

PLANNING COMMISSION
MAY 14, 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 Masek, Jim Vandenberg, Pam Kabourek, and Greg Aschoff. Planning Commission member Keith Marvin was absent. Also present were City Clerk Tami Comte, Deputy City Clerk Lori Matchett, Special Projects Coordinator Dana Trowbridge, Building Inspector Gary Meister, County Surveyor Brian Foral, Bryon and Mary Forney, Nick and Chelsea Sypal and Ken Spadi.

Chairman Jim Masek made a motion to accept the minutes of the April 9, 2022, meeting as amended. Pam Kabourek seconded the motion. The motion carried. Greg Aschoff: Yea, Pam Kabourek: Yea, Keith Marvin: Absent, Jim Masek: Yea, Jim Vandenberg: Yea. Yea: 4, Nay:0, Absent:1.

Nick Sypal introduced himself and said, “Just to update, I guess, I contacted and talked to Gary Meister and Brian Foral. Trying to figure out our boundaries, what we need to do, what we need to not do. We got the replating information from the City Office and forms. After talking to Brian a little bit more in depth, basically, got some direction as to what we need to do and what we don’t need to do. Obviously, that is why Brian is here today because he can answer a lot of questions that we were uncertain of.”

Chairman Jim Masek asked, “So you’re going to kind of be in the process of replating it then like we recommended to you then?”

Nick Sypal said, “Yes, that is the plan but there were certain things in the replating of it that sounded that it wasn’t necessary. I will pass it over to Brian.”

Brian Foral introduced himself and said, “I am doing work on the survey side for both Sypal and Forney trying to determine right-of-way lines through there for that street that is still platted but not open. The suggestion was to go through this replating process and then I got a copy of the permit regs and I guess the question that I have is what on that is necessary? Are we doing the boundary and topo mapping? To me, a lot of those regs are for something similar to what you are talking David City north, like a big subdivision. When they are vacating a street I haven’t seen where we have to do a replat. I am not saying we don’t have to but I am just trying to figure out what I need to deliver at the surveyor to get this accomplished. Or even if you are going to move forward, I don’t want to spend a lot of my time and their money for something that you are not even going to consider. I don’t know if you guys can even make that determination or if that is the City Council. So, I am here for more information myself as well along with if you have any questions.”

City Clerk Tami Comte answered, "This group recommends to the City Council, they can only recommend. It is ultimately up to the City Council. The reason we asked all the property owners to come today was to see if this would be something that the rest of the property owners in the area are agreeable to."

Discussion continued.

City Clerk Tami Comte added, "To clarify, I read Lori's minutes since I wasn't able to attend the last meeting. David Levy said that a lot of towns charge for vacation, David City has never done that. We didn't do it to the school, we didn't do it to the power district. Our philosophy has always been that that will be added to the tax rolls and eventually we will get that money back through taxes."

Planning Commission member Greg Aschoff said, "Brian, I read through the minutes because I was not here at the last meeting, I guess I don't understand why this would need to be replated."

Brian Foral said, "That is what I was questioning as well because most of the times, with what I am familiar with, we choose what we are vacating, make a description of it, we go through the process. If nothing else is stipulated the street center line is used to divide it, it's split half and half. Now they can go through other ways, they can sell it, they can retain easements, they can auction it off, they can do different things. Now, if we are not going to necessarily use the center line of the street, if you are worried about using a fence, then it is probably going to be different and at least have to survey it and now you are jumping into all of the hoops of replating."

Planning Commission member Greg Aschoff said, "Yeah, that makes sense. You are not using the center of the road."

Chairman Jim Masek said, "That is pretty much what Keith was saying too, that by replating it you end up showing where everything is and where all the easements are and all of that. Right now, we don't have a good description of that."

Planning Commission member Greg Aschoff said, "Normally plats don't really show easements as"

Brian Foral said, "Not as they exist, no. Right now, you are mincing words. You don't have an easement there; you have dedicated street right-of-way...."

City Clerk Tami Comte said, "I do think we need to show our easements."

