

**MINUTES OF THE JOINT MEETING
MINNEHAHA COUNTY & SIOUX FALLS PLANNING COMMISSIONS
October 23, 2017**

A joint meeting of the County and City Planning Commissions was scheduled on October 23, 2017 at 7:00 p.m. in the Commission Room of the Minnehaha County Administration Building.

COUNTY PLANNING COMMISSION MEMBERS PRESENT: Mike Cypher, Doug Ode, Becky Randall, Paul Kostboth, Bonnie Duffy, Mike Ralston, and Jeff Barth.

CITY PLANNING COMMISSION MEMBERS PRESENT: Sean Ervin, John Paulson, Nicholas Sershen, Kurt Johnson, and Katherine Fiegen.

STAFF PRESENT:

Scott Anderson, David Heinold, and Kevin Hoekman - County Planning
Jeff Schmitt – City Planning
Maggie Gillespie – States’ Attorney

The County Planning Commission Chair was presided over by Chair Mike Cypher. The City Planning Commission was chaired by Kurt Johnson.

Planning Commission Chair Mike Cypher called the joint City of Sioux Falls and Minnehaha County Planning Commission meeting to order at 7:00 p.m.

Consent Agenda

Commissioner Cypher read each item on the agenda individually. There were no objections to any of the items listed on the consent agenda by either the planning commissions or members of the audience.

A motion was made for the County by Commissioner Kostboth and seconded by Commissioner Barth to **approve** the consent agenda consisting of Items 1, 2, 3, and 4. The motion passed unanimously. The same motion was made for the City by Commissioner Sershen and seconded by Commissioner Fiegen. The motion passed unanimously.

ITEM 1. Approval of Minutes – August 28, 2017

As part of the consent agenda, a motion was made for the County by Commissioner Kostboth and seconded by Commissioner Barth to **approve** the meeting minutes from August 28, 2017. The motion passed unanimously. The same motion was made for the City by Commissioner Sershen and seconded by Commissioner Fiegen to **approve** the meeting minutes from August 28, 2017. The motion passed unanimously.

ITEM 2. CONDITIONAL USE PERMIT #17-72 to exceed 1,200 square feet of total accessory building area – requesting 1,380 sq. ft. on the property legally described as Tracts 29 & 30, Rollinger’s Skyline, 2nd Addition, Section 28-T101N-R48W.

Petitioner: Brad Archer

Property Owner: same

Location: 2904 S. George St. - Approximately 0.5 mile east of Sioux Falls

Staff Report: Scott Anderson

This would allow 1,380 square feet of total accessory building area.

General Information:

Legal Description – Tracts 29 & 30, Rollinger’s Skyline, 2nd Addition, Section 28-T101N-R48W

Present Zoning – A-1 Agriculture

Existing Land Use – Residential

Parcel Size – 2 acres

Staff Report: Scott Anderson

Staff Analysis: The property is located approximately ½ mile southeast of Sioux Falls. The site is located within a subdivision of more than four lots. In subdivisions or residential developments which exceed four lots in number, accessory building area is limited to 1,200 sq. ft. unless approval for a larger size is obtained through the conditional use permit process.

The petitioner constructed a 420 square foot (14’ x 30’) accessory building for personal storage and use without first obtaining a building permit or conditional use permit to exceed 1,200 square feet of accessory building area. Staff met with the applicant on site on October 3, 2017. He indicated that the contractor located in Emery, SD told him that he didn’t need any kind of permits. Staff became aware of the violation and contacted the property owner. He promptly applied for the necessary permits to correct the issue and paid a penalty for constructing prior to gaining approval. The new accessory building is shown on the site plan and is located north of the dwelling. The newly constructed accessory building combined with the existing detached garage exceed the maximum of 1,200 by 180 square feet. The applicant is using the existing driveway to access the new accessory building.

The surrounding residential properties include several large accessory buildings that can be seen in the Existing Accessory Building Map. The largest accessory buildings that are used for residential purposes are located to the north of the subject property. The residence at 9100 E. Preston Lane has a single 1,800 square foot detached accessory building. The residence at 2704 E. Preston Lane has a single 1,440 square foot detached accessory building. The Planning Commission has often used nearby accessory building sizes as a guide to determine if the request is reasonable. With at least one accessory building that is larger than the request, and one

accessory building that is close to the same size, the accessory building is similar to area structures.

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 proposed use is surrounded by residential lots and properties. One area of concern for a large accessory building is the visual impact of the neighborhood. The accessory building is partially visible from S. George Street. The applicant has planted a shelterbelt of trees along the property boundaries and they partially block view of the structure.

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. Many of the building eligibilities have been used with a few lots available to the northeast of the proposed accessory building. The construction of a large accessory building in the area will not likely deter future residential growth, but there is some potential that other property owners will ask for large accessory buildings on their properties.

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

The petitioner will be responsible for attaining and extending utilities to the proposed accessory building.

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. The accessory building will be limited to a maximum of 35 feet in height to meet the zoning height regulations.

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

The existing accessory building should have little to no effect on the health, safety, and general welfare of the public as well as the Envision 2035 Comprehensive Plan. Several large accessory buildings already exist in the area.

