

**REGULAR MEETING OF THE PLANNING AND ZONING COMMISSION WAS HELD ON April 17, 2017 AT WILLISTON CITY HALL, 22 E. BROADWAY, WILLISTON, ND**

Vice-Chairman Maristuen called the meeting to order at 5:30pm. Roll Call was taken. A quorum was present.

**MEMBERS PRESENT:** Eynon, Hansen, Bauer, Christensen, Maristuen.

**MEMBERS ABSENT:** Aafedt, Long

**OTHERS PRESENT:** Kent Jarcik, Planning Director; Rachel Laqua, Principal Planner; Josephine Ching, Staff Planner; Christine Edwards, P&Z Office Manager; Bob Hanson; Jordon Evert, Assistant City Attorney; Tate Cymbaluk, City Commissioner; Howard Klug, City Commission Chairman.

**PUBLIC HEARINGS:**

**A. Ordinance 1058 to be known as the Small Cell Tower Ordinance, an amendment to Ordinance 912 - Staff**

Vice-Chairman Maristuen introduced the first public hearing item (as above) and asked Laqua to present. Laqua explained that this ordinance amends, consolidates and updates Ordinance 912, which is the ordinance which regulates cell towers within the City and ETJ. She said that as technology has changed, the current ordinance has not been able to meet modern needs of cell technology. In particular, Ordinance 912 does not contain adequate flexibility to allow small cell and distributed antenna systems (DAS). Small cell and distributed antenna systems provide backup capacity to neighborhoods when macro-cell towers become overloaded. These small cell towers are useful around large gathering spots such as schools, hospitals, and sporting centers. Laqua stated however, due to their size and inherent need to be placed around people, the regulations in Ordinance 912 which are directed toward macro-cell towers which require greater separation distances end up prohibiting the use of small cells. This ordinance update creates a set of regulations specifically addressing small cell and DAS, and brings the ordinance up to date with all FCC and state regulations.

The ordinance particularly focuses on regulating the form and design of said small cell and DAS. By nature, they are visible and will be placed in high traffic areas. Laqua said the ordinance lays out preferred locations for small cells, ranking locations in order of preference (for example, the most preferable is "on an existing structure in a commercial or industrial zone" and the least preferable is "on a new stealth designed structure in a public right of way in a residential zone"). In addition, the ordinance highly incentivizes the addition of small cell and DAS to the community in a way that allows such systems to integrate into the landscape. Small cell and DAS are essential to ensuring that Williston is open to new, modern technology. However, these systems also need to be acceptable to community members.

Laqua stated that this ordinance creates a faster, administrative process for small cell and DAS applications which propose a location on an existing structure on public or private property, or on a stealth designed (in most cases, a light pole) new structure in a City right of way, while requiring small cell and DAS applications that incorporate a new structure on private property or a non-stealth new pole in a right of way to go through the standard special use permit process. Laqua said this should incentivize utilizing existing structures.

Laqua said that there is a notification period to any surrounding owners. The ordinance also forms an administrative review committee to examine any administrative applications.

The ordinance lays out all of the application requirements for small cell, DAS and macro-cell applications with all required information and all appropriate FCC required timelines. Macro-cell towers are still required to go through the special permitted use process, and regulations for macro-cell towers have not been changed, as that was not the intent of the ordinance.

This ordinance came out of a committee formed as a company called Dakota Carrier Network began looking to deploy small cell and DAS around the state. The committee was formed by the Mayor to look at whether Ordinance 912 was capable of handling such requests. Laqua stated that the committee also retained River Oaks Communication to help draft this ordinance. With River Oaks, the committee held multiple focus group meetings at the end of November 2016 as well as a public meeting at the ARC.

This ordinance has been reviewed and commented on by Verizon and AT&T, and the committee working on this ordinance has spoken with them. The ordinance as presented has no remaining comments from either company.

During the development of this ordinance, the committee also received a series of applications from Verizon and Dakota Carrier Network to put up 7 small cell systems in two sites – one near Bakken Elementary, and one near the airport. These were able to be reviewed because they were located in the right of way, where they could be considered a permitted use. The applications followed the process laid out in this proposed ordinance, including surrounding owner notification. The applications received no negative public comment and have subsequently been approved with several contingencies.

- There remains discussion regarding the notification boundaries – the cell companies have stated that the 1,000 and 300 ft. radii are too large for systems that generally don't reach more than 300 feet. If the commission would want to change this, we can edit the ordinance.
- This ordinance will be accompanied at the City Commission with a Right of Way agreement, included in Commission packets for this Planning Commission meeting.
- There is also an attached fee resolution update that will need to be approved. This makes the application for small cell towers the same as the fee for a Special Use Permit.

