

## Burleigh County Planning and Zoning Meeting Minutes

April 10, 2024

**PRESENT:** Chairman Dennis Agnew, Commissioners Brian Bitner, Alvie Jarratt, Steve Marquardt, Dale Patrick, Mike Schmitz, Bea Streifel, and Brian Zuroff.  
Commissioner Wayne Munson was not present.

**OTHER:** Casey Einrem, County Engineering, Brian Renke, Rural Fire Department, Mitch Flanagan and Marla McMonagle, County Planning, and Members of the Public (see Sign in Sheet)

Chairman Dennis Agnew opened the meeting:

AGENDA ITEM	ACTION	
Approval of March 13, 2024 meeting	Approve the March Minutes 1 <sup>st</sup> Commissioner Bitner 2 <sup>nd</sup> Commissioner Zuroff	Approved 8 - 0
<b>CONSENT AGENDA</b>		
Peaceful View Subdivision	<i>2 lot subdivision on 17.89 acres &amp; zoning change from A-Agricultural to R1-Rural Single Family Residential</i>	
Marla McMonagle	Gave a summary of the Peaceful View Subdivision, the section line vacation and the zoning change request from A-Agricultural to R1-Rural Single Family Residential	
Dennis Agnew	Questioned the requirement to supply an access line if it was required by the Corp of Engineers.	
Marla McMonagle	Stated when the section line was vacated, there was a requirement to replace the section line with an alternative route.	

MOTION:	RESPONSIBLE PARTY	RESULTS
Approve the Peaceful View Subdivision and Zoning Change and call for a public hearing	1 <sup>st</sup> Commissioner Patrick 2 <sup>nd</sup> Commissioner Streifel	Approved: 8 – 0
Fleck Subdivision	<i>A 3-lot subdivision containing 39.89 acres</i>	
Marla McMonagle	Provided a summary of the Fleck Subdivision. The 3-lot subdivision contains lots greater than 10 acres and qualifies for A-Agricultural Zoning.	
Commissioner Zuroff	Questioned the distance from the existing buildings to the access easement.	
Marla McMonagle	The Burleigh County Engineering Department looked at the location of the access easement and the building. The required distance is maintained.	
The Hilltop PUD	800 NW 149 <sup>th</sup> Avenue Zoning Change from A-Agricultural to PUD for 9.3 acres more or less.	
Marla McMonagle	Provided a summary of the PUD and why the developers wanted to verify that the current zoning could be changed before they continued with the proposed development. Issues that may affect the preliminary/final plat have been discussed and the developers understand the fundamental cost involved with those concerns. If the petition for a zoning change fails, the developer will not continue with the project.	
Commissioner Zuroff	Questioned whether the access to the site could be paved so there is no tracking on the road way.	
Casey Einrem	Stated they have discussed the adjustment of the Road Way Master plan. The developer understands what is required.	
MOTION:	RESPONSIBLE PARTY	RESULTS
Approve the preliminary PUD and call for a public hearing	1 <sup>st</sup> Commissioner Zurauff 2 <sup>nd</sup> Commissioner Jarrett	Approved 8 – 0

PUBLIC HEARINGS		
Baker Subdivision	A 2-lot Subdivision containing 69 Acres No Zoning Change is required. Subdivision will maintain A-Agricultural Zoning	
Mitch Flanagan	Provided a summary of the Baker Subdivision and the vacation of the section line and new access easements	
Chairman Agnew opened the Public Hearing. No comments were made. Public hearing was closed		
MOTION:	RESPONSIBLE PARTY	RESULTS
Approve the Baker Subdivision and give a “Do Pass” recommendation to the Board of Burleigh County Commissioners	1 <sup>st</sup> Commission Bitner 2 <sup>nd</sup> Commissioner Marquardt	Approved 8 - 0
Article 21 – FP Floodplain District	Amendment to Article 21 – Floodplain District of the Burleigh County Zoning Ordinances	
Mitch Flanagan	Explained the reasons for the amendments and how they were a requirement from FEMA, the timeline to record the amendment and the steps taken to amend the Article.	
Commissioner Patrick	Asked about why we were restricting parking recreational vehicles in the county to 180 days. Why can a property owner park their recreational vehicles on their property?	
Mitch Flanagan	Recreational Vehicle restriction applies to camp grounds.	
Commissioner Bitner	Pointed out a typographical error	
Chairman Agnew opened the Public Hearing. No one approached The Public Hearing was closed		
MOTION:	RESPONSIBLE PARTY	RESULTS
Approve the Amendment to Article 21 – FP Floodplain District	1 <sup>st</sup> Commissioner Bitner 2 <sup>nd</sup> Commissioner Patrick	Approved 8 – 0
Commissioner Bitner	Asked Mitch where in the amendment does it say Recreational Vehicle Parking is restricted to campgrounds.	

Mitch Flanagan	Stated it does not say it in the amendment, but the County is not going to tell property owners they must move their recreational vehicles.	
Commissioner Bitner	Asked that the amendment be changed before coming before the County Commission to address property owners not being included in the restriction.	
Burnt Creek Farm Special Use Permit	Special use permit (SUP) request for an event facility at 11501 NE 41 <sup>st</sup> Street	
Mitch Flanagan	Provided information for rescheduling the public hearing, when a postponement was requested. Because of the concerns expressed regarding the SUP, the citizens wanted to address their concerns.	
Commissioner Bitner	Was wondering what the status was regarding stakeholder meetings or resolution.	
Mitch Flanagan	Stated a compromise could not be reached. Stakeholders felt this was a C-Commercial use of the land	
Commissioner Streifel	Stated the surrounding property owners were not against the SUP just the number of events surrounding the site	
Commissioner Bitner	Was concerned with the amount of people attending the public hearing.	
Chairman Agnew	Expressed that the public hearing should be held tonight. Commissioner Streifel shared she lives just South of the property and wanted the Commissioner to know that.	
Chairman Agnew	Asked for a motion to recuse Commissioner Streifel due to a conflict of interest.	
<b>MOTION</b>	<b>RESPONSIBLE PARTY</b>	<b>RESULTS</b>
Due to the possible conflict of interest, ask Commissioner Streifel to recuse herself from voting on this SUP	1 <sup>st</sup> Commissioner Schmitz 2 <sup>nd</sup> Commissioner Zuroff	Approved 7 – 0 Commissioner Streifel did not vote on the motion.

