

PLANNING COMMISSION

April 9, 2022

8:00 AM

Chairman Jim Masek opened the meeting at 8:00 a.m. in the meeting room of the City Office Building, 557 4th Street, David City, Nebraska, and notified the public of the "Open Meetings Act" posted on the east wall of the meeting room. Chairman Jim Masek also notified the public that if you wish to speak to the Commission to please state your name and address for the record.

Present: Planning Commission members Jim Vandenberg, Keith Marvin, Jim Masek, Pam Kabourek, and Alternate Brian Small. Also present were Deputy City Clerk Lori Matchett, Council Member Pat Meysenburg, Bryon Forney, Nick & Chelsea Sypal, Stacy Bykerk, Susan Znamenacek, and Janae McMahon representing Butler County Food Pantry. David Levy of BairdHolm and Building Inspector Gary Meister attended via Zoom. Planning Commission member Greg Aschoff was absent.

Planning Commission member Jim Vandenberg made a motion to accept the minutes of the March 12, 2022, meeting as presented. Keith Marvin seconded the motion. The motion carried. Greg Aschoff: Absent, Pam Kabourek: Yea, Keith Marvin: Yea, Jim Masek: Yea, Jim Vandenberg: Yea, Brian Small: Yea. Yea: 5, Nay: 0, Absent: 1.

Planning Commission member Keith Marvin made a motion to combine the public hearings for agenda items four and six together. Seconded by Jim Masek. The motion carried. Greg Aschoff: Absent, Pam Kabourek: Yea, Keith Marvin: Yea, Jim Masek: Yea, Jim Vandenberg: Yea, Brian Small: Yea. Yea: 5, Nay: 0, Absent: 1.

Chairman Jim Masek made a motion to open the public hearing at 8:02 a.m., to consider amending the Future Land Use Plan Map by changing the zoning classification from MDR – Medium Density Residential to C – Commercial and amending the Official Zoning Map by changing the zoning classification from R-2 – Two Family Residential to C-2 Downtown Commercial for the following real estate as requested by Bridging Our Community; Original Town, Block 12, Lots 2, 3, 6, 7, 10 and 11. Pam Kabourek seconded the motion. The motion carried. Greg Aschoff: Absent, Pam Kabourek: Yea, Keith Marvin: Yea, Jim Masek: Yea, Jim Vandenberg: Yea, Brian Small: Yea. Yea: 5, Nay: 0, Absent: 1.

Chairman Jim Masek said, "We discussed this last time as far as changing it. Is there anything else that you would like to add to it? Any of the members?"

Planning Commission member Jim Vandenberg said, "I think this is just basically changing the zoning where the church is..."

Planning Commission member Keith Marvin said, "I think it's Scout Hall and anything that is connected to Sack Lumber."

Chairman Jim Masek said, "So anything along 5th Street on the east side from the Railroad tracks to G Street."

Planning Commission member Jim Vandenberg said, "I guess last time there was someone that was concerned about parking. There is off-street parking all along the north side of the church. That will stay off-street parking."

Planning Commission member Pam Kabourek said, "It was only one time of a month that there was going to be the delivery."

Planning Commission member Jim Vandenberg said, "So, I don't think that one question should be an issue."

Susan Znamenacek introduced herself and asked, "My only question is if you zone this commercial now, does that mean in the future, when the building sells, does it lose its historic status and can get torn down and any business could build there?"

Planning Commission member Keith Marvin answered, "Technically, yeah."

Susan Znamenacek said, "So, not that I ever want this, I think this a wonderful thing to do, but we all know that building does have a lot of issues and the owner is somewhat reluctant to sell outside of what he wants. So how do we, in the future, say, 'No, we don't want like a Casey's going in there or a gas station' if this is now just easily commercial?"

Planning Commission member Keith Marvin said, "Some of that stuff would be, like a Casey's and that, would be a conditional use permit in the downtown anyway. This body would have a lot to say in how that worked."

Susan Znamenacek asked, "So if another business were to move in and want to build there as a commercial business, would that involve another hearing?"

Planning Commission member Keith Marvin answered, "Potentially, yes. Depending on what the use is."

Chairman Jim Masek added, "There are certain things that are allowed and certain things that are conditionally allowed. If they are conditionally allowed, they would have to come before us, and we have to vote to allow it."

Susan Znamenacek said, "Okay, that was my only question if this was opening the door to a flood of other things in the neighborhood."

Chairman Jim Masek made a motion to close the public hearing at 8:06 a.m. to consider amending the Future Land Use Plan Map by changing the zoning classification from MDR – Medium Density Residential to C – Commercial and amending the Official Zoning Map by changing the zoning classification from R-2 – Two Family Residential to C-2 Downtown Commercial for the following real estate as requested by Bridging Our Community; Original Town, Block 12, Lots 2, 3, 6, 7, 10 and 11. Jim Vandenberg seconded the motion. The motion carried. Greg Aschoff: Absent, Pam Kabourek: Yea, Keith Marvin: Yea, Jim Masek: Yea, Jim Vandenberg: Yea, Brian Small: Yea. Yea: 5, Nay: 0, Absent: 1.

Planning Commission member Keith Marvin made a motion to recommend to the City Council the amendment to the Future Land Use Plan Map by changing the zoning classification from MDR - Medium Density Residential to C - Commercial for the following real estate as requested by Bridging Our Community; Original Town, Block 12, Lots 2, 3, 6, 7, 10, and 11. Jim Vandenberg seconded the motion. The motion carried. Greg Aschoff: Absent, Pam Kabourek: Yea, Keith Marvin: Yea, Jim Masek: Yea, Jim Vandenberg: Yea, Brian Small: Yea. Yea: 5, Nay: 0, Absent: 1.

