



Community Development Department

DATE: June 25, 2024

FROM: Ben Ehreth, Community Development Director

ITEM: Amend Sections 14-02-03, 14-03-06, 14-03-08, and 14-04-17 of the City Code of Ordinances to allow agriculture recreation uses and private riding arenas in the A – Agriculture zoning district based on certain criteria.

REQUEST:

Public hearing on Ordinance 6579, a zoning ordinance text amendment.

BACKGROUND INFORMATION:

The Community Development Department requests approval of amendments to Sections 14-02-03, 14-03-06, 14-03-08, and 14-04-17 of the City Code of Ordinances to allow agriculture recreation uses and private riding arenas in the A – Agriculture zoning district based on certain criteria.

The proposed amendments would allow for agriculture recreation uses that offer opportunities to promote agritourism and to amend the ordinance to allow private riding arenas that are larger in size than standard accessory buildings.

The Planning and Zoning Commission held a public hearing on this request on April 24, 2024. Representatives of Apple Creek Farms, the Tourism Division of the Department of commerce, and several citizens spoke during the public hearing. Concerns were raised by some that the proposed ordinance limited opportunities for agriculture recreation in particular that certain events, such as pumpkin patches, corn mazes and u-pick produce should not be restricted to the major agriculture recreation uses.

At the conclusion of the public hearing, the Planning and Zoning Commission voted to continue the public hearing and directed staff to work with a representative of Apple Creek Farms and the Tourism Division of the ND Department of Commerce to address concerns expressed during the hearing.

Planning staff, a representative of Apple Creek Farms, and representatives of the Tourism Division met on May 3, 2024 to modify the ordinance to address concerns made during the public hearing.

A continued public hearing at the Planning and Zoning Commission meeting was held on May 22, 2024. Two members of the public spoke during the hearing. One member requested the

lot/parcel size requirement for minor agriculture recreation uses be removed from the ordinance.

At the conclusion of the public hearing and based on the findings contained in the staff report, the Planning and Zoning Commission voted unanimously to approve the zoning ordinance text amendment with the removal of the lot/parcel size requirement for minor agriculture recreation uses.

The City Commission considered the proposed zoning ordinance text amendment at their June 11, 2024 meeting and called for a public hearing on the request.

The attached staff report contains a complete review of the request, according to standards of the Comprehensive Plan, city ordinances, and other relevant law. Additionally, the staff report contains an overview of past public engagement related to this request.

RECOMMENDED CITY COMMISSION ACTION:

Hold a public hearing on the zoning ordinance text amendment as outlined in Ordinance 6579 and take final action.

STAFF CONTACT INFORMATION:

Ben Ehreth, Community Development Director, 701-355-1842, behreth@bismarcknd.gov
Daniel Nairn, Planning Manager, 701-355-1854, dnairn@bismarcknd.gov
Jenny Wollmuth, Senior Planner, 701-355-1850, jwollmuth@bismarcknd.gov

ATTACHMENTS:

1. ZOTA2023-001 - Ag Recreation



STAFF REPORT

Application for: **Zoning Ordinance Text Amendment**

Project ID: **ZOTA2023-001**

Project Summary

<i>Title:</i>	Agriculture Recreation Uses and Private Riding Arena
<i>Status:</i>	Board of City Commissioners – Public Hearing
<i>Project Contact:</i>	Jenny Wollmuth, AICP, CFM
<i>Request:</i>	Amend Sections 14-02-03, 14-03-06, 14-03-08, and 14-04-17 of the City Code of Ordinances to allow agriculture recreation uses and private riding arenas in the A – Agriculture zoning district based on certain criteria
<i>Staff Recommendation:</i>	Approve
<i>Planning & Zoning Commission:</i>	Approve

Project Narrative

The Community Development Department requests approval of amendments to Sections 14-02-03, 14-03-06, 14-03-08, and 14-04-17 of the City Code of Ordinances to allow agriculture recreation uses and private riding arenas in the A – Agriculture zoning district based on certain criteria.

Planning staff has been asked by property owners to amend the zoning ordinance to allow for agriculture recreation uses that offer opportunities to promote agritourism and to amend the ordinance to allow private riding arenas that are larger in size than standard accessory buildings.

