

REGULAR MEETING OF THE PLANNING AND ZONING COMMISSION WAS HELD ON May 15, 2017 AT WILLISTON CITY HALL, 22 E. BROADWAY, WILLISTON, ND

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

MEMBERS PRESENT: Eynon, Hansen, Bauer, Christensen, Aafedt

MEMBERS ABSENT: Long, Maristuen

OTHERS PRESENT: Kent Jarcik, Planning Director; Rachel Laqua, Principal Planner; Josephine Ching, Staff Planner; Bob Hanson; Jordon Evert, Assistant City Attorney.

PUBLIC HEARINGS:

A. Rezone of west corridor properties to HCC: Highway Corridor Commercial - Staff

Chairman Aafedt introduced the first public hearing item (as above) and asked Jarcik to present. Jarcik reminded the Commission that in May of 2015, the City extended its one-mile Extra-Territorial Jurisdiction (ETJ). After extending the one-mile ETJ the City initiated a process to rezone the properties to zoning designations under the City of Williston's Zoning Ordinance 613. This corridor comprises the last remaining properties to be rezoned to complete the zoning designation process under the City Zoning Ordinance. When evaluating the zoning needed to accommodate the existing businesses the corridor was looked at as a whole including a portion of the north side of Highway 2 currently within the City annexed area. Jarcik pointed out the areas in question on the map and explained that currently there is a mix of uses from County Commercial to County Industrial and included are some residences. He stated that in evaluating the uses along the corridor and the goals of the comprehensive plan it was determined that a specialty zoning district would best address the corridor.

Jarcik explained the intent of the HCC: Highway Corridor Commercial zone. Prior to the growth beginning in the mid 2000's and before the City urban area expanded along the corridor the nature of development was more industrial oriented. The intent of this district is a specific purpose zoning district that will allow for a mix of commercial to light industrial uses and development standards to work with the existing pattern of development that has occurred along the principal arterial highway corridor. Further it is intended to achieve the goals of the comprehensive plan of developing an urban entryway. These goals include: 1) identify physical features that improve the appearance of existing development at the gateways to the City, and work with property owners to implement these features; 2) establish zoning which requires higher industrial development standards to ensure that future development and redevelopment contributes to a positive image of the community. The goals serve to meet the input of the community to transition the corridor into more of an urban corridor entryway.

Jarcik explained that the zoning of this corridor to HCC: Highway Corridor Commercial would not create any non-conforming uses. The legal existing uses/businesses within the zone would remain permitted uses and not be considered non-conforming uses. No non-conforming businesses will be created with this rezone. There will be no change for legal status or daily operations of legal existing permitted businesses. Development standards would only apply for new building permits and new developments, as occurs in other parts of the City in other zoning districts. The existing legal residences will be issued Special Permitted Uses to maintain their status as legal permitted uses in HCC zoning district. A couple of properties on the north side

of Highway 2 will go from a current non-conforming status to a permitted status with the approval of the HCC zoning designation.

Specific properties:

Qualey Property: This parcel is adjacent to the west of the livestock sales lot (parcel ID# 45-154-01-00-28-100). This lot is currently being leased by Pacific Steel. Pacific Steel also owns a parcel to the southwest zoned M-2: Heavy Industrial, which has access through this parcel. Based on the topography, adjacent industrial zoning to the southwest and east the proposed zoning is to be M-1: Light Industrial. This parcel is currently vacant/undeveloped, additional communications are needed with the property owners and current lease holder to understand the intended use of the property. This item needs to be tabled for the further communications and to advertise the zoning for this specific parcel.

West Acres Rental LLC: This parcel is one of four parcels owned by West Acres Rental LLC and is located west of Crane Electronics and east of the older Schlumberger property on the south side of the Highway (parcel ID# 45-154-01-00-29-110). This lot is currently being leased by Creedence Energy Services. Additional communications are needed with the property owner and current lease holder of the property to understand the existing use of the property and if an SPU is needed for the existing use. This item needs to be tabled for the further communications.

Novak Property: This parcel is the last parcel on the west end of the proposed rezone area, just west of Tractor and Equipment (Parcel ID#45 154-01-00-30-110). The uses on the property are described as:

1. The Saddlery/farm store: This would be a Special Permitted Use in the Agriculture zone. As this was a legal existing use in the County we will recommend issuing a Special Permitted Use with this rezone process.
2. Residence: There is an existing residence on the property. A single family residence is a permitted use in the Agriculture zone.
3. Horse Barn: There is a metal building under construction. Richard Kimball of the City Building Department at time of inspection of the property was given a building permit issued by Williams County which authorized a horse barn for personal use only per filed affidavit as identified on the building permit. The County building permit was issued in May of 2015 prior to the extension of the City ETJ (see the County building permit application, issued County building permit, and filed affidavit attached).

