

REGULAR MEETING OF THE PLANNING AND ZONING COMMISSION WAS HELD ON December 17, 2018, AT WILLISTON CITY HALL, 22 E. BROADWAY, WILLISTON, ND.

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

MEMBERS PRESENT: Bauer, Eynon, Gjovig, Long, Hansen, Christensen

MEMBERS ABSENT: Aafedt

OTHERS PRESENT: Kent Jarcik, Planning Director; Rachel Laqua, Principal Planner; Jeremy Miller, Staff Planner; Mark Schneider, Development Services Director; David Wicke and Bob Hanson, City Engineering.

COMMUNICATIONS:

- A. Approval of minutes of the November 19th, 2018, Planning Commission Meeting.

MOTION BY CHRISTENSEN, SECOND BY EYNON to approve the November 19th, 2018, minutes. **CARRIED ON VOICE CALL**

PUBLIC HEARINGS:

- A. **Ordinance 1094, an ordinance amending Section 25.W of Ordinance 613, The Zoning Ordinance of the City of Williston, to change the review timeframes for Small Cell Applications – Staff**

Vice-Chairman Hansen introduced this item (as above) and asked Miller to present. Miller stated that this is a staff-initiated ordinance due to a Declaratory Ruling and Third Report and Order released by the Federal Communications Commission (FCC) on September 27th, 2018.

In this Ruling, for Small Cells, the FCC states that review timeframe for Collocation Applications is to be set at 60 days and the review timeframe for New Site or Tower Applications is to be set at 90 days. In the City of Williston's current Wireless Communication Facilities Ordinance (Ordinance 1058), the review timeframe for Collocations Applications is 90 days and New Site or Towers Applications is 150 days.

This ordinance will change our review timeframes to match those of the FCC Ruling.

They review timeframes for other applications will remain unchanged.

No Public Comment.

MOTION BY CHRISTENSEN, SECOND BY GJOVIG, to recommend approval of Ordinance 1094, an Ordinance which updates the review timeframes of Collocation and New Site or Tower Applications for Small Cells.

AYES: Eynon, Gjovig, Long, Hansen, Christensen, Bauer. **NAYS:** None **ABSENT/NOT VOTING:** Aafedt. **ABSTAINED:** None.

B. Ordinance 1095, an Ordinance amending Section 4.B of Ordinance 1082, the Subdivision Ordinance of the City of Williston, adding requirements to split residential lots by administrative review – Staff

Vice-Chairman Hansen introduced this item (as above) and asked Laqua to present. Laqua stated that this ordinance is to update Ordinance 1082, the Subdivision Ordinance of the City of Williston, to allow for a single residential lot split by administrative review.

This ordinance updates the requirements for an administrative review plat to allow a split of one lot into two lots in residential zones.

No Public Comments

MOTION BY GJOVIG, SECOND BY CHRISTENSEN, to recommend approval of Ordinance 1095, an Ordinance which updates Ordinance 1082, the Subdivision Ordinance, modifying administrative review plat requirements.

AYES: Eynon, Gjovig, Long, Hansen, Christensen, Bauer. **NAYS:** None **ABSENT/NOT VOTING:** Aafedt. **ABSTAINED:** None.

COMMITTEE REPORT

Vice-Chairman Hansen asked for volunteers to be on the nomination committee for boards seats to be elected at the January 2019, Planning and Zoning Commission meeting. Commissioner Christensen and Long volunteered to be on the nomination committee. Hansen will also sit on this committee.

UNFINISHED BUSINESS:

A. NONE

NEW BUSINESS:

A. Application for a Special Permitted Use to add 3 wells to an existing pad, located in the SWNE SENE NESE of Section 6, T154N, R100W- Nine Point Energy

Vice-Chairman Hansen introduced this item (as above) and asked Miller to present. Miller stated that the applicant, Nine Point Energy, requests a special permitted use (SPU) for the addition of 3 oil wells on an existing well pad located the SWNE SENE NESE of Section 6, T154N, R100W. There are currently 5 existing wells and this SPU will make 8 total oil wells.

Miller stated that this property was granted permits to drill the existing wells in June of 2013 and December of 2014. The existing wells were drilled while this property was located in the County, before the Extra Territorial Jurisdiction (ETJ) was expanded in May of 2015.

