



**MINUTES OF THE
MINNEHAHA COUNTY PLANNING COMMISSION**
January 22, 2018

A meeting of the Planning Commission was held on January 22, 2018 at 7:00 p.m. in the Commission Room of the Minnehaha County Administration Building.

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

STAFF PRESENT:

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

Bonnie Duffy chaired the meeting. Planning Commissioner Vice-Chair Bonnie Duffy called the Minnehaha County Planning Commission meeting to order at 7:00 p.m.

Commissioner Duffy called for nominations for chair of the Planning Commission. Commissioner Kostboth nominated Bonnie Duffy for chair. Commissioner Barth seconded the nomination. No other nominations were made. Commissioner Duffy called for a vote and Bonnie Duffy was elected unanimously as chair of the Planning Commission for 2018.

Commissioner Duffy called for nominations for vice-chair of the Planning Commission. Commissioner Barth nominated Becky Randall for vice-chair. Commissioner Ralston seconded the nomination. No other nominations were made. Commissioner Duffy called for a vote and Becky Randall was elected unanimously as vice-chair of the Planning Commission for 2018.

Commissioner Duffy noted that an item was on the agenda that required the Board of Adjustment to meet. Commissioner Barth motioned to recess to allow for the Board of Adjustment meeting to commence. The motion to recess was seconded by Commissioner Kostboth. The motion passed unanimously.

Commissioner Duffy reconvened the Planning Commission meeting at 7:13 p.m.

CONSENT AGENDA

Commissioner Duffy read each item on the agenda individually. Commissioner Barth requested to move Item 3 on the regular agenda.

A motion was made by Commissioner Randall and seconded by Commissioner Kostboth to **approve** the consent agenda consisting of Items 2, 4, 5, 6, 7, and 8. The motion passed unanimously.

ITEM 2. Approval of Minutes – November 27, 2017

As part of the consent agenda, a motion was made by Commissioner Randall and seconded by Commissioner Kostboth to **approve** the meeting minutes from November 27, 2017. The motion passed unanimously.



Consent Agenda

ITEM 4. CONDITIONAL USE PERMIT #18-02 to amend Conditional Use Permit #15-61 to allow an additional building and site plan adjustments on the property legally described as Tract 3 (Ex. H-1), Krell's Addition, SE 1/4 SE1/4, Section 36-T101N-R51N.

Petitioner: Joshua and Amanda Nelson
 Property Owner: Blue Barn, LLC (Josh and Amanda Nelson)
 Location: 46594 268th St. Approximately 3 miles west of Sioux Falls
 Staff Report: David Heinold

This would amend Conditional Use Permit #15-61 to allow an additional building and site plan adjustments.

General Information:

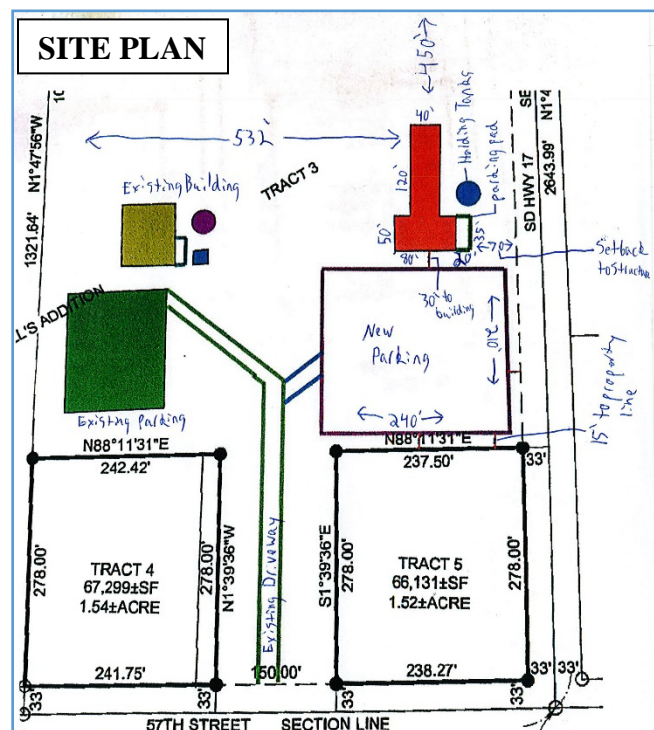
Legal Description – Tract 3 (Ex. H-1) Krell's Addition, SE1/4 SE1/4, Section 36-T101N-R51W
 Present Zoning – [C Commercial District](#)
 Existing Land Use – Commercial
 Parcel Size – 17.05 Acres

Staff Report: David Heinold

Staff Analysis:

The petitioner is requesting an amendment to Conditional Use Permit #15-61 to allow an additional event building and site plan adjustments. The attached narrative describes that the proposed building would be used in an identical role as the banquet facility on the same property. According to the site plan, at right, the proposed 8,800 square foot event building will be located directly east of the existing 4,000 square foot event barn facility approved on October 20, 2015 by the County Commission.

On January 9, 2018, staff visited the property and determined the proposed land use to be compatible with properties in the immediate vicinity. The application provided complete detail for the proposed use, additional event building. The applicant indicated that most of the drainage of storm water runoff will go to the north of the

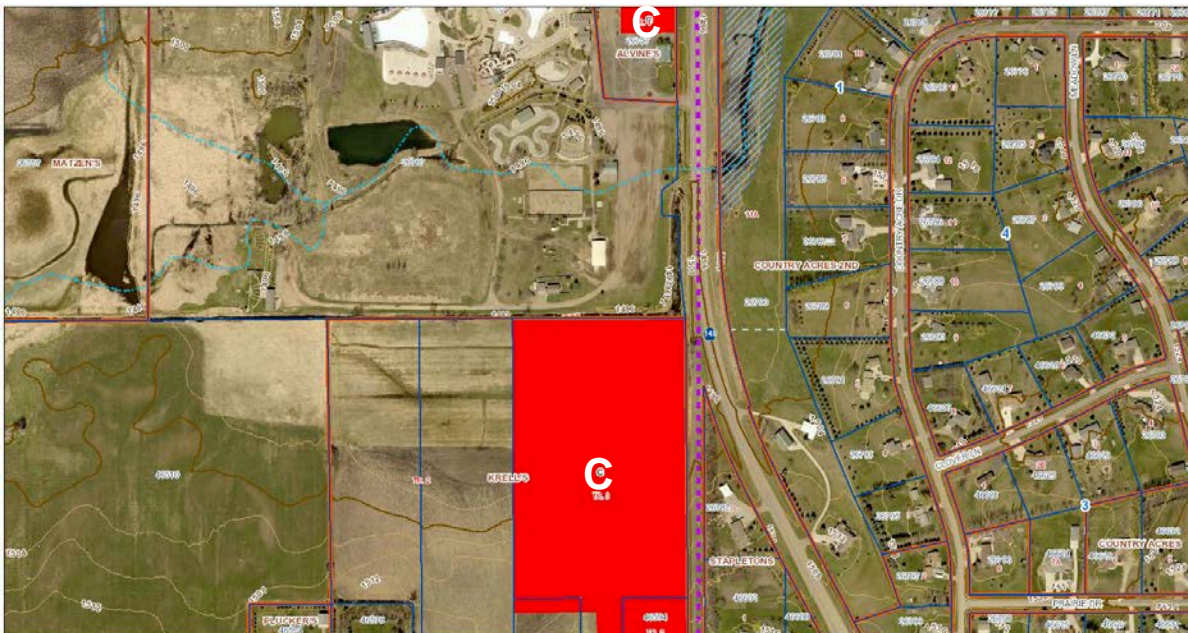




proposed building site.

