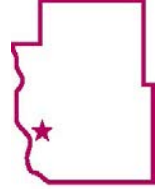




Burleigh County Planning and Zoning Commission Meeting Agenda

Tom Baker Meeting Room, City/County Building, 221 5th Street N,
Bismarck, ND



5:15pm

Attend in Person || Watch Live on Government Access Channels 2 or 602 || Stream on [Freetv.org](https://www.freetv.org) or
[Dakota Media Access Facebook Live](https://www.facebook.com/DakotaMediaAccess) || Replay Later from [Freetv.org](https://www.freetv.org)

AGENDA

July 10, 2024

1. Roll Call
2. Approval of the June Minutes
3. Consent Agenda *(The following item(s) are request(s) for a public hearing)*
 - 3-1 Aberle 2nd Subdivision
 - 3-2 Amendment to Zoning Ordinance
 - Article 8 – Special Use, Section 28 - Agri-Recreation
 - 3-3 Amendment to Zoning Ordinance
 - Article 8 – Special Use, Section 29- Solar Farms
4. Public Hearing Agenda
 - 4-1 Menoken Farm Facility Zoning Change
A-Agricultural to P-Public Use District
 - 4-2 Baldwin Greenhouse Special Use Permit
 - Corn Maze for 2024 Session
5. Other Business:
 - 5-1 Draft Ordinance Article 8, Section 30 – Data Centers
 - 5-2 Draft Ordinance Article 8, Section 31 Accessory Dwelling Units on A-Agricultural and R1-Rural Single-Family Residential Zoning Districts.
6. Adjourn – Next meeting – August 14, 2024

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Agenda Item 3-1

Application for a Preliminary Subdivision & Zoning Change

Project Summary

Consent Agenda:	Aberle 2 nd Subdivision
Status:	Planning and Zoning Commission – Consideration
Petitioner/Developer	Janice Aberle
Engineer	Swenson Hagen & Co.
Location:	Part of the NW 1/4 of Section 29, Township 139 N Range 78 W, Burleigh County, ND
	
3-1-1 Location Map	
Project Size:	6 acres more or less Zoning Change A-Agricultural to R1 Rural Single Family Residential
Petitioners Request	Approval of the preliminary plat and zoning change. Call for a public hearing

As set forth under Chapter 11, Section 33 of the North Dakota Century Code and Article 33 of the Burleigh County Ordinances, the Planning Commission shall approve or disapprove the subdivision of all lands within its jurisdiction and recommend the same to the Board of Burleigh County Commissioners



PLANNING AND ZONING COMMISSION

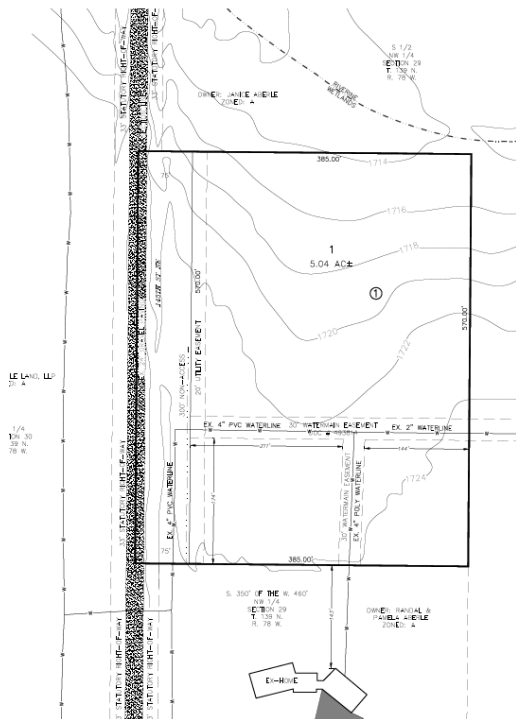
July 10, 2024

History/Description

Burleigh County was approached regarding a one (1) lot subdivision and zoning change from A-Agricultural to R1-Rural Single Family Residential.

The review committee did not find issues of concern. A Stormwater Waiver has been requested and approved. A paving waiver has been requested and was granted by the Board of Burleigh County Commissioners in May.

The surrounding properties are zoned A- Agricultural, however, the size of the property conforms to similar parcels in the area.



Attachment 3-1-2 Preliminary Plat



PLANNING AND ZONING
COMMISSION

July 10, 2024



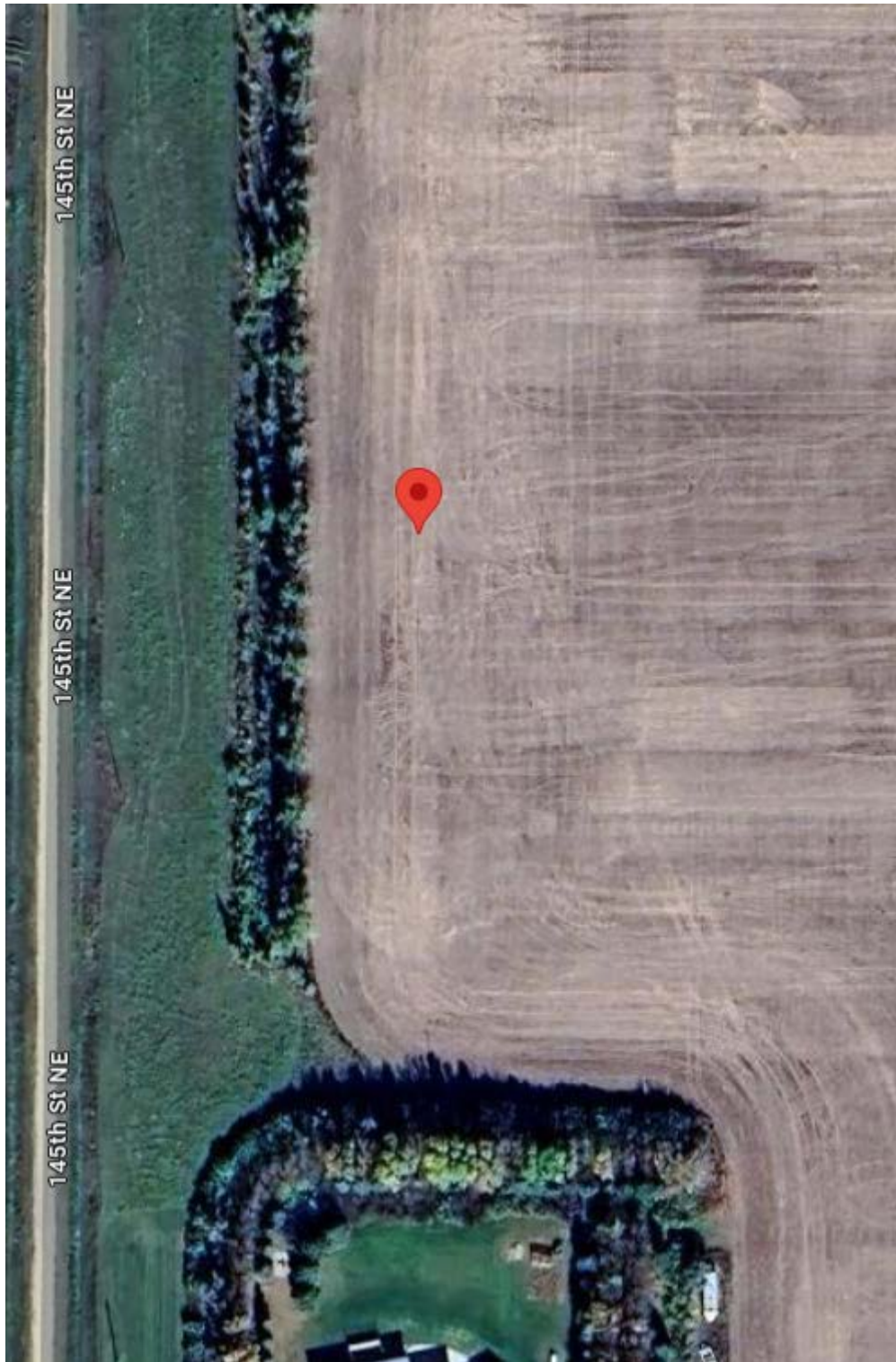
Attachment 3-1-3 Site Map

July 10, 2024



PLANNING AND ZONING COMMISSION

July 10, 2024



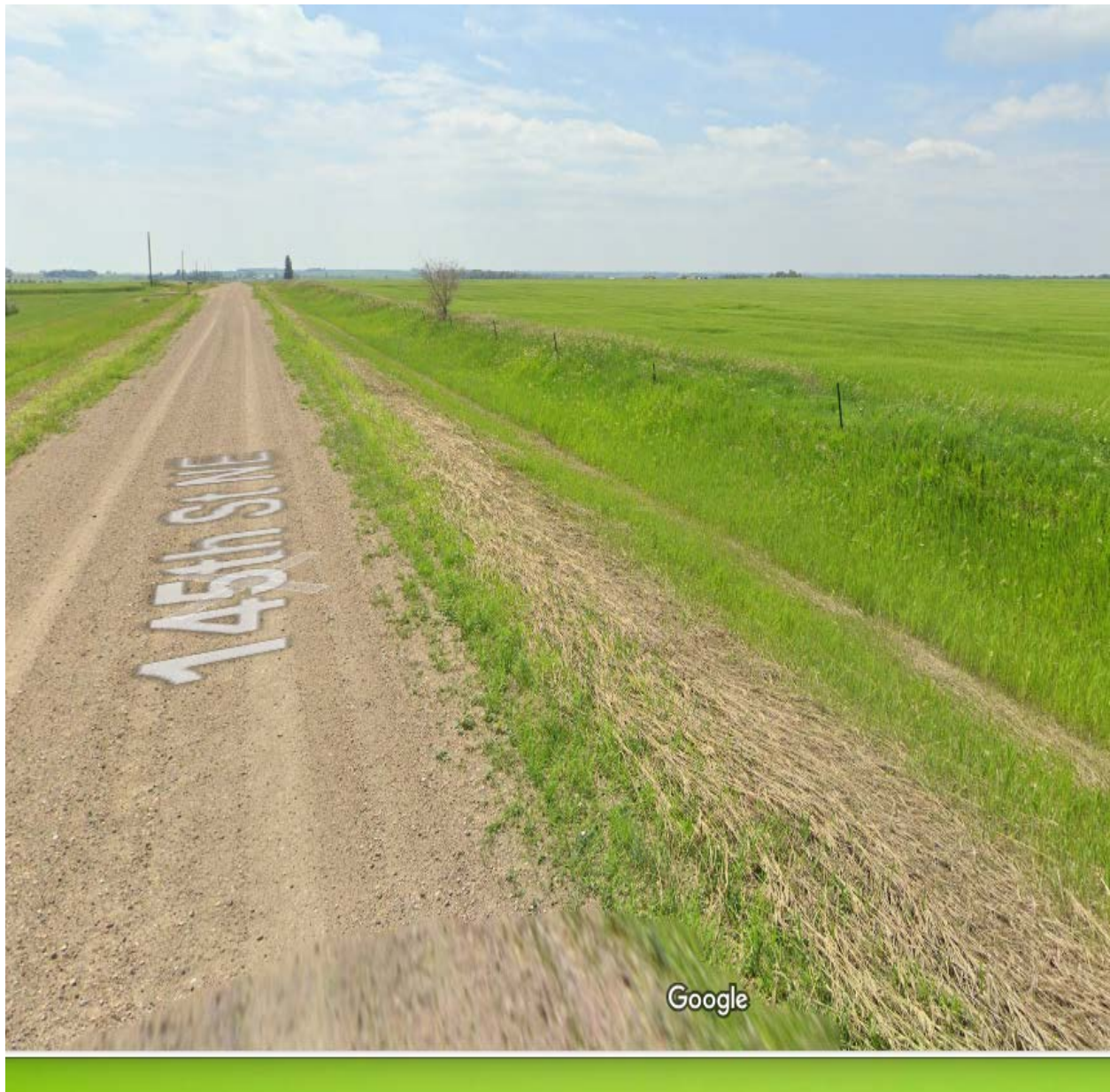
Aerial View –
google maps

July 10, 2024



PLANNING AND ZONING
COMMISSION

July 10, 2024



South View

July 10, 2024



PLANNING AND ZONING COMMISSION

July 10, 2024



North View

Staff Findings:

1. This subdivision fulfills the requirements of Article 33 of the Burleigh County Zoning Ordinance.
2. This zoning change fulfills the requirements of Article 12 of the Burleigh County Zoning Ordinance
3. A paving waiver has been granted
4. A Stormwater Management Plan or Waiver Request has been granted
5. This preliminary plat has been submitted to all reviewing entities. All concerns and corrections have been addressed.



PLANNING AND ZONING COMMISSION

July 10, 2024

6. This subdivision and zoning change meet the requirements of the Burleigh County Comprehensive Plan Article 3 Residential Neighborhoods – Objectives 1 and 2.

Planning Staff Recommendation

The petition for a preliminary plat and zoning change meets all administrative requirements of the Burleigh County Zoning Ordinance. Staff recommends approval of the preliminary plat and zoning change. and calling for a public hearing.