Planning Commission member Keith Marvin made a motion to recommend to the City Council to amend the Official Zoning Map by changing the zoning classification from R-2 - Two-Family Residential to C-2 - Downtown Commercial for the following real estate as requested by Bridging Our Community; Original Town, Block 12, Lots 2, 3, 6, 7, 10, and 11. Jim Vandenberg seconded the motion. The motion carried. Greg Aschoff: Absent, Pam Kabourek: Yea, Keith Marvin: Yea, Jim Masek: Yea, Jim Vandenberg: Yea, Brian Small: Yea. Yea: 5, Nay: 0, Absent: 1.



Planning Commission member Keith Marvin made a motion to combine the public hearings for agenda items eight and ten together. Jim Masek seconded the motion. The motion carried. Greg Aschoff: Absent, Pam Kabourek: Yea, Keith Marvin: Yea, Jim Masek: Yea, Jim Vandenberg: Yea, Brian Small: Yea. Yea: 5, Nay: 0, Absent: 1.

Planning Commission member Jim Masek made a motion to open the public hearing at 8:09 a.m. to consider amending the Zoning Ordinance No. 1060 by amending 2: Definitions to add the definition of a "food pantry" and "second hand/thrift store and amending Section 5.13 C-2 Downtown Commercial 5.13.02 permitted uses by adding #6 ww. Food Pantry"; Pam Kabourek seconded the motion. The motion carried. Greg Aschoff: Absent, Pam Kabourek: Yea, Keith Marvin: Yea, Jim Masek: Yea, Jim Vandenberg: Yea, Brian Small: Yea. Yea: 5, Nay: 0, Absent: 1.

Planning Commission member Keith Marvin said, "Tami did share with me that these are definitions that she found, I believe, from the State. So, these would be in line with what the state would define both of these uses as."

Planning Commission member Pam Kabourek said, "I see food pantry is non-profit, where thrift store could be profit or non-profit. So does that matter when it is in the same building?"

Planning Commission member Keith Marvin answered, "Nope, I don't think so."

Chairman Jim Masek said, "Well, because the thrift store does sell some items, while the food pantry just hands it out."

Planning Commission member Keith Marvin made a motion to close the public hearing at 8:11 a.m. to consider amending the Zoning Ordinance No. 1060 by amending 2: Definitions to add the definition of a "food pantry" and "second hand/thrift store" and amending Section 5.13 C-2 Downtown Commercial 5.13.02 permitted uses by adding #6 ww. Food Pantry"; Jim Vandenberg seconded the motion. The motion carried. Greg Aschoff: Absent, Pam Kabourek: Yea, Keith Marvin: Yea, Jim Masek: Yea, Jim Vandenberg: Yea, Brian Small: Yea. Yea: 5, Nay: 0, Absent: 1.

Planning Commission member Keith Marvin made a motion to recommend to the City Council the amending of Zoning Ordinance No. 1060 by amending 2: Definitions to add the definition of a "food pantry" and "second hand/thrift store"; Jim Vandenberg seconded the motion. The motion carried. Greg Aschoff: Absent, Pam Kabourek: Yea, Keith Marvin: Yea, Jim Masek: Yea, Jim Vandenberg: Yea, Brian Small: Yea. Yea: 5, Nay: 0, Absent: 1.

Planning Commission member Keith Marvin made a motion to recommend to the City Council the amending of the Zoning Ordinance No. 1060 by amending Section 5.13 C-2 Downtown Commercial 5.13.02 Permitted Uses by adding #6 ww. Food Pantry: Jim Vandenberg seconded the motion. The motion carried. Greg Aschoff: Absent, Pam Kabourek: Yea, Keith Marvin: Yea, Jim Masek: Yea, Jim Vandenberg: Yea, Brian Small: Yea. Yea: 5, Nay: 0, Absent: 1.

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FERTILIZER TRANSMISSION LINES shall mean structures and appurtenant facilities used for the distribution of dry and/or liquid fertilizers.

FIRE LIMITS shall mean a designated area or zone where construction must conform to minimum fire ratings.

FIREWORKS shall mean any substance or combination of substances or articles prepared for the purpose of producing a visible or an audible effect by combustion, explosion, deflagration, or detonation, and includes blank cartridges, toy pistols, toy cannons, toy canes, or toy guns in which explosives other than toy paper caps are used, firecrackers, torpedoes, sky rockets, Roman candles, Dayglo bombs, sparklers, or other fireworks containing any explosive or flammable compound, or any tablet or other device containing any explosive substance. Nothing in this regulation shall be construed as applying to toy paper caps containing not more than 0.25 of a grain (16.20 milligrams) of explosive composition per cap.

FIREWORKS STAND shall mean any portable building and/or structure used for the retail sale of fireworks, usually on a temporary basis.

FIREWORKS STORAGE shall mean any permanent building and/or structure where fireworks are stored for any portion of a year provided there is no retail sales made from the storage location. Said storage facility may also be used for the delivery and distribution of fireworks on a wholesale basis.

FLAGPOLE shall mean a freestanding structure or a structure attached to a building or to the roof of a building on a parcel of record and used for the sole purpose of displaying flags of political entities or team sports.

FLEX SPACE shall mean an area or district established to provide space for a range of commercial, office, light industrial, and production facilities and support uses such as complimentary office and retail uses.