The chart, below, indicates surrounding land uses and zoning adjacent to the subject property.

	Existing Land Use	Existing Zoning
North	Recreation Facility/Waterpark	A-1 Agricultural District
South	Commercial/Residential	C Commercial District
East	Residential	A-1 Agricultural District
West	Agriculture	A-1 Agricultural District



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.

There is already a permitted event facility located on the subject property and 16'x20' photography studio with a 14'x15' office on commercially zoned property to the immediate south of the proposed building location. In addition to the photography studio and office, there was 16'x20' storage shed permitted on the same parcel. The adjacent property to the north contains an existing recreation facility known as Wild Water West waterpark less than a quarter mile from the proposed land use for an additional event facility. There is an existing subdivision, Country Acres, which contains over 60 single family dwellings located east of County Highway 145. The remaining land to the south and west is primarily used for agriculture with a few residential acreages along 268th St.



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

The Envision 2035 Comprehensive Plan identifies the area just outside the Transition Area for the City of Sioux Falls in the Agricultural Production Area. The predominant land use among the surrounding properties is agricultural because it is likely to continue as primarily farm land through the duration of the 20-year planning horizon and beyond with the exception of the available building eligibilities for single family dwellings.

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

Applicant response: The parking lot, accessible via the existing driveway approach off of 268th St., would be constructed of a surge rock base and overlay with crushed asphalt. This parking lot construction would allow for a dust free area that still allows water to penetrate and have a minimal effect of drainage. Irrigation on this half of the property will come from a large pond during building construction as well as a shallow well.

According to the 4-foot contour map, at right, the majority of the water shed from the proposed building should runoff to the south and north adjacent low-lying areas. There is an existing stream about a quarter mile to the north of the site that flows through the middle of the subject property towards Skunk Creek. Although without a proper review of the site development characteristics, it is difficult to determine the adequacy of drainage from the site and drainage can be a concern on similar sized lots when the larger drainage patterns are not considered. The entire parcel encompasses approximately 17.05 acres, which the site consists of about 2 acres.



Therefore, staff suggests that a stormwater drainage plan be submitted for the site as described on the contour map, above, prior to issuing a building permit detailing the management for the type, amount, and intensity of water flow across the site.

The Environmental Stewardship section of the Envision 2035 Comprehensive Plan implies:

That development should not be allowed prior to completion of a drainage plan which defines natural drainage corridors and identifies the number and location of detention facilities needed to accommodate additional runoff from impervious surfaces. The Plan encourages land developers to use natural areas for aesthetic, open space, hydrologic, and ecological purposes.



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

Applicant response: The parking lot will be more than adequate for a building of this size.

The site plan shows an approximately 50,000 square feet of parking area adjacent to the south of the proposed building. The zoning ordinance requires a minimum of 88 parking spaces for uses classified as recreation facilities, or 1 space for every 100 square feet of gross floor area.

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.

Applicant response: The building will be built to code with all setback requirements being met. The property is currently zoned commercial. The proposed parking lot will have a 10-foot screening wall on the east side of the property, which is adjacent to a residential home.

Due to the nature of the proposed use for a wedding and corporate event facility, there will be nuisances between surrounding land uses. At a minimum, the petitioner shall be required to provide fully cutoff and fully shielded lighting, limited evening hours of operation, dust control on gravel driving surfaces, and opaque screening from the adjacent residentially-used property.

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 existing commercial establishments and in close proximity to residential uses. The proposed use will fit well into the mix of commercial, agricultural, and residential uses in the immediate area.

The subject property is zoned C Commercial, which allows for permitted uses such as office, warehousing, and retail sales with certain limitations. Staff recognizes that residents of rural communities utilize small towns and rural service areas as gathering spots, employment, and convenience shopping that are changing as commercial and industrial districts expand services to attract customers from Sioux Falls as well as the larger regional area. The Envision 2035 Comprehensive Plan should assist in the orderly development of these important places of rural character. Furthermore, the addition of conditions on this permit allows planning staff a method for insuring that the goals and policies of the Plan and intent of the Zoning Ordinance are upheld.

The proposed use will be located just outside the transition area and about one mile south of an existing commercial rural service area as defined by the Envision 2035 Comprehensive Plan. The immediate area is served by transportation access to highways including County Highways 145 and 148. The proposed use of an additional event facility is compatible with existing land uses in the surrounding area and should not significantly affect the health, safety, and general welfare of the public.

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

Goal #1 aims to develop a countywide land use pattern that ensures compatibility and functional relationships among jurisdictions and related land use activity.



Recommendation:

Staff finds that the proposed use is compatible with the zoning ordinance and Envision 2035 Comprehensive Plan. Staff recommends **approval** of Conditional Use Permit #18-02 with the following conditions:

- 1.) That CUP #18-02 shall allow a banquet and event facility.
- 2.) That the property shall adhere to the submitted site plan dated 12-20-2017.
- 3.) That all signage shall be in conformance with Article 16.00 and 17.00 of the 1990 Revised Zoning Ordinance for Minnehaha County. A building permit is required for the installation of any signage.
- 4.) That a set of plans certified by a registered professional engineer be submitted for review and approval prior to the building permit(s) being issued for all buildings.
- 5.) That the applicant shall comply with Section 15.04 Minimum Improvement and Maintenance Standards of the 1990 Revised Zoning Ordinance for Minnehaha County for all driveways, parking lots, and loading/unloading areas.
- 6.) All applicable gravel driveways and parking areas shall have dust control product applied a minimum of once a year.
- 7.) No outside storage shall be allowed at any time.
- 8.) That all outdoor lighting shall be of a full cutoff and fully-shielded design to prevent direct spillage of light beyond the property boundary.
- 9.) 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.
- 10.) That the Planning Department reserves the right to enter and inspect the banquet and event facility at any time, after proper notice to the owner, to ensure that the property is in full compliance with the conditional use permit conditions of approval and the Minnehaha County Zoning Ordinance.

Action

As part of the consent agenda, a motion was made by Commissioner Randall and seconded by Commissioner Kostboth to **approve** Conditional Use Permit #18-02 with staff recommended conditions. The motion passed unanimously.

Conditional Use Permit #18-02 – Approved



Consent Agenda

ITEM 5. CONDITIONAL USE PERMIT #18-03 to transfer one (1) building eligibility from the E1/2 NE1/4 (Ex. portion of Tract 1, Dressen’s Addn.) to Tract 4, Powers’ Addition, SE1/4; all in Section 11-T102N-R49W.

