

# PLANNING COMMISSION MINUTES

Regular Meeting

June 01, 2021

Page 1 of 16

**Regular Meeting:** Planning Commission

**Location:** City Hall, Council Chambers, 515 2<sup>nd</sup> Avenue SW., City of Minot, N.D.

**Meeting Called to Order:** Tuesday, June 01, 2021, 5:30 p.m.

**Presiding Official:** Chairman Charles DeMakis

**Members in Attendance:** Kelly Barnett, Tim Baumann, Charles DeMakis, Elisha Gates, Justin Hochhalter, Dustin Offerdahl, Cynthia Sessions, Todd Wegenast

**Members Absent:** Aaron Faken, Todd Koop, Shane Lider, Tammy Nesdahl, Boyd Sivertson

**City Staff Present:** Community & Economic Development Director Billingsley, Principal Planner Van Dyke, Planner I Baumgartner, Assistant City Attorney Stalheim, Assistant City Engineer Huettl, Airport Services Coordinator Romanick, Code Enforcement Officer Zietz

**Others Present:** Cole Zeitz, neighbor of Case # 2021-06-05; Rusten Roetliuk, representative of Case # 2021-06-04; Rob Berard, representative of Case # 2021-06-06; Hunter Langseth, applicant for Case # 2021-06-02; Mike Baker, neighbor of Case # 2021-06-02; Shannon Grosse, representative of Case # 2021-06-05

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**Meeting Called to Order by Chairman DeMakis at 5:30 p.m.**

**Item #1 Roll Call**

**Item #2 Pledge of Allegiance**

**Item #3 Planning Commission Intro and Public Hearing Decorum**

**Item #4 Approval of Minutes**

Motion by Commissioner Baumann to approve the May 04, 2021 Planning Commission Meeting Minutes, second by Sessions, and was carried by the following roll call vote: ayes: Barnett, Baumann, DeMakis, Gates, Hochhalter, Offerdahl, Sessions, Wegenast nays: none

**Motion Carries**

**The following are the recommendations of the Planning Commission:**

**Item #5: Case #2021-06-03**

**Zoning Map Amendment and Annexation**

This item was delayed by the request of the applicant to the July 2021 Planning Commission meeting.

Motion to waive staff oral presentation on items 6-8 by Commissioner Wegenast, Second by Offerdahl, and was carried by the following roll call vote: ayes: Barnett, Baumann, DeMakis, Gates, Hochhalter, Offerdahl, Sessions, Wegenast nays: none

# PLANNING COMMISSION MINUTES

Regular Meeting

June 01, 2021

Page 2 of 16

## **Item #6: Case #2021-06-01**

### **Outlot Plat**

Planning Commission recommends City Council approve a subdivision plat to create Outlot 5, being all of Outlot 4, a Portion of the NW1/4 of the NW1/4, and a portion of the NE1/4 of the NW1/4, all within Section 9, Township 155N, Range 82W, Ward County, North Dakota.

The property is located at 4540 30<sup>th</sup> Avenue NE.

**Planning Commission waived staff's oral report on this item. Below is a summary of staff's written report that is attached to the Planning Commission Agenda.**

Public hearing request on an application from James Walsh representing Jeana Walsh and Lloyd Patrick Walsh, owners for a subdivision plat to create Outlot 5, being all of Outlot 4, a Portion of the NW ¼ of the NW ¼, and a portion of the NE ¼ of the NW ¼, all within Section 9, Township 155N, Range 82W, Ward County, North Dakota.

The property is located at 4540 30<sup>th</sup> Ave NE. An aerial view of the property is provided in **Exhibit 1**.

The outlot plat is being requested by the applicant/owner to facilitate conveyance of an existing farm home and consolidate it with a farm building located on Outlot 4. The property will be 10.08 acres in size.

Both owners are family and actively farm the subject property and surrounding area. This activity is intended to continue, if approved.

**Exhibit 2** is the outlot plat for proposed Outlot 5. The proposed outlot meets the minimum size requirements within the "AG" Agricultural District of ten (10) acres.

A zoning map and future land use map of the area is provided **Exhibits 3 & 4** respectively.

### **Finding of Facts:**

The Minot Planning Commission should accept the following findings of facts:

- 1) The applicants have submitted a complete application.
- 2) The applicants' request is be consistent with Minot's Comprehensive Plan Goal #2, Policy #2.
- 3) The applicant's request is consistent with the bulk requirements of the Minot's Land Development Ordinance
- 4) The Minot Planning Commission has the authority to hear this case and recommend that it be approved or denied. The public notice requirements were met, the hearing was legally noticed and posted and the hearing was held and conducted under the requirements of North Dakota Century Code and Minot City ordinances.

### **Staff Recommendations:**

Staff recommends the Planning Commission adopt the staff findings of fact and recommend approval to City Council of the Outlot Plat application subject to the following condition:

- 1) No later than six months after a subdivision design has been approved by the City Council, the applicant for design approval may submit the final form of the instrument or document to the City Engineer which is to be recorded in the office of the County Recorder in order to accomplish the subdivision or to establish the necessary predicate for the later accomplishment of the subdivision. That is, the subdivider shall submit the final form of the original of the appropriate instrument of conveyance, auditor's outlot plat, or plat, and the necessary copies thereof required by ordinance or by way of regulation. The City Engineer shall indicate his approval on

## PLANNING COMMISSION MINUTES

Regular Meeting

June 01, 2021

Page 3 of 16

the original by signing his name under a suitable statement or legend that expresses approval. However, if the documents or instrument for which approval is sought is a plat, then before the City Engineer approves it he shall first satisfy himself that the technical requirements of Section 10.2-5 have been complied with and that monuments have been placed at all block corners, lot corners, angle points, points of curves in streets which are depicted in the plat, and at such intermediate points as may be required.

