

REGULAR MEETING OF THE PLANNING AND ZONING COMMISSION WAS HELD ON DECEMBER 21, 2015 IN THE COMMISSION ROOM AT CITY HALL IN WILLISTON, NORTH DAKOTA.

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

MEMBERS PRESENT: Christensen, Hansen, Haugen, Long, Boyeff, Maristuen

MEMBERS ABSENT: Aafedt

OTHERS PRESENT: Kent Jarcik, Planning Director; Donald Kress, Principal Planner; Rachel Ressler, Senior Planner; Samantha Neill, Staff Planner; Josephine Ching, Staff Planner; Christine Edwards, Administrative Assistant; Bob Hanson, City Engineer; Jordon Evert, Assist. City Attorney.

DISPOSITION OF MINUTES:

- Minutes were approved for November 16, 2015 regular meeting. MOTION BY CHRISTENSEN, SECOND BY HAUGEN. CARRIED ON VOICE CALL.

COMMUNICATION:

- 2016 Planning and Zoning Commission calendar was presented for approval. It was explained that January and February meeting dates were proposed to be held on the third Tuesday of those months as the third Mondays fell on city Holidays; also, July and September ad hoc meetings were proposed for the first Tuesday of those months as the first Mondays fell on city Holidays. MOTION BY BOYEFF, SECOND BY HANSEN to approve the 2016 calendar as presented. CARRIED ON VOICE CALL.
- Discussion of extending the notice radius for entitlements within the city limits and within the one-mile extra-territorial jurisdiction (ETJ).

Kress stated that At the December 7, 2015 ad hoc committee meeting, the committee discussed a proposal to extend the notice radius within the City's one-mile extra-territorial jurisdiction (ETJ), as the properties in the ETJ are generally larger in size than properties within the city limits.

The "notice radius" is the distance around the property that is the subject of an entitlement (for example plat, zone change, special use permit, PUD) in which the surrounding property owners must receive notice of the public hearing for that entitlement.

At the December 7, 2015 ad hoc committee meeting, the committee discussed notice radius size within city limits and the ETJ.

Kress said that the current 150 foot notice radius derives from Section 29(C) of Ordinance 613 known as the Williston Zoning Ordinance.

Review by the city attorney indicates that notice radius is not addressed in the North Dakota Century Code. The city attorney advised the ad hoc committee that the Planning Commission could establish a policy to require a notice radius greater than the one specified in Section 29(C) rather than having to amend that ordinance.

The committee noted that the lot sizes, density, and intensity of development are different within the city limits and within the City's one-mile extra-territorial jurisdiction (ETJ)

The city attorney noted that there could be a different notice radius in the city from the one in the ETJ, and recommended that the Planning Commission pass a resolution that would direct staff to use the notice radius designated by that Commission. The City Commission would not be required to approve this resolution.

MOTION BY CHRISTENSEN, SECOND BY HANSON to expand the notice radius within city limits to 300 ft. and for projects within the city's one-mile, extra-territorial jurisdiction to 1000 ft. AYES: Haugen, Christensen, Hansen, Long, Boyeff, Maristuen. NAYS: None ABSENT/NOT VOTING: Aafedt. ABSTAINED: None.

Kress noted that these notification radius would become effective with the January 2016 Planning Commission Meeting.

- Planning Article of the Month

Maristuen explained to the Commission that this is something the staff was going to start including each month to help the Commission understand and be up to date on the processes, trends, purposes of City Planning.

PUBLIC HEARINGS:

- A. Proposed Ordinance 1032 repealing Ordinance 936 and amending Section 23(N) of Ordinance 613, also known as the Zoning Ordinance of the City of Williston, to provide for more comprehensive regulations governing adult establishments in the M-2:Heavy Industrial Zoning District – City Attorney

Maristuen introduced Item A of Public Hearings and asked attorney Evert to present. Evert explained that proposed Ordinance 1032 is an amendment to Ordinance 613, otherwise known as the zoning ordinance of the City of Williston ("City") and results from a direction by the City Commission due to the negative secondary effects experienced in the downtown area associated with adult establishment businesses.

