

Item #4, the rezoning request for Lyons Subdivision was moved to be first on the agenda.

4. **REZONING REQUEST** – To consider a rezoning request from R1 (Residential Low Density) to R2 (Residential Medium Density) and R3 (Residential High Density) within the Lyon's Subdivision.

Chairman Abrahamson opened the Public Hearing. Tracy Tooz stated they are proposing to buffer all adjacent R1 property with an R1 zone to the south, east and north. They plan to discontinue 6th Avenue to 40th Street. The road will end at the Marsh property line. He is asking to rezone to R2 in the middle of the subdivision adjacent to the R2 zone remaining to the west. The rezone will be from 6th ½ Avenue East to 200' east of 4th Avenue East.

Gene Jackson clarified that all access to the development will come from 4th Avenue rather than 6th or 40th. 7th Avenue to 6th ½ Avenue will remain R1 and the rezone will take place just in the center area. Mr. Jackson asked if he plans to replat. Mr. Tooz stated he will replat but wanted to be assured the rezone would be approved first. City Planner Ed Courton stated he agreed to rezoning first in this case. He said there is no requirement for a final plat to rezone as long as we have an accurate legal description and he can come back later with a replat. Mr. Courton said this is a procedural issue rather than a legal issue. He described it as a peninsula with south, east and west edges. The zoning change will proceed inward with R2, then R3 abutting the existing R2 zone. The impact will be directed westward toward the industrial property. Mr. Tooz is planning to construct apartments and townhouses to serve the property to the north. Gene Jackson stated there is only 117' for the cul de sac and 140' will be needed. Tracy Tooz explained that Marsh's have expressed concern about the traffic but they're okay with the cul de sac. He said their road is not built to specifications so it would be wise to end it. All activity will be to the west.

Mr. Courton shared a color copy showing the requested rezone more clearly. He stated if there is still confusion, we can come back with a clearer drawing or if everything is clear, we can proceed.

Sandra Kuntz, property owner to the south, stated she is opposed to the rezone. She noted the R2 zone directly to the west will be converted to drainage which will include water draining from the North Industries Subdivision. She stated there will be an island of R2 and R3. There is nothing to address the drainage for more population. She added stopping access to the north and channeling it to the west will change the dynamics of the waterway. She said once it is all paved, she will be flooded out. She said she is adamantly opposed to the change in zoning.

Shannon Selle, property owner to the east of Lyons Subdivision expressed her opposition as well. She said they purchased land in an area for single family

homes to build their home, adding this zoning change will significantly change their lifestyle. She talked with the Police Department where she was shown an incident map where their calls are located. The majority of domestic calls came from the more densely populated areas – the apartment complexes and college area. She also spoke with a corrections officer and again found the apartments had a higher incidence. She noted that 80% of sex offenders also live in apartment complexes. There is reason for concern in creating a more dense residential zoning district. She fears the zoning change will affect their lifestyle, property values and taxes. She said if 7th Avenue is paved as discussed today, they will be asked to participate in that \$90,000 amount. Scott Kovash asked why the Selle property would be affected by 7th Avenue being paved. Mr. Courton explained the west half of the right-of-way is city and the east half of the right-of-way is county. He said it was established with the Lyons Subdivision which was approved about a year ago.

Tracy Tooz wanted to clarify that the R2 property on 4th Avenue would be designated for drainage and is actually owned by Dickinson Energy Park and is part of North Industries Subdivision and not Lyons Subdivision. He said the retention pond was designed by Kadrmars, Lee and Jackson to encompass all the R2 lots in North Industries. He added they only own ½ of the right-of-way on 7th which will be required to be developed to city standards since being annexed into the city limits. Ms. Selle asked which agencies set standards for water drainage and its impact for the surrounding area. Jen Gross, in for City Attorney Matt Kolling stated there are State requirements and possibly Federal requirements due to the size. Ed Courton agreed, noting that there is a normal permitting process for storm water runoff which is part of the development requirements for urban standards. The drainage needs to meet the required standards and it needs to be retained on site. Mr. Courton stated the standards are the same for any development.

Shannon Selle stated their property is not to city standards, but added they've gotten more water this year than they've ever had before. They feel it's due to the trees and grass being removed allowing the water to travel towards their property faster. She said it's an issue that needs to be addressed for future.

