



**JOINT MINNEHAHA COUNTY & CITY OF SIOUX FALLS
PLANNING COMMISSION
MEETING MINUTES**

APRIL 25th, 2022

**MINUTES OF THE JOINT MEETING
MINNEHAHA COUNTY & SIOUX FALLS PLANNING COMMISSIONS
April 25th, 2022**

A joint meeting of the County and City Planning Commissions was held on April 25th, 2022 at 7:00 p.m. in the Commission room of the Minnehaha County Administration Building.

COUNTY PLANNING COMMISSION MEMBERS PRESENT: Commissioners Bonnie Duffy, Becky Randall, Doug Ode, Adam Mohrhauser, Mike Ralston, Ryan VanDerVliet, and Jeff Barth.

CITY PLANNING COMMISSION MEMBERS PRESENT: Janet Kittams, Larry Luetke, John Paulson, Aaron Norman, and Erik Nyberg.

STAFF PRESENT:

Scott Anderson, Kevin Hoekman, and Mason Steffen – County Planning
Maggie Gillespie – States Attorney's Office
Fletcher Lacock– City Planning

The County Planning Commission was presided over by Commissioner Bonnie Duffy. The City Planning Commission was chaired by Janet Kittams.

Chair Duffy called the joint Minnehaha County and City of Sioux Falls Planning Commission meeting to order at 7:00 p.m.

PUBLIC COMMENT

Chair Duffy opened the floor for public comment and nobody moved to speak.

CONSENT AGENDA

Commissioner Duffy read each item on the consent agenda, and no items were requested to be moved to the regular agenda.

A motion was made for the County to approve the consent agenda consisting of Items 1 and 2 by Commissioner Randall and seconded by Commissioner Barth. The motion passed unanimously with 6 votes in favor and 0 votes against the motion.

The same motion was made for the city by Commissioner Paulson and seconded by Commissioner Luetke. The motion passed unanimously with 4 votes in favor and 0 votes against the motion.

ITEM 1. Approval of Minutes – March 28th, 2022

As part of the consent agenda, a motion was made for the County by Commissioner Randall and seconded by Commissioner Barth to **approve** the meeting minutes from March 28th, 2022. The motion passed unanimously with 6 votes in favor and 0 votes against the motion.



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As part of the consent agenda, the same motion was made for the city by Commissioner Paulson and seconded by Commissioner Luetke to approve the meeting minutes from March 28th, 2022. The motion passed unanimously with 5 votes in favor and 0 votes against the motion.



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ITEM 2. CONDITIONAL USE PERMIT #22-34 to allow Temporary Firework Sales on the property legally described as Wittrock Tract 1 (Ex. E30') NW¼ NW¼ Section 22 T101N-R50W Wayne Township.

Petitioner: Mike Denning

Property Owner: Swearingen Properties LLC.

Location: Southeast corner of W 12th Street & S Ellis Road

Staff Report: Mason Steffen

General Information:

Legal Description – Wittrock Tract 1 (Ex. E30') NW¼ NW¼ Section 22 T101N-R50W Wayne Township

Present Zoning – C – Commercial

Existing Land Use – Commercial Lot

Parcel Size – .94 Acres

Staff Report: Mason Steffen

Staff Analysis: The subject property is located at the southeast corner of W 12th Street and S Ellis Road. The property is located in an unincorporated island with the city limits of Sioux Falls in close proximity in all directions. The petitioner is requesting conditional use permit approval to operate a temporary fireworks stand on the subject property. Additionally, the petitioner for this request petitioned for the same use on the same property in 2012 and was denied. However, since this denial there have been several conditional use permit approvals for fireworks stands in the immediate surrounding area. Currently, there are two operating fireworks stands in the area, one on the property directly south of the subject property and one a quarter-mile east on W 12th Street.

In accordance with SDCL 34-37-10, the 9-days of sales will take place from June 27th through July 5th. The approval of this permit would allow the petitioner to operate a fireworks stand in this location for subsequent years, as long as the conditions of the permit are met. Fireworks will be sold from a tent located in the southwest corner of the property, and parking will be provided to the east of the tent. In addition, there will be temporary flags placed on the property and a banner sign placed on the proposed tent, which is consistent with other temporary fireworks stands in the joint area. The hours of operation for the business were listed on the submitted narrative as 10:00 a.m. to 11:00 p.m., and these hours will be listed as a condition of approval. The petitioner also stated in the submitted narrative that there will be overnight security on the property from 10:00 p.m. to 10:00 a.m. Finally, after discussing this request with the city of Sioux Falls planning staff, they did not find it necessary to submit a comment letter, and deferred to the county planning staff's recommendation.

