

Dickinson County Board of Adjustment  
December 28, 2021  
7:00 P.M.

The Dickinson County Board of Adjustment met Monday December 28, 2021 at 7:00 P.M. in the community room of the Dickinson County Courthouse and via zoom.

Members present were Jeff Ashland, Kirby Berhow, Jen Johnson, and Alex Oponski. Absent was Delmer Lee.

Also in attendance was Steve Goodlow- Dickinson County Assistant Attorney, and Megan Kardell-Dickinson County Zoning Assistant. David Kohlhaase-Zoning Administrator-Absent.

Jeff Ashland, Chairman called the meeting to order at 7:00 p.m.

First on the agenda was Roll Call.

Second on the agenda was New Business. 1<sup>st</sup> Item of New Business. Leona Simpson/POA Ivan Simpson, Conditional Use, Recreational Storage, NW1/4, NW/14, Section 36, Township 100, Range 37, Dickinson County, Iowa. The request was read.

Ivan and Adam Simpson introduced themselves to the Board. This site for recreational storage and is a second part to the original plan. Back in September they filed and received a conditional use permit for recreational storage on the home farm's south western building. They advertised for storage and received an overwhelming response for storage in that facility. He had a lot of people who wouldn't totally commit. The marinas were selling many new boats, they thought they had storage at the marinas, but they didn't have enough room. Over the course of this year, he turned down over 82 boats. They had some over sale, and they had some people who would drop boats off on their way home to Le Mars or wherever, saying they couldn't get into Parks or Mau. They are roughly 12 boats over. So he put them in the new building. He was not hiding anything, the walls were not even done yet. He put them in anyway and helped those people out. They thought now would be a good time to go ahead and add recreational storage to the ag building. They did it, it was not hind sight, there was a plan A and a plan B. Adam will explain option B, but option A is recreational storage in the ag building. The request for outside storage on this land is because we had boat trailers with license plates identified from O'Brian County, and people would ask what it is doing in your yard. He is sick and tired of people asking why things are in his yard. It's his yard. His family's stuff can be there. This area is a good place to park items that people do not want to look at. If they decided to build another building, it will be here, because it is out of sight out of mind. This area is not on the highway.

They applied for recreational storage use in the Ag buildings, if you were to go to the building today, it has a combine, a grain truck, a tractor, it is not full of boats. It is full of equipment, but yes there are some boats in it, if he needs to, he will store them in there for the first year for free. We can work with the system. This option on the north farm was something we were going to do down the road. The other two buildings are the primary options for the recreational storage. There are a lot of questions about land use with this building. If we build this building, people ask where is the next one going to go, how many are you going to build. He cannot see the sunset. Then people ask what about drainage, his drainage guy will talk about that. He's been asked by the Board of Supervisors to not talk about drainage due to the pending lawsuit from the Harbor to the County. He will not speak about drainage here, but from his point of view, he seen and witnessed when it was all installed. But at this point in time he would like to introduce his son to talk about option B.

Ashland reminded Simpson we are currently talking/working with the Northern site.

Simpson said the north site is self-explanatory.

Ashland asked the board if they have any questions.

Berhow said not for this site.

Ashland asked Simpson that the description of the use is to have outside storage and adding buildings in the near future, but when it comes time for buildings, you'll have a plan for that.

Simpson said yes.

Ashland said so basically we're talking about open/outside storage for a conditional use.

Simpson said yes.

Ashland said they're looking at this site first.

All had a chance to view the site.

No Correspondence.

Ashland opened the meeting to the public.

Ken Eckerman, owns property just east of this site 2133 140<sup>th</sup> St. He said it is not out of sight out of mind, he drives by that site every day, and he does not particularly care to see a bunch of junk sitting out there. His real concern with this site is the road going to it. When looking at a commercial endeavor on this property, it's a rural road that has a tendency to frost boil when all of the activity will be on that road. There is also two blind hills on that road that making it very dangerous, especially if you're going to be doing any storage of boat hoist or anything like that. Those people go down the road with those hoists, they're a wide load, and you come over the top of these hills, and one has a really dangerous situation. You've also got a bike trail crossing on this road that is already a dangerous crossing and when you start adding more traffic and put 80 boats out there, then you have a lot of traffic on that road.