Planning and Zoning Commission Action

The Planning and Zoning Commission held a public hearing on this request on April 24, 2024. Representatives of Apple Creek Farms, the Tourism Division of the Department of commerce, and several citizens spoke during the public hearing. Concerns were raised by some that the proposed ordinance limited opportunities for agriculture recreation in particular that certain events, such as pumpkin patches, corn mazes

and u-pick produce should not be restricted to the major agriculture recreation uses.

At the conclusion of the public hearing, the Planning and Zoning Commission voted to continue the public hearing and directed staff to work with a representative of Apple Creek Farms and the Tourism Division of the ND Department of Commerce to address concerns expressed during the hearing.

Planning staff, a representative of Apple Creek Farms, and representatives of the Tourism Division met on May 3, 2024 to modify the ordinance to address concerns made during the public hearing.

A continued public hearing at the Planning and Zoning Commission meeting was held on May 22, 2024. Two members of the public spoke during the hearing. One member requested the lot/parcel size requirement for minor agriculture recreation uses be removed from the ordinance.

At the conclusion of the public hearing and based on the findings contained in the staff report, the Planning and Zoning Commission voted unanimously to approve the zoning ordinance text

(continued)

amendment with the removal the lot/parcel size requirement for minor agriculture recreation uses.

Planning staff, a representative of Apple Creek Farms, and representatives of the Tourism Division met on May 3, 2024 to modify the ordinance to address concerns made during the public hearing.

During this meeting, it was decided to revise the definitions of both major agriculture recreation and minor agriculture recreation to provide additional agriculture recreation opportunities and increase the number of days for a major recreation event from 12 to 30.

Revised Definitions

Agriculture Recreation, Minor. Any agricultural-related use that combines agriculture production with commercial recreation uses that are ancillary to the primary agricultural use. Such uses include education related events and tours, farm to table dinners, pumpkin patches, u-pick produce, Christmas tree farm, corn maze, and hayrides for someone other than the property owner. Minor agriculture recreation uses shall not exceed an occupancy of seventy-five (75) people at any one time.

Agriculture Recreation, Major. Any agricultural-related use that combines agriculture production with commercial recreation uses that are ancillary to the primary agricultural use. Such uses include but are not limited to education related events and tours, a celebration, ceremony, wedding, reception, corporate function, u-pick produce, Christmas tree farm, pumpkin patches, corn maze and hayrides for someone other than the property owner. A Major agriculture recreation use shall not exceed an occupancy of two-hundred fifty (250) people at any one time and shall not exceed thirty (30) days per calendar year.

Sources of Information

Planning staff reviewed ordinances from peer communities throughout the state and zoning

practice publications from the American Planning Association.

A stakeholder group, including representatives from the Planning and Zoning Commission, Board of Adjustment, representatives from Papas Pumpkin Patch, Apple Creek Farms and Grandpa Al's Hayrides was formed in the Fall of 2023 and five meetings have been held to draft and review the proposed amendments. City and County staff also met with representatives of the Convention and Visitors Bureau and the Tourism Division of the ND Department of Commerce in March and again in May 2024.

Proposed Changes

The proposed amendments include the following:

- Definitions for agriculture, minor agriculture recreation, major agriculture recreation, and private riding arena.
- Modify the lot/parcel size and increase the area of accessory buildings approved by special use permit for properties located in the A – Agriculture zoning district that are entirely outside of the Urban Service Area Boundary (USAB).
- Minor agriculture recreation uses permitted by right for properties located in the A – Agriculture zoning district that are entirely outside of the Urban Service Area Boundary (USAB).
- Major agriculture recreation uses approved by special use permit for properties located in the A – Agriculture zoning district that are entirely outside of the Urban Service Area Boundary (USAB) and include 35 or more acres. Criteria for approval include mitigation of noise and light impacts to adjacent properties, additional setback requirements and requirements to meet applicable building and fire codes.

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- Private riding arenas approved by special use for properties located in the A – Agriculture zoning district that are entirely outside of the Urban Service Area Boundary (USAB) and include 35 or more acres. Criteria for approval include location requirements, building size limitation of no larger than 22,000 square feet, setback requirements, restrictions for sales, training and/or similar events, and requirements to meet applicable building and fire codes.