Maristuen opened the public hearing. Leroy Sidel approached the Commission and asked the exact purpose for these small cell towers was; specifically he wanted to know if they would have any impact on the ability for life alert type of devices to work outside of a person's home. Commission Maristuen stated that these small cell towers were to improve communication capabilities over called macro-cell towers that might be two miles away. Laqua stated that the small cell towers are geared to add capacity but she could check on their effect on life alert devices but she does not believe that there will be any difference on those services.

Maristuen called a second and third time for public input; hearing none he closed the public hearing and called for the wishes of the Commission.

**MOTION BY BAUER, SECOND BY CHRISTENSEN** to recommend to the City Commission approval of Ordinance 1058, an amendment of Ordinance 912 to regulate Small Cell and Distribute Antenna Systems. **AYES:** Hansen, Eynon, Bauer, Christensen, Maristuen. **NAYS:** None. **ABSENT/NOT VOTING:** Aafedt, Long. **ABSTAINED:** None.

**B. Ordinance 1062 , amending Ordinance 1028 adding the Highway Corridor Commercial district – Staff**

Maristuen introduced this item (as above) and asked Ching to present. Ching reminded the Commission that in December of 2016, the City Commission passed Ordinance 1028, regulating signs.

This amendment, Ordinance 1062, would add the Highway Commercial Corridor (HCC) Zoning District to the sign ordinance. The sign regulations in HCC zone will be the same as those for C-2: General Commercial and M-1: Light Industrial, in the same way that the uses are derived from those two zoning districts.

Ching said there were no concerns with this amendment when discussed at the Ad Hoc meeting on April 3, 2017 and explained the items required for approval as follows:

1. Public Hearing at City Commission, scheduled for May 9, 2017, and a second reading of the ordinance, to be heard at a later date, most likely May 23.

Ching concluded her presentation and Commissioner Maristuen called for any public input. After calling for public comment three times and hearing none, Maristuen closed the public hearing and asked for the wishes of the Commission.

MOTION BY CHRISTENSEN, SECOND BY HANSEN to recommend to the City Commission approval of Ordinance 1062 amending Ordinance 1028. \*\*DISCUSSION: Commissioner Eynon asked if this area was already subject to Ordinance 1028. Laqua stated that as a part of the extra-territorial jurisdiction (ETJ) they were subject to zoning ordinances and that until the HCC zoning district was established signs for this area would have been evaluated under M-1:Light Industrial or C-2:General Commercial requirements. Eynon pointed to the sunset date of April 3, 2017 to come into compliance with Ordinance 1028 and asked since that date has already passed if these properties would be subject to violations and fines. Laqua said that staff has been working closely with properties to make corrections without writing violations and that there have been no issues in this area.\*\* AYES: Hansen, Eynon, Bauer, Maristuen. NAYS: None. ABSENT/NOT VOTING: Aafedt, Long, Christensen. ABSTAINED: None.

**C. Short plat to split one lot into three; Lot 1, Block 1, Highway 7 Industrial Park, City of Williston – Highway 7 Land, LP**

Maristuen introduced this item (as above) and asked Maristuen introduced this item (as above) and asked Ching to present. Ching stated that the applicant, Roger Glessner, was appearing by phone for this item. She said that this is a request for a short plat to create 3 lots from 1 lot in Lot 1, Block 1 of Highway 7 Industrial Park at County Road 7 (a/k/a 16<sup>th</sup> Ave. W) and 58<sup>th</sup> St.

Ching stated that there is no minimum lot size requirement in M-2: Heavy Industrial zone. Proposed Lots 2 and 3 are currently undeveloped and there is currently a farm and a residence on Lot 1. The owner originally platted and rezoned this property to industrial. The existing uses of residence and farm was allowed to, and will be allowed to, remain on Lot 1 but industrial uses cannot be expanded on Lot 1 until the house is no longer being lived in and all residential and farm uses have ceased.

Ching said that Lot 1 has an existing access from 58<sup>th</sup> Street. Lot 2 and 3 will take access from 16<sup>th</sup> Avenue W with a proposed joint ingress/egress easement. There is a city water and sewer line

available along 58<sup>th</sup> Street W and 16<sup>th</sup> Avenue W. The applicant is proposing to a sewer easement half way up the east side of Lot 1 and then turning west. The City Engineer has requested that this easement continue to County 7 to facility sewer development further to the west at a future point.

The applicant is also proposing to have a storm water easement in between Lot 1 and Lot 2.

At the April 3<sup>rd</sup> ad hoc meeting, the City Engineer requested that the applicant extend the sewer easement and lay pipe with an 18" pipe going out to 16<sup>th</sup> Ave W/County 7 right of way (ROW) line instead of an 8" pipe that is standard. The city will look to participate in the costs of the additional requested sewer line. The city would provide for the additional material costs + 25%, and will need to approve the contractor costs.

