

# I. PLANNING & ZONING COMMISSION MEETING MINUTES

April 20, 2011

## II. OPENING CEREMONIES AND PRESENTATIONS

### III. I. CALL TO ORDER

Chairman Earl Abrahamson called the meeting to order at 7:10 AM.

### IV. II. ROLL CALL

PRESENT: Nancy MosBrucker, Matt Kolling, Jerry Krieg, Shawn Soehren, Earl Abrahamson, Tracy Tooz, Jason Hanson Larry Dockter and Gene Jackson

ABSENT: Ron Hartl, Jay Elkin and Scott Kovash

STAFF: Ed Courton, City Planner, Matt Kolling, City Attorney & Shawn Soehren, City Engineer

## STANDARD MOTIONS

### 1. MINUTES

Minutes of the March 16, 2011 meeting submitted for approval.

**MOTION BY:** Jason Hanson                      **SECOND BY:** Larry Dockter  
to approve minutes of the March 16, 2011 meeting.

**DISPOSITION:** Motion carried.

## REGULAR AGENDA

1. **FINAL PLAT** – State 6<sup>th</sup> Addition – Replat of a portion of Blocks 15, 16, 17, 19, 32, 33 and 36 of State Addition and a portion of 6<sup>th</sup> Street West, 7<sup>th</sup> Street West, Experiment Drive and Dakota Drive of State Addition.

Chairman Abrahamson opened the Public Hearing. Walt Smith of Kadrmas, Lee and Jackson stated this is the third phase by this developer. Water, sewer and storm sewer will connect to the previous development.

**MOTION BY:** Jason Hanson                      **SECOND BY:** Jerry Krieg  
to recommend approval of the Final Plat to the City Commission.

**DISPOSITION:** Motion carried.

2. **PRELIMINARY PLAT** – Vaagen Subdivision – A tract of land lying in the SE¼ Section 25, Twp 140N, Rge 96W.

Chairman Abrahamson opened the Public Hearing. Proprietors Amanda Vaagen and Keith Vaagen were present to answer questions. Keith Vaagen stated one change was to combine Lots 4 and 5 into one (Lot 5) on the west side of the subdivision. They have no plan to rezone the property. Gene Jackson noted that the wording for the streets is not clear. Mr. Jackson asked if the streets will be private and Vaagen's stated they will. Mr. Jackson asked that the wording on the plat be made clear and labeled as private. Mr. Vaagen stated they met with the County and have agreed to construct joint-access driveways for the ten acre lots, numbered 2, 3, 4, & 5. Lot 6 will also share access for a portion of the driveway to the north.

**MOTION BY:** Gene Jackson                      **SECOND BY:** Nancy MosBrucker  
To recommend approval of the Preliminary Plat contingent on labeling the wording for private access easements be included.

**DISPOSITION:** Motion carried.

3. **STREET VACATION** – To consider a request to vacate the entire street right-of-way starting at 14<sup>th</sup> Street East extending into the Braun 2<sup>nd</sup> Subdivision, which was dedicated for Lots 1, 2, 3, 4, & 5, Block 1, Braun 2<sup>nd</sup> Subdivision..

Chairman Abrahamson opened the Public Hearing. Steve Schwab of Continental Real Estate was present as agent for the Wallander's and Braun's. He stated that they want to vacate the platted street and add a private road on the east side of Lots 1, 2, & 3 for a single residence. There is an existing home on Lot 4, which has access via 14<sup>th</sup> Street. Lots 5 and 6 are owned by Mr. Braun. Mr. Schwab stated the Braun's could potentially sell Lot 5 and they would need to grant access along the west side of Lot 4.

City Planner Ed Courton stated that he would be in favor of the street vacation, as long as access was granted for all the lots. He added the City would require a 60' sewer easement in the same location of the existing street rights-of-way. Mr. Schwab stated they would have no problem with the sewer easement.

