

AGENDA

REGULAR SCHEDULED MEETINGS BROWN COUNTY PLANNING/ZONING COMMISSION

TUESDAY, FEBRUARY 15, 2022 – 7:00 PM

BROWN COUNTY COURTHOUSE ANNEX in the BSMNT COMMUNITY ROOM

- I. **Call to Order:** by Chairman Stan Beckler for Brown County Planning/Zoning Commission
 - II. **Roll Call:** David North - Vice Chair, Darwin Bettmann, Dale Kurth, Patrick Keatts, James Meyers, Brown County Commissioner Mike Gage and Chairman Stan Beckler. Also in attendance for today's meeting are Chris Anderson and Scott Bader from Planning & Zoning Department.
 - III. **Minutes:** *January 18, 2022,* Motion: 1st _____ 2nd _____
 - IV. **Old Business:**
 1. **Sign-up sheet:** is on the table by the door entrance, and you can clearly mark YES or NO if you want to speak to the Board on any Agenda Item.
 2. **Permits:** Anyone present for a Variance Request or Conditional Use Petition that has been submitted to the Zoning Board of Adjustment (BOA) **IS STILL REQUIRED** to get a **Building Permit, Zoning Permit, Floodplain Permit (FPDP), or Use Permit, from the Zoning Office BEFORE STARTING** your project if the request is approved through the Zoning BOA. Penalties are assigned when starting without proper permits in-place.
 - V. **New Business:** *Planning/Zoning Commission as Zoning Board of Adjustment (BOA).*
 1. **Variance request for 2 residences** on one (1) parcel in an Agriculture Preservation District (AG-P) described as "NW1/4 of Section 28-T128N-R64W of the 5th P.M., Brown County, South Dakota (38407 & 38405 104th St Frederick, SD 57441; Osceola Twp).
 2. **Variance request for Building Setbacks** in an Agriculture Preservation District (AG-P) described as NW1/4 of Section 28T128N-R64W of the 5th P.M., Brown County, South Dakota (38407 & 38405 104th St Frederick, SD 57441; Osceola Twp).
 3. **Conditional Use Petition (CUP)** for temporary fireworks stand – 2022-2023 season in a Highway Commercial District (HC) described as "Judy's Outlot 2" in the NW1/4 of Section 22-T123N-R63W of the 5th P.M., Brown County, South Dakota (5110 East Highway 12; Aberdeen Twp).
 - VI. **Other Business:** *Completed as Zoning Board of Adjustment (BOA) & going to Planning Commission*
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REGULAR SCHEDULED MEETING

BROWN COUNTY PLANNING/ZONING COMMISSION

TUESDAY, FEBRUARY 15, 2022 – 7:00 PM
BROWN COUNTY COURTHOUSE ANNEX in the BSMNT COMMUNITY ROOM

I. Old Business:

II. New Business: *Planning/Zoning Commission as Planning Commission*

10. **Rezone Parcel** from Agriculture Preservation District (AG-P) to Mini-Agriculture District (M-AG) for a property described as Spanier Outlot A in "Spanier Outlot A" in the NW1/4 of Section 25-T123N-R60W of the 5th P.M., Brown County, South Dakota (41125 134th Street; Groton Twp.).
11. **Rezone Parcels** from Agriculture Preservation District (AG-P) to Highway Commercial (HC) for properties described as proposed Outlot 1 & Outlot 2, "B & B Outlots" in the NE1/4 of Section 23-T123N-R63W of the 5th P.M., Brown County, South Dakota (39265 & 39285 133rd Street; Bath Twp.).
12. **Preliminary & Final Plat** for a property described as "S and R Rozell Addition" in the NE1/4 of Section 1-T121N-R65W of the 5th P.M., Brown County, South Dakota (14201 & 14205 382nd Avenue; New Hope Twp.).
13. **Preliminary & Final Plat** for a property described as "B & B Outlots" in the NE1/4 of Section 23-T123N-R63W of the 5th P.M., Brown County, South Dakota (39265 & 39285 133rd Street; Bath Twp).
14. **Amendment Discussion to Brown County Title 4 Ordinance** in Chapter 4.0504 AG-P District; Chapter 4.0604 M-AG District; Chapters 4.22 to 4.29 for administrative changes.

III. Other Business:

IV. Motion to Adjourn: 1st _____ 2nd _____

MINUTES

REGULAR SCHEDULED MEETING BROWN COUNTY PLANNING/ZONING COMMISSION

TUESDAY, JANUARY 18, 2022 - 7:00 P.M.

BROWN COUNTY COURTHOUSE in the BASEMENT COMMUNITY ROOM

- I. **Call to Order:** The *Brown County Planning/Zoning Commission* meeting was called to order by Chairman, Stan Beckler.
- II. **Roll Call:** Members of the Brown County Planning/Zoning Commission present for roll call were Vice Chairman David North, Darwin Bettmann, Dale Kurth, Patrick Keatts, James Meyers, County Commissioner Michael Gage, serving on this Board, Deputy States Attorney Ross Aldentaler and Chairman Stan Beckler. Also present for the meeting was Planning/Zoning Director Scott Bader and staff member Ron Keller from the Planning/Zoning Office.
- III. **Meeting:** This meeting was conducted in the basement Community Room using recommended social distancing protocol for spacing chairs in the audience area, and Board Member table & chairs as much as possible based on number of agenda items and expected number of people.
- IV. **Minutes:** After discussion about previous months Minutes, Kurth moved and Keatts seconded to approve the December 21, 2021, Minutes of the Planning Commission and Zoning Board of Adjustment (BOA) monthly meeting. All members voted aye; the motion carried.
- V. **Old Business:**
 1. **Sign-up Sheet:** at the door entrance on a table for anyone wants to speak on Agenda Item.
 2. **Permits:** Anyone present that has submitted a Variance Request or Conditional Use Petition to the Zoning Board of Adjustment (BOA) *IS STILL REQUIRED* to get their required PERMITS from the Zoning Office before starting their project if their request gets approved tonight.
- VI. **New Business: Planning/Zoning Commission as Zoning Board of Adjustment (BOA)**
 1. **Variance for Lot Size** in an Agriculture Preservation District (AG-P) described as proposed Lot 1, "Dennert Addition" in the NE1/4 of Section 4-T125N-R63W of the 5th P.M., Brown County, South Dakota (11847 391st Ave; Garland Twp). Submitted by Dana Dennert. Following discussion on FoF, North moved, and Bettmann seconded to **approve the finding of facts** as presented. Also following discussion North moved and Bettmann seconded to **approve the variance to lot size** to be 4.47 acres rather than the minimum of 40 acres required in an AG-P District, all members voting aye, motion carried.
 2. **Variance for Lot Size** in an Agriculture Preservation District (AG-P) described as Proposed Lot 1, "Svarstad Addition" in the SE1/4 of Section 10-T122N-R63W of the 5th P.M., Brown County, South Dakota (13797 392nd Ave; Gem Twp). Submitted by Arne Svarstad. Following discussion on FoF, Kurth moved, and Gage seconded to **approve the finding of facts** as presented. Also following discussion Kurth moved, and Gage seconded to **approve the variance to lot size** to be 2.19 acres rather than the minimum of 40 acres required in an AG-P District, all members voting aye, motion carried.

3. **Variance for Building Setbacks** in a Lake Front Residential District (R-3) described as Proposed Lot 1, "Wayne and Nancy Johnson First Richmond Lake Subdivision" in the NW1/4 of Section 13-T124N-R65W of the 5th P.M., Brown County, South Dakota (126219 North Bridge Rd; Ravinia Twp). Submitted by Wayne Johnson. Wayne Johnson was in attendance for this item. Following discussion on FoF, North moved, and Keatts seconded to **approve the finding of facts** as presented. Also following discussion North moved and Keatts seconded to **approve the variance for building setbacks** to have a 25' rear yard setback for a new house/garage rather than the minimum 30' required in an R-3 District, all members voting aye, motion carried.

VII. Other Business: None

Completed as **Zoning Board of Adjustment (BOA)** & going to **Planning Commission**

MINUTES

BROWN COUNTY PLANNING/ZONING COMMISSION

TUESDAY, JANUARY 18, 2022- 7:00 P.M.

COMMUNITY ROOM, BROWN COUNTY COURTHOUSE

I. Old Business: None

II. New Business: **Planning Commission**

10. **Rezone Parcels** from Mini-Agriculture District (M-AG) to Agriculture Preservation District (AG-P) for properties previously described as Lot 1, Block 2; Lot 4, Block 2; & Lot 5, Block 2, "Whitetail Meadows First Subdivision" in the NW1/4 of Section 26-T123N-R65W of the 5th P.M., Brown County, South Dakota (US Hwy #12 West & 387th Ave; Mercier Twp). Submitted by Brown County Planning & Zoning Department for the landowner Levern Didreckson. Following discussion, Meyers moved, Kurth seconded to **recommend approval of the rezone** on Lots 1, 4 & 5, Block 2 (6.95± acres) to the Board of County Commissioners to clean up some previous zoning errors, all members voting aye, motion carried.
11. **Preliminary & Final Plat** for a property described as "Dennert Addition" in the NE1/4 of Section 4-T125N-R63W of the 5th P.M., Brown County, South Dakota (11847 391st Ave; Garland Twp). Submitted by Dana Dennert. Dana Dennert was in attendance for this item. Following discussion, North moved, Bettmann seconded to **recommend approval of this plat** to the Board of County Commissioners, all members voting aye, motion carried.
12. **Preliminary & Final Plat** for a property described as "Wayne and Nancy Johnson First Richmond Lake Subdivision" in the NW1/4 of Section 13-T124N-R65W of the 5th P.M., Brown County, South Dakota (126219 North Bridge Rd; Ravinia Twp). Submitted by Wayne and Nancy Johnson. Wayne Johnson was in attendance for this item. Following discussion, Kurth moved, Keatts seconded to **recommend approval of this plat** to the Board of County Commissioners, all members voting aye, motion carried.

13. **Preliminary & Final Plat** for a property described as “Svarstad Addition” in the SE1/4 of Section 10-T122N-R63W of the 5th P.M., Brown County, South Dakota (13797 392nd Avenue; Gem Twp). Submitted by Arne Svarstad. Following discussion, North moved, Gage seconded to **recommend approval of this plat**, to the Board of County Commissioners, all members voting aye, motion carried.

14. **Preliminary & Final Plat** for a property described as “Pasch Second Subdivision” in the SW1/4 of Section 8-T122N-R61W of the 5th P.M., Brown County, South Dakota (40112 & 40132 138th Street; West Hanson Twp). Submitted by Donald Pasch & Robert Pasch. Following discussion, Meyers moved, North seconded to **recommend approval of this plat** to the Board of County Commissioners, all members voting aye, motion carried.

III. Other Business: *None*

There being no further business before the Planning/Zoning Commission, Keatts moved and Kurth seconded to adjourn, all members voting aye, motion carried.

Submitted by: Scott Bader & Ron Keller –Planning & Zoning Department.

STAFF REPORT

February 15, 2022

BROWN COUNTY ZONING BOARD OF ADJUSTMENT (BOA)

Variance request for 2 residences on one (1) parcel **ITEM # 01**

GENERAL INFORMATION:

PETITIONER: Tom Gunther

REQUEST: **Variance request for 2 residences on one (1) parcel in AG-P District.**

LEGAL DESCRIPTION: NW1/4 of Section 28-T128N-R64W of the 5th P.M., Brown County, South Dakota.

TOWNSHIP: Osceola Twp

LOCATION: 38407 & 38405 104th St Frederick, SD 57441

EXISTING ZONING: Agriculture Preservation District (AG-P)

SURROUNDING ZONING:

- North: Agriculture Preservation District (AG-P)
- South: Agriculture Preservation District (AG-P)
- East: Agriculture Preservation District (AG-P)
- West: Agriculture Preservation District (AG-P)

REPORTED BY: Scott Bader

GENERAL COMMENT: The petitioner is requesting a Variance for two (2) residences on one (1) parcel in an AG-P District. The Variance request is per 4.0605 #1 and 4.2002 of Brown County Ordinances. The mobile home would be apprx. 300' apart from the grandfather's house and 200' from the father's house.

REVIEW: Staff has reviewed this request and recommends approval. Staff could not find whether the section line was previously vacated, so we need to treat this as though it is not. There are five (5) grain bins that will be removed, and the proposed mobile home will be set in that location if the variances are approved.

(TOM GUNTHER)

VARIANCE FINDINGS WORKSHEET

Prong One <i>Whether granting the variance runs counter to the public interest?</i>			
Consider the entire public-not just the neighbors	Findings		
1. Does it injure the neighborhood?	Yes <input type="checkbox"/>	No <input checked="" type="checkbox"/>	
2. Does it conform to the neighborhood?	Yes <input checked="" type="checkbox"/>	No <input type="checkbox"/>	It is accepted by the farming community and rural areas to have family living on farm site.
3. Does it conform to the general purpose of the zoning ordinances?	Yes <input checked="" type="checkbox"/>	No <input type="checkbox"/>	
4. Does it conform to the comprehensive plan currently in place?	Yes <input checked="" type="checkbox"/>	No <input type="checkbox"/>	
5. Does it harm the public safety, health, or general welfare of the community?	Yes <input type="checkbox"/>	No <input checked="" type="checkbox"/>	
Prong Two <i>Whether special conditions exist to grant a variance?</i>			
Physical conditions-not money or econ hardship	Findings		
1. Does a special condition--exceptional narrowness, topography, siting, or the like--exist on the property? *Explicitly state the condition on the property that is a special condition if one exists. *It must be a physical condition. *Exception: legal justification (for example, estoppel) is a special circumstance.	Yes <input checked="" type="checkbox"/>	No <input type="checkbox"/>	The chosen location on the property will allow the mobile home to sit on a good solid location once the grain bins are removed. There is room for water hookup and a sewer drain.
a. <i>If</i> a special condition exists, does enforcing the ordinance create an unnecessary hardship? *That does not mean money, econ hardship, or allowing a use that's prohibited (<i>i.e.</i> , not otherwise excluded) in the zoning district.	Yes <input type="checkbox"/>	No <input checked="" type="checkbox"/>	The ordinance allows more than one residence in AG-P District with the approval of the Planning/Zoning Commission.
b. <i>If</i> a special circumstance exists, does granting the variance observe the ordinance's spirit while doing substantial justice.	Yes <input checked="" type="checkbox"/>	No <input type="checkbox"/>	The ordinance allows more than one residence in AG-P District with the approval of the Planning/Zoning Commission.

BROWN COUNTY PLANNING & ZONING COMMISSION

(2 Residences on one (1) parcel)

APPLICATION FOR VARIANCE

DATE: January 24, 2022
RECEIPT # 620608
TOWNSHIP: Osceola Twp

FEE: \$125.00
PAID: YES/NO CHK/CASH
DATE: 01/26/22

OWNERS SIGNATURE: Delbert Gunther
OWNERS ADDRESS: 38407 104th St
OWNERS CITY, STATE, ZIP: Frederick, SD 57441
OWNERS PHONE: _____

AGENTS SIGNATURE: Tom Gunther *Tom Gunther*
AGENTS ADDRESS: 38395 104th St
AGENTS CITY, STATE, ZIP: Frederick, SD 57441
AGENTS PHONE: 605-329-7853

REQUEST: Variance for two (2) residences on one parcel in an Agricultural Preservation District (AG-P) per 4.0605 #1 & 4.2002 of Title 4 Brown County Ordinances.

LEGAL DESCRIPTION: NW1/4 of Section 28-T128N-R64W of the 5th P.M., Brown County, South Dakota (38407 104th St Frederick, SD 57441).

Planning Commission Action: Approved / Denied

By: Scott Bader Date: _____

HEARING DATE: February 15, 2022 TIME: 7:00 p.m.

MEETING: located in the **Basement Community Room of the Court House Annex**

25 Market Street • Aberdeen, South Dakota 57401-4203

Phone: 605-626-7144 • FAX: 605-626-4010 • email: Scott.Bader@browncounty.sd.gov

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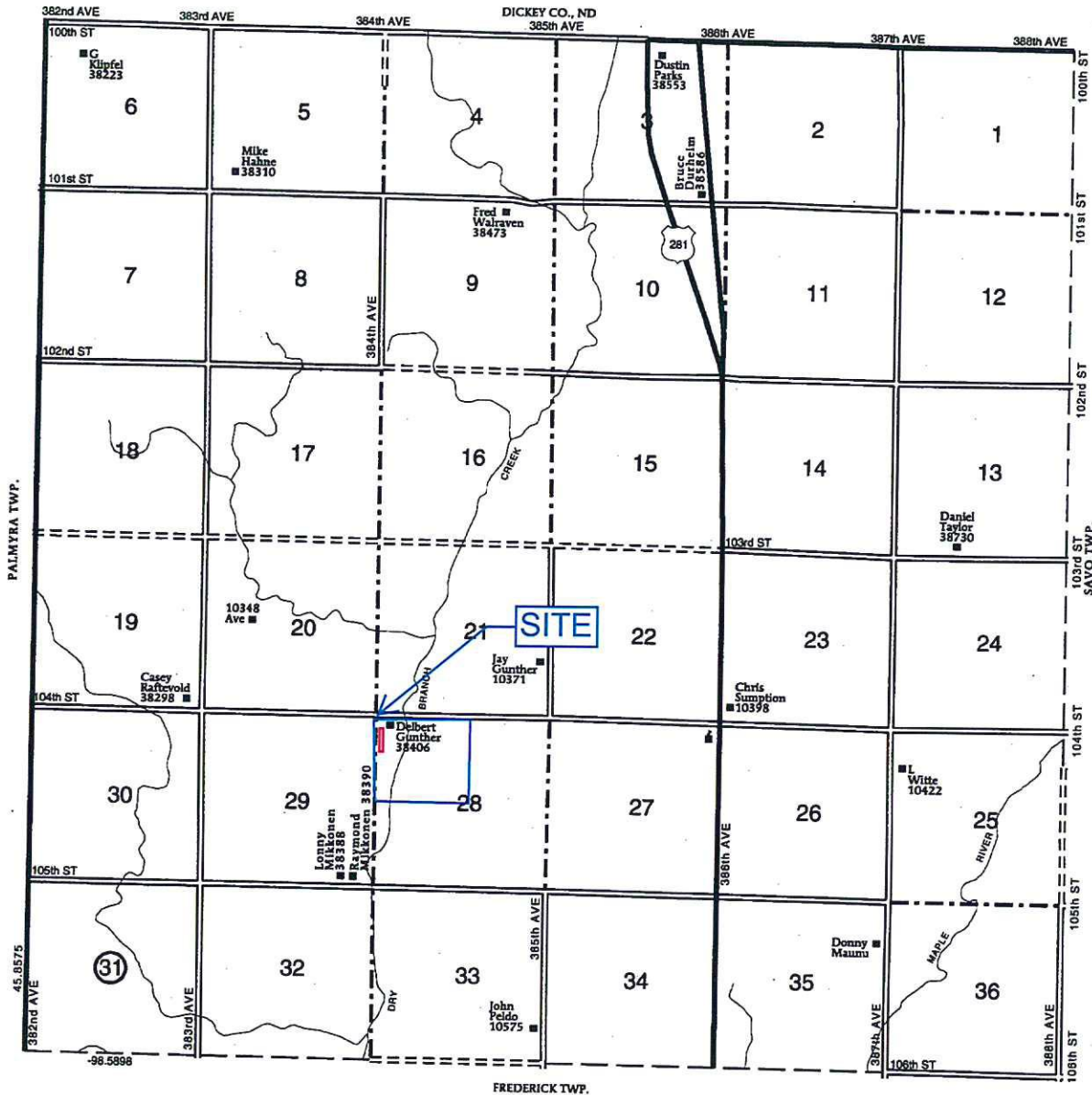
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T-128-N

OSCEOLA DIRECTORY

(Residents - Owners or Renters)

R-64-W



NOTICE OF HEARING

Application has been submitted to the Brown County Planning/Zoning Commission for a VARIANCE REQUEST. A hearing on this request will be held in the Courthouse Annex, Basement Community Meeting Room, on February 15, 2022, at 7:00 P.M.

Petitioner / Owner: Tom Gunther for Delbert Gunther

Description of property: NW1/4 of Section 28-T128N-R64W of the 5th P.M., Brown County, South Dakota (38407 104th Street Frederick, SD 57441).

Reason: A Variance Request has been submitted to the Brown County Planning/Zoning Commission to have two (2) residences on one (1) parcel in an Agriculture Preservation District (AG-P) per 4.0605 #1 and 4.2002.

The public is invited to attend the hearing to present either comments or testimony regarding the proposed variance request.

Dated this 2nd day of February 2022.

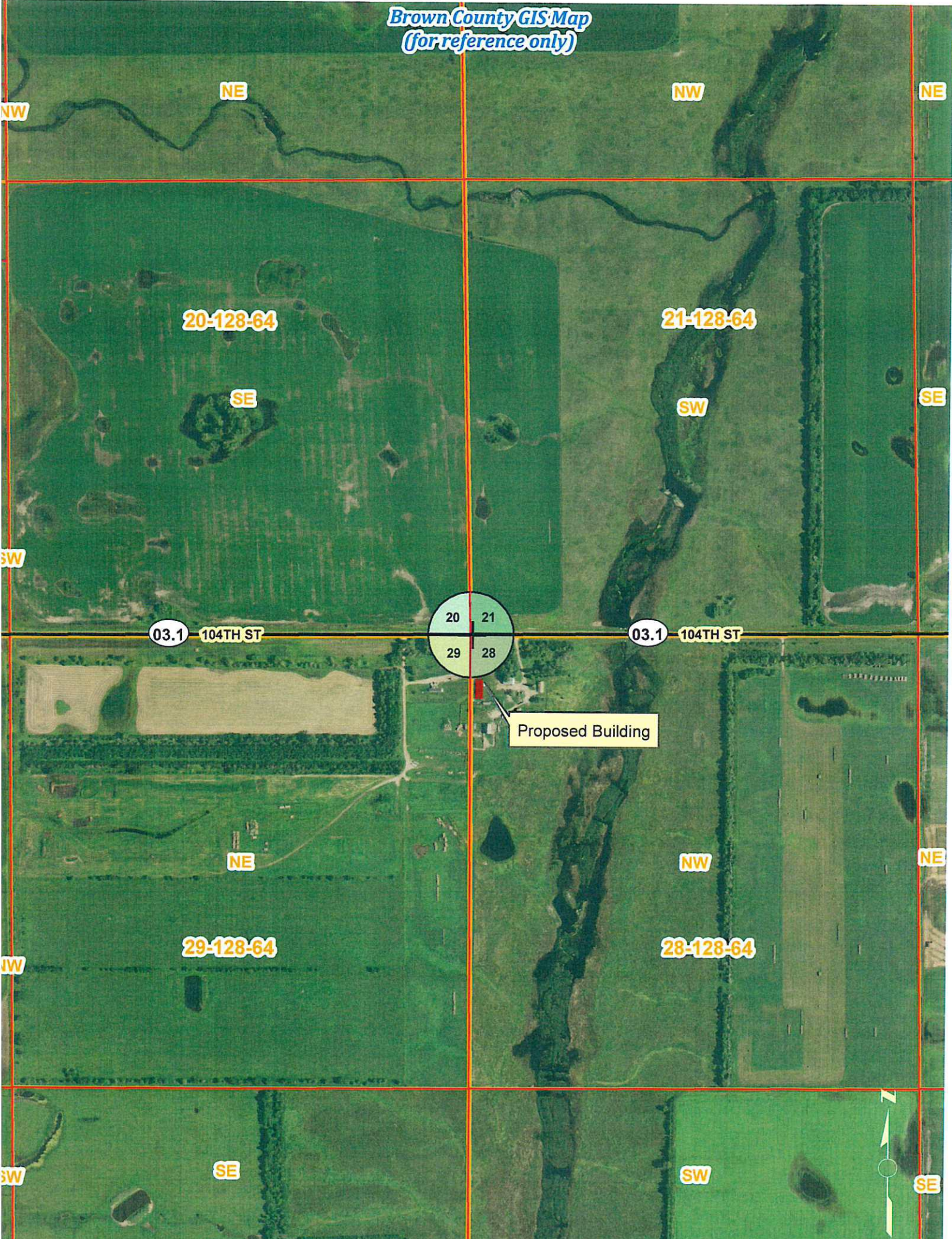
Planning/Zoning Commission &
Scott Bader – P&Z Director
25 Market Street
Aberdeen, SD 57401
Office: (605) 626-7144

Published once at the total approximate cost of _____.

Ordinance Explanations

1. You are requesting a **variance for two (2) residences on one (1) parcel** in an Agricultural Preservation District. Sections 4.0605 & 4.2002 of Title 4 in the Brown County Ordinances requires the approval from the Planning/Zoning Commission to have more than one residence on a parcel.
 - a. **Title 4.0605 Minimum Lot Requirements.** The minimum lot frontage width shall be two hundred (200) feet. The minimum area for any plot, piece, or area of land of contiguous assemblage as established by survey, plot, or deed shall contain an area of not less than forty (40) acres for AG-P District.
 - b. The Planning/Zoning Commission may reduce the required land area following the procedures of a Variance providing that:
 - i. *If to be occupied by other members of the farm unit, the Planning/Zoning Commission may reduce the required area following the procedures of a Variance.*
 - c. **Title 4.2002 Erection of More Than One Principal Structure on a Lot.** In any district, no more than one main structure shall be located on a tract of land or lot when used for residential purposes. Where a lot or tract is used for an agricultural farm operation, commercial or industrial purpose, more than one main building may be located upon the lot or tract of land, but only when such buildings conform to all other yard requirements or any other requirements of this Title 4 and are treated as though it were on an individual lot such as forty (40) acres.
 - i. *"The ordinance allows more than one principal structure on one parcel without having to plat separate lots, but they would need to be setup as though each residence has its own forty (40) acres of land in the AG-P District to meet the requirements of this Title 4".*
 - ii. *"If Delbert's house was on the NW1/4 of the NW1/4 of Section 28-T128N-R64W he would hypothetically have a minimum of forty (40) acres, which he does".*
 - iii. *"If Chris's mobile home would be setup on the NE1/4 of the NW1/4 of Section 28-T128N-R64W he would have his own forty (40) acres, but that isn't where it is planned to go. So, the option here is to request a variance from the Planning/Zoning Commission to place it by the grain bins and have two residences on the NW1/4NW1/4".*
2. You need to also request a **variance for building setbacks** to be 10' from the WEST right-of-way line rather than 100' or 20' required in an AG-P District. We cannot find that the north-south statutory section line right-of-way of 384th Avenue has been vacated in the past, so you need to ask for a variance to minimum required setbacks to be closer than required by Ordinance.
 - a. **Title 4.0606 Minimum Setback Requirements.** All structures shall be set back not less than one hundred (100) feet from all improved public roads measured from road right-of-way. The minimum side yard and rear yard setback shall each be twenty (20) feet.
 - i. *"In this particular request, there is not an improved road in the section line right-of-way, but we cannot find that it is formally vacated either. The proposed placement of the mobile home is where the existing old grain bins are located. We would measure from the mile-line Section Line of 384th Avenue going east, half of the Statutory right-of-way width of 33' and then using a 10' setback rather than the minimum of (Front Yard Setback) 100 feet; (Side Yard Setback) 20 feet".*

*Brown County GIS Map
(for reference only)*



20-128-64

21-128-64

29-128-64

28-128-64

03.1 104TH ST

03.1 104TH ST

Proposed Building



*Brown County GIS Map
(for reference only)*

SE

20-128-64

SW 21-128-64

03.1 104TH ST

20 21
29 28

03.1 104TH ST

Proposed Building



29-128-64

NE

28-128-64

NW



Delbert Gunther
38407 104th Street
Frederick, SD 57441

Tom Gunther
38395 104th Street
Frederick, SD 57441

Josh Larsen
10348 383rd Ave
Frederick, SD 57441

Lauren Witte
10422 387th Ave
Frederick, SD 57441

Austin Gunther
38298 104th Street
Frederick, SD 57441

Bretsch Real Estate LP
10326 390th Ave
Frederick, SD 57441

Mikkonen Land Corp.
38390 105th Street
Frederick, SD 57441



Aberdeen News
Watertown Public Opinion

Order Confirmation

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Account Number:	556235
Customer Name:	Brown County Auditor-Legals
Customer Address:	Brown County Auditor-Legals 25 Market St ABERDEEN SD 57401-4227
Contact Name:	Brown County Auditor-Legals
Contact Phone:	6056267110
Contact Email:	
PO Number:	

Date:	01/28/2022
Order Number:	6849513
Prepayment Amount:	\$ 0.00

Column Count:	1.0000
Line Count:	46.0000
Height in Inches:	0.0000

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Product	#Insertions	Start - End	Category
ABD The American News	1	02/02/2022 - 02/02/2022	Public Notices
ABD aberdeennews.com	1	02/02/2022 - 02/02/2022	Public Notices

Total Order Confirmation

\$17.88

Ad Preview

NOTICE OF HEARING
Application has been submitted to the Brown County Planning/Zoning Commission for a VARIANCE REQUEST. A hearing on this request will be held in the Courthouse Annex, Basement Community Meeting Room, on February 15, 2022, at 7:00 P.M.

Petitioner / Owner: Tom Gunther for Delbert Gunther

Description of property: NW1/4 of Section 28-T128N-R64W of the 5th P.M., Brown County, South Dakota (38407 104th Street Frederick, SD 57441).

Reason: A Variance Request has been submitted to the Brown County Planning/Zoning Commission to have two (2) residences on one (1) parcel in an Agriculture Preservation District (AG-P) per 4.0605 #1 and 4.2002.

The public is invited to attend the hearing to present either comments or testimony regarding the proposed variance request. Dated this 2nd day of February 2022.

Planning/Zoning Commission &

Scott Bader – P&Z Director
25 Market Street
Aberdeen, SD 57401
Office: (605) 626-7144
Published once at the total approximate cost of \$17.88.

February 2, 2022 6849513

STAFF REPORT

February 15, 2022

BROWN COUNTY ZONING BOARD OF ADJUSTMENT (BOA)

Variance request for Building Setbacks

ITEM # 02

GENERAL INFORMATION:

PETITIONER: Tom Gunther

REQUEST: **Variance request for Building Setbacks in an Agriculture Preservation District (AG-P).**

LEGAL DESCRIPTION: NW1/4 of Section 28T128N-R64W of the 5th P.M., Brown County, South Dakota.

TOWNSHIP: Osceola Twp.

LOCATION: 38407 104th Street

EXISTING ZONING: Agriculture Preservation District (AG-P)

SURROUNDING ZONING:

- North: Agriculture Preservation District (AG-P)
- South: Agriculture Preservation District (AG-P)
- East: Agriculture Preservation District (AG-P)
- West: Agriculture Preservation District (AG-P)

REPORTED BY: Scott Bader

GENERAL COMMENT: The petitioner is requesting a Variance to Building Setbacks for a mobile home to be 20' from the WEST right-of-way line rather than the minimum of 100' required in an AG-P District. The Variance request is per 4.0605 #1 and 4.2002 of Title 4 - Brown County Ordinances.

REVIEW: Staff has reviewed this request and recommend approval. Staff could not find in the Register of Deeds whether the section line was previously vacated, so we need to treat this as though it was not. There are five (5) old grain bins that will be removed, and the proposed mobile home will be set in that location if the variance is approved.

(Variance to Building Setbacks)

VARIANCE FINDINGS WORKSHEET

Prong One

Whether granting the variance runs counter to the public interest?

Consider the entire public— <i>not</i> just the neighbors	Findings		
1. Does it injure the neighborhood?	Yes <input type="checkbox"/>	No <input checked="" type="checkbox"/>	It is still farming in this area.
2. Does it conform to the neighborhood?	Yes <input checked="" type="checkbox"/>	No <input type="checkbox"/>	There are two family homes in this location and this is the 3rd gen.
3. Does it conform to the general purpose of the zoning ordinances?	Yes <input checked="" type="checkbox"/>	No <input type="checkbox"/>	
4. Does it conform to the comprehensive plan currently in place?	Yes <input checked="" type="checkbox"/>	No <input type="checkbox"/>	
5. Does it harm the public safety, health, or general welfare of the community?	Yes <input type="checkbox"/>	No <input checked="" type="checkbox"/>	

Prong Two

Whether special conditions exist to grant a variance?

Physical conditions— <i>not</i> money or econ hardship	Findings		
1. Does a special condition—exceptional narrowness, topography, siting, or the like—exist on the property? *Explicitly state the condition on the property that is a special condition if one exists. *It must be a physical condition. *Exception: legal justification (for example, estoppel) is a special circumstance.	Yes <input checked="" type="checkbox"/>	No <input type="checkbox"/>	Going to the east, the land drops off considerably, maybe 20' slope. The water main also stops out in front of this location and does not go east.
a. <i>If</i> a special condition exists, does enforcing the ordinance create an unnecessary hardship? *That does not mean money, econ hardship, or allowing a use that's prohibited (<i>i.e.</i> , not otherwise excluded) in the zoning district.	Yes <input type="checkbox"/>	No <input checked="" type="checkbox"/>	
b. <i>If</i> a special circumstance exists, does granting the variance observe the ordinance's spirit while doing substantial justice.	Yes <input checked="" type="checkbox"/>	No <input type="checkbox"/>	

BROWN COUNTY PLANNING & ZONING COMMISSION


(Variance to Building Setbacks)

APPLICATION FOR VARIANCE

DATE: January 24, 2022
RECEIPT # 620608
TOWNSHIP: Osceola Twp

FEES: \$125.00
PAID: YES/NO CHK/CASH
DATE: 01/26/22

OWNERS SIGNATURE: Delbert Gunther
OWNERS ADDRESS: 38407 104th St
OWNERS CITY, STATE, ZIP: Frederick, SD 57441
OWNERS PHONE: _____

AGENTS SIGNATURE: Tom Gunther 
AGENTS ADDRESS: 38395 104th St
AGENTS CITY, STATE, ZIP: Frederick, SD 57441
AGENTS PHONE: 605-329-7853

REQUEST: A request for a proposed mobile home to be 20' from the right-of-way line rather than a minimum of 100' required in an Agriculture Preservation District (AG-P).

LEGAL DESCRIPTION: NW1/4 of Section 28-T128N-64W of the 5th P.M.,
Brown County, South Dakota (38407 104th St Frederick, SD 57441).

Planning Commission Action: Approved / Denied

By: Scott Bader Date: _____

HEARING DATE: February 15, 2022 **TIME:** 7:00 p.m.

MEETING: located in the Basement Community Room of the Court House Annex

25 Market Street • Aberdeen, South Dakota 57401-4203

Phone: 605-626-7144 • FAX: 605-626-4010 • email: Scott.Bader@browncounty.sd.gov

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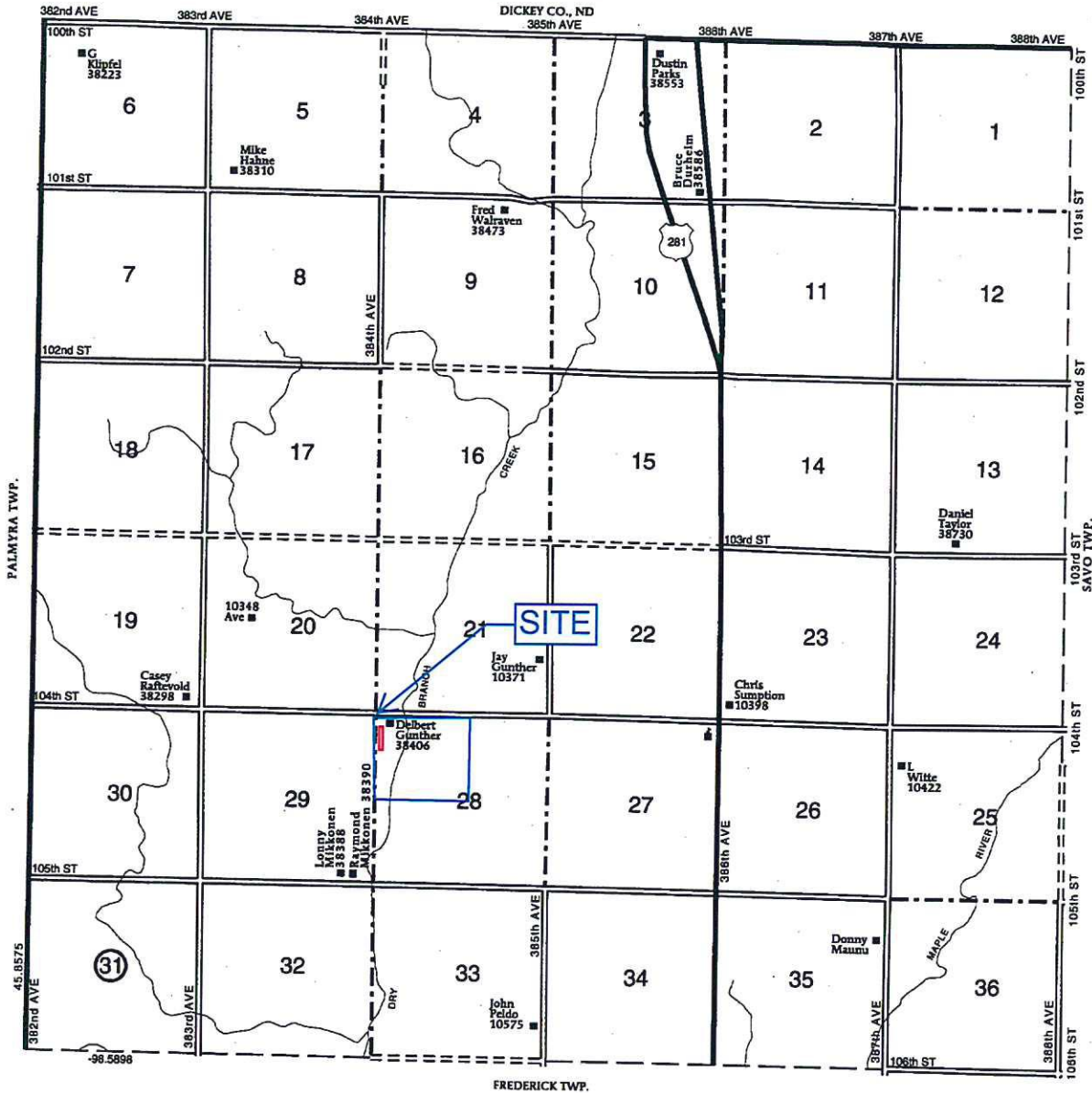
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T-128-N

OSCEOLA DIRECTORY

(Residents - Owners or Renters)

R-64-W



NOTICE OF HEARING

Application has been submitted to the Brown County Planning/Zoning Commission for a VARIANCE REQUEST. A hearing on this request will be held in the Courthouse Annex, Basement Community Meeting Room, on February 15, 2022, at 7:00 P.M.

Petitioner / Owner: Tom Gunther for Delbert Gunther

Description of property: NW1/4 of Section 28-T128N-R64W of the 5th P.M., Brown County, South Dakota (38407 104th Street Frederick, SD 57441).

Reason: A Variance Request has been submitted to the Brown County Planning/Zoning Commission for Building Setbacks to be 20' from the WEST right-of-way line rather than 100' minimum in Agriculture Preservation District (AG-P).

The public is invited to attend the hearing to present either comments or testimony regarding the proposed variance request.