Miller stated that at Development Review Committee, there was a discussion regarding landscaping and screening. The site plan, submitted by Nine Point Energy, showed a slatted perimeter fence and a single row of trees along the northeast, east, and southeast portions of the fence. It was determined that Nine Point Energy would need to install double slats in the perimeter fence and install a staggered double row of evergreen trees along the north, east, and south sides of the well pad. This will meet the city's current screening requirements for well pads.

Jon Skaare, a representative for Nine Point Energy, asked about the timeframe for installing the required screening. Rachel Laqua, Principal Planner, explained that our deadline for landscaping is July 31st, as specified by our Landscaping Ordinance (Ordinance 1007). Jon Skaare stated that by mid-July they would have the fencing and trees installed.

Miller also stated that there were concerns in regard to noise and flaring from the new wells.

Jon Skaare stated that drilling will increase the noise in the area but after the wells are drilled and operational, the noise will not be increase significantly compared to what it is now. Jon Skaare also explained that the well pad is tied into the Oneok gas line and it will be larger, when the new wells are drilled, but will go down after the wells have been in operation.

Miller stated that SPU notices were sent out to properties owners within 1,000 feet of this property and staff received no comments.

Stoney Creek Township has been notified of this SPU and has not sent any comments to Planning Department Staff.

MOTION BY LONG, SECOND BY BAUER, to approve the special use permit for the addition of three oil wells located on the SWNE SENE NESE of Section 6, T154N, R100W

AYES: Eynon, Gjovig, Long, Hansen, Christensen, Bauer. **NAYS:** None **ABSENT/NOT VOTING:** Aafedt. **ABSTAINED:** None.

B. Application for a Special Permitted Use for a Compassion Center- Dispensary at 120 26th St E , Suite 500- Harvest of Williston.

Vice-Chairman Hansen introduced this item (as above) and asked Laqua to present. Laqua stated that Harvest of Williston is a medical marijuana provider who won the state application for the Williston Distribution region. As the City was going through the ordinance process for Medical Marijuana, the State planned to create eight 50-mile distribution regions and one was centered on Williston. As part of City ordinances, they are required to go through the Special Use Permit (SPU) process, including a review by the City Commission.

They have turned in all required items, including the redacted version of their State application and a notarized statement holding the City harmless against any claims and litigation for issuing

an SPU and the application meets all requirements for a compassion center – distributor based on Ordinance 1075.

Laqua stated that because this dispensary has already been approved by the State, the review process for the dispensary is similar to how the City reviews well pads. This means that the review is based on the nine SPU criteria and at public, health, welfare, safety, and mitigation for surrounding properties.

Laqua explained that this property is a Commercially Zoned strip mall along 26th St. This area was noted with Ordinance 1075 to be part of an “exception area” that met State required distances from schools, and, even though it does not meet City required distances from residences, was considered to be an accessible commercial location which was viable for use by a Compassion Center – Distributer. This was noted through a map of “exception areas” that was included with Ordinance 1075.

Laqua explained that the “exception areas” were discussed in committee meetings with department heads, fire, and police chiefs and when the ordinance was passed at Planning & Zoning Commission and City Commission. These “exception areas” were determined based on accessibility and visibility. The “exception areas” do meet State requirements.

Laqua explained that all neighbors within 300 feet were notified via certified mail of the SPU. She was made aware that some neighbors did not receive the letters until recently. The letters were mailed out on December 7, 2018 and there may have been issues with the Post Office delivering mail this time of year.

Laqua went over the nine SPU criteria as follows:

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.* This property takes access from 26th Street. The existing strip mall accesses would be used.
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.* This SPU requires no additional parking.
3. *Refuse and service areas, with particular reference to the items in “1” and “2” above.* This use will not affect the current refuse and service areas. The compassion center has specific regulations regarding disposal of product based on state regulations.
4. *Utilities, with reference to locations, availability, and compatibility.* This use will use all utilities as currently used by the strip mall.
5. *Screening and buffering with reference to type, dimensions, and character.* No additional screening or buffering is needed.
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.* the applicant proposes placing a sign with their logo above the door. This is allowed within

the sign ordinance. Specific state regulations govern the type of signage and logo allowed.

7. *Required yards and other open spaces.* No yards or open spaces are required by the zoning ordinance.
8. *General compatibility with adjacent properties and other property in the district.* The property is part of an "exception area" built into Ordinance 1075. The use should not impact the residential neighborhood to the south as it is not connected and will operate as with all other commercial uses in the strip mall. The hours of operation will be similar to the surrounding tenants.
9. *Use shall not impose a hazard to health or property.* This SPU will not impose any hazards to health or property. This SPU is only allowable for medical marijuana.

