



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)

AMENDED AGENDA

May 8, 2024


1. Roll Call
2. Approval of the April Minutes
3. Consent Agenda *(The following item(s) are request(s) for a public hearing)*
There are no items on the Consent Agenda
4. Public Hearing Agenda
4-3 Burnt Creek Farm Special Use Permit Continuation
5. Other Business: *(Addition to the May 8 Agenda)*
5-1 Article 8 – Section 28 - Agricultural Recreation
6. Adjourn – Next meeting – June 12, 2024



Agenda Item 4.3 Burnt Creek Farm

Application for a Special Use Permit

Project Summary

| | |
|---|--|
| Public Hearing Agenda: | Special Use Permit |
| Status: | Public Hearing Continued |
| Petitioner/Developer | Dave Lehman |
| Property Owner: | Dave Lehman |
| Location:  | Burnt Creek Township, Section 24, PT SW 1/4 Tract #1 Addressed as: 11501 NE 41 st Street |
| Exhibit 4-3-1 Location Map | |
| Parcel Size: | 30.81 acres A- Agricultural Zoning |
| Petitioners Request | "Do Pass" recommendation to the Board of Burleigh County Commissioners for a Conditional Special Use Permit for Events |
| Posted Dates | Bismarck Tribune 3/29 & 4/4/2024 Surrounding Property Owners 3/28/2024 Burleigh County Website 3/28/2024 |



History

Burleigh County Planning and Building Staff have been working with Dave Lehman since January regarding his Burnt Creek Farm. He has made several improvements and added buildings to his property. This will be the second public hearing for the Burnt Creek Farm Special Use Permit

Because Mr. Lehman submitted large revisions to his original plans, a 2nd request for the Planning and Zoning Commission to hold a public hearing was re-scheduled for the May 6th meeting of the Planning and Zoning Commission. Public hearing notices were sent to 39 total parcels (with duplicates, duplicate property owners were removed) along 110th Ave NE- (See Attachment 4-3-2).

ANALYSIS OF BURNT CREEK FARMS SUP APPLICATION 5-180-2024

Because of unusual size or safety hazards, infrequent occurrence, effect on surrounding area, petitions that are reviewed under Burleigh County Planning and Zoning Commission's discretionary powers, require that certain uses, if allowed, can be considered under a Special Use Permit. Though Agri-Tourism use may be on the increase in other parts of the Country, Burleigh County has not yet received a request or issued a permit for this type use.

Analysis

Burnt Creek Farm is located approximately 1 mile to the east of the City of Bismarck ETA. The proposed project site lies within the A-Agricultural District.

FACING EAST ON 110TH AVE NE





Surrounding Land Uses

The proposed project area is surrounded by A-Agricultural Districts to the west, northwest and south. Is adjoined by a 500+ acre parcel to the north, east, northeast that is zoned R1- Rural Single-Family Residential District.



BURNT CREEK FARM- FACING NORTH ON 41ST ST.

Future Land Use

The Burleigh County Comprehensive Plan does not specifically mention tourism or the commercializing of agricultural property.

Explanation of 1st Public Hearing

On 1-10-2024, the Burnt Creek Farm SUP application was denied by an 8-1 vote at the Planning Commission meeting, based on these findings of fact;

| | |
|---------|-------------------|
| Dust | Concerns for fire |
| Traffic | Vehicle safety |
| Noise | Overuse of land. |



Appeal

On February 5, 2024, Dave Lehman petitioned the Burleigh County Commission on appeal. The County Board considered his request and instructed to table the Public Hearing back to the Planning Commission, while issuing a directive for Mr. Lehman to reach a compromise with the opponents of the SUP prior to the Public Hearing;
("allow the developer to work with those residents to see if they could come to some sort of resolution on their own").

| At Issue | Resolution |
|---|---|
| Dust control. Safety of road. | Willing to share cost of dust control. |
| Condition of road, i.e.: steep ditches, narrow width. | Willing to share cost of road maintenance. |
| Fire Risks: smoking, sod or grass for parking areas. Chance of fires to neighbors. | Req' designated smoking areas. Provide low cut grass parking areas. Provide fire breaks. Reduce Fuel Loads. |
| Impact of scale and size of events Some neighbors are opposed to having any events. | Limit 2 events per year-200 people Limit 1 event per week-100 people. |
| Trespassing from participants. | Open discussion. No consensus. |
| BCF is unable to contain the participants. | Open discussion. No consensus. |
| Effect of weekend and evening events. Noise | Open discussion. No consensus. |
| Costs and impact events could have on neighbors. | Open discussion. No consensus. |
| Traffic on the road. Provide Traffic Study | Open discussion. No consensus. |

2 stakeholder meetings were held Feb. 26th & March 20th, the following differences were defined:

A revised plan was submitted on March 22 (See Attachment 4-3-5). The revised plan includes the following:

1. 200 People Events = 2 times per year
2. All Other Events = 100 Attendees Cap
3. Limited to one (1) Event per week.
4. Direct traffic to 97th Avenue and 26th Street which are paved.
5. Utilize shuttle services whenever possible.



6. Dust control will include directing traffic to 97th Avenue and 26th Street
7. Dust control measures are in place on 110th Ave from Highway 83 to 26th Street.

Staff Recommendations

1st Recommendation: Approve Special Use Permit.

