

# PLANNING COMMISSION MINUTES

Regular Meeting

May 04, 2021

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**Regular Meeting:** Planning Commission

**Location:** City Hall, Council Chambers, 515 2<sup>nd</sup> Avenue SW., City of Minot, N.D.

**Meeting Called to Order:** Tuesday, May 04, 2021, 5:30 p.m.

**Presiding Official:** Chairman Charles DeMakis

**Members in Attendance:** Charles DeMakis, Kelly Barnett, Tim Baumann, Aaron Faken, Justin Hochhalter, Todd Koop, Shane Lider, Dustin Offerdahl, Cynthia Sessions, Todd Wegenast

**Members Absent:** Elisha Gates, Tammy Nesdahl Boyd Sivertson

**City Staff Present:** Community & Economic Development Director Billingsley, Principal Planer Van Dyke, Planner I Baumgartner, Assistant City Engineer Huettl

**Others Present:** Sean Weeks, Representative for Item 7; Travis Mowbray, Applicant for Item 7; Rusten Roteliuk, Representative for Item 5

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**Meeting Called to Order by Chairman DeMakis at 5:30 p.m.**

**Item #1 Roll Call**

**Item #2 Pledge of Allegiance**

**Item #3 Planning Commission Intro and Public Hearing Decorum**

**Item #4 Approval of Minutes**

Motion by Commissioner Koop to approve the April 6th Planning Commission Meeting Minutes, second by Offerdahl, and was carried by the following roll call vote: ayes: Barnett, Baumann, DeMakis, Faken, Hochhalter, Koop, Lider, Offerdahl, Sessions, Wegenast nays: none

**Motion Carries**

Chairman DeMakis then introduced a vote to waive the staff presentation on Items 5 & 6 per staff's recommendation. A motion was made by Commissioner Koop to waive the staff presentation on the aforementioned items, second by Wegenast, and it was carried by the following roll call vote: ayes: Barnett, Baumann, DeMakis, Faken, Koop, Lider, Offerdahl, Sessions, Wegenast nays: none abstain: Commissioner Hochhalter was silent on this one and did not vote

**Motion Carries**

**The following are the recommendations of the Planning Commission:**

**Item #5: Case #2021-05-04**

**Subdivision Plat**

Planning Commission recommend City Council approve a subdivision plat of Southeast Ridge Business Park 3<sup>rd</sup> Addition that will combine three lots into two. The property is legally known as Lots 3, 4, & 5, Block 1 of Southeast Ridge Business Park Addition, Section 29, Township 155 North, Range 82 West, Ward County, North Dakota.

The properties are located at 1309 39<sup>th</sup> Street SE., 1305 9<sup>th</sup> Street SE and 3900 13<sup>th</sup> Avenue SE.

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**Planning Commission waived staff's oral report on this item with the above roll call vote preceding Item #5, below is a summary of staff's written report that is attached to the Planning Commission Agenda.**

Public hearing request on an application from Rusten Roteliuk representing Schatz Properties, LLC, owner, for a subdivision plat of Southeast Ridge Business Park 3rd Addition that will combine three lots into two. The property is legally known as Lots 3, 4, & 5, Block 1 of Southeast Ridge Business Park Addition, Section 29, Township 155 North, Range 82 West, Ward County, North Dakota. The properties are located at 1309 39th St. SE, 1305 39th St. SE, and 3900 13th Ave. SE. An aerial view of the property is provided in **Exhibit 1** of staff's written report.

The subject properties are currently vacant and owned by the applicant, Schatz Properties, LLC. The preliminary plat for the proposed Southeast Ridge Business Park 3rd Addition is provided in **Exhibit 2** of staff's written report. The newly created subdivision will consist of two (2) lots with Lot 1 being 1.30 acres and Lot 2 being 1.67 acres. The proposed lots meet the bulk lot requirements for the "M1" Light Industrial District per Section 14-7.

The properties are currently zoned "M1" Light Industrial District and they are designated as being Industrial on the Future Land Use (FLU) Map.