Evert reviewed some of the crime statistics from the Williston Police Department that prompted the request from the City Commission:

- (1) Between mid-2013 and June 2015 there were over 200 reported incidents at the 2 strip clubs located within City limits that the Williston Police Department responded to.
- (2) The following is a summary of the types of calls and incidents that the Williston Police Department responded to:
 1. 2 homicides; 1 murder and 1 death from grave bodily injury resulting from an assault.
 2. 42 fights/assaults, almost all involved intoxicated individuals.
 3. 8 DUIS/Disorderly Conduct
 4. 36 unruly and intoxicated patrons

5. 10 theft of property calls, including 2 stolen vehicles
6. Multiple dates of minors being admitted to the establishments while under the age of 18 and/or being served with alcohol while under the age of 21.

Evert stated that in following the request of the City Commission, Ordinance 1032 has been drafted. This ordinance applies to adult establishments that are:

- within the city limits and were approved by the City under Ordinance 936; and,
- within the ETJ and were approved by Williams County under their adult establishment ordinance and were later included within the City's jurisdiction following the ETJ adjustment of May 26, 2015 (Ordinances 1017 and 1018).

Ordinance 1032:

1. Amends Sections 23 (M-2: Heavy Industrial Zone) of Ordinance 613 to add Section N: Adult Establishments and Repeals Ordinance Number 936;
2. Provides the legislative purpose of the ordinance as well as specific factual findings supporting the ordinance in light of the negative secondary effects experienced by municipalities around the country;
3. Specifies that the purpose of the ordinance is lawful regulation of the location of such adult establishments under the City's zoning and general police powers and not the impermissible regulation of the content of certain protected expression that occurs as such adult establishments;
4. Defines "Adult Establishments/Adult Uses;"
5. Specifies that the location of any adult establishment is restricted to the M-2: Heavy Industrial District from the effective date of the Ordinance;
6. Specifies location restrictions in that all adult uses may not be located in the same building or upon the same property as any other adult use/adult establishment and may not be located within 1,250 feet of any residential district, day care centers, schools, libraries, public parks, religious facilities or another adult establishment;
7. Specifies requirements for nonconforming uses in that any adult use lawfully operating outside of the M-2 district prior to the date the ordinance is enacted is deemed a nonconforming use and that such nonconforming uses may continue outside the M-2 district for a period of one year only;
8. Specifies the requirements to receive an extension of the compliance period for nonconforming uses;
9. Specifies the signage regulations for adult uses within city limits;
10. Specifies the requirements of adult movie rentals, adult magazines and other adult uses in relation to prohibiting access to minors;
11. Specifies the penalties for violating the ordinance.

At the December 7, 2015 ad hoc meeting, discussion included:

STATUS OF ORDINANCE 1032: Ordinance 1032 is a proposed amendment to the City of Williston's Planning and Zoning Code. The ordinance restricts all adult establishments/adult uses to the M-2: Heavy Industrial Use District. Evert stated that the ordinance is retroactive and requires that even adult establishments located outside the M-2 district but approved as lawful nonconforming uses must come into compliance with the ordinance. The ordinance gives these adult establishments one year to come into compliance with the new ordinance.

Evert said that Ordinance 936 sought to address some of the same issues as Ordinance 1032. However, Ordinance 936 was not as comprehensive or restrictive as Ordinance 1032. For example, it allowed for adult establishments in existence at the date the ordinance was enacted to continue as nonconforming uses outside the M-2 District. This new ordinance eliminates that possibility. Ordinance 1032 was drafted because of the persistent negative effects that exist with allowing adult establishments located outside of the M-2 District, in central areas of town, such as downtown.

The negative effects experienced downtown are significant and in conflict with the stated goals of the Comprehensive Plan to develop the downtown area.

Evert concluded his presentation. Maristuen called three times for public input; hearing none he closed the public hearing and asked for the wishes of the Commission.