If the Planning & Zoning Commission chooses to recommend approval of the SUP, staff suggests the following requirements:

1. limit hours of operation for all activities; _____ AM to _____ PM
2. limit days of operation from; _ _____ to _____.
3. limit months of operation from; _____ to _____.
4. limit amount of people to; _____.
5. to minimize dust, Burnt Creek Farms as directed by the County Engineer, shall apply calcium chloride, magnesium chloride or similar chemical to some or all portions of 110th Ave NE route, approximately 0.9-mile.
6. require site plan: see exhibit 4-3-4 Site Plan Requirements for SUP.
7. In the future if any development adds impervious areas to the site, applicant would need to submit a SWMP with their site plan or plat.
8. request applicant to submit application through Article 8 Section 28.

2nd Recommendation: _____ Deny the Special Use Permit.

Due to the use being incompatible with surrounding property owners as stated finding of facts without consensus at the public hearing and the stakeholder group meetings.

See Attachment:

4-3-1 Location Map

4-3-2 Mailing List



- 4-3-3 Burleigh County Staff Analysis of Burnt Creek Farms SUP Application to 3-27-2024
- 4-3-4 Site Plan Requirements for SUP
- 4-3-5 Revised Plan Burnt Creek Farm

4-3 Burnt Creek Farm Special Use Permit:

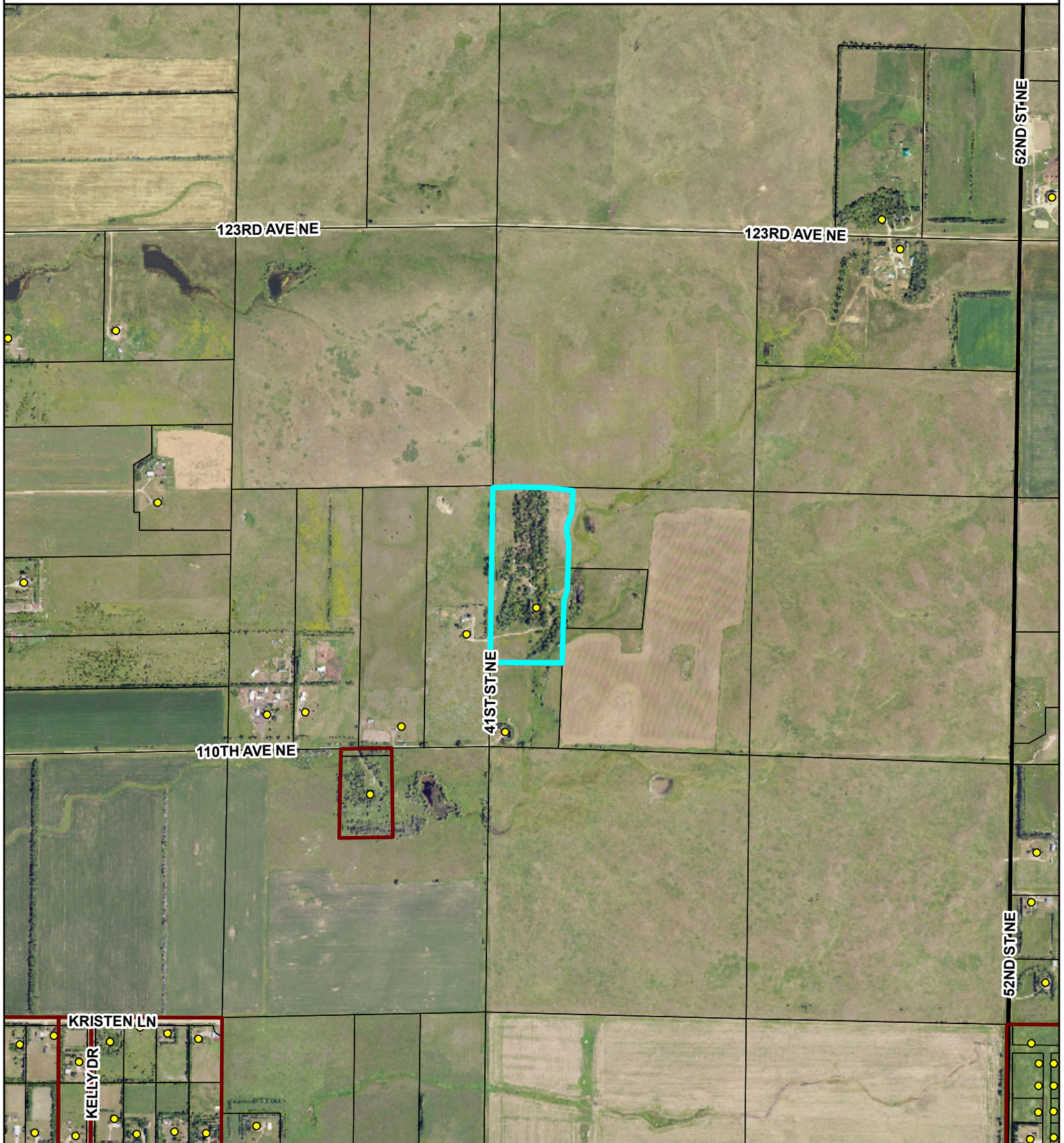
April 10th Public Hearing Continuation

On April 19th, Dave Lehman requested a 2nd time in writing, to pull his SUP permit. Since the May 8th meeting public hearing is a continuation of the rescheduled April 10th public hearing, it was described on the May 8th agenda as a Public Hearing, it was also published a 2nd time as public notice- this department does not have the authority to cancel the hearing, only the Planning Commission can.

