

to recommend approval of the Final Plat.

DISPOSITION: Motion carried.

2. **FINAL PLAT** – Koch’s Meadow Hills First Addition – Tract of land in NW ¼ Section 28, Twp 140N, Rge 96W.

Harvey Schneider of Toman Engineering in Mandan and owner Mike Koch were present to answer questions concerning the plat. An additional handout was provided showing some changes within the development. The original plat contained 14.36 acres which has been modified to 23.08 acres to include three parcels adjacent to the development in the SE corner. The additional proprietors will be Greg Lefor and Ron Hartl, owners of the additional acres. City Engineer Shawn Soehren stated he did meet with Hartl and Lefor and they agreed to join the plat and give 40’ of right-of-way on 10th Avenue West. Schneider said they plan to annex the next two subdivisions right away.

Schneider stated they have modified the oil line easement from 30’ to 50’ as requested by Klein Production. The oil line has been located and was found to lay 20’ south of the north easement line. It has been tied in on the plat. There will be a berm constructed within the easement on the low side. Fred Klein indicated he would like to see that, then if a break in the line occurred, it would be contained to the easement. Lots 1-9, Block 5 were also modified to accommodate the oil line easement. A sewer easement was added between Lots 13 & 14 to accommodate sewer service to Lot 10 for Greg Lefor. An additional gas line easement was added along the rear of Lots 14 & 15 for MDU.

The plat now contains five blocks with 34 lots. The zoning for Lots 10 & 11 (belonging to Ron Hartl and Greg Lefor) will remain AG (Agriculture). Blocks 1, 3, 4 and the remainder of 5 will be zoned R1 (Residential Low Density), Block 2 will be zoned R2 (Residential Medium Density). Schneider noted that a copy of the plat and a letter was mailed to all area utility companies.

Schneider and Koch met with the Dickinson Park District on January 28th to discuss park dedication. James Kramer of the park district stated they would want cash in lieu of land at this time and he provided a letter indicating that. Mr. Koch has agreed to the cash in lieu of land. Scott Kovash stated they looked at the land they were proposing to give to the park district and found it to be the least desirable so decided to take cash in lieu of land. He asked if they would be paid on the entire plat or just what is annexed in. Soehren explained the dollar amount is determined by the number of lots. Zoning of R1, R2 and R3 all have a different value, but the amount will be determined by how it’s platted. Kovash said they may desire a park within the development at some point but the parcel offered was at the far east end and would have cost too much to make it useable. They may have looked at it differently if they had been offered a more desirable parcel. Walking trails were not discussed and Kovash noted that Dickinson is

lacking trails as the city has no river to follow which is a common placement for trails in other communities.

Tracy Tooz noted that the minutes state there has never been a leak in the oil line. However, he said there was, in fact, a leak last summer just north of the Lefor property. Tooz stated he feels this is a significant issue and asked if this is what stimulated talk of the berm. Schneider explained the berm will be ½ foot to one foot in depth which would catch spillage should a leak occur. The oil line is a 2.5 inch insulated heated pipe which moves about 100 barrels a day. The berm should be enough to contain a leak within the easement. Jay Elkin noted the pipeline easement is 50' with another 38 feet between the easement and the Lefor property. Elkin asked if it might be better to dedicate that 38 feet to a non-use green space. Schneider stated Mr. Koch has offered 12 feet of that area to Mr. Lefor for tree planting, leaving 20 feet for the property owner to build a shed. Elkin, again stated he feels it should be left for no use. He said the original buyer would likely be aware of the oil line, but future buyers may not know about it. Chairman Abrahamson stated we can't define what will happen with an oil leak. There is no way to determine when, where or how much will leak or how soon it will be discovered or how easily it will be contained. He added this is a 60 year old line and the risk to leak increases every year.

Jerry Krieg asked who recommended the berm. Schneider stated Fred Klein asked for it as a solution before a leak happens. Tooz asked how we can be assured that the berm will remain after the nine lots are developed and sold. He agreed it may be easier to give the entire 88 feet as easement. Tooz asked if the berm will be written in covenants. Koch stated he is not here to maintain properties; he is not in favor of covenants. He stated the city doesn't want to be involved so then the developer gets dragged in. He said he would file the covenants if required for development, but he's not a fan of covenants.

Shawn Soehren said he also met with Mr. Klein and they are asking for this easement with the berm. He said the Klein's were not aware of the leak and they are confident that their line is good. Soehren stated this is not the only oil line in town or in a residential lot. Soehren agreed it will be difficult to manage the berm. It will be a challenge as someone may not want to mow over it and could possibly take it out in the maintenance of their yard. He added that an 88' easement might not be a good idea either as no one would want responsibility to maintain it and it may fill up with weeds and junk. He said the Board could determine if they want the berm on the plat and stipulate the size and elevation.