Commission Bitner	Stated he is in favor of the motion, because he was in the same position in the past and it is not reflection on Commissioner Streifel	
Commissioner Jarratt	Asked for clarification of the recusal request.	
Commissioner Streifel	Asked if she was able to leave the table and comment on the SUP which was affirmed by the Chairman Agnew	
Chairman Agnew opened the Public Hearing.		
Kurt Fleck	He is against the SUP as written. He stated the surrounding property owners set up a meeting with the property owners and the petitioners. The neighbors are not against the SUP, but would like it limited and the types of events. He would like to see the Agri-Tourism amendment be finalized first. They would like to meet with stakeholders, petitioner and the County. He submitted a letter to the Commissioner. Agri-Tourism should be defined before we move ahead.	
Commissioner Bitner	Stated we are working on an ordinance at this time. He says the ordinance does not mention anything regarding this issue.	
Kurt Fleck	The Agri-Tourism should be decided ahead of this SUP	
Bill Miller	Stated he lives less than 2 miles from the Burnt Creek Farm and he did not get any notification and the people living on 97 <sup>th</sup> and 26 <sup>th</sup> did not get notifications. How can this issue be solved? He submitted a petition to the commissioners against the SUP. (Petition is on file) The petition addresses the noise and how it will affect the surrounding property. Home values will drop and affect wildlife.	
Commission Bitner	Stated Mr. Miller was not on the notification list, but the County is working on extending the notification area.	
Tammy Bonnet	Lives west of Burnt Creek Farms. She is tired of having to defend her area to keep her life style. She is concerned about having to pay to replace the roads, dust, traffic and the condition of the roads. She is concerned about the trespassing, dust and accidents on the road. She is not against small events, but large events concern her.	

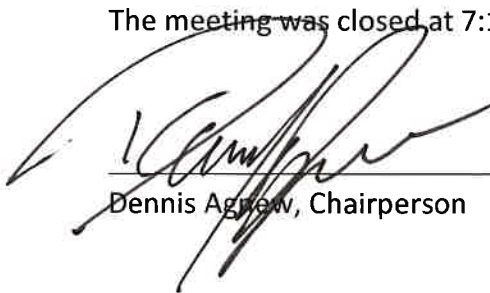
Melissa Miller	<p>She and her family live on 110<sup>th</sup> Ave. She is opposed to using the property as a commercial venue. She feels they will be impacted by the noise, dust, and traffic. They met twice regarding the SUP. No resolution was found. She stated they are not opposed to using the farm for small educational events. The petitioners proposed traffic pattern and dust amounts were not accurate in her opinion. She does not feel the neighbors should contribute to the cost of road maintenance and dust control when the farm is a commercial business. She would like an ordinance for Agri-Tourism before the SUP.</p>
Betty McCommon	<p>She lives 2 miles from the property. She says the access to the property has one way in and the moving of the traffic. If people were to try to avoid a "check point" they would have nowhere to go and would be stuck. She feels there would be a lot of people just driving around the area. She is concerned about the noise, dust and traffic.</p>
Valerie Jundt	<p>Her family has 40 acres near the Burnt Creek Farms. (Her testimony is on file.) The petitioner received a grant to educate on agriculture. The neighbors don't have a problem with agricultural education, but oppose the extension of the uses in the special use request. Her opinion is the special use if approved will directly affect the neighbors, and large events will put a burden on the neighbors, the roads suggested for additional traffic, property values, and life in the area. Tickets were sold when the petitioner held a movie event in the past, but a special use permit was not obtained for this event which is commercial. The events he would like to hold are a commercial use.</p> <p>Burleigh County does not have an ordinance regarding Agri-Tourism. An ordinance should be developed before the special use permit is issued. She feels the concerns of County Commission were not addressed.</p> <p>She feels the notification area should have been larger since people affected by the traffic were not notified.</p>

Chairman Agnew asked for a motion to continue the public hearing at the May 8, 2024 meeting.		
MOTION	RESPONSIBLE PARTY	RESULTS
Continue the public hearing at the May 8 2024 meeting	1 <sup>st</sup> Commissioner Patrick 2 <sup>nd</sup> Commissioner Bitner	Approved  6-2  Commissioner Bitner and Jarratt were opposed
OTHER BUISNESS		
Notification Distance		
Mitch Flanagan	Provided a brief history of the notification distance and submitted examples of the proposed notification distances of 1/2 mile, 2-mile polygon, and 2-mile circle and the amount of people covered in the mailing. The Burnt Creek Farms was used as an example. He explained the notice is post in the paper twice, on the website and the option to receive email notifications on all meeting and public hearings.	
Chairman Agnew	Asked Mitch to explain what the 2-mile polygon was.	
Mitch Flanagan	Stated the polygon measurement was a 2-mile distance along 110 <sup>th</sup> to highway 83.	
Chairman Agnew	What is the minimum of 1320' Also questioned if this was flexible.	
Commissioner Bitner	Stated a 2-mile circle is too large.	
Commissioner Schmitz	Said a 1/4 is to small for the county.	
Commissioner Bitner	Stated we should be able to be flexible and we are doing what we should legally.	
Mitch Flanagan	Stated we could increase that distance on more sensitive issues but we could also be spending \$1,000.00 per mailing. He asked Marla McMonagle how long it takes to do a mailing.	

Marla McMonagle	Stated about 3 hours if not less. Stated she is concerned about the question of "how come you sent out mailers to over what the ordinance says"
Commissioner Bitner	Asked staff to contact Julie Lawyer, States Attorney, for an opinion on setting a minimum or increasing the distance.
Commissioner Zuroff	Suggested have notification distances for commercial, agricultural, special use etc. He is also concerned about not having a set distance and changing it for some but not others.
Commissioner Bitner	Expressed concerns about the cost of mailing, mailing into different jurisdictions or ETA
Commissioner Streifel	Stated Special Uses go directly to a public hearing. She suggested the applicant could pay the fee.
Commissioner Bitner	Stated we need to get the information out to the public to get on the email list. Maybe include a mailer with the letters.
Commissioner Zuroff	Suggested a flyer in the tax statement.
Chairman Agnew	Suggested a fee to the petitioner.
Mitch Flanagan	Stated staff will investigate the distances and contact the States Attorney for an opinion.

Chairman Agnew asked for a motion to close the meeting.