BURLEIGH COUNTY, NORTH DAKOTA

LOCATION MAP

N
4/2/2024



PARCEL ID: 24-140-80-00-24-610 OWNER: LEHMAN, DAVID ACRES: 30.81
SITE ADDRESS: 11501 NE 41ST ST
MAIL ADDRESS: P.O BOX 7388, BISMARCK, ND 58507-7388
LEGAL: BURNT CREEK TOWNSHIP Section 24 PT SW1/4 - TRACT #1 #455911 24-140-80



Burnt Creek Farm

11501 41st St NE Bismarck, ND

David Lehman, Owner

March 2024

Background

Burnt Creek Farm (BCF) Historical Site: North Dakota has an incredibly rich history as it pertains to agriculture, homesteading, etc. Unfortunately, with each passing year we are losing these historic barns, homes, and outbuildings. North Dakota has many pioneer village type facilities with historic community type buildings, collections of antiques, tractors, and ag equipment displayed. While these are important, tourists don't get an opportunity to see the equipment, tools, vehicles, etc. in a real farm setting. By staging the farm, it gives people a better feel for what the farm actually looked and felt like and provides a better appreciation for what farming was like in the early days of North Dakota. Burnt Creek Farm is one of very few fully intact restored historic farms in North Dakota.

The North Dakota State Historical Preservation Office has toured the farmstead numerous times and feels confident in its eligibility for the state and national registers of historic places. Due to innovation and progress in agriculture and larger equipment requiring larger facilities, very few farm sites from the early days of agriculture remain intact and preserved. There are 2 or 3 other farmsteads available to tour in the state, however, Burnt Creek Farm differs in that it is a well-preserved example of a 'modern' farmstead built during the mechanization era as farms transitioned from horse to tractor power. This includes the innovation in building construction, running water systems (windmill with gravity feed to areas of the farm), rechargeable 32V battery system powering the farm, and equipment. The farm will be staged as it would have been in the 1920's showing the transition from horse to tractor power. These were all major technological advances in agriculture and an incredibly important era in North Dakota which isn't a focus with other historic sites. Due to the farm's ties to the Non-Partisan League and its role in the inception of the state bank, mill, and elevator, this shift in North Dakota's ag economy will also be covered. Other elements of Burnt Creek Farm which are relatively unique and lend themselves to agritourism tours are the following:

- 1878 Tree claim with evidence that can be easily seen by tourists
- Intact 1920's-1950's farmstead
- Rare (possibly the only) instance of terracotta structural clay tile and brick use in the farmhouse and bunkhouse construction. The clay tile and brick came from the early days of North Dakota's Hebron Brick factory.
- One of the first 'modern' farms in ND with running water and electricity (less than 2% of farms had these amenities in the early 1920's.)
- Ties to the Non-Partisan League and Linda Slaughter both heavily involved in the development of the region, state, and upper Midwest.
- Unique architecture such as the trench/bunker silo
- Filming location of End of the Rope movie
- Only historic farm site located close to a major community. Located about a mile outside of Bismarck's extra-terrestrial area and easily accessible from the interstate and highway 83 allows visitors easy access to the facilities while still accessing amenities of a larger community. It also allows Burnt Creek Farm the opportunity to draw more people to promote North Dakota's proud ag history.

Services

1. Tours: Educating visitors about the history of agriculture in North Dakota is BCF's primary focus. Initial plans would be to offer tours by reservation. It is anticipated there would be demand from schools, commodity groups, organizations, etc. for the tours. While the tours are an important element to the goal of educating others about the history of agriculture in North Dakota, it is not anticipated to be a significant source of traffic or revenue at BCF.

2. Events: Events would primarily be outdoor events. The historical integrity of the buildings will be restored and maintained and as such will not be insulated and no additional construction is planned that would alter the appearance/feel of the historic farmstead. This will limit their utility relative to events. Events are anticipated to include the following:

- Corporate events: It is anticipated there may be some interest in company picnics during the summer.
- Family events: It is anticipated there could be some demand for family get togethers, weddings, picnics, pictures, etc. at BCF.
- Agritourism: Farm tours as well as interest in the orchards, etc.

BCF would plan to do 2 events per year of up to 200 people, with all other events would be capped at 100 people. No more than one event would be allowed per week.

3. Lodging: There is currently a granary that has been converted to a lodge that may be used for traditional lodging or as a bridal suite for the bridal party to prepare for weddings. The lodge is not four seasons and will be winterized each year.

4. Facilities: There is currently an ADA restroom facility, a lodge (same building as the ADA restrooms), a park with a clearing for events, as well as the original buildings. These buildings have limited capacity and are not climate controlled. There are no plans to expand these buildings or renovate beyond the restoration back to their original state due to the historical significance of the structures. They will however be staged as they would have been in the 1920's for tours.

Traffic

When calculating traffic, I assumed 40 cars per week. Taking 40 trips/week times 20 weeks (summer season) comes out to 800 trips per year (to and from BCF) which is similar to that of a family of 2. While the traffic would be more concentrated at specific times, most of the week there would be no noticeable change in the amount of traffic.