MOTION BY: Jerry Krieg **SECOND BY:** Gene Jackson
To recommend approval of the rezoning request within Lyons Subdivision to the City Commission.

DISPOSITION: Motion carried.

1. **FINAL 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 and Tim Gross of Wyoming Casing were present to answer any

questions. City Planner Ed Courton provided copies of the plat of the Brown Subdivision clarifying the buffer requirement between his LI (Limited Industrial) and AG (Agriculture) zones. There is a 66' right-of-way buffer between the zones. Mr. Courton stated this could be applied to the SLH Subdivision or the board can require additional if that is the direction they want to go, possibly adding a 50' conservation or non-buildable easement. Tim Gross stated they also have the 66' right-of-way and should meet the 50' buffer requirement with that 66'. He said they will access the property from the south end off of 34th. Their main building will be just off of 34th with three more buildings to the north. He said there will be no buildings to the residential area of the Brown Subdivision.

Gene Jackson clarified that the zoning actions by this board were completed last month with the recommendation to the City Commission from AG (Agriculture) to LI (Limited Industrial) and that we are reviewing the final plat for approval today. Mr. Courton stated that was correct and that he would send the rezoning request to the City Commission at the same time as the final plat. Mr. Jackson asked that the 66' public right-of-way to the north be clarified with a thick bold line on the plat. He would also like to see a thicker line for the 75 feet dedicated on the south along 40th. Mike Njos asked why 75'. Mr. Courton explained we require 150' on all plats and 75' would be from the centerline to their property. He said if there is an error in that figure, they could discuss it following the meeting. Mr. Jackson stated the importance of street dedication and would like to see a motion contingent on the street dedication.

Mr. Jackson said he likes the idea of a tree buffer but the details become sticky – who plants the trees, who maintains them and what happens if they're cut down or die? He said he feels it can be temporary in nature. Mr. Courton said he agrees. He stated it could be a requirement of the plat but then it comes down to the owner abiding by it and the city being able to enforce it. He said if the board decides on a buffer, they need to be clear before sending it to City Commission.

Henry Brown stated he would like to see a 150' buffer plus the 66' of right-of-way. He said this is a 24 hour operation and feels it will destroy their way of life. He said it's worse than living next to the interstate with the backup alarms, flood lights and pipes clanging. Mr. Brown said they won't be able to sell their home right next to this industrial property. He said he's talked to the owners and they don't care about his feelings. He offered to buy 150' of their property for \$70,000 to protect his property. He also offered to sell them his house. Mr. Brown stated before he purchased his land, he checked with the owner to the south and was told the land was for residential use – until the big oil money came in. Mr. Njos stated this issue had been addressed already. The rezone was completed last month and the recommendation for the plat was to put in a buffer. He said he's confused about doubling up the buffer. Mr. Njos stated Mr. Brown gave 150' to buffer between his residential and industrial zones, but he currently has trucks parked in the buffer zone and no trees were ever planted. Chairman

Abrahamson stated the Wyoming Casing property is utilized 24 hours a day. You can't zone intent and that's the issue; the only way to address it is to place the buffer requirement on the plat. He added Mr. Brown has control of his industrial zone and the times of activities on his property. He will have no control over the buffer or activities on the Wyoming Casing property.

Mr. Gross stated that the company does run 24 hours a day, but they are not unloading pipe or running heavy equipment at night. The afterhours activity would be crews coming in or leaving with a one ton pickup. He said they've met with their electrician and will install LED lights facing downward to be the least offensive. He said they will put in tree rows, taking into consideration what Mr. Brown is requesting. There are no buildings planned in the area of Brown's residential property.

Gene Jackson stated he would be ready to make a motion for approval contingent on the street right-of-way issue, modifying the plat to create a 150' lot on the north end with the same zoning so if the two parties could come together, it could be sold and he would require a tree buffer. Tracy Tooz stated he is in favor of the second lot but is not in favor of the tree requirement. He said it would be a maintenance issue and would not be a long term answer to the extreme land use transition.

City Planner Ed Courton said with respect to prior comments, the City is looking at similar land use conflicts and this is proposed to be addressed in the Comprehensive Plan. He said he's thought about an interim policy statement to address these issues for the short term and to require buffering until the Comprehensive Plan is adopted. This would help the Planning and Zoning Board in making these decisions. He said if the Board decides to go with a conservation easement, there are many ways to describe it; specifying the number of trees, deciduous or coniferous, etc.

