



**AGENDA
BOARD OF APPEALS
CITY COUNCIL CHAMBERS
FEBRUARY 6, 2025**

**CALL TO ORDER – 6:30 p.m.
PLEDGE OF ALLEGIANCE
ROLL CALL**

APPROVAL OF MINUTES

1. Minutes of the September 9, 2020 Board of Appeals meeting.

ACTION ITEMS

2. **PUBLIC HEARING FIVE STAR RESTROOM RENTALS LLC SUP APPEAL:** An appeal to a decision of the Plan Commission regarding a Special Use Permit for a Home Occupation for a portable restroom facility business for a property located in the Kinnickinnic Township Urban Reserve Area at 1149 County Highway M.

The Board of Appeals may convene into closed session pursuant to Wis. Stat. sec. 19.85(1)(a), deliberating concerning a case which was the subject of any judicial or quasi-judicial trial or hearing before that governmental body, to wit: deliberation concerning appeal of Special Use Permit. Should the Board enter closed session, the Board would reconvene in public open session prior to taking any action.

ADJOURNMENT

***Council members may be in attendance for informational purposes only.
No official Council action will be taken.***

NOTE: Any person who has a qualifying disability as defined by the Americans with Disabilities Act that requires the meeting or materials to be in an accessible location or format, may contact City Clerk Amy White at (715) 426-3408 or in person at 222 Lewis Street, for accommodations. Requests for accommodations should be made at least three (3) business days in advance of the meeting. Every effort will be made to arrange accommodations.

Community Development Department

222 Lewis Street
River Falls, WI 54022
715.425.0900
www.rfcity.org



**BOARD OF APPEALS
JANUARY 22, 2020 at 6:00 p.m.
City Council Chambers**

Members Present: Eric Amundsen (Chair), Gary Horvath, Kellen Wells-Mangold, Morris Marsolek, Jeanette Leonard
Members Absent: Andrew Brown (recused)
Staff Present: Amy Peterson, Sam Wessel, Brandy Howe, Amy White
Others Present: Jim Renslow (applicant), Steven (Tyler) Kohlhagen, Joan Nickleby, and Jim Sullivan

CALL TO ORDER

Amundsen called the meeting to order at 6:30 p.m.

APPROVAL OF MINUTES

M/Wells-Mangold, S/Horvath – motion carried 5-0 to approve January 22, 2020 BOA minutes

ROLL CALL, READING OF PUBLIC HEARING NOTICE AND ANNOUNCEMENT OF PROCEEDINGS

Amy White called roll, read the public hearing notice, and read the announcement of proceedings

AGENDA ITEM

Request for zoning variance by Jim Renslow, 121 Cascade Ct and 641 S Main St

Amundsen opened the public hearing and read the description of the variance request, which is to encroach on the 175 foot shoreland setback required by Chapter 17.124 of the City's Zoning Ordinance to build up to 75 feet from the South Fork of the Kinnickinnic River.

Renslow described his request and stated that the shoreland zoning ordinance amendments have been put on hold due to COVID-19 and that the City is interested in infill development along South Main Street. He also mentioned that neighboring and downtown properties have been within the shoreland setback for a very long time, and that redevelopment of the site would improve property values and the site's conditions. He mentioned that City staff advised that a variance would be the only way to move the proposed development forward since the shoreland ordinance rewrite was on hold.

Wessel gave a presentation describing the property's history, including a similar 2007 variance request that was denied for only the 641 S Main St property, former houses on the site that were demolished, and the latest concept to build townhomes on the site. Wessel also listed the criteria that must be met to grant a variance under Chapter 17.104.030 of the City's zoning ordinance. He then described Chapter 17.124, shoreland zoning, in detail, describing changes to state law and stormwater regulations for properties throughout the City. Specifically, the site has a 175 foot

setback because of steep slopes, and other properties in the City can develop as close as 75 feet if they meet certain criteria. Pavement and structures can't be built in the setback, but stormwater could be allowed in shoreland zones 2 and 3 if approved by the City Engineer. He affirmed that the new shoreland zoning ordinance was on hold, and it is unknown when it will be revisited and what the final setbacks will be in the new ordinance. He also mentioned that the applicant has the option to take the average of the 175 foot setback and a neighboring structure's setback to build approximately 157.5 feet (121 Cascade Ct) or 118 feet (641 S Main St) but the applicant chose not to use that option. In their current configuration, about 2/3 of the total area of the parcels is unbuildable, and only 641 S Main St has a large enough area to build a home without a variance. He also depicted elevation contours to show how much of the slope is freed up for development if the 75 foot setback would be approved. He described submitted comments that included loss of green space, traffic, waste disposal, maintenance, safety, and impacts to the river, and that a few neighbors were in attendance wishing to speak. He reminded the Board that staff doesn't make a recommendation since the Board is quasi-judicial, functioning like a court.

Amundsen asked if Board members made site inspections or had ex parte communication to disclose. Amundsen, Leonard, Marsolek, and Horvath visited the site, and Wells-Mangold drove past it several times. No ex parte communication was disclosed by Board members.

Joan Nickleby of 116 W Park St expressed concerns about runoff going into the river, unknown road and sidewalk changes to accommodate development, spills from car fluids parked at the site, litter from townhomes, setting a precedent for future shoreland properties if approved, the large size of the setback reduction being requested, and concerns with too many people and traffic using Cascade Court.

Tyler Kohlhagen, 644 State St, wants to welcome new families to the neighborhood but doesn't want traffic or shoreland development as proposed because of the trash produced by rentals near a river. He is concerned about 14 units on a dead end site because of safety with kids using the street and the possible 28 additional cars driving through, a big increase from the 10 cars that use the street. He is also concerned the street would have to be widened, taking up already small yard space. He would be more comfortable with a scaled down development that would improve the site, and wants the river to remain quiet and peaceful.

Jim Sullivan, 125 Cascade Ct, says the site can't be compared to The Depot or City Station since it isn't downtown and wasn't a former industrial site. The applicant knew the small parcel south of 121 Cascade Ct was unbuildable when he bought it, and 641 S Main St. can still have a house on it under its single family zoning. 121 Cascade Ct had a house burn down but reconstruction was not pursued. A new home at 121 Cascade Ct would be a welcome improvement to the neighborhood. All other neighbors in the area have to follow shoreland rules even if just adding a deck, so the request violates the requirement of not being based on wanting to increase the site's value for a granted variance. It also harms public interest because there is too much site coverage too close to the river. There is little to no area for runoff and the site sits on a limestone shelf with topsoil as shallow as 2 feet. Existing homes get water in the basement because of the lack of drainage. He supports 2 single family homes on 641 S Main St and 121 Cascade Ct.

Renslow responded to concerns saying he worked with the City in the past to get a storm sewer pipe on the property to help with runoff in that area. The existing garbage results from a newly initiated bridge clean up. He stated that downtown is closer to the river, has been that way for a long time,

and still manages to address garbage. Development of the site would clean it up, address garbage, and improve property values.

Amundson closed the public hearing and asked for a motion. M/S Amundsen/Wells-Mangold to approve the requested variance.

Horvath asked Wessel to explain the neighboring structure setback averaging rule in 17.124.050 C., which Wessel described in detail. Horvath said the applicant passed up this option so there is no apparent hardship.

Amundsen asked Wessel if a variance would be needed just to build a single family home, Wessel didn't think so but a new driveway may be required to use Cascade Court instead of the existing Main Street curb cut since it doesn't currently meet code.

Horvath also was concerned about runoff with how shallow the limestone bedrock is on that site.

Marsolek commented that all the neighbors want the green space to remain how it already is in the neighborhood.

Leonard stated that the variance request is based on a desire to increase the property's value, failing the 3rd variance criteria in code. The applicant should have known what he bought since he's been there for years, and Leonard has had to follow the same rules with her rental properties. She was also concerned about runoff.

Wells-Mangold didn't have additional comments but agreed with all the concerns discussed.

Amundsen said that surrounding properties would be impacted, but taking the big picture into consideration, all the neighbors also need variances to do anything, so granting one might encourage the setback to be changed in the future so not everyone needs to get a variance for everything. 121 Cascade Ct is unbuildable in its current state, and other buildings along the South Fork are closer than 75 feet. He disagrees with how the City's shoreland zoning has worked in the past and agrees with the state decision to go with 75 feet, and new downtown buildings approaching 75 have worked well. The City's aggressive stormwater ordinance also does a great job even when buildings are close to the river.

Leonard reminded the Board of the North Main Street property that was denied a variance request of only a few feet to accommodate handicap accessibility since they didn't want to set a precedent at that time, and this would set a much larger precedent.

With no further discussion, Amundsen restated the motion and asked for a vote. Results to approve the variance request were:

Amundsen - yes
Horvath – no
Leonard – no
Marsolek – no
Wells-Mangold – no

Therefore, the variance request was denied.

Wessel read procedures for the Board to complete their individual conclusions of law forms that will be compiled in the order and determination and final report, which Wessel and Amundsen will complete and submit to Pierce County.

M/S Wells-Mangold/Horvath to adjourn at 8:01 p.m.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Samuel Wessel". The signature is written in a cursive style with a large, stylized initial "S".

Sam Wessel, AICP, Planner



MEMORANDUM

TO: The Board of Appeals
FROM: Harley Mehlhorn, Senior Planner
DATE: February 6th, 2025
ITEMS: FIVE STAR RESTROOM RENTALS SUP APPEAL

BACKGROUND

An appeal to a decision of the City of River Falls Plan Commission (PC) has been filed for the consideration of the Board of Appeals. The appeal is pertaining to the approval of a Special Use Permit (SUP) for a Home Occupation for a Portable Restroom Facility Business. The subject property is located in the Town of Kinnickinnic in the River Falls' Urban Reserve Area (URA). The cooperative agreement between the Town and City affords the City land use authority over parcels within the URA, thus, the request was analyzed using the standards of the City of River Falls zoning code rather than codes applicable to the Extra Territorial Zone (ETZ). The subject property, addressed as 1149 County Highway M, is within the Agriculture "A" District. The "A" District allows for a small number of uses conditionally under the Special Use Permit, one such use is Home Occupation, thus necessitating the approval of the Plan Commission. The attached PC Memo outlines much of the background and factual findings, but below find a more detailed summary of the entitlement path of the appealed PC decision.

CODE INTERPRETATION AND ENTITLEMENT PATH

When this request was first put forward to staff, it was not immediately clear which path the request should take, which avenue of review and approval was consistent with code. Chapter 17.82 of the River Falls Zoning Code describes the intent and administration of typical Home Occupations within the City. However, as noted previously, the subject site is within the Agriculture District which requires a Special Use Permit for Home Occupations and does not reference 17.82, and instead only refers to Home Occupations as "herein defined". This made it clear to staff that the request could not be approved administratively as was typical of a Home Occupation and, secondly, that this request was to be considered a Special Use Permit first and foremost with Home Occupation being the Special Use.

Special Use Permits differ from standard Home Occupation Permits in a number of ways. Firstly, the process is completely different, with Home Occupation Permits being administratively approved, and SUP's being necessarily approved by the Plan Commission per state statute. Secondly, the standards of each are defined in code, with the aforementioned 17.82 outlining the administrative performance standards for a Home Occupation and the standards for a Special Use Permit being outlined in "17.104.040 Special Use Permits". Whereas a Home Occupation Permit has discrete standards, Special Use Permits are slightly more discretionary as far as the standards to which they must comply. Code and statute, however, do outline the specific

considerations the Commission may contemplate as they approve, or deny, the SUP. Staff determined that the request for approval made by Five Star Restroom Rentals was a Special Use Permit and beholden to the standards and requirements thereto, and not inherently a Home Occupation Permit as outlined by code. However, both the PC Memo and approved resolution make reference to the standards of 17.82 Home Occupations. Staff found that the Home Occupations chapter was a useful basis of comparison, especially when writing recommended conditions of approval. It should, however, be noted that it is staff's interpretation that the requested SUP need not comply with the letter of all of the provisions within 17.82, as it must first and foremost satisfy the standards of a Special Use Permit. More information regarding the SUP can be found below; this language is also within the PC memo and serves to outline the regulatory framework, both statute and code, surrounding SUP's.

SPECIAL USE PERMIT ANALYSIS

Plan Commission has the authority to approve, approve with conditions, or deny special use permits. Once granted, a Special Use Permit (SUP) remains in effect as long as the conditions upon which the permit was issued are followed, or until the duration of the permit expires, or any other conditions outlined in the resolution. If a special use permit application is denied, the applicant may appeal the decision to the Board of Appeals.

Special Use Permit Process

Review and approval of a Special Use Permit is a quasi-judicial process (applying policy) as opposed to a legislative process (creating policy). This means that an application is reviewed against the standards in the ordinance for compliance and if the standards are met, a permit is granted.

Special Use Permits allow uses that may be appropriate in a zoning district if certain conditions are met. Specific conditions may be added to the approval to ensure compatibility with adjacent land uses and so that the purpose and intent of the ordinance is met; however, any condition must be reasonable and related to the proposed use. If an application meets the conditions in the ordinance and the applicant agrees to meet and maintain compliance with the specific conditions of the permit, a permit is granted.

State Statute Regarding Special/Conditional Use Permits

In 2017, Wis. Act 67 limited the discretion that municipalities have when approving Special or Conditional Use Permits. The law requires that decisions must be made based on substantial evidence:

The [municipality's] decision to approve or deny the permit must be supported by substantial evidence. "Substantial evidence" means facts and information, other than merely personal preferences or speculation, directly pertaining to the requirements and conditions an applicant must meet to obtain a conditional use permit and that reasonable persons would accept in support of a conclusion.

The law also requires that any conditions imposed on the permit be based on substantial evidence:

Any condition imposed must be related to the purpose of the ordinance and be based on substantial evidence. All conditions must be reasonable and, to the extent practicable, measurable and may include conditions such as the permit's duration, transfer, or renewal."

The law then requires the applicant to demonstrate that they meet the standards in the ordinance:

The applicant must demonstrate that the application and all requirements and conditions established by the [municipality] relating to the conditional use are or shall be satisfied, both of which must be supported by substantial evidence.

If the applicant can demonstrate that their proposal can or will meet the requirements and conditions, then a permit must be granted:

If an applicant for a conditional use permit meets or agrees to meet all of the requirements and conditions specified in the [municipal] ordinance or those imposed by the [municipal] zoning board, the [municipality] shall grant the conditional use permit.

PLAN COMMISSION VOTE REPORT

For more specific information on the Plan Commission meeting, the minutes of the Oct 1, 2024 Plan Commission meeting are attached to this memorandum. The ultimate vote of the Commission was 3/2 in favor of the approval of the Special Use Permit.

EXHIBITS

1. Notice of Appeal
2. A supporting letter to the appeal by the appellants
3. Response to the appeal by Five Star Restroom Rentals, LLC
4. Plan Commission Memo
5. Plan Commission Minutes

Notice of Appeal

From: Appellants

Cindy Maxwell
82 Emerson Valley Dr
River Falls, WI 54022

October 22, 2024

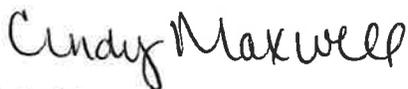
River Falls Board of Appeals
City of River Falls
222 Lewis St.
River Falls, WI 54022

Dear Board of Appeals,

Please find enclosed a Notice of Appeal, pursuant to River Falls Municipal Code § 17.104.030 D (1) and Wis. Stat. § 62.23(7)(e)7, appealing the decision of the Plan Commission to grant a special use permit to Justin Kleist at a hearing on October 1, 2024.

The city fee schedule does not list a fee for this type of appeal. City staff was unable to tell me whether a fee was required. If the board has adopted rules imposing a fee for appeals unrelated to variances, please let me know as soon as possible.

Regards,



Cindy Maxwell

Cc: River Falls Plan Commission

To: River Falls Plan Commission
River Falls Board of Appeals

NOTICE OF APPEAL

Brad Gilbertson and Cindy Maxwell (appellants), by this filing and according to municipal and state law, appeal the decision of the Plan Commission when it granted a home occupation special use permit for Justin Kleist and Five Star Restroom Rental on October 1, 2024. Appellants request that the Board of Appeals hold a hearing as provided under Wis. Stat. § 62.23(7)(e)6. Appellants will prove at the hearing that the Plan Commission decision was both incorrect and unreasonable. Appellants request that the Board of Appeals, upon hearing the question *de novo* as required by law, deny the home occupation special use permit.

I. Standing and legal authority to bring appeal.

One of the duties of the Board of Appeals is “[t]o hear and decide appeals where it is alleged that there is an error in any order, requirement, decision or determination made by an administrative officer in the enforcement of the zoning code.” River Falls Municipal Code § 17.104.030 D (1); *see also* Wis. Stat. § 62.23(7)(e)7. Appeals to the Board of Appeals may be taken by any person aggrieved by a decision of an administrative officer. Wis. Stat. § 62.23(7)(e)4.

A. The Plan Commission is an “administrative officer” whose decision is appealable.

“Administrative officials generally include the zoning administrator... Additionally, if a conditional use decision is made by the planning commission/committee, that decision should be appealed to the zoning board as an administrative appeal.” Zoning Board Handbook For Wisconsin Zoning Boards of Adjustment and Appeals (p. 77).

“Administrative official” includes the planning and zoning committee. *League of Women Voters v. Outagamie County*, 113 Wis. 2d 313, 334 N.W.2d 887 (1983) referencing Wis. Stat. § 59.694(7). Though this case refers to the statute for counties, Wis. Stat. § 62.23(e)7 for cities, villages, and towns has parallel wording, leading the author of the Zoning Board Handbook For Wisconsin Zoning Boards of Adjustment and Appeals to conclude that the *League* decision also applies to cities (footnote 133, p. 90).

B. Appellants are “aggrieved persons” with standing to bring the appeal.

An aggrieved person is one whose legally protected interests are affected by the decision. An aggrieved person need not be a party to the hearing before the administrative official. *State ex rel. Brookside Poultry Farms, Inc. v. Jefferson County Bd. of Adjustment*, 131 Wis. 2d 101, 388 N.W.2d 593 (1986). *See also* Zoning Board Handbook For Wisconsin Zoning Boards of Adjustment and Appeals (p. 79).