Recommendation:

Staff finds that the request for a larger accessory building is reasonable and conforms to the general sizes of other accessory buildings in the area. Staff recommends **approval** of

Conditional Use Permit #17-72 with the following conditions:

- 1.) That the total accessory building square footage shall not exceed 1,380 square feet.
- 2.) That a building permit is required prior to construction of the accessory building.
The building permit fee shall be doubled for construction without a building permit.
- 3.) An inspection must be made of the proposed new accessory building to ensure that the total floor area of the building does not exceed 1,380 square feet.
- 4.) Only personal residential storage shall be allowed in the building, and no commercial uses or commercial storage will be allowed at any time.
- 5.) 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 the Planning & Zoning Department reserves the right to enter and inspect the accessory building at any time, after proper notice to the owner, to ensure that the property is in full compliance with the conditional use permit conditions of approval and the Minnehaha County Zoning Ordinance.

Action

As part of the consent agenda, a motion was made for the County by Commissioner Kostboth and seconded by Commissioner Barth to **approve** Conditional Use Permit #17-72 with staff recommended conditions. The motion passed unanimously. The same motion was made for the City by Commissioner Serhsen and seconded by Commissioner Fiegen. The motion passed unanimously.

Conditional Use Permit #17-72 – Approved

ITEM 3. CONDITIONAL USE PERMIT #17-74 to exceed 1,200 square feet of total accessory building area – requesting 2,400 sq. ft. on the property legally described as Tract 1, Siemonsma’s Second Addition, NE1/4 NW1/4, Section 30-T102N-R49W.

Petitioner: Joseph Rauscher

Property Owner: same

Location: 6103 N. Kiwanis Ave.. Approximately 0.25 mile north of Sioux Falls

Staff Report: David Heinold

This would allow 2,400 square feet of total accessory building area.

General Information:

Legal Description – Tract 1, Siemonsma’s 2nd Addition, NE1/4 NW1/4, Section 30-T102N-R49W

Present Zoning – A-1 Agricultural District

Existing Land Use – Residential

Parcel Size – 1.21 Acres

Staff Report: David Heinold

Staff Analysis:

The petitioner is requesting conditional use permit approval to allow 2,400 square feet of total accessory building area. The subject property is approximately 1.21 acres and located just north of Sioux Falls city limits. The site plan, at right, shows that the proposed building will be placed west of the existing house and accessible via an extension of the driveway. The property owner also owns the adjacent farm to the west of the subject property, which contains about 29.57 acres.



According to the joint City of Sioux Falls and Minnehaha County Zoning Ordinance, Section 15.07 (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.

There are several accessory building sizes in the surrounding area larger than the petitioner's request. The property owner, 2104 W. 70th St., was granted a conditional use permit to allow 2,160 sq. ft. on approximately 1.09 acres. The farmland property located at 2200 W. 70th St. has 5,251 sq. ft. of total accessory building area on 33.17 acres. The other accessory building sizes range from 1,024 sq. ft. to 1,620 sq. ft. that have been approved on roughly one acre lots located one half mile to the east.

On October 5, 2017, staff visited the property and determined that the accessory building size is appropriate for the surrounding area. The location of the proposed 40'x60' accessory building, pictured at right, will be directly west of the existing house.



Conditional Use Permit Criteria

1) The impact of the proposed use on adjacent properties shall be a major consideration. The proposed use should be generally compatible with adjacent properties and other properties in the district.

The use of the proposed 40'x60' accessory building for personal storage should not negatively affect the use and enjoyment of surrounding properties. The area is primarily agricultural land with a few residential acreages located in the immediate vicinity.

2) Measures shall be taken to ensure that the proposed use does not alter the general character of the area or neighborhood.

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) The effects of noise, odor, traffic, air and water pollution, and other negative factors shall be eliminated or controlled through the use of screening, setbacks, and orientation.

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.

4) The proposed use shall not adversely affect the public.

The proposed accessory building should have no effect on the health, safety, and general welfare of the public provided that all county regulations are being met. The use of the building for private use and storage will create few problems to neighboring properties. The Envision 2035 Comprehensive Plan identifies the area within the Transition Area for the City of Sioux Falls. Goal 2, Action 2.4, on Page 91 of the Envision 2035 Comprehensive Plan recommends

supporting growth that is compatible to adopted municipal comprehensive plans.

In the Future Land Use Plan section of the Envision 2035 Comprehensive Plan,

Goal #2 aims to coordinate growth and land use planning among Minnehaha County, Cities, Townships, and other relative organizations. The result of this coordination is cooperation between County, Cities, and Townships for planning and implementing strategies and land use procedures.

The subject property is located within the City of Sioux Falls growth area. The Shape Sioux Falls 2040 Comprehensive Plan identifies the area as light industrial on the future land use plan.

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 #17-74 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

As part of the consent agenda, a motion was made for the County by Commissioner Kostboth and seconded by Commissioner Barth to **approve** Conditional Use Permit #17-74 with staff recommended conditions. The motion passed unanimously. The same motion was made for the City by Commissioner Sershen and seconded by Commissioner Fiegen. The motion passed unanimously.

Conditional Use Permit #17-74 – Approved

ITEM 4. CONDITIONAL USE PERMIT #17-80 to exceed 1,200 square feet of total accessory building area – requesting 5,616 sq. ft. on the property legally described as Moans Tract 1, Part NW1/4 (Ex. N 939.15’), Section 19-T102N-R49W.

Petitioner: Dean M. Wilson

Property Owner: same

Location: 8801 N. Kiwanis Ave.. Approximately 0.25 mile north of Sioux Falls

Staff Report: David Heinold

This would allow 5,616 square feet of total accessory building area.