Planning Commission Action

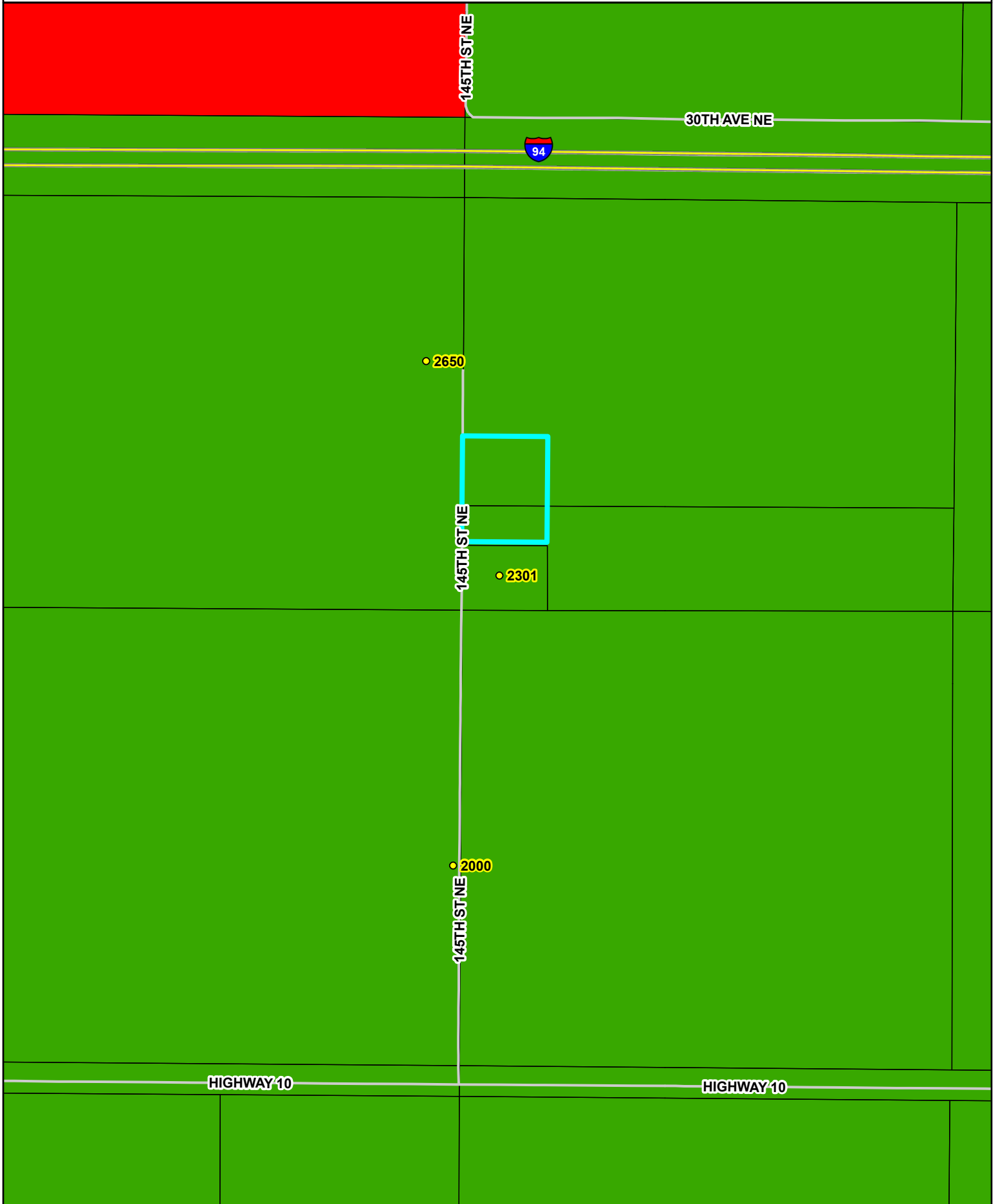
The Burleigh County Planning and Zoning Commission can:

1. Approve the preliminary plat and zoning change. Call for a public hearing.
2. Approve the preliminary plat and zoning change with conditions and call for a public hearing after all condition have been completed.
3. Deny the preliminary plat and zoning change with reason.
4. Table the preliminary plat and zoning change for more information.

Attachments - Aberle 2nd Subdivision and Zoning Change

BURLEIGH COUNTY, NORTH DAKOTA
LOCATION MAP

N
7/1/2024

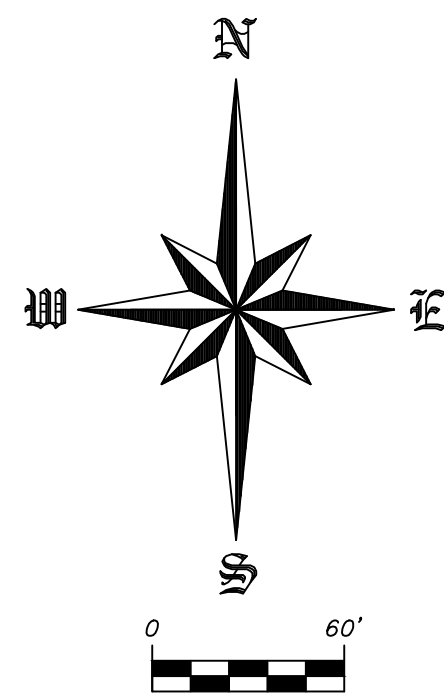


ABERLE SECOND SUBDIVISION

PART OF THE NW 1/4 OF SECTION 29
TOWNSHIP 139 NORTH, RANGE 78 WEST

BURLEIGH COUNTY, NORTH DAKOTA

PRELIMINARY PLAT



SCALE - 1" = 60'
VERTICAL DATUM: NAVD 88
JUNE 26, 2024

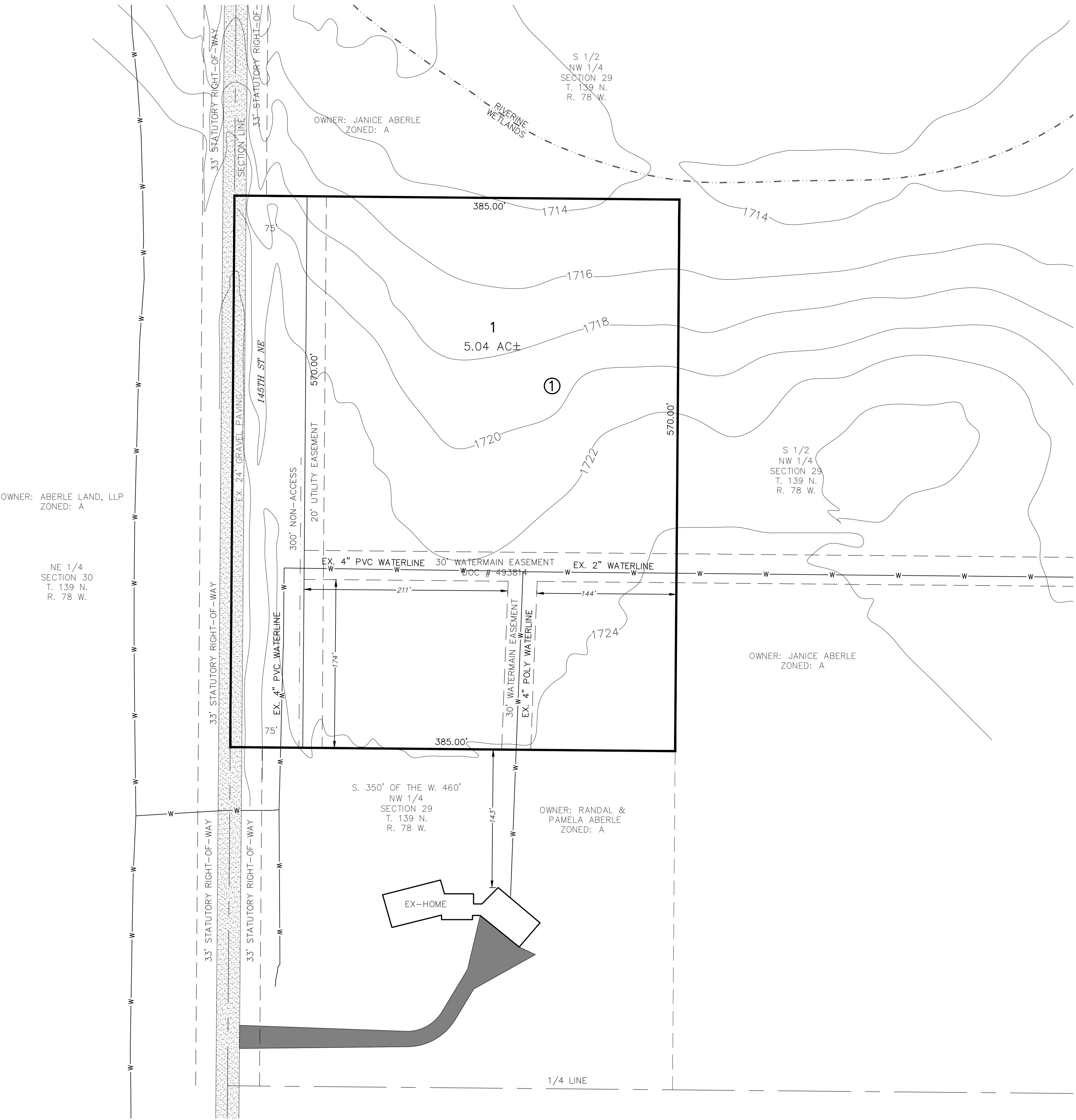
6.00 ACRES
EXISTING ZONING: A
PROPOSED ZONING: R1
1 LOT 1 BLOCK

OWNER: JANICE ABERLE
5801 PRAIRIE ROSE LOOP
BISMARCK, ND 58501

SURVEYOR: SWENSON HAGEN & CO
TERRY BALTZER
909 BASIN AVE
BISMARCK, ND 58504



LOCATION MAP



SWENSON, HAGEN & COMPANY P.C.

909 Basin Avenue
Bismarck, North Dakota 58504
sheng@swensonhagen.com
Phone (701) 223-2600
Fax (701) 223-2600

Surveying
Hydrology
Land Planning
Civil Engineering
Landscape & Site Design
Construction Management

BURLEIGH COUNTY, NORTH DAKOTA
LOCATION MAP

N
7/1/2024



3-1-4 Aerial View



3-1-5 South View



3-1-6 North View



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ORDINANCE 24-0-----

AN ORDINANCE TO AMEND AND RE-ENACT ARTICLE 8 OF THE 1972 AMENDED ZONING ORDINANCE OF BURLEIGH COUNTY, NORTH DAKOTA RELATING TO SECTION 28 AGRICULTURAL RECREATION

Section 1. **Amendment** Article 8 of the Zoning Ordinance is hereby amended and re-enacted as follows:

Section 28 Agriculture Recreation

Agriculture Recreation may be permitted in an Agricultural District as a special use. All persons, entities or organizations wishing to establish the use of Agricultural Recreation within Burleigh County must apply for and be granted a special-use permit.

Definitions. The following definitions represent the meanings of terms as they are used in these regulations:

Agriculture. The Science or practice of cultivating the soil, producing crops and or raising livestock.

Agriculture Recreation. An agriculture recreation use combines agricultural production with recreational uses that are in common with and ancillary to the primary agricultural use and in conjunction with a single-family dwelling.

Agriculture Recreation Tier 1 Any agriculture-related activity, in conjunction with agricultural production which is intended to educate the public in a singular one-day event about agriculture, agricultural practices, agricultural activities, or agricultural products.

Agricultural Recreation Tier II Any agricultural-related use that combines agriculture production with recreation uses that are in common with and ancillary to the primary agricultural use, such as pumpkin patches, farm festivals, corn mazes, hayrides, trail rides, U-Pick orchards,

on-farm markets, floriculture, demonstration farms, U-Pick Christmas tree farms or similar activities for someone other than the property owner, involving the gathering of individuals assembled for the common purpose of said event.

Special Uses In order to carry out the purposes of this title. Board of Burleigh County Commissioners find it necessary to require that certain uses, because of unusual size, safety hazards, infrequent occurrence, effect on surrounding area, or other reasons, be reviewed by the Burleigh County Planning and Zoning Commission prior to the granting of a building permit or certificate of occupancy and that the Burleigh County Planning and Zoning Commission and the Zoning Administrator (where allowed) are hereby given limited discretionary powers relating to the granting of such a permit or certificate.

1. **Permanent Uses** (Planning and Zoning Commission approval) Burleigh County Planning and Zoning Commission is authorized to recommend approval of Special Use Permits for the following uses:

A. **Agriculture Recreation Tier II** may be permitted in any A-Agricultural District as a Special Use provided:

1. The use is ancillary to the primary agricultural uses, and in conjunction with an owner-occupied single-family dwelling.
2. The lot in which the use is located is at least forty (40) acres in area, thirty-five (35) acres aliquot description.
3. Attendance is limited to seventy-five (75) persons in attendance at any time.
4. Limited to thirty (30) events per year
5. Site design and building(s) must conform to all applicable requirements of the International Building Code (IBS) and the International Fire Code (IFC) as adopted by the State of North Dakota.
6. The events or activities shall not involve the construction or use of new or permanent structures.
7. All parking areas shall be mowed and designed to prevent debris from the site entering the public right-of-way, and be arranged to provide for orderly and safe loading or unloading and parking.
8. Sound generated by the use shall meet the requirements as outlined in NDCC.
9. All outdoor light fixtures shall be installed in a manner intended to limit the amount of off-site impacts. Light fixtures located near adjacent properties may require special shielding devices to prevent light trespass.

10. The use is setback a minimum of 100 feet to all adjacent properties.
11. A site plan is required.
12. If necessary, a stormwater management plan is required to be submitted for review and approval prior to the issuance of a building permit
13. Off-street parking is required. Parking on grass and agricultural areas may be gravel or low-cut grass area. Parking ratios shall be determined in accordance with Article 10 Automobile Parking.
14. Under certain circumstances, items for road/ditch repair and dust control application at the permittees cost, may be required.
15. Additional conditions may be included in the Special Use Permit.
16. After approval and issuance of a Special Use Permit, any violations of Section 28 may/shall be basis for revocation of the Special Use Permit.

Article 11 A-Agricultural Zoning District In an A-Agricultural District, the following regulations shall apply:

1. Uses Permitted. The following uses are permitted.
 - a. Agricultural Recreation Tier 1
 - i. Agriculture Recreation Tier 1 shall be allowed on a parcel of land forty (40) acres in area, (thirty-five (35) aliquot description.)
2. The following Special Uses are allowed as per Section 28 hereof:
 - a. Agricultural Recreation Tier II

Section 2 Repeal. All ordinances or parts of ordinances in conflict with this ordinance are hereby repealed.

Section 3. Severability If any section provision or part of this ordinance shall be adjudged invalid or unconstitutional such as adjudication shall not affect the validity of the ordinance as a whole or any section, provision or part thereof not adjudged invalid or unconstitutional.

Section 4. Effective Date This ordinance shall take effect after final passage, adoption and publication as provided by law

First Reading Passed: _____

Passed and adopted this _____ day of _____, 2024

Brian Bitner

Chairperson

Final passage and adoption:

I, Mark Splonskowski, do hereby certify that I am the duly elected auditor of the County of Burleigh, State of North Dakota, and that the foregoing is a full, true and correct copy of an ordinance adopted by the Board of Burleigh County Commissioners at its regular meeting of _____

IN WITNESS WHEREOF: I have hereto set my hand and seal of Burleigh County this _____ day of _____, 2024

Mark Splonskowski, Burleigh County Auditor/Treasurer

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ORDINANCE 24-0-----

AN ORDINANCE TO AMEND AND RE-ENACT ARTICLE 8 OF THE 1972 AMENDED ZONING ORDINANCE OF BURLEIGH COUNTY, NORTH DAKOTA RELATING TO SECTION 29 SOLAR FARMS

Section 1. **Amendment** Article 8 of the Zoning Ordinance is hereby amended and re-enacted as follows:

SECTION 29 Solar Energy System Facilities

A solar energy system may be permitted in an Agricultural District upon approval as a special use, provided the criteria and submittal requirements are met.