FLOOR AREA whenever the term "floor area" is used in this Regulation as a basis for requiring off-street parking for any structure, it shall be assumed that, unless otherwise stated, said floor area applies not only to the ground floor area but also to any additional stories of said structure. All horizontal dimensions shall be taken from the exterior faces of walls.

FLOOR AREA RATIO shall mean the total floor area of all stories of all buildings within the lot or project divided by the land area.

FOOD PANTRY shall mean a public or private nonprofit establishment that distributes food, clothing, household supplies, personal care items and other related items to needy households.

FOOD SALES shall mean establishments or places of business primarily engaged in the retail sale of food or household products for home consumption. Typical uses include groceries, delicatessens, meat markets, retail bakeries, and candy shops.

- A. **FOOD SALES (LIMITED)** shall mean food sales establishments occupying 10,000 square feet or less of space.
- B. **FOOD SALES (GENERAL)** shall mean food sales establishments occupying more than 10,000 square feet of space. Typically, a supermarket.

FRONTAGE shall mean that portion of a parcel of property which abuts a dedicated public street or highway.

FURNACE, OUTDOOR CORN AND WOOD PELLET shall mean an accessory structure inspected by the State Fire Marshall that burns shelled corn or wood pellets and is only attached to a building by duct work. Such furnace structures shall include fuel storage structures and areas which shall be of residential character and materials.

SATELLITE DISH ANTENNA shall mean a round, parabolic antenna incorporating a reflective surface that is solid, open mesh, or bar configured and is in the shape of a shallow dish, or cone and used to transmit and/or receive radio or electromagnetic waves.

SCALE shall mean a proportional relationship of the size of parts to one another and to the human figure.

SCHOOL, DAY shall mean a preschool or nursery school for children.

SCHOOL, DAY, PRE-, OR NURSERY shall mean a school or center for children under school age, whether licensed as a day care center or not, shall be approved by the Nebraska State Fire Marshall as being in safety conformance with the National Fire Protection Association, Pamphlet 101, known as the Life Safety Code and shall be approved by the Nebraska Department of Health and Welfare as meeting their health and welfare standards.

SCREENING shall mean a structure of planting that conceals from view from public ways the area behind such structure or planting.

SECOND HAND STORE – see Thrift Store

SELECTIVE CLEARING shall be the careful and planned removal of trees, shrubs, and plants using specific standards and protection measures.

SELF-SERVICE STATION shall mean an establishment where motor fuels are stored and dispensed into the fuel tanks of motor vehicles by persons other than the service station attendant and may include facilities available for the sale of other retail products.

SELF-SERVICE STORAGE FACILITY shall mean a building or group of buildings containing individual, compartmentalized, and controlled access stalls or lockers for storage.

SEPARATE OWNERSHIP shall mean ownership of a parcel of land by a person who does not own any of the land abutting such parcel.

SERVICE STATIONS shall mean buildings or structures and premises where the primary use is the supply and dispensing at retail of motor fuels, lubricants, batteries, tires, and motor vehicle accessories and where light maintenance activities such as engine tune-ups, lubrications, and washing may be conducted, but not including heavy maintenance and repair such as engine overhauls, painting, and body repair.

SETBACK LINE, FRONT YARD shall mean the line which defines the depth of the required front yard. Said setback line shall be parallel with the right-of-way line or highway setback line when one has been established.

SETBACK LINE, REAR YARD OR SIDE YARD shall mean the line which defines the width or depth of the required rear or side yard. Said setback line shall be parallel with the property line, removed therefrom by the perpendicular distance prescribed for the yard in the district.

SHOPPING CENTER shall mean a group of commercial establishments planned, constructed, and managed as a total entity with customer and employee parking provided on-site, provisions for goods delivery that is separated from customer access, aesthetic considerations, and protection from the elements.

SHOPPING CENTER, COMMERCIAL STRIP shall mean a commercial development, usually one store deep, that fronts on a major street for a distance of one city block or more. Includes individual buildings on their own lots, with or without on-site parking and small linear shopping centers with shallow on-site parking in front of the stores.

SHOPPING CENTER, OUTLET shall mean a commercial development that consists mostly of manufacturers' outlet stores selling their own brands at a discounted price. This definition

TEMPORARY USE shall mean a use intended for limited duration to be located in a zoning district not permitting such use.

THEATER shall mean a building or structure used for dramatic, operatic, motion pictures, or other performance, for admission to which entrance money is received and no audience participation or meal service.

THRIFT STORE shall mean a shop that sells used articles of clothing or other used household goods such as furniture, decorations, and kitchenware, whether such shop shall be operated for profit or for the benefit of a charity.

TOWER shall mean a structure situated on a site that is intended for transmitting or receiving television, radio, or telephone communications. (Also, see Antenna)

TOWNHOUSE shall mean a one-family dwelling unit, with a private entrance, which part of a structure whose two or more dwelling units are attached horizontally in a linear arrangement having a common wall, and having a totally exposed front and rear wall to be used for access, light, and ventilation, and not located above nor below any other dwelling unit. A townhouse may be owner-occupied.

TOWNHOUSE OWNERSHIP shall mean the title of each unit of occupancy, and the real estate on which the unit resides, is held in separate ownership. The minimal ownership shall be the unit and footprint of property on which the unit occupies. The maximum ownership shall be the unit and an area of land which shall reflect the property if the common wall was extended to serve as a property line.

