

REGULAR MEETING OF THE PLANNING AND ZONING COMMISSION WAS HELD ON SEPTEMBER 18, 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, Long, Christensen, Aafedt

MEMBERS ABSENT: Bauer, Maristuen.

OTHERS PRESENT: Kent Jarcik, Planning Director; Rachel Laqua, Principal Planner; Jeremy Miller, Staff Planner; Jordon Evert, Assist. City Attorney.

PUBLIC HEARINGS:

- A. Short plat application for proposed Charles Joseph Subdivision on 0.52 acres of currently unplatted land in the NE1/4 NE T154, R101W – City of Williston/Bob Hanson, City Engineer

Commissioner Aafedt introduced public hearing item A (as above) and asked Miller to present. Miller explained that this application is to create three separate lots from a tract of land in the NE1/4 of the NE1/4 of Section 2, T154N, R101W to become the Charles Joseph Subdivision. Lot 1 will be transferred to Lot 2R, a Re-arrangement of Lots 1 & 2 of the H & H Subdivision, and Lot 2 will be transferred to Lot 3 of the H & H Subdivision. This project is between the City of Williston, NDDOT, and the property owners, in order to create a frontage road bulb out. Lot 3 will be retained by the City of Williston and transferred to the NDDOT for the right-of-way to complete the bulb out.

The property was originally subdivided within the city. The lots have access to city water and sewer services and the creation of the new lots will not affect those services.

The September 5, 2017, ad hoc committee recommended approval of this short plat.

City Engineer Hanson explained that this is a requirement in the right of way acquisition efforts. This is basically is to make Second Chance Properties to the north and the State property to the south, whole by transferring these pieces to the adjoining properties.

Aafedt called three times for public input; hearing none she closed the public hearing and asked for the wishes of the Commission.

MOTION BY CHRISTENSEN, SECOND BY HANSEN to recommend approval of the short plat for the creation of 3 lots from a tract of land located in the NE1/4 of the NE1/4 of Section 2, T154N, R101W, as presented, contingent on the completion of the recordation requirements.

AYES: Christensen, Eynon, Long, Hansen, Aafedt.

NAYS: None

ABSENT/NOT VOTING: Maristuen, Bauer.

ABSTAINED: None.

B. Short plat application for proposed Roseland Subdivision 4th Addition, a rearrangement of Lot 1, Block 1, Roseland Subdivision 3rd Addition – Hi Line Owner’s Group/Ulteig Engineers

Commissioner Aafedt introduced public hearing item B (as above) and asked Miller to present Miller said that this application is to consider a lot split into two lots from Lot 1, Block 1 of the Roseland Subdivision 3rd Addition, for financing purposes. For lots in R-3 zones, there are various lot requirements laid out in the Zoning Ordinance. The proposed Lot 2 meets all these requirements and they are as follows: The lot size requirement is 7,200 square feet and Lot 2 is 23,856 square feet. The lot coverage by building requirement is less than 35% and the lot coverage by building for Lot 2 is 8.1%. The impervious cover ratio must be less than .70 and the impervious cover ratio for Lot 2 is .59.

Miller said that for required parking, the parking ordinance requires 1 parking space per 250 square feet of floor area for an office building. The office building is 1954 square feet making the number of required parking spaces 8. This parking space requirement is fulfilled by the 17 parking spaces that are already provided.

Miller said proposed Lot 2 will have the office for the apartment complex situated on the lot. After discussions, it was decided that documentation tying this lot to the apartment complex is required. The required documentation would inhibit the sale of Lot 2 separately from the apartment complex and prevent any possible change in the way the office building is used. This is due to the fact that office buildings are not permitted within R-3 zones, except as related to an apartment complex. A deed restriction is being reviewed by the City Attorney Jordon Evert. Evert stated that he hasn’t had time to fully review this yet but agreed that any motion to approve be contingent on approval of the deed restriction document.

The property was originally subdivided within the city and has access to city water and city sewer services.

The September 5, 2017, ad hoc committee recommended approval of this short plat.

Aafedt called three times for public input; hearing none she closed the public hearing and asked for the wishes of the Commission.

MOTION BY LONG, SECOND BY CHRISTENSEN to approve the short plat for the lot split of Lot 1, Block 1 of the Roseland Subdivision 3rd Addition, as presented, contingent on the completion of the recordation requirements and the approval of the deed restriction document by the City Attorney. **AYES:** Christensen, Eynon, Long, Hansen, Aafedt. **NAYS:** None **ABSENT/NOT VOTING:** Maristuen, Bauer. **ABSTAINED:** None.

