



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

JANUARY 23rd, 2023

**MINUTES OF THE JOINT MEETING
MINNEHAHA COUNTY & SIOUX FALLS PLANNING COMMISSIONS
January 23rd, 2023**

A joint meeting of the County and City Planning Commissions was held on January 23rd, 2023 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, Mike Ralston, Ryan VanDerVliet, and Joe Kippley.

CITY PLANNING COMMISSION MEMBERS PRESENT: Dana Fisher, Bradyn Neises, Sean Ervin, Larry Luetke, John Paulson, and Janet Kittams.

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 7:03 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 Item 4 was requested to be moved to the regular agenda by Commissioner Luetke. Commissioner Luetke commented that given there is a similar request to Item 4 on the regular agenda, he would like to treat both of these request similarly.

A motion was made for the County by Commissioner Randall and seconded by Commissioner Kippley to **approve** the consent agenda consisting of Items 1, 2, 3, & 5. The motion passed unanimously.

The same motion was made for the City by Commissioner Luetke and seconded by Commissioner Paulson to **approve** the consent agenda consisting of Items 1, 2, 3, & 5. The motion passed unanimously.

ITEM 1. Approval of Minutes – November 28, 2022

As part of the consent agenda, a motion was made for the County by Commissioner Randall and seconded by Commissioner Kippley to **approve** the meeting minutes from November 28, 2022. The motion passed unanimously with 5 votes in favor of the motion and 0 votes against the motion.



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The same motion was made for the City by Commissioner Luetke and seconded by Commissioner Paulson to **approve** the meeting minutes from November 28, 2022. The motion passed unanimously with 5 votes in favor and 0 votes against the motion.



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Consent Agenda

ITEM 2. CONDITIONAL USE PERMIT #23-01 to exceed 2,400 square feet of accessory building space (requesting 3,000 square feet) on the property legally described as Tract 1B Howard Addition SW¼ Section 35 T102N-R50W Benton Township.

Petitioner: Dan & Brenda Petit

Property Owner: Same

Location: 6800 W Benson Road

Staff Report: Kevin Hoekman

General Information:

Legal Description – Tract 1B Howard Addition SW¼ Section 35 T102N-R50W
Benton Township.

Present Zoning – A1 Agriculture

Existing Land Use – Residential Acreage

Parcel Size – 2.31 Acres

Staff Report: Kevin Hoekman

Staff Analysis:

The petitioner is requesting to build a 36 feet wide by 50 feet long shed. The proposed accessory building will be a second accessory building on the property. The total square foot area will exceed the 2,400 square feet of accessory building space allowed on the property without a conditional use permit. The property is located at the edge of a small residential subdivision off Benson Road. A larger accessory building in a residential subdivision requires approval of a conditional use permit prior to construction.

The petitioner submitted a site plan to support the application. The site plan shows the proposed accessory building far in the rear of the property. The property has an established tree belt that will surround the proposed building.

Conditional Use Permit Criteria:

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

The proposed shed is shown to be located behind the house in the rear yard. There will be no new driveways for the shed and it will be used for personal storage. In addition, the shed is nearly surrounded by trees. With these characteristics, the shed should not have a negative effect on existing uses.

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

The property is across the street from a recently annexed portion of Sioux Falls. Development in this area will change and become more urban as the city develops. The large building will also not likely change this development or future development to the north of the property.



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

The property has an existing access onto Benson Road. The property owner will need to extend any utilities for the structure at the time of construction.

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

The property is used for a single family dwelling. There is already enough parking on the site for the land use.

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 property owner must comply with all rules of the public nuisance ordinance. The CUP should limit the use of the shed to exclude commercial businesses and activities in order to prevent nuisance commercial uses. Lighting should be designed to prevent glare onto neighboring properties.

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

The proposed larger accessory building should not harm the health, safety, or general welfare of the public when conditions are applied.

Recommendation: Staff recommends **approval** of Conditional Use Permit #23-01 with the following conditions:

- 1.) The building location shall adhere to the submitted site plan.
- 2.) The total area of all accessory buildings may not exceed 3,000 square feet.
- 3.) That the building shall be an accessory use to the continued use of the property as a residential lot. The building shall not be used for commercial purposes.
- 4.) That all outdoor lighting shall be of a full cutoff and fully-shielded design to prevent direct spillage of light beyond the property boundaries.
- 5.) That a building permit is required prior to construction of the accessory building.
- 6.) That the Planning & Zoning Department reserves the right to enter and inspect the accessory building 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 Kippley to **approve** Conditional Use Permit #23-01. The motion passed unanimously with 5 votes in favor of the motion and 0 votes against the motion.

The same motion was made for the City by Commissioner Luetke and seconded by Commissioner Paulson to **approve** Conditional Use Permit #23-01. The motion passed unanimously with 5 votes in favor and 0 votes against the motion.