TOWNHOUSE STRUCTURE shall mean a building formed by at least two townhouses and not more than twelve contiguous townhouses with common or abutting walls. For the purpose of the side yard regulations, the structure containing a group of townhouses shall be considered as one building occupying a single lot.

TRAILER, AUTOMOBILE shall mean a vehicle without motive power, designed and constructed to travel on the public thoroughfares and to be used for human habitation or for carrying property, including a trailer coach.

TRUCK REPAIR shall mean the repair, including major mechanical and body work, straightening of body parts, painting, welding, or other work that may include noise, glare, fumes, smoke, or other characteristics to an extent greater than normally found in gasoline service stations, of trucks having a hauling capacity of over one ton and buses but excluding pickups and other vehicles designed for the transport of under eight passengers.

TRUCK STOP shall mean a facility intended to provide services to the motoring public including the following activities: dispensing of fuel and other fuel delivery services, repair shops, automated washes, restaurants, motels, and overnight parking; all as part of the facility.

UPZONING shall mean a change in zoning classification of land to a more intensive or less restrictive district such as from residential district to commercial district or from a single family residential district to a multiple family residential district.

USE shall mean the purpose or activity for which the land or building thereon is designed, arranged, or intended, or for which it is occupied or maintained, and shall include any manner of standards of this ordinance.

USE, BEST shall mean the recommended use or uses of land confined in an adopted comprehensive plan. Such use represents the best use of public facilities, and promotes health, safety and general welfare.

Section 5.13 C-2 Downtown Commercial District

5.13.01 Intent: The Downtown Commercial District is intended to establish standards that will foster and maintain an area within the district boundaries that will benefit the retail trade, business, cultural, and social activities of the entire community. In addition, this district prohibits all exterior storage by a primary use unless a separate Conditional Use Permit is requested for the use and granted by the City.

5.13.02 Permitted Uses.

The following principal uses are permitted in the C-2 District:

1. Medical/dental offices and business services including: attorneys, banks, insurance, real estate offices, postal stations, printing, credit services, security brokers, dealers and exchange, title abstracting, finance services and investment services; but not including uses defined in Adult Establishment.
2. Child care center.
3. Dance studio, not including uses defined in Adult Establishment.
4. Meeting hall, not including uses defined in Adult Establishment.
5. Museum, art gallery.
6. Retail business or service establishment supplying commodities or performing services, such as, or in compatibility with and including the following:
 - a. Apparel shop.
 - b. Appliance store.
 - c. Antique store.
 - d. Automobile parts and supply store.
 - e. Bakery shop (retail).
 - f. Barber and Beauty shop.
 - g. Bicycle shop.
 - h. Book store, not including uses defined in Adult Establishment.
 - i. Brew-on premises store.
 - j. Camera store.
 - k. Clothing services, including dry cleaning, Laundromats, etc.
 - l. Communication services, including newspaper, radio, television, and photocopying.
 - m. Computer store.
 - n. Confectionery.
 - o. Dairy products sales.
 - p. Drug store.
 - q. Dry cleaning and laundry pickup.
 - r. Exercise, fitness and tanning spa, not including uses defined in Adult Establishment.
 - s. Floral shop.
 - t. Mortuary.
 - u. Food Sales (Limited).
 - v. Food Sales (General).
 - w. Furniture store or showroom.
 - x. Gift and curio shop.
 - y. Gunsmith.
 - z. Hardware store.
 - aa. Hobby, craft, toy store.
 - bb. Jewelry store.
 - cc. Liquor store.
 - dd. Locksmith.
 - ee. Meat market, retail.
 - ff. Music retail store.
 - gg. Music studio.
 - hh. Newsstands, not including uses defined in Adult Establishment.
 - ii. Paint store.
 - jj. Pet shop.
 - kk. Photographer.
 - ll. Picture framing shop.

- mm. Reservation center.
 - nn. Restaurants, cafes and fast food establishment.
 - oo. Second hand stores.
 - pp. Shoe store.
 - qq. Sporting goods.
 - rr. Stamp and coin stores.
 - ss. Tailors and dressmakers.
 - tt. Tanning salon.
 - uu. Travel agencies.
 - vv. Video store, not including uses defined in Adult Establishment.
 - ww. **Food Pantry**
- 7. Social club and fraternal organizations, not including uses defined in Adult Establishment.
 - 8. Telephone exchange.
 - 9. Telephone answering service.
 - 10. Theater, indoor, not including uses defined in Adult Establishment.
 - 11. Public overhead and underground local distribution utilities.
 - 12. Publicly owned and operated facilities.
 - 13. Human health care services, but excluding hospitals.
 - 14. Indoor commercial recreational facilities.
 - 15. Tavern and cocktail lounge, not including uses defined in Adult Establishment.