Public Engagement

A stakeholder committee met on five occasions to draft, review and offer suggested changes to the draft ordinance.

Planning and Zoning Commission

The public has been duly notified of this request. A notice was published in the Bismarck Tribune on April 12 and April 19, 2024 and the hearing was continued to the next regular meeting of the Planning and Zoning Commission.

All written comments received by staff prior to the public hearing were distributed to the Planning and Zoning Commission prior to their April 24 and May 22, 2024, meeting and summarized by staff during the oral presentation.

City Commission

The public was duly notified of this request. A notice was published in the Bismarck Tribune on June 12 and June 19, 2024.

All written comments received by staff prior to the public hearing will be distributed to the City Commission prior to the June 25, 2024, meeting and summarized by staff during the oral presentation.

Basic project information, with the ability to contact staff for more details, has been provided publicly online through the Community Development Activities map.

Review Standards and Findings of Fact

The request is evaluated according to standards contained within the Comprehensive Plan, Bismarck Code of Ordinances, and relevant state law. Findings of fact, related to land use, are presented in response to each standard.

The goals and objectives of Together 2045 Bismarck’s Comprehensive Plan would be advanced by the proposed zoning ordinance text amendment ([Comprehensive Plan](#))

Yes. The following objective of the plan would be advanced through the proposed amendment.

Objective 17(e) states:

“Encourage agritourism that combines retail of local produce with unique experiences, such as vineyards, pumpkin patches, Christmas tree groves, community-supported agriculture, and farm-based event venues.”

The proposed text amendment is justified by a change in conditions since the zoning ordinance was originally adopted or clarifies a provision that is confusing, in error or otherwise inconsistent with the general intent and purpose of the zoning ordinance ([Goal S9-e](#), [G10-g](#))

Yes. This section of the zoning ordinance was previously amended in 2012, specifically relating to sizes of accessory buildings in the A – Agriculture zoning district within a certain distance of corporate limits. Conditions have changed since this time period, which justify the proposed revision. In particular, the utilization of the Urban Service Area Boundary (USAB) to designate areas suitable for agriculture recreation uses and private riding arenas.

The general intent and purpose of the zoning ordinance would be adhered to with the proposed amendment (Section 14-02-01; [NDCC 40-27-03](#))

Yes. The proposed zoning text amendment would support the purpose of the zoning ordinance, as stated in the City Code of Ordinances and North Dakota Century Code.

The proposed text amendment will preserve the overall integrity and coherence of the zoning ordinance ([Goal G10](#))

Yes. All sections of the zoning ordinance containing any references to or potential conflicts with the proposed zoning ordinance text amendment have been reviewed and corrected, as needed. Additional definitions for agriculture, agriculture recreation and private riding arena, and criteria for approval have been added to the ordinance to avoid misinterpretation, and to clarify uses and approval requirements.

Proper administrative procedures related to the request are being followed (Section 14-07-02, [NDCC Chapter 40-47](#))

Yes. All administrative procedures of the City Code of Ordinances and North Dakota Century Code have been followed to date. The zoning ordinance text amendment has been initiated by staff from the Community Development Department, on behalf of the Planning and Zoning Commission. A preliminary draft is attached to this report for consideration by the Planning and Zoning Commission.

The public health, safety and general welfare will not be adversely impacted by the proposed zoning text amendment ([Goal S10-a](#))

Yes. As a cumulative result of all findings contained in this staff report, City of Bismarck staff find that the proposed zoning text amendment would not adversely impact the public health, safety, and general welfare.

Certain federal and state requirements associated with commercial building construction may apply to event spaces / buildings associated with agriculture recreation and private riding areas, depending on the situation. Notably, any commercial use, regardless of size, that is open to the public must provide reasonable accommodations for persons with disability to be compliant with the Americans with Disabilities Act (ADA). Although this is not a zoning criterion, the property owner is still responsible for compliance.

Staff Recommendation

Based on the above findings, staff recommends approval of the zoning ordinance text amendment for Sections 14-02-03, 14-03-06, 14-03-08, and 14-04-17 of the City Code of Ordinances to allow agriculture recreation uses and private riding arenas in the A – Agriculture zoning district based on certain criteria.

