

Docket Number: 23/13456

Applicants: Scot Henss of Best Portable Toilets (applicant), 3211 90th Street, Urbandale, IA 50322, represented by E.J. Giovannetti with Hopkins & Huebner, P.C., 2700 Grand Avenue, Suite 111, Des Moines, IA 50312

Request: Approval of a Conditional Use Permit for a Disposal Use of a septic holding tank for temporary storage of portable restroom waste.

Subject Property / Surrounding Land Uses:

The subject property is located at 1962 NE Aurora Avenue, Des Moines. The property is approximately 1.48 acres in size, and is legally described as a part of Outlot V and Lot A of Ford Industrial Park, an Official Plat in Polk County, Iowa, being within Section 24 of Township 79 North, Range 24 West of the 5th P.M. (Saylor Township). The property is zoned “HI” Heavy Industrial District. Surrounding properties to the north and east are also located within unincorporated Polk County, zoned “HI” Heavy Industrial District, and developed with existing industrial uses. Directly adjacent to the east is an active railroad right-of-way owned and operated by Union Pacific Railroad. The City of Des Moines corporate limits are located adjacent to the south and west of the property. The properties within the City are also industrially zoned and contain a mix of existing industrial uses, including adjacent Union Pacific Railroad property to the south. There are no residences or areas of residential zoning in close proximity to the subject property. The site is located approximately three-quarters of a mile (¾) east of the intersection of E. Aurora Avenue and NE 14th Street (Hwy 69). See *Attachment A* for a vicinity map of the subject property and surrounding area.

The site contains an existing industrial building constructed in approximately 1950, according to County records. There are limited records for this property, but it appears to have been originally owned by Union Pacific Railroad. Union Pacific also owns and operates an active railroad right-of-way adjacent to the south and east of the property. The subject property and building appear to have been originally constructed and utilized by Union Pacific as a railroad maintenance facility/yard. The current property owner is Aurora Warehouse, LC, represented by Jeff Pettiecord, which has owned the subject property since 1996. The current owner has consented to this application. The site appears to have been used for various industrial uses over time.

Application

The applicant currently operates a portable restroom business at the subject property, known as Best Portable Toilets. This use involves the storage of portable restroom units and transfer of waste. Currently, waste is transferred from individual units to smaller and larger trucks for eventual delivery to the regional wastewater treatment plant. This Conditional Use Permit is requested to allow for the installation of an underground septic tank for temporary storage of portable restroom waste, to create efficiencies in the storage and transfer/disposal of this waste. The submitted application and site plan can be found as *Attachment B* to this report. The Polk County Zoning Ordinance, *Article 4: Use Regulations, Division 4, Section 6 (F)* includes “storage of septic tank wastes or sludge” as a listed Disposal Use. Furthermore, *Article 4: Use Regulations, Division 2 Table of Uses, Table 4.1* permits Disposal Uses within the “HI” Heavy Industrial District upon the granting of a Conditional Use Permit by the Polk County Board of Adjustment.

Public Testimony

Staff mailed out a total of 11 notices regarding this request, including the date and time of the public hearing, to surrounding property owners within the 500-foot notification boundary. To-date staff has received one (1) response in support, and zero (0) responses in opposition, of the request.

Natural Resources / Environmental

The site topography is relatively flat, with a low elevation of approximately 854 feet along its southern boundary adjacent to NE Aurora Avenue, and a high elevation of approximately 864 feet along the western property line. The majority of the site is flat with an elevation between 856 to 858 feet. The property contains no areas of mapped floodplain or other environmental hazards or features. The site contains no trees, vegetation or open space, as it has historically been fully developed, including the existing building and compacted gravel.

Roads / Utilities

The property has frontage and access to the south onto NE Aurora Avenue. NE Aurora Avenue is a dead-end road east of NE 14th Street (Hwy 69), within the improved roadway terminating approximately 275 west of the subject property. However, access to the subject property has been historically established within the remaining public right-of-way and Union Pacific Railroad right-of-way adjacent to the property. The source of water supply and wastewater treatment for the current property and building are unknown.