### **Chairman DeMakis opened the meeting for comments from the public.**

No one from the public came forward with any questions or comments.

### **Chairman DeMakis asked for a motion from the commissioners.**

Motion by Commissioner Offerdahl to recommend approval per staff recommendations with conditions based on findings of fact, second by Commissioner Sessions, and was carried by the following roll call vote: ayes: Barnett, Baumann, DeMakis, Gates, Hochhalter, Offerdahl, Sessions, Wegenast nays: none

### **Motion passes**

#### **Item #7 Case #2021-06-06**

#### **Subdivision, Zoning Map Amendment, and Future Land Use Map Amendment**

Planning Commission recommends City Council approve a subdivision plat of Bertsch Addition. Proposed Lot 1 is to be "AG" Agricultural District and proposed Lot 2 is to be "RR" Rural Residential District, and to pass an ordinance on first reading to rezone from ""AG" Agricultural District to both "AG" Agricultural District and "RR" Rural Residential District and includes a future land use map amendment from Medium Density Residential and Low Density Residential to Very Low Density Residential.

The property is located to the east of 1504 54<sup>th</sup> Avenue SE. (County Rd. 14A)

### **Planning Commission waived staff's oral report on this item. Below is a summary of staff's written report that is attached to the Planning Commission Agenda.**

Public hearing request on an application from Ackerman Surveying representing Troy Bertsch, owner for a zoning map amendment from "AG" Agricultural District to both "AG" Agricultural District and "RR" Rural Residential District. Further, the request includes a future land use map amendment from Medium Density Residential and Low Density Residential (LDR) to Very Low Density Residential (VLDR). Finally, the request includes a subdivision plat of Bertsch Addition. Proposed Lot 1 is to be "AG" Agricultural District and proposed Lot 2 is to be "RR" Rural Residential District. The property is legally known as Outlot 13 of Section 6, Township 154 North, Range 82 West, Ward County, North Dakota. The property is located to the east of 1501 54<sup>th</sup> Ave.

SE. (County Rd. 14A). An aerial view of the property is provided in **Exhibit 1**.

The property is presently farmed. A rural residential lot totaling two (2) acres is requested to be created from the property. The remainder will remain for continued farming.

The preliminary plat for the proposed Bertsch Addition is provided in **Exhibit 2**. The newly created subdivision will consist of 2 properties with acreage totaling 36.79 acres for the "AG" Agricultural District lot and 2 acres for the proposed "RR" Rural Residential District lot. The properties are within the extra-territorial jurisdiction of the City. The properties will be served by rural water and septic. The proposed lots meet the bulk lot and area requirements per Chapters 2.4 and 2.5.

Select site photos are available in **Exhibit 3**.

### **Finding of Facts:**

# PLANNING COMMISSION MINUTES

Regular Meeting

June 01, 2021

Page 4 of 16

The Minot Planning Commission should accept the following findings of facts:

- 1) The applicants have submitted a complete application.
- 2) The subject area is currently depicted as both Low and Medium Density Residential on the Future Land Use (FLU) Map of the Comprehensive Plan.
- 3) The FLU map is requested to be amended to Very Low Density Residential based on the subdivisions proposed density and reliance of onsite septic systems.
- 4) The request is similar in nature to the Galusha Ranch 2<sup>nd</sup> Addition request, which was approved in March of 2021 and is located to the east of the proposed Lot 2 of Bertsch Addition.
- 5) The proposed subdivision aligns with Land Use Goal #2, Policy #2 of the Comprehensive Plan.
- 6) The change in zoning from "AG" Agricultural District to "RR" Rural Residential District for Lot 2 will be in alignment with the FLU map, if amended to Very Low Density Residential.
- 7) The applicant's request is consistent with the bulk requirements of the Minot Land Development Ordinance.
- 8) A change in conditions does exist due to the proposed plat to create an additional two-acre property per Section 9.1-7 H. 1.
- 9) No additional public services will be required to support the request and Section 9.1-7 H. 2 is satisfied.
- 10) The additional two-acre lot will be in close proximity to those previously approved through both phases of Galusha Ranch and there exists no belief it will substantially diminish the condition or value of property in the vicinity per Section 9.1-7 H. 3.
- 11) Per Section 9.1-7 H. 4., the zoning change is consistent with the purpose of the Zoning Ordinance and other adopted policies of the City, and will be consistent with the comprehensive plan, subject to amendment of the Future Land Use Map.
- 12) The Minot Planning Commission has the authority to hear this case and recommend that it be approved or denied. The public notice requirements were met, the hearing was legally noticed and posted and the hearing was held and conducted under the requirements of North Dakota Century Code and Minot City ordinances.

## **Staff Recommendations:**

Staff recommends the Planning Commission adopt staff findings of fact and recommend approval to City Council of the Suburban Homes 4th Addition plat, a zoning map amendment from "AG" Agricultural District to "RR" Rural Residential District, and a Future Land Use Map amendment from Medium Density Residential and Low Density Residential to Very Low Density Residential subject to the following conditions:

- 1) No later than six months after a subdivision design has been approved by the City Council, the applicant for design approval may submit the final form of the instrument or document to the City Engineer which is to be recorded in the office of the County Recorder in order to accomplish the subdivision or to establish the necessary predicate for the later accomplishment of the subdivision. That is, the subdivider shall submit the final form of the original of the appropriate instrument of conveyance, auditor's outlot plat, or plat, and the necessary copies thereof required by ordinance or by way of regulation. The City Engineer shall indicate his

## PLANNING COMMISSION MINUTES

Regular Meeting

June 01, 2021

Page 5 of 16

approval on the original by signing his name under a suitable statement or legend that expresses approval. However, if the documents or instrument for which approval is sought is a plat, then before the City Engineer approves it he shall first satisfy himself that the technical requirements of Section 10.2-5 have been complied with and that monuments have been placed at all block corners, lot corners, angle points, points of curves in streets which are depicted in the plat, and at such intermediate points as may be required.