Laqua explained that this entitlement is strictly for medical marijuana. If State laws were to change and allow for recreational marijuana, Harvest would need to get a separate entitlement for the sale of recreational marijuana. There will also be no use of or production of product at this location. Therefore, there will be no odor.

Laqua also noted that there is a 100' grass area behind the strip mall with a fence and alley buffering the property from the residential properties to the south. There are no driving connections between the strip mall and the residential properties.

Laqua also explained that this SPU is for Harvest of Williston only. If a new business was to take over the location, they would need to get another SPU for a medical marijuana dispensary.

Commissioner Eynon wanted to emphasize that there are no exceptions being established tonight as the "exception areas" were part of the original ordinance that was first read at the City Commission on February 27, 2018 and the second reading at City Commission on March 13, 2018.

Commissioner Christensen asked if there was a fence behind the property because there only appears to be a row of trees.

A member of the audience stated that there is a fence that is not the most secure and needs repaired.

Laqua then stated that Pat Murphy is here and would like to give a brief presentation about Harvest and the dispensary.

Pat Murphy, a representative of Harvest, gave a presentation about the history of the company, how they plan to secure the locations (with both onsite and offsite monitoring), and showed images of other dispensaries around the Country. (The PowerPoint is included as an Appendix)

Commissioner Christensen stated that the residence have written a letter to the Commission

expressing their concerns (letter in Appendix). He wanted to know if Harvest will work with the residents to make sure that the fence is complete and secure behind the property.

Pat Murphy stated that Harvest will work with the residence to make the fence secure.

Commissioner Eynon asked how the product is transported.

Pat Murphy explained that he didn't have the complete information for how the product would be transported. He assumes that the product will be transported in a secured truck. He did explain that all their product will come from North Dakota growing facilities in Bismarck or Fargo.

Laqua did note that they will be transporting the product by secure truck with at least two individuals and one person is to stay in the truck at all times.

Vice-Chairman Hansen asked if all their products are pre-packaged.

Pat Murphy said that all product is pre-packaged and that you are unable to enter the facility without a State issued ID card.

Commissioner Long asked about access to product for people with disabilities.

Laqua explained that patients could have a caregiver that could get the product for a person with a disability. However, these caregivers will also have a State issued ID card to get the product. The employees will not be allowed to take product out to vehicles for patients.

Vice-Chairman Hansen explained that, for this SPU, the public will be allowed to ask questions and voice their concerns. She then asked if anyone from the audience wanted the opportunity to speak.

Samantha Brunick was concerned with how the Post Office handled the delivery of the certified mailing. She also expressed concern with them not receiving a certified letter for the public meetings for when the ordinance was presented at the City Commission meeting is February and March of 2018. She explained that she is from Wyoming and has dealt with medical marijuana from Colorado and is concerned with her children playing outside with this facility located so close. She also made a comment regarding the fence. She suggested a better fence could be supplied as there is currently a chain link fence with vinyl privacy slats and noted that the fence is in poor condition.

Commissioner Eynon asked who owned the fence.

Members of the audience stated that it was owned by the strip mall property because it was on the north side of the alley. There is also a walk way on the west side of the fence that residence use to go to the mall to shop and that a full fence would prohibit this access.

It is unsure if this walk way is a City right-of-way. Laqua stated that this will be looked into, to determine if this is a City right-of-way.

Chris Stick expressed his concern with how the City has handled this SPU. He was unable to find the agenda or anything about the SPU on the website. He also asked how many jobs this business would create.

Pat Murphy stated that they believe this will create 10-20 part-time and full-time jobs.

Chris Stick also asked how many dispensaries can be in a City.

Laqua explained that the State regulations is one dispensary per 50-mile radius zone.

Chris Stick is not in favor of the location. He stated that he is from Colorado and where he lived they hid their medical marijuana dispensary. People were able to locate this facility even though it was not in a strip mall along a busy area.

Dr. JulieaAnn Wick expressed concerns regarding this use and the large number of children and grandchildren that play in the neighborhood. She also was not in favor of the proposed location and wanted to know if other locations were considered and if any of Harvest's other locations changed from medical to recreational. She is concerned that, if the law does change and allows for recreational marijuana, this will be the first location that everyone knows to go to and their property values will be affected. She has spoken with people in Colorado who have experienced the negative effects of having a recreational dispensary located near their residence.