Conditional Use Permit #23-01 – Approved



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ITEM 3. CONDITIONAL USE PERMIT #23-05 to transfer one (1) building eligibility from the NW¼ NE¼ within the N½ N½ (Ex. H-1 & 2) to Tract 2 Lunstra's Addition SE¼ NE¼ all in Section 18 T102N-R48W Brandon Township.

Petitioner: David Lunstra

Land Owner: Same

Location: Located 2.5 miles northeast of Sioux Falls

Staff Report: Scott Anderson

General Information:

Legal Description – Tract 2 Lunstra's Addition SE¼ NE¼ all in Section 18 T102N-R48W Brandon Township.

Present Zoning: A1 Agricultural

Existing Land Use: Cropland/Pasture

Parcel Size – 5.97 Acres

Staff Report: Scott Anderson

Staff Analysis: The property is located approximately 4 miles to the north of Sioux Falls and Brandon south of the intersection of County Highway 130 and 479th Avenue. The applicant is requesting to move one building eligibility to the southeast. The proposed location is further away from County Highway 130

On January 10, 2023, staff conducted a site visit. The site is relatively open with one residence located to the north and Swedona Covenant Church and parsonage located to the south. The proposed location is quite serene, as the church is a scenic, historic structure. The primary use in the area is for agriculture.

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.

There are two existing residences located within ½ mile of the proposed site. A right-to-farm notice covenant should be required to notify potential buyers to the realities of locating in an agricultural area.

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

The transfer of a building eligibility does not increase the number of dwelling units allowed in this section. The requested location for the eligibility places it near other residentially used property. Access would have to be approved by the Brandon Township. The siting of a building eligibility in this location would have little to no effect on the orderly development of the surrounding properties.

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



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No other extra utilities or services will be required for this site to utilize the building eligibility. It is likely that rural water and electricity are already located in the ditch. There is already an approach onto the proposed building site. Brandon Township will need to approve the location of this approach for use as a residential approach, which is a change in use from a field approach.

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

The off-street parking requirements will be provided for once a single-family residence is constructed on the subject 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 proposed conditional use will not cause odor, fumes, dust, noise, vibrations or lighting in any amounts that would constitute a nuisance.

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

The proposed conditional use will have no effect on the health, safety and general welfare of the public. Placing this building eligibility in this location will enhance the productivity of the rest of this quarter section and locate the building eligibility in closer proximity of similar uses.

Recommendation: Staff finds this conditional use permit request to be consistent with density zoning and the comprehensive plan. Staff recommends **approval** of Conditional Use Permit #23-05 with the following conditions:

1. A right-to-farm notice covenant shall be placed on the deed of each lot prior to the issuance of a building permit for a single-family dwelling.
2. Approval from Brandon Township must be obtained for the location of the driveway before a building permit is to be issued.

Action

As part of the consent agenda, a motion was made for the County by Commissioner Randall and seconded by Commissioner Kippley to **approve** Conditional Use Permit #23-05. The motion passed unanimously with 5 votes in favor of the motion and 0 votes against the motion.

The same motion was made for the City by Commissioner Luetke and seconded by Commissioner Paulson to **approve** Conditional Use Permit #23-05. The motion passed unanimously with 5 votes in favor and 0 votes against the motion.

Conditional Use Permit #23-05 – Approved



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ITEM 5. CONDITIONAL USE PERMIT #23-07 to exceed 3,600 square feet of accessory building space (requesting 7,068 square feet) on the property legally described as Tract 1 Lacey's Addition NE¼ SE¼ Section 6 T101N-R48W Split Rock Township.

Petitioner: Monte Albertson

Property Owner: Same

Location: 2901 N Six Mile Road

Staff Report: Mason Steffen

General Information:

Legal Description – Tract 1 Lacey's Addition NE¼ SE¼ Section 6 T101N-R48W Split Rock Township.

Present Zoning – A1 Agriculture

Existing Land Use – Residential Acreage

Parcel Size – 3.22 Acres

Staff Report: Mason Steffen

Staff Analysis: The petitioner is requesting conditional use permit approval to allow 7,068 square feet of residential accessory building area on the subject property. Currently, there are two accessory buildings on the property that total 6,396 square feet. These accessory buildings were built prior to the adoption of the Joint Zoning Ordinance, and therefore property was not required to obtain a conditional use permit before now. Finally, this request would allow the petitioner to move on an additional 24' x 28' detached accessory building in the southwest corner of the property.

On January 11, 2023, staff conducted a site visit of the subject property and surrounding area. The property is located on N Six Mile Road approximately ½-mile north of the intersection with Maple Street, and there are currently no direct neighbors to the property. However, across the highway is the Callies Place residential subdivision, and directly south of the property there are two vacant similar sized lots. The property is also in an area currently surrounded by agriculture and large residential acreages, but given its location in the rapidly expanding area between Sioux Falls and Brandon this is not likely to remain the case in the future. However, the addition of a small accessory building on a large lot with large existing buildings should not impact this development in a major way. Finally, this request was sent to the city of Sioux Falls planning staff for comment, and they did not provide any additional comments regarding the request.

