

REGULAR MEETING OF THE PLANNING AND ZONING COMMISSION WAS HELD ON February 20, 2018, AT WILLISTON CITY HALL, 22 E. BROADWAY, WILLISTON, ND.

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

MEMBERS PRESENT: Eynon, Bauer, Long, Gjovig, Hansen, Aafedt (via phone)

MEMBERS ABSENT: Christensen

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

COMMUNICATIONS:

A. Approval of minutes of the January 16, 2018, Planning Commission Meeting.

Commissioner Long noted that her name was listed as having made a motion during the January 2018 meeting but she was not present at that meeting.

MOTION BY EYNON, SECOND BY GJOVIG, to approve the minutes as presented with the correction of the Commissioner name on the motion. CARRIED ON VOICE CALL

B. Introduction of Development Services Director, Mark Schneider.

PUBLIC HEARINGS:

Chairman Aafedt appearing by phone called the meeting to order and turned it over to Vice Chairman Hansen.

A. Ordinance 1075, an ordinance adding Section 20.E.5, Compassion Center – Distributer, Section 21.E.7 Compassion Center – Distributer, Section 21.1.E.8 Compassion Center – Distributer and Section 23.E.1 – Compassion Center – Grower to the Ordinance 613, otherwise known as the zoning ordinance of the City of Williston, adding Compassion Center – Distributer as a Special Permitted Use to Section 20 – C-2: General Commercial, Section 21 – C-3: Restricted Commercial, and Section 21.1, HCC – Highway Corridor Commercial District and adding Compassion Center – Grower as a Special Permitted Use to Section 21 – M-2: Heavy Industrial – Staff

Vice Chairman Hansen introduced this item (as above) and asked Laqua to present. Laqua explained that a committee to examine this issue was put together after the State released preliminary regulations. That committee consisted of Howard Klug, City Commissioner; Tate Cymbaluk, City Commissioner; Cyndy Aafedt, Planning and Zoning Commissioner; Donna

Hanson, Planning and Zoning Commissioner; Jon Maristuen, Planning and Zoning Commissioner (former); David Tuan, City Administrator; David Peterson, Police Department Chief; John Kautzman, City Auditor; Dave Bell, Public Works Director; Jordon Evert, Assistant City Attorney; Jason Catrambone, Williston Fire Chief; Kelly Aberle, Building Department; Rachel Laqua, Principal Planner, Williston Planning Department; and Kent Jarcik, Planning Director, Williston Planning Department. The committee was set up to review the State regulations, provide any comments necessary to the State, determine appropriate City regulations, and create any necessary ordinances.

Laqua said that this ordinance is the work of that committee, and:

1. Establishes Compassion Center – Distributer as an available Special Use Permit in C-2, C-3, and HCC.
2. Establishes Compassion Center – Grower as an available Special Use Permit in M-2.
3. Clarifies implementation intent, which clarifies that all Compassion Centers must follow all state regulations.
4. Clarifies that in this case, special use permit applications will follow standard review process by the Planning and Zoning Commission but will also require a review at the City Commission.
5. Clarifies that special use permits for a Compassion Center are only available in the stated zones, and are not intended to be applied for in any other zone.
6. Creates regulations for Compassion Centers, including:
 - a. Requiring that any approvals also be contingent on application approval by the State
 - b. Requiring that Compassion Centers meet the state-required distance of 1,000 feet from the property line of a pre-existing public or private school.
 - c. Additionally, requiring that Compassion Centers be located at least 1,000 feet from the property line of any church.
 - d. Additionally, requiring that Compassion Centers be located least 300 feet from a residential zone, nor with residential zoning on any side of the property.
 - e. Building in an exception area as noted on the attached Exhibit A.
 - f. Requiring that the applicant must provide a copy of their state application
 - g. Requiring a notarized statement from the applicant holding the City harmless against claims and litigations for issuing an SPU.
 - h. Requiring the applicant to submit a copy of their current permit to the City
 - i. Requiring that the applicant begin construction or opening process by submitting building permits, showing work has been done, or opening within 30 days of State approval.
 - j. Requiring that a Compassion Center must be operational within 18 months of State approval.
 - k. Declares that any issued SPU shall be considered invalid if items I or J above are not complete.
 - l. Requiring the Planning and Zoning Commission to record findings certifying compliance following the meeting at which a Compassion Center is considered.

Laqua explained that the State had drawn a circle of 50 miles around specific cities allowing operations within those circles. Williston is the center of one such circle.