Ching talked about other items of discussion at the ad hoc meeting:

Right-of-Way Easement: The City Engineer requested a 30 feet wide ROW easement along the east side of Lot 1 in order to enable future connectivity in the event that the property to the north is redeveloped. The City Engineer at a future point would look to obtain a 30 feet wide ROW easement from the property to the east in order to provide a total of 60 feet wide ROW easement. The City Engineer noted that the 30 feet ROW easement can be located along the proposed 30 feet sewer easement east of Lot 1.

Recordation of Proposed Easements: Since this is a short plat and all of the proposed easements cannot be directly added to the plat, the easements will be recorded first so the easements can be shown and referenced on the plat.

WBI Engery:

1. Bill Hanley from WBI Gas noted: No fencing, trees or shrubs, no utility or other parallel encroachments, no structures, either permanent or temporary, and no proposed grading or ground disturbance is allowed within the pipeline easement. Any activity within the pipeline easement must have written approval of WBI Energy Transmission Inc.

City Engineer:

1. The sewer and storm sewer easements should be accompanied by some sort of construction easement as it is not possible to construct the sewers in the 20 foot wide permanent easement being provided.

**Recordation Requirements:**

1. All plat corrections and a final plat
2. Approval of all easements by City Engineering, in addition to an agreement with the applicant regarding the oversizing of the proposed sewer line
3. Final easement documents

Ching concluded her presentation. Maristuen opened the public hearing and asked for any public input. Commissioner Christensen asked why a house and farm land would be zoned industrial. Jarcik explained that the property owners requested this zoning while under county jurisdiction with the contingency of the house staying. They will now have to transition those lots to industrial use.

After a second and third call for public input and hearing none he closed the public hearing and asked for the wishes of the Commission.

MOTION BY BAUER, SECOND BY HANSEN to approve the short plat to split one lot into three; Lot 1, Block 1, Highway 7 Industrial Park contingent on meeting all recordation requirements as presented. AYES: Hansen, Eynon, Bauer, Christensen, Maristuen. NAYS: None. ABSENT/NOT VOTING: Aafedt, Long. ABSTAINED: None.

**D. Zone Change request to change Lot1, Block 2, Saddle Ridge Subdivision from M-1:Light Industrial to Agriculture – Go Aggregates, LLC**

Maristuen introduced this item (as above) and asked Laqua to present. Laqua explained that this item consists of two applications: an application for a zone change from M-1: Light Industrial to A: Agriculture for Lot 1, Block 2 of the Saddle Ridge Subdivision, and an application for a special use permit (Item 8A) for a gravel pit for Lot 1, Block 2 of the Saddle Ridge Subdivision, the SWSE of Section 34, and the SESW of Section 34, T155N R101W.

**PROPERTY HISTORY**

The Owan property applied for a zone change and SPU for a gravel pit in September 2014 and was denied due to the proposed exit route, concerns over dust abatement, and proximity of the pit and exit routes to residential properties.

The Weyrauch property, the SWSE and SESW of Section 34, had in the past been utilized as a gravel pit which was not fully mined.

**ZONING COMPATIBILITY**

The properties are bounded on the north side by Oasis, by Agricultural properties that include residential uses and well pads to the west, by the golf course, residential, and industrial properties to the south, and by residential and industrial properties to the east.

Concerns have been raised about the compatibility of the use with the surrounding residential areas and the effect of the use on the rest of the city due to its location in a main wind route and the amount of dust created.

The site has access to rural water but would not have access to sewer; any on site office would need to provide arrangements.

**ROADS/TRAFFIC**

Currently, the maps provided with the applications show an exit route through the Mosing Land and Cattle Co. This exit route does not exist at the moment. The Borsheim Subdivision roads are not intended for a gravel mine operation and should not be used for any traffic in relation to the operation of the mine. If approved, any and all mine traffic must use the new access road proposed to be constructed for the operation. The operation must gain an exit route through the Mosing Land and Cattle Co. property.

In addition, the application shows all truck trips coming out of that exit route, entering County Hwy 7 at the property line of Oasis, and heading north up County 7 to the Truck Reliever Route. If the applicant has a project in town, then the only available route would be south to 58th St, then east to Hwy 2/85. The applicant would not be able to go south on 16th to 42nd, due to residential properties and the traffic concerns that would create at the 42nd St intersection with Hwy 2/85.

The County Highway Department must approve the use of County 7 to the truck reliever route.

Laqua added that the County Highway Department recently stated that they are not in favor of the use of a county highway for concentrated haul operations and would prefer that the pit utilize the state highway system, going east on 58<sup>th</sup> St to Highway 2, which, as noted in the fact sheet, is not the preferred route of the City due to the stated preference to reduce truck traffic within the City unless for a specific in-town purpose. City Engineer Hanson stated that County Road 7 does have the surface to handle this traffic however.