General Information:

Legal Description – Moans Tract 1, Part NW1/4 (Ex. N 939.15’), Section 19-T102N-R49W

Present Zoning – A-1 Agricultural District

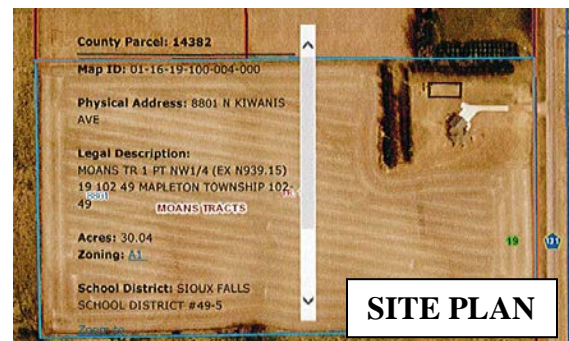
Existing Land Use – Residential

Parcel Size – 30.04 Acres

Staff Report: David Heinold

Staff Analysis:

The petitioner is requesting conditional use permit approval to allow 5,616 square feet of total accessory building area. The subject property is approximately 30.04 acres and located just north of Sioux Falls city limits. The site plan, at right, shows the proposed building located north of the existing house and accessible via an extension off the driveway.



According to the joint City of Sioux Falls and Minnehaha County Zoning Ordinance, Section 15.07 (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.

There are several accessory building sizes in the surrounding area larger than the petitioner’s request. The property owner, 8800 N. Kiwanis Ave., immediately across the street to the east

has 6,720 sq. ft. of total accessory building area on 40 acres. The property located to the north at 8909 N. Kiwanis Ave. has 3,680 sq. ft. total among a few accessory buildings on 20 acres. The accessory building sizes range from 1,350 sq. ft. to 6,720 sq. ft. on varying lot arrangements.

On October 5, 2017, staff visited the property and determined that the accessory building size is appropriate for the surrounding area. The location of the proposed 54'x104' accessory building, pictured at right, will be northwest of the existing house.



Conditional Use Permit Criteria

1) The impact of the proposed use on adjacent properties shall be a major consideration. The proposed use should be generally compatible with adjacent properties and other properties in the district.

The use of the proposed 54' x 104' accessory building for personal storage of car collection and farming equipment should not negatively affect the use and enjoyment of surrounding properties. The area is primarily agricultural land with a few residential acreages located in the immediate vicinity.

2) Measures shall be taken to ensure that the proposed use does not alter the general character of the area or neighborhood.

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, 5,616 sq. ft. of accessory building area would be congruent with the land composition.

3) The effects of noise, odor, traffic, air and water pollution, and other negative factors shall be eliminated or controlled through the use of screening, setbacks, and orientation.

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.

4) The proposed use shall not adversely affect the public.

The proposed accessory building should have no effect on the health, safety, and general welfare of the public provided that all county regulations are being met. The use of the building for private use and storage will create few problems to neighboring properties. The Envision 2035 Comprehensive Plan identifies the area within the Transition Area for the City of Sioux Falls. Goal 2, Action 2.4, on Page 91 of the Envision 2035 Comprehensive Plan recommends supporting growth that is compatible to adopted municipal comprehensive plans.

In the Future Land Use Plan section of the Envision 2035 Comprehensive Plan,

Goal #2 aims to coordinate growth and land use planning among Minnehaha County, Cities, Townships, and other relative organizations. The result of this coordination is cooperation between County, Cities, and Townships for planning and implementing strategies and land use procedures.

The subject property is located within the City of Sioux Falls growth area. The Shape Sioux Falls 2040 Comprehensive Plan identifies the area as light industrial in the future land use plan.

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 #17-80 with the following conditions:

- 1.) That the total accessory building square footage shall not exceed 5,616 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

As part of the consent agenda, a motion was made for the County by Commissioner Kostboth and seconded by Commissioner Barth to **approve** Conditional Use Permit #17-80 with staff recommended conditions. The motion passed unanimously. The same motion was made for the City by Commissioner Sershen and seconded by Commissioner Fiegen. The motion passed unanimously.

Conditional Use Permit #17-80 – Approved

Regular Agenda

ITEM 5. CONDITIONAL USE PERMIT #17-71 to transfer three (3) building eligibilities from the SE1/4 NW1/4 & NE1/4 to the E1/2 NE1/4 and transfer one (1) building eligibility from the NE1/4 NW1/4 to the NW1/4 NW1/4; all in Section 25-T102N-R49W.

Petitioner: Mark Kuca

Property Owner: Douglas A. Klein Family Trust

Location: 47677 Slip Up Creek Rd. Approximately 1.5 miles north of Sioux Falls

Staff Report: Kevin Hoekman

This would allow the transfer of four (4) building eligibilities.

General Information:

Legal Description – THAT PT SEC 25 N OF HY (EX SW1/4 NW1/4 & EX NW1/4 SW1/4 & EX RD & EX S909 E934.9 SE1/4 NE1/4 & EX TUNTLANDS TR 1A) 25-102-49 MAPLETON TOWNSHIP

Present Zoning – A1-Agriculture

Existing Land Use – Cropland, Pasture Land, and a Farmstead

Parcel Size – 272.99 acres

Staff Report: Kevin Hoekman

Staff Analysis:

The applicant has applied to transfer a total of four building eligibilities from the landlocked areas of a parcel to two edges of the parcel to make the building eligibilities available for use. One eligibility will move west and the other three will move east. A landowner in the rural area of the county is allowed to build a single family dwelling if the parcel designated for the residence has an available building eligibility. Building eligibilities are assigned to each quarter-quarter section or each lot of record at the time density zoning became effective. To transfer a building eligibility from its assigned location, the receiving parcel must be adjacent to the sending parcel, and both parcels must be owned by identical ownership. A conditional use permit is required to move one or more building eligibilities at a time.