Laqua went on to show the City's map pointing out the City limits and the ETJ and the schools that require 1000 ft. buffers (for Williston, schools will include all public schools as well as St. Joes and Trinity Christian) and churches. Further she explained the 300 ft. from residential

buffer and when finished the map had "greyed out" those areas that would not allow a dispensary so that the Commission could see what was left available for Compassion Centers. She pointed out an "exception area" map, which shows parcels that may meet State requirements but would not necessarily fit in the City regulations for the extra distances beyond state regulations. These areas would still be allowed to apply.

Commissioner Hansen opened the public hearing and asked for any comment from the public. After calling three times for public comment and hearing none; the public hearing was closed.

Commissioner Eynon asked Laqua about the proposed ordinance, section 23.E.1(c). Eynon was concerned about only having a 300 ft. buffer to residential areas because of the odor from a grow facility. Laqua stated that the committee decided on the 300 ft. because that is the distance that is normally used for an SPU buffer. As far as odor, the State should be in charge of code compliance with odor regulations. Laqua stated that should the Commission wish to change that, their recommendation could certainly be taken to the City Commission. Commissioner Long stated that she had recently driven by a grow facility in Arizona and could smell the marijuana, she believed that she was approximately 200 ft. from that facility.

Jarcik stated that the reason for placing the growers in M2-Heavy Industrial zone was that they tend to be more removed from residential areas and because that zone is where more "nuisance" related uses are located for issues like dust, noise, light and odor. Laqua said that the committee felt that to be sufficiently removed from residential areas. Commissioner Gjovig asked if there any businesses operating or conditions in the City now that have been required to have greater than a 300 ft. buffer for nuisance reasons; Laqua stated there was not.

Commissioners Eynon and Bauer discussed that if there is a 1000 ft. rule from schools and churches then why not from residential areas for growers in and M-2 zone. Commissioner Gjovig said that could make it more difficult to find an area that a grow facility could be. Laqua stated that that was one of the considerations that the committee discussed when it came to distribution, although there wasn't as much discussion about that issue for a grow facility because it came down to just the zoning but the 300 ft. from residential was because there was nowhere left in the City for a grow facility.

Commissioner Aafedt said she doesn't remember talking about odor being an issue in the committee meetings but now that this has been brought up she feels that may need to be discussed further as she is concerned. Aafedt used the stock yard as an example and how far through town that can be smelled. Laqua stated that there is a requirement in the state code that the HVAC systems in a grow facility be such that no odor escapes. Laqua again stated that M-2 is for the purposes of such issues. Commissioner Hansen added that the committee did discuss that Denver has places that you can't smell it all but if you're driving down the highway along an industrial area you may be able to smell it but it wasn't 300 ft. either. Hansen further reminded that the State is the one inspecting the HVAC systems for odor control and not the City.

Jarcik stated that after speaking with the City of Fort Collins they said that as long as the HVAC system is working properly they will handle the odor but it does take maintenance and some code enforcement to keep them up. Aafedt asked if the City Code Enforcement could enforce the odor issue if the State is in charge of the inspections. Attorney Evert stated he felt that the City could build that into the ordinance and into any approval process; Aafedt said she thought "we" should. Evert stated that the Commission could make the recommendation to incorporate that. Eynon stated, in agreement with Aafedt, that if there is an issue and someone from

Bismarck is the only regulating body then there could be no way of knowing how long it will take to get issues addressed and the City will have little power to do anything about it. Bauer suggested that along with allowing the City Code Enforcement to have enforcement power, extending the buffer distance to residential zones may be more self-regulating. Gjovig stated concern about regulating and restricting this business more than other "nuisance" business and cutting down the area they have to find a location. Commissioner Long states that she would be ok with the 300 ft. buffer as long as it was written into the ordinance that the City Code Enforcement has the ability to enforce the odor regulations. Commissioner Hansen added that if someone is able to set a grow facility they are not going to want to let that go so they will want to do anything they can to comply.

Commissioner Eynon stated he still felt there should be some additional buffer between a facility and residential areas. Attorney Evert and Laqua discussed that there wasn't enough time for a re-write of the proposed ordinance to come back to the Planning Commission before the State begins to issue permits for growers and distributors. Commissioner Aafedt suggested that whatever ideas and concerns that the Commission has tonight need to be forwarded to the City Commission with the proposed ordinance and let the City Commission make the decisions. Attorney Evert stated that the City Commission does have the final say regardless; they will make their recommendations at the first hearing, staff will make those changes and the City Commission will see it a second time for a final decision.