### **Finding of Facts:**

The Minot Planning Commission should accept the following findings of facts:

- 1) The applicants have submitted a complete application.
- 2) The applicant's requested subdivision is currently zoned "M1" Light Industrial District and is depicted as being Industrial on the Future Land Use (FLU) Map of the Comprehensive Plan.
- 3) The proposed subdivision aligns with both Land Use Goal #2, Policy #2 and Commercial/Industrial Land Use Goal #1 of the Comprehensive Plan.
- 4) The applicant's request is consistent with the bulk requirements of Minot's Zoning Ordinance.
- 5) The Minot Planning Commission has the authority to hear this case and recommend that it be approved or denied. The public notice requirements were met, the hearing was legally noticed and posted and the hearing was held and conducted under the requirements of North Dakota Century Code and Minot City ordinances.

### **Staff Recommendations:**

Staff recommends the Planning Commission adopt staff findings of fact and recommend approval to City Council subject to the following conditions:

- 1) A site plan is required for development.
- 2) Connection fees are required for future development.
- 3) No later than six months after a subdivision design has been approved by the City Council, the applicant for design approval may submit the final form of the instrument or document to the City Engineer which is to be recorded in the office of the County Recorder in order to accomplish the subdivision or to establish the necessary predicate for the later accomplishment of the subdivision. That is, the subdivider shall submit the final form of the original of the appropriate instrument of conveyance, auditor's outlot plat, or plat, and the necessary copies thereof required by ordinance or by way of regulation. The City Engineer shall indicate his approval on the original by signing his name under a suitable statement or legend that expresses approval. However, if the documents or instrument for which approval is sought is a plat, then before the City Engineer approves it he shall first satisfy himself that the technical requirements of Section 28-27 have

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been complied with and that monuments have been placed at all block corners, lot corners, angle points, points of curves in streets which are depicted in the plat, and at such intermediate points as may be required.

**Chairman DeMakis opened the meeting for comments from the public.**

No one from the public came forward for or against the item.

**Chairman DeMakis asked for a motion from the commissioners.**

Motion by Commissioner Koop to approve per staff recommendations with conditions based on findings of fact, second by Commissioner Lider, and was carried by the following roll call vote: ayes: Barnett, Baumann, DeMakis, Faken, Hochhalter, Koop, Lider, Offerdahl, Sessions, Wegenast nays: none

**Motion passes**

**Item #6: Case #2021-05-01**

**Subdivision, Plat, Zoning Map Amendment, and Future Land Use Map Amendment**

Planning Commission recommends City Council approve a subdivision plat of Ruth Addition, which includes Outlot 31 and an unplatted portion of the SE ¼ NW ¼, Section 21, Township 155 North, Range 83 West, Ward County, North Dakota, pass an ordinance on first reading to rezone from "AG" Agricultural District and "P" Public Zone to establish "AG" Agricultural District on Lot 1 and "P" Public Zone on Lot 2, and amend the Future Land Use Map of the Comprehensive Plan boundaries of Low Density Residential with a Conceptual Greenway Connection overlay and Public/Semi-Public with a Conceptual Greenway Connection overlay to establish Low Density Residential with no change to the Conceptual Greenway Connection overlay on Lot 1 and Public/Semi-Public with no change to the Conceptual Greenway Connection overlay on Lot 2.

The property is part of Outlot 31 and an unplatted portion of the SE ¼ NW ¼, Section 21, Township 155 North, Range 83 West, Ward County, North Dakota.

**Planning Commission waived staff's oral report on this item with the above roll call vote preceding Item #5, below is a summary of staff's written report that is attached to Planning Commission Agenda.**

Public hearing request on an application from Nathan Amick representing Souris River Joint Board and David Kopp, owners for a subdivision plat of Ruth Addition, which includes Outlot 31 and an unplatted portion of the SE ¼ NW ¼, Section 21, Township 155 North, Range 83 West, Ward County, North Dakota. The applicant also requests a zoning district change to revise the existing zoning district boundaries of "AG" Agricultural District and "P" Public Zone to establish "AG" Agricultural District on Lot 1 and "P" Public Zone on Lot 2. Further, the applicant requests to amend the existing Future Land Use Map of the Comprehensive Plan boundaries of Low Density Residential with a Conceptual Greenway Connection overlay and Public/Semi-Public with a Conceptual Greenway Connection overlay to establish Low Density Residential with no change to the Conceptual Greenway Connection overlay on Lot 1 and Public/Semi-Public with no change to the Conceptual Greenway Connection overlay on Lot 2. The property is part of Outlot 31 and an unplatted portion of the SE ¼ NW ¼, Section 21, Township 155 North, Range 83 West, Ward County, North Dakota. An aerial view of the property is provided in **Exhibit 1** of staff's written report.

