

MEDORA PLANNING AND ZONING COMMISSION

Official Proceedings on June 19, 2018

(Subject to board review and approval)

Meeting was called to order at 6:00 p.m. by President Kinley Slauter. Present were Jim Bridger, Doug Ellison, Ben Brannum, and Aaron Axvig. City Attorney Sandra Kuntz was also present.

Minutes from the May 15, 2018 meeting were presented to the Board for approval. Bridger made the motion to approve the minutes. Second by Ellison. Motion passed unanimously.

Application No. 18-18, an application from Troy Mack/Black Hills Gold & Gift Outlet at 346 & 362 Pacific Ave. for Outside Vending Machines & Carousel Horse Ride. Pictures of the vending machine and the horse ride were reviewed. Mack presented photos of part of the vending machine painted brown and stated it would all be painted to blend prior to installation. There will be no lighting inside the machines and they will be located in the door entry way and not obstruct the walkway. Axvig moved to approve Application No. 18-18. Ellison seconded. Motion passed unanimously.

Application No. 18-19, an application from TRMF for adding a sidewalk between SHSND stone entry to Town Square Showhall. Per Slauter, TRMF requested this Application be withdrawn pending resolution of current actions.

Application NO. 18-20, Brad Skachenko at 345 3rd Street to Re-side and Tin Roof. The siding will match what was there. A brown metal fascia will be installed and a trim board which will match will be placed around the bottom. Brannum moved to approve Application 18-20. Bridger seconded. Motion passed unanimously.

Application NO. 18-21, Denis Joyce at 225 East River Road South for Corbels on front porch. Six “fancies” will be positioned on the deck as outlined. Ellison moved to approve Application 18-21. Brannum seconded. Motion passed unanimously.

Misc Business

The following input and comments relate to changes made by the State Historical Society of North Dakota (SHSND) to the wall at deMores Park without a Zoning request (documented in the May 15 meeting minutes).

City Attorney Kuntz reviewed a memo that she prepared at the request of the City related to her actions and recommendations related to deMores Park. Kuntz noted that Chris Dorfschmidt, Chateau Site Supervisor, is in attendance and has been very helpful.

Memo to Zoning Board RE: deMores Park

On June 5, 2018, I spoke with Fern Swenson, Director of the Archaeology & Historic Preservation Division of the State Historical Society. She provided a brief background of problems they were having with maintaining the Park. These issues led to an agreement with TRMF. The agreement provides that TRMF shall maintain the park in exchange for authorization to utilize the park for commercial purposes, both free public events and private fee-based events. The legality of this agreement has been raised in light of the status of the site as a park. A brief

research of this issue directs me to Chapter 55-08 Parks and Recreation. The use of the park as provided in the agreement appears authorized under this chapter*. I will bring further information on this subject to the zoning meeting tomorrow.

*NDCC 55-08-01.1. State parks and recreation policy. The parks and recreation department shall plan and coordinate government programs encouraging the full development and preservation of existing and future parks, outdoor recreation areas, and nature preserves.

Ms. Swenson had previously provided an email to the Auditor citing two Attorney General opinions that she interpreted to permit the State entity to act without the input of the City Zoning board. The General Rule is that AG opinions are binding until the issue is challenged and determined in a Court. While the AG opinions refer to more utility and building code issues and may be distinguished, a citation to a 56 Am. Jur. 2nd Municipal Corporations, Section 409, Page 451, states that: "A municipal ordinance does not apply to the state, nor can it be enforced against officers of the state, as to do so would affect that performance of their public duties." This more broadly definitional rule corroborates the NDSHS's position that they cannot be held liable for a violation of the City's zoning ordinance or failure to involve the Zoning Board in its decision to take down a portion of the wall. It does not appear that the action of the NDSHS was intended to insult or ignore the City, but rather the current experts involved in the process were unaware of prior procedures and mutual involvement by the City in past zoning matters.

Notwithstanding the above, the 1998 AG opinion does city NDCC 54-40.3-01 (2) which authorizes any City to enter into a joint powers agreement with any agency of the state for the undertaking of any power or function which any of the parties is permitted by law to undertake. Accordingly, I spoke to this option with Ms. Swenson, who was open to further exploring a better collaborative effort with the City to improve communication and reestablish the boundaries and respect between the entities in light of the local response to the current concerns with the wall.

Toward that end, I recommend two options to explore simultaneously. First a petition from the public for those in favor of replacing the wall to its prior status. [Assurances have been provided that each stone is numbered and stored at the site consistent with Secretary of Interior standards.] Second, drafting a joint powers agreement for such historical matters of significance in the City of Medora for which the City wishes to be consulted.

Slauter asked if it is an option to have an Attorney General opinion on this situation. Kuntz replied that it would be appropriate but it could take some time depending on workload. Ellison commented that the SHSND seems to be willing to reinstate the collaborative relationship with the City so what would an AG opinion do?

Diane Rogness, former Chateau Site Supervisor: Fern (Swenson) knows that the NDSHS has followed the Medora Zoning process for at least 15 years. The practice has been for Site Supervisors to be informed of the Zoning procedures and follow them.