The meeting was closed at 7:15pm



Dennis Agnew, Chairperson



Marla McMonagle, Staff



Attachments to the  
April 10<sup>th</sup> Minutes

Items given to the Planning and Zoning Commission during the April 10<sup>th</sup> Meeting:

1. George Schmaltz Letter
2. Signed Petition
3. Written Testimony - Wayne and Valarie Jundt

To: Burleigh County Planning and Zoning  
Burleigh County Building, Bismarck ND

April 10, 2024

From: George Schmaltz, 3101 162<sup>nd</sup> Ave NE, Baldwin, ND 58521

Subject: Burnt Creek Farm Venue Special Use Permit

I am contacting you about the proposed Burnt Creek Farm request for Special Use Permit, in the Burnt Creek Township, which I thought was a done deal after it was rejected in February and March.

The following is the memo I sent to the Burleigh County Commissioners on February 4<sup>th</sup>, 2024

I am in strong opposition to the Special Use Permit request for several reasons:

1. **Disrupts the quiet, peaceful life style of country living** of all the neighbors within a 2-mile radius.  
Imagine living in town or country and your neighbor across the street had a garage party every Thursday, Friday and/or Saturday night until 1:00-2:00AM. You would probably start looking for a new place to live in no time. Buying property in the country is not cheap, but if you **VALUE** and **TREASURE** the peace and quiet, you do it.
2. I put up 120 acres of hay between 97<sup>th</sup> Ave and 110<sup>th</sup> Ave., and between 26<sup>th</sup> St NE and 41<sup>st</sup> St NE. I have used the section line on 41<sup>st</sup> St from 97<sup>th</sup> Ave. to 110<sup>th</sup> Ave and the gravel road on 110<sup>th</sup> Ave. gets really sloppy and slippery after a rain.
3. Heavy traffic on 110<sup>th</sup> Ave east of 26<sup>th</sup> St NE presents a few potentially dangerous incidents, extremely steep ditches on the south side of road, difficult visibility due to the dust of gravel road and sloppy, slippery conditions after a rain.
4. At the planning and zoning meeting on Jan 10<sup>th</sup>, the committee denied the Special Use Permit by 8 to 1. I am hoping you will strongly take that into consideration.
5. Last, but not least, no matter how good fences may be, there is always a chance livestock may get out. What if some livestock gets out and gets hit on the road by an intoxicated driver, (which you and I both know is fairly common at weddings and/or party events).
6. Thanks for your review, consideration, and time.

Sincerely,

George Schmaltz

(701) 391-5810

## **Zoning/Special Use Protest Petition**

**RE: Burnt Creek Farm Special Use Permit: Section 24, PT SW ¼ Tract #1  
Addressed as 11501 NE 41<sup>st</sup> St, Bismarck ND**

We, the undersigned owners of property considered affected by the requested Special Use Permit described in the above-referenced address, do hereby file this petition in opposition.

This property directly adjoins rural residential and agricultural property and we oppose this change that will increase the noise, traffic, and dust. We believe it would detrimentally affect the peaceful enjoyment of our homes and property and upset the flow and general welfare of the surrounding area.

We also feel that this change in the use of agricultural property would negatively affect the value of our homes, safety of the neighborhood and aesthetics of the environment and wildlife.

“For the purposes of promoting the health, safety, peace, morals, comfort, convenience, and general welfare; conserving the value of property throughout the County; reducing and avoiding congestion on public roads, streets, and highways” (Article 1 Section 1 of Burleigh County Planning & Zoning Ordinances); and for all reasons stated at the public hearing on January 10, 2024 by the public; we respectfully request this Special Use Permit be denied.

Property Owner: Kurt & Dana Fleck  
Address: 3566 110<sup>th</sup> Ave NE, Bismarck ND 58503

Property Owner: Roger & Melissa Miller  
Address: 3818 110<sup>th</sup> Ave NE, Bismarck ND 58503

Property Owner: Brad & Tammy Bonnet  
Address: Bismarck ND 58503

Property Owner: William & Laura Miller  
Address: 9801 41<sup>st</sup> St NE, Bismarck ND 58503

Property Owner: Brett Meyhoff  
Address: 2600 97<sup>th</sup> Ave NE, Bismarck ND 58503

Property Owner: Julie Bryant  
Address: 10900 Olive Lane, Bismarck ND 58503

Property Owner: Greg & Justine Schonert  
Address: 12002 26<sup>th</sup> St NE, Bismarck ND 58503

Property Owner: Nate DuPour  
Address: 1958 110<sup>th</sup> Ave NE, Bismarck ND 58503

Property Owner: Betty McCommon  
Address: 3213 Kristen Ln, Bismarck ND 58503

Property Owner: Jerry, Trevor & Linda O'Shea  
Address: 11649 26<sup>th</sup> St NE, Bismarck ND 58503

Property Owner: Jeanette Hoffman  
Address: 10601 52<sup>nd</sup> St NE, Bismarck ND 58503

Property Owner: Bob & Shelly Miller  
Address: 10801 52<sup>nd</sup> St NE, Bismarck ND 58503

Property Owner: Wayne & Karen Martineson  
Address: 7521 123<sup>rd</sup> Ave NE, Bismarck ND 58503

Property Owner: George Schmaltz (farms on 41<sup>st</sup> St NE)  
Address: 3101 162<sup>nd</sup> Ave NE, Baldwin ND 58521

Property Owner: Tim Hoge  
Address: 5352 97<sup>th</sup> Ave NE, Bismarck ND 58503

Property Owner: Brandyn & Michelle Engelhard  
Address: 10011 Corona St, Bismarck ND 58503

Property Owner: Byron Andrea  
Address: 10451 52<sup>nd</sup> Ave NE, Bismarck ND 58503

Property Owner: Troy & Kristin Kihle  
Address: 2605 Kristen Ln, Bismarck ND 58503

Property Owner: Donavan Klein  
Address: 9720 Kelly Dr, Bismarck ND 58503

Property Owner: Larry Ziegler  
Address: 9720 Kelly Dr, Bismarck ND 58503

Property Owner: Carolyn Moore  
Address: 9520 Plainview Dr, Bismarck ND 58503

Property Owner: L. Paul Lemier  
Address: 3900 97<sup>th</sup> Ave NE, Bismarck ND 58503

Property Owner: David Schwalbe  
Address: 9500 66<sup>th</sup> St NE, Bismarck ND 58503

Property Owner: Layne & Vicki Jose  
Address: 2997 123<sup>rd</sup> Ave NE, Bismarck ND 58503

**Burleigh County Planning & Zoning Commission Meeting**

**April 10, 2024**

Written Testimony pertaining to Special Use Permit

Requested by Dave Lehman - Burnt Creek Farms

provided by

Wayne & Valerie Jundt

3202 84<sup>th</sup> Ave NE

Bismarck ND

By way of introduction, we are the owners of a home we built in 1992 along with 40+ acres of land on the SE Corner of 26<sup>th</sup> Street & 84<sup>th</sup> Ave NE. Our 40 acres is adjacent to my brother/sister-in-laws 40 acres (Patrick & Carol Geiger); which was originally purchased in 1972 by our parents, Leo & Bernice Geiger. This farmstead was at one time commonly referred to as the "Morris Farm". Wayne and I also own the 5 acre lot directly across from our home in Sunnyview Acres.