Pat Murphy explained that they did look at other locations. However, this was the best location because it is an already built facility that is roughly 2,100 square feet. This is the size facility that they will need for their operation. He also explained that he is not aware of any of their facilities changing to recreational.

Bruce Slipked asked if this facility is the first one Harvest has established close to residence.

Pat Murphy explained that he can't site a specific place but does believe there are some facilities close to residents. He understands the neighbors' concerns regarding the location of this facility. He emphasized that, without a State issued ID, you will not be able to enter the facility.

Vice-Chairman Hanes wanted to elaborate that the accessibility has more to do with the police and fire being able to get to the location quickly in the event of an emergency.

Chris Stick asked when the next meeting will be for this SPU.

Laqua explained that, if this item is not tabled, this SPU will be reviewed by the City Commission December 27, 2018 at 6:00PM.

Commissioner Christensen asked what the process would be for changing this location from medical to recreation, if the laws do change.

Laqua explained that she does not have an answer for that questions because there are currently no rules governing recreation marijuana. However, as of right now, this SPU only covers medical marijuana.

Commission Eynon asked Pat Murphy to explain why this location was selected.

Pat Murphy explained that other locations were considered. They looked at spaces that were around 2,100 square feet that have good access and visibility, there were not many choices to choose from. After reviewing the locations with his real estate team, this was the best location. This location was also approved by the State in their State Applications.

Commissioner Eynon asked if the State was aware of their location before they were selected.

Pat Murphy stated that he had to get a letter from the Planning & Zoning Department stating whether or not the location was eligible for a medical marijuana dispensary, for the State Application.

A member of the audience asked if any locations Harvest considered were located out of "exception areas".

Pat Murphy stated that there were locations considered out of "exception areas". However, this was the most practical locations based on the size, access, and visibility.

Laqua explained that the location has already been approved by the State. At this point, the Commission is just looking at mitigating factors similar to how the Commission reviews well pads.

A member of the audience asked if the SPU location was set prior to Pat selecting the location.

Commissioner Eynon explained that the "exception areas" were established with the original ordinance which was before anyone applied for an SPU.

A member of the audience asked if the church across the street was notified.

Laqua explained that the church was not notified because it did not fall within the 300' buffer around the property that notices are required to be sent to property owners. Laqua also explained that there may have been some confusion with the area that letters were to be sent out as members of the audience thought it was 1000' feet. Laqua explained that the 1000' refers to the distance requirement for how far a Compassion Center- Distributer needs to be from schools and churches. The State only requires 1000' from a school but the City has an

additional requirement of 1000' from churches and 300' from residences. This property is considered an "exception parcel" because it meets the 1000' State requirement from schools but does not meet the 1000' and 300' City requirement from churches and residences.

A member of the audience asked Pat Murphy if there is any chance that Harvest could change locations.

Pat Murphy explained that he is not sure if he can. Their application has been approved by the State for this specific location.

Samantha Brunick asked why residents were not made aware of the "exception areas".

Laqua explained that the ordinance that established the "exception areas" was advertised in the paper, on the website, and on Facebook as is our public hearing notice process for ordinances.

Samantha Brunick asked why this couldn't be located near anytime fitness and the Western Star.

Laqua explained that this area is not eligible due to the proximity of schools, residences, and churches.

Commissioner Eynon asked Laqua to explain the complaint process in the ordinance.

Laqua explained that the ordinance lays out the ability for the City to revoke, cancel, or suspend the ordinance for the following causes or reasons:

1. When the use on the property for which the SPU has been issued ceases;
2. When the holder of the SPU has been convicted of the violation of any provision of this section, or a felony under the laws of the United States, this state, or of any other state of the United States;
3. When the license or permit of the holder of the SPU has been terminated or revoked by the State of North Dakota;
4. When the holder of an SPU at the location approved is in violation of health, or sanitary regulations or other ordinances or policies of the City of Williston relating to the Section;
5. When the City receives 3 or more complaints from individuals representing separate household or businesses within a 45 day period;
6. When the holder of the SPU has made false statements in their applications, or has supplied false information or made false representations in the applications process;
7. When any odors, debris, dust, fluids or other substances exit a Special Permitted Facility;
8. When the license fails to properly dispose of all such materials, items and other substances in a safe, sanitary and secure manner and in accordance with all applicable federal, state and local laws and regulations.