Commissioner Bauer said that if the people at the schools and the churches are important enough to have a 1000 ft. buffer then the people in their homes should be just as important. Commissioner Long asks if there is anything left if that buffer is instated; Laqua said that about half of what is available would be lost. Long stated, in agreement with Commissioner Gjovig, that making this buffer more than any other "nuisance" type of use is almost penalizing a grower for being a grower. Long said that she has heard from a lot of people about family members that truly need this option and that are already mad at the State for taking so long to get this out and now the Planning Commission is here trying to make it more difficult.

Commissioner Aafedt and Laqua discussed that the committee, in helping set this ordinance, asked for 1000 ft. buffer around Churches despite there being nothing in the State regulation about that. The State regulation did make it 1000 ft. around schools. Laqua also explained that the State regulations apply to both dispensaries and grow facilities. Aafedt stated that the context of that conversation in the committee pertained to the distribution centers near schools and churches; however she didn't feel that an argument for one (distribution) could be the right argument for the other (grow). In that she believed the 1000 ft. buffer around schools and churches to a distribution center was different than asking for 1000 ft. from a neighborhood to a grow facility; it is different activities going on. Aafedt said she is okay with the 300 ft. buffer at the grow facilities.

Commissioner Bauer asked how the two are separated in the proposed ordinance stating that he is only seeing Compassion Center. Laqua said they are separated by the zoning they would be allowed in; distribution centers are allowed in C-2, C-3, and Highway Corridor Commercial whereas grow facilities are only allowed in heavy industrial zones. She further added that there is one heavy industrial area that is affected by the mandatory school buffer and pointed out there are areas where the residences are already in existence near the industrial districts where there is no specific distance buffer.

Bill Glenn approached the Commission from the audience and commented that the Commission should focus enforcement on the design of the HVAC, the height of the smell as it exits the

factory as the higher it is the less it's going to affect the surrounding area. This does have an odor, especially at harvest time and when they are processing. Depending on the system 1000 feet is not good enough, 12 miles is not good enough. There are going to be times that there is no way to control the odor. To the extent that the City can control the ventilation system, the design of the set-up, the review of the installation process is where the City is going to have its best strength to be sure that this is not a nuisance.

MOTION BY EYNON, SECOND BY LONG to recommend approval of the ordinance as presented with the exception that the City Attorney add language to Section 23.E.1 that the building department have approval of the ventilation system plans for odor regulation and that approval must be granted before an SPU is issued. This should be added to the Ordinance before it is presented to the City Commission. ****DISCUSSION:** Laqua asked to clarify that the motion was to add that language before it is presented to City Commission, Eynon stated yes. Laqua asked Attorney Evert if that was okay and he agreed. Commissioner Aafedt interjected that the motion failed to include the allowance of City of Williston Enforcement to have enforcement authority of any odor issues. **EYNON asked that language be added and amended to his motion, LONG agreed and seconded.**

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

B. Highway 1804 re-zone to HCC: Highway Corridor Commercial from University Ave. to W. Dakota Parkway on both sides of the highway and from W. Dakota Parkway to Bean Drive on the north side of the highway – Staff

Vice Chairman Hansen introduced this item (as above) and asked Miller to present. Miller stated the area along East Broadway and Highway 1804 has experienced an increase in commercial uses as industrial uses have migrated out of the area. Industrial uses are no longer finding these small lots suitable for their operation and seek out larger lots. On the other hand, due to location and lot size, commercial businesses have begun to occupy this area. It has been observed that uses not permitted under the M-1: Light Industrial and M-3: Industrial Park, or would require a Special Permitted Use (SPU), have moved into the area. The City does not have a change of use permit and unless these new uses submit a building permit, there is no way to track how properties are changing uses. This is why the City is proposing to rezone this area from M-1: Light Industrial and M-3: Industrial Park to HCC: Highway Corridor Commercial. This zoning designation allows for a combination of compatible Light Industrial and Commercial uses and provides properties with more flexibility. The rezoning of these properties would bring the non-conforming uses into compliance, while still allowing for the current uses of the other properties to operate as is.

Miller explained that all current properties with existing development would not be required to meet standards as specified in the Ordinance 1060 (HCC Zoning District) unless: 1) the floor area of any building is increased by 1,000 sq. ft. or 10 percent of the existing building footprint, whichever is greater; or two or more expansions of square footage on the site that, in total, exceed 1,000 sq. ft. or 10 percent of the existing building footprint area; 2) the addition of 6 or more parking spaces. All properties that are vacant in the proposed rezone area would be required to meet development standards at time of development.

The rezoning of this area was first reviewed by an Ad Hoc Committee on January 2nd, 2018. There was a discussion about why the properties along E Broadway/Highway 1804 east of E Dakota Parkway were also not included in the proposed rezone. Miller stated that it was decided by the committee to expand the rezone area to include the properties north of E Broadway/Highway 1804 from E Dakota Parkway to the Little Muddy River.