Conditional Use Permit Criteria:

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

There should be no anticipated negative effect upon the use and enjoyment of the residential properties in the immediate vicinity. Property values in the area should also not be negatively impacted due to the personal use of the proposed accessory building.

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



The proposed site of the accessory building is located in an area that is still primarily used for agriculture, and a majority of the neighboring property is farmland with a few residential acreages. The additional small accessory building on the subject property should not impact the normal and orderly development and improvement of surrounding vacant farmland or residential acreages.

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

The petitioner will be required to extend all necessary utilities to the structure. The accessory building will be accessed by the same driveway as the current buildings on the property. The addition of another accessory building on the property should not have any negative effects on the drainage of the surrounding area.

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

The proposed site of the accessory building is large enough to accommodate the off-street parking requirement. The new accessory building will also add additional parking and storage to 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.

No commercial business or storage will be allowed in the proposed accessory building at any time. Any public nuisance violations will be addressed upon the Planning Department receiving a complaint about the subject property. All outdoor lighting will need to be directed downward onto the property. Lighting must be designed to be fully-shielded and fully-cutoff to prevent light pollution off site.

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

The health, safety, and general welfare of the public will not be negatively affected by the construction of the proposed accessory building. The proposed use will fit within the uses of other properties in the rural area. This property is located within the transition area of Sioux Falls & Brandon within the Comprehensive Plan, and the addition of a small accessory building on this lot will not impact the growth of either of these cities into the future.

Recommendation: Staff recommends **approval** of Conditional Use Permit #23-07 with the following conditions:

- 1) The building location shall adhere to the submitted site plan.
- 2) The total area of all accessory buildings may not exceed 7,068 square feet.
- 3) That the building shall be an accessory use to the continued use of the property as a residential lot.
- 4) The building shall not to be used for commercial uses or as a dwelling at any time.
- 5) That all outdoor lighting shall be of a full cutoff and fully-shielded design to prevent direct spillage of light beyond the property boundaries.
- 6) That a building permit is required prior to construction of the accessory building.
- 7) That the Planning & Zoning Department reserves the right to enter and inspect the accessory building at any time, after proper notice to the owner, to ensure that the



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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 Kippley to **approve** Conditional Use Permit #23-07. The motion passed unanimously with 5 votes in favor of the motion and 0 votes against the motion.

The same motion was made for the City by Commissioner Luetke and seconded by Commissioner Paulson to **approve** Conditional Use Permit #23-07. The motion passed unanimously with 5 votes in favor and 0 votes against the motion.

Conditional Use Permit #23-07 – Approved



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Regular Agenda

ITEM 4. CONDITIONAL USE PERMIT #23-06 to allow a Bed & Breakfast Establishment on the property legally described as Lot 8 Block 1 Harvard Alguires 1st Addition to Ellis T101N-R50W Wayne Township.

Petitioner: Daniel Brunz
Property Owner: Doug Kooiker
Location: 1803 N Ellis Road
Staff Report: Mason Steffen

General Information:

Legal Description – Lot 8 Block 1 Harvard Alguires 1st Addition to Ellis T101N-R50W Wayne Township
Present Zoning – A1 Agriculture
Existing Land Use – Residential Acreage
Parcel Size – .34 Acres

Staff Report: Mason Steffen

Staff Analysis: The petitioner is requesting to operate a short term rental operation, such as those seen on Airbnb and VRBO, out of the existing home on the property. The Joint Minnehaha County & City of Sioux Falls Zoning Ordinance currently classifies such a use as a bed and breakfast establishment, which requires a conditional use permit.

The petitioner has submitted a narrative for the operation that explains the proposed number and type of guests, their plan for monitoring the property, as well as some of the rules guests must follow. Also in the narrative the petitioner explains that they are equipped to accommodate small & multi-family groups, and that the average group size will be four people. Additionally, the petitioner has explained that they will be constantly monitoring the property through installed security cameras, and that these cameras will be used to track group sizes and to enforce the 10:30 p.m. to 6:00 a.m. quiet hours

On January 11, 2023, staff conducted a site visit of the subject property and surrounding area. The subject property is located along N Ellis Road within the unincorporated residential subdivision of Ellis, which contains approximately thirty homes on similar sized lots. Additionally, almost all of the lots within this subdivision have existing single family dwellings, and the proposed use of a short term rental within an existing dwelling should not have a major impact to the surrounding area. The petitioner will also be providing several off-street parking spaces, including six indoor parking spaces, as well as the existing concrete pads in front of the two garages. Finally, this request was sent to the city of Sioux Falls planning staff for any additional comments, and the city planning office provided no additional comments and deferred to the County's recommendation.