Conditional Use Permit Criteria:

1) The effect upon the use and enjoyment of other property in the surrounding area for the uses already permitted, and upon property values within the surrounding area.

Due to the limited timeframe for the firework sales, the proposed use should not have a negative



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effect on the enjoyment or property values of property in the immediate vicinity. The hours of operation will be limited from 10:00 a.m. to 11:00 p.m., which is consistent with other firework sales approved by conditional use permits.

2) The effect upon the normal and orderly development and improvement of surrounding vacant property for uses predominant in the area.

The temporary nature of the proposed use should not have an impact on future development. The surrounding properties are largely commercial/industrial in use, so the additional traffic added by the request for a temporary period should not affect the surrounding properties.

3) That utilities, access roads, drainage, and/or other necessary facilities are provided.

Access to the site will be provided via an existing driveway off of W 12th Street as shown on the submitted site plan. Also depicted on the site plan, are plans for the site to have one Porta Potty and one dumpster located on the east side of tent.

4) That the off-street parking and loading requirements are met.

The parking for the firework stand will be located in the current parking lot on the property for Chaser's Bar. Given the size of the proposed tent the ordinance would require at least 6 parking spaces for the operation. There is sufficient space on the property to handle the traffic and parking generated by this temporary land use and the business already operating on the property.

5) That measures are taken to control offensive odor, fumes, dust, noise, vibration, and lighting (inclusive of lighted signs), so that none of these will constitute a nuisance.

The temporary use should not create odor, fumes, dust, or vibration. Lighting should be directed away from the streets to prevent glare. Any public nuisance violations will be addressed upon the Planning Department receiving a complaint about the subject property.

6) Health, safety, general welfare of the public and the Comprehensive Plan.

The proposal is for a temporary use adjacent to a State Highway. The land is already zoned C Commercial in an area that is already used for Commercial/Industrial land uses. Approving this similar request in the same general area as two existing fireworks stands should not affect the general welfare of the public or the Comprehensive Plan.

Recommendation: Staff recommends **approval** of Conditional Use Permit #22-34 with the following conditions:

- 1) The property shall adhere to the submitted site plan and narrative.
- 2) No outside storage shall be allowed at any time.
- 3) The retail sale of fireworks must abide by all applicable SD laws and regulations.
- 4) That the temporary retail sales of fireworks shall be allowed to operate annually between June 27th and July 5th.
- 5) That the business shall only be allowed to operate between the hours of 10:00 a.m. and 11:00 p.m. Set up and tear down activities outside of the nine-day sales period must take place between 8:00 a.m. and 8:00 p.m.
- 6) Temporary signage for the operation must meet the requirements of Article 17.00 of the



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- 7) Temporary signs for the business are allowed to be placed no earlier than June 13th and must be taken down by July 10th.
- 8) That parking shall not be allowed within the right-of-way of S Ellis Road or W 12th Street.
- 9) That all outdoor lighting shall be of a full-cutoff and fully-shielded design to prevent direct spillage of light beyond the property boundaries.
- 10) That the Planning & Zoning Department reserves the right to enter and inspect the fireworks stand at any time, after proper notice to the owner, to ensure that the property is in full compliance with the conditional use permit conditions of approval and the Minnehaha County Zoning Ordinance.

Action

As part of the consent agenda, a motion was made for the County by Commissioner Randall and seconded by Commissioner Barth to **approve** Conditional Use Permit #22-34 with staff recommended conditions. The motion passed unanimously with 6 votes in favor and 0 votes against the motion.

As part of the consent agenda, the same motion was made for the city by Commissioner Paulson and seconded by Commissioner Luetke to **approve** Conditional Use Permit #22-34 with staff recommended conditions. The motion passed unanimously with 4 votes in favor and 0 votes against the motion.