Appellants are property owners near and adjacent to the Kleist property. Appellants’ property values are likely to decrease if the special use permit is granted and their private wells could be contaminated by chemicals and septage stored at the Kleist property. Appellants’ due process

rights have been violated by the arbitrary and capricious decision of the Plan Commission, and they therefore meet the definition of an aggrieved person for the purposes of bringing an appeal.

II. Grounds for appeal.

The decision of the Plan Commission to issue a home occupation special use permit was both unreasonable and incorrect. The commission made the decision without considering relevant facts and incorrectly applied the governing ordinance. The decision of the Plan Commission was contrary to state law because (1) it was arbitrary and capricious and not supported by credible evidence, representing an act of will instead of judgment, and (2) the Plan Commission did not proceed on a correct theory of law.

A. Factual background.

On October 1, 2024, the Plan Commission approved a request for a special use permit to allow Five Star Restrooms to operate as a home occupation of Mr. Justin Kleist under River Falls Municipal Code § 17.82. During public comments, several members of the public spoke in opposition to the proposed special use and questioned whether and how chemicals would be stored on the property. After the public comment period had closed and just before the commission voted to approve the permit, Mr. Kleist, seated in the audience and speaking to members of the public rather than to the commission, stated that he was not yet ready to operate because he still had to install the septage containment tank required under state law for his business.

It is unclear whether the Plan Commission was aware of this fact. The sole mention of the tank in the analysis that was prepared for the commission by city staff stated, “Any washing that does take place within the facility will drain into a separate holding tank per DNR regulations.” (Analysis, p. 7). The analysis fails to mention that the tank is not yet installed and gives no indication as to the configuration of the tank, such as whether it is a freestanding interior tank or an underground storage tank.

On October 8, 2024, Cindy Maxwell sent an email to Amy Peterson, Director of Community Development, to request a reconsideration of the special use request on the basis of the new information. On October 9, Ms. Peterson denied the request to reconsider (Peterson email). Ms. Peterson stated that “[t]he tank will be located underground, beneath the building, with no exterior evidence and therefore will not constitute a violation of the home occupation provisions.” (Peterson email).

B. The Plan Commission’s decision was arbitrary and capricious and not supported by credible evidence, representing an act of will instead of judgment.

Wisconsin law requires that municipal officials make decisions based on credible evidence; doing otherwise results in an impermissible arbitrary and capricious decision that represents an act of will rather than judgment. *Eternalist Found., Inc. v. City of Platteville*, 225 Wis. 2d 759, 593 N.W.2d 84 (Ct. App. 1999).

In response to Ms. Maxwell's request for reconsideration, Ms. Peterson stated "The holding tank is not new information as it was mentioned in the application, which was considered as part of the project and thus was part of the plan commission packet." (Peterson email). Yet neither the applicant's narrative nor the analysis (see II. A above) indicate that the holding tank was yet to be installed, nor did either describe the tank configuration.

The analysis prepared by city staff defers to Mr. Kleist's own description of his business. "A more detailed description of the operations can be found in the applicant narrative attached to this memo." (Analysis, p. 4). The sole mention of the septage containment tank in Mr. Kleist's narrative is that "waste water is contained in a holding tank." (Narrative, pp. 1-2). The narrative did not describe the configuration of the tank and failed to mention that the required septage containment tank was yet to be installed on the property.

River Falls Municipal Code § 17.82.020 B (2) relating to home occupations states that "Nothing incidental to the conduct of a home occupation shall be constructed, installed, placed or stored outside the principal building." According to Ms. Peterson's email and based on evidence not in the public record, the tank will be installed under the large outbuilding, not located within it. Mr. Kleist is prohibited by city ordinance from installing the septage containment tank outside the principal building, and the commission based its approval on incomplete evidence.

Moreover, at the hearing on October 1, Mr. Kleist admitted, only after being directly questioned on the issue by concerned citizens and a commission member, that he would be storing chemicals on the property as part of his business operation. The analysis prepared by city staff did not mention chemical storage, and the Plan Commission appears to have had no knowledge of it before the hearing.

River Falls Municipal Code § 17.82.020 A (4) states that a home occupation must not "create a risk to health, safety or property of residents and occupations of adjacent and neighboring properties." Having learned of the chemical storage only minutes before the vote to approve, the Plan Commission had no evidentiary basis to determine whether chemical storage on the property would create such a risk and thereby violate the ordinance.

The Plan Commission, in relying solely on the narrative supplied by the applicant, failed to ascertain facts relevant to each element of the home occupation ordinance. The decision to approve the special use permit was not supported by evidence before the commission and represents an act of will instead of judgement.

C. The Plan Commission did not proceed on a correct theory of law.

Even if the Plan Commission was aware that Mr. Kleist still needed to install a septage containment tank, they applied an incorrect interpretation of the city ordinance to nonetheless approve the special use permit.

Municipal ordinances are construed in the same manner as statutory interpretation. One of the precepts of statutory interpretation is to give meaning to each word in a statute and to avoid interpretation of a statute that would render statutory language superfluous. *Banuelos v. Univ. of Wisconsin Hosps. & Clinics Auth.*, 406 Wis. 2d 439, 988 N.W.2d 627 (2023). The Zoning Board

Handbook For Wisconsin Zoning Boards of Adjustment and Appeals provides “[o]rdinances must be interpreted to give effect to every provision. Interpretations that render part of an ordinance meaningless must be avoided whenever possible.” (p. 82). The ordinance at issue is River Falls Municipal Code § 17.82.020 B (1) and (2):

1. Not more than twenty-five (25) percent of the gross floor area of the dwelling unit nor twenty-five (25) percent of the gross floor area if conducted in an accessory structure, shall be used in the conduct of the home occupation.
2. **Nothing incidental to the conduct of a home occupation shall be constructed, installed, placed or stored outside the principal building** in which it is carried on, nor shall any exterior evidence of a home occupation be permitted to exist on the lot in question if it is visible from any adjacent or neighboring properties or if it is not in keeping with the residential character of the neighborhood surrounding the lot, except for a sign and off-street parking as is set for the below. [emphasis added]

In denying the request for reconsideration, Ms. Peterson stated, “The tank will be located underground, beneath the building, with no exterior evidence and therefore will not constitute a violation of the home occupation provisions.” (Peterson email).

Two issues arise with Ms. Peterson’s and the Plan Commission’s interpretation.

First, clause (1) places limits on the gross floor area to be used in “the dwelling unit” and in “an accessory structure.” The ordinance therefore regulates the home and any accessory structures associated with the home.

In the present case, Mr. Kleist’s home, the “dwelling unit,” will be used for office space for his business. His large outbuilding is considered the “accessory structure” under the ordinance.

Clause (2) then prohibits construction “outside the principal building,” which must be construed as the dwelling unit, not the accessory structure. A building cannot logically be considered both an “accessory structure” and the “principal building.” The ordinance does not permit Mr. Kleist to install a tank unless it will be inside his home, the principal building.

Second, even if the outbuilding is considered the “principal building,” the commission’s decision and Ms. Peterson’s explanation does not give effect to the first portion of the ordinance (appearing in bold above), but instead relies entirely on the second portion of the ordinance that focuses solely on visible exterior evidence of the business. The first portion is related *to construction outside the principal building* and says nothing of whether the construction is visible from adjacent properties. The second portion of the ordinance deals strictly with *the visible aspect* of the home occupation *on the lot*, regardless of whether it is inside the principal building (e.g., a barber’s chair set up in front a large picture window) or outside the principal building (e.g., a barber’s chair set up in the front yard).

Each portion of the ordinance addresses a different manifestation of business activities, and both portions must be given effect. In relying solely on the visible aspects of Mr. Kleist’s septage containment tank, the city renders a portion of the ordinance superfluous. This interpretation is an incorrect theory of law.

The plain words of the ordinance prohibit installation of the septage containment tank to support Mr. Kleist's home occupation, as a tank installed underground is outside the principal building.

D. The Plan Commission followed neither the letter nor the spirit of the law, rendering the decision unreasonable.

While it has been demonstrated that the Plan Commission did not follow the letter of the law, it also bears noting that the commission has not followed the spirit of the home occupation ordinance. The ordinance, in citing a specific though nonexhaustive list of examples, was clearly intended to allow relatively unassuming businesses that quietly provide personal or professional services or that are creative in nature to operate out of residences. The ordinance does not envision a business that involves daily truck hauling and delivery, installing underground tanks, or storing chemicals, much less one that is regulated under state law for handling hazardous waste, as is the case here.

The ordinance is intended to ensure quietude in neighborhoods by limiting commercial activity. Mr. Kleist's business is not remotely similar to the types of businesses envisioned as home occupations and does not comport with the intent of the ordinance.

Brad Gilbertson

Brad Gilbertson
1143 County Road M
River Falls, WI 54022

10/29/2024

Date

Cindy Maxwell

Cindy Maxwell
82 Emerson Valley Drive
River Falls, WI 54022

10/24/2024

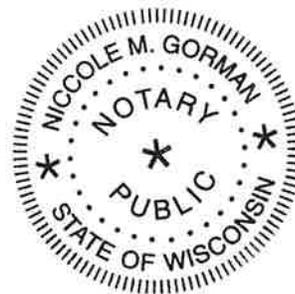
Date

Subscribed and sworn to before me, in my presence, the 24 day of October 2024, a Notary Public in and for the state of Wisconsin

Niccole M. Gorman
(Signature)

Notary Public

My commission expires 2-10, 2026



Supporting Letter to Appeal

From: Appellants

TO: River Falls Board of Appeals

FROM: Appellants, Brad Gilbertson and Cindy Maxwell

DATE: February 6, 2025

RE: Appeal of Special Use Permit to Five Star Restroom Rentals for Home Occupation

Summary

The Plan Commission’s decision to approve a special use permit to operate Five Star Restroom Rentals as a home occupation is contrary to state law because (1) the commission did not proceed on a correct theory of law and (2) the decision was arbitrary and capricious and not supported by credible evidence, representing an act of will instead of judgment. The Plan Commission incorrectly applied the governing ordinance and made the decision without considering relevant facts or requiring Mr. Kleist to establish that each condition of the special use ordinance would be met.

Appellants request that the Board of Appeals, upon reviewing the matter *de novo*, deny Mr. Kleist’s request for a home occupation special use permit.

Factual Background

On October 1, 2024, the Plan Commission approved a request for a special use permit to allow Five Star Restrooms to operate as a home occupation of Mr. Justin Kleist under River Falls Municipal Code § 17.82.

During public comments, several members of the public spoke in opposition to the proposed special use and questioned whether and how chemicals would be stored on the property. Only after being directly asked by a commission member did Mr. Kleist admit that chemicals would be stored on the property.

After the public comment period had closed and just before the commission voted to approve the permit, Mr. Kleist, seated in the audience and speaking to members of the public rather than to the commission, stated that he was not yet ready to operate because he still had to install the holding tank required under state law for his business.

It is unclear whether the Plan Commission was aware of this fact. The sole mention of the tank in an analysis that was prepared for the commission by city staff stated, “Any washing that does take place within the facility will drain into a separate holding tank per DNR regulations.” (Analysis, p. 7). The analysis fails to mention that the tank is not yet installed and does not indicate the tank’s location.

On October 8, 2024, Cindy Maxwell emailed Amy Peterson, Director of Community Development, to request a reconsideration of the special use request on the basis of the new information. On October 9, Ms. Peterson denied the request to reconsider. Ms. Peterson stated that “[t]he tank will be located underground, beneath the building, with no exterior evidence and therefore will not constitute a violation of the home occupation provisions.” (Peterson email).

Standard of Review

When reviewing a special use permit decision, the Board of Appeals may conduct a *de novo* review of the record and substitute its judgment for that of the Plan Commission. *Osterhues v. Bd. of Adjustment for Washburn County*, 2005 Wis. 92, 282 Wis. 2d 228; 698 N.W.2d 701. The Board of Appeals may reverse, affirm, or modify a Plan Commission decision. Wis. Stat. § 62.23(7)(e)8.

Argument and Authorities

A. The Plan Commission did not proceed on a correct theory of law because it misinterpreted the home occupation ordinance.

1. Statement of the law.

Municipal ordinances are construed in the same manner as statutory interpretation. One of the precepts of statutory interpretation is to give meaning to each word in a statute and to avoid an interpretation of a statute that would render statutory language superfluous. *Banuelos v. Univ. of Wisconsin Hosps. & Clinics Auth.*, 406 Wis. 2d 439; 988 N.W.2d 627 (2023). The Zoning Board Handbook for Wisconsin Zoning Boards of Adjustment and Appeals provides that “[o]rdinances must be interpreted to give effect to every provision. Interpretations that render part of an ordinance meaningless must be avoided whenever possible.” (p. 82).

2. Analysis.

In response to Ms. Maxwell’s request for reconsideration, Ms. Peterson stated, “The holding tank is not new information as it was mentioned in the application, which was considered as part of the project and thus was part of the plan commission packet.” (Peterson email). Yet neither the applicant’s narrative nor the staff analysis indicates that the holding tank was yet to be installed, nor did either describe the tank’s location. In denying the request for reconsideration, Ms. Peterson stated, “The tank will be located underground, beneath the building, with no exterior evidence and therefore will not constitute a violation of the home occupation provisions.” (Peterson email). This information was not presented to the Plan Commission at the October 1 meeting and was not part of the packet of information that Plan Commission members received.

The staff analysis defers to Mr. Kleist’s own description of his business. “A more detailed description of the operations can be found in the applicant narrative attached to this memo.” (Analysis, p. 4). The sole mention of the holding tank in Mr. Kleist’s narrative is that “waste water is contained in a holding tank.” (Narrative, pp. 1-2). The narrative did not describe the tank’s location or configuration and failed to mention that the required holding tank was yet to be installed on the property.

By failing to fully examine the tank issue, the commission did not consider a critical element of the home occupation ordinance. River Falls Municipal Code § 17.82.020 B (2) provides:

Nothing incidental to the conduct of a home occupation shall be constructed, installed, placed or stored outside the principal building in which it is carried on, nor shall any exterior evidence of a home occupation be

permitted to exist on the lot in question if it is visible from any adjacent or neighboring properties or if it is not in keeping with the residential character of the neighborhood surrounding the lot, except for a sign and off-street parking as is set for the below. (emphasis added)

While the municipal code does not define “principal building,” the definition for “accessory building” in § 17.108.040 provides guidance:

“Accessory building” means any building, **except the principal building** or buildings on a lot. In the case of a house and detached garage on the lot, the accessory building is the garage. (emphasis added)

Therefore, in the context of the home occupation ordinance, Mr. Kleist’s dwelling unit is the principal building, and the large outbuilding is the accessory building. Under §17.82.020 B (2), Mr. Kleist is prohibited from constructing, installing, placing, or storing anything incidental to his home occupation outside of his dwelling unit. The ordinance clearly prohibits installing a wastewater holding tank unless Mr. Kleist intends to install it in his dwelling unit. According to Ms. Peterson’s email, that is not his intent.

Moreover, the commission’s decision and Ms. Peterson’s explanation do not give effect to the first portion of the ordinance (appearing in bold above), but instead rely entirely on the second portion of the ordinance that focuses solely on visible exterior evidence of the business. The first portion is related **to construction outside the principal building** and says nothing of whether the construction is visible from adjacent properties. The second portion of the ordinance deals strictly with **the visible aspect** of the home occupation **on the lot**, regardless of whether it is inside the principal building (e.g., a barber’s chair set up in front a large picture window) or outside the principal building (e.g., a barber’s chair set up in the front yard).

Each portion of the ordinance addresses a different manifestation of business activities, and both portions must be given effect. In relying solely on the visible aspects of Mr. Kleist’s holding tank, the city renders a portion of the ordinance superfluous. This interpretation is an incorrect theory of law.

The plain words of the ordinance prohibit Mr. Kleist from installing the holding tank as part of his home occupation. Because the holding tank is required by state law, Mr. Kleist cannot lawfully operate his business without it, and the permit must be denied.

B. The Plan Commission's decision was arbitrary and capricious and unsupported by credible evidence, representing an act of will instead of judgment, because the applicant did not present credible evidence that each condition of the special use ordinance was met.

1. Statement of law.

Wisconsin law requires that municipal officials make decisions based on credible evidence; doing otherwise results in an impermissible arbitrary and capricious decision that represents an act of will rather than judgment. *Eternalist Found., Inc. v. City of Platteville*, 225 Wis. 2d 759, 593 N.W.2d 84 (Ct. App. 1999).

In Wisconsin, there is no presumption that a conditional use serves the public interest. At every stage, the applicant has the burden of establishing that each condition of the special use ordinance is met. *Delta Biological Resources, Inc. v. Board of Zoning Appeals of the City of Milwaukee*, 160 Wis. 2d 905, 467 N.W.2d 164 (1991).

2. Analysis.

Mr. Kleist failed to meet the burden of establishing that his business meets each of the general standards for home occupations. Section 17.82.020 A (4) provides the following:

A home occupation shall not produce any offensive noise, vibration, smoke, **dust**, odors, heat, gas, glare, electrical or audible interference, nor shall it otherwise create **a risk to health, safety or property of residents and occupations of adjacent and neighboring properties.** (emphasis added)

Mr. Kleist offered no evidence of how dust would be controlled on his property's gravel driveway when it is traversed by delivery trucks multiple times a day.

Nor did Mr. Kleist provide evidence about any risk to health or safety to neighboring properties, particularly regarding the risks to well water and the Kinnickinnic River. To the contrary, Mr. Kleist did not reveal in his application materials that chemicals will be stored onsite at his business and only admitted as much under direct questioning at the October 1 meeting. The staff analysis did not mention chemical storage, and the Plan Commission appears to have had no knowledge of it before the hearing. Having learned of the chemical storage only minutes before the vote to approve, the commission had no evidentiary basis to determine whether chemical storage on the property would create a risk and thereby violate the ordinance.

