

MANDAN PLANNING AND ZONING COMMISSION
MANDAN CITY HALL BUILDING
March 23, 2015

The Planning and Zoning Commission of Mandan duly met in session in the meeting room of the Mandan City Hall Building on March 23, 2015, at 5:15 p.m. CDT.

Commissioners Present: Zachmeier, Fleischer, Kelly, Klein, Knoll, Van Beek, Leingang, Laber, Mehlhoff, Liepitz, Beach, Robinson.

Commissioners Absent: Liepitz

Commissioner Laber motions to approve the February 23, 2015 minutes. Commissioner Fleischer seconds. Upon vote, the motion receives unanimous approval of the Board.

OLD BUSINESS

1. A request from Leslie Volochenko for a preliminary plat and a change of zoning. The request is to change the zoning of Lot AE less Lot 1 & less R/W 8.79 acres of the SE ¼ in Section 26, Township 139N, Range 81W from A (Agricultural) to PUD (Planned Unit Development) over CB (Heavy Commercial). The property is located east of Mandan Avenue NE on Division Street NE.

Bob Decker, City Planner, identifies and describes the area. The uses would be restricted using the PUD option. Uses allowed would be Residential, Retail Group A, Service Group A and Office Bank Group.

Dave Patience, Swenson & Hagen. Leslie Volochenko has owned the property for 17 to 20 years. Neighbors have not been happy for most of that time. Fire chief Nardello told Dave because the property is zoned Agricultural and it is not platted, he has a hard time enforcing any city ordinances. Dave thinks some kind of plat and zoning needs to be approved. Mr. Volochenko would like to get the heaviest zoning he could. When Mr. Volochenko tells him he wants to put a shop on the property, he is defining a use for the whole thing. He likes the PUD.

Commissioner Laber asks how the landscape buffer requirements would come into play. She does not see them on the plat. Dave says they are defined by a site plan. They do not have a site plan at this time. The Mandan Architectural Review Commission looks at those requirements before a building permit can be issued. Bob says the property would be platted and the buyer would have to provide a site plan with the PUD overlay plans. Dave says he has a utility easement on the south boundary shared with the neighbors. He can put a 25' landscape buffer on the plat. Now they would be 50' away from the adjoining neighborhood.

Mayor Van Beek asks if the commission can deny the request until the property is cleaned up. Bob thinks there can be a time limit or a sunset clause can be added into the motion.

Commissioner Leingang asks if they can approve the plat but delay the zoning. Bob says they can place conditions on the motion. Dave Patience says the fire department needs it zoned so they have some teeth in enforcing city ordinances.

Commissioner Laber says Les has not made an attempt to clean it up. She thinks a well written PUD can get uses in there that would be compatible with the area.

Bob Decker says stormwater would be worked out before it went to the City Commission as well as additional details of the site plan.

Commissioner Leingang voices his frustration with conditions not getting enforced. Bob says the city is looking at hiring a code enforcement officer that may help with some of these issues.

There is more discussion about getting the property cleaned up and whether the commission can place clean up conditions on the request for a plat and zone change approval.

Dave Patience says there are a couple clients who may be interested in buying some of the property, but until it is platted and zoned they would be sticking their neck out.

Jim Englehardt, lives on 2nd Street NE, "Is there a reason why this can't be zoned residential? Just strictly residential instead of apartment buildings and light commercial? Wouldn't that settle your problems as far as getting it zoned and be done with it? Then he can clean up his lot and sell it if he wants. We already got enough noise in the neighborhood with the interstate and everything else."

Chair Robinson tells Jim the zone change request is driven by the applicant. It is zoned Ag. They can apply for whatever level of zone they wish.

Jim Englehardt, "Well, it doesn't sound like he's getting what he wishes. So why not give him something he can sell and we'd all be happy?"

James McEachran, 1710 4th Street NE, "I think the question before you is are you going to zone it heavy commercial. I think the petitioners have that voted on tonight and if he wants to rezone it something else than he can petition it again. He's petitioned it heavy commercial I think at least three times in hopes you guys will get tired and the neighbors will be quiet and some day he'll get it. The question before you is heavy commercial. I think you should vote on that."

Bob Decker explains the suggested PUD over CB uses. The Planned Unit Development options allow you to take one of the other zones and customize it for an area by restricting the uses. We're starting with a CB option and taking out the heavier commercial uses. So, we have residential and lighter commercial uses. The CB is being strained down to a limited number of lighter uses.

Ron Kaiser, 1718 4th Street NE, "I would hope that he gets it cleaned up. I've had a number of confrontations with him, as we all have. The trailer and the barn and everything is right next to my yard. We had a confrontation about that and a number of different things. I don't mind the idea of what he proposes with light commercial and residential. I don't want to see heavy commercial. To compensate us neighbors for all of what we've been through I would like to see us get an alleyway in there or something. Because he stands to make a lot of money off this land and we put up with a lot over the years. Doesn't mean that we would, but it would be nice to consider some kind of compensation."