Commissioner Hansen asked for clarification if the current adult entertainment businesses would be required to move. Evert explained that both are non-conforming uses in their current location. Ordinance 1032 requires that they move to M-2: Heavy Industrial zone within one-year. Ordinance 936 permits adult entertainment in M-2 zone but did not specify any correction type or time line for correction of the non-conforming status, Ordinance 1032 will correct that.

Commissioner Haugen asked if there would need to be two motions, one on Ord. 1032 and another to repeal Ord. 936. Evert said that Ord. 1032 includes language to repeal Ord. 936 so only one motion would be needed.

City Engineer Hanson asked about notice to business owners and how that is accomplished. Kress said that proposed ordinances are advertised in the Williston Herald, the City at large is not individually notified. Commissioner Hansen wondered about the owners of the adult entertainment businesses knowing about the proposed ordinance as no one had appeared at the public hearing. Kress stated that the ordinance would need to go before the City Commission twice more, once as another public hearing, and that both times it would be advertised in the paper just as it was for this Planning Commission meeting.

MOTION BY HAUGEN, SECOND BY HANSEN, to recommend the City Commission approve ordinance 1032 repealing Ordinance 936 and amending Section 23(N) of Ordinance 613 to provide for more comprehensive regulations governing adult establishments in the M-2:Heavy Industrial Zoning district in the City of Williston and its extra-territorial jurisdiction. **AYES:** Haugen, Christensen, Hansen, Long, Boyeff, Maristuen. **NAYS:** None **ABSENT/NOT VOTING:** Aafedt. **ABSTAINED:** None.

B. Proposed Ordinance 1031 amending Section 25: Supplementary Regulations of Ordinance 613, otherwise known as the Zoning Ordinance of the City of Williston, adding Section P "Fabric Structures" regulating the use of fabric structures - Staff

Maristuen introduced Item B of Public Hearings and asked Ressler to present. Ressler explained this ordinance amends Section 25 of Ordinance 613, City of Williston Zoning Ordinance, by adding Section P, Fabric Structures. It is intended to address industrial tent structures, or "fabric structures". Ressler said there is currently no ordinance to address these structures and appropriate locations for them.

This ordinance defines the appropriate use for fabric structures, and the appropriate locations. The ordinance allows these structures in M-1: Light Industrial and M-2: Heavy Industrial zones. If the property is along the Hwy 2/85 or 1804 corridors, then the ordinance requires that the structure be located at least 300 feet from the right of way. 300 feet is a standard block length as defined by the American Planning Association.

Ressler stated the ordinance also notes that these structures should be used only for inert, permanent, industrial storage. They should be maintained in good condition, and must meet all fire and building codes for permanent buildings.

The ordinance does not allow these structures in any other zone. Ressler said this would not necessarily preclude fabric from being utilized as an accent structure, nor does it mean that temporary tents (for weddings, carports, etc.) could not be used for a temporary structure. Ressler added that those temporary structures would go through a temporary building permit process.

Ressler said that a moratorium was put into place by way of Ordinance 1021, at the August 11, 2015 City Commission meeting. Ressler stated that at that meeting, City Commissioners asked that staff meet with the industry, architects, and local representatives. Staff met with a company that produces these structures (Mahaffey), local architects (Mark Schneider, Mike McLean, Burton Young), and a local representative (Curtis Shuck). The local architects and representative agreed that the ordinance attached would address most concerns while still leaving flexibility for creativity and for the use of the structures.

Ressler said that at the December 7, 2015 ad hoc meeting, staff explained the proposed ordinance and the committee was in favor of it. With that she concluded her presentation.

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

Commissioner Boyeff asked if fabric structures are defined in the Zoning Code. Ressler stated that they are not but they are defined in the Building and Fire Code. Ressler said that the ordinance could indicate the definition as written in the Building and Fire Code or the staff could look at adding a definition into Section 31 of the Zoning Code (Definitions). City Attorney Evert added that the Commission could direct either way.

Commissioner Haugen asked what the Fire Chief has said about fabric structures meeting Fire Code. Ressler stated that there are several ways they can meet Code, which is something the Chief would be involved in. Fire Chief Catrambone has been involved in the ad hoc meeting for this ordinance. Maristuen reminded that all buildings are permitted and inspected through the Building Department and Fire Chief and that would include any proposed fabric structures.

