

MANDAN PLANNING AND ZONING COMMISSION
MANDAN CITY HALL
August 26, 2019

The Planning and Zoning Commission of Mandan duly met in session in the meeting room of the Mandan City Hall on August 26, 2019, at 5:30 p.m. CDT.

ROLL CALL

Commissioners Present: Boehm, Helbling, Knoll, Leingang, Liepitz, Frank, Renner, Camisa, Robinson

Commissioners Absent: Klemisch, Klein

Commissioner Knoll motions to approve the July 22, 2019 minutes. Commissioner Camisa seconds. Upon vote, the motion passes unanimously.

PUBLIC HEARINGS

1. A request from Jon McCreary for approval of an amendment to the City of Mandan's Land Use and Transportation Plan that serves as the City's Comprehensive Plan. Said property is parts of Sections 17, 18, & 20; in Township 139N; Range 81W. Said property is vacant land on the west side of Mandan. This is the same request previously heard at July's Planning and Zoning Commission meeting as "McCreary Masterplan." It is being re-noticed to address any confusion tied to how it was described in previous public notices.

A. Staff report

John Van Dyke, city planner, presents. This staff report reflects unchanged information from July's Planning and Zoning Commission meeting. The public hearing being held today is due to resident concern the previous public hearing was advertised as a masterplan subdivision rather than amendment to the City's comprehensive plan. The City has re-noticed the public hearing via the newspaper and sent the necessary notices to adjacent property owners with the clarifying language. Staff's recommendation remains unchanged.

Jon McCreary has submitted an application for an amendment to the comprehensive plan for approximately 1,000 acres west of Boundary St. NW.

City staff from multiple departments met with the applicant or the applicant's representative Scott Harmstead on a number of occasions to address concerns or issues that needed to be addressed in order to provide a recommendation of approval to this Commission.

The current land use designations for this area call for low density residential throughout the majority of the land south of I-94. An open space buffer separates a mix of medium and high-density residential and commercial from the Interstate.

Exhibit 1 contains the proposed amendment to the comprehensive plan. The proposed plan adjusts the location of roads, provides a mix of industrial, neighborhood commercial, and

commercial closer to the interstate, and delineates open space on those areas of steep terrain and which provide natural conveyance of water.

If approved, this amendment to the comprehensive plan would replace the future land uses and preliminary road layout presently planned for the area.

Staff asks the Planning and Zoning Commission to focus on the uses which may be inherent in each of these proposed designations and their spatial relationship to one-another and determine if this plan is superior than the one presently adopted by this Commission for this 1,000 acres.

The Engineering and Planning Department recommend approval of the amendment to the comprehensive plan as presented in Exhibit 1.

I move to approve the amendment to the comprehensive plan as presented in Exhibit 1.

B. Open public hearing

Scott Harmstead, SRF Consulting Group, says there is nothing new. He is here to answer questions.

C. Close public hearing

There are no public comments.

D. Commission action.

Commissioner Camisa motions to approve the McCreary amendment to the City of Mandan's Land Use and Transportation Plan that serves as the City's Comprehensive Plan as presented in Exhibit 1. Commissioner Renner seconds. Upon vote, the motion passes unanimously.

2. A request from Alex Poole, Raymond Schaff, and Leonard & Lucia Storms for a change of zoning from Residential to MB (Industrial). The property is the North 280' of Lot "C" of Lot 1 of Auditor's Lot "E"; Lot "B" of Lot One (1) of Lot "E"; and Lot "A" Auditor's Subdivision in the SW ¼ of Section 29, Township 139N, Range 81W. The properties are located at 4081 Sunny Lane South, 4080 & 4085 Sunny Place South.

A. Staff report

John Van Dyke, City Planner, presents. The applicant's wish to rezone their property from R-7 Residential to MB-Industrial. The area is largely residentially zoned, although there are commercial/industrial uses in the vicinity. The following link provides pictures of the area: <https://arcg.is/1vOKzX>. The purple colored numbers are those pictures of industrial facilities in the area. The red colored numbers are of the applicant's property.