Burleigh County finds that it is in the public interest to encourage the use and development of renewable energy systems (including solar energy systems) that have a positive impact on energy conservation with limited adverse impact on nearby properties. Burleigh County supports the use of solar collection systems and the development of solar energy farms. Consistent with the Burleigh County Comprehensive Plan, it is the intent of the County with this Section to create standards for the reasonable capture and use, by households, businesses and property owners, of their solar energy resource and encourage the development and use of solar energy.

I. DEFINITIONS

The following words, terms and phrases, when used in this Article and Section, shall have the meaning provided herein, except where the context clearly indicates otherwise:

1. **Agrivoltaics**- The dual use of land for combining agriculture with solar energy production, typically, with raised co-located solar arrays above agricultural activity.
2. **Building-Integrated Solar System**- An active solar system that is an integral part of a principal or accessory building, rather than a separate mechanical device, replacing or substituting for an architectural or structural component of the building. Building integrated systems include, but are not limited to, photovoltaic or thermal solar

systems that are contained within roofing materials, windows, skylights and awnings.

3. Community Solar Energy System- A solar-electric (photovoltaic) array that provides retail electric power between 100kW and 10 MW (or a financial proxy for retail power) to multiple community members or businesses residing or located off-site from the location of the solar energy system.
4. Ground Mounted Panels- Freestanding solar panels mounted to the ground by use of stabilizers or similar apparatus.
5. Photovoltaic System- An active solar energy system that converts solar energy directly into electricity.
6. Roof or Building Mounted SES- Solar Energy System (panels) that are mounted to the roof or building using brackets, stands or other apparatus.
7. Roof Pitch- The final exterior slope of a building roof calculated by the rise over the run, typically, but not exclusively, expressed in twelfths such as 3/12, 9/12, 12/12.
8. Solar Access- A view of the sun, from any point on the collector surface that is not obscured by any vegetation, building, or object located on parcels of land other than the parcel upon which the solar collector is located, between the hours of 9:00 AM and 3:00 PM Standard time on any day of the year.
9. Solar Collector- A device, structure or a part of a device or structure that the primary purpose is to transform solar radiant energy into thermal, mechanical, chemical or electrical energy.
10. Solar Energy- Radiant energy received from the sun that can be collected in the form of heat or light by a solar collector.
11. Solar Energy System (SES)- An active solar energy system that collects or stores solar energy and transforms solar energy into another form of energy or transfers heat from a collector to another medium using mechanical, electrical, thermal or chemical means.

12. Solar Farm- A commercial facility that converts sunlight into electricity, whether by photovoltaics (PV), concentrating solar thermal devices (CST), or other conversion technology, for the primary purpose of wholesale sales of generated electricity. A solar farm is the primary land use for the parcel on which it is located.
13. Solar Hot Water System- A system that includes a solar collector and a heat exchanger that heats or preheats water for building heating systems or other hot water needs, including hot water for commercial processes.

II. **APPLICABILITY**

These regulations are for all solar energy systems and solar energy farms on properties and structures under the jurisdiction of the Burleigh County Zoning Ordinance except that Burleigh County requires the owner or operator of solar farms that would generate electricity greater than 50 megawatts of power to have approval for such a system from the North Dakota Public Service Commission.

Types of Solar Energy Systems.

1. Rooftop solar energy systems:

Accessory to the primary land use, designed to supply energy for the primary use:

- a. These systems are permitted accessory uses in all districts in which buildings are permitted. The owner or contractor shall receive a electrical, building and or a mechanical permit before installing a rooftop solar energy system.

2. Ground-mount solar energy systems:

Accessory to the primary land use, designed to supply energy for the primary use.

- a. Ground-mount systems are permitted accessory uses in all districts in which buildings are permitted.
- b. Ground-mount systems require a Burleigh County building permit and are subject to the accessory use standards for the district in which it is located, including setback. The height of a ground-mounted shall not exceed 10 feet and shall not cover or encompass more than 10 percent of the total property area or lot size.

3. Community solar energy systems:

Roof or ground-mount solar energy systems, may be either accessory or primary use, designed to supply energy for off-site uses on the distribution grid, but not for export to the wholesale market or connection to the electric transmission grid.

These systems shall be subject to the following conditions:

- a. Rooftop community solar energy systems are permitted in AG districts in which buildings are permitted.
- b. Ground-mount community solar energy systems are an accessory use in all districts.
- c. An interconnection agreement must be completed with the electric utility in whose service territory the system is located.
- d. All structures must meet the setback, height and coverage limitations for the district in which the system is located.
- e. Ground-mount systems must meet all required standards for structures in the district in which the system is located.
- f. Site Plan Required: The owner or operator shall submit to the County a detailed site plan for both existing and proposed conditions. These plans shall show the location of all areas where solar arrays would be placed, the existing and proposed structures, property lines, access points, fencing, landscaping, surface water drainage patterns, floodplains, wetlands, the ordinary high-water mark for all water bodies, any other protected resources, topography, electric equipment and all other characteristics requested by the County.
- g. Power and communication lines. Power and communication lines running between banks of solar panels and to electric substations or interconnections with buildings shall be buried underground. The Building Official or their designee may grant exemptions to this requirement in instances where shallow bedrock, water courses or other elements of the natural landscape interfere with the ability to bury lines.

4. Solar farms:

Ground-mount solar energy arrays that are the primary use on the lot or of a property, designed for providing energy to off-site uses or export to the wholesale market. These types of systems are permitted and regulated by the North Dakota Public Service Commission and ND State Electrical Board.

- a. Solar farms are allowed under a special use permit in Agricultural (AG) zoning.
- b. Shall be on properties of at least 10 acres in size.
- c. Stormwater management and erosion and sediment control, if required, shall meet the design restrictions of the County.
- d. Foundations. If required, the manufacturer's engineer or a ND registered design professional shall certify that the foundation and design of the solar panels meet the accepted professional standards, given local soil and climate conditions.
- e. Other standards and codes. All solar farms shall meet all applicable local, state and federal regulatory standards, including the State of North Dakota Building Code and the National Electric Code.
- f. Power and communication lines. Power and communication lines running between banks of solar panels and to electric substations or interconnections with buildings shall be buried underground. The Building Official or their designee may grant exemptions to this requirement in instances where shallow bedrock, water courses or other elements of the natural landscape interfere with the ability to bury lines as reviewed by the manufacturer's engineer or a ND registered design professional.
- g. Interconnection. The owner or operator of the solar farm must complete an interconnection agreement with the electric utility in whose service territory the system is located.
 - a. Site Plan Required. The owner or operator of the solar farm must submit to the County a detailed site plan for both existing and proposed conditions. These plans shall show the location of all areas where solar arrays would be placed, proposed location and distances from the existing and proposed structures, property lines, access points to the site, fencing, landscaping, surface water drainage patterns, floodplains, wetlands, the ordinary high- water mark for all water bodies, any other protected resources, topography, electric equipment and all other characteristics requested by the County.
 - b. The County allows the installation of small operations, security and equipment buildings on the site of solar farms as permitted accessory uses to the solar farm.

- c. ~~No freestanding accessory solar energy system may exceed 1,000 square feet in area per acre of land in the lot or parcel.~~
- d. The owner or operator shall contain all unenclosed electrical conductors located above ground within structures that control access or they must be protected from entry by a six-foot-tall fence. All electrical connections to the utility system must meet or exceed the National Electrical Safety Code and any additional requirements set forth by the ND State Electrical Board.
- e. ~~Solar farms that have panels that would cover more than 20 acres of land must meet the approval review and design standards of the North Dakota Public Service Commission and ND State Electrical Board.~~

5. Accessory Solar Energy Systems:

- a. Solar Access: an applicant may obtain solar easements from the adjoining property owners to preserve direct access to sunlight, as authorized by Section 47-05-01.2 of the North Dakota Century Code. A permit granted by Burleigh County to install a solar energy system does not guarantee solar access.
- b. Accessory Use: Solar energy systems are permitted as an accessory use, subject to all requirements of Article 8 Section 30 and the building code requirements of Article 22 Section 1.
- c. An accessory solar energy system must be located on the same lot or parcel of land as the primary use it is intended to serve.
- d. An accessory solar energy system is intended to produce energy primarily for on-site consumption but excess electrical power may be transferred to a power supply grid pursuant to utility company interconnection agreements.

6. Decommissioning Plan:

The County requires the owner or operator to submit a decommissioning plan for ground-mounted systems to ensure that the owner or operator properly removes the equipment and facilities upon the end of project life or after their useful life.

The owner or operator shall decommission the solar panels in the event they are not in use for twelve (12) consecutive months. The plan shall include provisions for the removal of all structures and foundations, the removal of all electrical transmission components, the restoration of soil and vegetation and a soundly-based plan ensuring financial resources will be available to fully decommission the site. The disposal of structures and/or foundations shall meet all County requirements and the requirements of the County Solid Waste Ordinance. The County also may require the owner or operator to post a bond, letter of credit or establish and escrow account to ensure property decommissioning.

7. Prohibitions:

The County prohibits community solar farms located within:

- a. All Floodplain Districts and Designated SFHA Areas.

8. Additional standards:

In addition to the requirements listed above, all solar energy systems shall meet the following standards.

- a. The owners or operators of electric solar energy systems that are connected to the electric distribution or transmission system, either directly or through the existing service of the primary use on the site, shall obtain an interconnection agreement with the electric utility in whose service territory the system is located. Off-grid systems are exempt from this requirement.
- b. Electric solar system components that are connected to a building electric system must have an Underwriters Laboratory (UL) listing.
- c. All solar energy systems shall meet the standards of the North Dakota Electrical Code and National Electric Code.
- d. Solar farms shall control all Noxious Weeds according to NDCC Chapter 4.1-47.
- e. All electrical lines serving a freestanding accessory solar energy system shall be buried.
- f. All rooftop solar systems shall meet the standards of the North Dakota Building Code.
- g. All solar energy systems using a reflector to enhance solar production shall minimize glare from the reflector that affects adjacent or nearby properties.

Steps to minimize glare nuisance may include selective placement of the system, screening on the north side of the solar array, reducing use of the reflector system or other remedies that limit glare.

- h. Roof-mounted solar systems shall not exceed the maximum allowed height in any zoning district.
- i. All exterior electrical and plumbing lines, batteries, and other appurtenant features serving a building-mounted accessory solar energy system shall be either screened. ~~or painted/coated to match the color of adjacent roofing or siding materials.~~ This provision does not apply to a solar collector.
- j. The non-collecting side of a solar collector and other appurtenant features of any freestanding accessory solar energy system shall be screened from view of said public right-of-way with landscape buffer and/or fencing.
- k. Commercial rooftop systems shall be placed on the roof to limit visibility from the public right-of-way or to blend into the roof design, provided that minimizing visibility still allows the property owner to reasonably capture solar energy.
- l. Setbacks. All equipment and structures shall meet the setback and coverage limitations for the zoning district in which the system is located. No freestanding accessory solar energy system may extend into or over a legally recorded easement

Section 2. **Repeal.** All ordinances or parts of ordinances in conflict with this ordinance are hereby repealed.

Section 3. **Severability.** If any section provision or part of this ordinance shall be adjudged invalid or unconstitutional such adjudication shall not affect the validity of the ordinance as a whole or any section, provision or part thereof not adjudged invalid or unconstitutional.

Section 4. **Effective Date.** This ordinance shall take effect after final passage, adoption and publication as provided by law.

First Reading Passed: _____

Passed and adopted this _____ day of _____, 2024

Brian Bitner, Chairperson

Final passage and adoption:

I, Mark Splonskowski, do hereby certify that I am the duly elected auditor of the County of Burleigh, State of North Dakota, and that the foregoing is a full, true and correct copy of an ordinance adopted by the Board of Burleigh County Commissioners at its regular meeting of _____ day of _____, 2024

IN WITNESS WHEREOF: I have hereto set my hand and seal of Burleigh County this _____ day of _____, 2024

Mark Splonskowski, Burleigh County Auditor/Treasurer

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PLANNING AND ZONING
COMMISSION

July 10, 2024

Agenda Item: 4-1 Menoken Farm Facility Zoning Change

Public Hearing

Project Summary

Public Hearing

Menoken Farm Facility – Zoning Change
A-Agricultural to P-Public unit
Development
Public Hearing

Status:

Petitioner/Developer

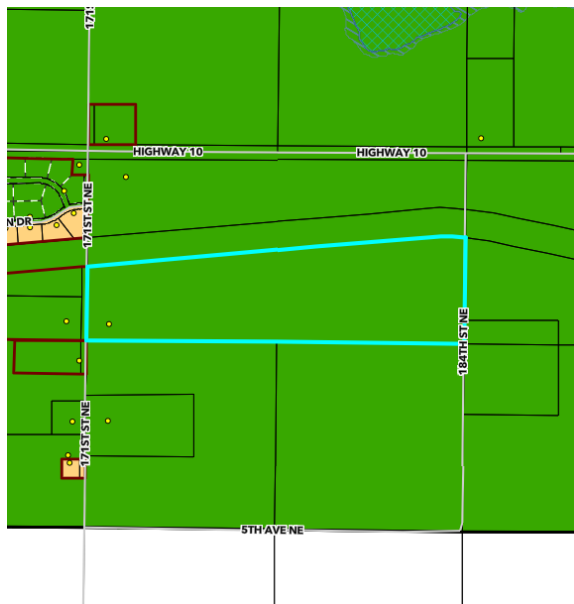
Burleigh County Soil Conservation District

Engineer

N/A

Location:

Menoken Township Section 34 N1/2 lying
South of RR ROW



Attachment 4-1-1 Location Map

Project Size:

150 acres more or less
A- Agricultural Zoning

As set forth under Chapter 11, Section 33 of the North Dakota Century Code and Article 33 of the Burleigh County Ordinances, the Planning Commission shall approve or disapprove the subdivision of all lands within its jurisdiction and recommend the same to the Board of Burleigh County Commissioners



PLANNING AND ZONING COMMISSION

June 12, 2024

Posted Dates:

Bismarck Tribune - 6/24/2024 & 7/3/2024

Surrounding Property Owners - 6/27/2024

Burleigh County Website – 6/28/2024

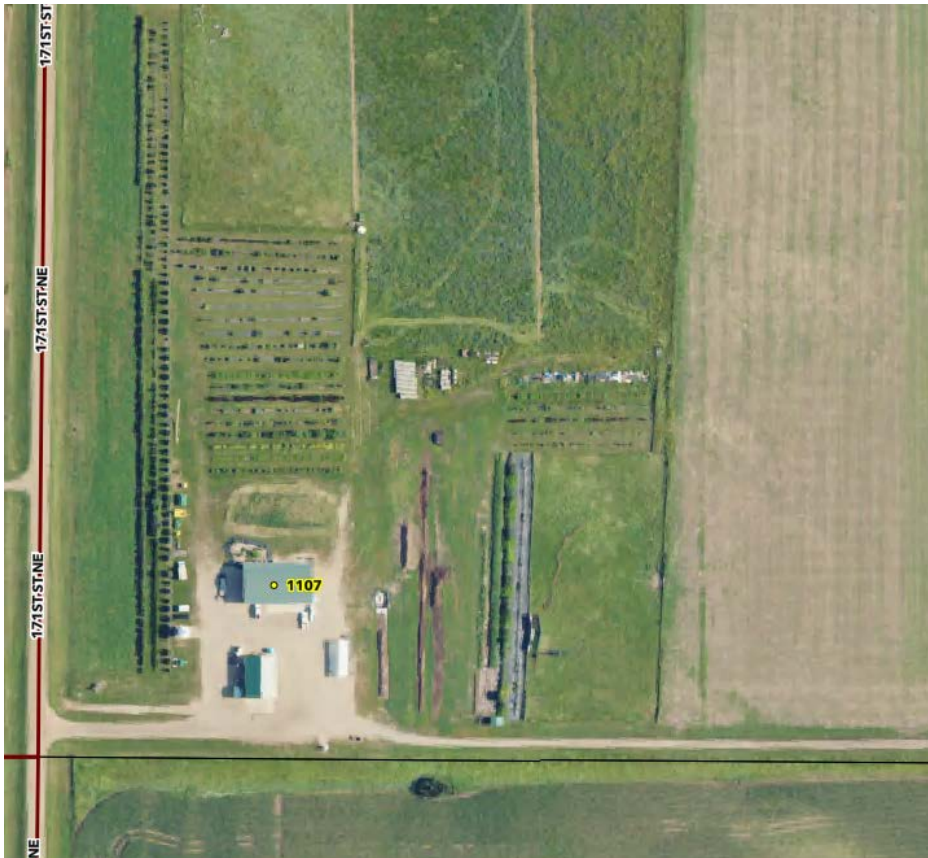
Notification Distance

2 miles - 113 notifications sent

History

Burleigh County was approached by the Burleigh County Soil Conservation District regarding their plan to build a learning center/assembly area building. The 8,300-sf building will be a public use building with a learning center, larger assembly area and office space.

