

**MINUTES OF THE
MINNEHAHA COUNTY PLANNING COMMISSION**
September 28, 2015

A meeting of the Planning Commission was held on September 28, at 7:00 p.m. in the Commission Room of the Minnehaha County Administration Building.

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

STAFF PRESENT:

Scott Anderson, Kevin Hoekman, and David Heinold - County Planning

The meeting was chaired by Mike Cypher.

The consent agenda items were read and item #5 was requested to be moved to the regular agenda by members of the audience. The consent agenda consisted of items 1, 2, 3, 4, and 6.

CONSENT AGENDA

A motion was made by Commissioner Even and seconded by Commissioner Barth to **approve** the consent agenda. The motion passed unanimously.

ITEM 1. Approval of Minutes – August 24, 2015

A motion was made by Commissioner Even and seconded by Commissioner Barth to **approve** the meeting minutes from August 24, 2015. The motion passed unanimously.

ITEM 2. CONDITIONAL USE PERMIT #15-58 to allow a Class 1 Major Home Occupation, Stain Shop on the property legally described as Lot 1 Langdon's 5th Subd., Section 34-T103N-R49W.

Petitioner: Steven Landgren

Property Owner: same

Location: 47535 255th St. Approximately 5 miles north of Sioux Falls

Staff Report: David Heinold

This would allow a Class 1 Major Home Occupation, Stain Shop.

General Information:

Legal Description – Lot 1 Langdon's 5th Subd., Section 34-T103N-R49W

Present Zoning – A-1 Agricultural District

Existing Land Use – Residential

Parcel Size – 0.89 Acres

Staff Report: David Heinold

Staff Analysis:

The petitioner is requesting to allow a Class 1 Major Home Occupation, which consists of sanding and staining millwork as well as painting doors and trim for delivery to customers. The home occupation is anticipated to have one to two employees, including the property owner, working approximately 50 hours per week from 8 am to 6 pm each day. The proposed use will be conducted out of future 30'x40' accessory building with a 14 foot height. The operation will feature a spray booth, sprinklers, and an eye wash station.

The petitioner has a shared driveway with the neighbor immediately to the east of the subject property, which will be utilized for pick up and deliveries. The attached site plan shows enough space to accommodate the anticipated amount of employees, or 1-2 cars in the driveway area. Nearly all of the adjacent properties have an accessory building of a comparable size and located in the same area as the proposed building for the home occupation.

On September 17, 2015, staff visited the property and determined that the proposed location for the home occupation will be located in an area that will likely not detract from the residential character of adjacent properties. The proposed accessory building will be situated towards the south end of the lot behind the house similar to neighboring properties in the immediate vicinity.

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 subject property is located in a subdivision of 6 lots along 255th St. with a corn field across the road and accessory buildings on nearly every lot in the area. The proposed use 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 proposed use and building is common sight in the general area. The proposed use of the building will likely not have an impact on surrounding vacant property since this is a hobby-type occupation with limited deliveries via truck. The conditional use permit process allows the planning commission authority in placing limitations on the proposed use or building in an effort to minimize the likelihood of any public nuisances arising.

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 residence already being in place. 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. 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.

Due to the residential nature of the home occupation use of the building for millwork staining and sanding as well as painting doors and trim 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 finds that the Conditional Use Permit request for a major home occupation, Stain Shop conforms to the goals and policies of the Envision 2035 Comprehensive Plan and would not be as easily detectable as a commercial operation from surrounding properties. The residence will clearly be the primary use of the lot since the occupation will be conducted entirely within the accessory building, which remains secondary to the principal use of the lot for residential purposes. Staff recommends **approval** of Conditional Use Permit #15-58 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 use.
- 3.) That the occupation shall be operated by a member of the family residing in the dwelling.
- 4.) That in addition to the dwelling, up to 1,200 square feet (30'x40') of accessory building space may be used as storage for the occupation.

- 5.) 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.
- 6.) That no outside storage of woodworking materials, display of goods or merchandise, or external evidence of the occupation shall occur on the property.
- 7.) 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.
- 8.) 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.
- 9.) That there shall be only limited and incidental sale of products conducted on the premise.
- 10.) 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.
- 11.) That a minimum of two (2) 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.
- 12.) That all outdoor lighting shall be of a full cutoff and fully-shielded design to prevent direct spillage of light beyond the property boundaries.'
- 13.) That a building permit is required prior to construction of the accessory building.
- 14.) That the home occupation shall be limited to a millwork, doors, and trim stain shop. Any expansion beyond this will require the Conditional Use Permit to be reviewed.
- 15.) That the occupation shall not create noise which, when measured off the property, exceeds 60 decibels between the hours of 8:00 am and 6:00 pm. The occupation shall not create noise which is detectable to the normal sensory perception off the property between the hours of 6:00 pm and 8:00 am. These off the property noise standards shall not apply to public and railroad rights-of-way.

ACTION

A motion was made by Commissioner Even and seconded by Commissioner Barth to **approve** Conditional Use Permit # 15-58. The motion passed unanimously.

Conditional Use Permit # 15-58 – Approved

ITEM 3. CONDITIONAL USE PERMIT #15-59 to exceed 1,200 square feet of total accessory building area – requesting 4,140 sq. ft. on the property legally described as Tract 1A Story Addition SE1/4 SW1/4, Section 28-T101N-R51W.

Petitioner: Cory Stoffers

Property Owner: same

Location: 46234 267th St. Approximately 6.5 miles west of Sioux Falls

Staff Report: Kevin Hoekman

This would allow 4,140 sq. ft. of total accessory building area.

General Information:

Legal Description – **as Tract 1A Story Addition SE1/4 SW1/4, Section 28-T101N-R51W**

Present Zoning – A-1 Agricultural

Existing Land Use – Single Family Dwelling

Parcel Size – 8.56 acres

Staff Report: Kevin Hoekman

Staff Analysis:

The property is located approximately one (1) mile south of Wall Lake in the Wall Lake Township. The site is located within a subdivision of more than four lots which requires a limit to 1,200 sq. ft. unless approval for a larger size is obtained through the conditional use permit process.

The petitioner would like to construct a 4,140 square foot accessory building for personal storage and use. The provided site plan includes the accessory building located to the northeast of the house and 50 feet from the closest neighboring property lines. The proposed size of the building is 50 feet by 80 feet which allows some additional floor space for a small accessory garden shed. The nearest neighbor currently has a dense grove of trees along the adjacent property line. In addition, the Planning Commission approved a 4,296 square feet of accessory building to this neighboring property in August.

There are several large accessory buildings in the area. The neighbor to the east was recently approved for 4,296 square feet of accessory building. As the attached map depicts, one accessory building to the northeast includes 4000 square feet, and a nearby farmstead to the southeast includes 6,198 square feet. The relatively large size of the lot will allow for the large accessory building to fit well on the lot.

Conditional Use Permit Criteria:

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

The construction of the proposed accessory building should have little impact on surrounding properties. The site has significant buffer distance from other non-farm residences and will have

no effect on the agricultural use nearby. The accessory structure shall not be used as a commercial operation at any time.

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

The accessory structure may only be used for residential purposes, no commercial or business activities are allowed. The proposed structure is compatible to the area. Several of the similar-sized buildings in the area are located on nearby parcels and.

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

All needed infrastructure is in place, and the proposed accessory building will utilize the existing driveway.

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

No off-street parking will be needed as a result of personal activities in this accessory building. No commercial or business parking will be allowed at any time.

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 proposed accessory structure. The use of lighting should be directed downward on to the property in order to prevent light pollution off site.