Bob Decker says there is an easement in there and an additional easement may go there as a landscape buffer. If an access driveway is needed in that area that could possibly be developed also. With sanitary sewer there has to be some kind of access anyway.

Commissioner Leingang asks if a blacktop road could be built there. Bob says it could possibly be some kind of driveway access. Lots 1 & 2 have a large drainage easement in the back. The road could maybe go all the way through or there would have to be some kind of turnaround on Lot 3. The primary concern is to get some kind of buffer in there.

Ken Hartleib, 1708 4th Street, "Last time I was here Mr. Volochenko threatened you and said he would take care of us neighbors and he did that. I got eight foot weeds in the back of my yard. I got dead trees laying. I called your city forester and he asked me you don't want me to deal with him it's crazy. Then he came back and says at the end of the conversation he says no he's retarded. I dealt with this for a year after he sat and lied to you saying he was going to clean it up. It's gone nowhere. I see this is all a joke. I don't see a future what you guys are planning down the road. I see it with housing development and I had this land planned when I bid against him on this property. He paid \$11,000 for it. He's asking millions now. That's a joke. I could have walked down the street and sold everybody's lot for \$5,000 and you would have been walking away with \$40,000 you would have had tax payers paying on the property. It would have been cleaned up and there would have been no problems. Now look at what we've got. A junk yard and a threat from a guy out back. Every other week I called the police department. I've called the fire department. I've called the city forester. It's a joke. You guys are a joke. I'm tired of it. I'm looking for a place to live elsewhere. This is a city that don't take care of themselves. You sit and tell things and plan but nothing goes anywhere. He's been in my backyard threatening me. The police departments been in my yard many times. He's been at the end of my gun. This is uncalled for. Are you guys crazy? I'm done."

Commissioner Mehlhoff suggests just approving to the City Commission giving more teeth to make him comply with clean up. A lot of the problem is we are an Ag state and Ag rights say he can have implements on the property. Some of that is state law and the city's hands are tied. If the commission gives him 4 months, does he sit and come back and the commission gives him another 4 months? The city may have more teeth to enforce compliance if the plat and zone change is approved.

Commissioner Zachmeier doesn't understand where the fire chief can't enforce the fire code. Just because it is Ag shouldn't mean a city employee loses authority. He knows there is a difference between what weeds are considered noxious and non-noxious. The dead trees can also be a health or fire hazard. The city council has to figure out what their department heads are or are not saying and making sure they are in compliance with state law.

Ron Frazier, "In addition to what he's saying, I don't know if anybody has checked his tax records to see where his income is coming from. Because if it was agricultural I could see having tractors or implement parked back there, but he's got commercial trucks parked there. He's got a turning lathe that goes to a machine shop. He's got junk back there from various different places. He's using this land as a catch all to store his junk. If he was a farmer and he had agricultural he could have a field or whatever, but he doesn't. According to what he was saying, he could be liable for whatever he's using it for."

Kris Hartleib, 4th Street, "I've been to a couple of these city commission meetings and I just don't like the idea of him saying I don't have to clean it up until I get what I want. That

leaves a bad taste in my mouth. I think if he had good faith and he wanted to move this property he should have cleaned it up. I don't like the idea of it being even light commercial. I think it should be residential like the way it is down there now. It's like he's strong handing everybody. I don't have to do anything to clean it up til I get what I want. The zoning I want so I can get the money I want. We have put up with him for twenty years and his junk and his crap and his bullshit, if that's the way you want to put it. I want to see it residential. I think that is what it needs to be and I think that's what all the neighbors would agree to down there.

Rod Bosch, 3rd Street, I just have one question. Whatever this land gets approved for is there anything that would stop Mr. Volochenko from retaining one of those lots. Moving in and building. Partially renovating it and it's sitting there another twenty years like his building on Collins Avenue is. Because that doesn't do anybody any good either.

Bob Decker explains building standards would have to be followed to obtain a building permit.

Commissioner Beach says the cleanup issue is not really the Planning Commission's area. A comment was made earlier we don't like to place conditions on motions. For the clean up issue other avenues should be taken. The commission should look at the zoning. It would be a duplication to add the clean up to the motion. If the zone change is approved, the clean up will happen regardless.

Commissioners discuss how the cleanup issue is not something the Planning & Zoning Commission can enforce, but can suggest the City Council take action on it.

