



City of Vermillion
Planning Commission Agenda
5:30 p.m. Regular Meeting
Monday, August 26, 2019
Large Conference Room – 2nd Floor
City Hall
25 Center Street
Vermillion, SD 57069

1. **Roll Call**
2. **Minutes**
 - a. July 22, 2019 Regular Meeting.
3. **Declaration of Conflict of Interests**
4. **Adoption of the Agenda**
5. **Visitors to Be Heard**
6. **Public Hearings**
7. **Old Business**
8. **New Business**
 - a. Presentation to the Public of Part Two of the Proposed Amendments to the City's Zoning Ordinance.
9. **Staff Reports**
10. **Adjourn**

WELCOME TO YOUR PLANNING COMMISSION MEETING

If you wish to participate in the discussion, the meeting provides several opportunities. After the minutes are approved, the Chairperson will ask if any visitors wish to be heard. Any item not on the agenda may be discussed. During the discussion of agenda topics, anyone may comment. The Chairperson will recognize you if you raise your hand. Please introduce yourself with your name and address when addressing the Planning Commission. Discussion occurs before motions are made and seconded. Discussion also occurs after the motion is seconded and before the vote. You may participate each time if you wish. Your suggestions and ideas are welcome. The best decisions are made when everyone participates and provides information.

Meeting Assistance: The City of Vermillion fully subscribes to the provisions of the Americans with Disabilities Act of 1990. If you desire to attend this public meeting and are in need of special accommodations, please notify the City Manager's Office at 677-7050 at least 3 working days prior to the meeting so appropriate auxiliary aids and services can be made available.

Unapproved Minutes
Vermillion Planning Commission
Monday, July 22, 2019 Regular Planning and Zoning Commission Meeting

The regular meeting of the Vermillion Planning and Zoning Commission was called to order in the Large Conference Room at City Hall on July 22, 2019 at 5:30 p.m.

1. Roll Call

Present: Fairholm, Forseth, Gestring (5:31p.m.), Muenster, Tuve, Wilson.

Absent: Kleeman, Manning, Iverson.

Staff present: James Purdy, Assistant City Manager, José Domínguez, City Engineer.

2. Minutes

- a. June 24, 2019 Regular Meeting.

Moved by Commissioner Fairholm to adopt June 27, 2019 regular meeting minutes as printed, seconded by Commissioner Tuve. Motion carried 6-0.

3. Declaration of Conflict of Interest

Commissioner Muenster noted that he owns investment property.

Commissioner Forseth noted that he owns investment property.

4. Adoption of the Agenda

Moved by Commissioner Muenster to adopt the agenda as published, seconded by Commissioner Wilson. Motion carried 6-0.

5. Visitors to be Heard

None.

6. Public Hearing

None.

7. Old Business

- a. Discussion on Comments regarding Amendments to Zoning Ordinance - Section 155.095 Conditional Use Permits.

José Domínguez, City Engineer, noted that at the June 24, 2019 meeting, Staff presented proposed changes to the Conditional Use Permit (CUP) portion of the zoning ordinance. Per Commission request, Staff modified the expiration of the CUP.

Staff and Commission reviewed the current CUP application document. Domínguez pointed out that the application does not require an applicant to note what the conditional use would be. Discussion followed.

Moved by Commissioner Tuve to add language to the Conditional Use Permit Application noting what the conditional use would be, seconded by Commissioner Fairholm. Motion carried 6-0.

8. New Business

- a. Discussion on Amendments to Zoning Ordinance - Section 155.004 Provisions as Minimum Requirements; 155.029 Annexations, 155.050 Intent Compliance with Comprehensive Plan; 155.054 Amendments; 155.078 Home Occupations; and 155.079 Manufactured Homes.

Mr. Domínguez presented the proposed changes to the aforementioned sections as printed in the packet. Discussion followed. In addition to minor grammatical changes regarding the aforementioned items, the Commission directed Staff to do the following: (1) research whether or not a question should be added to the Building Permit Application asking if the proposed project meets known individual requirements (deed restrictions/covenants) on the property. (2) utilize the current smallest size PDD as a benchmark for a minimum size PDD in the zoning ordinance.