Laqua explained that if we do receive a complaint, Code Enforcement or the Police Department would investigate the complaint. If it was a valid complaint, a review of the complaint would be held at the Planning & Zoning Commission and City Commission to determine an appropriate response. This could include revocation or suspension of the SPU. If a complaint was determined to not be valid, then the individual who submitted the complaint has the opportunity to appeal the decision and then the complaint would go through the Board of Adjustments.

Greg Delarum asked if the other business in the strip mall have been notified of the SPU and why the property needed to be accessible to law enforcement if it is going to be as secure as Harvest claims. Greg also asked if Harvest has entered into a lease with the strip mall owner.

Pat Murphy explained that the reason they want easy accesses for police is if the police are needed at the location. Also, they have already signed a lease for this location.

Laqua explained that only properties owners were notified and it would be the responsibility of the strip mall property owner to inform the other tenants.

Commissioner Eynon asked if Pat Murphy has spoken with other tenants.

Pat Murphy stated he did not speak with the other tenants.

Char Corny expressed concerns with people using the alley behind her house to try and illegally access the facility from the rear.

Pat Murphy explained that they will have cameras and other security systems in place to prevent any security breaches.

Vice-Chairman Hanson told Pat Murphy that he will need to put up a fence with lighting and cameras in the rear.

Commission Long asked if the fence extended beyond the length of the strip mall property.

A member of the audience stated that the fence only runs the length of the property line.

Commission Christensen stated that he didn't want a fence to block the City walk way that is on the west side of the property.

City Engineer Bob Hanson stated that he didn't know if there was a City right-of-way along the west side of the property. This will need be looked into.

Ryan Hass wanted to know how Harvest could have already signed a lease for the building before having an SPU.

Laqua explained that they can lease any property for anything they want. However, without the

SPU, they will not be able to operate the dispensary at this location.

Greg Delarum asked the Planning & Zoning Commission to table this item. He would like time to speak with other neighbors and surrounding properties. He would also like time to look for alternative locations that Harvest could use for their facility.

Laqua explained that the State has already approved this location. The Commission is just looking at the mitigating factors. The process has been closed by the State and Harvest wouldn't be able to go back through the process, to her knowledge. She stated that she would contact the Medical Marijuana Division to find out about the process for relocating the facility.

Commission Eynon explained that the Planning & Zoning Commission will be making a recommendation to the City Commission tonight. After this, the SPU will then be reviewed by the City Commission on December 27, 2018.

Vice-Chairman Hansen stated that she would like discussion between the board members and closed the public discussion.

MOTION BY BAUER, SECOND BY EYNON, to deny the application for a Compassion Center-Distributer at 120 26th St E, Suite 500.

Commissioner Long stated that she feels this is similar to a pharmacy. She recalls meetings at the college, held by the State, pushing the State to pass legislation to allow for their loved ones to receive this medicine. She stated that pharmacies have controlled substances too.

Commission Bauer stated that he did not want to be responsible for individuals driving under the influence of medical marijuana. He is concerned about protecting the children of Williston. He stated that if people need this medicine, they will go and get the medicine they need somewhere else.

Commissioner Gjovig stated that he is comfortable with this facility. He feels that the State and local focus groups have put a lot of time into creating the regulations for medical marijuana. He emphasized that everyone is concerned about the concerns the citizens brought forward tonight.

Commissioner Eynon stated that he did second the motion to deny to SPU so it could be discussed. He stated that he is comfortable with the fact that the ordinance can address problems with this facility including revocation of the SPU.

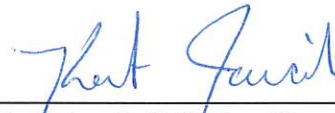
AYES: Bauer. **NAYS:** Eynon, Gjovig, Long, Hansen, Christensen
ABSENT/NOT VOTING: Aafedt. **ABSTAINED:** None.

MOTION BY CHRISTENSEN, SECOND BY GJOVIG, to approve the application for a Compassion Center- Distributer at 120 26th St E, Suite 500, contingent on completion and recordation requirements. **AYES:** Eynon, Gjovig, Long, Hansen, Christensen **NAYS:** Bauer **ABSENT/NOT VOTING:** Aafedt. **ABSTAINED:** None.

It was clarified that this motion does not include a requirement to fix the fence or install security or lighting.

DATE OF NEXT REGULAR MEETING: Monday, January 28th, 2018.

MEETING ADJOURNED.



Kent Jarcik, Williston Planning Director