of the driveway. This condition has not been accomplished yet, but the new winery site has only been completed this spring.

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

A winery is not specified in the parking and loading regulations of the Zoning Ordinance. The tasting room portion of the winery would fall under the restaurant type category which requires one parking space per 100 square feet, or ten (10) spaces for this portion of the building. The remaining portion of the building would require one parking space per 300 square feet. The total parking requirement for the building would be fifteen (15) spaces. It appears as if the site includes enough gravel parking to comply with this 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.**

No offensive nuisances shall be permitted at any time during use of the winery. The use of lighting should be directed downward on to the property in order to prevent light pollution off site.

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

The presence of the winery has had minimal negative effect on the health, safety, and general welfare of the public. The land use will allow on-site consumption of alcohol; however, the intent of on-site consumption of alcohol is to provide samples for “tasting” and to promote the sale of wine, not for a full service bar. The petitioner has agreed that the majority of the conditions for the operations original Conditional Use Permit # 08-41 should be maintained. Any changes to the operation have been discussed above.

Certain types of Ag Tourism Permits, including wineries, allow special events. Special events may bring in large amounts of people, traffic, and potential noise to the area. Any special events shall meet requirements of Article 12.13 (G).

**Recommendation:**

Staff recommended **approval** of Ag Tourism Permit #15-01 to allow the winery to expand operations with the following conditions:

- 1.) The winery shall be secondary to the principle use of the property as residential. If the residential use ceases, the winery operation shall cease.
- 2.) The owner or occupant of the dwelling shall be engaged in the winery occupation. The winery shall have a limit of two full-time, non-resident employees, not to exceed four (4) full-time employees on site.
- 3.) The total signage for the operation shall be limited to 112 square feet consisting of 80 square feet of sign on the southeast wall of the winery and 32 square feet of illuminated sign near the highway.
- 4.) That prior to any special event or festival the applicant shall follow the provisions of Article 12.13 (G) of the 1990 Revised Zoning Ordinance for Minnehaha County.
- 5.) All outside lighting shall be of a style that directs light downward and prevent light spillage onto adjacent properties.
- 6.) Wine tasting and sales shall be considered an accessory use to the winery. The wine tasting and sales area shall not exceed 1,000 square feet in the wine production building.
- 7.) The applicant maintain a Sales Tax License.
- 8.) A building permit is required before any permanent signs are to be erected.

- 9.) A minimum of 15 off-street parking spaces and one loading bay meeting the requirements of Article 15 of the Zoning Ordinance be provided for the processing, storage, and tasting facility.
- 10.) Retail sales of horticulture plants, produce, and listed products in Article 12.13 (B) 1) c) shall remain an accessory to the winery.
- 11.) Food concessions shall meet the requirements of Article 12.13 (B) 1) d) and be accessory to the winery.
- 12.) That the Planning & Zoning Department reserves the right to enter and inspect the winery operation 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**

A motion was made by Commissioner Cypher and seconded by Commissioner Duffy to **approve** Agricultural Tourism Permit #15-01. The motion passed unanimously.

**Agricultural Tourism Permit #15-01 – Approved**

**ITEM 5. CONDITIONAL USE PERMIT #15-41 to allow the Transfer of Building Eligibility from the N1/2 N1/2 (Ex. N60' S243.8', W90' E247' & Ex. Lot 1 Substation Addn.) to Tract 1 D&J Ranch Addition, N1/2, Section 32-T102N-R47W.**

Petitioner: D&J Ranch Properties, LLC (Jeraldine Johnson)

Property Owner: same

Location: 26117 486th Ave.      Approximately 1 mile northwest of  
Valley Springs

Staff Report: Scott Anderson

This would allow the transfer of a building eligibility.

**General Information:**

Legal Description – Tract 1 D&J Ranch Addition, Section 32, T102N - R47W

Present Zoning – A-1 Agriculture

Existing Land Use – SFR

Parcel Size – 1.67 acres

**Staff Report:** Scott Anderson

**Staff Analysis:** The applicant wants to transfer one (1) building eligibility from the N ½ of the N ½ of Section 32 of Red Rock Township to a 1.67 acre parcel.