Conditional Use Permit Criteria:



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

The subject property is located within a residential subdivision of houses within the unincorporated Ellis. Short term rentals, such as this proposal, are generally compatible with residential sites because traffic is low and the number of guests are limited. Also, this use is easily converted back into a single-family dwelling if the property owner wishes to stop operating the bed and breakfast establishment.

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

There are currently few undeveloped lots within the residential subdivision of Ellis. Therefore, any new development in the area will mostly include additions to, or replacements of single-family dwellings. Finally, given that the proposed operation will operate similar to a conventional single-family dwelling that can easily be convert back to a conventional single-family dwelling at any time, the proposed operation should not impact any development in the surrounding area.

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

The property has existing access off of N Ellis Road and this access is hard surfaced. Since the property is already developed with a single-family dwelling, all the other necessary utilities are already present on the site. Finally, portions of Ellis are located within the 100-year flood plain, but the subject property is over 150 feet from any portion of the flood plain.

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

Given that there are five bedrooms within the residence, a minimum of five off-street parking spaces should be provided. As explained by the petitioner in the narrative, there will be six indoor parking spaces available to guests, along with several other outdoor off-street parking spaces. There are no loading requirements for this type of operation.

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 petitioner has explained in the narrative that there will be strict quiet hours from 10:30 p.m. to 6:00 a.m., and that they will be monitoring the property with security cameras to insure that guests are following the set rules. Additionally, the property owner will have the ability to screen potential guests before approval is given, and the property owner will be able to monitor the property remotely through the installed cameras. Finally, 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.

Since the proposed use is similar to that of a conventional single-family dwelling, the effect on the public should be minimal. In order to protect the guests who stay at the bed and breakfast, the house must have functioning smoke and carbon monoxide detectors as required by the building code as adopted by Minnehaha County. Additionally, the petitioner should maintain a list of all guests who stay at the bed and breakfast. This list shall be maintained and available for law enforcement if needed.



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Recommendation: Staff recommends **approval** of Conditional Use Permit #23-06 with the following conditions:

- 1) That the house must have functioning smoke and carbon monoxide detectors as required by the building code adopted by Minnehaha County.
- 2) That the proprietor must obtain any applicable South Dakota Sales Tax that is required.
- 3) That the proprietor must obtain the required Lodging License with the South Dakota Department of Health.
- 4) That the proprietor shall maintain a guest list and make such list available at the request of law enforcement.
- 5) That the establishment shall be limited to a total of fifteen guests at one time.
- 6) That a minimum of five off-street parking spaces must be provided for the bed & breakfast establishment.
- 7) That no parking will be allowed within the right-of-way of N Ellis Road at any time.
- 8) That the Planning & Zoning Department reserves the right to enter and inspect the bed and breakfast establishment 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.

Public Testimony

Mason Steffen, of county planning staff, presented a brief overview of the staff report and recommendation to the commission.

Commissioner Paulson asked staff for clarification on the definition of short term rentals, due to the petitioner narrative stating that they would like to host longer stays of fifteen to ninety days. Mason Steffen explained that the bed & breakfast only applies to stays less than fourteen consecutive days, and that as long as a daily rate is maintained then those longer stays will not effect this request.

The petitioner, Daniel Brunz of 3004 W 90th Street, Sioux Falls, was present and available for questions. Mr. Brunz stated that he represents the property owner and that they are more interested in the longer stays, but that they would like to have the option of shorter stays which is why they are requesting the bed & breakfast establishment. Billy Schlatter, the property host, also stated to the commission that they are ideally looking for nurses and other long term guests, which would provide a better long term solution than hotels.

Commissioner Luetke asked if the petitioner was only applying for this permit to be in compliance with the county ordinance. The petitioners explained that this permit would allow the flexibility to host shorter stays, such as weekends and daily stays. Commissioner Luetke also asked if the request is more a short term rental than a bed & breakfast, and the petitioners explained that it is more of a short term rental.

Terry Mellema, of 1804 N Alguire Ave, explained to the commission his concerns with the proposed bed & breakfast establishment. Mr. Mellema stated that he is concerned that the house



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will become a party house, and that there is only a 4-foot chain link fence between his property and the subject property. He also stated that adding a condition for a 6-foot privacy fence on the west side of the property would help alleviate his concerns with the operation.

Daniel Brunz returned to the podium to address the neighbor's concerns with the bed & breakfast establishment. Mr. Brunz reiterated that the property owner also does not want excessive noise, and that the primary use would be for longer stays and not weekend stays. He further explained that if there were to be several nuisance offenses caused by a guest then that would be grounds for their removal from the rental. Finally, he stated that he believes a 6-foot fence would be unnecessary given that they will cater to business professionals, and that in addition to the security cameras they would open to installing noise monitors.

