



PLANNING AND ZONING COMMISSION MEETING MINUTES

Wednesday, January 17, 2024 at 7:10 AM
City Hall – 38 1st Street West Dickinson, ND 58601

Commissioners:

Chairman: Jason Fridrich

Vice Chairman: Scott Bullinger

Dean Franchuk

Jo Marie Kadrmas

Troy Bosch

Val Decker

Rick Haugen

Aaron Johansen

Mike Schwab

CALL TO ORDER

ROLL CALL

OPENING CEREMONIES: PLEDGE OF ALLEGIANCE

1. ORDER OF BUSINESS:

Motion to approve the order of business.

Motion to approve made by Vice Chairman Bullinger, Seconded by Commissioner Haugen.

Voting Yea: Chairman Fridrich, Vice Chairman Bullinger, Commissioner Franchuk, Commissioner Haugen, Commissioner Schwab, Commissioner Bosch, Commissioner Decker

2. MINUTES

A. December 20th, 2023 Minutes for Approval

Motion to approve minutes as presented.

Motion to approve made by Commissioner Decker, Seconded by Commissioner Schwab.

Voting Yea: Chairman Fridrich, Vice Chairman Bullinger, Commissioner Franchuk, Commissioner Haugen, Commissioner Schwab, Commissioner Bosch, Commissioner Decker

3. REGULAR AGENDA:

A. CHAIRMAN APPOINTMENT FOR 2024

Bullinger nominates Fridrich, Decker seconds Fridrich

Motion to made by Vice Chairman Bullinger, Seconded by Commissioner Decker.

Voting Yea: Chairman Fridrich, Vice Chairman Bullinger, Commissioner Franchuk, Commissioner Haugen, Commissioner Schwab, Commissioner Bosch, Commissioner Decker

B. VICE CHAIR APPOINTMENT FOR 2024

Bosch nominates Bullinger, Franchuk seconds Bullinger.

Motion made by Commissioner Bosch, Seconded by Commissioner Franchuk.

Voting Yea: Chairman Fridrich, Vice Chairman Bullinger, Commissioner Franchuk, Commissioner Haugen, Commissioner Schwab, Commissioner Bosch, Commissioner Decker

C. SPECIAL USE PERMIT (SUP-001-2024) - *Presented by: City Planner, Matthew Galibert*

To consider a Special Use Permit to allow for a heavy industrial use (“American Pulverizer car shredder”) in the General Industrial (GI) zoning district. The property is legally described as Lot 6, Block 2, Energy Center 1st Subdivision City of Dickinson, Stark County, North Dakota. This property is located in the City of Dickinson.

Mr. Galibert introduces the SUP request to allow a car shredder on the property. He states that the applicants have an environmental engineering consultant present on Teams. He explains there will be local and out of state material brought to the site. Mr. Galibert discusses some of the economical impacts, the impacts to the landfill. He states that Public Works has not shared any concerns. There has been concerns and comments from one of the neighbors regarding their quality of life. Their property is legally nonconforming. Staff is not recommending approval or denial at this point; it needs a bit more analysis before they can make that determination. The board can go ahead to approve, deny or give more time. Chairman Fridrich asks what triggered the need for an SUP. Mr. Galibert says it's because it is a heavy industrial use. Mr. Fridrich says he has never seen it needed for this reason in the past. Mr. Galibert says it is because they are intensifying the use. Mr. Fridrich wants to know where it is in the code that is triggering the requirement – Mr. Galibert says table 4-2 which has heavy industry as one of the lines. Mr. Fridrich says he cannot

find it the code where this would be required. Mr. Galibert says this is a sizable upscaling of the use, and that would require a SUP - it is a matter of intensification. Mr. Galibert states that it is his professional opinion of the code. Mr. Fridrich points out this wouldn't even trigger a building permit so he still doesn't understand why it is here. City/County Planner Mr. Josephson says when the city engineer saw the site plan and what was being built was at a higher level of vibration and noise is what distinguishes heavy industry over other uses. The possibility of explosions and such are higher and will create more impacts than the current car crusher that is currently on site; it is a different operation than the shredder that is already there. City Engineer/Community Development Director Skluzacek says there was a geotechnical report and acoustic sound suppression that was reviewed. He was looking at our ordinance and where they were adding noise and dust. It is supposed to be under our decibel limits according to our city ordinances. Discussion ensues about the neighbor being zoned GI and the history on that. There is no documentation that could be found from staff on this. Mr. Josephson explains when a property is annexed they will look at the county and city codes and match those.