5.13.03 Conditional Uses.

The following uses are subject to any conditions listed in this ordinance and are subject to other conditions relating to the placement of said use on a specific tract of ground in the C-2 District as recommended and approved by the Planning Commission:

- 1. Variety store, not including uses defined in Adult Establishment
- 2. Amusement arcades.
- 3. Bowling center.
- 4. Brew Pubs.
- 5. Micro breweries when in conjunction with a restaurant.
- 6. Coffee Kiosks.
- 7. Automated Teller Machines when not within the interior of a primary use.
- 8. Business or trade school.
- 9. Garden supply and retail garden center.
- 10. Commercial greenhouse.
- 11. Mail order services.
- 12. Pinball or video games business.
- 13. Convenience store with limited fuel sales.
- 14. Residences in conjunction with the principal use when located above the ground floor.
- 15. Churches, temples, seminaries, and convents including residences for teachers and pastors.
- 16. Retail building material sales; provided that the following minimum standards are present:
 - a. All lumber shall be enclosed with the primary structure.
 - b. All year round landscaping materials shall be enclosed within the primary structure.
- 17. Hotels and motels.
- 18. Sales, rental, and display of automobiles, trucks, campers, recreational vehicles, mobile homes, boats and farm implements, provided that all servicing and maintenance shall be conducted within an enclosed building.
- 19. Car wash.
- 20. Tire store and minor automobile repair service.
- 21. Service station with minor automobile repair services.
- 22. Commercial Fuel Pumps
- 23. Apartment units on or below the main level of an existing structure if it meets the following criteria:
 - 1. Apartment must be less than 30% of the main floor square footage.

Nick Sypal introduced himself and said, "We got a print off of the potential street if it went through, just to give you a view. There is a top aerial, and the other ones are from different directions from C and A Street looking down if that street was there. I guess our biggest thing is, for future setbacks, the street itself was to continue through, I believe it is an eighty-foot-wide street. It would encroach into both of us and our neighbors' next door. Honestly, on our side of it, the way that the land lays there is a creek that goes through there. I can't see a potential street ever going through there. Up until the last few months, it was actually brought to light to us, that the street was not vacated over the years, and we've always thought it was. So, I guess, proceed if we can, to possibly get that street vacated just because of the area that it is in. Honestly, it is more of an acreage-type setting in David City. I guess for what it is we got two other neighbors, three including Polacek's that have a shop next door to where we live and where our shop is at. We have Dan Kouba, which are all acreage-type settings. Bryon and Mary Forney, Joey Ossian lives next to us adjoining our property, and then like I said Polacek Brothers shop is right next to our shop. It is just one of those areas that with that easement being through there it encroaches in both directions and any future developments of our own and our neighbors. It is a pretty decent size encroachment coming into that property that we thought we had on our side, I guess without that street being there, with being under the impression. I guess that is where we are at."

Bryon Forney introduced himself and said, "I am just going to state where I am at with this here. The Forney's have resided on this property for over seventy years. As we have called it over the seventy years is a gully. We have never done anything with that, it has always been a natural waterway. Forney's have kept that mowed and cleaned for the last seventy years. I have actually taken care of it for the last fifty years. The way it is right now, if the street goes through, my father had a business there 'Forney & Sons' for thirty-one years. We bought the home place, and we restored the home place. The street has never went through because the neighbors back then were Ivan Long, my Grandpa, and so forth through the years. Well anyway to make a long story short, our property, when the old shop was put in and the access road in front of Nick's shop that was put in for Forney & Son's Repair. Our tree line is what actually boundaries the property between us Forney's, Grandpa Forney, Ivan Long, and all these folks are gone now. If that street goes through, from my understanding, is we are going to lose a forty-foot easement that was awarded to my father seventy-some years ago, actually back in 1947 is when my folks bought the property. If I lose that easement from the telephone poles, then I will no longer have a driveway. That means I will have to move buildings. I am a little bit discouraged with this because I have been on that property all my life and I am sixty-two years old. To see this change, the wife and I have discussed this, and if we do lose the driveway and we do have to move buildings and so forth in order to get to the back of our property then that is going to cut our property value in half. So, I am going to have to move buildings that I have nowhere to go with. It surprises me and I have been thinking about this since I was notified about this, we never done anything with the natural waterways because us seven boys were always taught to stay out of the draw because that was just part of the natural waterway of the north side of the city. All of this money has got put in this draw here probably nine years ago, ten years ago, when they came in and dug it all out and redone it all and that street was never vacated then. Or why was it never brought to my attention when I bought the property from my father back in 2000 before he passed away, the boundary lines? Everything here has changed because if I would have known this, to be honest with you, I would have never bought the home place. Because the way it is right now it is going to cut the value of our home in half plus it is going to be a very big hindrance for us, my wife and I, who have been there twenty-seven years, to move buildings and redo the driveway. If you take away the easement from the Forney's there will be no place for a driveway. We are going to have to put our driveway through our yard. So, for me, myself, and my wife, this is a big deal. As far as what happens through the draw the only thing that I am going to say here is that I think the hand is in the cookie jar, we

need to stay out of there, because it works well. I have seen that water twenty-five feet deep in that draw through my years. It works well, it drains the city well. My opinion in as far as putting in Oak Street that would be millions and millions and millions of dollars that I don't think is ever going to happen. But my concern is, where this all started was the property was separated with a tree line; I have city electrical on it; city cable on it. We did put up a fence on it on the north side here five-six years ago. There was no problem getting the permit and nobody ever brought up anything to my wife and I, that my father had an easement agreement with Ivan Long and the City back then, this had never been known. I talked to my brother out in Boston last night and he really couldn't believe it. My brother is over seventy. He said no way it has been this way all our lives. Now all of a sudden, if we put the street through, I lose that easement. So that, not only for my neighbor Sypal, that is going to create something for me that is not a good thing. Actually, the wife and I have decided that if we lose this easement that we have decided that we are going to sell that. We bought the property and we have put two hundred and fifty thousand dollars in the property and in the house and all of the sudden it is getting disrupted. The only thing my wife and I wanted, or would like to have, or would like the City to have is behind the telephone pole that has our meter on it. The only thing we are asking is to let us put up our privacy fence because we are considering that to be our retirement home and we just want to be left alone. Everyone in this room is more than glad and invited to my home, drive in the back and take a look at what we have done in twenty-seven years. There is a lot back there that you can't see from the front. To where we decided last night that if we have to start moving garages; buildings; driveways; and electrical; and the city has to start moving electrical and telephone poles that have been there for years, how much expense is this going to be? What is it going to create? So, Mr. Sypal has built a home across the draw; he is raising a family; he's started a shop there, I think that's a good thing and it's our upcoming future. But on the other hand, I am looking at it and my wife is looking at it that we are looking for lenience from the city that I don't think it is right that after all these years we are going to lose this easement, we can't put up a fence, we have to move buildings, and we have to move driveways, and we have to move electrical. So, it is not a good thing. Do I think the street should be vacated so that it does not go through? Yes. Do I think that the street should have been vacated years ago? Yes. Do I think the street should have been vacated when Gerhold's, Castle Construction, Gary Meister, and Jerome Meister were hired to go in and dig that all out and redo it, make it deeper so that it could handle the water? Why was this not discussed then? Why was the Forney's not contacted then?"