Miller said that after including the properties east of E Dakota Parkway and north of E Broadway/Highway 1804, the proposal to rezone E Broadway/Highway 1804 was reviewed by another Ad Hoc Committee on February 2nd, 2018. There were no additional comments or requests from this committee. The recommendation was to move forward with the proposed rezoning of the outlined properties along E Broadway and Highway 1804 from M-3: Industrial Park and M-1: Light Industrial to HCC: Highway Corridor Commercial.

An ad hoc meeting was held on January 2nd, 2018, and again on February 5th, 2018.

Miller spoke to a few specific properties:

1. Great Plains Gas & Compression:

- Legal- Lots 1, 2, 3, & 4, Block 3 of the Wegley Addition
- Reason- Outdoor storage of flammable liquids (motor oil) in drums. This use did not require an SPU in M-1: Light Industrial, but will require one in HCC: Highway Corridor Commercial.

** Planning & Zoning staff recommends tabling the rezone of Lots 1, 2, 3, & 4, Block 3 of the Wegley Addition, from M-1: Light Industrial to HCC: Highway Corridor Commercial, so that the proper steps can be taken to issue an SPU at the time the property is rezoned.*

2. Outdoor Storage of RVs:

- Legal- Lots 27-30, Block 1 of the Ruetten Addition
- Reason- If the storage of the RVs is a commercial operation; this would require a special use permit under the HCC: Highway Corridor Commercial zoning designation.

**Planning & Zoning has sent a letter to the property owner and has yet to confirm if the use is commercial or not. Planning & Zoning staff recommends tabling the rezone of Lots 27-30, Block 1 of the Wegley Addition, from M-1: Light Industrial to HCC: Highway Corridor Commercial, to determine the use on the property.*

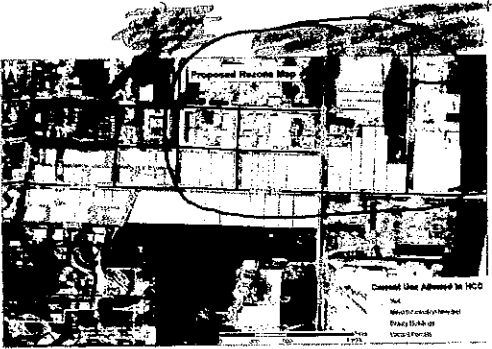
3. Junk/Rubbish

- Legal- Lots 33 & 34, Block 1 of the Ruetten Addition

**This property has a Code Enforcement case open on it because of the junk/rubbish on the property. The use otherwise is considered allowable in HCC: Highway Corridor Commercial.*

On January 12th, 2018, Planning & Zoning staff sent out letters to all the property owners in the proposed rezone area. The letters explained why the city was proposing to rezone the area, how their properties would be affected, and asked for any comments/concerns with the proposed rezone. On February 9th, 2018, Planning & Zoning staff sent public hearing notices to each property owner and the property owners within 300 feet of the rezone area.

Four public comments were received in response to these mailings; Miller explained the comments and staff follow-up:

<p>Dean Aafedt 701.572.7231 719 E Broadway</p>	<p>Received a phone call from Dean Aafedt on 1/16/2018. He received a vacant building rezone letter that was sent out on January 12th, 2018. He had informed me that the building is actually not vacant and is used as Kasmer and Aafedt Oil's office. This use is permitted in the HCC zoning.</p>
<p>Owen Smith 701.570.1433 515 2nd Street E</p>	<p>Received a phone call from Owen Smith on 1/30/2018. He received a vacant building rezone letter that was sent out on January 12th, 2018. He informed me that the building is actually not vacant and is used as Basin Bit Incorporated. This use is permitted in the HCC zoning.</p>
<p>Harold Christopherson 701.572.1905 312 6th Ave E</p>	<p>Received an enveloped that contained the map each property owner was sent for the proposed rezone of the area. See below for the map. Tried to make contact with Harold Christopherson on 2/7/2018 and left a message trying to get more information on what these concerns are.</p> 
<p>Ann Holmen 701.572.4069 617 Broadway</p>	<p>Ann Holmen had called the Mayor to ask questions about the proposed rezone. Planning & Zoning had made contact with Ann Holmen on 2/6/2018 to address any concerns she had. Ann Holmen explained to Planning & Zoning that she had originally misunderstood the letter she received and had no objection or concerns with the proposed rezone. She had originally thought that the area was going to be rezoned to include more heavy industrial uses.</p>

Miller concluded his presentation. Commissioner Hansen opened the public hearing and asked for any comment.