Ashland closed the meeting to the public.

Ashland asked if there is going to be a fence for security or theft.

Simpson said at some point there will be yes.

Ashland asked what type of items will be at this site.

Simpson said boat trailers, there will not be any hoists. There is one hoist, but it is his.

Ashland asked if he would have campers.

Simpson said he has not been asked about campers, but he wouldn't turn it down. Simpson asked what the parameters of the conditional use permit would be.

Kardell read the definition of Recreational Storage.

Simpson said it would be within that guideline.

Ashland asked if it would be a year 'round site.

Simpson said he believes it would go to a building. The concept of starting the process is to take the target items from the home farm someplace else. That's really it.

Ashland asked the board if they had any other questions.

Berhow asked what is total area for storage that will be used on this site.

Simpson said about 3 acres are available. Do you need a defined area.

Berhow said it didn't seem like a large area for the use.

Simpson said they would probably pick out an area north of the bin site, so probably 150' x 300'.

Ashland stated how it is squared out on the site plan.

Simpson said yes.

Ashland said typically a conditional use is good for 6 months, and in the past we've put a stipulation on the vote that the conditional use will be in effect for as long as it is used as Recreational Storage.

Oponski said maybe a possibility for the conditional use would be for a set period of time before it needs to be reviewed, and we can look at further utilization.

Goodlow said he thinks what Ashland was talking about was you can put any conditional that you want, generally speaking, we were talking about the mobile concrete plant a couple meetings ago and putting a 6 months on that because they were going to build another structure. The use permit could be indefinite, or 6 months, whatever you choose.

Kardell said if the Board would want to put a conditional time period and Simpson would agree to that, the Board could go that route.

Ashland said this is for the outdoor storage part, if he is going to do a building, he is going to come back to us.

Oponski said right. He said that is something he would like to consider as a condition, that we do it for a period of time under the condition that he comes back with a plan, so it just doesn't remain open storage. Technically it could stay open storage, unless they put some stipulation on it that it come back with a more

serious plan, and also they could then look at utilization, they can look at traffic, they can look at other issues. That's where he would go, he heard some concerns.

Ashland asked what kind of time frame is he thinking.

Oponski said a least a season, 12 to 24 months.

Ashland said 2 years.

Oponski said if they do 18 months, they could get two seasons, and then they could get feedback from the community.

Ashland asked Goodlow if they should put a date on it.

Goodlow said for the public and for Mr. Simpson, he believes it would be best to put a date on it.

Oponski said September/October of 2023. He is trying to give Simpson two seasons.

Ashland asked Simpson if October 1, 2023 was okay with him.

Simpson said yes.

Oponski said that does not preclude you from coming sooner with a plan to build a building.

Goodlow said that is correct.

Oponski motioned vote on the application that the use is in effect until October 1, 2023. Berhow seconded the motion.

Vote recorded as 4-0 Approve. Johnson, Ashland, Oponski, Berhow approve.

2<sup>nd</sup> item of New Business is Ivan Simpson, Conditional Use, Recreational Storage, W ¼, SW ¼, Section 2, Township 99, Range 37, Dickinson County, Iowa. The request was read.

Ivan and Adam Simpson introduced himself to the Board.