Analysis

The Board of Adjustment in reviewing an application for a Conditional Use permit shall consider the proposal in terms of the following:

- 1. Existing zoning and land use in the vicinity of the uses.**
The subject property and surrounding properties include land both within unincorporated Polk County and the City of Des Moines. All surrounding properties are zoned industrially, and contain existing industrial uses, including manufacturing and warehousing. An active Union Pacific Railroad and right-of-way is adjacent to the south and east. There are no residential properties or zoning in close proximity.

- 2. Planned and proposed public and private development, which may be adversely affected by the proposed use.**
There are no major public or private developments planned in the area.

- 3. Whether and to what extent the proposed use, at the particular location for which it is suggested, is necessary or desirable to provide a development which is in the interest of the public convenience or which will contribute to the general welfare of the area or Polk County.**
The proposed septic holding tank will create efficiencies in the transfer and storage of waste for the portable restroom business operating from the site, including reduced truck traffic to and from the regional wastewater treatment plant.

4. **Whether and to what extent all steps possible have been taken by the developer to minimize any adverse effects of the proposed use on the immediate vicinity and on the public health, safety and welfare in general.**

If approved, the applicants will be required to comply with all conditions of approval, including an approved site plan, and compliance with Building and Environmental Health permitting and regulations for the holding tank.

Findings

The application shall be denied if the Board of Adjustment finds any of the following:

- a. **The application and record fail to establish compliance with the standard made applicable to the proposed development by the provision of this Ordinance.**

The use is permitted within the "HI" Heavy Industrial District upon approval of a Conditional Use Permit by the Board of Adjustment. Upon staff's review, the proposal complies with the standards set forth in the Ordinance for Disposal uses, subject to the recommended conditions of approval and final approval by the Board of Adjustment. The Ordinance contains additional setback requirements from property lines for disposal uses. However, upon staff's review these additional setbacks are intended for above-ground or at-grade disposal uses, such as a salvage yard or windrow storage of sludge/waste. The proposed septic holding tank is therefore not subject to these additional setbacks.

- b. **The proposed use, developed in the proposed manner, and at the proposed location, would be inconsistent with the standards pursuant to the provisions of this Ordinance.**

The proposed use is consistent with the Ordinance, subject to approval of this Conditional Use Permit and compliance with the conditions of approval.

- c. **The adverse impacts on the overall public health, safety and welfare are not balanced by the public or private benefits of the proposal. The Board of Adjustment shall include in this balance, any proposals of the applicant and any conditions that it might impose on the development, pursuant to the provisions of this Ordinance, to ameliorate problems associated with the development.**

See recommended conditions of approval at the end of this report.

In addition, no application for a Conditional Use Permit shall be approved unless the Board of Adjustment specifically finds the proposed conditional use appropriate in the location for which it is proposed. This finding shall be based on the following criteria:

- A. **The proposed use is not in harmony with the general purpose, goals, objectives, and standards of the following:**

1. **Polk County Comprehensive Plan:** The proposal is consistent with the goals and policies of the 2050 Polk County Comprehensive Plan.

2. **Polk County Zoning Ordinance:** Staff review finds the proposal is consistent with the use standards in the Ordinance for Disposal Uses. Additional setbacks from adjacent properties are not applicable for a septic holding tank.

3. **Other plan, program, map, or ordinance adopted, or under consideration pursuant to official notice, by the County:** None.
- B. **The proposed location of the use is not consistent with policies or provisions of the following:**
1. **Comprehensive Plan:** The proposed use is consistent with the goals and policies of the 2050 Polk County Comprehensive Plan.
 2. **Polk County Zoning Ordinance:** Disposal Uses are allowed within the “HI” Heavy Industrial District, subject to approval of a Conditional Use Permit by the Board of Adjustment.
 3. **Other plan, program, map, or ordinance adopted, or under consideration pursuant to official notice, by the County:** None.
- C. **The proposed use at the proposed location results in a substantial or undue adverse effect on any of the following either as they now exist or as they may in the future be developed as a result of the implementation of provisions and policies of the Comprehensive Plan, this Ordinance, or any other plan, program, map, or ordinance adopted, or under consideration pursuant to official notice, by the County or other governmental agency having jurisdiction to guide growth and development:**
1. **Adjacent property:** The proposed use is compatible with adjacent properties, which are all industrial in use and zoning.
 2. **Character of the neighborhood:** The character of the neighborhood is entirely industrial, including a mix of existing manufacturing and warehousing uses as well as active railroad right-of-way. There are no existing residences or areas of residential zoning in close proximity. The existing use of a portable restroom business is permitted by right. The proposed additional Disposal Use of a septic holding tank is permitted upon the granting of this Conditional Use Permit, and would not be out of character with the surrounding neighborhood.
 3. **Traffic conditions:** NE Aurora Avenue is a two-lane roadway that is adequate to handle existing and proposed traffic, including this use.
 4. **Parking:** There are limited parking needs for this use that can be accommodated on the existing site.
 5. **Public improvements:** No impact upon future public improvements is anticipated.
 6. **Public sites or rights-of-way:** No impact upon public sites or adjacent rights-of-way is anticipated.
 7. **Other matters affecting the public health, safety, and general welfare:** None.