Gene Jackson stated he is also okay with the proposal; however, he felt vacating a cul-de-sac may be confusing and problematic. He suggested the applicant should replat the subdivision to avoid any confusion. City Attorney Matt Kolling stated that State Statute dictates how property is divided up in the vacation of street right-of-way, but there is no definition how to divide a cul-de-sac and he agreed that replatting would be better. Mr. Jackson asked if that could be handled administratively through the City Engineer's office. Mr. Courton stated this was discussed with the City Engineer and the both of them are working on an administrative procedure rather than a formal process for minor replats. Mr.

Jackson felt this should be done administratively; it may be the best way to move the project forward. He would recommend a title report and aggregate the two lots together. Mr. Schwab stated the owners would prefer not to replat, but would agree to it in order to move forward with construction.

**MOTION BY:** Tracy Tooz                      **SECOND BY:** Jerry Krieg

To recommend approval of the street right-of-way vacation with the replat to be approved by the City Planner.

**DISPOSITION:** Motion carried.

4. **REZONING REQUEST** – To consider a request to rezone from R2 (Residential Medium Density) to GC (General Commercial) in order to build an electrical substation on the property described as Lots 1, 2, 3, 4, 5, 6, & 7, Block 3, North Industries 1<sup>st</sup> Addition, the replat of North Industries Addition lying in the N½ Section 27, Township 140N, Range 96 West..

Chairman Abrahamson opened the Public Hearing. Walt Smith from Kadrmass, Lee and Jackson stated the utility company needs to put in an electrical substation along the east side of North Industries to accommodate the development to the north and need to rezone to fit this use.

Gene Jackson asked if they will use all seven lots. Mr. Smith stated they won't at this point, but plan to purchase all seven lots in the future. Tracy Tooz stated they requested purchasing Lots 5, 6, & 7, then came back with an agreement to purchase all seven, as the lots are narrower than what they need. The lots are roughly 425 feet deep. Mr. Jackson stated we were adamant about the transition to residential and asked if they could apply for a conditional use permit rather than rezone the property, which would allow all land uses in the GC district. Ed Courton stated he had spoken with a representative from the electric company and they discussed a Special Use Permit rather than a rezone. This would limit the land use to the specified use and it could be conditioned appropriately. Mr. Jackson recommended that we defer the request and ask for a Special Use Permit. He added if they need to expand they would have to come back and modify the SUP. Mr. Courton opined that the SUP process is the same as the rezone process and asked if the Commission felt comfortable to allow the petition to be changed and move forward to the City Council rather than re-advertising it as a SUP. City Attorney Matt Kolling stated that the petition was advertised as a rezoning petition and it should be re-advertised in order to be clear and factual. .

Mike Maus was present on behalf of Gary and Laura Marsh, Russ Koepplin, Bradley Robertson and Patrick and Kristy Marx. He said they are opposed to the rezoning request and feel the R2 district should remain. They feel their property values will decrease. Maus added there are other commercial properties to accommodate the substation. The closest dwelling is immediately across the 33'

drainage way and they don't feel that is a sufficient buffer. Trees cannot be planted within the drainage way.

Tracy Tooz stated they will bring it back as a Special Use Permit if that's what the Board is requiring but added there are electrical substations all over town within residential zoning districts. Jerry Krieg asked that they look at how much land they will need and eliminate what they don't need from the request. Tooz stated a requirement of the sale was that Roughrider Electric buys all six parcels, so they would have control, adding they have no formal offer on the property at this time. Mr. Tooz says Roughrider did look at several commercially zoned properties, but they were all too far away from their existing transmission lines.

**MOTION BY:** Jason Hanson                      **SECOND BY:** Gene Jackson  
To table the request and bring it back with a request for a Special Use Permit.

**DISPOSITION:** Motion carried.

5. **REZONING REQUEST** – To consider a request to Rezone from R2 (Residential Medium Density) to R3 (Residential High Density) in order to build apartment buildings on the property described as Lots 26-31, Block 5, Lots 36-41, Block 5 and the E ½ Lots 32 and 35, Block 5 of the Replat of Lots 5-11, Block 1, and all of Block 5, Country Oaks Estates 2<sup>nd</sup> Addition.