The building plans have been submitted and a review is starting. A septic system for the site is being designed for the site. The Stormwater Management Plan has been submitted and approved.



4-1-2 Site Map

July 10, 2024



Analysis

The Menoken Farm Facility combines natural resource education and a systems approach to conservation. The 150-acre property is a demonstration farm established in 2009 to explore soil conservation methods. The farm is owned and operated by the Burleigh County Soil Conservation District. They receive additional funding from:

- Section 319 Nonpoint Source Pollution Control Program through the North Dakota Department of Health/Water Quality Division
- Natural Resources Conservation Service, US Department of Agriculture.

The Menoken Farm Facility holds various events at the site and offers training and education in conservation methods for rural and urban areas. Visitors have two (2) access points the location:

- I94 East to Exit 170, 158th Street NE/County Hwy 10, 171st Street NE
- Main Ave East to 171st Street



PLANNING AND ZONING COMMISSION

June 12, 2024

Article 20.1 – Public Use District, Burleigh County Zoning Ordinance

The P-Public Use District is established for areas which the principal land use is governmental, civic or institutional uses, including major public facilities. The regulation is intended to prohibit any other use which would diminish its value in serving the needs of the public. P-Public Use District is an alternative zoning classification for public and institutional uses.

The Menoken Farm Facility meets the criteria of Article 20.1 – P – Public Use District Regulations of the Burleigh County Planning and Zoning Ordinance. The principal land use is a governmental, civic and institutional.

The Menoken Farm Facility meets the criteria of the 2014 Burleigh County Comprehensive Plan Article 4 - Parks & Recreation Goal: *Conserve and expand the County's recreational and scenic areas, natural features, parks, and open spaces for the benefit and enjoyment of the public.* The Menoken Farm Facilities offers educational seminars and farm tours to the public.



North View



PLANNING AND ZONING COMMISSION

June 12, 2024



Menoken Farm Facility

Staff Findings:

1. The zoning change from A-Agricultural to P – Public Use District fulfils the requirements of Article 20.1 of the Burleigh County Zoning Ordinance.
2. Stormwater Management plan has been completed.
3. All concerns of the necessary county entities have been addressed.
4. The established use of the parcel will not change.
5. The parcel is owned and operated by a government agency
6. The parcel is in Menoken Township. The township has been notified regarding the zoning change request.
7. The parcel meets the criteria of 2014 Burleigh County Comprehensive Plan



PLANNING AND ZONING COMMISSION

June 12, 2024

Planning Staff Recommendation

The requested zoning change meets all the criteria of Article 20.1 – Public Use District of the Burleigh Zoning Ordinance. Staff recommends approving the request with a “Do Pass” recommendation.

Planning Commission Action

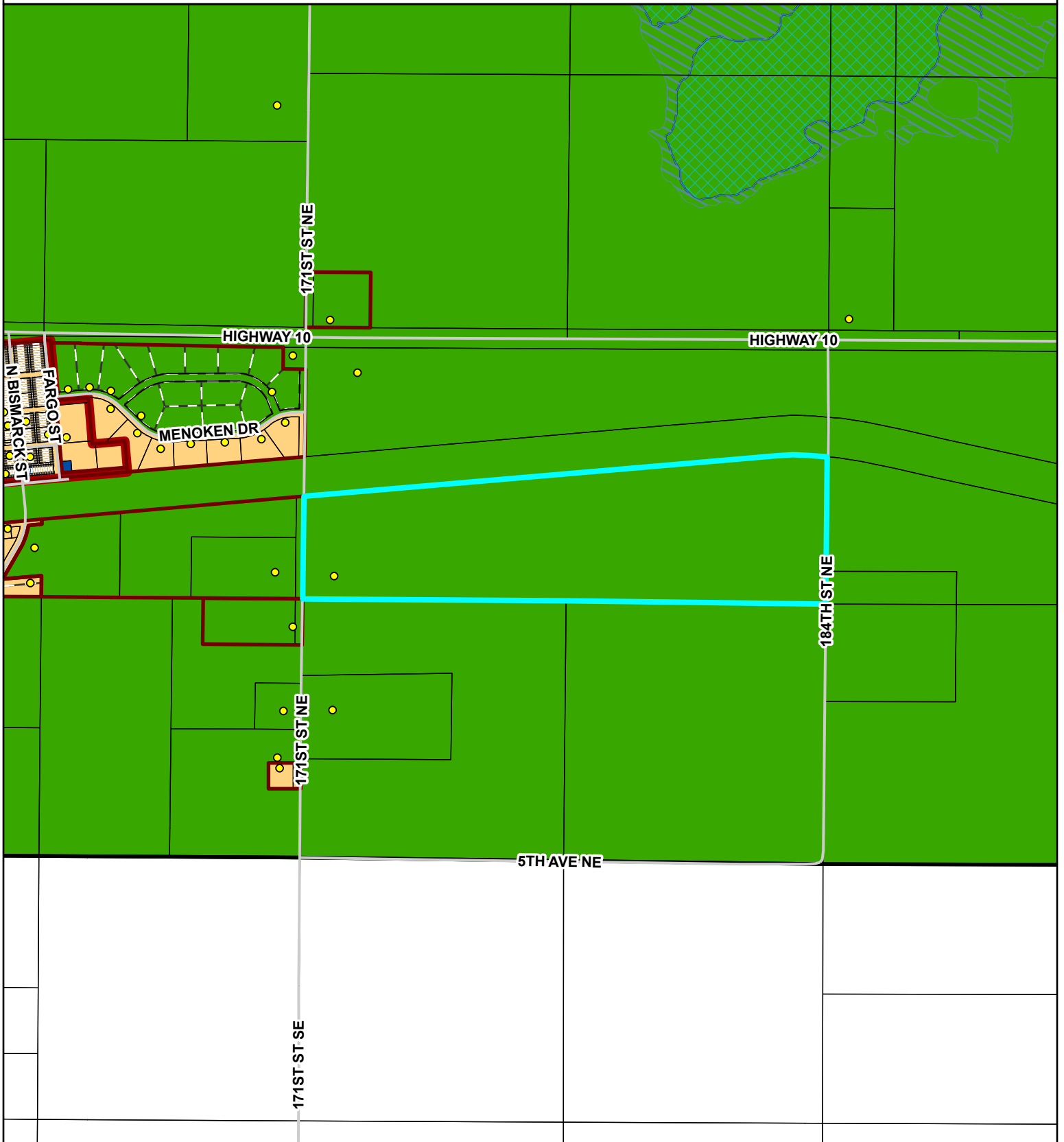
The Burleigh County Planning and Zoning Commission can:

1. Approve the request and give a “Do Pass” recommendation to the Board of Burleigh County Commissioners.
2. Approve the request with conditions.
3. Deny the request with reason.
4. Table the request for more information.

Attachments - Menoken Farm Facility - Zoning Change

BURLEIGH COUNTY, NORTH DAKOTA
LOCATION MAP

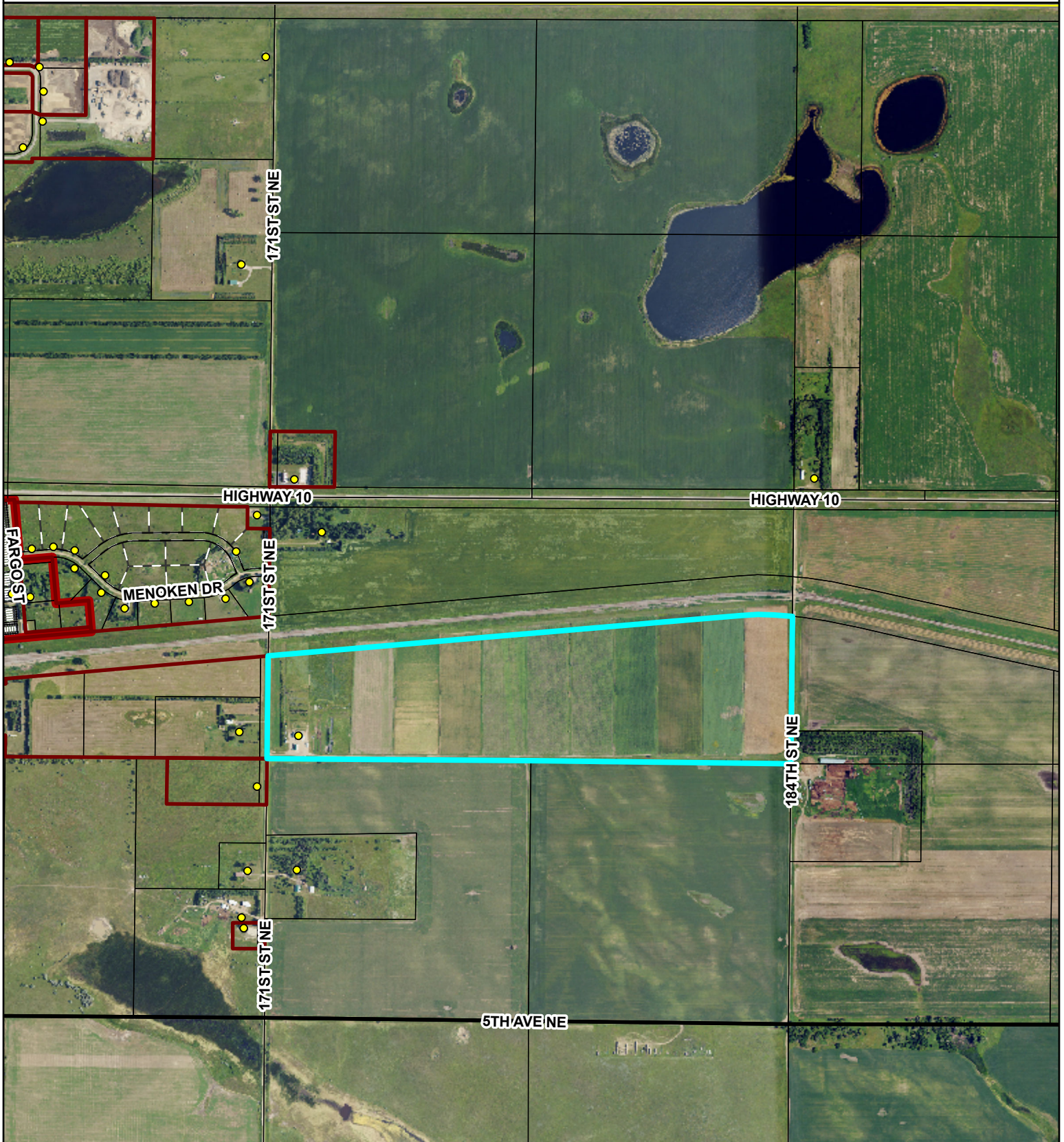
N
5/31/2024



PARCEL ID: 33-139-78-00-34-220 OWNER: BURLEIGH CO SOIL CONS DISTRICT ACRES: 150.12
SITE ADDRESS: 1107 NE 171ST ST
MAIL ADDRESS: 916 E INTERSTATE AVE #6, BISMARCK, ND 58503-0560
LEGAL: MENOKEN TOWNSHIP Section 34 N1/2 LYING SOUTH OF RR R/W 701210 34-139-78

BURLEIGH COUNTY, NORTH DAKOTA LOCATION MAP

N
6/4/2024



PARCEL ID: 33-139-78-00-34-220

OWNER: BURLEIGH CO SOIL CONS DISTRICT

ACRES: 150.12

SITE ADDRESS: 1107 NE 171ST ST

MAIL ADDRESS: 916 E INTERSTATE AVE #6, BISMARCK, ND 58503-0560

LEGAL: MENOKEN TOWNSHIP Section 34 N1/2 LYING SOUTH OF RR R/W 701210 34-139-78





Menoken Farm

The Menoken Farm is a conservation demonstration farm located in central North Dakota, owned and operated by the Burleigh County Soil Conservation District

The systems approach management enhances erosion protection, sunlight harvest, plant diversity, carbon, pollinators, beneficial insects, wildlife, salinity control, livestock forage and more

Advancing Soil Health through innovation and education.



Cropping Systems

Menoken Farm is divided into 10 fields, each about 12 acres. The cropping system includes no-till seeding, high crop diversity and rotations with cover crop combinations seeded after harvest and as season-long plantings.



Compost

Each fall compost is made from a number of organic materials, including common ingredients such as hay, straw, wood shavings, fish and manure. Upon completion, the compost is applied to available cropland and gardens.



Windbreaks

A number of windbreaks have been planted and serve as an arboretum for information and education on energy, wildlife and forestry topics.



