

Unapproved Minutes

Vermillion Planning and Zoning Commission

Tuesday, November 16, 2021 Special Planning and Zoning Commission Meeting

The special joint meeting of the Vermillion Planning and Zoning Commission and the Clay County Planning Commission was called to order in the City Council Chambers at City Hall on November 16, 2021 at 5:30 p.m.

1. Roll Call

City Planning and Zoning Commissioners Present: Fairholm, Fitzgerald, Forseth, Gestring, Heggstad, Merrigan, Mrozla, Wilson.

City Planning and Zoning Commissioners Absent: Tuve

City Staff present: Jose Dominguez, City Engineer, Stone Conley, Assistant to the City Manager, Brent Matter, City Attorney.

2. Minutes

a. No Previous Minutes were adopted.

3. Declaration of Conflict

Forseth noted that he owns commercial property in Vermillion.

4. Adoption of the Agenda

Moved by Fitzgerald to adopt the agenda as printed, seconded by Wilson. Motion carried 8-0.

5. Visitors to be Heard

None

6. Public Hearings

a. A proposal to rezone certain areas from A-1: Agriculture to HI: Heavy Industrial. The properties proposed for rezoning are located north of West Cherry Street, west of the west City limits, south of SD Hwy. 50 Bypass, and east of the Vermillion River (also known as 1919 West Cherry Street).

Jose Dominguez, City of Vermillion City Engineer, presented the Agenda Memo from the City Planning and Zoning Commission packet on the Request to Rezone Lot 1 (Except Terminal Grain Tract 1 of said Lot 1), and Lots 2, 3 & 4 of Alber's Subdivision, being an official replat of Lot 2 of Lot A in the SW $\frac{1}{4}$ NW $\frac{1}{4}$, and Lot 2 of Lot A in the NW $\frac{1}{4}$ SW $\frac{1}{4}$); and, Terminal Grain Track 1 of previously platted Lot 1 of Alber's Subdivision; and, Terminal Grain Track 2 of previously platted Lot A in the N $\frac{1}{2}$ NW $\frac{1}{4}$, all in 14-92-52, West of the 5th P.M., Clay County, South Dakota, from the A-1: Agricultural District to the HI: Heavy Industrial District.

Dominguez explained that Staff recommends the petition to rezone the area from A-1: Agricultural to the HI: Heavy Industrial districts be denied. Additionally, City Staff recommends that both planning commissions direct staff to amend the A-1: Agricultural district so

that the "grain terminal/grain processing facility" use be included as a conditional use.

Dominguez read two letters from residents residing in the Joint Jurisdictional Zoning Area (JJZA) who are opposed the rezone. Ms. Cheryl Burbach of 1815 Baylor Street expressed concerns about noise and air pollution. Mrs. Karyn Ehrenfeldt and Mr. Mike Ehrenfeldt of 1508 Rockwell Trail expressed concerns about the proximity of an H-1 Heavy Industrial Zone to the residential neighborhood in which they reside.

Drew Gunderson, Clay County Zoning Administrator, explained the County believes that including "grain elevator" as an allowable or conditional use in the A-1 Agriculture Zone would open all the Ag Districts to a Light or Heavy Industrial use. Gunderson noted that two Comprehensive Plans oversee the JJZA. He read items from each that he felt may be relevant when deciding the item. Gunderson recommended approval of the rezone.

Kevin Myron, 1919 W Cherry Street provided a complete history of his family business, noting his family purchased the property in question in June of 2004. At the time parts were zoned industrial and agricultural. He explained that the grain business had been down due to flooding in recent years and closure of ethanol plants during the COVID-19 pandemic. Myron described different ways the company attempted to generate revenue to offset the struggle, including rail transloading and possible sale of the property. He noted that continued pursuit of revenue generation opportunities led to communication with the County Zoning Administrator, which is when he learned that the entire property was rezoned Agricultural, and "grain elevator" is not an allowable use. The County Zoning Administrator suggested contacting the City for more information. Myron states they learned that the property was rezoned with the 2012 Joint Jurisdictional Zoning Agreement, passed jointly by the City Council and Clay County Commission. Myron expressed his disappointment with the rezoning process that took place at that time and seeks for it to be reviewed. Myron explained that the request to rezone to HI-Heavy Industrial is because it is the only district that allows for a "grain elevator." Myron expressed frustration that his property is not sellable.

Responding to a question from the Commission regarding other area elevator facilities, Myron stated they are zoned Commercial within City Limits. Noting he requested to combine the zoning and conditional use permit hearings together to expedite the process.

Responding to a question from the Commission, Myron affirmed that utilizing the rail system in place that assisted in transportation of water pipe for the Lewis & Clark water system would have been an industrial use. Further expanding that his company has handled a multitude of product in that capacity.

Kathy Olson, 1501 Rockwell, Trail sought clarification on the applicant's request.

Terrence Brady, 1882 Constance Drive, believes if the plant is going to continue as is, property should be left as is in A1- Agricultural. Thinks the "mix-up" on the zoning should be resolved. Understandable that the applicant needs flexibility in his business, noting the flexibility is also the concern of those who live nearby. "What will it be if it is not going to be a grain elevator?" He asked the Commissioners for examples of what uses are conditional and allowable in both A1-Agricultural and HI - Heavy Industrial zoning districts. Dominguez listed all possible conditional and allowable uses within the HI district.

It was discussed that prior to 2012 Joint Jurisdictional Agreement, the City did not have a Heavy Industrial zoning district. The only industrial district was Light Industrial. Dominguez explained that every single time the use changes, an applicant must go through the same process. A Conditional Use Permit is for one use, not all that are possible.