Dated this 2nd day of February 2022

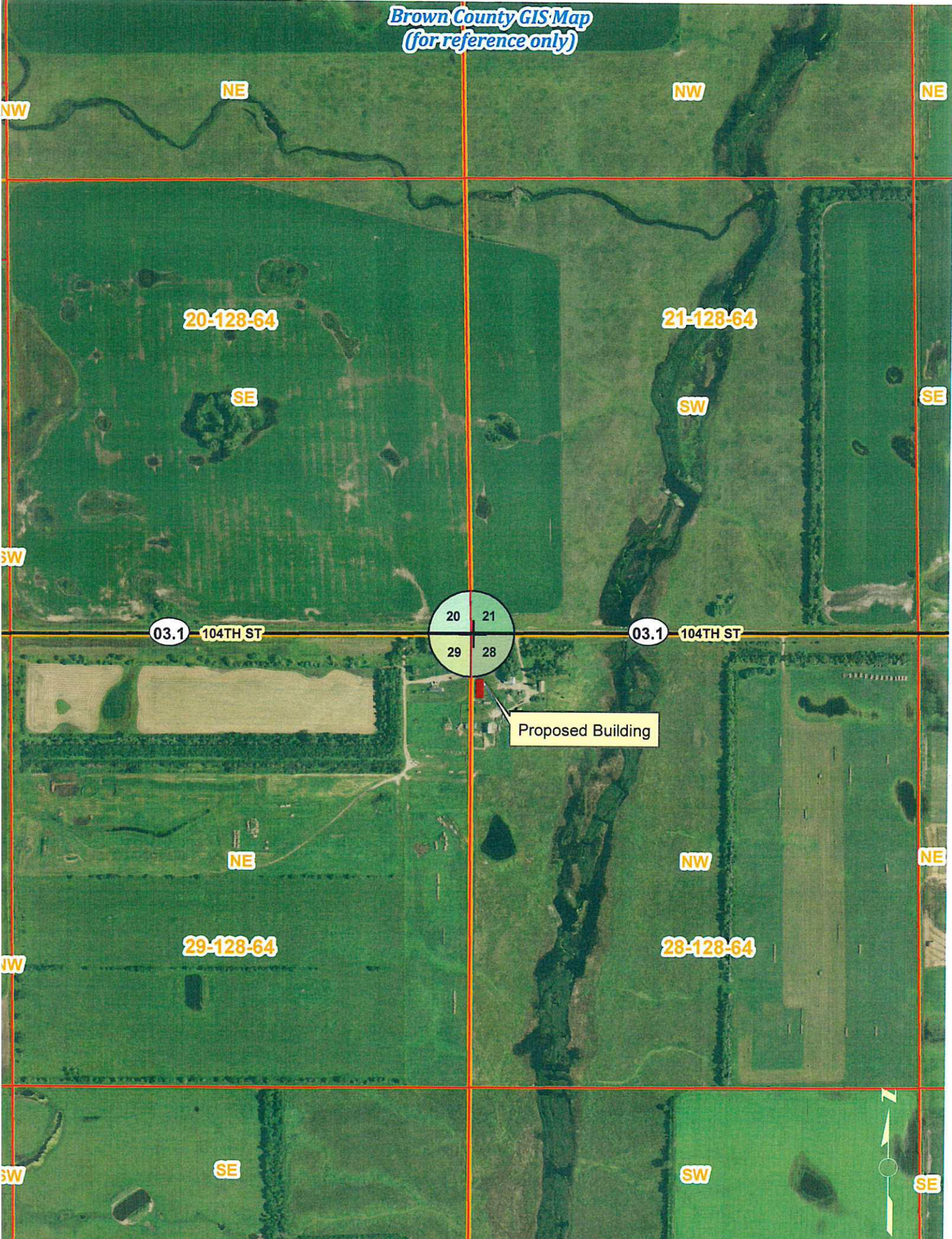
Planning/Zoning Commission &
Scott Bader – P&Z Director
25 Market Street
Aberdeen, SD 57401
Office: (605) 626-7144

Published once at the total approximate cost of _____.

Ordinance Explanations

1. You are requesting a **variance for two (2) residences on one (1) parcel** in an Agricultural Preservation District. Sections 4.0605 & 4.2002 of Title 4 in the Brown County Ordinances requires the approval from the Planning/Zoning Commission to have more than one residence on a parcel.
 - a. **Title 4.0605 Minimum Lot Requirements.** The minimum lot frontage width shall be two hundred (200) feet. The minimum area for any plot, piece, or area of land of contiguous assemblage as established by survey, plot, or deed shall contain an area of not less than forty (40) acres for AG-P District.
 - b. The Planning/Zoning Commission may reduce the required land area following the procedures of a Variance providing that:
 - i. *If to be occupied by other members of the farm unit, the Planning/Zoning Commission may reduce the required area following the procedures of a Variance.*
 - c. **Title 4.2002 Erection of More Than One Principal Structure on a Lot.** In any district, no more than one main structure shall be located on a tract of land or lot when used for residential purposes. Where a lot or tract is used for an agricultural farm operation, commercial or industrial purpose, more than one main building may be located upon the lot or tract of land, but only when such buildings conform to all other yard requirements or any other requirements of this Title 4 and are treated as though it were on an individual lot such as forty (40) acres.
 - i. *The ordinance allows more than one principal structure on one parcel without having to plat separate lots, but they would need to be setup as though each residence has its own forty (40) acres of land in the AG-P District to meet the requirements of this Title 4".*
 - ii. *If Delbert's house was on the NW1/4 of the NW1/4 of Section 28-T128N-R64W he would hypothetically have a minimum of forty (40) acres, which he does".*
 - iii. *If Chris's mobile home would be setup on the NE1/4 of the NW1/4 of Section 28-T128N-R64W he would have his own forty (40) acres, but that isn't where it is planned to go. So, the option here is to request a variance from the Planning/Zoning Commission to place it by the grain bins and have two residences on the NW1/4NW1/4".*
2. You need to also request a **variance for building setbacks** to be 10' from the WEST right-of-way line rather than 100' or 20' required in an AG-P District. We cannot find that the north-south statutory section line right-of-way of 384th Avenue has been vacated in the past, so you need to ask for a variance to minimum required setbacks to be closer than required by Ordinance.
 - a. **Title 4.0606 Minimum Setback Requirements.** All structures shall be set back not less than one hundred (100) feet from all improved public roads measured from road right-of-way. The minimum side yard and rear yard setback shall each be twenty (20) feet.
 - i. *In this particular request, there is not an improved road in the section line right-of-way, but we cannot find that it is formally vacated either. The proposed placement of the mobile home is where the existing old grain bins are located. We would measure from the mile-line Section Line of 384th Avenue going east, half of the Statutory right-of-way width of 33' and then using a 10' setback rather than the minimum of (Front Yard Setback) 100 feet; (Side Yard Setback) 20 feet".*

*Brown County GIS Map
(for reference only)*



03.1 104TH ST

03.1 104TH ST

20 21
29 28

Proposed Building

20-128-64

21-128-64

29-128-64

28-128-64



*Brown County GIS Map
(for reference only)*

SE

SW 21-128-64

20-128-64

03.1 104TH ST

20 21
29 28

03.1 104TH ST

Proposed Building



28-128-64

29-128-64

NW

NE



Delbert Gunther
38407 104th Street
Frederick, SD 57441

Tom Gunther
38395 104th Street
Frederick, SD 57441

Josh Larsen
10348 383rd Ave
Frederick, SD 57441

Lauren Witte
10422 387th Ave
Frederick, SD 57441

Austin Gunther
38298 104th Street
Frederick, SD 57441

Bretsch Real Estate LP
10326 390th Ave
Frederick, SD 57441

Mikkonen Land Corp.
38390 105th Street
Frederick, SD 57441



Aberdeen News
Watertown Public Opinion

Order Confirmation

Not an Invoice

Account Number:	556235
Customer Name:	Brown County Auditor-Legals
Customer Address:	Brown County Auditor-Legals 25 Market St ABERDEEN SD 57401-4227
Contact Name:	Brown County Auditor-Legals
Contact Phone:	6056267110
Contact Email:	
PO Number:	

Date:	01/28/2022
Order Number:	6849551
Prepayment Amount:	\$ 0.00

Column Count:	1.0000
Line Count:	47.0000
Height in Inches:	0.0000

Print

Product	#Insertions	Start - End	Category
ABD The American News	1	02/02/2022 - 02/02/2022	Public Notices
ABD aberdeennews.com	1	02/02/2022 - 02/02/2022	Public Notices

Total Order Confirmation

\$18.16

Ad Preview

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Dated this 2nd day of February 2022
Planning/Zoning Commission &

Scott Bader – P&Z Director
25 Market Street
Aberdeen, SD 57401

Office: (605) 626-7144

Published once at the total approximate cost of \$18.16.

February 2, 2022 6849551

STAFF REPORT

February 15, 2022

BROWN COUNTY ZONING BOARD OF ADJUSTMENT (BOA)

Conditional Use Petition (CUP) in HC District

Item # 03

GENERAL INFORMATION:

PETITIONER: Ka-Boomer's Inc. / Dan Bunjer

REQUEST: **Conditional Use Petition (CUP)** for temporary fireworks stand – 2022 & 2023 season

LEGAL DESCRIPTION: 'Judy's Outlot 2" in the NW1/4 of Section 22-T123N-R63W of the 5th P.M., Brown County, South Dakota

LOCATION: 5110 East Highway 12

EXISTING ZONING: Highway Commercial District (HC)

SURROUNDING ZONING:

North:	Highway Commercial District (HC)
South:	Agriculture Preservation District (AG-P)
East:	Highway Commercial District (HC)
West:	Highway Commercial District (HC)

REPORTED BY: Scott Bader

GENERAL COMMENT: The petitioner is requesting this Conditional Use Petition (CUP) for temporary fireworks stand on leased property. This is for the allowed timeslots of State approved sales dates for the 4th of July Holidays of 2022 and 2023 season.

REVIEW: Staff has reviewed this request and recommend approval. We recommended to the petitioner to request a two-year period for approval on the leased land if he plans to continue this location. He did come to agreement with the property owner for a two-year contract, so they are requesting the same.

SPECIAL EXCEPTION/CONDITIONAL USE
WORKSHEET

REQUEST INFORMATION

Request:	Special Exception/Conditional Use Permit • (Short Description) Seasonal Fireworks Stand
Applicant:	Name Ka-Boomers / Dan Bunjer • Address PO Box 86, Wahoo, NE 68066
Landowner:	• Same Farm Power Manufacturing
Legal Description:	"Judy's Outlot 2" in the NW1/4 of Section 22-T123N-R63W of the 5th P.M., Brown County, South Dakota
Location:	5110 East Highway 12
Size:	0.43 acres
Physical Description:	Empty gravel lot.
Tax ID:	26506
Current Zoning:	Highway Commercial District (HC)
Existing Land Use:	Highway Commercial
Surrounding Zoning:	• Highway Commercial (HC) and Agriculture Preservation District (AG-P)
Utilities:	
Ordinance:	
Report by:	Scott Bader

FINDINGS

JURISDICTION (APPROVING AUTHORITY SDCL 11-2-17.3 AND 11-2-53 (3); BCO 4.2402)
The Board of Adjustment is empowered under chapter 4.24 of Brown County Ordinance to grant the special exception/conditional use and that the granting of the special exception will OR will not adversely affect the public interest and welfare.

CATEGORY OF CONDITIONAL USE REQUIRING APPROVAL SDCL 11-2-17.3

NOT SURE WHAT THIS MEANS? IS IT THE USE THEY ARE ASKING FOR?

ZONING DISTRICT AVAILABILITY OF SPECIAL EXCEPTION SDCL 11-2-17.3

PROPERTY IS ZONED AS:

Highway Commercial District (HC)

Special Exception/Conditional use permitted? YES No

Fit with Comprehensive Plan? YES No

Fit with Purpose of Zoning Ordinance and Relevant District? (see statement of intent in ordinance)

YES No

CRITERIA FOR EVALUATING CONDITIONAL USE SDCL 11-2-17.3

BCO 4.2402 (5) - SATISFACTORY PROVISIONS AND ARRANGEMENTS (write considerations in blanks)

(a) Ingress and egress to property and proposed structures thereon with particular reference to automotive and pedestrian safety and convenience, traffic flow and control, and access in case of fire or catastrophe;

Conditional Use has adequate ingress, egress and traffic flow.

(b) Off-street parking and loading areas where required, with particular attention to the items in "a" above and the economic, noise, glare or other effects of the general exception on adjoining properties and properties generally in the district;

Conditional Use has parking and has minimal effects to adjoining properties.

(c) Refuse and service areas, with particular reference to the items in "a" and "b" above;

Conditional Use will have accommodations for refuse.

(d) Utilities, with reference to locations, availability, and compatibility;

Conditional Use uses existing utilities.

(e) Screening and buffering with reference to type, dimensions, and character;

Conditional Use does not have screening due to it being retail sales.

(f) Signs, if any, and proposed exterior lighting with reference to glare, traffic safety, economic effect and compatibility and harmony with properties in the district;

Sign and exterior lighting would have minimal effect to adjoining properties.

(g) Required yards and other open spaces;

Conditional Use meets yard and space requirements.

SPECIAL EXCEPTION/CONDITIONAL USE
WORKSHEET

(h) General compatibility with adjacent property in the district

Conditional Use is compatible with other properties in the district.

SPECIFIC RULES GOVERNING INDIVIDUAL SPECIAL EXCEPTIONS BCO 4.2402(5) (if any)

Most don't have any. Examples that do are Mining and CAFOs

BCO 4.2402 (6) CONDITIONS AND SAFEGUARDS

(a) Fire Hazard. The use shall not include any activity involving the use or storage of flammable or explosive material unless protected by adequate fire-fighting and fire-suppression equipment and by such safety devices as are normally used in the handling of any such material.

Conditional Use would have a fire risk due to it involving the sale of fireworks. Fire suppression equipment will be on site.

(b) Noise. The use shall not include noise which objectionable due to volume, frequency, or beat unless muffled or otherwise controlled.

Conditional Use would create minimal noise. Discharge of fireworks at this location is unlawful.

(c) Vibration. The use shall not include vibration, which is discernible without instruments on any adjoining lot or property.

Conditional Use would create minimal vibration.

(d) Air Pollution. The use shall not involve any pollution of air by fly ash, dust, vapors, or other substances which are harmful to health, animals, vegetation, or other property or which can cause soiling, discomfort, or irritation.

Conditional Use does not generate air pollution.

(e) Odors. The use shall not involve any malodorous gas or matter, which is discernible to any adjoining lot or property.

Conditional Use would create minimal odors.

(f) Glare. The use shall not involve any direct or reflected glare that is visible from any adjoining property or from any public street, road, or highway.

Conditional Use would create minimal glare.

(g) Traffic Hazard. The use shall not involve any activity substantially increasing the movement of traffic on public streets unless procedures are instituted to limit traffic hazards and congestion. No single use or density of development should generate traffic volumes on any public street in excess of one hundred (100) vehicle trips per day per acre

Conditional Use should not create a traffic hazard.

(h) Sewer and Water. The use shall not involve an activity, which will substantially increase the burden on the water supply or cause sewage treatment problems unless provision is made for necessary adjustments.

Conditional Use does not use sewer or water.

(i) Character of Neighborhood. The use shall not involve any activity not in character with the majority of the uses in the neighborhood unless, by design, setback, nature of operation, and other devices, the character of the neighborhood will be maintained.

The character of the neighborhood will slightly altered.

(j) General Welfare of the Community. The use shall not involve any activity which adversely affects the general welfare to the community.

Conditional Use should not adversely affect the general welfare of the community.

SPECIAL EXCEPTION/CONDITIONAL USE
WORKSHEET

After consideration and approval of the stated findings above, the Brown County Board of Adjustment moves to APPROVE DENY the application for Special Exception/Conditional use.

BROWN COUNTY PLANNING & ZONING COMMISSION

APPLICATION FOR SPECIAL EXCEPTION / CONDITIONAL USE

DATE: January 18, 2022

FEES: \$225.00

RECEIPT # 620607

PAID: YES/NO CHK/CASH

TOWNSHIP: Aberdeen Twp

DATE: January 26, 2022

OWNERS SIGNATURE: Dan Bunjer kaboomersfireworks@yahoo.com

OWNERS ADDRESS: PO Box 86

OWNERS CITY, STATE, ZIP: Wahoo, NE 68066

OWNERS PHONE: (402) 314-0857

AGENTS SIGNATURE: _____


AGENTS ADDRESS: _____

AGENTS CITY, STATE, ZIP: _____

AGENTS PHONE: _____

REQUEST: Family Fireworks set up in a temporary tent for the 4th of July Holiday
This is leased property for this seasonal & annual business.

LEGAL DESCRIPTION: "Judy's Outlot 2" in the NW1/4 of Section 22-T123N-R63W
of the 5th P.M., Brown County, South Dakota

SIGNATURE: 
Daniel Bunjer
Dan Bunjer

Planning Commission Action: <u>Approved</u> / <u>Denied</u>	

By: _____	Date: _____
HEARING DATE: <u>February 15, 2022</u>	TIME: <u>7:00 pm</u>

MEETING: located in the Basement Community Room of the Court House Annex
25 Market Street • Aberdeen, South Dakota 57401-4203
Phone: 605-626-7144 • FAX: 605-626-4010 • email: Scott.Bader@browncounty.sd.gov

Want a "free" extra book?

By reviewing township Directory maps for correct information before we publish the next issue, FHP will send you a free book of any county in any state printed by FHP for that year.

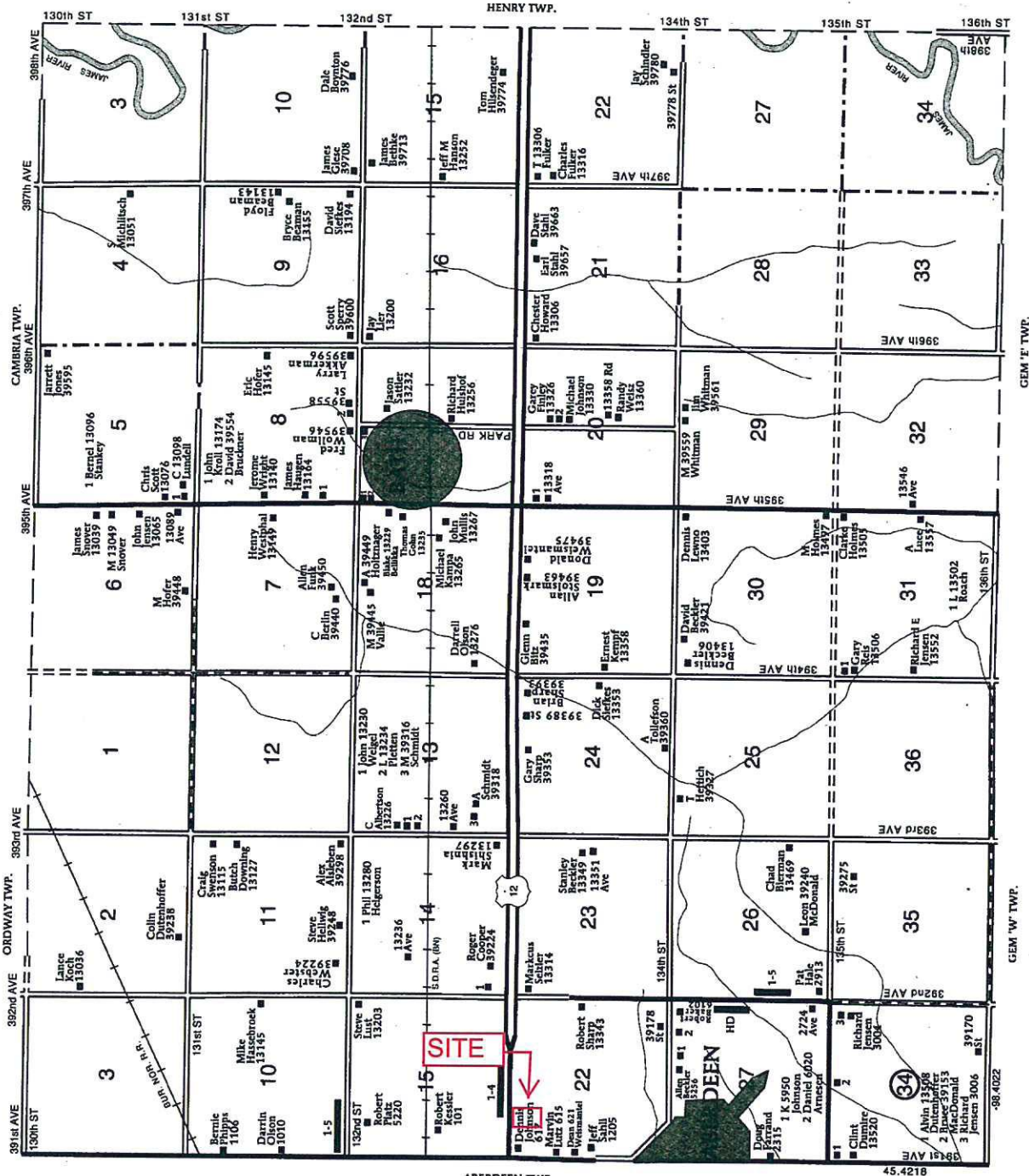
Contact our updating dept. at
800-685-7432-ext. 2605 or
 email: amanda.engebretson@farmandhomepublishers.com

T-123-N

BATH DIRECTORY

R-62-63-W

(Residents - Owners or Renters)



- BATH TOWNSHIP**
- SECTION 10W**
- 1 Beckler, Ron 5005
 - 2 Tennant, Cory 5025
 - 3 5091
 - 4 Gross, Del 5115
- SECTION 15W**
- 1 Harper, Steve 5219
 - 2 Goasman, C 5405
 - 1 Eilers, Todd 5455
 - 4 Knudson, R 5485
 - 4 Goasman, S 5755
- SECTION 17**
- 1 Buechler, Jerry 13228
 - 2 Brinkman, Stanley 13230
- SECTION 20**
- 1 Westphal, Henry 13316
- SECTION 28**
- 2 Rohrbach, Kevin 13328
- SECTION 34**
- 1 Bellikka, Daryl 2111
 - 3 Kohnease, Paul 2135
 - 3 Griese, Doug 2215
 - 4 Rud, Robert 2317
 - 5 Mattern, R 2519
- BROWN CO., SD**

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Reason: A Conditional Use Petition (CUP) for temporary fireworks stand on leased property.

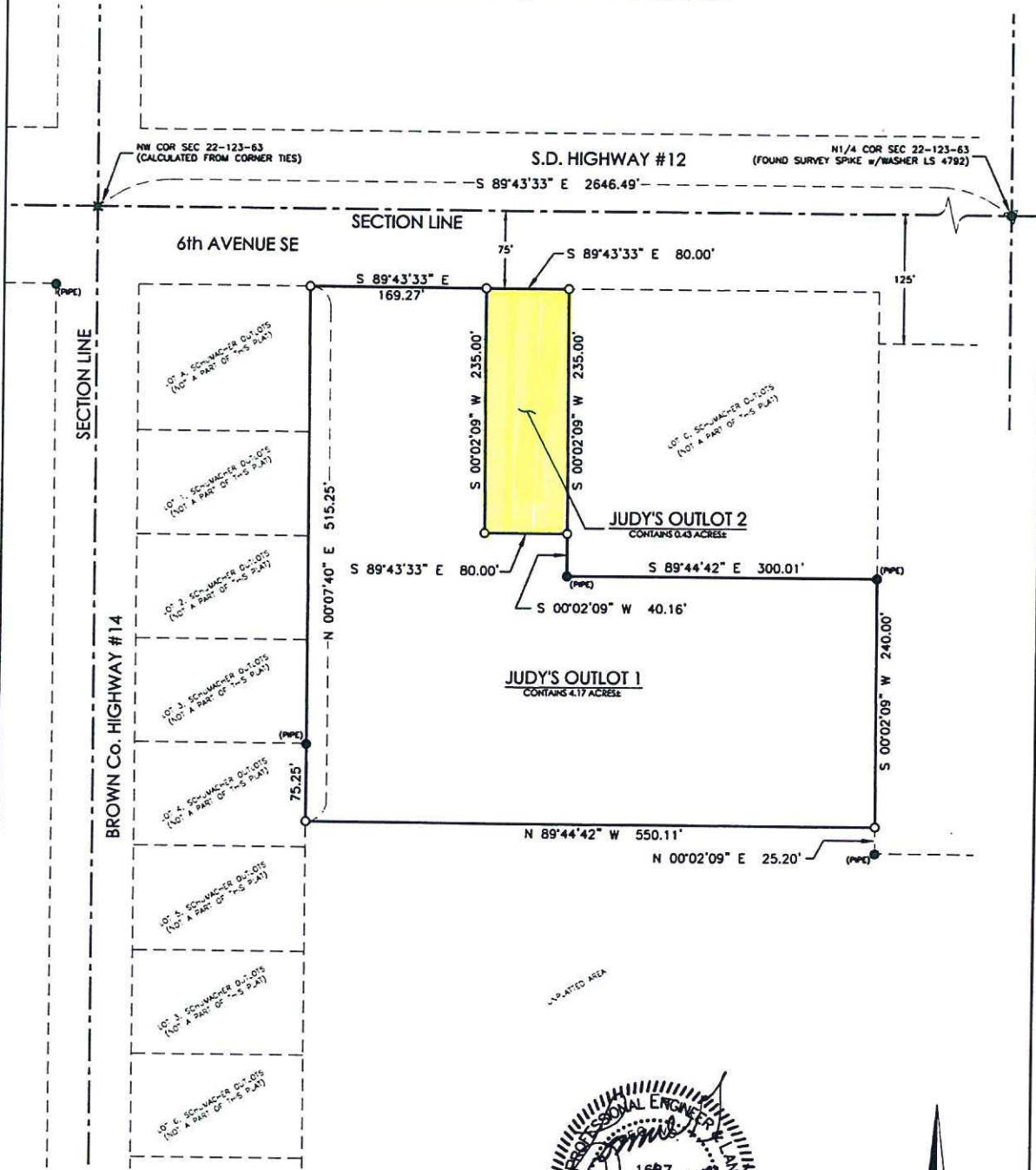
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Planning/Zoning Commission &
Scott Bader – P&Z Director
25 Market Street
Aberdeen, SD 57401
Office: (605) 626-7144

Published once at the total approximate cost of _____.

**PLAT SHOWING
JUDY'S OUTLOTS
IN THE NORTHWEST 1/4 OF SECTION 22
T123N R63W of the 5th P.M.,
BROWN COUNTY, SOUTH DAKOTA**



BASIS OF BEARINGS
G.P.S.

LEGEND

- PIN FOUND (AS NOTED)
- PIN SET w/CAP LS 1687
- ▼ FOUND SURVEY SPIKE w/WASHER (AS NOTED)
- ✕ CALCULATED CORNER



Prepared by:

CLARK
ENGINEERING CORPORATION

2301 8TH AVE NE #125
ABERDEEN, SD 57401
(605) 225-3494
(605) 225-5433 FAX

FIREWORKS

- 34-37-1 Definition of terms.
- 34-37-2 Licenses required for sale of fireworks--Application--Duration--Display--Violation as misdemeanor.
- 34-37-2.1 Minimum age for sale or dispensing of fireworks--Violation as misdemeanor.
- 34-37-2.2 Sales to out-of-state residents--Early and late season licenses--Copy of law and map provided with sale--Violation as misdemeanor.
- 34-37-3 Prohibited fireworks--Manufacture or use as misdemeanor.
- 34-37-4 Possession, sale, or use of unauthorized fireworks--Misdemeanor.
- 34-37-5 Consumer fireworks permissible--Use of unauthorized fireworks as misdemeanor.
- 34-37-6 Submission of fireworks for examination by department--Violation as misdemeanor.
- 34-37-7 Exemptions from chapter.
- 34-37-8 Unlicensed transportation of fireworks into state for sale--Misdemeanor.
- 34-37-9 Records to be kept by licensee--Inspection--Violation as misdemeanor.
- 34-37-10 Periods and time during which retail sales permitted--Violation as misdemeanor.
- 34-37-10.1 Sale from motor vehicle--Misdemeanor.
- 34-37-10.2 Exits from structures where fireworks sold--Violation as misdemeanor.
- 34-37-10.3 "No smoking" signs where fireworks sold--Smoking within fifty feet of location as misdemeanor.
- 34-37-10.4 Signs stating minimum distance for igniting fireworks--Igniting fireworks within minimum distance as misdemeanor.
- 34-37-10.5 Open flame on retail premises as misdemeanor--Fire extinguisher required.
- 34-37-10.6 Repealed.
- 34-37-11 Sale or use prohibited in forests, parks and other specified areas--Exception--Violation as misdemeanor.
- 34-37-12 Sales or shipment by wholesaler or manufacturer to persons outside of state--Violation as misdemeanor.
- 34-37-12.1 Evidence of delivery outside of state--Violation as misdemeanor.
- 34-37-13 Permit for use of display fireworks at event--Purchase and use requirements--Violation as misdemeanor.
- 34-37-13.1 Permit for use of consumer fireworks at event--Purchase and use requirements--Violation as misdemeanor.
- 34-37-14 Repealed.
- 34-37-15 Revocation, suspension, or nonrenewal of license.
- 34-37-16 Possession of unauthorized fireworks as misdemeanor--Seizure--Destruction.
- 34-37-16.1 Periods during which use of consumer fireworks permitted--Violation as misdemeanor.
- 34-37-16.2 Certain fireworks permitted all year.
- 34-37-17 Enforcement of chapter.
- 34-37-18 Record forms prescribed by secretary.
- 34-37-19 County regulation of fireworks--Use of South Dakota grassland fire danger index.
- 34-37-20 Repealed.

34-37-1. Definition of terms. Terms used in this chapter mean:

- (1) "Consumer fireworks," fireworks designed primarily to produce visible effects by combustion; that comply with the construction, chemical composition, and labeling regulations promulgated by the U.S. Consumer Product Safety Commission 16 C.F.R. Part 1507, effective January 1, 2019, and that are classified as 1.4G, UN0336 under the American Pyrotechnics Association Standard 87-1, 2001 edition;
- (2) "Display fireworks," fireworks regulated by the Bureau of Alcohol, Tobacco, Firearms and Explosives that are not intended for consumer use and are normally used at a public event and classified as 1.3G, UN0335 under the American Pyrotechnics Association Standard 87-1, 2001 edition;
- (3) "Public event," use of fireworks for commerce on public property or sponsored by a public entity;

(4) "Retailer" or "Retailer licensee," includes any person licensed under this chapter to engage in the business of making sales of fireworks at retail;

(5) "Retail sale," the sale of fireworks to any person not licensed to sell fireworks or for any purpose other than for resale;

(6) "Sale," any transfer, exchange, or barter, conditional or otherwise, in any manner or by any means, for consideration;

(7) "Wholesaler" or "Wholesaler licensee," any person licensed under this chapter to engage in the business of making sales of fireworks to retailers for resale to consumers.

Source: SL 1964, ch 31, § 1; SL 1983, ch 259, § 1; SL 1998, ch 213, § 1; SL 2019, ch 154, § 1, eff. Mar. 20, 2019.

34-37-2. Licenses required for sale of fireworks--Application--Duration--Display--Violation as misdemeanor. A person is guilty of a Class 1 misdemeanor if the person sells, holds for sale, or offers for sale, as wholesaler or retailer, any fireworks in this state without a license as a wholesaler or retailer issued under this chapter.

Application for a license as wholesaler or retailer shall be made to the Department of Public Safety on forms to be prescribed by the department. An application shall be accompanied by an application fee of five hundred dollars for a wholesaler's license, and twenty-five dollars for a retailer's license.

In addition to a license as a retailer issued under this section, a retailer shall obtain a retailer sales license for a fee of twenty-five dollars, for each sales period specified in § 34-37-10, during which a retailer may sell fireworks. An application for the retailer sales license in any year shall be received by the department no later than fifteen days before the beginning of the sales period. Any application for a retailer sales license received after that date shall be denied by the department and returned to the applicant, together with any application fee submitted. The retailer sales license expires sixty days after the end of the sales period and is renewable annually until the application deadline for the corresponding sales period. The retailer licensee shall at all times display the retailer sales license at the retailer's place of business.

Any funds received by the department under this section shall be deposited in the state general fund.

Source: SL 1964, ch 31, §§ 3, 4; SL 1977, ch 190, § 101; SL 1982, ch 18, § 101; SL 1998, ch 213, § 3; SL 2003, ch 272 (Ex. Ord. 03-1), § 20; SL 2013, ch 161, § 1; SL 2019, ch 154, § 2, eff. Mar. 20, 2019.

34-37-2.1. Minimum age for sale or dispensing of fireworks--Violation as misdemeanor. A person under the age of eighteen years may not be licensed under this chapter. A wholesaler or retailer may not employ or permit any person under the age of eighteen to sell, dispense, or offer for sale any fireworks enumerated in this chapter. A violation of this section is a Class 1 misdemeanor.

Source: SL 1971, ch 207, § 1; SL 2019, ch 154, § 3, eff. Mar. 20, 2019.

34-37-2.2. Sales to out-of-state residents--Early and late season licenses--Copy of law and map provided with sale--Violation as misdemeanor. In addition to any license required under § 34-37-2, for any sales to out-of-state residents, a retailer licensee may obtain:

(1) An early season license to operate from May first to June twenty-sixth, with a required fee of one thousand dollars; or

(2) A late season license to operate from July sixth to August thirty-first, and from December twenty-eighth to January first, with a required fee of one thousand dollars.

A retailer licensee with a license issued under this section that is located west of the Missouri River shall provide any consumer with a copy of any law that prohibits the use of fireworks and a map of the Black Hills Forest Fire Protection District with any sale of fireworks, other than any sale occurring from June twenty-seventh to July fifth. A violation of this section is a Class 1 misdemeanor.

Source: SL 1983, ch 259, § 2; SL 1985, ch 282, § 1; SL 1986, ch 27, § 32; SL 2011, ch 162, § 1; SL 2019, ch 154, § 4, eff. Mar. 20, 2019.

34-37-3. Prohibited fireworks--Manufacture or use as misdemeanor. Any person who manufactures, uses, or disposes to another, with or without consideration, so as to endanger the safety of others, any consumer fireworks made wholly or in part of dynamite, nitroglycerin, or giant powder, is guilty of a Class 1 misdemeanor.

Source: SDC 1939, § 13.1607; SL 1977, ch 190, § 102; SL 1983, ch 259, § 3; SL 1998, ch 213, § 4.

34-37-4. Possession, sale, or use of unauthorized fireworks--Misdemeanor. Except as provided in § 34-37-12, a person is guilty of a Class 1 misdemeanor if the person possesses, sells, offers for sale, brings into this state, or uses any pyrotechnics commonly known as fireworks, other than consumer fireworks.

Source: SL 1949, ch 41, § 1; SDC Supp 1960, § 13.1607-1; SL 1964, ch 31, § 2; SL 1977, ch 190, § 103; SL 2019, ch 154, § 5, eff. Mar. 20, 2019.

34-37-5. Consumer fireworks permissible--Use of unauthorized fireworks as misdemeanor. Permissible fireworks are consumer fireworks as enumerated in Chapter 3 of the American Pyrotechnics Association Inc., Standard 87-1, 2001 edition and that comply with labeling regulations promulgated by the U.S. Consumer Product Safety Commission 16 C.F.R. 1507 as in effect on January 1, 2019. The use of fireworks that are not permissible, unless authorized in this chapter, is a Class 1 misdemeanor.

Source: SL 1949, ch 41, § 1; SDC Supp 1960, § 13.1607-1; SL 1964, ch 31, § 1 (4); SL 1983, ch 259, § 4; SL 1998, ch 213, § 5; SL 2019, ch 154, § 27, eff. Mar. 20, 2019.

34-37-6. Submission of fireworks for examination by department--Violation as misdemeanor. Before any fireworks not enumerated under § 34-37-5 may be sold, held for sale, or offered for sale in this state, the licensee shall submit the fireworks to the Department of Public Safety for examination. For any fireworks submitted under this section that comply with 16 C.F.R. Part 1507, effective January 1, 2019, and the American Pyrotechnics Association Standard 87-1, 2001 edition, the department shall authorize the fireworks for sale in this state. A violation of this section is a Class 1 misdemeanor.

Source: SL 1964, ch 31, § 5; SL 1982, ch 18, § 102; SL 1983, ch 259, § 5; SL 1998, ch 213, § 6; SL 2003, ch 272 (Ex. Ord. 03-1), § 20; SL 2019, ch 154, § 6, eff. Mar. 20, 2019.

34-37-7. Exemptions from chapter. Nothing in this chapter shall be construed as applying to toy paper caps containing not more than twenty-five hundredths of a grain of explosive composition per cap, and to the manufacture, storage, sale, or use of signals necessary for the safe operation of railroads or other classes of public or private transportation, nor applying to the military or navy forces of the United States or of this state, or to peace officers, nor as prohibiting the sale or use of blank cartridges for ceremonial, or theatrical, or athletic events.

Source: SL 1949, ch 41, §§ 1, 4; SDC Supp 1960, § 13.1607-1; SL 1964, ch 31, § 1.

34-37-8. Unlicensed transportation of fireworks into state for sale--Misdemeanor. A person is guilty of a Class 1 misdemeanor if the person is not licensed as a wholesaler or retailer and transports any fireworks into this state for sale. A retailer may not sell any fireworks that have not been purchased from a wholesaler licensed under this chapter.

Source: SL 1964, ch 31, § 6; SL 1977, ch 190, § 104; SL 2019, ch 154, § 7, eff. Mar. 20, 2019.

34-37-9. Records to be kept by licensee--Inspection--Violation as misdemeanor. Any person licensed under the provisions of this chapter shall comply with the provisions of § 10-45-45. Each invoice for fireworks purchased is subject to inspection by the Department of Public Safety. The invoice shall show the license

number of the wholesaler from which the purchase was made. A violation of this section is a Class 1 misdemeanor.

Source: SL 1964, ch 31, § 6; SL 1983, ch 259, § 6; SL 2003, ch 272 (Ex. Ord. 03-1), § 20; SL 2019, ch 154, § 28, eff. Mar. 20, 2019.

34-37-10. Periods and time during which retail sales permitted--Violation as misdemeanor. A person is guilty of a Class 1 misdemeanor if the person offers any fireworks for sale to any other person at retail other than during the period between June twenty-seventh and July fifth or during the period between December twenty-eighth and January first.

A person who is issued a license under § 34-37-2.2 may sell fireworks to out-of-state residents for the periods designated in § 34-37-2.2. A person who is issued a late season license under § 34-37-2.2 or a retailer license under § 34-37-2 may sell any fireworks to residents and nonresidents during the period from December twenty-eighth to January first.

A retail licensee may not make any sale of fireworks between the hours of twelve a.m. and seven a.m.

Source: SL 1949, ch 41, § 2; SDC Supp 1960, § 13.1607-1; SL 1964, ch 31, § 1; SL 1983, ch 259, § 8; SL 1985, ch 282, § 2; SL 1986, ch 27, § 33; SL 2011, ch 162, § 2; SL 2013, ch 161, § 2; SL 2019, ch 154, § 8, eff. Mar. 20, 2019.

34-37-10.1. Sale from motor vehicle--Misdemeanor. A person is guilty of a Class 1 misdemeanor if the person sells any fireworks from a motor vehicle.

Source: SL 1971, ch 207, § 2; SL 2019, ch 154, § 9, eff. Mar. 20, 2019.

34-37-10.2. Exits from structures where fireworks sold--Violation as misdemeanor. If the general public occupies a structure where fireworks are being displayed or sold, two or more approved exits shall be provided. If the general public does not occupy the structure that displays or sells fireworks, one or more approved exits shall be provided. A violation of this section is a Class 1 misdemeanor.

For the purposes of this section, an approved exit is a continuous and unobstructed means of egress to a public way. Exit doors shall be of the pivoted or side-hinged swinging type and shall swing in the direction of exit travel. Exit doors shall be able to be opened from the inside without the use of a key or any special knowledge or effort.

Source: SL 1971, ch 207, § 3; SL 1998, ch 213, § 7; SL 2019, ch 154, § 10, eff. Mar. 20, 2019.

34-37-10.3. "No smoking" signs where fireworks sold--Smoking within fifty feet of location as misdemeanor. At any location where consumer fireworks are being offered for sale, the licensee shall prominently post a sign in red letters not less than three inches in height that reads, "NO SMOKING WITHIN FIFTY FEET." A person is guilty of a Class 1 misdemeanor if the person smokes within fifty feet of a location under this section.

Source: SL 1971, ch 207, § 4; SL 2019, ch 154, § 11, eff. Mar. 20, 2019.

34-37-10.4. Signs stating minimum distance for igniting fireworks--Igniting fireworks within minimum distance as misdemeanor. At any location where consumer fireworks are being offered for sale the licensee shall prominently post a sign that states no fireworks may be ignited or used within three hundred feet of the licensee's premises. A person is guilty of a Class 1 misdemeanor if the person ignites or uses any fireworks within three hundred feet of a location under this section.

Source: SL 1971, ch 207, § 5; SL 2019, ch 154, § 12, eff. Mar. 20, 2019.

34-37-10.5. Open flame on retail premises as misdemeanor--Fire extinguisher required. A person is guilty of a Class 1 misdemeanor if the person has any device, apparatus, receptacle, or burner from which an open flame is emitted on the premises of a retail licensee. A retailer licensee shall keep and maintain upon the retailer's premises a fire extinguisher bearing a rated capacity of at least 2-A.

Source: SL 1971, ch 207, § 6; SL 1977, ch 190, § 105; SL 1982, ch 18, § 103; SL 1998, ch 213, § 8; SL 2019, ch 154, § 13, eff. Mar. 20, 2019.

34-37-10.6. Repealed by SL 2019, ch 154, § 25.

34-37-11. Sale or use prohibited in forests, parks and other specified areas--Exception--Violation as misdemeanor. No person may sell or cause to be sold, use, or cause to be used, any pyrotechnics of any description or any consumer fireworks within the exterior boundaries of the Black Hills Forest Fire Protection District.

No person may use or cause to be used, any pyrotechnics or consumer fireworks within a zone that extends three hundred feet beyond the exterior boundaries of the Black Hills Forest Fire Protection District in this state.

No person may sell or cause to be sold, use or cause to be used, any pyrotechnics of any description or any consumer fireworks within any national forest, national park, state forest, or any land owned or leased by the Department of Game, Fish and Parks without written authorization by the department permitting the use of pyrotechnics or consumer fireworks, pyrotechnic displays, sales, or exhibits on land owned or leased by the department, unless the department is otherwise prohibited by law from providing the written authorization.