Mr. Kleist provided only general assurances that because his business is state licensed, it is therefore safe. One commission member stated at the hearing that she was satisfied that the state business licensing process addresses any safety concerns. But Mr. Kleist's current business license does not address all the safety concerns for the proposed relocation to 1149 County Road M. Unlike his current business location, the property has a pond and a wetland near the accessory structure, both of which drain to the Kinnickinnic River. Indeed, at the time of the hearing, Mr. Kleist did not possess the

requisite state approval to install a nondomestic wastewater storage structure (the holding tank) according to Wis. Stat. § 281.41 and Wis. Admin. Code, chapters NR 108 and 213.¹

Mr. Kleist’s business is licensed under Wis. Admin. Code, chapter NR 113, which regulates sewage collection vehicles and sewage disposal. It does not regulate chemical storage, and it is unclear whether the chapter’s regulations extend to a washing facility such as that proposed by Mr. Kleist.

The commission’s reliance on the state business license for his original business location as evidence that the proposed use does not pose a risk to neighboring properties at the new location is unreasonable. Mr. Kleist presented no evidence beyond stating that he possesses a business license. He therefore failed to establish the condition of the special use ordinance that his home occupation must not create a nuisance or risk to neighboring properties.

C. The Plan Commission’s decision was arbitrary and capricious and not supported by credible evidence, representing an act of will instead of judgment, because the proposed use is a commercial enterprise and not a home occupation.

1. Statement of law.

Wisconsin law requires that municipal officials make decisions based on credible evidence; doing otherwise results in an impermissible arbitrary and capricious decision that represents an act of will rather than judgment. *Eternalist Found., Inc. v. City of Platteville*, 225 Wis. 2d 759, 593 N.W.2d 84 (Ct. App. 1999).

2. Analysis.

River Falls Municipal Code § 17.82.020 A (2) requires a home occupation to be “clearly incidental to and secondary to” to the permitted principal use of the dwelling unit as a residence.

River Falls Municipal Code § 17.82.020 E provides the following:

The following are examples of home occupation uses permitted within the city of River Falls, which meet the intent of this section subject to compliance with the conditions of this chapter:

1. The office or studio of an accountant, architect, artist, attorney, ceramist, engineer, interior designer, landscape architect, photographer, dentist,

¹ Mr. Kleist applied for state approval of his nondomestic wastewater holding tank on November 17, 2024. He applied under his own name, rather than his business name, and indicated that the source of wastewater would be “domestic wastewater from toilet, hand wash sink, shower, etc.” and “motor vehicle fluids (oil, grease, etc.) drippings or spillage from vehicle or equipment service areas.” He did not indicate that the wastewater would include commercial wastewater from washing septage from portable restroom units. To appellants knowledge, Mr. Kleist has not received state approval.

physician or other licensed medical practitioner, teacher and practitioners in similar fields of service;

2. Dressmaking, tailoring, millinery, catering, and telephone or mail services;
3. Beauty parlors, beauty salons or barber shops;
4. Family home day care services, not to exceed five children.

The occupational examples cited, without exception, use equipment normally found in homes: computers, phones, art supplies, scissors, chairs, tables, cameras, ovens, and sewing machines. The ordinance, in citing a specific though nonexhaustive list of examples, is clearly intended to allow relatively unassuming businesses that quietly provide personal or professional services or that are creative in nature to operate out of residences. The ordinance is intended to ensure quietude in neighborhoods by limiting commercial activity.

As noted in American Law Reports:

That a ‘home occupation’ must be a ‘customary’ one or one that is ‘customarily incidental’ to the use of a dwelling as a residence has been spelled out in substance in most of the ordinances in question, and even where not so spelled out has been generally recognized by the courts as an essential attribute. In determining whether this requirement has been met, the courts have generally inquired into whether, either from the standpoint of the manner of operation or from the kind of occupation involved, the activities amounted to a ‘commercial enterprise’ or the like which went beyond a mere incident to residential use of the premises or was not customarily carried on in the home, or which, if allowed, would have an adverse effect upon the over-all scheme of zoning. 73 A.L.R.2d 439. (Originally published in 1960)

In *State ex rel. A. Hynek & Sons Co. v. Board of Appeals*, 267 Wis. 309, 66 N.W.2d 623 (1954), homeowners who operated a commercial photography studio in a commercial neighborhood sought to move their photography business to their home and sought a home occupation permit.² In ruling that the zoning board of Racine did not act unreasonably in denying the use as a home occupation, the court noted “It appears to us that the term of ‘home-occupation’ requires considerable stretching to make it applicable to an established business which is simply moved from a commercial neighborhood to a residential one, there to be conducted in a part of the structure designed for that purpose alone and not for living quarters, although the remainder of the building is designed and will be used for a residence.” *Id.* at 626-627. In this case, Mr. Kleist is relocating his current business activities to an enormous 11,200-square-

² Although the River Falls ordinance specifically allows photographers to operate a home occupation, the Racine ordinance in question was otherwise nearly identical to that of River Falls.

foot building on his property that he designed for the very purpose of housing his business.³

Likewise, in an unpublished disposition, the Wisconsin Court of Appeals held in *Hohl v. Columbia County Board of Adjustment* No. 2005AP3086 (Nov. 2, 2006) that the board acted reasonably in denying a home occupation permit to a petitioner who lived on a 770-acre farm and sought to operate a business storing and selling liquid propane gas, which included several large trucks for picking up and delivering the gas. The court stated that, “The business is not clearly incidental or secondary to the use of the property for residential purposes...In essence Hohl is seeking permission to run a commercial operation.”

Other jurisdictions have considered requests for home occupation permits with facts similar to the Kleist application. In New Jersey, a court found that a septic-tank-cleaning service involving arrival and departure of work trucks, some of which contained septic waste, bore no resemblance to the types of activities traditionally recognized as home occupations. *Adams v. DelMonte*, 309 N.J. Super. 572, 707 A.2d 1061 (App. Div. 1998).

In Pennsylvania, a court found that a roofing business involving daily loading and unloading of trucks destined for work sites and the use of outbuildings for storage was not a home occupation because the activities were not customary for home occupation nor clearly incidental and secondary to principal residential use. *Agnew v. Bushkill Tp. Zoning Hearing Board*, 837 A.2d 634 (Pa. Commw. Ct. 2003).

Parking and storing commercial vehicles have generally been held as unacceptable accessory uses of a residence:

- Storing commercial trucks in a three-stall garage could not be deemed a use accessory to a residential dwelling. *Dumais v. Somersworth*, 101 N.H. 111, 134 A.2d 700 (1957).
- A board of adjustment's determination allowing a property owner to construct a barn next to his residence to store a road grader, used in his construction business, as an accessory use was reversed upon objection of neighbors. *Becker v. Town of Hampton Falls*, 117 N.H. 437, 374 A.2d 653 (1977).
- Storing heavy equipment used in an asphalt business is not an accessory use of rural-residential property. *Taddeo v. Com.*, 49 Pa. Commw. 485, 412 A.2d 212 (1980).

Mr. Kleist's business involves daily truck loading, unloading, and delivery; installing an underground holding tank to contain septage runoff; storing chemicals; storing delivery vehicles and other commercial equipment; and storing 400 Porta Potty units in an enormous accessory building built next to his residence. None of these activities are customary for home occupation.

³ In seeking approval of his building plans for the structure, Mr. Kleist expressed to staff of St. Croix Inspections that he intended to “seek whatever he needs from zoning to make this building usable for his business.” See Melissa Cook email to Emily Shively, August 24, 2023.

There is nothing about this business that is “incidental and secondary” to use of the dwelling unit as a residence. Mr. Kleist is seeking permission to run a commercial operation. The permit must be denied.

Appendix (separate attachment)

- Peterson email
- Kleist application for Small Capacity Non-Domestic Wastewater Holding Tank Plan Approval
- Melissa Cook email to Emily Shively, August 24, 2023

RE: Reconsideration of special use permit

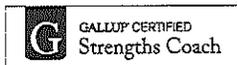
From Amy Peterson <apeterson@RFCITY.ORG>
Date Wed 10/9/2024 2:04 PM
To Cindy Maxwell <ckmaxwell@hotmail.com>

Ms. Maxwell,
Staff reviewed your email along with the home occupation application. The holding tank is not new information as it was mentioned in the application, which was considered as part of the project and thus was part of the plan commission packet. The tank will be located underground, beneath the building, with no exterior evidence and therefore will not constitute a violation of the home occupation provisions. Chemicals are regulated by the WIDNR as part of the operator's licensure. If plan commission determined that they did not have enough information to make a decision at the October 1 meeting, they could have tabled the item and requested more information before making a decision.

Regards, Amy

Amy M. Peterson, AICP, CPM (she/her) | Community Development Director
Restorative | Harmony | Learner | Individualization | Discipline

City of River Falls | 222 Lewis Street | River Falls, WI 54022
715.426.3425 | www.rfcity.org



From: Cindy Maxwell <ckmaxwell@hotmail.com>
Sent: Tuesday, October 8, 2024 10:13 AM
To: Amy Peterson <apeterson@RFCITY.ORG>
Cc: Brad Gilbertson <bkgilbert88@att.net>; awgoner@gmail.com; andrew@piercecountyjournal.news; kdoolittle@orourkemediagroup.com
Subject: Reconsideration of special use permit

**** CAUTION:** This email originated from outside of the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe. ******

Dear Ms. Peterson,

I am writing regarding the home occupation special use permit that was approved by the Plan Commission last week for Justin Kleist and Five Star Restroom Rentals. I am requesting that the special use permit be reconsidered based on new evidence that arose after the public comment period closed at the meeting on Tuesday, October 1.

Just before the commission took the vote on the matter, Mr. Kleist, seated in the audience and speaking to members of the public rather than to the commission, stated that he was not yet ready to operate because he still had to install the holding tank required under state law for his business.

It is unclear whether the commission was aware of this fact. It was not part of the analysis given to the commission by city staff—nor was the fact that Mr. Kleist would be storing chemicals onsite, which only came out upon direct questioning from the public at the meeting.

City ordinance 17.82.020 relating to home occupations states that "Nothing incidental to the conduct of a home occupation shall be constructed, installed, placed or stored outside the principal building." Mr. Kleist is therefore prohibited by city ordinance from installing the holding tank.

This matter deserves to be reconsidered, as the analysis did not include facts pertinent to an adequate review of the request, as noted in public comments at the hearing and as stated herein. Mr. Kleist will immediately be in violation of his special use permit and city ordinance once tank installation begins. It behooves all parties to resolve the matter before it gets to that point.

Best regards,
Cindy Maxwell

Notice: Under s. 281.41, Wis. Stats. and chs. NR 108 and 213, Wis. Adm. Code, Wisconsin Dept. of Natural Resources (hereafter WDNR) approval of non-domestic wastewater storage structures is required prior to installation. Owners of proposed non-domestic wastewater holding tanks must complete and submit this Plan Approval Application form. WDNR plan review and approval under s. 281.41, Wis. Stats. and ch. NR 108, Wis. Adm. Code, may be required as stated in Part III of this form. Personally identifiable information will be used for program administration and may be made available to applicants as required under Wisconsin Open Records law [ss. 19.31 - 19.39, Wis. Stats.].

Definitions: Wastewater originating from residential plumbing fixtures and appliances such as sanitary (toilets), bath, laundry, dish wash, garbage disposal, and general cleaning is defined as **domestic wastewater**. Wastewater from restaurants is also generally considered as domestic wastewater. This wastewater is typically discharged from dwellings and from commercial establishments and is commonly called sewage. **Non-domestic wastewater** may include wastewater from any other source including industries and commercial operations such as vehicle service facilities, vehicle storage facilities, kennels, car washes, milkhouses, etc. **Mixed wastewater** refers to a combination of domestic and non-domestic wastewater.

Instructions: Read and complete all parts of this form.

- Complete and submit this form to the WDNR for non-domestic wastewater or mixed wastewater holding tank proposals that include proposed installation of holding tank products pre-approved by Wisconsin Department of Safety and Professional Services. WDNR does NOT charge a fee for plan review. If the holding tank proposal is for mixed wastewater, you must also obtain approval from the Wisconsin Department of Safety and Professional Services for the domestic wastewater component prior to installation.
- Submit completed form 3400-185 along with any supporting documentation or plan attachment if required by Part III of this form via one of the following options:
 - o Email: DNRHoldingTankReview@Wisconsin.gov
 - o FAX: 608-267-2800
 - o Mail: Jason Knutson - WY/3, Department of Natural Resources, PO Box 7921, Madison, WI 53707-7921
- Any approval granted under Part IV of this form will be void unless you complete and submit this form along with any required supplemental documentation or plans to the WDNR prior to commencing installation.

All information must be completed for an approval to be valid.

Part I - Applicant Information				
Owner or Business Name <i>Justin Hliest</i>	(Area Code) Telephone Number	Email Address		
Street Address <i>1149 Cty Rd M</i>	City <i>River Falls</i>	State <i>WI</i>	ZIP Code <i>54022</i>	County <i>St. Croix</i>
Address where holding tank will be installed (if different than owner / business address above)	City	State	ZIP Code	County
Provide a brief description of the activity or business that will be generating wastewater requiring storage and disposal and indicate the approximate design flow rate, general wastewater type and constituents (check appropriate boxes below).				
Description of Activity / Business:				
Design Flow Rate: <u><i>4150</i></u> gallons/day				
General Wastewater Type: <input type="radio"/> Non-domestic only <input checked="" type="radio"/> Mixed non-domestic and domestic				
Wastewater Source/Constituents (select all that apply):				
<input checked="" type="checkbox"/> Domestic wastewater from toilet, hand wash sink, shower, etc.				
<input type="checkbox"/> Rainwater, snowmelt, or washwater from vehicle or equipment storage areas.				
<input checked="" type="checkbox"/> Motor vehicle fluids (oil, grease, etc.) drippings or spillage from vehicle or equipment service areas.				
<input type="checkbox"/> Animal, Fruit / Vegetable or Food processing wastes (describe - provide attachment if necessary): _____				
<input type="checkbox"/> Other (describe - provide attachment if necessary): _____				
Designer Company Name <i>BIRD Plumbing Inc.</i>	Name of Designer <i>Shawn Bird</i>	WI License Number <i>226900</i>		
Email Address <i>sbird@frontier.net.net</i>	(Area Code) Telephone Number <i>715-246-4516</i>	(Area Code) Fax Number		
Address <i>1432 120th St.</i>	City <i>New Richmond</i>	State <i>WI</i>	ZIP Code <i>54017</i>	

Small Capacity Non-Domestic Wastewater Holding Tank Plan Approval Application

Form 3400-185 (R 6/20)

Page 2 of 3

Part II - Tank Information

Proposed holding tanks receiving non-domestic wastewater are generally subject to the WDNR site and design requirements of ss. NR 213.08 and 213.15, Wis. Adm. Code. However, proposed holding tank designs in conformance with s. SPS 384.25, Wis. Adm. Code and applicable sections of chs. SPS 382, 383, and chs. NR 811 and 812, Wis. Adm. Code will be acceptable to WDNR.

A. Has Wisconsin Dept. of Safety and Professional Services (DSPS) pre-approved the proposed holding tank product specifically for use in holding tank applications, and will the proposed tank(s) meet DSPS specifications contained in s. SPS 384.25, Wis. Adm. Code, for water tightness, strength, and protection from the elements and will the tank(s) be installed in accordance with the manufacturer's specifications?

Yes No

Tank Manufacturer	Tank Material	No. of Tanks	Total Capacity (gallons)
Wiesler	Concrete	1	3000

B. Will the tank(s) have an inspection manhole?

Yes No

C. Will the tank(s) have a vent?

Yes No

D. Will the tank(s) be equipped with a high-level alarm?

Yes No

E. Will the tank(s) be located in compliance with all of the following minimum separation distances?

Yes No

- 8 feet from all public water supply pipelines (s. NR 811.75(1)(a), Wis. Adm. Code)
- 10 feet from all private water supply / service pipelines (s. SPS 383.43(8)(l), Wis. Adm. Code)
- 25 feet from all private water supply wells (s. NR 812.08(4)(b)3, Wis. Adm. Code)
- 200 feet from all community water supply wells (s. NR 811.12(5)(d)3, Wis. Adm. Code)
- 50 feet from a community water supply well if the holding tank will serve a community water supply pumping or treatment building (s. NR 811.25 (1)(h)2c, Wis. Adm. Code) (Note: This alternative separation distance is a special exception to the standard 200 feet minimum separation distance from a community water supply well that may apply if the proposed holding tank is installed below the ground surface and will only contain water from: a pump gland drainage, pressure relief or control valve, sampling faucet, or floor drainage)

If the answer to the above is No, contact the WDNR to request consideration of a variance for all code setback distances that cannot be met prior to submittal of this form and installation of the holding tank, and indicate below which separation distance(s) cannot be met and why not:

F. Will the tank(s) be located outside floodway and wetland areas?

Yes No

If "No", contact the WDNR to request consideration for coverage under the applicable WDNR permit(s) for construction within a wetland or floodplain and include a copy of such permit(s) or other WDNR written authorization with this form and prior to tank installation.

G. Will the holding tank contents be hauled off-site by a licensed septage or wastewater contract hauler?

Yes No

If yes:

Hauler Company: <i>Duress Septic</i>		License No. <i>1978</i>	
Address: <i>147 Myrtle W</i>	City: <i>River Falls</i>	State: <i>WI</i>	ZIP Code: <i>54017</i>

H. Will the holding tank contents be hauled to a publicly-owned wastewater treatment facility covered by a Wisconsin Pollutant Discharge Elimination System (WPDES) discharge permit, and have the owner of the tank and the licensed hauler (noted in item G) been notified of the disposal location?

Yes No

If "Yes", indicate the name or location of the receiving facility (required):

If "No" contact the WDNR to request consideration of an acceptable alternate discharge option for the holding tank contents and include a copy of the WDNR written authorization with this form and prior to tank installation.