Recommendation:

Staff finds that the proposed building size conforms to the general sizes of other accessory buildings in the area. Staff recommends **approval** of Conditional Use Permit #15-59 with the following conditions:

- 1.) That the total accessory building square footage shall not exceed 4,140 square feet.
- 2.) That a building permit is required prior to construction of the accessory building.
- 3.) That the accessory building shall not exceed 35 feet in height and meet the setback requirements for the zoning district.
- 4.) That an inspection be made on the proposed new accessory building to ensure that the square feet of the floor area of the building does not exceed 4,140 square feet.
- 5.) That only personal residential storage shall be allowed in the building and no commercial uses or commercial storage will be allowed at any time.
- 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 full compliance with the conditional use permit conditions of approval and the Minnehaha County Zoning Ordinance.

ACTION:

A motion was made by Commissioner Even and seconded by Commissioner Barth to **approve** Conditional Use Permit # 15-59. The motion passed unanimously.

Conditional Use Permit # 15-59 – Approved

ITEM 4. CONDITIONAL USE PERMIT #15-60 to transfer one building eligibility from the SW1/4 NW1/4, Section 29-T101N-R50W to the N1/2 (Ex. E1/2 SE1/4 SE1/4 NE1/4 NE1/4 & Ex. Murschel's Addn. & Ex. N1074.43 E607.43 & Ex. H-2), Section 30-T101N-R50W.

Petitioner: Andrew Harr

Property Owner: Dennis Murschel

Location: Approximately 1.5 miles west of Sioux Falls

Staff Report: Scott Anderson

This would transfer one building eligibility.

General Information:

Legal Description – NE ¼ of Section 30, T101N, R50W.

Present Zoning – A1 - Agriculture

Existing Land Use – Agriculture

Parcel Size – 241 acres

Staff Report: Scott Anderson

Staff Analysis:

The applicant wants to transfer one (1) building eligibility from the SW 1/4 NW ¼ of Section 29 of Wayne Township to a 241 acre parcel located in the NE ¼ NE ¼ of Section 30 of Wayne Township.

On August 26, 2015, staff conducted a site visit. There are no confined animal feeding operations near the proposed transfer. The applicant is moving the eligibility from one productive crop field to another. There is an existing farmstead located to the north and south of the subject property. Neither farmstead had livestock located on them.

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

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 proposed building site will use existing right-of-way.

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

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

5) That measures are taken to control offensive odor, fumes, dust, noise, vibration, and

lighting (inclusive of lighted signs), so that none of these will constitute a nuisance.

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

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

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

Recommendation: Staff finds this conditional use permit request to be consistent with density zoning and recommends **approval** of Conditional Use Permit #15-60 with the following condition:

- 1.) The lot shall be platted and a right-to-farm notice covenant shall be placed on the deed prior to the issuance of a building permit.

ACTION:

A motion was made by Commissioner Even and seconded by Commissioner Barth to **approve** Conditional Use Permit # 15-60. The motion passed unanimously.

Conditional Use Permit # 15-60 – Approved

ITEM 6. CONDITIONAL USE PERMIT #15-62 to exceed 1,200 square feet of total accessory building area – requesting 2,400 sq. ft. on the property legally described as Tract 4 Peterson’s Addn., NE1/4 & NE1/4 SE1/4, Section 26-T103N-R48W.

Petitioner: Sam and Michelle Schimelpfenig

Property Owner: same

Location: 25465 477th Ave. Approximately 5 miles southeast of Baltic

Staff Report: David Heinold

This would allow 2,400 sq. ft. of total accessory building area.

General Information:

Legal Description – Tract 4 Peterson’s Addition, NE1/4 & NE1/4 SE1/4, Section 26-T103N-R49W

Present Zoning – A-1 Agricultural District

Existing Land Use – Residential

Parcel Size – 8.30 Acres

Staff Report: David Heinold

Staff Analysis:

The petitioner is requesting to exceed 1,200 square feet of total accessory building area. The petitioner is requesting 2,400 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 is requesting to construct a 40’x60’ accessory building for personal storage and as a hobby shop. There was a small shed on the property previously, but was destroyed in the last wind storm. Currently, the petitioner does not have any accessory buildings on the property.

There are several accessory buildings that range from 1,200 sq. ft. to 1,800 sq. ft. on 4-5 acre lots. The property owner at 25397 477th Ave. has a 1,800 sq. ft. pole building about a half mile to the north of the petitioner’s residence. The two 5-acre lots just to the south at 25403 and 25406 477th Ave. have 1,664 and 1,620 sq. ft. of total accessory building area respectively. The property, 25455 477th Ave., immediately to the north of the subject property has 1,500 sq. ft. The largest total accessory building area is located at 47715 254th St., which has about 8,880 sq. ft. on an 11 acre parcel and appears to be used for horses and/or agricultural storage.

On September 17, 2015, staff visited the property and determined that the proposed accessory building size is appropriate for the immediate area. The proposed building will be located on a 8.30 acre parcel.

Conditional Use Permit Criteria:

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

There are two other properties within a half-mile of the subject property that have building sizes relatively comparable to the petitioner's requested total accessory building area. It is unlikely that the proposed building size will have a detrimental effect on property values in the immediate vicinity. The proposed building will be used for the property owner's personal storage. The area is primarily agricultural with five residential acreages within a half-mile of each other.

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

The accessory building may only be used for residential purposes, no commercial or business activities are allowed. Given the size of the other larger accessory buildings, 2,400 sq. ft. of accessory building area would be congruent with the land composition.

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

Access will be provided via an extension of the petitioner's driveway between the house and location for the proposed accessory building. No further infrastructure will need to be provided.

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

No off-street parking will be needed with the supplemental area for parking as a result of residential activities. No commercial or business parking will be allowed at any time.

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 proposed accessory structure. 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 proposed accessory building should have no effect on the health, safety, and general welfare of the public. The use of the accessory building for private use and storage will create few problems to neighboring properties.

Recommendation:

Staff finds that the requested total accessory building size is relatively comparable to the existing accessory buildings in the immediate vicinity. Staff recommends **approval** of Conditional Use Permit #15-62 with the following conditions:

- 1.) That the total accessory building square footage shall not exceed 2,400 square feet.
- 2.) That the accessory building shall not exceed 35 feet in height.
- 3.) That the building shall be an accessory use to the continued use of the property as a residential lot.
- 4.) That only personal residential storage shall be allowed in the building and no

commercial uses or commercial storage will be allowed at any time.

5.) That all outdoor lighting shall be of a full cutoff and fully-shielded design to prevent direct spillage of light beyond the property boundaries.

6.) That a building permit is required prior to construction of the accessory building.

ACTION:

A motion was made by Commissioner Even and seconded by Commissioner Barth to **approve** Conditional Use Permit # 15-62. The motion passed unanimously.

Conditional Use Permit # 15-62 – Approved

Regular Agenda

ITEM 5. CONDITIONAL USE PERMIT #15-61 to allow an Event Facility on the property legally described as Tract 3 (Ex. H-1) Krell's Addn., SE1/4 SE1/4, Section 36-T101N-R51W.

Petitioner: Josh and Amanda Nelson

Property Owner: Bobbie Wagner and Stephanie Kriens

Location: Approximately 3 miles west of Sioux Falls

Staff Report: Kevin Hoekman

This would allow an event facility.

General Information:

Legal Description – Tract 3 (Ex. H-1) Krell's Addn., SE1/4 SE1/4,
Section 36-T101N-R51W

Present Zoning – C – Commercial (Effective September 20, 2015)

Existing Land Use – Crop and Pasture Land

Parcel Size – 20.11 Acres

Staff Report: Kevin Hoekman

Staff Analysis:

The subject property is located approximately 3 miles west of Sioux Falls and adjacent to the south property line of Wild Water West amusement park. The applicant recently rezoned the approximately 18.2 acres of the 20.11 acre parcel from A-1 Agricultural to C – Commercial zoning district. This rezoning took effect on September 20th, 2015. The petitioner rezoned the property as the first step towards constructing the requested event facility.