The subdivision, rezoning of the proposed properties to "AG" Agricultural District and "P" Public District, and amendment to the Future Land Use Map will facilitate furtherance of the ongoing flood control project and is refining what was approved for Outlot 31 earlier this year.

David Kopp, one of the owners a part of this application, intends to retain ownership of Lot 1 of the proposed subdivision. The other owner a part of this application, Souris River Joint Board (SRJB), intends to retain ownership of Lot 2.

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**Exhibit 2** is the preliminary plat for the proposed Ruth Addition. The proposed Lot 1 will consist of 1,764,910 square feet, or approximately 40.52 acres; Lot 2 will consist of 150,025 square feet, or approximately 3.44 acres. Proposed Lot 1, which is proposed to be zoned "AG" Agricultural District meets the minimum lot area requirement of 20 acres and there is no minimum lot size or yard requirements for properties in the "P" Public Zone.

Neighboring zoning districts are provided in **Exhibit 3** of staff's written report, and the designation of the properties on the Future Land Use Map are shown in **Exhibit 4**.

### **Finding of Facts:**

The Minot Planning Commission should accept the following findings of facts:

- 1) The applicants have had the necessary pre-application meeting as described in Section 16-7
- 2) The applicants have submitted a complete application.
- 3) The applicants' request will be consistent with Minot's Comprehensive Plan following amendment of the Future Land Use Map and more accurately reflects the planned use of the property as part of the flood control project.
- 4) A change in zoning district that will result in the shifting of the boundary of the "AG" Agricultural District and "P" Public District zones will bring the property into alignment with the Future Land Use Map of Minot's Comprehensive Plan following its amendment.
- 5) The applicant's request is consistent with the bulk requirements of the Minot's Zoning Ordinance
- 6) The Minot Planning Commission has the authority to hear this case and recommend that it be approved or denied. The public notice requirements were met, the hearing was legally noticed and posted, and the hearing was held and conducted under the requirements of North Dakota Century Code and Minot City ordinances.

### **Staff Recommendations:**

Staff recommends the Planning Commission adopt the staff findings of fact and recommend approval to City Council:

- 1) A zoning map amendment of Lot 1 from "AG" Agricultural District and "P" Public District to just "AG" Agricultural District, and to rezone proposed Lot 2 from "AG" Agricultural District and "P" Public District to just "P" Public District and
- 2) To amend the Future Land Use Map of the Comprehensive Plan to "Low Density Residential" for Lot 1 and "Public/Semi-Public" for Lot 2. There is no change to the Conceptual Greenway Connection boundaries effected through this amendment; and
- 3) The preliminary plat as presented in Exhibit 2 of staff's written report.

Subject to the following conditions:

1. The final plat shall include an adequate easement for the purpose of widening, deepening, sloping, improving, or protecting the stream or drainage course, as determined by the City Engineer.
2. No later than six months after a subdivision design has been approved by the City Council, the applicant for design approval may submit the final form of the instrument or document to the City Engineer which is to be recorded in the office of the County Recorder in order to accomplish the subdivision or to establish the necessary predicate for the later accomplishment of the subdivision. That is, the subdivider shall submit the final form of the original of the appropriate

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instrument of conveyance, auditor's outlot plat, or plat, and the necessary copies thereof required by ordinance or by way of regulation. The City Engineer shall indicate his approval on the original by signing his name under a suitable statement or legend that expresses approval. However, if the documents or instrument for which approval is sought is a plat, then before the City Engineer approves it he shall first satisfy himself that the technical requirements of Section 28-27 have been complied with and that monuments have been placed at all block corners, lot corners, angle points, points of curves in streets which are depicted in the plat, and at such intermediate points as may be required.

### **Chairman DeMakis opened the meeting for comments from the public.**

No one from the public came forward to speak in support of or against the item.