Signature of Designer (required)	Date Signed <i>11-17-24</i>
Signature of Owner (required) <i>Jim Hubert</i>	Date Signed <i>11-17-24</i>

Amy White

From: Emily Shively <eshively@RFCITY.ORG>
Sent: Friday, August 25, 2023 8:28 AM
To: David B. Hovel
Subject: FW: Kleist building plans
Attachments: Keist Building App_part1.pdf; Keist Building App_part2.pdf; Keist Building App_part3.pdf

Hi Dave,

Justin Kleist has submitted building plans for his shed on Cty M in the URA. On his application he states that the building will be used for storage of farm equipment. Is there anything on the plans that would lead you to think it may be used for other purposes?

Thanks!
Emily

Emily Shively, AICP, ASLA
Assistant Director of Community Development
City of River Falls
222 Lewis Street, River Falls, WI 54022
P: 715.426.3437 eshively@rfcity.org



From: Melissa Cook <mcook@allcroix.com>
Sent: Thursday, August 24, 2023 2:46 PM
To: Emily Shively <eshively@RFCITY.ORG>
Subject: RE: Kleist building plans

**** CAUTION:** This email originated from outside of the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Hi Emily,

I've attached the plans and his building application. (There is actually 30 pages to his application but I've just attached 9- let me know if you want the entire thing.)

Here's the issue for us: Mr. Kleist has told us that he fully intends to seek whatever he needs from zoning to make this building usable for his business.

We should not even have his application in here as AG buildings are exempt by the state for permitting for construction. (He will still need a state permit for the electrical work.)

If his plan does come to fruition, he will need to send his building plans to the state for commercial plan review. At that point anything that was not done to code would have to be brought to code. And at first glance, his building plans do not appear to meet commercial code.

Response to Appeal and Support for PC Decision

**From: Five Star Restroom Rental,
LLC**

MEMORANDUM IN SUPPORT OF PLAN COMMISSION’S DECISION

SPECIAL USE PERMIT FOR A HOME OCCUPATION

5 Star Restroom Rentals, LLC (Kleist)

TO: City of River Falls – Board of Appeals

FROM: 5 Star Restroom Rentals, LLC
(Through its attorneys, Lommen Abdo, P.A.)

DATE: January 23, 2025

RE: Memorandum in Support of Decision by the City of River Falls Plan Commission Granting a Special Use Permit

The City of River Falls Plan Commission issued a decision granting a Special Use Permit to 5 Star Restroom Rentals, LLC. The decision was lawful, proper and based on substantial evidence. The Board of Appeals should affirm the decision of the Plan Commission.

1. Procedural Background:

Justin and Alison Kleist reside at 1149 County Road M in the Kinnickinnic Township. Their property is within the agricultural zoning district and the Urban Reserve Area. The site includes the Kleists’ home and an accessory building (sometimes referred to as the “shed”).

The Kleists own and operate a small family business that rents portable restroom units, primarily for construction sites and local events. The business operates under 5 Star Restroom Rentals, LLC (“5 Star”). Justin Kleist, Alison Kleist and their daughter are employees of the business. The Kleists applied on behalf of 5 Star for a Special Use Permit to operate their family business as a home occupation at 1149 County Road M.

City staff reviewed the application and analyzed the existing and proposed structures, architectural plans, neighboring uses, parking areas, driveway locations, highway access, traffic generation, drainage, sewerage, water systems, and the proposed operation of the business. (Mehlhorn Memorandum at p.6). This review analyzed the facts in conjunction with the Special Use Ordinance. Following their extensive review, City staff issued a Memorandum dated October 1, 2024, recommending approval of the Special Use Permit, with conditions.

A public hearing occurred on October 1, 2024, where additional facts, evidence and public comments were presented and received by the Plan Commission. Senior Planner Harley Mehlhorn reported to the Plan Commission that “the request was heavily analyzed by staff.” (Minutes of 10-1-24 Public Hearing). Following the public hearing, the Plan Commission

adopted resolutions approving the Special Use Permit.¹ Two individuals (“Appellants”) submitted a joint “notice of appeal” dated October 24, 2024, thus necessitating this appeal before the Board of Appeals.

2. Evidence Before the Plan Commission:

The Plan Commission received and analyzed substantial evidence in making its determination that 5 Star is, and will be, compliant with the home occupation ordinance. Substantial evidence is shown in the Special Use Permit Application, Memorandum from Senior Planner Harley Mehlhorn, and Minutes of the October 1, 2024 Public Hearing, all of which are incorporated in this Memorandum.

The business is fully insured, including commercial general liability, automotive, workers’ compensation and unemployment coverages. Justin Kleist holds a Master Operator’s Septage License through the Wisconsin DNR. The DNR heavily regulates septage businesses, such as 5 Star. All toilet units are pumped at customer sites and never returned to the shop before they have been pumped empty, per DNR regulations. DNR regulations prohibit the transport of units containing waste. Disposal of the pumped septage occurs at licensed waste water treatment facilities before the units are returned to the shop. Wastewater is lawfully disposed of at the Baldwin Wastewater Treatment Plant. All units are returned to the shop empty and clean.

The shed serves primarily as a storage warehouse for units that are not in use. The shed comprises 11,200 square feet. Not more than 2,800 square feet (less than 25%) will be used for the home occupation, which includes areas for storage and a wash bay. The units are detailed (polished, wiped, staged, etc.) within the shed prior to rental. Trucks are occasionally washed onsite. All detailing and washing will occur within the shed. All onsite wastewater is fully contained within an underground concrete holding tank, which is pumped and disposed of at a licensed waste water treatment facility, as with all holding tanks.²

The only “chemicals” used in the home occupation are common household cleaners that are approved by the DNR, non-hazardous and biodegradable. They are Dairy Brite (used by dairy farms and in food applications), Soft Scrub (kitchen cleanser, found in retail stores) Scalex (household toilet and bathroom de-scaler), dish soap and bleach. No other chemicals are used.

No evidence was presented to the Plan Commission that could have supported a denial of the Special Use Permit request. For example, Appellants commented as follows:

¹ The Special Use Permit Application, Memorandum from Senior Planner Harley Mehlhorn dated October 1, 2024, Minutes of the October 1, 2024 Public Hearing and the Plan Commission Resolution No. 2024-08 are all referenced and incorporated within this Memorandum in their entirety.

² The holding tank is fully installed, licensed and functional. It is a below-ground concrete holding tank. All proper approvals and permits are in place. Copies accompany this Memorandum. Septic holding tanks are permitted for accessory structures throughout the county, regardless whether a home occupation occurs at the site. *See St. Croix County Code of Ordinances, Subchapter I, §17.09 270.*

“The next speaker was Brad Gilbertson who was likewise opposed to the request. He stated concerns over contaminants and airborne particulates due to his domicile’s proximity to the business. Gilbertson also had concerns over property value impacts.” (Minutes p.4).

“The next speaker was Cindy Maxwell who also spoke for a second time, stating that the application of the SUP is inconsistent with what was said during the hearing and stating, particularly regarding the number of vehicles. Also stating concerns over the chemicals that the business stores on-site.” (Minutes p.5).

No data, information or other evidence was offered in support of any of the above comments. There was nothing presented, other than speculation, that “contaminants and airborne particulates” would be produced, released or otherwise create a risk. No evidence was presented that the household “chemicals” used for cleaning would somehow escape the holding tank. No evidence was presented that the home occupation would somehow impact property values.

3. The Board of Appeals Should Uphold the Decision of the Plan Commission:

A. Substantial Evidence Supports the Plan Commission’s Decision.

The Plan Commission must support its approval or denial of a Special Use Permit based on substantial evidence. "Substantial evidence" means facts and information, other than merely personal preferences or speculation, directly pertaining to the requirements and conditions an applicant must meet to obtain a Special Use Permit and that reasonable persons would accept in support of a conclusion (§62.23(7)(de)1.b., Wisconsin Statutes). Code §17.104.040B.1.

“Substantial evidence” is evidence such that a reasonable person could reach the same decision as the plan commission. *Oneida Seven Generations Corp. v. City of Green Bay, 2015 WI 50, ¶43, 362 Wis. 2d 290, 865 N.W.2d 162*. Substantial evidence is “less than a preponderance of the evidence,” but “more than ‘a mere scintilla’ of evidence and more than ‘conjecture and speculation.’” *Oneida Seven at ¶44*.

Facts and information unequivocally establish that 5 Star has met, or agreed to meet, all of the General Standards for a Special Use Permit. The proposed home occupation involves the sale of goods or services, specifically the provision of restroom units to customers for a fee. Code §17.82.020A.1. The business will occur within a portion of the shed, incidental to residential use for the remainder of the building. It will be conducted entirely within the principal building and be incidental and secondary to the permitted principal use of the building as space for residential use. Code §17.82.020A.2. The home occupation will be conducted by the Kleists, who reside on the premises. No more than one person other than family members can be engaged in the business. Evidence established that not more than one person, other than members of the Kleist family, will be regularly engaged or employed by the business. Code §17.82.020A.3. The business, including the storage and detailing of the restroom units, will occur within the shed. All waste water will be captured in a concrete holding tank, pumped, and disposed of as required by law. Thus, it will not produce any offensive noise, vibration, smoke, dust, odors, heat, gas, glare, electrical or audible interference, nor will it create a risk to health, safety or property of residents

or occupants of adjacent and neighboring properties. Code §17.82.020A.4. Finally, deliveries will not occur between the hours of ten p.m. and six a.m. Code §17.82.020A.5. All of the general standards required for a Special Use Permit are supported by substantial evidence.

Substantial evidence also establishes that all of the Structural Standards are satisfied. No more than 2,800 square feet of the building will be used for storage and cleaning, which is less than 25% of the total square footage. Code §17.82.020B.1. All of the storage and detailing will occur within the shed. Nothing incidental to the business will be constructed, installed, placed or stored outside of the shed, nor be visible to neighbors. Code §17.82.020B.2. As mentioned, there is an underground holding tank in place, which is not visible (it is below ground). Off street parking is provided onsite. Code §17.82.020B.3.

Because substantial evidence establishes that the requirements for a Special Use Permit have been met, the City is required to grant the permit. Wis. Stat. §62.23(7)(de)2.a. As Senior Planner Harley Mehlhorn correctly states in his Memorandum of October 1, 2024, Wisconsin Act 67 (2017) limits the discretion that municipalities have when approving or denying a Special Use Permit. If an applicant meets or agrees to meet all of the requirements and conditions specified in the ordinance, or those imposed by the board, the municipality “shall grant” the permit. Wis. Stat. §62.23(7)(de)2.a. (emphasis supplied).

Conversely, the City cannot deny a Special Use Permit without substantial evidence demonstrating that the requirements of the ordinance cannot be met. There was no evidence whatsoever, nor any explanation before the Plan Commission, as to how the storage or detailing of already cleaned restroom units entirely within the shed could cause “contaminants and airborne particulates” to encroach on neighboring properties. There was not any evidence or explanation of how water and commonly used biodegradable household soaps and cleaners could escape the concrete holding tank and become a risk. No evidence was submitted (other than unsupported speculation) that neighboring property values would be negatively impacted by the home occupation. Such claims are wholly speculative, unsupported by evidence, and simply demonstrate the personal preferences of a few individuals who prefer the Kleists be prohibited from engaging in their family business as a home occupation.

As set forth above, substantial evidence supports the Plan Commission’s decision approving the Special Use Permit. There is no evidence in the record that could support a denial of the application. “Concerns” over property values, odors or chemicals are unfounded and totally unsupported by any evidence, let alone substantial evidence.

4. The Board Should Reject Appellants’ Arguments that the Plan Commission Violated the Law.

Appellants argue, as grounds for their appeal, that the Plan Commission acted arbitrarily and capriciously in granting the permit request, and violated the law. “Arbitrary and capricious” means the Plan Commission acted without evidence. The Plan Commission certainly did not act without evidence. Substantial evidence supports its decision, as explained above. It is difficult to imagine a more thorough summary and analysis (“heavily analyzed by staff”) of the facts as they apply to the ordinances, than as set forth in the October 1, 2024 Memorandum.

The Plan Commission also appropriately applied the law. Appellants contend the Plan Commission did not correctly apply the structural standards set forth in Code §17.82.020B(1) and (2), which provide:

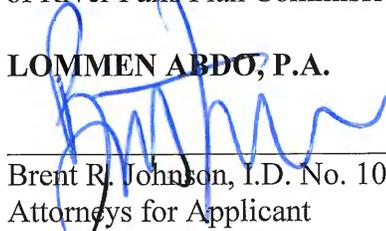
1. Not more than twenty-five (25) percent of the gross floor area of the dwelling unit nor twenty-five (25) percent of the gross floor area if conducted in an accessory structure, shall be used in the conduct of the home occupation.
2. Nothing incidental to the conduct of a home occupation shall be constructed, installed, placed or stored outside of the principal building in which it is carried on, nor shall any exterior evidence of a home occupation be permitted to exist on the lot in question if it is visible from any adjacent or neighboring properties or if it is not in keeping with the residential character of the neighborhood surrounding the lot, except for a sign and off-street parking as is set forth below.

Appellants argue the “ordinance does not permit Mr. Kleist to install a tank unless it will be inside his home.” Notice of Appeal, p.4. Such an interpretation would be unreasonable and absurd. A more reasonable and correct application of the ordinance is that (1) not more than twenty-five (25) percent of the gross floor area of the accessory structure (shed) shall be used in the conduct of the home occupation, and (2) no equipment or anything else incidental to the home occupation will be constructed, placed or stored outside where it is visible. In other words, there shall be no “exterior evidence of a home occupation.” Code §17.82.020B(2). The ordinance does not prohibit an underground holding tank. It prohibits items outside the building that would be visible from neighboring properties. As discussed, 5 Star is compliant with both standards.

Finally, Appellants express concern that the holding tank was not yet installed. However, the Kleists have a fully installed, functional, licensed and permitted accessory structure holding tank. A copy of the permit, recorded Accessory Structure Affidavit for the holding tank, and other related documents are enclosed with this Memorandum.

Justin Kleist, Alison Kleist and 5 Star Restroom Rentals, LLC respectfully ask the Board of Appeals to affirm the decision of the City of River Falls Plan Commission.

LOMMEN ABDO, P.A.



Brent R. Johnson, I.D. No. 1025761
Attorneys for Applicant
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Telephone: (715) 381-7104
Fax: (612) 436-2842
brent@lommen.com

Community Development Department

222 Lewis Street
River Falls, WI 54022
715.425.0900
www.rfcity.org



MINUTES PLAN COMMISSION OCTOBER 1, 2024 CITY COUNCIL CHAMBERS

Members Present: Dan Toland, Chris Holtkamp, Diane Odeen, Rob Gormanson and Lisa Moody, Michael Woolsey
Members Absent: Rebecca Prendergast
Staff Present: Emily Shively, Harley Mehlhorn
Others Present:

CALL TO ORDER

Meeting convened at 6:30 p.m.

APPROVAL OF MINUTES

M/Moody, S/Holtkamp to approve minutes. Motion carried 5/0.

PUBLIC COMMENTS

None.

ORDINANCES AND RESOLUTIONS

PUBLIC HEARING: Special Use Permit for supportive housing facility (Red's Place) on Highway 29 (Northeast area of PID 276011410640) (Danielson Development)

The Mayor opened the Public Hearing. Harley Mehlhorn provided a presentation. Applicant is requesting an update to the Special Use Permit that was granted in May to accommodate for additional units and building height to allow for broadening of supportive housing services provided. The proposed site is 4.5 acres and zoned R2 multifamily which makes the Special Use Permit necessary. The supportive housing facility with services and amenities for adults with Autism will include 73 units total. The site plan remains the same as previously approved, the building height will change from two stories to three stories.

City staff found no concerns and recommends the Plan Commission approve the resolution for the Special Use Permit with a few conditions which include the permit being contingent upon approval of Red's Place final plat by City Council, enhanced landscaping to be planted along eastern perimeter of the property, and the development shall be in conformance with approved plan set dated September 5, 2024.

Adam Johnson, who lives near the new development shared his concern with the height of the third story causing privacy issues for surrounding properties. He would appreciate privacy elements in the design.

Don Nelson discussed concern with the access road to the development. He was referring to the access drive to Larsen Park, which is emergency only. He also discussed property values and security of the housing unit for the residents.

Dick Rinehart shared comments regarding traffic, and speed limits in the area. More traffic in that area causes safety concerns.

Sarah Johnson shared her concern for the safety of the residents of Red's Place.

Bruce Danielson, founder of Red's Place addressed the concerns. Danielson shared who will be served at Red's Place, and the additional units allow for elderly parents to live with their adult autistic child. Danielson explained the residents will be living in a building that was designed by an architect who has a child with Autism. The building has multiple safety features as this a huge responsibility to take on residents with a disability and keep them safe. He stated he worked with the Wisconsin DOT regarding traffic safety issues.

The site will be excavated about twelve feet with landscaping added for privacy. Danielson addressed the property value concern explaining that it is a facility much like the nearby Comforts of Home.

Danielson further explained they worked for the last two and a half years to address any issues for the residents of Red's Place and to remain good neighbors in the process. He stated this facility is non-profit, not out to make money, but to fulfill a need and a promise to a friend.

The Mayor closed the public hearing.

Holtkamp asked whether balconies on the units were planned. Danielson stated they are not. There was discussion regarding the Special Use Permit and City Council approval. Special Use permits are granted with the Plan Commission and do not go to Council. Holtkamp asked for clarification where the facility will be located on the lot. The location, setbacks, and access road locations were shared by Mehlhorn.

M/Odeen, S/Holtkamp made a motion to approve the special use permit.

Motion carried 5/0

PUBLIC HEARING: Special Use Permit for a home occupation at 1149 County Highway M (Kleist)

The Mayor opened the public hearing.

