

**MINUTES OF THE CITY OF PELLA
PLANNING AND ZONING COMMISSION MEETING
MAY 11, 2022**

CALL TO ORDER BY THE CHAIRPERSON AND ROLL CALL

Vice-Chairperson Canfield called the Planning and Zoning Commission to order at 7:00 p.m. in the Public Safety Complex. Members present were: Sarah Buchheit (via telephone), Joe Canfield, Cathy Haustein, Kisha Jahner, Tom Johnson, and Robin Pfalzgraf; absent: Julio Chiarella, Mark Groenendyk, Ann Visser, and Teri Vos. Staff present: Planning and Zoning Director Gerald Buydos, Zoning Analyst Jared Parker, the Deputy City Clerk, and City Attorney Kristine Stone. Five members of the public were present.

APPROVAL OF TENTATIVE AGENDA

Motion by Jahner, second by Johnson to approve the tentative agenda. Motion carried 6-0.

APPROVAL OF MINUTES

Haustein stated that she would like an email she sent to Planning and Zoning Director Gerald Buydos regarding the Orchard Drive right-of-way vacation to be considered a written comment in the minutes from April 25, 2022. The minutes will be amended to reflect the receipt of one written comment for that agenda item.

Motion by Jahner, second by Johnson to approve the minutes of the April 25, 2022 meeting, as revised by Haustein. Motion carried 6-0.

NEW BUSINESS PROPOSED

Consider a Revised Preliminary Plat Application for West 12th Street, Submitted by Jeff Dingeman

Jeff Dingeman submitted a revised preliminary plat to subdivide two parcels (approximately 16.13 acres) into two developable lots. The proposed plat also includes two outlots, and a lot for dedication/reservation of street right-of-way. The subject property is located at the northern terminus of 12th Street. As background, a different preliminary plat was considered by the Commission for this property on February 28, 2022. That plat was recommended for approval with conditions, and it was presented to the City Council on April 5, 2022. The City Council tabled the item on April 5, 2022, directing that the item be brought back to the Planning and Zoning Commission because of stated discrepancies in the plat proposed by the applicant. Specifically, it was staff's understanding that the applicant did not agree with the conditions recommended by the Commission on February 28, 2022, and that the applicant desired to proceed with his original preliminary plat. However, during the Council meeting on April 5, 2022, the applicant stated he agreed with the Commission's recommendations and had

submitted a revised plat which incorporated the recommendations. Due to the uncertainty regarding which plat the applicant was proposing, the City Council tabled the item. At the meeting on April 25, 2022, the Commission chose to table this item so that the City Attorney could be present to answer questions at a future meeting.

The revised preliminary plat is the applicant's interpretation of the Commission's recommended changes for his original plat which was reviewed by the Commission on February 28, 2022. The revised plat only identifies the W. 12th Street right-of-way extension to the end of Lots 1 and 2. The plat does not propose to construct W. 12th Street, but only offers right-of-way for the extension of W. 12th Street. Staff is recommending denial of this plat because we do not believe the plat, as submitted, meets City Code requirements for extending W. 12th Street to the northern property boundary as recommended/required by City Code sections 170.11, 170.11.1, 170.11.2, 170.11.3(F), 170.11.3(H), 170.11.5(C), 170.11.5(E), and 170.13.1. The City Attorney reviewed the proposed plat and agreed with staff's assessment that the plat does not meet current subdivision code requirements related to the extension of streets and utilities to the property line.

Section 170.13(13) of the subdivision code allows for the deferral of public improvements for subdivisions that are located outside of the Urban Services Area of the City. However, that process allows deferral only upon the receipt of a petition and waiver from the subdivider, which would allow the City to assess for the future installation of the public improvements. The Urban Services Area is defined as the areas served by public sanitary sewer as shown on the City's latest version of the Urban Services Area Map. This property is located within the Urban Services Area.

The original preliminary plat submitted by the applicant proposed a public cul-de-sac which would be constructed at the southern boundary of his property in lieu of extending W. 12th Street to the northern property boundary. During their meeting on February 28, 2022, the Commission considered this proposal and voted unanimously to conditionally approve the plat as submitted with the following conditions:

1. Build the cul-de-sac now as shown on the plat.
2. Dedicate the appropriate width right-of-way to the northerly edge of the property (Outlot B) as depicted on the plat.
3. Construct a road to terminate in a temporary cul-de-sac at the northern edge of Lots 1 and 2 as development occurs on Lots 1 and 2.
4. Road from northerly edge of Lots 1 and 2 to northern property boundary will be constructed as development occurs in that area.