Attachments

1. Revised draft zoning ordinance text amendment
2. Map of the USAB
3. Written Comments

CITY OF BISMARCK

ORDINANCE NO. 6579

<i>First Reading</i>	_____
<i>Second Reading</i>	_____
<i>Final Passage and Adoption</i>	_____
<i>Publication Date</i>	_____

AN ORDINANCE TO AMEND 14-02-03, 14-03-06, 14-03-08, 14-04-17, OF THE CODE OF ORDINANCES OF THE CITY OF BISMARCK, NORTH DAKOTA, AS AMENDED, RELATING TO RIDING ARENA AND AGRICULTURE RECREATION.

BE IT ORDAINED BY THE BOARD OF CITY COMMISSIONERS OF THE CITY OF BISMARCK, BURLEIGH COUNTY, NORTH DAKOTA:

Section 1. Amend. 14-02-03 of the Code of Ordinances of the City of Bismarck, North Dakota, relating to riding arenas, his hereby enacted to read as follows:

14-02-03. Definitions. The following definitions represent the meanings of terms as they are used in these regulations:

* * * * *

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

Agriculture Recreation, Minor. Any agricultural-related use that combines agriculture production with commercial recreation uses that are ancillary to the primary agricultural use. Such uses include education related events and tours, farm to table dinners, pumpkin patches, u-pick produce, Christmas tree farm, corn maze, and hayrides for someone other than the property owner. Minor agriculture recreation uses shall not exceed an occupancy of seventy-five (75) people at any one time.

Agriculture Recreation, Major. Any agricultural-related use that combines agriculture production with commercial recreation uses that are ancillary to the primary agricultural use. Such uses include but are not limited to education related events and tours, a celebration, ceremony, wedding, reception, corporate function, u-pick produce, Christmas tree farm, pumpkin patches, corn maze and hayrides for someone other than the property owner. A Major agriculture recreation use shall not exceed an occupancy of two-hundred fifty (250) people at any one time and shall not exceed thirty (30) days per calendar year.

* * * * *

Private Riding Arena: A building or portion of a building used exclusively for private equestrian activities by the property owner. A private riding arena must be ancillary to a single-family dwelling.

* * * * *

14-03-06. Incidental Uses. Permitted uses and approved special uses shall be deemed to include accessory uses and accessory structures that are customarily incidental to the principal use, subject to the following standards:

1. Accessory Uses and Buildings

* * * * *

b. One and two-family residential accessory uses and buildings

* * * * *

6. All allowable accessory buildings for a single-family rural residence in the agricultural zoning district (A) shall be limited to a maximum area of one (1) percent of the total lot area up to a maximum of five thousand (5,000) square feet. The maximum building height shall be limited to twenty-five (25) feet.

The allowable accessory buildings for a single-family rural residence on a lot in the agriculture zoning district (A) A – Agriculture zoning district with at least (40) acres in area, or the aliquot part of a corrective section intended to comprise a quarter-quarter section, provided such aliquot part is not less than thirty-five (35) acres in size area, and located entirely outside the Urban Service Area Boundary (USAB), may be increased to a maximum of seventy-five hundred (7,500) 8,000 square feet provided a special use permit is approved by in accordance with the provisions of Section 14-03-08.

The allowable accessory buildings for a single-family rural residence on a lot in the A – Agriculture zoning district with at least eighty (80) acres in area, or two aliquot parts of a corrective section intended to comprise two quarter-quarter sections, provide such aliquot parts are not less than seventy (70) acres in area when combined together, and located entirely outside the Urban Service Area Boundary (USAB), may be increased to a maximum of 15,000 square feet as a special use in accordance with the provisions of Sections 14-03-08 and 14-04-17.

A private riding arena up to 22,000 square feet, in addition to the accessory buildings allowed in this section for a single-family rural residence, may be located on a lot in the A – Agriculture zoning district with at least thirty-five (35) acres area, and located outside the Urban Service Area Boundary (USAB), as a special use in accordance with the provisions of Section 14-03-08.