On June 4, 2015, staff conducted a site visit. There are no confined animal feeding operations near the proposed transfer. The applicant is moving the eligibilities from very productive crop land into an existing lot in order to bring the subject property into compliance with the Zoning Ordinance. In 2007, the property owner obtained Building Permit #07-421 to construct a 42' x 60' metal pole building for personal agricultural machinery storage. Living quarters were then added to this structure and it was used as a residence for the applicant's son. The applicant is now transferring a building eligibility to correct the zoning issue.

**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.**

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 the building this eligibility does not increase the number of dwelling units allowed in this section.

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

Rural water is available in the area and a waste water system will be utilized. The applicant indicated that the residence will use an existing drive shared with the residence on Tract 2.

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

Off-street parking requirements have been provided for the single-family residence.

**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 health, safety, general welfare of the public will not be impacted by the transfer of one building eligibility. The intent of the Comprehensive Plan will be met, as density zoning will be followed.

**Recommendation:** Staff found this conditional use permit request to be consistent with density zoning and recommended **approval** of Conditional Use Permit #15-41.

**ACTION**

A motion was made by Commissioner Cypher and seconded by Commissioner Duffy to **approve** Conditional Use Permit #15-41. The motion passed unanimously.

**Conditional Use Permit #15-41 – Approved**

**REGULAR AGENDA**

A motion was made by Commissioner Barth and seconded by Commissioner Even to **approve** the regular agenda consisting of items #3, 6, and 7. The motion passed unanimously.

**ITEM 3. CONDITIONAL USE PERMIT #15-39 to allow a Class 1 Major Home Occupation, Flag Marker Assembly on the property legally described as SW1/4 SE1/4 (Ex. H-1), Section 36-T104N-R49W.**

Petitioner: Paul Carrette

Property Owner: same

Location: 47742 250th St.                      Approximately 3.5 miles east of Baltic

Staff Report: David Heinold

This would allow a Class 1 Major Home Occupation, Flag Marker Assembly.

**General Information:**

Legal Description – SW1/4 SE1/4 (Ex. H-1), Section 36-T104N-R49W

Present Zoning – A-1 Agricultural District

Existing Land Use – Residential

Parcel Size – 39.65 Acres

**Staff Report:** David Heinold

**Staff Analysis:**

The applicant is requesting conditional use permit approval for a Class 1 Major Home Occupation involving assembly of utility flag markers and shipping to clients or customers. Originally, staff discovered that this occupation was being conducted without proper zoning approval. The occupation does not involve any retail sales on the premises; however, there may be on occasion one local customer pick up their product during the week. Therefore, there will be only limited and incidental sale of products conducted on the premises. The assembly parts arrive at the site by car, van, delivery truck, or an occasional semi-trailer. The site plan indicates that there is a turnaround on the premises for the semi-trailers. The last step in the process is delivery of the final product, which is shipped out via UPS.

Currently, the applicant has 5 full-time employees including himself and 4 part-time positions. One of the part-time positions includes a summer intern that works for about three months. The occupation is conducted entirely within a 5,600 square foot accessory building, which is situated on a 39.65 acre parcel with the single family dwelling to the southwest of the home occupation site. The occupation involves only hand-assembly of flag shooter guns as well as some light automated machinery for mending and bonding the flags to the wire. There is also a machine that straightens and cuts the wire to desired length. The applicant expects no more than 10 employees to be at the occupation over the course of the year; however, there may be times when the number of employees is less than that. Most of the employees stay on site during lunch and some have even carpooled to work.

On June 3, 2015, staff conducted a site visit and determined that the major home occupation proposal generally meets the standards of the home occupation ordinance section. The petitioner

indicated that the occupation has been in operation at this location since 2010. Based on estimates provided by the applicant, staff calculates that the average number of total daily trips would be about 30 trips generated by the home occupation throughout any given week. This calculation includes the number of employee trips, one semi-trailer load of assembly supplies per week, and one UPS delivery of assembled product per day. The driveway up to the building includes a truck turnaround located just south of the building for the delivery truck drivers.

The petitioner is currently seeking a location in a local industrial park, but in the meantime has used the existing building since 2010 to get the business started, add local jobs, and grow so they can be financially profitable. The existing building, 54'x75' with lean-to additions, was originally constructed in 2006 for personal storage only and the existing 15'x65' lean-to was enclosed in late 2013.