Chairman Abrahamson opened the Public Hearing. Duane Schwab and Mike Sullivan were present representing Sullivan Construction in the rezoning request. Schwab stated they own all of the shaded area on the map provided and it is all zoned R2. He said they have a block and a half and they may be come back to vacate some platted easements. He said they are not sure how many units will be built on the property but they plan to maximize the density. Ed Courton noted it is a linear-shaped property; consequently site constraints will limit density. Mr. Sullivan stated they are working on another parcel in Williston and are faced with the same issue, so they are aware of what they need to take care of and will work with the Engineering Department. He said they moved in equipment last week and hope to start next week on the road work.

Gene Jackson asked about plans for Block 4. Mr. Sullivan stated it is all zoned R2 and they plan to phase from the apartments in R3 to R2 and then to single family homes to the north. Mr. Jackson noted there is multi-family housing to the south and east and it consistent with other development.

**MOTION BY:** Jason Hanson                      **SECOND BY:** Tracy Tooz  
To recommend approval of the Rezoning request from R2 (Residential Medium Density) to R3 (Residential High Density) to the City Commission.

**DISPOSITION:** Motion carried.

6. **REZONING REQUEST** – To consider a request to rezone from R2 (Residential Medium Density) to R3 (Residential High Density) in order to build apartment buildings on the property described as Lot 6, less N29', Block 2, Prairie Hills 2<sup>nd</sup> Replat.

Chairman Abrahamson opened the Public Hearing. Duane Schwab, agent for Legend Energy, stated they are looking to build an apartment to house their employees. Mr. Schwab stated the area to the east is the new Microtel Inn and Suites, to the north is an apartment building, to the west is an R3 zone and to the south is a CC zone. City Planner Ed Courton clarified the area to the west is zoned R2 and not R3. Mr. Schwab shared a copy of the site layout of the proposed 40-unit building. Mr. Courton noted that if the parcel is 1.03 acres or approximately 44,000 SF, the maximum density would be 32 units. He stated it is a very confined lot and with the setback and parking requirements, it would be difficult to construct 32-units. Mr. Schwab stated the square footage price offered to purchase the city lot was based on square footage of 52,233 SF, which is how they came up with the 40 unit maximum. He added if the lot doesn't allow for the 40-units, they will conform to city standards. They are planning a three-story structure with an elevator.

A petition of opposition was presented to the Commission. Tasha Gartner, 841 17<sup>th</sup> Street West, stated the petition was signed by 35 neighbors opposing the rezoning request. She stated traffic and safety as their primary concern. With the construction of the Microtel Inn and new townhomes nearby, they have seen an increase in traffic and more garbage. The local residents feel there will be a negative impact on property values in the area if the apartment building is built.

David Rinn, 1579 Prairie Avenue (Heritage Condos), stated he is strongly opposed to the request. He reminded the Commission to consider how we got where we are here with zoning. Several years ago, meetings were held with realtors and developers to come up with a plan looking out for the best interest for the people of Dickinson. A lot of time and energy was spent coming up with the designated zoning and he doesn't feel we should just change it.

Mr. Rinn stated some reasons to change the zoning may be: 1) So the city can sell the property to the developer. 2) The need for additional apartments because of the oil boom. 3) Profit for the developers and realtors. 4) Development of a vacant lot. Mr. Rinn stated none of these are good enough reasons to make changes to the existing zoning. He stated the consequences of changing the zoning could include: 1) Traffic will increase greatly and the added dangers of high traffic volumes. 2) Garbage – Mr. Rinn shared pictures of trash in the area. 3) Parking – the area is already very congested. 4) Property values – Mr. Rinn stated with all the garbage and congestion he feels property values will decrease even though he recently received a letter from the assessor's office stating his value has increased. He shared a picture of the lot, a picture of a 36-unit apartment building and a picture of a parking lot to hold 70

vehicles. Mr. Rinn stated it won't fit; the lot is more suitable for three or four condo units.