#### LENGTH OF OPERATION

The SPU application notes that this is intended to be a 5 year mining operation. Go Aggregates notes that they will reclaim the property as an individual area is depleted of gravel and no longer needed for processing and stockpiling. The area will be re-contoured to match the topography prior to excavation, or in a manner consistent with the end-use of the property. The subsoil and topsoil will be replaced and the area will be seeded.

The ad hoc committee noted that there should be a one year timeline for any final reclamation after the gravel pit has been fully mined. In addition, a reclamation bond will be required prior to mining. There was question and discussion that the length of the operation could be longer than 5 years based on the gravel available. The application proposal stated the operation was for 5 years and did not discuss longer and the project has been evaluated based on what was provided in the application.

#### HOURS OF OPERATION

The SPU application lists that the hours of operation would be from 6am - 10pm, with "every effort to avoid operations on Sundays", but clarifies that this may be altered based on time sensitive projects. They have noted that any changes to the operating hours must be approved by the City.

#### NOISE

The SPU application notes that the siting of the mining area in the Saddle Ridge Subdivision is in a valley which should buffer noise and dust. The 80 acre site in Section 34 is proposed for "minor clearing and stripping". At ad hoc, the applicant noted that they will have a crushing and washing facility, but that they anticipate that 90% of the mined material would be washed for concrete or decorative products, so they would not be using the crusher as much as if this was not the case. They are willing to use the crusher at certain times of the day. It is hard to determine at this point what the noise disturbance levels will be to the surrounding area. The area is within the primary growth area of the City and not intended as an area of heavy industrial activity which creates significant amounts of noise, smoke, dust or glare.

#### DUST

The City has taken numerous measures to reduce the amount of dust within the City, and this property lies on a main wind route into the center of the city. The applicant has proposed to use "mistlers and dust collectors as needed" for crushing operations. There could be up to 20 trucks per hour on the road. They have proposed to use a water truck to control dust on the haul/exit route, and have stated that the washer for the concrete and decorative products does not create as much dust as the crusher.

#### TOWNSHIP APPROVAL

Missouri Ridge has been contacted, and has approved this use.

## PUBLIC NOTICE

Public notice of both the zone change and SPU were sent to property owners within 1,000 feet of the properties inside the ETJ and to property owners within 300 feet of the properties inside the City.

## COMPREHENSIVE PLAN COMPATIBILITY

A Future Land Use Amendment is required for the zone change on Lot 1, Block 2 of the Saddle Ridge Subdivision. On the Future Land Use Plan, this area is shown as constrained open space. Due to the location next to the Build Through Acreage, this area would generally be considered for residential. In this case, a Future Land Use Amendment would be needed to change from constrained open space to a mining use on agricultural property.

As part of the review for a Future Land Use Amendment, the following items are required to be considered:

1. *Is the proposed land use compatible with existing land uses, existing zoning designations, or approved subdivisions?* No, based on the land use plan, a mining use would not be compatible. Some projects can mitigate adverse impacts. For it to be considered consistent, the applicant would need to demonstrate to the satisfaction of the Commission that they can provide adequate mitigation efforts to reduce the adverse effects of noise, dust and traffic on the surrounding properties.
2. *Is the proposed change compatible with surrounding future land uses, or does it result in the need for other land use plan changes to bring about future land use compatibility? If so, have those changes been included in the proposed amendment?* No, based on the land use plan, a mining use would not be compatible with the proposed surrounding BTA and constrained open space. However, it may be possible to provide adequate mitigation efforts to reduce the adverse effects of noise, dust, and traffic on the surrounding properties. The applicant has proposed a 5 year operation. If it is not intended to be closed after 5 years, that needs to be further discussed because a long term operation in the primary growth direction of the City could cause greater incompatibility.
3. *Does the proposed change result in the need for changes to streets and roadways to bring about existing or future continuity and connectivity? If so, have those changes been included in the proposed amendment?* No.
4. *Can the proposed change be accommodated by the surrounding infrastructure (roadways and utilities)?* Yes, all traffic related to the proposed use (including employee vehicles) would be required to utilize the exit route the applicant has proposed to build, and would be required to utilize County 7 north to Highway 2. Traffic would be able to use 58<sup>th</sup> St to Highway 2 south or north only when an in-town project is utilizing gravel from this site. Trucks would not be permitted to use internal City roads and routes as cross routes to get to out of town projects. Traffic would not be able to use 16<sup>th</sup> Ave or 42<sup>nd</sup> Street. The ability to utilize County 7 depends on approval of the County Highway Department. County 7 is intended to be the primary haul route with County approval. Highway 2 is not intended for travel out of the City as the City's efforts have been to reduce through town truck traffic and internal truck generators sending trucks out of town from within the City.
5. *Is the proposed change consistent with the goals and objectives of the comprehensive plan and with other adopted plans and policies of the city?* No, there are a number of concerns regarding noise, dust, and traffic. However, it would need to be demonstrated that adequate

mitigation efforts to reduce the adverse effects of noise, dust and traffic on the surrounding properties will occur.