Harley Mehlhorn gave a presentation. He stated that this is a request for a special use permit for a home occupation. He began the presentation by explaining the Urban Reserve Area cooperative boundary agreement which gives the City of River Falls land use authority over a portion of the Kinnickinnic Township and that the subject site is within said portion. Mehlhorn proceeded to give background information on the location of the subject site and explained the current zoning of the property. Mehlhorn went on to provide the code definition of a home occupation and the considerations contemplated during the review of a standard home occupation permit, the types of uses outlined in code for a home occupation, and then the standards that code outlines for a typical home occupation permit to be granted. Mehlhorn then described the operations and site layout of the proposed Five Start Restroom Rentals home occupation, noting that the Wisconsin Department of Natural Resources (DNR) heavily

regulates the business. Mehlhorn went on to state that staff finds the operations consistent with code standards and outlined the five conditions of approval recommended by staff. He then outlined the process for grievances or complaints outlined by code. Mehlhorn concluded his presentation by providing the staff recommendation of approval with conditions.

The mayor then opened the floor for public comment.

A number of residents spoke regarding the item.

The first to speak was Cindy Maxwell who was opposed to the Special Use Permit stating that the recommendation of approval is based on an inadequate analysis. Maxwell felt there were inconsistencies between the proposed operations of the home occupation and the standards outlined in the ordinance and asked the Plan Commission to deny the request.

The next speaker was Ian Lewenstein who was also opposed to the Special Use Permit, stating he feels that the analysis of the SUP uses faulty logic and that the proposed operations are inconsistent with the ordinance, citing the intensity and scale of the business.

The next speaker was Brad Gilbertson who was likewise opposed to the request. He stated concerns over contaminants and airborne particulates due to his domicile's proximity to the business. Gilbertson also had concerns over property value impacts. Gilbertson requested the Plan Commission deny the request.

The next speaker was Elizabeth Kleist who stated that she is the applicant's eldest daughter. Elizabeth Kleist spoke to the operations of the business and that she is the only one working for the business besides her father, the applicant.

The next speaker was Tom Schreiber who was opposed to the project on concerns of safety. Schreiber stated he is concerned about chemical particulates and well water contamination.

The next speaker was Craig Greenwood. Greenwood stated that the shed that the proposed business would operate from is proximal to Mr. Gilbertson's home, citing concerns that a portable restroom business would not be compatible with such proximity to a residence.

The next speaker was Justin Kleist, the applicant and business owner. Justin Kleist began by stating his dedication to the community. Justin Kleist went on to describe the specific operations of his business; stating that the business only operates two trucks and has one full time employee beyond himself. Further stating that all chemicals used in his business are regulated by the Department of Natural Resources. He explained that the trucks and portable restroom facilities come back to the site fully pumped without any waste material. Mr. Kleist explained that many other similar businesses operate out of agrarian residential properties. Mr. Kleist then spoke regarding the sufficiency of space provided by the proposed storage area, stating that at any one time no more than fifty to one-hundred are on-site at any given time, with the rest being on customer sites.

The next speaker was Greg Erickson. Erickson stated that he felt a conflict with the intent of the Urban Reserve Area and the proposed business. Erickson then raised questions regarding the financing of the project and how Mr. Kleist received financing prior to the SUP being issued. He then stated his concerns over environmental impacts and conservation as it relates to the proposed business.

The next speaker was Dick Reinhart who stated that he felt the proposed business would be more appropriate in an industrial park and was concerned that the business could impact future annexations and development.

The next speaker was Brad Gilbertson who spoke for a second time. Gilbertson stated that he felt it was not right that the SUP, once approved by the Commission, would not need approval by Council. He finished by reiterating his environmental concerns.

The next speaker was Cindy Maxwell who also spoke for a second time, stating that the application of the SUP is inconsistent with what was said during the hearing and stating, particularly regarding the number of vehicles. Also stating concerns over the chemicals that the business stores on-site.

The next speaker was Justin Kleist who responded to the concerns regarding the amount of vehicles his business utilizes, which according to Kleist is limited to the amount as outlined in the ordinance.

The Mayor then closed the public hearing and opened the Plan Commission hearing.

The Mayor entertained a motion prior to the Commission discussion and comment.

Motion to approve M/Holtkamp S/Odeen.

Odeen commented on the project, stating the need for portable restroom facilities and that she is heartened that the chemicals for the business are to be regulated by the DNR.

Holtkamp then asked what the remaining balance of the shed structure was to be used for, which the applicant responded to stating personal use. Holtkamp then asked staff if the twenty-five percent limitation on area is structure by structure or total, which Mehlhorn responded to by stating it is building by building.

Woolsey stated his difficulty in making the proposed business fit with the analogous uses provided by the ordinance.

Odeen then asked Mehlhorn if the examples of uses listed in the home occupation section of code or the standards are what is considered when deciding upon the item. Mehlhorn responded by stating that the request was heavily analyzed by staff and that the staff recommendation is predicated upon finding consistency with both code and home occupation standards. Mehlhorn went on to explain the process that staff went through to come to the recommendation of approval.

Odeen asked if the list of uses in the Home Occupation Ordinance are exhaustive or exemplative, to which Mehlhorn responded citing code which states that the uses are examples.

Woolsey stated that he feels the testimony of residents indicates that the intensity of the proposed business is outside of what the ordinance allows for in regards to number of employees. Mehlhorn responded by clarifying that the ordinance allows for one employee outside of the residents of the home out of which the occupation is operating.

The Mayor then drew a comparison to the business in regards to number of employees and vehicles.

Woolsey then stated that he feels that the subject site is not the right place for such business.

Holtkamp asked staff if a delivery driver employed under the business would constitute an employee per code, Mehlhorn responded that it would.

Woolsey stated that he thinks that staff works hard to find a path forward for the applicant while protecting the community, finishing by stating he appreciates the effort of staff.

Holtkamp asked the future land use plan for the area which Mehlhorn responded to by stating its designated as future growth within the URA.

Moody asked if the Agricultural zoning of the property has any bearing on the review. Mehlhorn responded by stating the reason for pursuing the SUP is due to the Agriculture district listing home occupation as a special use.

Gormanson asked the applicant how often the holding tank will be emptied and who will empty it. Justin Kleist responded that it is pumped per DNR standards and that it is pumped by another septic service provider.

The Mayor then requested a vote.

Motion carried by majority 3/2

In favor: Holtkamp, Odeen, and Gormanson
Opposed: Woolsey and Moody

REPORTS

Planning Update

Emily Shively shared the next Plan Commission Meeting will be Wednesday November 6, as Tuesday is Election Day.

ADJOURNMENT

Commissioner Holtkamp made a motion to adjourn at 7:53 p.m. S/Gormanson; motion carried 5/0.

Respectfully submitted,

Angie Bond, Building Permit Technician/Code Compliance Officer and Harley Mehlhorn, Senior Planner



RECEIVED
 OCT 30 2024
 St Croix County Community Development

4822 Madison Yards Way
 Madison, WI 53705
 P.O. Box 7162
 Madison, WI 53707-7162

Sanitary Permit Number 663903 SAN-2024-345
 (by Co.)

Sanitary Permit Application

In accordance with SPS 383.21(2), Wis. Adm. Code, submission of this form to the appropriate governmental unit is required prior to obtaining a sanitary permit. Note: Application forms for state-owned POWTS are submitted to the Department of Safety and Professional Services. Personal information you provide may be used for secondary purposes in accordance with the Privacy Law, s. 15.04(1)(m), Stats.

State Transaction Number
 Project Address (if different than mailing address)

I. Application Information - Please Print All Information

Property Owner's Name
Justin Kliest

Parcel #
022-10966-0000

Property Owner's Mailing Address
1149 Clyredm

Property Location
Govt. Lot

City, State
Rice Falls WI 54022

Phone Number
NE 1/4 SW 1/4, Section 33

II. Type of Building (check all that apply)

1 or 2 Family Dwelling - Number of Bedrooms
 Public/Commercial - Describe Use Accessory Building
 State Owned - Describe Use

Lot #
T 28 N R 18 E of W

Block #

CSM Number

Subdivision Name

City of

Village of

Town of Kronichville

III. Type of POWTS Permit: (Check either "New" or "Replacement" and other applicable on line A. Check one box on line B. Complete line C if applicable.)

A. New System Replacement System Other Modification to Existing System (explain) Additional Pretreatment Unit (explain)
 B. Holding Tank In-Ground (conventional) At-Grade Mound Individual Site Design Other Type (explain)
 C. Renewal Before Expiration Revision Change of Plumber Transfer to New Owner
 List Previous Permit Number and Date Issued

IV. Dispersal/Treatment Area and Tank Information:

Design Flow (gpd)	Design Soil Application Rate(gpd/sf)	Dispersal Area Required (sf)	Dispersal Area Proposed (sf)	System Elevation						
0	0	-	-	-						
Tank Information	Capacity in Gallons		Total Gallons	# of Units	Manufacturer	Prefab Concrete	Site Constructed	Steel	Fiber Glass	Plastic
	New Tanks	Existing Tanks								
Septic or Holding Tank	3000		3000	1	Wieser	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Dosing Chamber						<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

V. Responsibility Statement - I, the undersigned, assume responsibility for installation of the POWTS shown on the attached plans.

Plumber's Name (Print) Steve Bird Plumber's Signature [Signature] MP/MPRS Number 276900 Business Phone Number 715-246-4516
 Plumber's Address (Street, City, State, Zip Code) 1432 120th St. New Richel WI 54017

VI. County/Department Use Only

Approved Disapproved Owner Given Reason for Denial
 Permit Fee \$ 700- Date Issued 11/6/2024 Issuing Agent Signature Kevin Huber

Conditions of Approval/Reasons for Disapproval
SYSTEM OWNER:
 1. Septic tank, effluent filter and dispersal cell must be serviced / maintained as per management plan provided by plumber.
 2. All setback requirements must be maintained as per applicable code / ordinances.
 3) POWTS MAINTENANCE AGREEMENT FOR HOLDING TANKS document recorded at R.O.D. as DOC: 1185339.
 4) ACCESSORY STRUCTURE AFFIDAVIT recorded as DOC: 1185340.
 5) All setbacks to/from well must be maintained.

Attach to complete plans for the system and submit to the County only on paper not less than 8 1/2 x 11 inches in size

System PLOT PLAN

PROJECT Justin Kliest ADDRESS 1149 Ctv Rd M River Falls Wi 54022

NE 1/4 SW 1/4S 33 /T 28 N/R 18 W TOWN Kinnickinic COUNTY ST. CROIX

SYSTEM ELEVATION TBD DATE 10/30/24 BEDROOM 0

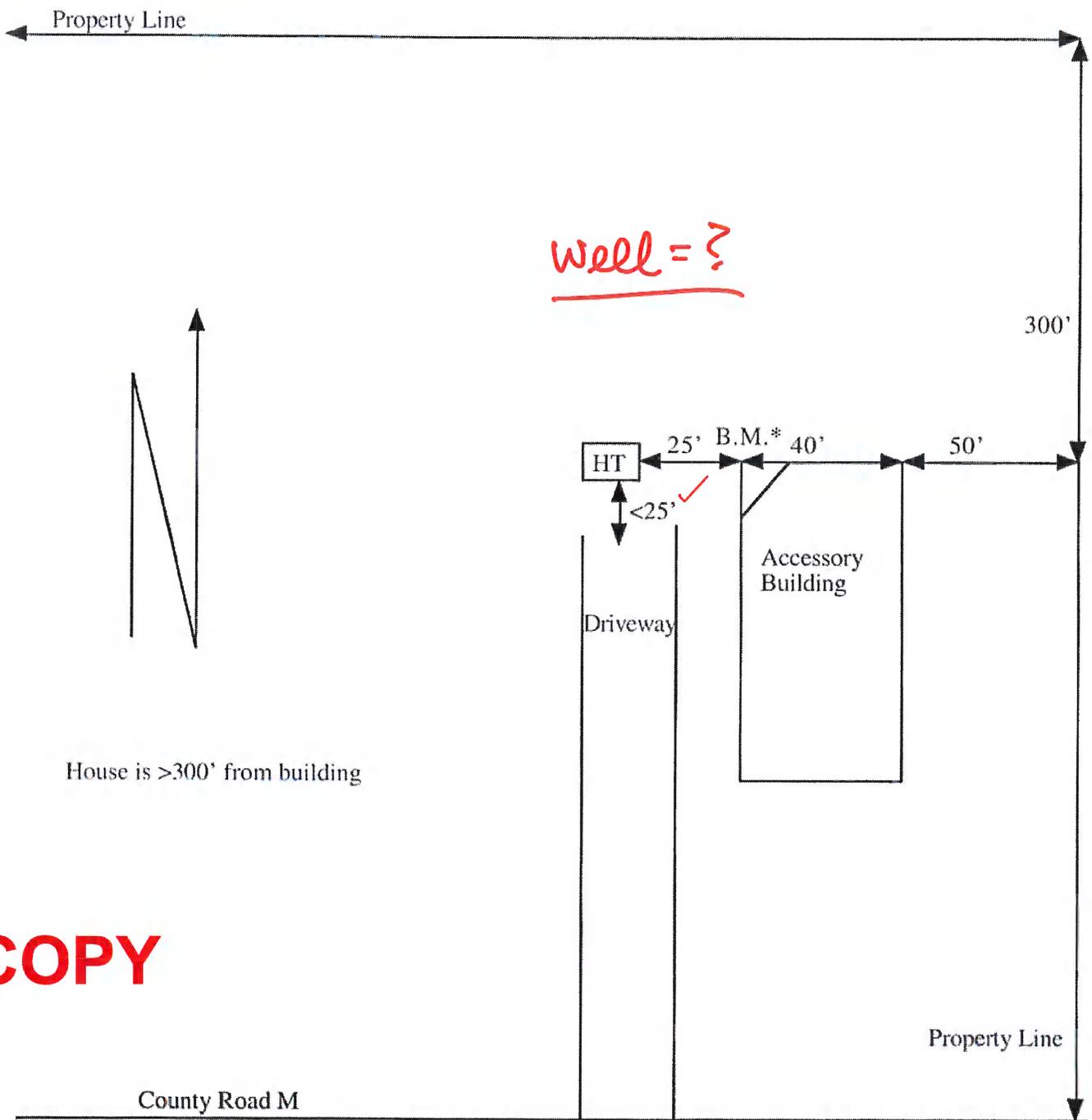
CONVENTIONAL AT-GRADE CONVENTIONAL LIFT _____ HOLDING TANK XXX

MOUND _____ SEPTIC TANK SIZE _____ LIFT TANK SIZE _____ DOSE TANK SIZE _____

HOLDING TANK SIZE 3000 LOAD RATE _____ ABSORPTION AREA 0 # of Chambers 0

▲ BENCHMARK V.R.P. Bottom of shed siding ASSUME ELEVATION 100' Filter ~~Lifetime~~

BOREHOLE WELL *H.R.P. same as benchmark



House is >300' from building

COPY

County Road M

Cover Page

Shaun Bird

Bird Plumbing Inc.

1432 120th St.

New Richmond Wi 54017

715-246-4516

Date: 10/30/24

Owner: Justin Kliest

Location: NE1/4 SW1/4 S33 T28 N,R18W 1149 Cty Rd M Kinnickic

System type: Holding Tank

Manuals Used: Holding Tank Component Manual Version 2.0 SBD-10855-9

Page#

1. Cover Page
2. Holding Tank Plot Plan
3. Holding Tank Cross Section
4. Maintenance and Contingency Plan
5. Tank anchoring Calcs

Signature _____

License number 226900

System PLOT PLAN

PROJECT Justin Kliest

ADDRESS 1149 Ctv Rd M River Falls Wi 54022

NE 1/4 SW 1/4S 33 /T 28 N/R 18 W TOWN Kinnickinic COUNTY ST. CROIX

SYSTEM ELEVATION TBD DATE 10/30/24 BEDROOM 0

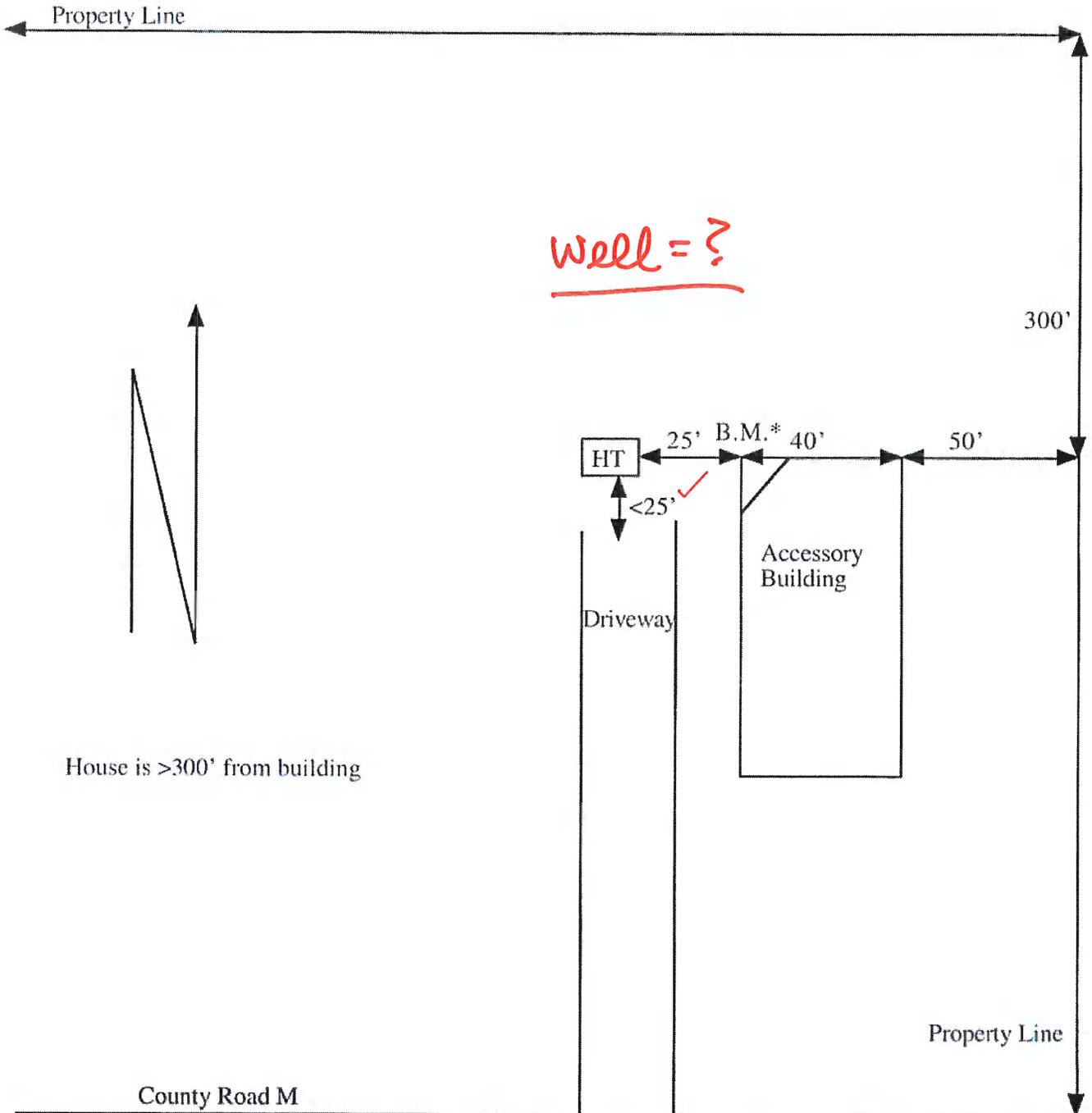
CONVENTIONAL AT-GRADE CONVENTIONAL LIFT HOLDING TANK XXX

MOUND SEPTIC TANK SIZE LIFT TANK SIZE DOSE TANK SIZE

HOLDING TANK SIZE 3000 LOAD RATE ABSORPTION AREA 0 # of Chambers 0

▲ BENCHMARK V.R.P. Bottom of shed siding ASSUME ELEVATION 100' ~~Filter Lifetime~~