Petitioner: Dean Hammer
Property Owner: Edwin J. Powers
Location: Approximately 3 miles north of Sioux Falls
Staff Report: David Heinold

This would transfer one (1) building eligibility.

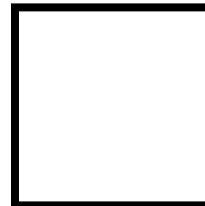
General Information:

Legal Description – Tract 4, Powers’ Addition, SE1/4, Section 11-T102N-R49W
Present Zoning – A-1 Agricultural District
Existing Land Use – Pasture
Parcel Size – 7.43 Acres

Staff Report: David Heinold

Staff Analysis:

The petitioner is requesting conditional use permit approval to allow the transfer of one (1) building eligibility from the E1/2 NE1/4 (Ex. portion of Tract 1, Dressen’s Addn.) to Tract 4, Powers’ Addn., SE1/4; all in Section 11-T102N-R49W. The proposed building site is adjacent to a hard surfaced road, County Highway 130, while the current location is adjacent to gravel. The proposed transfer location, Tract 4 at right, will allow the current location to continue as farmland.



PROPOSED TRANSFER LOCATION

On January 9, 2018, staff visited the property and determined that the proposed location is appropriate for a single family dwelling. The attached questionnaire indicates that the proposed single family dwelling will utilize a shared driveway off County Highway 130. There are no concentrated animal feeding operations within a mile of the subject property.

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.

A right-to-farm notice covenant is required to notify potential buyers to the realities of locating in an agricultural area. The addition of residential land use should not negatively affect the nearby residences and farmland. The proposed building site will be located on an existing pasture area.



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

The approval of the building eligibility for a single family dwelling will not increase the number of dwelling units allowed in this section. The surrounding area is primarily agriculture with a few existing single family dwellings southwest and east of the proposed location for the dwelling.

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

The placement of the building eligibility will result in the construction of a single family dwelling utilizing the existing shared driveway approach off of County Highway 130.

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 otherwise constitute a nuisance.

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

The health, safety, general welfare of the public should not be significantly impacted by the placement of one single family dwelling with an existing building eligibility. The intent of the Envision 2035 Comprehensive Plan will be met under the requirements of density zoning.

Recommendation:

Staff finds this conditional use permit request to be consistent with density zoning and recommends **approval** of Conditional Use Permit #18-03 with the following conditions:

1. A right-to-farm notice covenant shall be placed on the deed prior to the issuance of a building permit for the single family dwelling.

Action

As part of the consent agenda, a motion was made by Commissioner Randall and seconded by Commissioner Kostboth to **approve** Conditional Use Permit #18-03 with staff recommended conditions. The motion passed unanimously.

Conditional Use Permit #18-03 – Approved



Consent Agenda

ITEM 6. CONDITIONAL USE PERMIT #18-04 to allow an Agricultural Related Operation – Haygrinding Business on the property legally described as Tract 1A and 1B, Dunker’s Addition, SE1/4, Section 31-T103N-R50W.

Petitioner: Travis Haaland

Property Owner: JR Friessen Properties, LLC

Location: 46638 256th St. Approximately 3.5 miles west of Crooks

Staff Report: Kevin Hoekman

This would allow Truck Storage and Repair Shop.

General Information:

Legal Description – Tract 1A and 1B, Dunker’s Addition, SE1/4, Section 31-T103N-R50W

Present Zoning – A1-Agriculture

Existing Land Use – Residential Acreage

Parcel Size – 4.19 Acres

Staff Report: Kevin Hoekman

Staff Analysis:

The subject site is located approximately 3.5 miles northwest of the City of Crooks on a township road. The petitioner has divided the property into two lots. Tract 1A has the residential dwelling and Tract 1B has a large shed. The petitioner plans on utilizing the shed for the operations for a hay grinding business.

The site is currently a residential property with several accessory buildings left from a time when it was a farmstead, and from more recent construction. The petitioner has submitted a simple site plan that shows the location of the now constructed accessory shed. A narrative describes the operation as a haygrinding business. The shed will store equipment and be a location to do business related shop work, but the actual hay grinding will take place off site. The off-site nature of the business should minimize many potential concerns. The site will use the driveway constructed at the time of building construction.

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 primarily serve agricultural businesses in the region. The shed will be used for storage of items and machines to avoid outdoor accumulation of items. The primary function of the business, haygrinding, will take place at the site of the customer and not at this location. The use of the building for storage and shop maintenance will be similar to the use of accessory buildings anywhere in the rural area of the county. In addition, the accessory building and maneuvering driveway are largely located behind a grove of trees that screen the view of the



structure from the right-of-way.

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

The proposed haygrinding business will take place within an existing accessory structure. The haygrinding will largely take place off site. The use of the accessory building for primarily storage and maintenance will not likely impact future growth of the area.

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

The site plan shows an access east of the driveway for the dwelling. The petitioner will be required to obtain any necessary utilities for the use. The use of the accessory structure will not significantly affect the drainage of the site.

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

The accessory structure itself will contain much of the parking. The driveway and maneuvering area is large enough to allow for loading and unloading off the road.

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

Since the primary use of the business will take place at the location of the customer, many concerns over nuisance will not take place on site. The maintenance of equipment and loading and unloading may create noise, but it is not likely the noise will exceed regular equipment used by other agriculture operations.

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

The site is located in an active agriculture production area. The comprehensive plan encourages support of agriculture and businesses that support agriculture. The agriculturally related operation of haygrinding should fit with the intent of the plan.

Recommendation:

Minnehaha County planning staff finds that the proposed use is generally compatible with the site and surrounding land uses. Staff recommends **approval** of Conditional Use Permit #18-04 with the following conditions:

- 1.) The property shall adhere to the submitted site plan.
- 2.) No outside storage of commercial equipment and materials shall be allowed at any time.
- 3.) Any on-site grinding of hay shall take place minimally and during daylight hours.
- 4.) That the Planning & Zoning Department reserves the right to enter and inspect the haygrinding business at any time, after proper notice to the owner, to ensure that the property is in full compliance with the conditional use permit conditions of approval and the Minnehaha County Zoning Ordinance.



Action

As part of the consent agenda, a motion was made by Commissioner Randall and seconded by Commissioner Kostboth to **approve** Conditional Use Permit #18-04 with staff recommended conditions. The motion passed unanimously.

Conditional Use Permit #18-04 – Approved



Consent Agenda

ITEM 7. CONDITIONAL USE PERMIT #18-05 to make one (1) building eligibility available on the SE1/4 SE1/4, Section 5-T102N-R48W.

Petitioner: Brian Mohr

Property Owner: same

Location: Approximately 5.5 miles southwest of Garretson

Staff Report: David Heinold

This would make one (1) building eligibility available.