While staff appreciates the Commission's effort to find a compromise solution to facilitate development, staff believes the above recommendation needs further refinement and clarification. For instance, the recommendation does not clearly identify when W. 12th Street would need to be extended and who is responsible for extending W. 12th Street. Second, the City of Pella's subdivision code requires the installation of public improvements, to the property boundary, at the time of platting. The only exception to this requirement is where the subdivision is located outside of the Urban Services Area. That exception is not applicable in

this case. The recommendation to dedicate right-of-way without installing a public street is contrary to the City's subdivision code.

If the Commission's desire is to waive the City Code requirements for extending W. 12th Street to the property boundary, then the Commission should state the reasons for the waiver. This is important, because the City receives a number of development proposals on any given year which require public street extensions; therefore, unintended consequences for future developments could arise unless it is clearly understood why the Commission is recommending the waiver of the requirement for this applicant to extend W. 12th Street to their northern property line. Furthermore, any such waivers should be in accordance with City Code section 170.17, which is listed below:

170.17 VARIATIONS AND EXCEPTIONS FOR UNUSUAL CONDITIONS.

Whenever the tract proposed to be subdivided is of such unusual size or shape or is surrounded by such development or unusual conditions that the strict application of the requirements contained in this chapter would result in substantial hardships or injustices, the City Council, upon written recommendation of the Commission, may modify or waive such requirements. Any variations and exceptions granted hereunder shall be in harmony with the intended spirit of this chapter, granted with a view toward protecting the public welfare and interest of the City and surrounding area, and not be in violation of the Zoning Ordinance.

The proposed land use is "Light Industrial" which is defined as the on-site extraction, storage, manufacture, assembly, processing, or production of goods by nonagricultural methods, and the storage and distribution of products.

The developer has indicated an intent to subdivide the parcels into two individual lots and one outlot. Staff reviewed the proposed subdivision and confirmed that the proposed lots meet all minimum lot requirements for the M1 zoning district.

According to City Code section 170.12, before the final plat of any area shall be accepted, the subdivider is required to make and install all public improvements identified in City Code section 170.13. Currently, W. 12th Street terminates at the southern boundary of this parcel. Staff believes City Code requires the preliminary plat to show the continuation of W. 12th Street from the existing southerly property edge to the northerly property edge. The reason this extension is needed is to serve subsequent developments to the north. Improvements need to consist of a fully dedicated right-of-way to the northern property boundary and partially constructed street improvements to the northern end of Lot 2. Staff believes terminating W. 12th Street at the southern portion of this property would limit the extension of utilities north of this parcel which will likely be needed for future development.

City Code section 170.06(2) requires the Planning and Zoning Commission to review the preliminary plat for conformance with the Comprehensive Plan, including the Future Land Use Map. The Future Land Use Map identifies this site for "Low-Density Residential" land uses, which is appropriate for projects with densities up to four units per acre. Because the site was identified for residential use, the City Council conditionally approved the applicant's rezoning request on July 21, 2020. Specifically, Council approved the removal of allowable M1 zoning

uses from the property because of their potential conflicts with future abutting and adjacent residential properties. Furthermore, Council required design standards and additional screening requirements for the industrial properties to lessen the impact to potential new residential developments adjacent to and abutting this site. This also underscores why it is important that W. 12th Street be extended in the future, as it could help facilitate additional residential development for the City which is a key strategic goal of the Comprehensive Plan.

The applicant's original rezoning application, submitted in July 2020, included a concept plan that showed the extension of W. 12th Street. This emphasizes that the applicant was aware of the requirements to extend W. 12th Street before the property was rezoned.

The City Attorney was consulted on this matter to review the City's options when a subdivider objects to the installation of street/sewer infrastructure to the property boundary. Three alternative options are listed below.

Waive/Modify Subdivision Requirements

Whenever the tract proposed to be subdivided is of such unusual size or shape or is surrounded by such development or unusual conditions that the strict application of the requirements contained in this chapter would result in substantial hardships or injustices, the City Council, upon written recommendation of the Commission, may modify or waive such requirements. Any variations and exceptions granted hereunder shall be in harmony with the intended spirit of this chapter, granted with a view toward protecting the public welfare and interest of the City and surrounding area, and not be in violation of the Zoning Ordinance.

