

CITY OF MINOT

ZONING ORDINANCE STEERING COMMITTEE

Meeting Minutes
March 13, 2019

Attendance

Committee: Rolly Ackerman, Josh Wolsky, Pat Graner, Tyler Neether, Gloria Larsgaard

Absent: Tim Baumann

Staff: Lance Lang, Principal Planner
Glenda Sorensen, Planning Assistant
Stefanie Stalheim, Assistant City Attorney

Guests: Stephan Podrygula, City Council
Elysha Head, Executive Officer of Minot Association of Builders
Rusten Roteliuk, Houston Engineering

Chairman Ackerman called the meeting to order at 8:06 a.m.

The Chairman asked if there are any changes or additions to the minutes of January 23, 2019 and if not to make a motion to approve; motion to approve by Neether, second by Wolsky. All votes in favor, no nays. Motion passes.

The Chairman asked the committee to review the agenda for today for any changes or additions. Motion to approve as is by Wolsky, second by Neether. All votes in favor, no nays. Motion passes.

Chairman Ackerman introduced Scott Harmstead, a planning consultant from SRF Consulting that will be assisting the committee with revisions to the zoning ordinance. The Chairman then introduced Rusten Roteliuk with Houston Engineering. Rusten has volunteered to be a member of the committee but has not been officially appointed by the Mayor. Ackerman noted that Mr. Roteliuk was the City Engineer in Minot in the past as well as a Project Engineer in Grand Forks, so he brings a lot of good experience to the group.

The Chair discussed scheduling and mileposts. Lang said that the consulting contract with SRF is a maximum fee, not to exceed contract, so it really doesn't provide guidance in terms of length of time to finish the work. The consultant will perform the work as assigned by the committee up to the maximum contract amount.

Mr. Ackerman said he feels the goals related to scheduling are as follows:

- A more readable document
- Eliminate redundancy
- A more user-friendly product

**Zoning Ordinance Steering Committee
Minutes
March 13, 2019**

- Inclusion of charts, tables, and graphics

Some of the more important topics based on past work by the committee include:

- Aesthetics (building construction components and materials, landscaping)
- Hidden fasteners for metal construction
- Nonconforming uses
 - Financial issues with lenders
 - Property rights
 - Pending Legislative bill

Meyer explained that there is an LB proposed that would allow a nonconforming residential structure to be rebuilt to its former footprint and height if destroyed, regardless of any percentages of loss, if the new structure is not enlarged and if the request for permission to rebuild is within six months. It would apply to all residential structures, even those in commercial zoning districts.

Lang reminded the committee that the Minot ordinance currently has a “loophole” that allows nonconforming structures in residential zoning districts to be rebuilt to the same footprint, height, and general appearance of the pre-existing structure. This loophole would not apply to a residential use on commercially zoned property because it is not written into any of the commercial zones.

Ackerman continued with his list of topics:

- Cannot be obstructionist
- Need to avoid “red tape”
- Consider bringing back the Board of Adjustment
- This is a comprehensive review, beginning to end
- The “backbone” of the ordinance is good, better than most ND zoning ordinances
- Avoid getting caught up in “wordsmithing” details
- Flow charts for processes
- Chapter 28 is engineering, probably not committee territory, Lance M. may review and may want changes

Lang stated that the document is 31 chapters currently, although there are some sub-chapters within it, so maybe 35 or 36 total chapters. But, he pointed out 15 of those chapters are the chapters for individual zoning districts. We will go through those chapters quickly.

Lang also stated that since this document included subdivisions and everything that goes along with subdivisions, like stormwater management, developer agreements, etc.

**Zoning Ordinance Steering Committee
Minutes
March 13, 2019**

the document would be better titled the “City of Minot Land Development Ordinance” rather than simply zoning ordinance. Lang feels there is some work to be done to the engineering chapters as well.

Harmstead said the first task he is working on based on the consulting contract is an approach document that will be presented to City Council. He would like to gain an understanding of what the important topics are in order to prepare this document.

Chairman Ackerman said in his opinion the approach document may have some value to this committee, but he questioned the value of taking it to Council. The City Council wants the ordinance fixed, whatever it takes. Wolsky said the license to go on this has been granted. The money for the approach document might be better spent on other needs. The Chairman went around the table and asked everyone what their major concerns are:

Larsgaard.