Conditional Use Permit #22-34 – Approved



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ITEM 3. CONDITIONAL USE PERMIT #22-36 to amend Conditional Use Permit #21-33 to allow for a short-term exception to the condition requiring a fire suppression system on the property legally described as Tract 4 Lots 5 & 6 Pleasant View Acres N½ SE¼ & S½ NE¼ Section 19 T101N-R48W Split Rock Township.

Petitioner: Explosive Ventures, LLC.

Property Owner: Todd Voss

Location: 7401 East Arrowhead Parkway

Staff Report: Kevin Hoekman

General Information:

Legal Description – Tract 4 Lot 6 Pleasant View Acres N½ SE¼ & S½ NE¼ Section 19 T101N-R48W Split Rock Township.

Present Zoning – C – Commercial

Existing Land Use – Commercial Lot

Parcel Size – 2.08 Acres

Staff Report: Kevin Hoekman

Staff Analysis:

The Joint Minnehaha County & City of Sioux Falls Planning Commission approved temporary fireworks sales on the above property last year. The permit was approved with 14 conditions. Condition #11 requires a fire suppression system for the building in order to operate. At the time of approval, the petitioner had a letter from the City of Sioux Falls stating the expected availability of water supplies will be in 2021. The city did not complete water lines, and the timeframe of water availability is now expected to be summer of 2023. In the summer of 2021, planning staff allowed fireworks sales within the building as a good-faith effort was shown by the petitioner to obtain fire suppression system despite water was unavailable at the time. staff fines that ongoing unavailability of water requires further discussion and an amendment to the permit for fireworks sales to continue on the property. The petitioner is requesting a major amendment to allow the fireworks sales and storage in the building before water is available to complete condition #11.

The petitioner submitted a detailed narrative, a recommendation from the sprinkler installation company, and previous correspondence with City Engineering regarding water hookup timeline. The petitioner explains in the narrative that he feels the structure is safe compared to alternatives and that not having fireworks sales as intended and not having a tenant in the smaller portion of the building would be “financially catastrophic.”

The petitioner submitted a letter from Kyler Bouma of Service First Fire Sprinkler. The letter contains three suggestions of how to move forward with the requested fireworks sales. Option one is open the building because there is egress available in a small building. Option two suggests a trained fire spotter while the building is occupied. And option three explains the added cost of supplying a tank and pump large enough to sprinkle the building. It is suggested that the additional cost of a tank and pump is too much and not reasonable.



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The Service First letter does not address long term storage of fireworks. The petitioner's narrative suggests that long term storage of fireworks in this building is safer than storage within a storage unit. Staff reached out to the South Dakota Fire Marshal's Office regarding fireworks storage in buildings with a phone call. It was discussed that anytime more than 125 pounds of explosive materials is located within a permanent structure, the use is considered as hazardous and the structure must meet fire code requirements. Consumer grade fireworks are assumed to be 25% explosive by weight unless verified differently. This means that 500 pounds of fireworks products could be placed within a structure without fire suppression sprinkler.

The Minnehaha County building inspector has informed planning staff that he cannot issue occupancy for the building without water, sewer, and the required fire suppression system. The petitioner acknowledges in the narrative that occupancy of the other portion of the building cannot happen without water and sewer, but is requesting occupancy of the fireworks side of the building without water and sewer, and without required sprinkler system.

This is an unusual situation with potentially significant financial hardship for the petitioner. Last summer (2021), the Planning Department granted permission for fireworks sales to take place within the building for the nine day South Dakota resident sales time. This could be an option along with fire watch as described in the letter from Service First Fire Sprinkler. To be clear, if this option is pursued, having more than 125 pounds of explosives within the building is still a violation of the fire code until a sprinkler is functional. In addition, staff suggests that if this option is pursued, fireworks are not permanently stored within the building.

The preferred option for planning staff is to allow fireworks sales on the property in a temporary tent. This is how most temporary fireworks sales take place within the county. In addition, a temporary tent was proposed by the petitioner for the 2021 fireworks sales season as a contingency if the building was not complete. Staff finds that a temporary tent can be used for fireworks sales on the property as planned until the building is complete with fire sprinkler. This can continue without amending the permit as it was part of the original permit application plan.

Conditional Use Permit Criteria:

1) The effect upon the use and enjoyment of other property in the surrounding area for the uses already permitted, and upon property values within the surrounding area.

A fireworks stand is already approved for the property. Having the fireworks stand in a temporary tent does not significantly change how the use affects neighboring properties.