The subject property has six total building eligibilities. One building eligibility is locked (used) by a dwelling located on a farmstead on the east side of the parcel. The remaining five eligibilities are located on interior portions of the property that have no direct access to a right-of-way. This transfer request will consolidate two building eligibilities to the northwest northwest quarter and three building eligibilities will be consolidated along the country highway on the east side of the property. The petitioner has noted through discussion that the two eligibilities in the northwest northwest quarter are intended to be moved again to place the eligibilities along Slip Up Creek Road. Both transfers cannot happen at the same time because the landowner of each parcel are currently different. The petitioner plans on obtaining some land

to make a second transfer possible.

The petitioner has submitted a site plan showing the split up of building eligibilities. The proposal would move eligibilities off of productive cropland and pastureland. No CAFOs are located nearby any of the proposed building eligibility locations.

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 proposed locations for the moved building eligibilities are located in an active agricultural zone. The three eligibilities on the east side of the parcel will be located near a commercial area at the EROS Exit off Interstate 90. The two eligibilities moving west will move closer to an existing residential subdivision along Slip Up Creek Road. Both receiving areas of building eligibilities will be located near existing development that can absorb additional traffic from future residential dwellings. A right-to-farm notice covenant is required for new residential dwellings 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 area around the subject property is composed of rolling hills and near the interstate highway. Future development in the area will be influenced by the growth of Sioux Falls. The City of Sioux Falls Planning Department has indicated that the proposed density of dwellings do not conform to the city comprehensive plan or its annexation policies. Areas like this proposal of dense residential development may cause difficulties with annexation when property owners are confronted with upgrading to city services. In addition, the area around the EROS exit may expand when it becomes the beginning point for South Dakota Highway 100. More residences in close proximity to EROS exit may lead to more opposition of commercial growth in the area.

The transfer of the building eligibilities do not increase the number of dwelling units allowed in the area.

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

The applicant will have to make these arrangements for any extension of utilities including waste water disposal. A cluster of residential dwellings in one area may create many accesses onto the road. Typically the planning commission has required the sharing of driveways for clustered development to avoid excessive access points. If approved staff would recommend that all platted lots use the same access point as a condition of approval

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

Off-street parking requirements will be provided for once each 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 Envision 2035 Comprehensive Plan has a goal to coordinate growth and land use planning among Minnehaha County, cities, townships, and other relative organizations. The City of Sioux Falls has expressed concerns regarding this proposed transfer of building eligibilities and future growth in the area.

Recommendation:

Minnehaha County planning staff recognizes the concerns of the City of Sioux Falls' Planning Department for this project in the joint jurisdiction. Based on City of Sioux Falls' concerns, Staff recommends **denial** of Conditional Use Permit #17-71

Public Testimony

Kevin Hoekman, County Planning, presented an update on the conditional use permit request for the transfer of building eligibilities. Mr. Hoekman explained that the petitioner has requested the joint planning commissions consider a motion to withdraw the application.

Action

A motion was made by Commissioner Kostboth and seconded by Commissioner Barth to **withdraw** Conditional Use Permit #17-71. The motion passed unanimously. The same motion was made for the City by Commissioner Paulson and seconded by Commissioner Sershen. The motion passed unanimously (4-0).

Conditional Use Permit #17-71 – Withdrawn

ITEM 6. CONDITIONAL USE PERMIT #17-76 to allow Retail Sales of Fireworks on the property legally described as W14 Acres (Ex. H-1 & Ex. Rocky Ridge Addition & Ex. Pt. in City Limits) NE1/4 NW1/4 and N431' W1/2, NW1/4 (Ex. H-1 & Ex. Wittrock Trs. & Ex. W145' E345' N183' & Ex. Wittelm's 2nd Addn. & Ez. H-2); all in Section 22-T101N-R50W.

Petitioner: Andy Jorgensen

Property Owner: Daniel D. Aesoph & Richard Elmen, PTR

Location: 8101 W. 12th St. West of Sioux Falls

Staff Report: Kevin Hoekman

This would allow Retail Sales of Fireworks.

General Information:

Legal Description – W14 Acres (Ex. H-1 & Ex. Rocky Ridge Addition & Ex. Pt. in City Limits) NE1/4 NW1/4 and N431' W1/2, NW1/4 (Ex. H-1 & Ex. Wittrock Trs. & Ex. W145' E345' N183' & Ex. Wittelm's 2nd Addn. & Ez. H-2); all in Section 22-T101N-R50W

Present Zoning – A1-Agricultural

Existing Land Use – Vacant land and existing farm buildings

Parcel Size – 8.39 Acres

Staff Report: Kevin Hoekman

Staff Analysis:

The subject site is located on the south side of W. 12th Street approximately 0.2 miles west of S. Discovery Avenue and 0.2 miles east of S. Ellis Road. The City Limits of Sioux Falls border the two site properties on the north, east, and south sides. The property with the address of 8101 W. 12th Street includes the structure where the proposed fireworks sales would take place, while the vacant larger parcel will have part of the property used for parking and stacking spaces for customers.

The petitioner is requesting retail fireworks sales in the A-1 Agricultural district. Fireworks sales are allowed in the A-1 Agricultural district with a conditional use permit if the sales do not exceed nine (9) days, June 27th through July 5th. The site was permitted to have temporary fireworks sales for the last two years of 2016 and 2017. The permit that allowed the previous two years of fireworks sales had a sunset condition that required the applicant to apply for this conditional use permit request.