UNFINISHED BUSINESS:

A. NONE

NEW BUSINESS:

- A. Special Permitted Use request to allow a tow business and residence on an Agriculture zoned lot located on Lot 7, Stony Acres Subdivision, 5094 132nd Lane NW, in the City of Williston extra-territorial jurisdiction – Eaton Towing and Recovery, LLC/Richard Eaton

Commissioner Aafedt introduced new business item A (as above) and asked Laqua to present. Laqua stated that this application originated with a code enforcement case against this property for an improper business location. Surrounding zoning is Agriculture to the north, R-1E to the south, R-1A to the east and Agriculture to the west.

Code Enforcement was under the impression that Eaton Towing was operating as a home occupation, though in violation due to the “heavy commercial vehicles” (over 10,000 lbs, as defined by Ordinance 985-B) on the property. Code Enforcement wrote an enforcement letter to Eaton Towing. Mr. Eaton responded, noting that he had been granted a CUP by the County to operate the business off of the property. He does not store towed vehicles on the yard or property.

At that point, staff reviewed all CUPs granted by the county inside the ETJ. At the time of ETJ rezoning, the City had noted that all county CUPs would be effective until the date that the county had set for expiration. This is currently the only one operating in violation.

When the City's Extra Territorial Jurisdiction was taken in on May 26, 2015, the City noted that uses which legally existed in the County could continue to operate within the City. When Stony Creek was rezoned to City Zoning in March 8, 2016, the City noted that any CUPs which were granted by the County would be able to continue to exist until the expiration date that the County had set.

Laqua stated that Eaton Towing was approved for a CUP by the County on January 13, 2015 for a period of one year, approved for indoor storage of commercial family owned work tow trucks with no outside storage, and was approved for one year until January 13, 2016.

It appears that Eaton Towing operated beyond January 13, 2016, and additionally was in violation of the original terms of the CUP by having vehicles stored outdoors.

City staff and Commissioners held an ad hoc to review all ETJ properties with a CUP and determined that, in this case, Mr. Eaton should be allowed to apply for a Special Use Permit to run this business on the Agricultural zoned property based on the timing of the CUP expiration and ETJ establishment and rezoning. Based on when the ETJ was taken in on May 26, 2015, and when Stony Creek Township was rezoned on March 8, 2016, along with the CUP expiration of January 13, 2016, there was potential for confusion regarding renewal of the CUP.

The City has issued an SPU for a contractor yard in an Agricultural zoned property before; however, as this is a towing yard it would be considered a non-enumerated SPU.

At ad hoc, a commissioner questioned whether there had been neighbor comment at the original County hearing. Staff was not aware of what occurred at those meetings. That commissioner spoke with a County Commissioner after ad hoc and has noted that the County

commissioner remembered some neighbor objections. City staff has been contacted by one neighbor, as noted below.

Laqua said that the township was notified via mail of this case. We did receive a call from both Kelly Brunelle and Casey Heller regarding this case. Kelly stated that the township recommends denial of the special use permit. This is partially based on the past case where, as Casey Heller noted, he was allowed a one year CUP in order to allow time to move his business off the property across street to the east of the Eaton Property. The county determined to not allow a business to be run off of that residential property.

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.* This will not be altered from current access points.
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.* All work vehicles, heavy commercial vehicles, and Eaton Towing vehicles must be stored inside, as noted in the original County CUP.
3. *Refuse and service areas, with particular reference to the items in "1" and "2" above.* This will not be altered from current areas.
4. *Utilities, with reference to locations, availability, and compatibility.* This will not be altered from current utilities.
5. *Screening and buffering with reference to type, dimensions, and character.* This will not be altered from current screening.
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.* This will not be altered from current signage.
7. *Required yards and other open spaces.* These will not be altered from current yards. All towed vehicles are stored off site.
8. *General compatibility with adjacent properties and other property in the district.* The use has been in existence for two years, with no code enforcement complaints beyond the one which alerted the City to this concern.
9. *Use shall not impose a hazard to health or property.* The use was granted by the County as a CUP and has been in operation for over two years.

The September 5, 2017, ad hoc committee recommended that the full commission review this Special Use Permit request.

