

MOTION BY: Tracy Tooz **SECOND BY:** Gene Jackson
To recommend approval of the Final Plat to the City Commission.

DISPOSITION: Motion carried.

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

Chairman Earl Abrahamson opened the Public Hearing. Mike Njos of Highlands Engineering representing Wyoming Casing was present to answer any questions. Mr. Njos stated the property is just east of Tooz Construction and the plat has not changed from the Sketch Plat presented last month. There will be 33' of right-of-way on the north side.

Henry Brown stated he has land to the north. He said when he platted, he was asked to put in a buffer between the LI (Limited Industrial) and his residential zone. He said he believes he was required to put in a 150' buffer. He asked what the use will be. Tim Gross of Wyoming Casing stated they intend to move all current operations of Wyoming Casing to this site. Mr. Brown stated he is concerned with the property value of his home.

Gary Marsh stated he owns a 1.5 acre tract to the east but he wasn't notified of the plat. Mr. Courton explained Parcel D is between this tract and Mr. Marsh's land. It is a ten acre parcel, thus making his property greater than 300' away.

Chairman Abrahamson recalled that a lot of time was spent on the Brown Subdivision and the required buffer between his two lots and he would like to see some kind of buffer for Mr. Brown as well. Tracy Tooz said Brown's had a buffer requirement to the south as well and he didn't feel Wyoming Casing should be required to put in another buffer. Mr. Tooz stated the buffer requirement should be on the Brown plat.

City Planner Ed Courton stated he discussed the plat with the County yesterday and he recommends approval requiring county road easements to be dedicated by the applicant. He agreed to meet with representatives of Wyoming Casing and Mr. Brown to check the buffering requirement on the Brown Subdivision before the Final Plat.

MOTION BY: Jason Hanson **SECOND BY:** Tracy Tooz
To recommend approval of the Preliminary Plat adding the buffer as mentioned if it doesn't exist on the Brown Subdivision plat.

DISPOSITION: Motion carried.

4. **REZONING REQUEST** – To consider a request to rezone from AG (Agriculture) to LI (Limited Industrial) in order to build a shop, office and operations of Wyoming Casing on the property described as East Half of the Southwest Quarter of Section 22, Township 140N, Range 96W, 5th PM.

Chairman Abrahamson opened the Public Hearing. Mike Njos of Highlands Engineering and Tim Gross of Wyoming Casing stated this is part of moving the entire operation of Wyoming Casing to this location. The LI zoning fits their operation and this location. The surrounding parcels include Parcel D which is zoned AG and Parcel which is also zoned AG with a Special Use Permit for an LI use. City Planner Ed Courton noted that based on the proposal, a Special Use Permit would have limited the operation, but the LI zone fits their use.

MOTION BY: Scott Kovash **SECOND BY:** Jason Hanson
To recommend approval of the rezoning request to the City Commission.

DISPOSITION: Motion carried.

5. **PRELIMINARY PLAT** – Sax Motors Addition – Replat Lots 1, 2, & 3, Block 1, Lots 1-12, Block 2, Lots 1 & 20, Block 5, Lots 1 & 20, Block 6, Lots 1 & 20, Block 7, Hewson's 3rd Addition.

Chairman Abrahamson opened the Public Hearing. Quinton Kitzan of Big K Industries stated a sketch plat was presented last month with three options. They have decided to go with Option 1. City Planner Ed Courton noted that the road to the east will match with 20th Street.

MOTION BY: Tracy Tooz **SECOND BY:** Nancy MosBrucker
To recommend approval of the Preliminary Plat of Sax Motors Addition.

DISPOSITION: Motion carried.

6. **SPECIAL USE PERMIT** – To consider a request for a Special Use Permit for Community Action to construct a new building in the R1 (Residential Low Density) district on the property described as Lot 2, Auditor's Plat #8 and addressed as 107 3rd Avenue SE.

Chairman Abrahamson opened the Public Hearing. Erv Bren, Director of Community Action stated they have received grant monies to add an Early Head Start program which serves children and families of low income or special needs from pre-birth to age three. Mr. Bren stated a Special Use Permit is required to operate a group daycare for approximately 56 children in the residential zoning district. He stated the Board of Adjustment approved lot variances earlier this week to allow the project to fit within the existing property. City Planner Ed Courton explained that the variances approved included reducing the street sideyard setback from 15' to 2' on the north side in order to allow the required

parking on the south side of the new building and eliminate the 10' buffer along the property line on the south side, and to reduce the parking requirement from 30 spaces to 27. Mr. Courton stated the Board of Adjustment did approve the variances with one change per his recommendation to remove the two parking spaces in the SW parking lot on the drawing provided. This will provide room for turn around and allow for better traffic flow. The single wide mobile home on the property is currently used as an office and will be removed following construction. Mr. Courton said this has been a difficult endeavor to make it work through city standards and he recommends approval of the request.