Mike Njos asked for clarification of the buffer and if it could end at Brown's LI zone.

MOTION BY: Gene Jackson

SECOND BY: Tracy Tooz

To recommend approval of the Final Plat of SLH Subdivision contingent on three things:

1. Lot boundaries terminate at the street right-of-way (street dedication), being 33' on the north boundary and a footage agreeable to the City Engineer, City Planner and County Road Superintendant on the south.
2. Split the parcel into two lots north/south dimension of 150' and east/west dimension of 560'.
3. Allow for a conservation easement for trees to include deciduous and coniferous, 50' wide on the north side of Lot 2, 100' east of the western border.

Mr. Jackson stated the intent of the 150' Lot 2 would be to facilitate a sale if the parties came to an agreement. The new lot would extend 150' east of the west property line (at approximately the end of the Brown's residential zone) which would be more than enough for access if ever needed on the north side. He stated it would not line up with the Brown Subdivision and it would not be street dedication but would allow access if needed in the future.

DISPOSITION: Motion carried.

2. **FINAL 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 presented the plat for final approval. City Planner Ed Courton stated he is fine with the proposed plat. He noted a couple of changes south of 20th Street West where the lots were changed to tracts. He stated tract 1 is undevelopable and tracts 2 and 3 are unbuildable but a record of survey could adjoin them to the lots to the south. He said it would be a progression issue.

Gene Jackson questioned the interior easements stating we don't know where they are and asked that dimensions of the easements be placed on the plat. Mr. Kitzan stated they were aware of that and they have no problem adding them.

MOTION BY: Gene Jackson **SECOND BY:** Jason Hanson
To recommend approval of the Final Plat of Sax Motors Addition to the City Commission contingent on showing the easements on the plat.

DISPOSITION: Motion carried.

3. **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.

Removed from Agenda to bring back for Final Plat next month, allowing parties to meet the requirements of the Century Code.

5. **REZONING REQUEST** – To consider a request to rezone from R2 (Residential Medium Density) to R3 (Residential High Density) in order to construct housekeeping apartments on the property described as Lots 1, 2, & 3, Block 2, Osborn's Addition.

Chairman Abrahamson opened the Public Hearing. Quinton Kitzan from Big K Industries stated this is the area of the old Putt 'n Stuff miniature golf, directly across the street to the south of the Armory and east of the Quality Inn. The R3 zone would allow construction of studio apartments for housekeeping staff for the hotel. The apartments could be rented out if not needed for staff housing. With

the shortage of affordable housing, any R3 use would be allowed if the rezoning were approved. The difference between density for R2 and R3 was explained by the square footage requirements. 7000 SF is required for the first unit, 3000 SF for the next three units, then 1000 SF for each additional unit. The same is true for R2 up to 16000 SF for a maximum of ten units. Mr. Courton explained that after meeting landscape and parking requirements and adequate room for turning movements, they may not end up with any more density than the R2 zone. They may be required to submit a parking plan for the hotel as well. He added they have not submitted a plan at this time. Mr. Kitzan stated if the parking works, their estimation is to get possibly four more units than the R2 zone would allow, maybe less.

Gene Jackson asked if access would be from Sims or Museum Drive. Mr. Kitzan stated the main entrance is off of Museum between these lots and the Quality Inn. He said there is also a driveway to the south. Mr. Courton stated he is not in favor of access from Museum Drive as it is too close to the intersection. He suggested they work with the hotel for joint access.

Gayle Selle stated she lives across the street on Sims. She stated their property is zoned R1 and they were assured this property would be zoned R2. She stated it is difficult to get out of their driveway on Sims now as cars can jump out onto Sims anywhere because of the mountable curb. Mr. Courton said he would agree to make a raised standard curb as part of the development to eliminate the free for all exiting and entering the property.

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

DISPOSITION: Motion carried. Aye – 7. Nay – 1 (Krieg)

6. **SPECIAL USE PERMIT** – To consider a request for a Special Use Permit for Dustin Kolling to construct eight ranch style townhomes in an LC (Limited Commercial) zone on the property described as Lot 13, Block 29, State Addition.