MOTION BY CHRISTENSEN, SECOND BY HANSEN, to recommend to the City Commission approval of Ordinance 1031: amending Section 25 of Ordinance 613, otherwise known as the City of Williston Zoning Ordinance, adding Section 25(P) Fabric Structures, and adding a definition of Fabric Structures to Section 31, Definitions. AYES: Haugen, Christensen, Hansen, Long, Boyeff, Maristuen. NAYS: None ABSENT/NOT VOTING: Aafedt. ABSTAINED: None.

C. Proposed amendment to Ordinance 971—Wall Signs in the C-2: General Commercial District—to correct a typographical error—Staff

Maristuen introduced Item C of Public Hearings and asked Ressler to present. Ressler said that Ordinance 971 was adopted on September 24, 2013 and amended Section 20.L: Sign Limitations of Ordinance 613 of the City of Williston. Specifically, the ordinance changed the allowable wall signage from “not exceeding the larger of 20% of the façade to which it is attached or 60 square feet up to a maximum of 200 square feet” to “not exceeding 2 square feet per 1 foot of building frontage of the façade to which the sign will be attached. If there is less than 100 feet of building frontage, wall signage not exceeding 20% of the façade to which they are attached is allowed; however, this is not to exceed 200 square feet of wall signage.”

Ressler stated that the ordinance was not intended to change anything other than the wall signage allowances; however, a typographical error in the final draft of the ordinance replaced an allowance of 125 square feet for freestanding signs (under number 1, which was not to have changed) with 75 square feet. The Planning Department has not applied this 75 square feet requirement, as it was not discussed, approved, or intentional.

Staff proposes amending the ordinance to replace “75 square feet” allowance for freestanding signs with “125 square feet” in order to return the ordinance to its intended language.

At the December 7, 2015 ad hoc meeting, staff explained the proposed amendment and the committee was in favor of the ordinance amendment. Ressler concluded her presentation.

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

MOTION BY LONG, SECOND BY HANSEN to recommend to the City Commission approval of amending Ordinance 971, to correct a typographical error regarding allowances for freestanding signs, replacing “75 square feet” in number 1 with “125 square feet”. AYES: Haugen, Christensen, Hansen, Long, Boyeff, Maristuen. NAYS: None ABSENT/NOT VOTING: Aafedt. ABSTAINED: None.

D. Short plat to create one lot from Lots 1R and 2R, Monica Johnson Subdivision, City of Williston - Family Crisis Shelter

Maristuen introduced Item D of Public Hearings and asked Ching to present. Ching stated that this application requests a Short Plat to combine two lots into one lot on Lot 1R and Lot 2R, of the Monica Johnson Subdivision. The size of the lot after combining will be 1.12 acres. The lots are currently zoned R-1A: Rural Residential. The proposed lot will meet the minimum lot area requirements of the R-1A zone.

Ching reminded the Commission that a Special Use Permit (SPU) was granted for the Family Crisis Shelter in July of 2015. The proposed new shelter access will be from 34th Street East. There are water and sewer lines available both on University Avenue and 34th Street East.

There were no comments from the Ad Hoc Committee at the December 7, 2015 meeting. The City Engineer had two plat comments. With that, Ching concluded her presentation.

Maristuen called for public input. After a third call and hearing no public input he closed the public hearing and asked for the wishes of the Commission.

MOTION BY BOYEFF, SECOND BY CHRISTENSEN, to approve the short plat to create one lot from Lots 1R and 2R, Monica Johnson Subdivision, City of Williston, contingent on addressing all ad hoc and staff comments. AYES: Haugen, Christensen, Hansen, Long, Boyeff, Maristuen NAYS: None ABSENT/NOT VOTING: Aafedt. ABSTAINED: None.