Brian Foral continued, "If you are going to go through this process and retain an easement and not go the full width of the street then yes if you are going to start piecing things up."

Chairman Jim Masek said, "I think that is what Keith was saying. Like you said a piece here, a piece here, piece there, we need to replat the whole thing, so we show all the pieces in one drawing."

Brian Foral added, "So when you start talking the replating, so the Forney's get a piece of it, the replating is that going to include everything he owns? Are we going to make that one lot and taking away the original lot and blocks that were developed there? That replating can be a big and cumbersome thing and reading through the regs, I am not sure what our end result was if we are going to replat this one street, or replating the adjoining properties to kind of do away with everything and start over with a clean slate?"

Planning Commission member Greg Aschoff said, "We see it all the time, where a street or alley is vacated, it's just understood that half goes to the adjoining landowner. And the city can just retain an easement."

Brian Foral said, "And you can say that we want to retain an easement from the north two hundred some feet or to the extension of the property line between Joey Ossian and Bryon Forney's and if you extend that line across, we are keeping that as an easement because that is where our utilities are. Ownership will still get split in half"

City Clerk Tami Comte said, "We need probably two easements, we need a utility easement and a drainage easement."

Discussion continued.

Planning Commission member Jim Vandenberg said, "So the two issues that are triggering this are, Nick wants to build a shed on the city property and Bryon wants to, at some point, put a privacy fence that would be on city property. Otherwise, there is no reason to vacate this street."

Nick Sypal added, "Ten years ago we would have never expected to be a development on the north side of town, never expected that, never dreamt of that. Same thing in our area. What if we put up a building and Bryon and Mary put up a privacy fence and do more stuff around the yard. They add things, we add things, get our yards put like we want it and then twenty years from now, come to find out, that we are clearing your stuff out because we are coming through. We don't want that, we want it in stone, like anybody would. We don't want something to go haywire some day after we get it established."

Chelsea Sypal said, "And we are looking at it, we are doing this for the benefit of both for the Forney's and ourselves. We could have put our building up already; we got the permit. Done deal. We could start tomorrow but we are trying to do this the right way and help Forney's to put a fence up."

Nick Sypal said, "Without the street being vacated, in my eyes, the city still has control over it. And just like Bryon and Mary are running into, they have been under the understanding

for the last seventy years that that was private property and that was theirs and they could do what they wanted with it.”

Chelsea Sypal added, “Not to mention, if they wanted to sell their house right now, they would have to get it surveyed for the people that would want to take it down the road and they would come to find out that they would have to move half the buildings and that they wouldn’t have a driveway.”

Bryon Forney agreed with Nick and Chelsea Sypal.

Ken Spadi introduced himself and spoke on behalf of Mary and Bryon Forney and spoke about adverse possession.

Discussion continued.

City Clerk Tami Comte asked, “Brian, what do we do if Joey Ossian says that I don’t want that? Then what?”

Brian Foral answered, “You can still force him to take it and then he can turn around and try to sell it, he can auction it off and he can do whatever he wants with it. And then again, we will end up probably back in the same situation of the whole survey and plating maybe. We will want to attach that to his lot.”

Planning Commission member Greg Aschoff said, “He could just convey the description to be just his half of the vacated alley adjacent to his lot.”

City Clerk Tami Comte asked, “He could just convey it to the other side property owner?”
Planning Commission member Greg Aschoff said, “Yeah, sure.”

City Clerk Tami Comte said, “That is what Brian and I were talking about, whether we would have them do an administrative plat or have to go through the whole preliminary plat and final plat.”

Brian Foral said, “To me what you are explaining the second part is that you are trying to do for a major development, not where you need the contours and propose how you are going to get utilities to.”

Discussion continued.

Planning Commission member Greg Aschoff said, “The administrative plat does not take care of the vacation of the street.”

Brian Foral said, “Yes, that is another public process that you will have to go through, notices, meetings. And if it doesn’t get vacated everything, we do”

City Clerk Tami Comte said, “For the administrative plat is...”