General Information:

Legal Description – SE1/4 SE1/4, Section 5-T102N-R48W

Present Zoning – A-1 Agricultural District

Existing Land Use – Farmland/Pasture

Parcel Size – 146.5 Acres

Staff Report: David Heinold

Staff Analysis:

The petitioner is requesting to make one (1) building eligibility available in the SE1/4 SE1/4 of Section 5-T102N-R48W to allow construction of a single family dwelling. The proposed single family dwelling location is accessible to 480th Ave. on approximately 5 acres of pasture. The proposed transfer, at right, will allow the remaining 141 acres to continue as farmland.



PROPOSED TRANSFER LOCATION

On January 9, 2018, staff visited the property and determined that the proposed location is appropriate for a single family dwelling. The attached questionnaire indicates that the proposed single family dwelling will utilize a shared driveway off the township road. There are no concentrated animal feeding operations within a mile of the subject property.

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.

A right-to-farm notice covenant is required to notify potential buyers to the realities of locating in an agricultural area. The addition of residential land use should not negatively affect the nearby residences and farmland. The proposed building site will be located on an existing pasture area.



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

The approval of the building eligibility for a single family dwelling will not increase the number of dwelling units allowed in this section. The surrounding area is primarily agriculture with a few existing single family dwellings southwest and east of the proposed location for the dwelling.

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

The placement of the building eligibility will result in the construction of a single family dwelling with a driveway approach being installed via 480th Ave.

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 otherwise constitute a nuisance.

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

The health, safety, general welfare of the public should not be significantly impacted by the placement of one single family dwelling with an existing building eligibility. The intent of the Envision 2035 Comprehensive Plan will be met under the requirements of density zoning.

Recommendation:

Staff finds this conditional use permit request to be consistent with density zoning and recommends **approval** of Conditional Use Permit #18-05 with the following conditions:

1. A right-to-farm notice covenant shall be placed on the deed prior to the issuance of a building permit for the single family dwelling.
2. That a driveway or culvert permit be obtained from Brandon Township prior to the issuance of a building permit.

Action

As part of the consent agenda, a motion was made by Commissioner Randall and seconded by Commissioner Kostboth to **approve** Conditional Use Permit #18-05 with staff recommended conditions. The motion passed unanimously.

Conditional Use Permit #18-05 – Approved



Consent Agenda

ITEM 8. CONDITIONAL USE PERMIT #18-06 to exceed 1,200 square feet of total accessory building area – requesting 4,800 sq. ft. on the property legally described as Tract 3 Ruhaak Addition, NE1/4, Section 23-T102N-R51W.

Petitioner: Jon A. Maras

Property Owner: same

Location: 1900 E. 2nd St. Approximately 0.5 mile east of Hartford

Staff Report: Kevin Hoekman

This would allow 4,800 square feet of total accessory building area.

General Information:

Legal Description – Tract 3 Ruhaak Addition, NE1/4, Section 23-T102N-R51W

Present Zoning – A1-Agriculture

Existing Land Use – Residential Acreage

Parcel Size – 6.91 Acres

Staff Report: Kevin Hoekman

Staff Analysis:

The property is located approximately ½ mile east of Hartford on E. 2nd Street. The site is located within an area of more than 4 platted lots. In subdivisions or residential developments which exceed four lots in number, accessory building area is limited to 1,200 square feet, unless approval for a larger size is obtained through the conditional use permit process. This request will need a conditional use permit even if the proposed ordinance amendment for accessory buildings passes.

The petitioner would like to construct a 60 foot by 80 foot accessory building. At the time of the application the petitioner noted that a 120 square foot building exists on the property that was not included in the request. During review of the request, staff found that the small building is assessed for 440 square feet. The 440 square feet will count towards the approved total accessory building area; therefore, the planning commission may approve a larger than requested area to accommodate the existing shed or simply approve the requested 4,800 square feet of accessory building. Combined the two buildings would equal 5,240 square feet.

The property is currently a large acreage including a single family dwelling. The proposed accessory building is shown on the site plan to be located east of the existing dwelling. A large concrete pad currently exists where the building is proposed to go. The property has two driveway accesses to the road.

The subject property is located in a subdivision, but only one neighbor has already constructed a dwelling. The surrounding area is predominantly agricultural but only a short distance west of the property is the City of Hartford. The provided map of accessory building sizes are only



properties that are not currently agricultural farmsteads. One of the nearby properties has a similar area of accessory building as this request, and another has accessory building space that exceeds this request.

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 accessory building 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 large square footage may lead to other large accessory building requests by neighboring residential property owners. The surrounding agricultural land will likely remain for agricultural uses. Several building eligibilities exist nearby and outside of the subdivision. These building eligibilities may also be used for residential dwellings in the future. The proposed accessory building is on a property that has many trees on the east and west sides. The building will not be screened from the south. It is unlikely that it will have any effect on the future development of agricultural or residential development in the area.

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, and the proposed accessory building will utilize the same driveway as the dwelling.

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.

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

The proposed 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. Other large accessory building totals are located on far and non-farm properties in the near area.

Recommendation:



Staff finds that the proposed accessory building is reasonable to the size of the existing structures, the size of the property, and the location on the property. Staff recommends **approval** of Conditional Use Permit #18-06 with the following conditions:

- 1.) The total accessory building square footage shall not exceed 5,240 square feet.
- 2.) A building permit is required prior to construction of the accessory building.
- 3.) That an inspection be made on the proposed new accessory building to ensure that the total floor area of the addition does not exceed 4,800 square feet.
- 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 the Planning & Zoning Department reserves the right to enter and inspect the accessory building at any time, after proper notice to the owner, to ensure that the property is in full compliance with the conditional use permit conditions of approval and the Minnehaha County Zoning Ordinance.

Action

As part of the consent agenda, a motion was made by Commissioner Randall and seconded by Commissioner Kostboth to **approve** Conditional Use Permit #18-06 with staff recommended conditions. The motion passed unanimously.

Conditional Use Permit #18-06 – Approved



Regular Agenda

ITEM 3. CONDITIONAL USE PERMIT #18-01 to allow a Commercial Recreation Facility – Multi-Purpose Amphitheatre on the property legally described as W600’, E1400’, S790’, NE1/4, Section 36-T101N-R51W.

Petitioner: Francis Phillips

Property Owner: same

Location: 26767 466th Ave. Approximately 3 miles west of Sioux Falls

Staff Report: Scott Anderson

This would allow a Commercial Recreation Facility, Multi-Purpose Amphitheatre.

General Information:

Legal Description – W600’, E1400’, S790’, NE1/4, Section 36-T101N-R51W.

Present Zoning – C Commercial

Existing Land Use – vacant

Parcel Size – 10.88 acres

Staff Report: Scott Anderson

Staff Analysis: The applicant is requesting to develop the subject property stage/concert venue. While this use is not identified as a specific conditional use within the A-1 Agriculture District, it is considered a recreational facility and is consistent with the other recreational uses already allowed through conditional use.