9. Staff Reports

Anderson Street: contractor stated project will begin in August. Completion date is at the end of October.

Elm Street: local contractor is waiting for equipment (paver) to begin the project.

Roosevelt Street: working with developer that will be constructing the street. Project is on hold - they are requesting a variance for parking requirements.

Downtown Streetscape: Public Meeting is on Monday, July 29, 2019.

10. Adjourn

Moved by Commissioner Tuve to adjourn, seconded by Commissioner Wilson. Motion carried 6-0. Commissioner Forseth declared the meeting adjourned at 6:23 p.m.

Planning & Zoning Commission Agenda Memo

From: Jose Dominguez, City Engineer

Meeting: August 26, 2019

Subject: Presentation to the Public of Part Two of the Proposed Amendments to the City's Zoning Ordinance

Presenter: Jose Dominguez

Background: Over the years the City has had two zoning ordinances, with the first being adopted in 1966. This ordinance established different districts (agricultural, residential, commercial and industrial) with allowable uses. The ordinance also allowed for conditional-uses; however, at the time these were called 'special uses'. In order for 'special uses' to be approved, the application would be reviewed by the Commission, and then action would be taken by the City Council. In 2008, the City adopted a new zoning ordinance that completely rewrote zoning requirements within the City. This new ordinance still divided the City into districts; however, each of the districts had permitted uses and conditional uses. This, along with different uses being permitted within each zoning district, were the largest changes between the two ordinances.

Due to the existing zoning ordinance being 11 years old, Staff is proposing that the Planning Commission perform a review of the ordinance in order to determine if changes need to be made. The depth and scope of that review can be determined by the Planning Commission.

Discussion: Up to now the Commission has had eleven meetings (January 14, January 28, February 11, February 25, March 11, March 25, April 8, May 13, May 28, June 24 and July 22), all open to the public, to discuss the proposed changes to various sections of the zoning ordinance. Part two of the proposed amendments will focus on the meetings held on May 28, June 24 and July 22. At these meetings the Commission reviewed possible changes to sections 155.004 Provisions as Minimum Requirements, 155.029 Amendments, 155.050 Intent Compliance with Comprehensive Plan, 155.054 Amendments, 155.072 Off-Street Parking, 155.078 Home Occupations, 155.079 Manufactured Homes, and 155.095 Conditional Use Permits.

The proposed changes deal mainly with updates that Staff felt were needed to remove possible conflicts from the ordinance that may arise from differing interpretations. Additionally, some of the changes ensure that adjustments to the districts and definitions are also reflected in these sections.

Following is a list of major changes to the ordinance:

- Clean-up needs to occur regarding the requirements for boarding houses, sororities and fraternities. This is due to Ordinance 1367 mistakenly conflicting with Ordinance 1354.
- Amended the criteria that the Commission reviews when approving a conditional use permit application. Rather than placing conditions on most of the items, the Commission will mainly review that the proposed application meets the requirements already set out in the subdivision or zoning ordinances.
- Remove deed restrictions, or covenants, from list of requirements that need to be reviewed by Staff.
- Require that all annexations enter the City as Natural Resource Conservation District.
- Require that all future planned development districts be at least 5-acres in size when being created.
- Changed what items are considered major, minor and minimal amendments to a planned development districts.
- Required that all home occupations need to occur within the residential dwelling, and that accessory buildings are not available for home occupations.
- Furthered clarified what constitutes a home occupation.
- Removed the manufactured homes section from the zoning ordinance.

Compliance with Comprehensive Plan: The City's Comprehensive Plan encourages the City to perform periodic reviews of the zoning ordinance. Those reviews are intended to update, strengthen and streamline the zoning ordinance.

Conclusion/Recommendations: The Commission is asked to take public comment after a brief presentation from Staff.