MOTION BY: Tracy Tooz **SECOND BY:** Jerry Krieg
To recommend approval of the Special Use Permit request to the City Commission.

DISPOSITION: Motion carried.

7. **REZONING REQUEST** – To consider a request from Marquis Property from R2 (Residential Medium Density) to R3 (Residential High Density) on property described as Lots 1-4, Block 1, Country Oaks 2nd Addition.

Chairman Abrahamson opened the Public Hearing. Dave Kitzan of Marquis Property and Development stated the property to the north has recently been rezoned to R3 and Century Apartments are directly east of this site and he feels the R3 zone fits the area. Mr. Kitzan stated he wants to construct four unit apartments on the property and is also requesting a Special Use Permit to construct an office building on Lot 1. The office will be utilized by Badlands Services who operate from the existing building on Lot 2. He said there are no plans to increase the number of people in the existing facility but they have no office currently. City Planner Ed Courton stated there are two separate issues here; the first is to rezone and if approved, the second request is for a Special Use Permit to allow a general office building. The focus is on the rezone first. He explained the request is to rezone all of Block 1 to R3 including the existing structure on Lot 2 which is currently operating with a Special Use Permit. The use falls within what is allowed and Mr. Courton recommended a rezone of the entire Block for continuity purposes.

Bruce Pier of 2052 Prairie Oak Drive stated he appeared before this board several years ago when a rezone was requested for Lot 2. He said he was opposed to the rezone at that time. He was not opposed to the function. He asked for an explanation of the difference between R2 and R3. He also questioned if the rezone and SUP are tied together why they shouldn't be discussed together. Mr. Courton clarified that Lot 2 was not rezoned but is operating with a Special Use Permit. He said he is not in favor of rezoning just a single lot and it was his suggestion to rezone the entire block which would be consistent with the use at Century Apartments. In certain cases on a corner lot, he may favor rezoning only one lot if there were unique characteristics to it but in

this case he would rather keep continuity and rezone the whole block. He added if the board is not comfortable with rezoning the entire block, they could break off part of it and only rezone part of it. The request could not be expanded from the publication, but he said it could be minimized if that's what the commission wanted. Mr. Courton said he feels it makes the most sense to rezone the entire block.

Chairman Abrahamson stated he received phone calls from area residents who were concerned and expressed fear of the facility expanding. He said they didn't want to see expansion of the existing facility. He added he also favors rezoning the whole area rather than one lot. Mr. Abrahamson asked if the board could take no action on the request. City Attorney Matt Kolling stated if there is no motion, it would proceed to the City Commission without a recommendation.

Mr. Pier stated he has no problem with what they're doing but he wished they had provided a master plan when they appeared before the board for the special use so they wouldn't have to keep coming back

MOTION BY: Gene Jackson **SECOND BY:** Tracy Tooz
To recommend approval of the rezoning request to the City Commission

DISPOSITION: Motion carried.

8. **SPECIAL USE PERMIT** – To consider a request for a Special Use Permit from Marquis Property to construct and operate a general office in an R3 (Residential High Density) zoning district on the property described as Lots 1-3, Block 1, Country Oaks 2nd Addition..

Chairman Abrahamson opened the Public Hearing. City Planner Ed Courton noted the application was filled out improperly asking for a special use on Lots 1-3 when they only need the special use for Lot 1. The general office will support the facility currently located on Lot 2. Dave Kitzan of Marquis Property stated the building has not been designed yet but he will meet the setback requirements. Mr. Courton stated the drawing provided does give a footprint of the building, but he agrees we should have a more detailed plan. He said they may put some of the parking on Lot 3. They are not expanding the facility but Mr. Courton noted they can put restrictions on the SUP if desired. He said it may be better to continue the request to next month for a better analysis. Mr. Kitzan said he could also move the building to Lot 3 if he needed more room. Mr. Courton said the publication included Lot 3 so we could proceed without re-advertising if he chose to move the request to Lot 3. He agreed to work with Mr. Kitzan to come up with a more detailed plan.

