



**MINUTES OF THE JOINT MEETING
MINNEHAHA COUNTY & SIOUX FALLS PLANNING COMMISSIONS
January 25, 2021**

A joint meeting of the County and City Planning Commissions was held on January 25, 2021 at 7:00 p.m. in the Commission Room of the Minnehaha County Administration Building and in the Zoom Personal Meeting Room ID 728 439 8039.

David Heinold, County Planning Department, read aloud the instructions for Zoom attendees on how to raise their hands to speak on an agenda item.

Commissioner Bonnie Duffy chair the County Planning Commission, and called for roll call of County Planning Commission members present to determine quorum.

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

Commissioner Erik Nyberg chaired the City of Sioux Falls Planning Commission, and called for roll call of City of Sioux Falls Planning Commission members present to determine quorum.

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

STAFF PRESENT:

Scott Anderson, David Heinold, and Kevin Hoekman - County Planning
Albert Schmidt – City Planning

The County Planning Commission was presided over by Commissioner Bonnie Duffy. The City Planning Commission was chaired by Erik Nyberg.

Chair Duffy called the joint City of Sioux Falls and Minnehaha County Planning Commission meeting to order at 7:08 p.m.

PUBLIC COMMENT.

Commissioner Duffy opened the floor for public comment and nobody moved to speak or no hands were raised in the Zoom Personal Meeting Room.



MINNEHAHA COUNTY & CITY OF SIOUX FALLS
PLANNING COMMISSION
MEETING MINUTES

JANUARY 25, 2021

ITEM 1. Approval of Minutes – November 23, 2020

Chair Duffy called for any comments or amendments to the minutes. Nobody raised any comments or additions.

A motion was made for the County by Commissioner Barth and seconded by Commissioner VanDerVliet to **approve** the meeting minutes from November 23, 2020. A roll call vote was taken, and the motion passed unanimously with 7 votes in favor of the motion and 0 votes against the motion.

The same motion was made for the City by Commissioner Johnson and seconded by Commissioner Norman to **approve** the meeting minutes from November 23, 2020. A roll call vote was taken, and the motion passed unanimously with 4 votes in favor of the motion and 0 votes against the motion.



ITEM 2. CONDITIONAL USE PERMIT #20-54 to allow Temporary Retail Sales of Fireworks on the property legally described as Tract 1, Lammer's Addition, S1/2 NE1/4, Section 33-T101N-R50W.

Petitioner: Mike Denning

Property Owner: Alphonse C. Lammers Rev. Liv. Trust

Location: 4001 S. Ellis Rd.

West Sioux Falls

Staff Report: Kevin Hoekman

General Information:

Legal Description – Tract 1, Lammer's Addition, S1/2 NE1/4, Section 33-T101N-R50W.

Present Zoning – A1-Agriculture

Existing Land Use – Vacant/Agricultural

Parcel Size – 45.82 acres

Staff Report: Kevin Hoekman

Staff Analysis:

This item was initially scheduled for a hearing at the November 23rd, 2020 Joint Planning Commission meeting. The petitioner requested a deferral of any action to the next regular meeting in January. The item was deferred and nobody from the public commented on the item in November. The staff report is largely the same as the report for November except for minor changes.

The petitioner is requesting to operate a fireworks stand for 9 days a year on the subject property along Ellis Road. The proposed use is allowed within the A1-Agricultural zoning district with approval of a conditional use permit. The application notes that sales will take place during the normal season allowed by the state from June 27th To July 5th.

The application for the fireworks stand was submitted with only a sketch plan of the site. The sketch plan shows that sales will be done out of a tent with a temporary portable toilet, and a camper located on the site for staff. The camper will presumably be used as a deterrent of overnight theft through an easily accessible temporary tent. The tent is shown to be setback from property lines with the remaining property to be used as potential parking.



Sioux Falls Planning Staff submitted comments and a recommendation for denial of this proposed fireworks stand. Concerns include traffic concern for increased traffic and for future development of the site and area. In addition, the proposed fireworks stand is located over an easement for a high pressure gas line (see Figure 1). It is suggested to require the petitioner to obtain approval from the easement holder prior to any hearing for this request. Alternatively, large weights rather than stakes could be used to hold down the tent in order to avoid underground penetration of the pipeline. Or the tent could be placed on another part of the property where the easement is not located.



Figure 1: Gas Easement Location

The Ellis Road area has a history of permitted fireworks stands taking advantage of the close proximity to the City of Sioux Falls. Most recently a permit was issued in 2018 for a fireworks stand to be located at the intersection of Ellis Road and 12th Street. The applicant operates several fireworks stands within Minnehaha County, and until recently, one of the stands was located approximately 1.5 miles north of the proposed site. The previous location was annexed into the City of Sioux Falls. Sunset conditions have been used to limit the duration previous permitted fireworks stands in the joint jurisdiction area. A sunset condition could be used again for this request to allow the use with a review period set as the city expands west.

Conditional Use Permit Criteria:

(a) The impact of the proposed use on adjacent properties shall be a major consideration. The proposed use should be generally compatible with adjacent properties and other properties in the district.

The general area around the property includes residential acreages and subdivisions located along a busy highway. To the west of the site is largely agricultural land. The proposed land use will create a commercial business location for 9 days a year. The highway is large enough to



accommodate additional customer and setup traffic. Nearby subdivisions have some separation to buffer the proposed use, adjacent acreages may experience increased traffic, lights from vehicles and the site, and potential noise from generators and customers. These potential problems will be reduced by the short duration of the 9 days of activities, and it can be further reduced by limiting hours of operation to stop at 10:00 pm. The 10:00 pm close will reduce problems with vehicles lights at night as the daylight during summer months is long.