D. The proposed use in the proposed area is not adequately served by or imposes an undue burden on any of the following.

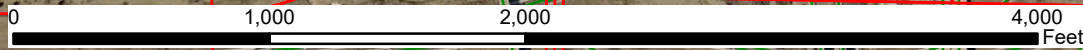
- 1. Public improvements:** Adequate for proposed use.
- 2. Public facilities:** Adequate for proposed use.
- 3. Public utilities:** Adequate for proposed use.
- 4. Public services:** Adequate for proposed use.

Recommendation

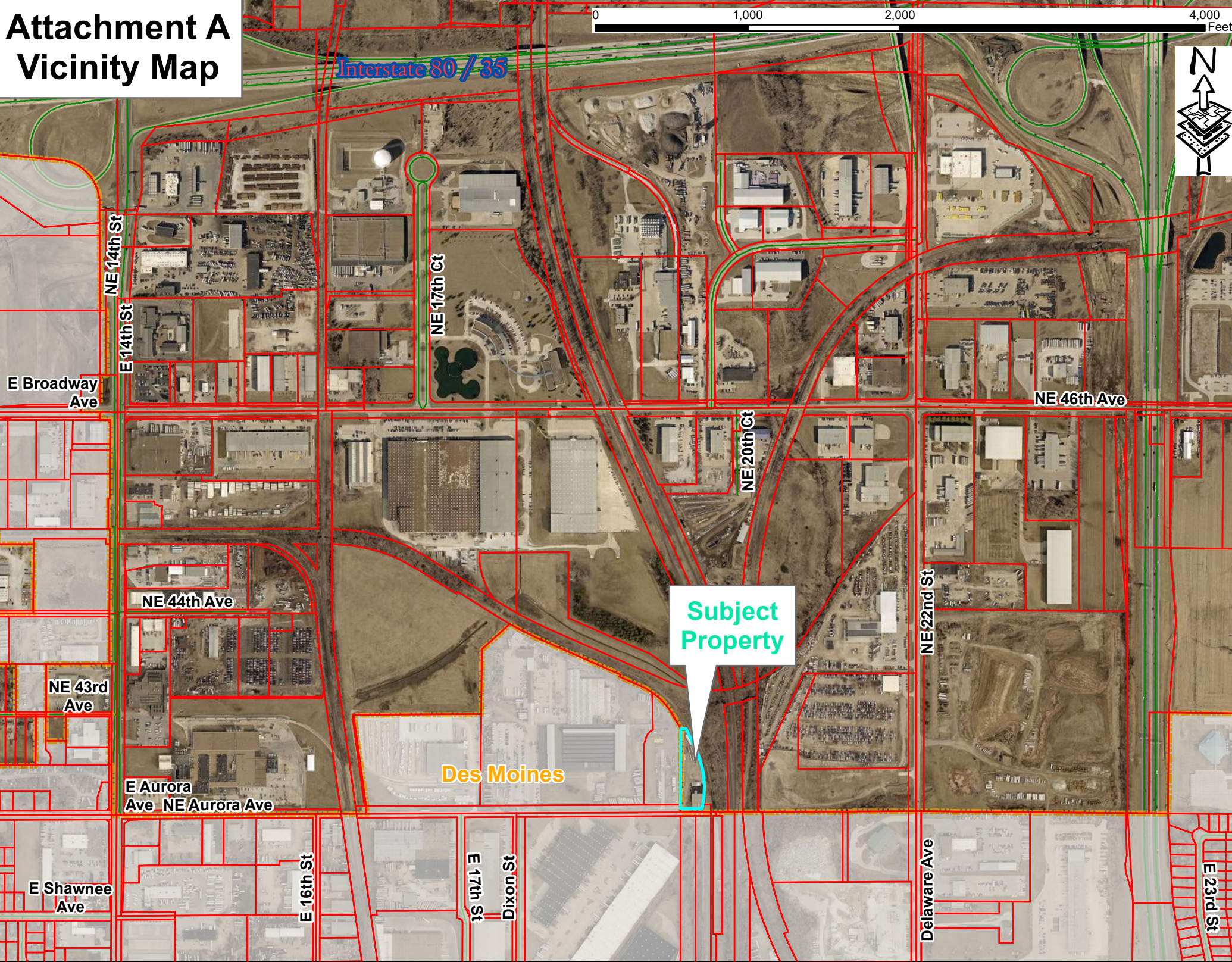
Staff recommends approval of the Conditional Use Permit for a Disposal Use of a septic holding tank for temporary storage of portable restroom waste, subject to the following conditions:

1. The holding tank is only permitted for the temporary storage and transfer of portable restroom waste associated with the current business and applicant, or a similar portable restroom business for the same purpose. The tank is not permitted to be used as a source/method of wastewater treatment for the subject property or building.
2. The applicant shall gain approval of a site plan for the existing and proposed use from Polk County Public Works prior to installation of the holding tank.
3. The holding tank shall be permitted by Polk County Public Works, Environmental Health Division, prior to installation. The tank shall comply with all determined applicable regulations per Polk County Environmental Health upon review and issuance of the permit. The design and installation shall be adequate to contain any spillage onsite during transfer activities, as deemed required by Polk County Environmental Health.
4. The applicant shall comply with all applicable Polk County Building Codes, including protection of the tank and equipment via curbing, bollards or fencing.

Attachment A Vicinity Map



Interstate 80 / 35



Attachment B

Conditional Use Permit Application

Conditional Uses are those uses which may have a special impact or uniqueness demanding closer scrutiny and analysis to the site and the surrounding environment. When such a use is proposed, a review and report by Planning Division staff of the location, design, configuration, and impact will be conducted, comparing the proposed use to fixed standards and presented to the Board of Adjustment for action at a public hearing. Notices of the request are mailed to all property owners located within 500 feet of the subject property.



Please complete the entire application, submit with fee and review the standards on page 3.

To: **Polk County Board of Adjustment**

1. The undersigned Petitioners request that the Board consider this application for a Conditional Use Permit for the following use: (Describe briefly the nature of the use.)

Temporary pre-cast concrete 5,000 gallon septic tank.

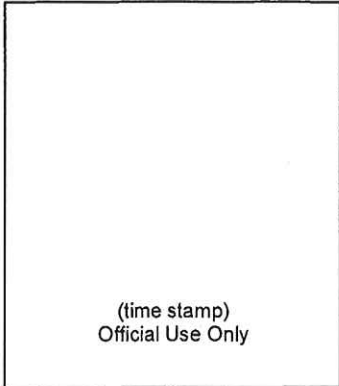
2. Subject Property Address: 1962 E Aurora Avenue, Des Moines, IA 50313

3. Subject Property District and Parcel Number: 2070/01090-007-002 and 7924-24-251-004

4. Subject Property Legal Description (attach if necessary):

Parcel C BEG SW COR OUTLOT V THN N 493.47F E35.95F SE 135.85F SLY 388.15F TO N LN LT A THN SW 25.64F W 141.4F N 25F TO

POB OUTLOT V and LOT A FORD INDUSTRIAL PARK

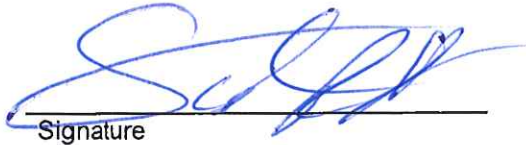


5. Filing Fee: - \$457.00

6. Applicant(s) Information:

Scot Henss

Applicant (Print Name)


Signature

11-20-23
Date

Renter

Interest in Property (owner, renter, perspective buyer, etc.)

scothenss@gmail.com

Email

3211 90th Street, Urbandale, IA 50322

Address, City, State and Zip

515-208-7481

Phone

Fax

7. Applicant(s) Representative:

If the appeal is going to be represented by someone other than the applicant please provide that information below.