- We should research other communities in North Dakota and see how their ordinance deal with things like aesthetics and appearance of buildings

Wolsky.

- Major goals are to make this document easy to use, improve mechanics, ensure clarity
- Use Matrix is a good addition
- We may want to reorganize the order of the Chapters
- Wholistic viewpoint, policy direction to achieve development types and trends we want to accomplish such as mixed-use neighborhoods
- We need to take a hard look at the parking minimums. There are negative external effects from requiring so much parking.
- Be mindful of an emphasis on property rights, especially as they relate to undeveloped properties
- Perhaps there are too many restrictions in residential zones to promote housing in a bigger way. Maybe consider alternatives like garage apartments or carriage houses.
- Questions the ability of this ordinance to deliver mixed-use developments with both residential and commercial uses that complement one another.

Ackerman interjected that a focus on infill development is important, and also discussed “Parking Licenses” whereby a business could have access to additional parking owned by a neighboring business.

**Zoning Ordinance Steering Committee
Minutes
March 13, 2019**

Podrygula.

1. Planning documents need to be flexible, borne of common sense.
2. The matrix approach, free of jargon, makes sense.
3. No offensive development, like the Blind Duck plaza- trashy looking. Highly visible areas seen from major roads and highways need to project quality development, maybe an overlay district would best accomplish this goal. Aesthetics are not contrary to practicality.
4. Our goal should be to be congruent with the development vision for the community. Shared use, cohesive approach. Good government should facilitate development, not obstruct opportunity. Good development should be environmentally sensitive. We should use the grant funding as we are charged to promote resiliency in our community in a broad sense, a higher level of functioning that is objective, legal, and fair.

Ackerman again brought up the importance of reinstating the Board of Adjustment to smooth out the development process. Many things that Alderman Podrygula speaks of could be addressed in a more direct and expeditious manner with B of A.

Lang explained an alternative he is familiar with to deal with issues that pop up in certain developments that do not warrant a variance but need to be dealt with in some manner. The Planned zoning overlay district, similar to a PUD, but more site specific. A "P" or "PD" attached to a base zoning district indicates that project to be a "planned development". Deviations from standard practices and development regulations might make the project better in the long run. This a negotiation game. For example, less side yard setback is offset with greater than normal setbacks elsewhere with a playground and additional landscaping. These are not hardship situations begging the question of a variance, and they are not traditional PUD projects with large campuses of mixed-use development and phasing plans. It is very site specific and project specific. In these cases, the developer must submit more information so that staff and Commission and Council can understand the proposal and react to it. A site plan layout, drainage, landscaping, utilities, etc shall all be considered at least from a feasibility standpoint. Certain development trends may kick in the need for the "P" overlay, like a development served with a private roadway is automatically considered a planned development. The planned approach provides much greater flexibility and more autonomy for staff to work with developers to get a better end product without the time, money, and frustration of seeking variances.

Roteliuk.

- The difficult task here is to achieve balance between easy and effective.

**Zoning Ordinance Steering Committee
Minutes
March 13, 2019**

- One size does not fit all with zoning ordinances, too many unforeseen variables. How much flexibility do we want? Who is going to make interpretations? Common sense is relative because one man's common sense will differ from another's.

Neether

- Basically, the same list he has had since the beginning...
- Inequity in decisions
- Aesthetics for C2, M1 and M2
- Reduce requirements in general
- C2, M1, M2 building aesthetics (time sensitive)
- Percentage of building expansion kicks in certain improvement requirements (time sensitive)
- Nonconforming issues
- R1 Residential in commercial zoning districts
- Paving
- Landscape
- Clinics require CUP

Lang stated that the issue with clinics is more impactful than one might think. When the CC approved staff recommendation for opioid dispensaries to be considered a clinic and did the same with medical marijuana, all clinics are now conditional uses, meaning they all require conditional use permits. All of the existing clinics in town, whether they be foot clinics, dental clinics, pharmacies, chiropractors, etc. are now nonconforming. It seems to be unnecessary for a dental clinic, for example, to be required a CUP. Even the medical marijuana seems to be overkill because the ND State Department of Health is setting all the rules and regulations. What conditions would the City actually attach to a medical marijuana CUP that aren't already covered by the state?