This rezone request is premised on a zoning violation as a result of adjacent property owner complaints to the City of Mandan and Morton County for having an accumulation of vehicles stored outside stemming from a wrecking operation on Mr. Poole's property (See Exhibits 1 and 2).

While Raymond Schaff's signature is on the letter, he has since joined in the application along with the other two applicants and no longer opposes the industrial rezoning of the area (See Exhibit 3).

The future land use designation for the property is high-density residential (see image below; red star marks area of rezone request).

The purple is industrial, red is commercial, and yellow is low-density residential. The hashed overlay denotes the 100-year floodplain.

Industrial zoning in the floodplain creates additional problems when floods occur. In the case of a junkyard, vehicle fluids and components from vehicles are more likely to produce environmental and public health/safety hazards than single-family dwellings.

Existing zoning in the area is largely R7 residential and agriculture. There is a property that went through a commercial rezone in 2011 to the east of the applicant's property denoted by a star (see below red colored property).

If this zone change is approved, the industrial zoning designation will be entirely surrounded by R-7 residential. Industrial and residential uses are disharmonious and incompatible in close proximity, leading to complaints from land owners.

Finally, access to the majority of land that is part of this request is dependent on an access easement that passes through many of the property owners that have complained about the industrial activity occurring on Mr. Poole's property. A rezone to industrial would create the potential for heavier machinery and vehicles to access the property through the easement and damage the existing private gravel road.

In summary, staff is recommending denial of the proposed rezone for the reasons outlined in Exhibit 4.

Alex Pool's property is an active enforcement complaint from several neighbors for trucking/junk yard-related activity.

Engineering and Planning recommend denial of the zoning amendment from R-7 Residential to MB Industrial in the area specified in Exhibit 1 for the reasons outlined in Exhibit 4.

Commissioner Frank says the Future Land Use Plan that is referenced shows commercial throughout this entire area, including high density residential, which doesn't exist there right now. She asks John what he knows about the discrepancy in the plan and what is there now. John says the zoning designation occurred when the ETA boundary was established or extended. It was denoted as R7 at that time. The plan was adopted in 2015. He was not part of the discussion for the Future Land Use map so it is difficult to say at first glance what he would have recommended.

Commissioner Frank says it is not recommended to have industrial uses in a flood plain. This looks like it is all in the flood plain. John points to Exhibit 4 as to why he is recommending denial.

Commissioner Camisa asks John to summarize his visits with the county on this. John says this is a gray area. Morton County does not have a nuisance law and do not have plans to

adopt one at this time, so they are not able to site for junked vehicles. For the city to get involved, it has to be a zoning violation. The zoning violation is having a business tied to the property in a residential zone.

Commissioner Leingang asks if there is a building permit for the out building being built there. Shawn Ouradnik, City Building Official, says they do not have a permit. He thinks they are going to apply for one.

B. Open public hearing

Brain Zuroff, Engineer on behalf of the applicants, says there has been a building permit issued. The property has a wrecking yard, not salvage. The wrecking is just a running of the trucks, not storing, although they are storing vehicles short term. The applicants say the mixed uses have been there for over 50 years. These tradesmen that have operated their businesses here built homes for the families to grow in. While some neighboring properties are solely single family residences, there are other neighboring properties with commercial uses. There is concrete and asphalt crushing, a salvage yard, BNSF Railway, agriculture and a multitude of other uses. The applicants desire to have the zoning reflect the current and historic use of their property. If they were to be stopped from running their businesses like they have for years, they would have to relocate their families as well. In this particular case, the historical use should be acknowledged. The applicants don't want to keep getting letters about zoning violations.

Commissioner Frank says it seems the accumulation of stuff is what the neighboring properties complaints are. If it were to transition to industrial and it is classified as a business, what are the screening requirements to disguise some of the items? Brian says there are screening requirements but he cannot say what the details would be before agreements are made. John says screening would be required.

