

PLANNING & ZONING MEETING MINUTES

January 17th, 2018

Watch Planning & Zoning Meetings at www.dickinsongov.com

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: Jason Fridrich
Commissioners: Shirley Dukart, Scott Decker, Scott Bullinger, and Dean Franchuk

Absent: Commissioner Scott Karsky

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

II. ORDER OF BUSINESS

MOTION BY: Shirley Dukart **SECONDED BY:** Jason Fridrich

DISPOSITION: Motion carried unanimously.

Planning Director Walter Hadley introduced the new City Attorney, Janilyn Murtha to the Planning Commission.

MOTION BY: Dean Franchuk **SECONDED BY:** Shirley Dukart

Approve meeting minutes dated November 15th, 2017.

DISPOSITION: Motion carried unanimously.

III. ACTION ITEMS – AGENDA

1. **FINAL PLAT** - To consider a Minor 1 lot Subdivision located along Palm Beach Road within the ETZ, and described as being located within the E ½ of Section 8, Township 139 North, Range 96 West consisting of 3.58 acres. The proposed Subdivision lies within the R-1 Low Density Residential Zone and will be restricted to the allowed uses.

Planning Director Walter Hadley presented the Final Plat for the Howe Minor Subdivision. Mr. Hadley stated there are five generic conditions to accompany the approval. There was one call about the Plat regarding the type of construction on the lot. Chairman Gene Jackson asked if anyone from the commission had any questions or comments, there being none Mr. Jackson stated this is a public hearing and asked if anyone from the public would like to comment, there being none, Mr. Jackson closed the public portion of the hearing. Mr. Jackson asked for a motion.

***** Approval *****

Howe Subdivision Preliminary/Final Plat

I move the City of Dickinson Planning and Zoning Commission recommend Approval of **FLP-007-17 Howe Subdivision Preliminary/Final Plat**, as depicted in Attachment A, and meeting all the requirements of the Dickinson Municipal Code and also being in the interest of the public health, safety and welfare.

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

DISPOSITION: Motion declared duly passed.

PLANNING & ZONING MEETING MINUTES

January 17th, 2018

2. **ZONING TEXT AMENDMENT** – To consider proposed amendments to the Downtown Commercial Zoning District in the City of Dickinson Municipal Code Chapter 39 “Zoning” under the following sections: 39.04 Zoning District Regulations; and 39.07 Supplemental Site Development Regulations.

County Planner Steven Josephson presented Zoning Text Amendments to change the Downtown Commercial (DC) zoning district regulations. There was discussion regarding zoning districts, changes to the permitted and allowable uses in DC district. There is a letter of support from Kristi Schwartz from the Downtown Association. Mr. Hadley added this incorporates our new street scape designs. There are some errors the material presented to the commission not related to these amendments; the text presented to the commission did not reflect recent code changes that have not yet been codified. City staff will start updating the code quarterly to avoid this in the future. Commissioner Shirley Dukart asked how many blocks this covers. Mr. Josephson stated it’s about ten blocks, and gave a brief detail of the coverage area.

Commissioner Scott Bullinger interjected saying on page 7, where shows the addition of pet daycare, distillery and microbreweries are only permitted in Downtown Commercial zoning. Mr. Josephson said at this time we have just added it to DC, but it can be expanded to other commercial districts. Attorney Janilyn Murtha added that this use had been added to the Downtown Commercial amendments to have it presented to the Planning Commission. There could be local differences between the definitions of this use, however the definitions presented were consistent with state code. Mr. Jackson stated why not add microbrews now to be allowed in the districts we currently allow cocktail lounges. Mr. Josephson stated he has no issues with that proposal. Commissioner Jason Fridrich stated since there is a license required for microbrews, this would be restricted to downtown and the City needs to discuss this issue. Mr. Jackson added we allow cocktail lounges in Community Commercial and General Commercial. Mr. Jackson stated he would like to make this amendment today and add distilleries and microbreweries to the Community Commercial and General Commercial districts; this seems to be the consensus of the commission. Attorney Murtha was asked whether the motion could include the other districts referenced, and she indicated that it could. Mr. Jackson asked if anyone from the public would like to comment, there being none, and the public portion of the hearing was closed. Mr. Jackson asked for a motion.