Simpson said similar to the aerial photo on the screen. In the bottom left hand corner is the building they received the conditional use for in September that had overwhelming success and moved additional boats into their property. He's 71 years old and plans to retire within the next few years. His son Adam is will be the fourth generation on the home farm. He will be taking over the home farm and the rest of the 300 acres. One of his main concerns is to provide enough income to support him and his family on 300 acres. There are several ways to do that. They built this building originally as a livestock/ag building that holds livestock and machinery. Which was the total plan until September came along, and then they had boats everywhere, they had marina's calling them with 50 boats they couldn't store. "Can we, no we can't." If he wanted to, he could have filled the building seam to seam, he only put in a little bit of additional that he did not have room for in the other building and were dropped in his lap. If we look at it as an income source, would that building better serve the farming operation as storage, as a conditional use, with their ag equipment, then for instance cow/calf's. It looks like it does when one turns down 82 boats in one fall season. That's 35,000 dollars' worth of storage, which is at a cheap rate. So that made them review what they were doing, which is why they filed for more conditional use permits because that is the way they would like to go. They need to look at option 1 or option 2. Option 1 is already on the table. Traffic going in and out is all before and after spring travel. People bring boats in October and pick them up in April. It's not a highway problem, they do not sit out more than 5 or 6 hours, and then they go in. It's not a site or visibility problem. The building is there. Drainage, they put in a waterway with two tiles all the way across that 40, and spent about \$15,000.00. Then those two 6" inch tiles go into Cutty's to try to divert some of the water. On the East side of the building they put in 6" inch rock, they put in a rock wall, to buffer the area going towards the bike trail. These are things they did on their own because of their own water interest. Storage looks like a good option for them, it's a clean option for the area. It's a very profitable option to pass down in the family.

Adam Simpson said on this smalltime farm operation he needs to diversify, he has a full time job, he raises cattle, and a family. He does a lot of other things for income. For him to take this farm operation over, he will need to diversify even more and one option is the consideration of 40 head of cattle, which are about 4 miles from home. When he takes over the farm, he might be inclined to take the cow heard back to the original home farm. If forced into using this building for something other than storage, he's going to be inclined to explore the option of setting up his cattle operation and selling the other cattle area and reinvesting that equity into the home farm. It's a question whether what is going to serve his family best. As of right now they're weighing options. Storage looks good, and he can say the profit margins on cow/calf are not good, they've been shocked at the boom in storage. Maybe he would leave the cattle operation where it is, but he is going to need to finance this farm with non-farm income. 300 acres is not going to support a family very well. These are things he weighs out for his next fifty years on this farm. He needs to

think about his three kids who have chance of inheriting that farm, and keeping it as an operating farm. As of right now the storage building looks like a better option than cattle, which is why they are here.

Ashland asked if the board has any questions.

Oponski said if he understands correctly, option A is to use the building as storage, and option B is you will bring cattle back.

Simpson said yes.

Oponski said he want to make sure he outlined the options for him in the future.

Simpson said yes.

Oponski said that building was built for....there was not a conditional use on this building, correct?

Simpson said it was built for AG.

Adam Simpson said a bulk of their large farm equipment is in it.

Oponski said for storage, there is area for storage.

Adam Simpson said yes, combine, tractor, planter, skid loader, one perk of that building is that they can unfold and work on equipment in there because it is wider and taller.

Oponski said he thought there was other storage in there as well.

Adam Simpson said yes. As Ivan Simpson outline they had to put some boats, 12 or 13 in there. They got overbooked, they had boats dumped on them when they really did not commit to storing them for people. Also that is a lot of what pushed us in this direction, they got swamped for boat storage.

Ashland said he understands they got swamped, but at some point couldn't you have said you cannot take anymore. Why is there 12 boats in a new building, when it was known you couldn't?

Adam Simpson said some people just dropped them off, one big problem every year is people will not commit to storing them the next year, and it's pretty hard to take someone's spot from them, especially when there is a track record and are friends. They did get overbooked.

Ashland said then why can't one tell them that you're booked and cannot store it and you need to take it home.

Adam Simpson said he guesses they didn't get to that point until Mau Marine contacted them with the need to store 50 boats, we turned them away. They did not store a single boat for them.

Ivan Simpson said they did turn away a lot of people.

Ashland asked Ivan Simpson, in his letter with his packet, it reads "I am asking for temporary authorization of existing storage."

Ivan Simpson said that was a suggestion from the zoning office.

Ashland asked if that is what he is looking for with this application.