Chairman Abrahamson opened the Public Hearing. City Planner Ed Courton stated this is a remnant piece of LC zoning existing where everything around it has been rezoned to R3. An SUP is needed to build multi-family housing which is just a continuation of what they have developed on 1st and 2nd Streets West. The request is for an eight plex between two 12 plexes. Dustin Kolling stated they didn't get in on the rezone when the city approached other lot owners to rezone to R3 several years ago.

Gene Jackson asked what reason there would be to not rezone at this time. Mr. Courton stated additional conditions can be added with the SUP. He said the LC

zone makes sense for the future, if these units were ever removed, a convenience store use would fit.

Jerry Krieg stated the townhouses will be rented out, but asked if they could be sold in the future. Mr. Clement stated they've been approved through Stark Development as side by side units which could be sold. Jason Hanson questioned that if they were sold as single family units and one burned down, could they rebuild. Mr. Courton explained the SUP runs with the land, the Special Use Permit would remain, they would be granted one year to turn in plans to rebuild. If they didn't rebuild within one year the property would revert back to an LC use. Mr. Krieg noted they will be similar units to those in Blocks 10 and 11 to the north and west. Mr. Clement stated they were and their intention is to keep them for ten years.

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

DISPOSITION: Motion carried.

7. **REZONING REQUEST** – To consider a rezoning request from AG (Agriculture) to PUD (Planned Unit Development) in order to develop the property 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. The property size is +/- 47 acres.

This item is officially removed from the Agenda.

8. **SKETCH PLAT** – Southwest Dickinson.

City Planner Ed Courton stated Highlands Engineering is proposing the plat. It is outside the city boundaries in the SW section. Mr. Courton stated the property would need to be annexed, however it is not contiguous so the proprietors would need to work with adjacent property owners for joint annexation. He stated the city is not in favor of Rural Development.

Gene Jackson asked what the intentions were for infrastructure. He said he would not be in favor of the plat without urban services. Jerry Krieg questioned the cul de sacs and odd shaped lots. Mr. Courton concurred stating he didn't ask them to redraw the plat as the biggest obstacle at this point is annexation. He agreed we would try to prevent cul de sacs unless there is no continuation of roads or due to drainage issues.

Mr. Jackson asked who the proprietors would be. Mr. Courton stated he met the surveyor, Mark Swenson but didn't catch the owners names. He said he didn't believe they would be moving forward in the near future. Mr. Jackson stated he

concurs with staff on annexation and asked if we will need a motion. Mr. Courton stated a motion would be appropriate.

MOTION BY: Nancy MosBrucker

SECOND BY: Jerry Krieg

To deny the sketch plat based on the annexation issue primary for this area.

Gene Jackson stated we're not at the point of discouraging development but do not want to entertain review of a preliminary plat until annexation can occur. Tracy Tooz agreed stating we don't want to see what happened with Lyons Subdivision again. They should reach a developers agreement based on what the City Planner recommends.

DISPOSITION: Motion carried.

9. SKETCH PLAT – Klayton Oltmanns – Lot 3, Block 4, Lutz's 1st Addition.

Klayton Oltmanns explained he purchased the property addressed as 2273 3rd Avenue West four years ago from Riverside Marine. The 250' x 249' parcel is larger than what they need for his wife's business, Eyewear Concepts, thus they wish to sell the remaining parcel. They will retain 124' x 185' and sell the remaining parcels of 125' x 250' and 64' x 124' or approximately 39,000 square feet. City Planner Ed Courton stated he met with Mr. Oltmanns and recommends moving forward with the Preliminary Plat.

10. CODE ENFORCEMENT REPORT – May, 2011

City Planner Ed Courton stated the report indicates a significant increase in the number of commercial building permits. To date, we have issued 11 commercial permits for a value of \$18,967,990 compared to 4 with a value of \$1,883,316 through the same period a year ago. He said the commercial permits require more extensive review and staff time. He stated we are out about a month for commercial and residential review on building permits. The newly hired code enforcement officer will be starting tomorrow.

11. ADJOURNMENT

There being no further business to discuss

MOTION BY: Tracy Tooz

SECOND BY: Jason Hanson

to adjourn meeting. Meeting adjourned at 9:55 AM

DISPOSITION: Motion carried.

PREPARED BY:

Karen Amann

APPROVED BY:

Ed Courton