*****Approval*****

I move the City of Dickinson Planning and Zoning Commission recommend Approval of the proposed changes to the **Downtown Commercial Zoning District** as being compliant with the City of Dickinson Comprehensive Plan as meeting all the requirements of the Dickinson Municipal Code and also being in the interest of the public health, safety and welfare.

(AND) the following additional requirements (*IF THE PLANNING AND ZONING COMMISSION RECOMMENDS ANY ADDITIONS AND/OR DELETIONS TO THE PROPOSED MOTION LANGUAGE*):

1. Microbreweries and distilleries are added to Community Commercial and General Commercial districts as a permitted use;

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

DISPOSITION: Motion declared duly passed.

IV. **WORK SESSION – AGENDA**

PLANNING & ZONING MEETING MINUTES

January 17th, 2018

1. Residential Landscape Amendment - Chapter 39

City Attorney Jan Murtha went over the proposed changes to the Residential Landscape Amendment with revisions added by Engineering, Planning and Building Departments. Ms. Murtha stated she has taken the proposed changes and put them in an ordinance form and made sure it was clear and enforceable. There is a discrepancy in section 1 and section 4 and it will need to be revised accordingly.

Ms. Murtha explained Section 1, explaining in detail Section D which is a summary from comments received from Mr. Hadley; this has been added to explain surety, and developer involvement.

Mr. Jackson added Mr. Fridrich was not at the last meeting, but from the discussion the Commission had at the last Planning meeting the developers were not going to plant the trees. Mrs. Dukart stated that was correct. Mr. Hadley stated this section was added to give the developer the opportunity to plant the trees. Mr. Jackson stated this is just confusing because this isn't what we left the last meeting agreeing on, and don't see the need to discuss this in our code. Commissioner Scott Decker added he didn't remember agreeing on a specific location for the tree to be planted either. Mr. Jackson stated there was an agreement at the last meeting on tree location. Ms. Dukart added we decided against the developer planting because there won't be anyone to take care of the trees, and it should be at the homeowner's discretion where the trees are planted. Mr. Fridrich stated he can't see a developer putting up a bond to take care of trees, even if this isn't written in the code, it can be provided as an option. Mr. Jackson stated it can also be added to the Development Agreement. Ms. Murtha stated this was added to allow the homeowners some clarification. Mr. Jackson stated this can be made clear with a discussion before the Certificate of Occupancy. Mr. Fridrich added if you're giving out Temporary Certificates of Occupancy then people are just closing without trees. Mr. Jackson asked if there was a consensus about the developers' not planting trees, the Commission was in agreement.

Judge Bob Keogh spoke on behalf of the Urban Forestry Committee. He stated the Urban Forestry Committee didn't meet to discuss any of this, we haven't been involved. Trees are our focus, we want to make sure there are more trees not less. If this moves forward, the Urban Forestry Committee needs to be involved as well.

Mr. Jackson asked what the current process is now if he were to build a house. Mr. Hadley explained the process for getting a Certificate of Occupancy. Mr. Jackson asked what happens if the house sells to another owner and the trees aren't planted. Mr. Hadley stated they wouldn't have a Certificate of Occupancy and could not close on their house. Mr. Fridrich stated that won't work especially in the winter months. Building Official Leonard Schwindt stated this has been an ongoing issue for years; issuing a Temporary Certificate of Occupancy based on landscaping is problematic. Once someone is in a home we won't take away their Certificate of Occupancy, we won't kick them out, and we can't make them plant them. Mr. Schwindt stated he is for trees and whatever the Commission decides. In the past there were only a few people who made planting trees a huge issue, now we are wasting a lot of time with letters. Trees in the boulevard in the past have been handled by the City Forester. In other communities trees in the right-of-way are planted by the city. Mr. Jackson added there is no good answer for this. Mr. Fridrich added in the past there were correction notices that were accompanying Certificate of Occupancies. Mr. Jackson stated with weeds and grass we go in and bill the property owner; can we do something like that with trees. Mr. Fridrich stated Temporary Certificate of Occupancy's have been an issue for years, I would like to see us go back to how we used to do it with a corrective notice. Mr. Schwindt stated the tree requirement shouldn't be tied to the Temporary Certificate of Occupancy, if there is a fee we hire a contractor to do it and we charge the homeowner.