The petitioner has submitted a site plan, a site plan narrative, and a project narrative to describe the proposed facility. The project narrative describes a 50 foot by 80 foot event barn that will have two stories with a loft above the event hall. The building is described to have bathrooms, dressing rooms, an office, and a kitchen to be used for “small prep/storage” of food. No building plans have been submitted yet.

The project narrative also describes some of the functional aspects of the proposed facility. The reception hall is proposed to always have staff available during events, and they plan on having beer and wine sales on site. Food will be provided by catering services, and the kitchen will be available for set up and food storage. The petitioner has noted that they would like a facility that is available to guests from 8:00 am to midnight with some time for staff setup and cleanup before and after events. In addition, the petitioner has indicated that he plans on utilizing dust control on the right-of-way that approaches the driveway of the property.

The site plan includes detailed locations of site elements, and a narrative was submitted to describe in greater detail items that could not fit on the site plan. The parking lot is planned to remain gravel and contain 45 spaces. Overflow parking will hold an additional 45 spaces that will be located on a lawn area. A line of willow trees will be planted on the west and north side

of the facility. In addition to the main structure, a smaller accessory structure will be constructed for storage of maintenance equipment. And a drive under sign will be located at the end of the driveway.

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 proposed use will create changes to the surrounding area. The area includes a mix of uses ranging from agricultural fields to residential subdivisions to an amusement/water park. Unless the property is approved for access onto SD Highway 17, the township road (268th Street) will see an increase in traffic during events. The increase in traffic may create additional dust without proper dust control measures. The land use will be used during daytime and late evening hours that have the potential to create noise and traffic late into the night. The petitioner noted that the intent is to close the facility to guests by midnight. Considerations can be given for the potential outdoor use of the property and any changes to the hours of guest operation in general. Public nuisances will not be allowed at any time.

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

The proposed land use will unlikely have an effect on future land use. New residential development will have to continue to remain at county density standards and agriculture will be able to remain.

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

The site plan show access to the site from 268th Street. A portion of the property borders SD Highway 17, but access onto the highway would require DOT approval. This access would be preferable because of the accessibility to a hard surfaced road. If access is approved onto SD highway 17 then driveway and parking areas shall be paved according to Section 15.04 Minimum Improvement and Maintenance Standards of the Zoning Ordinance. The petitioner will have to obtain a permit (if required) from the township for the driveway and any necessary culverts. No drainage plan has been submitted. The site generally slopes to the north into the intermittent stream that has been channeled along the north property line. All necessary facilities and utilities will have to be obtained by the property owner as needed.

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

The proposed building would have a footprint of 4,000 square feet. The Zoning Ordinance requires one parking space for every 100 square feet for a "Recreation of Amusement Establishment" the provided 45 parking spaces provides enough off street parking to meet this requirement. The petitioner has included additional overflow parking in a lawn area for when overflow is needed.

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.

Lighting should be directed downward onto the property and not spill off the site. Outdoor gatherings and events should be kept to a minimum as not to disturb adjacent dwellings. It is

also recognized that certain activities of an event facility will be better suited for outdoors. To minimize outdoor noise, staff recommends reducing the hours of which outdoor activities are allowed. Appropriate outdoor activities may be allowed from 9:00 am to 9:00 pm.

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

It is unlikely that the requested expansion will create any additional health safety or welfare concerns if reasonable conditions that were discussed are met. The site is located adjacent to an existing commercial outdoor establishment and in close proximity to residential uses. The proposed use will fit well into the aesthetics of the surrounding agricultural land and residential uses.

Recommendation:

Staff finds that the proposed event facility is an appropriate use of the commercial land at this site. Staff recommends **approval** of Conditional Use Permit #15-61 with the following conditions:

- 1.) The property shall adhere to the submitted site plan and site plan narrative.
- 2.) No outside storage shall be allowed at any time.
- 3.) All outdoor lights shall be of shoe-box style, directing lights directly downward onto the property.
- 4.) Building permits are required for all buildings.
- 5.) Approval of access must be sought from the SD DOT for access to the property from SD Highway 17. Alternative access will require approval from the township that maintains 268th Street.
- 6.) If access is approved onto SD highway 17, then no public access shall be onto the property from 268th Street.
- 7.) All applicable gravel driveways and parking areas shall have dust control product applied a minimum of once a year. In addition, the portion of 268th street between SD Highway 17 and any approved public driveway access to the facility shall have dust control product applied a minimum of once a year.
- 8.) The hours of operation for the public will be between 8:00 am and 12:00 am (midnight). Outdoor events and activities shall be limited to the hours of 9:00 am to 9:00 pm.
- 9.) Event staff must be present at all events.

PUBLIC TESTIMONY

Kevin Hoekman of Planning Department staff presented the staff report and recommended conditions of approval. Commissioner Even asked if notice was given to Lincoln County residents. Staff responded that they did provide the addresses of the Lincoln County residents.

The petitioners, Amanda and Josh Nelson, spoke on behalf of the application. Amanda stated that they are accepting of all the conditions recommended by staff. She pointed out that they have been speaking with the neighbors. Some of the neighbors are excited for the project and other have concerns. Amanda noted that the main concern that they heard was regarding the traffic. She added that they were willing to work with traffic and neighbors through dust control.

Commissioner Even pointed out that section 5 of the staff report recommended that outdoor activities be confined to 9:00 am to 9:00 pm. He asked if the petitioners recognized this and if they were ok with it. Amanda responded that they do not intend on having outdoor activities and noted that they want to keep noise down themselves.

Commissioner Cypher asked if they have been in contact with the DOT. Josh responded that they have an application but they have been waiting for the permitting to go through before sending it to the state. Commissioner Cypher noted that access was one of the reasons the Planning Commission denied the rezoning request for the property in the first place. Amanda noted that they have received a verbal 'no' from the DOT but they still intend on sending in the application.

Commissioner Even asked what type of events are expected to happen at the facility. Amada responded that they plan on mainly having weddings with some corporate events as well. The facility will be a year round facility with air conditioning and heat.

Commissioner Ode asked what the size and use of the accessory building would be. Josh responded that the accessory building will be used for lawn mowers and other property maintenance items. The shed is proposed at 20 feet by 20 feet. Commissioner Ode followed by asking if 268th Street already has some sort of dust control. Josh responded that it does not look like it does.

Commissioner Duffy asked if they have been in contact with the township. Josh responded that they have been in contact with the township, and that they will work with the township to apply dust control.

Kathy Larson, 46645 Prairie Drive, noted that the facility looks good, but she had concerns with drunk driving traffic along 268th Street. She added that the street is already a common driving location for those leaving the bars in Sioux Falls. The additional traffic is concerning for horse traffic from nearby stables and for the children that use the road for biking and other activities.

Francis Phillips, General Manager for Wild Water West, raised several concerns and questions regarding the proposed facility. He first noted the Wild Water West crushed asphalt lot receives 4 applications of dust control a year and that is not always enough. Francis described the drainage dike that separates his property from the petitioner's. The high ground water and drainage to the dike may be a concern for graywater and septic seepage. In addition the park has had troubles with wind and garbage and Frances raised concern for the petitioner's garbage handling system as to prevent waste from blowing into Wild Water West. Concern was also raised for people crossing the property and causing trouble after park hours. He noted that he did not want to be the one to have to put up a fence between the two properties.