* * * * *

14-03-08. Special Uses. In order to carry out the purposes of this title, the board of city commissioners finds it necessary to require that certain uses, because of unusual size, safety hazards, infrequent occurrence, effect on surrounding area, or other reasons, be reviewed by the city planning and zoning commission and by the Zoning Administrator (where allowed) prior to the granting of a building permit or certificate of occupancy and that the city planning and zoning commission and the Zoning Administrator (where allowed) are hereby given limited discretionary powers relating to the granting of such a permit or certificate.

* * * * *

4. Permanent uses (planning and zoning commission approval). The city planning and zoning commission is authorized to grant special use permits for the following uses:

* * * * *

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

1. The use is ancillary to the primary agricultural use.
2. The lot in which the use is located is at least thirty-five (35) acres in area.
3. The lot in which the use is located is outside the Urban Service Area Boundary (USAB).
4. Attendance is limited to two hundred and fifty (250) persons in attendance at any one time.
5. No more than thirty (30) days per calendar year, not to include minor agriculture recreation uses.
6. Site design and building(s) must conform to all applicable requirements of the International Building Code (IBC) and the International Fire Code (IFC) as

adopted by the City of Bismarck (Title 4 of the City Code of Ordinances – Building Regulations).

7. All parking areas shall be mowed and designed to prevent debris from the site entering the public right-of-way and be arranged to provide for orderly and safe loading or unloading and parking.
8. Access to buildings or areas associated with the agriculture recreation use shall be an all-weather access and be designed for safe and orderly access for patrons and emergency services.
9. Sound generated by the use shall meet the requirements outlined in Chapter 08-10 of the City Code of Ordinance.
10. All outdoor light fixtures shall be installed in a manner intended to limit the amount of off-site impacts. Light fixtures located near adjacent properties may require special shielding devices to prevent light trespass.
11. The use is setback a minimum of 50 feet adjacent to properties with a residential use, zoning, or land use classification.
12. A site plan, and if necessary, a stormwater management plan is submitted for review and approval prior to the issuance of a building permit or commencement of operations.

bb. Private riding arena: A private riding arena may be permitted in any A – Agricultural district as a special use provided:

1. The use is ancillary to and in conjunction with a single-family dwelling.
2. The lot in which the use is located is at least thirty-five (35) acres.
3. The lot in which the use is located is outside the Urban Service Area Boundary (USAB).
4. There will be no sales, shows, competitions, training clinics, or similar events within or on the premises in which the private riding arena is located. There will be no spectator seating, stands or bleachers within the arena.
5. The proposed building is setback a minimum of 100 feet adjacent to properties with a residential use or zoning.
6. Site design and building(s) must conform to all applicable requirements of the International Building Code (IBC) and the International Fire Code (IFC) as adopted by the City of Bismarck (Title 4 of the City Code of Ordinances – Building Regulations).

7. A site plan, and if necessary, a stormwater management plan is submitted for review and approval prior to the issuance of a building permit.

14-04-17. "A" Agricultural Zoning District. In an A agricultural district, the following regulations shall apply:

* * * * *

2. Uses Permitted. The following uses are permitted.

i. Agriculture Recreation, Minor, shall be allowed on a parcel entirely located outside the Urban Service Area Boundary (USAB), and shall not exceed an occupancy of seventy-five (75) people at any one time.

* * * * *

The following special uses are allowed as per Section 14-03-08 hereof:

* * * * *

u. Private riding arena

v. Agriculture Recreation, Major

* * * * *

11. Accessory Buildings.

* * * * *

The allowable accessory buildings for a single-family rural residence on a lot in the ~~agriculture zoning district (A)~~ Agriculture zoning district with at least (40) acres in area, or the aliquot part of a corrective section intended to comprise a quarter-quarter section, provided such aliquot part is not less than thirty-five (35) acres in size area, and located entirely outside the Urban Service Area (USAB) may be increased to a maximum of ~~seventy-five hundred (7,500)~~ 8,000 square feet provided a special use permit is ~~approved by~~ in accordance with the provisions of Section 14-03-08.

