

PLANNING & ZONING MEETING MINUTES

November 15th, 2017

OPENING CEREMONIES AND PRESENTATIONS

I. CALL TO ORDER

Chairman Gene Jackson called the meeting to order at approximately, 7:10 AM.

ROLL CALL

Present were: Chairman: Gene Jackson Vice Chairman:
Commissioners: Shirley Dukart, Scott Decker, Scott Bullinger, Scott Karsky and Dean Franchuk

Absent: City Attorney Haylee Cripe and Vice Chair Jason Fridrich

Staff: City Engineer Craig Kubas, Planning Director Walter Hadley, City Attorney Christina Wenko and County Planner Steve Josephson

II. ORDER OF BUSINESS

MOTION BY: Scott Bullinger **SECONDED BY:** Shirley Dukart

DISPOSITION: Motion carried unanimously.

MOTION BY: Scott Decker **SECONDED BY:** Scott Karsky
Approve meeting minutes dated October 18th, 2017 as amended.

DISPOSITION: Motion carried unanimously.

Planning Commissioner Scott Bullinger stated the adjournment time for the October meeting minutes should be amended to 8:49 AM.

County Planning Director Steven Josephson presented a letter dated November 7th 2017 from Rikki Roehrich stating that the state of North Dakota has accepted the City of Dickinson's Renaissance Zone amendment..

III. ACTION ITEMS – AGENDA

1. To consider an amendment to the zoning text in Chapter 39 "Zoning" under the Section 39.019, 39.04.005, & 39.06.005 to include Pet Daycare facilities. The purpose of the amendment is to add a definition and classify use within all Agricultural, Residential, Commercial, and Industrial zoning designations within the City.

Planning Director Walter Hadley presented a zoning text amendment change to Chapter 39 under sections 39.019, 39.04.005, & 39.06.005. Mr. Hadley stated this amendment is consistent with previous discussions. Mr. Hadley stated he did receive one email opposed to the pet daycares being located in R-1 zoning.

Chairman Gene Jackson asked Attorney Christina Wenko if she had any comments. Ms. Wenko, who is filling in for Attorney Cripe, stated this ordinance as written is in compliance with discussions that have taken place at the Planning and City Commission meetings regarding how to address code violations if it were passed today. Ms. Cripe has done a great job drafting this amendment.

Mr. Jackson opened up the hearing for public comments, there being none the public portion of the hearing was closed.

Mr. Bullinger asked what the comment was regarding the dog daycare. Mr. Hadley stated it was from a realtor who is opposed to the Dog Daycare in R-1 zoning. Chairman Jackson said that needs to be part of the record.

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Commissioner Shirley Dukart asked if a Special Use Permit for dog daycares are still required in residential. Mr. Hadley stated that is correct. Mr. Jackson clarified that's in R-1.

Approval

ZONING TEXT AMENDMENT

Chapter 39 "Zoning" under the Section 39.019, 39.04.005, & 39.06.005
to include Pet Daycare facilities

MOTION BY: Scott Decker **SECOND:** Scott Karsky

DISPOSITION: Roll call vote... Aye 5, Nay 1, Absent 1

Motion declared duly passed.

2. To consider an amendment to the zoning text in Chapter 39 "Zoning" under the Section 39.05 Special and Overlay Districts. The purpose of the amendment is to add an Airport Overlay District.

Planning Director Walter Hadley presented a zoning text amendment change to Chapter 39 under section 39.05. There is a draft ordinance provided, there will be a final draft presented to the City Commission.

Mr. Jackson asked what stage this amendment is in the County process. Commissioner Dean Franchuk stated they approved it yesterday at the County Commission meeting. Commissioner Scott Decker stated it has been approved at the County Planning & Zoning Commission as well.

Matt Nisbet with KLJ explained this ordinance was drafted based on the findings of the joint Airport Zoning Commission; it is the final step of approval. Mr. Jackson requested a summary explaining what this does for the public. Mr. Nisbet explained how this protects the flying public, the people on the ground, allows for federal funding and creates protected air space. Mr. Nisbet discussed the City and County Board's plans, stating the guidelines are more black and white. The plans are a lot more defined with land use compatibility.

Mr. Bullinger questioned if there are any issues with noncompliance at this time. Mr. Nisbet stated if there are expansions there could be retroactive issues, but there are no immediate issues at this time.

Mr. Jackson opened up the hearing for public comments, there being none the public portion of the hearing was closed.

Approval

ZONING TEXT AMENDMENT

Chapter 39 "Zoning" under the Section 39.05 Special and Overlay Districts

MOTION BY: Scott Karsky **SECOND:** Shirley Dukart

DISPOSITION: Roll call vote... Aye 6, Nay 0, Absent 1

Motion declared duly passed.