E.J. Giovannetti

Applicant Representative (Print Name)

Hopkins & Huebner, P.C.

Firm or Business Name

2700 Grand Avenue, Suite 111, Des Moines, IA 50312

Address, City, State and Zip

ejgiovannetti@hhlawpc.com

Email

515-697-4236

Phone

515-697-4339

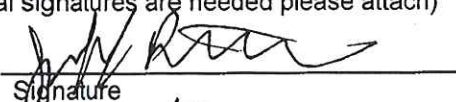
Fax

8. Property Owner Consent:

The application must be signed by all the Titleholders, Contract Purchasers, or Option Purchasers of the subject property. The application may also be signed by the Registered Agent for a corporation or other person with similar legal authority to sign for a property owner. (if additional signatures are needed please attach)

Aurora Warehouse, L.C.

(Print Name)


Signature

11/20/23

Date

Jeff Pettiecord

(Print Name)


Signature

11/20/23

Date

9. Written description:

Please provide a written description providing specific detail and reasons for the proposed Conditional Use Permit. (attach if necessary)

Presently, Best Portable Toilets, Inc., moves waste effluent from their portable toilets by a smaller truck that moves to this site, 1921 NE 58th Avenue, Des Moines, and dumps into a larger truck that, once at capacity, transports effluent to the Waste Water Reclamation (WRA) Facility for ultimate disposal and treatment. This requires multiple trips from this location to the WRA facilities on a frequent basis. This obviously requires multiple trips throughout the week. The installation of a temporary holding facility in a larger underground tank (5,000 gallons) would reduce multiple trips, with a probability that moving the storage tank's capacity to one large trip every other day. The matter has been compounded as in March 2023, the WRA agency has altered its hours essentially from receiving waste 24/7 to 5 days a week, 7:30 a.m. - 4:00 p.m. Additionally, the facility is now closed on holidays. We would note that arrangements could be made with the WRA to accept effluent by appointment. However, the problem for an operation such as this is that their peak times are on holidays and, dependent upon crowd participation, i.e. no plausible way to predict the need, thereby making arrangements by which to accommodate the need.

It is our belief that the proposal best reduces traffic by eliminating multiple trips and, thereby, reducing the potential for accidental exposure to roadways and environment. We would underscore that there is no hazardous waste involved, but rather domestic sewage. There is something unique about the nature of this work and not one, in which many folks are involved.

As board and staff are aware, the property in question is zoned HI or heavy industrial. Pursuant to the County Ordinance, the District is intended to permit moderate to heavy industrial uses including large areas of outdoor storage. The contents would be held temporarily for a brief period and subsequently pumped into a tanker for movement into the WRA facility. Reducing frequently represents significant reduction in costs of labor as well as vehicular fuel and expenses. This proposal would minimize leakage. However, if the operation was moved indoors, doing so would be above ground.

10. Required Information: (must be included prior to making submittal)

- A. Complete Application including the detailed description of requested Conditional Use Permit, including specific information about the request.
- B. Submit six (6) copies of a fully dimensioned, to scale site plan meeting site plan requirements, as required.
 - 1. Provide additional information as required by Zoning Ordinance specific to the use requested.
 - 2. Submit a reduced size, 11"X17" site plan that is legible that can be reproduced.

A completed application with required information and filing fee must be submitted. Incomplete submittals will not be processed and will be returned to the Applicant.