The applicants have no intention of increasing the activity on the property.

Commissioner Renner says he is concerned about changing the zoning to industrial and who knows what could go in there in the future.

Commissioner Camisa asks if the residences would be grandfathered in. John says yes.

Max Voight, Sunny Road S, "I've lived there close to forty some years. Ray Schaff has nothing on me. When we moved out there I was in the cattle business at the time. Lyle Hartman come in there later...Greg Wetch come in there. Jim Sackman. I was in the cattle business with the veterinarian, Bob Syvrud. We kept our cattle in there and in the winter until the neighbors were complaining about it. Then we found out we really can't do anything about it. Bob Syvrud was grandfathered in there, but if Bob ever sells that property it's going to turn back into residential. Bob did sell the property to another vet, Jim Clement. Well, we already moved our cattle out to the farm. The neighbors complained. It was rezoned back to residential. So, Mr. Clement had to move his cattle out of there. This is many years ago. The same neighbor a few years ago, after Jim moved his cattle out, I drove by there one day, and here he got cattle in there. That really disgust me. If you got a law, it's commercial, let's keep it commercial. I moved out there from Bismarck. I like it out there. I was going to stay out there, but as business goes, it dissolved because there's no money in business. I stayed there. I raised my kids there. Got a nice beautiful yard there. Mr. Schaff was the same way too. Ray Schaff had to do the same thing. He could only have 2 or 3 trucks there. Then he had to get

the access to go in there. He got that access from Greg Wetch. Jan Meyer bought that private road from Greg's dad. He says he has 4 or 5 trucks...he's crazy. I see semis come in there. I have pictures of them. He makes nothing but dust. The guy brings stuff in at night. I started to deal with this in January. I tried to deal with the city. The city come out there and they finally agreed with me that it's residential. Candy Fleck come out there and start moving his stuff out. All of a sudden, I look over there, he's bringing more junk in there. So, I went in to Candy she says no it isn't residential because there is no curb and gutter out there. I says who said that. I went to the county. I dealt with Natalie Pierce. I also got ahold of Andy Zachmeier. He actually came out and took a look at it. He says you do have a problem here Max. This is junkyard. All he does is move stuff around."

Max shows the commissioners pictures he took. Natalie Pierce proved to him this is the city's issue.

Alex Poole, "I'm Alex Poole, the man in question here tonight. Those photos, in order to get those photos, you have to go on Janice's property, not? Those trucks weren't from her yard? They try to get pictures of big things to make it look worse than it is. Three of my neighbors, two of which are filing with me, the third one is Janice and she is indifferent about it. In general, she doesn't mind either way. Ray Schaff, the other applicant, he's worried that when he goes to sell his property, because he's elderly, they buyer won't be able to use it for what he is using it for already. He's got a shop and the road is built up. He saw what happened to me. I bought the property from Lyle Hartman. For 20-25 years he was trucking out of there as well. He gave me the good faith that I would be able to run my trucks out of there too."

Alex asks if there is any way they can grandfather in what has been done on these properties for years. John says certain uses can be grandfathered. A wrecking yard is not one of them. Alex asks if he doesn't bring any vehicles in and only strictly trucking, would that be an acceptable use. John says he would have to take a look through the ordinance.

Shawn Ouradnik, Building Official, says an application for a building permit was submitted today. It is not approved yet. The structure is quite far along.

Wade Kincaid, 4060 Sunny Road, "Our property would be on the NW corner where this zoning change wanting to take place. We had this type of issue right across the street from me to the west 30 years ago with Mr. Pulkrabek and he made promises and the county made him sign papers saying he would only have 3 trucks, so many tons of gravel. It wasn't long and he had 8 or 9 trucks out there and a filling dispensary. We fought that battle many many times and we lost that war. Trucks are going 24/7. Every one of those trucks are a bomb."