The petitioner has submitted a sketch site plan with simple details. The site configuration has not changed since the previous permit. A field approach will serve as a driveway off of West 12th Street, and vehicles will park in the grassy pasture area west of the barn. The barn will serve as the structure for the sale of fireworks.

In addition to the sketch site plan, the petitioner submitted a letter that explains the reasons for the request and some requests to change conditions from what was allowed during the last permit. The change requests include removing a building inspection, extending hours of operation, and removing the sunset condition so the business can operate until they decide to move and/or the city annexes the property. Planning staff agrees that another building inspection would probably not be needed, but there are some concerns about the other two requests.

The petitioner has requested the hours of operation to be from 8:00 am to midnight. The permit that was issued for the previous two years required the business to close at 10:00 pm. The earlier close time was considered because the layout of the parking lot is located immediately to the north of a row of residential dwellings. Little to no screening exists to prevent the glare of vehicle headlights from shining into the back yards of those residences. Staff believes that 10:00 pm is a reasonable closing time as that is about the time where twilight begins to be dark enough during summer that headlights cause greater effect.

The site of the fireworks stand is nearly surrounded by the city limits of Sioux Falls. The proximity to the city means that the site is in a transition area that will continue to convert into denser city districts and uses. Properties with uses that are not allowed within city limits become difficult to transition when the site is surrounded and development grows around it. This concern is the primary reason for limiting the duration of the fireworks sales. County planning staff supports a limit to the amount of time the fireworks stand will be allowed to continue without further permitting. County staff recommends an additional 5 years to allow the business to have some stability of location (the petitioner has invested in several improvements to the barn) and to allow future review of the site among any potential changes to the urban area.

The area around the intersection of W. 12th Street and Ellis Road has had many past applications for fireworks stands. The joint planning commissions have both approved and denied past requests. The two most recent requests were approved with conditions of 2 years of operation. After which the petitioners are required to apply again for a new permit.

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 maintain a busy retail business for a temporary time period. The area includes a mix of urban and rural land uses that have largely remained the same since the issuance of a CUP for fireworks stand two years ago. A residential subdivision within Sioux Falls is located approximately 260 feet to the south of the site. The Number 10 fire station is located across 12th Street from the proposed use. The land adjacent to the Number 10 fire station is currently vacant, in the city limits, and has the potential to develop in the near future. Much of the operations surrounding the fireworks stand will take place around the week before Independence Day. County staff received no complaints from neighbors during the last two years of operation. A set of complaints were received by another concerned fireworks seller that

the petitioner was not abiding by the conditions of the permit. Staff investigated those concerns and found no violation of conditions.

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 is located on two parcels that are nearly surrounded by the City of Sioux Falls. As Sioux Falls continues to grow, more residences and businesses will encroach on the proposed property. The City of Sioux Falls does not allow the sale of fireworks within city limits, and staff recommends a limit of duration of the permit be in place in order to prevent a hold out of a land use that is not allowed in city limits. At the site visit, staff noticed that the land that the petitioner uses for a parking lot has a sign indicating it is for sale. The petitioner should be aware of the possible change in land use and that a change in parking location would require a renewal of the conditional use permit.

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

The site plan show access to the site from W 12th Street. The proposed access to the road was covered in gravel from the property line to the concrete of the road. The added gravel appears to be working to prevent mud and debris from entering the road.

No drainage plan has been submitted and the property appears very flat with a slight slope to the northeast. 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/petitioner as needed.

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

The proposed building would have a footprint of approximately 2,200 square feet (approximately 110ft x 21ft). The Zoning Ordinance requires one parking space for every 100 square feet for a "Recreation of Amusement Establishment" the provided 15 to 20 parking spaces which is not enough for this type of use. However, it is likely that the petitioner provides plans do not include the preface enough off street parking to meet 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.

The presence of a busy retail business has the potential to disturb residents of single family housing developments. A time limit on hours of operation is proposed to limit disturbance to neighbors. In addition, the petitioner will not be allowed to discharge fireworks on the site.

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

The site is located adjacent to an existing commercial outdoor storage and in close proximity to residential uses. Conditions proposed for the site should limit potential nuisances and allow for future development of the area. The Envision 2035 Comprehensive Plan has a goal to coordinate growth and land use planning among Minnehaha County, cities, townships, and other relative organizations. The conditions that are recommended are the same as those approved two years

ago with the exception of a building inspection and sun set condition that has been extended to 5 years.

Recommendation:

Minnehaha County planning staff finds the requested fireworks sales consistent with recently approved fireworks sales in the area. Staff recommends **approval** of Conditional Use Permit #17-76 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.) The retail sales of fireworks must abide by all applicable SD laws and regulations.
- 4.) The retail sales of fireworks may only be marketable for nine (9) days per calendar year.
- 5.) All outdoor lights in use for the building or to illuminate the parking area shall be directed away from single family dwellings.
- 6.) Building permits are required for all structural changes.
- 7.) Temporary signs for the business are allowed to be placed no earlier than June 13th and must be taken down by July 10th. One temporary freestanding sign is allowed not to exceed 32 square feet. One temporary wall sign is allowed per building face not to exceed one square foot per linear foot of building frontage.
- 8.) Flags that are used for advertising shall be located on the subject properties, not block the view of traffic entering or exiting the property, and shall only be placed during the regular nine (9) day selling period of June 27th through July 5th.
- 9.) No parking or stacking of vehicles shall be allowed in the right-of-way at any time.
- 10.) The hours of operation for the public will be between 8:00 am and 10:00 pm. Set up and tear down activities outside of the nine day sales period must take place between 8:00 am and 8:00 pm.
- 11.) No storage of fireworks is allowed from August 1st to June 10th.
- 12.) The driveway as indicated on the site plan shall be configured to have a minimum of 24 feet wide driving area. Gravel must be placed on the driveway and meet the minimum improvement and maintenance standards in article 16.04 of the ordinance from the shoulder of the road to 15 feet onto the property.
- 13.) The operation will be allowed to operate under the conditions of this permit until August 1, 2022. The business owner will be required to obtain another conditional use permit if they wish to continue operating at this location.
- 14.) That the Planning & Zoning Department reserves the right to enter and inspect the fireworks stand 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.