The restriction on R1 in commercial zoning districts has also created a large number of nonconforming situations. Every house, duplex, condo, townhouse, apartment building, etc. that is in a commercial zone is now nonconforming. That is a lot of properties.

Graner.

- Aesthetics requirements need to be reduced
- The ordinance should require only health and safety concerns
- Builders should make design decisions
- Additions and enlargements require too many rules
- Landscaping and paving requirements should be reduced

**Zoning Ordinance Steering Committee
Minutes
March 13, 2019**

- The code should present a minimalist approach

Stalheim.

- Most concerns have been addressed in other people's comments
- Whatever we do the ordinance needs to be legally defensible

Meyer.

- Staff should have more ability to make minor adjustments instead of the variance process
- For example, on parking. If a development is within 10 %, or some reasonable number, and there is no practical way to add more parking, staff should be able to make a judgement call.
- Strive for consistency in the subdivision ordinance
- In some other communities in NoDak, the preliminary plat is submitted, reviewed, and approved as the initial step in the subdivision process. Any required easements or dedication of right-of-way and those types of issues can then be discussed, engineering issues such as stormwater and feasibility of utilities can be studied and then the final plat is brought forward.

Ackerman noted that DRT meetings have been helpful in addressing the easements, stormwater, utilities, etc. early in the process.

Neether added a comment on subdivisions. He said there should be a difference between a full-blown subdivision and a minor lot line adjustment. To move a lot line over five feet if two neighbors agree should not be subjected to the time and expense of a new, revised subdivision plat.

Head.

- The current ordinance is too restrictive
- We don't want to cause potential projects to leave town or not be pursued because of expensive development requirements

Wolsky suggested that restarting the Board of Adjustment may have significant impact on the different moving pieces we are working on within the ordinance. If the committee feels that the B of A is important, we should be taking that into account early in the process as we move forward.

Lang said that a B of A is a different animal than other boards and commissions like the Planning Commission. The sole purpose of the B of A is to hear appeals and grant or deny variances. The variances are to be based on hardship(s). The B of A is a quasi-

**Zoning Ordinance Steering Committee
Minutes
March 13, 2019**

judicial board and appeals from the board's decision go to district court instead of City Council.

Chairman Ackerman said that there was a B of A in Minot, but staff decided to do away with it. It was a three-member board of appointed volunteers. The members are typically, architects, engineers, attorneys and the like, professional and technical type people. The B of A only meets if there is an appeal to be heard. In the past in Minot there were a lot of problems with getting a quorum of the board together for meetings. Staff decided to shift the variance responsibility to the Planning Commission since they meet on a regular basis. One common problem with B of A is if the board grants a lot of variance without good cause. There is supposed to be a hardship, a condition beyond the control of the applicant. Variances are not to be granted for convenience. Taking variance appeals through the PC adds time and expense to the process. His opinion is the B of A would be a better alternative. Chairman Ackerman asked for a show of hands from the committee who would be in favor of resurrecting the B of A. A majority of the members raised their hands.

Alderman Podrygula stated that there needs to be more flexibility in our approach. Staff and DRT need to be use operational common sense early in the process. Do we really need a B of A if we can tackle the issues in a different way to reduce the number of variances? Alderman Wolsky also question whether we need a B of A or no? The City Council should make that decision and probably sooner than later.

Ackerman said we should consult the Century Code and review what it contains regarding the powers and responsibilities of a B of A. He feels that the B of A would be helpful in resolving the variance questions in a timelier manner. Also increased reliance on the DRT process and administrative approvals, as in staff's ability to make interpretations and judgement calls.

The Chairman continued; There are many important things to do to improve process, procedures and what we have to work with. If you drive around town there is an obvious lack of enforcement in many instances. We are charged with making these rules for the City Council to consider, and then they adopt these rules, and regulations, and standards but no one follows up to make sure they are enforced. It comes down to priorities. We could do better with enforcement, but the Council needs to decide. It is a matter of staffing and budget. We need people and money.

Lang added to the Chairman's comments stating that currently we have only one full-time person working on code enforcement, Margie Zietz. She does a good job, but the task is overwhelming. There are so many locations that need to be addressed. Her marching orders are basically to act on complaints, especially if the complaints come from Aldermen or the City Manager. She is not out on a witch hunt to find all violators,

**Zoning Ordinance Steering Committee
Minutes
March 13, 2019**

but when she follows up on a complaint oftentimes there are other properties in the same area just as bad, or worse. She cannot turn a blind eye to these, so she adds them to the case load.