Ivan Simpson said he wants more than temporary, he would store those 15 boats for free before he played his option for a temporary storage card if that's all it got him. He said it would be real simple, he just will not bill them. He doesn't want to play that card on this big of a project and have that be his offering and settle for, he would sooner play this to the end for the permit.

Ashland said but if we do this as recreational use and not have it temporary, it sounded like you were willing to come in with a drainage plan and all that.

Ivan Simpson said they pretty much have their drainage plan set up. Patrick Mohning, a land surveyor is here to speak about drainage.

Adam Simpson said just to reiterate two points. He contacted the DNR and asked what the State laws and regulations about the number of head of cattle could be on a property. As the law states right now, 999 head of cattle would be allowed on that property, until there would be a water quality issue and fines could be assessed, you can possess 999 head of cattle. Also just because he knows it is going to get bought up, the boat with the Mau Marine stickers on it, is not owned by Mau, it is owned by another company now.

Ashland asked Simpson if he would consider a temporary on this site.

Ivan Simpson said like a temporary leading to a permanent.

Ashland said a conditional use permit, typically they have the drainage plan and all that with the application and that's not in this application.

Ivan Simpson said when he did the other building in September, he did not need a drainage plan.

Kardell said there are many items going on with this building. Mr. Simpson is a farmer and as a farmer they fall under Iowa Code, Farms Exempt, and he can build this building without the oversight of zoning however he sees fit, which he did. Now switching from Ag rules to zoning rules, and since we do not have an actual site plan showing the distances to the lot lines, the corner of the building is possibly encroaching on the setback. Could the building be adjusted or would Mr. Simpson have to come to the Board for a variance for the 50' foot setback, because currently the building might not be in compliance to zoning rules, that will need to be determined. If Mr. Simpson comes back with a zoning compliance application then those instructions with the zoning compliance application and setbacks would apply to this structure. If they are looking to use this building as a Recreational Storage building, it needs to be in compliance. Mr. Kohlhaase mentioned to myself about suggesting a temporary use to try to work with both the applicant but also those people who own the boats and may not have known the Simpson's were out of compliance.

Kardell asked Simpson how many vessels are in the building, the number has changed from 12 to 15.

Ivan Simpson said between 12-15. He did not count.

Kardell said this was something Kohlhaase and her talked about, was to try to accommodate these people, because it is winter, so we proposed a temporary conditional use that would expire June 1, 2022, and at that point, the Simpson's could come back with a full application to the board for consideration. The Board has three options, you can grant the conditional use as it stands, consider a temporary use, or you can reject.

Goodlow said those are the options he witnessed as well with Kohlhaase.

Ashland asked if Kardell could answer Ivan Simpson's question about the previous building.

Kardell said she would have to revisit the application, it was a different situation because first, you came to the board prior to using the building as Recreational Storage, and went through the proper channels. Also the buildings had been in existence for many years, she believes it is on a level B road and is out, separated away from people.

Simpson said he would like to propose a permanent conditional use on the 60' X 120' building, and a temporary use on the 80' x 160' building.

Kardell said that is something Simpson can discuss with the Board. This is a working session.

Berhow asked if that changes the application.

Kardell said both buildings were included for a conditional use request.

Ashland asked if they could have a temporary use on one building and a permanent use on the other building.

Kardell said due to the request being less, you could grant a temporary use, we can always go less, but cannot go more.

Ashland said so what Kardell is saying is the board can consider the temporary use tonight.

Kardell said yes, a temporary is less than a full conditional use.

Ivan Simpson introduced Patrick Mohning, Mohning Land Surveying, he is a professional land surveyor. Mohning knows drainage is going to be a concern especially with the Harbor, as far as the buildings use, it was built for agriculture, and is currently it is zoned agricultural, and if used for agricultural, there is no drainage requirements on the building, which is why there is not a drainage plan. As Simpson stated he has gone above and beyond and thought about drainage, they put in all of the rock check area, it's not a low impact development area, but it is an area where any water coming off the building will filter through. It would be able to filter out any silt toward the bike trail and down the ditch towards the culvert that goes to the Harbor. He knows there are further issues down the line, with the culvert going through the Harbor. There is pending litigation on that. He asked Kardell, it is his understanding if this were to be granted and if a conditional use permit were to be issued, there would have to be a drainage plan.