Grazing Systems

Rotational perennials are part of the crop rotation. These fields are seeded to 21 species of perennial grasses, legumes and flowering forbs. The grazing system is managed with short livestock exposure periods, followed by long plant recovery periods. Livestock are also rotated to season-long cover crops, fall seeded cover crops and crop residue, when available. Paddock size is managed with single-wire electric fence. Each paddock is usually a half acre or larger.



Gardens

Menoken Farm has a high tunnel greenhouse garden and outside garden. The soil health principles and compost are used to manage the gardens. Healthy, fresh produce is donated to the Bismarck/Mandan food pantries, in cooperation with the Hunger Free North Dakota Garden Project.



Education

With continued support from the North Dakota Department of Health and NRCS-USDA, Menoken Farm provides natural resource education. Tours are available from May - October and are open to farmers, ranchers, gardeners, Soil Conservation District employees and supervisors, NRCS employees, Extension Service employees, no-till associations and the general public. Some of the topics our tour participants will learn include: soil health principles; carbon cycle; soil function demonstrations; crop rotations; cover crop combinations; grazing systems; and gardening.

Visit us at: www.menokenfarm.com



The farm is owned and operated by Burleigh County Soil Conservation District. Additional financial and technical support is provided by:

- Section 319 Nonpoint Source Pollution Control Program through the North Dakota Department of Health/Water Quality Division
- Natural Resources Conservation Service (NRCS), U.S. Department of Agriculture (USDA)

After identifying a number of resource concerns across the Menoken Farm landscape, work focused on providing these basic building blocks to improve soil health:

- 🌿 Soil armor
- 🌿 Minimal soil disturbance
- 🌿 Plant diversity
- 🌿 Continual live plant/root
- 🌿 Livestock integration

The systems approach management enhances erosion protection, sunlight harvest, plant diversity, carbon, pollinators, beneficial insects, wildlife, salinity control, livestock forage and more.



Menoken Farm

Schedule a Menoken Farm Tour:

- 👤 Darrell Oswald
- ☎ 701-250-4518, ext. 3
701-391-5830
- ✉ darrell.oswald@nd.nacdnet.net
menokenfarm@gmail.com
- 💻 www.menokenfarm.com

The Menoken Farm address is:

- 📍 Menoken Farm
1107 171st St. N.E.
Menoken, ND 58558

Driving directions to Menoken Farm are:

- From I-94, take Menoken Exit 170 (about 10 miles east of Bismarck, ND)
- 1 mile south to Highway 10
- 1 mile east to St. Hildegard's Church
- 1/2 mile south

*This brochure is based upon work supported by the Natural Resources Conservation Service, U.S. Department of Agriculture, under number 68-6633-16-516. USDA is an equal opportunity provider and employer



Menoken Farm

Burleigh County Soil Conservation District, North Dakota

Menoken Farm was established in 2009 and is a combination of natural resource education and systems approach conservation



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Agenda Item 4-2

Application for a Special Use Permit

Project Summary	
Public Hearing	Baldwin Green House – Corn Maze
Status:	Planning and Zoning Commission – Consideration
Petitioner/Developer	Stoll Farms LLC – Mary Podoll
Address:	1725 201 st Ave. NE, Baldwin, ND
Location:	Glenview Township, Section 24, W 1/2 E 1/2 NW 1/4 Range 80
	
Attachment 4-2-1 Location Map	
Project Size:	40 acres more or less A- Agricultural Zoning
Petitioners Request	Approval of a Special Use Permit and a “Do Pass” recommendation to the Board of Burleigh County Commissioners.
Posted	Bismarck Tribune 6/26 & 7/1/2024 Burleigh County Website 6/28/2024
2-mile notification area – 132 letters	Surrounding Property Owners 6/28/2024

As set forth under Chapter 11, Section 33 of the North Dakota Century Code and Article 33 of the Burleigh County Ordinances, the Planning Commission shall approve or disapprove the subdivision of all lands within its jurisdiction and recommend the same to the Board of Burleigh County Commissioners



History/Description

The petitioner approached Burleigh County on June 20, 2024 requesting a special use permit to have a commercial corn maze on the grounds of the Baldwin Greenhouse. The corn maze would run from August thru October. Clark Coleman, who in the past has had a corn maze at the Buckstop Junction will run the maze, Friday thru Sunday. Stoll Farms will run the maze the remainder of the week. There will also be a food truck, portable bathrooms, and a gravel parking lot. The last person to enter the maze on any day will be a half hour before sunset.

This is not the first Special Use application we have received from the petitioner. Stoll Farms, LLC had originally applied for a Special Use permit to operate a corn maze, teaching facility with an additional building, a commercial kitchen and educational growing sites for attendees. The petitioner was advised, her request does not fall under a special use category as the ordinance is written at this time. She was asked to wait with the first special use, until the ordinance is written. She was also advised because she has commercial activities, although farm related, they would not fit under allowable uses nor special uses of Article 12 – A-Agricultural Zoning of the Burleigh County Ordinances. Staff advised her to apply for a PUD. The petitioner is part of the Stakeholders Group for Agri-Recreation.

The Baldwin Greenhouse was owned and operated by the Werre family before being purchased by Stoll Farms in November of 2022. The Werre family operated the greenhouse during the growing and planting season. The green house was closed during the fall and winter months. Stoll Farms, LLC since purchasing the greenhouse have held several events which include food trucks. On Mother's Day of 2024 for example over 2,000 people visited the green house and enjoyed the food available thru the food trucks on site.

Starting in the Spring of 2023, Burleigh County started to receive complaints about the activities and the amount of people on the greenhouse property. The concern expressed was that the activities being held were not agricultural in nature. These non-agricultural events were affecting the neighboring property and his livestock.



PLANNING AND ZONING COMMISSION

July 10, 2024

Jamie Feist is a neighbor who shares the east/west property line with the greenhouse. Mr. Feist and his family raise and breed deer on his property. His animals are wild and are not pets. The additional activities with the food trucks alone have caused his deer to bolt against their pens and has caused death and miscarriage in his stock. His pens are located approximately 40' from the shared property line. When Mr. Feist purchased his property in August of 2020, the greenhouse was only operational between the summer months and traffic was limited to those purchasing items at the greenhouse. Food trucks and various activities were not held on the property.

The most recent complaint from Mr. Feist was the encroachment on his property by the equipment used to seed the corn maze. The operator of the equipment used Mr. Feist's 40' buffer zone to turn around while seeding the corn maze. The equipment caused damage to the plants and shrubbery Mr. Feist was trying to grow as an additional buffer to the deer pens on his property.

Mr. Feist is very concerned that the additional activity of a corn maze and participants in the corn maze trespassing on his property to see the deer. His male deer are just growing antlers and very skittish, the deer might bolt, break an antler and bleed out. The bolting of deer in one pen will cause a chain reaction in his other pens.

Mr. Feist has submitted documentation with his complaints (attachment – Feist Documentation)

County staff visited the site on June 28 to address Mr. Feist's complaint and verify additional information on the location of the corn maze. Measurements and pictures were taken at this time. (Attachment – Staff Documentation)

Facing East





PLANNING AND ZONING COMMISSION

July 10, 2024

Analysis

The request for a Special Use Permit to have a corn maze is allow per the Burleigh County Zoning Ordinance Article 8 which states:

"In order to carry out the purpose of this Article, The board of County Commissioners finds it necessary to require that certain uses, because of unusual size, safety hazards, infrequent occurrence, effect on surrounding area, or other reasons, be reviewed by the County Planning and Zoning Commission and the Board of County Commissioners be and are hereby given limited discretionary powers relating to the granting of such permit or certificate."

The petitioner has submitted a site and operating plan for the corn maze as follows:

Hours will be from 9:00 am with the last person entering the maze one half hour before sunset. Normal operating hours are from 9:00am to 6:00pm on Monday, Tuesday, Thursday, Friday and Saturday. 10:00 am to 5:00pm on Sunday.

1. The maze will operate from late August through October.
2. Clark Coleman will operate the maze Friday thru Sunday. Stoll Farms may run the maze the remaining days of the week or by appointment.
3. Parking will be in a gravel parking lot, located approximately 100' feet from the west property line. Over flow parking is not available
4. Restrooms/Porta Potties will be available and located within the greenhouse complex.
5. The maze is located in the middle of the parcel and approx. 6 acres in size.
6. A buffer of 7 rows of corn has been planted on the west side of property.



PLANNING AND ZONING COMMISSION

July 10, 2024

Facing South



County staff visited the site on June 28, 2024. Staff notes on the site visit are as follows:

1. Measurements were taken along the west side property line to the corn maze. The average distance to the property line is 15'. (see Staff Documentation)
2. A footpath is located along the property line to the south end of the maze on both the east and west sides of the site.
3. The buffer rows of corn run east to west. The buffer rows should run north to south to provide a more effective visual buffer between the maze and the neighboring property.

Staff Findings:

1. The special use application fulfills the administrative requirements of Article 8, Section 1, General Provisions.
2. Growing of corn is allowed in an A-Agricultural Zoning District
3. The operators of the corn maze will charge a fee for participation.
4. The petitioner states 400 to 2000 people could participate in the maze on any given day.
5. The corn maze does not have a 100' buffer between properties.
6. The maze is approximately 15' from the east/west property line.
7. The corn maze could be considered a commercial enterprise which is not allowed in an A-Agricultural Zoning District.



PLANNING AND ZONING
COMMISSION

July 10, 2024

8. Operation of the corn maze does not follow the intent of Article 11 A-Agricultural District Regulations, Section 1 – Description which states:
 - a. *The A-Agricultural District is established as a district in which the principal use of land is for general agricultural uses. The regulations are intended to prohibit commercial and industrial usage of the land and to prohibit any other use which would interfere with the development or continuation of the agricultural use of the land; and to discourage any use which because of its character or size, would create requirements and cost to public services such as police and fire protection, water supply, and sewerage before such services can be systematically and adequately provided.*
9. Food Trucks are not considered an agricultural activity.
10. According to the “proposed” Agri-Recreational Ordinance: operation of the corn maze will have a size limit of 75 people per event and limited to 30 events per year.
11. The operation of a corn maze for commercial purposes is not an allowable use in A-Agricultural Zoned Districts.
12. Operation of the corn maze will impact the surrounding property owners use and enjoyment of their property.
13. The application for this type Special Use Permit does not coincide with the Burleigh County Comprehensive Plan

Planning Staff Recommendation

Staff recommends denial of the Special Use Permit as the operation of a corn maze is not an allowable use or special use in an A-Agricultural Zoned District.

Planning Commission Action

The Burleigh County Planning and Zoning Commission can:

1. Approve the Special Use Permit and give a “Do Pass” recommendation to the Board of County Commissioners



PLANNING AND ZONING
COMMISSION

July 10, 2024

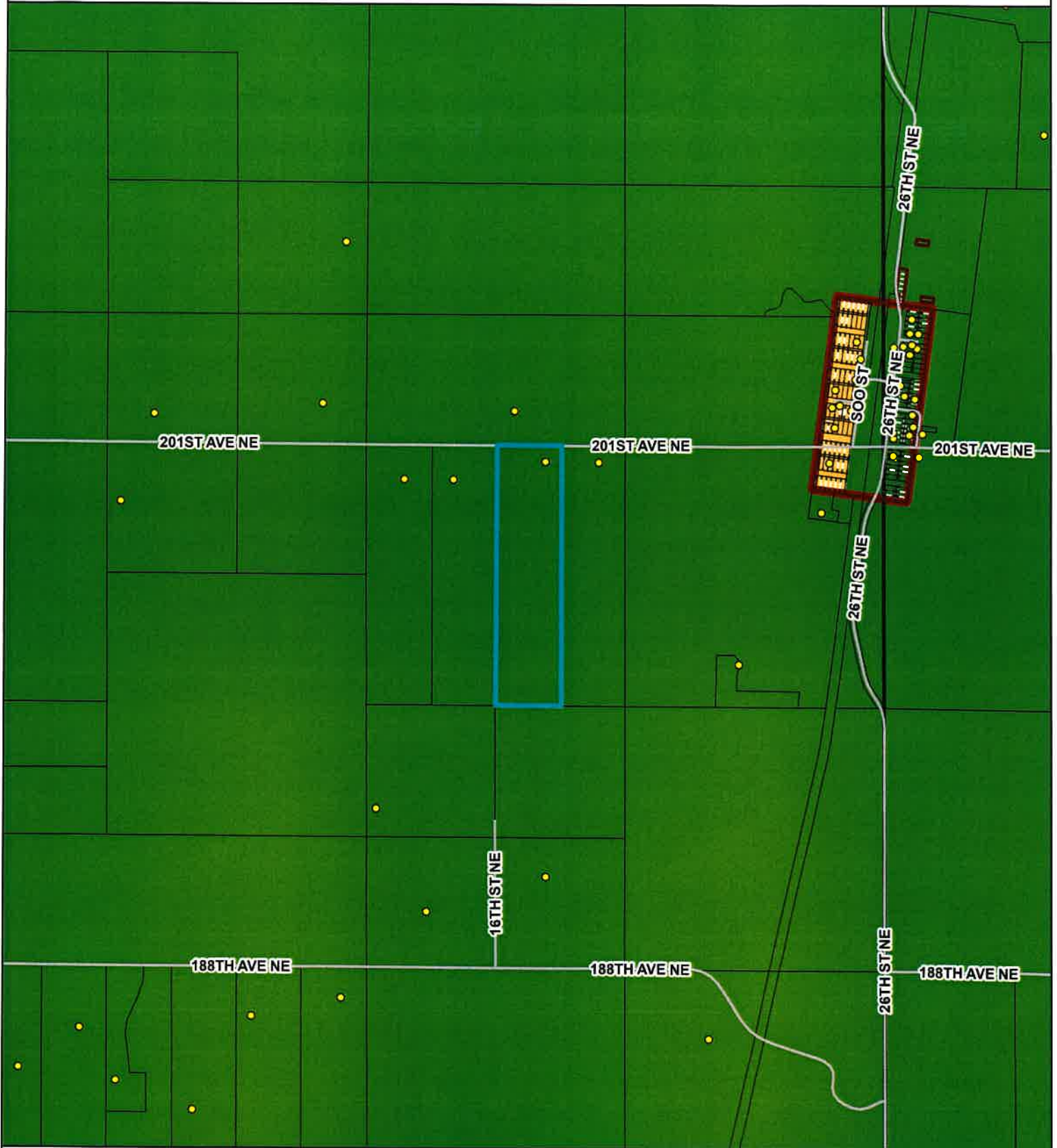
2. Approve the Special Use Permit with conditions and give a "Do Pass" after all condition have been completed.
3. Deny the Special Use Permit with reason.
4. Table the Special Use for more information.