Planning Commission member Pam Kabourek asked, "Why is it being discussed now?"

Alternate Planning Commission member Brian Small asked, "What spurred this?"

Chelsea Sypal responded, "We did."

Alternate Planning Commission member Brian Small asked, "Did you discover that there was a street there?"

Nick Sypal answered, "We found out from our survey stuff, from different things over the last year. Our potential thing is that we are planning on putting up another building where the shop is. It was on that map, it is toward A Street side. So, we got the permit under the impression that that street was vacated. We got the permit from the city already. Well then after, coming to find out from some of the paperwork that that street was not vacated."

Planning Commission member Pam Kabourek asked, "So nobody is wanting to come in and have a street built or anything like that?"

Nick Sypal answered, "No, there is no proposal. That has never been brought up. We just don't want that to happen five years from now. You have a building, Bryon has all his stuff that he is adding to his yard, Joey Ossian puts up a shed, Bryon puts a fence up, then we all

come under the impression of 'oh we need to put a street in' ten years down the road. We don't want all this development of our own stuff on city easement when we're under the impression that the street was vacated."

Planning Commission member Jim Vandenberg asked, "Okay, are we maybe talking about vacating the north part of the street from Bryon's south property line north? Or are we talking about vacating the whole thing?"

Nick Sypal answered, "Our proposal was to vacate the whole thing. Correct Bryon?"

Bryon Forney answered, "Yes"

Chairman Jim Masek added, "From A Street all the way to C Street."

Nick Sypal said, "Yes, because that street as of right now shows that it was not vacated from A continuing to C. Through the pictures, through the draw, through the trees, Bryon's yard. We just don't want all this development down the road of our own and then the City or some kind of development company or engineering company comes in and says that they are planning on putting a street through or that you guys are thinking about putting a street through now. We just don't want that to happen."

Planning Commission member Keith Marvin said, "There is a street from A to B going north to south."

Nick Sypal said, "That is a glorified alley."

Bryon Forney said, "That is the access road that was put in for my father that was put in when he ran the truck shop years and years ago so that we could get semi's in and out. What that was, when that was brought in, the city actually gave us the culvert, Dick Grubaugh, my father, all of them came in and put the culvert in on a Saturday afternoon. The deal then was that if we rocked it, we maintained it, we plowed it, we took care of it we could have that access road. That is how and why that access road got put in there was to get to my father's back shop."

Planning Commission member Keith Marvin said, "It's sitting on the right-of-way."

Bryon Forney said, "Yes."

Nick Sypal said, "To clarify, this one more time because I know you asked. There is no talk, there was no talk by anybody about a potential street going through. There is no push for that. Nobody's talked about that. It's the opposite of that, we don't want that to happen in the future."

Planning Commission member Jim Vandenberg asked, "Okay, my question is, Bryon, if they vacate that the whole thing A to C, do you have a problem with getting to your property off from A Street there?"

Bryon Forney responded, "From A Street to my property, no, because I have B Street. The access road he has kept it open so that we both can still use it and he uses it for his shop."

Planning Commission member Jim Vandenberg asked, "So what happens if the city vacates that? The property is what, divided?"

Planning Commission member Keith Marvin added, "Anything not under vacation, my understanding of a vacation is that each property owner can take the centerline of that road and each property owner on each side of that gets half of that land."

Nick Sypal said, "We talked to Brian Foral, County Surveyor, about two-three weeks ago and that is what he kind of made it sound like, too. He said in Brainard they have had that happen numerous times and that is usually the potential ending."

Planning Commission member Keith Marvin said, "Bryon, what you would get if you went from B to C, you would gain forty feet to the west side of your property."

Bryon Forney said, "I would actually have back that forty feet that our driveway and our buildings were put there years ago. If I lose that forty feet that would put my driveway up against our home."

Planning Commission member Keith Marvin said, "If the city vacates a street, half goes to the property owner on each side of the centerline. You would gain forty feet."

Bryon Forney added, "I would gain that forty feet back. To where it is now if I lose this forty feet, I had Brian Foral down surveying the other day and that is when all of this was brought to my attention. He was telling me where the property line used to be years ago, and it floored me. I said, 'it's in the middle of my front garage.' We just put all new cables in, underground gas line. Not only would it hinder my wife and I if we lose that forty feet, it would pretty much tear our property apart because our property was never constructed without that forty feet that is the way it was constructed before and that is the way it has always been. To where, yes, Nick would gain forty feet and I would gain forty feet."