2) The effect upon the normal and orderly development and improvement of surrounding vacant property for uses predominant in the area.

Staff expects the water line to be available through the City of Sioux Falls within a couple years. If a tent is required for a couple years it will not affect future development before the petitioner can move into the building as planned.

3) That utilities, access roads, drainage, and/or other necessary facilities are provided.

The necessary water is not yet available for fire suppression or for bathroom facilities. Portable



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bathrooms must be provided for staff and customers. Access roads area present and drainage will not change from the current building and parking on the property.

4) That the off-street parking and loading requirements are met.

A temporary tent may reduce available parking on the site. The parking area is large and likely can accommodate required parking area for a tent since none of the building is occupied.

5) That measures are taken to control offensive odor, fumes, dust, noise, vibration, and lighting (inclusive of lighted signs), so that none of these will constitute a nuisance.

The conditions of approval for the original permit will remain. The use of the property for fireworks sales has already been approved, and conditions were placed on the property to reduce potential conflicts and nuisances.

6) Health, safety, general welfare of the public and the Comprehensive Plan.

Staff finds that allowing permanent occupancy of the building without water, sewer, and required sprinkler system is contrary to the health, safety, and general welfare of the public. Denying the request and allowing temporary tent for fireworks sales is likely the best solution until water is available in the building.

Recommendation: Staff recommends **denial** of Conditional Use Permit #22-36 to amend the conditions of approval for CUP #21-33.

Public Testimony

Kevin Hoekman, Planning Department, presented the staff report and recommendation. Commissioner Luetke asked if water hookup delay is caused by the delay in finishing Arrowhead Parkway. Kevin Responded that the delay in building the road is the reason water was not extended out yet.

Commissioner Nyberg asked if there are any other fireworks stands operate indoors have sprinkler system. Kevin Hoekman explained that none of the fireworks sales indoor in the county have fire sprinkler. The lack of fire sprinkler is likely due to the age of the fireworks stands where many were approved before the 1990 Zoning Ordinance for the County.

Commissioner Luetke asked if the building could be occupied if this is not approved. Kevin Hoekman stated that the building cannot be occupied if this amendment is not approved. Commissioner Barth added questions if a tent could be used to sell fireworks and if the building could store fireworks. Kevin Hoekman responded that a tent is the recommended way to sell fireworks on the property and the building cannot be used for storage either.

TJ Cameron, 2821 E Daybreak Circle, presented the history of permitting the Fireworks sales on the property. The original request was to allow for full season sales and the Commission approved 9-day sales season. TJ stated that the business voluntarily included fire suppression system. He shared the original code review stating that a sprinkler is not required due to inadequate water. Sioux Falls Water was expected to be available in 2021. TJ explained that



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there are 19 permanent fireworks stores and perhaps one of them has a sprinkler system. There are over 100 tents selling fireworks which should have fire sprinkler system if the tent is larger than 1000 square feet. He pointed out that a tent was approved earlier in the meeting. TJ further explained that he believes a permanent structure is safer than a tent, and that a tent would produce fewer sales than the building. The building will have an exit within 25 feet of any part of the building and a tent could be further away with tables on the outside of the tent. He stated that the code compliance officer has the authority to wave requirements. Once the water is ready to hook up it will be on a five inch main line and hooked up as soon as reasonable.

Commissioner Barth asked if there are any limits on the occupancy of the building because more people may make it more difficult to get out. TJ responded that a fire watch could limit the number of people in the building at a time. Commissioner Barth asked if a fire watch will be on site. TJ stated that he is willing to do that and will train a person to do that for the season.

Reese Almond, attorney with Davenport Evens, 206 W 14th Street, stated that the Planning Commission has the authority to amend the permit in a similar manor as a variance. Reese described that the petitioner has put in a lot of investment to make the fireworks stand safe. He urged that the commission amend the permit.

Kyler Bouma, 2916 S. Keyrail, is the owner of Service First Fire Sprinkler and he is available for questions. There were no questions.

Commissioner Barth stated that it is difficult to allow something to go forward without protection, but he could not recall any fireworks stand which have blown up.