IV. WORK SESSION – AGENDA

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1. Residential Landscape Amendment - Chapter 39

Mr. Jackson opened the discussion, noting that Mr. Fridrich has some comments on the matter; he is not present today. Mr. Jackson stated Mr. Fridrich will have time to give his input at a later date, today we will just be giving staff direction.

Mr. Hadley stated there have been consistency issues on how landscaping has been administered, we are trying to preserve the urban forest in Dickinson, those being the publicly owned trees on publicly owned grounds. The City needs to decide where we want this to go beyond us, will we require trees to be planted upfront or do we require a bond. Mr. Hadley stated trees and lighting should be done when the development is being done, or a bond could be made out to the Urban Forestry department so the city forester could plant the trees. Mr. Hadley added Building Official Schwindt isn't here today and agrees with the concept of changing these standards so they are easier to enforce, his department deals with this day to day, and we need to have a plan before spring.

Mr. Hadley stated that Riverfront Estates Addition, as an example, presented a tree/lighting plan. We should require something like that for every development, that's a reasonable plan for street lighting, signs and trees. Developments and new construction should have a plan including these things, but we can still be flexible with the existing homeowners.

Mr. Jackson stated he sees three big issues; how many trees, where are the developers planting the trees and the enforcement part of it. Mr. Jackson stated personally in a perfect situation, communities want to see trees in the boulevard when homes are built; we need to look at that with the flexibility to do different things. Mr. Jackson added he is struggling with holding the developer responsible, especially when there is a start and stop nature with developers; this is where the home owners should be planting the trees. Mr. Jackson stated the enforcement side of this should be left up to staff. Mr. Jackson stated we should have some direction on those three things.

Mr. Decker asked about creating canopies, as you drive down the newer streets are they wider now. City Engineer Craig Kubas stated yes the new streets are 40 feet wide with a 66 foot right of way, allowing for more room in the boulevard. Mr. Decker stated these would be large trees needed to create canopies, trees that could damage sidewalks, boulevards and leave the homeowners responsible for repairs.

Mr. Decker stated the amount of trees will always be debatable, whether there are no trees, one tree or 14 trees. This it's problematic that the City requires a specific location the trees should be planted. If we as a commission are requiring trees be planted, people should be allowed to plant them where they want. Mr. Decker states he doesn't have an answer for the enforcement side of it.

Building Inspector Jim Thorpe stated we have been working with people on interpretation on the amount of trees we are asking people to plant, giving them a break since we are looking at changing the code. Mr. Jackson asked if we are sending letters to people whose trees have died. Mr. Thorpe stated that is something we could be doing in the future. Mr. Jackson stated he has an issue with asking homeowners to replace trees that have died, especially if they are older homes. Ms. Dukart stated the developers she has worked with have an issue having to install the trees especially in the winter months.

Mr. Thorpe stated a Temporary Certificate of Occupancy is issued to allow time to complete the landscaping; we have no teeth in enforcing the completion. The Building Department gives them until June of the next year when a Temporary Certificate of Occupancy is issued in the fall; no one can plant anything during the winter months. Mr. Thorpe stated there are a lot of people questioning the tree requirement and why we round the number up and not down. The front yard and side yard are green space, the back yard is not and some corner lots require a lot more trees than what would seem to be reasonable.

Ms. Dukart stated with a triple garage you can't plant all those trees. Mr. Thorpe stated as you widen the area for a garage you impede the green space. Mr. Kubas stated with garages it's always a reevaluation process with construction; the drive way widths should only be as wide as your garage or up to 40ft. Trees can do damage, we do have a preferred tree list with trees that tend not branch out, not damaging the concrete but it's not guaranteed. Mr. Decker stated canopies would require larger trees. Mr. Jackson stated the word canopy suggests hanging over the whole street.

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Mr. Hadley stated corner lots can be revaluated and the homeowners don't want to plant that many trees either. We don't want to regulate the homeowners front yard landscaping. He questioned if are we going to go after people when their trees have died. These homes may have been sold several times. If a tree dies in the right of way are we going to force the home owner to replace that, is this their tree to replace or a function at that point for the City Forester to follow up with. We need a simple solution so this isn't a big issue. Mr. Jackson stated there are different thoughts on how this can go; we need to look at the widths of the boulevards, and the little boulevards aren't cutting it. Mr. Kubas stated we need wider right of ways, the developers don't want to give up the square footage, they want to build on it. The boulevards are very important; we need the snow storage space, narrower streets is a discussion we can have, there are cost savings along with long term maintenance savings. Mr. Jackson stated when we are talking about a three ft. boulevard compared to a six ft. boulevard it makes a difference.