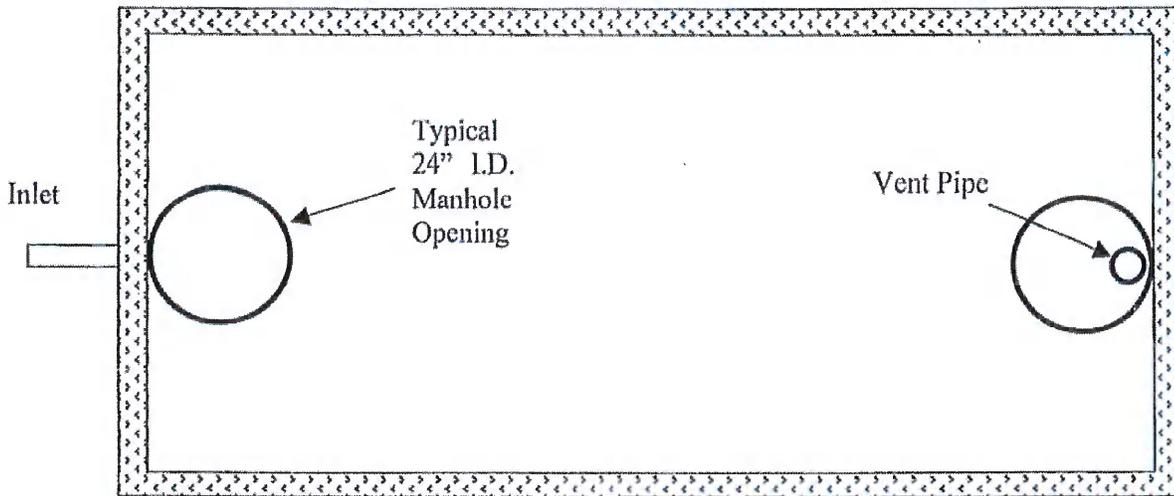
□ BOREHOLE ○ WELL *H.R.P. same as benchmark



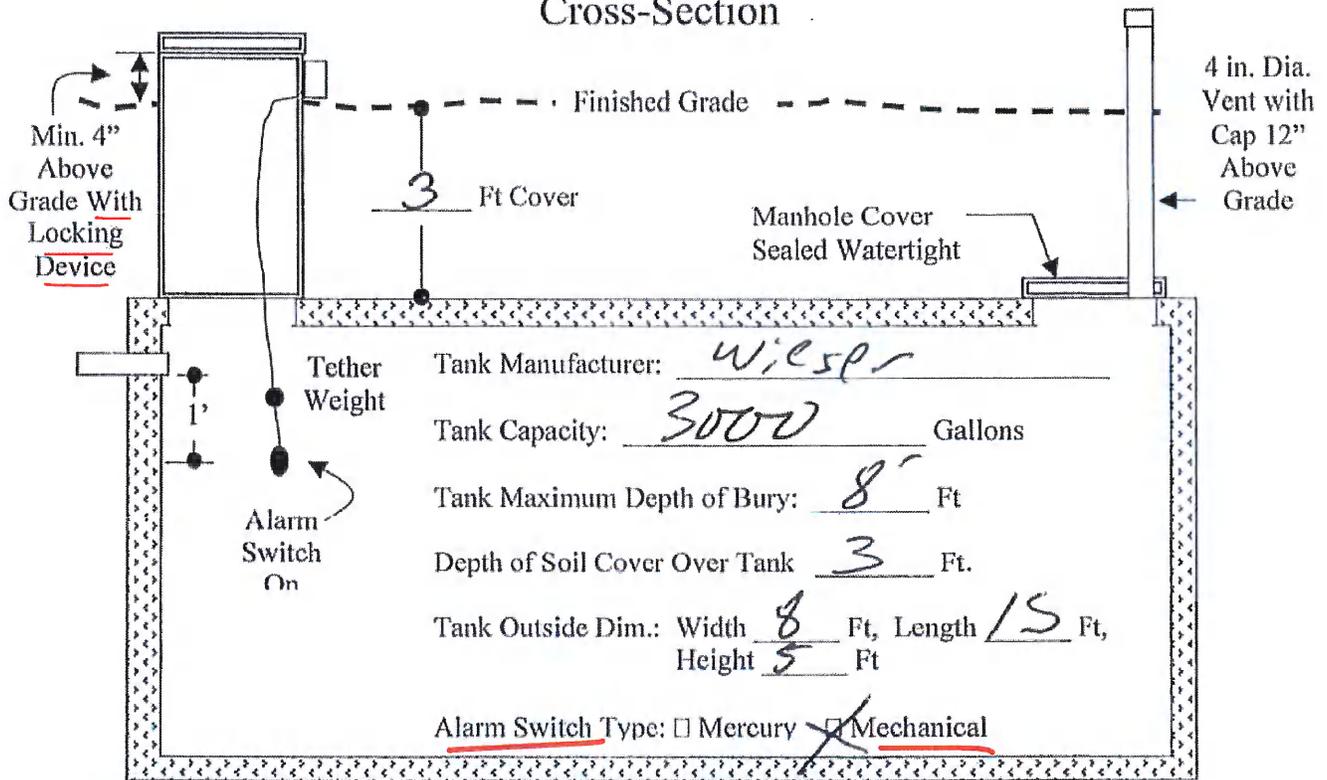
House is >300' from building

Single Holding Tank Cross Section and Plan View

Plan View



Cross-Section



GENERAL INSTALLATION: The tank is bedded and back filled in accordance with the manufacturer's product approval specifications. Maximum depth of bury as specified by the manufacturer may not be exceeded without prior approval. Manhole covers exposed to grade have an effective locking device (padlock) installed. Manhole covers below grade are sealed watertight. Piping at the inlet is of approved material, connected to the tank with watertight fittings, and laid on stable soil to prevent settling or sagging. Electrical is as per the National Electrical Code and applicable Wisconsin standards. . Electrical is as per the National Electrical Code and applicable Wisconsin standards.

HOLDING TANK MANAGEMENT PLAN

This Private Onsite Wastewater Treatment System (POWTS) has been designed, and is to be installed and maintained according to Comm 83, Wis. Admin. Code, the Holding Tank Component Manual (SBD-10571-P 6/11/1999), and the St. Croix County Sanitary Ordinance.

1. This POWTS is designed to accommodate an estimated domestic wastewater flow of 0 gpd.
2. The owner of this POWTS is responsible for system operation and maintenance, including all provisions in the attached Holding Tank Servicing Contract and Maintenance Agreements.
3. Each time the wastewater in the second tank reaches a level of 12" below the inlet invert (at which time the alarm will activate), the pumper listed in the current Servicing Contract must be called to empty the tank's contents and dispose of them in accordance with NR 113, Wis. Adm. Code.
4. At each service event, the service provider should visually inspect the condition of the tank, risers and manhole cover(s) and verify that the alarm system functions and manhole locking devices are present. Discrepancies are reported to the owner in a timely manner for corrective action. All corrective actions shall comply with the county sanitary ordinance and Comm 83 and 84 Wis. Adm. Code.
5. All service events or inspections of this POWTS shall be reported to the county within 10 business days.
6. The owner may not remove any of the wastes from the holding tank(s), or cause such wastes to be removed by any person not authorized to do so under Ch. 281, Wis. Statutes. The discharge of wastes from this holding tank to the ground surface, including intentional discharges and discharges caused by neglect, constitutes a failing POWTS and may result in issuance of correction orders or a citation by the county or state.
7. No one should enter a holding tank for any reason without being in full compliance with OSHA standards for entering a confined space. The atmosphere within these tanks may contain lethal gases, and rescue of a person from the interior of the tank may be difficult or impossible.
8. In the event that this POWTS fails and cannot be repaired, a code compliant replacement holding tank may be installed in the same location (a new sanitary permit is required for such a replacement). Connection to municipal services would also be considered at this time if they are deemed available to the property.
9. If this POWTS is replaced, or its use discontinued, components no longer in use it shall be abandoned in accordance with Comm 83.33 Wis. Adm. Code.
10. If there is a problem with, or question about this installation, the following persons should be contacted:

a. Installer.....	<u>Shawson</u>	Phone: <u>715-246-4151</u>
b. Service Provider.....	<u>Dellwyn Soper</u>	Phone: <u>715-425-1025</u>
c. County Zoning or Health Dept.	<u>St. Croix County</u>	Phone: <u>715-376-4687</u>
11. _____

Project:
Transaction Number:

Septic Tank Dimensions & Weights

Septic Tank Size	Dimensions	Weight (lbs)	Anchor Weight (lbs)	Soil Cover (in)
5000 gal	204"L x 96"W x 93"H	41,400	30,850	24
X 3000 gal	165"L x 92"W x 76"H	20,300	23,320	23
2600 gal	147"L x 90"W x 73"H	18,100	20,625	24
2000 gal	162"L x 78"W x 64"H	16,100	15,675	19
1600 gal	145"L x 78"W x 61"H	14,000	11,270	16
1200 gal	111"L x 78"W x 61"H	11,400	9,532	17
1000 gal Low Profile	120"L x 67"W x 57"H	9,500	8,705	17
1000 gal Heavy Duty	96"L x 78"W x 61"H	9,200	8,945	18
800 gal	96"L x 67"W x 57"H	8,000	6,560	16
600 gal	78"L x 56"W x 60"H	6,600	3,810	14
1600/1400 gal	174"L x 90"W x 73"H	23,000	22,410	22
1250/750 gal	162"L x 78"W x 64"H	16,400	15,725	19
1000/600 gal	145"L x 78"W x 61"H	14,700	12,705	17

HOLDING TANK SERVICING CONTRACT

SAN-2024-345

Contract Date

10-27-2024

This contract is made between the

Holding Tank Owner(s) Name(s)

Justin & Alison Kleist

and

Pumper's Name Darrell's Septic
Service Inc

We acknowledge the installation of (a) holding tank(s) on the following property: (Provide legal description:)

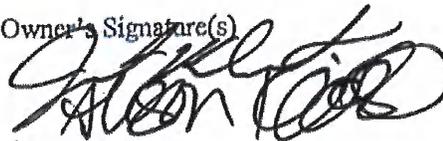
SEC 33 T28N R18W E 1/2 NE SW EXC CSM VOL 2/4679 EXC 90' BY
730' DE SC IN WD-1093/262 E2-UT-1496/87

1. The owner agrees to file a copy of this contract with the local governmental unit hereinafter called the "municipality", which has signed the pumping agreement required in Ch. DSPS383.52, Wis. Adm. Code and with the County of St. Croix
2. The owner agrees to have the holding tank(s) serviced by the pumper and guarantees to permit the pumper to have access and to enter upon the property for the purpose of servicing the holding tank(s). The owner further agrees to pay the pumper for all charges incurred in servicing the holding tank(s) as mutually agreed upon by the owner and pumper.
3. The pumper agrees to submit to the municipality which has signed the pumping agreement required by DSPS383.52, Wis. Adm. Code, and to the county, a report for the servicing of the holding tank(s) on a semiannual basis. The pumper further agrees to include the following in the semiannual report:
 - a. The name and address of the person responsible for servicing the holding tank;
 - b. The name of the owner of the holding tank;
 - c. The location of the property on which the holding tank is installed;
 - d. The sanitary permit number issued for the holding tank;
 - e. The dates on which the holding tank was serviced;
 - f. The volumes in gallons of the contents pumped from the holding tank for each servicing;
 - g. The disposal sites to which the contents from the holding tank were delivered.
4. This agreement will remain in effect until the owner or pumper terminates this contract. In the event of a change in this contract, the owner agrees to file a copy of any changes to this service contract or a copy of a new service contract with the municipality and the County names above within ten (10) business days from the date of change to this service contract.

Owner(s) Name(s) (Print)

Justin Kleist
Alison Kleist

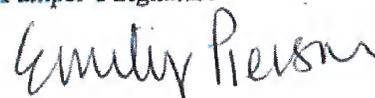
Owner's Signature(s)



Pumper's Name (Print)

Darrell's Septic Service Inc

Pumper's Signature



Emily Pierson
Pumper's Registration Number

#1972

DIC # 83013



DocId:9076281

Tx:5248828

1185339

BETH PABST
REGISTER OF DEEDS
ST. CROIX CO., WI
RECEIVED FOR RECORD
10/31/2024 08:52 AM

EXEMPT #:

REC FEE 30.00

PAGES: 1

Document Number/Plan I.D. No.	POWTS MAINTENANCE AGREEMENT For Holding Tanks	
Owner Name(s)	Justin & Alison Kleist	
Parcel Identification Number (PIN)	022-1096-60-000	Agreement Date 10/27/2024
Legal description of Property	Sec 33 T28N. R18W E412 NE SW EXC CSM VOL 21467 @ EXC 90' BY 730' DESC IN WD-1093/262 EZ-UT-1496187	

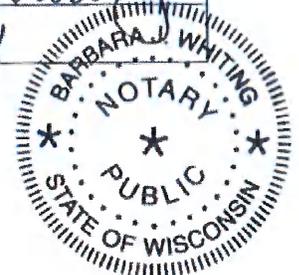
Return to:

Zoology

As an inducement to the county to issue a sanitary permit for a holding tank on the above-described property, the owner agrees to conform to all applicable requirements of Chapter SPS 383, Wis. Adm. Code relating to holding tank management, including the following:

1. The owner agrees to contract with a person who is licensed under Ch. NR 113, Wis Adm. Code, except as provided by section 281.48 (3) (d), Stats., to have the holding tank properly serviced and to file a copy of the service contract with the governmental unit. The owner further agrees to file a copy of any changes to the service contract, or a copy of a new service contract, with the governmental unit within ten (10) business days from the date of change to the service contract.
2. The owner agrees to contract with a person licensed under Ch. NR 113, Wis. Adm. Code, who shall submit pumping reports to the governmental unit in accordance with SPS 383.55, Wis. Adm. Code, for the servicing of the holding tank. In the case of exemption under Section 281.48 (3) (d), Stats., the owner shall submit the report to the governmental unit. The governmental unit may enter upon the property to investigate the condition of the holding tank when the pumping reports may indicate the holding tank is not being properly maintained.
3. If the owner fails to have the holding tank properly serviced in response to orders issued by the governmental unit to prevent or abate a human health hazard as described in s. 254.59, Stats., the governmental unit may enter upon the property and service, or cause the tank to be serviced. The county may recoup the cost of having the holding tank serviced from the property owner by imposing a special charge prescribed by s. 66.0627 stats. pursuant to authority set forth in section 59.70(5) stats. The owner agrees to pay all charges and cost incurred by the governmental unit for inspection, pumping, hauling, or otherwise servicing and maintaining the holding tank in such a manner as to prevent or abate any human health hazard caused by the holding tank.
4. The agreement will remain in effect only until the governmental unit responsible for the regulation of private sewage systems certifies that either a soil absorption system that complies with SPS 383, Wis. Adm. Code, or a municipal sewer serves the property. In addition, this agreement may be cancelled by executing and recording said certification with reference to this agreement in such manner which will permit the existence of the certification to be determined by reference to the property.
5. This agreement shall be binding upon the owner, the heirs of the owner, and assignees of the owner. The owner shall submit the agreement to the register of deeds, and the agreement shall be recorded by the register of deeds in a manner, which will permit the existence of the agreement to be determined by reference to the property where the holding tank in installed.

Owner(s) Name(s)- Please Print Justin & Alison Kleist	Subscribed and sworn to before me on this date: October 30, 2024
Notarized Owner(s) Signature(s) <i>Justin Kleist</i> <i>Alison Kleist</i>	Notary Public <i>Barbara J. Whitings</i>
	My commission Expires: June 3, 2028



Drafted by Justin Kleist



DocId:9076282

Tx:5248828

1185340

BETH PABST

REGISTER OF DEEDS

ST. CROIX CO., WI

10/31/2024 08:52 AM

EXEMPT#:

REC FEE

30.00

PAGES: 2

Document Number

Document Title

St. Croix County

Accessory Structure Affidavit

Justin Kleist
Name - (Owner) Typed or printed

He/she is the legal owner of the following parcel of land located in St. Croix County, Wisconsin, with their deed or document of ownership interest recorded as Document Number 1147668 St. Croix County Register of Deeds Office.