Craig De Velder, 1304 Over Drive, states he has no problem with the grain elevator but opposes the rezone to Heavy Industrial to improve the value of the applicant's land for sale, noting Myron mentioned multiple times during his testimony that sale is an option. Once the land is sold, Myron can no longer control what is happening at that location, providing possibility of all allowable and conditional uses within the HI district.

Kelly Person, 1330 Over Drive, supportive of grain elevator, afraid of what will happen with the access points to the property from SD HWY 50. Noting that Myron expressed the option to sell many times when he spoke and afraid the rear of her house will become a busy truck route. Myron noted that due to an easement, access from the SD HYW by-pass is not an option. Person expressed her frustration of not being notified about the hearing as her property does not directly abut Myron's property due to said easement.

Dominguez confirmed that if the rezone takes place, the applicant must apply for a conditional use permit to operate a grain elevator. If the property were to be sold in the future, the conditional use permit would go with it. Dominguez noted that the true concern with a potential sale are not the conditional uses within the Heavy Industrial zoning district, but the permitted uses. The only thing a property owner needs to obtain to utilize the land for a permitted use, such as a redi mix plant or a fruit and vegetable canning and processing plant is a building permit; there is no discussion. These two examples require significant water and wastewater capacity. Thusly, City staff have said "grain processing and terminal" should be considered agribusiness within the Ag district or include the "terminal processing" as a conditional use in the Ag district. No one has issue with the grain elevator, the big issue is what happens if it is rezoned Heavy Industrial and then the property is sold. The

applicant has requested to rezone to Heavy Industrial for this one specific use. "Is the request to have the grain terminal to be there or is the request to rezone it Heavy to have options to sell it?"

Discussion regarding the refinement of zoning districts to better serve the community followed.

Ray O'Connor, 1520 Rockwell Trail, has no issues with the grain elevator but does not support the rezone to Heavy Industrial as it would open a "Pandora's Box" to allowable uses by simply obtaining a building permit. O'Connor noted that the property is actively for sale.

Gunderson stated the original request to rezone and seek a conditional use permit at the same time, but the request was resisted by the City. Dominguez explained that while combining the processes would expedite the timeline, it is not possible to grant a conditional use for a zoning district that does not exist. The amendment to the ordinance does not exist until 20 days after approval due to statutory processes. County Commissioner Mockler states that if a conditional use permit is contingent upon a rezone and the rezone is denied, then so is the conditional use.

Discussion was had on whether the property could be returned to Light Industrial district. A grain terminal is not a permitted or a conditional use in the Light Industrial district. Dominguez explained that regardless of how the applicant wishes to rezone the property, the same process is in place.

Commissioner Fairholm made the point that the 2012 Joint Jurisdictional Agreement was drafted and approved by both the City and the County. Addressing procedural concerns of the applicant regarding the 2012 rezone, he recognized that while the process is extensive, it is important that at this time Commissioners and Staff ensure the process is followed. Combining the two requests would be faster, but it wouldn't be following the correct process.

Brent Matter, City Attorney, offered "a few points of clarity," noting the reason for the meeting is a statutory procedure; the applicant's issue with the rezoning process does not rest with the City or County but the state legislature.

Matter provided the Chair the notice of hearing from the newspaper and the dually approved minutes and approval of the 2012 Joint Jurisdictional Zoning Agreement. He reminded those present that the reason for the meeting is to address the rezone, not the JJZA as a whole or the statutory process.

Craig Thompson, 1416 Rockwell Trail, offered the suggestion that should Myron opt to sell the property in the future, it could be done so with a contingency of a rezone.

Cheryl O'Connor, 1932 Oscar Howe Drive, states that while Mr. Myron would like the property to be "put back the way it was," it was never Heavy Industrial. It was explained to her that there is a way to keep the grain elevator without changing the zoning to HI which impacts the rest of the Clay County residents living in the area. Dominguez outlined the allowable uses allowed prior to the 2012 rezone. Discussion regarding alternative zoning amendments, such as the addition of "agribusiness" as a conditional use in the A-1 district followed.

Responding to a question from the Commission, Gunderson noted he had two objections to adding "grain processing facility" to the A1 district: 1) adding the term as a conditional use to the district would make it a possibility in the entire Joint Jurisdiction Ag district, and 2) it adds another step for the applicant to return his property back to "where it should be or where he was."

Myron expressed that he ultimately wants the property to return to the zoning that existed prior to the 2012 Joint Jurisdictional Zoning Agreement. He explained that adding agribusiness doesn't work because due to the business struggles, the business cannot function exclusively as an agribusiness.

Marjorie Iverson, 1874 Constance Drive, expressed that rezoning to Heavy Industrial sends a message to homeowners and would adversely affect the lifestyle of Vermillion and Clay County residents in that area. "You're concerned about business, but you should also be concerned about people who want to live here."

Matter addressed Commission to again state that the present issue is to rezone Mr. Myron's property.

Ryan O'Connor, Vermillion Resident, expressed that there is a lot of fear of the unknown and everyone should be able work together to find a solution.

Mockler stated that a mistake was made in 2012 and two wrongs don't make a right. The situation needs to be fixed. Fairholm mentioned that there are members on the Commissions who were involved in the 2012 rezone and is grateful for the opportunity to refine the process and the zoning.

Discussion regarding the timeline of the process to amend an ordinance took place along with existing definitions and uses.

Moved by Merrigan to recommend approval of the rezone as requested, no second. Motion failed.

Moved by Fitzgerald to recommend denial of the request to rezone 1919 W Cherry Street, seconded by Wilson. Motion carried 6-2.

7. Old Business

None

8. New Business

None

9. Staff Report

None

10. Adjourn

Moved by Mrozla to adjourn, seconded by Gestring. Motion carried 8-0,
Forseth declared the meeting adjourned at 7:55 p.m.