Attachments - Special Use Permit - Stoll Farms

STAFF
DOCUMENTATION

BURLEIGH COUNTY, NORTH DAKOTA
LOCATION MAP

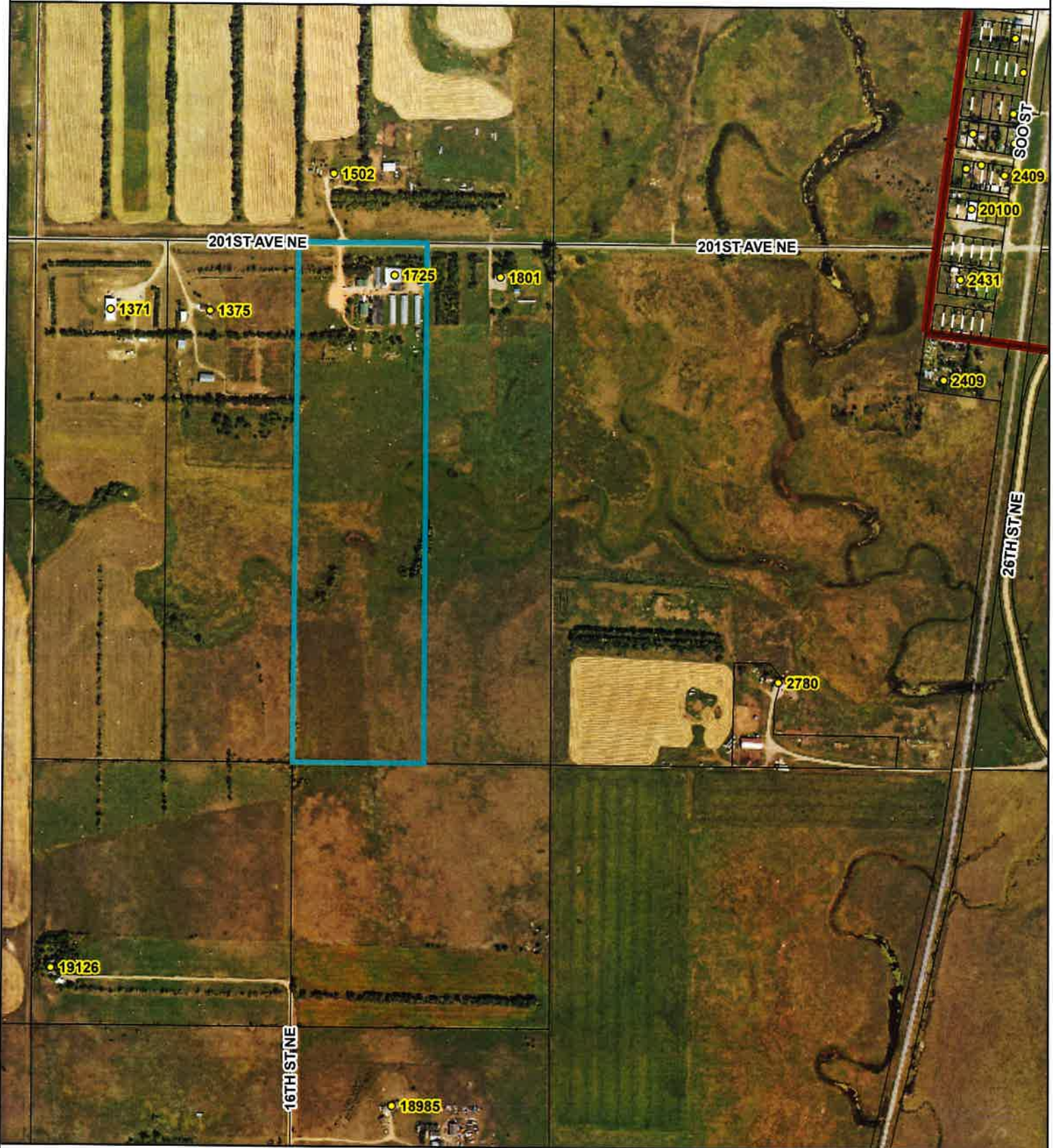
N
7/2/2024



PARCEL ID: 16-141-80-00-24-403 OWNER: STOLL HOLDINGS LLP ACRES: 40
SITE ADDRESS: 1725 NE 201ST AVE
MAIL ADDRESS: 1725 201ST AVE NE, BALDWIN, ND 58521
LEGAL: GLENVIEW TOWNSHIP Section 24 W1/2E1/2NW1/4 772217 24-141-80

BURLEIGH COUNTY, NORTH DAKOTA
LOCATION MAP

N
7/2/2024



PARCEL ID: 16-141-80-00-24-403 OWNER: STOLL HOLDINGS LLP ACRES: 40
SITE ADDRESS: 1725 NE 201ST AVE
MAIL ADDRESS: 1725 201ST AVE NE, BALDWIN, ND 58521
LEGAL: GLENVIEW TOWNSHIP Section 24 W1/2E1/2NW1/4 772217 24-141-80

Distance from property line to
corn maze 13'



From property line
to deer pens



Distance of property line to corn
maze.



Property Line Marker





Corn maze - corn
planted east to west



Feist Property Line

corn maze

East

Looking East
From Feist Property Line

West



STOLL FARM
DOCUMENTATION

McMonagle, Marla M.

From: Baldwingreenhouse@outlook.com
Sent: Monday, June 10, 2024 12:30 PM
To: McMonagle, Marla M.
Subject: Request for a temporary variance approval for a corn maize

******* CAUTION:** This email originated from an outside source. Do not click links or open attachments unless you know they are safe. *********

In September, Stoll Farms LLC would like to host the Coleman's Corn Maize. Length of the activity is weather dependent, but the goal is to start in late August and continue through October. The field is agriculture and the corn will be harvested. The location is zoned for agriculture. There is adequate parking, spiffy biffs on site,

The location is 1725 201st Ave NE, Baldwin, ND 58521. This address is also the location of the Baldwin Greenhouse & Nursery.

Since the current policy for special permits is in draft, I believe that this the current process to use. However, whatever the title, please present to the board for awareness?

The primary roads are Highway 83 and 201st street - both are paved and well cared for roads.

Please let me know if any additional information is needed?

As for the other activities, I will put together a better packet for the larger plan now that I have more information about the final plan for the new farmer program. I hope that the special permit issue will be resolved before August, so I can turn in the official request in September!

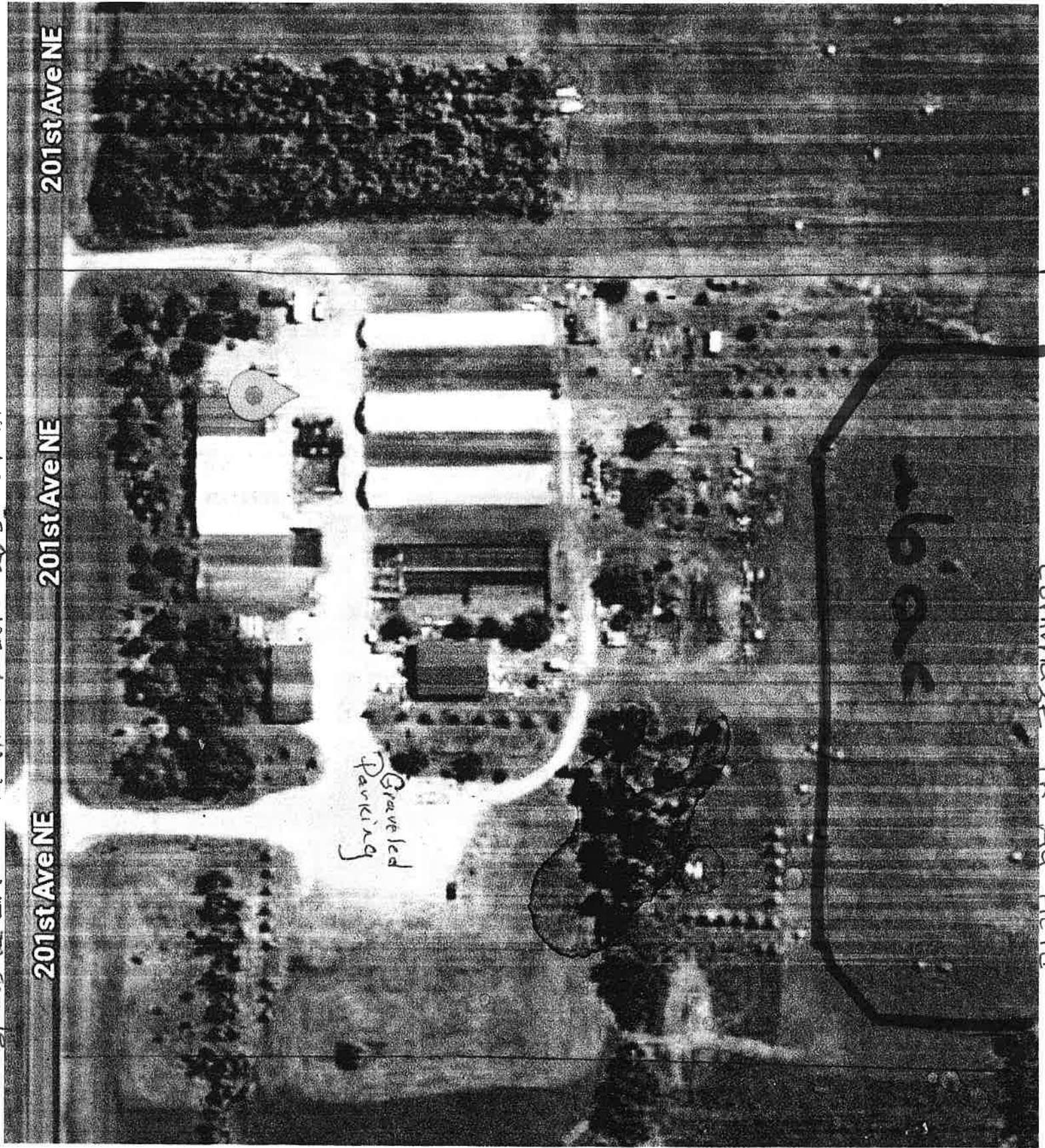
Thank for all you do!

Mary

Mary Podoll
Baldwin Greenhouse & Nursery volunteer
Americorp Member Strengthen ND
Strong Farm Incubator.

27

40 ACRES NOT SHOWN NOT TO SCALE



cannage in Ag Field



Mary Podoll <mary@strengthennd.com>

Fw: Special Use Permit Information needed

2 messages

Baldwingreenhouse@outlook.com <Baldwinggreenhouse@outlook.com>
Reply-To: Baldwingreenhouse@outlook.com <Baldwinggreenhouse@outlook.com>
To: Mary Podoll <mary@strengthennd.com>

Thu, Jun 20 at 8:02 PM

Yahoo Mail: Search, Organize, Conquer

----- Forwarded Message -----

From: "McMonagle, Marla M." <mcmmonagle@nd.gov>
To: "Baldwinggreenhouse@outlook.com" <Baldwinggreenhouse@outlook.com>
Cc: "Flanagan, Mitch" <mflanagan@nd.gov>
Sent: Thu, Jun 20, 2024 at 4:46 PM
Subject: Special Use Permit Information needed

Hi Mary,

I was looking over your site plan. I will need some addition information on the site plan and regarding your special use permit.

Can you show on the site plan the following?

Stoll Farms LLC / Baldwin Greenhouse & Nursery
easily handled 400 Transactions on our busiest day.
Families (most) 4-8 Probably 2,000 people

1. Show and label distances from the sides of the corn maze and property lines.
2. Show and label all walking pathways, parking areas, restrooms etc. If within 100' of the neighboring properties please show and list the distance. ALL Greater than 100'
3. Show and label distances from properties lines all parking areas and overflow parking areas.
4. Label all parking surfaces i.e. gravel, grass, etc. GRAVEL
5. If corn maze is to operated in the evenings, please show and describe lighting. NOT at dark

Here are the questions I have regarding the special use permit:

1. How many people do you plan to go through the maze? Per day? ? 1st Year → 200 maybe
2. Is there a limit to the amount of people per day in the maze?
3. Is there a limit to the amount of people in the maze at one time? } NOT AT this time
4. What days and hours do you plan to operate the corn maze? Is it going to be every day, specific days of the week?
5. Is the maze going to operated at night, what are your lighting plans? NA F, S, S - by the Coleman's
6. What other activities/events will be associated with the corn maze? M-Th by the Stoll's
Food Truck on site

I have attached some maps to help you with your site plan. Things do not have to be to scale, but I need a detailed site plan for the project. If you could get this information to me as soon as possible that would be great. I need to include as much information as possible for my staff report which is due on June 27th.

McMonagle, Marla M.

From: Mary Podoll <mary@strengthennd.com>
Sent: Monday, June 24, 2024 2:24 PM
To: Mary Podoll; Flanagan, Mitch; McMonagle, Marla M.
Subject: Re: Stoll Farms LLC Baldwin Greenhouse & Nursery special permit corn maze
Attachments: Mary Podoll mary@strengthennd.com.pdf

You don't often get email from mary@strengthennd.com. [Learn why this is important](#)

***** **CAUTION:** This email originated from an outside source. Do not click links or open attachments unless you know they are safe. *****

Good afternoon, I scanned documents for special permit information. It is titled with email address I used to copy-sorry about that.

The only area that may be closer than 100ft is the cropland field. However, there are a minimum of 7 rows of corn that create a sight and sound barrier for this neighbor, as he raises deer. With the corn maze being away from the property line.

We handled about 2000 people on Mothers Day with parking and food trucks. Parking is graveled, walk paths are mowed grass, and the last participants will be allowed no later than 30 minutes before sunset.

Clark Coleman and his family are running the corn maze on Friday-Sunday. They have been near the Buckstop Junction in the past. They have exhibited a professional and manageable agriculture related activity and I'm excited to work with them.

The township chair had no concerns, neighbors north and east and Baldwin community and Wilton Community are welcoming this activity. The neighbor with deer should be accustomed to people and noise, And we included a sound and sight barrier with 7 rows of corn that are not part of the maze...

I do not know how to estimate numbers, but we should be able to manage appropriately with day to day on site management and cooperation with the Coleman family.

Thank you!