Planning Commission member Keith Marvin added, "And anyone south of you would gain forty feet to their property line."

Alternate Planning Commission member Brian Small asked, "Is there any utility easements in this?"

Bryon Forney responded, "We have the poles, the light poles, our meters on the poles, we have overhead wiring running from the pole to C Street because all the wiring at our house and cables are all underground, we had that put underground seven years ago when we remodeled the house."

Alternate Planning Commission member Brian Small asked, "In the eighty feet of this tree that there is water, sewer...."

Bryon Forney said, "Oh, everything. Yes, there is everything there. All of that will have to be moved."

Planning Commission member Keith Marvin said, "No, we would have to have an easement done for utilities."

Alternate Planning Commission member Brian Small added, "You would have a utility easement there, which would mean you couldn't build on that."

Nick Sypal asked, "I was going to say, Bryon, your utility easement is through there, correct? Your electric, your cable, and your gas are through there. We have had a locate done through that ditch down there before."

Planning Commission member Keith Marvin said, "I want to ask David a question real quick. David, it would be my thinking, since right now there would be utilities probably in that right-of-way that's never been vacated, we probably can't vacate that without having a subdivision being done and easements put on those areas to cover those utilities."

David Levy introduced himself and answered, "Yeah, you're right. What you said before about the property, if you vacated it half of it would go to the adjacent owners on the east and

west but once that becomes private property the city and utility companies, whoever's pipes or wires are there would need easements before you could vacate it and transfer it to the adjacent owners. The other thing just as I have been listening here and looking at the GIS, you will want to make sure that you aren't going to landlock any parcel, and I don't think you are as best I can tell, but that is something that you would want to make sure. And then, I don't know what David City's practice has been, but in most cities, this is a strip of property eighty feet wide that currently belongs to the City and thus to the public. So then typically the City would charge these owners something for the additional forty feet of property that they are going to gain because what you are doing if you vacate this is taking that eighty-foot strip of property and transferring forty feet on either side to the adjacent owners. I don't know what the feeling of the commission is in doing this one way or another, it is a policy matter that really is up to all of you, but it is more complicated than just vacating it. And there is typically a monetary transfer or requirement that goes along with all of that. So yeah, you need to get public works involved and get this all surveyed and get the utility companies involved if they are other than the city. There is some work to do in terms of, Keith, you said, creating a subdivision. You could do a minor plat or administrative plat, but you would have to do some kind of plat."

Planning Commission member Keith Marvin said, "Yes, that is the way you would have to create the easement is through a subdivision. Typically, I think, we have a council member in here, but I think historically the city has just kind of if it vacates it just has deeded that area over and they just make up their revenue off the additional property taxes that are accumulated over the years."

City Council Member Pat Meysenburg introduced himself and said, "That is what we did on 11th Street."

Planning Commission member Keith Marvin said, "With that said, I didn't know that you had your utilities through there Bryon, utilities will need to be protected. So, you are going to gain forty feet but we have to protect where the utilities are in that right-of-way that is there right now. My opinion is, and David backed up, is that instead of vacating this at this point in time, a subdivision needs to be generated that would show where those easements would be and how that land would be vacated. The City by acting on us recommending to the City Council and them approving it would then vacate it. That would show up on the subdivision plat but that would also create utility easements to protect your utilities that would run through there, which would mean nobody could relocate them."

Nick Sypal said, "I was just going to add to that. I believe that. And this is just for your understanding too, I am almost sure that Bryon's utilities actually cross through Joey Ossian's yard, the pole line comes through and stops, I believe, at the northwest corner of your fence. It would actually be more on Joey Ossian, just for you guys to understand that. It's more to the north of Bryon's property, just to include that, just so that you have an understanding on that."

Planning Commission member Keith Marvin said, "Regardless, we would have to protect those utilities. My feeling, Nick, is that this is something that you are looking to do it would become your responsibility to probably generate that subdivision."

Nick Sypal said, "Ok. I don't know that process or procedures or whatever."

Planning Commission member Keith Marvin said, "Well, Gary can work you through it and the City. The issue becomes creating a utility easement, that is what I am not sure about."

Nick Sypal said, "I understand that completely. Whatever needs to be done."

David Levy said, "I gather that some of the adjacent property owners are in the room, but maybe not all of them. And I am sure the notice of this item went out to the adjacent property

owners, but for example, you have got a property west of this right-of-way that goes from north to south the entire length.”

Planning Commission member Keith Marvin said, “That is the applicant that owns it.”

David Levy continued, “Ok, good. I just want to make sure that everybody that is going to be directly affected by this and literally have their property boundaries changed to be aware and onboard.”

Planning Commission member Keith Marvin said, “That is another reason to do this as a subdivision because by doing the subdivision, as David said, you’re going to adjust all those property boundaries to the centerline of Oak Street.”

Nick Sypal said, “Okay.”

David Levy said, “Yeah, you are going to replat five properties.”

Planning Commission member Keith Marvin said, “That creates a new legal description for everybody’s property.”

Nick Sypal said, “Oh, sure. I see. That makes sense.”

Alternate Planning Commission member Brian Small said, “Pretty much change some setback for the utilities.”

David Levy said, “One other thing, it looks like the access to the building on the south end of the applicant’s property is currently on the east side of the eighty feet adjacent to Mark Polacek, so you will want to think about that and come up with a private reciprocal easement between the two of you or in theory you would have to move your access off of A Street over to the west side of that because right now it looks like where you drive in off of A Street is on the east half of eighty feet which is fine because it is public right-of-way but once it becomes private and Polacek owns that eastern forty-feet you would be driving across their property so you would want to work that out with them.”