#### SPECIAL USE PERMIT CONSIDERATIONS

As part of the review for a special use permit, the following items are required to be considered:

1. *Ingress and egress to property and proposed structures thereon with particular reference to automotive and pedestrian safety and convenience, traffic flow and control, and access in case of fire or catastrophe.* All traffic related to the proposed use (including employee vehicles) would be required to utilize the exit route the applicant has proposed to build, and would be required to utilize County 7 north to the Truck Reliever Route. Traffic would be able to use 58<sup>th</sup> St to Highway 2 south or north only when an in-town project is utilizing gravel from this site. Traffic would not be able to use 16<sup>th</sup> Ave or 42<sup>nd</sup> Street. The ability to utilize County 7 depends on approval of the County Highway Department.
2. *Off-street parking and loading areas where required, with particular attention to the items in "1" above and the economic, noise, glare, or odor effects of the special permitted use on adjoining properties and properties generally in the district.* There should be no effect from off-street parking and loading areas, but noise, dust, etc. may have an effect on neighboring properties.
3. *Refuse and service areas, with particular reference to the items in "1" and "2" above.* There should be no refuse and service effects.
4. *Utilities, with reference to locations, availability, and compatibility.* This property has access to all necessary utilities.
5. *Screening and buffering with reference to type, dimensions, and character.* The properties must be buffered from surrounding uses. The applicant has stated that the grade differential may buffer noise effects.
6. *Signs, if any, and proposed exterior lighting with reference to glare, traffic safety, economic effect, and compatibility and harmony with properties in the district.* Any signs associated with this should have no effect on surrounding properties.
7. *Required yards and other open spaces.* N/A
8. *General compatibility with adjacent properties and other property in the district.* There are a number of concerns regarding noise, dust, and traffic. However, it would need to be demonstrated to the satisfaction of the Commission that adequate mitigation efforts to reduce the adverse effects of noise, dust and traffic on the surrounding properties will occur.
9. *Use shall not impose a hazard to health or property.* There are a number of concerns regarding noise, dust, and traffic. However, it would need to be demonstrated to the satisfaction of the Commission that adequate mitigation efforts to reduce the adverse effects of noise, dust and traffic on the surrounding properties will occur.

#### COMPLETION/RECORDATION REQUIREMENTS

1. A haul/exit route from the proposed gravel pit through the Mosing Land and Cattle Co. property to the east must be secured and approved by City Planning and City Engineering.



2. Dust control measures must be taken to the satisfaction of the City, including watering all routes through the property and the exit route or other measures as needed and determined.
3. Mining activity must take place within the proposed times as listed above: Monday-Saturday; 6am – 10pm, with crushing activities taking place only between the hours of 8am and 6pm. Any variation from these timelines must be approved by the City Engineer.
4. All traffic to and from the site must utilize the haul/exit route to be determined through the Mosing Land and Cattle Co property. Truck traffic may only utilize County 7 north to the Truck Reliever route. Use of 58<sup>th</sup> St to Highway 2 may be utilized only for in-town deliveries. 16<sup>th</sup> Ave to the 42<sup>nd</sup> St and Highway 2 intersection may not be used for any purpose by any traffic associated with the site.
5. A reclamation bond must be provided to the City for the cost of reclamation.
6. The gravel pit must be fully reclaimed within a year of the end of mining.
7. The SPU for gravel mining will terminate as proposed in the application 5 years after the approval of the SPU. No discussions of extension beyond 5 years were proposed with this application for evaluation.
8. Mining activity must be approved and must begin within 6 months of the approval of the zone change and special use permit.

Laqua concluded her presentation and Maristuen opened the public hearing.

Leroy Sidel stood in the audience and stated he would be concerned about the current water trapping and coulee issues through that area.

Jesse Minor, representing the applicant, addressed the Commission and said that the biggest issues with water trapping are on the Mosing Land & Cattle property to the east but their mining intent is only on the (Saddle Ridge and Weyrauch) properties indicated in red on the map on the screen.

Minor stated that any possible access route through the Mosing Land & Cattle Co. property is on hold as that property is under contract and they are unable to contact any ownership until that is finalized. He stated that they could go west to 54<sup>th</sup> Street but that is a fairly steep gravel road and would not be their preferred route as it would be difficult for fully loaded trucks. Minor added that this meeting was the first he had heard that the County was not in favor of them using County Road 7; that would be their best option.

Minor explained as far as the wash plant was concerned, they would “make to order” so the wash plant would not necessarily be running all the time and not all materials, (i.e.) road base, would be washed but added that most materials would be. He said that Williams Rural Water was ok with this proposal on their end.