I am here to provide testimony and respectfully request that the Planning & Zoning Commission DENY the Special Use Permit (SUP) requested by Burnt Creek Farms.

Due to prior travel commitments, my brother Patrick has already provided his concerns, and feedback via e-mail regarding the Special Use Permit requested by Mr. Lehman. We will echo and concur with Pat's comments in addition to providing our own.

First & foremost we fully respect and understand that there are certain privileges that go along with owning property. **However, they must abide by the rules & regulations of the Planning & Zoning Commission, Burleigh County & with respect to their neighbors.**

The growth to Bismarck has sprawled quickly to the North in the past several years and the surrounding areas in the development near and surrounding this property have been properly controlled with respect to prior owners with subdivisions zoned as rural residential and/or agricultural. **That should not change.**

According to Mr. Lehman's materials found on his Burnt Creek Farms website, the *"main goal of this project is to preserve North Dakota's ag history and educate others about agriculture in North Dakota.* While applying for state grant dollars (to which over \$88,000 was granted) it was done so *"in the interest of preserving and educating the general public about North Dakota's rich ag history".*

He further emphasizes the desire to *"provide a rural experience and ag education to those that maybe otherwise wouldn't have the opportunity.*

The SUP requested broadens the scope of this facility to include hosting larger events such as weddings, corporate functions, etc.

My brother Pat provided this citation by way of reference, and we believe it's worthy of additional emphasis when applying for a Special Use Permit:

## ARTICLE 8 - SPECIAL USES", Section 1, # 6

- The proposed use in harmony with the purpose of this regulation and of portions of the Master Plan of the County of Burleigh for the district. **Is this area being considered to be zoned commercial at this time? Based on the purposes outlined in the application and long-term goals, it appears that is the direction this is going.**
- The proposed use will not adversely affect the health and safety of the public and the workers and residents, or farmers in the area, and will not be detrimental to the use or development of adjacent properties or of the general neighborhood. **This request does not serve the surrounding residences or farmers, It will cause a negative impact on neighboring landowners property values (Who would want to buy/build or live next to a heavily trafficked area hosting outdoor and larger events?)**
- The proposed use will comply with all appropriate regulations for the district in which it will be located. **Who will be monitoring compliance with noise, attendance and traffic control? This puts an additional burden on the neighbors and in particular law enforcement.**
- The proposed use will comply with all special regulations established by this section and all special conditions necessary for the sanitation, safety, and general welfare of the public. **It is hard to believe that this location is safe for the purposes of hosting larger events. Mr. Lehman suggests for larger groups, they be held outdoors. Another grave concern especially for neighbors. There is only one road in/out; and it's a narrow gravel road. If that road should become blocked from eventgoers, there would be no access for emergency vehicles. If 41<sup>st</sup> is to be upgraded, Then Mr. Lehman should pay for that upgrade (Not the taxpayers of Burleigh County) as this facility is a "for-profit" entity that would only benefit him. If his events are going to host larger groups, where will they all park and how will traffic be controlled to ensure safety?**

Have those homeowners and subdivisions along 110th Ave NE, 97<sup>th</sup> Ave NE and 26<sup>th</sup> Street NE been notified? This action will likely directly and negatively impact those property owners, as well as all of the homeowners in the surrounding areas.

Additional concerns impacting the surrounding community; potential decrease in property value; potential increase in taxes, jeopardizing safety, compromises the purpose of those who built or bought homes with the intent of living in a quiet community/"rural environment".

### CONCERNS REGARDING SUP AS IT PERTAINS TO THE SURROUNDING IMPACTED PROPERTIES:

It is our understanding that a "movie showing event" was held in July 2023. During this event "food trucks, antique cars, hundreds of people were encouraged to attend with tickets being sold". We assume a SUP was requested and granted to host this event? What were the terms and restrictions outlined in this permit?

## PROPOSED ACTIVITIES TO BE HELD PRECIPITATING SUP APPLICATION

- Mr. Lehman provided a revised plan which suggests 200 people events -2 x per year
- All other events - 100 attendees 1x per week
- Directing traffic to flow to 97<sup>th</sup> Ave NE and 26<sup>th</sup> NE and utilizing shuttle services where needed.

## ISSUES FOR THIS COMMISSION TO ADDRESS:

It was concerning to read that while Agri-Tourism use may be on the increase in other parts of the Country, "Burleigh County has not yet received a request of issue a permit for this type of use". Approving this SUP sets a dangerous precedent. This would be the FIRST permit granted of its kind. Careful consideration needs to be given to fully consider those impacted vs those benefiting from this request.

It's clear that Mr. Lehman wants to change the direction of his initial plan and greatly expand the use of this property to include weddings, corporate events, movie showings and other activities that go beyond the scope of his original plan for this property. If approved, this completely changes the landscape and use of rural residential/agricultural property in this community.

This precedent setting action would only encourage similar owners and investors to repurpose agricultural property into commercial-for profit entities (while remaining zoned Agricultural). And - without careful consideration of how Burleigh County Planning & Zoning has laid out its plans for future development.

It does not appear that the concerns raised during the January board meeting have been satisfactorily addressed. Of additional concern is that those neighborhoods and residents that would be impacted by this request have not been properly notified and given the opportunity to comment (in particular those living along the route or impacted surrounding areas where Mr. Lehman is suggesting traffic would be directed for various events).

## CONCLUSION-ACTION REQUESTED

For valid reasons, the Planning & Zoning Commissioners voted 8-1 to deny this permit in January.