John Walker of 921 17<sup>th</sup> Street West stated he agreed; the area is already too congested and it would be a mistake to rezone. Don Bares of 924 16<sup>th</sup> Street West echoed opposition. Kevin Ziman of 944 16<sup>th</sup> Street West stated the area is already congested. Gail Jilek of 1667 Prairie Avenue stated she picks up garbage everyday and can't keep ahead of it. She added there is so much traffic already she sometimes has to wait five minutes to back out of her driveway. Helen Connell of 1569 Prairie Avenue also stated her opposition concurring with everything already said.

Jason Hanson stated he lives on 18<sup>th</sup> Street West and agrees that traffic is very congested and parking is full on Prairie Avenue. He said because of snow removal, traffic has been one-way most of the winter. He added that doesn't even take into consideration anticipated traffic increases with the new motel and townhouses under construction.

Gene Jackson noted that a plat was approved to the south about a year ago which is also high density and he asked if it went all the way to 15<sup>th</sup> Street. Mr. Soehren stated it does go all the way to 15<sup>th</sup>, adding it has a mixed use of retail and multi-family townhouses next to the Elks.

Duane Schwab reiterated that Legand Energy is making a substantial investment in Dickinson and will be bringing in 30 plus employees. He asked the Board to look at the density on the lots in the area, as this will be the same. He says they will provide off-street parking even if they have to reduce the number of units. Mr. Courton stated this is zoned R2 and will need an R3 zoning district designation for the higher density. Mr. Soehren said he's not sure if the old zoning allowed for a 12 plex in an R2 zone, but there was no R3 zoning when those apartments were established. The R3 zoning district came about with the Land Use and Transportation study established in the last five or six years. Jerry Krieg asked what the maximum number of units would be in an R2 zone. Mr. Courton explained the lot is approximately one acre. 7,000 SF is required for the first unit, 3,000 SF for each additional unit with a limit of ten units per lot; therefore, the maximum number of units would be ten without subdividing.

Tracy Tooz stated this is a high density area. The Dakota Crossing is in the 100 unit range which will likely develop in the next two or three years. He thought they had 66 off-street parking spaces. The Microtel Inn is a 93-unit motel. He says everything fits the old R2 zoning and he believes this lot will be used for multi-family development someday. He says Metroplains looked at 12 different areas before choosing this area, stating off-street parking is a big concern for the developer.

**MOTION BY:** Jason Hanson

**SECOND BY:** Larry Dockter

To recommend denial of the Rezoning petition to the City Commission.

Tracy Tooz stated he has a problem with the motion. He would rather the request be tabled in order to see a more accurate depiction of what they are proposing. He said he would like to see a plan. Mr. Schwab stated they would bring back a plan to look at it again if the motion were to table the request. City Attorney Matt Kolling stated there is a motion pending. He said the originator of the motion could amend the motion if he wished.

Gene Jackson stated that we want to welcome any new company coming to Dickinson, even if we decide to go in a different direction than they would like. We have to try and keep a quality community.

**DISPOSITION:** Motion carried.

Mr. Schwab was told they could appeal the denial to the City Commission

7. **SPECIAL USE PERMIT** – To consider a request for a Special Use Permit to allow convenience storage units on AG (Agriculture) zoned property located in the NW¼ Section 14, Township 139, Range 96.

Chairman Abrahamson opened the Public Hearing. Ervin Lantz stated the zoning will remain AG where he wants to construct a convenience storage on a tract of land owned and used by him for ranching. Stark County Road Superintendent Al Heiser stated his concern with an approach and access to the property. Mr. Lantz stated access will come from the section line road, not from 8<sup>th</sup> Street SE. He said the property is one mile east of Loaf and Jug on the old George Gress place. The section line is maintained by an oilfield company.

City Planner Ed Courton stated he recently received plans for the project and would recommend approval. There will be no outside storage. He said City Code prohibits outside storage. It is not a large structure being a single structure measuring 200' x 40'.