Daniel and Reginal Robertson are present to speak. They are the manager/owners. They currently process car bodies, and have since 2015. The biggest machine they currently have bails metals or densifies the metals and chops it into small pieces. Prior to that it was a scrap yard - Continental Metal - since the early 90s. The only change is the equipment used to make the process a little quicker. Mr. Robertson explains they requested a permit in 2022 from the building department and was told it wasn't needed. He adds that they have hired an environmental specialist. They were contacted from the City in Nov 2023 about the SUP. They currently have equipment coming in for the project. They are in an urgent need for clarification. They realize there will be increased dust, noise and vibration. There are systems in place to control these issues. They have no intentions of causing health problems to anyone in the community. There is vibration springs to help lessen the vibrations. The noise levels could reach 120 db right at the shredder - the noise is not that excessive away from the machine. He discusses explosions - they come from people sneaking in propane tanks. They make sure there are no batteries, gas tanks or sealed containers - they have a plan to do this before it goes in the shredder. They haven't ever had a problem with a propane tank. Mr. Fridrich asks how the new shredder is different. Mr. Robertson explains that right now they are crushing and shearing; the new equipment cleans up the material better - he explains how the new machine works. They will use our landfill if they want the material, if not they will use a truck and ship it out. He explains how it could be beneficial to some landfills - this fluff can protect the liner of the landfill, and could be used as daily cover also. Ms. Decker asks for a comparison on sound. Mr. Robertson says they believe the sound will be similar to the current noise level. He says right now the size is the main difference. They will be erecting belting from the coal mines that will put a first layer of a noise buffer and using an acoustifence. Engineer design will put a 20' fence

completely around the property. They hope to eliminate any noise level over the city's standards. Mr. Schwab asks about the rail spur that goes through the property - if it is being used - they say it is. Mr. Fridrich asks if they have ever been in violation of any noise or environmental issues. Mr. Robertson says they have had complaints but have always been unfounded. No EPA issues. The distance from the site to the residents is about 100 yards. He also adds that this will increase the use of the railroad spur. Discussion ensues on what will be shipped in the railcars. Ferrous material goes by rail truck. The air quality permit from the state is pending - they submitted the request in 2023.

Mr. Josephson cites the code for salvage services, auto wrecking yards. Adding the machine could impact noise, vibration, etc - and that is what triggered the request for a SUP. This is 39.03.009.

Lydia Crabtree, who is present on Teams, has done some noise calculations. The minimum noise dampening would be 40 decibels - 120 decibels at the equipment would make it 80 decibels and less than 75.

Mr. Robertson speaks on the annual review for the SUP. He has a concern about that. He is asking us to look at the air quality standard, noise codes and base it on that. He says having nuisance complaints would be difficult to handle if that shuts them down. Mr. Galibert says they won't be approving the SUP annually, it's just an inspection. If it were to be revoked it would have to be done at Planning and Zoning and City Commission.

Mr. Fridrich believes we are in a grey area being here today. Mr. Bullinger asks about tests after the fact to make sure they are in compliance. Mr. Skluzacek mentions the railroad could be in the tests for vibrations; they would have to put something external in to test. Mr. Josephson speaks on sound ordinances for residential boundaries. The neighbors are zoned G1.

Mr. Roberson speaks on the economic benefit. They have paid out to the local community over the last 8 years, 3 million dollars.

Dean Rummel comes to the podium to speak. He says that Rummels Auto Wrecking was in Dickinson and gives a brief history on the business. He explains that his dad was actually the one who brought it to the zoning commission to zone it to G1. There was some opposition at the time but they did approve it. He agrees it is a great economic benefit to SW ND. He believes we need this facility in this area.