- E. Short plat to create two lots from Lot 20, Bennett Industrial Park 3rd Addition, City of Williston extra-territorial jurisdiction – CSG General Contractors/Westrum Land Survey

Maristuen introduced Item E of Public Hearings and asked Ching to present. Ching said that this application requests a Short Plat for a lot rearrangement to create two lots from one lot on Lot 20, Block 2 of Bennett Industrial Park Third Addition Subdivision, located in the extra-territorial jurisdiction (ETJ). The lot size is currently 4.16 acres and the approval of this short plat would create two lots that are each 2.08 acres.

Ching state that he lot is currently zoned Industrial by the County and stated that the City is undergoing the process of rezoning the Extra-Territorial Jurisdiction. The City proposed to rezone both of the properties to M-2: Heavy Industrial. There is no minimum lot size requirement in M-2 zone in the City.

The 50' Access and Utility Easement will be created with the plat. Both lots will take access on 141st Avenue NW/County Road 4. The lots will served by septic and rural water.

Ching told the Commission that on December 4th, 2015, Planning Staff met with the local agent for this property regarding access points concerns in the Bennett Industrial Park. The lots located along the Bennett industrial Trail Drive – Lots 3 through 10, Block 2, were platted before ND DOT developed the truck route. The State also took away the lots access to the street. It was not required at the time to correct the access points along with the plat, which left the applicant with unresolved access issues. The agent noted that they plan to replat the unsold lots that have no access to the truck route.

Discussion at the December 7, 2015 Ad Hoc meeting included:

Drainage Ditch Easement: City Engineer commented there is a drainage ditch that slices through the east side of Lot 20. The applicant explained the drainage is the result when North Dakota Department of Transportation (ND DOT) developed the truck route and moved the dirt there. City Engineer asked the applicant to provide the capacity of the ditch and a study of the channel to show that it can handle 100 year flow. *NOTE: The applicant has provided the drainage easement and City Engineer responded the drainage easement is adequate to carry 100 year flow. City Engineer recommended contacting the County Planning/County Water*

Resource Board to ask about drainage studies in the area. Planning Staff has contacted these agencies.

Development Agreement: Since there is no formal Development Agreement in the County, Planning Staff will prepare a development agreement regarding the access and drainage issue on Block 2 of this subdivision including the following:

- a. Access:
 - i. Lots 3 through 10, Block 2, of the Bennett Industrial Park 3rd Addition had their platted access eliminated by the development of the Highway 85 Truck Reliever Route ("TRR"). At the time the TRR was developed, no plat was required to correct this situation of eliminating access to these lots, leaving an unresolved access issue.
 - ii. No further development on Lots 3 through 10, Block 2 of the Bennett Industrial Park 3rd Addition shall be permitted until public access consistent with the development standards of the M-2: Heavy Industrial Zone is provided to these lots through a plat approved by the City.
 - iii. There are access options available from other properties. Options may be limited based on lot numbers and locations to access. A formal plan would need to be reviewed and approved for any proposed platting.
- b. Drainage:
 - i. Lots 3, 4, 18 and 19, Block 2, of the Bennett Industrial Park 3rd Addition have unresolved drainage issues.
 - ii. No further development of Lots 3, 4, 18 and 19, Block 2, of the Bennett Industrial Park 3rd Addition shall be permitted until the drainage issues are corrected to the satisfaction of the Williston City Engineer.
- c. Title:
 - i. Lots affected by drainage and access issues as noted above shall be noted for title purposes on any lots that could be sold.

Ching stated that the ad hoc committee was in favor of approving this project and concluded her presentation. Maristuen opened the public hearing and asked for input from the audience.

Roger Cymbaluk spoke from the audience. He and his son Tate Cymbaluk are the applicants of this plat. As a way of history of this property he stated that this subdivision was originally started with Williams County and that they (Cymbaluk's) had agreed to give a 240 (+/-) ft. right-of-way to the State on this property and the state had agreed to leave all existing access points. Once the truck reliever route was put in place the State removed the access points to their property. Also created during this time was a 6 acre orphaned piece of land, belonging to the State, within Bennett Industrial Park and that creates a drainage issue for all surrounding properties.