City Engineer Craig Kubas stated we are well within the City Code to legally go plant the trees. The board at the last meeting indicated they don't want staff to spend a lot of time on this. We don't want it tied to the Temporary Certificate of Occupancy and we don't want to do it after the fact, can we just do it before. Can we just have whomever plant the trees. The requirements are lessened enough this could be done when the landscaping, driveway and sidewalk are done. Mr. Fridrich added that it's difficult with equipment driving around when landscaping is the final thing. Ms. Murtha added you could add a time frame's for Certificate of Occupancies into the code. Mr. Jackson added there will still be people to take advantage of that. Mr. Schwindt stated you will still have to enforce that. Mr. Bullinger stated can this be addressed upfront financially. Mr. Fridrich stated that was done in the past. Ms. Dukart added the title companies don't want to babysit people either. Mr. Schwindt added that this is a planning issue and it can be done, people just need to do it prior to the final inspection. Mr.

PLANNING & ZONING MEETING MINUTES

January 17th, 2018

Jackson asked Mr. Fridrich what he would do. Mr. Fridrich stated he would go back to the surety upfront. Mr. Jackson stated we all want trees planted as we develop, so how do we do it. Mr. Hadley added that there were a lot of cash deposits in the past for certificate of occupancy permits and it took almost a year to go through them and it didn't function well then either. Mr. Jackson stated that was a different time, it was much busier then. Mr. Schwindt stated the deposit works with new construction. Mr. Fridrich asked what happens if I cut my tree down in a year because I don't like it. Mr. Jackson stated this is an imperfect system. Mr. Jackson said the Certificate of Occupancy issue is what we need to resolve. Mr. Fridrich stated we need to go back to a correction notice and the fine goes to the builder, or the homeowner if they take out the permit. Mr. Decker stated there will be an occasional builder that gets away. Then suspend their right to build. Mr. Jackson stated I think we have an agreement. Mr. Jackson asked Ms. Murtha to meet with Mr. Schwindt, Mr. Fridrich and staff to come up with something. Ms. Murtha stated she would remove surety and Subsection D, and recraft the language as discussed. Then recraft the language to reflect that a Certificate of Occupancy shall be issued and failure to comply with landscaping requirements will result in a corrective notice and possibly a fine issued to the builder. Mr. Schwindt explained how the correction notice worked, and stated this should be a fee and not a fine. Mr. Decker added he doesn't want to see the City going on to anyone's land to plant a tree. Mr. Fridrich added if this is an issue repeatedly the builder's rights to get a building permit will be suspended. Mr. Schwindt questioned what the fee would be and how long does it continue. Mr. Schwindt asked is this a continuous fee, Mr. Fridrich suggested that or a suspension of building rights. Mr. Decker added he still feels we need to allow the owner to plant where they want, if they decide not to plant that tree in the front yard are we going to continue to fine them. Ms. Murtha added that if there is a fine that continues, there needs to be a date of measurement, the fees could be outlined in the ordinance.