Nick Sypal said, “To add to that, I don’t know if there is a conditional thing that you can add to that vacancy if that happens but may be an agreement of some kind between Bryon, us, and Polacek’s, everybody involved in that driveway, it is more or less a glorified alley. It’s a nice road but I don’t know if that is a possibility. It’s rock from the center of that gravel road to the front of my shop. That will never change because we use it for access, Bryon and Mary use it for access, and Polacek’s use it all the time. I don’t know if there is some kind of condition you can add to that to where we wouldn’t actually, where if the Polacek’s owned to the center and we owned to the center potentially, we wouldn’t close that road. There is no reason to close that road.”

Planning Commission member Jim Vandenberg asked, “Would it be possible, listening to this conversation, to vacate from the south side of Bryon’s property north and leave that south strip so you wouldn’t have this issue? So, you could use it and you can use it and the driveway remain in the same location?”

Nick Sypal responded, “I would agree Jim, the only thing is with the other setback for the easement, it’s set at eighty-foot right now.”

Planning Commission member Jim Vandenberg said, “Well, you mean on your new construction.”

Nick Sypal continued, “Yes, it would be on the new construction granted we talked to Tami the other day and we got the permit to do the potential building six months ago and started

dirt work already under the impression that the street was vacated. Now, she told us that it was an error on the city and we can continue to build when we decide to get it built this year. That is one thing, that the setback would actually be pushing into that new building. Is there any way that you could narrow that easement down to where it wouldn't be encroaching on that new building?"

Planning Commission member Keith Marvin responded, "Well, I guess my question for David was because you were talking, Nick, about easements for access and everything, if they wanted to attach all those easements to this subdivision plat they could do so and my thought process is, the good news would be for all property owners would be the only way to get rid of them would be to replat it which then would take City Council action to replat that whole area to get rid of an easement."

David Levy responded, "Yeah, you could do it either way. I mean what I think you want to do for sure is do a set of private reciprocal easements between the property owners if you are going to do this. You are right, Keith, that could all become part of the plat and that would require City Council action. If it were just a private easement you would still need the permission of all the adjacent owners to modify it. So, either one works, but since you are going to a replat anyway you could put all that on the plat. The city is taking on a little bit of a private matter but it is kind of private and public so I wouldn't have any heartburn over doing those reciprocal easements on the plat. I think the idea of only vacating the north two-thirds of that is interesting but from the city's standpoint, you are left with something that really is not useful. In theory, you would have to maintain it. I think the better thing is to just deal with all of it and vacate the whole thing if that is what you want to do. On the plat, Keith, as you said, deal with the reciprocal access between the adjacent properties."

Planning Commission member Keith Marvin said, "Okay. Do the private easement for access for all of you and then attach that to the subdivision plat, and then what it does, in order to make any of those easements go away, you have to replat the area to make the easement go away would require city action so everybody is protected. No matter what you do, both parties are supposed to be able to do it. Have to sign off to eliminate an easement."

Nick Sypal said, "Whatever is the simplest route is."

Planning Commission member Keith Marvin said, "I honestly think you need to replat this area because you will need to re-describe all of the lots that are there because you are going to gain forty feet on either side and then we also need to know where that easement is going to be for the utilities. The utility side is protected as well. And we need to also probably make sure with Polacek, that make sure that's all going to work out as well."

David Levy said, "You are going to replat five lots plus this right-of-way."

Planning Commission member Keith Marvin said, "Since you both have used Brian Floral, he has all kinds of data already and he has already done a lot of the fieldwork for the both of you."

Nick Sypal said, "That would be pretty simple, with all the information that he has."

David Levy said, "My recommendation if the applicants are okay with this, is that the Commission table this. The applicants own their application so they can call Tami on Monday (Tuesday) and withdraw their application, that will take it off the Commission's agenda going forward and then they start fresh with an application for a replat."

Planning Commission member Keith Marvin made a motion to table the application and have Nick Sypal start with the Application of Subdivision Plat. Jim Masek seconded the motion.

The motion was tabled. Greg Aschoff: Absent, Pam Kabourek: Yea, Keith Marvin: Yea, Jim Masek: Yea, Jim Vandenberg: Yea, Brian Small: Yea. Yea: 5, Nay: 0, Absent: 1.



DAVID CITY PLANNING COMMISSION

TYPE OF ACTION REQUESTED

- Conditional Use \$100.00 Vacate request: alley, street, etc. \$50.00
 Rezoning/Zoning Amendment \$150.00

LEGAL DESCRIPTION OF THE PROPERTY:

*(Oak Street) Starting At (C) Street And
Continuing To (A) Street - Oak Street Going
North & South. Our Home Address 243 West C. -
Our Shop Address 216 West A. These Two Properties
Connect.*

DESCRIPTION OF THE PROJECT:

[Signature]
Applicant's Signature

FOR CITY USE ONLY

Date received: 3-30-22 By: [Signature]
Fee Paid: Yes \$50.00 No
Hearing Date: _____
Hearing Notice Published: Yes No
Adjoining Landowners Notified Yes No
Action Taken: _____





There being no further business to come before the Planning Commission, Planning Commission member Keith Marvin made a motion to adjourn. Chairman Jim Masek declared the meeting adjourned at 8:49 a.m.

Minutes by Lori Matchett, Deputy City Clerk