Billie Leingang, 3rd Street, Why can't he bring this issue up again once he's got it cleaned? Instead of baiting him or challenge him. Why doesn't he just clean it up? When he's got it cleaned up then he can come and open up the whole issue again. It's not getting done. It hasn't for seventeen years.

Brenda Hartwig, 4th Street, This road that you're talking about the alley. Would this cost be all born by him or does our neighborhood have to kick in too? Heavy commercial coming in would it tear up the roads?

Bob Decker says any road put on his property would be his cost or the developers cost. It wouldn't impact the neighborhood.

Brenda Hartwig, I'd like to state that residential or R7 zoning we all would be happy.

Commissioner Fleischer motions to recommend approval of PUD (Planned Unit Development) over CB (Heavy Commercial) restricted to Residential, Retail Group A and Retail Group B uses. The property must also be cleaned up within 3 months as of today or the recommendation becomes null and void. Commissioner Labor seconds. The motion fails with the following vote: Zachmeier-nay, Fleischer-aye, Kelly-nay, Klein-nay, Knoll-nay, Van Beek-nay, Leingang-nay, Laber-nay, Mehlhoff-nay, Beach-nay, Robinson-nay.

Commissioner Labor motions to approve the PUD (Planned Unit Development) over CB (Heavy Commercial) restricted to Residential, Retail Group A and Service Group A. Commissioner Mehlhoff seconds. The Motion passes by the following vote: Zachmeier-aye, Fleischer-aye, Kelly-aye, Klein-aye, Knoll-aye, Van Beek-aye, Leingang-nay, Laber-aye,

Mehlhoff-aye, Beach-nay, Robinson-nay

Commissioner Laber motions to recommend that the City Commission reviews Planning & Zoning's standing and how the city is dealing with the nuisance of the trash, weed and other issues brought up by the citizens and come to a resolution as quickly as possible. Commissioner Zachmeier seconds. Upon vote, the motion passes unanimously.

2. A request from Meadowlands Development LLC for a final plat and a change in zoning. The request is to change the zoning of Lots 17-20 and parts of the South ½ of Section 26, Township 139N, Range 81W from RM (Multi-Family Residential) and MB (Heavy Industrial/Heavy Commercial) and CC (Heavy Commercial) to RMH (Residential Mobile Home), CB (Heavy Commercial) and CC (Heavy Commercial). The property is located southeast of Frontier Mobile Home Development and north of 3rd Street SE.

Bob Decker, City Planner, identifies and describes the area. This is continued from the February Planning & Zoning meeting. This comes back with a zoning plan. Access details had to be discussed. An access will be granted through the west/east existing road that runs through the existing mobile home court to 6th Avenue SE. The owner of that court is this developer's brother. The other access will be a north/south roadway lying within this development. The site plan shows a park in the southwest corner. Access onto Memorial Highway has been worked out. There is a recreational trail on the south side of 3rd Street. It may be possible to use the dike as a path to get from the park to the existing trail.

Dave Patience, Swenson & Hagen. There are 84 manufactured home lots in this development. To the east may be apartment complexes, office uses or assisted living communities. There are a couple commercial sites along Memorial Highway. A developer's agreement has been submitted to the city engineer's office for review. Dave points out where ponds are on the site plan and says those ponds are where dirt was removed to build up the railroad bed. Those low spots are going to catch water so they could be incorporated as storm water detention. The actual storm water plan has flow to the west to a storm water pump station that sits west of the park.

Commissioner Laber asks if there was input from the Lower Heart. Dave says he met with Ron Manchester, who acts as an advisory engineer, a couple times. This entire area was removed from the flood plain and is protected by dikes that surround this site.

Burlington Northern access that has been used for a long time is actually part of this developer's property. He owns it. There more than likely will be an agreement between the two to continue this access.

Commissioner Fleischer says the school district has no objections.

Commissioner Leingang motions to approve the final plat and zone change from RM (Multi-Family Residential) and MB (Heavy Industrial/Heavy Commercial) and CC (Heavy Commercial) to RMH (Residential Mobile Home), CB (Heavy Commercial) and CC (Heavy Commercial). The property is located southeast of Frontier Mobile Home Development and north of 3rd Street SE. Commissioner Laber seconds. Upon vote, the motion passes unanimously.

NEW BUSINESS

1. A request from Terry and Terry Lea Mastel for a setback variance. The request is to reduce the front yard setback on Lot 5, Block 1, Mantahni Subdivision in Section 9, Township 139N, Range 81W.

Bob Decker, City Planner, describes and identifies the area. This request was brought before Morton County in 2013. It is within the extraterritorial jurisdiction and referred to the city. They would like to build a large storage building/garage. The land is fairly rugged. Their property is on a dead end gravel road with about three other properties. The request is for a setback variance in the front, which would place the new garage a little closer to the road than the house is. The variance would prevent them from having to remove a lot of trees. The R.O.W. is wide enough. This subdivision uses septic water and sewer. There is little likelihood this subdivision would develop into an urban density. The Planning Commission doesn't usually see variances, but because of the questions on this, it was brought forth for the commissioners recommendations.