From a similar perspective, when the Morris Family owned the farm (1950-1997), they had a family of 6. National studies show that traffic generated is roughly 1 (two-way) trip/person, or 6 trips/day for a family of 6. This amounts to 2190 trips per year which is 2.5 times that generated by BCF. In addition, the family farmed and had construction operations (hauling grain, livestock, coal, aggregate, soil, etc.), so the road also accommodated trucks and heavy equipment (which it doesn't currently see as a result of my occupation). As a result of being a farm operation, most of these trips were concentrated over the same general season as proposed by the events and tours at BCF.

For events, traffic will be directed to use 97th Ave and 26th St, both of which are paved.

Dust

The level of dust generated is expected to be less than that generated by a typical single-family residence. There is currently dust control in use for those homes on 110 Ave near highway 83, however for events, traffic will be directed to use 97th Ave and 26th St, both of which are paved. In addition, shuttles will be utilized, when possible, to accommodate larger groups.

Timeline

2020-ongoing: Farm restoration and development of grounds

2021: Filming of End of the Rope film, Farm tours, and events

2023: Screening for End of the Rope Film, Farm tours, and events

2024: Farm tours and events

Appendix



STATE HISTORICAL SOCIETY
OF NORTH DAKOTA

HISTORY FOR *everyone.*

August 31, 2023

To Whom I may Concern,

I have visited the Burnt Creek Farm located north of Bismarck, North Dakota and reviewed the information provided by Dave Lehman. I have made the preliminary determination that the property is eligible for listing in both the North Dakota State Historic Sites Registry and the National Register of Historic Places. The farm is a rare example of an improved tree claim and demonstrates the evolution of farm technology spanning the prosperous era just before the Great Depression through the recovery following World War II. Additionally, the architectural and engineering designs of the individual buildings and the building systems testify to the innovations of the time. This property is worthy of preservation and certainly contributes to our understanding of history.

If you have any questions, please feel free to contact me at lbmeidinger@nd.gov or 701-328-2089.

Sincerely,

Lorna Meidinger
Lead Historic Preservation Specialist

Appendix I: Historical Tidbits

The history of Burnt Creek Farm (BCF) dates back to the early years of Edwinton/Bismarck, Dakota Territory. In the 1870's GW Racek and his brother Chas owned the Racek Bro's harness shop on 4th street in Bismarck (known as Murderers Gulch or Bloody 4th having earned a reputation as one of the wildest cities in the nation resulting from the saloons, brothels, and a cultural clash of soldiers, native Americans, immigrant settlers, rich business men etc.). One of (if not the first) saddle and harness shop in Bismarck, G.W. did leatherwork for the calvary and settlers. They also started the Racek Bro's harness shop in Billings Montana, well known for quality territorial era saddles and leather goods. They also bought a parcel in Medora to capitalize on the gold trade as the Marquis De Mores and others had stage coach service directly to Deadwood and the Black Hills. It is unknown, however, if this business came to fruition.



1870's Photo of Racek Bro's Saddle & Harness Shop located on 4th Street in Bismarck, ND

ND Historical Society



G.W homesteaded North of Bismarck (around where Stan Puklich is located). To acquire more 'free' land, he staked a tree claim where BCF is located. Per the 1878 Timber Culture Act, settlers were granted a quarter of land for planting 27,000 trees on 10 acres within that quarter and keeping 25% of them alive for 8 years. After planting the trees in the late 1870 or early 1880's, G.W received title to the quarter in 1889, the year North Dakota was granted statehood. As seen in the picture to the left, ripples in the front yard (and back woods) still show evidence of the 1890 tree claim. Ripples in the land created while planting and watering the 27,000 trees with horse drawn implements are still very noticeable (see photo at left). Note all trees are on the crest of the ripples. GW (George)

Racek passed away not long after establishing the tree claim. The horse drawn breaking plow believed to have been used to plant the trees is currently on display in the ND Heritage center.



Upon G.W.'s passing in 1901, the land transferred to his son J.B Racek, a wealthy banker in Mandan. In 1922, J.B. had the farm built much as it exists today (see photo above). The farm included a brick prairie square (or American foursquare) house, barn, bunkhouse, garage, corn



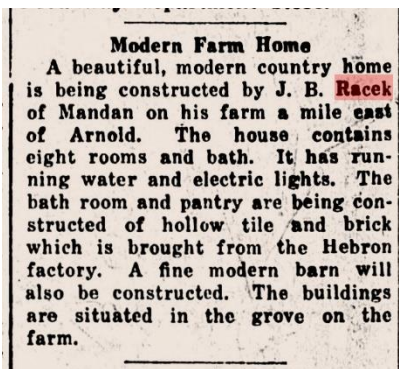
crib/granary, chicken coop, outhouse, etc. It was extremely rare, being one of less than 2% of the farms at that time with running water and electricity. Running water came from a

windmill/cistern at the top of the hill (still present) which gravity flowed to the barn, house/cistern (a hand pump located in the

kitchen drew water from the cistern, but there was no bathroom initially), and finally the orchard. Electricity to power the farm came from a 32-volt generator and rechargeable glass battery system (photo above) which will also be restored and on display at the farm.



J.B Racek's signature on the \$10 bank note from The First National Bank of Mandan. 1 of 11 still known to exist. Owned by Dave Lehman.