Return forms to: Polk County Public Works, Planning & Development Division 5885 NE 14th Street
 Des Moines, IA 50313
 • Phone (515) 286-3705 • Fax (515) 286-3437 •
 email: PublicWorks@polkcountyiowa.gov

Forms available online <http://www.polkcountyiowa.gov/PublicWorks/> BOA Calendar Calendar

OFFICIAL USE ONLY			
Received by		Docket Number	
Application deadline		Date Received	
BOA meeting date		BOA Approved	Y / N

Paragraph 9 to Conditional Use Permit Application

As the name describes, Best Portable Toilets, Inc., is a company that deals with plastic molded outdoor cubicle used as a toilet or temporary holding receptacle. As we know, they are most frequently seen and used at outdoor events such as concerts, fairs, automobile races, etc. In our case, they are serviced by a number of smaller trucks, 5 trucks with the capacity of 650 gallons and one of 800 gallons, that are emptied into a larger truck of 2,000 gallons that is onsite, 1921 NE 58th Avenue, Des Moines. When this truck is at capacity, contents are taken to the wastewater reclamation agency for ultimate disposal and treatment. The movement of this waste, both in its collection as well as depositing on the site, as well as movement to the wastewater reclamation agency, is in fact an exposure to leakage onto the public streets as well as not necessarily a cost-effective manner in which to operate this type of business. These trucks move continuously throughout the day and frequently into the evening around the community as needed.

Prior to this year (2023), the WRA's receiving hours were 24/7 to 7:30 a.m. to 4:30 p.m. However, as of May 2023, that was changed from 6:00 a.m. to 6:00 p.m., 7 days a week, including holidays. The WRA will accommodate the hauler who has special needs and accommodate outside those hours. The difficulty with an operation such as ours is that peak times are not predictable but dependent on crowd participations and the nature of events. There is no plausible way to predict the need thereby making arrangements in advance.

In order to overcome this hardship, our proposal is to replace the truck with a 5,000 gallon in-ground tank that would obviously reduce traffic, eliminating multiple trips, minimizing environmental impact of the possibility of spillage/leaking thereby reducing the potential for accidental roadway and hard to the environment and, needless to say, operate more cost-effectively. An additional advantage of temporary in-ground storage is that we would avoid the freezing of effluent. Incidentally, we would underscore that there is no hazardous waste involved, but rather domestic sewage. We believe this is another unique aspect of this.

As one peruses the uses in the various zoning districts in Polk County, the conclusion is that this use, temporary underground storage of waste, is not permitted. However, in this district, heavy industrial (HI) we note that the district is intended to permit moderate to heavy industrial use a reasonable district and site for such a use. We note the general use of "disposal" is identified as a conditional use in this district. However, we are not speaking of disposal, our issue is one of "storage". We believe that it is appropriate that a user such as ours should come before this Board and staff to meet the appropriate criteria for the use. We believe that this site is one that would appropriately accommodate this use. One would argue that use of this nature should be allowed in some district, hence the most appropriate is this one. We believe the hardship is obvious given the nature of the operation including the inability to predict either time or volume.

The existing zone, HI, is defined as one that is intended to permit moderate and heavy industrial uses including manufacturing sites, construction contractors, and other uses with possible large areas of outdoor storage. The land use in the vicinity is similarly heavy industrial. This particular site is on a dead-end at a railroad track without a crossing, i.e., the street goes no further. It does not appear that there are any plans or proposed developments that may be adversely affected by the proposed use. We believe there would be no adverse effect anywhere as the effluent will be confined underground in a tank on a temporary basis. It is obviously pumped in and out but without any exposure to the environment. We would offer that if this site is not appropriate, there well may be no site in Polk County that would

accommodate this use. We believe that the use is certainly consistent and in harmony with the industrial setting.