Jim Sackman, 2278 Sunny Road, "their lawyer said there is agriculture there. There is no agriculture anywhere in there. That red spot is where Vic Fleck has his operation going. Other than that, it is all residential. I have a piece of paper at home that says that property goes back to residential when they sell."

Mitch Mastel, 4075 Sunny Place, "I see the traffic from both of their businesses. It's not heavy. It's not a nuisance 90% of the time. I have no problem with their businesses that happen. It's the zoning they're going for leaves too many windows open for what could happen. If they move out, I'm stuck with whoever the next person buys it and sees the industrial grading on that. They could come up with enough money to put anything they want on that property. I would like to see an equal medium where they could still do what they do

because it's not a heavy nuisance to me. I just don't want to see that high of a zoning on that property.”

C. Close public hearing

D. Commission action

Commissioner Leingang motions to deny the zone change as recommended in Exhibit 4. Commissioner Camisa seconds. Upon vote, the motion passes unanimously.

3. Consider approval of an ordinance enacting guidelines and regulations regarding murals.

A. Staff report

The DRAFT mural ordinance as seen in Exhibit 1 is the end product of several drafts exchanged with the Lonesome Dove's attorneys in an effort to resolve the Federal Court Lawsuit. In that lawsuit, the Plaintiffs raised certain constitutional concerns. While the City attorneys do not believe the previous mural ordinance embedded in the City's sign code violates the constitution as claimed by Lonesome Dove's attorneys, Exhibit 1 provides for a much simplified permitting process while at the same time fulfilling the legitimate interests of the City in preserving public safety, traffic and pedestrian safety, aesthetics, and property values. The City's attorneys believe Exhibit 1 is fully in keeping with constitutional considerations, which the City is committed to uphold.

Residential Districts Not Regulated

The mural ordinance does not regulate residential districts, rather leaving neighborhood home-owners' associations and other legal processes to address this issue.

Permitting & Maintenance

A permitting process is required for structurally affixed murals to ensure that any mural not applied by painting directly onto a building is done safely and in keeping with the building code. Murals painted directly onto buildings have a streamlined permitting process, including the requirement the materials used to paint onto the structure are adequate to withstand North Dakota weather well into the future. The painted mural permit also requires documentation of the original condition of the mural after it has been applied, which provides a baseline if the mural should become degraded. If a mural painted directly to a building fades, chips, or peels, through inadequate upkeep or weathering, or is vandalized, the overall aesthetics of the building and surrounding area begins to degrade and risks becoming an eyesore. Such scenarios lead to blight, negatively affecting property values. The ordinance provides for a mechanism for the City to put the mural owner on notice of degradation or vandalism of a mural and provides for a reasonable time period to bring the mural back into its original condition.

Summary of Mural Standards

The standards for murals ensure that they are not applied directly to significant architectural elements or building materials. They provide that the mural not interfere with building

ingress, egress, or obscure street addresses needed for first responders in the event of any emergency.

Murals are limited to two per structure, as non-residential districts are already afforded additional means to convey messages through the sign ordinance. The Mandan Architectural Review Committee (MARC) will be called upon to review any application that is denied or conditionally approved because of the significant architectural elements standard. The standards also address concerns with traffic and pedestrian safety in order to ensure that messaging is not a dangerous distraction. Minimizing distractions to motorists and pedestrians is also the reasoning behind the 25% limitation on murals applied to the street-fronting sides of buildings.

Existing Murals

Existing murals that predate the previous mural provisions and the anticipated passage of Exhibit 1 into law by future vote of the City Commission would be considered lawful nonconforming (in other words, they will be grandfathered in). It is the belief of City Engineering and Planning that the Lonesome Dove painted sign would be considered lawful conforming per the language provided in Exhibit 1. The City will apply Exhibit 1 prospectively to new murals that are applied following its anticipated adoption.

Engineering and Planning recommend approval the mural ordinance as presented in Exhibit 1.

Commissioner Renner asks if this opens it up to a broader area. John says this opens it up to all districts.