MOTION BY: Tracy Tooz **SECOND BY:** Jason Hanson
To continue the request for one month.

DISPOSITION: Motion carried.

9. **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. Ron Schaper, representing his father-in-law, Leonard Johnson stated this right-of-way was given during the platting process in 2006 and they are now asking that the undeveloped street be vacated leaving the 33' of right-of-way and 10' easement. City Planner stated this was discussed last month but it had not been published for Public Hearing so had to come back to the commission. He said discussions have been held with the County and both City and County agree to vacate the 42'.

MOTION BY: Jason Hanson **SECOND BY:** Scott Kovash
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.

11. **PRELIMINARY PLAT** – Hulsing Subdivision – located in Tract No. 2 of the E ½ of the W ½ of Section 9, Twp 139N, Rge 96W of the 5th PM.

Chairman Abrahamson opened the Public Hearing. Proprietor Dennis Hulsing was present representing the plat. He stated they tried to look at the subdivision from the view point of an architect as well as that of a civil engineer. He stated the property is adjacent to the southside softball complex. They wish to complete the subdivision with more green space and walkways, separating the pedestrian traffic from the vehicular traffic. They will have one street through the development with turn abouts allowing room for two fire trucks to pass each other. They will not ask to change the current zoning of R1 (Residential Low Density).

City Planner Ed Courton stated he likes the concept and the nature trail to the south. He likes the orientation of the houses to project to the rear and that the driveways will be continuous around the cul de sacs. They now just need to make sure the public streets are functional for Public Works. They will meet and iron that out before the final. Gene Jackson noted it appears they will do this without a lift station. Mr. Hulsing replied that is the hope.

Jeff Maher, resident of Heart Drive and Emil Baranko from MJB Subdivision directly across the street stated they are not opposed to the development but expressed concern as to how the development will progress. Mr. Baranko asked if it will be done in phases or if the entire site will be stripped out, removing all the topsoil at once. He asked how dust control will be provided. They also stated that traffic on State Avenue has really increased and backs up nearly to the Heart River Bridge on occasion. Mr. Baranko asked if there are plans for an underpass

or overpass for the railroad tracks. The drainage ditch around Heart Drive has three culverts and many times runs full and backs up, they expressed concern that the runoff will increase once streets are in place rather than the grass. They also wanted to know who would be taking care of the walking path. Lois Frankl from Heart Drive expressed concern with the drainage ditch and stated she didn't think it was a good idea to put in a walking trail in the area unless it could be closed off.

Mr. Courton stated the subdivision will develop in stages. He said the city has a property maintenance code they will need to follow as well as the storm water ordinance. They will need to show how they plan to address the dust issue, which may include having a water truck on site. Mr. Courton stated the City is aware of the traffic issue on State Avenue. He said the City will be hiring a consultant to perform a Comprehensive Study and how to best address some of these issues. Mr. Courton added the development will likely have a Home Owners Association to maintain the walking trail and open spaces within the subdivision. Regarding the drainage way, Mr. Courton stated all building sites are outside of the floodway and only one corner of one lot is partially in the floodway. He added we may have to condition the plat to have a gate which can be closed when the water is high.

MOTION BY: Jason Hanson **SECOND BY:** Tracy Tooz
To recommend approval of the Preliminary Plat of Hulsing Subdivision.

Mr. Courton asked if the motion included working out the road issues prior to the final plat.

DISPOSITION: Motion carried.

12. **SPECIAL USE PERMIT** – To consider a request for a Special Use Permit for Dickinson Energy Park to allow a truck facility in the AG zoning district via 21st Street West and is described as the S ½ SE ¼ of Section 29, Township 140N, Range 96W.

Chairman Abrahamson opened the Public Hearing. Tracy Tooz of Dickinson Energy Park stated they are requesting a Special Use Permit to operate and trucking and oilfield facility in the west 39.9 acres of the property. He said the other 17 acres will remain an R1 zone. He stated he had a conversation with Jay Elkin and following annexation into the city limits, a heavier use will be allowed. Mr. Tooz stated he will live on the 8 acre Filipi farmstead. He said he will utilize the shop, but will remove the house and rebuild. He stated he will be living next to it. There is a 60' tree buffer between his property and the proposed truck facility. He has a purchaser from Colorado who will develop the facility himself. The building will have a store front with office space and they will lease to the trucking company. There will be outside storage of vehicles but no roustabout equipment. Mr. Tooz stated there is also an active stripper well, an active oil line

and an abandoned oil line on the property. He added they will need a drainage plan as there are two drainage ditches through the property.