For the numerous reasons we've outlined above, we urge the Planning & Zoning Commissioners to DENY the Special Use Permit for Burnt Creek Farm.



## Burleigh County Planning and Zoning Meeting Minutes

March 13, 2024

- PRESENT:** Chairman Dennis Agnew, Commissioners Brian Bitner, Alvie Jarratt, Steve Marquardt, Wayne Monson, Bea Streifel, and Brian Zuroff. Commissioners Mike Schmitz, and Dale Patrick were not present.
- OTHER:** Casey Einrem, County Engineering, Brian Reinke, Rural Fire Department, Mitch Flanagan and Marla McMonagle, County Planning, and Members of the Public (see Sign in Sheet)

Chairman Dennis Agnew opened the meeting:

AGENDA ITEM	ACTION	
Approval of revised January 10, 2024 – and Approval of the February 14, 2024 minutes	Approve the revised January and the February minutes: 1 <sup>st</sup> Commissioner Zuroff 2 <sup>nd</sup> Commissioner Munson	Approved 7 - 0
CONSENT AGENDA		
Baker Subdivision		
Marla McMonagle	Gave a summary of the Baker Subdivision request for 69 acres – 2 lot subdivision. Petitioner is requesting a public hearing	
Brian Zuroff	Questioned the first subdivision application which requested a three (3) lot.	
Marla McMonagle	Stated there was a section line which was vacated and the Bakers were able to reduce it into a two (2) lot subdivision	
MOTION:	RESPONSIBLE PARTY	RESULTS
Approve the Baker Subdivision Preliminary Plat and call for a public hearing	1 <sup>st</sup> Commissioner Zuroff 2 <sup>nd</sup> Commissioner Munson	Approved: 7 - 0

PUBLIC HEARING AGENDA		
Hartmann Subdivision – Short Plat		
Mitch Flanagan	Gave a summary of the Hartmann Subdivision request. The Hartmann's would like to combine their three (3) lots into one (1) lot	
Chairman Agnew opened the Public Hearing		
Greg Wavra	Stated he is a resident of Riverside Subdivision which the Hartmann lots are a part of and is also a board member. He is concerned about what the Hartmann's intend to do with the property. There is an active covenant which limits the type and size of building on the property. He is concern about the property not being included in the active covenant.	
Chairman Agnew	Asked about the covenant and if it was an HOA. Greg explained it was and they are concerned about the development in the area	
Commissioner Bitner	Was surprised that we were subdividing within a subdivision. He says it has never been done before. He is concerned petitioners could use this Short Platting to get around the covenants.	
Mitch Flanagan	Stated replats happen all the time. Commissioner Bitner stated he is concerned that by doing the short plat would be a by-pass the covenants put in place.  Mitch stated additions to subdivisions happen often will not nullify the subdivision. He stated Burleigh County does not enforce covenants.	
Commissioner Zuroff	Stated he has seen this in the past, covenants were listed on the plat. Suggested adding to the Hartmann plat that it would follow the covenants.	
Commissioner Bitner	Is concerned about having a subdivision within a subdivision. Why we are changing the name instead of using Riverside 3 <sup>rd</sup> .	

Marla McMonagle	Suggested adding an amendment to the covenants to include the Hartmann Subdivision	
Commissioner Bitner	Is concerned about the covenants being passed over.	
Greg Wavra	Stated he would like to talk with the land owner of what his intentions are.	
Commissioner Bitner	Would not approve a subdivision within a subdivision if it overruled the original covenants.	
Commissioner Munson	Is concerned about a business on the property.	
Greg Wavra	The covenant does not allow businesses without the HOA approval. The covenants tell the purchaser of lots in the subdivision what to expect.	
Thomas Lenihan	He is concerned about if the petitioner were to sell the home, there is the possibility of a new owner would be able to run a business. The covenant was meant to prevent that. He would like to see the members of the HOA vote on this Short Plat. He would like to know what the plan is for the property.	
Greg Wavra	Stated the petitioner has met with the HOA before on the building of an addition to his house.	
Casey Einrem	Stated the covenants are not usually placed on the plat. The note on the plat means the County would have to enforce it.	
Commissioner Bitner	Stated this issue with changes to plats was discussed several times, but we didn't anticipate the issue we are having a subdivision within a subdivision and this needs to be looked at again.	
Chairman Agnew	Asked if there were any more questions	
Commissioner Bitner	Made a motion to continue the public hearing until the applicant and the HOA can meet and discuss the covenant.	
<b>MOTION</b>	<b>RESPONSIBLE PARTY</b>	<b>RESULTS</b>
Continue the Public Hearing until the applicant and the HOA meet for a discussion	1 <sup>st</sup> Commissioner Bitner 2 <sup>nd</sup> Commissioner Munson	Approved 6 -1 Commissioner Zuroff voted against the motion.

and then bring it back to the P & Z Commission		
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<b>OTHER BUISNESS</b>		
<b>Article 21 FP Floodplain</b>		
Mitch Flanagan	Explained the changes to the ordinance, the steps taken to make the changes to the ordinance and changes to the accessory building requirements in the floodplain. Only accessory structures less than 600 sf., will allowed to build below the BFE. He also verified this is the new FEMA regulations.	
Commissioner Bitner	Stated we have a time frame to complete the ordinance.	
Mitch Flanagan	Stated he is just looking for input. He stated he would like to present a resolution to the County Commissioner to hold a public hearing.	
Commissioner Bitner	Stated this must be completed by June 6 <sup>th</sup> . He stated it is a new thing for him in his 16 years to have to go to the County Commission to schedule a public hearing at the Planning and Zoning Commission and having to have two (2) public hearings.	
Chairman Agnew	Asked if there were any more questions	
Commissioner Zuroff	Stated having reference to NVAD Datum be replaced with verbiage to state "the current FIRM Datums etc." This will allow the ordinance to be a timeless ordinance and not having to change the ordinance every time the "Datums" changes. He stated the vertical will change in 2025, this would require the staff to rewrite the ordinance again.	
Commissioner Marquardt	Asked if the City had addressed this issue. He stated the elevation changes has caused issues in the City comparing the verticals to now and in the past. He would like Mitch to follow up with the City.	
Mitch Flanagan	Stated he will approach the stakeholders regarding the vertical datums.	