This property is described as follows (include lot no. and subdivision/CSM or detailed legal description):

Recording Area

Name and Return Address

zoning

Parcel Identification Number (PIN)

022-1096-60-000

OR:

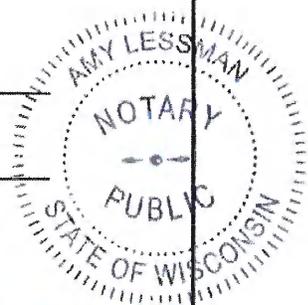
See attached deed copy for legal description

As owner of the above described property, I acknowledge that the Private Onsite Wastewater Treatment System (POWTS) serves an accessory building on this lot and is sized for a future (0) bedroom home, or a design flow of (0) gpd. This accessory building may not be used as a residence on this parcel. I also acknowledge that I will disclose this information and stipulation to any future parties interested in purchasing this property.

Dated this 30 day of October, 2024.

Justin Kleist
* _____
* _____

* _____
* _____



AUTHENTICATION

Signature(s) _____

authenticated this _____ day of _____, _____

*

TITLE: MEMBER STATE BAR OF WISCONSIN
(If not, _____
authorized by § 706.06, Wis. Stats.)

THIS INSTRUMENT WAS DRAFTED BY:

St. Croix County Community Development

(Signatures may be authenticated or acknowledged. Both are not necessary.)

ACKNOWLEDGMENT

STATE OF WISCONSIN)

) ss.

St. Croix County.)
Personally came before me this 30 day of October, 2024
the above named

Justin Kleist

_____ to me known to be the
person(s) who executed the foregoing instrument and acknowledge the
same.

Amy Lessman
10-30-24

Notary Public, State of Wisconsin
My Commission is permanent. If not, state expiration date:
Date: 8-2-26

EXHIBIT "A"

THE EAST HALF OF THE SOUTHEAST QUARTER OF THE SOUTHWEST QUARTER (E½ OF SE¼ OF SW¼) AND THE EAST HALF OF THE NORTHEAST QUARTER OF THE SOUTHWEST QUARTER (E½ OF NE¼ OF SW¼), ALL IN SECTION THIRTY THREE (33), TOWNSHIP TWENTY EIGHT (28) NORTH, RANGE EIGHTEEN (18) WEST, TOWN OF KINNICKINNIC, ST. CROIX COUNTY, WISCONSIN, EXCEPT THE FOLLOWING DESCRIBED PARCELS:

Commencing at a point 200 feet South of the Northeast corner of the Southeast Quarter of the Southwest Quarter, Section 33, Township 28 North, Range 18 West; thence West 50 feet; thence South 80 feet; thence East 50 feet; thence North 80 feet to the point of beginning;

AND EXCEPT Certified Survey Map in Volume 2, page 467, as document number 343429, being a part of the East Half of the Northeast Quarter of the Southwest Quarter Section 33, Township 28 North, Range 18 West;

AND EXCEPT, that certain parcel of land located in the Northeast Quarter of the Southwest Quarter of Section 33, Township 28 North, Range 18 West, more fully described as follows: Commencing at the Northeast corner of that Certified Survey Map in Volume 2, page 467, as document number 343429, the point of beginning of the parcel to be herein described; thence S89°40'20"E 90.00 feet; thence S00°00'50"E 730.00 feet; thence N89°40'20"W 90.00 feet; thence N00°00'50"W 730.00 feet to the point of beginning.

(Signatures may be authenticated or acknowledged. Both are not necessary.)

NOTE: THIS IS A STANDARD FORM. ANY MODIFICATIONS TO THIS FORM SHOULD BE CLEARLY IDENTIFIED.

WARRANTY DEED

© 2003 STATE BAR OF WISCONSIN

FORM NO. 1-2003

*Type name below signatures

ST. CROIX COUNTY for Acc. Building HOLDING TANK

NO. 663903

STATE SANITARY PERMIT

1149 CITY RD M

~~TRANSFER/RENEWAL~~ PREVIOUS NO. —

ZONE X

OWNER JUSTIN KLIEST

PLUMBER SHAUN BIRD LIC.# 226700

TOWN OF KINNIKINNIC

SEC 33, T 28 N, R 18 E/W

AND/OR LOT — BLOCK —

existing parcels SUBDIVISION

Kevin Huber AUTHORIZED ISSUING OFFICER — DATE 11/6/2024

THIS PERMIT EXPIRES 11/5/2026 UNLESS RENEWED BEFORE THAT DATE

CHAPTER 145.135 (2) WISCONSIN STATUTES

(a) The purpose of the sanitary permit is to allow installation of the private sewage system described in the permit.

(b) The approval of the sanitary permit is based on regulations in force on the date of approval.

(c) The sanitary permit is valid and may be renewed for a specified period.

(d) Changed regulations will not impair the validity of a sanitary permit.

(e) Renewal of the sanitary permit will be based on regulations in force at the time renewal is sought, and that changed regulations may impede renewal.

(f) The sanitary permit is transferable.

History: 1977 c. 168; 1979 c. 34,221; 1981 c. 314

Note: If you wish to renew the permit, or transfer ownership of the permit, please contact the county authority.

POST IN PLAIN VIEW

VISIBLE FROM THE ROAD FRONTING THE LOT DURING CONSTRUCTION

Plan Commission Memo and Minutes

From: Staff

MEMORANDUM

TO: Mayor Toland and Plan Commissioners

FROM: Harley Mehlhorn, Senior Planner

DATE: October 1, 2024

ITEMS: **FIVE STAR RESTROOM RENTALS SPECIAL USE PERMIT (SUP)**

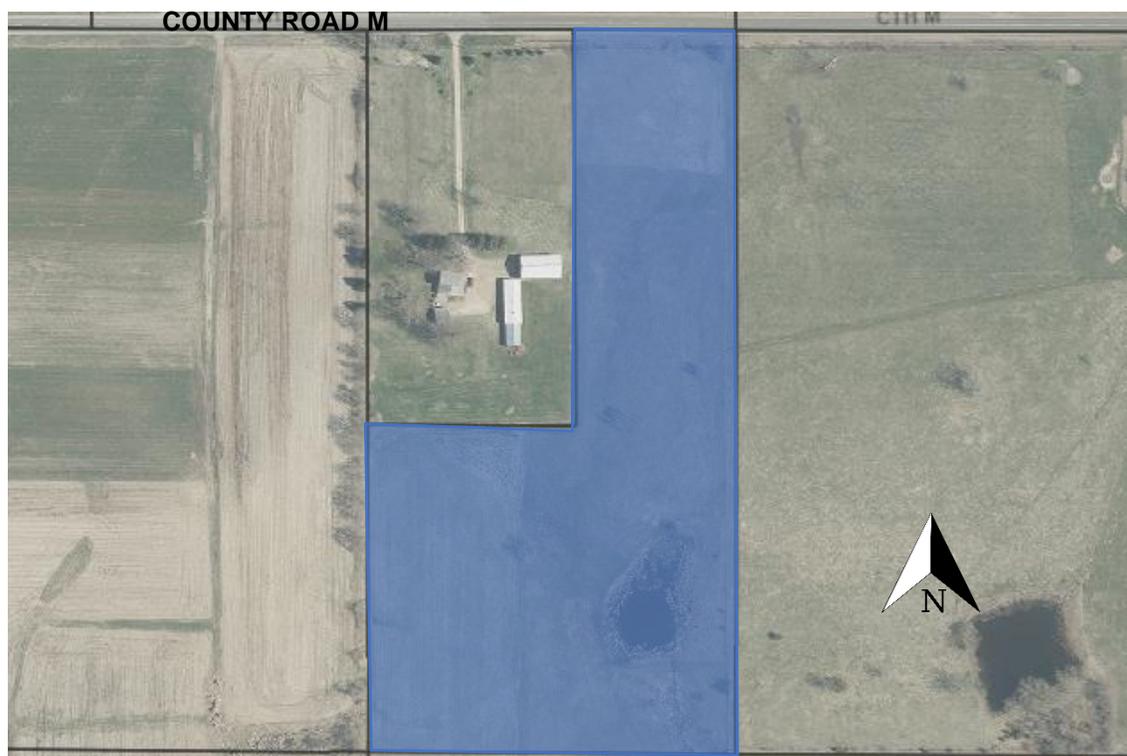
RECOMMENDED ACTION

Adopt resolution approving a Special Use Permit for a home occupation with conditions.

BACKGROUND

Five Star Restroom Rentals, LLC, has submitted this request for Special Use Permit approval for the operation of a home occupation on an existing residential property at 1149 County Road M zoned "A" – Agriculture within the Town of Kinnickinnic in the River Falls' Urban Reserve Area (URA). The cooperative agreement between the Town and City affords the City land use authority over parcels within the URA, thus, this request will be analyzed using the standards of the City of River Falls zoning code rather than codes applicable to the ETZ. The Agriculture district allows a small number of uses by SUP including all those permitted by SUP within the Residential Suburban (RS) district. Home occupations require a SUP within the RS district and therefore within the Agriculture district, thus necessitating this Special Use Permit.

Location Map (site outlined in blue)



SPECIAL USE PERMIT OVERVIEW

Plan Commission has the authority to approve, approve with conditions, or deny special use permits. Once granted, a Special Use Permit (SUP) remains in effect as long as the conditions upon which the permit was issued are followed, or until the duration of the permit expires, or any other conditions outlined in the resolution. If a special use permit application is denied, the applicant may appeal the decision to the Board of Appeals.

Special Use Permit Process

Review and approval of a Special Use Permit is a quasi-judicial process (applying policy) as opposed to a legislative process (creating policy). This means that an application is reviewed against the standards in the ordinance for compliance and if the standards are met, a permit is granted.

Special Use Permits allow uses that may be appropriate in a zoning district if certain conditions are met. Specific conditions may be added to the approval to ensure compatibility with adjacent land uses and so that the purpose and intent of the ordinance is met; however, any condition must be reasonable and related to the proposed use. If an application meets the conditions in the ordinance and the applicant agrees to meet and maintain compliance with the specific conditions of the permit, a permit is granted.

State Statute Regarding Special/Conditional Use Permits

In 2017, Wis. Act 67 limited the discretion that municipalities have when approving Special or Conditional Use Permits. The law requires that decisions must be made based on substantial evidence:

The [municipality's] decision to approve or deny the permit must be supported by substantial evidence. "Substantial evidence" means facts and information, other than merely personal preferences or speculation, directly pertaining to the requirements and conditions an applicant must meet to obtain a conditional use permit and that reasonable persons would accept in support of a conclusion.

The law also requires that any conditions imposed on the permit be based on substantial evidence:

Any condition imposed must be related to the purpose of the ordinance and be based on substantial evidence. All conditions must be reasonable and, to the extent practicable, measurable and may include conditions such as the permit's duration, transfer, or renewal."

The law then requires the applicant to demonstrate that they meet the standards in the ordinance:

The applicant must demonstrate that the application and all requirements and conditions established by the [municipality] relating to the conditional use are or shall be satisfied, both of which must be supported by substantial evidence.

If the applicant can demonstrate that their proposal can or will meet the requirements and conditions, then a permit must be granted:

If an applicant for a conditional use permit meets or agrees to meet all of the requirements and conditions specified in the [municipal] ordinance or those imposed by the [municipal] zoning board, the [municipality] shall grant the conditional use permit.

HOME OCCUPATION AND SPECIAL USE PERMIT ANALYSIS

Zoning Standards

The subject site is zoned A – Agriculture which is both agrarian and residential in nature, allowing for both commercial farming operations and single-family residential uses. In addition to these permitted uses by right, a small number of uses are also permitted via SUP, in particular code states that any use permitted via SUP within the Residential Suburban (RS) district may likewise be permitted in the “A” district via SUP. The RS district designates home occupations as a use requiring a SUP, thus necessitating a SUP for the operation of a home occupation on the subject site.

Code defines a home occupation as: “an occupation or business activity that results in any commercial activity or enterprise for financial gain, benefit, advantage, livelihood, product or service that is conducted for gainful employment in a dwelling unit by a person residing in that dwelling unit. A home occupation is incidental to the residential use of the dwelling unit” (17.04.020).

Section 17.82.020.E.1-4 of the zoning code continues on to identify and characterize the uses permitted under the home occupation designation, stating:

Permitted Uses. The following are examples of home occupation uses permitted within the city of River Falls, which meet the intent of this section subject to compliance with the conditions of this chapter:

1. The office or studio of an accountant, architect, artist, attorney, ceramist, engineer, interior designer, landscape architect, photographer, dentist, physician or other licensed medical practitioner, teacher and practitioners in similar fields of service;
2. Dressmaking, tailoring, millinery, catering, and telephone or mail services;
3. Beauty parlors, beauty salons or barber shops;
4. Family home day care services, not to exceed five children.

There are also both general standards and structural standards as outlined in that same chapter in sections 17.82.020.A and 17.82.020.B:

A. General Standards.

1. The home occupation shall involve the sale of goods or services in connection with such home.
2. The home occupation shall be conducted entirely within the principal building and shall be clearly incidental and secondary to the permitted principal use of the building.
3. The home occupation shall be conducted by a person residing on the premises in which the home occupation is conducted. Not more than one person, other than members of the family residing on the premises in which a home occupation is conducted, shall be regularly engaged in such occupation.
4. A home occupation shall not produce any offensive noise, vibration, smoke, dust, odors, heat, gas, glare, electrical or audible interference, nor shall it otherwise create a risk to health, safety or property of residents and occupations of adjacent and neighboring properties.
5. Customers or clients, or deliveries shall not enter the premises between the hours of ten p.m. and six a.m. Depending upon the nature of the home occupation and the neighborhood, the city staff may reduce the hours of operation.

B. Structural Standards.

1. Not more than twenty-five (25) percent of the gross floor area of the dwelling unit nor twenty-five (25) percent of the gross floor area if conducted in an accessory structure, shall be used in the conduct of the home occupation.

2. Nothing incidental to the conduct of a home occupation shall be constructed, installed, placed or stored outside of the principal building in which it is carried on, nor shall any exterior evidence of a home occupation be permitted to exist on the lot in question if it is visible from any adjacent or neighboring properties or if it is not in keeping with the residential character of the neighborhood surrounding the lot, except for a sign and off-street parking as is set forth below.
3. One unlighted sign per dwelling shall be allowed and shall not exceed four square feet in area or project six feet above the surface of the ground.

Proposed Home Occupation

Five Star Restroom Rentals is a portable restroom facility business which provides facilities for construction sites and events. Five Star transports, pumps, cleans, and services all of their own facilities. The majority of the business operations are to be conducted off of the subject home occupation site as waste management and disposal is a heavily regulated industry, mostly by the Wisconsin Department of Natural Resources. All pumping of waste is performed on job sites and disposal of waste is prompt at a DNR approved facility such as a wastewater treatment plant. The applicant has stated that the home occupation site is to be used solely as storage, staging, and detailing of the portable restroom facilities. The home occupation requested herein is conducted at two separate locations on the same site. There is a small office proposed within the home and a storage/washing bay area in a shed. Since all waste has been emptied by the time the facilities are to reach the home occupation site, it is staff's understanding that the washing bays are for the detailing the facilities and removing cleaner or waste residue. A more detailed description of the operations can be found in the applicant narrative attached to this memo.

Analysis

When evaluating a home occupation, there are two primary considerations; firstly, as to if the proposed use is consistent with the character of uses as listed in code and secondly, if the proposed operations of said use are consistent with the standards of a home occupation.

In evaluating the proposed use, staff found there to be several mitigating factors that attenuate the potentially offensive nature of the use and allow it to be considered in a similar way to the storage and servicing of any other good. Since there is no storage or disposal of waste on the home occupation site and since the storage and servicing of the portable restroom facilities will be conducted entirely indoors, staff considers this use to be like that of the storage and servicing of other goods such as catering supplies, rental party equipment, or machinery. Since code allows for the consideration of uses such as catering services, which by its nature is similar in that the fundament of operations is the storage and servicing/cleaning of equipment, staff finds the proposed use to be considerable by code.

As aforementioned, even if a use is considerable, it must demonstrate compliance with the standards as outlined in the home occupation section of code listed above. The proposed operations demonstrate compliance with the provisions regarding the good or service's connection to the dwelling unit, the incidental and indoor nature of a home occupation, the operation of said business by the residents of the property, and the spatial standards. Those provisions that are not satisfied by effect of the nature of the use may be satisfied via conditions.

Upon analysis of the regulations in place via the DNR, staff finds that with additional conditions of approval, the operations of the home occupation could satisfy code standards. Staff is recommending five conditions:

1. All home occupation activities shall occur entirely indoors with no storage, servicing, cleaning, or staging of any good outside of a structure.
2. No more than 2,800 square feet of the shed shall be used to conduct the home occupation.
3. The home occupation shall not produce any offensive noise, vibration, smoke, dust, odors, heat, gas, glare, electrical or audible interference, nor shall it otherwise create a risk to health, safety or property of residents and occupations of adjacent and neighboring properties.
4. Customers, clients, or deliveries shall not enter the premises between the hours of ten p.m. and six a.m.
5. Department of Natural Resources licensure of the business operations shall be kept in good standing for the continued operation of this home occupation and a copy of the current license shall be provided to the City of River Falls and thence provided at each renewal within 30 days of such renewal.

Conditions 1-4 reflect the home occupation standards. Condition one limits home occupation activity to be entirely within the confines of a building, limiting potential impacts on neighbors and reducing any visual impact that the home occupation may create. Condition two limits the use of the shed to 25% of the floor area as prescribed in the home occupation ordinance, limiting the scale of operations on site and thus the potential for adverse impacts. Condition three prohibits offensive externalities such as odor, noise, or vibration from leaving the site, further reinforcing the character of the use. Condition four places temporal constraints on hours of operation as to preserve the residential character of the area. Finally, condition five ensures that the operations of the business are consistent with regulatory standards as enacted by the Wisconsin DNR. The applicant is amenable to complying with these conditions.

Any violation of the conditions above or any other provision of the home occupation standards will constitute grounds for investigation and potential action. Section 17.104.040.E outlines a process for violations, stating:

1. Any permitted special use which does not continue in conformity with the conditions of the permit shall be considered a violation of this section.
2. Revocation. Any special use permit granted by the plan commission may be revoked if it is found that the use is not being conducted in compliance with the plans and specifications submitted with the application and subsequently approved, or is being operated in violation of the conditions of the special use permit.