A violation of this section is a Class 2 misdemeanor. A second or subsequent violation of this section is a Class 1 misdemeanor.

Source: SL 1957, ch 91, § 1; SDC Supp 1960, § 20.0506; SL 1963, ch 130, § 1; SL 1964, ch 31, § 10; SL 1977, ch 190, § 106; SL 1981, ch 266; SL 1989, ch 301; SL 1990, ch 279, § 1; SL 2004, ch 238, § 1; SL 2007, ch 198, § 3; SL 2019, ch 154, § 14, eff. Mar. 20, 2019.

34-37-12. Sales or shipment by wholesaler or manufacturer to persons outside of state--Violation as misdemeanor. Nothing in this chapter prohibits a wholesaler licensee or manufacturer from storing, selling, shipping, or otherwise transporting, fireworks to any person outside this state, consistent with 18 U.S.C. § 836, effective on January 1, 2019. Any delivery of fireworks may be made by a certified motor carrier as specified in chapter 49-28 or in a vehicle owned or leased by a wholesaler licensee, manufacturer, or fireworks permit holder. A violation of this section is a Class 1 misdemeanor.

Source: SL 1949, ch 41, § 4; SDC Supp 1960, § 13.1607-1; SL 1964, ch 31, § 7; SL 1982, ch 18, § 104; SL 1983, ch 259, § 14; SL 2019, ch 154, § 15, eff. Mar. 20, 2019.

34-37-12.1. Evidence of delivery outside of state--Violation as misdemeanor. A wholesaler licensee shall retain written evidence of the delivery of fireworks to any person outside this state. Evidence under this section may include the fireworks license or permit number and address, a bill of lading, or delivery receipt for delivery by a certified motor carrier if the purchaser is unlicensed. A violation of this section is a Class 1 misdemeanor.

Source: SL 1983, ch 259, § 10; SL 2019, ch 154, § 16, eff. Mar. 20, 2019.

34-37-13. Permit for use of display fireworks at event--Purchase and use requirements--Violation as misdemeanor. Nothing in this chapter prohibits the use of display fireworks at a public or private event. A person using display fireworks at a public or private event shall obtain a permit from the governing body of the municipality, township, or county where the display fireworks are to be used. Display fireworks may only be purchased from a wholesaler licensee. Use of display fireworks at a public or private event shall comply with the National Fire Protection Association Standard 1123, 2018 edition. A violation of this section is a Class 1 misdemeanor.

Source: SL 1949, ch 41, § 3; SDC Supp 1960, § 13.1607-1; SL 1964, ch 31, § 8; SL 1983, ch 259, § 11; SL 1992, ch 60, § 2; SL 1998, ch 213, § 9; SL 2019, ch 154, § 17, eff. Mar. 20, 2019.

34-37-13.1. Permit for use of consumer fireworks at event--Purchase and use requirements--Violation as misdemeanor. Nothing in this chapter prohibits the use of consumer fireworks at a public or private event. A person using consumer fireworks at a public or private event outside the periods permitted by § 34-37-16.1 shall obtain a permit from the governing body of the municipality, township, or county where the consumer fireworks are to be used. Consumer fireworks may only be purchased from a retailer licensee or wholesaler licensee. Use of consumer fireworks at a public or private event shall comply with the National Fire Protection Association Standard 1124, 2006 edition. A violation of this section is a Class 1 misdemeanor.

Source: SL 2019, ch 154, § 18, eff. Mar. 20, 2019.

34-37-14. Repealed by SL 2019, ch 154, § 26.

34-37-15. Revocation, suspension, or nonrenewal of license. For any licensee who is found guilty of a second or subsequent violation under this chapter, the department may revoke or suspend the license and refuse to renew the license upon its expiration.

Source: SL 1964, ch 31, § 12(2); SL 1983, ch 259, § 13; SL 2019, ch 154, § 19, eff. Mar. 20, 2019.

34-37-16. Possession of unauthorized fireworks as misdemeanor--Seizure--Destruction. A person is guilty of a Class 1 misdemeanor if the person possesses any fireworks, other than those enumerated in § 34-37-5. If any person possesses any fireworks in violation of § 34-37-5, a warrant may be issued for the seizure of the fireworks. Any fireworks seized under this section shall be safely stored to be used as evidence.

Upon conviction of any person charged under this section, any seized fireworks shall be destroyed. If a person charged under this section is found not guilty, any seized fireworks shall be returned to the person.

This chapter does not apply to the transportation of fireworks by regulated carriers.

Source: SL 1964, ch 31, § 12 (3); SL 1977, ch 190, § 108; SL 2019, ch 154, § 20, eff. Mar. 20, 2019.

34-37-16.1. Periods during which use of consumer fireworks permitted--Violation as misdemeanor. Except as otherwise provided in this chapter, a person is guilty of a Class 2 misdemeanor if the person uses consumer fireworks except during the period from June twenty-seventh to the first Sunday after July fourth, and during the period beginning December twenty-eighth to January first.

Source: SL 1983, ch 259, § 7; SL 2011, ch 162, § 3; SL 2013, ch 162, § 1; SL 2019, ch 154, § 21, eff. Mar. 20, 2019.

34-37-16.2. Certain fireworks permitted all year. The provisions of §§ 34-37-2 and 34-37-16.1 do not apply to:

- (1) Smoke effects if the smoke effects do not fly, travel, or explode;
- (2) Single-shot parachute pieces without a flare; or
- (3) Any fireworks classified as a novelty under section 3.2 of the American Pyrotechnics Association Standard 87-1, 2001 edition.

Source: SL 2015, ch 186, § 1; SL 2019, ch 154, § 22, eff. Mar. 20, 2019.

34-37-17. Enforcement of chapter. The Department of Public Safety, together with any law enforcement agency of the state or any political subdivision of the state, shall enforce this chapter.

Source: SL 1964, ch 31, § 9; SL 2003, ch 272 (Ex. Ord. 03-1), § 20; SL 2019, ch 154, § 23, eff. Mar. 20, 2019.

34-37-18. Record forms prescribed by secretary. Records required under provisions of this chapter shall be kept on forms prescribed by the secretary of public safety.

Source: SL 1983, ch 259, § 7; SL 2003, ch 272, §§ 20, 121.

34-37-19. County regulation of fireworks--Use of South Dakota grassland fire danger index. Any county may, by resolution, regulate or prohibit the use of fireworks outside the boundaries of any municipality in those areas where the fire danger, as determined by use of the South Dakota grassland fire danger index published by the National Weather Service, has reached the extreme category in that county during the period from June twentieth to July second, inclusive, and during the period from December twenty-eighth to January first, inclusive. During any such period, the county's action is suspended if the grassland fire danger index falls below the very high category and again becomes effective if the grassland fire danger index reaches the extreme category.

Source: SL 1989, ch 302; SL 2002, ch 252 (Ex. Ord. 02-1), § 17; SL 2003, ch 187, § 1; SL 2004, ch 239, § 1; SL 2011, ch 162, § 4.

34-37-20. Repealed by SL 2018, ch 207, § 3.

Ka-Boomer's Enterprises, Inc.
2022 Property Lease Agreement
PO Box 86 Wahoo, NE 68066

Aberdeen, SD
2022 + 2023

The following license agreement is for a short-term license only for the purpose of operating a retail fireworks on privately owned property. Ka-Boomers Enterprises, Inc. agrees to the following terms of the contract with the current property owner(s):

Name Farm Power Mfg., Inc. Amber Weismantele
Address 5050 E. Hwy 12 Aberdeen, SD 57401
Phone 605-229-0120 Cell: _____ Fax: 605-229-4432 Email: farm-power@outlook.com

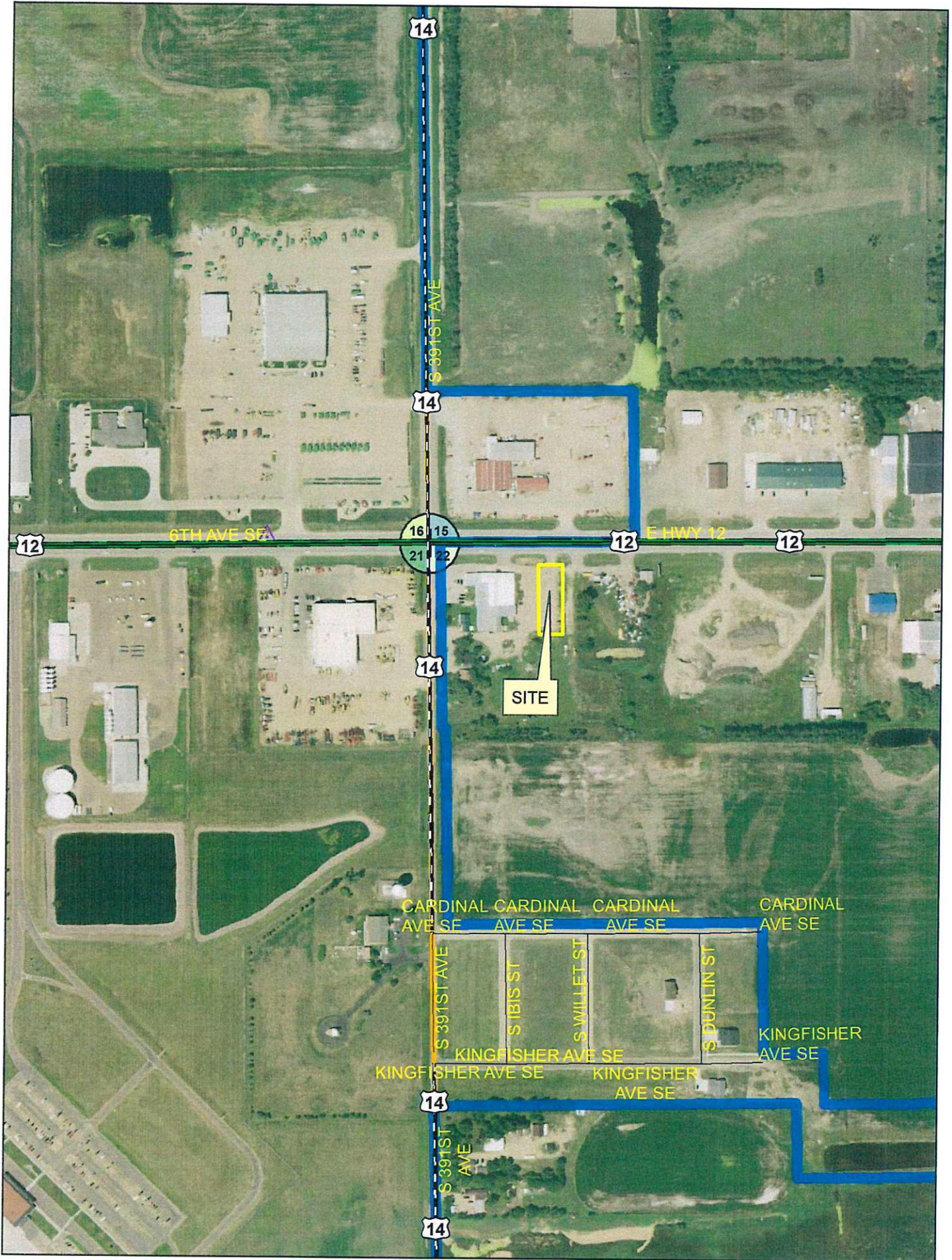
1. To pay lease fee in the amount of, _____ on the property located at 5050 E. Hwy 12 Aberdeen, SD 57401 Rent payable to said owner per approval of said premises by City Council or County Board. Ka-Boomer's will be given first option the following year upon performance satisfaction in current selling year as witnessed by landowner. If said City Council, County Board, or State in which you are located decides to Ban the sale of Fireworks due to weather/dry conditions and making it unable for Ka-Boomer's to make use of the property, 100% of the lease amount would be returned to Ka-Boomer's, Inc. If a Ban should occur during said period of lease, then a pro-rated lease amount will be returned to Ka-Boomer's based on the number of days not used by Ka-Boomer's, Inc. In the event Ka-Boomer's is unable to fill the management position to operate this location prior to the dates of the lease, the lease is void.
2. The date of the lease will be from June 27th through and including July 4th, 2022. We will start setting up the area 2-3 days in advance. Trailer will be removed as soon as possible or as agreed upon at the time of the lease.
3. These premises will be left in similar condition as prior to beginning retail operations. Ka-Boomers will repair promptly any damage resulting to the premises as a result of Ka-Boomer's activities. All trash will be picked up and removed from the property upon or before departure.
4. Ka-Boomer's Enterprises, Inc. will provide owner of property a premise liability insurance policy in the amount of \$5,000,000 in case of any injury occurring on the property. This policy will be received two weeks prior to date of lease.
5. Ka-Boomer's Enterprises Inc., will protect and maintain said property through and including dates of this lease agreement. The location will be supervised by an adult. Fireworks will not be allowed to be discharged on property. Signs will also be posted as to not allow the lighting of fireworks on property.
6. Waiver. To the extent permitted by law, Licensor (land owner), its agents and employees, shall not be liable for, and licenses waives all claims for damage or loss to persons or property sustained by licensee or any persons claiming through Licensee resulting from any accident or occurrence in or upon the Licensee Area.
7. Indemnification. Licensee shall indemnify Licensor, its agents and employees, from and against any and all liability, liens, claims, damages, expenses, fines, penalties, suits, proceedings, action and causes of action arising or related in any way to Licensee's use of the Licensed Area and adjacent area, Licensee's activities in the Area, or any damage, loss or theft of any property of Licensee.
8. Rental fee and insurance will be received by land owner no later than two weeks prior to setting up fireworks stand.
9. Contract void if before mentioned property is sold/leased providing Ka-Boomer's with a 60 day notice prior to lease date.

* * * * *

I, Dan Bunier, agent for Ka-Boomer's Enterprises, Inc. do hereby agree to these terms
Signed: [Signature] Date: 10/5/21

I, current land owner (representative for land owner), do hereby agree to these terms (please print legibly for payment)
Signed: [Signature] Date: 1/18/22
Printed Name: AMBER WEISMANTELE

NOTE: Rent payment will be made to: Farm Power Mfg., Inc. If Indv.: S.S. # _____
If Payable to Business; FED. ID # 46-0282102 Type of Business (Indv., S-Corp, LLC, 501, etc.) _____



14

14

16 15
21 22

14

14

14

S 391ST AVE

6TH AVE SE

E HWY 12

CARDINAL AVE SE

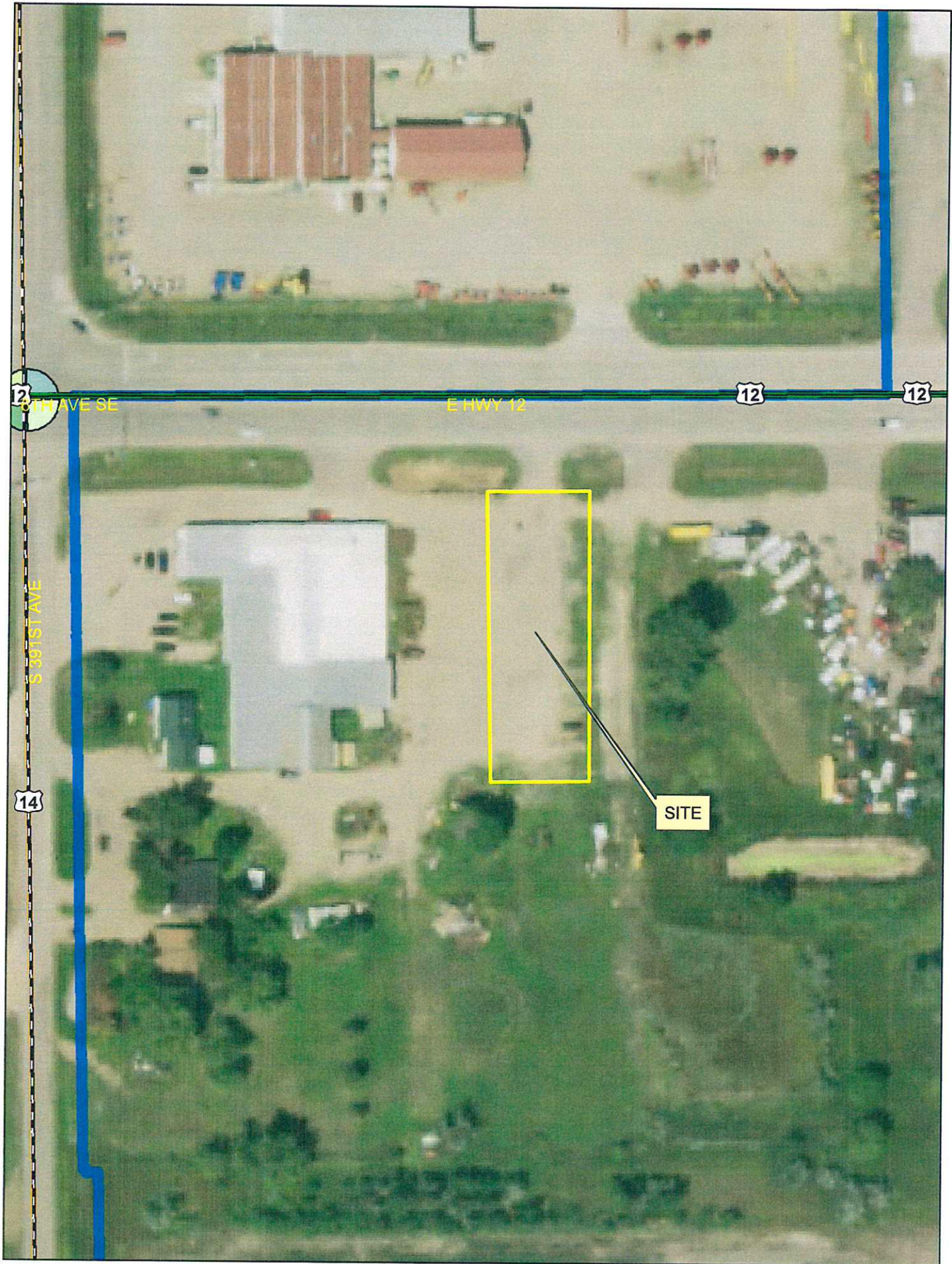
KINGFISHER AVE SE

S IBIS ST

S WILLET ST

S DUNLIN ST

SITE



8TH AVE SE

E HWY 12

12

12

S 391ST AVE

14

SITE

Ka-Boomer's Inc.

PO Box 86
Wahoo, NE 68066

Farm Power Manufacturing Inc.

5050 Hwy 12 E
Aberdeen, SD 57401

Dean Weismantel

39230 138th St
Aberdeen, SD 57401

Butler Machinery Company

PO Box 9559
Fargo, ND 58106-9559

Jeff Hanson

Attn: Bath Twp
13252 397th Ave
Bath, SD 57427

Titan Machinery, Inc.

644 E Beaton Drive
West Fargo, ND 58078

Terry Belden

5153 Hwy 12 E
Aberdeen, SD 57401

Flashrock Enterprises LLC

5856 Hwy 12 E
Aberdeen, SD 57401



Aberdeen News
Watertown Public Opinion

Order Confirmation

Not an Invoice

Account Number:	556235
Customer Name:	Brown County Auditor-Legals
Customer Address:	Brown County Auditor-Legals 25 Market St ABERDEEN SD 57401-4227
Contact Name:	Brown County Auditor-Legals
Contact Phone:	6056267110
Contact Email:	
PO Number:	

Date:	01/28/2022
Order Number:	6849584
Prepayment Amount:	\$ 0.00

Column Count:	1.0000
Line Count:	41.0000
Height in Inches:	0.0000

Print

Product	#Insertions	Start - End	Category
ABD The American News	1	02/02/2022 - 02/02/2022	Public Notices
ABD aberdeennews.com	1	02/02/2022 - 02/02/2022	Public Notices

Total Order Confirmation

\$16.48

Ad Preview

NOTICE OF HEARING

Application has been made to Brown County Planning/Zoning Commission for a CONDITIONAL USE PETITION (CUP). A hearing will be held in the Courthouse Annex, Basement Community Meeting Room, on February 15, 2022, at 7:00 P.M.

Petitioner: Ka-Boomer's Inc. / Dan Bunjer
Description of proposed property: "Judy's Outlot 2" in the NW1/4 of Section 22-T123N-R63W of the 5th P.M., Brown County, South Dakota (5110 East US Hwy 12).

Reason: A Conditional Use Petition (CUP) for temporary fireworks stand on leased property.

The public is invited to attend the hearing to present either comments or testimony regarding the proposed variance request. Dated this 2nd day of February 2022.

Planning/Zoning Commission &

Scott Bader – P&Z Director
25 Market Street
Aberdeen, SD 57401
Office: (605) 626-7144
Published once at the total approximate cost of \$16.48.

February 2, 2022 6849584

STAFF REPORT

February 15, 2022

BROWN COUNTY PLANNING/ZONING COMMISSION

Rezone Parcel from **AG-P** to **M-AG** District

ITEM # 10

GENERAL INFORMATION:

PETITIONER:	Roger Spanier
REQUEST:	Rezone Parcel: AG-P to M-AG
LEGAL DESCRIPTION:	“Spanier Outlot A” in the NW1/4 of Section 25-T123N-R60W of the 5 th P.M., Brown County, South Dakota
LOCATION:	41125 134 th Street
TOWNSHIP:	Groton Twp
EXISTING ZONING	Agricultural Preservation District (AG-P)
SURROUNDING ZONING:	
North:	Agricultural Preservation District (AG-P)
South:	Agricultural Preservation District (AG-P)
East:	Agricultural Preservation District (AG-P)
West:	Agricultural Preservation District (AG-P)
PUBLIC UTILITIES:	Unknown
REPORTED BY:	Ron Keller

GENERAL COMMENT: The petitioner is requesting this rezone to bring this parcel into compliance for its current use.

GENERAL REVIEW: Staff recommends approval.

NOTICE OF HEARING

A *PETITION to REZONE* has been submitted to Brown County Planning/Zoning Commission. A hearing will be held in the basement of the Courthouse Annex Community Room, on *February 15, 2022 at 7:00 p.m.*

Owner & Petitioner: Roger Spanier

Description of property: "Spanier Outlot A" in the NW1/4 of Section 25-T123N-R60W of the 5th P.M., Brown County, South Dakota (41125 134th Street; Groton Twp).

Reason: Rezoning from Agriculture Preservation District (AG-P) to Mini-Agriculture District (M-AG) to bring this parcel into compliance for its current use.

The public is invited to attend the hearing and to present comments and testimony regarding the proposed rezone petition. At the conclusion of the hearing, the Brown County Planning/Zoning Commission will forward a recommendation to the Board of Brown County Commissioner's with a future meeting date in the Commission Chambers. Verify the date with the Brown County Auditor.

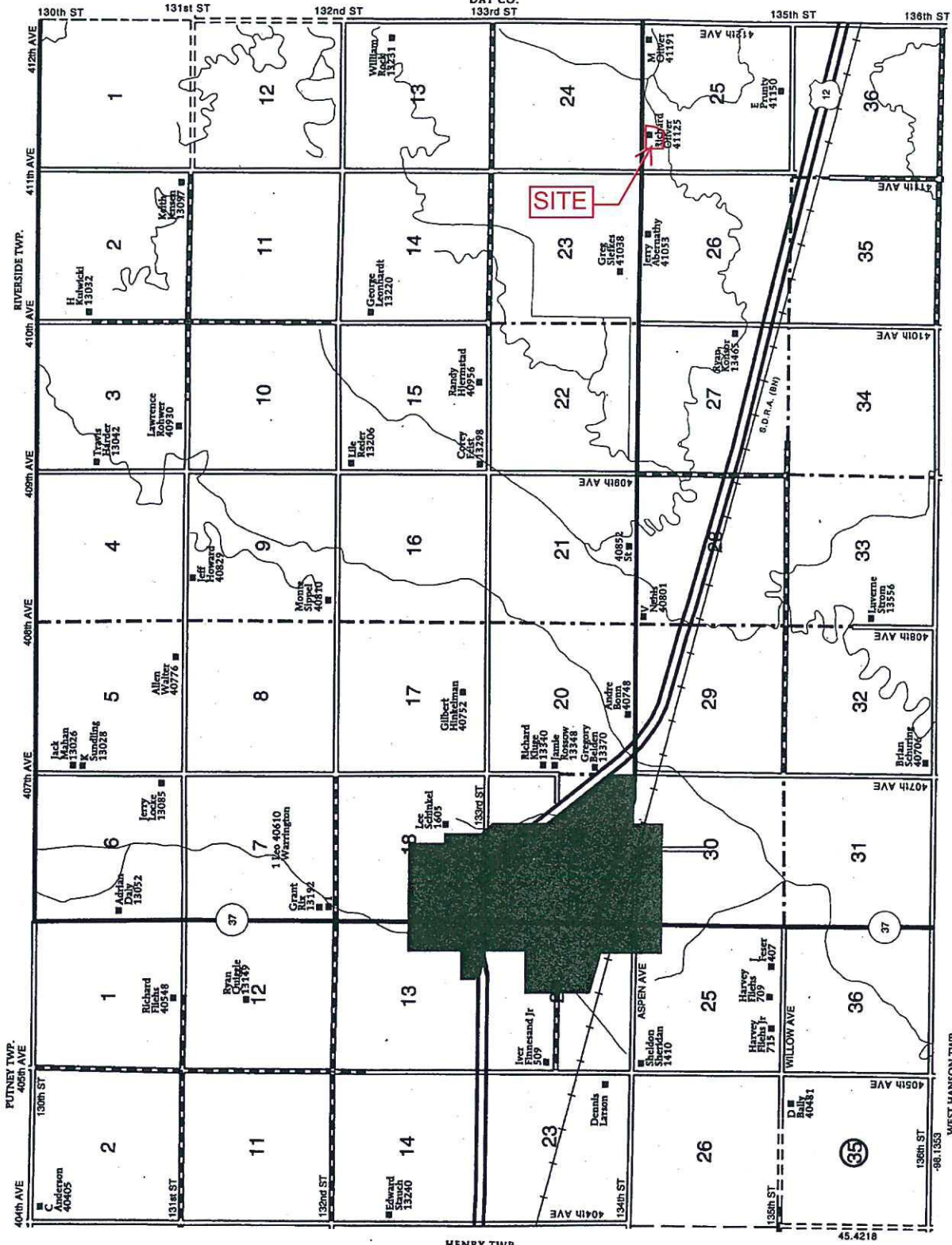
Dated this 2nd day of February 2022

Planning/Zoning Commission
Scott Bader – P&Z Director
25 Market Street
Aberdeen, SD 57401
Office: (605) 626-7144

Published once at the total approximate cost of _____.

(Residents - Owners or Renters)

DAY CO.
133rd ST



HENRY TWP.

WEST HANSON TWP.

EAST HANSON TWP.

REZONE PETITION

BROWN COUNTY COMMISSION
25 MARKET ST
ABERDEEN, SD 57401

Petition No: _____
Date: 1/24/2021
Receipt: 620606
Filing Fee: \$350
(non-refundable)

Brown County Commission Members:

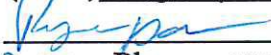
I/We the undersigned, do hereby petition the Brown County Commission of Brown County, South Dakota to rezone property as follows:

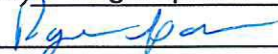
Legal Description:

"Spanier Outlot A" in the NW1/4 of Section 25-T123N-R60W of the 5th P.M., Brown County, South Dakota

General Area Location or Street Address: 41125 134th St
From the Agriculture Preservation District
To the Mini-Agriculture District

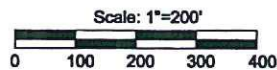
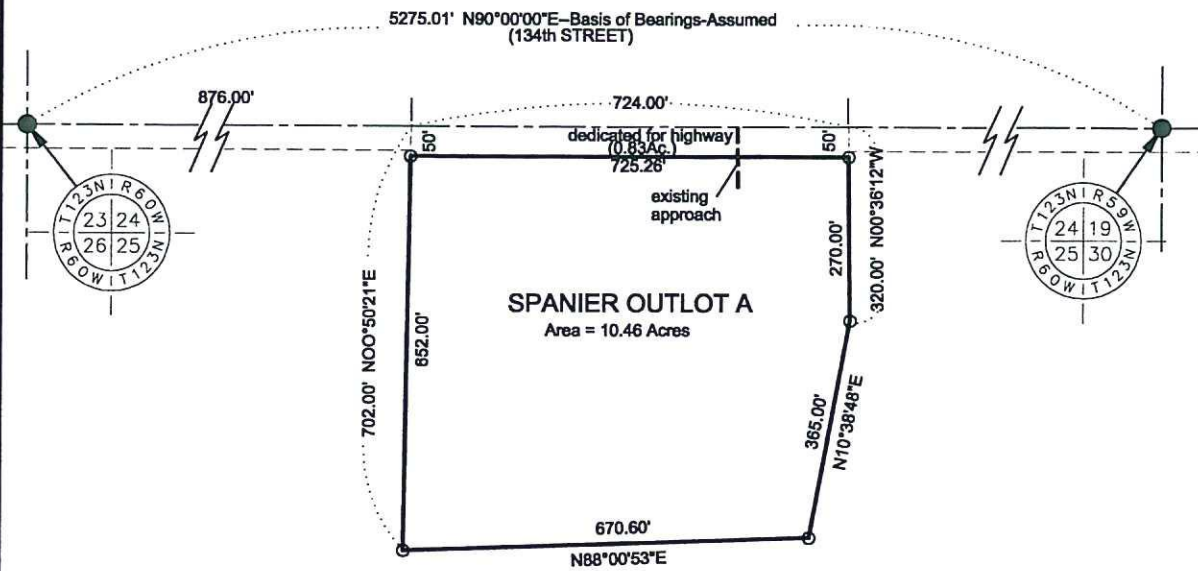
Purpose: To Bring into Compliance
Size of Parcel: 10.46 acres
Existing Land Use: Mini-Agriculture

Petitioner: (Print) Roger Spanier
Signature: 
Date: 1-25-22 Phone: 605-228-3880
Address: PO Box 163
Groton, SD 57445-0163
City State Zip

Owner: (Print) Roger Spanier
Signature: 
Date: 1-25-22 Phone: 605-228-3880
Address: PO Box 163
Groton, SD 57445-0163
City State Zip

Additional Signatures may be submitted on a separate page.

**SPANIER OUTLOT A IN
NW1/4 SEC. 25-T123N-R60W of 5th P.M.
BROWN COUNTY, SOUTH DAKOTA**



LEGEND

- Monuments Found-LS Shiners
- Monuments Set:
○ 5/8" rebar w/cap SD1641



Francis E. Brink
5-19-2010

Prepared by:
Francis E. Brink, P.E., L.S. SD1641
616-4th Street North, Aberdeen, South Dakota
Tel. (605) 225-9181

HIGHWAY AUTHORITY CERTIFICATE

The location of existing approach access for Outlot A is hereby approved.

By: Jan Weismantel 6/22/10
For the Brown County Highway Department Date

Title: Superintendent

OWNER'S CERTIFICATE

I, Sandra Oliver, a widowed person, hereby certify that I am the owner of the Northwest Quarter of Section 25, Township 123 North, Range 60 West of the 5th P.M., Brown County, South Dakota, except lands deeded for highway, and did authorize a survey and plat of a portion of the NW1/4 of Section 25-T123N-R60W of the 5th P.M., Brown County, South Dakota, which shall hereafter be known as "SPANIER OUTLOT A IN NW1/4 SEC. 25-T123N-R60W of the 5th P.M., BROWN COUNTY, SOUTH DAKOTA", as shown on the attached plat, and that development of this land shall conform to all existing applicable zoning, subdivision and sediment control regulations. Land shown as dedicated for highway is hereby dedicated for the perpetual use of the public.

Sandra Oliver _____ May 28, 2010
Sandra Oliver Date

ACKNOWLEDGEMENT OF OWNERS

STATE OF SOUTH DAKOTA)
COUNTY OF BROWN)

On this, the 28th day of May, 2010, before me, Gail Zeck, a Notary Public, appeared Sandra Oliver, personally known to me or satisfactorily proven to me to be the individual named above, executed the above OWNER'S CERTIFICATE and acknowledged to me that she executed the same.

My Commission Expires: 02-09-2015

Gail Zeck
Notary Public, State of South Dakota

SURVEYOR'S CERTIFICATE

I, Francis E. Brink, Licensed Land Surveyor, do hereby certify that at the request of the Owner shown above, have surveyed and platted "SPANIER OUTLOT A IN NW1/4 SEC. 25-T123N-R60W of the 5th P.M., BROWN COUNTY, SOUTH DAKOTA", as shown on the attached plat; have shown monuments found and set thereon, and to the best of my knowledge, said survey and plat are true and correct.

Signed this 19th day of May, 2010

Francis E. Brink
South Dakota Licensed Land Surveyor No. SD1641

COUNTY PLANNING COMMISSION CERTIFICATE

I hereby certify the following is a correct copy of the resolution duly passed by the County Planning Commission of Brown County, South Dakota, at a meeting held on the 30th day of July, 2010.

Sty Bull
Secretary of County Planning Commission, Brown County, SD

"Be it resolved by the Brown County Planning Commission, Brown County, South Dakota, that the plat showing "SPANIER OUTLOT A IN NW1/4 SEC. 25-T123N-R60W of the 5th P.M., BROWN COUNTY, SOUTH DAKOTA", having been examined, is hereby approved in accordance with the provisions of SDCLS of 1967, Chapter 11-6, and any amendments thereof.

COUNTY COMMISSION APPROVAL

I hereby certify that the following is a correct copy of the resolution duly passed by the County Commission of Brown County, South Dakota, at a meeting held on the 27 day of July, 2010.

Melvin Fischer
County Auditor, Brown County, South Dakota

"Be it resolved by the County Commission of Brown County, South Dakota, that the plat showing "SPANIER OUTLOT A IN NW1/4 SEC. 25-T123N-R60W of the 5th P.M., BROWN COUNTY, SOUTH DAKOTA", having been examined, is hereby approved in accordance with the provisions of SDCL of 1967, Chapter 11-3, and any amendments thereof.

TREASURER'S CERTIFICATE

I hereby certify that all taxes which are liens upon any of the lands included in the above plat are shown by the records of my office to be fully paid.

Signed this 28 day of June, 2010.

Shila Enderson
County Treasurer, Brown County, South Dakota

DIRECTOR OF EQUALIZATION'S CERTIFICATION

I hereby certify that I have received a copy of this plat this 28 day of June, 2010.

Al Vit
Director of Equalization, Brown County, South Dakota

REGISTER OF DEED'S CERTIFICATION

Filed for record this 29th day of July, 2010, at 9:11 o'clock A.M., and duly recorded in Book of

Plats No. 2668H

Kimseely Byram - Deputy
Register of Deeds, Brown County, South Dakota



SITE

134TH ST

12E

24

25

23

24

26

25

411TH AVE

412TH AVE

135TH ST

25

36

26

25

35

36

12

HWY 12

12

12

South Dakota State Railroad

411TH AVE

412TH AVE



SITE

134TH ST

12E

Roger Spanier
PO Box 163
Groton, SD 57445-0163

T. J. Harder
Attn: Groton Twp
13042 409th Avenue
Groton, SD 57445

Richards Family Trust
2833 Carolina Avenue
Clovis, CA 93611

Sandra J Oliver Trust
4402 Key Avenue South
Sioux Falls, SD 57106



Aberdeen News
Watertown Public Opinion

Order Confirmation

Not an Invoice

Account Number:	556235
Customer Name:	Brown County Auditor-Legals
Customer Address:	Brown County Auditor-Legals 25 Market St ABERDEEN SD 57401-4227
Contact Name:	Brown County Auditor-Legals
Contact Phone:	6056267110
Contact Email:	
PO Number:	

Date:	01/28/2022
Order Number:	6849618
Prepayment Amount:	\$ 0.00

Column Count:	1.0000
Line Count:	53.0000
Height in Inches:	0.0000

Print

Product	#Insertions	Start - End	Category
ABD The American News	1	02/02/2022 - 02/02/2022	Public Notices
ABD aberdeennews.com	1	02/02/2022 - 02/02/2022	Public Notices

Total Order Confirmation

\$19.84

Ad Preview

NOTICE OF HEARING
A PETITION to REZONE has been submitted to Brown County Planning/Zoning Commission. A hearing will be held in the basement of the Courthouse Annex Community Room, on February 15, 2022 at 7:00 p.m.
Owner & Petitioner: Roger Spanier

Description of property: "Spanier Outlot A" in the NW1/4 of Section 25-T123N-R60W of the 5th P.M., Brown County, South Dakota (41125 134th Street; Grafton Twp).

Reason: Rezoning from Agriculture Preservation District (AG-P) to Mini-Agriculture District (M-AG) to bring this parcel into compliance for its current use.

The public is invited to attend the hearing and to present comments and testimony regarding the proposed rezone petition. At the conclusion of the hearing, the Brown County Planning/Zoning Commission will forward a recommendation to the Board of Brown County Commissioner's with a future meeting date in the Commission Chambers. Verify the date with the Brown County Auditor.

Dated this 2nd day of February 2022
Planning/Zoning Commission

Scott Bader – P&Z Director
25 Market Street
Aberdeen, SD 57401
Office: (605) 626-7144
Published once at the total approximate cost of \$19.84.

February 2, 2022 6849618

STAFF REPORT

February 15, 2022

BROWN COUNTY PLANNING/ZONING COMMISSION

Rezone Parcels from AG-P to HC District

ITEM # 11

GENERAL INFORMATION:

PETITIONER:	Neil Bellikka (B & B Real Estate)
REQUEST:	Rezone Parcels: AG-P to HC District
LEGAL DESCRIPTION:	Proposed Outlot 1 & Outlot 2, "B and B Outlots" in the NE1/4 of Section 23-T123N-R63W of the 5 th P.M., Brown County, South Dakota
LOCATION:	39265 & 39285 133 rd Street
TOWNSHIP:	Bath Twp
EXISTING ZONING	Agricultural Preservation District (AG-P)
SURROUNDING ZONING:	
North:	Heavy Industrial District (H-I)
South:	Agricultural Preservation District (AG-P)
East:	Agricultural Preservation District (AG-P)
West:	Agricultural Preservation District (AG-P) / Highway Commercial (HC)
PUBLIC UTILITIES:	WEB Water
REPORTED BY:	Ron Keller

GENERAL COMMENT: The petitioner is requesting this rezone to bring these parcels into compliance for their future use.

GENERAL REVIEW: Staff recommends approval. Outlot 1 and Outlot 2 are adjacent to Highway 12 and need to be rezoned to Highway Commercial (HC) to be compliant for their future uses.

NOTICE OF HEARING

A *PETITION to REZONE* has been submitted to Brown County Planning/Zoning Commission. A hearing will be held in the basement of the Courthouse Annex Community Room, on *February 15, 2022 at 7:00 p.m.*

Owner & Petitioner: Neil Bellikka (B & B Real Estate)

Description of properties: Proposed Outlot 1 and Outlot 2, "B and B Outlots" in the NE1/4 of Section 23-T123N-R63W of the 5th P.M., Brown County, South Dakota (39265 & 39285 133rd Street; Bath Twp).

Reason: Rezoning from Agriculture Preservation District (AG-P) to Highway Commercial District (HC) to bring these parcels into compliance for their future use.

The public is invited to attend the hearing and to present comments and testimony regarding the proposed rezone petition. At the conclusion of the hearing, the Brown County Planning/Zoning Commission will forward a recommendation to the Board of Brown County Commissioner's with a future meeting date in the Commission Chambers. Verify the date with the Brown County Auditor.

Dated this 2nd day of February 2022

Planning/Zoning Commission
Scott Bader – P&Z Director
25 Market Street
Aberdeen, SD 57401
Office: (605) 626-7144

Published once at the total approximate cost of _____.

Want a "free" extra book?

By reviewing township Directory maps for correct information before we publish the next issue, FHP will send you a free book of any county in any state printed by FHP for that year.