Commissioner Bitner	Made a motion to present a resolution to the Board of Burleigh County Commissioners to hold a public hearing at the Planning and Zoning Commission.	
<b>MOTION</b>	<b>RESPONSIBLE PARTY</b>	<b>RESULTS</b>
Present a resolution to the Board of Burleigh County Commissioners to approve a public hearing at the Planning and Zoning Commission	1 <sup>st</sup> Commissioner Bitner 2 <sup>nd</sup> Commissioner Marquardt	Approved 7 – 0
Article 8 – Special Uses, Section 28 Agri-Tourism		
Mitch Flanagan	<p>Explained the Burleigh County Planning Staff and the Bismarck Planning met with the ND Tourism regarding our ordinance. They asked the County to add a Tier 1 and Tier 2 system to the ordinance. This ordinance doesn't hinder the property owner from holding a single event like hay rides, wedding etc., on their property. The ordinance is to limit commercial activities on agricultural land. The ordinance will allow commercial events as defined by the ordinance.</p> <p>This ordinance does mirror the Bismarck Ordinance, but allows tap rooms, wineries etc. This is in the draft stage. Additional stakeholder meetings will be held to refine the ordinance.</p> <p>If an applicant is approved under this ordinance, they would have to follow this ordinance.</p>	
Commissioner Bitner	Stated in discussion the single-family home was mentioned where a renter was holding events, but the owner doesn't know about the events. He would like the reference put in the ordinance.	
Chairman Agnew	Expressed concern if the Special Use permit runs with the land. He also expressed concern about the dust, road conditions and parking. He was wondering if this should be included in the ordinance.	
Mitch Flanagan	All those items can be added to the ordinance. Morton County requires dust control and repair of the roads.	

Commissioner Bitner	Would like the Planning Department and the Highway Department on the verbiage.
Casey Einrem	Stated it should be a condition added to the individual Special Use permit, not in the ordinance. He stated the verbiage could be added to stress it would depend on individual Special Use permit. Road Conditions can vary because of storm events. On street parking is not allowed in the County already.
Commissioner Bitner	Would like to have something in writing regarding parking and pulling the Special Use Permit.
Commissioner Streifel	Was concerned about how the ordinance was changed from 30 acres to 40 acres and if the number of people from 200 to 250.
Mitch Flanagan	A meeting is scheduled with the Fire Marshall regarding parking on grass or on gravel.
Chairman Agnew	He would like to see parking on grass eliminated and have parking allowed on gravel. He was concerned about the single event having to gravel. It was all fire risk.
Commissioner Zuroff	Stated requiring gravel parking lots, depending on the size of the lot will cause a lot of dust problems and cause problems with reusing the property.
Mitch Flanagan	Discussed mowing of the grass
Commissioner Streifel	Questioned the 100' set back. The previous document said all property.
Mitch Flanagan	Stated the reference was from the City. He could change the wording.
Chairman Agnew	Questioned alcohol sales on the property.
Mitch Flanagan	Stated it must be grown on the property or in the region.
Chairman Agnew	Questioned alcohol at wedding events
Mitch Flanagan	Stated all alcohol sales are licensed

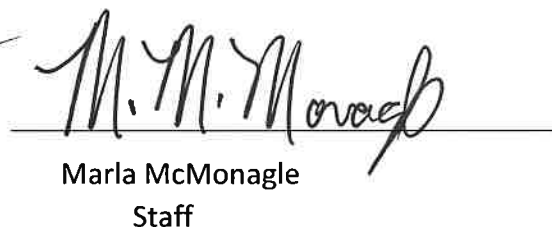
Commissioner Zuroff	Was concerned about having historical buildings meet the current code requirements. Commission Bitner stated when it comes to public safety, the code must be followed.
Mitch Flanagan	Historical buildings are exempt to some degree from the building code. It depends on the changes to the historical building.
Chairman Agnew	Asked if this is ready to be on the public hearing agenda.
Commissioner Zuroff and Chairman Agnew	Asked about properties already operating would they be required to apply for this. i.e. Black Leg Ranch, Pappa's Pumpkin Patch.
Commissioner Bitner	Stated they would be non-conforming/grandfathered in until they change the use or activities.
No action was taken	Mitch Flanagan is to make the changes suggested and present the revised ordinance at the next Planning and Zoning Commission meeting

Hearing no more items a motion was made to close the meeting.

Meeting adjourned at 7:00pm



Dennis Agnew  
Chairman



Marla McMonagle  
Staff

## Burleigh County Planning and Zoning Meeting Minutes

February 14, 2024

**PRESENT:** Chairman Dennis Agnew, Vice Chairman Dale Patrick, Commissioners Alvie Jarratt, Steve Marquardt, Wayne Monson, Mike Schmitz, Bea Streifel, and Brian Zuroff. Commissioner Brian Bitner was not present.

**OTHER:** Casey Einrem, County Engineering, Brian Renke, Rural Fire Department, Mitch Flanagan and Marla McMonagle, County Planning, and Members of the Public (see Sign in Sheet)

Chairman Dennis Agnew opened the meeting:

AGENDA ITEMS	ACTION	RESPONSIBLE PARTY	MOTION
Approval of January 10, 2024	Commissioner Streifel requested a verbatim accounting of the Rural Fire Response regarding Burnt Creek Farm Item 5.1		
<b>MOTION:</b> Approve the January minutes after the correction is made		1 <sup>st</sup> Comm. Marquardt 2 <sup>nd</sup> Comm. Patrick	Motion approved 8 - 0

CONSENT AGENDA	ACTION	RESPONSIBLE PARTY	MOTION
There were no items on the consent agenda			

PUBLIC HEARING AGENDA			
Bauer Butcher Shop Special Use Permit			
	Leon & Susan Bauer are requesting a Special Use permit to open a butcher shop on their property located at 21175 26 <sup>th</sup> Street NE, Baldwin, ND		
Marla McMonagle	Presented the request for the commissioners, along with the requirements and licensing the Bauer will need for their shop.		