### **Chairman DeMakis opened the meeting for comments from the public.**

No one from the public came forward with questions or comments.

### **Chairman DeMakis asked for a motion from the commissioners.**

Motion by Commissioner Wegenast to recommend approval per staff recommendations with conditions based on findings of fact, second by Commissioner Barnett, and was carried by the following roll call vote: ayes: Barnett, Baumann, DeMakis, Gates, Hochhalter, Offerdahl, Sessions, Wegenast nays: none

### **Motion passes**

#### **Item #8 Case #2021-06-07**

#### **Subdivision Plat and Street/Alley Vacation**

Planning Commission recommends City Council approve a subdivision plat including a vacation of right-of-way to be known as Minot International Airport Fourth Addition. The properties are legally known as Lots 5 & 6, Block 5 and a Portion of Vacated Right-of-Way of Minot International Airport Second Addition.

The property address is 2400 N. Broadway, Unit 2.

### **Planning Commission waived staff's oral report on this item. Below is a summary of staff's written report that is attached to the Planning Commission Agenda.**

Public hearing request on an application from Maria Romanick representing the City of Minot, owner for a subdivision plat, including a vacation of right-of-way to be known as Minot International Airport Fourth Addition. The properties are legally known as Lots 5 & 6, Block 5 and a Portion of Vacated Right-of-Way of Minot International Airport Second Addition. The property address is 2400 N. Broadway Unit 2. An aerial view of the property is provided in **Exhibit 1**.

The subject properties maintain a small hangar and vacant land both owned by the City of Minot. Airport operations desires to combine the two lots and a small portion of airport right-of-way for the purposes of building a new larger hangar at the current site.

The preliminary plat for the proposed Minot International Airport Fourth Addition is provided in **Exhibit 2**. The newly created subdivision will consist of one (1) lot being 0.21 acres. The proposed lots meet the bulk lot requirements for the "P" Public District per Chapter 2.22.

The properties are currently zoned "P" Public District as noted in the zoning map in **Exhibit 3** and they are designated as being Public/Semi-public on the Future Land Use (FLU) Map in **Exhibit 4**.

### **Finding of Facts:**

The Minot Planning Commission should accept the following findings of facts:

- 1) The applicants have submitted a complete application.

## PLANNING COMMISSION MINUTES

Regular Meeting

June 01, 2021

Page 6 of 16

- 2) The applicant's requested subdivision is currently zoned "P" Public District is depicted as Public/Semi-public on the Future Land Use (FLU) Map of the Comprehensive Plan
- 3) Chapter 3 of the Comprehensive Plan surrounding transportation emphasizes the future growth plans of the Minot International Airport and its importance within the community.
- 4) The applicant's request is consistent with the bulk requirements of the Minot Land Development Ordinance.
- 5) The necessary pre-application meeting with the Development Review Team (DRT) was held on May 5, 2021 in accordance with Section 2.22-4 A. of the Minot Land Development Ordinance.
- 6) The Minot Planning Commission has the authority to hear this case and recommend that it be approved or denied. The public notice requirements were met, the hearing was legally noticed and posted and the hearing was held and conducted under the requirements of North Dakota Century Code and Minot City ordinances.

### **Staff Recommendations:**

Staff recommends the Planning Commission adopt staff findings of fact and recommend approval to City Council subject to the following conditions:

- 1) A site plan and associated building permit is required for development.
- 2) No later than six months after a subdivision design has been approved by the City Council, the applicant for design approval may submit the final form of the instrument or document to the City Engineer which is to be recorded in the office of the County Recorder in order to accomplish the subdivision or to establish the necessary predicate for the later accomplishment of the subdivision. That is, the subdivider shall submit the final form of the original of the appropriate instrument of conveyance, auditor's outlot plat, or plat, and the necessary copies thereof required by ordinance or by way of regulation. The City Engineer shall indicate his approval on the original by signing his name under a suitable statement or legend that expresses approval. However, if the documents or instrument for which approval is sought is a plat, then before the City Engineer approves it he shall first satisfy himself that the technical requirements of Section 10.2-5 have been complied with and that monuments have been placed at all block corners, lot corners, angle points, points of curves in streets which are depicted in the plat, and at such intermediate points as may be required.

### **Chairman DeMakis opened the meeting for comments from the public.**

No one from the public came forward with questions or comment on the item.

### **Chairman DeMakis asked for a motion from the commissioners.**

Motion by Commissioner Offerdahl to recommend approval per staff recommendations with conditions based on findings of fact, second by Commissioner Barnett, and was carried by the following roll call vote: ayes: Barnett, Baumann, DeMakis, Gates, Hochhalter, Offerdahl, Sessions, Wegenast nays: none

### **Motion passes**

### **Item #9 Case #2021-06-04** **Zoning Map Amendment**

Planning Commission recommends City Council pass an ordinance on first reading for a zoning map amendment from "C4" Planned Commercial to "C2" General Commercial with a Planned Unit Development (PUD) overlay for the purposes of building expansion. The property is legally known as Lot 8 of Dakota Square Second Addition to the City of Minot, North Dakota.

# PLANNING COMMISSION MINUTES

Regular Meeting

June 01, 2021

Page 7 of 16

The property is located at 2400 10th Street SW.

## **Chairman DeMakis asked Planner I Baumgartner for his report.**

Public hearing request on an application from Jason Loney, Scheels All Sports, Inc. representing Dakota Square Mall CMBS, LLC owner for a zoning map amendment from "C4" Planned Commercial to "C2" General Commercial with a Planned Unit Development (PUD) overlay for the purposes of building expansion. The property is legally known as Lot 8 of Dakota Square Second Addition to the City of Minot, North Dakota.