Cymbaluk added that Lots 18 and 19, to the south of Lot 20, have been added to this plat and Development Agreement requirements but they are owned by another gentleman (Myers) who has proper access to his lots and those lots and a 2 acre section available for development on the front of lots is not involved in the drainage problems. Therefore Cymbaluk does not feel it is fair to join Myers in a "non-development" agreement. He agreed that the whole plat needs to be re-worked at some point and agrees that no development can or will occur on his Lot 20 until the access and drainage issues are resolved but again states that it is unreasonable to force Myers to the same.

Kress stated that the development issues are not the fault of the subdivider; access was taken from them. However this is a subdivision wide issue that needs to be addressed even outside of this plat to prevent future issues with peripheral development.

City Engineer Hanson corrected all the statements about the drainage issues being corrected and said that they need to be accommodated, not corrected. He added that it appears that applicant is headed in the right direction to handle this situation but there still needs to be some continued work to fully handle water flow.

Cymbaluk stated again that he is satisfied that more work needs done to correct issues in this subdivision and that he has no issue with not being able to develop on his Lot 20 until access and drainage are corrected but again does not want the Myers lots affected by his Development agreement.

Maristuen called a third time for public input.

Dan Kalil of the Williston Township Board spoke from the audience and stated he is in favor of Cymbaluk's plan to correct drainage issues. With more development in the area there is more water and silt being pushed down the coulee from there so anything that could help drainage, the Township Board is in favor of.

Maristuen closed the public hearing and asked for the discussion or wishes of the board.

Commissioner Boyeff asked who maintains access. Cymbaluk stated that access would be maintained by both the County and the State and added that there is no existing access on the west side. Kress stated that the staff has talked with the County about how to work out access. This will also be added as staff and Commission comments and addressed in the Development Agreement but access must be established before any development can happen.

Boyeff asked about an overall plan to allow access from the reliever route. He is concerned that the plat will show access points that the County may not approve and then the plat will change from what is being approved. Cymbaluk said that splitting his Lot 20 would make access more available.

Maristuen stated that this is an issue that the City has been left with from the State and County and will simply have to be dealt with, not allowed to continue and corrected before more development can go forth in this subdivision.

Commissioner Christensen asked what would insure that the water/drainage issues would be taken care of if the Commission were to approve this plat. Kress stated that would be part of staff comments and would be built into the Development Agreement and reminded that the Commission may require additional provisions as they see fit.

City Engineer Hanson stated that Lots 18 & 19 were added to this plat because of drainage issues, not access. The drainage issues cut through the northwest of Lots 18 & 19 and then onto Lot 20. There are existing building permits active for the Myers' lots that came from the County as well.

Christensen stated he is concerned about approving this plat without a firm plan in place for drainage. He acknowledged that he believes it will get there but to approve without a plan, when there are clear drainage issues, is worrisome.

City Attorney Evert said that the Development Agreement clearly prevents development of Lot 20 until all drainage and access issues are resolved to the satisfaction of the City Engineer. Cymbaluk is simply asking that Lots 18 & 19 not be included in the Development Agreement so far as non-development is concerned as they are not a part of the proposed plat for Lot 20.

Kress says that Myers is the actual applicant on the application for this short plat as he is the current owner of Lot 20 but that it is under contract to Mr. Cymbaluk. As such, Mr. Meyer will have to sign the plat along with Cymbaluk and therefore is a party to this plat and any agreement already. Cymbaluk stated that as soon as the plat records Lot 20 will be fully deeded to him and Mr. Meyer will no longer have any dealings with that Lot and should not be bound to a Development Agreement that does not concern him or his Lots 18 & 19.

Boyeff asks why Lots 18 & 19 would need to be added to the Development Agreement stating that he is not comfortable holding Cymbaluk's project based on someone else's agreement. Jarcik stated that Lots 18 & 19 would be tied to this Development Agreement only to the issue concerning drainage. Kress added that this was addressed by the County so the City must now address it.

City Attorney Evert asked if drainage was addressed in approval of a building permit. City Engineer Hanson stated that drainage is looked at to be sure that any building will not block drainage. He explained how the drainage runs now, the pipes and culverts that the County has in place and stated he is not sure how to forcibly include Lots 18 & 19 into the Development but Lot 20 does not address the drainage issues alone.