MEMORANDUM

Vermillion City Engineer's Office

**25 Center Street
Vermillion, South Dakota 57069**

To: Mr. Bob Iverson
Planning and Zoning Commission members
Mr. James Purdy
Mr. John Prescott

From: Jose Dominguez, City Engineer

Date: August 21, 2019

Re: Legal Opinion Regarding Restrictive Covenants, Deed Restrictions,
and Zoning Ordinance

At the last Commission meeting (July 22nd) Staff explained to the Commission that one of the proposed amendments to the zoning ordinance would be to remove 'deed restrictions, or covenants' from section 155.004 of the ordinance.

The Commission asked Staff to discuss the proposed removal from the ordinance. The following questions were asked to Mr. Jim McCulloch, the City Attorney (after each question is the paraphrased answer).

1. Should city staff/planning commission require a conditional use permit applicant to disclose if there exist restrictive covenants or deed restrictions on the subject property? *If the current ordinance is not changed the City should ask for the information to be disclosed in the conditional use permit application. However, regardless of the answer given by the applicant the City would have to verify if there are covenants or deed restrictions attached to the property.*
2. Should city staff research the property subject to building permit applications to determine if there exist restrictive covenants or deed restrictions, and, if so, then enforce them? *Similar to question #1, if the current ordinance is not changed the City should review each of the building permit applications to ensure that the proposed construction is allowed based on covenants or deed restrictions. Again, if the current ordinance is not amended the City would have to enforce the covenants or deed restrictions due to the fact that the City's ordinance elevates covenants and deed restriction to the same level as the City's ordinances. This is based on the premise that said covenants and deed restrictions are lawfully adopted.*
3. In the event of conflict between city ordinances, restrictive covenants and deed restrictions, do those imposing the most restrictive or higher standards prevail, or do restrictive covenants and deed restrictions yield to city

ordinances? *Based on the current ordinance the most restrictive or higher standard prevails, if lawfully adopted, regardless of source. However, the State's statutes do not elevate covenants/deed restrictions to the level that the City's ordinances do.*

Based on the document supplied by the Mr. McCulloch, Staff still recommends on removing the words 'deed restrictions, or covenants' from section 155.004 of the ordinance.

Removing these words from the ordinance places the responsibility of enforcing the covenants/deed restrictions on the parties that have agreed to them. Additionally, it would remove any liability on the City since we would not be required to ensure that every conditional use permit or building permit is affected by a covenant/deed restriction.

Sincerely,

A handwritten signature in black ink, appearing to read 'Jose L. Dominguez', written in a cursive style.

CITY OF VERMILLION

Jose L. Dominguez

City Engineer

August 15, 2019

Jose Dominguez
City Engineer
City of Vermillion
25 Center Street
Vermillion, South Dakota 57069

SENT VIA EMAIL TO
josed@cityofvermillion.com
on 08/15/19

RE: Restrictive Covenants, Deed Restrictions Questions

Dear Jose:

Background

The City of Vermillion has enacted a comprehensive zoning ordinance. One of its sections, §155.004, reads as follows:

In their interpretation and application, the provisions of this chapter shall be held to be minimum requirements, adopted for the promotion of the public health, safety, and general welfare. Wherever the requirements of this chapter are at variance with the requirements of any other lawfully adopted rules, regulations, ordinances, deed restrictions, or covenants, the most restrictive or that imposing the higher standards, shall govern.

The current version of §155.004 elevates deed restrictions and covenants to equal status as rules, local ordinances and regulations, which two cited statutes under "Question No. 3" do not contemplate. Zoning ordinances are upon enactment subject to referendum and protest provisions in law, and time limits are imposed for exercising those rights. There is no time limit for adoption of deed restrictions or covenants, and recently covenants have been utilized to attempt to combat and defeat lawfully adopted and preexisting ordinance and regulation provisions.