Chairman Fridrich opens the public hearing.

Lori Sticka is online; they are resident's that live next door. She says they are good people; they have come to an understanding with the Robertson's, and it is good. However, they are concerned with the noise and devaluation of their property. She says they have not received a permit from the EPA. They want assurances that their foundation and walls won't crack. Right now, the noise and vibrations are occasional and she is afraid it will be an everyday thing. She says they did protest in the 80's. She hopes if it is approved, it will be regulated regarding the noise, vibration, etc. Mr. Robertson speaks on Continental Metal processing metals when they were there. Ms. Sticka had said that they didn't process, but he clarifies that they did in fact process. Ms. Crabtree speaks on the submittal for the air quality permit. There is a stamped receipt verification on March of 2023. Mr. Rummel explains more history on the property. He also adds that Fisher Industries does do crushing and produces quite a bit of noise and dust. He also speaks on the quality of life in regards to the lagoons that used to be used in that area along with the live stock yards.

The public hearing is closed.

Mr. Fridrich asks how the city got involved. Mr. Galibert states he was notified of this in October and asked them in for a preapplication meeting. In the last couple weeks we recieved more information. Attorney Wenko asks about the status of the permit for EPA from the state. The consultant who is present on Teams says they are very understaffed. They have gotten to the point where they are ready to issue the permit; they need to have a public comment period on the permit. Ms. Wenko asks about that permitting process – asking if they need city approval first in order to get state approval. The question would be can we grant a SUP if they don't have a permit from the state. Ms. Wenko says we could add a condition of the state permit being approved. Mr. Josephson says the conditions should say it is approved based on the application submitted by the Robertsons. There is discussion on SUPs - some run with the owner and some run with the land; this one would run with the land. Mr. Schwab would like to make sure if the DEQ needs our approval to issue their permit. Mr. Thorton says in his experience it is typically a separate permit; it is usually done locally before it is approved by the state. Mr. Bosch has a question on the condition #2 on revocation of the permit. He asks if we can we make it more of a cooperative effort to continue operations instead of pulling the permit. Ms. Wenko says then PZ would review and recommend to City Commission to keep or revoke their permit. Would adhere to the complaints coming from residents.

Motion to approve according to the application summitted and the following conditions:

1. *The Special Use Permit runs with the land and requires an annual compliance review.*

2. *Nuisance complaints against the operations, including those relating to noise, vibration, odors, traffic, urban services, will be recorded as part of the annual review of the Special Use Permit. Staff will investigate any complaints and concerns and report any significant findings of nuisance to the Planning & Zoning Commission for further investigation and recommendation for the continuation of the Special Use Permit.*
3. *Operation of the facility shall comply with all applicable city, county, state and federal regulations.*
4. *The City's approval Special Use Permit is conditioned upon the approval of the North Dakota Department of Environmental Quality Permit.*
5. *The special use will be developed in accordance with the SUP application.*

Motion made by Vice Chairman Bullinger, Seconded by Commissioner Franchuk.

Voting Yea: Chairman Fridrich, Vice Chairman Bullinger, Commissioner Franchuk, Commissioner Haugen, Commissioner Schwab, Commissioner Bosch, Commissioner Decker

D. FUTURE LAND USE MAP AMENDMENT (FLM-001-2024) - Presented by: City Planner, Matthew Galibert

To consider a Future Land Use Map Amendment from Residential to Commercial for a property legally described as a parcel of land being a portion of Lots four (4), five (5), and six (6), Block one (1), State 8th Addition.

Mr. Galibert presents the request. He explains this is to amend the Future Land Use Map (FLUM) for Lots 4-8 of the proposed State 9th Addition Subdivision, which is a pending re-plat of State 8th Addition. The applicant seeks to retain the Commercial FLUM designation along the north of the property whilst amending the south portion to Residential, along 8th Street West on the south face of the block.

Chairman Fridrich excuses himself from this item.