Aug 1922 Bismarck Tribune

NDSU ties

According to prior owners of BCF, the farm was designed by the North Dakota Agricultural College (NDAC now NDSU). These claims have yet to be substantiated due to lack of records retention, however, there is evidence that this is a very strong possibility based on the following:

- The roughcut cottonwood fences and buildings (aside from the brick house) are painted white and green similar to NDSU experiment stations.
- The well-designed farm was built by a banker and farmed by a tenant farmer. Being a banker, it is unlikely JB Racek would have had the background to design the farmstead. NDSU archives hold very similar designs for gates/fences, water systems, buildings, etc. dating back to the 1920's.
- Mr. Racek's step children (Luthers) attended NDAC and held various leadership roles, so it's quite possible there was an established relationship. His stepson was president of AGR and student body president and his stepdaughter taught at NDAC.
- The land grant extension service in ND was in its infancy, and unfortunately many records have been lost.





In 1950, the farm was sold to Robert Morris. Under his ownership, BCF was featured in The Farmer magazine (a national/regional publication) on a couple of occasions due to its unique and progressive design. The Farmer magazine featuring the trench silo (left) due to its unique architecture and diverse range of utility. The roof on the 15'x65' building was removable so silage could be added. When it did not have silage, it was used for farrowing hogs and 4H 'barn' dances. The back was later converted to a shop. This silo's architecture was identified as one of the farms features qualifying for the state and national register.

The section of land the farm resides on is of importance for other reasons as well. Somewhat ironically, it was more so noteworthy due to the women involved rather than the men. At a time when women maybe weren't afforded the same opportunities as men, these women had a major impact in their respective spheres of influence.

1. Florence Borner: In the 1910's, ND farmers felt taken advantage of by 'Big Business' and created the Non-Partisan League (NPL). The NPL, a socialist movement, took control of the state government (and much of the upper Midwest). They felt that by creating the State Mill and Elevator and the Bank of North Dakota they could gain control over commodity prices. These are businesses are still in operation today. Florence Borner was a league poet and an integral part of the propaganda machine for the NPL. The Borners spent a lot of time at the BCF, so many discussions of the NPL and construction of the State Mill and Elevator, and BND likely occurred at the kitchen table at BCF. The Borner farm which bordered Burnt Creek Farm was later purchased by J.B. Racek and added to the farm's acreage.

| THE PRAIRIES | THE DEAR OLD FARM |
|---|---|
| <p>The prairies seem so lonely like To some, but not to me; I think they are the only place Where I could happy be; Here in my little old sod shack I lead a peaceful life; And have no need to feel alarm At this world's care and strife.</p> <p>The people here live far apart, For miles and miles around, There's naught save lonely prairies, Or perhaps you hear the sound Of a coyote calling to his mate, Upon some distant hill, Or a hoot owl's screech as he flits past Then every-thing is still.</p> <p>I love the rolling prairies, Where the wind blows wild and free; None of your crowded city homes, Or big hotels for me; I want to live a lonely life, Upon the prairie sod; It seems to me that I am here, Much nearer to my God.</p> | <p>I read a picce the other day That made me kind of warm, It told about the money made, Upon the dear old farm. It said the farmers all were rich, Excepting those who shirked, And 'lowed we'd all been millionaires If harder we had worked.</p> <p>It spoke of softly lowing kine, And fields of new-mown hay, Of how the chickens always laid So many eggs a day. It mentioned fields of golden grain, Fruit hanging on the vine, And written down in words like that The "dear old farm" sounds fine.</p> <p>It said the farmer is a king, The monarch of the land, It told of lovely sylvan dells, Great trees on every hand. It said the farmer owed no one, Looked each man in the face, Called him the son of honest toil— A credit to his race.</p> <p>Well, what that fellow didn't know Of farming was a lot; And when he said "he owes no one," It hit a tender spot. Here I've been working twenty years, From dawn till set of sun, And find that I have even less Than when I had begun.</p> |

Excerpts from Borner's book Modern Poems for Modern People when she lived by BCF. Published in 1919, this book contained poems about farm life, the NPL, and the struggles of the era.

1. Linda (Warfel) and Dr. Ben Slaughter (Gov Burgum's great grandparents) established the 'Burleigh County Poor Farm' and post office bordering the farm. Ben was a post surgeon assigned to the region's earliest military posts, including Camp Greeley/Hancock and Fort Rice. Linda Warfel Slaughter was known for the following:

- Founded the first ND historical society, which merged with the State Historical Society of North Dakota.
- First woman to vote in a national convention for a presidential candidate.
- Started the first Sunday school in 1872
- Started the Bismarck Academy in 1873, the first Bismarck public school
- First teacher and superintendent of schools in Burleigh County.
- First postmistress of Bismarck
- Crafted a bill in 1881 creating a board of education.
- Involved in the temperance movement and close personal friend of Susan B. Anthony.
- Wrote the words to the state song.

Two Evils.

SLAUGHTER, N. D., July 31, 1890.—After a swing around the circle, taking in Conger, Croft and Cromwell, and noting the excellent crops—at least, excellent in appearance, I was impressed with at least two major evils, of which one at least could easily be remedied. I refer to the condition of farms owned by non-residents, some of which are being pre-empted by noxious weeds and wild mustard, that are disfiguring the face of the country. Handsome trees of vigorous growth waiting to be blackened and dissipated by the first prairie fire, for the want of a little care. Infinitely preferable the untouched virgin sward of indestructible native grasses.