### **Chairman DeMakis asked for a motion from the commissioners.**

Motion by Commissioner Baumann to approve per staff recommendations with conditions based on findings of fact, second by Commissioner Koop, and was carried by the following roll call vote: ayes: Barnett, Baumann, DeMakis, Faken, Hochhalter, Koop, Lider, Offerdahl, Sessions, Wegenast nays: none

### **Motion passes**

#### **Item #7**

#### **Zoning Map Amendment and Future Land Use Map Amendment**

Planning Commission recommend City Council pass an ordinance on first reading for a zone change from "C2" General Commercial to "M1" Industrial and adopt a resolution for a future land use map amendment from Commercial to Industrial. The property is legally known as Lots 14-17 in Block 3 of the Replat of Lots 41 thru 49, Block 1, and Blocks 2 & 3 of Norton's Addition.

The property is located at 328 20<sup>th</sup> Ave SE.

### **Chairman DeMakis asked Principal Planner Van Dyke for his report.**

Principal Planner Van Dyke provided the following:

Public hearing request on an application from Travis Mowbray representing Mowbray Properties, LLC, owner for a zoning map amendment from "C2" General Commercial to "M1" Industrial and a future land use map amendment from Commercial to Industrial. The property is legally known as Lots 14-17 in Block 3 of the Replat of Lots 41 thru 49, Block 1, and Blocks 2 & 3 of Norton's Addition. The property is located at 328 20TH AVE SE. An aerial view of the property is provided in **Exhibit 1** of staff's written report.

The subject property maintains a contractor shop for a plumbing/HVAC services and includes sheet metal fabrication. The property includes two buildings owned by the applicant, Mowbray Properties, LLC.

The zoning designation for the property is "C2" General Commercial District ("C2") and the Future Land Use Map Designation is "Commercial," shown in **Exhibits 2 & 3** respectively of staff's written report. Machine and Contractor shops were disallowed by right in "C2" from the zoning ordinance adopted in 2013, resulting in the property becoming legal non-conforming. The newly adopted code allows for fabrication and enclosed warehousing in "C2" with a Conditional Use Permit. However, "C2" maintains higher design standards and does not reflect the nature of this area which is surrounded by businesses of a similar nature. Approval is sought by the applicant to move forward with a 2,600 sq. ft. addition.

### **Finding of Facts:**

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The Minot Planning Commission should accept the following findings of facts:

- 1) The applicants have submitted a complete application.
- 2) The subject area is currently depicted as Commercial on the Future Land Use (FLU) Map of the Comprehensive Plan.
- 3) The FLU map is requested to be amended to Industrial and an existing designation that encompasses adjacent property would be enlarged to include the subject property.
- 4) The FLU map designation of Industrial is more appropriate than Commercial for those properties highlighted in Exhibit 5 due to the distance from highly trafficked roadways and adjacency to commercial properties.
- 5) The proposed zoning amendment will align with the FLU Map if amended to Industrial and further aligns with Economic Development Goal #2 and Commercial/Industrial Land Use Goal # 1 of the Comprehensive Plan.
- 6) The applicant's request is consistent with the bulk requirements of Minot's Zoning Ordinance.
- 7) The Minot Planning Commission has the authority to hear this case and recommend that it be approved or denied. The public notice requirements were met, the hearing was legally noticed and posted and the hearing was held and conducted under the requirements of North Dakota Century Code and Minot City ordinances.

### **Staff Recommendations:**

Staff recommends the Planning Commission adopt staff findings of fact and recommend approval to City Council a Future Land Use Map amendment from Commercial to Industrial and a zoning map amendment from "C2" General Commercial District to "M1" Light Industrial District.

### **Chairman DeMakis opened the meeting for comments from the commissioners.**

None of the commissioners had any questions or comments for staff.

### **Chairman DeMakis opened the meeting for comments from the public.**

No one from the public came forward to speak either for or against this item.

### **Chairman DeMakis asked for a motion from the commissioners.**

Motion by Commissioner Lider to approve per staff recommendations with conditions based on findings of fact, second by Commissioner Offerdahl, and was carried by the following roll call vote: ayes: Barnett, Baumann, DeMakis, Faken, Hochhalter, Koop, Lider, Offerdahl, Sessions, Wegenast nays: none

### **Motion passes**

### **Item #8**

### **Conditional Use Permit – Hazardous Material Storage**

Planning Commission recommends City Council approve a resolution for a conditional use permit for hazardous material storage related to diesel fuel tanks to be utilized to support operations of Keller Paving and Landscaping, Inc. The property is legally known as Outlot 37 of NESW NWSE Section 29, Township 155 North, Range 82 West.