The property is located at 2400 10th St. SW. An aerial view of the property and 300-foot notification area is provided in **Exhibit 1**.

Scheels All Sports, Inc., applicant, is in the process of acquiring the subject property. The property is currently vacant, being the site of the former Sears anchor store at the mall. Scheels will consolidate it's two stores within the mall into the former Sears site. As part of their relocation, they are expanding the existing structure and modifying the parking lot and corresponding onsite circulation.

The new Scheels location had been occupied by Sears since 1988 when it relocated from the Town & Country Mall and remained there until September of 2017 when it closed its doors along with 180 other Sears' locations across the country. The anchor store location has been vacant since September 2017.

The applicant held a pre-application Development Review Team (DRT) meeting on 3/31/21 and submitted their application for the PUD/Rezoning on April 26, 2021.

The applicant's PUD submission can be found in **Exhibit 2**.

The zoning and Future Land Use (FLU) maps of the area are provided in **Exhibits 3 & 4**, respectively.

## **Finding of Facts:**

The Minot Planning Commission should accept the following findings of facts:

- 1) The applicants have submitted a complete application.
- 2) The subject property is currently zoned "C4" Planned Commercial Development, which is a "legacy" zone.
- 3) Per Table 1.2: Zoning Equivalency Table Equivalent, the new zoning district which corresponds with "C4" Planned Commercial Development is "C2" General Commercial and "PUD" Planned Unit Development.
- 4) The applicant's request is consistent with the City of Minot 2012 Comprehensive Plan Future Land Use Map designation of Commercial and the following Goals and Policies:
  - Economic Development Goal 2, Policy 3:
  - Land Use Goal #2, Policy 2
- 5) The PUD submission provided in Exhibit 2 meets all the standards for approval per Section 2.23-4 of the Minot Land Development Ordinance.
- 6) The Minot Planning Commission has the authority to hear this case and recommend that it be approved or denied. The public notice requirements were met, the hearing was legally noticed and posted and the hearing was held and conducted under the requirements of North Dakota Century Code and Minot City ordinances.

## **Staff Recommendations:**

## PLANNING COMMISSION MINUTES

Regular Meeting

June 01, 2021

Page 8 of 16

Staff recommends the Planning Commission adopt the staff findings of fact and recommend approval to City Council a zoning map amendment from “C4” Planned Commercial District to “C2” General Commercial District with a “PUD” Planned Unit Development overlay subject to the following conditions:

- 1) A site plan review is required for development.
- 2) The approved PUD plan is provided in Exhibit 2.

**Chairman DeMakis opened the meeting for questions from the Commissioners.**

Commissioner Baumann thanked staff for their work on the project and for having the opportunity to see the new ordinance in action.

**Chairman DeMakis opened the meeting for comments from the public.**

No one from the public came forward to comment either for or against the item.

**Chairman DeMakis asked for a motion from the commissioners.**

Motion by Commissioner Baumann to recommend approval per staff recommendations with conditions based on findings of fact, second by Commissioner Sessions, and was carried by the following roll call vote: ayes: Barnett, Baumann, DeMakis, Gates, Hochhalter, Offerdahl, Sessions, Wegenast nays: none

**Motion passes**

### **Item #10 Case #2021-06-05**

#### **Subdivision, Zoning Map Amendment, and Future Land Use Map Amendment**

Planning Commission recommends City Council approve a subdivision plat to be known as Suburban Homes 4<sup>th</sup> Addition to adjust the shared property boundary between the two subject properties thirty (30) feet to the west. The area of the property boundary adjustments is the same area affected by the zoning map amendment and future land use amendment request and pass an ordinance on first reading to rezone from “R1” Single-Family Residential District to “C2” General Commercial District and a future land use map amendment from Low Density Residential to Commercial. The properties are legally known as Lot 2, Less the East 20 Feet thereof, and the North ½ of Lot 9, and the South 60 Feet of the East ½ of Lot 9 and the West 100 Feet of Lot 10, and the East 100 Feet of the West 200 Feet of Lot 10, All in Block 1, Suburban Homes Addition to the City of Minot, North Dakota.

These properties are located at 1401 4<sup>th</sup> Street SW and 1416 S. Broadway.

**Chairman DeMakis asked Principal Planner Van Dyke for his report.**

Public hearing request on an application from Michael Sartwell, PRGA Properties – St. Joseph, LLC owner/representative and Trustees Church of God of Prophecy, owner for a zoning map amendment from “R1” Single-Family Residential District to “C2” General Commercial District and a future land use map amendment from Low Density Residential to Commercial. Further, a subdivision to be known as Suburban Homes 4<sup>th</sup> Addition is being requested to adjust the shared property boundary between the two subject properties thirty (30) feet to the west. The area of the property boundary adjustment is the same area affected by the zoning map amendment and future land use map amendment request. The properties are legally known as Lot 2, Less the East 20 Feet Thereof, and the North ½ of Lot 9, and the South 60 Feet of the East ½ of Lot 9 and the West 100 Feet of Lot 10, and the East 100 Feet of the West 200 Feet of Lot 10, All in Block 1, Suburban Homes Addition to the City of Minot, North Dakota. The properties are located at 1401 4<sup>th</sup> St. SW and 1416 S. Broadway. An aerial view of the property is provided in **Exhibit 1**.

The properties are presently a drive-thru restaurant, Slim Chickens, and a church, Trustees Church of God of Prophecy that maintain a shared property boundary. Thirty (30) feet of land located on the church property is proposed to become part of the property where Slim Chickens resides. The adjustment is to facilitate expansion of the parking lot. The



## PLANNING COMMISSION MINUTES

Regular Meeting

June 01, 2021

Page 9 of 16

adjustment requires a future land use map amendment and rezone of the area proposed to be exchanged between the two properties.