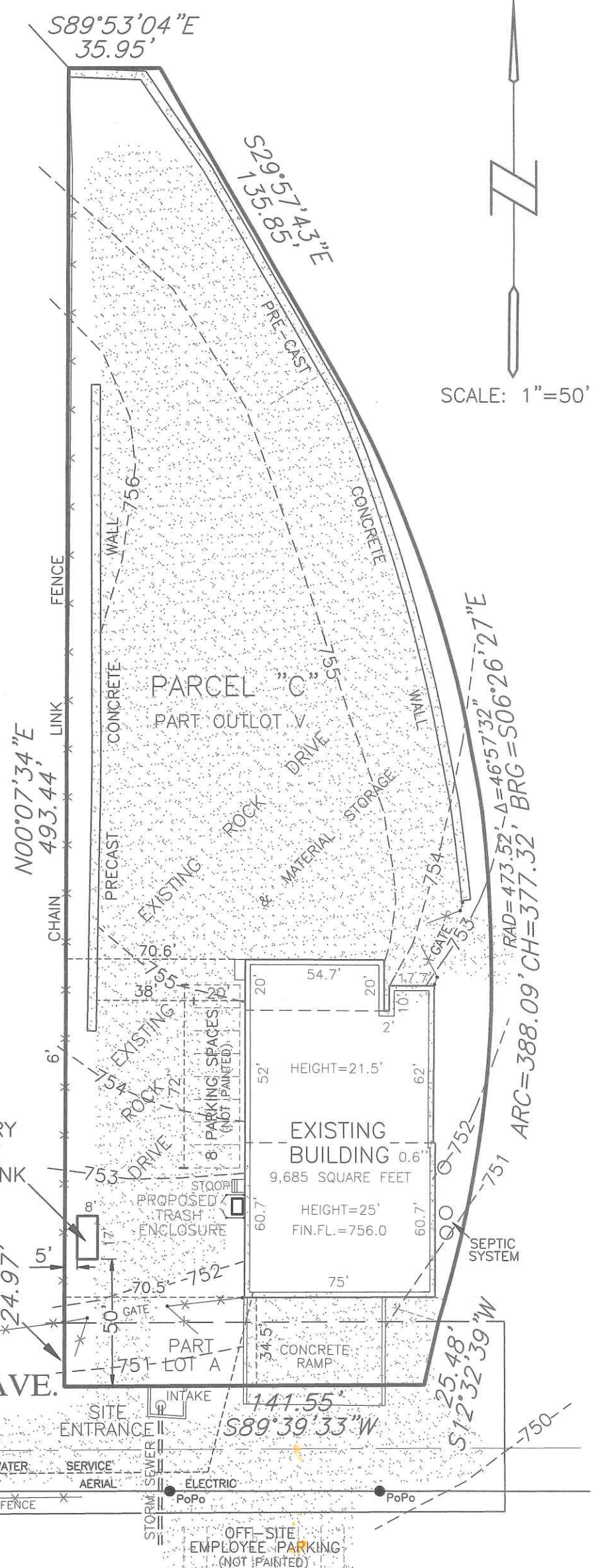
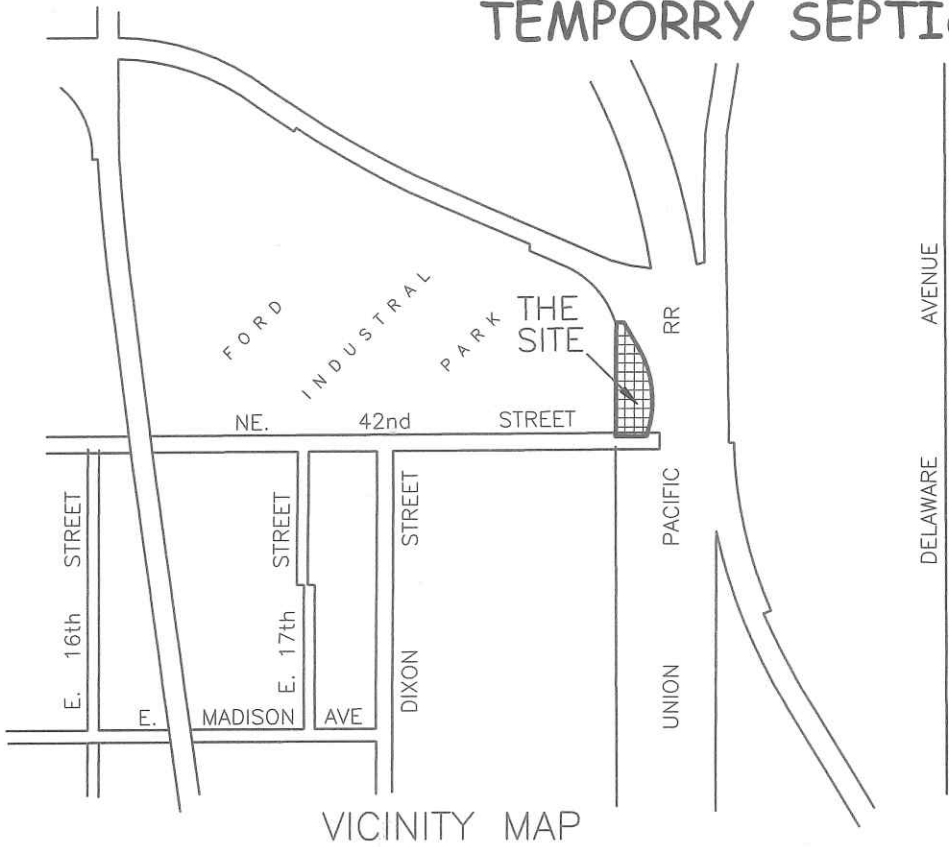
The issue obviously does not encourage a great deal of traffic, either in or out. The employees will come to work in the morning, park their cars, take their trucks from the building onsite, and move on and off the property as needed.