Kardell said there would have to be a drainage plan, if it does not comply with the setbacks of the agricultural district, he would have to apply for a variance, and a drainage plan would be a part of the zoning compliance application.

Mohning said they haven't gone that far as to see where it is in relation to the setback line. There is a big area that drains through this property, there are two drainage districts labeled on the site plan, DD66 and DD45 that runs just on the south side of where the building has been built. Just some rough calculations

there is about 222 acres mostly to the west that drains across this property and through the single culvert through the Harbor. That would be the culvert in question with litigation and the collapse of that culvert and significant restriction of water that is not allowed to pass through there.

Ashland asked Simpson if he would be okay with permanent recreational use in the 60' x 120' building, and then temporary on the 80' x 160', we would probably look at June 1 as a date, then you would need to come with a plan for that building.

Simpson said he could live with that.

No Correspondence.

Ashland opened up the discussion to the public.

Chris Hurley 20508 Dolphin Rd., President of West Okoboji Harbor, they are comprised of 145 lots, they are just to the east of the proposal, North Tradewind Dr. is directly east of this building. Kardell and Kohlhaase can attest to this, they have a design committee and overlay district that works very closely with zoning office and regulations. They approach the zoning office if there is even a question. He realizes a land owner may be in a bind, but typically there are rules to follow. The building is being used for a purpose in part that the conditional use permit is required for it to be used. Right now it is ag exempt and it can only be for agricultural. They have commercial, recreational storage, and are using it for what they are actually coming to the board to get that permission for, usually you get the permission first and then you start that venture. The association's primary concern, and what's been alluded to is drainage issues, and understand it is our position to provide a little bit of background on this land.

The area where the storage building is built upon is agricultural land, and naturally absorbs water draining around the property and directly to the south is DD45, which has drain tile constructed near Hwy 86, which goes beneath the highway and through a culvert down to the Harbor. That has been in place for a long period of time, the drain collapsed on private property of a homeowner, there is a big sink hole, and it has also resulted in pressure on Tradewind Dr, where one can see a definite dip in the road that is progressing over time. This has been going on for several years. They are uncertain of the drainage for this proposal because there has not been a plan for drainage with this request. They have not had any communication with the drainage district pertaining to this item, they have no access to specific data in terms to what the impact this building may have. They know that building a building for boats, Rv's or horses, is going to have the same effect on the drainage but the biggest concern is could this be the start of many of these types of buildings. We've heard they can be profitable and the natural consequence when one makes money, one, two, three, or four make more money, and that may be where we are headed. They are very concerned about the impact the drainage would have on this collapsed culvert. Currently, there is litigation with Dickinson County and there is a trial date scheduled for mid-August, they attempted to mediate, but the drainage district would not participate. It is not totally on the association's property, its private land owner's where the collapse is present, but it is testing the structural integrity of the boardwalk and of that roadway. They are transmitting a lot of water that isn't theirs. There is a great need for storage, and they understand that, but one needs to go through proper channels and get permission and then you proceed with the venture. Now there is the pressure to grant permission because they are already using it that way, and for that purpose. They would definitely need to see the plan for the drainage. There was reference by the county engineer that a retention pond was needed on the west side of 86, to adequately control water that would leave that area and enter into the Harbor, that would be a costly adventure, but we need some expert input into that. They would like to see the plans, before they weigh into it. They have a 7 member board, they have very serious concerns. Obviously the building is there, and they certainly support free enterprise and profit, but they want to make sure it adheres to the rules, which is the whole point of having a public hearing and having permission given. Without an adequate drainage plan, they as a board do not approve of the conditional use permit.