The preliminary plat for the proposed Suburban Homes 4th Addition is provided in **Exhibit 2**. The proposed lots meet the bulk lot and area requirements per Chapters 2.6 and 2.14 for "R1" Single-Family Residential and "C2" General Commercial respectively.

### **Finding of Facts:**

The Minot Planning Commission should accept the following findings of facts:

- 1) The applicants have submitted a complete application.
- 2) The subject area is currently depicted as both Low Density Residential and Commercial on the Future Land Use (FLU) Map of the Comprehensive Plan.
- 3) The FLU map is requested to be amended to align with boundary adjustment request as detailed by the plat depicting Suburban Homes 4th Addition.
- 4) A change in zoning from "R1" Single-Family Residential District to "C2" General Commercial District for the area being conveyed by one property owner to the other will be in alignment with the FLU map, if amended as requested by the applicant.
- 5) The applicant's request is consistent with the bulk requirements of the Minot Land Development Ordinance.
- 6) A change in conditions does exist due to the proposed shared property boundary adjustment per Section 9.1-7 H. 1.
- 7) No additional public services will be required to support the request and Section 9.1-7 H. 2 is satisfied.
- 8) The zoning provisions surrounding buffering and the lower overall rotation of vehicles intended for the new parking stalls will minimize impact to neighboring property owners and there exists no belief it will substantially diminish the condition or value of property in the vicinity per Section 9.1-7 H. 3.
- 9) Per Section 9.1-7 H. 4., the zoning change is consistent with the purpose of the Zoning Ordinance and other adopted policies of the City, and will be consistent with the comprehensive plan, subject to amendment of the Future Land Use Map.
- 10) The Minot Planning Commission has the authority to hear this case and recommend that it be approved or denied. The public notice requirements were met, the hearing was legally noticed and posted and the hearing was held and conducted under the requirements of North Dakota Century Code and Minot City ordinances.

### **Staff Recommendations:**

Staff recommends the Planning Commission adopt staff findings of fact and recommend approval to City Council of the Suburban Homes 4th Addition plat, a zoning map amendment from "R1" Single-Family Residential District to "C2" General Commercial District, and a Future Land Use Map amendment from Low Density Residential to Commercial subject to the following conditions:

- 1) Site plan review and de minimus effect memo required for development.

## PLANNING COMMISSION MINUTES

Regular Meeting

June 01, 2021

Page 10 of 16

2) No later than six months after a subdivision design has been approved by the City Council, the applicant for design approval may submit the final form of the instrument or document to the City Engineer which is to be recorded in the office of the County Recorder in order to accomplish the subdivision or to establish the necessary predicate for the later accomplishment of the subdivision. That is, the subdivider shall submit the final form of the original of the appropriate instrument of conveyance, auditor's outlot plat, or plat, and the necessary copies thereof required by ordinance or by way of regulation. The City Engineer shall indicate his approval on the original by signing his name under a suitable statement or legend that expresses approval. However, if the documents or instrument for which approval is sought is a plat, then before the City Engineer approves it he shall first satisfy himself that the technical requirements of Section 10.2-5 have been complied with and that monuments have been placed at all block corners, lot corners, angle points, points of curves in streets which are depicted in the plat, and at such intermediate points as may be required.

### **Chairman DeMakis opened the meeting for questions from the Commissioners.**

Commissioner Sessions asked Principal Planner Van Dyke read off the requirements for buffer yards (1 tree per 20 lineal feet) and asked how many trees would be required, Van Dyke responded that there would be six (6) trees required. She then asked him to pull up the site photos and asked if those were the photos of the existing buffer, Van Dyke responded that it was. Sessions then asked if she was correct in assuming that the new buffer will consist of the same type, kind, and height of trees; Van Dyke responded that at least 50% of them would have to be conifers, which appears to be the case in the photos. He then continued that by explaining that at the time of the photo, April 29<sup>th</sup>, that those trees appear to not have budded yet. Chairman DeMakis then interjected that there appears to be three trees there, three conifers and three non-conifers. Sessions then clarified that it will not be much of a buffer, and that it won't become a buffer for another 20 years.

Commissioner Sessions then asked how staff came to the conclusion that the expansion would not substantially diminish property values in the vicinity. Van Dyke responded that the staff findings of fact stated that staff had no belief that it would substantially diminish the condition or value of property in the vicinity. He then continued that there is no viable way for staff to determine how (the proposal) will impact adjacent property values. She then mentioned that the staff report stated that staff would not support any further encroachments and expansions (of the site) and asked what the reasoning behind that was. Van Dyke responded that staff wanted to ensure that this is the last time that (the property boundary) gets requested to be pushed back, there are certain instances where it would be appropriate to go further than 30' but in this instance staff believes that 30' is adequate to have minimum impact on the neighboring property owners and all them to exchange land and move on with their projects. Sessions then asked if the property was required to have a change to its future land use (FLU) designation. The Principal Planner responded that yes, when staff facilitates zoning amendments, they look to the comprehensive plan and its future land use map for direction and guidance. As thus, if the proposed FLU amendment from Single Family Residential to Commercial is approved, it would then be in support of the proposed zone change. Sessions then asked if the change would affect the surrounding neighborhood forever; Van Dyke responded that it is a permanent request, but that redevelopment occurs over time.

Commissioner Baumann then asked Van Dyke proposed vinyl fence would extend south to buffer the residential properties there as well, Van Dyke responded that it was his understanding that it would and the applicant is there to note what the agreement between the church and Slim Chickens is.

### **Chairman DeMakis opened the meeting for comments from the public.**

Shannon Grosse, the Vice President for Restaurant Group, the owners of the Slim Chickens property approached the podium to answer questions. Sessions asked him about the hours of operation, the frequency of shift changes, and when does the last employee leave. Mr. Grosse responded that the hour of operation are 10:30 am to 10:00 pm, Sunday through Saturday; that there are any number of shift changes, with employees coming and going throughout the day; and that the last employee leaves around 11:30 pm.