Scott Anderson, Planning Director, approached the podium to address some of the concerns of Francis Phillips. The following items were noted. If a road is paved the parking lot must be hard surfaced. If a road is not paved the parking lot is not required to be paved. Fencing between properties is a civil issue, but it can be added as a condition. The waste water system must be

approved by the State DENR, and if a problem starts it is the property owner's responsibility to repair the system. And if the wind spreads garbage onto the property, then it is in violation of the Public Nuisance Ordinance and code enforcement would take place.

Kirk Walters, 46602 268th Street, started with a comment on the rezoning of the property. He did not feel that the notification process was adequate. His concerns about the conditional use permit started with dust control. The close proximity of his house along the portion of road used for aces will see an increase in traffic. He was also concerned with the 16 hours of potential operation that was requested for every day. He finished with noting that he moved to the country for peace and quiet, and now that will be gone.

Darrel Bleeker, 46575 268th Street, noted that he built his house on the land that his great grandfather farmsteaded. The proposed event center will bring stuff he does not want his kids around. His kids play in the driveway and road currently and this poses problems and safety concerns, especially with drunk drivers. Darrel raised concerns about the noise. The music at Wild Water West is done at 8:00 where this is open late and potentially 7 days a week. He proposed that the operation not to be open on Sundays and that no outdoor noise should be allowed after 8:00 pm.

Kris Lair, 46578 268th Street, raised several considerations regarding the proposal. First, the LifeLight music festival placed dust control on the road, but the traffic was too much for it and it did not work. The traffic also caused the road to become washboarded. He then noted that snow accumulated at the proposed entrance of the facility. When snow happens, the township does not plow the road until 4:30 in the afternoon. He raised concern with the building location and its potential to create noise. A loud DJ will be heard outside even if it is in a building. He raised additional concerns about beer and wine sales. People will litter in the ditch and drive 268th street to avoid law enforcement. He added that operations like this may happen 7 days a week. A final concern was regarding the drainage for the lot and for water running across the road. He finished with a statement that he moved to the country for peace and quiet.

Brian Brodie, 261791 Country Acre Drive, reiterated noise concerns. He wanted concertation for dust control along the 3 mile stretch of 268th Street from the highway to Sioux Falls. Brian also noted that accidents are a regular occurrence on the highway and the intersection of Highway 17 and 268th Street.

Noah Hodak, 46574 268th Street, raised some traffic related questions. The first request was to have a traffic study done on 268th street to find the current traffic levels. The next would be to include the potential traffic of the event center.

The petitioner, Amanda Nelson, spoke in regards to some of the concerns given to the commission. She noted that they have reviewed All Occasions event hall for traffic, and that most of the traffic is gone by 10:00 pm. She noted that they are willing to work with land owners to adjust the site plan to accommodate concerns. She finished with an estimate of rental days for the facility. During the summer 80% of Saturdays will be booked and 20% of Saturdays will be booked during winter. The weekdays will only be booked approximately 10% of the time.

DISCUSSION

Commissioner Even asked a couple questions including: When was Wild Water West Established, and does Wild Water West serve alcohol? Francis Phillips answered from the audience that it was established in 1989 and yes they serve alcohol.

Commissioner Barth commented that things change including zoning. He added that efforts should be made to communicate among neighbors.

Commissioner Cypher noted that the condition for dust control should include the phrase “as needed”.

Commissioner Barth motioned to approve Conditional Use Permit # 15-61 with amending condition #7 to read ‘All applicable gravel driveways and parking areas shall have dust control product applied a minimum of once a year and as needed thereafter. In addition, the portion of 268th street between SD Highway 17 and any approved public driveway access to the facility shall have dust control product applied a minimum of once a year and as needed thereafter.’ Commissioner Ode seconded the motion. The motion failed with 2 ayes and 3 nays. Commissioner Duffy, Even, and Cypher voted against the motion.

ACTION

A motion was made by Commissioner Even to deny Conditional Use Permit #15-61. Commissioner Duffy seconded the motion. The motion passed with 3 ayes and 2 nays. Commissioners Ode and Barth voted against the motion.

Conditional Use Permit # 15-61 – Denied

Commissioner Cypher recused himself from Item 7. A motion was made by Commissioner Duffy to appoint Commissioner Even as the temporary chair for Item 7. Commissioner Ode seconded the motion. The motion passed unanimously.

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 southwest corner of the nearly quarter section parcel. The petitioner currently operates an existing facility at his farmstead approximately 1/2 mile to the west of the proposed CAFO site. The petitioner expressed the intention of moving and expanding his existing facility to this new location primarily because of direction from the State DENR to protect the Skunk Creek watershed.

The petitioner has proposed a beef cattle facility to hold 749 animal units which is well under the threshold for a required state permit. The facility will have to comply with the provisions and requirements of the 1990 Revised Zoning Ordinance. Each beef cow would be counted equivalent to 1 animal unit. During review of a family operated proposed dairy and at the previous Planning Commission meetings, concern was raised for the watershed because of the location of the existing facility. The proposal primarily assists in the protection of the watershed in the several ways. The facility is moved further away from the intermittent stream that is the overflow for Grass Lake. The existing CAFO is located adjacent to the Grass Lake outlet stream, and the proposed CAFO will be located approximately 900 feet away from the outlet stream. It will, however, still be located approximately 200 feet from another mapped intermittent stream that channels water into the Grass Lake outlet. The 200 foot separation exceeds the 100 foot minimum separation requirement, and it is further from a designated intermittent stream than the existing facility. Another potential benefit of the proposed facility rather than the existing facility is that a roof will be placed over the feedlot portion of the facility to prevent rainwater from carrying sediments and nutrients downstream. In addition the proposed manure

containment facility is described that it will be graded to prevent water from running into or out of the containment.

The proposed CAFO has been presented in front of the Planning Commission on June 22nd and July 27, 2015. Both times the Planning Commission has deferred the proposal with the presumption that the applicant will provide additional information to complete the application and/or to clarify the intent of the proposal. On August 28, 2015 staff sent the petitioner a letter requesting any additional information to be provided to the Planning Office by September 11th in order to allow time for staff to review any new materials. A site map was given to Planning Staff and stamped as received on September 11, 2015. No additional information was provided; therefore the prior submitted narratives and related materials will be considered as current. Where the new site plan and the old narratives conflict, the new site plan will be considered as the intended document.

The site plan is an important aspect of any conditional use permit, and it includes a list of required elements for general CUPs and specifically CAFOs. This type of list was provided to the petitioner in the form of a handout and is available online in the Zoning Ordinance. The required elements are listed in bold font at the beginning of the following paragraphs, and each listed element includes a description of the petitioner submitted materials that regard each element. The revised site plan provides more clarity of the proposed site plan than what previous site plans indicated. It is up to the Planning Commission to decide if the provided site plan and elements are sufficient for the proposed use.

The address of the property and the legal description. The site plan includes the legal description. There is no address for the property at this time, and the petitioner has provided his own address on the site plan.

The name of the project and/or business. The site plan includes the petitioners name and a description on the proposed building as “749 CAFO”

The scale and north arrow. The site plan includes a north arrow and a written scale.

All existing and proposed buildings or additions. The site has no existing buildings. The site plan includes a 100 foot by 600 foot barn, and a 100 foot by 100 foot stack slab for manure containment.

The dimensions of all buildings. The site plan includes the dimensions of the proposed building as stated in the previous element.