**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 primarily agricultural land with a few 3-4 house residential subdivisions over a mile away from the site of the home occupation. The home occupation will likely not have significant impact on property values in the surrounding area since the building is already built and there are no plans for building expansion at this site.

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

The impact on the normal and orderly development of surrounding agricultural property with the use of the subject property as a residence and major home occupation is likely to not have significant impact on day-to-day operations of farms in the vicinity. The major home occupation has been in operation since 2010 and no formal complaints have been filed regarding the particular use of the approximately 40-acre parcel.

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

The petitioner has the utilities, access roads, and drainage systems in place due to the building constructed and use already commenced. No further infrastructure will need to be provided.

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

The petitioner has adequate space adjacent to the existing accessory building for up to 10 automobile parking spaces. The driveway includes a delivery truck turnaround, which is located just south of the accessory building.

**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 occupation is an assembly-only process and will likely not produce vibration, glare, fumes, odors, or electrical interference detectable to the normal senses off the property that would otherwise be present in an industrial park-like setting.

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

The Future Development Plan encourages the majority of commercial and industrial development to locate within cities; however, it is recognized that convenience goods and services as well as some industrial uses could be appropriately sited within the rural area. These locations include existing service areas where some reasonable expansion is appropriate and at major highway intersections. While the present major home occupation is described as entailing some light assembly-only processes, it is similar to other permitted occupations involving receiving parts and assembling a product then distributing to clients or customers via UPS truck.

**Recommendation:**

Staff found that the Conditional Use Permit request for a major home occupation, Flag Marker Assembly conforms to the goals and policies of the 1998 Comprehensive Development Plan and is not as easily detectable as a commercial operation from surrounding properties. The residence is clearly the primary use of the lot and the occupation was formed as a startup operation, which remains secondary to principal use of the lot for residential and agricultural purposes. Staff recommended **approval** of Conditional Use Permit #15-39 with the following conditions:

- 1.) That CUP #15-39 shall permit the operation of a Class One Major Home Occupation, flag marker assembly. Any expansion beyond this will require relocation.
- 2.) That the property shall adhere to the submitted site plan received on 5-26-2015.
- 3.) That the applicant provide at least one hundred (100) feet of hard surfaced driving area measured from the County Highway 114 right-of-way edge in conformance with Section 15.04 of the 1990 Revised Zoning Ordinance for Minnehaha County
- 4.) That the occupation shall be conducted entirely within an accessory building and clearly incidental to the use of the structure for residential purposes.
- 5.) That the occupation shall be operated by a member of the family residing in the dwelling.
- 6.) That employees of the occupation shall be limited to residents of the dwelling and up to seven (7) non-resident employees, not to exceed eight (8) employees on site.
- 7.) That up to 5,600 square feet of accessory building space may be used as storage for the occupation.
- 8.) That the occupation shall not create vibration, glare, fumes, odor, electrical interference or other noise that may pose a nuisance or be detectable to the normal senses off the property.
- 9.) That no outside storage, display of goods or merchandise, or external evidence of the occupation shall occur on the property.
- 10.) That a non-illuminated nameplate not exceeding two square feet in area may be placed on the dwelling or accessory building and one non-illuminated sign not exceeding four square feet in area may be located along the driveway for the occupation.
- 11.) That no off-premise signs shall be used.
- 12.) That the occupation shall not generate more than 10 visits per day from clients or customers averaged over a period of seven (7) consecutive days.
- 13.) That there shall be only limited and incidental sale of products conducted on the premise.
- 14.) That the number of deliveries generated by the occupation shall not significantly affect the character of the area. Delivery vehicles shall be limited to auto, pick up, or typical delivery service truck.

### **PUBLIC TESTIMONY**

Staff presented a brief summary of the conditional use permit request and recommended a change to condition #7, allowing up to 5,600 square feet of accessory building space to be used as storage for the occupation.

Paul Carrette, 47742 250th St., identified himself and asked the planning commission for any questions. Mr. Carrette indicated that he was unaware of the need for a permit for this type of business; and recommends more collaboration between the rural economic development association and the planning department regarding the need for permits local entrepreneurial operators are required to obtain.