At the March 20th, 2017 Planning and Zoning Commission meeting the property owner requested this parcel be rezoned to Agriculture. The uses on this property would be more consistent with the Agriculture zoning district and would be considered permitted uses in the Agriculture zone under the City of Williston Zoning Ordinance as described above. Staff would recommend rezoning the property to Agriculture, and would recommend issuing a Special Permitted Use for the Saddlery/farm store.

Special Use Permit (SPU):

The City proposes to grant the properties a Special Permitted Use (SPU) where the current use on the property is a legal permitted use, but does not conform to the proposed zone or may be more consistent in that zone as an SPU. By granting the properties an SPU, it will allow the owner to continue their operations until the use ends.

Property Legal Description	Special Use Permit
Sec30T154R101 Tract in Lot 5 Parcel ID#45-154-01-00-30-110	Saddlery/Farm Store (Novak Property)

Special Use Permit (SPU) for Legal Existing Residences:

The City proposes to grant the properties a Special Permitted Use (SPU) where the current uses on those properties do not conform to the proposed zone. By granting the properties an SPU, it will allow the owner to continue their operations until the use ends. Any new uses must conform to the HCC zoning district. Any new uses however must comply with the HCC zoning district.

Property Legal Description	Special Use Permit
Section 30 Sublot 9 in L 1&5 Parcel ID#45154010030087	Residence in the HCC
Section 30 Sublot 7 in L 1&5 Parcel ID#45154010030085	Residence in the HCC
Section30 Tract in outlot 2 in N2NE Parcel ID#45154010030230	Residence in the HCC
Section 29 N 250.05 ft. of 100 x 500.1 tract in NENW Parcel ID#45154010029190	Residence in the HCC
Section 28, 1.15 acre plot in NWNE Parcel ID#45154010028110	Residence in the HCC

Jarcik explained that the fourth item above was inadvertently identified and advertised incorrectly. This was to indicate property belonging to Mr. Wastvedt and instead indicates property owned by Billy Lynn. Because of this he stated that this property will need to be tabled so that the correct Parcel ID can be advertised and SPU notices sent to the correct surrounding neighbors.

Jarcik concluded his presentation. Aafedt asked for any questions from the Commission. Commissioner Bauer questioned the statement, "any new uses must comply with the HCC zoning district" and would that mean that the home owners receiving special permitted uses would not be able to add on to their homes? Jarcik stated that these SPU's are intended to make those uses legal, conforming uses meaning that they can add on, if the residence burns down it can be built back etc.

Aafedt opened the public hearing and asked for any comment from the public. Bob Horab addressed the Commission and stated he had a few questions beginning with page one of the Ordinance, second paragraph under 21.1(A) stating "do not generate large volumes of heavy truck traffic, do not emit significant amounts of noise, smoke, dust, odors or glare" and asked who would clarify what truck volume is. Jarcik said that is the intent statement from the M-1: Light Industrial zoning district and said that there wouldn't be a truck traffic generator, rather would be limited by use. More of the truck traffic generating uses would go towards the truck reliever route west of town and those types of uses would be a different type of use in this zone as you would have in the M-1: Light Industrial uses. This Ordinance does clarify, on page 3, industrial Uses: 3. "Contractor or commercial service businesses, offices, and associated storage repair yards." Jarcik said this is something that has not been clearly defined in our current industrial ordinances that is clarified here to clear up that it does not just include building trade contractors but oilfield service contractors would be included into that category. Number 9, "Building material yards and lumber yards." He explained that his is geared to large

wholesale pipe yards such as Spec Tech and would not include wholesale oilfield pipe yards; storage/stacking laydown yards for oilfield equipment/tanks as a primary use. And number 11. "Heavy commercial truck shops." would not include truck tops or freight terminals. He concluded by saying this is really by use, but there isn't a traffic volume generator threshold.

Horab stated it his belief that where his "Cactus" property was rezoned to C-2; Jarcik asked if he was talking about the property right across from Conoco and Horab said yes. Jarcik explained that is zoned M-1: Light Industrial and is already in the City and is not part of this re-zoning. Horab said he understood that but was concerned that if this corridor is expanded that would include that property and what impact would an expanded corridor have on existing properties. Jarcik said that this re-zone is to complete a re-zone of the expanded ETJ and would have no impact on previously zoned properties. The Comprehensive Land Use Plan does show that area to be a good area to be C-2: General Commercial but right now this property, and some surrounding, are Light Industrial and they will stay Light Industrial unless a property owner wants to re-zone to C-2.