The distance from all buildings to the property lines at the closest points. The site plan shows that the barn is located 50 feet from the west property line and 83 feet from the center line of the road that is 262nd Street. Considering that the township road is a 66 foot easement, the 83 feet description would place the structure 50 feet from the front property line. Both of these setbacks meet or exceed the minimum requirements. The stack slab that is labeled on the site plan does not include setback distances. The stack slab is not considered a building and will not require a building permit; however the design of the manure containment facility is required by the ordinance to be engineered to

the South Dakota DENR's standards. Staff used the provided scale to determine that the stack slab is located approximately 250 feet from the west property line and 25 feet north of the proposed barn.

Building height and number of stories. A provided narrative describes the barn as a monoslope style. The site plan indicates that the building height will be 50 feet on the south side of the facility and sloping down to the north at a 2/12 pitch. Agricultural buildings are exempt from the height requirement of the zoning district.

Dimensions of all property lines. The provided site plan does not include the dimensions of the property lines. Staff recognizes that the proposed site is only a small portion of a nearly a quarter section parcel, and that including the entire parcel on a small site plan makes the plan difficult to read.

Parking lots or spaces; designate each space; give dimensions of the lot, stalls, and aisles. The proposed land use is for agricultural purposes on a large lot. Parking lots and space requirements are typically calculated for commercial and industrial uses. However, the site plan includes two driveways. The western driveway is an existing field approach and the eastern driveway is located at the east end of the proposed barn. Both driveways enter the property from 262nd Street. Staff recreated the provided site plan in MinnEMap and found that the eastern driveway appears to be located in or near an unmapped water way on the property. This may create problems with access onto 262nd Street. The petitioner should work with the township for the best location of this driveway.

Article 15 of the Zoning Ordinance requires that all driveways and loading/unloading areas to meet minimum standards. This CAFO operation will be required to have a gravel surface of a minimum four (4) inches thick for all its driveways and loading/unloading zones. It is suggested that the maneuvering and loading/unloading areas be setback from the front property line by fifteen (15) feet which is a standard for parking lots within the ordinance.

Screening including height, location, and type of material to be used. - And similarly - **The landscape setback and trees indicating the species of trees and materials to be used for landscaping.** Neither of these required items are included on the site plan; however, the narrative noted "trees not needed". Since the petitioner plans not to have trees or screening, these items do not need to be on the site plan. It is up to the Planning Commission to decide if not having trees or screening is adequate for a facility such as this.

Name and location of all adjacent streets, alleys, waterways and other public places. The site plan includes the name of 262nd Street which is the closest street to the proposed site. 461st Avenue is adjacent to the east property line of the parcel which is over a quarter mile away. An intermittent stream is located off the site to the west approximately 200 feet away. The outlet creek of Grass Lake, which is an intermittent stream, is located approximately 900 feet in a straight line to the north of the site and on the same parcel.

A landscaping in plan designed to assist in the dispersal of odors. A site plan narrative from the last planning commission meeting stated “No trees odor dispersion under control”. The provided site plan depicts no trees as stated. The petitioner has supported the absence of dispersal with submitting calculations of the South Dakota Odor Footprint Tool (SDOFT) and a supporting map that is drawn to scale on a large sheet of brown paper. Staff has recognized that the calculations for the SDOFT for the size of building was different than what was described; however, those calculations were turned in prior to the final site plan, and the supporting scale drawn map shows the setbacks supporting the 65,000 square foot barn.

A grading Plan designed to help keep pens and solid waste containment areas dry. The site plan includes a grading plan that shows the flow of water will nearly all flow from the west to the east. This flow would follow a 1% slope that stretches the entire length of the barn. The staff created map includes contours that show an unmapped waterway would then carry the water north into the outlet creek of Grass Lake. This is an important aspect of the site plan as it depicts the water will primarily flow away from the nearby property and intermittent stream. The submitted narrative notes that the manure confinement area will be graded to have no runoff and no water that will flow into it.

The location and description of the animal waste facilities and structure. The submitted site plan includes only one animal waste facility. It is described as a stack slab that will not have a roof. The site plan shows a 100 foot by 100 foot area for this animal west facility.

In relation to the site plan, 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 the proposed CAFO meets of all required setbacks, and therefore no waivers from adjacent property owners are needed.

At previous Planning Commission meetings it was noted that the application for the conditional use permit for the proposed CAFO was not complete or sufficient. As noted earlier, the petitioner submitted an additional map to clarify the site plan. Everything else, such as the narratives and plans, will remain the same as the last Planning Commission meeting. The previous paragraphs include a description of the required elements for the site plan. A pest control plan, odor control plan, and a dead animal disposal plan is also required as part of the application. These plans are found within the provided narrative, and they are discussed below.

The pest control plan includes control methods for rats and flies. Rats will be controlled by not storing feed on the site and with barn cats. The petitioner noted that flies will be controlled on an as needed basis and that he will make the call when to control them because the flies affect his cattle too. The plan notes that larvacide may be used if the problem persists. Staff finds that these plans are not adequate because there is no schedule or threshold described as to when treatment is necessary. In addition, the effectiveness of barn cats is questionable without alternative proven methods of control for rats. Inadequate pest control may affect the future development of the area. Pests may affect residential development and may prevent the location

of other agriculture operations in the vicinity due to a potential refuge for pests.

The submitted narrative states that “neighbors will have little to no affect from odors”. The petitioner submitted a chart created with data from the South Dakota odor footprint tool. The data that the petitioner entered into the tool assumes no methods of controlling odor. The submitted map of the data shows that two dwellings are located within the 99% annoyance free zone. The property owner of the dwelling to the northeast of the proposed site has submitted a signed waiver that he accepts the proposed CAFO. As noted earlier the landscaping plan and description also includes nothing for odor control. The petitioner appears to have considered the effects of odor and appears to have decided to not use any control methods because of the results of the odor footprint tool. The lack of control methods for odor may have a negative effect on future land uses within close proximity to the proposed CAFO. This is especially true for residential dwellings.

The dead animal control plan is included in the narrative. It was noted that a rendering service will be used and that the longest wait for pickup would be no more than 72 hours. A longer time for service would only be in the case of animals dying on weekends or holidays.

One of the major elements that the Planning Commission is to consider as part of a conditional use permit for a CAFO is the nutrient management plan. The petitioner has submitted a manure management plan that shows that they have enough land available for the nutrients that will be produced. The plan is comprehensive between this proposed CAFO and a dairy CAFO that is operated within the same family and recently approved by the County Commission. The Planning Department received signed manure application agreements for potential land for nutrient application. The submitted narrative notes that manure will be applied onto fields at least twice a year, and the manure will be incorporated within 48 hours after application. It is also noted that manure will be added to the containment facility on a weekly basis.

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 proposed CAFO is located within a low density and predominantly agricultural area. The site meets the required setbacks for the size of the facility, and the closest neighbor has signed a waiver for the construction of the CAFO. The petitioner’s submitted documentation from the South Dakota Odor Management Tool shows that most residential dwellings are outside of the 99% annoyance free zone. Two dwellings are located within the 98% annoyance free zone. Since the surrounding area is primarily agricultural land uses, the proposed CAFO will have little effect on current use and enjoyment of surrounding properties.

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

The surrounding land uses of the proposed CAFO are predominantly agricultural with scattered single family dwellings and farmsteads. There is potential for further development of agricultural uses, such as CAFOs, and residential uses in farmsteads and acreages. The land use of a CAFO will unlikely affect further agricultural development in the area, but as intense land uses such as

CAFOs increase in numbers, residential uses may become less desirable in close proximity to this type of project. The petition has proposed few provisions to control the undesirable effects of a CAFO. This may create greater effect on any future development including agricultural land uses. This is especially true with a lack of defined pest control. Pest control is important so that pests and diseases do not transfer from one CAFO to another. Future residential development will be required to have the Right-to-Farm Covenant placed on the deed prior to construction of a dwelling.