Mr. Jackson stated at the last meeting we decided that there would be one tree on a regular lot and three on a corner lot with one in the front yard and two in the side yard. Mr. Decker said he is still opposed to making the land owner plant trees in the front yard. There was a detailed discussion about lots with boulevards, where the trees should be planted and whose responsibility is it to replace trees in the boulevard. Mr. Hadley added trees planted in the boulevard by home owners become public improvements. Mr. Fridrich added boulevards should be green and not concrete. Mr. Jackson stated this board is here to improve our community and we should be flexible, a community looks nicer with trees in the boulevard. Ms. Dukart added there will be subdivisions without boulevards. City Engineer Craig Kubas stated maybe there should be some language added stating landscaping should be required adjacent to the street property line within the public right of way if a boulevard is present, if there isn't a boulevard then the required landscaping shall be planted in the yard adjacent to the street right of way. Mr. Jackson asked for a summary. Mr. Kubas stated if a boulevard is present plant it there, if not plant it in the yard adjacent to the street. Mr. Fridrich asked what about visibility on the street side yard. Mr. Decker said there a lot of examples of that. Mr. Jackson added for every one of those there are ten that are fine, we can't write this for every exception. Mr. Hadley stated once we have an Urban Forester they will resolve those issues in the field. Mr. Jackson asked, with the way Mr. Kubas has summarized this, is everyone in agreement. Mr. Decker stated he is in opposition of planting in the front yard including the boulevard, this should be up to the homeowner. Commissioner Dean Franchuk stated he is against trees in the boulevard, but is fine with the front yard requirement. Mr. Decker stated the new boulevards we have won't allow for a canopy affect. Ms. Dukart stated she thinks the homeowner should be able to plant the trees where they want. Mr. Fridrich stated he is indifferent but feels we need to have a requirement. Mr. Decker agreed there needs to be some sort of requirement. Mr. Jackson asked Ms. Murtha to remove the boulevard requirement from the next draft.

Ms. Murtha stated that covers the discussion of Section 2, moving on to Section 3 this is the species of trees.

Mr. Hadley stated this section is the NDSU suggestion of trees. Mr. Jackson asked why Ponderosa trees were not on the list. Mr. Hadley stated they are not good street trees and can disrupt services, streets, walks, and curbs. Mr. Kubas stated he doesn't whole heartedly agree with Mr. Hadley, This section should be completely removed from the code. This list changes frequently and Mr. Kubas feels it could be handed out to builders and developers as a guideline, and there are a few that could be excluded like Cottonwoods, Elms, and Ash trees. Mr. Decker asked if the list would be trees that are not recommended to be planted not that cannot be planted. Mr. Kubas stated this is a suggested list. Mr. Decker suggest adding an explanation why the trees are best suited for specific locations. Mr. Josephson added there are trees that are nuisance or pest trees, maybe this should be addressed in the ordinance. Ms. Murtha confirmed that the Commission agrees to the changes in table 8.1. This section refers to public right of ways and utility easements, if planting doesn't work on the property. Section 5 a majority of that was covered in Section 1.

PLANNING & ZONING MEETING MINUTES

January 17th, 2018

Ms. Murtha stated that obstruction of view refers to landscaping interfering with the lighting. Mr. Jackson stated that this is an enforcement issue, and it's not good. Mr. Decker stated we don't need to add rules we can't enforce. Mr. Jackson stated that should be removed as well. Ms. Murtha stated she will take the items discussed today and create an updated draft.

2. 2018 Planning & Zoning Projects

Mr. Hadley presented a summary for 2018 Planning projects. Mr. Hadley added Mr. Josephson will be working on the upcoming amendments, while Mr. Hadley assists and helps the general public with all current applications. Mr. Fridrich asked why we are revisiting the sign code. Mr. Josephson stated we are just reviewing it for glitches to be sure there are no major issues.

Mr. Jackson stated we need to start looking at medical marijuana, we need to be looking at a draft for this. Mr. Decker agreed stating some are waiting for the State act, we need to be out ahead of this, in the fall there will be a vote for recreational marijuana in his opinion, there are enough ordinances drafted already we can get going and look at what other states have. Ms. Murtha stated we are gathering ordinances from around the area and other states. We are reviewing them, we have the benefit of coming into this later. We can think of things that weren't thought of previously. Staff is in the process of arranging a presentation from the Attorney General's office and the ND Department of Health before the City Commission that will discuss how the State will handle medical marijuana law issues. Mr. Hadley added he met with the executive team; and it was discussed that a license should be required along with a Special Use Permit for a medical marijuana dispensary.

Chairman Jackson asked for a motion to Adjourn.

MOTION BY: Scott Bullinger **SECONDED BY:** Shirley Dukart
Adjournment of the meeting at approximately 8:57 AM.

DISPOSITION: Motion carried unanimously.

PREPARED BY:

Brandy Goetz

APPROVED BY:

Walter Hadley