These land owners should be made to pay for this ruthless disfigurement of our fair domain. If in no other way, let the tax gatherer reach out for them until our incoming legislature can help us.

Many tree claims that have been proved up on are permitted to go to weeds and grass, which will soon be their funeral pyre. There are some tree claim holders who richly deserve the blessing of the people in their respective communities—such as Asklund in Ecklund, Pollock in township 141, Racek in township 140 and a few others. These bright oases on the prairie make our hearts go out to them as substantial benefactors.

The reckless waste and neglect of farm machinery makes the heart grow sick. At one place I counted a mower, hay rake, double sulky plow and a reaper and binder

and but for the tall weeds that sheltered them from the pitiless rain and burning sun, might have counted more. I learned that this man had quit farming. He is one who ought to have quit ere he began. Why our farmers do not pay more attention to tree culture around their homes passeth my understanding. They have teams and woods are near, wells with abundance of water at hand when the rains are too tardy in coming. I notice some few have wells a little distance from their houses, but it seems never to have occurred that a group of trees around it, to shade and add sylvan beauty, would furnish pleasure to the eye and enhance the value of their property. They should not let another fall pass by without this addition. If late, it is not too late. S.

A columnist for the Bismarck Tribune, Linda Warfel-Slaughter criticized tree claims due to poor management but gave praise to G.W Racek for his good management practices.

For additional information regarding Burnt Creek Farm, please visit the Facebook page at: <https://www.facebook.com/burntcreekfarm>

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Agenda Item

Article 8 Section 28 Agricultural Recreation

Project Summary

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| Create Section 28 Agriculture Recreation in Article 8 as draft ordinance | |
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In coordination with stakeholder group meetings in Burleigh County and the City of Bismarck, County Planning staff have been working on developing the draft Special Use Article 8 Section 28 ordinance, that would allow agriculturally related activities in an AG District for persons, entities or organizations wishing to establish the use of agricultural recreation

ANALYSIS OF ARTICLE 8 SECTION 28

Analysis

There have been requests in the past from persons, entities or organizations intending to use private land for agricultural recreation in an AG District to educate the public about agriculture, agricultural practices, agricultural activities, or agricultural products and to allow the gathering of individuals assembled for the common purpose of events such as pumpkin patch/ hay rides, i.e. similar agriculturally related activities that are specifically intended for individuals other than the property owner.

These requests may seem uncomplicated, but the affect on neighboring properties, infrastructure, emergency responders, etc., could be considerable as the threshold to a commercial use is marginal.



The purpose of Section 28 is to define this type land use within the confines of the application and approval of a Special Use Permit.

Action Requested

Move the draft Article 8 Section 28 to a public hearing.

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 AGRI-TOURISM

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

Section 28 Agri-Tourism Agricultural Recreation

Agri-Tourism and Agricultural Recreation may be permitted in an Agricultural District as a special use. All persons, entities or organizations wishing to establish the use of Agri-Tourism, 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 Recreation.~~ ~~An agriculture recreation use combines agricultural production with commercial recreation uses that are ancillary to the primary agricultural use and in conjunction with a single family dwelling.~~

~~Agri-Tourism.~~ ~~Agritourism involves any agriculturally based operation or activity that brings the public, as visitors, to a farm or ranch.~~

Agriculture. The science or practice of cultivating the soil, producing crop, and or raising livestock.

Agriculture Recreation Tier I. Any agriculture-related activity, in conjunction with agricultural production, which is intended to educate the public about agriculture, agricultural practices, agricultural activities, or agricultural products.

Agriculture Recreation Tier II. Any agricultural-related use that combines agriculture production with commercial recreation uses that are ancillary to the primary agricultural use, such as a celebration, ceremony, wedding, reception, corporate function, pumpkin patch, hayrides, domestic winery as licensed through NDCC 5-01-17, domestic distillery as licensed through NDCC 5-01-1, brewery taproom as licensed through NDCC 5-01-21, or similar activity for someone other than the property owner, involving the gathering of individuals assembled for the common purpose of said event.

Agriculture Recreation Tier III. Any agricultural-related use that combines agriculture production with commercial recreation uses that are ancillary to the primary agricultural use, such as a celebration, ceremony, wedding, reception, corporate function, pumpkin patch, hayrides, domestic winery as licensed through NDCC 5-01-17, domestic distillery as licensed through NDCC 5-01-1, brewery taproom as licensed through NDCC 5-01-21, or similar activity for someone other than the property owner, involving the gathering of individuals assembled for the common purpose of said event.