Go Aggregate has applied for a five-year SPU with plans to have the mining completed in that time. If the oil prices go back up that would have the effect of more demand for materials which could lead to them completing the mining in less than the estimated five years. Minor stated that there is a lot of overburden to be removed to reach the gravel. The overburden would be stock piled and used for reclamation in any manner requested by the landowner. Their plan would be to fully mine out and then reclaim one section at a time.

To dust control, the wash plant would help considerably with the dust on most orders but stated that concrete aggregate requires crushing so that does create more dust than other materials.

Commissioner Eynon asked Minor about their estimate of up to 20 trucks per hour moving in and out of the site. Minor stated that would be during peak moving times of large amount of material. Eynon asked if they intended to work the full 8:00 a.m. to 10:00 p.m. and Minor answered "again, it would depend on demand". Minor added that they may also blend up soils and decorative rock for retail sales to the public if it is needed or wanted.

Maristuen called a 2<sup>nd</sup> time for public comment. Keith Kulland asked if Go Aggregate was buying the properties they intend to mine; Minor said they are under contract. LeRoy Sidel stated his only concern would be the dust.

Maristuen called a 3<sup>rd</sup> time for public comment and hearing none he closed the public hearing and asked for discussion or questions from the Commission.

Commissioner Christensen asked staff, if this were to be approved, how would dust and noise control be monitored. Jarcik said that with 20 trucks per hour on dirt roads are bigger items. The use of water trucks, permazyme techniques need to be addressed now because once it is approved it's there. It's difficult; noise will be an issue to figure out, dust abatement options, code enforcement would be dependent on call volume.

Maristuen asked if the SPU would be contingent on obtaining access through Mosing Land and Cattle Co. land. Jarcik said Laqua could address that but that there would need to be a clearer understanding of proposed access routes.

Minor said that their original proposal (2014) was south through residential and we were told it would be preferable to find a way to the truck route so that is why we proposed going through the Mosing property. If we don't have an easement in six months we simply won't do it. The western route is an alternative but not preferred as it is too steep to send 20 loaded trucks over regularly. As to dust control, Minor said they would do whatever they needed to do.

Tate Cymbaluk spoke from the audience to Commissioner Christensen's earlier question about controlling and/or monitoring dust and noise that the County Commission has in the past built a clause into a road maintenance and dust control agreement that allows the Commission to pull the SPU if the applicant is out of compliance with any of the conditions.

City Attorney Evert suggested that possibly the applicant doing a road maintenance agreement with the County would help with them not supporting Go Aggregate's use of County Rd. 7.

Maristuen stated that he believed this might be an opportunity to clean up an area that has been left a mess and leave it better for future growth of the City.

Commissioner Eynon asked about people working at other businesses near this location and the noise generated by the rock crusher and extra truck traffic. Commissioner Bauer stated that dust was a

concern as well since there could be 20 trucks and hour on the haul road; Commissioners Maristuen and Christensen stated that dust could be controlled with a permazyme fix.

Jesse Minor said they would be mining in holes that are already there; about 30 ft. deep, so that already provides a good noise and dust barrier. Secondly, the ground and materials are already fairly damp and water running all around in there would keep it damp and keep dust down. Minor added that they had previously visited with Keith Kulland and Oasis about these activities and neither expressed and concerns.

Commissioner Eynon asked if surrounding property owners were notified of the proposed zone change and SPU. Laqua said that a mailing of both requests and this public hearing were mailed out by the Planning and Zoning Department. No further discussion.

MOTION BY CHRISTENSEN, SECOND BY NONE to recommend approval of the zone change to change Lot 1, Block 2, Saddle Ridge Subdivision from M-1:Light Industrial to Agriculture. AYES: None NAYS: None. ABSENT/NOT VOTING: Aafedt, Long. ABSTAINED: None. \*\* With no second, the motion died, no vote was taken. City Attorney stated that the applicant could choose to move the zone change to the City Commission for consideration with a "no recommendation" from the Planning Commission.

**COMMITTEE REPORT:**

A. NONE

**UNFINISHED BUSINESS:**

A. NONE

**NEW BUSINESS:**

**A. Special Permitted Use request to operate a gravel pit on Lot 1, Block 2, Saddle Ridge Subdivision – Go Aggregates, LLC**

See presentation and discussion in Public Hearing D, above.

MOTION BY BAUER, SECOND BY HANSEN to deny the Special Permitted Use request to operate a gravel pit on Lot 1, Block 2, Saddle Ridge Subdivision. AYES: Hansen, Bauer, Eynon. NAYS: Christensen, Maristuen. ABSENT/NOT VOTING: Long, Aafedt. ABSTAINED: None.