Lang also mentioned one enforcement issue at a larger scale which is particularly bothersome to him as a professional planner. How did all of these C2 commercial properties end up developed with industrial uses? They are spread all over town. C2 commercial has certain development standards that are in the ordinance and required for that zone. C2 is C2 is C2 no matter where it is within our jurisdiction. The expectations with commercial zoning are generally; paving, landscaping, attractive building with curb appeal, windows, etc. How did these properties get developed with no paving, no landscaping, metal buildings with no curb appeal, widespread outdoor storage with no screening, etc. Many are oil field operations. These are not C2 commercial uses, they are industrial. The problem is there are usually several lots together like this with underperforming zoning compliance. Can we expect a new developer to locate here and build anything nice, anything that conforms to C2 standards when the tone has been set? Lang feels that we may need to reassess these areas when the next comp plan update is undertaken. Maybe they should be considered industrial, not commercial, because unfortunately, that is what they really are.

Chairman Ackerman said the committee needs to discuss the consultant's role in this process for Mr. Harmstead's benefit. The committee will decide priorities and assign the work to the consultant. The committee will be presenting the proposed revisions to the Planning Commission and City Council, not the consultant. The meetings at Commission and Council will be public hearings. The committee meetings are open to public comment, every meeting we hold can be attended by interested parties. We don't need any special public workshops or listening sessions or design charettes. We are meeting the requirements for public input throughout the process. This ordinance is not that broken. It is better than many other communities in this state. The committee can handle presentation of these revisions. We are not starting over from scratch.

Alderman Wolsky agreed but thinks there could be value in other public input as well. It is always difficult to get public engagement. We wish we could have more, but it is difficult to get people to come. Perhaps the solution is to move these steering committee meeting to various locations and different times, such as an afternoon meeting at the library, so more people could attend.

Neether thinks the public input aspect is important. At the end of the process we need to be able to say the public was involved with these decisions. It is for transparency and it is important.

**Zoning Ordinance Steering Committee
Minutes
March 13, 2019**

Harmstead discussed the two handouts he brought. The first is a general outline of the chapters of the zoning ordinance that we can use to set priorities and milestones. The second is quick look at the latest version of the comprehensive plan. This handout summarizes references to zoning aspects that are in the comp plan. He feels it is important to at least consider how these directives might influence our work here, and also, we can assess the question have we met, or are we meeting the goals and objectives set forth here in the comp plan?

Mr. Ackerman believes these are two different documents and our time will be best spent concentrating on the zoning ordinance. Wolsky said he feels in many ways the comp plan is sitting on a shelf somewhere and we are not paying enough attention to it. The future land use plan is certainly not accurate, case in point the landfill. He appreciates consideration of the comp plan as part of this exercise because the comp plan will address the bigger picture issues such as policy direction. If we go back to the idea that we want certain types of development, such as mixed-use, the comp plan is important in achieving our vision. He acknowledges that the comp plan needs to be updated.

Lang said that he has discussed updating the comp plan with the City Manager. Currently there is no money budgeted, however the City Manager agrees it is important and we will need to address it in the near future. Generally, comprehensive plans have a twenty to thirty-year window into the future but are updated about every ten years because conditions change so fast. It is very difficult to “look into the crystal ball” and predict the future with any accuracy or certainty. We mostly look at what has happened in the past and try to extrapolate those trends forward. But everything can change quickly, as when an unanticipated major land use comes to town that was not considered in the comp plan. For example, the new hospital building. The comp plan does not adequately address the area around this major community investment. Much of the land in this area is vacant and undeveloped, and it will develop. What do we want this area to look like?

Ackerman brought up the commercial and multi-family land use designations on the future land use plan across from Galusha Addition. This a rural area on a county road, mostly agricultural and rural residential. The commercial and multi-family designations are out of place. Lang stated that it is important to remember that the comp plan is a long-range planning tool looking out into the future twenty or more years. Perhaps the planners at the time thought, someday in the future, as this area develops it will become much different and the county road will carry more traffic. It is already prominently used as a cut-through from Highway 52 to Highway 83. Maybe a convenience store or the like will make sense here in twenty years? But, in five years, or today, no.

