

Planning Commission Staff Report

January 14, 2016

Item 3

Applicant: David & Ingrid
Nemelka

Location: 903 S Nemelka
Lane

Prepared by: Sean Conroy,
Community Development
Director

Public Hearing: No

Zone: A-2

Attachments:

1. Application materials.
2. PC minutes dated 10/23/14.

REQUEST

Consideration of a review of a Conditional Use Permit issued on October 23, 2014 to operate an existing single-family residence as a short-term vacation rental located in the Agricultural-Residential A-2 zone.

BACKGROUND AND PROJECT DESCRIPTION

The subject property is approximately 11 acres in size and is developed with a 17,000 square foot residence. The residence includes 9 bedrooms, an indoor pool, indoor basketball/racquetball court, an outdoor tennis court and other amenities. The home sits back approximately 425 feet from the street and has a large concrete driveway.

On September 16, 2014 the City Council adopted an ordinance allowing for short-term rentals (less than 30 days) on properties in the A-2 zone with specific conditions. On October 23, 2014 the Planning Commission issued a Conditional Use Permit for a short-term rental at the subject property. One of the conditions included in the approval required the applicant to return to the Commission after one year. The purpose of this item is to comply with the Commission's requirement for a one year review.

EVALUATION

Public Hearing & Conditional Use Permit Review: According to Mapleton City Code, conditional use permits require review by the Planning Commission, but do not require a public hearing. Whether to allow for public comment on this item is at the discretion of the Commission. If public comment is allowed, it is important to note that conditional use permits are considered administrative in nature. Administrative decisions cannot be made based simply on public clamor or because the Commission or public is not supportive of a particular use.

The Commission's discretion is limited to determining whether the applicant has complied with the conditions of the permit and whether issues have arisen that would justify modifying or adding conditions. The purpose of this meeting is not to determine whether the original permit ever should have been issued or whether vacation rentals should be allowed at all.

Below is a summary of the conditions imposed by the Planning Commission on October 23, 2014 followed by a brief staff response to each condition. The applicant has also provided a summary of the past year included in attachment "1".

1. *This conditional use permit is non-transferable and shall expire upon transfer of title of the property.*

Response: No change in ownership of the property has occurred. Staff does not recommend any modifications to this condition.

2. *The Planning Commission shall review the conditional use permit in one year and modify the conditions if necessary to address any issues that may have arisen.*

Response: Condition #2 is the purpose of this agenda item. Staff has not received any formal complaints regarding the operation of this short-term rental since its business license was issued on December 23, 2014. The police department has not had to respond to any issues related to parking, disturbing the peace or any other public disturbances. Staff is not recommending any modifications to the conditions of the permit.

3. *The rental shall be located on a legal lot of record of five (5) acres in size or larger*

Response: The property still exceeds the minimum size requirement of five acres.

4. *The property is developed or will be developed with a single-family residence that has received proper building permit approvals*

Response: This condition was met prior to the issuance of the original conditional use permit.

5. *A minimum of 11 on-site parking spaces shall be provided on site.*

Response: The on-site parking exceeds the 11 parking spaces required. Staff is unaware of any parking problems that have been caused by the short-term rental use.

6. *A business license shall be obtained prior to operation.*

Response: The applicant obtained a business license on December 23, 2014 and the license is still current.

7. *A building and fire inspection shall be required prior to issuance of a business license.*

Response: Prior to the issuance of the business license the property was inspected by both the building official and the fire marshal. The property is in compliance with applicable building and fire standards.

8. *The applicant shall register with the State Tax Commission and pay the Municipality Transient Room Tax.*

Response: The applicant has complied with this condition.

9. *Failure to comply with the standards of this section and/or conducting the short-term rental property in a manner constituting or conducive to a breach of the public peace or a menace to the public health, safety, morals or welfare may result in a revocation of the conditional use permit by the planning commission.*

Response: Staff is unaware of any evidence that would suggest that the conditional use permit should be revoked.

10. *The property shall be rented as a single unit. Individual rooms may not be rented separately.*

Response: Staff is unaware of any violations of this condition.

11. *All rental contracts shall require a minimum of stay of two (2) consecutive nights.*

Response: Staff is unaware of any violations of this condition.

12. *All short term residential rental properties shall designate a local property manager. The local property manager shall be available twenty four (24) hours per day to respond to tenant and neighborhood questions or concerns. Each short term residential rental property shall have a clearly visible sign within the unit containing the name and phone number of the local property manager.*

Response: The property has a designated property manager that is available to respond to questions or concerns.

13. *No on-site camping shall be permitted (i.e. tents, RV's, campers, etc.). All tenants shall utilize the indoor sleeping accommodations provided with the rental.*

Response: Staff is unaware of any violations of this condition.