**B. Special Permitted Use request for storage of gas and oil field chemicals in UN certified containers; Lot 5, Block 1, Bennett Industrial Third Addition Subdivision – AMGAS Services (U.S) Inc.**

Maristuen introduced New Business Item 8B (as above) and asked Ching to present. Ching stated that the applicant, AMGAS Services Inc., is requesting a special permitted use (SPU) to store hazardous materials in the Bennett Industrial Third Addition Subdivision. The applicant's

representative, Jayson Nelson appeared via phone. The property is located within the City's one mile extra-territorial jurisdiction.

Storage of hazardous materials, subject to locally adopted Fire Code and State Building Code Regulation is allowed by a special permitted use (SPU) pursuant to section 23(C)(2)(M) of the Williston Zoning Ordinance.

The applicant is proposing to store 2,100 gallons of Absorbital 320 Max and 550 gallons of Corvidal 400 at this time, with larger amounts proposed to be stored at a later time. The applicant will be storing the hazardous materials outside of the building within United Nation certified intermediate bulk containers (totes and drums). They will utilize a smaller pit liner and berm for the original materials to the south of the building. When they add more chemicals they will be adding a second pit liner and berm to the west side of the site. They will not need a second SPU for this, but they will need to remain in communication with the Fire Department and Department of Emergency Services and communicate levels of chemicals being stored.

The property is served by rural water and septic system and takes access from 51<sup>st</sup> NW and Bennett Industrial Drive.

At the ad hoc meeting held on April 3, 2017, discussions included:

The applicant clarified that they will not be producing or storing any chemical inside the building. All of the storage of the hazardous materials will be store outside the building in small volume.

The ad hoc committee directed the applicant to provide a containment plan as well as photos of proposed berm and pit liner which Williston Township requested. Ching stated that staff has since received the containment plan and photos of the proposed pit liner and berm. Staff has forwarded to the township for review. Williston Township is OK with the proposed berm and pit liner.

**STAFF COMMENTS:**

Fire Department: Bob Kiser commented that the Fire Department is OK with the SPU as long as they are installing the proposed pit liner and the berm as well as providing security fencing and NFPA 704 markings for the area.

County Emergency Response: Mike Smith at the County Emergency Response has no concerns with this SPU.

**Conditions Required for Approval:**

1. Installation of pit liner and berm, as proposed in the Containment Plan
2. Installation of security fencing and provision of NFPA 704 markings for the area.
3. Continued communication with the Fire Department and Department of Emergency Services regarding the second chemical containment area.

**MOTION BY BAUER, SECOND BY CHRISTENSEN** to approve the Special Permitted Use request for storage of gas and oil field chemicals in UN certified containers; Lot 5, Block 1, Bennett Industrial Third

Addition Subdivision. AYES: Hansen, Bauer, Eynon, Christensen, Maristuen. NAYS: None  
ABSENT/NOT VOTING: Long, Aafedt. ABSTAINED: None.

### **C. Appeal of zoning ad hoc decision in re: coffee and smoothie kiosk – Fresh Palate**

Maristuen introduced New Business Item 8C (as above) and explained that this application is an appeal of an administrative decision. He asked Laqua to present.

Laqua stated that on Friday, February 24, 2017, an ad hoc meeting was held consisting of Planning Director Kent Jarcik, Principal Planner Rachel Laqua, Building Official Bill Tracy, President of the City Commission Howard Klug, City Commissioner Tate Cymbaluk, and City Attorney Jordon Evert in order to discuss a question of interpretation of the mobile food and coffee kiosk ordinance.

Laqua explained that planning staff had received a request from Fresh Palate to include fruit and vegetable based smoothies in the definition of allowable items to be sold in a coffee kiosk. Based on the ordinance, it is clear that any on-site preparation of food items is prohibited, but the request was to prep, freeze, and bag individual smoothie ingredients into single serving smoothie packs off-site, in a kitchen licensed by the Health Department, at the brick and mortar location of the business. These would be transported and remain frozen at the coffee kiosk, then blended when ordered.

The ad hoc committee determined that substantially, this is similar to frozen coffee drinks in that the amount of on-site preparation is limited to blending. The ad hoc committee has also determined that when an application for such request is turned in, it should have detailed sanitation procedures for within the kiosk, explaining cleaning procedures in depth. In addition, the committee determined that kiosks wishing to serve smoothies as prepared above will need to be hooked up to water and sewer.

Subsequently, the owners of Fresh Palate let the City know that the water and sewer locations were not where they were originally told they were placed, and that the cost to hook up to the water and sewer was too high. They determined to appeal the administrative decision.

The question of if smoothies are an appropriate use for the kiosk as defined by the ordinance with revolves around if the use fits within the bounds of Ordinance 958, which allows for “coffee, tea and other non-alcoholic beverages” as well as “muffins, biscotti, and similar baked goods and fresh fruit”. If it fits within those bounds, then presumably the sanitation requirements laid out in the ordinance will meet the needs of the kiosk.