**Zoning Ordinance Steering Committee
Minutes
March 13, 2019**

Alderman Podrygula also said he feels the comp plan is on a shelf somewhere. We need to consider and modify the plan often. Maybe we shouldn't wait on a cycle of ten or twenty years to consider these things. Could an ad hoc grassroots approach make more sense? It seems that we are always changing the land use map for this project and that project which means to me that we don't have it right to begin with.

Lang stated that he recently researched back three years or so of Planning Commission recommendations. Roughly one third of the rezoning requests in that time period also required the future land use map to be amended. Actually, the number is likely somewhat higher. In some instances, staff felt like it doesn't make sense to amend the land use map for a single lot that is under consideration for rezoning if there are other surrounding lots in a similar situation. When we do embark on the next comp plan update we should consider these areas in a larger context instead of just a single lot.

Harmstead made some observations as the committee moves forward. He said he believes the current committee is better than the committee in place the last time he worked with them. He concurs that the formatting of the ordinance is very important and inclusion of tables, charts, flowcharts, and graphics will improve the formatting and make the document easier to understand. To that end he also suggests a short chapter in the front of the book explaining how to use the document, a "How to" or "FAQ" kind of thing.

Larsgaard asked when a new developer comes to town how do they know what design consultant(s) to choose? How do they know what to do, where to find information? How does this work with staff and City resources?

Lang said that DRT is designed for staff to meet with people interested in land development in Minot and advise them on process, procedures, regulations, timelines, etc. Staff can also suggest the type of professional consultants someone may need based on their project. DRT is very flexible. The discussion may be conceptual in nature such as where are some areas of town that would be best suited for a certain use or, the issue at hand may be very focused as in here is the final set of drawings for this project, please review them before they are submitted. DRT is a cross section of staff members providing customer service to the public. It is like "one stop shopping." It is valuable to developers and has proven to be successful. The amount of money based on staff hourly rates is substantial, but there is no fee to attend DRT meetings and sometimes a larger project may entail several meetings.

Larsgaard said that the City website and webpage could be a place with a lot of helpful information. Meyer acknowledged that the planning and engineering webpages need some improvements.

**Zoning Ordinance Steering Committee
Minutes
March 13, 2019**

Chairman Ackerman introduced the next topic on the agenda; artificial turf.

Lang explained that there has been a request to install artificial turf on a commercial project. Currently the zoning ordinance purposely does not allow artificial plants of any kind. City Council directed staff to prepare an ordinance amendment that will allow limited use of artificial turf with appropriate measures. Lang and Stalheim have been researching the product and a meeting was held with staff members and an artificial turf contractor who installs the product in this region to gain more knowledge about the product and installation concerns.

The revisions to Chapter 24, Landscaping, list all the zones where artificial turf is prohibited and allows artificial turf in commercial and industrial zones with limitations. The amount of artificial turf is limited to 20% of the required landscape area as a substitute groundcover. Since the permeability of the product is one of the major concerns, it was suggested that perhaps the percentage of artificial turf should be linked to the maximum impervious coverage as allowed in any particular zoning district. In commercial zoning districts certain areas of the site are not eligible for artificial turf; the foundation planting area in front of the building and the twenty (20) foot wide buffer yard that is required when the commercial use abuts a less intensive residential zone or use. In industrial zones artificial turf can comprise up to 100 percent (100%) of the maximum impervious area, or less.

Stalheim said that there are no other communities in North Dakota that specifically allow artificial turf. Most outright prohibit it, one community is vague, with no language either prohibiting nor allowing it. Most of our results from research are from western states like Arizona and California where drought and water rationing are prevalent. Lang said he researched states in this region including both Dakotas, Minnesota, Montana, Wyoming and Colorado. Out of all of those communities only Casper, Wyoming allows artificial turf and that is by written permission from the Planning Director based on soil profile.

We included some general specifications such as no inorganic filler. Organic infill such as sand is to be used. Also, there is a minimum blade length of one and one half (1 ½) inches and a blend of at least three colors of green is required. The quality of artificial turf is related to its weight. These specifications require at least sixty (60) ounce turf.