14. *The owner and property manager shall be jointly and severally liable for any violations of this article. Any rental dwelling unit which is found in violation of this article or any other provision of the city code may be subject to revocation of the short term residential rental property's business license and the conditional use permit. For the purpose of item G and L of this provision the disturbing the peace ordinance in section 9.12.040.A of this code shall include any disturbances between the hours of 10:00 p.m. to 7:00 a.m.*

Response: Staff has not received any complaints or evidence of violations of the disturbing the peace ordinance.

15. *The applicant shall agree, at its sole expense, to defend, indemnify, and hold harmless the City, its public officials, officers, employees, and assigns, from any liability; and shall reimburse the City for any expense incurred, resulting from, or in connection with any*

appeal, claim, suit or other legal proceeding related to the short-term residential rental property approval.

Response: Staff recommends that this condition remain in place.

RECOMMENDATION

Staff recommends that the Commission determine that no changes to the Conditional Use Permit are required.

January 6, 2016

To: Mapleton Planning Commission

From: David N. Nemelka, on behalf of the Nemelka Family

Re: Vacation Rental of the Nemelka Residence

For the one year review of the Nemelka Residence vacation rental, I think it might be helpful for your review if we provide the Planning Commission with a summary of how the rental is functioning.

We have had an inspection by the city and have met all requirements per the Short-Term Rental requirements of the City.

Three primary areas of concern for the City and Neighbors at the time of approval were the following:

1. Parking. The city requires 11 on-site parking spaces. We have provided the City with a map outlining our parking spaces. With the 5 acre requirement we have adequate parking for many more than 11 vehicles. During the 2015 rental season, the number of cars parked on our property was typically 10 – 15 vehicles. We are not aware of any parking issues with the neighbors or the city. When we check people in at the property, we make sure that they are aware that we do not allow parking below our circular driveway or on the public streets.
2. Noise. The City has required that no disturbances of the peace occur after 10 pm or before 7am. We are not aware of any violations of this requirement during the rental season. To mitigate potential violations of this requirement, we put in our contract with renters that if they violate this code they are subject to eviction. We also remind them at time of check-in that they are guests and that it is important that they do not disturb the peace or cause disruptions to the neighborhood.
3. On site property manager. We have a property manager who lives on site at the retreat. He is available to address issues with renters and neighbors. He is not aware of any issues that were created with neighbors during the rental season. Having an on-site person has been very important in dealing with maintenance and compliance. We think this is an important reason for the minimal impact our retreat has had on the neighborhood.

The house was rented for a total of 124 days during the year or 34% of the year.

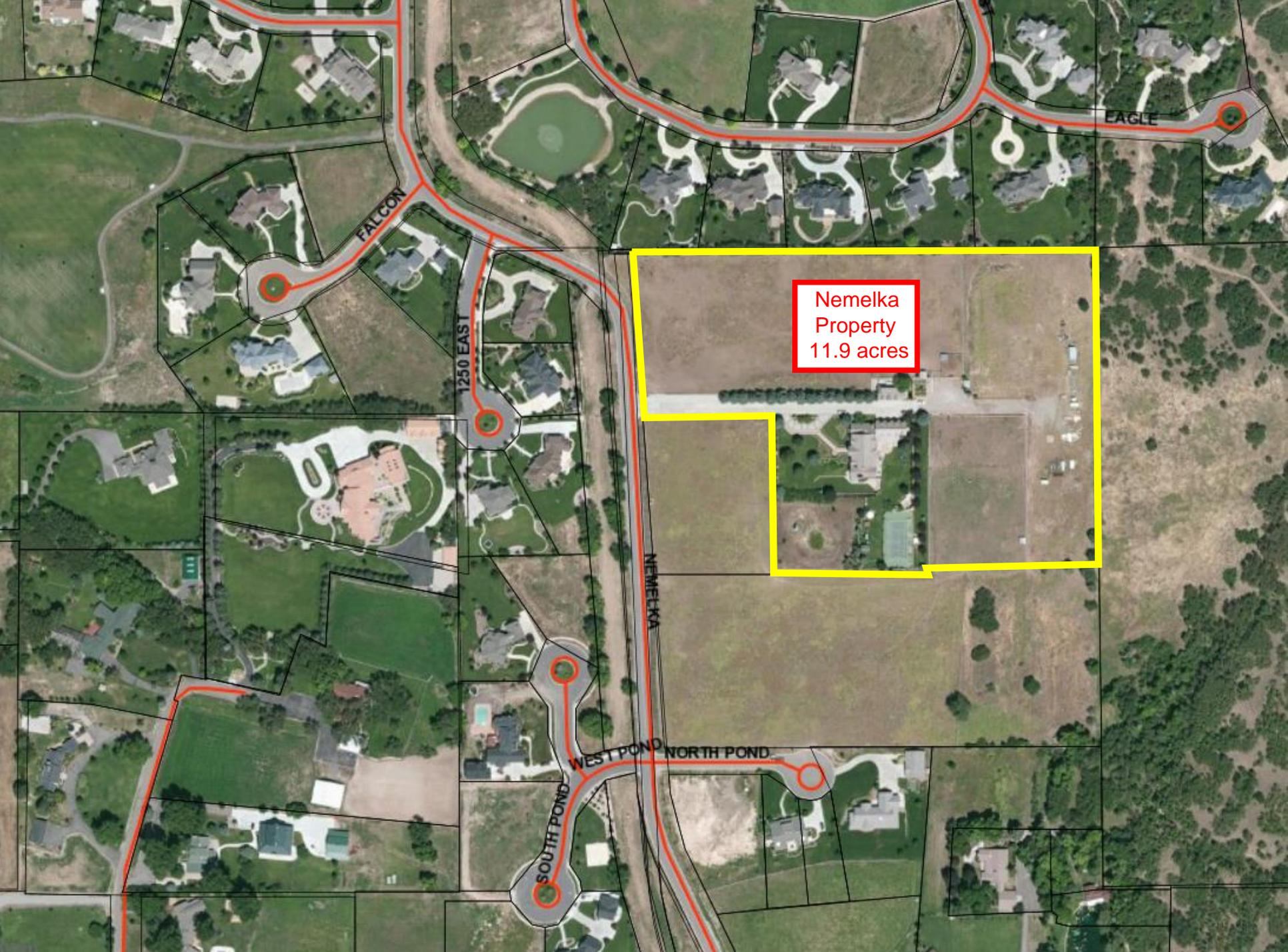
During the summer (June, July, August) most groups that rented the house were 45 – 55.