Simpson said if people want to talk about drainage and why he doesn't have drainage, Simpson showed a picture of the collapsed culvert to the board, it is a 70" culvert that is roughly 65 to 70 percent plugged, that has backed up water onto his land for over two years because of a private enterprise that cannot fix their own private tube. Then if you want to go one step further, there is a 60" inch tube with a wall built in front of it so they don't have to look at it. Tell me how drainage flows there, it doesn't. There has been a lot of turmoil with his family and the Harbor, for 6 years the Harbor paid his family not to have livestock. This drainage issue has water backed up over the ditches, and over the bike trail. Then they want to talk about plans, what about the 3000 feet of bike trail that is now draining into there, that totally changed the drainage in that area. There are a lot of things and issues that lead to this issue, but that drainage tube was put in, in 1961, they patched the holes in it with concrete and plywood. Don't tell me it's our problem, it's their problem.

Jeremy Mau, 20573 Dolphin Rd. asked what the penalty is for non-compliance.

Goodlow said it is up to the discretion of the board.

Mau asked if it has been applied in this case.

Goodlow said this is the first time it's come before the board on this particular issue, all those options are available to the board.

Mau said he did not see that on the agenda, is that going to be discussed tonight.

Goodlow said what is on the agenda is his application for a permit.

Mau said he was just curious about that, his only concern is, he too has spent some time on a commission. Typically how things go is one asks for permission and then approved for the use, and in this case it is the exact opposite. They're zoning after they're already using a piece of property for non-compliant use. His concern is what precedent does this set to other land owners in the county where they can choose to build a building without permits, then alter its use, and then after they get "caught" or it's discovered its use is not permitted, then they come to get a permit. That is concerning to him, and that should concern everyone in this room.

Kardell said in the past there was one time when the Board of Adjustment had a situation similar to this and they did impose a fine of \$500.00. We do have a Violations and Penalties article that does outline that a fine of \$500.00 per day or 30 days in jail, the Board does not have the power to put someone in jail. But the drainage that Mr. Simpson is responsible for is the result of the building he has built, he is not responsible for the watershed coming down to him, and subsequently down further south of him. So it is the 80' x 160' building's impervious surface that he has to address the drainage for, which is outlined in Chapter 17, Water Quality Management.

Ashland said if the building was in ag use, he wouldn't have had to address the drainage.

Kardell said correct, he would be farms exempt.

Ashland said if he has his temporary plan, and has an application talking about the drainage plan for recreational use, could that be considered.

Kardell said if the Board were to deny his request and he came back with a conditional use application and zoning compliance application, which a drainage plan is required, it could be considered.

Oponski asked if the fine was \$500.00 per day.

Kardell said yes.

Goodlow said from the onset of the non-compliance which would be hard to determine that specific date, usually within zoning and in our Nuisance setting we do this, if we have a \$500.00 fine and they've been out of compliance for 30 days, we do not go 500 times 30. We typically request a \$500.00 fine for something like that, and we do it, and currently have cases with fines and jail time. It might be just the one-time \$500.00, he is not advocating one way or another, but just trying to explain what the code says.

Kardell said the County's ultimate goal is compliance, whether it is no boats/no conditional use, temporary use, or full conditional use permit.

Ashland closed the meeting to the public.

Ashland said they've talked about the 120' x 60' recreational storage building, and then other one is temporary and June 1 would be the end date on that, and at that time, Simpson would have to come back with a plan for that building, should he wish.

Oponski asked if it is a permanent on the small building, what would be Simpson's requirements.

Kardell said what Kohlhaase and I have determined, due to the placement of the new building, it would be considered the principal structure of that lot, because accessory structures can only go in the limits of the sides and rear yard. If one were to draw a line across the lot with the placement of the new building that line would delineates the front yard. Accessory structures have reduced setbacks, because one can see the 50' foot setback line goes right through that building. We would need some additional information, we wouldn't be issuing a building permit, only a use permit due to the structure being already there. Accessory structures requires buildings to have a 3' feet sides and rear setback.

Berhow said as a board we need to decide which path we would like to choose.

Goodlow asked Kardell to explain the three avenues again for the board.