We respectfully submit that the burden placed upon us regarding hardship is clearly met. Furthermore, the permit that we are requesting is absolutely consistent with this district. One might ask the question if not here, where? We appreciate the time and cooperation that we have received from the staff and respectfully request approval.

BEST PORTABLE TOILETS, INC.

1962 E. AURORA AVENUE DES MOINES IOWA

TEMPORRY SEPTIC STORAGE TANK



PROPERTY DESCRIPTION:

PARCEL C IN A PART OF LOT A (STREET) AND IN PART OF OUTLOT V IN FORD INDUSTRIAL PARK, AN OFFICIAL PLAT, POLK COUNTY, IOWA AS SHOWN IN THE OFFICE OF THE POLK COUNTY RECORDER AT BOOK 7424, PAGE 599.

SITE AREA:

68,940 SQUARE FEET = 1.58 ACRES.

NOTES:

- EROSION CONTROL MEASURES MAY BE REQUIRED BASED ON FIELD INSPECTION.
- ALL CONSTRUCTION DEBRIS SHALL BE REMOVED FROM THE PUBLIC STREET EACH DAY.
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- ALL CONSTRUCTION DEBRIS SHALL BE REMOVED FROM THE PUBLIC STREET EACH DAY.
- ALL CONSTRUCTION DEBRIS AND SEDIMENTATION SHALL BE REMOVED FROM ADJACENT SITES AND EITHER SEEDED AND/OR SODDED PRIOR TO COMPLETION OF THE PROJECT.
- NO GRADING IS PROPOSED FOR THIS CONSTRUCTION.
- ALL CONCRETE WASHOUT WILL BE CONTAINED ON-SITE OR PLACED IN A CONTAINMENT DEVICE.
- PROPOSED TRASH ENCLOSURE SHALL BE CONSTRUCTED IN ACCORDANCE WITH THE POLK COUNTY STANDARD SPECIFICATIONS.

PARKING:

8 SPACES REQUIRED
8 SPACES PROVIDED (ON SITE)

ZONING:

HI HEAVY INDUSTRIAL DISTRICT

USE:

PORTABLE TOILET STORAGE SITE & EQUIPMENT MAINTENANCE SHOP

PROPERTY OWNER:

AURORA WAREHOUSE LC
1200 PRAIRIE DRIVE SW.
BONDURANT, IOWA 50035

TENANT:

BEST PORTABLE TOILETS, INC.
% SCOT HENSS
P.O. BOX 3825
URBANDALE IOWA 50322
PHONE: 515.453.2211

PROPOSED TEMPORARY
PRE-CAST CONCRETE
5000 GAL SEPTIC TANK

E. AURORA AVE.

Raccoon Valley Land Surveying
33235 L Avenue Adel Iowa 50003
Phone: 515.493.317

I HEREBY CERTIFY THAT THIS LAND SURVEYING DOCUMENT WAS PREPARED BY ME AND THE RELATED SURVEY WORK WAS PERFORMED UNDER MY DIRECT PERSONAL SUPERVISION AND THAT I AM A DULY LICENSED PROFESSIONAL LAND SURVEYOR UNDER THE LAWS OF THE STATE OF IOWA. LICENSE RENEWAL DATE: 31 DEC. 2023 PAGES COVERED BY THIS SEAL: THIS PAGE ONLY

SIGNED: *Joel R. Romey* DATE: *11/21/23*

JOEL R. ROMEY
IOWA
12971
LICENSED
PROFESSIONAL LAND SURVEYOR

PAGE 1 OF 1
DRAWING NO. '23 046