	One of the licenses require approval of the Special Use Permit before being able to apply.		
Comm. Patrick	<ul style="list-style-type: none"><li>- Are they going to sell meats to the public, but they are not going to sell the meat butchered on site?</li><li>- What are they going to do with the byproducts of the butchering?</li></ul>		
Marla McMonagle	<ul style="list-style-type: none"><li>- Explained the Bauers are applying for two (2) separate licenses<ol style="list-style-type: none"><li>1. Slaughter and package meat for the cattle owner.</li><li>2. Purchase USDA Certified meat to process and sell to consumers i.e. 3B Meats, Butcher Block meats</li></ol></li><li>- The by-products will be picked up and disposed of. No by-products will remain on the property</li></ul>		
Chairman Agnew opened the public hearing. No one approached, so the public hearing was closed			
Discussion:			
Comm. Marquardt	Was concerned about the by-products of the butcher shop, but felt his question was answered.		
Susan Bauer approached	She stated all the work would be inside and there is an area for storage inside until the byproducts were picked up.		
MOTION: Approve the Special Use permit with the staff recommendations: 1. Meet all ND State requirements/licensing for operations of a meat processing establishment  2. Maintain all ND State Licensing for a retail Exempt Meat Market  3. Septic system to be engineered  4. Require all new buildings, septic and mechanical systems be permitted by Burleigh County.		1 <sup>st</sup> Comm. Marquart 2 <sup>nd</sup> Comm. Jarratt	Motion Approved 8 -0

<b>OTHER BUSINESS:</b>			
Mitch Flanagan	Presented the first draft of additional Section 28 to Article 8 Special Uses – Agri-tourism		

Chairman Agnew	What are the setbacks for an accessory building and will the setback stay the same based on the road? Will the type of road affect the use – the amount of people allowed. He is concerned about the roads going to the property
Mitch Flanagan	<ul style="list-style-type: none"> <li>- The setbacks would stay as in the ordinance.</li> <li>- The road use is not covered in this ordinance. It would be a technical decision. This special use permit is for the single-family farm,</li> </ul>
Comm Marquardt	<ul style="list-style-type: none"> <li>- Is there anything in the ordinance that would grandfather the buildings if they are located closer to the road?</li> <li>-</li> </ul>
Mitch Flanagan	<ul style="list-style-type: none"> <li>- We would not make them move their building, but would work with them on this type of concern.</li> <li>-</li> </ul>
Comm. Schmitz	<ul style="list-style-type: none"> <li>- Would dust control be addressed in the Special Use Permit or in the ordinance.</li> <li>-</li> </ul>
Mitch Flanagan	<ul style="list-style-type: none"> <li>- Stated Morton County requires it in their Special Use permit</li> </ul>
Casey Einrem	<ul style="list-style-type: none"> <li>- Discussed how the County in other instances takes dust control etc. on a case by case basis so they have been confining dust control etc. to the Special Use Permit</li> </ul>
Comm. Streifel	<ul style="list-style-type: none"> <li>- If an individual going to be required to apply for a special use permit if they were going to have a wedding for a family?</li> </ul>
Mitch Flanagan	<ul style="list-style-type: none"> <li>- No, this ordinance is for those that are holding similar events on an on-going basis.</li> <li>-</li> </ul>
Comm. Jarratt	<ul style="list-style-type: none"> <li>- Is concerned about the wording</li> </ul>
Comm. Zuroff	<ul style="list-style-type: none"> <li>- Suggested changing the ordinance to read for commercial use, so it is clear this does not affect the single family from holding a family wedding, reunion etc.</li> </ul>

Chairman Agnew hearing no additional comments closed the meeting at 5:55pm

  
Dennis Agnew, Chair

  
Marla McMonagle, Staff

## Burleigh County Planning and Zoning Meeting Minutes

**January 10, 2024**

**Present:** Commissioners Brian Bitner, Alvie Jarrett, Steve Marquardt, Wayne Munson, Dale Patrick, Mike Schmitz, and Bea Streifel. Commissioners Dennis Agnew and Brian Zuroff attended remotely.

**Others Present:** Marcus Hall & Casey Einrem, County Engineering, Mitch Flanagan, Director, Building, Planning, Zoning, and Marla McMonagle, Building, Planning and Zoning. Members of the public – See Sign in Sheet

Mitch Flanagan, Director of Building, Planning and Zoning opened the meeting. He called for the election of new officers.

Agenda Items	Action taken	Responsible Party	Motion
Election of Chairman	<b>Motion:</b> Approve Dale Patrick for Chairman	1 <sup>st</sup> Comm. Bitner 2 <sup>nd</sup> Comm. Munson	0-9 Did not approve
	<b>Motion:</b> Approve Dennis Agnew for Chairman	1 <sup>st</sup> Comm. Patrick 2 <sup>nd</sup> Comm. Jarrett	9-0 Approved
Election of Vice Chairman	<b>Motion:</b> Approve Dale Patrick as Vice Chairman	1 <sup>st</sup> Comm Bitner 2 <sup>nd</sup> Comm Munson	9-0 Approved
Chairman Dennis Agnew turned the meeting over to Vice Chairman Patrick since he was attending remotely.			
<b>December 13, 2023 Minutes</b>	<b>Motion:</b>	<b>Responsible Party</b>	<b>Motion</b>
	Approve the December Minutes	1 <sup>st</sup> Comm. Bitner 2 <sup>nd</sup> Comm. Munson	9 – 0 Approved
<b>Consent Agenda</b>			
<b>Peaceful View Subdivision and Zoning Change: A two (2) lot subdivision described as Part of the South ½ of Section 11, Part of Lot B and Part of the North ¼ of Section 14, Township 137 N, Range 80 W in Burleigh County, ND</b>			

Mitch Flanagan presented the subdivision. He addressed the concerns the Planning Department and the Highway Department have regarding the section line. The main house and buildings are located on the section line. It was suggested a note be placed on the plat concerning the location of the existing buildings within the section line. He recommended approval of the plat after conditions be met.

**Discussion:**

**Commissioner Zuroff** questioned having the section line going through the buildings and whether the buildings becoming public property because they are on the section line.

**Marcus Hall** approached. He stated it was discussed in pre-application meeting on whether to have the section line vacated.

**Commissioner Zuroff** stressed his concerns about the public being able to access the buildings and property.

**Commissioner Bitner** suggested a request to for a State's Attorney opinion on the section line right of way. He also requested a list of conditions needed to be completed before the subdivision can be approved for a public hearing.

**Action:**

**Motion:**

Table the plat until we get a legal opinion from the State's Attorney

**Responsible Party**

1<sup>st</sup> Comm Zuroff

2<sup>nd</sup> Comm Bitner

**Motion**

9 – 0 Approve motion

**Public Hearing**

**Burnt Creek Farm Special Use Permit: Section 24, PT SW ¼ Tract #1 Addressed as 11501 NE 41<sup>st</sup> Street**

**Mitch Flanagan** described the request for the Special Use Permit. Mr. Dave Lehman would like to have an event location for agritourism, corporate events, weddings and similar events.