Commissioner Cypher asked what flag marker assembly consists of and Mr. Carrette explained that it is an invention he came up with in 2008 combining assembly of a plastic flag insertion device for utility locates as well as the flags themselves.

Commissioner Ode asked why the petitioner chose this location to conduct the business and Mr. Carrette indicated that he resides at this location. Commissioner Ode also asked if there were any livestock operations in the area and Mr. Carrette noted that there are none.

Commissioner Steinhauer closed the floor to public testimony.

### **DISCUSSION**

Commissioner Cypher mentioned the fact that this request pushes the upper limit of what is considered a major home occupation, but at the same time noted that the condition specifically states that the occupation cannot expand beyond the current operation. Staff concurred that the condition was recommended to prohibit any expansion of the home occupation.

### **ACTION**

A motion was made by Commissioner Even and seconded by Commissioner Barth to **approve** Conditional Use Permit #15-39 with condition #7 as amended by planning staff to change the total allowable square footage for the home occupation to 5,600 sq. ft. and strike the word “cold” as well as the remaining conditions as stated. The motion passed unanimously.

**Conditional Use Permit #15-39 – Approved**

**ITEM 6. CONDITIONAL USE PERMIT #15-35 to amend Conditional Use Permit #11-05 to Exceed Accessory Building Area – requesting 2,520 square feet on the property legally described as S165’ E231’ NE1/4, Section 30-T103N-R49W.**

Petitioner: Robert Wilkison

Property Owner: same

Location: 25449 473rd Ave.      Approximately 3 miles northeast of Crooks

Staff Report: David Heinold

This would amend CUP #11-36 to allow 2,520 square feet of total accessory building area.

**General Information:**

Legal Description – S165’ E231’ NE1/4, Section 30-T103N-R49W

Present Zoning – A-1 Agricultural District

Existing Land Use – Residential

Parcel Size – 0.87 Acres

**Staff Report:** David Heinold

**Staff Analysis:**

The petitioner is requesting to amend condition #5 to allow 2,520 square feet of total accessory building area for the home occupation of internet sales of car parts and trailers. Currently, the petitioner is allowed to utilize, in addition to the dwelling, 1,800 square feet (30’x60’) of accessory building space to be used as cold storage for the occupation. Conditional Use Permit #11-36 became effective on August 2, 2011, which amended Conditional Use Permit #11-05 that previously allowed up to 750 square feet in addition to the dwelling for the occupation.

The petitioner has a 30’x60’, 20’x30’, and 10’x12’ detached accessory building already on the subject property. Currently, the 30’x60’ accessory building is the only building in addition to the dwelling permitted for home occupation storage. The petitioner is requesting approval to construct a 24’x30’, 720 square foot addition onto the north end of the 30’x60’ accessory building that is currently being used for the home occupation. This 720 sq. ft. is intended to be used for home occupation storage, mainly consists of car parts and trailers, as well as a bathroom for customers.

On June 2, 2015, staff met with the petitioner to inspect the site and found that there was an automobile along with some car parts on the east edge of the building. On June 9, 2015, staff visited the property and determined the proposed building addition size, 720 sq. ft., is roughly comparable to existing total accessory building area within the surrounding area. The total accessory building size on this lot with the proposed addition would be 3,240 sq. ft. on this lot. There is a horse stable to the immediate south, a few residential accessory buildings to the north, and larger accessory buildings on lots about a half mile to the southwest of the subject property.

During this inspection, staff found that the entire occupation is contained within the existing 30’x60’ accessory building and there is no appearance of the occupation other than the

miscellaneous car parts lying on the west side of the building edge, which is hidden from view on the township road right-of-way. The materials on the east side had been moved to a location within the existing building.

**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 primarily agricultural land with a few residential acreages located within one-half mile of the subject property. The proposed addition will likely not have a significant impact on property values in the surrounding area.

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

The impact on the normal and orderly development of surrounding vacant property with the proposed 720 sq. ft. addition to the existing 1,800 sq. ft. accessory building being used for the home occupation is likely to be minimal. Although the requested building size is not projected to exceed the maximum allowable percentage for accessory building square footage in the rear yard, the amount of total accessory building area exceeds that of the residence. Nearly all of the properties in the surrounding area have accessory buildings of varying sizes from 1,200 to 4,000 square feet.