## PLANNING COMMISSION MINUTES

Regular Meeting

June 01, 2021

Page 11 of 16

Commissioner Baumann then asked if the vinyl fence between Slim Chickens and the church would extend along the southern portion of the property extension. Mr. Grosse responded that the church is requested for them to run the vinyl fence along the 120 feet running along the (West) property line, and that they will continue that on the 30' on the South and North sides of the property extension. He then continued that between that and the proposed landscape buffer that it will look like how it looks today but with more trees and a fence.

With no further questions, Mr. Grosse returned to his seat.

Margie and Cole Zietz then approached the podium and Ms. Zietz spoke first, explaining that her son, Cole is the current property owner for 1415 4<sup>th</sup> St SW (the residence directly west of the Slim Chickens. She then started to discuss a handout that she had given staff and the commissioners which detailed how the SuduWok (now the Slim Chickens) was out of compliance with the code in 2017 and how it will be even more so out of compliance now due to changes in the code. Ms. Zietz then referenced the site photos that she took herself and the ones that Planner I Baumgartner had taken, before stating that the cars from the drive through would be shining into her son's house, and that the existing trees were not providing a buffer at all during the winter time, as was evidenced in her site photos. She continued by stating that the Planning Commission could add a condition to require the fence, and that the one between the church and the restaurant was not enforceable by the city. She concluded her statement by mentioning that the lights from the employee's cars shine on her son's property for extended periods of time in the winter when they turn them on to warm up before they leave, and that the change from a church playground to an employee parking lot will have an effect on the neighborhood. *(A copy of Ms. Zietz's handout has been digitized and placed within the case's folder and a physical copy has been placed in the physical folder).* Cole Zietz then stated that he's hoping for a bit more privacy out of this than with the existing chain link fence that there isn't much to block the headlights. He continued that the vinyl fence would be a nice addition to the property in the future.

Vice Chairman Offerdahl then asked the vinyl would accommodate what Zietz was looking for if it were to be made into a requirement, Mr. Zietz responded that he thought it would take care of the headlight problem. Ms. Zietz then chimed in that if it were made a requirement for the city that staff could take some enforcement action to make sure that the fence remained up, and that a private agreement would not hold up well in the future.

With no further questions, Margie and Cole Zietz returned to their seats.

### **Chairman DeMakis asked for a motion from the commissioners.**

Motion by Commissioner Wegenast to recommend approval per staff recommendations with conditions based on findings of fact with the added condition to require the addition of the fence to cover the entire west edge of the property and the additional 30' on the north and south side, prior to the issuing of the Certificate of Occupancy, second by Commissioner Offerdahl.

### **Chairman DeMakis then opened it up for discussion amongst the commissioners.**

Sessions stated that she reluctant to approve the item in question because it provides precedent for the encroachment of commercial into residential and stated that the encroachment will lower the surrounding property values, citing the North Taco John's as an example.

Principal Planner Van Dyke then chimed in that a slight modification to the motion was needed as the Slim Chickens already had its Certificate of Occupancy and is currently in business, and instead recommended it be tied to the site plan approval. Chairman DeMakis agreed.

Vice Chairman Offerdahl then asked Van Dyke if staff had received any other notice from neighbors who were against it, Van Dyke responded that staff did not.

## PLANNING COMMISSION MINUTES

Regular Meeting

June 01, 2021

Page 12 of 16

Commissioner Bauman then stated that he appreciated Commissioner Sessions' thoughts, but when he looks at the scope and scale of the neighborhood, he sees it as an improvement, as it is one way that they can legally put a vinyl, light and site obscuring fence there, in addition to the landscaping buffer between the residential neighborhood and the business, that wasn't there at the time that it was built. He then explained that it could be a step up for the neighborhood as they wouldn't be being illuminated by the drive through lights. He believes that this is a lateral move, if not a forward move for the area.

**Chairman DeMakis the asked for a motion to amend the motion to tie the fence requirement to site plan approval.**

Motion by Commissioner Wegenast to amend his motion, Commissioner Offerdahl once again seconded the motion, and the motion to amend the motion was carried by the following roll call vote: ayes Barnett, Baumann, DeMakis, Gates, Hochhalter, Offerdahl, Wegenast nays: Sessions.

**Motion to amend the motion carries.**

The original motion, now amended, was passed by the following roll call vote: ayes: Barnett, Baumann, DeMakis, Gates, Hochhalter, Offerdahl, Wegenast nays: Sessions.

**Motion passes.**

**The following item(s) are provided for informational purposes only, as Planning Commission has final decision-making authority regarding variances and conditional use permits. Appeals are presented to City Council.**

### **Item #11 Case #2021-06-02**

#### **Conditional Use Permit and Variance**

Planning Commission approves a conditional use permit for commercial recreation outdoor related to a paintball arena and a variance to paving requirements for the driveway and parking area and relation of signage allowance within "R1" Single-Family Residential District. The property is legally known as Outlot 34 of the NE 1/4 and the SE 1/4 of Section 30-155-82, Less Sublot A, Less Highway, and Less Portion of Outlots 44 and 45.

The property is presently unaddressed and located on the southside of Valley Street. Access to the property is approximately 350' to the northwest of 2204 Valley Street.

**Chairman DeMakis asked Principal Planner Van Dyke for his report.**

Public hearing request on an application from Hunter Langseth representing Margo Ehr, owner, for a conditional use permit for commercial recreation outdoor related to a paintball arena and a variance to paving requirements for the driveway and parking area and relaxation of signage allowance within "R1" Single-Family Residential District. The property is legally known as Outlot 34 of the NE ¼ and the SE ¼ of Section 30-155-82, Less Sublot A, Less Highway, and Less Portions of Outlots 44 and 45.