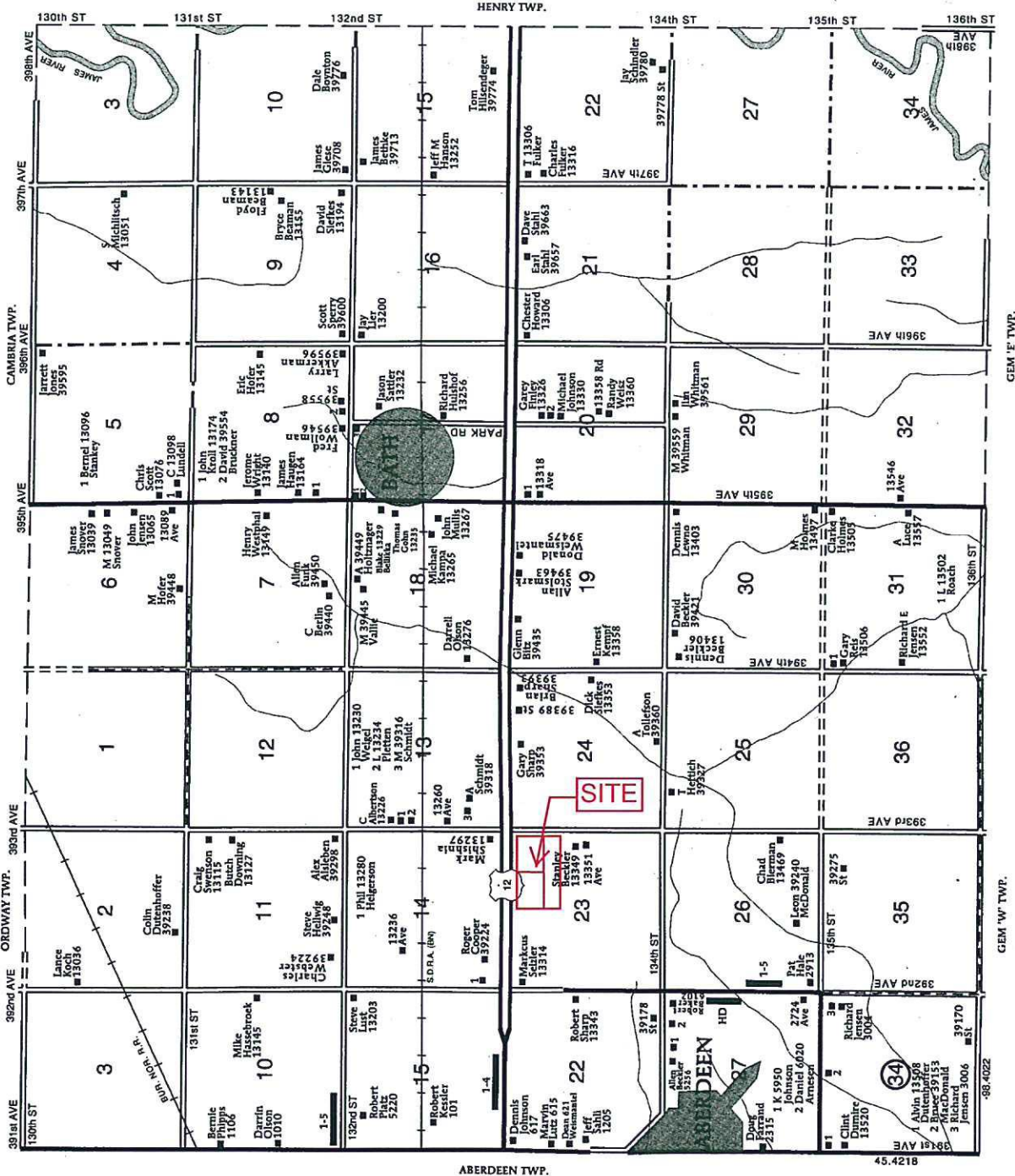
Contact our updating dept. at
800-685-7432-ext. 2605 or
 email: amanda.engebretson@farmandhomepublishers.com

T-123-N

BATH DIRECTORY

(Residents - Owners or Renters)

R-62-63-W



BATH TOWNSHIP

- SECTION 10W**
- 1 Beckler, Ron 5005
 - 2 Tennant, Cory 5025
 - 3 5091
 - 4 Gross, Del 5115
 - 5 Harper, Steve 5219
- SECTION 15W**
- 1 Gossman, C 5405
 - 2 Eilers, Todd 5455
 - 3 Knudson, R 5485
 - 4 Gossman, S 5755
- SECTION 17**
- 1 Bluecher, Jerry 13228
 - 2 Brinkman, Stanley 13280
- SECTION 20**
- 1 Westphal, Henry 13316
 - 2 Rohrbach, Kevin 13328
- SECTION 26**
- 1 Beilikka, Daryl 2111
 - 2 Jones, Paul 2135
 - 3 Grisea, Doug 2215
 - 4 Rud, Robert 2317
 - 5 Matern, R 2519

REZONE PETITION

BROWN COUNTY COMMISSION
25 MARKET ST
ABERDEEN, SD 57401

Petition No: _____
Date: 1-28-2022
Receipt: 620610
Filing Fee: \$350
(non-refundable)

Brown County Commission Members:

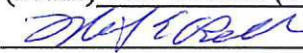
I/We the undersigned, do hereby petition the Brown County Commission of Brown County, South Dakota to rezone property as follows:

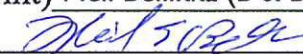
Legal Description:

Proposed Outlot 1 and Outlot 2, "B and B Outlots" in the NE1/4 of Section 23-T123N-R63W of the 5th P.M., Brown County, South Dakota

General Area Location or Street Address: 39265 & 39285 133rd Street
From the Agriculture Preservation District
To the Highway Commercial District

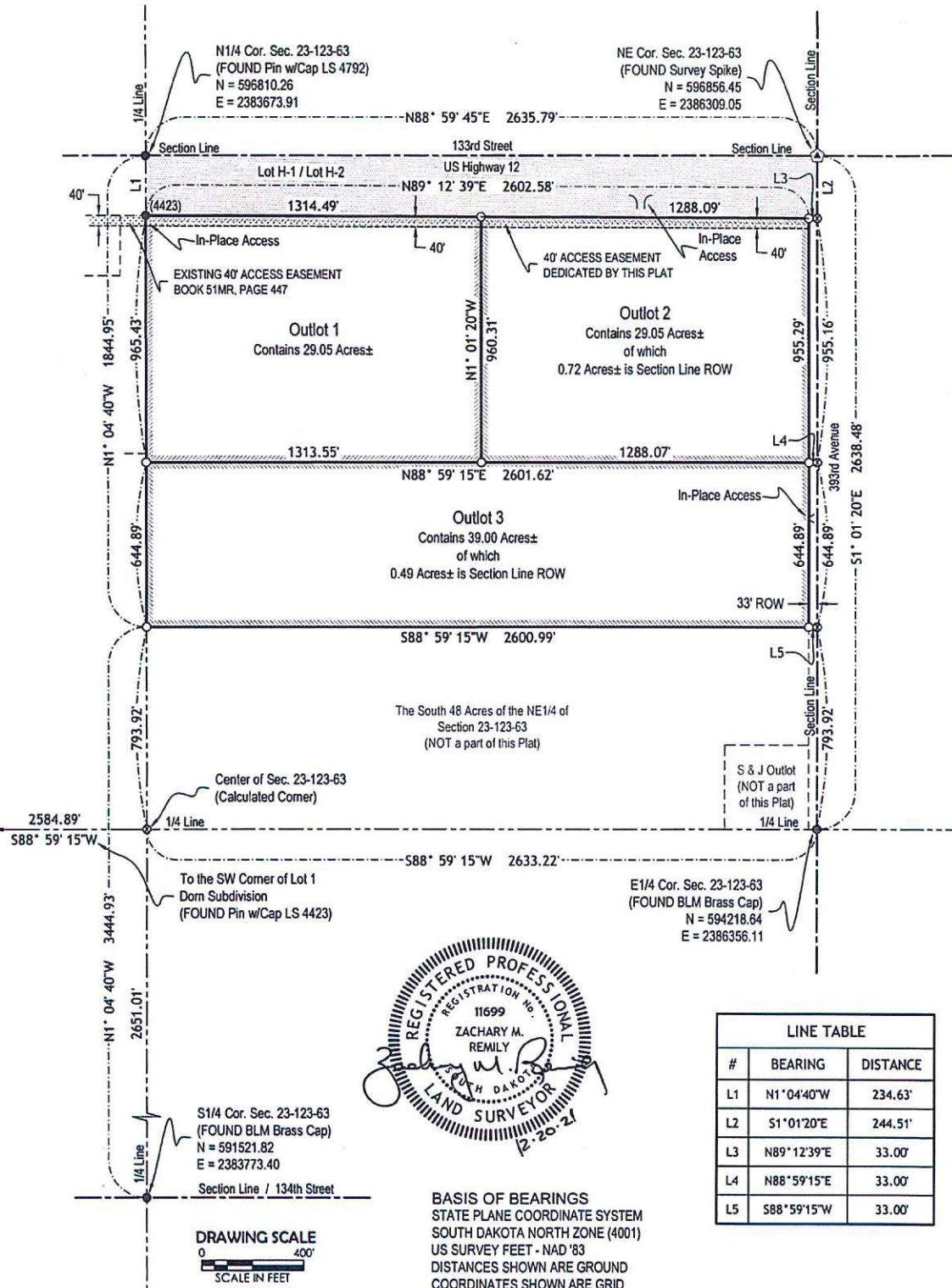
Purpose: To Bring into Compliance
Size of Parcel: Outlot 1=29.05 acres; Outlot 2=29.05 acres
Existing Land Use: Agriculture Preservation

Petitioner: (Print) Neil Bellikka (B & B Real Estate)
Signature: 
Date: Phone: 605-228-3200
Address: 723 Commerce Street
Aberdeen, SD 57401
City State Zip

Owner: (Print) Neil Bellikka (B & B Real Estate)
Signature: 
Date: Phone: 605-228-3200
Address: 723 Commerce Street
Aberdeen, SD 57401
City State Zip

Additional Signatures may be submitted on a separate page.

PLAT SHOWING
B and B OUTLOTS
 IN THE NE1/4 OF SECTION 23,
 TOWNSHIP 123 NORTH, RANGE 63 WEST OF THE 5th P.M., BROWN COUNTY, SOUTH DAKOTA



REGISTERED PROFESSIONAL
 REGISTRATION NO. 11699
 ZACHARY M. REMILY
 LAND SURVEYOR
 12-20-21

LINE TABLE		
#	BEARING	DISTANCE
L1	N1°04'40"W	234.63'
L2	S1°01'20"E	244.51'
L3	N89°12'39"E	33.00'
L4	N88°59'15"E	33.00'
L5	S88°59'15"W	33.00'

BASIS OF BEARINGS
 STATE PLANE COORDINATE SYSTEM
 SOUTH DAKOTA NORTH ZONE (4001)
 US SURVEY FEET - NAD '83
 DISTANCES SHOWN ARE GROUND
 COORDINATES SHOWN ARE GRID



- LEGEND
- PIN FOUND (AS NOTED)
 - PIN SET w/CAP LS 11699
 - ⊗ SPIKE FOUND (AS NOTED)
 - ⊗ CALCULATED CORNER



Prepared By:
Assurance
 LAND SURVEYING

619 14th Avenue S, Faulkton, South Dakota 57438
 Phone: 605-290-3090 / Email: zach@assurancelandsurveying.com
 Project No. ALS21168 Field Survey Date: 12-10-2021

PLAT SHOWING
B and B OUTLOTS

IN THE NE1/4 OF SECTION 23,
TOWNSHIP 123 NORTH, RANGE 63 WEST OF THE 5th P.M., BROWN COUNTY, SOUTH DAKOTA

OWNER'S CERTIFICATE

B & B Real Estate, LLC, a South Dakota Limited Liability Company, does hereby certify that it is the owner of the Northeast Quarter (NE1/4) of Section Twenty-Three (23), Township One Hundred One Hundred Twenty-Three (123) North, Range Sixty-Three (63) West of the 5th P.M., [EXCEPT the South Forty-Eight (48) Acres and EXCEPT Lot H-1 recorded in Book 122 of Deeds, Page 182 and EXCEPT Lot H-2 recorded in Book 172, Page 261], Brown County, South Dakota, and that it has caused the same to be surveyed and platted as shown on the attached plat which shall be hereinafter known and described as:

**"B and B OUTLOTS IN THE NE1/4 OF SECTION 23,
TOWNSHIP 123 NORTH, RANGE 63 WEST OF THE 5TH P.M.,
BROWN COUNTY, SOUTH DAKOTA"**

and that development of this land shall conform to all existing applicable zoning, subdivision and sediment control regulations.

By this plat, B & B Real Estate, LLC, a South Dakota Limited Liability Company, does hereby DEDICATE the 40' Access Easement (the North 40' of Outlot 1 and Outlot 2) as shown on the attached plat for INGRESS/EGRESS for Outlot 1 and Outlot 2 to the Owner's of said Outlot 1 and Outlot 2, B and B Outlots in the NE1/4 of Section 23, Township 123 North, Range 63 West of the 5th P.M., Brown County, South Dakota.

Owner: B & B Real Estate, LLC,
a South Dakota Limited Liability Company

Neil Bellikka Member
Print Name & Title

Neil Bellikka
Signature

Signed this 4th day of January, 2022

COUNTY OF Brown)
STATE OF South Dakota) SS

On this 4th day of January, 2022, before me, a notary public, the undersigned officer, personally appeared Neil F. Bellikka who acknowledge himself/herself to be the Member of B & B Real Estate, LLC, a South Dakota Limited Liability Company, and that he/she as such Member, being authorized to do so, executed the forgoing instrument for the proposed therein contained, by signing the name of the LLC by himself/herself as Member.

In witness whereof I hereunto set my hand and official seal.

My Commission Expires: 10-13-2023

[Signature]
Notary Public

SURVEYOR'S CERTIFICATE

I, Zachary M. Remily, Registered Land Surveyor, in the State of South Dakota, do hereby certify that, at the request of the owners, I have surveyed and platted:

**"B and B OUTLOTS IN THE NE1/4 OF SECTION 23,
TOWNSHIP 123 NORTH, RANGE 63 WEST OF THE 5TH P.M.,
BROWN COUNTY, SOUTH DAKOTA"**

as shown on the attached plat, that I have found and/or set iron pins as indicated thereon, and that said survey and plat are true and correct.

Signed this 20th day of DECEMBER, 2021.

Zachary M. Remily
ZACHARY M. REMILY, LS 11699



SDDOT HIGHWAY APPROVAL

"Existing Access to US HIGHWAY 12 is approved. This access approval does not replace the need for any permits by law to establish the precise access location, including permit requirements set forth in Administrative Rule of South Dakota 70:09:01:02."

Signed this 21 day of Dec, 2021.

Bruce Schroeder Area Engineer
Print Name & Title

[Signature]
Signature

TOWNSHIP HIGHWAY APPROVAL

"Existing Access to 354th AVENUE is approved. This access approval does not replace the need for any permits by law to establish the precise access location, including permit requirements set forth in Administrative Rule of South Dakota 70:09:01:02."

Signed this 3 day of January, 2022

Jeffrey M. Hanson Supervisor
Print Name & Title

[Signature]
Signature

COUNTY PLANNING COMMISSION APPROVAL

I hereby certify that the following is a correct copy of the resolution duly passed by the County Planning Commission of Brown County, South Dakota, at a meeting held on the _____ day of _____, 20____.

Secretary of County Planning Commission
Brown County, South Dakota

"Be it resolved by the County Planning Commission of Brown County, South Dakota, that the plat showing:

"B and B OUTLOTS IN THE NE1/4 OF SECTION 23, TOWNSHIP 123 NORTH, RANGE 63 WEST OF THE 5TH P.M., BROWN COUNTY, SOUTH DAKOTA"

having been examined is hereby approved in accordance with the provisions of SDCL of 1967, Chapter 11-6, and any amendments.

COUNTY COMMISSION APPROVAL

I hereby certify that the following is a correct copy of the resolution duly passed by the County Commission of Brown County, South Dakota, at a meeting held on the _____ day of _____, 20____.

County Auditor
Brown County, South Dakota

"Be it resolved by the County Commission of Brown County, South Dakota, that the plat showing:

"B and B OUTLOTS IN THE NE1/4 OF SECTION 23, TOWNSHIP 123 NORTH, RANGE 63 WEST OF THE 5TH P.M., BROWN COUNTY, SOUTH DAKOTA"

having been examined is hereby approved in accordance with the provisions of SDCL of 1967, Chapter 11-3, and any amendments thereof."

PLAT SHOWING
B and B OUTLOTS

IN THE NE1/4 OF SECTION 23,
TOWNSHIP 123 NORTH, RANGE 63 WEST OF THE 5th P.M., BROWN COUNTY, SOUTH DAKOTA

TREASURER'S CERTIFICATE

I hereby certify that all taxes which are liens upon any of the lands included in the attached plat are shown by the records of my office to be fully paid.

Signed this 7th day of January, 2022.

W. VanMeter

County Treasurer
Brown County, South Dakota

DIRECTOR OF EQUALIZATION CERTIFICATE

I hereby certify that I have received a copy of this plat this 7 day of January, 2022.

Stephenie Morgan

Director of Equalization
Brown County, South Dakota

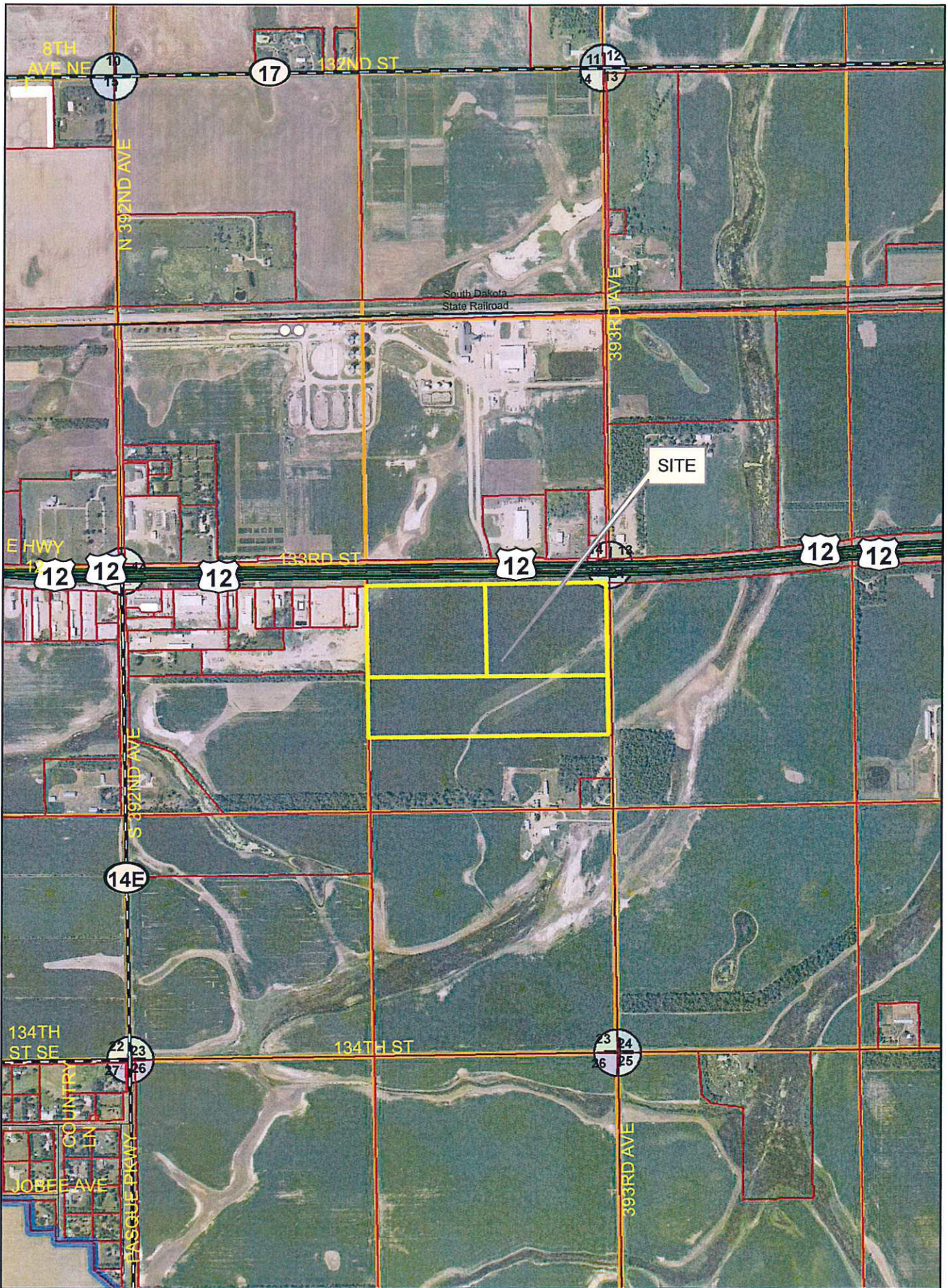
REGISTER OF DEEDS' CERTIFICATE

Filed for record this _____ day of _____, 20____.

at _____ O'clock _____ M., and duly recorded as Hanging Plat

No. _____.

Register of Deeds
Brown County, South Dakota



8TH
AVE NE

10
15

17

132ND ST

11
4
12
3

N 392ND AVE

South Dakota
State Railroad

393R DAVE

SITE

E HWY
12

12

12

133RD ST

12

12

12

S 392ND AVE

14E

134TH
ST SE

22
23
27
26

134TH ST

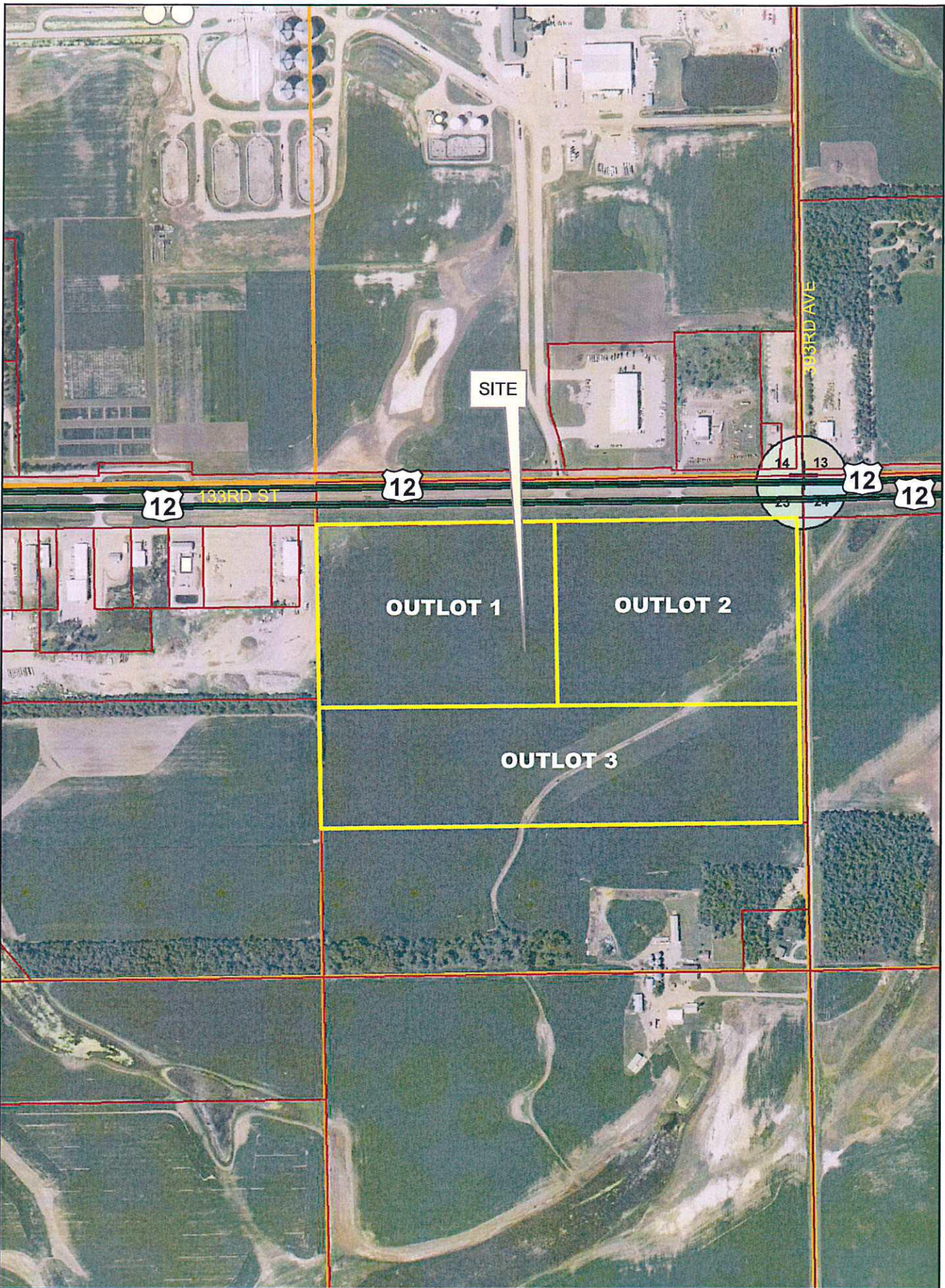
23
24
26
25

JOBBE AVE

COUNTRY
CO
H
L

LANCQUE PKWY

393RD AVE



SITE

12

1233RD ST

12

14
13
23
24

12

12

OUTLOT 1

OUTLOT 2

OUTLOT 3

1233RD AVE

B & B Real Estate, LLC
723 Commerce St
Aberdeen SD 57401

Bath Township
C/O James Whitman
39561 134th St
Bath SD 57427

Gordon Schmidt
39316 133rd St
Bath SD 57427

Matthew Vogel
PO Box 269
Aberdeen SD 57402-0269

Agtegra
908 Lamont St
Aberdeen SD 57401

Judy Hansen
2865 Diamond Ridge Rd
Reno NV 89523

Stanley Beckler
13349 393rd Ave
Bath SD 57427

H5 Investments, LLC
404 W Lyncrest Trail
Sioux Falls SD 57108

Prairie Hill Farms Acres
815 N 2nd St
Aberdeen SD 57401



Aberdeen News
Watertown Public Opinion

Order Confirmation

Not an Invoice

Account Number:	556235
Customer Name:	Brown County Auditor-Legals
Customer Address:	Brown County Auditor-Legals 25 Market St ABERDEEN SD 57401-4227
Contact Name:	Brown County Auditor-Legals
Contact Phone:	6056267110
Contact Email:	
PO Number:	

Date:	01/28/2022
Order Number:	6849647
Prepayment Amount:	\$ 0.00

Column Count:	1.0000
Line Count:	55.0000
Height in Inches:	0.0000

Print

Product	#Insertions	Start - End	Category
ABD The American News	1	02/02/2022 - 02/02/2022	Public Notices
ABD aberdeennews.com	1	02/02/2022 - 02/02/2022	Public Notices

Total Order Confirmation

\$20.40

Ad Preview

NOTICE OF HEARING
A PETITION to REZONE has been submitted to Brown County Planning/Zoning Commission. A hearing will be held in the basement of the Courthouse Annex Community Room, on February 15, 2022 at 7:00 p.m.
Owner & Petitioner: Neil Bellikka (B & B Real Estate)

Description of properties:
Proposed Outlot 1 and Outlot 2, "B and B Outlots" in the NE1/4 of Section 23-T123N-R63W of the 5th P.M., Brown County, South Dakota (39265 & 39285 133rd Street; Bath Twp).
Reason: Rezoning from Agriculture Preservation District (AG-P) to Highway Commercial District (HC) to bring these parcels into compliance for their future use.

The public is invited to attend the hearing and to present comments and testimony regarding the proposed rezone petition. At the conclusion of the hearing, the Brown County Planning/Zoning Commission will forward a recommendation to the Board of Brown County Commissioner's with a future meeting date in the Commission Chambers. Verify the date with the Brown County Auditor.
Dated this 2nd day of February 2022
Planning/Zoning Commission
Scott Bader – P&Z Director
25 Market Street
Aberdeen, SD 57401
Office: (605) 626-7144
Published once at the total approximate cost of \$20.40

February 2, 2022 6849647

STAFF REPORT

February 15, 2022

BROWN COUNTY PLANNING/ZONING COMMISSION

PRELIMINARY & FINAL PLAT

ITEM # 12

GENERAL INFORMATION:

PETITIONER/AGENT:	Scott Rozell
REQUEST:	PRELIMINARY & FINAL PLAT
LEGAL DESCRIPTION:	"S and R Rozell Addition" in the NE1/4 of Section 1-T121N-R65W of the 5 th P.M., Brown County, South Dakota
LOCATION:	14201 & 14205 382 nd Avenue
TOWNSHIP:	New Hope Twp
EXISTING ZONING	Mini-Agriculture District (M-AG)
SURROUNDING ZONING:	
North:	Agriculture Preservation District (AG-P)
South:	Agriculture Preservation District (AG-P)
East:	Agriculture Preservation District (AG-P)
West:	Agriculture Preservation District (AG-P)
PUBLIC UTILITIES:	WEB Water
REPORTED BY:	Ron Keller

GENERAL COMMENT: The petitioner is requesting this Preliminary & Final Plat for development purposes.

GENERAL REVIEW: Staff recommends approval.

PLAT APPROVAL CHECKLIST

SUBDIVISION NAME S and R Rozell Addition

QUARTER: NE SECTION: 1 TOWNSHIP: 121 RANGE: 65

LOTS 2 TRACTS _____ PARCELS _____ OUTLOTS _____ OTHER _____

OWNERS NAMES: Scott Rozell

OWNERS NAMES: _____

OWNERS NAMES: _____

ENGINEER OR SURVEYOR: Zachary Remily, Assurance Land Surveying

TYPE: PRELIMINARY _____ FINAL _____ BOTH X

FEE: \$100.00 TOTAL: \$ 100.00 DATE PAID: 01 / 06 /20 22

RECEIVED BY PLANNING DEPARTMENT: 01 / 06 /20 22 BY: Ron Keller

REASON FOR PLAT: DEVELOPMENT _____ CONVEYANCE _____ FINANCIAL PURPOSES _____ OTHER X

PLAT: ON 11 x 17 MYLAR _____ ON 11 x 17 PHOTO PAPER X

STREETS/ROADS NAMED PROPERLY X NEW STREETS/ROADS REQUIRE PRELIMINARY PLAT _____

EXISTING ACCESS SHOWN ON PLAT X ACCESS NEEDED _____

DIMENSION ALL LINEWORK FOR GIS DEPT. X BEARINGS & DISTANCES SHOWN TO "CLOSE" X

PLAT NAME CHECKED FOR DUPLICATION OR SIMILARITIES IN DEEDS OFFICE X

HIGHWAY SIGNATURE LINE SHOWN (STATE, COUNTY, TOWNSHIP) X

HIGHWAY SIGNATURE LINE SIGNED X

TAXES PAID IN FULL FOR THE YEAR X TREASURER SIGNATURE LINE SIGNED X

CONSIDERED BY COUNTY PLANNING COMMISSION:

RECOMMENDATION: _____ APPROVE _____ DENY _____ RE-SUBMIT ON _____

CONSIDERED BY COUNTY COMMISSION:


RECOMMENDATION: _____ APPROVE _____ DENY _____ RE-SUBMIT ON _____

BROWN COUNTY PLANNING & ZONING COMMISSION

APPLICATION FOR PLAT APPROVAL

DATE: January 6, 2022
RECEIPT # 620599
TOWNSHIP: New Hope Twp

FEES: \$100.00
PAID: YES / NO / CHK / CASH
DATE: 01/06/2022

OWNERS SIGNATURE: Scott Rozell * 
OWNERS ADDRESS: PO Box 133
OWNERS CITY, STATE, ZIP: Warner, SD 57479-0133
OWNERS PHONE: 605-225-8150

AGENTS SIGNATURE: _____
AGENTS ADDRESS: _____
AGENTS CITY, STATE, ZIP: _____
AGENTS PHONE: _____

REQUEST: Preliminary & Final Plat

LEGAL DESCRIPTION: "S and R Rozell Addition" in the NE1/4 of Section 1-T121N-R65W
of the 5th P.M., Brown County, South Dakota

Planning Commission Action: Approved / Denied

By: _____ Date: _____

HEARING DATE: February 15, 2022 TIME: 7:00 pm

MEETING: located in the Basement Community Room of the Court House Annex

25 Market Street • Aberdeen, South Dakota 57401-4203

Phone: 605-626-7144 • FAX: 605-626-4010 • email: Scott.Bader@browncounty.sd.gov

Storing Perishable Foods

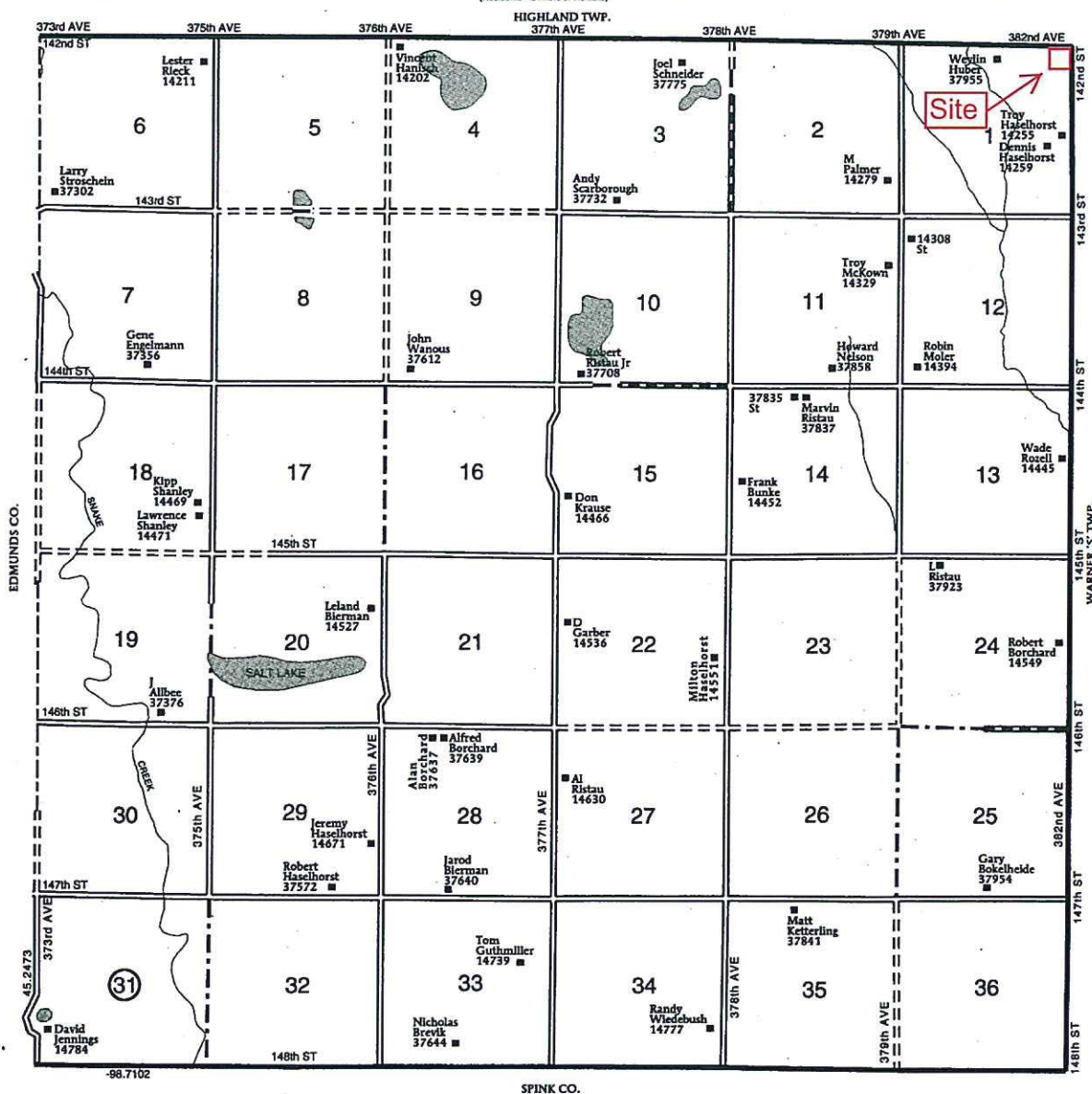
Follow these guidelines for storing perishable foods in the refrigerator or freezer.

- Raw meat and poultry should be wrapped securely so juices do not leak and contaminate other foods or surfaces. It's best to leave meat and poultry in the store wrapping unless the wrap is torn. Use plastic bags over commercial packaging. Store on bottom shelf to prevent dripping.
- Eggs should be stored in their carton in the refrigerator, not in the door.
- Arrange items in the refrigerator or freezer to allow air to circulate freely.

T-121-N

NEW HOPE DIRECTORY

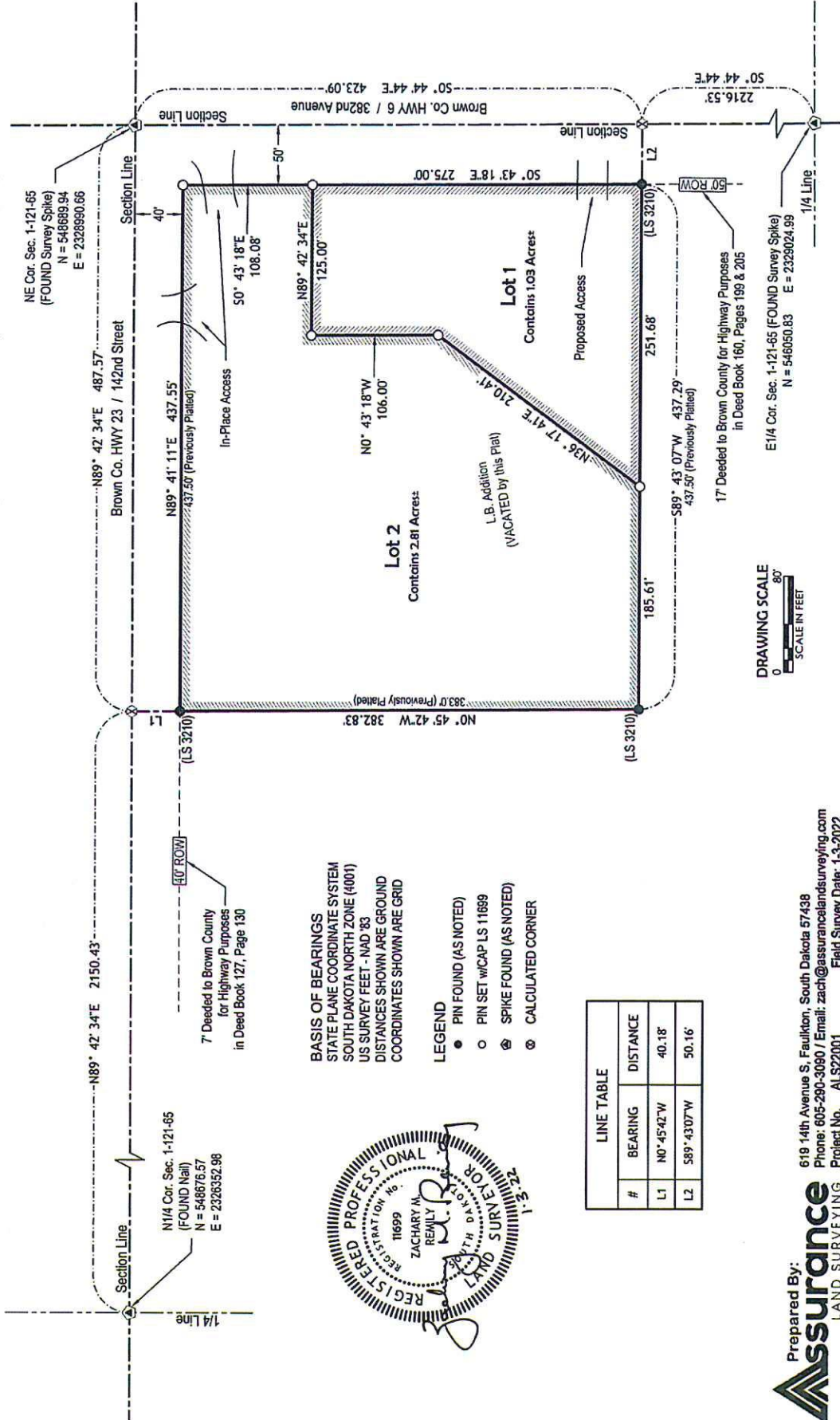
R-65-W



PLAT SHOWING

S and R ROZELL ADDITION

IN THE NE 1/4 OF SECTION 1, TOWNSHIP 121 NORTH, RANGE 65 WEST OF THE 5th P.M., BROWN COUNTY, SOUTH DAKOTA



NE Cor. Sec. 1-121-65
(FOUND Survey Spike)
N = 546689.94
E = 2328950.66

NE 1/4 Cor. Sec. 1-121-65
(FOUND Nail)
N = 546876.57
E = 2326352.98

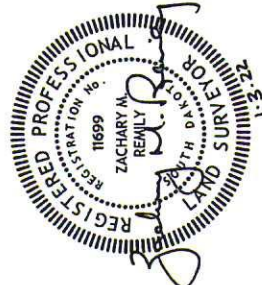
DRAWING SCALE
0 80'
SCALE IN FEET

E 1/4 Cor. Sec. 1-121-65 (FOUND Survey Spike)
N = 546050.83 E = 2329024.99

17 Deeded to Brown County for Highway Purposes
in Deed Book 160, Pages 199 & 205

BASIS OF BEARINGS
STATE PLANE COORDINATE SYSTEM
SOUTH DAKOTA NORTH ZONE (4001)
US SURVEY FEET - NAD 83
DISTANCES SHOWN ARE GROUND
COORDINATES SHOWN ARE GRID

- LEGEND
- PIN FOUND (AS NOTED)
 - PIN SET w/CAP LS 11689
 - ⊗ SPIKE FOUND (AS NOTED)
 - ⊙ CALCULATED CORNER



LINE TABLE	
#	BEARING DISTANCE
L1	N0° 45' 42" W 382.83
L2	S89° 43' 07" W 437.29

Prepared By: **Assurance**
LAND SURVEYING
619 14th Avenue S, Faulkton, South Dakota 57438
Phone: 605-290-3090 / Email: zach@assuranceandsurveying.com
Project No. ALS22001 Field Survey Date: 1-3-2022



SHEET 1 OF 3

PLAT SHOWING

S and R ROZELL ADDITION

IN THE NE1/4 OF SECTION 1, TOWNSHIP 121 NORTH, RANGE 65 WEST OF THE 5th P.M., BROWN COUNTY, SOUTH DAKOTA

OWNER'S CERTIFICATE

I, Scott Rozell, do hereby certify that I am the owner of Lot 1, L.B. Addition in the Northeast Quarter (NE1/4) of Section One (1), Township One Hundred Twenty-One (121) North, Range Sixty-Five (65) West of the 5th P.M., Brown County, South Dakota, and that I have caused the same to be surveyed and platted as shown on the attached plat which shall be hereinafter known and described as:

"S and R ROZELL ADDITION IN THE NE1/4 OF SECTION 1, TOWNSHIP 121 NORTH, RANGE 65 WEST OF THE 5TH P.M., BROWN COUNTY, SOUTH DAKOTA"

and that development of this land shall conform to all existing applicable zoning, subdivision and sediment control regulations.