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

The petitioner has the utilities, access roads, and drainage systems in place due to the building constructed and use already commenced. No further infrastructure will need to be provided.

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

The petitioner has adequate space adjacent to the existing accessory building for up to 2 automobile parking spaces as a result of residential activities. There is adequate space for delivery truck turnaround in the existing driveway.

**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 occupation will likely not produce vibration, glare, fumes, odors, or electrical interference detectable to the normal senses off the property that would otherwise be present in an industrial park-like setting.

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

Due to the residential nature of the home occupation use of the building for storage of car parts and trailers prior to shipping them via UPS delivery truck to customers or clients, there should be a minimal impact on surrounding residential as well as agricultural properties. Therefore, it is expected that the health, safety, general welfare of the public, and the Comprehensive Plan will likely not be affected in a significant manner.

**Recommendation:**

Staff found that the proposed 720 sq. ft. additional accessory building storage area for the home occupation, internet sales of car parts and trailers, is an appropriate accessory use and clearly incidental to the continued use of the lot as a residence. Conditions #5, #7, & #14 were revised to reflect review of the existing Conditional Use Permit. Staff recommended **approval** of Conditional Use Permit #15-35 to amend Conditional Use Permit #11-36 to allow internet sales of car parts & trailer as a Class 1 Home Occupation with the following conditions:

- 1) That the occupation shall be conducted entirely within a dwelling or accessory building and clearly incidental to the use of the structure for residential purposes.
- 2.) That no alteration to any building shall indicate from the exterior that the building is being utilized in whole or in part for any purpose other than a residential or agricultural use.
- 3.) That the occupation shall be operated by a member of the family residing in the dwelling.
- 4.) That employee's involved in the occupation will be limited to the two (2) property owners (Mr. & Ms. Wilkison).
- 5.) That in addition to the dwelling, up to 2,520 square feet (30'x84') of accessory building space may be used as cold storage for the occupation.
- 6.) That the occupation shall not create vibration, glare, fumes, odor, electrical interference or other noise that may pose a nuisance or be detectable to the normal sense off the property.
- 7.) That no outside storage of car parts and trailers, display of goods or merchandise, or external evidence of the occupation shall occur on the property.
- 8.) That the applicant be limited to one (1) non-illuminated nameplate not exceeding two square feet in area may be placed on the dwelling or accessory building. Additionally, one (1) non-illuminated sign not exceeding four square feet in area may be located along the driveway for the occupation. No off-premise signs shall be used. A Sign Permit shall be obtained prior to the installation of any sign.
- 9.) That the occupation shall not generate more than 10 visits per day from clients or customers averaged over a period of seven (7) consecutive days.
- 10.) That there shall be only limited and incidental sale of products conducted on the premise.
- 11.) That the number of deliveries generated by the occupation shall not significantly affect the character of the area. Delivery vehicles shall be limited to auto, pick up, or typical delivery service truck.
- 12.) That a minimum of three (3) off-street parking spaces be provided. Each parking space shall measure at least nine (9) feet by eighteen (18) feet and shall be kept in a dust free manner.
- 13.) That the home occupation shall be limited to internet sales of car parts and trailers. Any expansion beyond this will require the Conditional Use Permit to be reviewed.
- 14.) That the applicant shall maintain a South Dakota Sales Tax License & Dealers License.

### **PUBLIC TESTIMONY**

Staff presented a brief a summary and analysis of the conditional use permit request. Commissioner Steinhauer asked staff for clarification that the criteria analysis listed in number five should be listed as the occupation will likely not produce vibration, glare, fumes, odors, or electrical interference detectable to the normal senses off the property that would otherwise be present in an agricultural setting such as where the subject property is located. Staff agreed and explained that the current use of removing car parts, car part and trailer storage, and shipping to clients or customers wouldn't likely create any nuisances unusual to the immediate area.