Commissioner Gjovig stated that his employer and company he has a financial interest in, Go Wireline, is located in this area. In regard to outdoor storage of flammable liquid, he asked if that would include propane. Laqua said that is one of the things that staff is working with the fire department on to determine where there limits are for flammable liquids because the ordinance

does say, "subject to locally adopted fire codes" and in the past there has been some variation on what is and what is not included.

Dennis Schow approached the Commission and asked what this zone change was going to do the property taxes in the area now. Laqua stated that during past conversations with the County Assessor's office when zone changes were to occur, the County has stated that they base taxes on the use of the property not the zoning; if the use doesn't change then the taxes should not either. Laqua said that she had just spoken to a citizen who was concerned that her property taxes had gone up because of a zone change and the County Assessor assured her that was not the case, the zone change had nothing to do with the increased taxes. No guarantee of this but it should not affect taxes. Schow asked if outdoor storage will still be allowed as it is now and Laqua stated it would be. Schow then asked if it was going to change requirements for fire suppression systems and the like. Laqua said that if "you" do any improvements to the building you would need to come up to code but if you make no changes there is nothing that would need to be done. Commissioner Bauer added that had nothing to do with the zone change, it is simply the part of the building code and ordinance.

With no other comment Commissioner Hansen closed the public hearing and asked for the wishes of the Commission.

MOTION BY BAUER, SECOND BY EYNON to recommend approval of the rezoning of the outlined properties along East Broadway and Highway 1804 from M-3: Industrial Park and M-1: Light Industrial to HCC: Highway Corridor Commercial to include staff recommendation regarding tabled properties. **AYES:** Eynon, Bauer, Long, Aafedt, Hansen. **NAYS:** None **ABSENT/NOT VOTING:** Christensen **ABSTAINED:** Gjovig.

UNFINISHED BUSINESS:

A. NONE

NEW BUSINESS:

A. Final plat to be known as the HBM Subdivision located the SE1/4SE1/4SE1/4, Sec. 24, T155N, R101W and zone change for Lot 1 from Agriculture to M-2:Heavy Industrial – HBM Development LLC/AE2S

Vice Chairman Hansen introduced this item of New Business (as above) and asked Laqua to present. Laqua said this item is a final plat for the HBM Subdivision, a 10 acre parcel in the SESESE of Section 24, T155N R101W. This property is located next to Brady Trucking, at the corner of 84th St and 135th Ave NW.

This subdivision includes the City lot on the north side of the lot (Lot 2), also to be rezoned to M-2: Heavy Industrial, and required the dedication of road rights of ways on the east and south sides, as is standard for all section line easements.

Miller said the property has a large drainage running through it. This has been marked on the plat. This has been updated to include flood elevations and includes language requiring it be used only for conveying existing drainage and maintenance of the drainage. This should be sufficient to meet the "no build easement" required during the preliminary plat process.

The plat has one minor redline which will need to be corrected. The recorder's office will not be able to record the plat until the taxes which are due on Parcel 01-797-55-01-24-020 are paid. This parcel is the City's property. Laqua stated that after talking to the Assessor's office this appears to be a mistake. The Recorder's Office has said they will record the plat and allow the tax issue to be sorted out in its own time.

The zone change approved with the preliminary plat is contingent on the final plat being approved.

MOTION BY LONG, SECOND BY GJOVIG to recommend approval of the final plat of HBM Subdivision located in the SESESE of Section 24, T155N R101W, as presented, contingent on completion and recordation requirements. **AYES:** Eynon, Bauer, Long, Gjovig, Aafedt, Hansen. **NAYS:** None **ABSENT/NOT VOTING:** Christensen **ABSTAINED:** None.

COMMITTEE REPORT:

In January, 2018, Commissioner Eynon stated that the nominating committee for Commission seat placement for the 2018 calendar year had not yet met and asked that this be tabled until February 2018.

Commissioner Eynon stated that since that time the nominating committee consisting of himself and Commissioner Long had met and made the following nominations:

Chairman, Commissioner Aafedt
Vice-Chairman, Commissioner Hansen
2nd Vice-Chairman, Commissioner Bauer

MOTION BY EYNON, SECOND BY BAUER to accept the recommendations of the nominating committee. **AYES:** Eynon, Bauer, Long, Gjovig, Aafedt, Hansen. **NAYS:** None **ABSENT/NOT VOTING:** Christensen **ABSTAINED:** None.

DATE OF NEXT REGULAR MEETING: Monday, March 19, 2018.

MEETING ADJOURNED.



Kent Jarcik, Williston Planning Director