By this plat, I, Scott Rozell, do hereby VACATE Lot 1, L.B. Addition in the Northeast Quarter (NE1/4) of Section One (1), Township One Hundred Twenty-One (121) North, Range Sixty-Five (65) West of the 5th P.M., Brown County, South Dakota as filed for record on July 31, 2006 at 4:18 P.M. and duly recorded as Hanging Plat File 2235H.

Owner: Scott Rozell
Scott Rozell
Signature
Signed this 5th day of Jan, 2022.

COUNTY OF Brown)
STATE OF South Dakota) SS

On this the 6th day of January, 2022, before me, Nathan Bobzien, the undersigned officer, personally appeared Scott Rozell, known to me or satisfactorily proven to be the person who, subscribed to the within instrument and acknowledged that he executed the same for the purposes therein contained.

In witness whereof I hereunto set my hand and official seal.

My Commission Expires: March 14, 2024
Nathan Bobzien
Notary Public



SURVEYOR'S CERTIFICATE

I, Zachary M. Remily, Registered Land Surveyor, in the State of South Dakota, do hereby certify that, at the request of the owner, I have surveyed and platted:

"S and R ROZELL ADDITION IN THE NE1/4 OF SECTION 1, TOWNSHIP 121 NORTH, RANGE 65 WEST OF THE 5TH P.M., BROWN COUNTY, SOUTH DAKOTA"

as shown on the attached plat, that I have found and/or set iron pins as indicated thereon, and that said survey and plat are true and correct.

Signed this 3rd day of January, 2022.

Zachary M. Remily
ZACHARY M. REMILY, LS 11699

BROWN COUNTY HIGHWAY APPROVAL

"Existing Access to BROWN Co. HIGHWAY 23 and BROWN Co. HIGHWAY 6 is approved. This access approval does not replace the need for any permits by law to establish the precise access location, including permit requirements set forth in Administrative Rule of South Dakota 70:09:01:02."

Signed this 6th day of Jan, 2022.

Highway or Street Authority

COUNTY PLANNING COMMISSION APPROVAL

I hereby certify that the following is a correct copy of the resolution duly passed by the County Planning Commission of Brown County, South Dakota, at a meeting held on the ___ day of ___, 2022.

Secretary of County Planning Commission
Brown County, South Dakota

"Be it resolved by the County Planning Commission of Brown County, South Dakota, that the plat showing

"S and R ROZELL ADDITION IN THE NE1/4 OF SECTION 1, TOWNSHIP 121 NORTH, RANGE 65 WEST OF THE 5TH P.M., BROWN COUNTY, SOUTH DAKOTA"

having been examined is hereby approved in accordance with the provisions of SDCL of 1967, Chapter 11-6, and any amendments.

COUNTY COMMISSION APPROVAL

I hereby certify that the following is a correct copy of the resolution duly passed by the County Commission of Brown County, South Dakota, at a meeting held on the ___ day of ___, 2022.

County Auditor
Brown County, South Dakota

"Be it resolved by the County Commission of Brown County, South Dakota, that the plat showing

"S and R ROZELL ADDITION IN THE NE1/4 OF SECTION 1, TOWNSHIP 121 NORTH, RANGE 65 WEST OF THE 5TH P.M., BROWN COUNTY, SOUTH DAKOTA"

having been examined is hereby approved in accordance with the provisions of SDCL of 1967, Chapter 11-3, and any amendments thereof."

PLAT SHOWING

S and R ROZELL ADDITION

IN THE NE 1/4 OF SECTION 1, TOWNSHIP 121 NORTH, RANGE 65 WEST OF THE 5th P.M., BROWN COUNTY, SOUTH DAKOTA

DIRECTOR OF EQUALIZATION CERTIFICATE

I hereby certify that I have received a copy of this plat
this 9 day of January, 2022.

Stephanie Morgan
Director of Equalization
Brown County, South Dakota

REGISTER OF DEEDS' CERTIFICATE

Filed for record this _____ day of _____, 2022,

at _____ O'clock _____ M., and duly recorded as Hanging

Plat No. _____

Register of Deeds
Brown County, South Dakota



Prepared By:

06

SITE

23

142ND ST

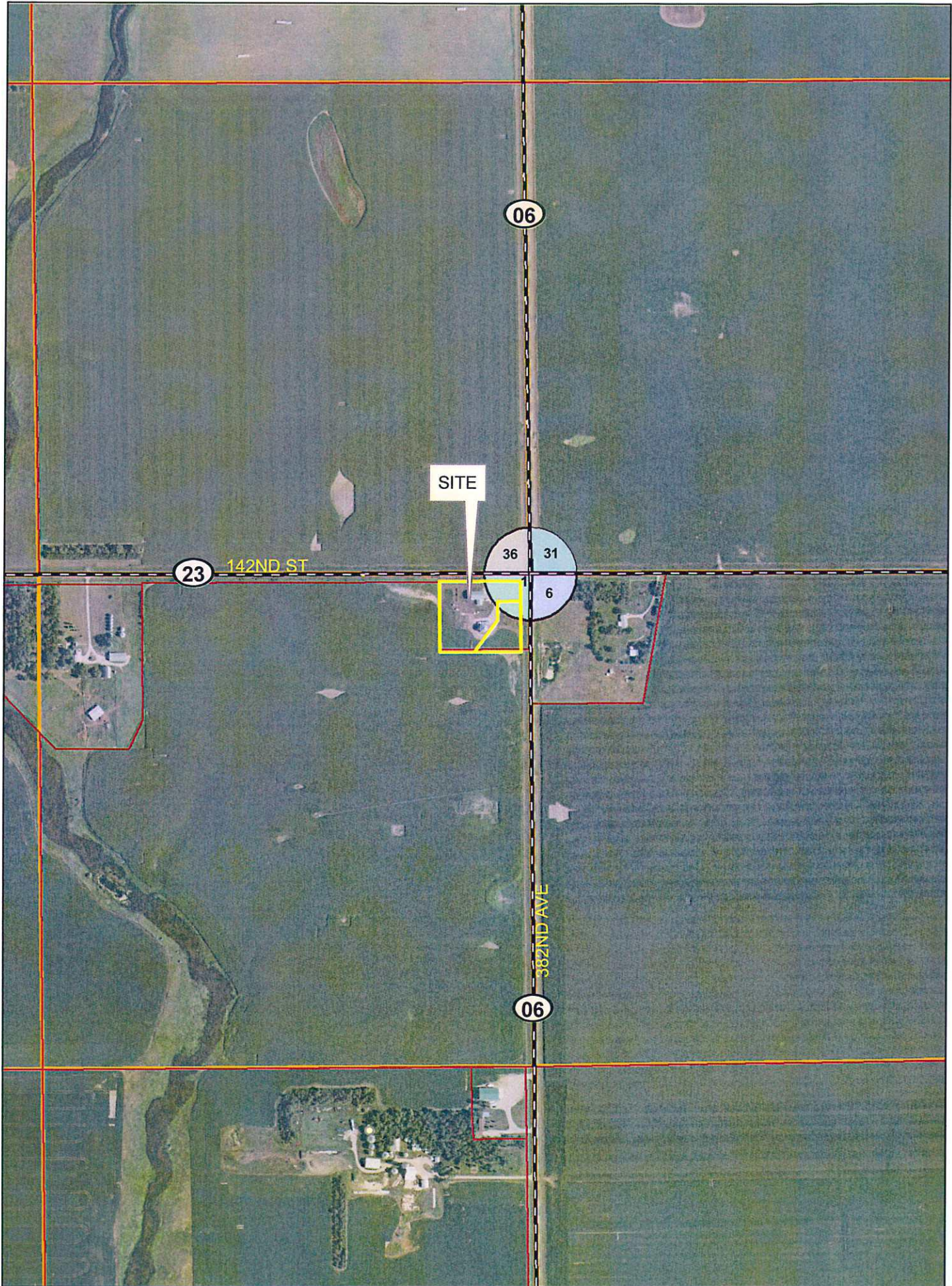
36

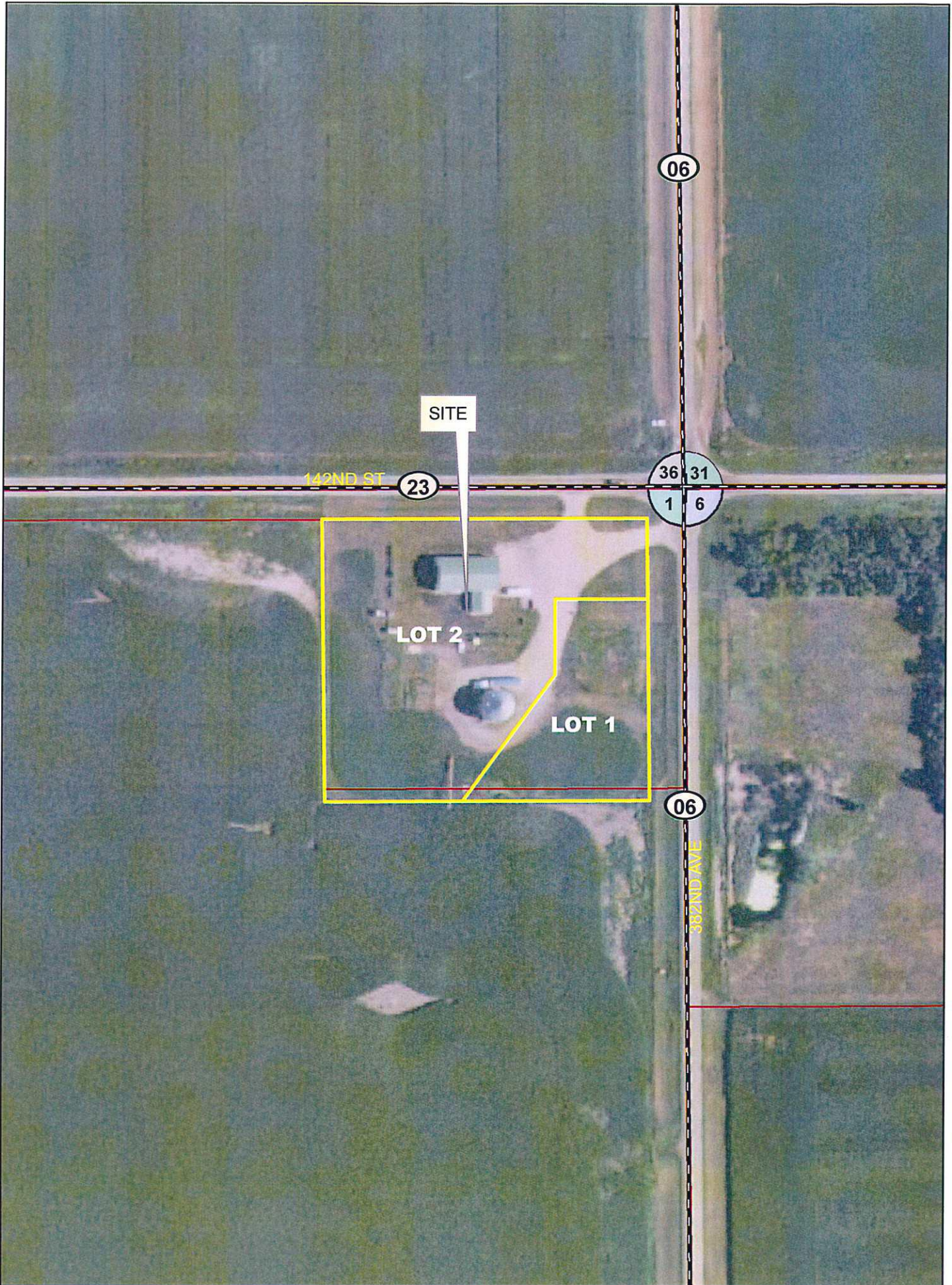
31

6

382ND AVE

06





SITE

142ND ST

23

06

36 31
1 6

LOT 2

LOT 1

06

382ND AVE

STAFF REPORT

February 15, 2022

BROWN COUNTY PLANNING/ZONING COMMISSION

Preliminary & Final Plat:

ITEM # 13

GENERAL INFORMATION:

PETITIONER/AGENT:	Neil Bellikka (B & B Real Estate)
REQUEST:	PRELIMINARY & FINAL PLAT
LEGAL DESCRIPTION:	"B and B Outlots" in the NE1/4 of Section 23-T123N-R63W of the 5 th P.M., Brown County, South Dakota
LOCATION:	39265 & 39285 133 rd Street; 13325 393 rd Avenue
TOWNSHIP:	Bath Twp
EXISTING ZONING	Agriculture Preservation District (AG-P)
SURROUNDING ZONING:	
North:	Heavy Industrial District (H-I)
South:	Agriculture Preservation District (AG-P)
East:	Agriculture Preservation District (AG-P)
West:	Agriculture Preservation District (AG-P) / Highway Commercial District (HC)
PUBLIC UTILITIES:	WEB Water
REPORTED BY:	Ron Keller

GENERAL COMMENT: The petitioner is requesting this Preliminary & Final Plat for development & conveyance purposes.

GENERAL REVIEW: Staff recommends approval.

PLAT APPROVAL CHECKLIST

SUBDIVISION NAME: B and B

PLAT OF
B AND B OUTLOTS
IN THE NE QUARTER OF SECTION 23, TOWNSHIP 123 NORTH, RANGE 63 WEST
OF THE FIFTH P.M., BROWN COUNTY, SOUTH DAKOTA

LEGAL SECTION: QUARTER: NE SECTION: 23 TOWNSHIP: 123 RANGE: 63

MANDATORY LOTS: _____ TRACTS _____ PARCELS _____ OUTLOTS 1,2,3 OTHER _____

OWNERS NAMES: Neil Bellikka (B & B Real Estate)

OWNERS NAMES: _____

ENGINEER OR SURVEYOR: Zach Remily (Assurance Land Surveying)

TYPE: PRELIMINARY _____ FINAL _____ BOTH X (both is allowed if there is not a new road needed)

PLAT FEE PER PLAT: \$100.00 DATE PAID: _____ / _____ / 20

RECEIVED BY PLANNING DEPARTMENT: 01 / 07 / 20 22 BY: Ron Keller

REASON FOR PLAT: DEVELOPMENT X CONVEYANCE X FINANCIAL PURPOSES _____ OTHER _____

ORIGINAL PLAT DRAWN ON: 11 x 17 MYLAR _____ 11 x 17 PHOTO PAPER X OTHER _____

STREETS/ROADS NAMED PROPERLY: X NEW STREETS/ROADS REQUIRE PRELIMINARY PLAT: _____

EXISTING ACCESS SHOWN ON PLAT: X ACCESS PERMISSION NEEDED BY: SD X BC _____ TWP _____

FULLY DIMENSIONED FROM SECTION CORNER: X OR QUARTER CORNER: X OR KNOWN MARKER: X

PLAT NAME CHECKED FOR DUPLICATION OR SIMILARITIES IN DEEDS OFFICE: X

HIGHWAY SIGNATURE LINE SHOWN: (State, County & Township) X SIGNATURE LINE SIGNED: X

TAXES PAID IN FULL: (on all lots involved) FOR THE YEAR _____ TREASURER SIGNATURE LINE SIGNED _____

BOLD BOUNDARY DRAWN AROUND COMPLETE LOT: X PROPERTY PINS SHOWN ON ALL CORNERS: X

REGULAR BOUNDARY LINE DRAWN AROUND R-O-W X

AFTER PLANNING COMMISSION MEETING

CONSIDERED BY COUNTY PLANNING COMMISSION:

RECOMMENDATION: _____ APPROVE _____ DENY _____ RE-SUBMIT ON _____

CONSIDERED BY COUNTY COMMISSION:

RECOMMENDATION: _____ APPROVE _____ DENY _____ RE-SUBMIT ON _____

BROWN COUNTY PLANNING & ZONING COMMISSION

APPLICATION FOR PLAT APPROVAL

DATE: January 10, 2022
RECEIPT # 620609
TOWNSHIP: Bath Twp

FEES: \$100.00
PAID: YES/NO CHK/CASH
DATE: January 28, 2022

OWNERS SIGNATURE: Neil Bellikka (B & B Real Estate)
OWNERS ADDRESS: 723 Commerce St
OWNERS CITY, STATE, ZIP: Aberdeen, SD 57401
OWNERS PHONE: 605-228-3200

AGENTS SIGNATURE: _____
AGENTS ADDRESS: _____
AGENTS CITY, STATE, ZIP: _____
AGENTS PHONE: _____

REQUEST: Preliminary & Final Plat

LEGAL DESCRIPTION: "B and B Outlots" in the NE1/4 of Section 23-T123N-R63W
of the 5th P.M., Brown County, South Dakota

Planning Commission Action: *Approved / Denied* _____

By: _____ **Date:** _____

HEARING DATE: February 15, 2021 **TIME:** 7:00 pm

Want a "free" extra book?

By reviewing township Directory maps for correct information before we publish the next issue, FHP will send you a free book of any county in any state printed by FHP for that year.

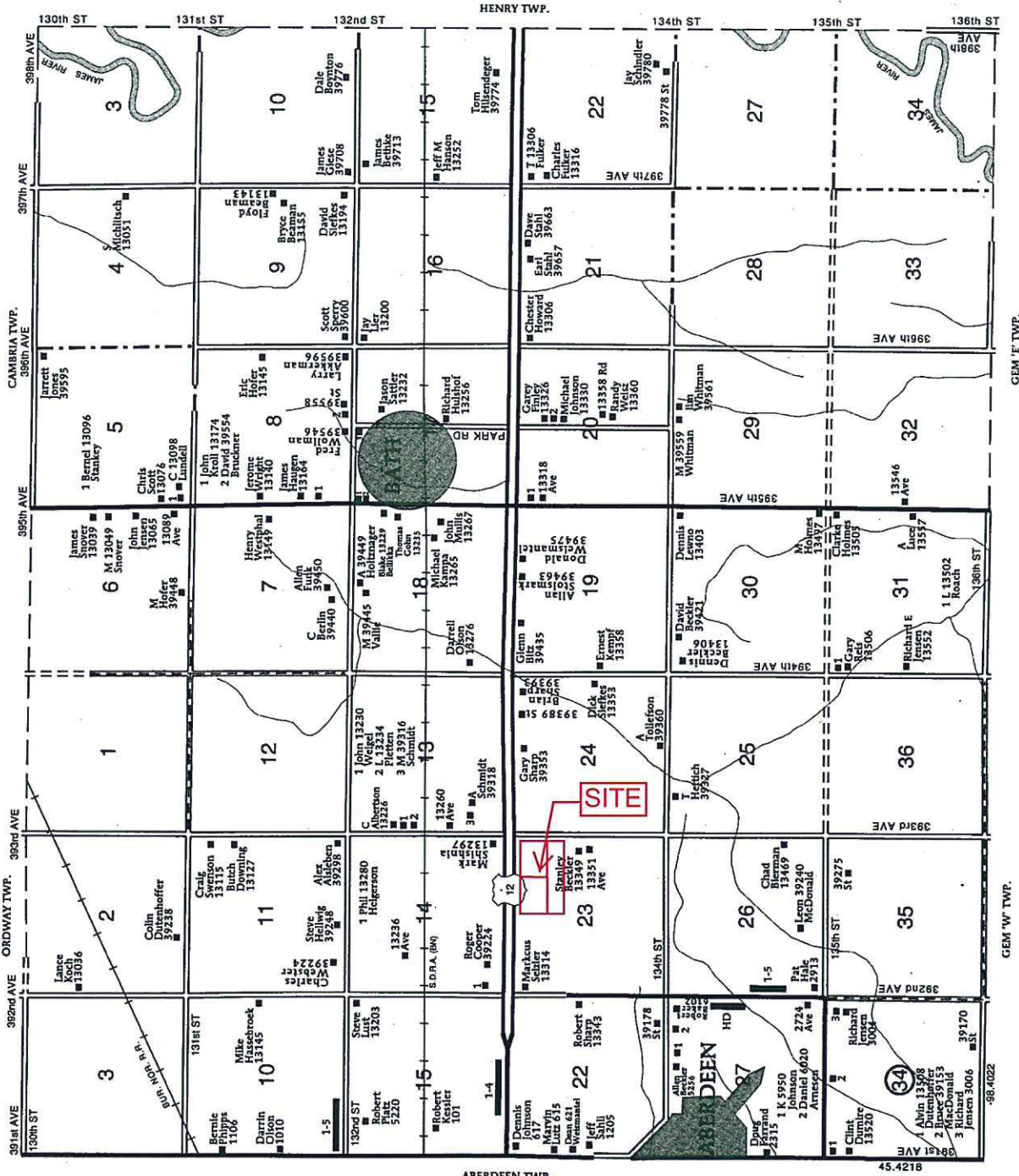
Contact our updating dept. at
800-685-7432-ext. 2605 or
 email: amanda.engebretson@farmandhomepublishers.com

T-123-N

BATH DIRECTORY

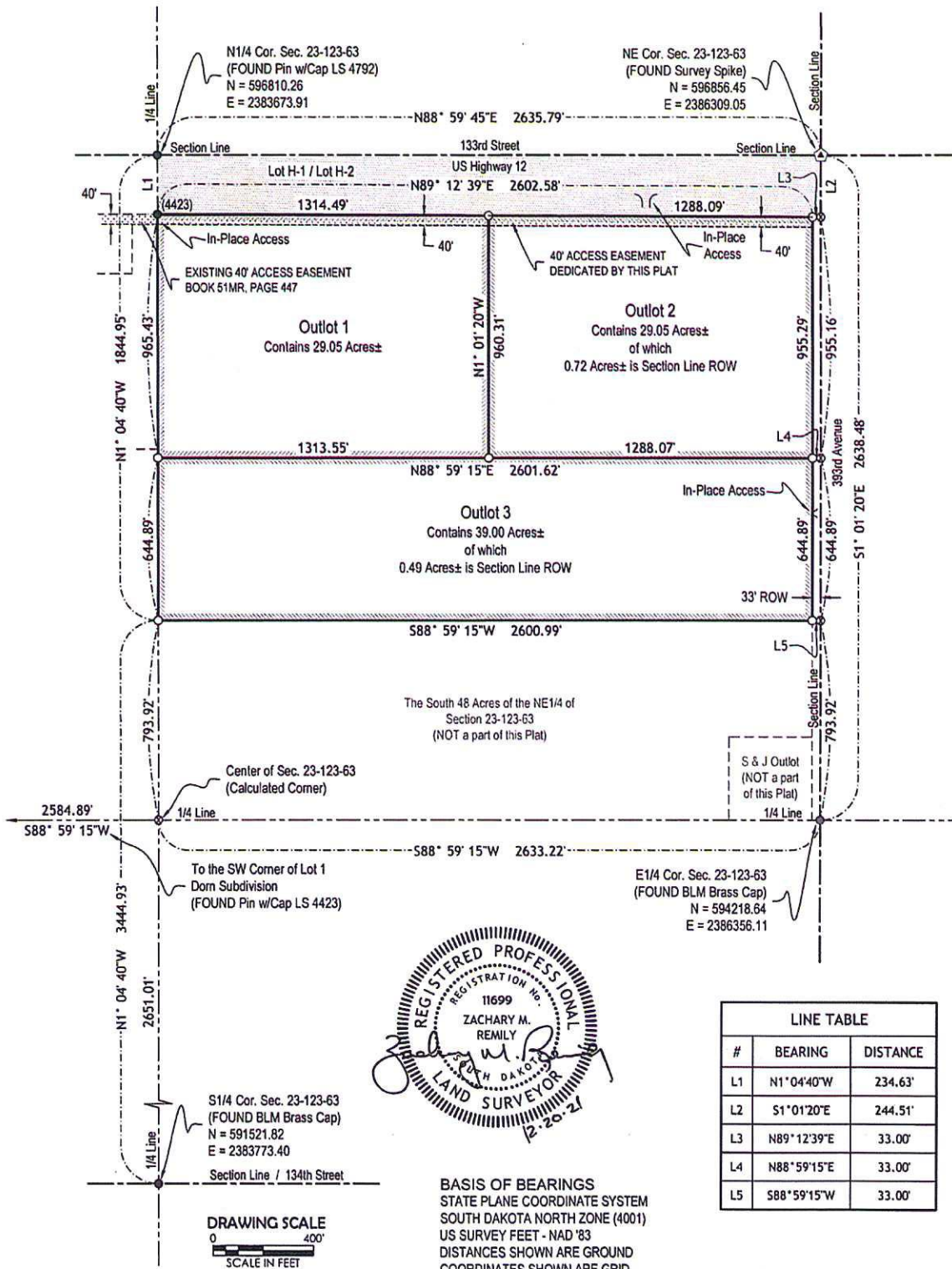
(Residents - Owners or Renters)

R-62-63-W



- BATH TOWNSHIP**
- SECTION 10W**
- 1 Beckler, Ron 5005
 - 2 Tennant, Cory 5025
 - 3 5091
 - 4 Gross, Del 5115
 - 5 Harper, Steve 5219
- SECTION 15W**
- 1 Gossman, C 5405
 - 2 Eilers, Todd 5455
 - 3 Knudson, R 5485
 - 4 Gossman, S 5755
- SECTION 17**
- 1 Bluecher, Jerry 13228
 - 2 Brinkman, Stanley 13230
- SECTION 20**
- 1 Westphal, Henry 13316
 - 2 Rohrbach, Kevin 13328
- SECTION 28**
- 1 Bellikka, Daryl 2111
 - 2 Kohrhaas, Paul 2135
 - 3 Grifese, Doug 2215
 - 4 Rud, Robert 2317
 - 5 Mattern, R 2519

PLAT SHOWING
B and B OUTLOTS
 IN THE NE1/4 OF SECTION 23,
 TOWNSHIP 123 NORTH, RANGE 63 WEST OF THE 5th P.M., BROWN COUNTY, SOUTH DAKOTA



LINE TABLE		
#	BEARING	DISTANCE
L1	N1°04'40"W	234.63'
L2	S1°01'20"E	244.51'
L3	N89°12'39"E	33.00'
L4	N88°59'15"E	33.00'
L5	S88°59'15"W	33.00'

BASIS OF BEARINGS
 STATE PLANE COORDINATE SYSTEM
 SOUTH DAKOTA NORTH ZONE (4001)
 US SURVEY FEET - NAD '83
 DISTANCES SHOWN ARE GROUND
 COORDINATES SHOWN ARE GRID



- LEGEND**
- PIN FOUND (AS NOTED)
 - PIN SET w/CAP LS 11699
 - ⊕ SPIKE FOUND (AS NOTED)
 - ⊙ CALCULATED CORNER



619 14th Avenue S, Faulkton, South Dakota 57438
 Phone: 605-290-3090 / Email: zach@assurancelandsurveying.com
 Project No. ALS21168 Field Survey Date: 12-10-2021

PLAT SHOWING
B and B OUTLOTS

IN THE NE1/4 OF SECTION 23,
TOWNSHIP 123 NORTH, RANGE 63 WEST OF THE 5th P.M., BROWN COUNTY, SOUTH DAKOTA

OWNER'S CERTIFICATE

B & B Real Estate, LLC, a South Dakota Limited Liability Company, does hereby certify that it is the owner of the Northeast Quarter (NE1/4) of Section Twenty-Three (23), Township One Hundred One Hundred Twenty-Three (123) North, Range Sixty-Three (63) West of the 5th P.M., [EXCEPT the South Forty-Eight (48) Acres and EXCEPT Lot H-1 recorded in Book 122 of Deeds, Page 182 and EXCEPT Lot H-2 recorded in Book 172, Page 261], Brown County, South Dakota, and that it has caused the same to be surveyed and platted as shown on the attached plat which shall be hereinafter known and described as:

**"B and B OUTLOTS IN THE NE1/4 OF SECTION 23,
TOWNSHIP 123 NORTH, RANGE 63 WEST OF THE 5TH P.M.,
BROWN COUNTY, SOUTH DAKOTA"**

and that development of this land shall conform to all existing applicable zoning, subdivision and sediment control regulations.

By this plat, B & B Real Estate, LLC, a South Dakota Limited Liability Company, does hereby DEDICATE the 40' Access Easement (the North 40' of Outlot 1 and Outlot 2) as shown on the attached plat for INGRESS/EGRESS for Outlot 1 and Outlot 2 to the Owner's of said Outlot 1 and Outlot 2, B and B Outlots in the NE1/4 of Section 23, Township 123 North, Range 63 West of the 5th P.M., Brown County, South Dakota.

Owner: B & B Real Estate, LLC,
a South Dakota Limited Liability Company

Neil Bellikka Member
Print Name & Title

Neil Bellikka
Signature

Signed this 4th day of January, 2022

COUNTY OF Brown)
STATE OF South Dakota) SS

On this 4th day of January, 2022, before me, a notary public, the undersigned officer, personally appeared Neil F. Bellikka who acknowledge himself/herself to be the Member of B & B Real Estate, LLC, a South Dakota Limited Liability Company, and that he/she as such Member, being authorized to do so, executed the forgoing instrument for the proposed therein contained, by signing the name of the LLC by himself/herself as Member.

In witness whereof I hereunto set my hand and official seal.

My Commission Expires: 10-13-2023

Robert
Notary Public

SURVEYOR'S CERTIFICATE

I, Zachary M. Remily, Registered Land Surveyor, in the State of South Dakota, do hereby certify that, at the request of the owners, I have surveyed and platted:

**"B and B OUTLOTS IN THE NE1/4 OF SECTION 23,
TOWNSHIP 123 NORTH, RANGE 63 WEST OF THE 5TH P.M.,
BROWN COUNTY, SOUTH DAKOTA"**

as shown on the attached plat, that I have found and/or set iron pins as indicated thereon, and that said survey and plat are true and correct.

Signed this 20th day of DECEMBER, 2021.

Zachary M. Remily
ZACHARY M. REMILY, LS 11699



SDDOT HIGHWAY APPROVAL

"Existing Access to US HIGHWAY 12 is approved. This access approval does not replace the need for any permits by law to establish the precise access location, including permit requirements set forth in Administrative Rule of South Dakota 70:09:01:02."

Signed this 21 day of Dec, 2021.

Bruce Schroeder Area Engineer
Print Name & Title

Bruce Schroeder
Signature

TOWNSHIP HIGHWAY APPROVAL

"Existing Access to 39th AVENUE is approved. This access approval does not replace the need for any permits by law to establish the precise access location, including permit requirements set forth in Administrative Rule of South Dakota 70:09:01:02."

Signed this 3 day of January, 2022.

Jeffrey M. Hanson Supervisor
Print Name & Title

Jeffrey M. Hanson
Signature

COUNTY PLANNING COMMISSION APPROVAL

I hereby certify that the following is a correct copy of the resolution duly passed by the County Planning Commission of Brown County, South Dakota, at a meeting held on the _____ day of _____, 20____.

Secretary of County Planning Commission
Brown County, South Dakota

"Be it resolved by the County Planning Commission of Brown County, South Dakota, that the plat showing:

"B and B OUTLOTS IN THE NE1/4 OF SECTION 23, TOWNSHIP 123 NORTH, RANGE 63 WEST OF THE 5TH P.M., BROWN COUNTY, SOUTH DAKOTA"

having been examined is hereby approved in accordance with the provisions of SDCL of 1967, Chapter 11-6, and any amendments.

COUNTY COMMISSION APPROVAL

I hereby certify that the following is a correct copy of the resolution duly passed by the County Commission of Brown County, South Dakota, at a meeting held on the _____ day of _____, 20____.

County Auditor
Brown County, South Dakota

"Be it resolved by the County Commission of Brown County, South Dakota, that the plat showing:

"B and B OUTLOTS IN THE NE1/4 OF SECTION 23, TOWNSHIP 123 NORTH, RANGE 63 WEST OF THE 5TH P.M., BROWN COUNTY, SOUTH DAKOTA"

having been examined is hereby approved in accordance with the provisions of SDCL of 1967, Chapter 11-3, and any amendments thereof."

PLAT SHOWING
B and B OUTLOTS

IN THE NE1/4 OF SECTION 23,
TOWNSHIP 123 NORTH, RANGE 63 WEST OF THE 5th P.M., BROWN COUNTY, SOUTH DAKOTA

TREASURER'S CERTIFICATE

I hereby certify that all taxes which are liens upon any of the lands included in the attached plat are shown by the records of my office to be fully paid.

Signed this 7th day of January, 2022.

W. Vanmeter

County Treasurer
Brown County, South Dakota

DIRECTOR OF EQUALIZATION CERTIFICATE

I hereby certify that I have received a copy of this plat this 7 day of January, 2022.

Stephanie Morgan

Director of Equalization
Brown County, South Dakota

REGISTER OF DEEDS' CERTIFICATE

Filed for record this _____ day of _____, 20____.

at _____ O'clock ____ M., and duly recorded as Hanging Plat

No. _____.

Register of Deeds
Brown County, South Dakota

DEED OF EASEMENT

I, the undersigned Edna C. Larson, of Brown County, South Dakota, do hereby grant and convey unto the adjacent property owners, and the public in general, a permanent easement to use as a right of way, the Forty (40) Feet next South of Lot H-2, and running the full length thereof, which lot H-2 is more further shown and described in a Plat filed as No. 688 on August 3, 1966, and being a part of the Northwest Quarter (NW $\frac{1}{4}$) of Section Twenty-three (23), Township One Hundred Twenty-three (123), Range Sixty-three (63) in Brown County, South Dakota.

IT IS AGREED that this easement shall be binding upon the heirs, successors and assigns of all property affected hereby.

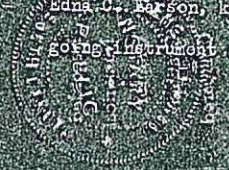
Dated this 14th day of June, 1968.

Edna C. Larson
(Grantor)

State of South Dakota)

County of Brown) SS

On this 14th day of June, 1968, before me personally appeared Edna C. Larson, known to me to be the person who is described in and who executed the foregoing instrument and acknowledged to me that he executed the same.



Edna C. Larson
Notary Public, South Dakota

My Commission Expires:
Nov. 23, 1973

**PLAT SHOWING
PRECISION AG AND ABERDEEN PLUMBING SUBDIVISION
IN THE NW1/4 OF SEC. 23-T123N-R63W of 5th P.M.
BROWN COUNTY, SOUTH DAKOTA**

affidavit 139MR/943

NW Corner 23-123-63

Section Line

U.S. Highway 12

33'

33'

Lot H1-Lot 1

Lot H2 & H3

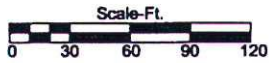
(Not a Part of this Plat)

(Not a Part of this Plat)

SECTION LINE



Francis E. Brink
7-26-2018



LEGEND

Monuments Found
Monuments Set-5/8"Ø rebar w/cap SD1641

N0°32'52"W

N90°00'00"E 124.34'

237.45' N0°35'22"E

289.94' N0°15'08"W

39.04'

84.04'

N29°09'28"E 78.12'-15.8'

Center of Existing Access Easement

LOT 2
0.99 Acre

N89°59'25"E

130.13'

108.80'

LOT 1
0.59 Acre

300.34'

N89°59'23"E

Existing 15' Wide Access Easement

N89°42'07"E

118.40'

62.09'

N0°33'00"E

50' In Former LOT 2
Crompton
1st Addition

85.95'

213.46'

33'

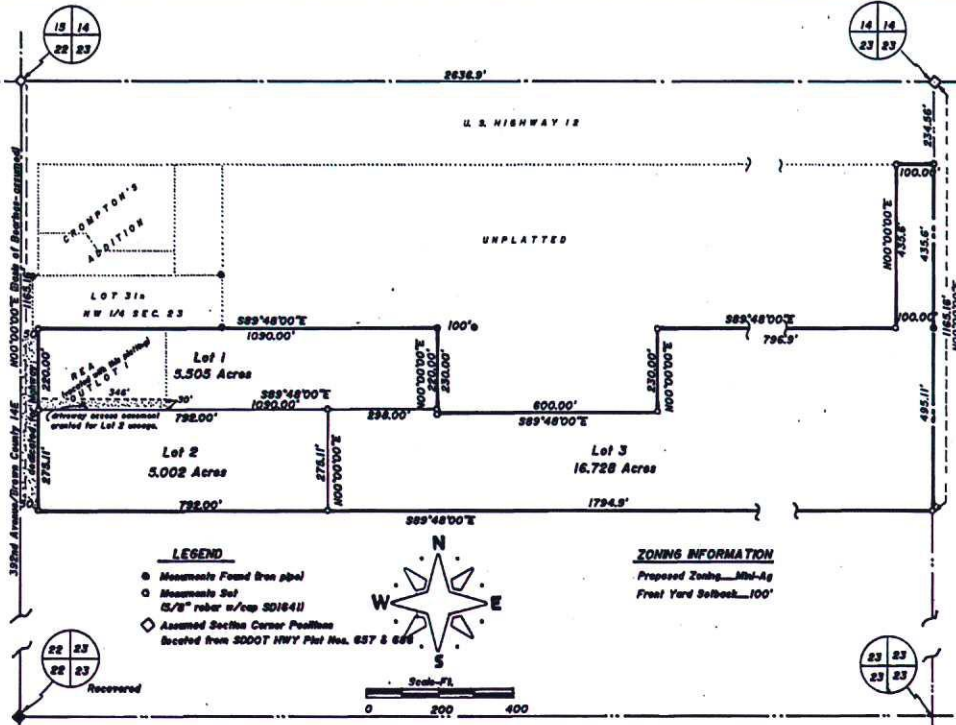
33'

Prepared By: Francis E. Brink, P.E., L.S., 1641
616-4th Street North, Aberdeen, South Dakota 57401
Tel. (605) 225-9181

DRAWING NUMBER
Book 18
1395-E

DRAWING NUMBER
152

REA FIRST ADDITION
IN
NW 1/4 SEC. 23-T123N-R63W of 5th P.M.
BROWN COUNTY, SOUTH DAKOTA



OWNER'S CERTIFICATE

REA HYBRIDS, INC., a South Dakota Corporation, does hereby certify that it is the owner of REA Outlot 1 in the NW1/4 Section 23-T123N-R63W of the 5th P.M., Brown County, and is vacating said REA Outlot 1, and joining with others in a survey and plat which shall be hereafter known as "REA FIRST ADDITION IN NW1/4 SEC. 23-T123N-R63W of 5th P.M., BROWN COUNTY, SOUTH DAKOTA", as shown above, and that development of this land shall conform to all existing applicable zoning, subdivision and sediment control regulations. The roadway shown on the plat is hereby dedicated to the perpetual use of the public.

For REA HYBRIDS, INC., and this 17th day of September, 1999,
Charles A. Rea, President *Wendell L. Rea, Vice President*
 Charles A. Rea, President Wendell L. Rea, Vice President

We, Wendell L. Rea and Mary Jane Wendell, Husband and Wife, hereby certify that we are the Owners of the south 495' of the North 1163.16' and the east 100' of the North 670.16' of the NW1/4 of Section 23, Township 123 North, Range 63 West of the 5th P.M., Brown County, South Dakota, except lands dedeed and highways, and have joined with others in a survey and platting of lands described herein and others, which shall hereafter be known as "REA FIRST ADDITION IN NW1/4 SEC. 23-T123N-R63W of 5th P.M., BROWN COUNTY, SOUTH DAKOTA", as shown above, and that development of this land shall conform to all existing applicable zoning, subdivision and sediment control regulations. The roadway shown on the plat is hereby dedicated to the perpetual use of the public.