Brian Foral said, "Is a waste."

City Clerk Tami Comte said, "Let's do that first. The vacation, then we can do the replat after that."

Brian Foral said, "That being said, if you are going to try and go through that process first, you are going to have to determine, if that's your intent, is to half and half, I would state that so that we know what we are doing going forward."

City Clerk Tami Comte said, "You should help us write that."

Planning Commission member Jim Vandenberg said, "Everybody is saying vacate the whole thing, can we vacate part of it?"

Planning Commission member Greg Aschoff said, "Sure."

Planning Commission member Jim Vandenberg continued, "We vacate the south part and take care of Sypal's problem. And then we don't have to have an eighty foot wide vacate. Skip says that the city is part the people and the people are part of the city. If on Bryon's property we vacate what he needs for his property fence unless there is a public easement, then the city keeps the rest of it to the north power poles area, where the ditch is. The city wouldn't need eighty foot all the way through the whole thing.

City Clerk Tami Comte said, "In that case we would need Bryon to do a survey to just end at Forney's north property line. I think we could absolutely do that."

Brian Foral said, "And there are grounds for doing that to maintain the ditch and power lines."

Planning Commission member Jim Vandenberg said, "It's just a natural that the city should keep that."

Discussion continued.

Building Inspector Gary Meister asked, "What is the next step, who is in charge?"

Chelsea Sypal asked, "What is the next step?"

Brian Foral said, "Speaking on my behalf of this, if the city takes the reins and pays the bills, that could be contingent on how you dispose of it to them. They are each going to pay half, or whoever is involved pays a portion. We are doing that in Brainard right now. The city is taking on the reins of running the project that way they get what they want. There is no miscommunication from homeowner told me to do this, the city says no they don't want this, or this was extra. I know we can't make that determination now."

Planning Commission member Jim Vandenberg said, "Well the City is supposedly the owners right now."

City Clerk Tami Comte said, "Well, we can't say that without asking the City Council."

Brian Foral said, "No, I totally agree. If you vacate it and somebody doesn't do their share, then it's yours to put at auction or hold on to."

City Clerk Tami Comte asked, "Forney's and Sypal's are you agreeable to sharing the cost."

Bryon Forney said, "Yes."

Chelsea Sypal said, "Yes."

Nick Sypal said, "Yes, what ever needs to be done. We have been on that path since the start. Whatever is the simplest outlook or path is. Whatever is easiest and whatever we need to do to make it right and be able to go on with what we need to do."

Discussion continued.

City Clerk Tami Comte said, "The next step would be to go to the City Council and see if we can have discussion with them to see if they are willing to entertain, because there is no point in spending a lot of money if they say no, if they don't vacate it. I can put it on the agenda on the 25th and you can all come and plead your case and see what they say. If they say yes, then we can start the process, then do some public hearings and vacate. And have Brian come in and do his thing."

Planning Commission member Jim Vandenberg made a motion to table public hearings to June 4, 2022, to consider amending the future land use plan map, amending the official zoning map and consideration of the preliminary plat of the Northland Subdivision due an error with the legal description of the property. Greg Aschoff seconded the motion. The motion carried. Greg Aschoff: Yea, Pam Kabourek: Yea, Keith Marvin: Absent, Jim Masek: Yea, Jim Vandenberg: Yea. Yea: 4, Nay: 0, Absent: 1.

Planning Commission member Jim Masek made a motion to table the considerations to June 4, 2022, of amending the future land use plan map, amending the official zoning map, and the preliminary plat of the Northland Subdivision due to an error with the legal description of the property. Pam Kabourek seconded the motion. The motion carried. Greg Aschoff: Yea, Pam Kabourek, Yea, Keith Marvin: Absent, Jim Masek: Yea, Jim Vandenberg: Yea. Yea: 4, Nay: 0, Absent: 1.

There being no further business to come before the Planning Commission, Chairman Jim Masek declared the meeting adjourned at 9:12 a.m.

Minutes by Lori Matchett, Deputy City Clerk