Discussion

Commissioner Luetke commented that he pulled the request from the consent agenda because he believes there are two different definitions between a bed & breakfast and short term rental. Commissioner Luetke also stated that he wants the two bed & breakfast requests on the agenda to be treated equal, since the other request was already on the regular agenda.

Commissioner Kippley stated that this situation is unique given that the County Planning Commission will be considering updated ordinance amendments for "short term rentals" later in the evening. Commissioner Kippley also stated that he appreciates staff working with what is currently in place regarding this issue, and that the bed & breakfast definition has served the commission okay to this point but an update to the definitions is needed.

Scott Anderson, the County Planning Director, addressed Commissioner Kippley's comments on the bed & breakfast definitions. Mr. Anderson stated that planning staff has tried to accommodate the Airbnb type of use with the bed & breakfast definition, but that this use does not perfectly fit the definition. Therefore, Scott explained that the county planning staff has had several discussions regarding a proposed ordinance amendment for short term rentals, including a conversation with the Sioux Empire Home Builders Association. Finally, Mr. Anderson stated that if the commission is uncomfortable approving this request as a bed & breakfast then they could choose to defer action for several months until the proposed ordinance amendments are adopted.

Commissioner Kippley commented that he appreciates Commissioner Luetke pulling the item for discussion, so that better background information could be provided. Commissioner Kippley also stated that he sees this specific item as a straightforward request that he would lean towards approving.

Commissioner Luetke stated that he does not see an issue with waiting the four months to approve the request once the ordinance has been updated because he does not see this request as a bed & breakfast. Commissioner Kippley responded to say that he does not want to penalize this specific petitioner by deferring action just because they happened to apply at a time when the County is trying to update its ordinances.



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Commissioner Ralston stated that he agrees with Commissioner Kippley that this is a timing issue, and that he would hate to penalize the petitioner because the County has yet to modernize the definitions for this use. Commissioner Randall agreed with the other commissioners in regards to their comments on the proposed request.

Action

A motion was made for the County to **approve** Conditional Use Permit #23-06 with the staff recommended conditions by Commission Kippley. The motion was seconded by Commission Ralston. The motion passed unanimously with 5 votes in favor and 0 votes against the motion.

A motion was made for the City to **approve** Conditional Use Permit #23-06 with the staff recommended conditions by Commission Luetke. The motion was seconded by Commissioner Neises.

Commissioner Luetke commented that this issue is a grey area and that he wanted to start a discussion in regards to this discrepancy. Commissioner Luetke also had several other comments including that he believes these type of short term rentals should be treated like hotels, that there should be a formal complaint process, and that each rental should be registered with the Planning Department. Commissioner Paulson stated that he would like to have some direction from staff in regards to these issues. Fletcher Lacock, of the city planning department, stated that as of now staff is just beginning to look into the issue of short term rentals, and that there is no ordinance that they are ready to move to present. He also commented that a bed & breakfast would similarly be a conditional use with the city of Sioux Falls. Commissioner Ervin then commented that this request would keep the property in compliance with the recent thinking behind the definition of a short term rental, even if it does not fully meet the current definition.

A vote was then taken to approve the Conditional Use Permit by the city planning commission. The motion to approve passed unanimously with 5 votes in favor and 0 votes against the motion.

Conditional Use Permit #23-06 – Approved



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**ITEM 6. CONDITIONAL USE PERMIT #23-04 to allow a Bed & Breakfast
Establishment on the property legally described as Tract 3 Andy's Acres NE¼
SW¼ Section 23 T102N-R49W Mapleton Township.**

Petitioner: Tyler Childress

Property Owner: Same

Location: 47644 Slip Up Creek Road

Staff Report: Kevin Hoekman

General Information:

Legal Description – Tract 3 Andy's Acres NE¼ SW¼ Section 23 T102N-R49W
Mapleton Township.

Present Zoning – A1 Agriculture

Existing Land Use – Residential Acreage

Parcel Size – .74 Acres

Staff Report: Kevin Hoekman

Staff Analysis:

This property is located in a rural subdivision about one mile north of Sioux Falls city limits along Slip Up Creek Road. The petitioner is requesting to utilize a single family dwelling for short term rental occupancy and have “special events” at the location. The zoning ordinance requires a conditional use permit for a bed and breakfast. There are no listed uses in the ordinance for special events. A bed and breakfast is defined as:

A bed and breakfast accommodation may provide no more than ten bedrooms for guests (exclusive of the living quarters of the owner or operator). Guests at a bed and breakfast accommodation may stay up to fourteen consecutive days provided that the bed and breakfast accommodation may only offer a daily rate and shall not offer weekly or bi-weekly rates. A bed and breakfast accommodation may include kitchen and dining facilities to furnish meals for guests only. Food preparation within a guest bedroom is prohibited. A bed and breakfast accommodation may not include a restaurant, banquet facilities or similar services. (amended 08/17/09 By MC30-02)

This item was brought to the attention of county planning staff by neighboring property owners who reported advertisements for the rental property on the Laurel Ridge Wedding Barn Website. Shortly after, other neighbors reported a news article on KELO News regarding the use of the property as a “2nd Sioux Falls venue” in conjunction with the wedding barn. These types of events are not permissible. Staff sent a letter to the property owner regarding the need for a conditional use permit for a bed and breakfast and that the property is not zoned for events. The property owner responded quickly to the letter, and applied for a conditional use permit for a bed and breakfast.