Horab then directed attention to page 2, number 3. "Antique shops and stores, providing all merchandise is displayed and sold inside the building....", and page 4, number 6. "Outdoor RV/boat storage (with requirements for fencing and screening)", why could you not use screening and allow an antique store that might have antique cars or something larger to be stored and displayed outdoors? Jarcik said that wording on page 2, number 3 is basically taking existing wording from the Commercial zoning district and moving it into the Light Industrial district and is intended to state the types of uses that would be outright permitted uses in the zone. As to page 4, number 6 Jarcik said that outdoor RV/boat storage doesn't exist anywhere else in the code so this was added to allow that with a special permitted use. Horab pointed out that in other areas similar outdoor storage would be allowed without screening (pawn shop) and said that maybe this needs to be looked at a little more. Jarcik agreed there may be some discrepancy and made note to look at that.

Commissioner Aafedt stated that Ordinance 1060 has already been passed and changes cannot be made at this meeting; the hearing at hand is the re-zone only. Horab said that he feels the Ordinance and rezone at this point do go hand in hand because once the rezone is done then the properties are subject to Ordinance that may need revisions. Aafedt agreed that in that light his concerns may be valid. Horab continued on to question sign limitations, specifically billboards. He stated he is aware that there was some question about billboards only being allowed in the heavy industrial zone but that there are billboards all up and down this corridor. Laqua said that the existing bill boards will be allowed to remain as is but the ordinance re: signs does only allow new billboards in the heavy industrial zone and added that has been the ordinance for a couple of years already. Horab next questioned Design Criteria: Building Placement: "should maximize the amounts of parking and storage located to the side or rear of the building" and asked what the City would do in the event of a car dealership or implement dealer that want their cars or equipment out in front of the building. Jarcik said that this is a flexible district and intended to work with development to have buildings on the lot frontage and storage to the rear or to the side and screened but would not interfere with dealership uses given as example by Horab. Any new dealerships would go through a site plan review process that allows flexibility in these instances and would not necessarily. Laqua added that with a dealership, the sales lot would not be considered in overall parking as the vehicles or equipment is what the business is selling, not just parking there. Jarcik stated that there were discussions had during this process to take those kinds of uses into consideration. Finally Horab asked about Alternative surfacing plans, page 6. As far as dust-free and mud-free surfaces he was looking for clarification of some of those items stating for instance the

Case IH dealership would be pretty hard not to have dust without hard surfacing. Jarcik stated that the City was having issues all over town and significant, nuisance level wind events. This idea was, understanding that some of these surface types still have dust associated with those, it is significantly less dust than a lot that has just been scraped down to level and is just bare soil. Understanding that some of those lots are very large and hard surfacing them would be prohibitive, the City tried to come up with some alternatives that would help keep that nuisance dust and mudding issues down. Aafedt asked if properties would be required to make these improvements. Jarcik stated these would come into play with a new development or with a building permit that triggers a threshold but will not impact anything that exists now until one of those triggering events comes into play.

Commissioner Eynon told Horab that the Case IH property was specifically discussed in creating this portion of the ordinance stating that no one wanted to require them to pave the entire eleven acres and have them put a grain auger or other equipment that won't be moved very often just to sit there so consideration was allowed for grass display areas and flexibility to allow the zoning commission to make those allowances. Even if there was an addition or expansion of the Case IH that would trigger these requirements, would they have to do the paving or would they have another option. Jarcik said staff would need to look at and evaluate parcels with the City Engineer and handle them the best way when site plans/building permits are applied for.

Aafedt asked if there any other public comments. Craig McIvor stated he has had several phone calls wondering if they purchase a building in this zone, would they be under the new rules or the old rules. Commissioner Bauer stated that if they purchase and make no major changes then nothing changes from what is now; but if they expand or add on enough that would trigger the thresholds and then they would be subject to this ordinance just as anyone else. Jarcik stated that this is really just about having some flexibility in surfacing based on the varied lot sizes and uses.