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

The proposed facility includes two proposed driveways off of 262nd Street. One access is using an existing field approach and the eastern access will be new. The driveway access should have approval of the township in order to assure that the placement does not affect the road and any necessary culverts are properly sized. The petitioner will have to acquire any utilities to the proposed facility.

The large proposed building and compact gravel will create a large area of impermeable surface. The submitted drainage plan shows that the majority of the water will be flowing off the site to the west and into a non-mapped waterway. The Comprehensive Plan encourages the use of Low Impact Development for projects that may have an effect on waterways and watersheds. Staff recommends that a grass filter strip be included along the non-mapped waterway in order to slow down and absorb runoff water and potential pollutants before it reaches the intermittent stream. This grass water way would be most effecting somewhere between the downstream edge of the proposed CAFO and the junction between the unmapped waterway and the stream that serves as the outlet for Grass Lake. The unmapped waterway is denoted in one of the staff created site maps.

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. Staff recommends that any on-site driveways or loading/unloading areas should be located at a minimum fifteen (15) feet from the front yard property line. This fifteen (15) foot buffer is a requirement for parking lots and would prevent parking and storage of items from being located next to the right of way.

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 petitioner is requesting a new CAFO facility. The inherent nature of a CAFO like this has the potential to create nuisances if not managed properly. This is especially true for odor, fumes, and dust. Although these nuisances could unlikely be fully controlled for a CAFO, it is common practice to provide documentation of methods and management to reduce the effects of nuisances. The reduction of nuisances is not only for current residences, but also for future development. The petitioner has submitted few and obscure ways to reduce nuisances. For example, it appears as if the petitioner believes that odor control is not needed because “neighbors will have little to no affect from odors” and his detailed map of the results of the South Dakota Odor Footprint Tool.

The Zoning Ordinance requires that plans are submitted for pest and odor control; it does not provide minimums or specific regulations as to what is required in these plans. Nuisance enforcement is difficult to pursue for agriculture operations once permitted. This difficulty is caused by many farming exemptions and the Right-to-Farm Covenant. It is up to the Planning Commission to decide if the provisions stated within the petitioner submitted materials are enough to approve this Conditional Use Permit. Staff has included several recommended conditions that may assist in reducing nuisances. These recommended conditions may be accepted, amended, or denied by the Planning Commission.

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 Agricultural Production Area of the Envision 2035 Comprehensive Development Plan. In the description of this designated area, a goal of the Comprehensive Development Plan is to “protect, preserve, and promote agricultural uses and the economic viability of farming operations.”

The petitioner noted at the last Planning Commission meeting that this proposed facility is in response to state resources to move his existing herd further away from an intermittent stream and to place the animals under a contained roof. With proper management, moving the CAFO to the proposed facility can be ecologically beneficial for the Skunk Creek Watershed. Many of these benefits will be negated if the petitioner’s current facility is allowed to remain as an active CAFO. Therefore, staff recommends that the proposed site become the primary location for confined animals of the petitioner. The Comprehensive Plan states that the County should support state programs that are designed to assist farming operations and support conservation and natural resource management programs.

Recommendation:

Staff finds that the proposed CAFO is an acceptable land use under the Comprehensive Plan. Staff recommends **Approval** of Conditional Use Permit #15-37 with the following conditions:

- 1.) The facility shall be limited to 749 animal units in size.
- 2.) Only beef cattle shall be confined in the CAFO.
- 3.) No animals shall be kept in the concentration or quantity of a defined CAFO on the petitioner’s farmstead located at 26193 460th Avenue. All animals shall be removed from the farmstead within 90 days of the completion of the construction of the barn and waste containment facility of the new CAFO.
- 4.) The CAFO shall comply with all applicable regulations of the County Zoning Ordinance.
- 5.) The facility shall conform to the submitted site plan that is dated September 11,

2015. Any minor changes may be approved by the Planning Director at the Minnehaha County Planning Department. Major changes will require an amendment to this permit and a public hearing.
- 6.) The manure containment facility must be in conformance with South Dakota Department of Environment and Natural Resources design standards for any newly constructed waste containment facility. A registered professional engineer shall certify the plan specifications and the construction of the facility.
 - 7.) Approval must be obtained by the township for the construction of the new road access.
 - 8.) All driveways, parking, and loading areas within the CAFO site must comply with minimum standards that are listed in section 15.04 of the Zoning Ordinance for Minnehaha County.
 - 9.) All driveways, parking, and loading areas must have a setback of a minimum of fifteen (15) feet from the front yard property line.
 - 10.) An address sign must be purchased at the planning department and placed at the driveway of the facility.
 - 11.) No water shall be allowed to sit on the site in a stagnant state for longer than 10 days without using mosquito control. This includes, but is not limited to puddles, buckets, the manure containment facility, and tires.
 - 12.) A rendering service must be used to pick up and remove dead animals from the property. Dead animals must not be stored, even temporarily, within 50 feet of any property line.
 - 13.) The unmapped waterway immediately to the west of the CAFO site shall have a minimum of 100 feet of grass filter planted and maintained somewhere between the southern point of the CAFO and the intersection of the unmapped water way and the stream that serves as the outlet for Grass Lake. The grass filter shall be planted and maintained at a minimum of 30 feet wide.
 - 14.) The proposed barn shall have engineer certified drawings that shall be submitted for review by the Building Inspector prior to the issuance of a building permit.
 - 15.) A building permit is required for all structures prior to construction.
 - 16.) That the Planning & Zoning Department reserves the right to enter and inspect the CAFO at any time, after proper notice to the owner, to ensure that the property is in full compliance with the conditional use permit conditions of approval and Minnehaha County Zoning Ordinance.

PUBLIC TESTIMONY

Kevin Hoekman of Planning Department staff presented the staff report and recommended conditions of approval. Commissioner Ode asked for clarification of condition number 2 regarding the term 'beef cattle'. Staff noted that it was listed in regards to the animal unit calculation of 1 animal unit for a beef cow and 1.4 animal units for a dairy cow. It was suggested that the term 'beef' be removed from the condition as it may cause confusion and is not necessary.

Kyle Albers, 26193 460th Avenue, spoke on behalf of the petitioner. Kyle started with two concerns. The first concern was regarding the term 'beef cattle' in condition number 2, because it may limit what they can put on the site. The second concern was regarding the removal of all

animals from the existing farm in condition number 3. Kyle stated that the RCPP program of the NRCS would allow certain portions of the existing CAFO to exist even after the cattle are moved to the new site. The moving of the cattle away from the existing farm would be required for obtaining funding from the NRCS for the proposed project.

Commissioner Barth commended the revised site plan. He commented that previous CAFO have required a concrete slab and walls to place dead animals temporarily before rendering service pick up. The main point of this type of requirement is to keep dead animal out of sight from the neighboring properties and the right-of-way. Bryan Albers, the petitioner, interjected that he would prefer to have the dead animal storage up front so that the rendering truck did not have to come all the way around the facility. The more on-site driving would bring more possibility of disease to spread to the other cattle.

Commissioner Even asked several questions and Kyle responded in sequence. Commissioner Even Asked who is going to build the barn, is the barn engineered, what is used for guidance for the manure management plan, and when was construction planned to start. Kyle responded that they intend on building the barn themselves, the barn is engineered by the company, the manure management plan was created in conjunction with Central Crop Consulting, the manure management plan included both this CAFO and the recently approved Dairy CAFO, and the plan is to start construction in the spring depending on funding. Commissioner Even followed with a request for clarification of the design for the manure containment facility. Kyle responded that the containment will be a stack slab that is graded to contain rainwater and the surrounding ground will slope away to prevent excess water from entering the containment facility. Commissioner Even finished with a question regarding whether or not the petitioner was reconsidering trees to be located on the site. Kyle responded that the original plan included trees, but plans were removed due to county inquiries and recommendations. The requested barn is vented naturally and trees may affect the air movement in the barn. Trees may be considered in the future, but the petitioner would like to decide when and how trees are planted.