Mr. Karsky stated we should have a standard minimum of one tree, corner lot two trees, if the tree dies in the first five years you're required to replant it. There should also be a list of acceptable trees and suggested trees. If they have a boulevard the tree is planted there. Leaving it up to the developer is a challenge this should be up to the property owner.

Mr. Decker stated we can't tell people what they can or can't plant in their yards. Mr. Karsky stated if it's in the boulevard we should have a say in what's planted, but agreed with Mr. Decker that people should be able to plant whatever they like in their own yards. Mr. Jackson added we can't go into someone's yard and tell them what they can or can't plant, unless they are required to plant the tree in the boulevard. Mr. Jackson added he liked the summary Mr. Karsky's suggested, we could add two trees to the side yard on corner lots.

Public Works Director Gary Zuroff stated he would like to thank Mr. Thorpe for all of his help in the absence of an Urban Forester. Mr. Zuroff stated per the City Ordinance the City Forester is responsible for approving any trees planted in the boulevard. There is an application available at Public Works along with a list of approved trees that can be planted in the boulevard. There will be a Forester hired this next year. The City of Dickinson planted 100 trees in the boulevard last year, spending about \$20,000. That's about \$180-\$200 a tree.

Mr. Jackson asked Mr. Hadley if he was getting a feeling of direction from the Commission. Mr. Hadley stated not regarding private property, when planting trees they go in the boulevard but if there is no boulevard they go in the front and side yard. Mr. Decker stated if there's no boulevard can they plant the trees anywhere with a new home. Mr. Kubas stated there were developments approved by Planning & Zoning previously that don't have boulevards with very narrow streets, there's building going on in older subdivisions. Today's standards require that there's a 66 foot right of way, 40 foot street, 1 ½ foot curb on each side, five foot side walk on each side and a ½ foot behind the sidewalks to not disturb the property pins creates the seven foot boulevard.

Mr. Decker used Sundance Coves as an example; he questioned if the requirement would be to allow trees in the back yard. Mr. Jackson stated he doesn't think so. Mr. Decker added you will meet some resistance. Mr. Hadley stated you should use a list of allowable trees, requiring them to be in the front yard, boulevard, or front easement.. Mr. Jackson added he's hearing if a tree dies, a year later we are going back and telling the property owner he has to replant it, Mr. Jackson stated he is struggling with doing that.

Ms. Wenko interjected stating from a legal perspective the retroactive nature of enforcement going too far back should give the City concern; legally moving forward if it's in the works and pending that's a different story. When someone is not willfully complying, the City needs some teeth so they do comply; having some fines or fees in place, there isn't anything like that in the existing code section. The City needs a mechanism to deal with this, and it can be tailored to deal with these circumstances.

Mr. Jackson asked Mr. Decker how he feels about tree replacement in the boulevard, if it's at the City's expense. Mr. Decker stated he doesn't have an opinion at this time he will look into it a little more. Mr. Decker said he feels like the Code Enforcement Department has more important things to do than drive around and look for trees that aren't planted. Mr. Jackson stated staff needs some flexibility and we need some good faith effort from the owner or builder planting the trees; after it's planted in the boulevard it's the City's responsibly.

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Mr. Decker stated his biggest concern is what the City can enforce on private property. Mr. Decker stated some cases you don't need that many trees on a corner lot; it completely changes everything you do in your yard. There should be minimum requirement of trees to plant and you put them wherever you want. If you were required to plant trees in the boulevard and it dies the City will replace it. Mr. Karsky suggested we could give an incentive to replace the trees in the boulevards. Mr. Hadley stated we will have a Forester on staff next year and they could handle that coordination effort and provide trees if the tree was older than two years and established.

Mr. Jackson stated City staff should go back and write a draft ordinance adding; trees need to be planted in the boulevard, a nominal lot (75 foot lot) ends up with one tree, a corner lot with no more than three trees, two of those in the side yard. If the trees can't be placed in the boulevard, they go in the front and side yards, address replacement, take the developer out of it, it should be done at the time the home is built.

Mr. Hadley stated a warranty time of one to five years was discussed. Mr. Karsky stated if a tree is going to die it would be in the first one to two years. Mr. Decker stated he feels enforcing a warranty time frame is a waste of code enforcement time. Mr. Jackson stated he doesn't feel it's necessary.

Attorney Wenko stated she will help draft the enforcement section of the ordinance; this is similar to other sections, and can be changed and altered to fit here. She will discuss this with Attorney Cripe.

Mr. Hadley added there won't be a meeting in December, however there are seven or eight new projects moving forward.

MOTION BY: Scott Decker **SECONDED BY:** Shirley Dukart
Adjournment of the meeting at approximately 8:21 AM.

DISPOSITION: Motion carried unanimously.

PREPARED BY:

Brandy Goetz

APPROVED BY:

Walter Hadley