**Commissioner Bitner** asked if it was an allowable use and questioned the wear and tear on the roads.

**Mitch Flanagan** explained the Planning Departments questions and concerns regarding the special use permit.

**Commissioner Patrick** asked if fire had looked at this site and about human waste. Mitch Flanagan stated those areas had been addressed.

**Chairman Agnew** asked whether we are in compliance on the ordinances as far as a public hearing notification. Mitch stated yes.

**Commissioner Zuroff** questioned if the highway department had seen increased complaints and maintenance around Black Leg Ranch.

**Marcus Hall, County Engineer** approached. He does not feel the additional traffic on 110<sup>th</sup> Ave NE and 41<sup>st</sup> Street NE will require the roads to be paved. He agreed there will be additional maintenance. He has also seen an increase in maintenance on the roads to Black Leg Ranch.

**Chairman Agnew** Asked Mitch if Black Leg Ranch was located in an organized township. Mitch stated yes.

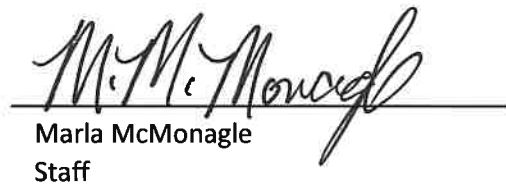
<b>Commissioner Streifel</b> disclosed she lived on an adjacent property to the Burnt Creek Farm.	
Public Hearing:	
Public	Testimony
<b>Wayne Martineson</b>	Is against this project because of steep ditches and narrow road. Is also concerned the barn needs sprinklers.
<b>Melissa Miller</b>	Is concerned about the one (1) entry into the area and it being a fire hazard, the number of cars and maintenance of the road.
<b>Kurt Fleck</b>	Is concerned about the wear and tear on the roads. He has no problem with the Burnt Creek Farms, but does not want the traffic on 110 <sup>th</sup> . He is also concerned about the trees in the ditches.
<b>Mitch Kersten</b>	He played a recording of the petitioner – Dave Lehmann – testifying at the July 8, 2020 Burleigh Co. Planning and Zoning Commission meeting <a href="#">7/8/2020 minutes</a> He is concerned about the dust on the houses.
<b>Greg Schonert</b>	He is not opposed however, what is next? He is concerned about the noise and dust.
<b>Dave Lehman – Petitioner</b>	He described what he would like to do with Burnt Creek Farms. He understands the concerns of the neighbors, but would still like to share Burnt Creek Farm. He would like to hold events on his property to help fund the development of the historical site. He stated he has ADA bathrooms and a septic system, has ample parking
	<b>Commissioner Streifel</b> asked about Papa Pumpkin Packet season since Mr. Lehman mentioned Burnt Creek Farms would have less traffic
<b>Dana Fleck</b>	She is concerned because her home is 200' from the road and would have dust concerns. She also would like to know how the dust would be mitigated.
<b>Dave Lehman</b>	Addressed Dana Fleck's comments. He stated he didn't know how much dust would be generated by the traffic.
	<b>Commissioner Streifel</b> asked about the size of Black Leg Ranch. He stated he is not sure and doesn't know how they mitigate dust and wear and tear on the roads.
<b>Vice Chairman Patrick</b> asked if there were any more comments, hearing none, closed the public hearing	
<b>Commissioner Bitner</b>	Asked about the roads to Papa's Pumpkin Patch – who does dust maintenance.
	<b>Casey Einrem - County Engineering</b> stated the township pays the dust maintenance and has an agreement with Papa's Pumpkin Patch. <b>Commissioner Munson</b> asked Casey about road widths. Casey stated they vary

<b>Brian Renke – Rural Fire Department</b>	I had a chance to briefly review the packet and I did drive up to the area on Tuesday. There are no particular concerns as it sits now. The concerns Mitch brought up regarding change of venue causing numerous people out there, can change things for us. We would look at the fire code and things. Our fire response as an emergency medical response does not change. This is a typical agriculture regional response. We deal with narrow roads, steep ditches, sketchy approaches, slippery roads all the time. If this turns out to be hosting numerous people, there might be a perfect storm, where there might be a problem getting in there. If they were <del>the</del> to convert the barn into a usable venue we would like to see plans and make sure it is up to code with alarms systems etc. There are no specific concerns currently.		
<b>Commissioner Zuroff</b>	Is concerned about the cost of road maintenance and why an agreement can't be made to cover the cost		
<b>Commissioner Streifel</b>	Is concerned about the de-valuing the property in the area, and security of the area. She is against this project because of the size of events. She feels it will be a cost to the neighbors.		
<b>Commissioner Bitner</b>	He is against this project because of the traffic on the roads, dust and the other property owners not being able to use their property.		
<b>Actions:</b>		<b>Responsible Party</b>	<b>Motion</b>
<b>Motion:</b>			
Deny the Special Use Permit for the following: 1. Excessive traffic. 2. The size and frequency of possible events would put a strain on the road system and negatively impact the surrounding property owners due to: a) dust, noise, traffic, possibility of fires.		1 <sup>st</sup> . Comm. Bitner 2 <sup>nd</sup> Comm. Jarrett	
<b>Commissioner Munson:</b>	How is the permitting being done now and if we deny this Special Use Permit will he be able to do anything at all.		
	Mitch Flanagan stated he doesn't need to have a permit for small events.		
<b>Commissioner Munson:</b>	Was wondering if there was a compromise instead of denying the permit altogether <b>Commissioner Bitner:</b> stated it is the size and frequency of the events is the concern. <b>Commissioner Munson:</b> He is concerned the commission is shutting his project down.		
Commissioners: Agnew, Bitner, Jarratt, Marquardt, Patrick, Schmitz, Streifel and Zuroff voted for the motion. Commissioner Munson voted against the motion.			8 – 1 to deny the Special Use Permit.

<b>Other Business:</b>		
Commissioner Streifel: would like to see movement on the revisions of the Comprehensive Plan and the notification distance increase. She would like to see these items on the agenda in the future.		

Meeting was adjourned at 6:50 pm

  
Dennis Agnew  
Chairman

  
Marla McMonagle  
Staff