Commissioner Even asked staff if condition number 13 was correct in stating the location of the water way. Staff responded that it was not correct and that it should refer to the unmapped waterway to the east of the building. Staff pointed out that condition 13 is based in the comprehensive plan encouraging best management practices for water control.

Commissioner Ode asked where the feed was planned to be stored. Kyle responded that feed will be stored only at the dairy site.

Carol Kapperman, 45994 263rd Street, is the land owner of the parcel directly to the west. Carol raised concern for the effect of the proposed CAFO combined with dairy CAFO on the land that they own in between the two. This included a concern for the road when traffic will run back and forth between the two facilities and possibly cause damage to the road.

Dennis Kapperman, 45994 263rd Street, started with recognition that the drawings were better than previous site plans. He raised concern with the large size of the building and its proximity to the road. The next concern regarded the location and adequacy of the driveway access for truck traffic. Dennis noted that he is feeling boxed in with the two CAFOs on either side of his land.

Kyle Albers responded to the opposition. He noted that the CAFO really takes up only two eligibility locations that will be affected and other will remain ok. He discussed the concerns with the road and noted that the township has no issues with the proposal and that they will work with the township. Kyle added that they will not need to park on the road for loading because there is enough room for maneuvering on the north side.

Commissioner Barth asked about possible traffic in the 50 foot gap between the barn and the road. Kyle responded that they may drive there but they are feeding in the building so driving will be primarily inside.

Commissioner Ode asked why the building could not be moved further to the east. Kyle responded that the drainage prevents the building from locating further to the east. He added that the gravel road does not have much traffic on it as there is no houses on it.

Commissioner Barth commented that the site plan is looking better, but the petitioner should type the narrative up to help with presentation, grammar, and spelling. He noted that the County Board may not be as accepting of less professional materials. Commissioner Barth asked if Kyle was able to print the odor footprint diagram. Kyle responded that the footprint tool is online and that it could not be printed.

DISCUSSION

Commissioner Barth commented that he believes that the materials are better and that the application is acceptable.

Commissioner Ode agreed and noted that there are always questions regarding any type of large operation. He included that the petitioner has done well to answer those questions.

Commissioner Duffy noted that she thinks the plan is better and this is better for the application and for the petitioner to have a good plan moving forward.

Commissioner Even added that there is a reason for the zoning ordinance to have minimum requirements. The ordinance protects the neighbors and the environment. He was also in agreement that having a professional application will help when moving forward.

The commissioners and planning staff addressed the recommended conditions to make any changes that were discussed and suggested.

ACTION

A motion was made by Commissioner Barth to **approve** Conditional Use Permit #15-37 with the amended conditions below. Commissioner Ode seconded the motion. The motion passed unanimously. Commissioner Cypher recused himself from voting.

- 1.) The facility shall be limited to 749 animal units in size.
- 2.) Only cattle shall be confined in the CAFO.
- 3.) No animals shall be kept out of conformance of the RCPP Program of the NRCS on

the petitioner's farmstead located at 26193 460th Avenue. All animals not meeting the requirement of the RCPP program of the NRCS shall be removed from the farmstead within 90 days of the completion of the construction of the barn and waste containment facility of the new CAFO.

- 4.) The CAFO shall comply with all applicable regulations of the County Zoning Ordinance.
- 5.) The facility shall conform to the submitted site plan that is dated September 11, 2015. Any minor changes may be approved by the Planning Director at the Minnehaha County Planning Department. Major changes will require an amendment to this permit and a public hearing.
- 6.) The manure containment facility must be in conformance with South Dakota Department of Environment and Natural Resources design standards for any newly constructed waste containment facility. A registered professional engineer shall certify the plan specifications and the construction of the facility.
- 7.) Approval must be obtained by the township for the construction of the new road access.
- 8.) All driveways, parking, and loading areas within the CAFO site must comply with minimum standards that are listed in section 15.04 of the Zoning Ordinance for Minnehaha County.
- 9.) All driveways, parking, and loading areas must have a setback of a minimum of fifteen (15) feet from the front yard property line.
- 10.) An address sign must be purchased at the planning department and placed at the driveway of the facility.
- 11.) No water shall be allowed to sit on the site in a stagnant state for longer than 10 days without using mosquito control. This includes, but is not limited to puddles, buckets, the manure containment facility, and tires.
- 12.) A rendering service must be used to pick up and remove dead animals from the property. Dead animals must be stored on a concrete slab with a six (6) foot opaque fence.
- 13.) The unmapped waterway immediately to the east of the CAFO site shall have a minimum of 100 feet of grass filter planted and maintained somewhere between the southern point of the CAFO and the intersection of the unmapped water way and the stream that serves as the outlet for Grass Lake. The grass filter shall be planted and maintained at a minimum of 30 feet wide.
- 14.) The proposed barn shall have engineer certified drawings that shall be submitted for review by the Building Inspector prior to the issuance of a building permit.
- 15.) A building permit is required for all structures prior to construction.
- 16.) That the Planning & Zoning Department reserves the right to enter and inspect the CAFO at any time, after proper notice to the owner, to ensure that the property is in full compliance with the conditional use permit conditions of approval and Minnehaha County Zoning Ordinance.
- 17.) A tree planning plan in accordance with the engineering of the building shall be submitted to the Planning and Zoning Department within two (2) years of construction.

ITEM 8. TEXT AMENDMENT #15-01 to amend Section 12.13 (B) Agricultural Tourism, Permitted Uses and Section 26.02 Definitions of the 1990 Revised Zoning District for Minnehaha County.

Petitioner: Lee Anderson & Janelle Johnson

Staff Report: David Heinold

This would amend Section 12.13 (B) Agricultural Tourism, Permitted Uses and Section 26.02 Definitions of the 1990 Revised Zoning Ordinance for Minnehaha County.

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Staff Analysis:

The proposed amendment has been requested by Lee Anderson and Janelle Johnson to allow breweries as a permitted use under the Agricultural Tourism Ordinance. The petitioners have submitted an ordinance amendment that does not meet the intent of the current ordinance, which was revised by planning staff to more similarly reflect the standards for wineries.

This item was deferred from the August 24 planning commission meeting to allow staff to research and consider adding ordinance language that would allow breweries and distilleries. The planning commission expressed support to revisit the requirement that the property owner must reside on the property, consider other uses than just breweries, and update definitions.

This proposed ordinance is an attempt to create consistency among the permitted agricultural tourism uses. If the applicant and/or property owner is unable to meet the aforementioned conditions, then they may submit an Agricultural Tourism Permit to be heard by the County Planning Commission. This process allows for a more extensive review of agricultural tourism permit requests on a case-by-case basis to determine if the proposal is an appropriate land use and fits with the goals and policies of the Envision 2035 Comprehensive Plan.

In addition to this text amendment request, staff is proposing to add two separate sections to the Agricultural Tourism Ordinance section to include provisions for Recall, Review, and Revocation similar to the existing text in the Conditional Use Permit section of the Zoning Ordinance.

This proposed amendment allows the same process for Agricultural Tourism Permit review as is already conducted on a case-by-case basis with Conditional Use Permits. The planning office has the opportunity to attempt to bring petitioners into compliance with approved conditions and the zoning ordinance, or allow the Planning Commission the chance to review the permit. The last part of this ordinance amendment is to revise the current language in the Agricultural Tourism Ordinance section under Wineries for consistency and clarity.