Staff would handle the permitting process. When architectural elements need to be reviewed, staff will consult with MARC (Mandan Architectural Review Commission).

Commissioner Frank asks if the definition of a mural as hand-painted or hand-tiled work would include a vinyl type material that would be affixed to the structure. John asks Malcolm Brown, City Attorney, to weigh in. He says it is a separate item that would be affixed. It would be considered a mural. John says the definition can be broadened in the ordinance to include that.

Commissioner Frank says numbers 5 and 6 have a difference in the amount of time a mural has to be brought back into substantial conformity of the original aesthetic. If the cause of a degradation is due to a lack of maintenance or exposure to time or weather, the applicant has sixty (60) days from revocation to bring the mural into conformity. If the cause is due to vandalism, the applicant has six (6) months. John says more time was given for vandalism because that is out of the applicant's control. John says more time can be added to the sixty (60) days.

Commissioner Frank asks about number 11 on Standards. It says a mural shall not be applied to, cover over, or obscure significant architectural elements or building materials such as stone, marble, granite or glass block. She asks if it would be a hard no to a mural. She says there are plenty of buildings that have those elements but would not be considered historically relevant or in need of preservation. John says the call as to whether a building is architecturally significant would be best left to those architects and builders who are more

capable of making that call. The National Historical Register offices are going to have those that have already made the grade. There are buildings that are on the cusp with the potential to make it on the register. It is in the city's interest to preserve the historical aspect.

Commissioner Frank points out letter "e" that states only one mural, not larger than 25% of the total square footage of the street-fronting side, may be applied to the street-fronting side of a structure's mural area. Does that include the sides and alley? John says the street-fronting side would be limited to the 25% due to traffic safety and aesthetics.

Commissioner Frank asks for clarification on "h" that states no structure shall contain more than two murals. There is discussion on what would be considered one mural vs. a partial one that would be finished later. John says he doesn't think you couldn't modify an existing mural to include additional or expanded art. It wouldn't count against you. Chair Robinson asks when you apply and give a rendering, are you giving a rendering for the whole process? Dot says only part of it. He thinks then it would be two murals. Dot thinks a lot of this relies on the perspective of whoever is making that decision. She is comfortable with limiting the murals to that which is not obscene or those that incite violence.

A. Open public hearing

Melissa Gordon, local artist, "I've done a number of murals around Bismarck and Mandan. As far as the vinyl you were talking about the Bismarck Box Art project was done with a vinyl wrap on all those electrical boxes. In order to have those approved, those are guaranteed for seven years by the company they went through in Montana. They had followed some very strict guidelines. Vinyl is an acceptable medium. There are some guidelines that companies that install them are aware of and they go through a process. As far as an ongoing mural, everything in art alley was done one at a time. It's taken the course of three years. Each artist had to complete their section of the art alley within the summer that they started on. You wouldn't want to start the application of your paint and have winter come in and destroy what you've started. The 25% on the front facing of a building is something that a lot of cities don't allow. Big cities have an arts policy in place."

B. Close public hearing

Mayor Helbling asks City Attorney Brown if this ordinance is something the city can stand behind in court. Attorney Brown says yes.

C. Commission action

Commissioner Liepitz motions to recommend approval of the mural ordinance for the reasons listed in Exhibit 1. Commissioner Renner seconds. Upon vote, the motion passes with the following vote: Boehm-aye, Knoll-aye, Helbling-aye, Leingang-aye, Liepitz-aye, Frank-nay, Renner-aye, Robinson-aye.

OTHER BUSINESS

1. Recommendations for Planning & Zoning Commission appointment.

One letter of interest from Victoria Vayda was received for the open seat on the commission.

Commissioner Liepitz motions to appoint Victoria Vayda to the Planning & Zoning Commission. Commissioner Knoll seconds. Upon vote, the motion passes unanimously.

Commissioner Frank motions to adjourn. Commissioner Knoll seconds. Motion passes unanimously.

Meeting adjourns at 7:17 p.m.