Commissioner Steinhauer believes that the criteria analysis of the proposed use should always fit the overlaying zoning district in which it is located. Commissioner Barth concurred, but thinks that the Right-to-Farm Notice Covenant covers any vibration, glare, fumes, odors, or electrical interference detectable to the normal senses off the property. Commissioner Steinhauer noted an example in that a proposed wood finishing business requiring a strong, lacquer finish would not appropriate in an agricultural area because it is not a particular nuisance that you would find in this particular agricultural zoning district.

Sarah Wilkison, 25449 473rd Ave., introduced herself and indicated that her husband (petitioner) was not able to attend because of the storm. Mrs. Wilkison explained that they are requesting the addition to add a bathroom and have more space for storage inside the accessory building for the occupation.

Commissioner Steinhauer asked the petitioner if there was an issue with the number of people that visit that would be the cause of needing a bathroom inside the accessory building. Mrs. Wilkison indicated that the bathroom is required as a condition on the dealer's license.

Commissioner Cypher asked how the property owners have been involved in the occupation and staff noted that the conditional use permit was approved in 2011.

Commissioner Steinhauer closed the floor to public testimony.

### **ACTION**

A motion was made by Commissioner Cypher and seconded by Commissioner Duffy to **approve** Conditional Use Permit #15-35. The motion passed unanimously.

**Conditional Use Permit #15-35 – Approved**

**ITEM 7. CONDITIONAL USE PERMIT #15-37 to allow a Class C Beef Cattle CAFO on the property legally described SE1/4 (Ex. N996.35' S2213.44' E534.46'), Section 31-T102N-R51W.**

Petitioner: Bryan Albers

Property Owner: same

Location: Approximately 2.5 miles southwest of Hartford

Staff Report: Kevin Hoekman

This would allow a Class C Beef Cattle CAFO (749 Animal Units).

**General Information:**

Legal Description – SE1/4 (Ex. N996.35' S2213.44' E534.46'), Section 31-T102N-R51W Hartford Township

Present Zoning – A-1 Agriculture

Existing Land Use – Agricultural Crop Land

Parcel Size – 147.78 acres

**Staff Report:** Kevin Hoekman

**Staff Analysis:**

The property is located approximately two and a half (2.5) miles southwest of Hartford. The petitioner would like to construct a beef cattle CAFO operation on the southeast corner of the nearly quarter section parcel. The petitioner currently operates an existing facility at his farmstead approximately 1 mile to the west of the proposed CAFO site. The petitioner expressed that he intends on moving and expanding his existing facility to this new location primarily because of direction from the State DENR to protect the watershed. The existing CAFO is located adjacent to the intermittent stream that is the overflow of Grass Lake. The same intermittent stream runs through the parcel of the proposed CAFO; however, the proposed CAFO will be approximately 700 or more feet away for the intermittent stream.

The proposed facility will be 749 animal units which is well under the threshold for a required state permit. The facility will still have to comply with the provisions and requirements of the 1990 Revised Zoning Ordinance. Each beef cow would be counted equivalent to have 1 animal unit.

The petitioner has drawn a site plan for the proposed operation includes one structure and a manure containment facility either to the west or the east depending on the best location based on grade of the land. The petitioner has expressed that there will be a driveway entering off of 262<sup>nd</sup> Street and one off of 461<sup>st</sup> Avenue. The two driveways will allow the feeder wagon to drive through and not have to turn around on the site. The site plan does not include a landscape plan and a grading plan has not been submitted. The site plan is generally inadequate because of the imprecision of setback, size of building, location and size of manure containment, and the location of gravel driveways. It is acknowledged that a site plan does not require exact locations because unknown site conditions may force changes during construction; however a revised site plan should be received and approved by the planning staff before Planning Commission approval.

The 749 animal unit operation will require a 1,540 foot buffer from a dwelling, church, school, or business. The setback map created by the GIS department shows that there is space available to place a CAFO of this size near the area and meet the required setbacks. However without a more precise site plan, it is difficult to know where the operation starts and ends. If the current site plan is accepted then waivers should be required from the neighbors within the buffer area of the proposed CAFO.

The application is not complete. Many element have not been submitted, and therefore not reviewed for adequacy. Because the incompleteness of the application staff is unable to know how the land use will fully comply with the criteria required for a conditional use and staff will recommend deferral of the proposed CAFO.