Public Testimony

Kevin Hoekman, County Planning, presented a brief summary of the staff report and recommendation for the conditional use permit request to allow temporary fireworks sales.

Andy Jorgensen, 1604 S. Williams Ave., spoke as the petitioner. He presented several photos that showed the progress and improvements of the site since the permit was approved in spring of 2016. Andy requested the Planning Commissions to remove the condition that would limit sales for five seasons to allow for every year into the future.

Commissioner Barth asked staff for clarification if most businesses operate without a recurring process. Staff explained the potential for a fireworks stand to become surrounded by the city, and that fireworks sales are not allowed in city limits. A fireworks sales operation surrounded by city limits may not be desirable for future city planning.

Discussion

Commissioner Paulson asked staff how could the fireworks sales permit be required to have a conditional use permit in the future if condition #13 was removed. Kevin of county planning staff replied that a typical conditional use permit does not require renewals of the permit, and that this permit would not require a renewal either if condition #13 was removed. If approved the fireworks sales could take place until the petitioner decides not to sell or until the property is annexed into the city.

Commissioner Sershen asked if the city had a timeline for annexation of the property. Jeff Schmitt, City Planning, responded that there are services that extend past the property already, so it would be up to the property owner at this time or a city annexation request. The annexation could be effective immediately.

Commissioner Johnson clarified with staff that the motions from each planning commission had to be the same or the item would automatically be referred to the Joint County Commission and City Council.

Commissioner Fiegen indicated that the proposal makes sense now but the business owner won't have the option to continue once the property is fully annexed.

Commissioner Sershen mentioned that he struggled with approval of this item two years ago since fireworks sales are not allowed in city limits and doesn't feel this is an appropriate area.

Action

A motion was made by Commissioner Barth and seconded by Commissioner Ralston to **approve** Conditional Use Permit #17-76 with staff recommended conditions except condition #13. The motion passed unanimously. The same motion was made for the City by Commissioner Fiegen and seconded by Commissioner Ervin. The motion passed 3-1, Commissioner Sershen voted against the motion.

Conditional Use Permit #17-76 – Approved 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.) The retail sales of fireworks must abide by all applicable SD laws and regulations.
- 4.) The retail sales of fireworks may only be marketable for nine (9) days per calendar year.
- 5.) All outdoor lights in use for the building or to illuminate the parking area shall be directed away from single family dwellings.
- 6.) Building permits are required for all structural changes.
- 7.) Temporary signs for the business are allowed to be placed no earlier than June 13th and must be taken down by July 10th. One temporary freestanding sign is allowed not to exceed 32 square feet. One temporary wall sign is allowed per building face not to exceed one square foot per linear foot of building frontage.
- 8.) Flags that are used for advertising shall be located on the subject properties, not block the view of traffic entering or exiting the property, and shall only be placed during the regular nine (9) day selling period of June 27th through July 5th.
- 9.) No parking or stacking of vehicles shall be allowed in the right-of-way at any time.
- 10.) The hours of operation for the public will be between 8:00 am and 10:00 pm. Set up and tear down activities outside of the nine day sales period must take place between 8:00 am and 8:00 pm.
- 11.) No storage of fireworks is allowed from August 1st to June 10th.
- 12.) The driveway as indicated on the site plan shall be configured to have a minimum of 24 feet wide driving area. Gravel must be placed on the driveway and meet the minimum improvement and maintenance standards in article 16.04 of the ordinance from the shoulder of the road to 15 feet onto the property.
- 13.) That the Planning & Zoning Department reserves the right to enter and inspect the fireworks stand 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.

ITEM 7. CONDITIONAL USE PERMIT #17-77 to allow Rock, Sand, and Gravel Extraction on the property legally described as NE1/4 (Ex. Tr. 2, Spader's 3rd Addition), Section 28-T102N-R49W.

Petitioner: Great Bear Sand & Gravel
Property Owner: Woods Family Farm Partnership
Location: Northwest corner of East Dike Place & North Cliff Avenue
Staff Report: Scott Anderson

This would allow Rock, Sand, and Gravel Extraction.

General Information:

Legal Description – NE1/4 (Ex. Tr. 2, Spader's 3rd Addition), Section 28-T102N-R49W
Present Zoning – RC Recreation/Conservation
Existing Land Use – Agriculture
Parcel Size – 153 acres

Staff Report: Scott Anderson

Staff Analysis:

Location and Background

The location of the site is located adjacent to the city limits of Sioux Falls north of East Dike Place, south of East 72nd Street North and west of Cliff Avenue. Sand and gravel deposits are common in the areas along the Big Sioux River and Skunk Creek basin. The predominate land uses in this area consists of commercial uses to the south and residential uses to the north and east.

The proposed extraction area is located adjacent to several residential area. There appears to be more than one hundred (100) residences located in the general vicinity within 1,000 feet of the area to be mined. The applicant has not provided any waivers from these property owners.