Mary Podoll
701-391-7759

On Mon, Jun 24, 2024 at 2:06 PM Mary Podoll <mpodoll7@icloud.com> wrote:

Sent from my iPhone

BURLEIGH COUNTY, NORTH DAKOTA

LOCATION MAP

10/26/2024

O 1502

Stoll Farm LLC
Baldwin Greenhouse Nursery

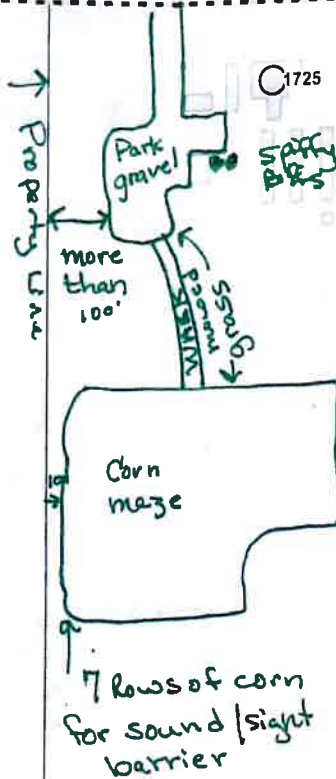
201ST AVE NE

201ST AVE NE

O 1375

C 1725

O 1801



* Coleman's
are managing
the Corn Maze

Friday, Sat.
Sunday

M-Th - Stoll's
have option
to be open.

Food Truck on
site.

* Last
oppt to go
in to maze
will be a
minimum of
30 min before
Sunset.

June 23
• Talked @ Terri Schoenert North ✓
• Carlson's ✓
• Township - in May ✓
2 Board Chair

If you need letters of support:

Wilton Mayor / Coleman's / People in Baldwin Area

Burleigh County, North Dakota

201st Ave



Porta
XX Potties

Corn Maze
6 acres

erial
photo

was p
orn for
sight
er

Creek

100'

100'

BURLEIGH COUNTY, NORTH DAKOTA
LOCATION MAP

8/29/2024



- 3. Parking Areas > 100'
- 4. Graveled Parking
- 5. will Not be operated after dark

- 1. # People - unknown
- 2. No Limitations
- 3. Planned at this time
- 4. Friday, Saturday, Sunday, and weekdays M, T, W, TH by the Coleman's or by a ppt by the Stoll's

6. Includes a food truck on site.

FEIST
DOCUMENTATION



Private Road

Pen 1 Pen 2

Pen 5 Pen 4 Pen 3

Proposed
CORN
MAZE

FEIST
JAMIE

WEDDE
SCOTT

📅 Sat

2D



Hunt Map

Pen
3

6 feet
from
property
line

5 feet from
property
line

2 feet
from
property
line

CORN
MAZE

35 feet

privacy screen

Property
Line

planted
by Feist
in 2023 ~~and~~ trampled
and ruined
by seeding of corn maze
from tractor driving
around my no trespassing
signs and along
pen 3. 35' into
my property.

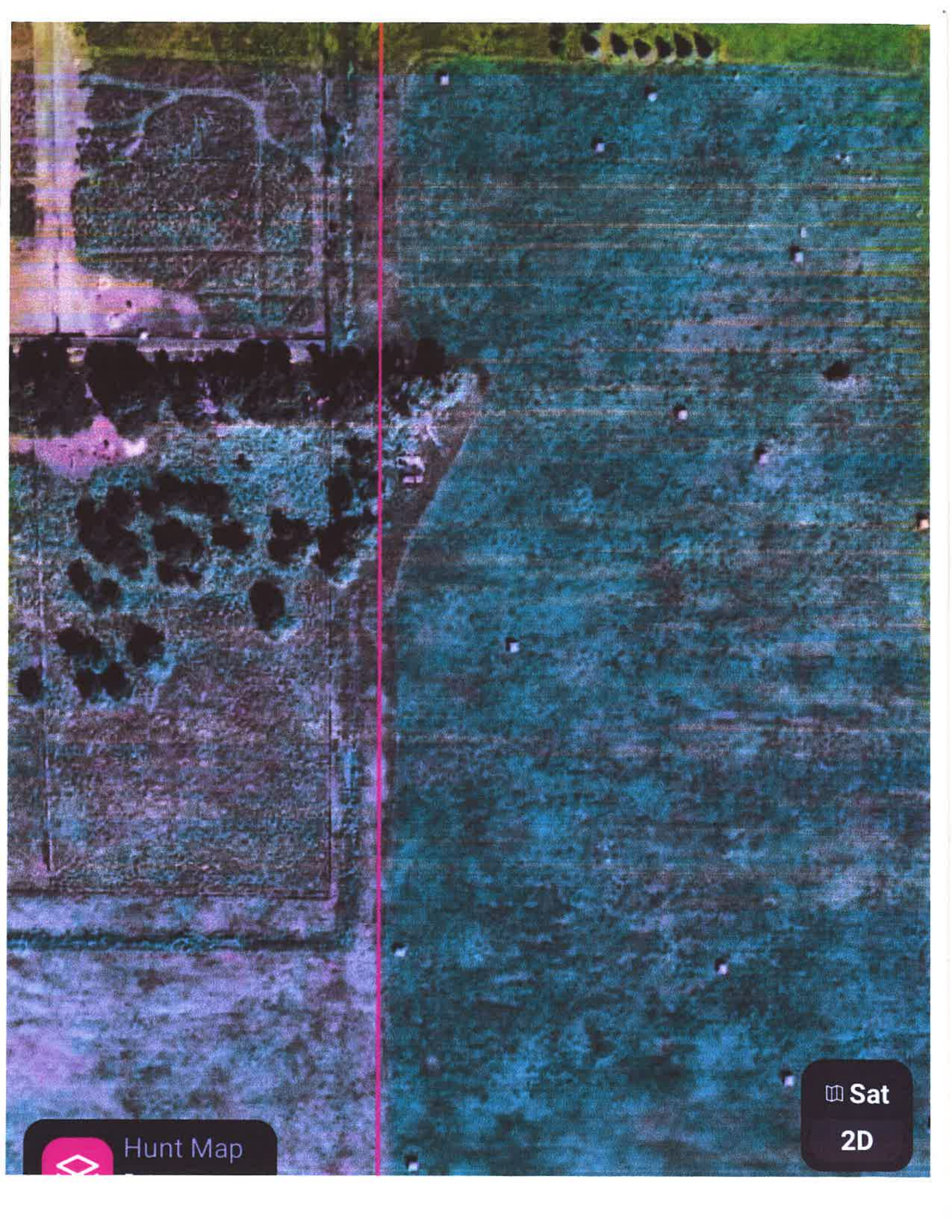


Hunt Map

Sat

2D

multiple videos
of tractor doing
this during planting





Add line

Save



Line name

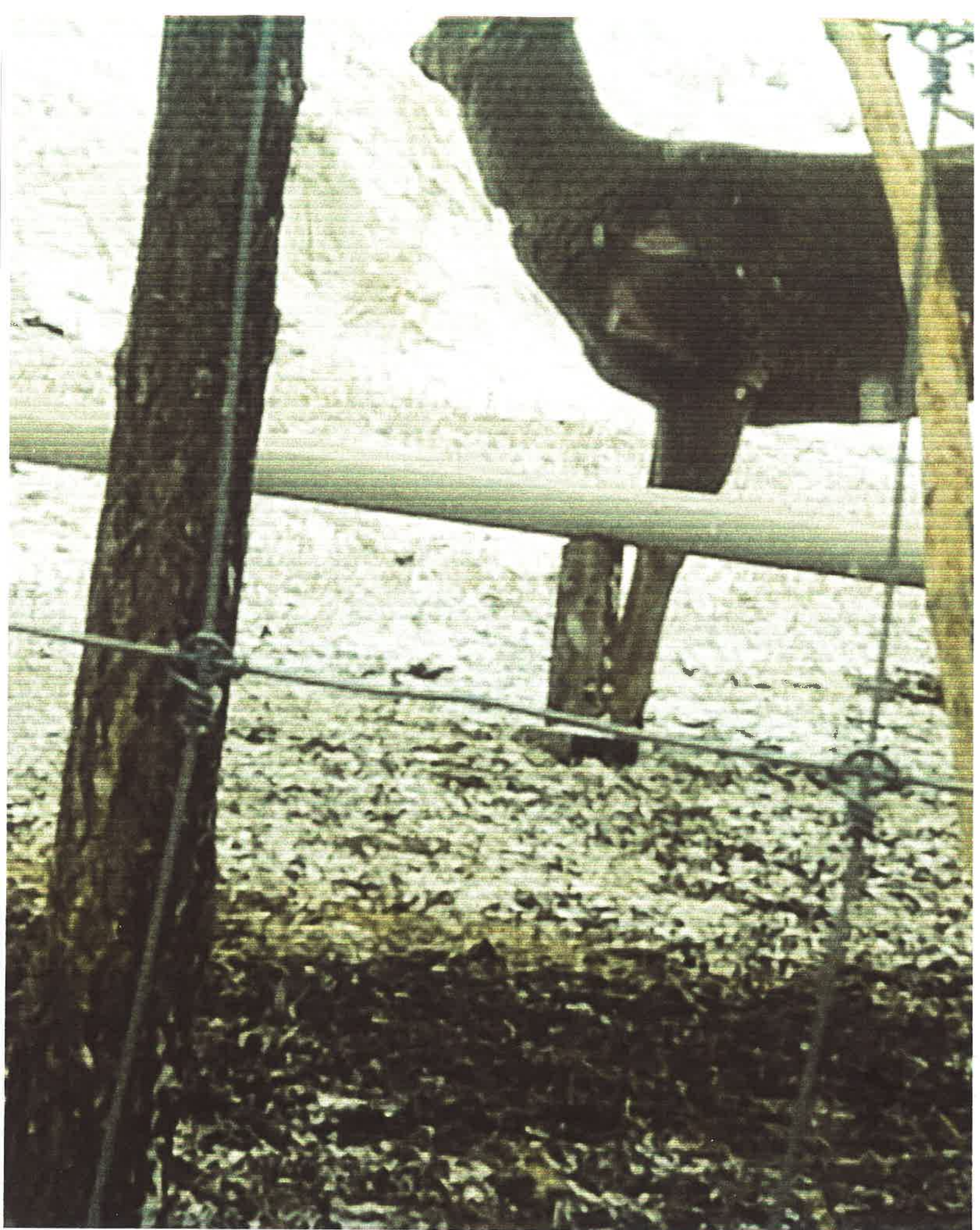
Save













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ORDINANCE 24-0-----

AN ORDINANCE TO AMEND AND RE-ENACT ARTICLE 8 OF THE 1972 AMENDED ZONING ORDINANCE OF BURLEIGH COUNTY, NORTH DAKOTA RELATING TO SECTION 30 DATA CENTERS

Section 1. **Amendment** Article 8 of the Zoning Ordinance is hereby amended and re-enacted as follows:

SECTION 30 Data Center Facilities

This section is adopted to allow data centers in appropriate locations in Burleigh County and minimize the potential off-site impacts of development and reduce long-term exposure that may impact the public health, safety, and the general welfare of Burleigh County residents. The low-frequency sounds emitted by data centers consist of long wavelengths that are not easily absorbed by the air or blocked by a sound barrier.

I. DEFINITIONS

The following words, terms and phrases, when used in this Article and Section, shall have the meaning provided herein, except where the context clearly indicates otherwise:

1. **Data Center**- a building, structure, complex or group of buildings and/or structures, facility, or dedicated space within a building, structure, complex, or facility that houses IT infrastructure, including, but not limited to, computer systems, networks, servers, applications, appliances, services, and other associated components or facilities used for the remote storage, processing, or transmission of digital data associated with those computer systems, networks, servers, applications, appliances, services, and other associated components or facilities. Associated components and facilities may also include air handlers, water cooling and storage facilities, utility substations, and other associated utility infrastructure to support operations. This definition also includes cryptocurrency mining, which involves the use of blockchain technology to verify and secure cryptocurrency transactions, as the terms “cryptocurrency”, “cryptocurrency mining”, “blockchain”, and “blockchain technology” are defined by any applicable State law or, if no applicable State law, by generally accepted industry standards. Data centers are intensive land uses that can consume large quantities of water and electricity. Buildings often include industrial HVAC systems or water cooling/storage systems to prevent computer servers from overheating. Such systems commonly generate continuous sound that can spread across property lines.

I. APPLICABILITY

These regulations are for Data Center Facilities on properties and structures under the jurisdiction of the Burleigh County Zoning Ordinance. The installation or construction of a data center, or any modification to a lawfully existing data center beyond routine maintenance, requires a Special Use Permit and also requires a Burleigh County Building Permit obtained from the County Building Department. Data centers may only be permitted in the Industrial (I) District with a Special Use Permit.

1. Exemption

- a. Data centers which subject to the exclusive jurisdiction of the North Dakota Industrial Commission pursuant to N.D.C.C. Chapter 38-08, or any successor statute, are exempt from the provisions of this Chapter.

2. Application Requirements

The application for the installation or construction a data center, or for modifications to a lawfully existing data center beyond routine maintenance, shall follow the application procedures for Special Use Permits Article 8 and any other procedures as may be required by this Ordinance for data centers, such as zoning map amendments, platting, or variances. In addition, applications shall include the following:

- a. Applicant name(s) and contact information. The applicant must also identify on the application, the record owner of the property, the occupant or lessee of the property, and the operator of the data center.
- b. A narrative describing the proposed project, including a description of how the project meets market demand, the facility's processing capacity, and the facility's anticipated water and electricity needs.
- c. A study prepared by an acoustical engineer that describes the anticipated noise level of the facility and any proposed mitigation efforts such as sound walls, baffles, ventilation silencers, etc.
- d. A site plan, drawn to scale, showing the location and dimensions of all existing and proposed structures, screening, fencing, lighting, electrical connections, property lines, and roadway access.
- e. A map of the project area showing all single-family and multi-family dwellings, schools, churches, synagogues, and other similar religious institution or structures, and public parks located within one (1) mile of the exterior boundaries of the property where the data center will be located.
- f. All application fees, including the required fees for a Special Use Permit and building permits, in the amounts determined by the Board of County Commissioners.
- g. Copies of signed permits or other documentation that indicates compliance with all applicable State and Federal laws, statutes, rules, regulatory standards, including but not limited to the North Dakota State Electrical Board.