The craft brewing and distilling industry has been experiencing growth over the past few years, particularly with agricultural development of locally-grown and produced alcohol. For example, two case studies from opposite corners of the country as well as one Midwest example have completely different sets of ordinance requirements for breweries and distilleries.

Leelanau County, Michigan promotes local agricultural production by primarily allowing processing facilities for cider, beer, wine, spirits, and other alcoholic beverages on lands where the ingredients for such products are raised or grown. These uses are permitted as a special land use that must be properly licensed by the appropriate governing body, minimum ten-acre and 350 foot wide parcel, minimum two acres of fruit or crop that are maintained according to generally accepted standards used in production, meet requirements for total land area of buildings, setbacks to lot lines, limited retail sales and food service area, food service is directly related to crops raised on the farm, seating capacity, food sales limitations, types of food service, parking, lighting, alcoholic beverage sales, and special events or activities.

Nelson County, Virginia specifically allows limited farm breweries that manufacture no more than 15,000 barrels per year provided that the brewery is located on a farm owned or leased by such brewery or its owner and agricultural products, including barley, other grains, hops, or fruit used by such brewery in the manufacturing of its beer are grown on the farm. The ordinance also allows on-premise sale, tasting, or consumption during regular business hours; shipment of beer in accordance with state law; storage; and sale of beer-related items.

Thurston County, Washington has a similar ordinance for agritourism uses in regards to minimum parcel size, storage, distribution, product tasting facilities, retail sales, and special events. The ordinance is more particular about the size of the operation, minimize impacts on the rural agricultural environment, lighting, parking, access, and on-site bed and breakfast services. The main difference between the two ordinances is that agritourism uses are restricted to locations within an overlay district as long as they are consistent with the size, scale, and intensity of the existing agricultural or resource use of the property.

Although these counties are embedded in an entirely different cultural and agricultural environment with varying sets of state laws, the underlying purpose of each is to promote local agricultural production and value-added products. Specifically, Leelanau County primarily allows agritourism uses as processing facilities, but only permits the sales of alcoholic beverages limited to what is produced at the facility. The ordinance also denotes that a winery, cidery, microbrewery, or distillery must have at least 20%, or 2 acres, of crop or fruit used for processing beverages and maintained according to generally accepted agricultural management practices.

The disparity between the two ordinance requirements suggest vast differences in the types of growing climates in existence throughout the country. The addition of similar guidelines as these to wineries, breweries, and distilleries would help support the intent of the current agricultural tourism ordinance to sustain local farming operations, rural character, and maintain agricultural heritage. Staff is proposing these additional stipulations for special permitted agricultural tourism uses with regard to unintended consequences. Staff believes that this change is an option to ensure that agricultural tourism uses meet the intent of the ordinance; however, it is understandable from a business perspective that sales of other beverages not produced at the facility may be sold complementary to the wine, beer, or spirits produced on-site. This proposed addition and revision to the special permitted uses section purposely aims to help promote and maintain local farming operations. Furthermore, the owner/operator would still

have the remaining option to submit an application for an Agricultural Tourism Permit to be reviewed by the Planning Commission on a case-by-case basis and conditions may be placed on specific uses in a context appropriate manner.

The Comprehensive Plan recommends that agricultural lands have a definite public value as open space, and the preservation in agricultural production of such lands constitutes an important physical, social, aesthetic, and economic asset. This goal can be achieved through sustainable use and management of productive landscapes as well as maintaining economic links to the value of rural land other than land development uses. These guidelines are critical to ensuring that all agricultural tourism uses remain secondary to the principal use of the land for agriculture.

During the August 24 Planning Commission, board members presented concern about the on-site residency requirement and planning staff was directed to review the requirement that states that the operator for a winery, brewery, or distillery reside on the property. Staff conducted some research and determined that it is appropriate to allow the operator to reside within one mile of the site. This change gives agricultural producers as well as rural landowners interested in agricultural tourism operations flexibility that more appropriately reflects the reality of agricultural production in Minnehaha County.

This revision is intended to allow some relief to the agricultural tourism operator in regards to the requirement to reside on the site of the facility while maintaining the agricultural heritage and rural character of the county by limiting the ability of an individual to live elsewhere and operate a winery, brewery, or distillery as a standalone business facility. However, the operator would still have the opportunity to submit an Agricultural Tourism Permit for review by the Planning Commission if the conditions cannot be met.

The last section of the proposed text amendment is to revise the agricultural tourism definitions to better reflect the changes made and correct a few grammatical as well as numbering errors.

The States Attorney has reviewed and approved of the proposed ordinance language included in the attached document.

Recommendation:

Staff found that the proposed text amendment changes are consistent with the intent of the Agricultural Tourism section and the Envision 2035 Comprehensive Plan. Staff recommended **approval** of Zoning Text Amendment #15-01.

PUBLIC TESTIMONY

Staff presented a brief overview of the proposed zoning ordinance text amendment.

Lee Anderson, 409 S Hawthorne Ave., introduced himself and thanked the planning commission for allowing him the relief to live within the shelterbelt north of the hops farm and the future brewery location. He explained that he would like a 3-5 year time period to build a residence at this location. He continued to mention that he is excited to get the operation going.

DISCUSSION

Scott Anderson, Planning Director, also pointed out there is a discrepancy regarding the proposed language in Section 2 (c) Retail. Mr. Anderson noted that this language should be reviewed, but asked the planning commission for their thoughts on the matter. Commissioner Even indicated that the Wall Lake area winery that was recently approved and mentioned some concerns regarding what the operator would sell at that location. Commissioner Barth added that he thinks this would be too restrictive. There was some discussion amongst the planning commission and staff regarding this language in Section 2 (c) Retail.

Commissioner Barth made a motion to **remove** the following language from 1) c) The retail area may sell locally-produced wine and other beverages made at said facility or from local producers. The motion was seconded by Commissioner Even. Motion passed (4-0).

Commissioner Barth asked if the residential requirement was too restrictive and Commissioner Cypher thought that the operator should live within the proximity not necessarily within one mile. Commissioner Even indicated that he thinks it is important from the public standpoint that owner live near operation or within the community. Discussion on this topic followed amongst the planning commission and staff.

Commissioner Even questioned the residency requirement and whether there is another option. Commissioner Even believes that requiring the operator to live within one mile of the site may be too narrow. Commissioner Cypher and Commissioner Barth continued discussion on this topic. Commissioner Cypher noted that the requirement to live within one mile of the site would be fine since most of the existing agricultural tourism operations are found on site, which gives the operator more flexibility with the location of the operation and the house site.

Staff pointed out an additional change in the ordinance under 7) c) Retail to match the removal of the language in the wineries section. Staff continued to mention that 7) h) should read “the Operator of the brewery or distillery must reside within one mile of the site”. Staff also indicated that the lettering in the wineries section needs to be changed to h), i), j) because of duplicate letters and h) should read “the Operator of the winery must reside within one mile of the site”.

Commissioner Even asked if the proposed amendment matches with SD Codified Law and staff noted that the States’ Attorney has reviewed and approved of the text amendment. Kevin Hoekman, Planner I, indicated that state law does not permit cideries in South Dakota.

ACTION

A motion was made by Commissioner Even to **recommend approval** of Zoning Text Amendment #15-01 and seconded by Commissioner Barth. The motion passed unanimously.

Zoning Text Amendment #15-01 – Recommended Approval

Old Business

None

New Business

None

Adjourn

A motion was made by Commissioner Even to adjourn and seconded by Commissioner Barth. The motion passed unanimously.