(b) Measures shall be taken to ensure that the proposed use does not alter the general character of the area or neighborhood.

The proposed use is temporarily set up and taken down each year for the 9 day selling season. Conditions can be placed on the permit to further reduce duration of the use on the property for setup and teardown of the tent and other facilities.

(c) The effects of noise, odor, traffic, air and water pollution, and other negative factors shall be eliminated or controlled through the use of screening, setbacks and orientation.

A fireworks sales tent will not directly create significant noise, odor, or pollution. Traffic will increase for the 9 days of selling season. Ellis Road is capable of absorbing increased traffic and other nuisances can be limited with limiting hours of operation.

Staff has concerns regarding the driveway for the proposed fireworks stand. The site plan shows the driveway location for the fireworks stand to move the driveway north of the existing driveway. The existing driveway should be used and if a new driveway is desired a driveway permit must be obtained from the appropriate department which maintains the highway. The existing driveway is currently a dirt driveway used as a field approach. The driveway needs improvements to allow traffic in both directions and to prevent mud from being dragged into the highway. Staff suggests that a 24 feet wide gravel driveway be installed which extends from the pavement of the highway to a minimum of 15 feet onto the property.

(d) The proposed use shall not adversely affect the public.

Adjacent to city limits, the proposed use will sell a product that is illegal to use within the city. The use of consumer fireworks is allowed outside of city limits and the location of sales would likely be beneficial to be located near the customers.

Health, safety, general welfare of the public and the Comprehensive Plan should be considered as part of the request.

The sale of fireworks will be regulated by state law, and the petitioner must comply with the safety aspects within his submitted narrative. Some of the state safety requirements include posting signage for no smoking within 25 feet of fireworks (SDCL 34-37-10.3), posting signage for no discharge of fireworks within 150 feet of the premises (SDCL 34-37-10.4), prohibition of open flames (SDCL 34-37-10.5), and a requirement for a fire extinguisher on the premises (SDCL 34-37-10.5). The nature of fireworks carries risk to nearby properties. The many



different regulations for fireworks sales, including conditions for this permit should aid in minimizing the risk.

The Envision 2035 Comprehensive Plan has a goal to coordinate growth and land use planning among Minnehaha County, cities, townships, and other relative organizations. The use will have to stop once the city annexes the land where the use is located. Minnehaha County planning staff finds the requested fireworks sales is consistent with recently approved fireworks sales in the area. Sioux Falls Planning Staff is recommending denial of the conditional use permit request.

Recommendation:

Staff recommends **approval** of Conditional Use Permit #20-54.

- 1.) The property shall contain all elements shown on the site plan and either receive approval for placement over the easement or move the use to locate outside of the easement area.
- 2.) No permanent structures or utilities shall be built and used for the use.
- 3.) No outside storage shall be allowed at any time.
- 4.) The retail sales of fireworks must abide by all applicable SD laws and regulations.
- 5.) The retail sales of fireworks may only be marketable for nine (9) days per calendar year.
- 6.) All outdoor lights in use for the building or to illuminate the parking area or tent shall be directed away from single family dwellings.
- 7.) 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.
- 8.) Temporary signs for the business are allowed to be placed no earlier than June 13th and must be taken down by July 10th.
- 9.) 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.
- 10.) No parking or stacking of vehicles shall be allowed in the right-of-way at any time.
- 11.) The hours of operation for the public will be between 8:00 am and 10:00 pm. Set up and tear down activities outside of the nine day sales period must take place between 8:00 am and 8:00 pm.
- 12.) No storage of fireworks is allowed on the site after July 10th, and through June 13th the following year.
- 13.) The driveway shall utilize the existing driveway and be configured to have a minimum of 24 feet wide driving area. Gravel must be placed on the driveway and meet the minimum improvement and maintenance standards in article 16.04 of the ordinance from the shoulder of the road to 15 feet onto the property.
- 14.) 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.

Public Testimony:

Kevin Hoekman, county planning staff, presented the updated staff report. Kevin stated a correction of the staff report that Merlyn Tiezen made comments at the November meeting. Commissioner Ode asked how deep the pipeline is. Kevin Responded that he understands that a pipeline is 3 to 4 feet deep but was unsure.

Mike Denning, 6605 W 52nd Street, was available for comments and questions. Commission Ode confirmed with Mr. Denning that conditions were acceptable.

Kevin Hoekman read the conditions of approval based on request.

Commissioner Johnson asked if a conditional use permit stay with the applicant or with the property. Kevin Hoekman explained that the permit goes with the property and a different operator may take over the permit.

Action:

Commissioner Barth made a motion to **approve** Conditional Use Permit #20-54 with recommended conditions. The motion was seconded by Commissioner Ode. A roll call vote was taken and the motion passed unanimously with 7 votes in favor of the motion and 0 votes against the motion.

Commissioner Norman made the same motion for the city planning commission to **approve** Conditional Use Permit #20-54 with recommended conditions. The motion was seconded by Commissioner Johnson. A roll call vote was taken and the motion passed unanimously with 4 votes in favor of the motion and 0 votes against the motion.

Conditional Use Permit #20-54 – Approved



MINNEHAHA COUNTY & CITY OF SIOUX FALLS
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Old Business

None.

New Business

None.

Adjourn

A motion was made for the County to **adjourn** by Commissioner VanDerVliet and seconded by Commissioner Ode. A roll call vote was taken, and the motion passed unanimously with 7 votes in favor of the motion and 0 votes against the motion. The same motion was made for the City to **adjourn** by Commissioner Johnson. Commissioner Norman adjourned the meeting. A roll call vote was taken, and the motion passed unanimously with 4 votes in favor of the motion and 0 votes against the motion.

The meeting was **adjourned** at 7:24 pm.