~~All persons, entities or organizations wishing to establish the use of Agriculture Recreation~~

~~within Burleigh County must apply for and be granted a special use permit for the following:~~

~~Events~~

- ~~1. Burleigh County Commission is authorized to grant a special use permit for the following uses:~~
 - ~~a. Celebration, ceremony, wedding, reception,~~
 - ~~b. Hayrides, farm animal viewing and petting, tours of grounds and facilities,~~
 - ~~c. Corporate function, or similar activity for the benefit of someone other than the property owner, involving the gathering of individuals assembled for the common purpose of said event,~~
 - ~~d. "Farmstay" Air B&B or short-term rental,~~
 - ~~e. Number of events must be tied to parking requirements.~~

~~2. Permanent Uses~~

- ~~1. Burleigh County Commission is authorized to grant an Agriculture Recreation Special use permit for;~~
 - ~~a. U-Pick orchard or farm: any farm, ranch, orchard or green house with a seasonally recurring ancillary recreational use and/or direct sale to customers,~~
 - ~~b. Production or manufacture of value-added products derived, in part, from produce or animals grown on site, or on land within region,~~
 - ~~c. Storage of products allowable for sale in this section,~~
 - ~~d. Domestic Winery as licensed through NDCC 5-01-17,~~
 - ~~e. Domestic Distillery as licensed through NDCC 5-01-19,~~
 - ~~f. Brewery Taproom as licensed through NDCC 5-01-21,~~
 - ~~i. Section 1.d.e.f would be restricted to number of events per year.~~
 - ~~i.a. Minimum per 12 times on season.~~
 - ~~i.b. Must be tied to available parking.~~
- ~~2. Agriculture Recreation may be permitted in any A Agricultural District as a special use, provided:~~
 - ~~a. The use is ancillary to the primary agricultural use and in conjunction with an owner-occupied single-family dwelling.~~
 - ~~b. The lot in which the use is located is at least (40) acres in area, or the aliquot part of a corrective section intended to compromise a quarter-quarter section, provided such aliquot part is not less than thirty-five (35) acres in size.~~
 - ~~c. Registration with the North Dakota Secretary of State as an agricultural use or ranch.~~
 - ~~d. Site design and building(s) must conform to all applicable requirements of the ND State Building Codes as adopted by Burleigh County.~~
 - ~~e. The use of all setbacks a minimum of 100' feet from all adjacent properties.~~
 - ~~f. Sound generated by the use shall meet the requirements outlined in NDCC.~~
 - ~~g. Outdoor light fixtures shall be directed so that there will not be any direct light visible above a height of five feet beyond any property lines. Light fixtures near adjacent property may require special shielding devices to prevent light trespass.~~

- h. ~~Parking on grass and agricultural areas may be permitted for limited seasonal events; however, parking areas shall be gravel and parking ratios shall be determined in accordance with Article 10 Automobile Parking, for on-seasonal events occurring more than twelve (12) times per year.~~
- i. ~~Under certain circumstances, application of mitigation for dust control may be a requirement as directed by the County Engineer.~~

Special Uses. In order to carry out the purposes of this title, 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 prior to the granting of a building permit or certificate of occupancy and that the county planning 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 commission is authorized to ~~grant~~ **recommend approval of** special use permits for the following uses:

aa. Agriculture Recreation Tier II. Agriculture Recreation Tier II may be permitted in any A – Agricultural district as a special use provided:

- a. The use is ancillary to the primary agricultural use, **and in conjunction with an owner-occupied single-family dwelling.**
- b. The lot in which the use is located is at least ~~(35)~~ **40** acres in area, **(35 acres aliquot description).**
- c. Attendance is limited to two hundred (250) persons in attendance at any time.
- d. No more than twelve (12) events per year.
- e. Site design and building(s) must conform to all applicable requirements of the International Building Code (IBC) and the International Fire Code (IFC) as adopted by **State of North Dakota**
- f. 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.
- g. Sound generated by the use shall meet the requirements outlined in NDCC.
- h. 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.
- i. The use is setback a minimum of **100 feet to all adjacent properties.**
- j. A site plan is required.
- k. If necessary, a stormwater management plan is required to be submitted for review and approval prior to the issuance of a building permit.
- l. **Off-street parking is required.** Parking on grass and agricultural areas may be permitted for limited seasonal events; ~~however, p~~ **Parking areas shall may be gravel or low-cut grass area. and p** **Parking ratios shall be determined in**

accordance with Article 10 Automobile Parking, for on-seasonal events occurring more than twelve (12) times per year.

~~m. Under certain circumstances, application of mitigation for dust control may be a requirement as directed by the County Engineer.~~

m. Under certain circumstances, items for road/ditch repair and dust control application at the permittees cost may be required.

n. Additional conditions may be included in the Special Use Permit.

o. 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.

bb. Agriculture Recreation Tier III. Agriculture Recreation Tier III may be permitted in any A – Agricultural district as a special use provided:

a. The use is ancillary to the primary agricultural use, and in conjunction with an owner-occupied single-family dwelling.

b. The lot in which the use is located is at least (35) 40 acres in area, (35 acres aliquot description).

c. Attendance is limited to two hundred (200) persons in attendance at any time.

d. No more than twelve (12) events per year.

e. Site design and building(s) must conform to all applicable requirements of the International Building Code (IBC) and the International Fire Code (IFC) as adopted by State of North Dakota.

f. 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.

g. Sound generated by the use shall meet the requirements outlined in NDCC.

h. 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.

i. The use is setback a minimum of 100 feet to all adjacent properties.

j. A site plan is required.

k. If necessary, a stormwater management plan is required to be submitted for review and approval prior to the issuance of a building permit.

l. Off-street parking is required. Parking on grass and agricultural areas may be permitted for limited seasonal events; however, Parking areas shall may be gravel or low-cut grass area. Parking ratios shall be determined in accordance with Article 10 Automobile Parking, for on-seasonal events occurring more than twelve (12) times per year.