Wendell L. Rea 9-17-1999 *Mary Jane Rea* 9/17/99
 Wendell L. Rea, Date Mary Jane Rea, Date

ACKNOWLEDGMENT OF OWNERS

STATE OF SOUTH DAKOTA)
 COUNTY OF BROWN)

On this, the 17th day of September, 1999, before me, Francis E. Brink, a Notary Public, appeared Charles A. Rea and Wendell L. Rea, personally known or satisfactorily proven to me to be the President and Vice President, respectively, of REA HYBRIDS, INC., and signed the above OWNER'S CERTIFICATE on behalf of REA HYBRIDS, INC., for the purposes therein contained.

My Commission Expires: 2-07-2002
 STATE OF SOUTH DAKOTA)
 COUNTY OF BROWN)
Francis E. Brink
 Notary Public, Brown County, South Dakota

On this, the 17th day of September, 1999, before me, Francis E. Brink, a Notary Public, appeared Wendell L. Rea and Mary Jane Rea, personally known to me or satisfactorily proven to me to be the persons named in the above OWNER'S CERTIFICATE, and signed on their behalf for the purposes therein contained.

My Commission Expires: 2-07-2002
Francis E. Brink
 Notary Public, Brown County, South Dakota

SURVEYOR'S CERTIFICATE

I, Francis E. Brink, Licensed Land Surveyor, do hereby certify that at the request of the Owners shown above, have surveyed and platted "REA FIRST ADDITION IN NW1/4 OF SEC. 23-T123N-R63W of 5th P.M., BROWN COUNTY, SOUTH DAKOTA" as shown on the above plat; have set iron pins as indicated thereon, and to the best of my knowledge said survey and plat are true and correct.

Signed this 16th day of September, 1999
Francis E. Brink
 South Dakota Licensed Land Surveyor No. 1641



3B.134(Red)

Parcel No. 42

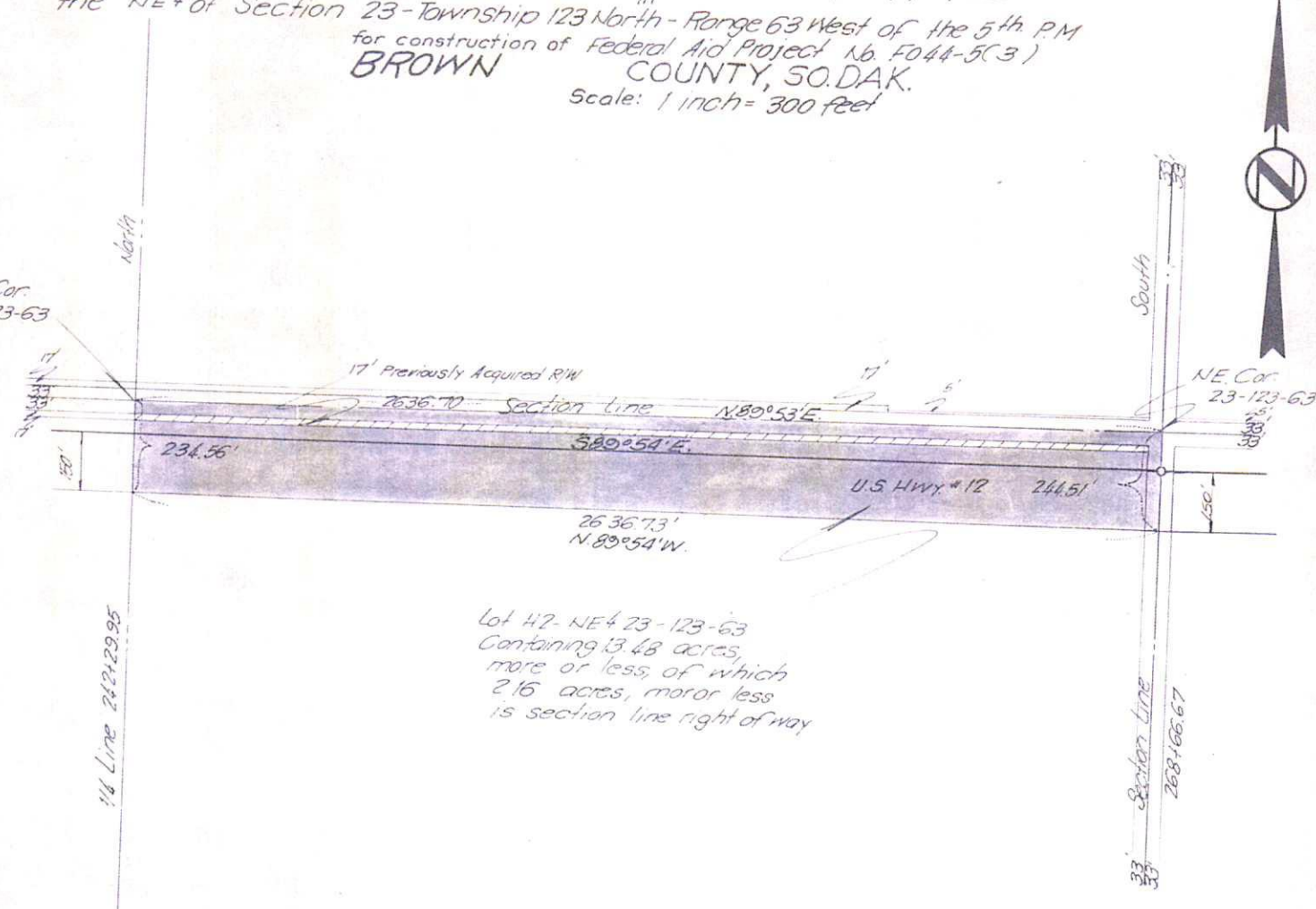
PLAT OF LOT H2- NE4 23-T123N-R63W

Showing Right of Way to be acquired for highway purposes
in
the NE⁴ of Section 23-Township 123 North - Range 63 West of the 5th P.M.
for construction of Federal Aid Project No. F044-5(3)
BROWN COUNTY, SO. DAK.
Scale: 1 inch = 300 feet



N 1/4 Cor
23-123-63

NE Cor
23-123-63



Lot H2- NE4 23-123-63
Containing 13.48 acres,
more or less, of which
2.16 acres, more or less
is section line right of way

Drawing prepared in Plans Dept.
South Dakota Highway Commission.
Drawn by: Checked by: B.F.
Date: 9-24-65

SURVEYOR'S CERTIFICATE

I, S.W. Gentile Registered Land Surveyor, do hereby certify that, at the direction of the South Dakota State Highway Commission, I have surveyed the tract of land as shown on the above plat and such tract shall be hereafter known by the lot number designated above. The location and dimensions of the tract are as shown on the plat. In witness whereof, I have set my hand and seal this day of APR 18 1966 A. D., 19

SEAL

S.W. Gentile
REGISTERED LAND SURVEYOR.

Faint, illegible text at the top of the page, possibly a header or address.

Robert A. Brown

31

Robert A. Brown

Ferdinand Aderman
Sec. 23
5th P.M.

Brown

123

63

NE 4

H.I.

1.01

my 29th

29th

September

31

Ferdinand Aderman

South Dakota

Brown

29th

September

31

Ferdinand Aderman

is

he

July 14, 1935

A. Mellosky

Brown

South Dakota

DEED RECORD No. 122

WARRANTY DEED

Derdinand Aderman (Single), grantor, of

Bath, Brown County, State of So Dak. for and in consideration of

Sixty & 60/100 DOLLARS,

grants, conveys and warrants to Brown County, a Municipal Corporation

Aberdeen, S.D., grantee, of

P. O., the following

described real estate in the County of Brown, in the State of South Dakota: Plat of Lot H. 1. being a strip of

land for highway purposes, adjoining and parallel to the present highway along the north side of the Northeast Quarter (N¹/₄) Section Twenty-three (Sec. 23) Township One Hundred twenty-three (Twp 123) North of Range Sixty-three (R. 63) West of the 5th P.M. containing 1.01 acres (more or less).

Dated this 29th day of September 1931 Derdinand Aderman

STATE OF South Dakota } ss.
County of Brown

On this 29th day of September in the year 1931, before me personally appeared Derdinand Aderman

known to me to be the person who is described in and who executed the within and foregoing instrument, and acknowledged to me that he executed the same.

A McClaskey
Notary Public
South Dakota

A. McClaskey
Notary Public

My commission expires _____ 19 _____

STATE OF SOUTH DAKOTA, County of Brown, ss.
Filed for record this 18th day of January 1933, at 10:30 o'clock A.M., and recorded in Book 122 of Deeds, on page 187

By _____ Deputy H. C. Milstead Register of Deeds

Donald Harris Hall

Grantor....., of

Brown County

County, State of South Dakota

for and in consideration of One dollar and other valuable considerations-----
-----(\$1.00)-----
-----DOLLARS

GRANTS, CONVEYS AND WARRANTS to THE STATE OF SOUTH DAKOTA

grantee..... of Pierre, South Dakota P. O., the following described
real estate in the County of Brown in the State of South Dakota:
Lot H-2 in the NE $\frac{1}{4}$ of Section 23, Township 123 North, Range 63 West of the 5th P.M.,
in Brown County, South Dakota, as shown by plat made by S.W. Gentle, Registered
Land Surveyor, under date of April 11, 1966; said plat to be filed in the office
of the Register of Deeds, in Brown County, South Dakota.

Said Lot H-2 contains 13.48 acres, more or less.

This transfer is to include "Controlled ACCESS" in accordance with Chapter 155 of
the 1953 Session Laws of the State of South Dakota. Access to the property is
granted at sta. 261+73 Rt.



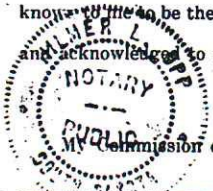
This Deed is given for Highway purposes only, with full reversionary rights.

Dated this 1 day of July 1966
Donald Harris Hall

State of *South Dakota* ss.
County of *Brown*

On this *July* day of *July* in the year 19*66*
before me *Wilma L. Opp* a Notary Public within and for
said County and State, personally appeared *Donald Harris Hall*

known to me to be the person who described in, and who executed the within instrument,
and acknowledged to me that he executed the same.

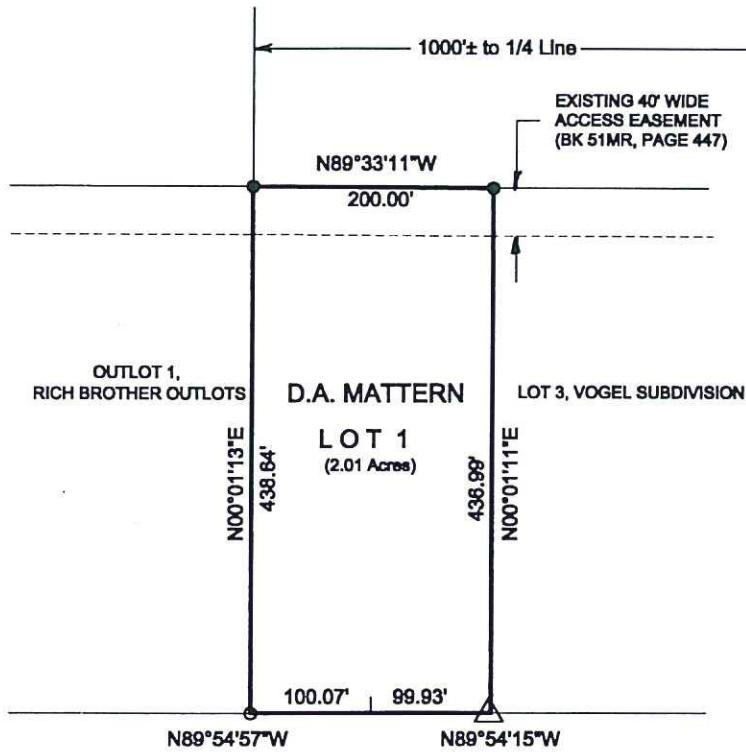


Wilma L. Opp
Notary Public.

D. A. MATTERN SUBDIVISION IN
 NW1/4 SEC. 23-T123N-R63W of 5th P.M.
 BROWN COUNTY, SOUTH DAKOTA



U.S. HIGHWAY 12
 RIGHT OF WAY



Scale: 1"=100'



-LEGEND-

Monuments Found:

- O'Donnell
- △ Bacon

Monuments Set:

- 5/8"Ø rebar w/cap SD1641 (original monuments damaged)



Prepared by
 Francis E. Brink, P.E., L.S., SD1641
 616-4th Street North, Aberdeen, SD
 Tel. (605) 225-9181

DRAWING NUMBER

Book 14
1401-E

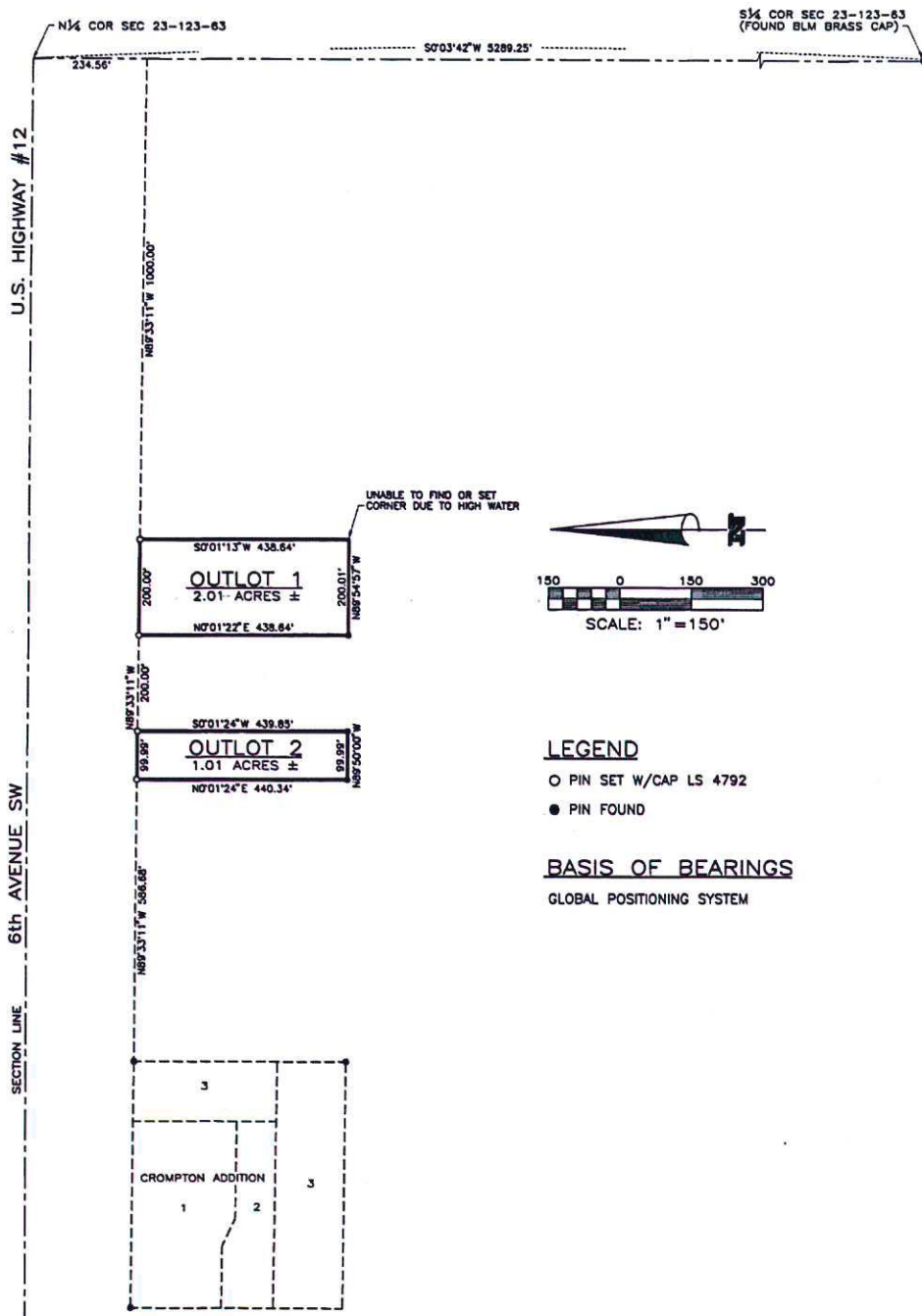
DAVID PRODUCTS • NEW HAVEN, CONNECTICUT
REGISTERED BY PATENT NUMBER 8502

DRAWING NUMBER

152

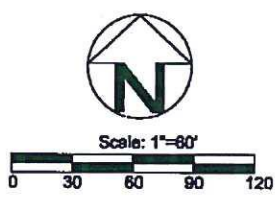
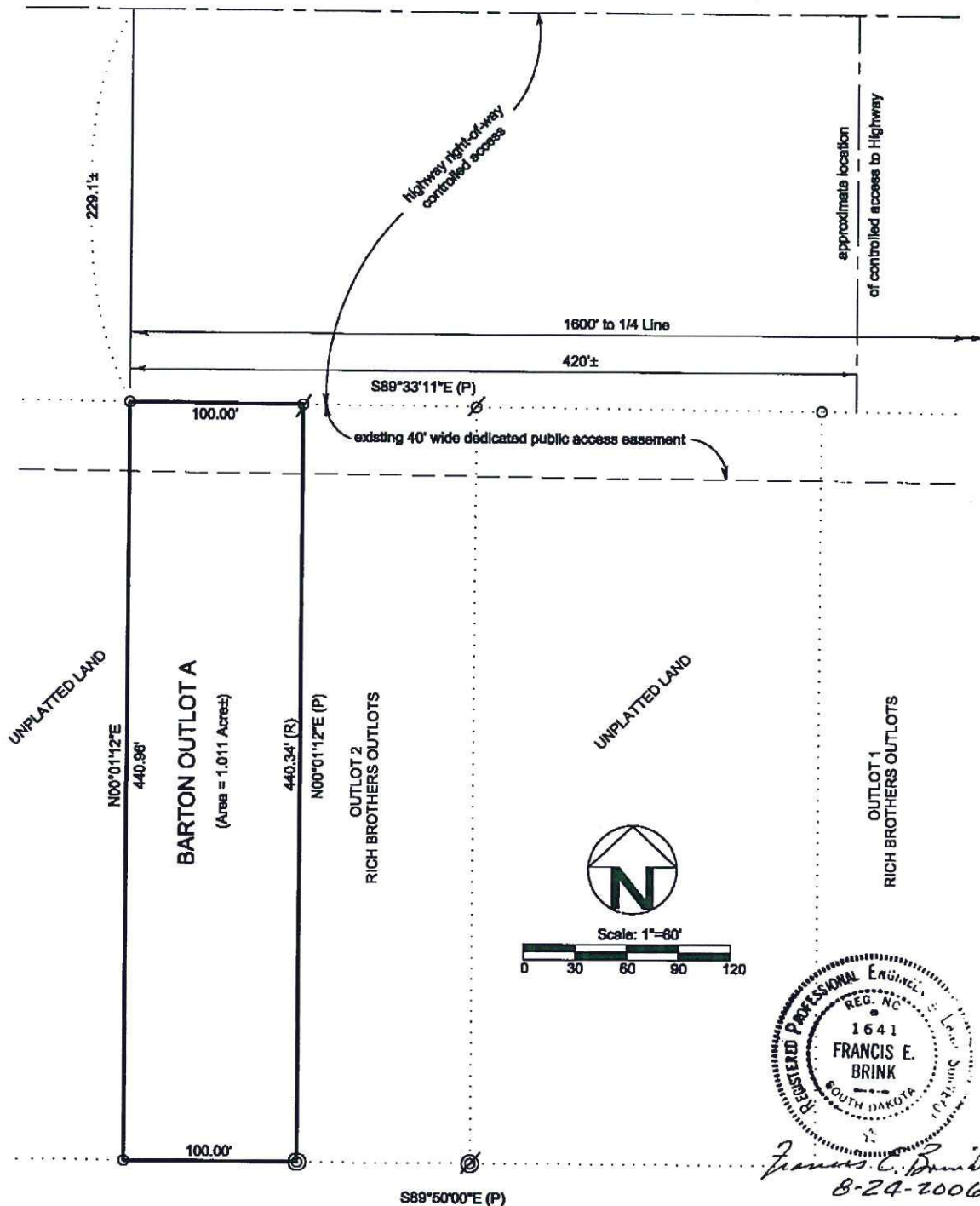
DAVID PRODUCTS • NEW HAVEN, CONNECTICUT
REGISTERED BY PATENT NUMBER 8502

PLAT SHOWING RICH BROTHERS OUTLOTS IN THE NW 1/4 OF SECTION 23, T123N R63W OF THE 5th P.M. BROWN COUNTY, SOUTH DAKOTA



**BARTON OUTLOT A IN
NW1/4 SEC. 23-T123N-R63W of 5th P.M.
BROWN COUNTY, SOUTH DAKOTA**

SIXTH AVENUE SE (U.S. HIGHWAY 12)



Francis E. Brink
8-24-2006

S89°50'00"E (P)

LEGEND

- Monuments Found:**
 LS Cap SD4792
 Iron Pipe
 Iron Pipe with rebar witness
- Monuments Set:**
 5/8"Ø rebar w/cap SD1641

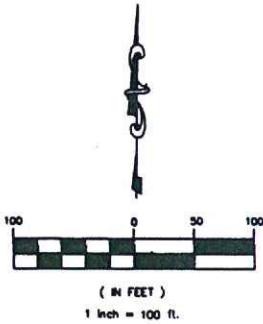
UTILITY EASEMENTS

- Rear Yard.....16'
 Side Yard.....5'

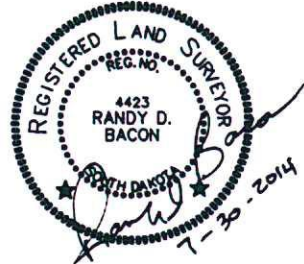
Prepared By: Francis E. Brink, P.E., L.S.
 616-4th Street North
 Aberdeen, South Dakota 57401
 Tel. (605) 225-9181

A-8884

PLAT OF B & B EAST SUBDIVISION IN THE NW1/4 OF SECTION 23-T123N-R63W OF THE 5th P.M., BROWN COUNTY, SOUTH DAKOTA

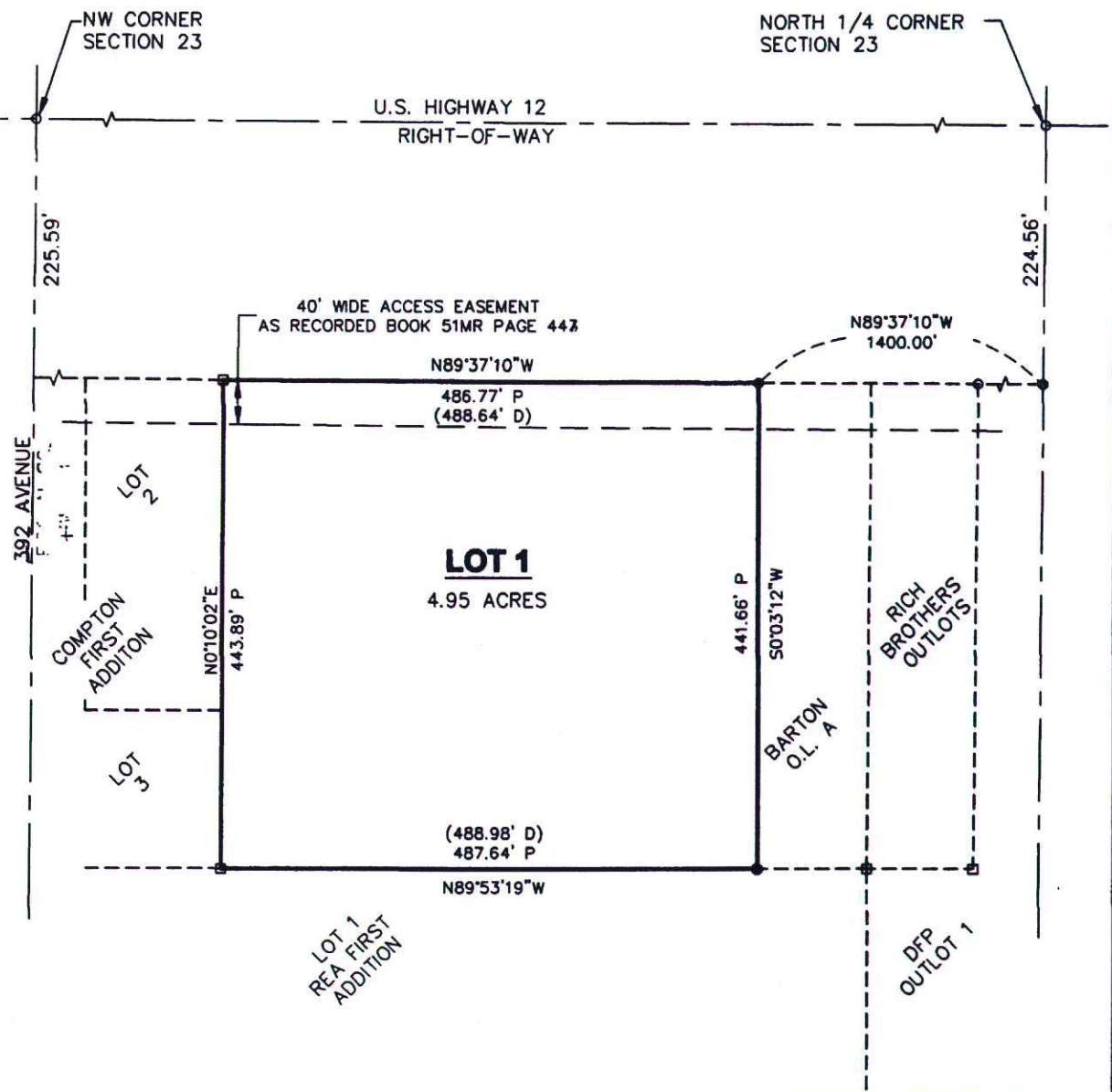


- LEGEND**
- SET 5/8" X 18" REBAR WITH SURVEY CAP STAMPED BACON RLS 4423
 - FOUND LS #1641
 - FOUND LS #4792
 - FOUND PIPE
 - ▲ CALCULATED POSITION



BASIS OF BEARINGS

GPS OBSERVATION
 (488.98' D) DEEDED DISTANCE
 487.64' P PLATTED DISTANCE THIS SURVEY

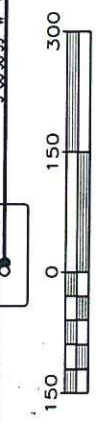
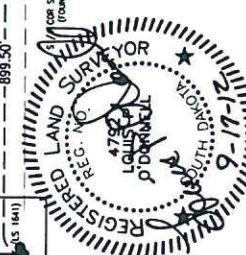
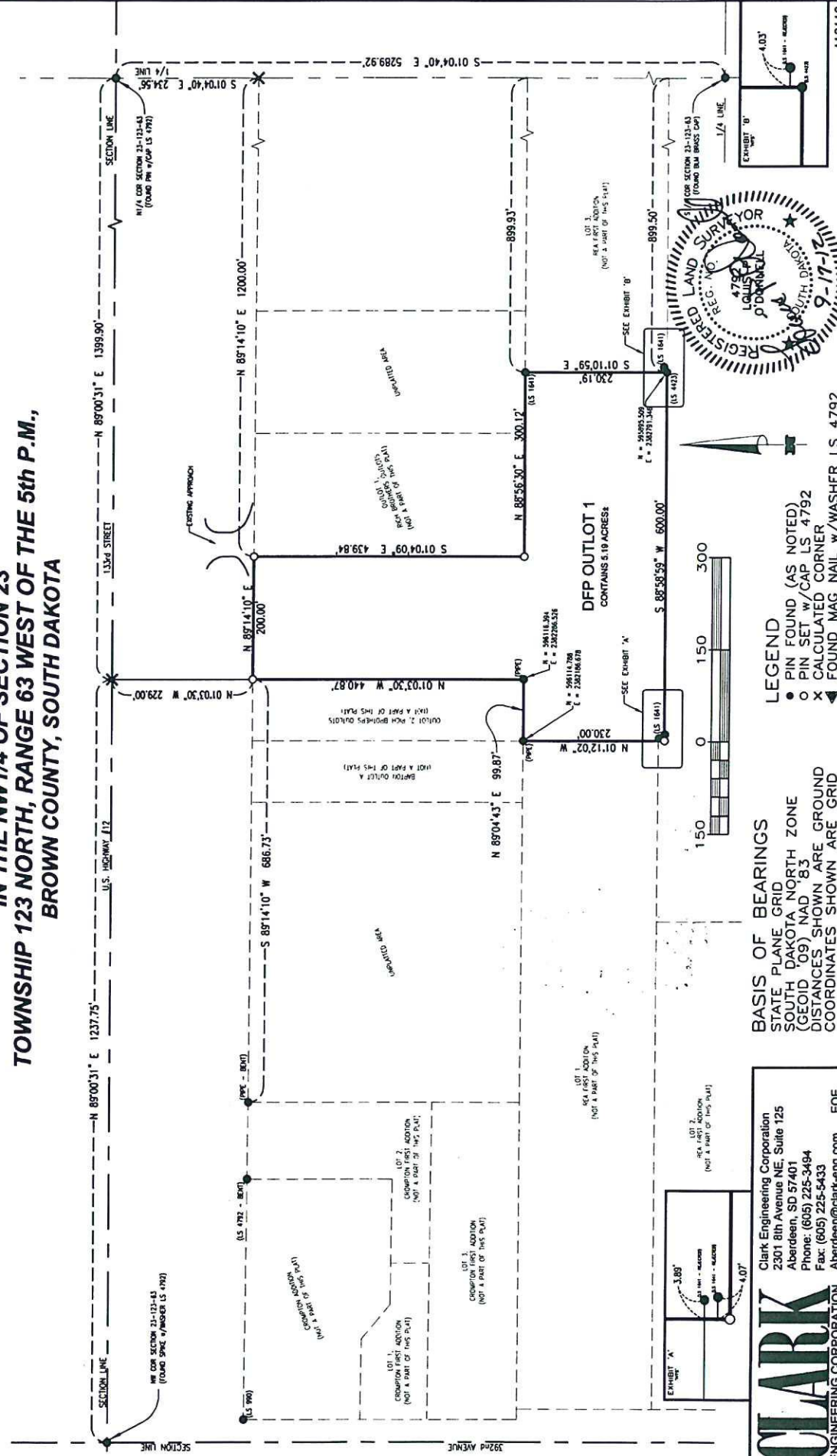


Helms & Associates
 CIVIL ENGINEERING & LAND SURVEYING

201 Brown County Highway 20
 P.O. Box 222
 Aberdeen, S.D. 57401
 Phone 605.456.2222
 Fax 605.456.2222

DWG. 8040-LS BY: MB SHEET 1 OF 2

**PLAT SHOWING
DFF OUTLOT 1
IN THE NW1/4 OF SECTION 23
TOWNSHIP 123 NORTH, RANGE 63 WEST OF THE 5th P.M.,
BROWN COUNTY, SOUTH DAKOTA**



LEGEND

- PIN FOUND (AS NOTED)
- PIN SET W/CAP LS 4792
- ✕ CALCULATED CORNER
- ◄ FOUND MAG NAIL W/WASHER LS 4792

BASIS OF BEARINGS
STATE PLANE GRID
SOUTH DAKOTA NORTH ZONE
(GEOID 09) NAD 83
DISTANCES SHOWN ARE GROUND
COORDINATES SHOWN ARE GRID

CLARK
ENGINEERING CORPORATION
Aberdeen@clark-eng.com EOE

Clark Engineering Corporation
2301 8th Avenue NE, Suite 125
Aberdeen, SD 57401
Phone: (605) 225-3494
Fax: (605) 225-5433

PLAT OF VOGEL SUBDIVISION IN NW 1/4 SECTION 23-T123N-R63W OF THE 5TH P.M. BROWN COUNTY, SOUTH DAKOTA

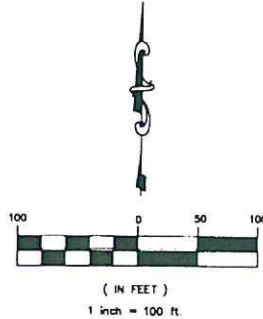
LEGEND

- FOUND PROPERTY CORNER
- SET 5/8" X 18" REBAR WITH SURVEY CAP STAMPED BACON RLS # 4423
- ▲ CALCULATED POSITION

699.74' M MEASURED THIS SURVEY
(700.00' PP) PREVIOUS PLATTED DISTANCE

BASIS OF BEARINGS

GPS OBSERVATION



NORTH 1/4 CORNER
SECTION 23

U.S. HIGHWAY 12

RIGHT-OF-WAY

(700.00' PP)
699.74' M
S89°44'38"E

EXISTING 40.00' WIDE
ACCESS EASEMENT
(BOOK 51MR-PAGE 447)

EXISTING 40.00' WIDE
ACCESS EASEMENT
(BOOK 51MR-PAGE 447)

LOT 3
1.84 ACRES

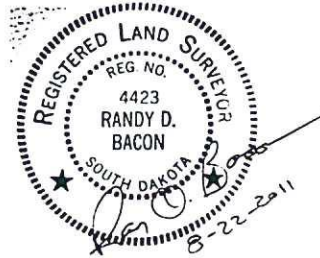
LOT 2
3.68 ACRES

LOT 1
1.50 ACRES

UNPLATTED AREA

SCHUMAKER LOT 1
(VACATED BY THIS PLAT)

REA FIRST ADDITION



Helms ASSOCIATES
CIVIL ENGINEERS & LAND SURVEYORS

231 Brown County
Highway 19
P.O. Box 111
Aberdeen, S.D. 57401
Phone: 606.225.1212
Fax: 606.225.3189

DRAWING NUMBER
16-1195 E
SAFCD PRODUCTS • NEW HOPE, MINNESOTA
REPROD BY PAUL HANSEN 8882

DRAWING NUMBER
1 of 2
SAFCD PRODUCTS • NEW HOPE, MINNESOTA
REPROD BY PAUL HANSEN 8882

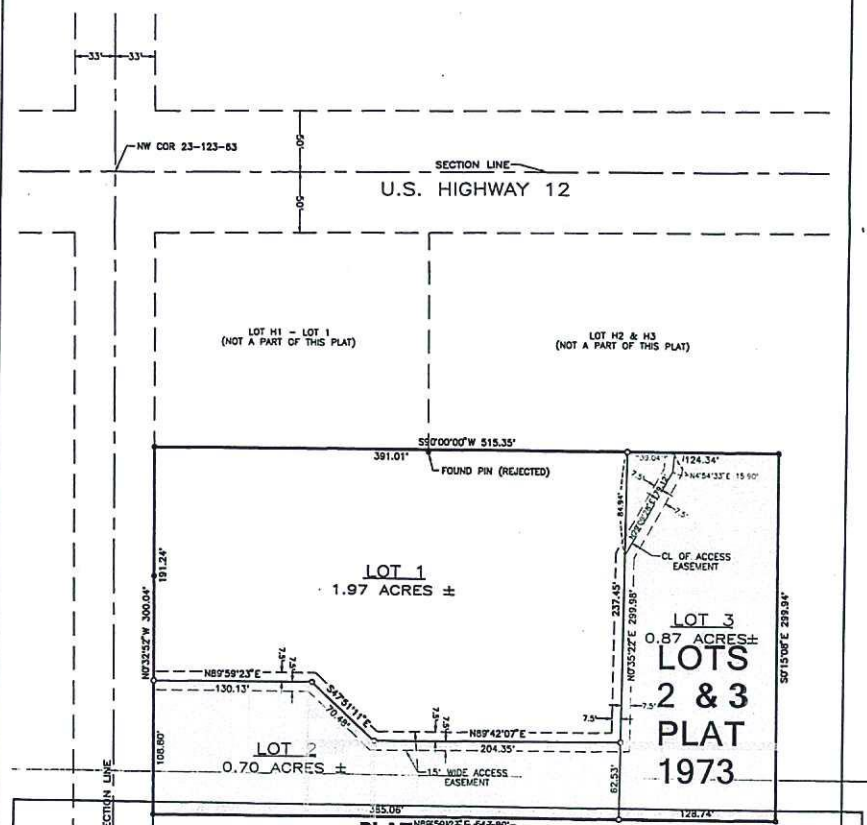
PLAT SHOWING
CROMPTON ADDITION
IN THE NW 1/4 OF SECTION 23-T123N-R63W
OF THE 5th P.M.
BROWN COUNTY, SOUTH DAKOTA



SCALE: 1" = 50'

LEGEND
○ PIN SET W/CAP LS 4792
● PIN FOUND

BASIS OF BEARINGS
ASSUMED



PLAT SHOWING
CROMPTON ADDITION
IN THE NW 1/4 OF SECTION 23-T123N-R63W
OF THE 5th P.M.
BROWN COUNTY, SOUTH DAKOTA

DRAWING NUMBER

16-1195 E

SAVED PRODUCTS - NEW HOPE, MINNESOTA
PIONEER BY PAT. NUMBER 8122

DRAWING NUMBER

2 of 2

SAVED PRODUCTS - NEW HOPE, MINNESOTA
PIONEER BY PAT. NUMBER 8122

PLAT SHOWING

CROMPTON ADDITION

IN THE NW 1/4 OF SECTION 23-T123N-R63W
OF THE 5th P.M.
BROWN COUNTY, SOUTH DAKOTA

OWNER'S CERTIFICATE

WE, MERLIN C. AND JEAN M. CROMPTON, DO HEREBY CERTIFY THAT WE ARE THE OWNERS OF LOT 1 AND LOT 2 IN THE NORTHWEST 1/4 OF SECTION 23 IN TOWNSHIP 123 NORTH, RANGE 63 WEST OF THE 5TH P.M., BROWN COUNTY, SOUTH DAKOTA, AND THAT WE HAVE CAUSED THE SAME TO BE SURVEYED AND PLATTED AS SHOWN ON THE ATTACHED PLAT, WHICH SHALL HERENAFTER BE KNOWN AND DESCRIBED AS "CROMPTON ADDITION IN THE NW 1/4 OF SECTION 23, T123N R63W OF THE 5TH P.M. BROWN COUNTY, SOUTH DAKOTA," AND THAT DEVELOPMENT OF THIS LAND SHALL CONFORM TO ALL EXISTING APPLICABLE ZONING, SUBDIVISION AND SEDIMENT CONTROL REGULATIONS.

WE ALSO HEREBY DESIGNATE THE ACCESS EASEMENT AS SHOWN ON THE ATTACHED PLAT FOR INGRESS AND EGRESS TO LOTS 1, 2, AND 3, CROMPTON ADDITION.

SIGNED THIS 22nd DAY OF March, 19 98.

OWNER:

Merlin C. Crompton
MERLIN C. CROMPTON
Jean M. Crompton
JEAN M. CROMPTON

STATE OF SOUTH DAKOTA }
COUNTY OF BROWN } SS

ON THIS 22nd DAY OF March, 19 98, BEFORE ME, A NOTARY PUBLIC, PERSONALLY APPEARED MERLIN C. CROMPTON AND JEAN M. CROMPTON, KNOWN TO ME TO BE THE PERSONS IN AND WHO EXECUTED THE WITHIN INSTRUMENT, AND WHO ACKNOWLEDGED TO ME THAT THEY EXECUTED THE SAME.

MY COMMISSION EXPIRES: 4-15-02

Tom Fuchs
NOTARY PUBLIC, BROWN COUNTY, SOUTH DAKOTA

SURVEYOR'S CERTIFICATE

I, LOUIS P. O'DONNELL, REGISTERED LAND SURVEYOR, DO HEREBY CERTIFY THAT, AT THE REQUEST OF THE OWNERS, I HAVE SURVEYED AND PLATTED "CROMPTON ADDITION IN THE NW 1/4 OF SECTION 23, T123N R63W OF THE 5TH P.M., BROWN COUNTY, SOUTH DAKOTA," AS SHOWN ON THE ATTACHED PLAT, THAT I HAVE FOUND AND/OR SET AS SHOWN AND INDICATED THEREON, AND THAT SAID SURVEY AND PLAT ARE TRUE AND CORRECT.

SIGNED THIS 27th DAY OF FEBRUARY, 19 98.

Louis P. O'Donnell
LOUIS P. O'DONNELL
REGISTERED LAND SURVEYOR #4792

CITY PLANNING COMMISSION APPROVAL

I HEREBY CERTIFY THAT THE FOLLOWING IS A CORRECT COPY OF THE RESOLUTION DULY PASSED BY THE CITY PLANNING COMMISSION OF ABERDEEN, SOUTH DAKOTA, AT A MEETING HELD ON THE 7th DAY OF April, 19 98.

Candace A. Lindaker
DEPUTY FINANCE OFFICER
ABERDEEN, SOUTH DAKOTA

"BE IT RESOLVED BY THE CITY PLANNING COMMISSION OF ABERDEEN, SOUTH DAKOTA, THAT THE PLAT SHOWING "CROMPTON ADDITION IN THE NW 1/4 OF SECTION 23, T123N, R63W OF THE 5th P.M., BROWN COUNTY, SOUTH DAKOTA," HAVING BEEN EXAMINED IS HEREBY APPROVED IN ACCORDANCE WITH THE PROVISIONS OF SDCL OF 1967, CHAPTER 11-6, AND ANY AMENDMENTS THEREOF."