After further interaction between Commissioners and Craig McIvor on this subject, City Attorney Evert interrupted. He explained that the specific zoning is HCC: Highway Corridor Commercial with took a commercial zoning district and an M-1: Light Industrial zoning district and combined them with some tweaks. He said to McIvor that those properties would be subject to the HCC zoning but that rather than hurt the property owners it should help them because they have the option of both commercial and light industrial uses. The only time site re-development conditions are triggered then the developer might have to come into compliance with certain other things. What this re-zone is not doing its not creating any non-conforming uses meaning once you're re-zoned you get to operate as is and will not be putting anyone in a position where at some future date you have to change uses to come into compliance with the zone. Jarcik stated that as an example if the building where Home Depot operated out of was sold a person could buy that and open up any number of businesses in there as long as it fits within the HCC zone: i.e. a paint shop, electronic store...any of these permitted uses; it is only impacted by changing the size or adding a new building.

Aafedt made a final call for public input; hearing none she closed the public hearing and asked for the wishes of the Commission. She reminded the Commission that the re-zone of the Bill and Karen Novak property will be a separate discussion.

MOTION BY CHRISTENSEN, SECOND BY HANSEN to recommend to the City Commission approval of the rezone of the proposed properties to HCC: Highway Corridor Commercial as

described on the attached zoning map. AYES: Hansen, Eynon, Bauer, Christensen, Aafedt, Maristuen. NAYS: None. ABSENT/NOT VOTING: Long. ABSTAINED: None.

MOTION BY BAUER, SECOND BY CHRISTENSEN to recommend to the City Commission approval of the rezone of the proposed properties to HCC: Highway Corridor Commercial with proposed Special Permitted Uses as described on the attached zoning map. Including legal description corrections needed for the Wastvedt property. AYES: Hansen, Eynon, Bauer, Christensen, Aafedt, Maristuen. NAYS: None. ABSENT/NOT VOTING: Long. ABSTAINED: None.

MOTION BY CHRISTENSEN, SECOND BY HANSEN to table the Qualey property and West Acres Rental property items as described in the fact sheet for additional information and public notification. AYES: Hansen, Eynon, Bauer, Christensen, Aafedt, Maristuen. NAYS: None. ABSENT/NOT VOTING: Long. ABSTAINED: None.

MOTION BY CHRISTENSEN, SECOND BY HANSEN to table the Wastvedt residential SPU for public notification and correction of the legal address. AYES: Hansen, Eynon, Bauer, Christensen, Aafedt, Maristuen. NAYS: None. ABSENT/NOT VOTING: Long. ABSTAINED: None.

**B. Rezone of Bill and Karen Novak property, a tract in Lot 5, Sec. 30, T154N,
R101W, within the City's extra-territorial jurisdiction (ETJ) – Staff**

This item was presented with presentation of Item A above. Jarcik again pointed out the location of the Novak property, reminded the Commission that the proposed zoning is Agricultural and would contain a saddlery shop to be covered by an SPU. It would have a residence and a horse barn which are allowed uses in the Agricultural zone.

Aafedt opened the public hearing and after making three calls for public comment, hearing none, 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 the re-zone of this property to Agriculture with a Special Permitted Use for the Saddlery/Farm store for the Novak property as described on the attached map. AYES: Hansen, Eynon, Bauer, Christensen, Aafedt. NAYS: None. ABSENT/NOT VOTING: Long, Maristuen. ABSTAINED: None.

COMMITTEE REPORT:

A. NONE

UNFINISHED BUSINESS:

A. NONE

NEW BUSINESS:

C. Special Permitted Use request to expand an existing oil well pad in Sec. 23, T154N, R101W, City of Williston – Oasis Petroleum

Aafedt introduced New Business Item 8B (as above) and asked Laqua to present. Laqua stated that this application is for an expansion of a well site on about .5 acres to the east of the current Harrier- Osprey site for storage.

Laqua stated that the well pad was originally applied for in June of 2014, and received a special use permit for the original site and four wells. The requirements of the SPU included a berm and double row of trees, in addition to maintenance of the required separation distance from the houses to the west of the well site. The double row of trees has not been planted due to the long term interest of the site to expand to the west.

The special use permit granted previously addressed the compatibility of this use with the zone and area. In this case, there is no expansion of intensity from what was previously permitted, and the additional space should not cause an incompatibility.