Staff conducted a site visit on December 18, 2017. Generally the site is fairly level. Some site grading had been done on this site to make it more suitable for past Lifelight events. Wild Water West and Blue Haven Barn are located directly to the south, while a convenience store and former Second Chance Animal Rescue are located to the north. The property to the west and east are vacant and used for agricultural purposes.

The applicant has prepared a detailed site plan and narrative explaining how the stage and concert area will operate and how it will look. This information has been included for your review. The proposed stage will be 40 feet by 60 feet and will stand 6 feet off the ground. There will be a 48 foot tall canopy covering the stage area. The applicant has applied for a height variance. The applicant has indicated that the existing parking lot for Wild Water West will be used for venue parking.

There will be no landscaping proposed for this project. The site has been graded to allow for concert goers to sit on the grass or bring chairs and watch the show. The applicant has not proposed any signage for the venue. Any signage will be required to meet the minimum standards of Article 16 of the County Zoning Ordinance. A building permit will need to be issued by the County. The applicant will need to work with the County Highway Department and obtain any permit that the county requires.



Staff will be recommending that the concession stand remain open and manned while the public is there. The concession stand shall have a first aid kit, fire extinguisher, and capability to contact E911 should some medical or other emergency arise. In addition, the applicant shall use the speaker systems to broadcast any evacuation order due to potential adverse weather.

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 an expansion of the existing recreational use already taking place to the south, that of Wild Water West. This recreational destination hosts thousands of visitors during the summer. This site was also the location of the Lifelight Event, which hosted up to 60,000 attendees per day. Given this fact, a concert venue should not significantly impact the property values in the area, nor the predominantly commercial uses to the north and south. This area is not well suited for further residential development due to drainage issues and a high ground water table, so the proposed use is well suited to the general area.

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

The subject property is located ½ mile south of the intersection of two county highways. There has been commercial development within this general area. This new use should not impact normal and orderly development in the area.

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

The site will utilize on-site drainage. The applicant has indicated that venue attendees will either walk along the north side of Wild Water West to access the site or walk thru the amusement park. The applicant has proposed to provide toilet facilities and a place to obtain food and water if needed.

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

The concert venue will be utilizing the existing Wild Water West parking lot which is capable of handling expected volumes. The applicant has additional land to expand the existing parking lot or create a new one for the concert venue.

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

There will be some general traffic noise, but one needs to consider that the site is located adjacent to a major County Highway. The operating hours will be daily from 8 am to midnight. The operation of the concert venue in this time frame is reasonable and should not present a nuisance to the average person.



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

Staff has reviewed the request and required conditions that will provide some safety measures for the public. The proposed use is an expansion of the existing recreational activities in the area. The Comprehensive Plan suggests that commercial develop in this area is appropriate, as it is near the intersection of a state and county highway.

Recommendation: Staff recommends **approval** of Conditional Use Permit #18-01 to allow a concert venue as a recreational facility with the following conditions:

1. That the applicant follow the site plan that was submitted with the application.
2. The applicant obtain and hold a South Dakota Sales Tax License.
3. All new exterior lighting shall be shoe box style that directs the lighting downward and any lighting on fences shall also be directed downward.
4. The hours of operations shall be daily between 8 a.m. and midnight.
5. Any new septic system must be reviewed and approved by the S.D. Department of Environment and Natural Resources (DENR) and the applicant shall obtain an On-site Wastewater Disposal Permit from the County prior to construction.
6. The Wild Water West concession stand remain open and manned while the public is present. The concession stand shall have a first aid kit, fire extinguisher, and capability to contact E911. The concession stand shall meet all health requirements for food handling required by the state.
7. One (1) illuminated sign shall be allowed up to 300 square feet, not to exceed 15 feet in width and 25 feet in height. The design of the sign shall be approved by the Planning Department.

Public Testimony

Scott Anderson, County Planning Director, presented a brief summary of the staff report and recommendation for the Conditional Use Permit.

Commissioner Ralston raised concern over the suggested hours of operation of 8:00 am to Midnight. The proposed use will create noise and it may be useful to have a noise decimal requirement to nearby dwellings.



Commissioner Barth related noise issues with Huset's Speedway which has projected noise all the way to Sioux Falls. He added that a race track is different than a concert venue.

Scott Anderson noted that the planning commission could consider noise requirements, and he pointed to regulations with mining as a potential example to follow.

Francis Phillips, the petitioner, spoke to the concerns of the planning commission. Francis Phillips noted that 7 years ago, the location was the host site for Life Light music festival. He described the area of nearest dwellings and businesses and further stated that no known noise issues were found as a result of the three band stages for that festival.

Commissioner Barth commented that there will be no way to recall the petitioner once the item is approved. He added that the Sheriff's Department was busy with cars parking on the road during Life Light. Mr. Phillips responded that the intent of the venue is to hold concerts and events for corporate events. He added that he was willing to work with the County if negative feedback arises.

Scott Anderson cleared up that Huset's Speedway was a grandfathered use with no way to recall the use, but the Commission will be able to recall the petitioner of a CUP if issues arise after approval.

Commissioner Randall asked how many parking spaces are available for the venue. Francis Phillips responded with a short list of hundreds of parking spaces and overflow spaces available with the current water park and future parking.

Commissioner Duffy asked how parking will be monitored. Francis Phillips responded that there are already parking monitors for the park that will continue to direct traffic and monitor parking through operating hours.

Commissioner Randall further asked how the petitioner will accommodate restrooms and if there are plans for camping to be part of future plans. Francis Phillips responded that there will be trailers and port-a-potties depending on size of event. Further the current park facilities will likely be used when corporate events take place. Francis Phillips continued that overnight camping is not part of current plans.

Action

A motion was made by Commissioner Barth and seconded by Commissioner Ralston to **approve** Conditional Use Permit #18-01 with staff recommended conditions. The motion passed unanimously.

Conditional Use Permit #18-01 – Approved



Regular Agenda

ITEM 9. REZONING #18-01 to rezone property described as Beginning in the SE corner of Section 9-T102N-R50W Thence W 716', Thence N 510', Then Northeasterly 864', Thence E53' Thence South 1060' to the point of the beginning. Unplatted Property SE ¼ SE ¼ Section 9-T102N-R50W Benton Township, Minnehaha County, South Dakota from the A-1 Agricultural District to the PD Hope Harbor Planned Development District.

Petitioner: Hope Harbor

Property Owner: Crooks Investment, LLC (Kent Huisken)

Location: Approximately 0.5 mile southwest of Crooks

Staff Report: Kevin Hoekman

This would rezone from the A-1 Agricultural District to the PD Hope Harbor Planned Development District.

General Information:

Legal Description – SE ¼ (Ex H-1) Section 09-102-50

Present Zoning – A1-Agriculture

Existing Land Use – Agriculture Cropland & Pasture

Parcel Size – 158.98 acres (approximately 13.2 acres requested to be rezoned)

Staff Report: Kevin Hoekman



Staff Analysis:

The applicant is proposing to rezone approximately 13.2 acres of a ¼ section parcel from A-1 Agricultural to Hope Harbor Planned Development district. An engineer drawing of the site is provided to the right in Figure 1. The primary purpose for rezoning request is to allow one or more group homes with associated school, structures, and activities.