In light of §155.004, the city planning commission has asked you to obtain from me a legal opinion addressing the three following questions:

1. Should city staff/planning commission require a conditional use permit applicant to disclose if there exist restrictive covenants or deed restrictions on the subject property?
2. Should city staff research the property subject to building permit applications to determine if there exist restrictive covenants or deed restrictions, and, if so, then enforce them?
3. In the event of conflict between city ordinances, restrictive covenants and deed restrictions, do those imposing the most restrictive or higher standards prevail, or do restrictive covenants and deed restrictions yield to city ordinances?

Question No. 1

Vermillion's zoning ordinance §155.004 says that if a provision of zoning ordinance that is at variance with "other lawfully adopted rules, regulations, ordinances, deed restrictions, or covenants, the most restrictive or that imposing the highest standards, shall govern."

Unless the city learns of the existence of such covenants or deed restrictions, a determination whether such covenants or deed restrictions are lawfully adopted or impose greater restrictions or higher standards cannot be made.

A conditional permit application requiring disclosure of covenants and deed restrictions will in theory facilitate city's knowledge of their existence and prompt city investigation. I say "in theory" because the applicant's response given on the application form may be inaccurate. To ensure accuracy, independent verification of deed restrictions or covenants should be made whether the application form requires such disclosure or not.

The answer to this question is "YES."

Question No. 2

There are two parts to this question. Should the city actively investigate existence of covenants and deed restrictions during the building permit application process, and if covenants and deed restrictions do exist, should the city enforce them?

The answer is "YES" to the first part of this question, because the city cannot effectuate §155.004 without knowing existence of covenants or deed restrictions first. Perhaps the building permit application form can require the same disclosure as that contemplated in "Question No. 1" above.

The answer to the second part of this question depends on what is meant by "enforce." SDCL §11-5-3 gives municipalities as well as property owners the authority to enforce restrictive covenants by "action or suit." Use of the word "may" makes this authority permissive, not mandatory. In the context of §155.004, the most restrictive/higher standards provisions of rules, regulations, ordinances, covenants or deed restrictions "shall govern" (a mandatory term) if they are "lawfully adopted."

The answer to the second part of this question is "YES," if the covenants or deed restrictions impose most restrictive/higher standards and are lawfully adopted.

Question No. 3

SDCL §11-4-6 states:

Whenever the regulations made under authority of this chapter require a greater width or size of yards, courts, or other open spaces, or require a lower height of building or less number of stories, or require a greater percentage of lot to be left unoccupied, or impose other higher standards than are required in any other statute or local ordinance or regulation, the provisions of the regulations made under authority of this chapter shall govern.

Wherever the provisions of any other statute or local ordinance or regulation require a greater width or size of yards, courts, or other open spaces, or require a lower height of building or a less number of stories, or other higher standards than are required by the regulations made under authority of this chapter, the provisions of such statute or local ordinance or regulation shall govern.

This statute makes no reference to covenants or deed restrictions, only to statutes, ordinances and regulations.

SDCL §11-5-5 states:

The authority granted by § 11-5-1 and any declaration or contract made thereunder, shall be subject to the right of the first or second class municipality to exercise the powers and authorities conferred under chapter 11-4 at any time the municipality may elect to exercise such authority.

When read together, these two statutes say that zoning ordinances prevail over covenants (deed restrictions are not mentioned in either) and in case of conflict among *statutes, local ordinances, or regulations*, the more stringent of them govern.

City of Vermillion's ordinance §155.004 give covenants and deed restrictions the same status as rules, ordinances and regulations, something the two statutes do not (statutes are not mentioned in §155.004); i.e., ordinances, regulations, rules, covenants and deed restrictions that impose most restrictive/higher standard "shall govern" if they are "lawfully adopted."

Giving the two statutes and §155.004 all effect, the answer to this question is that the most restrictive or higher standard prevails, if lawfully adopted, regardless of source (statute, rule, local ordinance, regulation, deed restriction or covenant).

Respectfully submitted,

James E. McCulloch
City Attorney
JEM/bwm