Laqua explained that 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. *Access to the property for the first two years will be from the east via 12th Ave. East and along an access easement to Riverside Drive. This route will not take vehicles past any residences.*
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. *No additional parking spaces are required for this SPU.*
3. Refuse and service areas, with particular reference to the items in "1" and "2" above. *No additional refuse containers will be required.*
4. Utilities, with reference to locations, availability, and compatibility. *There are no habitable structures on this site requiring water and sewer.*
5. Screening and buffering with reference to type, dimensions, and character. *The site plan depicts a three-foot high berm all around the site, plus a double tree row on the west side of site to screen the site in relation to residences to the west.*
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. *No additional signs are proposed.*
7. Required yards and other open spaces. *Acceptable. No additional space for yards or open space is required.*

8. General compatibility with adjacent properties and other property in the district. *Adjacent land uses to the east and north are industrial. The river is to the south; the applicant has stated the site is required to have berm around it to help isolate it from the river. Adjacent properties to the west are residential; the nearest residence is approximately 800 feet away from a well, which exceeds the required 500-foot separation distance.*

9. Use shall not impose a hazard to health or safety. *All drilling operations must meet North Dakota state safety requirements.*

This is an existing use that has been found to be compatible with the long term growth of the City.

Williston Township has reviewed this plat and the Planning and Zoning Commission's representative from Williston Township was present at the ad hoc meeting and recommended approval.

At the ad hoc held on May 1, 2017, discussion included future Oasis plans for expansion to the West, the fact that truck traffic would not increase with this expansion, and a discussion that a rig to drill the fourth previously permitted well would be on the existing pad site in the near future, but the expansion would not be utilized for storage until an SPU had been granted.

COMPLETION/RECORDATION REQUIREMENTS

1. Recordation of Findings

Laqua said that the ad hoc recommendation was to approve the SPU and concluded her presentation before asking City Attorney Evert to address a legal question regarding oil well sites.

Evert said he wanted to give a brief overview of the SPU process as it relates to oil well pads in conjunction with State statute. He said he was aware of some questions when it comes to the City's involvement of the approval process and stated that truly the City is not involved in the approval process. The SPU that the City approves is primarily related aesthetics, ingress, egress and safety concerns. The North Dakota Industrial Commission has been granted the sole authority to approve or deny oil and gas applications. The City has never denied that; we acknowledge that. What our review process is as it relates to a special use permit for oil and gas well pads, well pad expansions or additions to oil and gas well pads in the City of Williston really pertain to those additional concerns of the City to ensure that when they go up they are aesthetically pleasing as possible, that safety concerns are taken care whether that be making sure that the well pad has the necessary piping to it for fresh water, salt water, oil and gas. If there are flares is there a way to minimize those flares through the use of flare shields and the big one is ingress and egress. Developing a plan with the producer to be sure that there is proper, safe access and to minimize the effect on any roads whether that be watching the spring frost issues or other concerns. Evert stated that is really what the municipalities looks at in this process; it is not to say yes you can or no you can't have this but to develop a plan with the operator that makes sense for them and the City as well.

Commissioner Eynon asked, as part of this oil well permit process that is submitted to the Industrial Commission, if push came to shove on an access road and the site plan they filed with the Industrial Commission showed them coming in on the north and the City felt, as part of the

SPU, that it was better for them to access the site from the east or some other direction; would our decision have any weight?

Evert said that if the Industrial Commission wouldn't take the City's recommendation and it really became a contentious subject then we would probably end up in litigation. At the end of the day the Industrial Commission is the granting power. In the last 3 or 4 years the Industrial Commission has granted conditional permits stating they will grant a permit for an oil and gas well pad in the (municipality) however please obtain local approval. If it really came down to the use of an access road; if it is a private access road then the City wouldn't have much argument but if they were going to be using a City maintained road then it would be a different story. He said that we would not necessarily be able to tell them no but there could be possible litigation over damages. This is a give and take mentality but he stated luckily the producers in and around the City have been very good at working with us to create the best possible situation for all.

Aafedt asked if there were any questions from the Commission or if there was a motion.

MOTION BY BAUER, SECOND BY HANSEN to approve the Special Permitted Use request for the expansion of a well pad on Lot 1, except the north 85 ft., Block 4, Glacier Park First Addition, City of Williston, contingent on the recordation of the suggested findings. **AYES:** Hansen, Bauer, Eynon, Christensen, Aafedt. **NAYS:** None **ABSENT/NOT VOTING:** Long, Maristuen. **ABSTAINED:** None.

DATE OF SPECIAL MEETING: May 30, 2017

DATE OF NEXT REGULAR MEETING: June 19, 2017

MEETING ADJOURNED.

A handwritten signature in black ink, appearing to read "Kent Jarcik", is written over a horizontal line.

Kent Jarcik, Williston Planning Director

**APPENDIX
TO THE MAY 15, 2017 PLANNING AND ZONING
COMMISSION MEETING**

1. Special Permitted Use request to expand on Lot 1, except the north 85 ft., Block 4,
Glacier Park First Addition, Sec. 23, T154N, R101W, City of Williston – Oasis
Petroleum