CITY COMMISSION APPROVAL

I HEREBY CERTIFY THAT THE FOLLOWING IS A CORRECT COPY OF THE RESOLUTION DULY PASSED BY THE CITY COMMISSION OF ABERDEEN, SOUTH DAKOTA, AT A MEETING HELD ON THE 13th DAY OF April, 19 98.

Candace A. Lindaker
DEPUTY FINANCE OFFICER
ABERDEEN, SOUTH DAKOTA

"BE IT RESOLVED BY THE CITY COMMISSION OF ABERDEEN, SOUTH DAKOTA, THAT THE PLAT SHOWING "CROMPTON ADDITION IN THE NW 1/4 OF SECTION 23, T123N, R63W OF THE 5th P.M., BROWN COUNTY, SOUTH DAKOTA," HAVING BEEN EXAMINED IS HEREBY APPROVED IN ACCORDANCE WITH THE PROVISIONS OF SDCL OF 1967, CHAPTER 11-3, AND ANY AMENDMENTS THEREOF."

COUNTY PLANNING COMMISSION APPROVAL

I HEREBY CERTIFY THAT THE FOLLOWING IS A CORRECT COPY OF THE RESOLUTION DULY PASSED BY THE COUNTY PLANNING COMMISSION OF BROWN COUNTY, SOUTH DAKOTA AT A MEETING HELD ON THE 22nd DAY OF April, 19 98.

Donna B. Johnston
SECRETARY OF THE COUNTY PLANNING COMMISSION
BROWN COUNTY, SOUTH DAKOTA

"BE IT RESOLVED BY THE COUNTY PLANNING COMMISSION OF BROWN COUNTY, SOUTH DAKOTA, THAT THE PLAT SHOWING "CROMPTON ADDITION IN THE NW 1/4 OF SECTION 23, T123N R63W OF THE 5TH P.M., BROWN COUNTY, SOUTH DAKOTA," HAVING BEEN EXAMINED IS HEREBY APPROVED IN ACCORDANCE WITH THE PROVISIONS OF SDCL OF 1967, CHAPTER 11-6, AND ANY AMENDMENTS THEREOF."

COUNTY COMMISSION APPROVAL

I HEREBY CERTIFY THAT THE FOLLOWING IS A CORRECT COPY OF THE RESOLUTION DULY PASSED BY THE COUNTY COMMISSION OF BROWN COUNTY, SOUTH DAKOTA, AT A MEETING HELD ON THE 14th DAY OF April, 19 98.

Nancy Taylor
COUNTY AUDITOR, BROWN COUNTY, SOUTH DAKOTA

"BE IT RESOLVED BY THE COUNTY COMMISSION OF BROWN COUNTY, SOUTH DAKOTA, THAT THE PLAT SHOWING "CROMPTON ADDITION IN THE NW 1/4 OF SECTION 23, T123N R63W OF THE 5TH P.M., BROWN COUNTY, SOUTH DAKOTA," HAVING BEEN EXAMINED, IS HEREBY APPROVED IN ACCORDANCE WITH THE PROVISIONS OF SDCL OF 1967, CHAPTER 11-3, AND ANY AMENDMENTS THEREOF."

TREASURER'S APPROVAL

I HEREBY CERTIFY THAT ALL TAXES WHICH ARE LIENS UPON ANY OF THE LANDS INCLUDED IN THE ATTACHED PLAT ARE SHOWN BY THE RECORDS OF MY OFFICE TO BE FULLY PAID.

SIGNED THIS 2nd DAY OF March, 19 98.

Terri Lillemo
COUNTY TREASURER, BROWN COUNTY, SOUTH DAKOTA

DIRECTOR OF EQUALIZATION'S APPROVAL

I HEREBY CERTIFY THAT I HAVE RECEIVED A COPY OF THIS PLAT THIS 14th DAY OF April, 19 98.

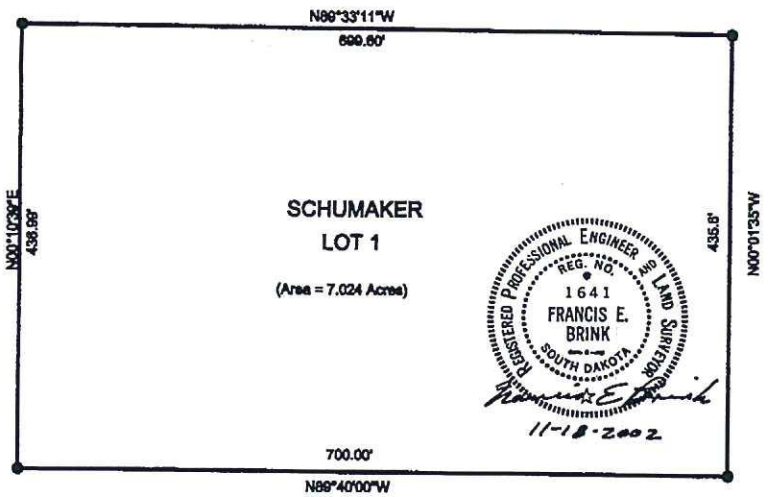
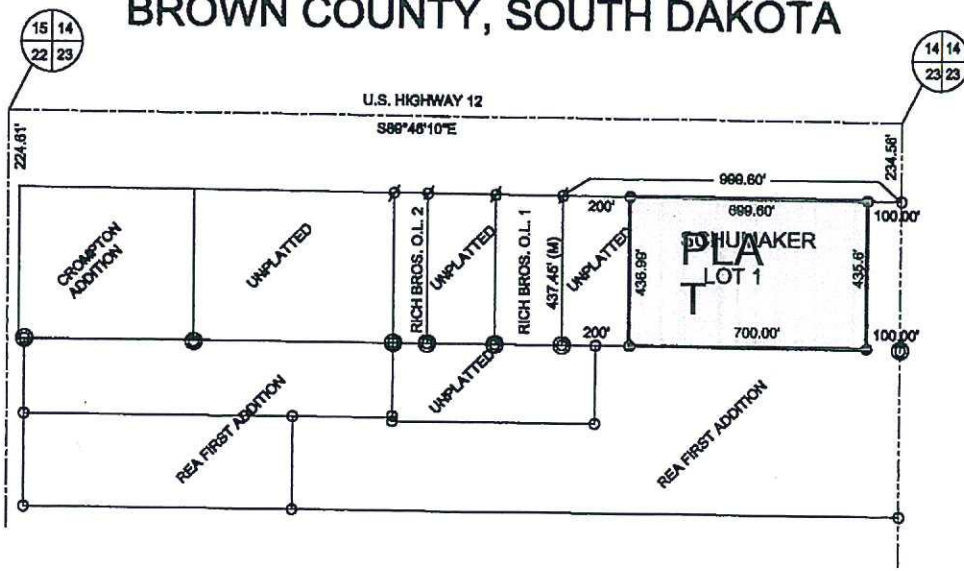
Carole Schumann
DIRECTOR OF EQUALIZATION, BROWN COUNTY, SOUTH DAKOTA

REGISTER OF DEEDS' APPROVAL

FILED FOR RECORD THIS 14th DAY OF April, 19 98, AT 11:02 O'CLOCK P.M., AND DULY RECORDED IN BOOK OF PLATS NO. 112, ON PAGE 1197E THEREIN.

Carole Schumann
REGISTER OF DEEDS, BROWN COUNTY, SOUTH DAKOTA

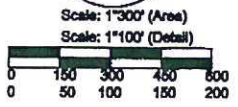
SCHUMAKER LOT 1 IN NW1/4 SEC. 23-T123N-R63W OF 5th P.M. BROWN COUNTY, SOUTH DAKOTA



REGISTERED PROFESSIONAL ENGINEER AND LAND SURVEYOR
 REG. NO. 1641
FRANCIS E. BRINK
 SOUTH DAKOTA
Francis E. Brink
 11-18-2002

ZONING INFORMATION

Proposed Zoning.....C-2
 Building Setback Requirements:
 Front Yards.....45'
 Rear Yards.....0'
 Side Yards.....0'



LEGEND

- Monuments Found
 - Iron Pipe
 - LS Cap SD1641
 - LS Cap 4792
- Monuments Set:
 - 5/8" dia. rebar w/loop SD1641
- Basis of Bearings-GPS from Plat of Record 19-1410 (Rich Brothers Outlots)

SCHUMAKER LOT 1 IN NW1/4 SEC. 23-T123N-R63W of 5th P.M., BROWN COUNTY, SOUTH DAKOTA

Sheet 2 of 3

OWNER'S CERTIFICATE

We, Carlyle S. Larson, as owner of record, and Dave Schumaker, purchaser under a contract for deed, hereby certify that we are the owners of the NW1/4 Section 23-T123N-R63W of 5th P.M., Brown County, South Dakota, except lands platted and deeded and highway, and, did authorize a survey and plat of a portion which shall hereafter be known as "SCHUMAKER LOT 1 IN NW1/4 SEC. 23-T123N-R63W of the 5th P.M., BROWN COUNTY, SOUTH DAKOTA", as shown on the attached plat, and that development of this land shall conform to all existing applicable zoning, subdivision and sediment control regulations.

Signed this the 23 day of November, 2002.

Carlyle S. Larson
Carlyle S. Larson

Dave Schumaker
Dave Schumaker

ACKNOWLEDGEMENT OF OWNERS

STATE OF SOUTH DAKOTA)
COUNTY OF BROWN)

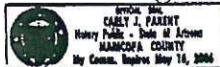
On this, the 2nd day of December, 2002, before me, Ronne Tarrell, a Notary Public, appeared Dave Schumaker, personally known to me or satisfactorily proven to me to be the individual named above and signed the above OWNER'S CERTIFICATE for the purposes therein contained.

My Commission Expires: 6-2-2007 Ronne Tarrell
Notary Public, South Dakota

STATE OF ARIZONA)
COUNTY OF Arizona)

On this, the 23rd day of November, 2002, before me, Carlyle S. Larson, a Notary Public, appeared Carlyle S. Larson, personally known to me or satisfactorily proven to me to be the individual named above and signed the above OWNER'S CERTIFICATE for the purposes therein contained.

My Commission Expires: May 1st 2006 Carlyle S. Larson
Notary Public, State of Arizona



SURVEYOR'S CERTIFICATE

I, Francis E. Brink, Licensed Land Surveyor, do hereby certify that at the request of the Owners shown above, have surveyed and platted "SCHUMAKER LOT 1 IN NW1/4 SEC. 23-T123N-R63W of 5th P.M., BROWN COUNTY, SOUTH DAKOTA" as shown on the above plat; have set iron monuments as indicated thereon, and to the best of my knowledge, said survey and plat are true and correct.

Signed this 16th day of November, 2002. Francis E. Brink
South Dakota Licensed Land Surveyor No. SD1641

CITY PLANNING COMMISSION CERTIFICATE

I hereby certify that the following is a correct copy of the resolution duly passed by the Planning Commission of the City of Aberdeen, South Dakota, at a meeting held on the 17th day of December, 2002.

Karl Albert
Finance Officer, Aberdeen, South Dakota

"Be it resolved by the City Planning Commission of Aberdeen, South Dakota, that the plat showing "SCHUMAKER LOT 1 IN NW1/4 SEC. 23-T123N-R63W of 5th P.M., BROWN COUNTY, SOUTH DAKOTA" having been examined, is hereby approved in accordance with the provisions of SDCL of 1967, Chapter 11-6, and any amendments thereof.

CITY COMMISSION APPROVAL

I hereby certify that the following is a correct copy of the resolution duly passed by the City Commission of Aberdeen, South Dakota, at a meeting held on the 23rd day of December, 2002.

Karl Albert
Finance Officer, City of Aberdeen, South Dakota

"Be it resolved by the City Commission of Aberdeen, South Dakota, that the plat showing "SCHUMAKER LOT 1 IN NW1/4 SEC. 23-T123N-R63W of 5th P.M., BROWN COUNTY, SOUTH DAKOTA" having been examined, is hereby approved in accordance with provisions of SDCL of 1967, Chapter 11-3, and any amendments thereof.

COUNTY PLANNING COMMISSION CERTIFICATE

I hereby certify the following is a correct copy of the resolution duly passed by the County Planning Commission of Brown County, South Dakota, at a meeting held on the 17 day of December, 2002.

Clayton Jacobson
Secretary of County Planning Commission, Brown County, SD

"Be it resolved by the Brown County Planning Commission, Brown County, South Dakota, that the plat showing "SCHUMAKER LOT 1 IN NW1/4 SEC. 23-T123N-R63W of 5th P.M., BROWN COUNTY, SOUTH DAKOTA", having been examined, is hereby approved in accordance with the provisions of SDCLS of 1967, Chapter 11-6, and any amendments thereof.

SCHUMAKER LOT 1 IN NW1/4 SEC. 23-T123N-R63W of 5th P.M., BROWN COUNTY, SOUTH DAKOTA

Sheet 3 of 3

COUNTY COMMISSION APPROVAL

I hereby certify that the following is a correct copy of the resolution duly passed by the County Commission of Brown County, South Dakota, at a meeting held on the 23 day of December, 2002. Melanie Taylor
County Auditor, Brown County, South Dakota

"Be it resolved by the County Commission of Brown County, South Dakota, that the plat showing "SCHUMAKER LOT 1 IN NW1/4 SEC. 23-T123N-R63W of 5th P.M., BROWN COUNTY, SOUTH DAKOTA", having been examined, is hereby approved in accordance with the provisions of SDCL of 1967, Chapter 11-3, and any amendments thereof.

TREASURER'S CERTIFICATE

I hereby certify that all taxes which are liens upon any of the lands included in the above plat are shown by the records of my office to be fully paid.

Signed this 27th day of Nov., 2002.

Shila Ederson
County Treasurer, Brown County, South Dakota

DIRECTOR OF EQUALIZATION'S CERTIFICATION

I hereby certify that I have received a copy of this plat this 26 day of December, 2002.

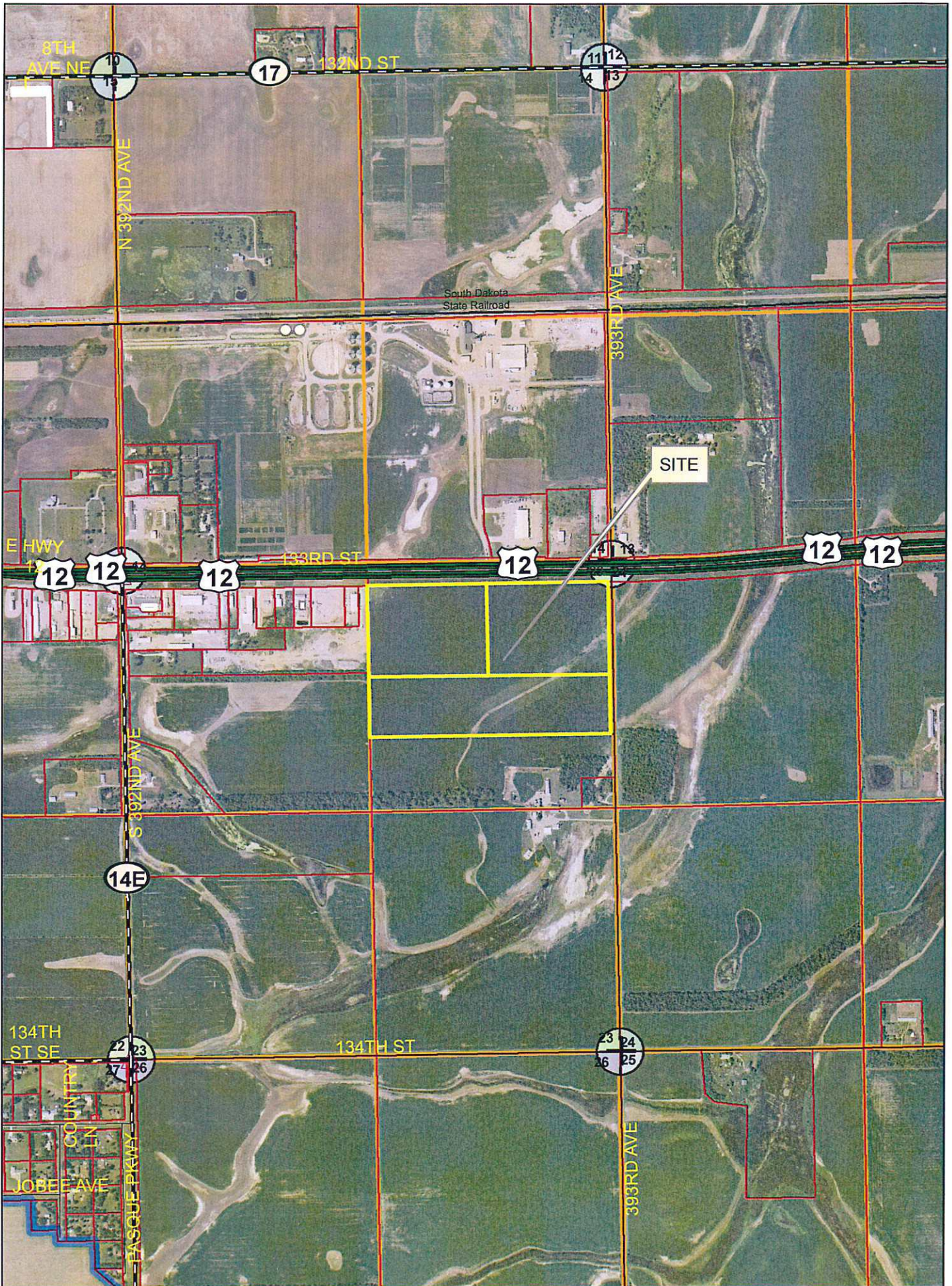
Mary E. Walie
Director of Equalization, Brown County, South Dakota

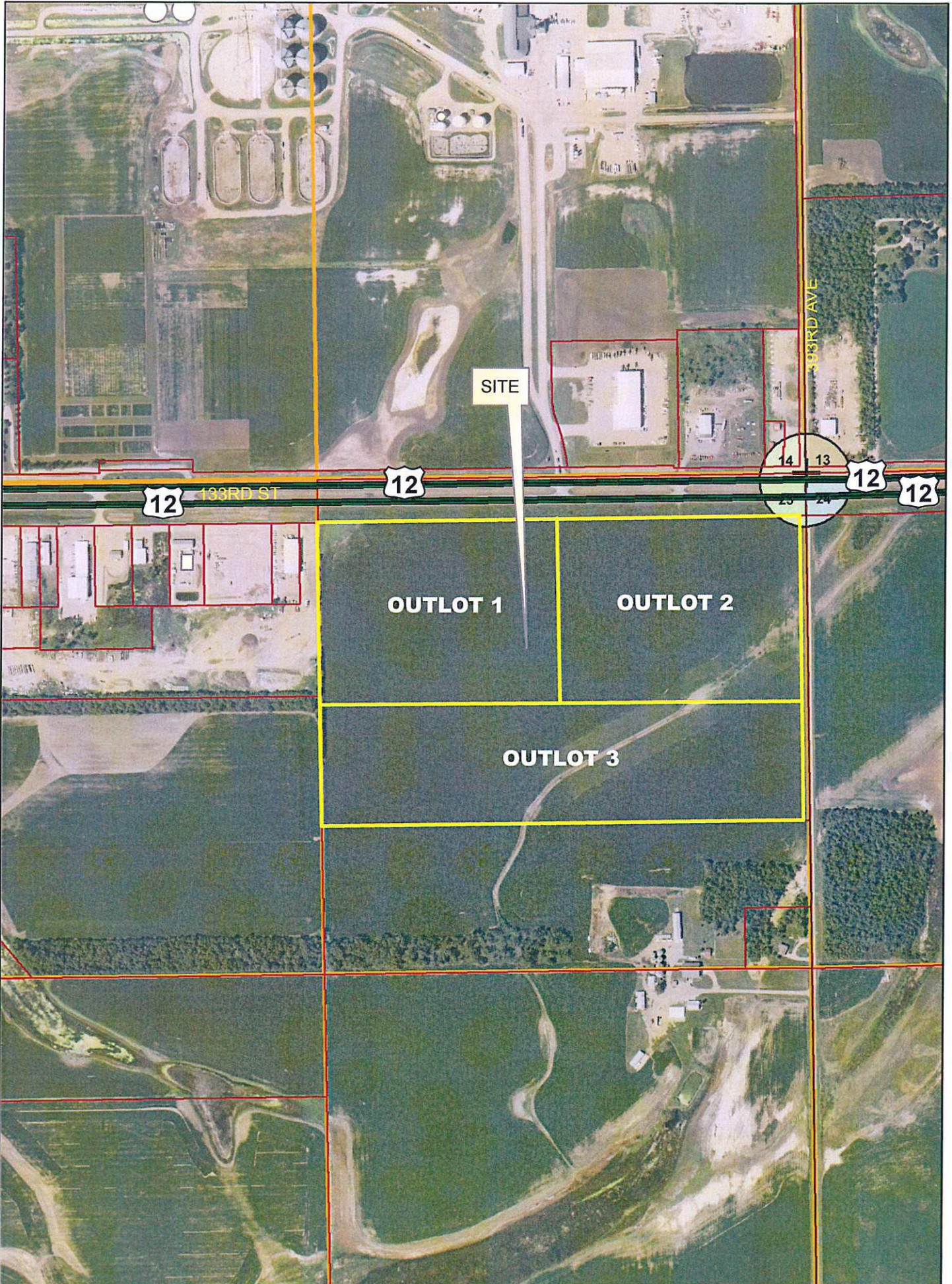
REGISTER OF DEED'S CERTIFICATION

Filed for record this 26th day of December, 2002, at 12:00 o'clock A. M., and duly recorded in Book of Plats No. 1808 H.

Carl Sherman; (Bondman) On Dep
Register of Deeds, Brown County, South Dakota

29 Jan 05
15584





SITE

12

193RD ST

12

14

13

12

12

23

24

OUTLOT 1

OUTLOT 2

OUTLOT 3

193RD AVE

STAFF REPORT

February 15, 2022

BROWN COUNTY PLANNING/ZONING COMMISSION

Ordinance Amendment Discussions

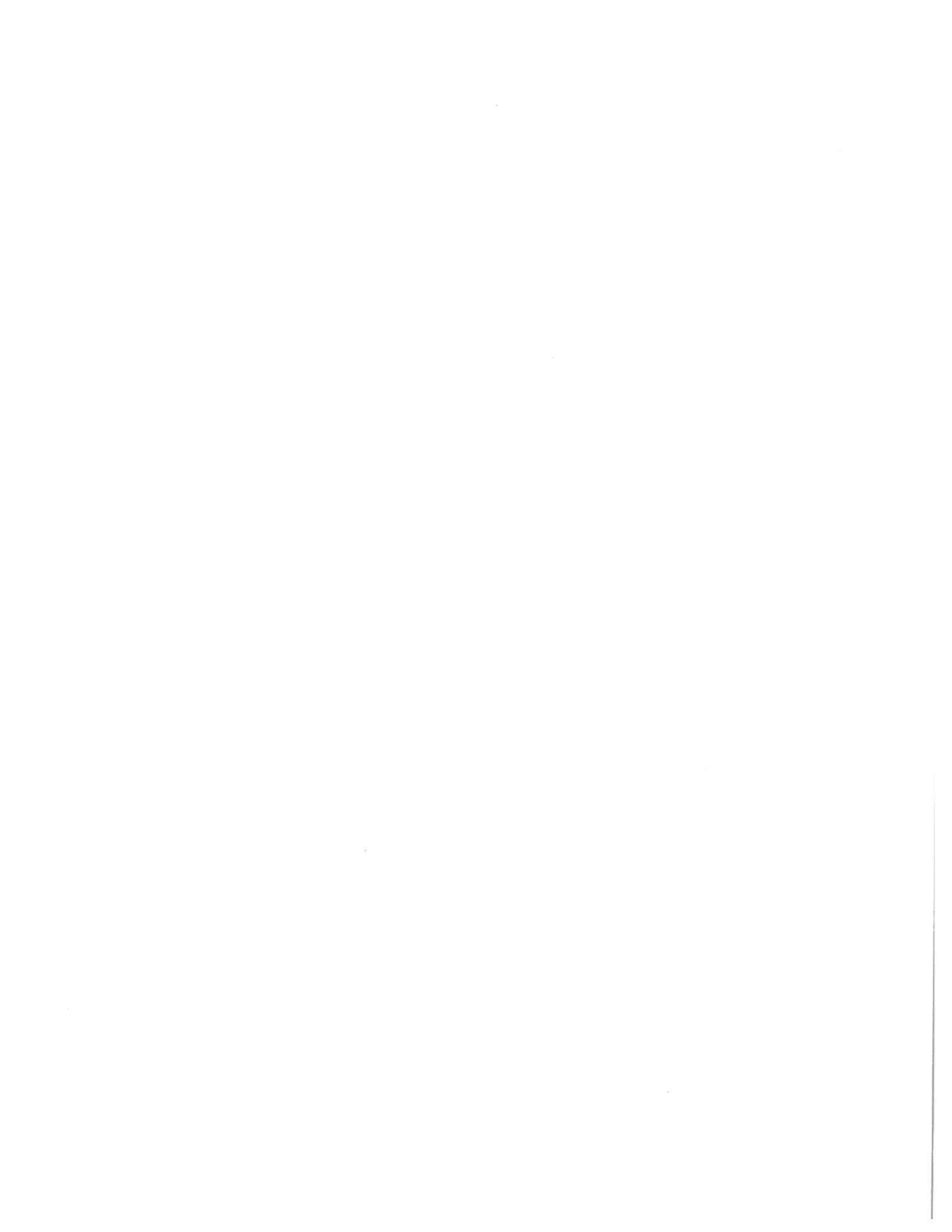
ITEM # 14

GENERAL INFORMATION:

PETITIONER:	Brown County Zoning Office
REQUEST:	Add Cannabis CUP to AG-P & M-AG Amendment to Title 4.22 to 4.29
LEGAL DESCRIPTION:	Brown County Ordinance Amendments
LOCATION:	25 Market Street, Aberdeen, SD 57401
TOWNSHIP:	Aberdeen Twp
REPORTED BY:	Scott Bader

GENERAL COMMENT: Brown County Planning & Zoning Office is proposing to Amend the Brown County Ordinances of Title 4 in Chapter 4.05 AG-P District; Chapter 4.06 M-AG District; Chapters 4.22 to 4.29 for Administrative.

GENERAL REVIEW: Staff recommends referral to the Board of Brown County Commission to approve the ordinance changes.



NOTICE OF HEARING

Application has been made to the Brown County Planning/Zoning Commission for proposed Ordinance Changes. A hearing will be held in the Courthouse Annex, Basement Community Meeting Room, on February 15, 2022 at 7:00 P.M.

Petitioner: Brown County Planning & Zoning Department

Reason: Changes to Brown County Ordinances. The changes in portions of Title 4 are Chapter 4.07 and Chapters 4.22 thru 4.29.

The public is invited to attend the hearing and to present comments and testimony regarding any proposed changes in portions of Brown County Ordinances.

Dated this 2nd day of February 2022

Planning/Zoning Commission and
Scott Bader – P&Z Director
25 Market Street
Aberdeen, SD 57401
Office: (605) 626-7144

Published once at the total approximate cost of _____.

ORDINANCE # _____

AN ORDINANCE ENTITLED, AN ORDINANCE TO AMEND: CHAPTER 4.0102, "DEFINITIONS"; CHAPTER 4.06, "AGRICULTURE PRESERVATION DISTRICT (AG-P)"; CHAPTER 4.0704 "MINI AGRICULTURE DISTRICT (M-AG)"; ALL ADOPTED BY ORDINANCE # _____, AS AMENDED, OF TITLE 4 ZONING ORDINANCE OF BROWN COUNTY, SOUTH DAKOTA.

Purpose and intent:

The Brown County Planning/Zoning Commission and the Brown County Planning/Zoning Department, have the following zoning ordinance changes within the jurisdictional areas of Brown County Planning and Zoning to protect the health, safety, and welfare of the general public.

BE IT ORDAINED by the Board of County Commissioners of Brown County, South Dakota: that CHAPTER 4.01, DEFINITIONS adopted by Ordinance # _____ on (month) (day), 2022, for Title 4, Zoning Ordinance of Brown County to be amended by adding the following Section in *bold and underlined font*.

CHAPTER 4.01 DEFINITIONS

4.0101 General. For the purpose of this Title, unless otherwise stated, words used in the present tense include the future; the singular number includes the plural and the plural the singular; the word shall is mandatory, not discretionary; the word may is permissive; the word person includes a firm, association, organization, partnership, trust, company or corporation, as well as, an individual; the word lot includes the word plat or parcel; and the words used or occupied include the words intended, designed, or arranged to be used or occupied.

4.0102 For the purpose of this Title, certain terms or words used herein shall be interpreted as follows:

Transmission Pipeline. Transmission pipeline means a pipeline that transports hazardous liquid or gas within a storage field or transports hazardous liquid or gas from an interstate pipeline or storage facility to a distribution main or a large volume hazardous liquid or gas user or operates at a hoop stress of twenty percent or more of the specified minimum yield strength. It also means a high pressure cross country pipeline transporting saleable quality natural gas from production or natural gas from processing to natural gas distribution pressure let-down, metering, regulating stations, where the natural gas is typically odorized before delivery to customers. A "water main", "sanitary sewer main", "storm water main" or natural gas line" when inside a municipality or town would not qualify as a Transmission Pipeline and would be considered as part of a public utility system under local control.

BE IT ORDAINED by the Board of County Commissioners of Brown County, South Dakota: that CHAPTER 4.0604 and 4.0606, adopted by Ordinance # _____ on (month) (day), 2022, for Title 4, Zoning Ordinance of Brown County to be amended by adding the following Section in *bold and underlined font*.

4.0604 ~~Special Exceptions/Conditional Uses~~ **Conditional Uses**. After notice and appropriate safeguards, the Zoning Board of Adjustment (BOA) may permit the following as ~~special exceptions/conditional uses~~ **Conditional Uses** in the Agriculture Preservation District (AG-P).

23. Piping Transmission Lines (Zoning BOA to decide depth & regulations).
24. Cannabis Dispensary (subject to Section 4.20).

4.0606 Minimum Setback Requirements.

1. All structures shall be set back not less than one hundred (100) feet from all improved public roads measured from road right-of-way.
2. The minimum side yard and rear yard setback shall each be twenty (20) feet.
3. **A Transmission Pipeline shall be setback a minimum of 1500 feet from cautionary uses listed as schools, daycares, churches, residential structures, libraries and recreational facilities and farm buildings. The distance is to be measured perpendicular or closest proximity from the property line of the cautionary use to the center of the pipe location and/or the easement area.**

BE IT ORDAINED by the Board of County Commissioners of Brown County, South Dakota: that CHAPTER 4.0704, adopted by Ordinance #_____ on *(month) (day)*, 2022, for Title 4, Zoning Ordinance of Brown County to be amended by adding the following Section in *bold and underlined font*.

4.0704 Conditional Uses. After notice and appropriate safeguards, the **Board of Adjustment Zoning Board of Adjustment (BOA)** may permit the following as Conditional Uses in the Mini-Agriculture District **(M-AG)**.

16. Cannabis Dispensary (subject to Section 4.20).

Passed and adopted *(month) (day)*, 2022.

County Commission Chairperson
Brown County, SD

County Auditor
Brown County, SD

CHAPTER 4.22 – ADMINISTRATION AND ENFORCEMENT

4.2201 – Administrative Standards.

An administrative official who shall be known as Brown County Planning and Zoning Director, who shall be designated by the Board of County Commissioners, shall administer, and enforce Title 4, Zoning Ordinances. The Director may be provided with the assistance of such other persons as the Board of County Commissioners may direct. Whenever it is necessary or desirable to make any administrative decision, then, unless other standards are provided in these Zoning Ordinances, the decision shall be made so that the result will not be contrary to the purpose of these Zoning Ordinances or injurious to the surrounding neighborhood.

If the Director shall find that any of the provisions of this Title are being violated, he/she shall notify in writing to the person responsible for such violations, indicating the nature of the violation and ordering the action necessary to correct it. He/she may order discontinuance of illegal use of land, buildings, or structures; removal of illegal buildings or structural changes; discontinuance of any illegal work being done; or shall take any other action authorized by this Title to ensure compliance with or to prevent violation of its provisions.

The Brown County Planning and Zoning Director shall administer and enforce the provisions of Title 4 Zoning Ordinance and shall administer the policies established by the Board of County Commissioners. His/her work shall be performed in cooperation with and under the direction of the Planning/Zoning Commission with the Zoning Commission acting as the Zoning Board of Adjustment (BOA) *SDCL 11-2-2; SDCL 11-2-49*. He/she shall have no power to vary or waive the Zoning Ordinance requirements. The Planning and Zoning Director shall:

1. Official Zoning Map: Maintain and keep current the Official Zoning Map; keeping records of amendments thereto of the Official Zoning Map; post map in the Board of Commission Chambers with all up-to-date changes noted on the map with addresses and dates.
2. Records: Maintain the records of Brown County Planning/Zoning Commission including Zoning Board of Adjustment (BOA).
3. Data: Collect data and information; be present or represented and prepared to answer technical questions at hearings or meetings of the Planning/Zoning Commission.
4. Liaison: Act as liaison between the Planning/Zoning Commission members.
5. Publication: Prepare and publish all public advertisement and notices for hearings of the Planning/Zoning Commission relative to Planning and Zoning activities and coordinate publication with the County Auditor for Board of County Commissioners meetings.
6. Permits: Issue All Permits for Planning and Zoning Department; make and maintain records thereof.
7. Use Permits: Issue, renew and maintain records thereof for all Use Permits.
8. Inspections: Conduct site inspections for minimum Setback distances from property lines or right-of-way lines; of buildings, structures, and land as necessary to ensure compliance with the various provisions of Title 4 Zoning.

9. Violations: Notify in writing to the person responsible for any violation of the provisions of these Zoning Ordinances, indicating the nature of the violation and ordering the action that will be necessary to correct it.
10. Provide public information relative to all matters arising out of this Ordinance.

4.2202 – Permits Required.

No building or structure, that meets any one of the above criteria, shall be erected, partially erected, moved, added to or structurally altered or used without an approved permit therefore issued by the Zoning Department. No Permit shall be issued by the Zoning Department except in conformity with the provisions of Title 4 Zoning, unless he/she received a written order of approval from the County Planning/Zoning Commission in the form of an administrative review, special exception, conditional use, or variance as provided for by Title 4 Zoning.

Permits are required in the following instances:

1. For any new building/structure, alterations, concrete, or improvements on or to any existing building/structure regardless of cost. Any mobile home, manufactured home or trailer house brought into the county jurisdictional area will require a permit from the Zoning Office. This home will be treated as any other residential structure for zoning laws such as setbacks, zoning district regulations and other requirements. The Treasurer's Office will also require their moving permit for their registration process.
2. It shall be unlawful to commence the excavation for construction of any building or any accessory building without a permit. A permit is also required for any filling, grading, dredging or lagoons which are related to site preparation for future construction.
3. Definition of *Structure* for this section: Anything constructed or erected with a fixed location on the ground, or anchored having a fixed location on the ground; among other things, structures for this section include *concrete, buildings, decks, walls, porches, sheds, garages, pole buildings, steel buildings, concrete buildings, dwellings, combination residential and agricultural buildings, combination residential and commercial buildings, grain bins, hopper bins, bin systems (appurtenances and accessories for movement of grain such as conveyors, legs, scales, towers, that are all part of a bin system), gas or liquid storage tank, portable or permanent livestock shelters, trailer houses, mobile homes or manufactured homes, modular homes, site-built homes, pre-built homes, walls, communication towers, wind towers, wind systems, solar systems, sign support frames, billboards and fences.*
4. Definition of *Permit* for this section - authorization to perform a process as in:
 - a. *Permit, Zoning* – Authorization to construct a structure in the unincorporated areas meeting all Zoning District's criteria, regulations, setbacks.
 - b. *Permit, Building* – Authorization to construct a structure in any incorporated towns, unincorporated towns or subdivisions in Brown County jurisdictional areas meeting all Zoning District's criteria, regulations, setbacks.

- c. *Permit, Use* – Authorization to use a property for a specific use.
- d. *Permit, Sign* – Authorization to install a new sign/structure or modify an existing sign face.
- e. *Permit, Demolition* - Authorization to tear down and remove an existing structure.
- f. *Permit, Move* - Authorization to move a structure to another location for zoning purposes. The Treasurer's Office also requires their own Moving Permit for their own registration processes.
- g. *Permit, Approach* – Authorization to construct an approved access approach.
- h. *Permit, Grading or Excavation* - Authorization to change contour of the land.
- i. *Permit, Septic* – Authorization by the State Health Department to build, modify or install a septic system.
- j. *Permit, Electrical* – Authorization by the State for all electrical work.
- k. *Permit, Plumbing* - Authorization by the State for any new plumbing or modifications of existing plumbing systems.
- l. *Permit, Flood Plain Development (FPDP)* - Authorization for construction, development, or alterations in a Special Flood Hazard Area (SFHA) established in the Flood Insurance Rate Map (FIRM or e-FIRM).

4.2203 - Application for Permit.

1. Application for permits shall be made to the Zoning Officer upon forms approved by the Board of County Commissioners. These forms shall be filled in by the owner, or authorized agent. All applications for permits shall be accompanied by a site plan drawn to scale, showing the actual dimensions and shape of the lot to be built upon; the exact sizes and locations on a lot of the buildings already existing, if any; and the location and dimensions of the proposed building(s) or alteration. The applicant shall also state the existing and intended use of all such buildings, and the location of existing or proposed water and sewer facilities. In the case of a change of use, the applicant shall, in writing, state the intended change.
2. The application shall include such other information as lawfully may be required by the Zoning Officer, including legal description, existing or proposed buildings or alterations; existing or proposed uses of the building and land; the number of families, housekeeping units, or rental units the building is designed to accommodate; conditions existing on the lot; existing or proposed water, sewer, electrical facilities; and such other matters as may be necessary to determine conformity with, and provide for the enforcement of, this ordinance. All plans and data accompanying the permit shall be final and conclusive. Deviations shall be deemed a violation of this Ordinance, and punishable as provided in 4.28 Violations and shall require a new permit.
3. One copy of the application shall be returned to the applicant by the Zoning Department after he/she shall have marked such copy either as approved or denied and attested to

same by his/her signature on such copy. If a building permit is refused, the Planning and Zoning Director shall state the reasons for such refusal in writing. The original and one copy of the application, similarly marked, shall be retained by the Planning and Zoning Director. The issuance of any Permit shall, in no case, be construed as waiving any provisions of Title 4 Zoning.

4.2204 - Expiration of Building Permit.

If the work described in any permit has not begun within one hundred and eighty (180) days from the date of Permit issuance thereof, said Permit shall expire; it shall be canceled by the Planning and Zoning Director, and written notice thereof shall give to the persons affected, together with notice that further work as described in the canceled permit shall not proceed unless and until a renewed building permit has been obtained. Construction must be completed within two (2) years of issuance date of Permit. There will be no additional cost to extend completion time if renewed before expiration, unless substantial changes have been made to the original Permit. If construction has not been completed within the two (2) year period and a Permit becomes expired, there shall be a new plan review; a new Permit and additional permit fees will be required for the remaining work.

4.2205 - Construction and Use to be as provided in Applications and Permits.

Permits are issued based on applications approved by the Planning/Zoning Director authorizing only the use, arrangement, and construction set forth in such approved application and no other use, arrangement, or construction. Use, arrangement, or construction at variance without authorization, shall be deemed a violation of this Title 4, and punishable as provided by Section 4.28.

4.2206 - Permitting Fees.

All Permits shall be obtained by application of the owner, agent or contractor and shall give an estimate of the valuation of total construction project or repairs, from start to finish and initial Permit Fees shall be based on such estimate; provided that if at the completion of said construction project or repair, the estimated cost as given in the application appears inadequate to the Planning/Zoning Director, he/she may demand bills or receipts to substantiate such valuation and additional fees may be assessed accordingly. It is the owner and contractor's responsibility to obtain a permit prior to construction on property, owned or leased.

4.2207 - Posting Permit.

All Permits issued by the Planning and Zoning Director must be placed in a conspicuous location on the construction site for the duration of the construction or work described.

4.2208 - Approach Access Permit and Criteria.

No approach access shall be constructed upon any Township Road, County Highway, State Highway or U.S. Highway without approval from the jurisdictional authority. No Approach Permit shall be issued by the Planning and Zoning Director for any land adjacent to a Brown County Highway, except in conformity with the below criteria, unless he/she has received a

written order from the Zoning Board of Adjustment (BOA) in the form of a Variance as provided by this Title 4.