Public: The practice goes back further than that.

Public: We want to move a letter/petition forward as we need to get attention before the Park gets National Historic Register listing. Brannum agrees.

A letter from Concerned Citizens to Zoning and the Council with 72 signatures was received and reviewed. Comment was made that Zoning appreciates citizens making their voices heard.

A letter from Carmen and Derwin Zuroff was presented and reviewed. The action is appreciated.

Ellison read a prepared statement related to the subject:

This is a complex and divisive issue. On the one hand, the “owner in trust” of the Park (the State Historical Society of North Dakota) has struggled for years to enhance the beauty and public usage of the aging Park. This chronic problem stretches back even further than my years of employment with the State Historical Society at the Chateau in the 1980s and ‘90s. The State Historical Society felt that entering into a Memorandum of Agreement (MOA) with the Theodore Roosevelt Medora Foundation (dated April 1, 2017) for maintenance and usage would improve access to the Park and help it regain its appeal and usefulness to the public. Their motive was forward-thinking and commendable.

Unfortunately, the manner in which the MOA was forged, and its content, leaves much to be desired. De Mores Park is, after all, a public park, and the public was not notified or given a chance to participate in this dialogue regarding the Park’s future. Especially hurtful to area residents, who rightfully consider the Park a local treasure, is that a portion of the 1930s stone wall was removed by the State in order to facilitate access from a private property owner, the Theodore Roosevelt Medora Foundation, which requested the removal per the above-referenced MOA. This alteration was performed without approaching the City zoning and governing boards for advice and consent. Even if not technically and legally required, as the State assumes in the MOA, this reverses the time-honored “good neighbor” policy that has been in effect for as long as any resident can remember.

Aside from other potential objections to the MOA, what remedies, if any, remain for the wall removal? A financial fine from the City against the State for bypassing the zoning process could be imposed, but probably could not be legally enforced. A request from the City to the State to reassemble the wall could be made, but probably could not be legally enforced. I feel that any formal action from the City would be time-consuming, expensive, and - in the end - fruitless.

I feel the best remedy rests in the hands of area residents and their power of petition. If they so choose, citizens (as public taxpayers) could make a formal request (either individually or collectively) to the State Historical Society and the State Historical Board to reassemble the wall or to provide other community services to compensate for its removal. Citizens may also, of course, make their voices heard through traditional and social media. In this case, as in most others, the most potent power is held directly by the people.

Public – do you think Zoning should be pushed aside like was done?

Slauter stated that as an employee of TRMF, there is a potential for conflict of interest. Since there is no direct and substantial personal or pecuniary interest in the matter, I intend to participate as necessary in the action.

Slauter – No, it is important to have dialog on any changes, but in this case SHSND did have an increase in usage.

Public – taking down the wall section changed the esthetics of the Park, it was never intended to have garden parties, alcohol, etc. there. No one wanted to change the feel of the Park and have crowds.

Slauter – the condition several years ago was bad and the intent was to improve the situation.

Zuroff – agree but don’t agree with the approach that was taken, why wasn’t the City approached?

Bridger – my thought is to put the wall back up as it was. “Chuckwagon Patio” is now being used in reference to the Park, I want to go back to the start and go from there in the right way.

Axvig – there doesn’t seem to be any firm footing for Zoning action.

Ellison – the memorandum was basic but way too liberal. The Park is not a place for broad use, usage needs to be appropriate. There doesn't seem to be a legal course to put the wall back.

Zuroff – but we need to ask. Can we request a letter from Zoning to support the action of the public to get the wall put back and deMores Park used as it was intended?

Brannum moved that Zoning support the citizen effort to petition or request by letter that the NDSHS:

-restore deMores Memorial Park back to its original state;

-terminate the current agreement with TRMF;

-conduct a public hearing in Medora on the usage and direction for deMores Park; and

-return to collaborative relationship with the City of Medora including honoring Medora Historic Integrity District and other City ordinances.

The letter should include background information on the historic relationship between SHSND and the City, concern about the August filing of Historic Registration that may prevent putting the wall back, etc. Ridenhower to draft a letter and review it with Slauter and Kuntz, letter to be sent as soon as they are in agreement. Bridger seconded. Motion passed unanimously.

Ellison commented that he maybe should abstain since he is on one of the letters. Comments were that there was no need as we all have the same intent in this action and the State needs to hear what the people of Medora are saying and feeling since that hasn't happened. It's too late for hurt feelings at the State.

Public – we need you to move the letter from Zoning ahead quickly as we are running out of time.

Diane Rogness– the public has a right to be at the meeting in August when the presentation related to Historic Registration is made to the State Review Board. I know it is bad timing but it may be necessary.

Kuntz commented that the City Special Events Permits cover having tents erected in the Park, this isn't a Zoning process. Ridenhower confirmed that Permits have been granted for the events that have been held.

There being no other business, Brannum moved to adjourn, Second by Axvig. Without objection meeting adjourned at 6:52 p.m.

ATTEST: _____ Kinley Slauter, President

ATTEST: _____ Gary Ridenhower, City Auditor