One neighbor, after receiving the certified SPU notification, contacted Planning and Zoning and asked remain anonymous, but stated opposition to the request, and noted that they had opposed the original CUP request to the county, based on past decisions by the county regarding the Heller property and that at that time, the applicant had multiple towed wrecked cars on the property. They did not feel it was an appropriate location for a towing business.

Aafedt asked for clarification of the dates; Laqua explained again the overlap of the County CUP, the expansion of the ETJ, expiration of the Eaton Towing CUP and the ETJ re-zone.

Long asked about the approval of the contractor yard. Laqua reminded the Commission of the Tod Ammerman SPU and added that at the time that item was presented to and approved by the Planning & Zoning Commission that Stony Creek Township had not gotten their comment to staff prior to the commission meeting but ultimately they did express their disapproval of that SPU as well.

Eynon asked Laqua about her statement of having reviewed the County CUP's and this one being the only one in violation expressing his concern that this was not going to be the first of several to come because of later expiration dates. Laqua stated that most of the remaining CUP's do not have expiration dates; two that do are crew camps and are dealt with under that ordinance and one other may end up in this same situation although Laqua believes the use has already been removed.

Long reminded that up the road from this proposed SUP is a drilling operation and asked what the zoning of that was. Laqua said that the drilling operation was approved by the County and that the zoning is R-1A.

Aafedt stated that although this was not a public hearing she would allow interested parties to speak to this matter.

John Borrud approached the Commission and stated that he owns the property to the north-west. He is wondering about outside storage of towed vehicles but realized that his question was answered during Laqua's presentation (will not be allowed). He added that beyond that concern he says that Rich Eaton has been a good neighbor and you rarely even know he is out there.

Rich and Diane Eaton addressed the Commission and stated that they have rented a lot north of town where wrecked vehicles would be stowed and offered an apology to the City for the confusion and any trouble caused by this matter. She stated that their son had been handling this issue with the zone change but their son passed away during this process and the zoning and CUP and SPU issue got lost in their family turmoil.

Christensen asked about the length of time that the SPU is valid and if there is a complaint about operation could the SPU be removed? Laqua stated that the SPU runs with the land as long as the use exists. The SPU would become null and void three-years after the termination of the use on the property. As to revocation of the SPU Laqua deferred the question to City Attorney Evert who explained that complaint proceedings would have to come before the Commission to determine whether the conditions had been violated. Evert added that if the Commission wanted to add to their motion that the SPU could be revoked after any complaint proceedings determined that any of the conditions were violated, they could do that.

Eynon asked if the Code Enforcement Case has been closed; he was told that the result of this SPU request was needed in order to conclude the Enforcement Case. Eynon asked Eaton's if they had a lot of calls in the middle of the night. Rich Eaton stated not many during the

summer time but more during the winter just because of the weather. He added that there is not open exhaust on his trucks, all are muffled so as to not create a lot of noise coming and going.

MOTION BY CHRISTENSEN, SECOND BY HANSEN to approve the special use permit for a non-enumerated special permitted use of a towing company on Lot 7, Stony Acres Subdivision, as was previously allowed by County CUP, contingent on the completion and recordation requirement, and the understanding that any non-compliance could result in revocation proceedings. **AYES:** Christensen, Eynon, Long, Hansen, Aafedt. **NAYS:** None
ABSENT/NOT VOTING: Maristuen, Bauer. **ABSTAINED:** None.

Rich Eaton asked the Commission for clarification on whether or not their drivers would be allowed to go into the residence on the property to sleep if they come back from a late night tow. He explained that many businesses now have gates locked at a certain hour in the evening, Kenworth for example, and if they have a tow after those hours they are not able to deliver a vehicle until the business opens again in the morning. Usually when that happens the vehicle stays hooked to the tow truck and driver goes into the house and rests until the vehicle can be delivered. The Commission agreed that as long as a tow was still hooked to the tow truck that would be considered "in the process" rather than storage that would disallowed and agreed that was acceptable and the drivers could rest in the house.

B. Vacation of Public Right-of-Way Petition for a tract of land in the SE1/4, Sec. 21, T154N, R101W, containing 0.32 +/- acres, north of US Hwy 2 and east of 32nd Ave. W
– Bobby Erickson

Commissioner Aafedt introduced new business item B (as above) and asked Laqua to present. Laqua explained that this request is to vacate .32 acres of 32nd Ave W to accommodate the realignment of 32nd Ave. W. which occurred with the 2017 construction project on Highway 2. The realignment required a dedication on the west side of 32nd Ave. W. and released this .32 acres from use.