The petitioner emailed the following comments to accompany the application as a narrative. Planning staff used GIS, property records, and the webpage for the house on the laurelridgebarn.com website to better understand the property and request.



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Written Narrative:

Bed & Breakfast

Inside Main Structure

1 4ft by 8 foot sign by Slip Up Creek Road

Yes we plan to hold special events

Overnight Accommodation will be 24 hours.

Special Events between 8am-12 midnight

We are using the existing concrete to park cars, as you see lots of parking spaces.

Minnehaha County GIS plans are up to date.

Tyler

The Joint Zoning Ordinance allows a bed and breakfast establishment in the A1-Agricultural zoning district; however there are no provisions for special events or venues for rent in the zoning district. In addition, the structure was built using the building code for a single family dwelling and not a place of assembly. Staff will support the request for a bed and breakfast, but special events are outside of the scope of a bed and breakfast. Using the property for a second venue would allow a single family dwelling in close proximity to other single family dwellings to be used for commercial uses beyond what a residential subdivision should expect. A large house with many bedrooms will attract groups of people and events such as birthdays and similar gatherings will likely happen when a group rent a house. The total number of people on the property should be limited to protect the neighborhood from routine large gatherings and large noisy parties.

The property is located in a residential subdivision on the north side of Slip Up Creek Road. The house has six bedrooms, a three stall garage, and a bonus room attached through the garage. The property also has a detached garage. There is a concrete driveway from the street to the home and detached garage. There are approximately six parking spaces on concrete outside of either the detached or attached garages. This is approximately one parking space per bedroom.

Conditional Use Permit Criteria:

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

The property is located within a subdivisions of houses. Short term rentals and bed and breakfast establishments can be compatible with residential sites if traffic remains low and the number of guests are limited. The last few bed and breakfast establishments have included a guest limit recommendation of three people per bedroom. This house has six bedrooms and the same recommendation would allow up to 18 people on the property at one time. This number can change if the Planning Commissions finds 18 people at one time too much for the neighborhood. To prevent large gatherings and special events, staff also suggests that the 18 person limit to be a maximum number of occupancy for the entire property at any one time. The limit to number of guests will also prevent over spill of the available parking onto the street or into the yards.



One advantage of a bed and breakfast is that the use can easily be converted back into a single family dwelling if the property owner wished to stop having bed and breakfast guests.

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

This area is close to the north side of city limits of Sioux Falls. The 2040 Future Land Use map shows the land use in the area will be light industrial and future parks. It is also in the Tier 3 annexation area not to be annexed within 16 to 25 years. This proposed land use will not significantly affect those developments.

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

The property is already developed with a single family dwelling and street access onto Slip Up Creek Road. No new utilities will be needed, and drainage will not change on the site.

This property is located on a rural lot with an on-site wastewater disposal system designed for 600 gallons per day of water usage. The Planning Commission and the Petitioner should be aware that the proposed use may create water usage problems for the property. Earlier in this report staff recommended a maximum occupancy of three people per bedroom for a total of 18 people on site at any one time. The USGS.gov website estimates that the average daily water usage for a person is 80 to 100 gallons. If each person at the house uses 80 gallons of water the system could only support 7.5 people. Even if average water use per person is divided in half (such as the state on-site wastewater design requirement for a rooming house), the septic system would not support 18 people. The Planning Commission may consider reducing the total maximum occupancy of the property to better align with the capacity of the septic system. The petitioner is encouraged to utilize water conserving faucets, toilets, and showers throughout the five bathroom house.

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

The property has a large concrete driveway. It is likely the driveway could accommodate up to six vehicles without blocking any vehicles from leaving. Staff is actively working on rules regarding short term rentals, and discussion is ongoing for how much parking should be required for a short term rental. For this property, one parking space for each bedroom appears to be adequate for the land use. There does not appear to be adequate parking for any events that would attract more than six vehicles. No on street parking shall be allowed.

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.

A bed and breakfast or a short-term rental will not likely create offensive odor, fumes, dust, vibration, or lighting. The use has the potential to create nuisance noise if guest at the bed and breakfast have events or stay outside late into the night. Staff is recommending limiting the total number of people on the site to 18 to prevent large nuisance gatherings.