The criteria for approaches shall:

1. Have no two approaches closer than five hundred (500) feet apart; measuring the distance from centerline of approaches and measuring from both sides of the road.
2. Not be located on the crest of a hill nor other locations where sight visibility will be impaired, or obstructions will cause visibility or safety concerns.
3. Have a maximum slope of four (4) to one (1) in the ditch portion adjacent to the shoulder of the road and adjacent to the shoulder of the new approach.
4. Have a minimum top driving width of twenty-four (24) feet, not including the wings,
5. Require the final approval of the County Highway Superintendent as he/she may require that a culvert be installed. The minimum culvert size along county highways is eighteen (18) inches if needed and the culvert material in any approach adjacent to a County Highway shall be either corrugated metal pipe (CMP) or reinforced concrete pipe (RCP).

CHAPTER 4.23 - BROWN COUNTY PLANNING/ZONING COMMISSION

4.2301 - Proceedings of the County Planning/Zoning Commission.

The Board of County Commissioners may appoint a Planning Commission of five or more members to be known as the County Planning Commission. The total membership shall always be an uneven number and at least one member shall be a member of the Board of County Commissioners. The County Planning Commission is also the County Zoning Commission *SDCL 11-2-2*. The Planning/Zoning Commission shall act as the Zoning Board of Adjustment (BOA) *SDCL 11-2-49*. The Brown County Planning/Zoning Commission meets a minimum of once per month on the third Tuesday of each month during each calendar year and may meet more at such times as necessary for any "special meeting" when approved. The Planning/Zoning Commission shall hold at least one public hearing for any petition submitted for an amendment, supplement, change, modification, or repeal to the respective comprehensive plan, zoning ordinance, zoning districts, restrictions, adopted boundaries pursuant to this section and subdivision regulations (*SDCL 11-2-18, 11-2-19, 11-2-22, 11-2-28, 11-2-28.1 & 11-2-28.2*).

1. **New Comprehensive Plan or Amendments.**
Refer to *SDCL 11-2*.
2. **Rezoning Amendments and Zoning of Land Parcels.**
Refer to *SDCL 11-2*.
3. **Zoning Ordinance or Subdivision Ordinance Amendments.**
Refer to *SDCL 11-2*.
4. **Appeal: Errors, Decisions, Determinations.**
Refer to *SDCL 11-2*.
5. **Conditional Use Petition (CUP).**
Refer to *SDCL 11-2*.
6. **Variances.**
Refer to *SDCL 11-2*.
7. **Appeal: Zoning Board of Adjustment (BOA) Decision.**
Refer to *SDCL 11-2*.
8. **Injunction Proceedings to Prevent or Abate Violations:**
 - a) In the event of a violation or a threatened violation of the regulations or restrictions of an ordinance adopted pursuant to this section, the Board of County Commissioners may institute an appropriate action or proceedings to seek an injunction in a court of competent jurisdiction to prevent, restrain, correct, or abate such violation or threatened violation and it is the duty of the State's Attorney to institute such action.

CHAPTER 4.24 - BROWN COUNTY ZONING BOARD OF ADJUSTMENT

4.2401 - **Administrative Review.**

Brown County Planning/Zoning Commission shall serve as the Zoning Board of Adjustment (BOA) as provided by *SDCL 11-2-2 & SDCL 11-2-49*.

1. In the regulations and restrictions adopted, pursuant to the authority of this chapter, shall provide that the board of adjustment may, in appropriate cases and subject to appropriate conditions and safeguards, grant variances to the terms of the ordinance.
2. Meetings shall be held at the call of the Chairman, and at such other times as the Zoning BOA may determine.
3. The Chairman, or in his/her absence, the Acting Chairman, may administer oaths and compel the attendance of witnesses.
4. All meetings shall be open to the public and posted on monthly Agenda SDCL 11-2-51.
5. The Zoning BOA shall keep Minutes of its proceedings, showing the vote of each member upon each question, or if absent or failure to vote indicating such fact, and shall keep records of its examinations and other official actions. All actions of which shall be immediately filed within 10 days of the meeting date, in the Zoning Office and are considered public records once filed in the Zoning Office SDCL 11-2-52.
6. The Zoning BOA may destroy any record that the Records Destruction Board, acting pursuant to § 1-27-19, declares to have no further administrative, legal, fiscal, research, or historic value.
7. The Planning/Zoning Commission shall adopt from time to time, sub-regulations as it may deem necessary to carry appropriate provisions of this Title into effect.
 - a) Unless otherwise specified timeline by the Zoning BOA at the time it approves a Petition for an Appeal or Variance, any Approved Petition shall be valid, for a period of two years following the date said Petition was approved by the Zoning BOA as shown in its official minutes.
 - b) At the end of that two-year period, or such other time as specified by the Zoning BOA as provided herein, any Approved Petition which has not resulted in a Permit, will expire, and become null and void.
 - c) If an Approved Petition has expired as provided herein, the Petitioner may re-apply with a new revised application. This revised application will be subject to the same process, review, consideration, and payment of fees as any other application.
 - d) Any Approved Petition granted before this revised Ordinance takes effect will continue to be valid for a period of two years following the effective date of this revised ordinance. At the end of that two-year period, any Approved Application,

which has not resulted in a Permit, will expire and become null and void. (Ordinance #108 May 30, 2017).

4.2402 - **Zoning Board of Adjustment (BOA) Powers and Duties.**

The Zoning Board of Adjustment (BOA) may:

1. Hear and decide APPEALS if it is alleged there is error in any order, requirement, decision, or determination made by an administrative official in the enforcement of this chapter or of any ordinance adopted pursuant to this chapter.
2. Authorize upon appeal in specific cases a VARIANCE from the terms of the ordinance that is not contrary to the public interest, if, owing to special conditions, a literal enforcement of the provisions of the ordinance will result in unnecessary hardship and so that the spirit of the ordinance is observed, and substantial justice done; and
3. Hear and determine CONDITIONAL USES as authorized by the zoning ordinance. The uses shall be determined by an affirmative majority vote of the present, voting members of the Board of Adjustment (BOA) SDCL 11-2-53.

4.2403 - **Variances, Hearings, Notice.**

The Zoning Board of Adjustment (BOA) shall have the power, where, by reason of exceptional narrowness, shallowness or shape of a specific piece of property at the time of the enactment of this Title, or by reason of exceptional topographic conditions or other extraordinary and exceptional situation or condition of such piece of property, to authorize, upon an appeal relating to the property, a Variance from such strict application so as to relieve such difficulties or hardships as such relief may be granted without substantially impairing the intent and purpose of this Title.

1. No such variance shall be authorized by the Zoning Board of Adjustment (BOA) unless it finds that the strict application of Title 4 should produce undue hardship; such hardship is not shared generally by other properties in the same zoning district and the same vicinity; the authorization of such variance will not be of substantial detriment to adjacent property and the character of the district will not be changed by the granting of the variance; and the granting of variance is based upon reasons of demonstrable and exceptional hardship as distinguished from variations for purpose of conveniences, profit, and caprice.
2. No variance shall be authorized unless the Zoning Board of Adjustment (BOA) finds that the condition or situation of the property concerned, or the intended use of the property concerned is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted as an amendment to the Title.

3. A variance from the terms of this Title shall not be granted by the Zoning Board of Adjustment (BOA) unless and until a written application for a variance is submitted demonstrating that special conditions for a variance and circumstances exist which are peculiar to the land, structure, or building involved and which are not applicable to the lands, structure, or buildings in the same district; that literal interpretation of the provisions of this Title would deprive the applicant of rights commonly enjoyed by other properties in the same districts under the terms of this Title; that special conditions and circumstances do not result from the action of the applicant; that granting the variance requested will not confer on the applicant any special privilege that is denied by this Title to other lands, structures, or buildings in the same district.
4. No nonconforming use of neighboring lands, structures, or buildings in the same district, and no permitted or nonconforming use of lands, structures, or buildings in other districts shall be considered grounds for issuance of a variance.
5. The Zoning Board of Adjustment (BOA) shall make findings that the requirements of 4.2404 have been met by the applicant for a Variance request; the Zoning Board of Adjustment (BOA) shall further make a finding that the reasons set forth in the application justify the granting of the Variance request, and that the Variance request is the minimum Variance that will make possible the reasonable use of the land, building, or structure; the Zoning Board of Adjustment (BOA) shall further make a finding that the general purpose and intent of Title 4 will not be injurious to the neighborhood, or otherwise detrimental to the public welfare.
6. In granting any Variance, the Zoning Board of Adjustment (BOA) may prescribe appropriate conditions and safeguards in conformity with this Title. Violation of such conditions and safeguards, when made a part of terms under which the variance is granted, shall be deemed a violation of Title 4 and punishable under Chapter 4.28 of this Title.
7. Under no circumstances shall the Zoning Board of Adjustment (BOA) grant a variance to allow a use not permissible under the terms of this Title in the district involved, or any use expressly or by implication prohibited by the terms of this Title in said district.
8. Zoning Board of Adjustment (BOA) criteria
 - a) The Zoning BOA shall hold a public hearing on a Variance request.
 - b) Notice to Publish the time and place of meeting shall be given at least ten (10) days in advance of meeting in a legal newspaper of the county.
 - c) Notification, of abutting or adjoining landowners shall be made by registered or certified mail, using information provided by the County Director of Equalization, about the Variance request, shall be given at least ten (10) days in advance of meeting.

- d) The Zoning BOA shall consider the Variance request with information furnished by the Planning/Zoning Director, staff, people present at the hearing and any written statements received to arrive at their decision.
- e) The Zoning BOA shall consider and decide all applications for Variances within thirty (30) days of such public hearing and in accordance with the standards provided below.
- f) Approval of a Variance request requires two-thirds of the members of the Zoning BOA of the Planning/Zoning Commission (*5 of 7 members say YEA or NAY*).

4.2404 - Reapplication.

No application requesting a variance, conditional use, zoning ordinance amendment or district classification change on any property whose application includes any such property either entirely or substantially the same as that which has been denied by the Zoning Board of Adjustment (variances, conditional uses) or Board of County Commissioners (Zoning Amendments, Zoning District Boundary Changes), shall again be considered by the Planning/Zoning Commission, Zoning Board of Adjustment or Board of County Commissioners before the expiration of six (6) months from the date of the final action of the Planning/Zoning Commission, Zoning Board of Adjustment or Board of County Commissioners.

CHAPTER 4.25 – APPEALS, CONDITIONAL USES

4.2501 - Appeals, Hearings, Notice (Error on Determination).

The Zoning BOA shall have the power to hear and decide appeals where it is alleged there is error in any order, requirement, decision, or determination made by the Planning/Zoning Director based on or made in the enforcement of any zoning regulation relating to the location or soundness of structures or to interpret any map.

1. Appeals, Hearings, Notice for appealing the Planning & Zoning Director's error, requirement, decision, determination, interpretation or enforcement shall be in accordance with *SDCL 11-2*.

4.2502 - Conditional Use.

Within each zoning district there are uses that are allowed as a Permitted Use. However, due to special characteristics attendant to their operation, requests for conditional uses or for decisions of other special questions upon which the Zoning Board of Adjustment (BOA) is authorized by this Ordinance to pass. If the use is approved by BOA, a Permit is also required for any use identified in the Zoning Ordinance as a Conditional Use after approved by the BOA.

1. **Applicability:**

Due to public health, safety, and welfare concerns, some Conditional Uses may be regulated by specific ordinance. For example: a utility substation is a permitted use in an AG-P District subject to approval by the Zoning BOA under the procedures prescribed in this section. Conditional Uses that are not regulated by specific ordinance items are also considered and decided by the Zoning BOA and interpreted by Planning & Zoning Director.

2. **Application:**

A Conditional Use Petition may be obtained from the Planning/Zoning Department. Applications must be complete prior to consideration by the Planning/Zoning Commission and include all of the following:

- a) Application fee.
- b) Name, mailing address, e-mail address, and telephone number of the applicant and property owner, and any authorized agent (if applicable).
- c) Legal description, street address, or other description of real property that clearly identifies the real property which is the subject of the application.
- d) Current zoning district and surrounding zoning.
- e) Size and physical description of the subject property.
- f) Site plan showing location and yard setback distance for proposed and all existing buildings or structures. The site plan must also include location of wells, drain fields, septic tanks, recorded easements, driveways, and Special Flood Hazard areas.

- g) Utilities, size of any on-site wastewater treatment system, and water source.
- h) Current use and requested Conditional Use.
- i) Information relevant to specified criteria will be found in the "Criteria for Evaluating Conditional Use Application" - See Application guidelines.
- j) Signature of applicant or authorized agent (if applicable) and property owner.
- k) Any other information and documentation as required by the Planning and Zoning Department.

4.2503 - **Conditional Use Process**

A conditional use shall not be granted by the Zoning Board of Adjustment (BOA) unless and until: Refer to *SDCL 11-2* on procedure.

The Zoning Board of Adjustment (BOA) is the approving authority of a Conditional Use regulated under this section. The Zoning BOA may approve, with conditions, or deny the Conditional Use application. Approval of a Conditional Use requires the affirmative majority vote of all members of the Zoning Board of Adjustment.

At the conclusion of the review, the Planning Commission may:

- (1) Approve the Conditional Use under the conditions already imposed; or
- (2) Approve the Conditional Use with additional conditions, subject to another review; or
- (3) Schedule another review; or
- (4) Schedule a revocation hearing in accordance with subsection (l) of this Ordinance

The Planning/Zoning Director may schedule a revocation hearing before the Planning/Zoning Commission if:

- 1. The owner or applicant has failed repeatedly to comply with the conditions of the approved Permit; or,
- 2. The continued Conditional Use is a threat to public health, safety, or general welfare.
 - a) Notice of time and place of hearing shall be given, in writing, to the permit holder at least ten (10) days in advance of hearing.
 - b) Adjacent or abutting property owners must also be given written notice of the hearing as provided under *SDCL 11-2*.
 - c) In addition, notice of time and place of the hearing shall be published at least ten (10) days in advance of hearing in the legal newspapers of the County.
 - d) Failure to comply with conditions of approval of a Conditional Use Permit is a violation of Brown County Zoning Ordinance and subject to the enforcement provisions of Chapter 4.31

CHAPTER 4.26 – SCHEDULE OF FEES, CHARGES, AND EXPENSES

4.2601 - Schedule of Fees, Charges, and Expenses.

The Board of County Commissioners shall establish a schedule of fees, charges, expenses; a collection procedure for permits, certificates of zoning compliance, appeal application and other matters pertaining to Title 4. The Fee Schedule shall be posted in the Office of the Zoning Administrator and may be altered or amended only by the Board of County Commissioners. Until all petition and application fees, charges, and expenses have been paid in full, no action shall be taken on any submittal or appeal.

CHAPTER 4.27 – AMENDMENTS; APPEAL OF ZONING BOA DECISION

4.2701 - Amendments to Zoning Ordinances or Subdivision Ordinances.

To edit, revise or create new ordinances, refer to SDCL 11-2 for procedures.

4.2702 - Appealing a Zoning Board of Adjustment (BOA) decision.

Any person or persons, jointly or severally, or any officer, department, board, or bureau of the county, aggrieved by any decision of the Zoning BOA may present to a court of record a petition duly verified, setting forth that the decision is illegal, in whole or in part, specifying the grounds of the illegality per *SDCL 11-2-61*.

For appealing a decision of the Zoning Board of Adjustment, Refer to *SDCL 11-2*.

CHAPTER 4.28 - VIOLATIONS, PENALTIES, AND REMEDIES

4.2801 - Building Permit Violations.

Any person, firm, or corporation in violation of Section 4.22, Subchapter 4.2202 may be assessed a violation fee of one-half percent (1/2 %) of the estimated final valuation or cost of project, a \$50.00 administrative fee in addition to the base cost of a Permit when an application is submitted after the project has been started. The Planning and Zoning Director may also take enforcement measures as given in 4.2201. Payment of all fees shall be made in the Office of the Brown County Planning and Zoning Director within ten (10) days after the person, firm, or corporation in violation of Title 4 has been notified by registered letter, certified letter or hand delivered notice by the Brown County Sheriff Department. If payment of the fee is not received at the end of the ten (10) day period, the Brown County State's Attorney shall have the power to prosecute, pursuant to SDCL 7-16-9, 7-19-1, 11-2-25.

4.2802 - Violation of Title 4.

It is declared unlawful for any person, firm, or corporation to violate any of the terms or provisions of the Title, except as otherwise specified in subchapter 4.2202. Violation thereof shall be a misdemeanor and may be punishable by a fine of up to one hundred (100) dollars for each and every day that any violator fails to comply with the provisions of this Title. All fines for violations shall be paid to the County Planning and Zoning Department and shall be credited to the general revenue fund.

Any architect, builder, contractor, agent, or other person, who commits, participates in, assists in or maintains such violation may each be found guilty of a separate offense and suffer the penalties herein provided.

Nothing herein contained shall prevent the County from taking such other lawful action as is necessary to prevent or remedy any violation.

4.2803 - Stop Work Order.

Whenever any work is being done contrary to the provisions of this ordinance, the Planning Director may order the work stopped by notice in writing served on any persons engaged in the doing or causing such work to be done, and any persons shall forthwith stop such work until authorized by the Planning Director to proceed with the work.

CHAPTER 4.29 - LEGAL STATUS PROVISIONS

4.2901 - Separability.

Should any article, section, or provision of this Title be declared by the courts to be unconstitutional or invalid, such decision shall not affect the validity of this Title as a whole, or any part thereof other than the part so declared to be unconstitutional or invalid.

4.2902 - Purpose of Catch Heads.

The catch heads herein in connection with the foregoing chapters are inserted simply for convenience to serve the purpose of any index and they shall be wholly disregarded by any person, officer, court, or other tribunal in construing the terms and provisions of this Title.

4.2903 - Repeal of Conflicting Ordinances.

All ordinances or parts of ordinances in conflict with this Title, or inconsistent with the provisions of this Title, are hereby repealed to the extent necessary to give this Title full force and effect.

New Comprehensive Plan or Amendments:

- 1) Planning Commission shall hold at least one public hearing on the comprehensive plan or proposed amendments to.
- 2) Notice of Publication shall be given at least ten (10) days in advance of meeting in a legal newspaper for the time and place of hearing.
- 3) Planning Commission shall provide recommendation to the Board of County Commissioners including all requests and findings.
- 4) Board of County Commissioners shall consider the request and information furnished by the Planning Director, staff, people present at the hearing and any written statements received to arrive at a decision.
- 5) Board of County Commissioners shall hold at least one public hearing on the Comprehensive Plan or Amendments.
- 6) Notice of Publication shall be given at least ten (10) days in advance of meeting in the legal newspaper for the time and place of hearing.
- 7) Action shall be by Resolution carried by affirmative votes of not less than a majority of all members of the Board of County Commissioners.
- 8) Action shall be filed with County Auditor.
- 9) Notice of Fact of the adoption shall be published once in a legal newspaper of the county and take effect on the twentieth (20) day after its publication unless a referendum is invoked *SDCL 11-2-22*.

Amendments to: Zoning Ordinance or Subdivision Regulations.

- 1) Planning Commission shall hold at least one public hearing on amendments.
- 2) Notice of Publication shall be given at least ten (10) days in advance of meeting in a legal newspaper for the time and place of hearing.
- 3) Planning Commission shall provide recommendation to the Board of County Commissioners all requests and findings.
- 4) Board of County Commissioners shall consider the request and information furnished by the Planning Director, staff, people present at the hearing and any written statements received to arrive at a decision.
- 5) Board of County Commissioners shall hold at least one public hearing on proposed amendments to.
- 6) Notice of Publication shall be given at least ten (10) days in advance of meeting in legal newspaper for the time and place of hearing.
- 7) Action shall be by Ordinance carried by affirmative votes of not less than a majority of all members of the Board of County Commissioners.
- 8) Action shall be filed with County Auditor.
- 9) Notice of Fact of the adoption shall be published once in a legal newspaper of the county and take effect on the twentieth (20) day after its publication unless a referendum is invoked *SDCL 11-2-22*.

Zoning Assignments and Rezoning of Parcels:

- 1) Planning Commission shall hold a hearing, open to the public, on any petition to all of the zoning/rezoning or part of the zoning/rezoning of a landowner's property. The Planning Commission may recommend approval, postponement or denial of any requests and findings.
- 2) Notification, of abutting, adjoining or neighboring landowners shall be made by registered or certified mail, using information provided by the County Director of Equalization, about the petitioned zoning change shall be given at least ten (10) days in advance of meeting *SDCL 11-2-28, 11-2-28.1-3, 11-2-29, 11-2-30.*
- 3) Notice of Publication of the meeting shall be given at least ten (10) days in advance of meeting in a legal newspaper for the time and place of hearing.
- 4) Within forty-five (45) days of receipt of any such petition, the County Planning Commission shall consider the requested action with information furnished by the Director, staff, people present at the hearing and any written statements received to arrive at their decision.
- 5) The Planning Commission shall make recommendation thereon to the Board of County Commissioners of their findings.
- 6) The Board of County Commissioners shall consider the recommendation and information furnished by the Director, staff, people present at the hearing and any written statements received to arrive at their decision.
- 7) The Board of County Commissioners shall hold at least one public hearing of any such petition.
- 8) Notice of Publication shall be given at least ten (10) days in advance of meeting in a legal newspaper for the time and place of hearing.
- 9) Action shall be by Ordinance for rezoning carried by affirmative votes of not less than a majority of all members of the Board of County Commissioners.
- 10) Action shall be filed with County Auditor.
- 11) Notice of Fact of the adoption shall be published once in a legal newspaper of the county and take effect on the twentieth (20) day after its publication date unless a referendum is invoked *SDCL 11-2-22.*
- 12) Any changes to zoning district or zoning district boundaries must be made on the Official Zoning Map for place, time and date changes.

Appeals: Errors, Decisions & Determinations:

- 1) Appeals to the Board of Adjustment may be taken by any person aggrieved or by any officer, department, board, or bureau of the County affected by any decision of the Planning/Zoning Director *SDCL 11-2-55*.
- 2) Such an Appeal shall be taken within a reasonable time not to exceed twenty-one (21) days provided by the Zoning Board of Adjustment, by filing with the officer from whom the appeal is taken and with the BOA a notice of appeal specifying the grounds of the appeal.
- 3) The officer from whom the appeal is taken shall forthwith transmit to the BOA all of the papers constituting the record upon which the action appealed from was taken.
- 4) An appeal to the BOA Stays all proceedings in the action appealed from *SDCL 11-2-56*.
- 5) The Zoning BOA shall hold at least one public hearing of the appeal *SDCL 11-2-57*.
- 6) Notice to Publish time and place shall be given at least ten (10) days in advance of meeting in a legal newspaper of the county *SDCL 11-2-57*.
- 7) Due notice shall be given to the parties of interest by registered or certified mail to abutting, adjacent or neighboring properties or other parties adjoining the appeal
- 8) The Zoning BOA shall decide the appeal within sixty (60) days of receiving a notice of the appeal *SDCL 11-2-57*.
- 9) Any party may appear at the hearing in person or by agent or by attorney.
- 10) The Zoning BOA may, in conformity with the provisions of this chapter, reverse or affirm, wholly or partly, or may modify the order, requirement, decision, or determination appealed from and may make such order, requirement, decision, or determination as ought to be made, and to that end has all the powers of the officer from whom the appeal is taken. As to all other decisions, the board of adjustment may make initial determinations as provided by statute and applicable zoning ordinance *SDCL 11-2-58*.
- 11) The concurring vote of two-thirds of the members of the Zoning BOA is necessary to reverse any order, requirement, decision, or determination of any administrative official or to affect any variation in the ordinance *SDCL 11-2-59*.

Conditional Use Petition (CUP):

1. A Petition for a Conditional Use is submitted, indicating the section of the zoning district of this Ordinance under which the Conditional Use is sought and stating the grounds on which it is requested.
2. Notice shall be given in the legal newspaper ten (10) days prior to the public hearing. The notice will be submitted by the Planning and Zoning Director.
3. Notice by certified letter shall be given to the abutting, adjacent and neighboring landowners, the property owners requesting the Conditional Use, the Township Officials having jurisdiction for this parcel or the local government entity. Letters shall be sent out at least ten (10) days prior to a hearing on the request. The notice will be sent by the Planning and Zoning Department.
4. The public hearing shall be held. Any party may appear in person or by agent or by attorney.
5. The Zoning Board of Adjustment (BOA) shall make a finding that it is empowered under the section of this Ordinance described in the Petition, to grant the Conditional Use, and that the granting of the Conditional Use will not adversely affect the public interest.
6. Before any Conditional Use Permit shall be issued, the Zoning Board of Adjustment shall make written findings certifying compliance with the specific rules governing individual Conditional Uses and that satisfactory provision and arrangement has been made concerning the following, where applicable:
 - a) Ingress and egress to property and proposed structures thereon with particular reference to automotive and pedestrian safety and convenience, traffic flow and control, and access in case of fire or catastrophe.
 - b) Off-street parking and loading areas where required, with particular attention to the items in "a" above and the economic, noise, glare, or other effects of the general exception on adjoining properties and properties generally in the district.
 - c) Refuse and service areas, with particular reference to the items in "a" and "b" above.
 - d) Utilities, with reference to locations, availability, and compatibility.
 - e) Screening and buffering with reference to type, dimensions, and character.
 - f) Signs, if any, and proposed exterior lighting with reference to glare, traffic safety, economic effect and compatibility and harmony with properties in the district.
 - g) Required yards and other open spaces; and
 - h) General compatibility with adjacent properties and other properties in the district.

7. Upon Petition application, pursuant to the provisions of this Ordinance, conditions and safeguards may be imposed as are appropriate. These conditions may specify time limits or address other matters pertinent to the issuance of a Conditional Use. If conditions and safeguards established are not met, the Conditional Use shall be declared unlawful and constitute a violation. Classified uses shall be authorized only if they meet the following criteria.
- a) Fire Hazard. The use shall not include any activity involving the use or storage of flammable or explosive material unless protected by adequate firefighting and fire-suppression equipment and by such safety devices as are normally used in the handling of any such material.
 - b) Noise. The use shall not include noise, which is objectionable due to volume, frequency, or beat unless muffled or otherwise controlled.
 - c) Vibration. The use shall not include vibration which is discernible without instruments on any adjoining lot or property.
 - d) Air Pollution. The use shall not involve any pollution of air by fly ash, dust, vapors, or other substances which are harmful to health, animals, vegetation, or other property or which can cause soiling, discomfort, or irritation.
 - e) Odors. The use shall not involve any malodorous gas or matter which is discernible to any adjacent lot or property.
 - f) Glare. The use shall not involve any direct or reflected glare that is visible from any adjoining property or from any public streets, road, or highway.
 - g) Traffic Hazard. The use shall not involve any activity substantially increasing the movement of traffic on public streets unless procedures are instituted to limit traffic hazards and congestion. No single use or density of development should generate traffic volumes on any public street in excess of one hundred (100) vehicle trips per day per acre.
 - h) Sewer and Water. The use shall not involve an activity which will substantially increase the burden on the water supply or cause sewage treatment problems unless provision is made for necessary adjustments.
 - i) Character of Neighborhood. The use shall not involve any activity not in character with the majority of the uses in the neighborhood unless, by design, setback, nature of operation, and other devices, the character of the neighborhood will be maintained.
 - j) General Welfare of the Community. The use shall not involve any activity which adversely affects the general welfare to the community.

Appeal: Zoning Board of Adjustment Decision.

1. The petition shall be a petition for writ of certiorari presented to the court within thirty (30) days after the filing of the decision in the office of the Zoning BOA *SDCL 11-2-61*. The Zoning BOA shall respond to the petition within thirty (30) days of receiving the notice of the filing and shall simultaneously submit the complete record of proceedings of the board appealed from, in the form of a return on a petition for writ, without need for a court order or formal issuance of writ *SDCL 11-2-61*. A petitioner to the circuit court under this section shall pay all transcript costs required to complete the record of proceedings of the board appealed from *SDCL 11-2-61*.
2. Any appeal of a decision of granting or denying a conditional use permit shall be brought under a petition, duly verified, for a writ of certiorari directed to the approving authority and, notwithstanding any provision of law to the contrary, shall be determined under a writ of certiorari standard regardless of the form of the approving authority. The court shall give deference to the decision of the approving authority in interpreting the authority's ordinances *SDCL 11-2-61.1*.
3. Upon the presentation of the petition, the court may allow a writ of certiorari directed to the board of adjustment to review the decision of the board of adjustment and shall prescribe the time within which a return must be made and served upon the relator's attorney, which may not be less than ten days and may be extended by the court. The allowance of the writ does not stay proceedings upon the decision appealed from, but the court may, on application, on notice to the board of adjustment and on due cause shown, grant a restraining order *SDCL 11-2-62*.
4. Upon filing of a petition for writ of certiorari, the court shall expedite any petition determination. Within thirty days of the filing of the response and the record, or as soon as reasonably practicable, the court shall schedule and hold a hearing on the matter to determine the merits, and the cause shall be speedily heard and determined *SDCL 11-2-62.1*.
5. The board of adjustment is not required to return the original papers acted upon by it, but it is sufficient to return certified copies of the papers, or of such portions of the papers as may be called for by the writ. The return shall concisely set forth such other facts pertinent and material to show the grounds of the decision appealed from and shall be verified *SDCL 11-2-63*.
6. If upon the hearing it appears to the court that testimony is necessary for the proper disposition of the matter, the court may take evidence, or appoint a referee to take such evidence as it may direct and report the evidence to the court with the referee's findings

of fact and conclusions of law, which constitute a part of the proceedings upon which the determination of the court is made *SDCL 11-2-64*.

7. The court may reverse or affirm, wholly or partly, or may modify the decision brought up for review. On motion, the court may award reasonable attorneys' fees and costs of the action in an action brought to the court under this chapter against any non-prevailing party relative to the petition for writ of certiorari *SDCL 11-2-65*.
 - a) Costs and attorneys' fees are not allowed against the board of adjustment unless the court determines that the board of adjustment acted with gross negligence, or in bad faith, or with malice in making the decision appealed from *SDCL 11-2-65*.

8. Any special permitted use, conditional use, or variance granted under this chapter does not expire for a period of two years following completion of any final appeal of the decision. Any county zoning ordinance provision to the contrary is invalid or unenforceable and the special permitted use, conditional use, or variance shall be allowed if actual construction as approved is commenced within this period. The authority constitutes a lawful use, lot, or occupancy of land or premises existing at the time of the adoption of a zoning ordinance amendment or replacement within this period or while an appeal is pending regardless of the commencement of actual construction, so that the approved use shall be allowed if upheld on final appeal.
 - a) For purposes of this section, the term, actual construction, means that construction materials are being permanently placed and the construction work is proceeding without undue delay

Variances.

1. No such variance shall be authorized by the Zoning Board of Adjustment (BOA) unless it finds that the strict application of Title 4 should produce undue hardship; such hardship is not shared generally by other properties in the same zoning district and the same vicinity; the authorization of such variance will not be of substantial detriment to adjacent property and the character of the district will not be changed by the granting of the variance; and the granting of variance is based upon reasons of demonstrable and exceptional hardship as distinguished from variations for purpose of conveniences, profit, and caprice.
2. No variance shall be authorized unless the Zoning Board of Adjustment (BOA) finds that the condition or situation of the property concerned, or the intended use of the property concerned is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted as an amendment to the Title.
3. A variance from the terms of this Title shall not be granted by the Zoning Board of Adjustment (BOA) unless and until a written application for a variance is submitted demonstrating that special conditions for a variance and circumstances exist which are peculiar to the land, structure, or building involved and which are not applicable to the lands, structure, or buildings in the same district; that literal interpretation of the provisions of this Title would deprive the applicant of rights commonly enjoyed by other properties in the same districts under the terms of this Title; that special conditions and circumstances do not result from the action of the applicant; that granting the variance requested will not confer on the applicant any special privilege that is denied by this Title to other lands, structures, or buildings in the same district.
4. No nonconforming use of neighboring lands, structures, or buildings in the same district, and no permitted or nonconforming use of lands, structures, or buildings in other districts shall be considered grounds for issuance of a variance.
5. The Zoning Board of Adjustment (BOA) shall make findings that the requirements of 4.2404 have been met by the applicant for a Variance request; the Zoning Board of Adjustment (BOA) shall further make a finding that the reasons set forth in the application justify the granting of the Variance request, and that the Variance request is the minimum Variance that will make possible the reasonable use of the land, building, or structure; the Zoning Board of Adjustment (BOA) shall further make a finding that the general purpose and intent of Title 4 will not be injurious to the neighborhood, or otherwise detrimental to the public welfare.

6. In granting any Variance, the Zoning Board of Adjustment (BOA) may prescribe appropriate conditions and safeguards in conformity with this Title. Violation of such conditions and safeguards, when made a part of terms under which the variance is granted, shall be deemed a violation of Title 4 and punishable under Chapter 4.28 of this Title.
7. Under no circumstances shall the Zoning Board of Adjustment (BOA) grant a variance to allow a use not permissible under the terms of this Title in the district involved, or any use expressly or by implication prohibited by the terms of this Title in said district.
8. Zoning Board of Adjustment (BOA) criteria
 - a) The Zoning BOA shall hold a public hearing on a Variance request.
 - b) Notice to Publish the time and place of meeting shall be given at least ten (10) days in advance of meeting in a legal newspaper of the county.
 - c) Notification, of abutting or adjoining landowners shall be made by registered or certified mail, using information provided by the County Director of Equalization, about the Variance request, shall be given at least ten (10) days in advance of meeting.
 - d) The Zoning BOA shall consider the Variance request with information furnished by the Director, staff, people present at the hearing and any written statements received to arrive at their decision.
 - e) The Zoning BOA shall consider and decide all applications for Variances within thirty (30) days of such public hearing and in accordance with the standards provided below.
 - f) Approval of a Variance request requires two-thirds of the members of the Zoning BOA of the Planning/Zoning Commission (*5 of 7 members say AYE or NAY*).

Permitting Process.

Permits are required in the following instances:

- 1) For any new building/structure, alterations, concrete or improvements on or to any existing building/structure regardless of cost. Any mobile home, manufactured home or trailer house brought into the county jurisdictional area will require a permit from the Zoning Office. This home will be treated as any other residential structure for zoning laws such as setbacks, zoning district regulations and other requirements. The Treasurer's Office will also require a *moving permit* for their registration process.
- 2) It shall be unlawful to commence the excavation for the construction of any building or any accessory building without a permit. A permit is also required for any filling, grading, dredging or lagoons which are related to site preparation for future construction.
- 3) Definition of *Structure* for this section: Anything constructed or erected with a fixed location on the ground, or anchored having a fixed location on the ground; among other things, structures include concrete, buildings, decks, walls, porches, sheds, garages, pole buildings, steel buildings, concrete buildings, dwellings, combination residential and agricultural buildings, combination residential and commercial buildings, grain bins, hopper bins, bin systems (appurtenances and accessories for movement of grain such as conveyors, legs, scales, towers, that are all part of a bin system), gas or liquid storage tank, portable or permanent livestock shelters, trailer houses, mobile homes or manufactured homes, modular homes, site-built homes, pre-built homes, walls, communication towers, wind towers, wind systems, sign support frames, billboards and fences.
- 4) Definition of *Permit* for this section - authorization to perform a process as in:
 - a. *Permit, Zoning* – Authorization to construct a structure in the unincorporated areas meeting all Zoning District's criteria, regulations, setbacks.
 - b. *Permit, Building* – Authorization to construct a structure in the incorporated areas of Brown County jurisdictional areas meeting all Zoning District's criteria, regulations, setbacks.
 - c. *Permit, Use* – Authorization to use a property for a specific use.
 - d. *Permit, Sign* – Authorization to install a new sign/structure or modify an existing sign face.
 - e. *Permit, Demolition* - Authorization to tear down and remove an existing structure.
 - f. *Permit, Move* - Authorization to move a structure to another location for zoning purposes. The Treasurer's Office also requires their own Moving Permit for their own registration processes.

- g. *Permit, Approach* – Authorization to construct an approved access approach.
 - h. *Permit, Grading or Excavation* - Authorization to change contour of the land.
 - i. *Permit, Septic* – Authorization by the State Health Department to build, modify or install a septic system.
 - j. *Permit, Electrical* – Authorization by the State for all electrical work.
 - k. *Permit, Plumbing* - Authorization by the State for any new plumbing or modifications of existing plumbing systems.
 - l. *Permit, Flood Plain Development (FPDP)* - Authorization for construction, development, or alterations in a Special Flood Hazard Area (SFHA) established in the Flood Insurance Rate Map (FIRM or e-FIRM).
- 5) Application for permits shall be made to the Zoning Officer upon forms approved by the Board of County Commissioners. These forms shall be filled in by the owner, or authorized agent. All applications for permits shall be accompanied by a site plan drawn to scale, showing the actual dimensions and shape of the lot to be built upon; the exact sizes and locations on the lot of the buildings already existing, if any; and the location and dimensions of the proposed building(s) or alteration. The applicant shall also state the existing and intended use of all such buildings, and the location of existing or proposed water and sewer facilities. In the case of a change of use, the applicant shall, in writing, state the intended change.
- 6) The application shall include such other information as lawfully may be required by the Zoning Officer, including legal description, existing or proposed buildings or alterations; existing or proposed uses of the building and land; the number of families, housekeeping units, or rental units the building is designed to accommodate; conditions existing on the lot; existing or proposed water, sewer, electrical facilities; and such other matters as may be necessary to determine conformity with, and provide for the enforcement of, this ordinance. All plans and data accompanying the permit shall be final and conclusive. Deviations shall be deemed a violation of this Ordinance, and punishable as provided in 4.28 Violations and shall require a new permit.
- 7) One copy of the application shall be returned to the applicant by the Zoning Department after he/she shall have marked such copy either as approved or denied and attested to same by his/her signature on such copy. If a building permit is refused, the Planning and Zoning Director shall state the reasons for such refusal in writing. The original and one copy of the application, similarly marked, shall be retained by the Planning and Zoning Director. The issuance of any Permit shall, in no case, be construed as waiving any provisions of Title 4 Zoning.
- 8) If the work described in any permit has not begun within one hundred and eighty (180) days from the date of Permit issuance thereof, said Permit shall expire; it shall be canceled by the Planning and Zoning Director, and written notice thereof shall give to the persons affected, together with notice that further work as described in the

canceled permit shall not proceed unless and until a renewed building permit has been obtained. Construction must be completed within two (2) years of issuance date of Permit. There will be no additional cost to extend completion time if renewed before expiration, unless substantial changes have been made to the original Permit. If construction has not been completed within the two (2) year period and a Permit becomes expired, there shall be a new plan review; a new Permit with additional permit fees will be required for remaining work.

- 9) Permits are issued on the basis of applications approved by the Planning and Zoning Director authorizing only the use, arrangement, and construction set forth in such approved application and no other use, arrangement, or construction. Use, arrangement, or construction at variance without authorization, shall be deemed a violation of this Title 4, and punishable as provided by Section 4.28.
- 10) All Permits shall be obtained by application of the owner, agent or builder and shall give an estimate of the valuation of total construction project or repairs, from start to finish and initial Permit Fees shall be based on such estimate; provided that if at the completion of said construction project or repair, the estimated cost as given in the application appears inadequate to the Planning and Zoning Director, he/she may demand bills or receipts to substantiate such valuation and additional fees may be assessed accordingly. It is the owner's and builder's responsibility to obtain a permit prior to construction on property, owned or leased.
- 11) All Permits issued by the Planning and Zoning Director must be placed in a conspicuous location on the construction site for the duration of the construction or work described.

LOCALIQ

Aberdeen News
Watertown Public Opinion

Order Confirmation

Not an Invoice

Account Number:	556235
Customer Name:	Brown County Auditor-Legals
Customer Address:	Brown County Auditor-Legals 25 Market St ABERDEEN SD 57401-4227
Contact Name:	Brown County Auditor-Legals
Contact Phone:	6056267110
Contact Email:	
PO Number:	

Date:	01/28/2022
Order Number:	6850592
Prepayment Amount:	\$ 0.00

Column Count:	1.0000
Line Count:	37.0000
Height in Inches:	0.0000

Print

Product	#Insertions	Start - End	Category
ABD The American News	1	02/02/2022 - 02/02/2022	Public Notices
ABD aberdeennews.com	1	02/02/2022 - 02/02/2022	Public Notices

Total Order Confirmation	\$15.36
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Ad Preview

NOTICE OF HEARING

Application has been made to the Brown County Planning/Zoning Commission for proposed Ordinance Changes. A hearing will be held in the Courthouse Annex, Basement Community Meeting Room, on February 15, 2022, at 7:00 P.M.

Petitioner: Brown County Planning & Zoning Department

Reason: Changes to Brown County Ordinances. The changes in portions of Title 4 are Chapter 4.07 and Chapters 4.22 thru 4.29.

The public is invited to attend the hearing and to present comments and testimony regarding any proposed changes in portions of Brown County Ordinances.

Dated this 2nd day of February 2022

Planning/Zoning Commission and Scott Bader – P&Z Director

25 Market Street
Aberdeen, SD 57401

Office: (605) 626-7144

Published once at the total approximate cost of \$15.36.

February 2, 2022 6850592