The property is presently unaddressed and located on the southside of Valley St. Access to the property is approximately 350' to the northwest of 2204 Valley St. An aerial view of the property and 600-foot notification area is provided in **Exhibit 1**.

Hunter Langseth (applicant) wishes to establish an outdoor paintball arena on a portion of a 77.45-acre property in southeast Minot. Per the letter of intent provided in **Exhibit 2**, the days and hours for this activity would be limited to two days per week from 6:30pm to 9:30pm and the occasional weekend for birthday parties or other special events. The arena would be located within an approximate one-hundred-fifty foot (150') by three hundred foot (300') area on the property, or approximately one-acre per the site plan provided within the application (See **Exhibit 3**). As part of the conditional use permit, the request includes a relaxation to the signage restriction of four-square feet that applies to the "R1" Single-Family Residential District.

## PLANNING COMMISSION MINUTES

Regular Meeting

June 01, 2021

Page 13 of 16

### **Finding of Facts:**

The Minot Planning Commission should accept the following findings of facts:

- 1) The property is located within a residentially zoned area of the Extra-territorial Jurisdiction of the City of Minot.
- 2) The City of Minot 2012 Comprehensive Plan Future Land Use Map designates this property as Medium Density Residential and Industrial.
- 3) The applicants have submitted a complete application for a variance and conditional use permit per Section 9.1-3 C. and 9.1-4 C. respectively.
- 4) The use of commercial recreation outdoor is a conditionally permitted use within the "R1" Single-Family Residential District.
- 5) The standards provided in Sections 9.1-4 F. 1. & 4. through 8. are met without additional conditions.
- 6) Conditions to address noise, location, days and hours, and other matters to mitigate negative externalities will ensure Sections 9.1-4 F. 2. & 3. are affirmed.
- 7) The granting of the variance will not adversely affect the rights of property owners in the surrounding neighborhood, or the character of the surrounding neighborhood per Section 9.1-3 G. 5.
- 8) The Minot Planning Commission has the authority to hear this case and decide whether it be approved or denied. The public notice requirements were met, the hearing was legally noticed and posted and the hearing was held and conducted under the requirements of North Dakota Century Code and Minot City ordinances.

### **Staff Recommendations:**

Staff recommends the Planning Commission adopt the staff findings of fact and approve a conditional use permit for commercial recreation outdoor and variance to the driveway and parking improvement requirements outlined in Sections 6.1-5 D. and 6.1-7 B 1. e. subject to the following conditions:

- 1) No paint grenades, smoke grenades, or non-traditional rounds may be used onsite.
- 2) Rounds are limited to paint rounds from Tippman Custom 98 paintball gun or equivalent
- 3) Round velocity is limited to two-hundred-eighty-five feet-per-second (285 fps) and the ability to randomly test player equipment to ensure this maximum threshold is met is required by onsite staff.
- 4) Any netting to be installed shall not exceed eight and one-half feet (8.5 ft.) tall measured from the ground without first obtaining a building permit.
- 5) In lieu of an air horn to denote the beginning and end of a round or to gain attention of players on-field, a system of colored flags shall be utilized to inform players.
- 6) No noise exceeding 55 decibels as measured from the property line is permitted.
- 7) The site plan as provided in Attachment 'A' (Exhibit 3 in this staff report) is adopted herein and no

# PLANNING COMMISSION MINUTES

Regular Meeting

June 01, 2021

Page 14 of 16

changes to size, whether by total area, dimensions, and position may be made unless an amended conditional use permit is submitted to the Planning Commission.

8) Days and hours of operation are limited to the following:

- a. Thursday and Friday 6:30pm to 9:30pm
- b. Saturday and Sunday noon to 9:30pm

9) Lighting, if any, shall be downward facing and face away from residential properties to the west.

10) Lighting, if any, shall be compliant with Section 3.1-10 D. 5. of Minot's Land Development Ordinance.

11) Safety rules are adopted herein as provided in Attachment 'B'. These may become more restrictive and/or expansive by the applicant but may not become less restrictive or contractive from those provided in Attachment 'B'.

12) Signage will be limited to no more than twenty-four square feet (24 s.f.) in area. Sign height shall not exceed eight feet (8 ft.) and shall be placed outside the visibility triangle as determined by the City Engineer. The sign will include a clearly legible site address for the benefit of emergency services and patrons. The sign shall not be illuminated. A sign permit is required prior to installation of any signage onsite.

13) The conditional use permit shall expire on December 31, 2025. At any time prior to expiration, the applicant or property owner may apply for renewal following the procedures as outlined in Article 9 of the Minot Land Development Ordinance. Following this date, the applicant must submit a new conditional use permit application. Additional conditions may be imposed at that time including, but not limited to, necessitating infrastructure improvements and permanent buildings, and addressing known issues or other concerns.

14) Driveway and parking improvement requirements per Section 6.1-5 D. and 6.1-7 B. 1. e. are waived per the variance issued on June 1, 2021 by the Minot Planning Commission. This variance is coupled to the conditional use permit and shares the same expiration timeframe as provided in condition 13) of this permit.

15) Per Section 9.1-4 I., the procedure for amending a conditional use permit shall be the same as required for the original approval.