Nuisance parties and late night noise have been a topic of discussion for other bed and breakfast establishments in the last few months. This property is unique in that it will be operated in conjunction with the Laurel Ridge Barn wedding and event venue. Many guests will likely be



coming from events at the end of an event at or near midnight, and it is possible further noisy activities will continue at the house. The narrative for this request makes no such reference to house rules or property monitoring. It may be possible to enforce quiet hours and occupancy limits through cameras and noise monitors if the Planning Commission finds noise will be a problem for neighboring residential properties. The fewer number of allowed guests would also limit the potential for noisy outdoor activities. The Planning Commission may reduce the maximum occupancy for the property to reduce noise possibilities. There are no noise ordinances in the rural area of Minnehaha County.

The petitioner wrote in the narrative time limits for special events. Special events are not part of the allowed uses of the property. Guests are renting a house, not an event venue.

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

A bed and breakfast should have minimal effect on the public. Reasonable conditions can and should be placed to prevent the property from becoming special event venue. Short term rentals such as proposed, allow property owners to earn income and guests take advantage of larger quarters. In this case, many guests will benefit from the close proximity to the property owners event center about a quarter of a mile to the east of the house.

To protect the guests who stay at the bed and breakfast, the house must have functioning smoke and carbon monoxide detectors as required by the building code as adopted by Minnehaha County. In order to protect the public, the petitioner should maintain a list of guests who stay at the bed and breakfast. The list shall be maintained and available for law enforcement if needed.

Recommendation: Staff recommends **approval** of Conditional Use Permit #23-04 with the following conditions:

- 1.) The house must have functioning smoke and carbon monoxide detectors as required by the building code as adopted by Minnehaha County.
- 2.) The proprietor must obtain any applicable South Dakota Sales Tax that is required.
- 3.) The proprietor must obtain the required Lodging License with the South Dakota Department of Health.
- 4.) That the proprietor shall maintain a guest list and make such list available at the request of law enforcement.
- 5.) The property shall be limited to a total maximum of eighteen guests and visitors at any one time.
- 6.) Guests shall have at least six dedicated off street parking spaces. No on-street parking will be allowed.
- 7.) Only one sign may be permitted on the property not to exceed 32 square feet in size.
- 8.) A building permit is required before the placement of any sign on the property.
- 9.) That the Planning & Zoning Department reserves the right to enter and inspect the bed and breakfast establishment 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.



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Public Testimony & Discussion

Kevin Hoekman, planning staff, presented the staff report and recommendation. Commissioner Lutke clarified with staff that the limited number of guests is based on three people per bedroom, and it is the same as the earlier bed and breakfast request.

Commissioner Paulson asked staff if the permit can be approved with special events listed as part of the narrative. Kevin Hoekman responded that staff is limiting the number of guests on the property to eighteen, but did not want to prevent groups who are renting the house from getting into trouble if they have a birthday party at the house as an example. Kevin explained if commission finds that events will likely be a problem at the house, the permit can be denied. Commissioner Paulson asked about the wastewater analysis. Staff explained that the wastewater analysis was done in part because a permit can be found for wastewater. No conditions were set on wastewater because it is recognized that the property owner would bear the results of a backed up system if a problem arises.

Commissioner Lutke asked city staff if a similar establishment near Lake Lorraine is permitted to hold special events. Fletcher Lacock responded that he was not aware of the facility in question, but he is certain that a bed and breakfast would require a conditional use permit.

Tyler Childress, the petitioner, explained that he originally planned for the house to hold sixteen people, and that he can meet all nine conditions recommended in the staff report. He further stated that he has other rental houses which he manages and he is aware of the department of health registration requirement.

Commissioner Kippley asked what a typical average guest stay might look like. Tyler Childress responded one to three nights, and not after the ten to twelve day market. Commissioner Kippley further asked if the house would be used primarily from wedding guests. Tyler Childress explained that the market may be bigger than just the wedding groups. He stated that he plans to screen every client before use of the house.

Commissioner Randall asked if cameras or quiet hours will be used for the house. Tyler Childress explained that he is actively working on best options for cameras for outside of the entry points of the house. He stated that quiet hours will be normal residential type hours like 10:00 pm to 7:00 am.

Commissioner Ode asked if there was any concerns over water use and sewer. Tyler Childress responded that the facility is new and the sewer is already monitored. The previous family was already large and didn't have a problem.

Kasey Olivier, Olivier Miles Holtz Law Firm 6210 S Lindquist Ave., presented several items of concern as a representative of neighboring property owners. She explained that SD Supreme Court requires that a CUP cannot create a hardship on neighboring property owners. She presented that the neighborhood has restrictive covenants that limit the property as residential property. The neighboring property owners would have to get the injunction themselves to stop the bed and breakfast. Kasey Olivier pointed out that advertisements and news articles show that



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the property is an event venue. She explains that there is no plan for security on this property. She finished by stating that the events venue is not a listed use in the ordinance, and that the proposed use should be denied.