Nancy MosBrucker asked how much higher the berm will be. Koch stated it will be more a ditch than a berm. He said it will be half a foot to one foot over a 50' area so you probably won't even see it. It'll slope away from the homes.

Tooz asked if he would consider widening the lots. Koch stated he discussed that with Mr. Lefor and would agree to modify or widen them if he knew of

someone who wanted to purchase them. Koch stated that increasing the lot width to 105' would raise the price from \$45,000 to \$65,000. Koch said he feels 80 to 90 feet wide is a decent and saleable size.

Bruce Selinger, attorney for Fred Klein of Klein Production stated that they did meet with the developer and engineer and Mr. Klein appreciates what Mr. Koch wants to do but they have not agreed to anything at this point. Mr. Klein is very concerned about the pipeline being in someone's back yard. Selinger stated today is the first he heard about the pipeline leaking and it's repair.

At the meeting last month, Gene Jackson expressed concern that the blanket easement may cause cloud on the title to each lot. Tim Pearson and Susie Willer from ND Guaranty and Title were present to explain and answer questions concerning the easement and how to insure title to these lots. Mr. Pearson stated the blanket easement will not negatively show up on the title. The blanket easement is an encumbrance; not a cloud. The blanket easement was created in the 60's and is not created in a normal easement document. It is recorded in a document for oil and gas. The blanket easement does not define an easement holder and does not show a description of where the oil line lays. Pearson suggested the easement could be defined and the rest of the land would be released. The oil company would then be limited to that 50 feet. This could be done by quit claim deed. Policies of title insurance would only show the easement on the lots affected. Pearson added it is typical in the platting process to get a title opinion. Their office now does insurance of the plat with subdivision map guaranty showing corrective measures and is given to the city.

Engineer Shawn Soehren stated he held a meeting with the adjoining property owners, Ron Hartl and Greg Lefor. He said it was a good meeting where they discussed water connection to their properties coming from the North in the easement between Lots 4 & 5 where the water would tie in on Wahl Street. They will be able to use the existing septic systems until repairs are needed, so the sewer easement was added giving the ability to tie into the sewer when the time comes. The Urban Road on 10th Avenue West was also discussed with the dedication of 40' of right-of-way on the east side and the city putting in the street with 80% Federal funds and a 20% city match. They also discussed retaining the current AG (Agriculture) zoning for both parcels. Tracy Tooz asked how they could remain AG if the development is annexed into the city limits. Soehren explained the city limits do not determine zone. We have other AG zoning districts within the city boundaries. They wish to continue the AG zone in order to allow keeping horses on the property.

Greg Lefor stated he owns a three acre tract in the plat. He purchased the property in July, 2009 where they had an open area of pasture and grain fields. They were not thinking of someone bringing in platting, development and annexation. He stated they attended a meeting with the developer and was asked for input. He feels what they are proposing will devalue their property.

The number of lots keeps increasing. He would like to see two or three lots to the north of them, but feels the developer doesn't want to work with them. He called the realtor for a second meeting but the phone call was never returned. He was on vacation last month when the plat was discussed for Preliminary Plat and read the paper which stated there had never been an oil leak on the line. He stated that last summer trucks and equipment were crossing his property and he finally stopped them and asked what was going on when he was told they were there to repair a leak in the oil line. He said the reclamation was much more than a 50' area. Lefor stated he wished to purchase the 38' strip from Koch and would plant trees as he wants it for a buffer. Mr. Koch offered the strip of land to him at \$2.00 a square foot which would equate to \$47,000. Lefor said he is not willing to pay that price. Koch then offered to let him plant trees in 12 feet of the strip. Lefor stated he would like to see restrictive covenants to protect the trees he would be paying for.

Ron Hartl stated he owns Lot 11 of the proposed plat. He received news of the development one month after he purchased his property. Hartl feels the plat is not ready for final and there are too many unresolved concerns.

Mike Koch stated they were asked to add these adjoining property owners to the plat but he doesn't want to be held hostage by them. He doesn't want them to become a hindrance to the development.

Soehren asked for direction in what the Board will require to resolve these issues. Jerry Krieg stated that knowing there has been a leak on the line is a deal stopper for him unless they replace the line or remove it and truck the product out from a tank battery. Krieg stated there are too many issues with the berm and dyke. Scott Kovash said he agrees but asked if that was Mr. Koch's problem. City Attorney Matt Kolling said the code doesn't specifically note oil lines. He said the rationale may be to deny the plat but the code doesn't allow a solution for replacing or moving the line. It would need to be determined by the developer and the engineer and the owner of the line. Koch also asked for more direction. He asked who will determine what the grounds will be. He said he can't go to Mr. Klein and make him replace the line. Kovash asked if the city would have any liability if the line should leak. Kolling stated the city would not be involved as it is on private property. Kovash stated he didn't think it was fair to hold up the development because of the pipeline. Jay Elkin noted there are still unresolved issues with the adjoining property owners too.