The allowable accessory buildings to a non-farm single-family residence may be increased to a maximum of fifteen thousand (15,000) square feet in area provided:

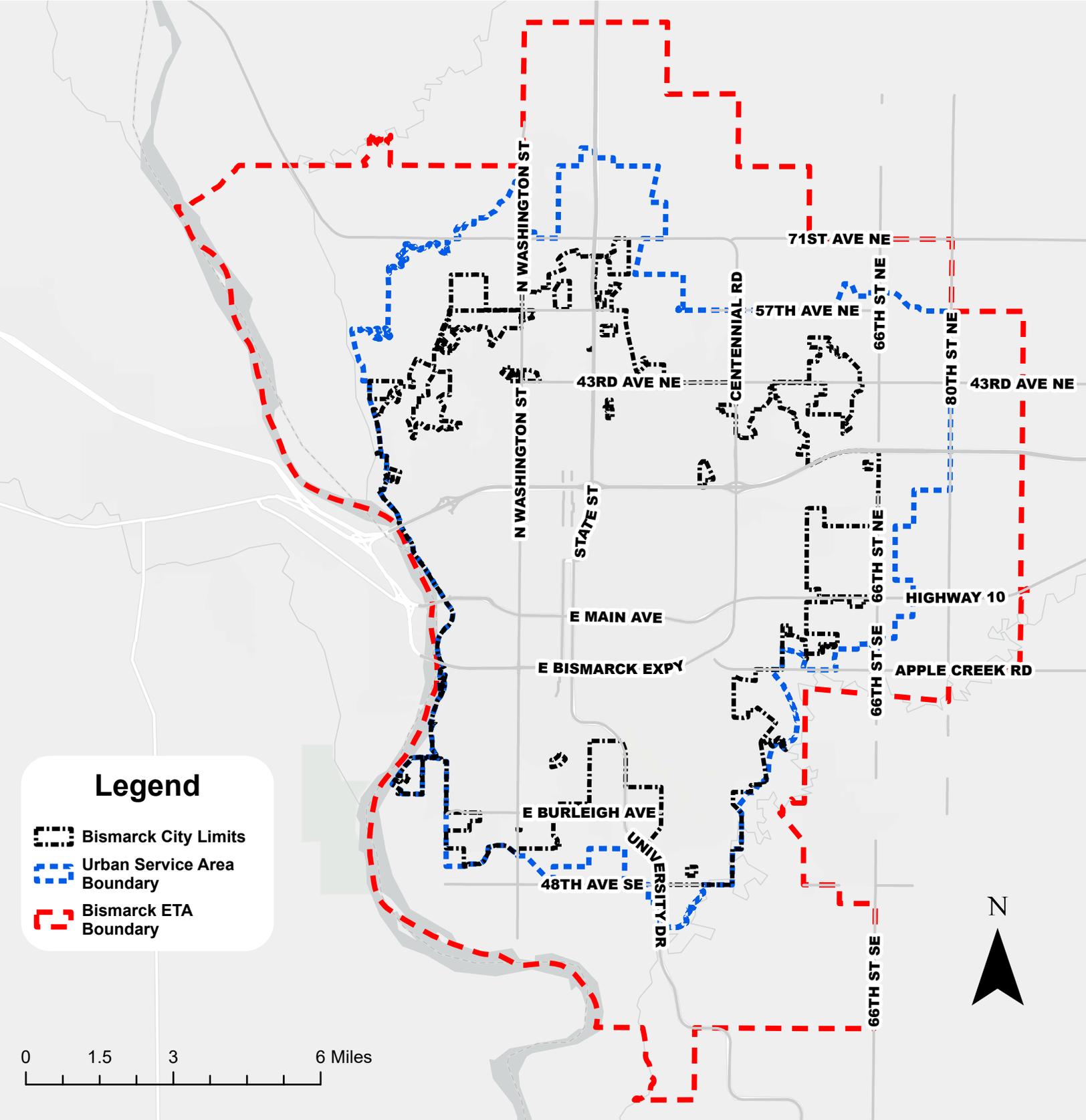
- a. ~~The property on which the accessory building(s) is to be located is no less than 80 acres in area, or two aliquant parts of a corrective section intended to comprise two quarter-quarter sections, provided such aliquot parts when combined are not less than seventy (70) acres in area.~~
- b. ~~The property on which the accessory buildings(s) is to be located is at least two (2) miles from the current corporate limits of Bismarck.~~
- c. ~~A special use permit is approved by the Planning Commission in accordance with provisions of Section 14-03-08.~~