~~m. Under certain circumstances, application of mitigation for dust control may be a requirement as directed by the County Engineer.~~

~~n. Under certain circumstances, items for road/ditch repair and dust control application at the permittees cost may be required.~~

-m. Location of lot shall be directly adjacent to a paved surface public roadway and have a paved access entry to same lot.

o. Additional conditions may be included in the Special Use Permit.

- p. 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:

2. Uses Permitted. The following uses are permitted.

i. Agriculture Recreation Tier I

i.a. Agriculture Recreation Tier I shall be allowed on a parcel of land 40 acres in area, (35 acres aliquot description).

3. The following special uses are allowed as per Section 28 hereof:

i. Agriculture Recreation Tier II

ii. Agriculture Recreation Tier III

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 _____

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

DRAFT

5-1-2 EXAMPLE OF DRAFT ORDINANCE

SUBMITTED: Kurt Fleck 5/3/2024

From: [Kurt Fleck](#)
To: [Flanagan, Mitch](#)
Cc: [McMonagle, Marla M.](#)
Subject: Ordinance Example
Date: Thursday, May 2, 2024 2:53:02 PM
Attachments: [Ordinance for Agri-Tourism \(1\).docx](#)

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

Good Afternoon, Mitch and Marla, I have attached an example of what all the stakeholders involved with this ordinance feel the ordinance should encompass. Mr. Lehman might disagree, but all those at the meeting and the other 30 in the area would and have agreed that it's a pretty straight forward when reading all the different definitions etc... about Ag-Tourism. Take Care and feel free to call anytime. Thanks

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 AGRI-TOURISM

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

Section 28 Agri-Tourism

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 for the production of crops, and raising livestock to provide food, wool or other products.

Agri-Tourism: Agri-tourism use involves any agriculture-based operation or activity that brings the public, as visitors, to a working farm or ranch. Agri-Tourism use combines agricultural production with recreation uses that are ancillary to the primary agricultural use and in conjunction with a single-family dwelling. In general, this is intended to educate the public about agriculture, agricultural practices, agricultural activities, or agricultural products.

Agri-Tourism may be permitted in an Agricultural Zoned District. All persons, entities or organizations wishing to establish the use of Agri-Tourism within Burleigh County must apply for, comply with, and be granted a special use permit. (See Article 8 Special Uses)

**Farms and ranches participating in Agri-Tourism activities are most often working farms and ranches that wish to expand their operations to include tourism activity as a secondary income for their family. These are generally viewed as small-scale, low-impact and education focused. Agri-Tourism activities are not usually designed for large groups of guests with the exception of pumpkin patches, orchards, U-Pick and corn mazes. Other activities may include bed and breakfast, biking, hiking, nature photography, fee hunting or fishing (Ref: North Dakota Department of Commerce).*

All persons, entities or organizations wishing to establish the use of Agri-Tourism within Burleigh County must apply for, be granted, and comply with a special use permit for the following:

Events:

1. Burleigh County Commission is authorized to grant a special use permit for the following uses: Anything that falls within the guidelines of Agri-Tourism as defined by the North Dakota Department of Commerce referenced above. The following would be examples and could include: pumpkin patches, orchards, farm festivals, corn mazes, hayrides, trail rides, U-Pick orchards, on-farm markets, floriculture, demonstration farms, Christmas tree farm, farm stays, farm tours, farm camps, farm-to-table dining, fee and lease pond fishing, hunting leases.

Special Uses: In order to carry out the purposes of this title, the Board of Burleigh 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 Burleigh County Planning and Zoning Commission. Prior to the granting of a building permit or certificate of occupancy, 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 use. Burleigh County Planning and Zoning Commission is authorized to grant special use permits for the following uses:

Agri-Tourism may be permitted in an A-Agriculture zoned district as a special use provided:

- a. The use is ancillary to primary agricultural use, and in conjunction with an owner-occupied single-family dwelling.
- b. The lot in which the use is located is at least 40 acres in area.
- c. Site design and building(s) must conform to all applicable requirements of the International Building Code (IBC) and the International Fire Code (IFC) as adopted by Burleigh County, State of North Dakota.
- d. Road access to the site must meet certain specifications (e.g., paved highway or gravel road) and the site must have two accesses.
- e. 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.
- f. Sound generated by the use shall meet the requirements outlined in NDCC (cite full reference)
- g. All outdoor light fixtures shall be installed in a manner intended to limit the number of off-site impacts. Light fixtures located near adjacent properties may require special shielding devices to prevent light trespass.
- h. The use will have a minimum setback of 500 feet from all adjacent properties.
- i. A site plan is required.
- j. If necessary, a stormwater management plan is required to be submitted for review and approval prior to the issuance of a building permit.
- k. Off-street parking is required. Parking on grass and agricultural areas may be permitted for limited seasonal events. Parking may be allowed on gravel or low-cut grass areas. Parking rations shall be determined in accordance with Article 10 Automobile Parking.
- l. Under certain circumstances, the permittee(s) may be required to pay the costs of road/ditch repair and dust control application.
- m. Attendance is limited to 50 people at any one time. Events will be limited to no more than twelve events per year with no more than two events per month.
- n. Hours of operation will be limited from 10:00a.m. to 6:00 p.m.
- o. Additional conditions may be included in the Special Use Permit.
- p. After approval and issuance of a Special Use Permit, any violations of Section 28 shall be a basis for revocation of the Special Use Permit.

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 _____

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

Mark Splonskowski, Burleigh County Auditor/Treasurer