The property is located at 1820 Hwy 2 Bypass E.

### **Chairman DeMakis asked Principal Planner Van Dyke for his report.**

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Principal Planner Van Dyke provided the following:

Public hearing request on an application from Justin Thurn representing D&DK Properties, LLP, owner, for a conditional use permit for hazardous material storage related to diesel fuel tanks to be utilized to support operations of Keller Paving and Landscaping, Inc. The property is legally known as Outlot 37 of NESW NWSE Section 29, Township 155 North, Range 82 West. The property is located at 1820 Hwy 2 Bypass E. An aerial view of the property and 300-foot notification area is provided in **Exhibit 1** of staff's written report.

D & DK Properties, LLP (owner) wishes to upgrade their existing diesel fuel storage tanks on the property to a higher standard of construction and safety per the applicant's letter of intent provided in **Exhibit 2** of staff's written report.

The site itself consists of the main Keller Paving and Landscaping office building, a portable asphalt batch plant, piles of aggregate for the batch plant, and their vehicle fleet. According to the applicant, they have always maintained diesel storage tanks on the property to service their fleet of vehicles. Staff cannot identify where the existing tanks are stored on the property.

Previously, the applicant was issued a conditional use permit (CUP) for a portable asphalt batch plant in June 2018 under Resolution 3594, shown in **Exhibit 3** of staff's written report. The conditions of the CUP are as follows:

- 1) A Traffic Study will be required to NDDOT standards and approved by NDDOT and the City Traffic Engineer.
- 2) Storm Water Management Plans will be required and approved by NDDOT and the City Engineer.
- 3) Erosion Control practices will need to meet State of North Dakota requirements and approved by the City Engineer.
- 4) Screening of the outdoor storage areas where the batch plant or materials are stockpiled and visible from the highway is required. An earthen berm or planting of evergreen conifer trees five feet in height, or a combination of the two will provide an adequate screen if the trees are planted no more than twenty feet apart in these areas. Credit will be given for retaining existing trees if they are located such as to provide the desired screening effect.
- 5) The Landscape Plan and associated Plant Schedule shall be amended to include conifers to screen the outdoor storage areas.

The applicant has complied with conditions 1) through 3). The applicant did submit a landscaping plan that was approved by the City as shown in the **Exhibit 4** of the written report that would comply with conditions 4) and 5). However, aerials and a site visit by staff for the purpose of this application indicate that these two conditions remain incomplete.

### **Finding of Facts:**

The Minot Planning Commission should accept the following findings of facts:

- 1) The applicants have submitted a complete application.
- 2) Installing above ground diesel storage tanks requires a Conditional Use Permit (CUP) within the "M1" Light Industrial District.
- 3) The applicant was issued a CUP in 2018 through Resolution 3594 and is noncompliant with landscaping and overall site improvement requirements outlined in the approved site plan shown in the Existing Landscape Plan Slide.
- 4) Sections 30-3 c) and d) are not met without conditions. The Planning Division and Engineering Department have included conditions outlined within the staff report to mitigate concerns and fulfill the standards required to issue a CUP.

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5) The City of Minot 2012 Comprehensive Plan Future Land Use Map designates this area as Industrial.

6) The Minot Planning Commission has the authority to hear this case and recommend that it be approved or denied. The public notice requirements were met, the hearing was legally noticed and posted and the hearing was held and conducted under the requirements of North Dakota Century Code and Minot City ordinances.

### **Staff Recommendations:**

Staff recommends the Planning Commission adopt the staff findings of fact and recommend approval of a conditional use permit for hazardous material storage to City Council with the following seven (7) conditions:

1) Any change in ownership requires renewal of the Conditional Use Permit (CUP).

2) Unfulfilled conditions from the CUP granted in 2018 under Resolution 3594 are included as follows to fulfill the standards required per Section 30-3 d). These are:

a. Screening of the outdoor storage areas where the batch plant or materials are stockpiled and visible from the highway is required. An earthen berm or planting of evergreen conifer trees five feet in height, or a combination of the two will provide an adequate screen if the trees are planted no more than twenty feet apart in these areas. Credit will be given for retaining existing trees if they are located such as to provide the desired screening effect.

b. The Landscape Plan and associated Plant Schedule shall be amended to include conifers to screen the outdoor storage areas.