The applicant has provided a narrative, hydrologic study and site plan which is included for the Planning Commissions' review. The site plan indicates that once mining is complete more than forty (40) acres of water will remain. The plan calls this area Goeden Lake Park. The area would be redeveloped as a resort and mobile home park.

The conditional use permit was submitted to the Sioux Fall Regional Airport for review. On October 12, 2017, staff received a letter from Dan Letellier indicating serious concerns with the proposed mining activity. The proposed activity is located at the end of the primary instrument runway, 21. The mining activity will result in over 25 acres of open water. This open water will be a draw for waterfowl, which is a threat to the operation of the regional airport. Furthermore, the proposed sand and gravel pit falls within the Airport Overlay District which requires an

easement from the airport. Dan Letellier, Executive Director for the Regional Airport, has indicated that no such easement will be granted.

The Planning Commission is to consider the following criteria when acting upon requests for conditional use permits:

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 proposed use would significantly impact the use of a major regional airport. The proposed use would also negatively impact the enjoyment of the residential property owners in the area by greatly increasing truck traffic, noise and dust.

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

The proposed conditional use permit could negatively impact the normal development of the area by restricting further residential development during the mining activity.

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

There are adequate roads to accommodate the proposed use. Utilities are found in the area and can be utilized.

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

Off street parking requirement would be met.

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

A berm has been proposed, which would be a measure to reduce some negative aspects of the mining activities.

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

Staff reviews conditional use permits to determine that they are compatible with the existing land uses in the general area. With this specific mining request, the proposed use will result in a serious conflicting land use for both the residential land uses to the north, east and south and for the Sioux Fall Regional Airport. The airport has seen significant growth over the past decade and the number of flights is likely to increase as the population of the region grows. The potential for bird strikes into planes should be considered. The mining activity will result in a large body of water, which will attract various types of birds, including large waterfowl. The proposed sand and gravel mining operation would be a threat to the health and safety of the traveling public and not following the intent to the Comprehensive Plan to reduce conflicting land uses.

The applicant has failed to submit the necessary waivers from all of the 100+ residences within

1,000 feet of the subject property under consideration for the sand and gravel conditional use permit. These residences will be impacted by noise, traffic and potentially dust.

Due to the incapability of the proposed land use with the existing land uses, staff finds the proposed conditional use permit not be in the best interest of the public and a threat to the safety of the public.

Recommendation: Staff recommends **denial** of Conditional Use Permit #17-77.

Public Testimony

Scott Anderson, County Planning Director, presented a brief overview of the staff report and recommendation for the conditional use permit request. Commissioner Cypher asked staff for clarification about the email letter from the Sioux Falls Water Department. Mr. Anderson explained that the City has wells in the general area and the Water Department is requesting delaying the application to allow additional time to review the conditional use permit. Mr. Anderson also mentioned that the opposition letters from neighboring landowners were sent to the joint planning commissions for their review.

Harold Goeden, 3501 River Bluff Road, identified himself as the petitioner for the conditional use permit request. Mr. Goeden explained that there will be a more limited amount of dust than most pits. He continued to mention that the trucks would use the stoplight at Dike Place and Cliff Avenue, which is already a truck route.

Mr. Goeden indicated that a majority of the sand will go into the City of Sioux Falls. He questioned the ability for larger cities to have pits with large bodies of water within one thousand feet of an airport as well as there being twenty pits already near city limits.

Harold Goeden sent out notification letters to the property owners within 500 feet but was not aware until receiving the notice for the 1,000-foot property owner mailing requirement. He continued to explain that this pit will have the least impact of all due to the truck routes being primarily on state highways. Commissioner Cypher asked the petitioner about the landowner waivers. Mr. Goeden explained that he did send all the waiver notification forms to all of the property owners within 500 feet of the subject property but has not received many of them back.

Commissioner Kostboth asked Scott Anderson if the planning commission can prove the waiver requirement. Mr. Anderson explained that it is strongly suggested to obtain waiver but it is not a mandatory requirement in the joint zoning ordinance. Commissioner Kostboth asked if airports are included in the waiver requirement and Mr. Anderson explained that airport is not listed in the zoning ordinance.

Jeff Schmitt, City Planning, explained the Airport Overlay District in the city limits for clarification that it does not have enforcement authority within other jurisdictions.

Commissioner Barth asked for an opinion from the City of Sioux Falls planning staff. Mr. Schmitt did not provide a recommendation for approval nor denial. He explained that the property is in a floodplain area and a transitional area which does allow mining to take place. The floodplain area makes it difficult for residential development in the future.

Commissioner Paulson asked city staff to comment on the letter from City Water Department. Jeff Schmitt noted that the City Water Department would like more time to review the permit. Jeff continued that mining operations are allowed in the water source protection overlay district but some items such as tanks and chemicals would not be allowed.

Gene Thill, 1002 E. 65th St. N., explained concerns over drainage across the surrounding his property and issues with maintenance of the dike.

Dan Letellier, 3800 S. Florence Ave., identified himself as the Executive Director of the Sioux Falls Regional Airport and explained the concerns for the current as well as future operation of the airport. Mr. Letellier indicated that the proposed use would be a recipe for disaster and that other cities didn't allow pits near major airports. He continued to explain that there are only existing rivers and water bodies next to the airports.

Courtney Vandenburg, 1405 E. 63rd St. N., indicated that she didn't get notice of the meeting other than from the neighbors. Ms. Vandenburg explained that there are thousands of children around the area at various daycares in the neighborhood.

Robert Fahey, 904 E. 65th St. N., noted that many elderly people live in the area, and he raised concern about dust and the health of the elderly. In addition he was concerned about the two wells that he has on his property.