The property is located on the northwest corner of County Highway 130 and 469th Avenue. The outline of the described area roughly follows the tilled land between Willow Creek and the two roads. The applicant would have to acquire permission from either the County Highway Department or Benton Township for access to the property. The proposed development site plan shows access will be from 469th Avenue which is maintained by Benton Township. The property is also within the platting jurisdiction of the City of Crooks, and any new plat must meet subdivision regulations of both the City of Crooks and Minnehaha County.

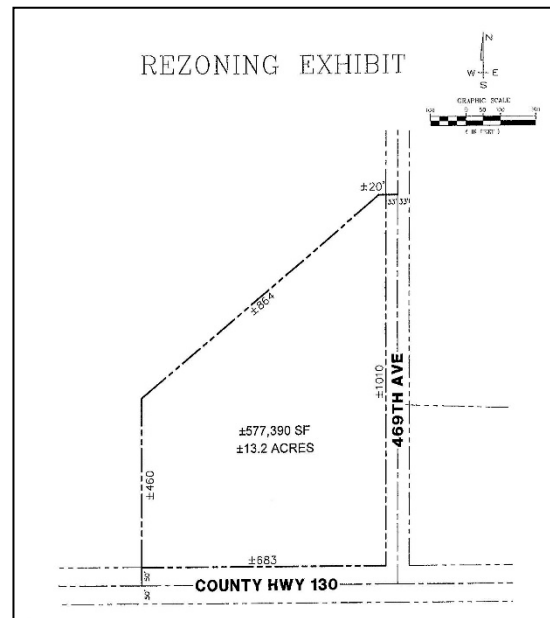


Figure 1 Engineer Drawing

The general area of the proposed request is mostly agricultural land with a few residences and farmsteads. Directly north of the quarter section is the lagoons for the City of Crooks. Willow Creek flows to the west and north site, and the creek’s floodplain extends on the site in some places. Much of the land is still developable outside of the floodplain, and the submitted narrative that describes potential development phases suggests possible recreational uses of the creek including a dugout pond.

The petitioner has submitted detailed narratives of the proposed group homes, and in addition to the narratives a concept site plan has been submitted as well. The first part of the narrative, the overview, describes the current organization of Hope Harbor which began in 2005 as a home for teen girls. The overview continues to describe how the proposed group home will use a similar program for teen boys. The program will accept voluntarily placed boys in a group home environment where individual boys will live for approximately 12 months. Staff will be present at all times day and night. The proposed zoning district regulations states that “Design, operating, and licensing requirements of appropriate state and federal agencies must be met for all group homes.”

The narrative and site plan together show the proposed phases of construction for the property. Dwellings are to be constructed for the purpose of housing the boys with about nine boys in each dwelling. The site plan, narrative, and proposed zoning district limits the number of dwellings to three. In addition to the dwellings, accessory buildings are planned to house school activities



and vocational type training such as shop repair and woodworking. The proposed zoning district would also allow an accessory dwelling unit to be constructed as part of the dwelling or other structure to allow families and employees to stay overnight if needed. The site plan shows three dwellings and three accessory buildings. Each dwelling has a driveway and each accessory building has a small parking lot. The site plan indicates two driveways to be shared by all the structures.

The Minnehaha County Comprehensive Plan, adopted in 2015, does not directly address the development of land for non-profit groups and institutions. The plan does include an action step to work with schools and public institutions for planning and siting of future development. Hope Harbor as a group home organization serves a similar purpose for the county as the schools and public institutions referenced in the comprehensive plan. This site is located along a county highway and is loosely bound on the west and north side by Willow Creek. It is also located near the City of Crooks which has been growing in the direction of this proposed development. There are no confined animal feeding operations (CAFOs) located near the proposed site. The nearest CAFO is a dairy located approximately 1.5 miles to the west of the proposed site. As a development in the rural area of the county, the petitioner should be aware that new or expanding CAFOs may happen in the future.

The Comprehensive Plan frequently addresses rural housing density, and this proposed development has the potential to increase the density of dwellings in the section. The proposed ordinance would allow for up to three dwellings to be located on the property. The intent of the dwellings is to house residents of the group home; however, if the project fails the dwellings may be converted into single family dwellings where building eligibilities have not previously existed. The entire quarter section of land has one remaining building eligibility after the others were transferred and clustered together to the west. Hope Harbor has been an organization since 2005 using a similar model of group homes in Minnesota. The longevity of the organization minimizes the possibility that the proposed facility will not be successful in maintaining the property for the intended purpose. The petitioner has noted in conversation that they are searching for a rural area for this group home in order to allow for outdoor activities and space for accessory structures for vocational type training. Developing the group home within a city would not allow for the desired development style.

The rezoning proposal generally meets the policies and objectives of the comprehensive plan. The county has supported a similar type of planned development with a mix of institutional, agriculture, and dwelling uses.

Recommendation: Staff recommends **approval** of Rezoning #18-01 to create the Hope Harbor Planned Development District as follows:

HOPE HARBOR PLANNED DEVELOPMENT DISTRICT. The regulations set forth herein or elsewhere are the district regulations in the Hope Harbor Planned Development District: (in Section 9-T102N-R50W)



(A) SUBAREA A

- (1). USES PERMITTED. A building or premises shall be permitted to be used for the following purposes:
 - (a). Single family dwelling not to exceed one per acre of land
 - (b). Group home(s) not to exceed one per acre of land

- (2). ACCESSORY USES.
 - (a). Accessory uses and buildings permitted are those detached accessory buildings and uses customarily incident to any permitted use in the district. No accessory building shall exceed 6,000 square feet in area.
 - (a). Accessory Dwelling. A structure or apartment which is detached or attached with a separate entrance for the purpose of temporary or permanent occupancy as a dwelling provided:
 1. no more than one accessory dwelling per primary dwelling.
 2. the accessory dwelling must not exceed 50% of the square foot area of the primary dwelling or 1,000 square feet, whichever is less.
 3. adequate sanitary sewer must be available.

- (3). PARKING REGULATIONS.
 - (a). Parking shall be regulated in conformance with the provisions of article 15.00.

- (4). SIGN REGULATIONS.
 - (a). Signs shall be regulated in conformance with the provisions of the RR zoning district.
 - (b). One freestanding sign may be permitted per sub area of the zoning district. Such freestanding sign may not exceed 32 square feet in area of sign face and 20 feet in height.

- (5). DENSITY, AREA, YARD AND HEIGHT REGULATIONS. The same requirements shall apply as in the RR zoning district.

- (6). OTHER REGULATIONS. Other regulations shall be:
 - (a). The residential density shall not exceed three (3) single-family dwellings.
 - (b). Design, operating, and licensing requirements of appropriate state and federal agencies must be met for all group homes.

Public Testimony

Kevin Hoekman, County Planning, presented a brief summary of the staff report and recommendation for the rezoning proposal.

Cheryl Moe, 704 N Agate Avenue, Brandon, was available for questions on behalf of the petitioner.