3) Site improvements including but not limited to landscaping and onsite circulation are required to be installed no later than October 30, 2021 per the approved site plan as shown in Attachment 'A'.

4) A copy of a Spill Prevention, Control, and Countermeasure (SPCC) plan is required.

5) The tanks shall be placed at least one foot above the proposed 100-yr flood plain (Base Flood Elevation 1548.5 NAVD88).

6) If substantial construction has not taken place within one (1) year of the date on which the conditional use permit was granted, the permit is void except that, on application, the council, after receiving recommendation from the Planning Commission, may extend the permit for such additional period, as it deems appropriate. If the conditional use is discontinued for six (6) months, the conditional use permit shall become void. This provision shall apply to conditional use permits issued prior to the effective date of this title, but the six (6) month period shall not be deemed to commence until the effective date of this title.

7) An amended conditional use permit may be applied for and administered in a manner similar to that required for a new conditional use permit. Amended conditional use permits shall include reapplications for permits that have expired or have been denied, requests for substantial changes in conditions or expansions of use, and as otherwise described in this Ordinance. Applications for conditionally permitted uses which consist of multiple structures to be developed on the property shall include a conceptual development plan showing the structures proposed. The conditional use permit is approved for the use of the property which does not require an amendment each time a structure is proposed; however, once proposed development exceeds the approved conceptual development plan or if the characteristics of use change, an amended application shall be submitted for consideration.

**Chairman DeMakis opened the meeting for questions from the Commissioners.**



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Vice Chairman Offerdahl asked if there was a reason as to why the applicant did not fulfill their landscaping requirements. Principal Planner Van Dyke responded that the applicant would have to explain that themselves.

Commissioner Bauman then asked Principal Planner Van Dyke if he could explain what an improved circulation plan was. Van Dyke responded that it was asphalt or concrete pavement that they denote as their onsite travel lanes when they are interacting with the asphalt plant. That was part of what they provided as their site plan that was approved in by the city following the issuing of their last conditional use permit. The city just wants to make sure that they improve what they denoted as going to be improved by asphalt or concrete on their site plan rather than just leaving it as dirt, which is what staff observed on site.

### **Chairman DeMakis opened the meeting for comments from the public.**

Commissioner Wegenast asked if the applicant was there, to which no one from the audience responded. Wegenast then clarified that he was asking to follow up on Vice Chairman Offerdahl's question from earlier and if there is a commitment by the applicant to complete those 2018 items, and if not, what leverage does the city have to make sure that they are completed knowing that there is a deadline in the conditions. Principal Planner Van Dyke responded that by including a date certain for the time of performance in Late October, they'll have to comply with that, and given that they are a paving and landscaping company, he is confident that they will be capable of accomplishing the requirements within that timeframe. He then continued that they are out of compliance with the original conditional use permit, if they do not fulfill the requirements within the allotted timeframe, staff would move to rescind the CUPs for both, but he thinks it is a fair path forward to give them six (6) months to bring themselves into compliance on both CUPs issued.

Commissioner Wegenast then asked a follow-up question on whether or not there was any commitment from the applicant (to meet these conditions). Van Dyke replied that staff did share the staff report and conditions of approval with the applicant and received no opposition. He also explained that the applicant generated the site plan that was approved by the city, so they were presumably amenable to the conditions at one time; staff just needs to make sure that they get done.

Vice Chairman Offerdahl then gave his opinion on the matter stating that he had a tough time with it because the applicant has already had two years to complete the conditions of their existing conditional use permit and now they were going to extend it a little longer. He continued on by saying that he'd almost rather see them complete the conditions of the previous one before they approve the new one.

### **Chairman DeMakis asked for a motion from the commissioners.**

Motion by Commissioner Wegenast to approve per staff recommendations with conditions based on findings of fact, second by Commissioner Barnett, and was carried by the following roll call vote: ayes: Barnett, Baumann, DeMakis, Faken, Hochhalter, Koop, Lider, Wegenast nays: Offerdahl, Sessions

### **Motion passes**

### **Other Business**

Neither staff nor any of the commissioners had any other business for the meeting.

### **Adjournment**

With no further business before the committee, Chairman DeMakis adjourned the meeting at 5:53 PM.