**MOTION BY:** Jason Hanson                      **SECOND BY:** Tracy Tooz  
To recommend approval of the Special Use Permit to the City Commission.

**DISPOSITION:** Motion carried.

8. **STREET VACATION** – To consider a request to Vacate 42 feet of the street right-of-way along the south and west sides of the Horse Haven Subdivision.

Chairman Abrahamson opened the Public Hearing. There was no one present to speak on behalf of the request. Ed Courton explained that the applicant wasn't aware they had given up that much land as part of the platting process until he received the tax statement. He then contacted the County about the vacation

process. Al Heiser concurred that the applicant called him. He said the County has sufficient public right-of-way and he doesn't foresee this road being developed, as there is no need for it. Heiser stated he is okay with the request.

**MOTION BY:** Gene Jackson

**SECOND BY:** Tracy Tooz

To recommend approval of the Vacation of street right-of-way along the south and west sides of the Horse Haven Subdivision to the City Commission.

**DISPOSITION:** Motion carried.

9. **SKETCH PLAT** – Sax Motors Addition – Replat Lots 1, 2, & 3, Block 1, Lots 1-12, Block 2, Part of Lots 1 & 20, Block 5, Part of Lots 1 & 20, Block 6, Part of Lots 1 & 20, Block 7, Hewson's 3<sup>rd</sup> Addition & Lots 5 & 6, Block 4, Proposed Diamond Acres Subdivision.

Quinton Kitzan of Big K Industries stated Sax Motors owns the property and they wish to replat for a new facility at this location. Mr. Kitzan stated they have two options for the Commission to consider. Gene Jackson noted that they will be eliminating public access and will only have private access. They will vacate the street eliminating access from 21<sup>st</sup> Street as well. Ed Courton stated they have looked at it with the applicant and are working out the details. He stated Option 2 is more viable in his opinion. Jerry Krieg stated a benefit of Option 1 would be that the streets line up.

10. **SKETCH PLAT** – SLH Subdivision (Wyoming Casing) – lying in the SW ¼ Section 22, Township 140N, Range 96W.

Mike Njos of Highlands Engineering stated this is an unplatted parcel known as Parcel B & C. The property is zoned AG (Agriculture) and they will be asking for an LI (Limited Industrial) zone. Northern Improvement owns Parcel A to the west where they have a Special Use Permit in order to keep material and equipment on the lot. Mr. Soehren stated he suggested platting and development rather than a Special Use Permit, adding that someday Northern Improvement will need to plat as well. Mr. Njos stated they would like to ask for the Preliminary and Final Plat at the next meeting if possible. Mr. Soehren stated the property is surrounded by LI, AG and GI zones. He added this is not part of the annexation but the City may require it be annexed prior to final approval.

Gene Jackson stated he agrees with the annexation. He asked the width of the right-of-way on the north side. Mr. Soehren stated he wasn't sure but noted that we would want to continue that the same standard on the south side.

Al Heiser stated if it is the City's intent to annex this property into the city limits, he would hope the County would be involved with the street issues. He says the residents to the south are already asking him when their street is coming

through. Heiser stated he wants to make sure the County is involved throughout the approval process.

**11. CODE ENFORCEMENT REPORT – March, 2011**

Ed Courton explained the report shows the difference from one year to the next along with the increase in the dollar amount. The value of new construction permits this year is already at 9 million compared to last year, which was 1.9 million. He stated we've received more applications and will see a significant increase over this year compared to last year. Mr. Courton stated we are in the process of interviewing and hiring another code enforcement officer to help with inspections and to address property maintenance issues as well.

**12. ADJOURNMENT**

There being no further business to discuss

**MOTION BY:** Jason Hanson                      **SECOND BY:** Larry Dockter  
to adjourn meeting. Meeting adjourned at 9:20 AM

**DISPOSITION:**      Motion carried.

**PREPARED BY:**

---

Karen Amann

**APPROVED BY:**

---

Ed Courton