

The Beulah Planning and Zoning Special Meeting of March 22, 2022 was called to order at 5:30 pm by Jerry Reichenberg at the Beulah Civic Center.

Present: Jerry Reichenberg, Dale Schwalbe, Dustin Buchmann, Chris Renner, Brock Seibel, Roger Gazur, Gerald Bieber, Gary Miller

Also Present: Beaver Brinkman, Economic Development; Heidi Hamelton, Assessor, Jennifer Gooss, Assistant City Attorney, Travis Frey, Mayor

This special meeting of the Planning & Zoning Commission was called to discuss the process for making text amendments to the Zoning Ordinance.

Gazur presented some background on the topic for reference. A list of text changes that need to be made to the current Zoning Ordinance is being maintained by Hamelton. Section 5.19, Zoning Ordinance Text Amendment references NDCC §40-12. NDCC §40-12 relates to Initiatives and Referendum for Commission and Modern Council cities. This is obviously an error and needs to be corrected. The City Attorney considers the governing statute for Enactment and Revision of Ordinances to be NDCC §40-11-09. NDCC §40-47-04 and §40-47-05 reference specific recommendations to effect change to either the District Zoning Map or the Zoning Ordinance itself, with no mention of the necessity for an ordinance. ND Attorney General's Opinion 81-1 where he addressed the applicability of NDCC §40-12. In the analysis, the NDAG addresses the substantive differences between an ordinance and a modification to a Zoning text amendment, and he goes through what the differences are. Gazur believes the best way to resolve the question of whether an ordinance is necessary to make text changes to the Zoning Ordinance is to submit a question to the ND Attorney General for their opinion and proceed forward based on the answer, with the assurance that you are on firm legal ground. The issue was presented to the City Council by the P&Z Liaison, and it was tabled to encourage communication between P&Z and the City Attorney.

Ordinance 437, which was the most recent ordinance enacted to amend the setback for sheds in backyards, was not enacted correctly as there was no published notice or public hearing. Gooss stated that she believes there was a public hearing. Gazur pointed out that there was no notice published for a public hearing for Ordinance 437, so the criteria put forth in NDCC §40-47-04 and §40-47-05 were not met.

The issue at hand is that the procedure for initiating a text amendment to the Zoning Ordinance needs to be corrected. The procedure needs to be as simple, streamlined, and cost-effective as possible, while also answering the question of whether an ordinance is needed at the end of the process. Gazur is of the belief that only the opinion of the NDAG carries the legal weight necessary to answer this question.

Gooss requested the floor and stated that the City Attorney's office, in general, agrees with the view presented by Gazur. The process described in NDCC §40-47-04 and §40-47-05 is a legitimate way to amend map and text of the Zoning Ordinance. Because the Zoning Code was established as an ordinance, NDCC requires it to be amended by ordinance. One way this could be changed is to amend the Zoning Ordinance and make it a regulation instead; a regulation would not need to be amended by an ordinance. The question becomes, what would the purpose or benefit of utilizing a Zoning Regulation as opposed to leaving it a Zoning Ordinance. The ordinance process is familiar and is used for all of the city ordinances. If we utilize a Zoning Regulation, the process may be streamlined for P&Z, but it would have a different process than city ordinances and may require more work for everyone involved. Gooss examined multiple cities throughout ND, and every city uses a Zoning Ordinance and amends it using ordinances. The only AG opinion she could find that references zoning amendments is the same one Gazur referenced from 1981. The opinion given is not applicable to this situation. Gooss also spoke with the attorney for the ND League of Cities, and she was not aware of any cities that utilized a different process. The attorney was also of the opinion that a different process could increase the amount of workload required to amend the Zoning Code/Regulations and make the process more cumbersome. The City Attorney's Office is open to changing the process if there is a cost savings or time savings that would benefit the city, but they have not seen that proven yet.