MOTION BY: Jerry Krieg **SECOND BY:** Scott Kovash
to table the Final Plat for one month to work through the issues.

DISPOSITION: Motion carried.

3. **FINAL PLAT** – State 5th Subdivision – a replat of a portion of Blocks 31, 32 & 36 of State Addition and a portion of 5th Street West, 6th Street West and Dakota Drive of State Addition lying in Section 5, Twp 139N, Rge 96W.

Chairman Abrahamson opened the Public Hearing. Walt Smith of Kadrmass, Lee and Jackson stated State 4th is 60% to 70% developed and this plat continues to the north. The zoning requested is R2 (Residential Medium Density) for Blocks 2, 3, and 4 and R1 (Residential Low Density) for Block 1.

MOTION BY: Jay Elkin **SECOND BY:** Tracy Tooz
to recommend approval of the Final Plat of State 5th Subdivision to the City Commission.

DISPOSITION: Motion carried.

4. **FINAL PLAT** – Allard Subdivision – a tract of land in SE ¼ SW ¼ Section 16, Twp 139N, Rge 96W

Chairman Abrahamson opened the Public Hearing. Doug Wellenstein was present to answer any questions. He stated they added the ten foot utility easements. They met with Jerry from Roughrider Electric and Ross from Consolidated and both indicated ten feet would be sufficient. The plat will remain RR (Rural Residential) zoning which matches zoning for the entire corridor. City Engineer Shawn Soehren stated they also added right-of-way for the road on the east and south sides of the plat.

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

DISPOSITION: Motion carried.

5. **SPECIAL USE PERMIT** – To consider a Special Use Permit to allow a parking lot on the property described as Lot 7 and Lot 8, Block H, Dakota Land and Colonization which requires a Special Use Permit within a Residential High Density (R3) zoning district. (444 1st Street West and 430 1st Street West)

Chairman Abrahamson opened the Public Hearing. Terry Dvorak of Charbonneau Car Center said they would like to put in an employee and customer parking lot on the two parcels due to increased business and the parking congestion from the funeral home, school and daycare in the area. Dvorak said they applied for the Special Use about a year ago and were granted approval by Planning and Zoning but were denied by City Commission. The reason for denial was because of the house in between the business and the proposed parking lot. Charbonneau's have now purchased that house and are again looking for consideration for the parking lot. The lot will provide 26 parking spaces freeing up 1st Street from 3rd Avenue to 5th Avenue. They will access the

parking lot through the alley. There will be no access off of 1st or 5th. Jerry Krieg asked if there was enough room as it looked as though some of the spaces would be unusable. Dvorak said he used the specs from the City's web page and made each parking space 10 x 25. Krieg also asked if lighting was proposed for the parking lot. Dvorak stated the adjacent owners asked for no lighting. There will not be much traffic after dark and the Charbonneau building has lighting on the east side so no lighting is planned for the parking lot. Jason Hanson asked if the lot will be fenced as proposed in the last request. Dvorak said there is already a fence on the north side next to the Keller house. The fence is white vinyl at six feet, then goes down to four feet for visibility at the street. They plan to put in the brick columns (to match the fence across the street) with the white vinyl. They will continue the fence on the west side of Lot A and the south sides of both lots. They will leave a four foot easement for green space where they will plant trees on the south side to block visibility of the lot for adjacent property owners. They also plan to put in a park bench. Dvorak said they closed on the purchase of the home in December but won't take possession until May, giving the previous owner time to find a place to live.

City Engineer Shawn Soehren stated two letters were received concerning the request. One was in favor of the lot, the other opposed. He said the area is very congested and the parking lot is much needed for the area. He sees it as a positive thing for the neighborhood and an opportunity to improve parking in this downtown area. Jay Elkin agreed that the parking lot is truly needed. Tracy Tooz concurred, adding that part of a car dealership is image and Charbonneau has been making improvements for over a year.

MOTION BY: Tracy Tooz **SECOND BY:** Jay Elkin
to recommend approval of the Special Use Permit for a parking lot with no lighting.

DISPOSITION: Motion carried.

6. **SPECIAL USE PERMIT** – To consider a Special Use Permit to allow a parking lot on the property described as Lot 1, Block 2, Springwood 2nd Addition which requires a Special use Permit within a Residential Low Density (R1) zoning district.