Commissioner Kelly doesn't see any utility easements identified on the plat.

Commissioner Zachmeier says there has to be proof of a hardship to grant a variance and there isn't a hardship here. The hardship can't be manmade. The trees were planted by an individual. Even if the trees were wild, it would not mean a hardship. The county staff report had concerns about the 25' setback off the original roadway. The report says the Morton County Commission does not have the authority to grant a variance from requirements recorded on the plat. There is supposed to be a 25' setback recorded on the plat. It is in the ND Century Code. If it is illegal for the county, it would have to be illegal for the city. This could create a special privilege if approved. The proposed building is substantially sized.

Bob Decker shows the commission this area on the Long Range Transportation Plan. The section line to the north of this property is not on the agenda to be developed into a roadway. This subdivision has been here a long time and there are no plans to add access points.

There are questions that would have to be looked into before a variance could be considered. There is probably enough land to move the building site. Commissioners discuss possible alternatives in where the building sits and how trees can possibly be saved with a tree spade.

Terry Mastel, "I'm really not concerned about the extra costs. Because I know on the down side of wherever I put that building. I will need to do something very serious about a retaining wall. An extra \$10,000 or \$20,000 isn't really the issue. The hardship doesn't have anything to do with my neighbor, but if I put the building where I'd like to, it's right in front of his house. I was hoping to stay on a little more level property. I'm not really concerned about the trees because a lot of those trees are not doing well because their on top of the hill. By utilizing that hill as well as possible, that's the reason I have that site proposed where it's at, because it would be the ideal site so I do not get snowed in. I have a situation with the size of the building where right now I can't bring my vehicle that I drive every day because my garage is too short. So, I don't really have a secure place to park my truck. I'm trying to make sense of a workable solution to the best placement of the building. Maybe I haven't met the requirements for a setback and if that's the case, so be it. Life goes on. But, that's what I would prefer."

Commissioner Leingang motions to approve the setback variance. Commissioner Laber seconds. The motion fails with the following vote: Zachmeier-nay, Fleischer-nay, Kelly-nay, Klein-nay, Knoll-nay, Van Beek-nay, Leingang-aye, Laber-nay, Mehlhoff-nay, Beach-nay, Robinson-nay

Commissioner Zachmeier motions to deny the setback variance based on Mandan Municipal Code 21-09-16 and based on recommendation of the Morton County Engineer. Commissioner Laber seconds. The motion passes with the following vote: Zachmeier-aye, Fleischer-aye, Kelly-aye, Klein-aye, Knoll-aye, Van Beek-aye, Leingang-nay, Laber-aye, Mehlhoff-aye, Beach-aye, Robinson-aye

2. A request from Boyd and Deborah Addy for final plat approval of all of Lot 1, Block 2, Eastside Commercial Park & Parcel 6B-21 of the SE ¼ of Section 26, Township 139N, Range 81W. The property is located at 2008 Twin City Drive.

Bob Decker, City Planner, describes the area. This is a doctor's office. They split the lot into two parcels and they want to retain the undeveloped portion. There is a water line on the west boundary that could be used for both properties. A utility easement would run along the south boundary. There is a sewer line that comes from the existing building across the street. If they built on the empty lot they would bring in a second line across the street. There was left over land from the DOT's interstate right of way on the north and east sides of this property that the Addys purchased. There is not a lot of buildable area on the second lot.

Commissioner Leingang motions to approve the final plat. Commissioner Fleischer seconds. Upon vote, the motion passes unanimously.

Kary McCoy addresses the commission about a request that is not on the agenda. They live in the Mantahni Subdivision. He wants to split his property into two lots. He wants to sell one and build a new home on the other. A neighbor brought up covenants for the development that he did not know about. He is asking the restrictions (covenants) be removed. He says there are numerous violations that have never been enforced. It used to fall under the county's jurisdiction but now falls under the city's. So, the county approved and recorded the covenants, but the property has since been included in the city's extraterritorial jurisdiction. Commissioner Zachmeier says the Morton County Commission at their last meeting approved the continuance of the covenants. It is up to the landowners to sue for enforcement of the covenants. Mr. McCoy says he has been back and forth between the county and the city. The citizens (every landowner) that live out there can agree to remove the covenants. It would need to be signed off by the landowners and probably have to be replatted. The city attorney should be consulted.

Commissioner Leingang motions to adjourn. Commissioner Laber seconds. Motion passes unanimously. Meeting adjourns at 7:30 p.m.