Andrew Schrank representing Venture Commercial is present. He explains the intention is to develop some smaller commercial lots. The southern portion would provide some residential opportunities. This will help create some infill for the community. He explains that they would not plan on doing apartments; the R3 would reduce the buffer yard provision and that is the intent of that zoning and provides a better transition.

Motion to approve made by Commissioner Decker, Seconded by Commissioner Haugen.

Voting Yea: Vice Chairman Bullinger, Commissioner Franchuk, Commissioner

Haugen, Commissioner Schwab, Commissioner Bosch, Commissioner Decker
Voting Abstaining: Chairman Fridrich

E. REZONE (REZ-001-2024) - *Presented by: City Planner, Matthew Galibert*

To consider a Zoning Map Amendment from Community Commercial (CC) to High-Density Residential (R-3) for a property legally described as a parcel of land being a portion of Lots four (4), five (5), and six (6), Block one (1), State 8th Addition.

Mr. Galibert presents the request that is tied to the last item (FLUM). He recommends approval.

Mr. Bullinger opens the public hearing. There being no comment the hearing is closed.

Motion to approve made by Commissioner Bosch, Seconded by Commissioner Schwab.

Voting Yea: Vice Chairman Bullinger, Commissioner Franchuk, Commissioner Haugen, Commissioner Schwab, Commissioner Bosch, Commissioner Decker
Voting Abstaining: Chairman Fridrich

F. PRELIMINARY PLAT (PLP-001-2024) - *Presented by City Planner, Matthew Galibert*

To consider a Preliminary Plat for State 9th Addition being the re-plat of Lots 4, 5, and 6, Block 1 of State 8th Addition, located in Section 5, Township 139N, Range 96W of the 5th Principal Meridian, Stark County, located within the City of Dickinson, ND. The site consists of +/- 3.09 acres.

Mr. Galibert says this has the same comments as the previous two items. The applicant seeks to re-plat the three existing commercial lots into eight lots. Three of the proposed lots would front onto Fairway Street and would accommodate commercial development. The remaining five lots would access 8th Street West. The proposed lots located on the north side of 8th Street West would be rezoned from Community Commercial (CC) to High Density Residential (R-3) with lots intended to accommodate 5-10 residential units with front yard lines along 8th Street W.

Mr. Skluzacek comments on the access on Fairway - there is a median currently in place and we would have to work with the developer to remove part of that median because of the street classification. This roadway is going to be reclassified into a Minor Arterial. We are looking at proximity to intersections, and not creating traffic concerns to the ingress and egress to these properties. Mr. Bullinger asks about the request to have three entrance points. Mr. Skluzacek states we recommended that

they went down to two - the applicant agreed. One approach would align with the hospital and there would be an additional approach between lots two and three.

Mr. Schrank clarifies some of the access points. He says access would line up with the hospital approach and mirror a turn lane like the hospital did. Lots two and three would be a right in right out. They would like to eliminate the NE corner of lot 3, which would be a condition of approval. On the west side there was a 10' easement – they will be vacating a 4' portion of that easement. That request will go forward in February.

Vice Chair Bullinger opens the public comment. There are no comments. The hearing is closed.

Motion to include condition: removing the NE entrance on Fairway on Lot 3

Motion to approve made by Commissioner Schwab, Seconded by Commissioner Decker.

Voting Yea: Vice Chairman Bullinger, Commissioner Franchuk, Commissioner Haugen, Commissioner Schwab, Commissioner Bosch, Commissioner Decker

Voting Abstaining: Chairman Fridrich

4. PUBLIC ISSUES OF CONCERN NOT ON AGENDA

5. ITEMS NOT ON AGENDA

6. WORK SESSION

7. ADJOURNMENT

Motion to adjourn

Motion made by Vice Chairman Bullinger, Seconded by Commissioner Schwab.

Voting Yea: Chairman Fridrich, Vice Chairman Bullinger, Commissioner Franchuk, Commissioner Haugen, Commissioner Schwab, Commissioner Bosch, Commissioner Decker