During the non-summer months, most groups were in the 25 – 50 persons range.

We had several Mapleton residents rent the retreat in 2015. They were grateful to have a place so close to home to be able to use for their families. For these families having the retreat was a positive benefit to living in Mapleton.

Sincerely,

David N. Nemelka



Nemelka
Property
11.9 acres



No.	Date	By	Notes

Designed _____
 Drawn _____
 Checked _____
 Date _____

Title: **NEMELKA PROPERTY MAPLETON**
 Client: **DAVID NEMELKA**
 Drawing Name: **PARKING PLAN**

PROJECT NO.
 2012-083
 SHEET NO.

**MAPLETON CITY
PLANNING COMMISSION MINUTES
October 23, 2014**

PRESIDING AND CONDUCTING: Chairman Rich Lewis

Commissioners in Attendance: Golden Murray
Justin Schellenberg
Keith Stirling

Staff in Attendance: Sean Conroy, Community Development Director

Minutes Taken by: April Houser, Executive Secretary

Chairman Lewis called the meeting to order at 6:30pm. Keith Stirling gave the invocation and Golden Murray led the Pledge of Allegiance.

Items are not necessarily heard in the order listed below.

Alternate Commissioner Justin Schellenberg was seated as a voting member this evening.

Item 1. Planning Commission Meeting Minutes – September 25, 2014.

Motion: Commissioner Stirling moved to approve the September 25, 2014 Planning Commission Minutes.
Second: Commissioner Murray
Vote: Unanimous

Item 2. Consideration of a request for a Conditional Use Permit to operate an existing single-family residence as a short-term vacation rental located at 903 South 1300 East in the Agricultural-Residential A-2 Zone. The applicants are Dave and Ingrid Nemelka.

Sean Conroy, Community Development Director, went over the Staff Report for those in attendance. The property is approximately 12 acres in size with a home of 17,000 square feet and a number of amenities. The City Council reviewed this ordinance and adopted it in September of this year. The purpose of this meeting tonight is not to dispute short term rentals in the A-2 Zone, as that has already been approved. The key points to be considered are first; what are the criteria of a short term rental in the A-2 Zone based on the recently approved ordinance, and second; does this request meet those criteria. This property would be required to provide 11 off street parking spaces. The proposed Conditions of Approval listed in the Staff Report were discussed. Staff feels the application can comply with the requirements of the ordinance. The definition of short term is anything less than 30 days. The occupancy is still considered residential, but there are certain requirements that will be required to help ensure the safety of those staying in the home.

David Nemelka, the applicant, stated that they have been through several hearings and feel they have addressed all of the concerns raised. **Commissioner Murray** asked how they plan to address the possible issue where people are unable to find the property, and David stated that they will put a sign up. They

will also ask those renting the unit not to bother the property owners in the area for directions to the home. The tenants will be required to adhere to the 10pm and 7am noise concerns, and the applicant plans to take all steps possible to ensure these are not being violated.