MOTION BY BOYEFF, SECOND BY HANSEN, to approve the Short Plat for Lot 20, Bennett Industrial Park 3rd Addition, City of Williston, addressing all staff comments but excluding any and all comments regarding Lots 18 & 19. AYES: Haugen, Hansen, Long, Boyeff, Maristuen. NAYS: Christensen. ABSENT/NOT VOTING: Aafedt ABSTAINED: None.

COMMITTEE REPORT: NONE

UNFINISHED BUSINESS:

- a. Short plat for rearrangement of an 11.91 acre parcel in the SW1/4NW1/4 of Section 22, T154N, R101W, into two sublots, north of Hwy 2/85 and east of 27th Ave W and a zone change for the entire property from A: Agricultural to C-2: General Commercial - Martin Reiger/Jeff Ames

Kress stated that the applicant requests that this matter remain tabled while a new drawing is being submitted to the City Engineer for approval. City Engineer Hanson stated that the current plat is different than the original and he is requiring that monuments be included on the plat; at this point he cannot approve it as is.

MOTION BY BOYEFF, SECOND BY CHRISTENSEN, to table this item until the January 2016 Planning Commission Meeting. CARRIED ON VOICE CALL

NEW BUSINESS:

- A. Special Permitted Use request to allow a parking lot in a C-2 zone located on Lot 7, Block 1, Sloulin Field 1st Addition, City of Williston – Interstate Power Systems

Maristuen introduced Item A of new business (as above) and asked Kress to present. Kress noted that this application was originally to be discussed at the November 19, 2015 Planning and Zoning Commission meeting, however, at the applicant's request, it did not appear on the agenda for that meeting, in order to allow the applicant additional time to evaluate the cost of the improvements to the property proposed by this SPU.

Kress noted that staff does consider this a zoning violation and the applicant was informed that if this was not brought forward at this time, staff would have to consider taking action on the violation.

Kress said this application requests a special permitted use (SPU) to allow truck parking in the C-2: General Commercial zone pursuant to Section 20(E)(1) of Ordinance 613, the Williston zoning ordinance. This SPU request comes as a way to clear the existing zoning code violation of having a parking lot in the C-2 zone without approval. Kress said that this parking lot has been operating since 1987 but staff research shows it has never been approved. The parking lot is for trucks in line for service at Interstate Power, west across 4th Avenue West from the property.

Kress explained that an SPU would require the applicant to provide a concrete or hot-mix asphalt paved surface for the area used for parking and a grass cover for any portion of the lot not used for parking. The SPU would also require that the west and south property lines have parking lot screening consistent with the requirements of Ordinance 1007 and that the boulevards on the west and south sides be planted with boulevard trees every 35 feet and grass.

Kress said this item was discussed at an ad hoc committee meeting on November 2, 2015 and discussion included:

STATUS OF THE EXISTING PARKING: Use of this C-2 zoned property as a parking lot is a zoning violation. It is not a non-conforming use as the use began after the property had been zoned C-2. This use had never been permitted on this property. Kress stated that there have been many different owners of this property since 1981; the applicant has owned the lot since 2011. The City owned this lot for a brief time having taken it in for unpaid taxes before eventually being sold to a private owner. It is the applicant's contention that this lot has been used for truck parking since 1987 including the time it was owned by the City of Williston.

NEED FOR SCREENING AND SURFACING IMPROVEMENTS: The committee clarified that the City is applying a standard for development in this situation. Though there may be a cost to the individual property owner to meet this standard, all property owners face that same situation.

SCREENING AND SURFACING REQUIREMENTS: Staff summarized these requirements, and explained the purpose of parking lot screening.

TIMING OF SCREENING AND SURFACING IMPROVEMENTS: The committee noted that the applicant has put considerable resources into improving other parts of their property and so it "makes sense we give them some time to allow them to phase that in budgets. Also, consideration for phasing was given due to the fact that this business has been established long term on this site. This is not a situation where an undeveloped ("green") property is being proposed for development. The committee suggested half the improvements could be completed in 2016 and the other half in 2017. Kress stated that should the Commission approve this SPU, the applicant would have until December 31, 2017 to complete these requirements.