Someone suggested to move the definition of artificial turf to Chapter 2, Definitions and Use Types.

Neether does not like the restrictions on blade length nor the fact it is barred from residential zones. What if a guy wants to build a putting green in his back yard? What about the front yard? Shorter blade length is a must for a putting green. The ordinance should not prohibit someone from doing this.

**Zoning Ordinance Steering Committee
Minutes
March 13, 2019**

In residential areas, what about shady areas where grass won't grow? What about dog runs?

Roteliuk observed that stormwater as it relates to this artificial turf is going to be a primary concern.

Meyer agreed and said that at first, we thought we need to determine a coefficient of runoff for this stuff, but there are so many variables as to how it is installed, what is the subgrade, is there a sub-drain system? etc. that we need to approach the stormwater on a case by case basis.

Wolsky said in his past life he used to run a landscape crew that installed artificial turf, so he is familiar with the product. He asked if anyone had consulted with Brett Kallis with Accelerated Greenworks? No, no one has talked to Brett. Wolsky suggested that staff contact him as he is very knowledgeable.

Lang said one concern with putting this stuff along the street is the fact that the street right-of-way contains the majority of the utility lines. If the City, or a private utility company like Excel Energy, needs to perform installation, maintenance, or repairs and there is artificial turf in place what about that scenario? The language includes a requirement for the owner to obtain an encroachment permit from the City Council to occupy the right-of-way with artificial turf. The encroachment agreements are written very specific to protect the City from liability and negligence claims. Lang said there is also a paragraph in the proposed amendment that basically says the city or private utility company is not responsible, any and all costs incurred with the artificial turf are to be paid by the owner.

Ackerman said he doesn't like the laundry list of prohibited zones. Instead, we should list the zones where it is allowed. He also thinks there is a conflict in the language between 3, b, 2, 1 and 2. He also thinks that artificial turf would be good downtown. There is nothing green down there.

Neether and Graner both felt that the way the ordinance is written is too restrictive. There may be situations where artificial turf makes perfect sense. Not only recreational purposes but what about a really steep slope in a residential setting or a really shady area where regular grass won't grow. The language needs to be more of a case by case basis and more lenient. Maybe the better solution is to allow the Community Development Director the authority to consider on a case by case basis and approve, with certain criteria.

Larsgaard asked how long this stuff lasts, like ten to fifteen years? What then? Lang said his research showed an industry standard warranty for the product of eight (8) years, although the product may actually remain in good condition for fifteen to twenty years. When it is removed it must go to the landfill. It is not recyclable.

**Zoning Ordinance Steering Committee
Minutes
March 13, 2019**

Lang said he has talked to the City manager and his concern is what if this stuff is installed and years later it starts to fade, or is stained, or becomes looking bad for some reason and the owner says that can't afford to replace it, they want to leave it. Maybe it is a different owner than the one who originally installed it. What recourse does the city have? Lang said there is a paragraph included that has standard language about maintaining the product free of stains, rips, fading, etc. but it would become an enforcement issue.

Meyer said we were just talking about enforcement a little while ago and here it is again. This artificial turf is very expensive, like eight to twelve dollars (\$8.00 - \$12.00) a square foot. Cost alone will probably prevent most people from considering it. But, if there was a compliance concern we would have to treat such a problem as a zoning violation, so code enforcement would send a letter with a deadline for correction. If need be more letters would be sent, and at some point, if compliance is not achieved, the matter would go to the City Attorney's office.

Stalheim concurred and said then it would be considered a criminal misdemeanor charge and the guy that doesn't take care of his artificial grass would be in the same company as drunk drivers and drug offenders. This is the only recourse available for legal compliance at this point.

Chairman Ackerman said in summary, staff needs to revise the draft based on the discussion today and the committee will consider the revised version at the next meeting.

Someone asked if committee members can email each other and the answer is no, because of open meeting laws. Committee members can email staff.

Lang said because of confusion as to what has happened in the past with appointing or not appointing members, he has sent a memo to the City Manager requesting that the Mayor reappoint all six members of the committee and consider appointment of Rustin Roteliuk also as the seventh member.

With no other business on the agenda, the meeting was adjourned at 10:16 a.m.

**Zoning Ordinance Steering Committee
Minutes
March 13, 2019**