Laqua said this item was requested by the City Engineer on behalf of Bobby Erickson.

It has been noted by WBI and the City Engineer that there is both a blanket easement and a specific easement held by WBI running over this property; it does not need to be shown on the exhibit and there are no changes to that easement being made by this vacation.

The September 5, 2017, ad hoc committee noted the WBI easement and recommended approval of the vacation.

MOTION BY LONG, SECOND BY CHRISTENSEN to recommend to the City Commission approval of the vacation of a tract of land in the SE1/4, Sec 21, T154N R101W, contingent on the completion and recordation requirements. **AYES:** Christensen, Eynon, Long, Hansen, Aafedt. **NAYS:** None **ABSENT/NOT VOTING:** Maristuen ,Bauer.
ABSTAINED: None.

C. Vacation of Public Right-of-Way Petition for .015 +/- acres on the east side of the rearrangement of Block 2, Holms First Subdivision to the City of Williston – Alliance Consulting

Commissioner Aafedt introduced new business item C (as above) and asked Laqua to present. Laqua said that this applicant is requesting to vacate .15 acres of land that was west of the previous 6th Ave W, to the east of the old Kum 'n' Go and the current renovation into offices for Alliance Consulting. The land was originally part of the property that is requesting the vacation, and was dedicated with the rearrangement of Block 2 for the purpose of the frontage road.

Since the frontage road has been removed and all traffic diverted to 9th Ave. W., the property owner is requesting the vacation of the .15 acres that were previously dedicated.

The September 5, 2017, ad hoc committee recommended approval of the vacation.

MOTION BY CHRISTENSEN, SECOND BY LONG to recommend to the City Commission approval of .15 acres on the east side of the Rearrangement of Block 2, Holms First subdivision contingent on the completion and recordation requirements. **AYES:** Christensen, Eynon, Long, Hansen, Aafedt. **NAYS:** None **ABSENT/NOT VOTING:** Bauer, Maristuen. **ABSTAINED:** None.

D. Revised final plat for a rearrangement of Lots 1 through 22, Block 8, Hawkeye Subdivision – Hawkeye Village LLC

Commissioner Aafedt introduced new business item D (as above) and asked Laqua to present. Laqua said the applicant is requesting to add a 20' public access easement to the previously approved final plat for this rearrangement. Previously, a 20' utility easement ran along the back of each lot in the rearrangement.

This addition would turn that previous 20' utility easement into a 20' utility and public access easement, as allowed by Ordinance 1041, which allows a 20' alley to be considered.

However, alleys that are public access and utility easements must be managed and controlled by an HOA, as laid out in Ordinance 1041, Section 11.A.7.g. The previous final plat approval included a special development agreement to amend a portion of the original development agreement. The proposed special development agreement will also need to be edited to reflect this change.

City Engineer Hanson asked that the minutes reflect very clearly that the City WILL NOT be maintaining this alley and that it is the responsibility of the HOA.

Commissioner Eynon asked if 20 ft. was standard alley right-of-way; City Engineer Hanson stated it was.

Commissioner Long asked for clarification of whether Ordinance 1041 stated that the HOA had to maintain the alley or if it just allowed the alley to exist. Laqua explained that Ord. 1041 does require that the HOA maintain any alleyway unless the City should decide to take responsibility.

MOTION BY LONG SECOND BY CHRISTENSEN to recommend to the City Commission approval of the updated final plat of the Rearrangement of Lots 1-22, Block 8, Hawkeye Subdivision, contingent on the completion and recordation requirements. **AYES:** Christensen, Hansen, Eynon, Long, Aafedt. **NAYS:** None **ABSENT/NOT VOTING:** Bauer, Maristuen. **ABSTAINED:** None.

COMMITTEE REPORT:

A. NONE

DATE OF NEXT REGULAR MEETING: October 16, 2017

MEETING ADJOURNED.



Kent Jarcik, Williston Planning Director

APPENDIX TO THE SEPTEMBER 18, 2017, PLANNING & ZONING COMMISSION MEETING

1. A Special use permit for a non-enumerated special permitted use of a towing company on Lot 7, Stony Acres Subdivision, as was previously allowed by County CUP – Eaton Towing