Further, the Home Occupation ordinance provides a framework by which to handle potential complaints or grievances with section 17.82.020.F.5-6 stating:

5. Any person who is aggrieved by the granting of a home occupation permit or the exercise of rights under such a permit may file a complaint explaining the reasons therefor with the city. The city planning director or his designee shall investigate the grounds of the complaint and shall issue a written decision as to whether or not the home occupation in question or the manner in which it is conducted is in violation of the terms and conditions of the permit granted under this chapter. If a violation is found to exist, the city staff shall determine what action should be taken by the city to correct the same. All complaints filed hereunder shall be kept on file and shall be open to public inspection. Prior complaints concerning a given home occupation shall be considered by staff in the course of investigation of a later complaint.
6. Persons aggrieved by the decision of the city staff in response to a complaint concerning a home occupation may appeal such decision to the common council, within thirty (30) days of the date on which the staff issued its decision.

The existing 13.5 acre "L" shaped lot consists of a driveway off of County Highway M serving a single-family home and a large accessory structure (shed) on the southwest side of the property. A portion of the home will be used as an administrative office and a portion of the shed for the storage and servicing of the restroom facilities.

Existing and Proposed Structures

A single-family home of 6,300 Square feet and a shed of 11,200 square feet exist on site. No changes to existing structures or new structures are proposed as part of this request.

Architectural Plans

No exterior modifications to the proposed building are proposed as part of this request.

Neighboring Uses

The site is surrounded by the other Agriculture zoned properties within the URA. These properties allow for a mix of single-family dwellings and commercial farming operations including livestock and agriculture.

Parking Areas

The single-family home is served by a large garage and the shed has improved surfacing surrounding it as well as bay doors that could be used to internally park vehicles. No additional parking is needed.

Roadway Access

The subject site has direct access to County Highway M.

Traffic Generation and Circulation

Staff anticipates the traffic generated from this development to be minimal and contained entirely within the confines of the site. Heavy machinery and large vehicles are within the typical character of an agricultural area.

Drainage

No regrading or substantial changes to permeability are being proposed as part of this project.

Sewerage and Water Systems

No new city services are proposed.

Proposed Operation

As described previously, the home occupation will consist of both an administrative office in the home and a storage and washing area in the shed. Emptied portable restroom facilities will be transported from customer sites to the shed to be stored and staged prior to redeployment. Any washing that does take place within the facility will drain into a separate holding tank per DNR regulations.

Staff finds the proposed operations as consistent with the provisions of code, consistent with comprehensive plan guidance, and organized as such to create the least impact on surrounding land uses.

NOTIFICATION

Per the requirements laid out by section 17.104.40 of municipal code, staff has physically posted notification of the proposed special use on site and sent mailers to property owners and residents within 500 ft.

SUMMARY

An application has been submitted for the approval of special use permit for a home occupation. The current zoning of A- Agriculture requires a SUP for home occupations. Staff finds the proposed application is in conformance with standards laid out by municipal code and consistent with the Comprehensive Plan.

Justin and Alison Kleist, owners of "5 Star Restroom Rentals, LLC", in application for a home based occupational permit, offer the following as a description of our business practices.

In 2019, we purchased the portable restroom rental business from Darrell Dunn. His business was known as "Darrell's" and included septic services as well as restroom rental. Upon purchase of that portion of his business, agreements were made for training, transfer of equipment, and rental of space for storage and business needs.

At present, 5 Star owns four pick-up trucks, two of which are used for transport of rental units as well as clean-up and waste removal. Another is a "daily use" vehicle, and the fourth is being prepared to replace one of the tank trucks. The business also has close to 400 restroom units, one luxury restroom trailer, and tools and equipment used for maintenance and daily tasks. Tools includes a pressure washer, mechanical tools, etc.

5 Star Restroom Rental, LLC is fully insured with general and automotive liability, worker's comp, and unemployment. Our licensing, master operator's septage license, is issued through the Wisconsin DNR, which requires 18 continuing education credits every three years, maintaining daily waste logs, yearly disposal audit, and bi-yearly truck inspections, and on site shop inspection.

We are currently renting shop and storage space from Darrell Dunn. The following is a description of activities at that location and use of space, as well a description of daily business activities off site. It is our hope to continue the same routine using the shed space on our property at 1149 Cty Rd M.

Each weekday begins as early as 5:30 with trucks leaving the shop for weekly planned servicing. Routes are designated by weekly log sheets. At every stop, DNR requires customer name, address, number of toilets serviced, notation of which truck is performing service, date, time, description of service (i.e. portable restroom/handwash station/camper), estimate of gallons pumped, and driver initials. When route servicing is complete, each truck is taken to a waste water treatment plant, where onboard waste is disposed of. Before leaving disposal site, a backlog of the day's work must be entered on the log sheet, including date, time, disposal location, total gallons disposed, and driver's initials. From there, we return to the shop around 4pm, where the truck is washed, cleaned, and restocked in preparation for the following day.

On Fridays through Sundays, or event days, trucks come in and out once per day in order to service events. An event is defined by several toilets requiring service multiple times throughout the weekend. Events might include a home based gathering or a town festival. Some of our larger events have included River Falls Days, Baldwin Windmill Days, River Falls FFA Truck and Tractor Pull, Bacon Bash, Minnesota High School Cycling League, and Syttende Mai (Woodville, WI).

Toilets are pumped at customer's site and never returned to the shop with remaining waste per DNR regulation. At the beginning of each day, trucks leave with clean water for cleaning and an empty waste tank. Disposal happens at proper treatment sites, generally Baldwin. When cleaning happens in the shop, whether trucks or restroom units, waste water is contained in a

holding tank, which is then also brought to a disposal site.

The shed at 1149 Cty Rd M will be used for storage, maintenance, and cleaning of trucks and rental units. The office will be home based. The remaining shed space is for farm use.

Any questions can be directed to Justin Kleist at
(715) 338-2224 or justinkleist@5starrestroomrentals.com



PLAN COMMISSION RESOLUTION NO. 2024-08

**RESOLUTION APPROVING THE SPECIAL USE PERMIT (SUP)
FOR A HOME OCCUPATION (FIVE STAR RESTROOM RENTALS)**

WHEREAS Five Star Restroom Rentals, LLC, has submitted an application for the operation of a home occupation at an existing residence in both the primary residence and an accessory structure located at 1149 County Road M; and

WHEREAS, 1149 County Road M is located in the A – Agriculture District and a home occupation requires a Special Use Permit in such district; and

WHEREAS, a public hearing is required to review the project, take public comments, and approve or deny the Special Use Permit application; and

WHEREAS, the Plan Commission reviewed the Special Use Permit request for a home occupation at 1149 County Road M and held a public hearing on October 1, 2024, and found it to be acceptable and consistent with City plans for the area;

NOW, THEREFORE, BE IT RESOLVED, that the Plan Commission of the City of River Falls hereby approves the Special Use Permit for a home occupation subject to the following conditions:

1. All home occupation activities shall occur entirely indoors with no storage, servicing, cleaning, or staging of any good outside of a structure.
2. No more than 2,800 square feet of the shed shall be used to conduct the home occupation.
3. The home occupation shall not produce any offensive noise, vibration, smoke, dust, odors, heat, gas, glare, electrical or audible interference, nor shall it otherwise create a risk to health, safety or property of residents and occupations of adjacent and neighboring properties.
4. Customers, clients, or deliveries shall not enter the premises between the hours of ten p.m. and six a.m.
5. Department of Natural Resources licensure of the business operations shall be kept in good standing for the continued operation of this home occupation and a copy of the current license shall be provided to the City of River Falls and thence provided at each renewal within 30 days of such renewal.

Dated this 1st day of October 2024.

CITY OF RIVER FALLS

Dan Toland, Mayor

ATTEST:

Amy White, City Clerk

Community Development Department

222 Lewis Street
River Falls, WI 54022
715.425.0900
www.rfcity.org



MINUTES PLAN COMMISSION OCTOBER 1, 2024 CITY COUNCIL CHAMBERS

Members Present: Dan Toland, Chris Holtkamp, Diane Odeen, Rob Gormanson and Lisa Moody, Michael Woolsey
Members Absent: Rebecca Prendergast
Staff Present: Emily Shively, Harley Mehlhorn
Others Present:

CALL TO ORDER

Meeting convened at 6:30 p.m.

APPROVAL OF MINUTES

M/Moody, S/Holtkamp to approve minutes. Motion carried 5/0.

PUBLIC COMMENTS

None.

ORDINANCES AND RESOLUTIONS

PUBLIC HEARING: Special Use Permit for supportive housing facility (Red's Place) on Highway 29 (Northeast area of PID 276011410640) (Danielson Development)

The Mayor opened the Public Hearing. Harley Mehlhorn provided a presentation. Applicant is requesting an update to the Special Use Permit that was granted in May to accommodate for additional units and building height to allow for broadening of supportive housing services provided. The proposed site is 4.5 acres and zoned R2 multifamily which makes the Special Use Permit necessary. The supportive housing facility with services and amenities for adults with Autism will include 73 units total. The site plan remains the same as previously approved, the building height will change from two stories to three stories.

City staff found no concerns and recommends the Plan Commission approve the resolution for the Special Use Permit with a few conditions which include the permit being contingent upon approval of Red's Place final plat by City Council, enhanced landscaping to be planted along eastern perimeter of the property, and the development shall be in conformance with approved plan set dated September 5, 2024.

Adam Johnson, who lives near the new development shared his concern with the height of the third story causing privacy issues for surrounding properties. He would appreciate privacy elements in the design.

Don Nelson discussed concern with the access road to the development. He was referring to the access drive to Larsen Park, which is emergency only. He also discussed property values and security of the housing unit for the residents.

Dick Rinehart shared comments regarding traffic, and speed limits in the area. More traffic in that area causes safety concerns.

Sarah Johnson shared her concern for the safety of the residents of Red's Place.

Bruce Danielson, founder of Red's Place addressed the concerns. Danielson shared who will be served at Red's Place, and the additional units allow for elderly parents to live with their adult autistic child. Danielson explained the residents will be living in a building that was designed by an architect who has a child with Autism. The building has multiple safety features as this a huge responsibility to take on residents with a disability and keep them safe. He stated he worked with the Wisconsin DOT regarding traffic safety issues.

The site will be excavated about twelve feet with landscaping added for privacy. Danielson addressed the property value concern explaining that it is a facility much like the nearby Comforts of Home.

Danielson further explained they worked for the last two and a half years to address any issues for the residents of Red's Place and to remain good neighbors in the process. He stated this facility is non-profit, not out to make money, but to fulfill a need and a promise to a friend.

The Mayor closed the public hearing.

Holtkamp asked whether balconies on the units were planned. Danielson stated they are not. There was discussion regarding the Special Use Permit and City Council approval. Special Use permits are granted with the Plan Commission and do not go to Council. Holtkamp asked for clarification where the facility will be located on the lot. The location, setbacks, and access road locations were shared by Mehlhorn.

M/Odeen, S/Holtkamp made a motion to approve the special use permit.

Motion carried 5/0

PUBLIC HEARING: Special Use Permit for a home occupation at 1149 County Highway M (Kleist)

The Mayor opened the public hearing.

Harley Mehlhorn gave a presentation. He stated that this is a request for a special use permit for a home occupation. He began the presentation by explaining the Urban Reserve Area cooperative boundary agreement which gives the City of River Falls land use authority over a portion of the Kinnickinnic Township and that the subject site is within said portion. Mehlhorn proceeded to give background information on the location of the subject site and explained the current zoning of the property. Mehlhorn went on to provide the code definition of a home occupation and the considerations contemplated during the review of a standard home occupation permit, the types of uses outlined in code for a home occupation, and then the standards that code outlines for a typical home occupation permit to be granted. Mehlhorn then described the operations and site layout of the proposed Five Start Restroom Rentals home occupation, noting that the Wisconsin Department of Natural Resources (DNR) heavily

regulates the business. Mehlhorn went on to state that staff finds the operations consistent with code standards and outlined the five conditions of approval recommended by staff. He then outlined the process for grievances or complaints outlined by code. Mehlhorn concluded his presentation by providing the staff recommendation of approval with conditions.

The mayor then opened the floor for public comment.

A number of residents spoke regarding the item.

The first to speak was Cindy Maxwell who was opposed to the Special Use Permit stating that the recommendation of approval is based on an inadequate analysis. Maxwell felt there were inconsistencies between the proposed operations of the home occupation and the standards outlined in the ordinance and asked the Plan Commission to deny the request.

The next speaker was Ian Lewenstein who was also opposed to the Special Use Permit, stating he feels that the analysis of the SUP uses faulty logic and that the proposed operations are inconsistent with the ordinance, citing the intensity and scale of the business.

The next speaker was Brad Gilbertson who was likewise opposed to the request. He stated concerns over contaminants and airborne particulates due to his domicile's proximity to the business. Gilbertson also had concerns over property value impacts. Gilbertson requested the Plan Commission deny the request.

The next speaker was Elizabeth Kleist who stated that she is the applicant's eldest daughter. Elizabeth Kleist spoke to the operations of the business and that she is the only one working for the business besides are father, the applicant.

The next speaker was Tom Schreiber who was opposed to the project on concerns of safety. Schreiber stated he as concerned about chemical particulates and well water contamination.

The next speaker was Craig Greenwood. Greenwood stated that the shed that the proposed business would operate from is proximal to Mr. Gilbertson's home, citing concerns that a portable restroom business would not be compatible with such proximity to a residence.

The next speaker was Justin Kleist, the applicant and business owner. Justin Kleist began by stating his dedication to the community. Justin Kleist went on to describe the specific operations of his business; stating that the business only operates two trucks and has one full time employee beyond himself. Further stating that all chemicals used in his business are regulated by the Department of Natural resources. He explained that the trucks and portable restroom facilities come back to the site fully pumped without any waste material. Mr. Kleist explained that many other similar businesses operate out of agrarian residential properties. Mr. Kleist then spoke regarding the sufficiency of space provided by the proposed storage area, stating that at any one time no more than fifty to one-hundred are on-site at any given time, with the rest being on customer sites.

The next speaker was Greg Erickson. Erickson stated that he felt a conflict with the intent of the Urban Reserve Area and the proposed business. Erickson then raised questions regarding the financing of the project and how Mr. Kleist received financing prior to the SUP being issued. He then stated his concerns over environmental impacts and conservation as it relates to the proposed business.

The next speaker was Dick Reinhart who stated that he felt the proposed business would be more appropriate in an industrial park and was concerned that the business could impact future annexations and development.

The next speaker was Brad Gilbertson who spoke for a second time. Gilbertson stated that he felt it was not right that the SUP, once approved by the Commission, would not need approval by Council. He finished by reiterating his environmental concerns.

The next speaker was Cindy Maxwell who also spoke for a second time, stating that the application of the SUP is inconsistent with what was said during the hearing and stating, particularly regarding the number of vehicles. Also stating concerns over the chemicals that the business stores on-site.

The next speaker was Justin Kleist who responded to the concerns regarding the amount of vehicles his business utilizes, which according to Kleist is limited to the amount as outlined in the ordinance.

The Mayor then closed the public hearing and opened the Plan Commission hearing.

The Mayor entertained a motion prior to the Commission discussion and comment.

Motion to approve M/Holtkamp S/Odeen.

Odeen commented on the project, stating the need for portable restroom facilities and that she is heartened that the chemicals for the business are to be regulated by the DNR.

Holtkamp then asked what the remaining balance of the shed structure was to be used for, which the applicant responded to stating personal use. Holtkamp then asked staff if the twenty-five percent limitation on area is structure by structure or total, which Mehlhorn responded to by stating it is building by building.

Woolsey stated his difficulty in making the proposed business fit with the analogous uses provided by the ordinance.

Odeen then asked Mehlhorn if the examples of uses listed in the home occupation section of code or the standards are what is considered when deciding upon the item. Mehlhorn responded by stating that the request was heavily analyzed by staff and that the staff recommendation is predicated upon finding consistency with both code and home occupation standards. Mehlhorn went on to explain the process that staff went through to come to the recommendation of approval.

Odeen asked if the list of uses in the Home Occupation Ordinance are exhaustive or exemplative, to which Mehlhorn responded citing code which states that the uses are examples.

Woolsey stated that he feels the testimony of residents indicates that the intensity of the proposed business is outside of what the ordinance allows for in regards to number of employees. Mehlhorn responded by clarifying that the ordinance allows for one employee outside of the residents of the home out of which the occupation is operating.

The Mayor then drew a comparison to the business in regards to number of employees and vehicles.

Woolsey then stated that he feels that the subject site is not the right place for such business.

Holtkamp asked staff if a delivery driver employed under the business would constitute an employee per code, Mehlhorn responded that it would.

Woolsey stated that he thinks that staff works hard to find a path forward for the applicant while protecting the community, finishing by stating he appreciates the effort of staff.

Holtkamp asked the future land use plan for the area which Mehlhorn responded to by stating its designated as future growth within the URA.

Moody asked if the Agricultural zoning of the property has any bearing on the review. Mehlhorn responded by stating the reason for pursuing the SUP is due to the Agriculture district listing home occupation as a special use.

Gormanson asked the applicant how often the holding tank will be emptied and who will empty it. Justin Kleist responded that it is pumped per DNR standards and that it is pumped by another septic service provider.

The Mayor then requested a vote.

Motion carried by majority 3/2

In favor: Holtkamp, Odeen, and Gormanson

Opposed: Woolsey and Moody

REPORTS

Planning Update

Emily Shively shared the next Plan Commission Meeting will be Wednesday November 6, as Tuesday is Election Day.

ADJOURNMENT

Commissioner Holtkamp made a motion to adjourn at 7:53 p.m. S/Gormanson; motion carried 5/0.

Respectfully submitted,

Angie Bond, Building Permit Technician/Code Compliance Officer and Harley Mehlhorn, Senior Planner