Kardell said the Board can approve the conditional use, the Board can approve a conditional use for the north building and a temporary use for the south building as discussed, or deny the conditional use.

Ashland said that we were visiting about having a temporary for the larger building, and a permanent one on the smaller building.

Kardell said correct as long as Mr. Simpson agrees to that stipulation.

Ashland asked what the setbacks were on the large building.

Kardell said 50' feet all four directions, with no maximum height.

Ashland said but what about the little building.

Kardell said it is an accessory structure.

Ashland said the smaller building is okay to grant a permanent use because it is in compliance.

Kardell said that is correct, she also reminded Mr. Simpson that there is not a full board due to illness and are welcome to ask for a continuance until we have a full board. However, if the Board votes, then that concludes the matter for 90 days,

Simpson said okay.

Ashland asked Simpson if he would like to pursue the vote tonight.

Simpson said yes.

Ashland said he would entertain a motion to vote with the stipulation.

Oponski said with the small building permanent, and the large building temporary.

Ashland said correct, but do we want to put a time limit on the permanent use, because the conditional use is only good for 6 months unless stipulated by the board, but the big building will be June 1, which will make it a temporary use.

Simpson asked if there was a time limit on his building from September.

Kardell said no there is not, it is in effect for as long as it is used as recreational storage.

Simpson asked if they can do that with the small building.

Ashland said he is okay with the little building being in effect as long as it's used for recreational storage, rather than having to come back.

Johnson asked if they were going to talk about a fine for the 12- 15 boats that are already there.

Ashland said he does not care to do that himself.

Johnson asked if the 12 - 15 boats can go to the other site.

Oponski said he believes they should talk about a fine, he does not feel that it is appropriate to build something and then change the use and then to ask for forgiveness. It's easier to ask for forgiveness sometimes, that is not the way this works.

Oponski asked Goodlow if they would be part of the application or separate

Goodlow said separate. One is a penalty, and the other is the application.

Oponski said let's take care of the application, and then we'll take care if we're going to levy a fine.

Oponski motioned to vote with a permanent use on the 60 x 120 for 24 months, and temporary conditional on the bigger building until June 1.

Ashland asked Simpson if that was agreeable to him.

Simpson said he would rather have the north building permanent, but he'll take it.

Berhow seconded the motion.

Vote recorded as 2-2 deny. Ashland-approve, Johnson-deny, Oponski-deny, Berhow-approve.

Ashland asked what the board would like to do about a fine.

Oponski said he agrees with Goodlow, we do not need to count days, but a fine would be appropriate for the improper use.

Oponski motions that Mr. Simpson pay a \$500.00 fine for the improper use of the ag building for commercial use.

Attorney Matt Early 707 39<sup>th</sup> St., asked to address the board.



Ashland granted the request.

Early said there is a question of the propriety of bringing a penalty/fine that was not on the agenda. Mr. Simpson did not have notice of this issue and has not had time to prepare in this regard, he thinks Simpson is entitled to that under due process.

Goodlow said he has no issue putting this on our next agenda. We meet the fourth Monday of the month we can put it on the next agenda if you feel that's appropriate for due process.

Early conferred with Simpson.

Goodlow said we'll table this, he agrees with Early, if he wants to raise that as an objection, we'll make sure he has proper notice for the next meeting.

Ashland tabled the levy of the fine until the next meeting.

Third item on the agenda was Old or Unknown Business. There is none.

Fourth item on the agenda was Approval of the minutes from November 22, 2021. Berhow motioned to approve. Johnson seconded the motion. All were in favor.

Fifth item on the agenda was Communications. Kardell asked the board to prepare for the January meeting, as she was made aware that an application would be received by noon the following day. Ashland asked the date of that meeting. Kardell said January 24, 2022.

Goodlow said to Early that he will put the penalty discussion/action on the next agenda.

Sixth item on the agenda was Adjournment. Oponski motioned to adjourn. Johnson seconded the motion. All were in favor.

(For more information see recording BOA 12 28 21)