**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.**

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

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

The facility is located approximately 1 and ¾ mile away from County Highway 159. The gravel township roads seem to be narrow for frequent truck traffic. Both Hartford and Humboldt Townships have been notified of the application for this dairy CAFO. The petitioner intends on extending rural water and other utilities to the facility.

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

The operation is located on a large site that will have enough space to meet off street parking and loading requirements. The parking and loading areas must be surfaced with gravel according to Article 15.04 (B) of the 1990 Revised Zoning Ordinance for Minnehaha County. Parking and loading in the right of way will not be 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.**

Since this is a proposal for a new facility, there are some possibilities for creating nuisance problems. The petitioner will have to explain how he intends to minimize nuisance when he submits the various required items for a new CAFO facility.

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

The proposed beef CAFO will have to comply with the conditions of this permit and the regulations for CAFOs in the 1990 Revised Zoning Ordinance for Minnehaha County. These rules and regulations are designed to allow for development while preventing much of the potential harms that a CAFO facility may create. The facility is not required to obtain a State permit; however the state will review the application if Minnehaha County deems state permitting to be necessary.

The proposed CAFO is located firmly within the Commercial Agricultural Area of the 1998 Comprehensive Development Plan. In the description of this designated area, the Comprehensive Development Plan states that the area is “intended to be preserved for farm related use where such activities can freely operate without the need to impose restrictions due to competing uses.” One of the policies of this designated area is to “regulate concentrated animal feeding and processing operations to protect the environmental quality and minimize conflicts with human activities.” The new CAFO will be required to follow county ordinances concerning CAFOs and any conditions placed on it through the Conditional Use Permit Process. Without additional information, there is little assurance that this operation will meet the required standards upon approval.

**Recommendation:**

Staff finds that the proposed CAFO application is incomplete for the Conditional Use Process. Staff recommends **Deferral** of Conditional Use Permit #15-37 to the next regular Planning Commission meeting on July 27, 2015 at 7:00 p.m.

**PUBLIC TESTIMONY**

Kevin Hoekman of Planning Staff presented a brief overview of the staff report. He also discussed a revised site plan and list of operations that were received after staff reports were sent to commissioners.

Commissioner Barth asked if the nutrient management plan was enclosed. Staff responded that a nutrient management plan was received but the title of the plan was for Kyle Albers. Because of a request from another CAFO operation, staff was uncertain whether this plan was for the other dairy CAFO or for both. Commissioner Barth continued with a question about the site plan of where the buildings are exactly located. Staff pointed to the site plan and showed that it states the buildings located as 50 feet away from the property.

Commissioner Even ask what type of manure handling would be used for the barn. The petitioner commented from the audience that it is bed pack and Staff pointed to the site plan with a rectangle labeled stack slab.

Kyle Albers spoke on behalf of the applicant. He started with a clarification that the manure management plan was comprehensive and works for both facilities because both operate on the same acres. He noted that they did not want to plant to the extent of the conservation district standards so they listed a couple of rows of threes on the site plan. He added that he used the odor footprint tool offered by the state, and that there is only one house located within the 98% change of nuisance odor that would be at the house. In addition he stated that trees are not going to effect the odor control. Kyle finished that they brought in everything that they asked for.

Commissioner Steinhauer asked for clarification of when things were brought in. Kyle explained that they brought it in Thursday morning.

Commissioner Duffy asked if this is a family operation. The petitioner responded that the operation is indeed a family operation. He added that the project is a RCPP Equip project

through the State of South Dakota. That means that the current facility is located within the Skunk Creek Watershed Protection Area, and that the State will provide grant funding to create a site that is better suited for cattle production, and close down the current facility.

Scott Anderson, the Planning Department Director, noted that the information that has been provided should be submitted at the time of application and not three days before Planning Commission Meeting. He added that the County Commission has made clear that this information is required with the application.

Commissioner Ode asked several questions including whether animals will be inside the building, whether the manure will be bed pack, and how often the manure will be cleaned. Kyle responded that the cows will have cover, yes the facility will use a bed pack system, and they will clean the manure out twice a year.

Commissioner Barth asked where the existing facility was located relative to the proposed facility. Kyle responded that it is ½ mile to the west of the proposed site.

The Chair asked for any other proponents and seeing none asked for opponents to come forward.