Chairman Lewis opened the Public Hearing. **Skip Tandy** stood in behalf of himself and the Smaldones, who were unable to attend the meeting this evening. He felt that using 1300 East would be a more appropriate address listing. Mr. Tandy lives directly to the west of this property. They are happy other people can enjoy this home, but want to make sure it stays within certain parameters. Skip asked if the property could be rented to commercial businesses. Sean stated that they could as long as it was for at least 2 consecutive nights. Mr. Tandy gave an IBC Report handout to each Commissioner, and addressed some concerns he had in regards to this code being met. He feels the home should be required to be fire sprinkled. Skip Tandy gave an email to the Commissioners and Staff as well from the State Fire Marshall stating the need for Fire Sprinklers on the property. He would like this information passed on to the City Attorney to give his input on what he feels should be required from the applicant. **Gary Williams** owns the 7.5 acres of property to the south of the Nemelka property. He utilizes these vacation properties personally. He is a professor at BYU and feels that this is a substantial business, and is very much a commercial enterprise. Mr. Williams feels it should be considered as a resort facility. He wonders if this is truly the intent of the City to allow for this type of Conditional Use Permit. Gary read two letters, one from his wife and the other from himself, to those in attendance. He believes there is a repurposing issue here, and that this should be considered a boutique hotel. Skip Tandy stood again and stated that the Nemelka's do keep the property very nice, and that Ingrid still lives in Mapleton. **Ingrid Nemelka**, applicant, is not trying to run a boutique hotel. She still owns the home, and David is the one who is managing it and she would very much vote against it being considered a commercial boutique hotel. Sean stated that the Commission does have the ability to limit the occupancy allowed if they desire to do so. The Planning Commission is the final decision making body for this item unless there is an appeal. Mr. Nemelka stated that they have approximately 33 beds in the home. In peak seasons they anticipate renting the home 24-25 nights per month, and down to 10 nights a month in slow seasons. They do not anticipate the home to be rented more than 100 nights per year. They are trying to be considerate of the neighbors, and are just trying to do what they need to do for their family. Gary Williams stood again and stated his concern is the order of magnitude. David Nemelka stated that he is very comfortable with 55-60 occupants on the home. Chairman Lewis feels this should be approved with the stipulation that if and when the property sells the new applicant/owner would need to come back before the Planning Commission if they wanted to continue the use. Staff felt it would be arbitrary to stipulate a number in regards to occupancy. If the Commission desired they could put a condition on the Use Permit that a yearly review of the property take place in order guarantee that all concerns are being addressed. No additional comments were given and the Public Hearing was closed.

Motion: Commissioner Murray moved to approve the Conditional Use Permit to operate an existing single-family residence as a short-term vacation rental located at 903 South 1300 East in the Agricultural-Residential A-2 Zone, with the conditions listed below:

1. The rental shall be located on a legal lot of record of five (5) acres in size or larger.
2. The property is developed or will be developed with a single-family residence that has received proper building permit approvals.
3. A minimum of 11 on-site parking spaces shall be provided on site.
4. A business license shall be obtained prior to operation.
5. A building and fire inspection shall be required prior to issuance of a business license.
6. The applicant shall register with the State Tax Commission and pay the Municipality Transient Room Tax.

7. Failure to comply with the standards of this section and/or conducting the short-term rental property in a manner constituting or conducive to a breach of the public peace or menace to the public health, safety, morals or welfare may result in a revocation of the Conditional Use Permit by the Planning Commission.
8. The property shall be rented as a single unit. Individual rooms may not be rented separately.
9. All rental contracts shall require a minimum of stay of two (2) consecutive nights.
10. All short term residential rental properties shall designate a local property manager. The local property manager shall be available twenty four (24) hours per day to respond to tenant and neighborhood questions or concerns. Each short term residential rental property shall have a clearly visible sign within the unit containing the name and phone number of the local property manager.
11. No on-site camping shall be permitted (i.e. tents, RV's, campers, etc.). All tenants shall utilize the indoor sleeping accommodations provided with the rental.
12. The owner and property manager shall be jointly and severally liable for any violations of this article. Any rental dwelling unit which is found in violation of this article or any other requirement of this code may be subject to revocation of the short term residential rental property' business license and the Conditional Use Permit.
13. The applicant shall agree, at its sole expense, to defend, indemnify, and hold harmless the City, its public officials, officers, employees, and assigns, from any liability; and shall reimburse the City for any expense incurred, resulting from, or in connection with any appeal, claim, suit or other legal proceeding related to the short-term residential rental property approval.
14. The Conditional Use Permit is reviewed in a year to determine if there are any additional issues and concerns that need to be addressed or amended with the Conditional Use Permit (CUP).
15. If the property sells the Conditional Use Permit terminates.

Second:

Commissioner Stirling

Vote:

Unanimous