16) Per Section 9.1-4 J. 1. through 3. are provided for reference and convenience of the applicant:

- a. Time limit. Substantial construction must take place within one (1) year of the date on which the conditional use permit was granted, or the permit shall be void. If the conditional use is discontinued for a period of twelve (12) months, the permit shall be void.
- b. Change of use. Any change of the use as documented in the resolution of approval shall void the conditional use permit.
- c. Vested property right. A conditional use permit goes with the land, and not the applicant or operator, and becomes a vested property right, and cannot be taken away unless the operator, for example, is out of compliance with the conditions of approval set forth in the permit

Principal Planner Van Dyke also read into record the following written public comment in opposition to the item in question:

"We stand in opposition to the City of Minot granting this permit and variance for the following reasons. We believe that this proposed activity will negatively impact the value of our property. A portion of our property is exceptional wildlife habitat with many species of wildlife seen on a daily basis. Deer, wild turkeys, rabbits, raccoon and an

## PLANNING COMMISSION MINUTES

Regular Meeting

June 01, 2021

Page 15 of 16

occasional coyote, along with many species of birds frequent this area. Our lot is adjacent to the parcel where the proposed paint ball arena is to be located. We believe that the activity of a paintball arena will create additional noise and traffic that will generate dust and will discourage the wildlife from frequenting this area.

According to the documents that were submitted in the application the commercial arena area is planned to be fenced, however the rest of the property that will be used for parking, restrooms etc. is not planned to be delineated. I can foresee that with the commercial use of the arena we will also see a dramatic increase in the number of people using the rest of this parcel of land and also coming onto our property, as the boundary between our property and the parcel where the proposed paint ball arena is to be located is not well defined.

Therefore we oppose the granting of this conditional use permit and variance because we believe that the presence of this activity will reduce the resale value of our property and reduce the enjoyment that we have in living here.”

### **Chairman DeMakis opened the meeting for questions from the commissioners.**

Commissioner Sessions asked Van Dyke if the proposed CUP would expire in 2025 and if things needed to be corrected, would they not have to do so until they need to apply for their new CUP. Van Dyke responded that staff included the December 31, 2025 time frame to provide a limit given the unique nature of the request and that staff has done its best to mitigate any potential concerns that they could come up with, but it is still possible for something to come up that staff didn't consider. He further explained the proposed time limit would allow staff to review it when the time limit is up and propose additional conditions if necessary, including requiring infrastructure improvements as they may be necessary in the future. He continued that not having a paved driveway works for now due to the exploratory nature of the proposal for the applicant, if it becomes more successful and they would like to expand the scope and scale of the project, they would then have to come back in for another review by staff and Planning Commission. Sessions clarified that she thought that the proposed 5 year deadline was a long time and that it wasn't a year in length. Van Dyke then explained that the five (5) years gives them five (5) seasons due to the sizable upfront costs, and that it is up to the Planning Commission to reduce or expand that timeframe, but he felt that one year was not enough time.

Commissioner Barnett then asked the Principal Planner to go into further detail on the proposed fencing for the site. Van Dyke responded that it would consist of screening, typically netted material that is attached to poles that could be hoisted up to catch any errant paintballs. He further explained that the 8.5' requirement is a building code requirement, and that anything over that height would need engineered plans and a building permit.

### **Chairman DeMakis opened the meeting for comments from the public.**

Mike Baker, a neighbor, came forward with some concerns that he had for the safety of his wife and kids. He specifically had some questions on the random testing of the paintball guns, and if participants can bring their own guns or if it will be strictly rentals. He also stated that he believed that if the proposed foot per second limit is what would keep people safe that it should be checked before the start of the game. Mr. Baker then mentioned that he and his neighbors have a major issue with trespassing through their properties and that he is concerned that this could cause that issue to occur more frequently. He concluded that his biggest concern was the distance that it was from his property, being only 300' from the property line, and that he thinks that the fencing should be mandatory.

Hunter Langseth, the applicant then approached the podium to answer the concerns of the applicant. He started by stating that safety is their number one concern, that they want to be as respectful as possible to the neighboring properties, and that he is willing to address the concerns of the neighbors as they come up. He then continued that this is ultimately a side project for both himself and his business partner as they have full time jobs. In regards to safety, they are providing rental guns to the public, and if a participant brings their own they will have to be tested to make sure that they meet standards; the proposed netting will be a fine "airflow" netting that would be a finer version of a golf-course style netting. He continued that the maximum travel distance is supposed to be 100 yards, so he felt that the placement of the

## PLANNING COMMISSION MINUTES

Regular Meeting

June 01, 2021

Page 16 of 16

arena was appropriate. Langseth then addressed the concern over people wandering into Mr. Baker's yard, stating that he wasn't sure how often that happens with Grain Hopper Bar being nearby, but the property owner did add a gate at the entrance to the property to prevent unwanted traffic, and explained that the gate would be locked anytime there wasn't someone that was authorized onsite. He then addressed the hours of operation, with limited operation during the week based on weather, and weekends would be by appointment only.

Commissioner Sessions asked if there was a particular reason that their hours went to 9:30 pm on Sundays, Langseth explained that it had to do with the hours he worked for his day job.

Mr. Baker then asked Mr. Langseth if there would be anything that would prevent the customers from getting closer to his property, Langseth responded that the arena would be fenced off with limited access into and out of the play area. With that question being answered, Mr. Baker said that he was in favor of approval of the item.

**Chairman DeMakis asked for a motion from the commissioners.**

Motion by Commissioner Wegenast to approve per staff recommendations with conditions based on findings of fact, second by Commissioner Barnett.

**Chairman DeMakis the opened the meeting up to discussion from the commissioners.**

Commissioner Baumann stated that he loved the idea of the project but was struggling to balance how he feels about it with its potential impact on the neighboring properties. He concluded his thoughts by stating that he wants to support the project but wasn't sure if he could.

With no further discussion, the motion was carried by the following roll-call vote: ayes: Barnett, DeMakis, Gates, Hochhalter, Offerdahl, Wegenast nays: Bauman, Sessions

**Motion passes**

**Other Business**

Principal Planner Van Dyke briefed the Planning Commission on the status of the update to the subdivision ordinance, noting that it is about to go before the Zoning Ordinance Steerage Committee (ZOSC) and that they will probably be seeing it this fall.

**Adjournment**

With no further business before the committee, Chairman DeMakis adjourned the meeting at 6:42 PM.