John & Tina Beck, 47645 Surrell Street, explained that they live directly north of the house, and that they purchased their house outside of the city limits in a quiet neighborhood. Tina stated that the neighborhood is tightly knit and that the proposed use will not fit in with strangers each day rather than neighbors. The use will affect property values and ability to sell home. She raised concern that advertising includes events. John added that a bed and breakfast is not a residential use as required by the covenant. He stated that the house had already been rented and he is concerned that vehicles will be parked on the unimproved street behind the house. John reiterated that Tyler Childress will not be responsible for bad activities on the property. And he finished by stating that the outside lights have been on all night and glaring in the yard.

Ryan Bechtold, 47610 Slip Up Creek Road, stated that the neighborhood has 35 houses and 33 people signed an opposition letter.

John Hagen, 47640 Slip Up Creek Road, stated that strangers will become his new neighbors if this is approved. He also raised concern about the four feet by eight feet sign which will prevent future buyers of his property.

Linda Wegman, 47634 Surrell Street, explained that the website covers a list of events and a possibility of renting 150 chairs. She stated that this is not a place to stay the night.

Dwayne Wegman, 47634 Surrell Street, stated that he was also against the proposal.

Kiley Beck, 47645 Surrell Street, explained that she grew up just north of the property. She stated that the petitioner has been through the procedure process for approval several times and should know not to advertise and start before an application is approved. She stated that the staff suggested eighteen people and that is too many. She added that there should be additional rules if the use is approved including requiring the owner or representative reside in the house, noise limits, contact information of the owner to be available, shielding of light, lower maximum capacity, and rules to be followed.

Zach Wipf, 47606 Slip Up Creek Road, noted that there is no noise ordinance in the country like there is in the city. Sheriff deputies will not do anything for a noise complaint.

Abigale Peterson stated she lives a half mile south of the site. She explained that past interactions with Tyler Childress would say things would not happen and then things happen a short time later. She stated that the road is fast and many people come and go like what happens at the event barn.

Scott Zwok, 47646 Slip Up Creek Road, stated that his bedroom is 50 feet from the house. He noted that the barn closes at 12:00 am and people will go to the house and continue to party. The narrative includes a statement of special events. Scott added that the petitioner already is



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approved for a second venue near the barn. And he asked if anyone would want to have the use next to them.

Steven Bechtold, 47614 Slip Up Creek Road, explained that a bed and breakfast should have the owner present. The people who stay there will show up at midnight. He finished that the speed limit is not enforced.

Rodger Lunstra, 47636 Surrell Street, stated that he owns six lots, and the proposed use will lower the value of the each lot from \$50,000 to \$100,000 in value. He added that three people to a bedroom is too much.

Tyler Childress, the petitioner, responded to several concerns of those opposed to the bed and breakfast. He explained that he received the covenant in the afternoon and that he understood that covenants expire in 50 years. He addressed that people will not walk to the house the website can be changed, the sign was placed on the property, the parking has more space for cars, and that the proposed use is not just for wedding events. He noted that the house could be rented today if a family rented it for 30 days.

The chair closed the floor for discussion.

Discussion

Commissioner Kippley asked if the covenants expire, and he explained that a previous bed and breakfast discussion included that the neighborhood should have covenants. Scott Anderson, county staff, stated that the county does not enforce covenants, and that a covenant is a private agreement made when purchasing a property. Any expiration of a covenant will not be enforced by the county. Commissioner Kippley noted that he will consider denial of the application

Commissioner Lutke asked staff if the unfinished road would also not have parking and if all bed and breakfast are allowed to have a sign. Staff responded that no parking will be allowed on the street and that signs up to four feet by eight feet are allowed. Commissioner Lutke further commented that he has an issue with the property being used for events.

Commissioner Ralston agreed that a denial may be the best action since further appeals can be made.

Commissioner Ervin noted that a condition can be added to prevent events on the property since past bed and breakfast establishments have been approved.

Commission Kippley reiterated that a denial may be a good possibility to have the neighborhood figure things out for six months or more.

Action

Commissioner Kippley motioned to **deny** conditional use permit #23-04. Commission Ralston seconded the motion. The motion passed unanimously with 5 votes in favor of the denial and 0 votes against it.



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Commissioner Lutke motion to **approve** conditional use permit #23-04 for the City Planning Commission. Commissioner Neises seconded the motion.

After the motion, Commissioner Neises commented that there is a lot of confusion of what an event is and he cannot vote for approval. Commissioner Fisher commented that many conditions would need to be agreed upon before the business is successful. The way it stands, she will be in favor of denial.

The City Planning Commission voted on the motion to approve conditional use permit #23-04 with 0 votes in favor of the motion and 5 votes to deny the motion.

Conditional Use Permit #23-04 – Denied

Old Business

None.

New Business

None.

Adjourn

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

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

The meeting was **adjourned** at 8:42 p.m.