City Planner Ed Courton stated staff's opposition to the request. He stated the area would be prime for a residential development with a CC corridor allowing some retail. He added this is not part of the truck route and we don't want to set precedence for further general commercial or industrial expansion. Mr. Courton stated the city will be conducting a comprehensive plan and he feels this will be a growth area for residential.

City Attorney Matt Kolling stated an LI use is not allowed with an SUP in an AG zone. Mr. Courton explained that based on information from Mr. Tooz, they looked at it as a GC use for a transportation terminal which would be allowed with a special use. Mr. Kolling said a transportation terminal would be described as passengers, baggage and their incidental freight, but would not include an oilfield service. Mr. Tooz said oilfield transportation is no different than any other transportation. There will be no chemicals, no explosives; they distribute coil tubing and fishing tools. The trucks will be 95,000 lbs or less.

Gene Jackson stated that rather than spending time on the administrative mechanics of the request, we need to talk about the concept. He added he is strongly opposed to the request as this is the only quadrant of the city without industrial growth. Mr. Jackson feels we need to keep industrial out of this area and reserve it for a light commercial use within a residential district.

Attorney Mike Maus, representing area property owners Nancy Herauf, Art Sickler's, Dean Kubas, Jan Prchal, Art Ridl's and Adam Wock's stated opposition to the request. He stated they agree with city staff and the city's legal council that an SUP is not allowed for this use. He stated if Mr. Tooz comes back to rezone the property, they will challenge it in court. His clients are concerned with trucks coming from four different directions, problems with water, two drainage ways, dust and noise. They feel this use doesn't fit the area and should not be allowed. Bill Herauf stated he and his mother, Nancy Herauf own land neighboring the request and agree the use does not fit; the industrial use should not be introduced to the area. Jan Prchal stated she resides on State Avenue to the west and north of this property. She stated her opposition as State Avenue is gravel and is nearly impassable with the oilfield trucks driving more than 50 mph in a 35 mph zone. At 7:00 AM, she cannot get out of her driveway for all the truck traffic. The US Postal Service will not deliver mail to her lot as it is too dangerous so her mail is delivered at a site on Nancy Herauf's property. She said she sees this development is only for personal gain and profit. Dean Kubas stated he also lives on State Avenue. He said there is so much dust from the truck traffic and if they leave their vehicles outside, they are completely covered with dust. He said his wife has COPD and cannot sit outside in the yard with all the dust. Bob Sivak, City Fire Chief stated the property is outside of city limits at this time but if the property is annexed into city limits, the fire code will also

season is underway. Mr. Hibl stated they would love to be a part of pre-planning for needs in the next five, seven, ten to fifteen years. Mr. Courton stated he would be invited to be part of the city's Comprehensive Plan to take place during the next year.

Gary Marsh stated he owns an acre and a half across the road but he wasn't contacted about that being a possibility for the substation. He asked why the substation wasn't designed into the plat. He said they have power, so this substation won't be for their use. They were against the industrial subdivision so close to their property but they platted a row of R2 zoning to buffer between them. He feels the substation could go in the industrial zone. He said they were lied to and feels Mr. Tooz will be back with changes every time he sells some lots.

Gene Jackson stated we need to find a place for the substation. He wants to be satisfied there is nowhere else for it to go. Mr. Jackson stated he doesn't know where the Marsh property is but Roughrider may not have looked at it because they don't wish to cross the road.

MOTION BY: Scott Kovash **SECOND BY:** Nancy MosBrucker
To recommend approval of the Special Use Permit to allow an electrical substation.

Gene Jackson asked that Roughrider Electric talk to the Marsh's to see if they can consider their location. He said he wants satisfaction that there is not a better location. Tracy Tooz stated there is no other available land on 40th.

DISPOSITION: Motion carried.

10. **REZONING REQUEST** – To consider a rezoning request from R1 (Residential Low Density) to R2 (Residential Medium Density) for Lots 1-3, Block 1, and Lots 1-6, Block 2, and from R1 (Residential Low Density) to R3 (Residential High Density) for Lots 1-3, Block 3, and Lots 1-6, Block 4, of the Lyon's Subdivision.