Commissioner Barth began by describing how the proposed project is essentially creating building eligibilities and he further asked the petitioner if they are likely to succeed with the group home and what responsibility will the Tri-Valley School District have for the project. Cheryl Moe responded that she believed that the project will succeed and introduced Dan Lemme to describe the project details. Cheryl Moe further described the hope harbor organization has worked with teen girls since 2005 and now is wishing to expand with a home for teen boys. As part of the program councilors, teachers, and staff will be hired by the organization. She described a screening process for placements and a process for removal of an individual if warranted.

Commissioner Ode asked if Hope Harbor attendees are referred to the organization by any agencies. Cheryl Moe responded that that was not the case.

Commissioner Randall noted that she was familiar with the program and has heard positive things about how the existing program is ran.

Commissioner Barth asked if the petitioner recognizes that the property is within a rural area where smells and machinery and other agricultural processes are common. Cheryl Moe responded that the program likes to work with the community and neighbors.

Dan Lemme spoke to the question about creating building eligibilities for the property. He noted that the property will have single family style homes on the property and not dormitories. Dan Lemme further described that the organization felt it necessary to have an “exit strategy” for the event that the group home would not remain at that site. The exit strategy for the project would be to have the three single family dwellings on the property. He described that the idea for the project has been part of long term planning for years now.

Commissioner Ode asked what the square footage of each building would be and if the driveways are planned for pavement or gravel. Dan Lemme responded that the driveway surface would depend on budget but the intent would be to asphalt the driveway at some point; each dwelling would be between 3,500 and 4,000 square feet.

Kirk Huisken, 1437 W. Waterstone Drive, noted that he has friends whose children have needed a service such as Hope Harbor. He stated that Hope Harbor has a high success rate and he is in full support of it. Kirk Huisken added that he has an agricultural background to work with the kids.

Tony Krammer, Sioux Falls, stated that his daughter has gone through the Hope Harbor program with great success. He continued that the nearest similar place for boys is 100’s of miles away. Tony Krammer finished by explaining that the parents and family are involved with counseling on a weekly basis as part of the program.



Jeannine Deters stated that she lives nearby. She raised concern with security of the group home when the kids have been determined to be a danger to themselves or others. She noted that there may be other places that would be better suited rather than this agricultural area. This proposal will create more development with more traffic and noise in the area. Jeannine Deters questioned why the petitioners desire a rural area when the two existing houses are located within cities. She continued that a program for boys would not have significant differences than a program for girls. She finished by describing that the program has repeat kids because they take away devices and other outside items while in the program, and send them back to normal conditions.

Heather McCauley, 1508 W. 71st Street, began by stating that she has a daughter currently in the girls program, and that she believes there is a great need for a boys program. She responded to previous comments by explaining a reintroduction period for participants to gradually gain back common items such as social media, phones, and similar items.

Tom Wintersteen, neighbor to the south of project, began by stating that nobody is questioning the need for this facility, only the location. He discussed the pressure for change closer to Sioux Falls, and questioned if opening building eligibilities would lead to more pressure for development. Tom Wintersteen explained some history of a failed subdivision plan for 75-100 houses for that land that failed because the commission saw the need to maintain the rural area. He continued that the project is not adjacent to the City of Crooks to allow further development if this project was to fail. He asked if the project would be more appropriate 15 or 20 miles farther outside of town were growth is slower. Tom Wintersteen proceeded with a series of questions regarding the size of Hope Harbor (he pointed to a facility in Nebraska with the same name), how would Tri-Valley School District respond with the potential influx of students, and regarding property taxes. He noted that this area is agricultural and pointed out a dairy a mile west, and that this proposed project is not an ag facility. Tom Wintersteen finished by reiterating his question that this may be a stepping stone for further development in the area. Commissioner Barth asked Tom if there would be anything that could be done to make the project more palatable. Tom Wintersteen responded that he has a vested interest in what happens in the area and mentioned that for himself some buffer may help, but that any buffers would not relieve the concerns for the project.

Dan Lemme spoke again to address concerns of Tom Wintersteen. He described the history of who owned the land and the attempt to develop the land, but the City of Crooks did not want to annex the land. He added that there are no current plans for the remaining land. Dan Lemme continued to explain that they did not want to be located too far out to allow better access for volunteers and staff.

Cheryl Moe added that the Hope Harbor in Nebraska is a different affiliation, and she described that the council service and schooling will all take place in house so there is not much need to work with the school district. Cheryl Moe discussed security that the facility will not be locked down but security will be installed for safety of staff and teens. Commissioner Kostboth asked where kids would go if the facility would close. Cheryl responded that the kids would return to



whatever school district they came from. Commissioner Randall asked if the petitioner will be open to planting more trees, and Cheryl replied that trees would likely be possible if that is what is needed. Commissioner Mohrhauser asked how close existing facilities are located to towns. Cheryl responded that the other two are located within the cities of Marshal and Winona Minnesota.

Tom Wintersteen further asked what if the facility was sold to a different entity that did not have a school on site.

Troy Kretzschmar, lives a mile north, asked why there are so many juvenile facilities on the north side of town. He raised concerns with examples of kids leaving Macrossan's Boys Ranch and stealing cars from nearby properties.

Aaron Shave, 46806 Prairie View Street, raised concern with no rural sewer in this location and the need for three more septic tanks. He also pointed out that there may be covenants on the property that require only single family dwellings on the property.

Commissioner Duffy closed the floor for discussion.

Discussion

Commissioner Barth commented that septic should be addressed. Commissioner Randall pointed out section 2 (3). "adequate sanitary sewer must be available." Commissioner Barth further asked when the item will be heard by the County Board. Kevin Hoekman, County Planner, stated that the item must be taken to the County Board and it will be scheduled for February 20th, 2018 at or after 9:00 am. At that meeting the Board will make the final decision.

Commissioner Raslton commented that if the commission should look at the project from a land use perspective as if any developer was presenting the plan.

Commissioner Randall recalled a planned development north of Renner where more dwellings were allowed than there were building eligibilities.

Commissioner Duffy asked staff if the Planning Commission was setting a precedent by approving the development. Scott Anderson explained that every action has a potential to be looked at a future date given similar circumstances. He added that every rezoning is a decision of its own for appropriate use.

Commissioner Barth asked staff if they knew anything about Aaron Shave's comments about single family dwellings. Scott Anderson explained that covenants may have been placed on his property but it is unlikely that any covenants are placed on unplanted land. It was further clarified that the county does not enforce covenants.

Commissioner Kostboth commented that he sees that the people who have worked with the organization are the ones in full support of the project. He noted that there is always someplace



else but he does not feel that approving this project would obligate the commission to approve a future projects.

Action

A motion was made by Commissioner Kostboth and seconded by Commissioner Barth to **recommend approval of Rezoning 18-01** with the addition of a section (6). (c). as included below. The motion passed 4 yes and 3 no's with Commissioners Randall, Kostboth, Barth, and Duffy voting for approval of the motion and Commissioners Mohrhauser, ode, and Ralston voting against the motion.