Commissioner Paulson asked staff what is different this year than last year. Kevin Hoekman explained that last year the temporary occupancy was allowed with the expectation of water hookup in the near future. Now that water is not available for two more years it was beyond staff to accommodate that long of an exception. Scott Anderson explained that he made the decision that the operation could operate as water was going to be hooked up soon. He explained that bringing back the item would allow a hearing on the item.

Larry Lutke asked Reese Almond what condition would need to be changed. Reese Almond responded that condition #11 could be changed to add that access to water is not needed until water is available.

Commissioner Barth asked what not having a sprinkler system would do for insurance. TJ Cameron explained that he has insurance for liability, building, and inventory. He noted that the state does not require coverage for the fireworks. He stated that many tents only have slip and fall liability insurance.

Commissioner Ralston asked if there was a code requirement. Condition #11 was placed by the Planning Commission. Commissioner Nyberg asked staff why the city originally recommended denial of the permit. Fletcher LaCock, City Planner, explained that the Planning Department would like to see a property using city services would be annexed into the city. The Public



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Works Department allowed hookups to the property before annexation.

Commissioner Lutke suggested condition #11 is allowed to extend to the end of 2023 before water is available.

Commissioner Ralston agrees that the additional 2 years would allow the petitioner to not have to waste time coming back if water is not connected next year.

Commissioner Barth asked what happens until if no water is hooked up. Staff responded that if water is hooked up before December of 2023, then the petitioner could continue operating without coming back to the commission for review.

Action

Commissioner Barth motioned to amend Condition #11 of CUP21-33 to allow the use of the building prior to water hookup up to December 31, 2023. Commissioner Ralston seconded the motion. The motion passed unanimously.

Commissioner Paulson motioned for the city the same amendment to Condition #11 of CUP21-33 to allow the use of the building prior to water hookup up to December 31, 2023. Commissioner Lutke seconded the motion. The motion passed unanimously.

Commissioner Barth made a motion to approve Conditional Use Permit 22-36 as amended. The motion was seconded by Commissioner Ralston. The motion passed unanimously.

Commissioner Lutke made the same motion for the city to approve Conditional Use Permit 22-36 as amended. The motion was seconded by Commissioner Norman. The motion passed unanimously.

Conditional Use Permit #22-36 – Approved with the Following Conditions:

- 1.) This conditional use permit allows the retail sales of fireworks on the property during nine (9) calendar days per year.
- 2.) No outside storage shall be allowed at any time.
- 3.) The use of shipping containers for storage of any kind shall be limited to placement during March 1st through August 1st.
- 4.) The retail sales of fireworks must abide by all applicable SD laws and regulations.
- 5.) All outdoor lights in use for the building or to illuminate the parking area or tent shall be directed away from single family dwellings.
- 6.) Temporary signage must be limited to a maximum of 3 signs, not to exceed 32 square feet for any one sign, and not to exceed 75 square feet total temporary signage.
- 7.) Temporary signs for the business are allowed to be placed no earlier than June 13th and must be taken down by July 10th.



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- 8.) Flags that are used for advertising shall be located on the subject property, not block the view of traffic entering or exiting the property, and shall only be placed during the regular nine (9) day selling period of June 27th through July 5th.
- 9.) No parking or stacking of vehicles shall be allowed in the right-of-way at any time.
- 10.) The hours of operation for the public will be between 7:00 am and 12:00 am. Set up and tear down activities outside of the nine-day sales period must take place between 8:00 am and 8:00 pm.
- 11.) A fire suppression system which meets the adopted building code must be installed within the building and operational before December 31, 2023.
- 12.) The driveways shall include a minimum of 24 feet wide driving area, and all driving surfaces must meet the minimum improvement and maintenance standards in article 16.04 of the joint zoning ordinance.
- 13.) That the Planning & Zoning Department reserves the right to enter and inspect the fireworks stand at any time, after proper notice to the owner, to ensure that the property is in full compliance with the conditional use permit conditions of approval and the Minnehaha County Zoning Ordinance.
- 14.) No demonstration of fireworks will be allowed on the property.

Old Business

None.

New Business

None.

Adjourn

A motion was made by the County to **adjourn** by Commissioner Mohrhauser and seconded by Commissioner Barth. The motion passed unanimously.

The same motion to **adjourn** was made for the City by Commissioner Luetke and seconded by Commissioner Paulson. The motion passed unanimously.

The meeting was **adjourned** at 7:46 p.m.