~~The allowable accessory buildings for a single-family rural residence on a lot in the A – Agriculture zoning district with at least seventy (70) acres in area and located entirely outside the Urban Service Area Boundary (USAB), may be increased to a maximum of 15,000 square feet as a special use in accordance with the provisions of Sections 14-03-08.~~

~~A private riding arena up to 22,000 square feet, in addition to the accessory buildings allowed in this section for a single-family rural residence, may be located on a lot in the A – Agriculture zoning district with at least thirty-five (35) acres area, and located entirely outside the Urban Service Area Boundary (USAB), as a special use in accordance with the provisions of Section 14-03-08.~~

* * * * *

- Section 2. Severability. If any section, sentence, clause, or phrase of this ordinance is for any reason held to be invalid or unconstitutional by a decision of any court of competent remaining portions of this ordinance.
- Section 3. Repeal. All ordinances or parts of ordinances in conflict with this ordinance are hereby repealed.
- Section 4. Effective Date. This ordinance shall take effect after final passage, adoption and publication.



Legend

-  Bismarck City Limits
-  Urban Service Area Boundary
-  Bismarck ETA Boundary



Sarah Fricke

From: sfricke@bismarcknd.gov
Subject: FW: Apple Creek Farms Request for approval of ordinance of Ag Recreation Minor & Ag Recreation Major

From: [REDACTED] >
Sent: Tuesday, April 23, 2024 3:27 PM
To: Planning - General Mailbox <planning@bismarcknd.gov>
Subject: Apple Creek Farms Request for approval of ordinance of Ag Recreation Minor & Ag Recreation Major

CAUTION: *External Email - Use caution clicking links or opening attachments*****

Re: Apple Creek Farms Request for approval of ordinance of Ag Recreation Minor & Ag Recreation Major

I'm writing to officially share my support of Apple Creek Farms Request for approval for the ordinance to allow Ag Recreation Minor & Ag Recreation Major for the activities they host at their property.

Albeit I am **opposed** to the city of Bismarck having the ETA or jurisdiction in this area in the first place.

With that stated, I am a North Dakota resident, a community member of approx. 20 years in the Bismarck **rural** area (*I live just across the road from Apple Creek Farms*) & close neighbor of Apple Creek Farms, I support the events they host at this location AND I support their Request for approval of ordinance of Ag Recreation Minor & Ag Recreation Major.

It's likely that I may not be able to attend the public meeting in person, be sure to include this letter of support.

I've lived in this area long before Apple Creek Farms began their events. I have yet to experience so much as one negative issue or even an inconvenience due to the events / activities held at Apple Creek Farms. In fact, on the contrary, thus far it's been nothing but a positive improvement to our community. The property and landscaping is pleasant to look at, the events are well organized and respectful.

I'd also like to know specifically how and why Apple Creek Farms is being seemingly singled out. Who decided this was an issue and why? Was it a specific employee within the City of Bismarck or complaint from who?

Respectfully,

Jeanne David

1100 80th Street SE

Bismarck, ND 58504

701-[REDACTED]

Sarah Fricke

From: Planning - General Mailbox
Sent: Tuesday, April 23, 2024 4:48 PM
To: Sarah Fricke; Daniel Nairn; Isak Johnson; Jenny Wollmuth; Lauren Oster
Subject: FW: Apple Creek Farm Request for Approval of Ordinance of Ag Recreation Minor & Major

From: Sara Timmer [REDACTED]
Sent: Tuesday, April 23, 2024 4:12 PM
To: Planning - General Mailbox <planning@bismarcknd.gov>
Subject: Apple Creek Farm Request for Approval of Ordinance of Ag Recreation Minor & Major

CAUTION: *External Email - Use caution clicking links or opening attachments*****

Hello,

I am writing to share my support for Apple Creek Farm's request for approval of the ordinance to allow ag recreation minor and major for the activities they host at their property.

I am a lifelong resident of Bismarck, having lived here for 36 years, and I am in full support the events hosted at Apple Creek Farm. I believe they serve a great purpose in the community.

Though I will not be able to attend the meeting, I would like to have my letter of support considered.

Sincerely

Sara J. Timmer