HOPE HARBOR PLANNED DEVELOPMENT DISTRICT. The regulations set forth herein or elsewhere are the district regulations in the Hope Harbor Planned Development District: (in Section 9-T102N-R50W)

(A) SUBAREA A

- (1). **USES PERMITTED.** A building or premises shall be permitted to be used for the following purposes:
 - (a). Single family dwelling not to exceed one per acre of land
 - (b). Group home(s) not to exceed one per acre of land

- (2). **ACCESSORY USES.**
 - (a). Accessory uses and buildings permitted are those detached accessory buildings and uses customarily incident to any permitted use in the district. No accessory building shall exceed 6,000 square feet in area.
 - (b). Accessory Dwelling. A structure or apartment which is detached or attached with a separate entrance for the purpose of temporary or permanent occupancy as a dwelling provided:
 1. no more than one accessory dwelling per primary dwelling.
 2. the accessory dwelling must not exceed 50% of the square foot area of the primary dwelling or 1,000 square feet, whichever is less.
 3. adequate sanitary sewer must be available.

- (3). **PARKING REGULATIONS.**
 - (a). Parking shall be regulated in conformance with the provisions of article 15.00.

- (4). **SIGN REGULATIONS.**
 - (a). Signs shall be regulated in conformance with the provisions of the RR zoning district.
 - (b). One freestanding sign may be permitted per sub area of the zoning district. Such freestanding sign may not exceed 32 square feet in area of sign face and 20 feet in height.



- (5). DENSITY, AREA, YARD AND HEIGHT REGULATIONS. The same requirements shall apply as in the RR zoning district.
- (6). OTHER REGULATIONS. Other regulations shall be:
 - (a). The residential density shall not exceed three (3) single-family dwellings.
 - (b). Design, operating, and licensing requirements of appropriate state and federal agencies must be met for all group homes.
 - (c). Three rows of trees must be planted as a buffer along the south boarder of the Hope Harbor Planned Development District. All trees that die must be replaced within one growing season

Rezoning #18-01 – Approval Recommended

Regular Agenda

ITEM 10. CONDITIONAL USE PERMIT #18-07 to transfer one (1) building eligibility from the W1/2 SE1/4 (Ex. Johnson’s Grove Addn. & Ex. High Estates & Ex. SW1/4 SW1/4 (school) & Ex. H-1 & H-2) to the NE1/4 SW1/4 (Ex. N208’ E420’); all in Section 7-T102N-R49W.

Petitioner: Samuel R. Assam

Property Owner: Todd & Linda Dawley U/T/D July 2nd 2012

Location: Approximately 3 miles north of Sioux Falls

Staff Report: Kevin Hoekman



This would transfer one (1) building eligibility.

General Information:

Legal Description (Receiving Parcel) – NE1/4 SW1/4 (Ex. N208’ E420’); all in Section 7-T102N-R49W
 Present Zoning – A1-Agriculture
 Existing Land Use – Crop and Pasture land
 Parcel Size – 33.92 acres

Staff Report: Kevin Hoekman

Staff Analysis:

The applicant has applied to transfer one building eligibility (BE) from the W1/2 SE1/4 (Ex. Johnson’s Grove Addn. & Ex. High Estates & Ex. SW1/4 SW1/4 (school) & Ex. H-1 & H-2) to the NE1/4 SW1/4 (Ex. N208’ E420’); all in Section 7-T102N-R49W of the same section. The proposed building site was once part of a farmstead with at least one structure remaining on the property. The building eligibility proposed to be moved is the last remaining available eligibility in the section.

Both the sending and the receiving parcel are currently owned by different people. The petitioner, Samuel Assam, represents an individual who intends on purchasing the receiving parcel as a building site; He also intends on purchasing the building eligibility from the sending parcel in order to build a residential dwelling as intended. The petitioner has submitted the purchase agreement between his client and the receiving parcel. A purchase agreement for the building eligibility has also been submitted. Planning & Zoning staff have reviewed these purchase agreements and finds that they do not meet the ownership requirements of the zoning ordinance.

Below is a copy of the section and item of the ordinance that pertains to the transferring of building eligibilities for the commission’s review:

3.04 CONDITIONAL USES.

(Y). The transfer of a building eligibility from one parcel to another parcel when all the following conditions are met: *(amended by MC16-69-04 3/16/04)*

- 1). The transfer of building eligibility shall occur only between contiguous parcels under the same ownership. For purposes of this section, same ownership means: Two or more parcels of land owned or controlled by an individual or combination of individuals, corporations, partnerships, or other legal entities; with said owners described uniformly on the deed or other legally binding conveyance of each parcel. *(amended 16-87-06 8/19/06)*
- 2). Suitability as a building site based on the following factors:
 - a). Agricultural productivity of the soil.
 - b). Soil limitations.



- c). Orientation of the building site(s) with respect to road circulation and access to public rights-of-way.
- 3). The minimum lot size shall be one acre but a larger area may be required when soil conditions warrant.
- 4). The parcel from which the eligibility is transferred shall continue as agricultural land or remain in its present use.
- 5). Approval has been granted by the appropriate governing entity for access onto a public road.

Recommendation:

Staff finds this conditional use permit incompliant with the ordinance and recommends **denial** of Conditional Use Permit #18-07.

Public Testimony

Scott Anderson, County Planning, informed the Planning Commission that the petitioner submitted an email request to defer the item.

Jeff Oleson, 4104 S Kathy Ave, explained that the petitioner had counseled the applicant that the project can move forward with how the purchase agreements were made. He noted that they would not have gone this far if they thought the proposal would be denied.

Scott Anderson explained that the parcels have to be in the same name in order to transfer a building eligibility and that this transfer does not have both properties in the same name. He explained the process of how land transfers happened in the past to allow transfers like this.

Commissioner Barth noted that they have seen similar projects worked out to overcome the ordinance requirements.

Jeremy Schoenfeldt, 609 Hickory Lane, Harrisburg, noted that the building eligibility thing is very different than what they have done in Nebraska where they are from. He explained that they want to build a house in an old farmstead. He noted that all ag land will remain ag. He feels the intent meets the intent of the comprehensive plan.

Scott Anderson noted that past legal cases have shown that the properties must be in the exact same name.

Commissioner Barth noted the example that there are many eligibilities located within the floodplain that cannot be transferred out.

Commissioner Randall asked where the building eligibility has gone. Scott Anderson pointed out that the dwelling on the north of the site likely received the eligibility.

Jeff Oleson raised concern that someone may protest the transfer the building eligibility.



Action

A motion was made by Commissioner Randall and seconded by Commissioner Ralston to **Defer** CUP 18-07 for one month. The motion passed unanimously.

CUP #18-07 – Deferred until February 26, 2018



Old Business

None

New Business

None.

Adjourn

A motion was made to **adjourn** by Commissioner Ode and seconded by Commissioner Randall. The motion passed unanimously. The meeting was **adjourned** at 9:14 pm.