Mark Christopherson, 1301 E. 67th St. N., mentioned that he does not want to look at a gravel pit across the street every day.

Greg Ericson, 5409 N. Fairfax Ave., identified himself as a 65 year resident of the neighborhood directly to the south of the proposed pit. He continued to explain that the homes in this neighborhood are well kept and there is concern about the impact to property values.

Kathy Scott, 1516 E. 67th St. N., indicated that she is currently building a house now in the Granite Valley Subdivision and mentioned concerns over the impact to property values. Ms. Scott explained that the berm will not control dust with dry stockpiles lying around.

Bud VanBockern, 5701 N. Gold Nugget Ave., mentioned concerns over the flow of water from the retention pond to the west under Cliff Ave. towards the subject property.

Linda Pierson, 5413 N. Indiana Ave., stated concerns about dust, sickness, truck traffic, property values, and general enjoyment of property. Ms. Pierson mentioned that the other pits started

prior to residential development.

Dick Wilde, 812 W. 72nd St. N., mentioned concerns over the effect on wells, peoples' health, and takes away from landowner plans.

Joanne Runge, 6200 N. Cliff Ave., identified herself as the owner of the mobile home court kitty corner to the northeast of the subject property. Ms. Runge stated concerns on behalf of the 200 residents in the trailer court regarding noise, traffic, air pollution, and drainage flow of water.

Duane Bjerkaas, 1200 E. 67th St. N., indicated that he is directly across Cliff Ave. to the east of the proposed gravel pit. Mr. Bjerkaas explained that he received a letter from a concerned citizen and mentioned concerns over certain kinds of diseases. He continued to indicated his concern regarding major loss of home value and losing an enjoyable view of the farm field. Mr. Bjerkaas stated overall concerns about property value, health, and aesthetics of the community.

Ryan Paul Tellberg, 1001 E. 65th St., reiterated the concerns of Mr. Bjerkaas and urged the planning commissions to deny the conditional use permit request.

Judy Woodard, 6101 N. Mineral Ave., questioned why the land has to change from farming use and indicated concern over the level of noise from traffic with the addition of the proposed use.

Jeff Westaby, 5401 N. French Ave., identified himself as a resident of the neighborhood for a majority of his life and explained concerns about dust from the proposed use.

Bill Schildhauer, 6413 N. Cliff Ave., mentioned concern over traffic, water wells, property values, and floodplain issues.

Linda Pierson, 5413 N. Indiana Ave., questioned the planning commissions about having a pit in their backyard.

Harold Goeden mentioned that the property values will probably not fall. He continued to explain that the proposed use for a sand pit doesn't necessarily devalue surrounding properties but it adds different structure to the neighborhood. Mr. Goeden mentioned a brief review of a hydrology study that was completed for the subject property and the impact to operations.

Mr. Goeden stated that they won't dewater the property due to restrictions and explained that they cannot control the water level because the water flows through the sand under the ground.

Commissioner Cypher closed the floor for public testimony.

Discussion

Commissioner Barth acknowledged that there may be plenty of experts here but many things presented tonight can't be proven. Commissioner Barth explained that there are plenty of

possibilities that could go on this site such as a solar array or soybeans. He indicated that life is full of change and its not zoned museum but there is a clear and present danger to air travel.

Commissioner Kostboth concurred with airport concerns as well as dust and noise issues.

Commissioner Ode concurred with both Commissioners Barth and Kostboth. Commissioner Ode continued to mention that people are always afraid of the unknown but there are ways to work around difficulties.

Commissioner Ralston mentioned that the proposed use is not appropriate for the area given the land use effect on the surrounding community.

Commissioner Randall indicated appreciation for the concerns presented by everyone and that the planning commission considers all aspects to their best individual abilities. She reiterated the concern of the airport regarding the geese population.

Commissioner Duffy stated her appreciation of the letters submitted from everyone regarding the safety issues and water drainage history. She continued to mention that the planning commission will decide based on the highest and best use of the land.

Commissioner Cypher questioned the appropriateness of the proposed use on this specific site.

Commissioner Johnson explained that he has aviation experience and reiterated the safety concerns with migratory wildlife. He continued to mention that water was there first in many of the areas brought up earlier in the public comment period.

Commissioner Ervin explained that property owner rights should always be considered and that the proposed use doesn't make sense on this site with the airport concerns in mind.

Commissioner Paulson mentioned safety concern and that the proposed land use is incompatible with the surrounding properties as well as not in the public interest.

Commissioner Fiegen concurred with Commissioner Ervin as well as the lack of waivers and airport concerns present.

Commissioner Sershen concurred with Commissioner Johnson but explained that this would be a good location if done right.

Commissioner Johnson explained that the City planning commission is always requested to vote in the affirmative.

Action

A motion was made for the County by Commissioner Barth and seconded by Commissioner Randall to **deny** Conditional Use Permit #17-77. The motion passed unanimously. A motion was made to **approve** for the City by Commissioner Ervin and seconded by Commissioner Paulson. The motion failed with 4 nays, 0 yeas (4-0). Item #7 was not approved by the City.

Conditional Use Permit #17-77 – Denied

Old Business

None.

New Business

None.

Adjourn

A motion was made for the County to **adjourn** by Commissioner Barth and seconded by Commissioner Kostboth. The motion passed unanimously. The same motion was made for the City to **adjourn** by Commissioner Sershen and seconded by Commissioner Feigen. The motion passed unanimously.

The meeting was **adjourned** at 8:33 pm.