Vern Landeen, 27952 477<sup>th</sup> Ave, Canton, SD, spoke against the proposed CAFO. He noted that he owns land to the north. He asked what the setback for the odor control was. The petitioner spoke from the audience that the nearest house is located just over a ½ mile and it sets just within the 98% nuisance free zone. Vern also asked what the next step is if the petitioner wants to expand. Commissioner Steinhauer responded that any expansion over what is approved now would require another permit.

Carol Kapperman, 45994 267<sup>th</sup> Street, spoke in opposition of the CAFO. She pointed out that there is a little site adjacent to the proposed CAFO where a house once stood and a few building still stand. She added that this location would be a prime spot to locate a retirement home someday. Carol raised concerns for the runoff that would lead to the east of the CAFO onto this site.

Warren Giede, 46134 263<sup>rd</sup> Street, owns the property to the south. Warren raised concerns about his drain tile that exits and flows just past the proposed CAFO. His concern was specifically that if the CAFO was found to pollute the water way that it may affect his ability to drain water down the intermittent stream. Warren also added that he would prefer to see the CAFO to be located next to the CAFO. He also asked where some of the funding for the project is coming from, and the petitioner responded from the audience that the NRCS is paying for a portion of the project.

Doug Viet, noted that he lives just north of the proposed dairy CAFO that is proposed by Kyle Albers. Doug noted that this is an NRCS project and he asked if the NRCS would require all kinds of stuff to meet NRCS Requirements.

Dennis Kapperman, 45994 263<sup>rd</sup> Street, started that he is the property owner of the land adjacent to the west of the proposed CAFO and across the street from the proposed dairy CAFO. He noted that he feels like his property is getting boxed in and asked why the site had to be so tight to the

property line. He added that the 50' distance from the property and the right of way would disrupt the snow and cause drifting in areas. He agreed that the cattle needed to be moved out of the creek bottom, but was clearly opposed to the close proximity to the neighbors. He also asked about the operation and whether they will move machinery back and forth from the other facility and ruin the road. He added that he will be fixing his fence repeatedly because of snow and machinery hitting it. Dennis finished that the petitioner should have every submitted before the commission in black and white before things are approved.

Kyle Albers returned to speak to what was said by the opponents. He mentioned that there will only be a small amount of runoff to the west because the land generally slopes the other way. He commented that they gave permission for water to be drained onto the property. He noted that the NRCS will not set aside any funding until the initial step of a permit is received. He added that the detailed plans are expressive and that they will be completed as necessary after approval. Kyle finished with explaining that the location of the site was there based on the lay of the land and the amount of dirt work required for construction of the building.

Commissioner Barth asked if the plan was to close down the existing facility when this is operational. Kyle Responded that closing down the existing facility is the only way that the NRCS will fund the new site.

### **DISCUSSION**

Commissioner Barth asked staff how much area is available to the petitioner to meet the required setbacks. Staff showed the setback map and explained that there was room to the east and some to the north that could still accommodate the site outside of required setbacks.

Commissioner Steinhauer commented that he did not want to pass the conditional use permit without the benefit of a staff recommendation. Commissioner Steinhauer added that he hoped that the petitioner would be able to meet with the neighbors and obtain better materials to explain what the plan for the CAFO is.

Commissioner Barth made a motion to defer action for CUP #15-37 to the next regular meeting on July 27, 2015. Bill Even seconded the motion.

Commissioner Barth pointed out that this is not the most contentious hearing and that people are being reasonable to look for way to alleviate concerns about the project.

Commissioner Duffy raised concern for approving something without a staff recommendation.

Commissioner Ode raised concern that there needs to be more information to approve the CAFO.

A vote was held on the motion to defer action. The vote passed unanimously

**ACTION**

Commissioner Barth made a motion to defer action for CUP #15-37 to the next regular meeting on July 27, 2015. Bill Even seconded the motion. The motion passed unanimously.

**Conditional Use Permit #15-37 – Deferred until July 27, 2015**

**Old Business**

None

**New Business**

None.

**County Commission Items**

None

**Adjourn**

A motion was made by Commission Cypher and seconded by Commissioner Duffy to **adjourn**.  
The motion passed unanimously.