The original committee reviewing the application felt that the smoothies prepared in the manner described are substantially similar to the blending of coffee drinks already occurring in coffee kiosks. However, based on the volume and type of the waste, they felt it appropriate to require additional sanitation requirements.

As a reminder, the original ordinance was passed to disallow mobile food vendors because it was “the determination of the City Commission that their use in the City for food dispensing is deleterious to the health, safety and welfare of the public at large. Portable heating devices, non-standard electrical connections, a lack of approved sanitary facilities, including, but not limited to, bathrooms with toilets, sinks and standard kitchen facilities, among other facilities associated with safe places of food preparation, all lend themselves to unhealthful, unsanitary and hazardous food preparation conditions, if utilized for extended periods of time, occasioned in part because these facilities and other non-permanent structures are not intended for use as places of food preparation and do not adequately provide for the needs associated with food preparation”. Coffee kiosks were allowed to remain because they had previously existed in town.

Laqua said that the kiosk proposes to have water delivered from C&D water services. They will utilize sanitation procedures that are commonly used in kiosks, with a triple sink plus a handwashing sink. The site at the south side of the property does not have access to sewer and water, which are located in the middle of the property. The kiosk proposes to dispose of wastewater each night into Elite Fitness's janitorial drain.

The kiosk is proposed to take access from 5<sup>th</sup> St E, with the exit onto Main Street.

This appeal was discussed at the April 3, 2017 ad hoc meeting. Comments incorporated questions regarding sanitation, location of sewer and water, cost of connection to sewer and water. There were questions regarding whether or not the kiosk would need to dump their grey water multiple times per day, based on the volume of smoothies made. They were comfortable with their capacity.

There was also conversation about the intent of Ordinance 958, which was intended to provide the ability for the existing operating kiosks to serve the products they were already serving. The conversation centered around whether or not the smoothies being served are considered beverages and meet the requirements of the ordinance, or whether they are moving beyond what the ordinance anticipated in terms of volume and type of waste and therefore requires more infrastructure.

Laqua concluded her presentation. Commissioner Bauer asked since this was an application for a smoothie and coffee kiosk would this Commission be considering both of those? Laqua said no, only the smoothies are considered in this appeal as the coffee kiosk will go forward regardless.

Commissioner Eynon asked if any other kiosks in town were currently serving anything like this. Laqua told him no they are not and that staff had visited with several others in the past and learned that anything other than coffee that they serve is bottled and poured over ice. Ad Hoc thought that packaging, freezing off site, and blending at the kiosk was substantially the same.

Commissioner Bauer asked projected waste water volume. Lacey Dixon of Fresh Palate addressed the question saying that they expect to fill less than two 5 gallon jugs a day. Further she told the Commission that the State Health Department requires a triple sink for dishes and sanitation as well as a separate hand washing sink. The temperature of the wash water must be at least 110 degrees to they will change that water out as needed, 2 -3 times per day.

Commissioner Eynon asked if Fresh Palate had gotten estimates to tie into sewer and water at the kiosk. Dixon explained that they had originally believed those lines ran through the corner they will be set up and that tying into them would be fairly easy to do. They have since learned that the lines are in the middle of the lot and the estimates to tie into those locations were between \$12,000 and \$15,000 and that did not include the asphalt replacement.

Commission Hansen asked if the Elite Health and Fitness were to re-do their parking lot, would Fresh Palate consider tying into water and sewer then. Dixon said that Elite plans to re-do their lot next summer and at that time she would tie in as soon as it is dug up.

Commissioner Eynon stated that the prep on site is similar to everyone else; the smoothie mixes will be prepared in an approved kitchen; and waste volume and type would be similar to other kiosks.

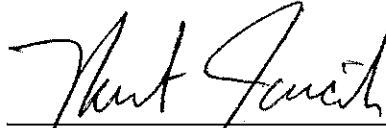
Commissioner Christensen asked Dixon if she would have a contract with Elite Health and Fitness for dumping waste water and the like. Dixon stated they would have a contract.

MOTION BY EYNON, SECOND BY CHRISTENSEN to overturn the zoning ad hoc decision and allow Fresh Palate to serve smoothies from pre-made, individually packaged, frozen ingredients at their coffee kiosk located in the parking lot of Elite Health and Fitness. AYES: Hansen, Bauer, Eynon, Christensen, Maristuen. NAYS: None ABSENT/NOT VOTING: Long, Aafedt. ABSTAINED: None.

\*\*Attorney Evert explained that since this Commission ultimately approved the request of Fresh Palate, it is not necessary for this item to move forward to the City Commission Board of Adjustments.

**DATE OF NEXT REGULAR MEETING:** May 15, 2017

**MEETING ADJOURNED.**



Kent Jarcik, Williston Planning Director