This provision makes it clear that the City Council may only waive or modify the requirements of the subdivision ordinance for a particular plat if the planning and zoning commission has recommended such action. Any such recommendation should only be made where the subdivider is able to demonstrate that a substantial hardship or injustice would result from the strict enforcement of the subdivision ordinance requirements. "Substantial hardship" and "injustice" are not defined terms within the City Code. However, it is reasonable to conclude that they require more than a showing of inconvenience or additional expense to the subdivider. The subdivider should be required to demonstrate that the unique characteristics of their property make the enforcement of one or more specific subdivision regulations inapplicable to their property. In that circumstance, the Commission can recommend a waiver or modification of a specific requirement of the subdivision ordinance. The City Council could then consider any such waiver or modification. The City Code also includes a provision which allows the City to waive certain public improvement requirements for projects that are included within an urban renewal area.

Negotiate an Alternative Acceptable Arrangement by Development Agreement

Some communities use the authority provided by Iowa Code sec. 354.821 to negotiate acceptable alternative arrangements related to the formal platting process. These negotiated development agreements cannot waive requirements that are otherwise required by code. However, the City may agree to a phased development concept which allows a subdivider to

install public improvements over time, rather than all at once. Or, in some cases, the City may want to upsize the public infrastructure within a particular plat to accommodate future development in the vicinity. In that circumstance, the City may be willing to participate in the costs of the oversized improvements and an agreement should be documented which outlines each party's responsibilities. These types of agreements are normally negotiated at the time of preliminary plat submission/review. Because these are negotiated agreements, the City cannot force a subdivider to enter into a development agreement if they are unwilling to do so. Furthermore, enforcement of a development agreement would require litigation in the courts, and that can sometimes be a deterrent to the City choosing to enter into these types of agreements.

Defer the Installation of the Improvements by Petition and Waiver

The City Code allows for the deferral of the installation of required public improvements, in the City's discretion, upon the receipt of a petition and waiver from the subdivider. A petition and waiver can best be described as a voluntary special assessment, where the developer agrees that the city may install the improvements in the future and assess the subdivider or subsequent purchasers of the subdivided property, for the costs of installation of the improvements. The City would still need to complete the special assessment process to collect the costs of the public improvement from the future property owners, but the city is able to forego the published and mailed notice requirements, and the property owners may waive the 25% limitation on the special assessments. This procedure also requires the City to be the one to install the improvements, and that is certainly less appealing than having the subdivider install the improvements at the time of platting. In conjunction with the petition and waiver, the City should require the dedication of the necessary right-of-way or easements to accommodate the future improvements at the time of platting. Otherwise, the City may be forced to utilize eminent domain to acquire the necessary property interests in the future. Petitions and waivers are recorded, and they act as a lien on the property to which they apply.

Staff finds the preliminary plat meets the minimum requirements of the zoning ordinance, but it does not conform to the requirements of the subdivision ordinance regarding infrastructure. Based on the findings, staff recommended the preliminary plat be denied as submitted. The City Attorney reviewed staff's recommendation and agreed with the assessment that the plat does not meet current subdivision code requirements related to the extension of streets and utilities to the property line.

The applicant, Jeff Dingeman, was in attendance to speak in favor of the preliminary plat and to answer questions from the Commission. Discussion amongst staff, the Commission, City Attorney Kristine Stone, and the applicant ensued. Pfalzgraf listed several building projects in Pella that she stated had code requirements waived by the City. She also expressed concern with the conflicting information the applicant said was shared with him, as well as the amount of time and money the applicant has invested in this process.

Motion by Jahner, second by Pfalzgraf to approve the preliminary plat with the condition that Outlots A and B and Lots 1 and 2 are not sold until all infrastructure is in place, citing Iowa Code Section 354.8. On roll call the vote was: ayes: Jahner, Pfalzgraf, Buchheit, and Haustein; nays: Canfield and Johnson. Motion carried 4-2.

OTHER BUSINESS / WORK SESSION

Next Meeting Date

The next Planning and Zoning Commission meeting is scheduled for May 23, 2022.

Adjourned at 7:53 p.m.