Chairman Abrahamson opened the Public Hearing. Tracy Tooz stated they are asking for the zoning change with the intention of constructing multi-family dwellings in the Lyon's Subdivision. He said the layout is not specific at this time; they may have to turn a few things to buffer. He stated he was not in favor of paving the roads and being annexed into the city limits and feels the R1 zone cannot substantiate the development infrastructure costs. He added he will have a problem with the roads to the north as they are not built to county specs. Gene Jackson asked if he would consider altering the request to better transition as he has concerns with R3 being next to RR. He would like to see the R1 zoning concept that he brought with the platting of Lyon's Subdivision retained. Mr. Tooz stated he would buffer in certain areas but he didn't realize he would be giving up so much land to permanent detention and retention ponds. He said there is so

much overland drainage. They had a plan developed by Kadrmass, Lee and Jackson to slow the water passing over the property. He said they are following State guidelines and are working to see who will monitor the retention/detention required.

Mr. Jackson asked if he would be open to a different look - to work with the neighbors to replat. Mr. Tooz stated a replat would be okay, but zoning would be another issue. He said the roadway by the Marx and Marsh properties would need to stay. The easements and right-of-way could not change without city and county having their say. City Planner Ed Courton concurred that the city and county worked together on where the roads should be. Mr. Courton suggested he meet with the neighbors and come back with lot aggregation to find a path everyone can agree with. Mr. Tooz said adjacent property owners may only agree to R1 zoning and may not like getting assessed over \$100,000 for infrastructure either. He said he received a quote of over \$900,000 for paving which would have to be shared with Marx and Marsh. Ed Courton stated he would not be opposed to bring roads through North Industries but they would have to meet urban road standards.

Sandy Kuntz, land owner to the south and east of Lyon's Subdivision stated she feels an R3 zone is not appropriate for the area. She said it will be an island of R3 which will likely attract transient residents and increase traffic. She said the entire area is RR with most people owning three or four acres. They are young families with horses and pets. She said Lyon's was platted with the intent being an R1 zone. She added Mr. Tooz knew that when he purchased the property. She suggested Mr. Tooz petition to de-annex from the city if he's not willing to put in the required infrastructure. She said just because he wants a profit, it shouldn't change their way of life. She said it makes no sense to allow an R3 island in the middle.

Shannon Selle stated her property is directly to the east. She stated her opposition to either R2 or R3. She said she appeared before the Planning and Zoning Commission a year ago concerning the Lyon's Subdivision. At that time, she was told the development would be rezoned from AG to R1, allowing for approximately 18 homes within the development. They planned to build \$200,000 to \$300,000 homes within the subdivision and the developer himself planned to build there. Ms. Selle stated she doesn't want to see her property devalued or their life style diminished. Mr. Tooz stated he is not trying to change the safety of the area. He added he couldn't predict the land would be annexed. Ms. Selle stated she would not be as worried about safety issues with an R1 zone. She stated they have already seen increased traffic, noise and litter. She stated Tooz Construction removed all the trees and the ground is all torn up so they've had sewer back-up at their home for the past six weeks. The trees and grass held back the water and litter to a degree.

Laurie Marsh stated the request is confusing and asked for time to talk with the other neighbors. She said she has the same concerns.

MOTION BY: Jason Hanson **SECOND BY:** Gene Jackson
To table the request for further discussion next month.

DISPOSITION: Motion carried.

13. CODE ENFORCEMENT REPORT – April, 2011

City Planner Ed Courton stated the report indicates 20 new construction permits vs. 35 for the same period last year. He said we have seen larger projects this year which require more time, adding the permit values are higher than this same period last year. Mr. Courton explained it is not slowing down. We are seeing more and more inquiries concerning commercial property.

14. DISCUSSION CONCERNING MEETING TWICE A MONTH – One meeting will be the regularly scheduled meeting and the second meeting will be a workshop discussion of planning related topics.

City Planner Ed Courton said that with the public hearings on the agenda taking three and a half hours, it would be difficult to discuss planning issues and policies following the public meeting. He said he would like to hold informal meetings for at least a couple of months to hold a workshop type meeting. There is a lot going on that needs to be addressed. He added any amendments to the zoning code would still go through the regular meeting with a recommendation to City Commission. Mr. Courton stated he would set up a meeting for the 1st or 2nd week in June.

15. ADJOURNMENT

There being no further business to discuss

MOTION BY: Jason Hanson **SECOND BY:** Nancy MosBrucker
to adjourn meeting. Meeting adjourned at 10:30 AM

DISPOSITION: Motion carried.

PREPARED BY:

Karen Amann

APPROVED BY:

Ed Courton