- h. Copy of the signed electrical power purchase agreement.
- i. Financial security for the following:
 - i. Financial security for maintenance of the data center, as fully constructed and operational or, if the project only involves modifications to a lawfully existing data center beyond routine maintenance as permitted by this Ordinance, financial security for maintenance of the lawfully existing data center as modified. The financial security shall be in the amount of 125% of the estimated cost to maintain the data center, as fully constructed and operational, or as modified, as determined by the applicant's ND State registered engineer, with such estimated costs subject to review and approval by the Burleigh County Building Department and
 - ii. Financial security for reclamation and restoration of any data center and the property on which the data center is located or, if the project only involves modifications to a lawfully existing data center beyond routine maintenance as permitted by this Ordinance, financial security for reclamation and restoration of the property on which the data center as modified is located. Reclamation and restoration shall include, but is not limited to, the removal and disposal of all above-ground structures, underground structures, and utilities to depth of four feet, and the removal and disposal of all other facilities, structures, equipment, and materials on or under the property. The financial security shall be in the amount of 125% of the estimated cost to reclaim and restore property on which the data center, or the data center as modified, is located as determined by the applicant's ND State registered engineer, with such estimated costs subject to review and approval of the Burleigh County Building Department. Any financial security provided by the applicant which is required by this Chapter shall be subject to review and approval by the County and be in the form of one or more of the following:
 - iii. an irrevocable letter of credit issued by an FDIC insured financial institution authorized to do business in the State of North Dakota to be effective beginning on the date that installation and/or construction of, or the approved modifications to, the data center start and provides for annual automatic renewals continuing to the date when full reclamation and restoration is complete as approved by the County;
 - iv. a surety bond which is effective beginning on the date that installation and/or construction of, or the approved modifications to, the data center start and provides for annual automatic renewals continuing to the date when full reclamation and restoration is complete as approved by the County; and/or;
 - i. cash in escrow to be held in trust by Burleigh County effective beginning on the date that installation and/or construction of, or the approved modifications to, the data center start and continuing to the date when full reclamation and restoration is complete as approved by the County. The financial security required above shall be provided to Burleigh

County prior to commencement of any work to install and/or construct the data center, or to modify a lawfully existing data center beyond routine maintenance, but no later than the date determined by the Board of County Commissioners in approving the data center or in approving the modifications to a lawfully existing data center beyond routine maintenance.

- j. Other relevant studies, reports, certifications, or approvals as may be required by the County to ensure compliance with this Chapter and this Ordinance.

II. Prohibitions:

The County prohibits data center facilities located within:

- a. All Floodplain Districts and Designated SFHA Areas.

III. Design Standards

1. Data centers shall be set back at least one (1) mile from all single-family and multi-family dwellings, schools, churches, synagogues, and other similar religious institution or structures, and public parks as measured from the nearest property line of any of these sensitive properties to the data center's exterior property lines.
2. Separation from other data centers. New data centers shall be set back at least three (3) miles from any lawfully existing data center.
3. Height. All buildings, structures, and appurtenances on the property where the data center will be located shall meet the height requirements of the Industrial I district in this Ordinance.
4. Electrical wiring. All electrical wiring shall be buried underground, except where wiring is brought together for interconnection to system components or the local utility power grid, provided that all electrical wiring shall comply with the North Dakota State Electrical Board, and any of its rules and regulations.
5. Security fencing. A secured chain link or solid wood or masonry fence at least six (6) feet in height shall be constructed and maintained around the entire perimeter of the facility to prevent unauthorized entry onto the property or into the facility. Any fencing shall comply with the Development Standards in this Ordinance.
6. Buffering and screening. Landscaped buffers shall be required around the entire perimeter of the property where the data center is located in accordance with the requirements of this Ordinance.
7. All outdoor light fixtures shall be installed in a manner intended to limit the amount of off-site impacts. Light fixtures located near adjacent properties may require special shielding devices to prevent light trespass.
8. Accessory structures and appurtenances. All accessory structures or appurtenances, including those constructed for noise mitigation, shall be designed in a manner that is complementary with the primary building(s) and shall be finished in a non-obtrusive color.

9. Roads. All adjacent exterior access roads serving a data center shall conform to the Development Standards in this Ordinance and Article 33. Exterior road construction or improvements shall be subject to approval by the Burleigh County Highway Engineer or their designee. A road maintenance agreement with any government entity having jurisdiction over the adjacent exterior access roads shall be required during installation or construction of the data center, or during modification of a lawfully existing data center beyond routine maintenance. All interior roads serving the data center shall be subject to review by the Burleigh County Fire Department to ensure safe and adequate access for emergency response vehicles.
10. Storm Drainage, Erosion Control, Grading, Drainage and Stormwater Management Permit for the data center shall comply with the requirements in Article 33 of this Ordinance.
11. Development Agreement. The applicant and, if different than the applicant, the record owner of the property, the occupant or lessee of the property, and/or the operator of the data center and of the property on which the data center will be located, as determined appropriate by Burleigh County, must sign a development agreement which shall include provisions related to, but are not limited to, the posting and use of financial security, exterior and interior road construction or improvement, road maintenance, improvements related to storm drainage, erosion control, grading, and drainage, reclamation and restoration, and/or any other condition imposed by this Chapter, this Ordinance, or the Board of County Commissioners in approving installation of construction of the data center or modifications to a lawfully existing data center beyond routine maintenance.

IV. Decommissioning Plan:

It is the responsibility of the original applicant, or if different, the record owner of the property, the occupant or lessee of the property, and the operator of the data center to notify Burleigh County in writing, at least six (6) months in advance, of the intent to abandon or cease operations of the data center. Any data center that is not operated for a continuous period of six (6) months shall automatically be considered abandoned, and Burleigh County may require the original applicant, or if different, the record owner of the property, the occupant or lessee of the property, and the operator of the data center to reclaim and restore the property within ninety (90) days after written notice to reclaim and restore the property from Burleigh County. Any such reclamation and restoration shall include, but is not limited to, removal and disposal of all above-ground structures, underground structures, and utilities to depth of four feet, and removal and disposal of all other facilities, structures, equipment, and materials on or under the property. If the property is not fully reclaimed and restored as required by this Article within ninety (90) days after written notice from Burleigh County, the County may reclaim and restore the property, or cause the property to be reclaimed and restored, including, but not limited to, removal and disposal of all above-ground structures, underground structures, and utilities to depth of four feet, and removal and disposal of all other facilities, structures, equipment, and materials on or under the

property and recover costs directly from the original applicant, or if different, the record owner of the property, the occupant or lessee of the property, and/or the operator of the data center. Burleigh County may also, in its discretion, recover such costs, by access to and use of the financial security provided and on file for the data center, or by lien or special assessment, or any other remedy, authorized by law or the Development Agreement entered into under this Article. Nothing in this Article is intended to impose a mandatory obligation on Burleigh County to reclaim and restore the property.

Article 18, I-Industrial Zoning District, the following regulations shall apply:

1. Special Uses Permitted. The following Special Uses are allowed as per Article 8 Section 30 hereof:
 - a. Data Center Facilities

Section 2. **Repeal.** All ordinances or parts of ordinances in conflict with this ordinance are hereby repealed.

Section 3. **Severability.** If any section provision or part of this ordinance shall be adjudged invalid or unconstitutional such adjudication shall not affect the validity of the ordinance as a whole or any section, provision or part thereof not adjudged invalid or unconstitutional.

Section 4. **Effective Date.** This ordinance shall take effect after final passage, adoption and publication as provided by law.

First Reading Passed: _____

Passed and adopted this _____ day of _____, 2024

Brian Bitner, Chairperson

Final passage and adoption:

I, Mark Splonskowski, do hereby certify that I am the duly elected auditor of the County of Burleigh, State of North Dakota, and that the foregoing is a full, true and correct copy of an ordinance adopted by the Board of Burleigh County Commissioners at its regular meeting of _____ day of _____, 2024

IN WITNESS WHEREOF: I have hereto set my hand and seal of Burleigh County this _____ day
of _____, 2024

Mark Splonskowski, Burleigh County Auditor/Treasurer

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ORDINANCE 24-0-----

AN ORDINANCE TO AMEND AND RE-ENACT ARTICLE 8 OF THE 1972 AMENDED ZONING ORDINANCE OF BURLEIGH COUNTY, NORTH DAKOTA RELATING TO SECTION 31 ACCESSORY DWELLING UNITS

Section 1. **Amendment** Article 8 of the Zoning Ordinance is hereby amended and re-enacted as follows:

Section 31 Accessory Dwelling Units

To provide for a broader range of housing options, efficient use of existing infrastructure and housing stock, and preserve the character of existing single-family neighborhoods. accessory dwelling unit to a single-family dwelling is permitted as a special use within any R1 – Rural Residential, and A – Agricultural zoning district subject to all requirements of the Burleigh County Ordinances, unless otherwise stated within this section.

Definitions The following definitions represent the meanings of terms as they are used in these regulations:

Accessory Dwelling Unit: A separate and complete dwelling unit established in conjunction with and ancillary to, the principal single-family dwelling unit, whether within the same structure as the principal unit or within a detached accessory structure on the same lot or parcel. An accessory dwelling unit contains one bedroom, kitchen and bathroom facilities, and a separate exterior entrance.

Accessory Use: A use or structure that is clearly incidental to and customarily found in connection with a principal structure or use; is ancillary in purpose to the principal building or uses; contributes to the comfort, convenience or necessity of occupants of the principal use; and is located on the same lot as the principal structure.

Building-Accessory: A permanent, or semi-permanent, ancillary building or structure, the use of which is customarily incidental to that of a principal building on the same lot, including, without limitation, garages, storage sheds, playhouses, kennels, statuary, trellises, barbecue stoves, residential greenhouses, tent-like structures, or similar structures, storm or civil defense shelter, radio towers, satellite receiving or transmitting stations or antennas, and other structures, towers, antenna, ornaments or devices

Special Uses. In order to carry out the purposes of this section, the Board of Burleigh County Commissioners find it necessary to require that certain uses, because of unusual size, safety hazards, infrequent occurrence, effect on surrounding area, or other reasons, be reviewed by the Burleigh County Planning and Zoning Commission prior to the granting of a building permit or certificate of occupancy and that the Burleigh County Planning and Zoning Commission and the Zoning Administrator (where allowed) are hereby given limited discretionary powers relating to the granting of such a permit or certificate.

1. Applicability:

An accessory dwelling unit to a single-family dwelling is permitted as a special use within any R1 Rural Residential and A – Agricultural zoning district subject to all requirements of the Burleigh County Zoning Ordinances,

2. Requirements for All Accessory Dwelling Units. Prior to receiving a special use permit an applicant shall demonstrate that the following requirements will be met:

- a. No more than one accessory dwelling unit may be permitted on each lot or parcel.
- b. An accessory dwelling unit must be contained completely within the principal structure on the lot or parcel, or contained within an accessory structure that meets all requirements of this Code, including size and setback requirements of the underlying zoning district. The height of any accessory structure containing an accessory dwelling unit may be up to twenty-five (25) feet.
- c. The principal or accessory dwelling unit must be occupied by the owner of the subject parcel as a legal residence for more than six (6) months of any given year. The home may not be owned by a corporation, but the owner-occupant may be a benefited person in a private trust or life estate. The owner-occupancy requirement applies to the applicant as well as all subsequent owners of the property.
- d. At least one off-street parking space shall be provided for an accessory dwelling, in addition to any parking required for the principal dwelling unit on the lot. However, in such cases where existing conditions render additional parking infeasible, the applicant may submit a parking plan to demonstrate how on-street facilities or other methods are sufficient to meet anticipated parking demand, such as the dwelling unit being reserved for a class or individual who does not need to store a personal vehicle on-site.

3. Size requirements.

- a. No accessory dwelling unit may include more than one (1) bedroom.
- b. Units within Principal Structure: The floor area of an accessory dwelling unit may not exceed forty percent (40%) of the gross floor area of the principal structure, excluding any attached garage, and may not be greater than 800 square feet or less than 300 square feet.

- c. Units within Accessory Structure: The floor area of an accessory dwelling unit may not be greater than 800 square feet or less than 300 square feet on any lot or parcel five (5) acres in area or less. The floor area of an accessory dwelling unit may be up to 1,200 square feet on any lot or parcel that is greater than five (5) acres in area.
 - d. An accessory dwelling unit on any lot or parcel that does not conform to the minimum lot size requirement of the underlying zoning district may only be permitted inside the principal building.
 - e. To protect the privacy of neighbors, rooftop decks and balconies are not allowed within 25 feet of a neighboring property.
 - f. An accessory dwelling unit must be connected to public utilities if available on the lot or parcel. If the lot is serviced by an on-site septic system, the applicant must show that sufficient sewage treatment capacity will be available to meet anticipated needs.
 - g. An accessory dwelling unit must comply with all residential building code requirements as defined by Article 22 and Article 23 of the Burleigh County Zoning Ordinance.
 - h. An accessory dwelling unit may be occupied by no more than one family, as defined by Article 3 of the Burleigh County Zoning Ordinance.
4. Methods of Creation. A new accessory dwelling unit may be created in any of the following ways:
- a. Conversion of a portion of an existing principal or accessory structure into a separate accessory dwelling unit.
 - b. Expansion of an existing structure that is in compliance with all setback, lot coverage, and height requirements of the underlying zoning district.
 - c. Construction of a new structure containing a single-family dwelling unit with an internal accessory dwelling unit.
 - d. Construction of a new detached accessory structure containing a dwelling unit on a lot with an existing principal structure.
 - e. Reuse of a non-conforming second dwelling unit within a residence that has ceased to be continuously utilized as a dwelling unit and thus does not qualify as a non-conforming use.
5. Special Use Permit Submittal Requirements. The following documents shall be submitted with any application for a special use permit to allow an accessory dwelling unit:
- a. A building plan that demonstrates compliance with all requirements of the residential building code.
 - b. For all new construction of an accessory structure, a site plan is required. The site plan must show, to scale, the location and dimensions of the building, all required setbacks, and any easements on the property.

- c. For all accessory dwelling units that would be served by an on-site septic system, documentation to provide compliance with Article 24 is required.
- 6. Termination of Special Use Permit. A special use permit for an accessory dwelling shall automatically expire:
 - a. If the permitted accessory dwelling unit is substantially altered and is no longer in conformance with these provisions,
 - b. The owner of the property no longer occupies one of the units,
 - c. The required parking is no longer maintained and available for use by the occupant,
 - d. Or the permit is not put to use within twenty-four (24) months from date of approval.

Section 2 Repeal All ordinances or parts of ordinances in conflict with this ordinance are hereby repealed.

Section 3. Severability If any section provision or part of this ordinance shall be adjudged invalid or unconstitutional such as adjudication shall not affect the validity of the ordinance as a whole or any section, provision or part thereof not adjudged invalid or unconstitutional.

Section 4. Effective Date This ordinance shall take effect after final passage, adoption and publication as provided by law

First Reading Passed: _____

Passed and adopted this _____ day of _____, 2024

Brian Bitner

Chairperson

Final passage and adoption:

I, Mark Splonskowski, do hereby certify that I am the duly elected auditor of the County of Burleigh, State of North Dakota, and that the foregoing is a full, true and correct copy of an ordinance adopted by the Board of Burleigh

County Commissioners at its regular meeting of

IN WITNESS WHEREOF: I have hereto set my hand and seal of Burleigh
County this _____ day of _____, 2024

Mark Splonskowski, Burleigh County Auditor/Treasurer

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