Chairman Abrahamson opened the Public Hearing. Walt Smith of Kadrmas, Lee and Jackson said that St. Benedict's Health Center wishes to expand their off street parking across 4th Avenue East from their facility. They plan to complete the west end first and expand as necessary. They need to light the parking lot for safety. The parking lot is used by employees and due to shifts ending and beginning after dark, the lot will need lighting for safety of their employees. They plan to purchase the property from the city. It is currently used for snow storage by St. Joseph's Hospital. The hospital has been made aware of the possibility of elimination of this area for snow storage.

Scott Kovash stated he thought the Park District owned that parcel and that it was dedicated park land. He said they have no plan to develop a park there, but if it is owned by the Park District and if it is dedicated park land, they can't sell it. City Attorney Matt Kolling said the Board needs to decide if this is an appropriate use for the land. If the city owns it, they can sell it but if the park district owns it, it may not be sold. City Engineer Soehren stated they will research and verify who owns it. He said the city maintains it and there is a park across the street.

MOTION BY: Tracy Tooz **SECOND BY:** Jay Elkin
to recommend approval of the Special Use Permit for a parking lot with non
evasive lighting.

DISPOSITION: Motion carried.

7. **REZONING REQUEST** – To consider a request to rezone from R1 (Residential Low Density) to GC (General Commercial) to match zoning of adjacent property for best use on the property described as Lots 7 & 8, Valentines Subdivision and the E½ Lot 1, Wosepka's 1st Subdivision.

Chairman Abrahamson opened the Public Hearing. Lyle Stockert stated they want to rezone to utilize the lot more effectively. Properties to the west, north and south are all zoned commercial. He said the tax records show they are taxed at the commercial level. He said when the property was platted, the MDU compressor plant ran only during the winter months, but it runs year round now making the area undesirable for residential.

MOTION BY: Jay Elkin **SECOND BY:** Jason Hanson
to recommend approval of the rezoning request from R1 (Residential Low
Density) to GC (General Commercial)

DISPOSITION: Motion carried.

8. **PRELIMINARY AND FINAL PLAT** – North Industries First Addition – a replat of North Industries Addition lying in the North Half (N ½) of Section 27, Twp 140N, Rge 96W

Chairman Abrahamson opened the Public Hearing. Walt Smith of Kadrmas, Lee and Jackson stated the original plat has been approved and recorded and they were before the Board last month to replat some revisions and are now back again with different revisions for a replat. The area south of 34th Street has been revised creating a 43 acre lot west of 3rd Avenue East to accommodate one buyer. The zoning will remain the same.

City Engineer Shawn Soehren noted that this plat also contains an oilwell and has an existing oil pipeline. The pipeline is not in an easement and it is not

shown on the plat. The well exists between Lots 2 & 4 in Block 6. The pipeline is also 50 to 60 years old. Proprietor Tracy Tooz stated there is a buyer for the whole area where the oilwell exists and the buyer will then deed the oilwell back to Klein Production. The access road will remain. The buyer has designed his buildings around the oilwell. They are not aware of any leaks on the line. Soehren noted if the line is moved to a street location and it leaked, the contamination spread could be much greater as there is storm sewer running in the street. Three hundred seventy-three acres of storm water flow through this property. He added there will also be fencing requirements for an oilwell within the city limits.

Tooz said they have discussed options with Mr. Klein and Tooz will pay for whatever they find to be most prudent. The options discussed are: 1) moving the line to the street; 2) putting up tank batteries; 3) running the pipeline down 34th and tying in across Highway 22; or 4) purchase the well from Klein Production. Tooz said at this point, it looks like they will move the line to the street easement.

Tooz stated that Roughrider Electric is interested in purchasing Lots 5, 6 & 7 in Block 4 to put up a substation and asked if they could rezone the parcel to accommodate that use. Soehren stated we didn't publish for it so can't act on it but they could either consider a rezoning application or a special use permit next month.

MOTION BY: Jay Elkin **SECOND BY:** Nancy MosBrucker
to recommend approval of the Preliminary and Final Plat to the City Commission.

DISPOSITION: Motion carried. Tooz abstained from voting.

9. **SKETCH PLAT** – State 6th Addition – Replat of a portion of Blocks 15, 16, 17, 19, 32, 33 and 36 of State Addition and a portion of 6th Street West, 7th Street West, Experiment Drive and Dakota Drive of State Addition.

Walt Smith of Kadrmas, Lee and Jackson stated this is the next phase of development to the north of State 5th Addition. The sketch shows the proposed zoning including R1, R2 and R3 zoning districts.

10. **CODE ENFORCEMENT REPORT** – January, 2011

City Engineer Shawn Soehren stated this report is provided for informational purposes. We had a couple of commercial permits and are already ahead of last year. Soehren said he expects it will pick up drastically as the weather improves.

11. **ADJOURNMENT**

There being no further business to discuss

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

DISPOSITION: Motion carried.

PREPARED BY:

Karen Amann

APPROVED BY:

Shawn Soehren