Gazur requested the floor again and stated that he believes as much of the process as possible should be managed by city staff. In regard to tracking the changes, this can be done with the application process that has been implemented by Hamelton. The application and supporting documentation can be referenced within Zoning Ordinance 420 and tracked that way. Once City Council approves the changes requested in the application, the changes can be made to the Zoning Ordinance without need for the City Attorney to draft an ordinance. The interpretation of ND Century Code §40-47-04 and §40-47-05 is that a Zoning Ordinance can be amended however the governing body sees fit, as long as the process meets the notification, publication, and hearing requirements.

Hamelton voiced concern about being responsible for drafting changes to the Zoning Ordinance without input and review by the City Attorney because it is considered a legal document. Gazur does not believe there are any legal ramifications to making changes to the Zoning District Map, but there is a requirement with Zoning Ordinance Text Amendments that the City Attorney must review the draft as part of the procedure, early in the process. Gooss stated that her experience has been that documents drafted by city staff requires more time from the City Attorney's office to review and revise than it would take for the City Attorney to draft the document in the first instance. Gazur stated that his experience with documents being sent through the City Attorney's office is that the timeline for completion is never known and can take quite a long time. That isn't a reason

to bypass the City Attorney's office review, but it shouldn't be a step in the process if it's not required.

Gazur asserted that the majority of the text changes made to the Zoning Ordinance relate to setbacks, variances, heights, planning & zoning issues, not legal issues. Gooss disagrees; those are legal issues because ND law dictates how things like that are to be managed. Gazur believes the City Attorney's office has a support function for the City of Beulah and the boards and organizations thereof. When one of these entities has a question or concern, the City Attorney will step in and give guidance and assistance. The ND Legislature carved out an exception for a Zoning Ordinance as far as modifying it, whether it be the district map or the text within.

Hamelton asked for clarification of Gooss's explanation. Because the zoning rules were adopted as an ordinance, it can only be changed by an ordinance. If the zoning rules had been adopted as regulations, then the method of amending them would be more flexible. NDCC §40-47-04 and §40-47-05 make no mention of an ordinance; they refer to zoning regulations. The only place amending an ordinance is mentioned in NDCC is in §40-47-11. There would be two more publications required if the zoning rules were adopted as a regulation, which would in turn cost the city more and lengthen the process. It would also require separate filing. Currently, the City Attorney's office keeps binders with a certified copy of the city's ordinances and is working to streamline the process. They keep a clean version and a redline version for each ordinance. A clean copy of the ordinances is also maintained at City Hall.

Gazur read a portion of the AG Opinion from 1981 aloud and it was discussed.

The concern remains whether there is a benefit to the City of Beulah in changing the process of amending the Zoning Ordinance with an ordinance.

There are currently between 15 and 20 changes that the P&Z Commission would like to make to the Zoning Ordinance. A zoning ordinance is constantly changing and evolving so whatever process we go with will be used on a regular basis. The section in the current Zoning Ordinance that says what process to use only references NDCC §40-47-12, which has nothing to do with amending ordinances; it is an error, and this would be the first thing that needs to be changed. Building season is coming soon, and the process to make amendments needs to be fixed so that it is usable. Gazur and Hamelton have a draft of what the process could look like.

The cost of requesting an AG opinion was questioned, and Gooss stated that the questions the P&Z Commission drafted would need to be expanded upon and formalized before it would be sent off, and the cost is related to the time the City Attorney would spend on preparation and mailing, which was estimated to be an hour. Gazur would like to make

sure the question as presented by P&Z would stay unchanged. There is no way to know how long it will take to receive a response from the AG. Planning & Zoning could start the text amendment process without the AG opinion and get through the second hearing.

A motion was entered by Gazur that P&Z requests Council member Miller, the P&Z Liaison, to present a request to submit two questions to the ND Attorney General's Office. Seconded by Schwalbe. The floor was opened for discussion.

Brinkman stated that at the City Council meeting where this was presented before, the council almost unanimously felt this was something they should not move forward with. P&Z needs to provide some sort of documentation proving that there is a benefit to changing the process. Gazur volunteered to represent P&Z at the City Council meeting.

Roll call vote was unanimous. Motion carried.

It was agreed that Gazur would present at the City Council meeting 3/23/2022.

Gazur entered a motion to adjourn. Buchmann seconded. Motion carried. Meeting adjourned.

  
Chairperson

  
Secretary