SIDEWALK ALONG 4th AVENUE WEST:

The committee determined to follow the City Attorney's recommendation to require the applicant to sign a non-protest for future sidewalk improvements along the east side of 4th Avenue West. The applicant would not incur any cost for the sidewalk at this time but would not be able to protest special assessments.

Kress stated that he applicant's attorney, Winthrop Weinstein of Minneapolis, challenges the need for this SPU wondering why the City would allow this lot to be used as it is now in 1990's if it has never been a conforming use. Kress stated that the applicant's attorneys have been provided all information available to the Planning and Zoning staff which indicates that the current C-2 zoning of this lot has been in place since 1987. The truck parking use on this lot has therefore always been a zoning violation.

City Attorney Evert stated that some of his communication with the applicant's attorney concerns the possible existence of a lease between the City and Interstate Power to use the lot for truck parking during the time the lot was owned by the City in the early 1990s. The City Attorney can find no record of this and therefore cannot address any parameters of any such lease should one have existed. Secondly he states that the applicant's attorney asks why the City would allow this use to exist for so long if it was a zoning violation. Evert said that their other comment pertained to being a non-conforming use vs. a non-permitted use.

Kress said that there was a miscommunication of non-permitted or non-conforming on the fact sheet from the zone change for Interstate Power (Lot to the west of the one in question for this SPU) in October, 2015. Kress said however that also in that same fact sheet was a note making it clear that this was a zoning violation. Evert stated that this came out of an ad hoc where it was originally thought this was a non-conforming use but that further research found it was indeed a zone violation because the zoning of this lot has always been C-2: General Commercial under the current zoning ordinance established in 1983.

Mike Ferguson, representing Interstate Power read a letter from the company stating in part their desire to see the City's research on this matter to understand the City's position. Ultimately Ferguson and Interstate Power asked that the Commission table this item to allow their attorney and the City attorney more time to discuss it. Kress added that the bulk of the information requested by Interstate Power's attorneys was provided to them the week previous to this meeting.

Commissioner Haugen asked why landscaping would be required on the south and west side but not on the north. Kress explained that since the north and east sides of the lot are adjacent to other C-2 property it is not required. The south and west sides are on the street so buffering of the parking lot there is required.

Maristuen stated that since this lot currently is a zoning violation he felt hesitant to delay approval of the SPU that would bring it into compliance unless the applicant could give some assurance of their intent to correct the violation and making the required improvements. Maristuen recognized that Mr. Ferguson is not in the position of power to address this.

Commissioner Hansen asked for clarification on Interstate Power's position that they do not believe that the landscaping and buffering work does not be done. Kress said that their attorney does not believe that it is a zoning violation therefore nothing should have to be done different than it currently stands.

MOTION BY LONG, SECOND BY HANSEN, to table the Special Permitted Use request for Lot 7, Block 1, Sloulin Field 1st Addition, for one month to allow the attorneys more time to discuss the issues and bring this back at the next meeting for final ruling. **DISCUSSION: Haugen suggested the addition of wording that all timelines for completion would remain as presented by staff. AMENDED MOTION BY LONG, SECOND BY HANSEN, to add that there will be not extension of time to complete any requirements and that the deadlines will remain as presented by staff. AYES: Haugen, Christensen, Hansen, Long, Boyeff, Maristuen. ABSTAINED: None. NAYS: None. ABSENT/NOT VOTING: Aafedt,

DATE OF NEXT REGULAR MEETING: January 19, 2016

MEETING ADJOURNED.



Kent Jarcik, Williston Planning Director

APPENDIX
to the
DECEMBER 21, 2015 PLANNING AND ZONING COMMISSION MINUTES

- A. Special Permitted Use request to allow a parking lot in a C-2 zone located on Lot 7, Block 1, Sloulin Field 1st Addition, City of Williston – Interstate Power Systems
** THIS ITEM WAS TABLED, TO BE DECIDED AT A LATER DATE**